

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, ~~and~~ 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, carbonates, and natural mineral salts of
23 boron, bromine, calcium, fluorine, iodine, lithium, magnesium, phosphorus, potassium,

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

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

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

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

38-14.1-02. Definitions.

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

1. "Alluvial valley floors" means the unconsolidated stream-laid deposits holding streams where water availability is sufficient for subirrigation or flood irrigation agricultural activities but does not include upland areas which are generally overlain by a thin veneer of colluvial deposits composed chiefly of sediment from sheet erosion, deposits by unconcentrated runoff or slope wash, together with talus, other mass movement accumulation, and windblown deposits.
2. "Approximate original contour" means that surface configuration achieved by backfilling and grading an area affected by surface coal ~~or leonardite~~ mining operations so that the reclaimed area closely resembles the general surface configuration of the land prior to being affected by surface coal ~~or leonardite~~ mining operations and blends into and complements the surrounding undisturbed land.
3. "Coal" means a dark-colored compact and earthy organic rock with less than forty percent inorganic components, based on dry material, formed by the accumulation and decomposition of plant material. The term includes consolidated lignitic coal, in ~~both oxidized and nonoxidized~~ forms, having less than eight thousand three hundred 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 ~~or leonardite~~
10 mining 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 ~~or leonardite~~ mining and reclamation operation, which condition,
16 practice, or violation could reasonably be expected to cause substantial physical harm
17 to persons outside the permit area before such condition, practice, or violation can be
18 abated. A reasonable expectation of death or serious injury before abatement exists if
19 a rational person, subjected to the same conditions or practices giving rise to the peril,
20 would not expose the person's self to the danger during the time necessary for
21 abatement.

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

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

1 leonardite mining within twelve consecutive calendar months in any one location or
2 who remove any coal or leonardite pursuant to reclamation operations under chapter
3 38-14.2.

4 ~~40.11.~~ "Other minerals" means clay, stone, sand, gravel, metalliferous and nonmetalliferous
5 ores, and any other solid material or substances of commercial value occurring within
6 five hundred feet [152.4 meters] or less of the land surface and which are excavated in
7 solid form from natural deposits on or in the earth, exclusive of coal or leonardite and
8 those minerals which occur naturally in liquid or gaseous form.

9 ~~41.12.~~ "Other suitable strata" means those portions of the overburden determined by the
10 commission to be suitable for meeting the requirements of subsections 2 and 17 of
11 section 38-14.1-24 and based on data submitted by the permit applicant.

12 ~~42.13.~~ "Overburden" means all of the earth and other materials, with the exception of suitable
13 plant growth material, which lie above natural deposits of coal or leonardite and also
14 means such earth and other materials, with the exception of suitable plant growth
15 material, disturbed from their natural state by surface coal or leonardite mining
16 operations.

17 ~~42.1.14.~~ "Performance bond" means a surety bond, collateral bond, self-bond, deposit, a bond
18 issued under the state surface mining and reclamation bond fund, any alternative form
19 of security approved by the commission, or combination thereof, by which a permittee
20 assures faithful performance of all requirements of this chapter.

21 ~~43.15.~~ "Permit" means a permit to conduct surface coal ~~or leonardite~~ mining and reclamation
22 operations issued by the commission.

23 ~~44.16.~~ "Permit applicant" means a person or operator applying for a permit.

24 ~~45.17.~~ "Permit area" means the area of land approved by the commission for surface coal ~~or~~
25 leonardite mining operations which shall be readily identifiable by appropriate markers
26 on the site.

27 ~~46.18.~~ "Permit renewal" means the extension of the permit term for areas within the
28 boundaries of the initial or existing permit, upon the expiration of the initial or existing
29 permit term.

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

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

1 or leonardite exploration subject to chapter 38-12.1, or the extraction of coal or
2 leonardite incidental to reclamation operations under chapter 38-14.2; and
3 b. The areas upon which such activities occur or where such activities disturb the
4 natural land surface. Such areas shall also include any adjacent land the use of
5 which is incidental to any such activities, all adjacent lands affected by the
6 construction of new roads or the improvement or use of existing roads to gain
7 access to the site of such activities and for haulage, and excavations, workings,
8 impoundments, dams, refuse banks, dumps, stockpiles, overburden piles, spoil
9 banks, culm banks, tailings, holes or depressions, repair areas, storage areas,
10 processing areas, shipping areas, and other areas upon which are sited
11 structures, facilities, or other property or materials on the surface, resulting from
12 or incident to such activities.

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

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

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

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

- 28 3. Upon request by the permit applicant, the commission, in its discretion, may designate
29 specific information included in the plans required by subdivisions c and d of
30 subsection 1 as exempt from disclosure under section 44-04-18, provided such
31 specific information pertains only to the analysis of the chemical and physical

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

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

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

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

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

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

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

25 **SECTION 9. AMENDMENT.** Paragraph 2 of subdivision e of subsection 3 of section
26 38-14.1-21 of the North Dakota Century Code is amended and reenacted as follows:

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

1 permit approval by the commission to conduct surface coal mining
2 operations within said alluvial valley floors.

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

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

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

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

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

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

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

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

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

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

- 1 10. Remove or bury all debris and other similar material resulting from the operation and
2 bury all mine wastes ~~and, coal, and leonardite~~ processing wastes unless the
3 commission approves the surface disposal of such wastes. If the commission
4 approves the surface disposal of such wastes, the permittee shall stabilize all waste
5 piles in designated areas through construction in compacted layers, including the use
6 of incombustible and impervious materials if necessary, to assure that the final contour
7 of the waste pile will be compatible with natural surroundings and that the site can and
8 will be stabilized and revegetated according to the provisions of this chapter.
- 9 18. Assume the responsibility for successful revegetation, as required by subsection 17,
10 for a period of ten full years after the last year of augmented seeding, fertilizing,
11 irrigation, or other work, provided that, when the commission approves a long-term
12 intensive agricultural postmining land use, the ten-year period of responsibility for
13 revegetation commences at the date of initial planting. However, for previously mined
14 areas that are affected by remining, the operator's responsibility for successful
15 revegetation will extend for a period of five full years after the last year of augmented
16 seeding, fertilizing, irrigation, and other work in order to assure compliance with the
17 applicable standards. For the purposes of this subsection, "previously mined areas"
18 are lands that were affected by coal or leonardite mining activities prior to January 1,
19 1970, and "augmented seeding, fertilizing, irrigation, or other work" does not include
20 normal conservation practices recognized locally as good management for the
21 postmining land use.

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

24 **38-14.1-25. Prohibited mining practices.**

- 25 1. ~~No~~A permittee may not use any coal or leonardite mine waste piles consisting of mine
26 wastes, tailings, coal processing wastes, or other liquid or solid wastes either
27 temporarily or permanently as dams or embankments unless approved by the
28 commission, after consultation with the state engineer.
- 29 2. ~~No~~A permittee may not locate any part of the surface coal mining and reclamation
30 operations or deposit overburden, debris, or waste materials outside the permit area

1 for which bond has been posted, except as provided in subsection 24 of section
2 38-14.1-03.

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

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

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

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

14 (2) Monitoring sites to record level, amount, and samples of ground water and
15 aquifers potentially affected by the mining and also directly below the
16 lowermost (deepest) coal or leonardite seam to be mined.

17 (3) Records of well logs and borehole data to be maintained.

18 (4) Monitoring sites to record precipitation.

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

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

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

26 a. Extraction of coal or leonardite by a landowner for the landowner's own
27 noncommercial use from land owned or leased by the landowner.

28 b. Extraction of coal or leonardite as an incidental part of federal, state, or local
29 government-financed highway or other construction under regulations
30 established by the commission.

- 1 3. The commission may provide or assume the cost of training coal or leonardite
2 operators who meet the qualifications in subsection 2 concerning the preparation of
3 permit applications and compliance with the regulatory program.
- 4 4. An operator who has received assistance under subsection 2 or 3 shall reimburse the
5 commission for the cost of the services rendered if the commission finds that the
6 operator's actual and attributed annual production of coal or leonardite for all locations
7 exceeds three hundred thousand tons [272155.41 metric tons] during the twelve
8 months immediately following the date the operator is issued a surface coal mining
9 and reclamation permit.

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

12 **47-10-24. Description and definition of minerals in leases and conveyances.**

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

19 ~~No~~

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

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

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

7 **57-61-01.9. Severance tax on leonardite in lieu of sales and use taxes.**

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