

FISCAL NOTE
Requested by Legislative Council
04/16/2015

Amendment to: SB 2377

- 1 A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2013-2015 Biennium		2015-2017 Biennium		2017-2019 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures						
Appropriations						

- 1 B. **County, city, school district and township fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

	2013-2015 Biennium	2015-2017 Biennium	2017-2019 Biennium
Counties			
Cities			
School Districts			
Townships			

- 2 A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

Engrossed SB 2377 with Conference Committee Amendments defines commercial leonardite, separate and distinct from coal.

- B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

In this version of the bill, commercial leonardite is taxed at the same rate as existing coal severance tax - \$.375 per ton. Therefore, there is no fiscal impact to this bill.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

- A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

- B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

- C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation or a part of the appropriation is included in the executive budget or relates to a continuing appropriation.*

Name: Kathryn L. Strombeck

Agency: Office of Tax Commissioner

Telephone: 328-3402

Date Prepared: 04/18/2015

FISCAL NOTE
Requested by Legislative Council
04/02/2015

Amendment to: SB 2377

- 1 A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2013-2015 Biennium		2015-2017 Biennium		2017-2019 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures						
Appropriations						

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	2013-2015 Biennium	2015-2017 Biennium	2017-2019 Biennium
Counties			
Cities			
School Districts			
Townships			

- 2 A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

Engrossed SB 2377 with House Amendments defines commercial leonardite, separate and distinct from coal.

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Name: Kathryn L. Strombeck

Agency: Office of Tax Commissioner

Telephone: 328-3402

Date Prepared: 04/06/2015

FISCAL NOTE
Requested by Legislative Council
02/25/2015

Amendment to: SB 2377

- 1 A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2013-2015 Biennium		2015-2017 Biennium		2017-2019 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues				\$(2,500)		
Expenditures						
Appropriations						

- 1 B. **County, city, school district and township fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

	2013-2015 Biennium	2015-2017 Biennium	2017-2019 Biennium
Counties			
Cities			
School Districts			
Townships			

- 2 A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

Engrossed SB 2377 redefines coal to exclude leonardite, removes leonardite from coal severance taxation, and imposes a 25-cent per ton leonardite severance tax.

- B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

Industry experts indicate there are approximately 10,000 tons of leonardite mined in North Dakota each year. This bill would remove this from coal severance taxation, which would reduce total coal severance taxes by an estimated \$7500 for the 2015-17 biennium. Section 18 of the bill imposes a 25-cent per ton leonardite severance tax. This will generate an estimated \$5000 during the 2015-17 biennium. The net change in revenue due to engrossed SB 2377 is an estimated reduction in revenues totaling \$2500 for the biennium.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

- A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

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Name: Kathryn L. Strombeck

Agency: Office of Tax Commissioner

Telephone: 328-3402

Date Prepared: 03/04/2015

2015 SENATE ENERGY AND NATURAL RESOURCES

SB 2377

2015 SENATE STANDING COMMITTEE MINUTES

Energy and Natural Resources
Fort Lincoln Room, State Capitol

SB 2377
2/20/2015
24203

- Subcommittee
 Conference Committee

Committee Clerk Signature

Kate Oliver

Explanation or reason for introduction of bill/resolution:

Relating to the definition of coal and leonardite.

Minutes:

8 Attachments

Chairman Schaible opened the hearing, role was taken and all members were present except for Senator Laffen

Senator Bekkedahl: District 1. See attachment #1. (.35-4:55)

Shawn Wenko: Executive Director Williston Economic Development. See attachment #2 (5:32-6:22)

Robert Harms: Leonardite Products. The amendments that you have in front of you are technical in nature and we worked with the Public Service Commission on them. See attachment #3. (6:48-10:48)

Cherie Harms: President of Leonardite Products. See attachment #4. (11:40-22:48)

Senator Triplett: Is there leonardite in other places?

Cherie Harms: The leonardite found in North Dakota is believed to be the best in the world.

Senator Triplett: Can you tell me why the royalty rate reduction process takes so long on the federal level?

Cherie Harms: It takes a long time, you need a letter from the governor, have to send to Washington D.C. and they will go through it and it make take 6 months to a year. Our business model is so different.

Lyndon Bucher: American Colloid Company. See attachment #5. (25:01-37:08)

Senator Triplett: This dilemma doesn't affect you or your company yet?

Lyndon Bucher: Yes.

Senator Triplett: What kind of royalty do you pay on your private and state minerals?

Lyndon Bucher: State mineral is \$.25 and private mineral rate is \$.50.

Casey Furey: Attorney, Public Service Commission. See attachment #6. (38:35-40:48)

Ed Murphy: State Geologist. See attachment #7 (41:16-43:09)

Senator Murphy: How does this occur in nature? Is it then part of the overburden?

Ed Murphy: If you are within 20 or 30 feet of the surface. I have found it at 200 feet deep it was left at or more than.

Senator Triplett: How much of leonardite in North Dakota is in federal or state lands?

Ed Murphy: Throughout western North Dakota. If you have any lignite close to the surface

Tyler Hamman: Director of Government Affairs Lignite Council. I would like to introduce Mr. Brian Bjella, an attorney with Crowley Fleck and secretary/treasurer of the Lignite Council Board of Directors.

Brian Bjella: Attorney, Crowley Fleck. See attachment #8. (47:07-53:26)

Senator Triplett: You referenced the Supreme Court of the United States without a citation; can you get that for us? You also say that we should kill the bill because we haven't had a chance to look at other statutes.

Brian Bjella: I wanted to point them out as potentially having the impact as it relates to this change. This is a matter of federal law, when they reserved the land and it determines who owns the land.

Senator Triplett: People from the fed are telling the other testifiers that leonardite is treated differently in North Dakota than anywhere else?

Brian Bjella: I am not sure the answer, it doesn't make sense to me. If you look at the interior board of land appeals they would seem like it is a federal law matter and not a state law matter. A reservation of coal and other minerals does include gravel. What did congress mean when it said coal?

Senator Hogue: You mention that you could change the ownership of the leonardite. Do they see commercial value in leonardite; do they sell it or anything beyond blending it?

Brian Bjella: I am not certain to the answer of your question. I think that it is encountered on occasion and it can be used for a blending product, I am not an expert on that.

Senator Triplett: Can I ask if anyone who has useful information for us?

There was no further testimony or discussion, Chairman Schaible closed the hearing on SB 2377 and the committee was adjourned.

2015 SENATE STANDING COMMITTEE MINUTES

Energy and Natural Resources
Fort Lincoln Room, State Capitol

SB 2377
2/24/2015
24277

- Subcommittee
 Conference Committee

Committee Clerk Signature

Katie Oliver

Explanation or reason for introduction of bill/resolution:

Relating to the definition of coal and leonardite.

Minutes:

1 attachment

Chairman Schaible opened the committee work on SB 2377, role was taken and all members were present.

Senator Armstrong handed out an amendment. See attachment #1.

Senator Armstrong: Pretty much all of them amendments moving through this thing are a combination of the Public Service Commission, the lawyer for the coal agencies about definitions and Bob Harms technical corrections. All the way through we talked to all involved and got the changes in some other places and legislative council determined where they were and were not needed to some degree or another, the tax portion is at the end, the only change that I put in is on page 14, line 23-26 and this was an attempt to alleviate the unique situations with coal reservations throughout the history, there are people who reserved only coal. Typically when you do a mineral reservation it is oil, gas, coal and all other minerals so leonardite would fall into that category. In order to alleviate some of those concerns I put the language in from 23-26, 'for the purpose of the lease or reservation leonardite is coal unless it is specifically excluded. Now it is being specifically being excluded in recent past and now for anyone who is entering into these types of things. That would be in affect going forward and going past. I think that this should alleviate the concerns of the coal company and remove leonardite from the definition of coal.

Senator Triplett: In your introduction you mentioned the Public Service Commission, Mr. Harms, someone else but you didn't mention Ed Murphy, our state geologist, and he offered some amendments did you consider those? They were incorporated into his testimony maybe it is not necessary but since you had mentioned you were going to try and include everyone.

Senator Armstrong: If we would like to this could be easily added to, it is just adding a word in a different section of code. I will reference Mr. Murphy's testimony but I will add the word leonardite in 39-12-01 subsection 7 as it appears on this. I think it will be a new section of the bill so it would go in the end actually.

Senator Triplett: It looks like virtually everything else is 38-14.1 for the most part. In section 2 of the amendment it references 38-12.1 so that gets pretty close to it.

Senator Armstrong: It is just a technical correction so I think that it will be easiest for our staff, given the late time, to put it at the end.

Senator Armstrong made a motion to further amend amendment with a second by Senator Murphy, there was no further discussion, roll was taken and the motion passed on a 6-0-0 vote. Senator Armstrong then made a motion to adopt the further amended .01001 amendment with a second by Senator Murphy, there was no further discussion, roll was taken and the motion passed on a 6-0-0 vote. Senator Armstrong then made a motion for a do pass as further amended with a second by Senator Murphy.

Chairman Schaible: I talked to the tax commissioner's office about the tax implications of this bill and they didn't think that there would be any issues with this.

There was no further discussion, roll was taken, the motion passed on a 6-0-0 count and Senator Armstrong carrying the bill to the floor.

Chairman Schaible then adjourned the committee.

PROPOSED AMENDMENTS TO SENATE BILL NO. 2377

Page 1, line 1, after "to" insert "create and enact section 57-61-01.9 of the North Dakota Century Code, relating to severance tax for leonardite; and to"

Page 1, line 1, after "reenact" insert "section 1-01-40,"

Page 1, line 7, remove the first "and"

Page 1, line 8, after "38-14.1-37" insert ", and section 47-10-24"

Page 1, after line 10, insert:

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

1-01-40. Coal - Definition.

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

Page 2, line 6, remove "or leonardite"

Page 2, line 8, remove "or leonardite"

Page 2, line 23, remove "or leonardite"

Page 2, line 29, remove "or leonardite"

Page 3, line 12, remove "or leonardite"

Page 4, line 5, remove "or leonardite"

Page 4, line 8, remove "or"

Page 4, line 9, remove "leonardite"

Page 4, line 18, remove "or leonardite"

Page 4, line 26, remove "leonardite"

Page 5, line 7, remove the second "or"

Page 5, line 8, remove "leonardite"

Page 5, line 12, remove "or leonardite"

Page 6, line 3, remove "or leonardite"

Page 7, line 5, after "coal" insert "or leonardite"

Page 13, after line 21, insert:

"SECTION 16. AMENDMENT. Section 47-10-24 of the North Dakota Century Code is amended and reenacted as follows:

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

1. All conveyances of mineral rights or royalties in real property in this state, excluding leases, shall be construed to grant or convey to the grantee thereof all minerals of any nature whatsoever except those minerals specifically excluded by name in the deed, grant, or conveyance, and their compounds and byproducts, but shall not be construed to grant or convey to the grantee any interest in any gravel, clay, or scoria unless specifically included by name in the deed, grant, or conveyance.
2. ~~No~~Except as provided in subsection 3, a lease of mineral rights in this state ~~shall~~may not be construed as passing any interest to any minerals except those minerals specifically included and set forth by name in the lease. For the purposes of this ~~paragraph~~subsection, the naming of either a specific metalliferous element, or nonmetalliferous element, and if so stated in lease, shall be deemed to include all of its compounds and byproducts, and in the case of oil and gas, all associated hydrocarbons produced in a liquid or gaseous form so named shall be deemed to be included in the mineral named. The use of the words "all other minerals" or similar words of an all-inclusive nature in any lease shall not be construed as leasing any minerals except those minerals specifically named in the lease and their compounds and byproducts.
3. Any conveyance or lease of coal in this state grants, conveys, or leases to the grantee any leonardite in the same real property, unless leonardite is excluded by name. This subsection applies to every conveyance or lease of coal in this state, regardless of when the conveyance or lease was or is made.

SECTION 17. Section 57-61-01.9 of the North Dakota Century Code is created and enacted as follows:

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

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

Renumber accordingly

February 24, 2015

2/24/15
ONE
1/3

PROPOSED AMENDMENTS TO SENATE BILL NO. 2377

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Page 1, line 1, after "reenact" insert "section 1-01-40, subsection 7 of section 38-12-01,"

Page 1, line 7, remove the first "and"

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

7. "Subsurface minerals" means all naturally occurring elements and their compounds, leonardite, volcanic ash, precious metals, carbonates, and natural mineral salts of 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."

Page 2, line 6, remove "or leonardite"

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No

- 2. Except as provided in subsection 3, a lease of mineral rights in this state shall may not be construed as passing any interest to any minerals except those minerals specifically included and set forth by name in the lease. For the purposes of this paragraph subsection, the naming of either a specific metalliferous element, or nonmetalliferous element, and if so stated in lease, shall be deemed to include all of its compounds and byproducts, and in the case of oil and gas, all associated hydrocarbons produced in a liquid or gaseous form so named shall be deemed to be included in the mineral named. The use of the words "all other minerals" or similar words of an all-inclusive nature in any lease shall not be construed as leasing any minerals except those minerals specifically named in the lease and their compounds and byproducts.
- 3. Any conveyance or lease of coal in this state grants, conveys, or leases to the grantee any leonardite in the same real property, unless leonardite is excluded by name. This subsection applies to every conveyance or lease of coal in this state, regardless of when the conveyance or lease was or is made.

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

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

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

Renumber accordingly

REPORT OF STANDING COMMITTEE

SB 2377: Energy and Natural Resources Committee (Sen. Schaible, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (6 YEAS, 1 NAYS, 0 ABSENT AND NOT VOTING). SB 2377 was placed on the Sixth order on the calendar.

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Renumber accordingly

2015 HOUSE ENERGY AND NATURAL RESOURCES

SB 2377

2015 HOUSE STANDING COMMITTEE MINUTES

Energy and Natural Resources Committee
Pioneer Room, State Capitol

SB 2377
3/13/2015
Job # 24824

- Subcommittee
 Conference Committee



Explanation or reason for introduction of bill/resolution:

Relating to severance tax for leonardite; relating to the definition of coal and leonardite.

Minutes:

Attachments 1, 2, 3, 4, 5, 6

Chairman Porter: Opens hearing.

Senator Bekkedahl, District 1: Written testimony #1

Representative Patrick Hatlestad, District 1, Williston: Written testimony #2

Robert Harms, Lobbyist for Leonardite Products, The Harms Group: (written testimony #3 explains amendments) The BLM (Bureau of Land Management) is treating Leonardite as coal and it's the only place in the country that they do this. The federal government has essentially increased the royalty rate after Leonardite products began business in the last six of seven years. They have increased the royalty rate by tenfold so there is a conflict between Leonardite products and the federal government and whether or not they can apply a tenfold increase in this royalty. Every time we try to resolve that issue the BLM points back to the North Dakota law that says North Dakota defines Leonardite as coal therefore we are going to apply federal coal royalty and you are paying tenfold of what you were paying when you began business. That is why the bill is here. If you approve the bill what will happen is Leonardite will continue to be mined in North Dakota, probably will grow in that process, the public service commission will retain jurisdiction over Leonardite, we will have a severance tax imposed on Leonardite and we expect that the BLM will then actually follow North Dakota law with the change that this bill contemplates.

Rep. Glen Froseth: What is the tax on leonardite now?

Harms: It's the same as coal.

Cherie Harms, President/ Owner Leonardite Products: Written testimony #4

Rep. Mike Lefor: If Senator bill 2377, is that the only road block left with BLM?

C Harms: We would hope so but I cannot speak for the federal government.

Rep. Mike Lefor: Did they list any other reasons other than the fact that the state defines it as coal?

C. Harms: No.

Rep. Glen Froseth: The severance tax of includes the weight as it comes out of the ground. Is there a separate royalty fee to the landowner besides this tax?

C. Harms: We pay a tax to the state, we pay the landowner for the use of their land while we mine it, and then we pay the federal government a royalty for each ton that we sell.

Rep. Glen Froseth: The fee to land owner based on a blanket royalty payment or by the ton that is extracted?

C. Harms: it's a onetime rental fee.

Rep. Roger Brabandt: There are two mines in the state near Williston, where is the other one?

C. Harms: American colloid in the south west corner of state.

Rep. Dick Anderson: How is leornadite classified in other states?

C Harms: It's considered a salable mineral instead of royalties.

Rep. Bob Hunsakor: Why sold out of state and not in state?

C. Harms: Leonardite is not a bi-product it is the product that we mine. There is leonardite associated with lignite, ours is not. Ours is leonardite, a layer of coal, leonardite and a layer of coal. I believe our competition is the same way. The reason it is not used in the Bakken because the Bakken uses oil based drilling muds. Leonardite in its natural form or processed is used in water based drilling. Water based drilling is used in Colorado, Louisiana, Texas and off shore drilling. We have a potential customer that buys leonardite, they buy it ship it to Houston, Houston ships it to Egypt and they turn it into a product called organo lignite. They sell it all over the eastern hemisphere. They also ship some back to Houston and Houston ships it back up to North Dakota.

Rep. Glen Froseth: How is it used in agriculture?

C. Harms: It is used as a fertilizer additive. As a chelator so your fertilizers will work better and it also adds organic matter or carbon to your soil. When we first started the business we thought it was going to be an entire export market but we are not able to keep up with the domestic demand. What has happened over the years is NPK has depleted some of the organic matter from soil. So a lot of the fertilizer companies are adding leonardite to their fertilizers which will make the NPK fertilizers work better and then add organic matter

to their soil. Perhaps the only place in the world that doesn't need more organic matter would be the Red River Valley.

Rep. Mike Nathe: What is the current severance tax?

C. Harms: 37 cent a ton plus 2 cents for the lignite research fund.

Rep. George Keiser: The issue is you do not want to be declared coal so you don't have to pay the severance tax?

C. Harms: No, we are happy to pay a severance tax to the state of North Dakota the issue is the federal government want to impose on us a royalty of over 18 dollars a ton and they are saying they are doing it because in the state of North Dakota leonardite is defined as coal. All we are trying to do is basically change the definition of coal to exclude leonardite in North Dakota and come up with a separate definition for leonardite so that the federal government will not impose coal rules and regulations on leonardite.

Rep. George Keiser: They do impose that in coal products.

C. Harms: They are except we are appealing it. We have three appeals and royalty rate reduction petition in with the BLM.

Rep. Mike Nathe: The current severance tax is 37 cents a ton, the bill is asking in section 18 25 cents per ton, why the reduction?

C. Harms: Because leonardite comes out of the ground with high water content, we have to take it to a processing plant, dry it, screen it and then we bag it. Sometimes in one ton totes and sometimes in 50 lbs. bags. We will pay per ton that comes out of the ground but at the same time we don't want to pay a severance tax for water.

Rep. George Keiser: This change isn't what it appears to be? Shouldn't this fiscal note be larger?

C. Harms: When I met with the tax department in July it is not a big revenue generated for this state. So to go from 37.5 cents to 25 cents a ton it's not going to impact the state.

Rep. Mike Nathe: The big coal companies now that take the coal out, are they grabbing leonardite and burning it too and paying severance tax on it?

C. Harms: I don't want to speak for them.

Rep. Corey Mock: There was a proposed amendment on definition of coal. Comparing it to your language and I'm noticing some differences most likely technical. We have the words oxidized and non-oxidized. We have consolidated lignite coal is current definition, your proposed definition removes the word consolidated and there is the 8,300 British thermal units per pound moist and mineral matter free which is removed from the definition in yours. Why the difference in the amendments.

C. Harms: Leonardite alone is not used to produce energy. It is not combustible; it has lower BTU value than woodchips or macadamia nuts.

Rep. Corey Mock: I would be curious why some of that language is being requested to be removed from code?

C. Harms: Leonardite is oxidized lignite. It is no longer lignite. You have all heard of peat. So peat turns in to coal and coal turns into leonardite. We want to differentiate ourselves from coal because it is a completely different compound and has different uses.

Rep. Bill Devlin: If it doesn't get separate out do coal companies discard it or do they burn it as part of coal?

C. Harms: I believe I have the answer but I don't want to answer for them. I will let them handle it.

Vice Chairman Damschen: Are there other states that have leonardite?

C. Harms: There are other states that have it but leonardite only refers to the reserves in North Dakota and it is named after A.G. Leonard the first geologist of North Dakota

Rep. Glen Froseth: How much reserve of leonardite is there?

C. Harms: There's enough to last my life time. It's all over western North Dakota. The benefits of the particular area where we are mining and where we want to mine is also a federal coal reserve is that it is close to Williston, it's on top and it's easy to get to.

Rep. Mike Nathe: Walk me through your process, you take the leonardite off the top and coal company gets the rest?

C. Harms: There is no lignite in our reserves. We hire an excavator to dig it out and we have a dump truck and front end loader. There are three layers. The bottom one is 20 feet deep. It is a very simple operation. We take it then from the mine three miles to our processing plant where we have a retro fitted drum dryer, we dry it, screen it, package it and we ship it in rail cars or trucks.

Rep. Mike Nathe: It's not always connected to the lignite?

C. Harms: No, ours is not.

Lyndon Bucher, American Colloid Company (ACC): Written testimony #5

Vice Chairman Damschen: Has there been a mine that the government BLM would be taxing?

Bucher: American Colloid has not mined federal minerals as of yet. We would like to. I believe leonardite products, that is kind of their main issue is they are currently mining leonardite at the loyalty rate.

Rep. George Keiser: Two important points as I see it; one is declaring that leonardite is not a coal product. To separate it in code and then the reason to get rid of the coal severance taxation and go to a leonardite taxation is to reinforce the concept that this is not a coal product. We would have to do both of those to make this thing work, is that correct?

Buscher: I really cannot address the tax side of it. I am sure Cherie could address that. Again the severance tax side of it is not really the issue. I am going to stick my neck out here and say if we left the severance tax alone we would still be ok with it. It's that federal royalty and the LBA process and dealing with the federal government that is the real issue.

Rep. George Keiser: It's the reference that it's a coal severance tax, you can't take it out of the coal section and still apply a coal severance tax.

Buscher: Correct.

Illona Jeffcoat-Sacco, General Counsel-Public Service Commission: Written testimony #6.

Tylor Hamon, Director of Government affairs for the Lignite Energy Counsel: As a general matter I think the lignite industry is very sympathetic and supportive to a solution for what these leonardite companies are facing from the coal mine perspective we know it certainly is not easy dealing with the federal government and mineral issues. Having said that we did have some concerns with the bill as introduced and the Lignite counsel testified in opposition of this bill on the senate side. We were concerned with once you severed leonardite from the definition of coal that could create issues with mineral rights and title ownership. The senate did include some amendments to the bill that addressed our concerns and unparticular I just want to draw your attention to in the bill on page 14 lines 28 through 31. That was language that was offered by the senate as an amendment. That protects our existing coal leases and our title concerns so it is absolutely critical that that is in bill. To follow up on that I want to draw your attention to the last page, the severance tax on leonardite, in response to the question raised by Mr. Nathe. Currently coal mine operators in the state, they do strip out the small metal leonardite as I understand it on the top of the coal seam and they blend that with the coal and burn it in the power plant. They do pay the 37.4 cent severance tax on that. So if this bill were enacted that portion of the leonardite that they are blending would be subject to this new 25 cent per ton. Those are basically my comments on the bill as passed by the senate. With the amendments that have been offered today we haven't had much of an opportunity for discussion and we just want to make sure the definition proposed to change the definition of coal in the first page, it might be ok we just want to make sure we have a chance to fully analyze those.

Rep. George Keiser: You would anticipate that with the passing of this legislation that any leonardite extracted by coal companies, whether it is burned or not burned, would have the new tax formula applied to that weight. If that is your statement do you know whether this fiscal note incorporates that change for what the coal mining companies would be doing?

Hamon: You are correct to the extent that if the leonardite is stripped off and blended with the coal, however many tons of leonardite were blended would be subject to the 25 cents per ton and then the coal would still be subject to the 37.5 cent. As I understand is if the

leonardite is stripped off it is part of the over burden, they don't pay a severance tax on that. As far as the fiscal note I wouldn't be the one to answer that.

Rep. Mike Nathe: My concern is the fiscal note I don't think is right. What is the current tax on lignite?

Hamon: 37.5 cent per ton severance tax and then there is also a coal conversion tax when it is burned in the power plant which comes out to 37.5 cents per ton.

Rep. Mike Nathe: If this bill were to pass with the 37.5 cent severance tax, how would it work? How do they know how much leonardite they have blended with the lignite?

Hamon: I'm not sure.

Chairman Porter: The mineral component, the language in here protects your already leased property, what will happen in the future? Who owns the new minerals?

Hamon: Yes as I understand it there would have to be a new lease for coal and leonardite if that is part of the mining process. As far as the mineral rights specifically, we have a couple of attorneys here that are better suited to answer that question.

David Strayle: Our objections were considered in the senate and I think protected pretty well. I guess I have a number of points I want to make. Our objection in trying to work with leonardite products and what their situation is with the federal government is we sympathize with them. I can tell you and assure you as a coal mining company that mines our coal for power generation the federal government is probably extremely difficult to work with. I think it is important to point out that some of the earlier testimony regarding what we pay for royalty. What we and what I mean by we, I am referring to those of us in the power generation side. We don't have an interest in the leonardite products. We want to be very clear today that we are not trying to mess things up with them but we want to make sure our interests are protected from the power generation side. I think it is important to point out the federal statute guarantees that a 12.5 percent royalty is paid on federal coal. When you apply for a federal lease you pay 12.5 percent on that royalty. After you receive the lease and you are a successful bidder on the federal coal lease you are then allowed if you are lucky enough to be in the fort union lignite reserve, which all of North Dakota coal is. You are allowed to then apply for a federal royalty rate reduction. That federal royalty rate reduction is a long process. If I remember right prior to me joining North American Coal that process was put in place mainly due to our company asking for relief from the federal government because that federal coal was subject to us going around it. It didn't make sense to us. It made sense for us to mine that coal and pay a royalty on it. However at 12.5 percent that number is so far out of line with what we pay the state royalty, it so far out of line to what we pay at the private. So we worked out an agreement over the course of about 15 years. We worked out a process of where the federal government would come in and examine our books, look at what we paid for private coal, what we paid for state coal, and they would use a blended average based on those two numbers and they would set their rate. Currently today that number is at about 2.2 percent if it is granted. It doesn't say they have to grant it. If it is granted we will pay that rate. We have been lucky enough over the past 15 years to receive those rate reductions but I can assure you it takes about 6 to 8

to 10 years some times to go through that process. One other piece I would like to say is that last session if you remember correctly for the non-new members here, the state of North Dakota put in a very similar process prior to 2013. The state of North Dakota charged a flat 6 percent or 25 cents per ton, but that was really dominated by the 6 percent of the selling price. We asked the state of North Dakota for relief from that and you guys allowed the State Land Board to renegotiate those leases to come down to a fair market value because the jeopardy of us going around those tons, because at some point they are just uneconomical to go after. That process is very much in place and we appreciate it. In the Words of a former president we feel her pain. We understand that process very well, we have guys who have been doing it for 30 something years in our company. It is a very onerous process and like I said the senate did take care of our issues with the leasing pieces. Just reading through the amendments this morning we do have some issues potentially that we hope you can address. We have a couple questions that we think need to go on the record so we don't miss them; the first amendment on page 1 removing line 16 through 18, I assume but I am not sure that you want to create two sections of code or two definitions within the definition of code. As I read that amendment you would be taking out lines 16 through 18 and redefining what coal means I think that needs to be addressed, because right now you are currently taking it out of the bill which does not remove it from law and then you are going to redefine coal. Whenever the word coal appears in laws of the state you have the definition and then you have this new definition as well, so that needs to be taken care of. The unintended consequences of that would cause, I think title attorneys some problems. It is also important to know that anytime you change the definition of coal it could cause issues of whether it is a mineral or not a mineral. Anytime you change a definition you are going to create that uncertainty. Not that we can't live with it but we would like to be a part of the solution. If you go to page 3 line 1, it maybe be beneficial if you decide to go down this route that you had the words at the end of the first sentence there "for purposes of this section". Page 3 line 21 would she be made clear on the definition of "high". Page 14 section 17 line 28 you may have to look at that issue and we would be happy to work with you on that to make sure you get the proper definition. I think with that I will just turn to a couple of the questions; what will we do if this bill is passed into law? I will assure you that our business guys will look at this and they will suggest that section 18 we will take full advantages as judges learn at hand would only advise us correctly to take advantage of the code. Not in a way that is devious and or miss construed in the grey areas. Clearly we do not want to be here to take advantage and to reduce our severance tax we are happy paying our taxes we are happy to pay that 37.5 cents per ton but if we are allowed to we would be crazy not to. So if you want to exempt us out of the bill. Anything you want to do we would be fine with that. We are trying to support leonardite products and what they are trying to do.

Rep. Mike Nathe: How do you separate it out from leonardite to lignite coal?

Staryle: You are talking coal seems that are 20ft to 150ft under the ground. You are talking coal seems that could be 6ft to 20ft thick, you may have inches of it where you scrape it off and just get rid of it. You may have 2ft of it. I don't know if you can tell it when you see it but for the definition you would want to make sure we go through and actually have a test performed. We would have to do more sampling and more analyzing that kind of thing.

Rep. George Keiser: You are referring the Harms Group amendment?

Strayle: Yes

Rep. George Keiser: We need to work a lot on these amendments I guess is my point.

Strayle: Please make sure you do those right. We offer our help. Please make sure those definitions are very clear in what you are changing.

Chairman Porter: I would like your mineral expert comes up.

Chris Freese, Land Manager for North American Coal: I think to get to your questions on who owns it, what is it, is it something new, is it something different? We have had a number of these situations in North Dakota history where we have defined and redefined certain substances as minerals or as substances that transfer with surface conveyances or reservations. I think that is the caution here is just to make sure that if we make this change that we are aware of that and we make sure that we do it in a way to sort of limit the confusion that could come out of changing the definition of a substance. From a title examination standpoint and from an ownership standpoint if you as a private owner or your attorney who is drafting your document wasn't aware of those changes in definition you created a lot of problems potentially going forward where you may have reserved all the oil and gas and other minerals but you didn't include the word coal so at the time your reservation was written coal wasn't a mineral so it suddenly went with a service cylinder and you thought you reserved it but you didn't so that is what we want to try to avoid with changing and making leonardite its own separate defined substance is to make sure of that going forward. It is not something we can't deal with we have obviously dealt with it before but it just creates some of that confusion and some of that potential problem. That is where our concerns came out. Mostly if you don't define it as going with coal in a reservation, conveyance or a lease suddenly if we take a lease that covers coal our lease doesn't cover leonardite at that point and we have a problem going forward if we mine it in our operations as part of our lignite mining operations we may have mined it and trespassed, because we didn't have it leased. We want to avoid the situation where someone thought they reserved it and then didn't and now all the sudden they are going to get a leonardite lease from someone else when our coal owner thought they owned the leonardite. It's just one of those potential issues that could be created anytime you change the definition of a mineral in code and you want to make sure to that you get the definition changed so that the amendment potential in the four purposes of this chapter leonardite is not considered coal. We want to make sure that we don't create any ambiguity in the code so that we have a code section here that defines leonardite as coal and a code section here that does not so that we know if a courts going to look at a reservation or conveyance or a lease in the future we know what definition they are going to use. So the title examiners know what definition they are going to use and that the title standards could be amended accordingly if they need to be.

Chairman Porter: Are there any guarantees that the federal government will recognize it?

Freese: No there are no guarantees.

Rep. George Keiser: Right now who owns it?

Freese: The coal owner.

Chairman Porter: if this bill is enacted tomorrow who owns it?

Freese: The leonardite owner. It is a separate definition.

Chairman Porter: Is it surface or subsurface?

Freese: In my opinion if it was severed yesterday and conveyed all gas, coal and other minerals under the definition that we are doing here leonardite would remain a mineral, it would stay with the mineral owner. I would think it would be retroactive.

Chairman Porter: Don't you think it would be wise on our part to put it into law?

Freese: Yes.

Vice Chairman Damschen: Is there anything that separates leonardite that is found with coal is different than that that is found separate from lignite.

Freese: That is outside of my expertise.

OPOSITION:

Rep. Bill Devlin: I was wondering if the tax department had any thoughts or comments?

Linda state supervisor of assessments: What I would say to that testimony is I was questioning how we would administer this and we just ask for an understanding of how they came at the change of the percentage and understood that it was based on moisture. Also knowing that there is moisture that would be removed with lignite coal, we would be able to administer it if it were changed. Of course the definition now and the question with it pertaining to the fiscal note we did not take into consideration any of the leonardite that may possibly be removed and mined with the lignite so if there is any way that they would be able to give us some numbers we would be able to recalculate a fiscal note, but the way the fiscal note was determined was really simply the small percentage change in the amount of the 37.5 cents that would be associated specifically with the leonardite that is reported to us.

Rep. Glen Froseth: Would it be more simple if the tax were the same?

Linda: Yes. The question for us would be how will we define those reports, how will we recreate them, how will we be certain that the lignite producers are able to report them separately?

Chairman Porter: We expect to hear from you with new numbers. As long as our state geologist is in the room if he had any comments or concerns, I guess I have one question for him. In the processes of mining leonardite the coal companies just take it is it possible

to take without touching the lignite and just mine that solely or is there always some lignite that comes out with it?

Ed Murphy, State Geologist: It depends on where you are at. There are some areas where all you have is a seam of leonardite. In other areas it is extremely variable from a little bit of leonardite on top of lignite to on the edge of the mine that you are coming off the edge of an outside pit where you have more leonardite and then it is decreasing. Again the coal companies would probably tell you that it ranges from being fairly straightforward to difficult to remove that. Along those same lines as I was listening to the testimony what I am wondering on page 3 line 2, if we take the proposed definition of leonardite and add to the end of that so it would read "leonardite means a dark colored soft early rock that is high in humic acid content form from the oxidation of lignite and is not used to generate power". In my mind would eliminate the tax department and the companies trying to separate it. They are blending then they aren't following under the leonardite definition. This probably creates other problems but I thought maybe this is the simple way of taking care of that.

Rep. Corey Mock: Do you have a definition for the word "high"?

Murphy: Maybe 60 percent as a breakout. Maybe it's better to use blended and burned instead of setting an amount.

Hearing closed.

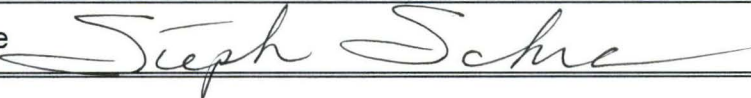
2015 HOUSE STANDING COMMITTEE MINUTES

Energy and Natural Resources Committee Pioneer Room, State Capitol

SB 2377
3/19/2015
Job # 25087

- Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to severance tax for leonardite; relating to the definition of coal and leonardite.

Minutes:

Attachments 1

Meeting location: Pioneer room

Time meeting called to order: 09:00 am

Members present: Rep. George Keiser, Rep. Mike Lefor,
Rep. Curt Hofstad: Absent.

Others present (may attach attendance sheet): See attachment.

Topics discussed:

Relating to the definition of coal and leonardite and relating to severance tax for leonardite.
proposed amendments to bill; written testimony #1.

Motion and Vote: None

Time of adjournment: 09:45 am

Note: If a motion is made, a description of the motion must be provided along with the member seconding the motion. A recorded roll call vote must be taken and reported for any nonprocedural motion.

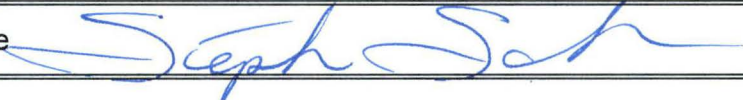
2015 HOUSE STANDING COMMITTEE MINUTES

Energy and Natural Resources Committee
Pioneer Room, State Capitol

SB 2377
March 25, 2015
Job # 25436

Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to severance tax for leonardite; relating to the definition of coal and leonardite.

Minutes:

Attachments 4

Meeting location: Pioneer room

Time meeting called to order: 04:00 PM

Members present: Rep. George Keiser, Rep. Mike Lefor, Rep. Bob Hunsakor

Others present (may attach attendance sheet): See attachment #4.

Topics discussed:

Relating to the definition of coal and leonardite and relating to severance tax for leonardite; proposed amendments to bill; **written testimony #1, #2, #3.**

Defining Leonardite for mining.

Replacing coal with Leonardite where pertinent.

Tax rate for leonardite.

Title issues that may arise from separating Leonardite from coal.

Time of adjournment: 04:30 pm.

Note: If a motion is made, a description of the motion must be provided along with the member seconding the motion. A recorded roll call vote must be taken and reported for any nonprocedural motion.

2015 HOUSE STANDING COMMITTEE MINUTES

Energy and Natural Resources Committee Pioneer Room, State Capitol

SB 2377
March 31, 2015
Job # 25658

- Subcommittee
 Conference Committee

Committee Clerk Signature

Steph Schade

Explanation or reason for introduction of bill/resolution:

Minutes:

Attachments \emptyset

Meeting location: Peace Garden Room

Time meeting called to order: 03:00 PM

Members present: Rep. George Keiser, Rep. Mike Lefor, Rep. Bob Hunsakor

Others present: Cherie Harms; Leonardite Products, Tyler Hamman; Lignite Energy Council, Chris Friez; North American Coal, Brian Bjella; Lignite Energy Council, Ned Kruger; Department of Mineral Resources-ND Geological Survey, Robert Harms, Leonardite Products, Ilona Jeffcoat-Sacco; Public Service Commission, Casey Furey; Public Service Commission, Jason Bohrer; Lignite Energy Council

Topics discussed:

Language in the bill; Public Service Commission, Lignite Energy Council and Leonardite are discussing the language for an amendment.

Motion and Vote: None

Time of adjournment: 3:02 PM

Note: If a motion is made, a description of the motion must be provided along with the member seconding the motion. A recorded roll call vote must be taken and reported for any nonprocedural motion.

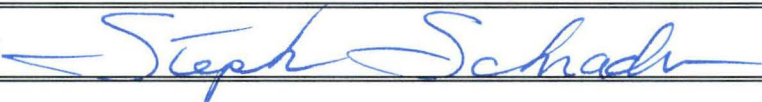
2015 HOUSE STANDING COMMITTEE MINUTES

Energy and Natural Resources Committee
Pioneer Room, State Capitol

SB 2377
April 1, 2015
Job # 25690

Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Attachments 5

Meeting location: Peace Garden Room

Time meeting called to order: 10:00 AM

Members present: Rep. George Keiser, Rep. Mike Lefor, Rep. Bob Hunsakor

Others present: **Cherie Harms**; Leonardite Products, **Tyler Hamman**; Lignite Energy Council, **Chris Friez**; North American Coal, **Brian Bjella**; Lignite Energy Council, **Brad Erickson**; North American Coal, **Robert Harms**, Leonardite Products, **Illona Jeffcoat-Sacco**; Public Service Commission, **Casey Furey**; Public Service Commission, **Jason Bohrer**; Lignite Energy Council

Topics discussed:

Proposed amendments (written testimony #1, #2) to amendment 15.1008.02002: #3; Harms Group, #4; Lignite Energy Council, #5 Public Service Commission.

Correction to the Harm's amendment; where it says, "P.10 lines 21 and 25 remove deletion of "coal" (retain "coal"). Replace "21" with "22".

The subcommittee agrees to the definition of commercial leonardite in written testimony #4, the consensus amendments in written testimony #3, with correction.

The subcommittee agrees to bring the amendments agreed upon from written testimony #3 and #4 to the full Energy and Natural Resources Committee.

Time of adjournment: 10:36 AM

Note: If a motion is made, a description of the motion must be provided along with the member seconding the motion. A recorded roll call vote must be taken and reported for any nonprocedural motion.

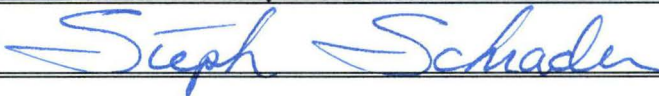
2015 HOUSE STANDING COMMITTEE MINUTES

Energy and Natural Resources Committee
Pioneer Room, State Capitol

SB 2377
4/2/2015
Job # 25737

- Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to severance tax for leonardite; relating to the definition of coal and leonardite.

Minutes:

Attachments 2

Chairman Porter opens hearing.

Rep. George Keiser explains the bill and amendments; written testimony #1, and #2.

The bill has been hog-housed due to the issues that would have come up with a tax change and issues with titles. By approaching this from a usage standpoint we eliminated all of the problems with wills and trusts and anything else that may have been involved. So, throughout the bill we went through and added, where appropriate, "commercial Leonardite and we kept the taxation rate the same as coal. The bill is much longer because we did not have all of the codes properly developed in our arguments. We went to all the sections of code that would apply to commercial leonardite and made those corrections. There was some disagreement with some of the language; the leonardite folks would have loved to remove the non-oxidized and oxidized from the definition of coal. We couldn't do that because then we would have to define the point at which oxidized lignite is considered leonardite. This bill treats all parties the same relative to commercial leonardite. We have crafted a policy where anyone can mine leonardite including coal companies. There was unanimous agreement by the subcommittee to bring these amendments to the full committee.

Rep. Roger Brabandt: What tax is the 37.5 cents per ton?

Rep. George Keiser: It is a severance tax.

Rep. Glen Froseth: On the tax page it says, "a tax of 37 and one half center per ton."

Rep. George Keiser: I think it's a typo.

Rep. George Keiser: I move the amendments with the correction to change "center" to "cents".

Rep. Bob Hunskor: Second.

Rep. Bob Hunskor: When two entities are put into a room, they work things out.

Voice vote: Carries

Rep. George Keiser: I move a Do Pas as Amended.

Rep. Bob Hunskor: Second.

Vote: Yes13, No 0, Absent 0

Rep. George Keiser: Carrier.

Chairman Porter closes discussion.

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2377

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to create and enact section 57-61-01.9 of the North Dakota Century Code, relating to severance tax for commercial leonardite; to amend and reenact subsection 5 of section 38-11.2-01, sections 38-12.1-01, 38-12.1-02, 38-12.1-03, 38-12.1-04, 38-12.1-05, and 38-14.1-02, subsection 3 of section 38-14.1-05, subsection 3 of section 38-14.1-13, subdivisions r and s of subsection 1 of section 38-14.1-14, subdivision c of subsection 2 of section 38-14.1-14, paragraph 2 of subdivision e of subsection 3 of section 38-14.1-21, subdivision b of subsection 4 of section 38-14.1-21, subsections 1 and 1.1 of section 38-14.1-24, subdivision b of subsection 3 of section 38-14.1-24, subsections 5, 10, and 18 of section 38-14.1-24, section 38-14.1-25, subdivision b of subsection 1 of section 38-14.1-27, subsections 1, 3, and 4 of section 38-14.1-37, section 38-15-01, 38-15-02, 38-18-07, and section 47-10-24 of the North Dakota Century Code, relating to the definition of coal and commercial leonardite; and to provide for application.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

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

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

38-12.1-01. Legislative findings.

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

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

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

38-12.1-02. Declaration of policy.

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

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

38-12.1-03. Definitions.

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

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 commercial leonardite.
2. "Coal exploration" means:
 - a. The use of any technique which when applied to the surface of the land will aid in the discovery or evaluation of coal or commercial leonardite or aid in determining the quantity and quality of coal or commercial leonardite present. It includes drilling or digging, excavating, core sample drilling and collection, diamond drilling, trenching, or any other type of penetration of the surface of the earth; or
 - b. Environmental data gathering activities conducted for the purpose of establishing the conditions of an area prior to applying for a permit under chapter 38-14.1. The provisions of sections 38-12.1-04 and 38-12.1-05 are not applicable to such environmental data gathering activities unless the natural land surface will be substantially disturbed or such activities are located on lands designated unsuitable for mining under section 38-14.1-05.
3. "Commercial leonardite" means a dark-colored, soft, earthy rock formed from the oxidation of lignite coal, and is produced from a mine that has as its only function for supply for purposes other than gasification or combustion to generate electricity.
4. "Commission" means the industrial commission of the state of North Dakota.
- 4.5. "Permit area" means a county.
- 5.6. "Person" means and includes any natural person, corporation, limited liability company, association, partnership, receiver, trustee, executor, administrator, guardian, fiduciary, or other representative of any kind, and includes any department, agency, or instrumentality of the state or of any

governmental subdivision thereof; the masculine gender, in referring to a person, includes the feminine and the neuter genders.

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

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

38-12.1-04. Jurisdiction of commission.

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

1. To require:
 - a. The furnishing of a reasonable bond with good and sufficient surety, conditioned upon the full compliance with the provisions of this chapter, and the rules and orders of the commission prescribed to govern the exploration for coal or commercial leonardite on state and private lands and roads used in coal or commercial leonardite exploration within the state of North Dakota. The person required to furnish the bond may elect to deposit a collateral bond, self-bond, cash, or any alternative form of security approved by the commission, or combination thereof, by which a permittee assures faithful performance of all requirements of this chapter and the rules and orders of the industrial commission.
 - b. The delivery, free of charge, to the state geologist of the basic data collected during the course of the exploration within a reasonable time as may be prescribed by the state geologist. The data so submitted is confidential and available only to the office of the state geologist for official purposes for a period of two years, and such period of confidentiality must, upon application, be extended for one-year periods by the state geologist, for a total period not to exceed ten years unless it is demonstrated that such period should be further extended in order to prevent possible resulting harm to the person, or the person's successors and assigns, who delivered such basic data to the state geologist. The basic data must include, if specifically requested by the state geologist and if the information has been developed by or for a person conducting the exploration:
 - (1) Sample cuts.
 - (2) Drillers' logs, sample logs, radioactivity logs, resistivity logs, or other types of electrical or mechanical logs.
 - (3) Elevation and location information on the data collection points.

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

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

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

1. It is unlawful to commence operations for drilling for the exploration for coal or commercial leonardite without first obtaining a permit from the director of mineral resources, under such rules and regulations as may be prescribed by the commission, and paying to the commission a fee of one hundred dollars for each such permit area. The permit application must include a description of the exploration area and the period of proposed exploration. The permit must be granted within thirty days after a proper application has been submitted.
2. This permit may not be required:
 - a. In an area where a permit to conduct surface coal mining operations is in effect pursuant to chapter 38-14.1;
 - b. For holes drilled to guide excavating equipment in an operating mine;
 - c. In areas where a drill hole is required by any other state agency; or
 - d. For environmental data gathering activities that do not substantially disturb the land, unless the environmental data gathering activities are located on land designated unsuitable for mining under section 38-14.1-05.

3. No person may remove more than two hundred fifty tons [226.80 metric tons] of coal or commercial leonardite pursuant to an exploration permit without first obtaining a permit from the public service commission.

SECTION 7. 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 mining operations so that the reclaimed area closely resembles the general surface configuration of the land prior to being affected by surface coal 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 or not the material is enriched in radioactive materials. The term does not include commercial leonardite.
4. "Commercial leonardite" means a dark-colored, soft, earthy organic rock formed from the oxidation of lignite coal, and is produced from a mine that has as its only function for supply for purposes other than gasification or combustion to generate electricity.
5. "Commission" means the public service commission, or such other department, bureau, or commission as may lawfully succeed to the powers and duties of that commission. The commission is the state regulatory authority for all purposes relating to the Surface Mining Control and Reclamation Act of 1977 [Pub. L. 95-87; 91 Stat. 445; 30 U.S.C. 1201 et seq.].
- ~~5-6.~~ "Extended mining plan" means a written statement setting forth the matters specified in section 38-14.1-15 and covering the estimated life of the surface coal mining operation.
- ~~6-7.~~ "Final cut" means the last pit created in a surface mining pit sequence.

- 7-8. "Highwall" and "endwall" mean those sides of the pit adjacent to unmined land.
- 8-9. "Imminent danger to the health and safety of the public" means the existence of any condition or practice, or any violation of a permit or other requirement of this chapter in a surface coal mining and reclamation operation, which condition, practice, or violation could reasonably be expected to cause substantial physical harm to persons outside the permit area before such condition, practice, or violation can be abated. A reasonable expectation of death or serious injury before abatement exists if a rational person, subjected to the same conditions or practices giving rise to the peril, would not expose the person's self to the danger during the time necessary for abatement.
- 9-10 "Operator" means any individual, person, partnership, firm, association, society, joint stock company, company, cooperative, corporation, limited liability company, or other business organization, or any department, agency, or instrumentality of the state, local, or federal government, or any governmental subdivision thereof including any publicly owned utility or publicly owned corporation of the state, local, or federal government, engaged in or controlling a surface coal mining operation. Operator does not include those who remove or intend to remove two hundred fifty tons [226.80 metric tons] or less of coal or commercial leonardite from the earth by coal or commercial leonardite mining within twelve consecutive calendar months in any one location or who remove any coal or commercial leonardite pursuant to reclamation operations under chapter 38-14.2.
- 10-11. "Other minerals" means clay, stone, sand, gravel, metalliferous and nonmetalliferous ores, and any other solid material or substances of commercial value occurring within five hundred feet [152.4 meters] or less of the land surface and which are excavated in solid form from natural deposits on or in the earth, exclusive of coal or commercial leonardite and those minerals which occur naturally in liquid or gaseous form.
- 11-12. "Other suitable strata" means those portions of the overburden determined by the commission to be suitable for meeting the requirements of subsections 2 and 17 of section 38-14.1-24 and based on data submitted by the permit applicant.
- 12-13. "Overburden" means all of the earth and other materials, with the exception of suitable plant growth material, which lie above natural deposits of coal or commercial leonardite and also means such earth and other materials, with the exception of suitable plant growth material, disturbed from their natural state by surface coal or commercial leonardite mining operations.
- 12.1-14. "Performance bond" means a surety bond, collateral bond, self-bond, deposit, a bond issued under the state surface mining and reclamation bond fund, any alternative form of security approved by the commission, or combination thereof, by which a permittee assures faithful performance of all requirements of this chapter.

- ~~43-15.~~ "Permit" means a permit to conduct surface coal mining and reclamation operations issued by the commission.
- ~~44-16.~~ "Permit applicant" means a person or operator applying for a permit.
- ~~45-17.~~ "Permit area" means the area of land approved by the commission for surface coal mining operations which shall be readily identifiable by appropriate markers on the site.
- ~~46-18.~~ "Permit renewal" means the extension of the permit term for areas within the boundaries of the initial or existing permit, upon the expiration of the initial or existing permit term.
- ~~47-19.~~ "Permit revision" means the modification of permit provisions during the term of the permit and includes changes in the mining and reclamation plans, incidental boundary extensions, and the transfer, assignment, or sale of rights granted under the permit.
- ~~48-20.~~ "Permit term" means a period of time beginning with the date upon which a permit is given for surface coal mining and reclamation operations under the provisions of this chapter, and ending with the expiration of the next succeeding five years plus any renewal of the permit granted under this chapter.
- ~~49-21.~~ "Permittee" means a person or operator holding a permit.
- ~~20-22.~~ "Person" means an individual, partnership, firm, association, society, joint stock company, company, cooperative, corporation, limited liability company, or other business organization.
- ~~21-23.~~ "Pit" means a tract of land, from which overburden, ~~or coal, or commercial leonardite~~, or both any combination of overburden, coal, or commercial leonardite has been or is being removed for the purpose of surface coal mining operations.
- ~~22-24.~~ "Prime farmland" means lands as prescribed by commission regulation that have the soil characteristics and moisture supply needed to produce sustained high yields of adapted crops economically when treated and managed, including management of water, according to modern farming methods. Furthermore, such lands historically have been used for intensive agricultural purposes and are large enough in size to constitute a viable economic unit.
- ~~23-25.~~ "Prime soils" means those soils that have the required soil characteristics (including slope and moisture supply) needed to produce sustained high yields of adapted crops, as determined by the state conservationist of the United States department of agriculture soil conservation service.
- ~~24-26.~~ "Reclaimed" or "reclaim" means conditioning areas affected by surface coal mining operations to make them capable of supporting the uses which they were capable of supporting prior to any mining, or higher or better uses, pursuant to subsection 2 of section 38-14.1-24.

- ~~25-27.~~ "Reclamation plan" means a plan submitted by an applicant for a permit which sets forth a plan for reclamation of the proposed surface coal mining operations pursuant to subsection 2 of section 38-14.1-14.
- ~~26-28.~~ "Refuse" means all waste material directly connected with the production of coal or commercial leonardite mined by surface coal mining operations.
- ~~27-29.~~ "Soil amendments" means those materials added by the operator to the replaced overburden or suitable plant growth material, or both, to improve the physical or chemical condition of the soil in its relation to plant growth capability.
- ~~28-30.~~ "Soil classifier" means a professional soil classifier as defined in subsection 4 of section 43-36-01.
- ~~29-31.~~ "Soil survey" means the identification and location of all suitable plant growth material within the proposed permit area and an accompanying report that describes, classifies, and interprets for use such materials.
- ~~30-32.~~ "State program" means the program established by the state of North Dakota in accordance with the requirements of section 503 of the federal Surface Mining Control and Reclamation Act of 1977 [Pub. L. 95-87; 91 Stat. 470; 30 U.S.C. 1253] to regulate surface coal mining and reclamation operations on lands within the state of North Dakota.
- ~~31-33.~~ "Suitable plant growth material" means that soil material (normally the A, B, and portions of the C horizons) located within the proposed permit area which, based upon a soil survey, is found by the commission to be the most acceptable as a medium for plant growth when respread on the surface of regraded areas.
- ~~32-34.~~ "Surface coal mining and reclamation operations" means surface coal mining operations and all activities necessary and incidental to the reclamation of such operations after July 1, 1979.
- ~~33-35.~~ "Surface coal mining operations" means:
- a. Activities affecting the surface of lands in connection with a surface coal or commercial leonardite mine. Such activities include extraction of coal or commercial leonardite from coal or commercial leonardite refuse piles, excavation for the purpose of obtaining coal or commercial leonardite, including such common methods as contour, strip, auger, box cut, open pit, and area mining, the uses of explosives and blasting, and in situ distillation or retorting, leaching or other chemical or physical processing, and the cleaning, concentrating, or other processing or preparation, and loading of coal or commercial leonardite at or near the minesite, except that such activities do not include coal or commercial leonardite exploration subject to chapter 38-12.1, or the extraction of coal or commercial leonardite incidental to reclamation operations under chapter 38-14.2; and
 - b. The areas upon which such activities occur or where such activities disturb the natural land surface. Such areas shall also include any adjacent land the use of which is incidental to any such activities, all adjacent lands affected by the construction of new roads or the

improvement or use of existing roads to gain access to the site of such activities and for haulage, and excavations, workings, impoundments, dams, refuse banks, dumps, stockpiles, overburden piles, spoil banks, culm banks, tailings, holes or depressions, repair areas, storage areas, processing areas, shipping areas, and other areas upon which are sited structures, facilities, or other property or materials on the surface, resulting from or incident to such activities.

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

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

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

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

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

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

- r. Cross sections, maps or plans of the land to be affected, including the actual area to be mined, prepared by or under the direction of and certified by a registered professional engineer, a registered land surveyor, or a qualified professional geologist with assistance from experts in related fields, showing pertinent elevation and location of

test borings or core samplings and depicting all of the following information:

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

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

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

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

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

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

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

SECTION 14. AMENDMENT. Subsections 1 and 1.1 of section 38-14.1-24 of the North 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 commercial leonardite being recovered so that reffecting 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 commercial 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 15. 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 commercial leonardite deposit;
- (2) The thickness of the coal or commercial 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 16. AMENDMENT. Subsections 5, 10, and 18 of section 38-14.1-24 of the North Dakota Century Code are amended and reenacted as follows:

5. Remove, segregate, and respread suitable plant growth material as required by the commission within the permit area. The commission may require the permittee to segregate suitable plant growth material in two or more soil layers. The commission shall determine the soil layer or layers to be removed based upon the quality and quantity of suitable plant growth material inventoried by the soil survey required in subdivision t of subsection 1 of section 38-14.1-14. Based on the soil survey, the commission shall also determine whether other suitable strata are necessary to meet revegetation requirements. If other strata can be shown to be suitable and necessary to meet revegetation requirements, the commission may require the permittee to determine the areal extent of other suitable strata within the proposed permit area, and to remove, segregate, protect, and respread such material. If the suitable plant growth material or other suitable strata cannot be replaced on an approved graded area within a time short enough to avoid deterioration of such material, the permittee shall stockpile and stabilize such materials by establishing a successful cover of quick-growing plants or by other means thereafter so that the suitable plant growth material or other suitable strata will be protected from wind and water erosion and will remain free from any contamination by toxic material. In the interest of achieving the maximum reclamation provided for in this chapter, the permittee may, or at the discretion of the commission shall, utilize such soil amendments as described in ~~subsection 27~~ of section 38-14.1-02.
10. Remove or bury all debris and other similar material resulting from the operation and bury all mine wastes ~~and~~ coal, and commercial leonardite processing wastes unless the commission approves the surface disposal of such wastes. If the commission approves the surface disposal of such wastes, the permittee shall stabilize all waste piles in designated areas through construction in compacted layers, including the use of incombustible and impervious materials if necessary, to assure that the final contour of the waste pile will be compatible with natural surroundings and that the site can and will be stabilized and revegetated according to the provisions of this chapter.
18. Assume the responsibility for successful revegetation, as required by subsection 17, for a period of ten full years after the last year of augmented seeding, fertilizing, irrigation, or other work, provided that, when the commission approves a long-term intensive agricultural

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

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

38-14.1-25. Prohibited mining practices.

1. ~~No~~A permittee may not use any coal or commercial leonardite mine waste piles consisting of mine wastes, tailings, coal processing wastes, or other liquid or solid wastes either temporarily or permanently as dams or embankments unless approved by the commission, after consultation with the state engineer.
2. ~~No~~A permittee may not locate any part of the surface coal mining and reclamation operations or deposit overburden, debris, or waste materials outside the permit area for which bond has been posted, except as provided in subsection 24 of section 38-14.1-03.
3. ~~No~~A permittee may not deposit overburden, debris, or waste materials in such a way that normal erosion or slides brought about by natural causes will permit the same to go beyond or outside the permit area for which bond has been posted.

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

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

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

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

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

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

38-15-01. Policy.

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

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

38-15-02. Definitions.

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

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

2. "Commercial leonardite" means a dark-colored, soft, earthy rock formed from the oxidation of lignite coal, and is produced from a mine that has as its only function for supply for purposes other than gasification or combustion to generate electricity.
3. "Commission" means the industrial commission.
- ~~3-4.~~ "Conflicting interests" means those interests of producers which are in conflict, so that full production and utilization by one producer is prohibited or impeded by the interests of another producer of a separate natural resource.
- ~~4-5.~~ "Gas" means all natural gas and other fluid hydrocarbons not hereinbelow defined as oil.
- ~~5-6.~~ "Natural resources" means coal, oil, gas, and subsurface minerals as defined herein.
- ~~6-7.~~ "Oil" means crude petroleum oil and other hydrocarbons, regardless of gravity, which are produced at the wellhead in liquid form, and the liquid hydrocarbons known as distillate or condensate recovered or extracted from gas other than gas produced in association with oil and commonly known as casinghead gas.
- ~~7-8.~~ "Owner" means the person who has the right to produce natural resources either for that person or others.
- ~~8-9.~~ "Person" means any natural person, corporation, limited liability company, association, partnership, receiver, trustee, executor, administrator, guardian, fiduciary, or other representative of any kind, and includes any department, agency, instrumentality, or political subdivision of the state. The masculine gender, in referring to a person, includes the feminine and the neuter genders.
- ~~9-10.~~ "Producer" means the owner of a well or wells, or mine or mines, capable of producing coal, commercial leonardite, oil, gas, or subsurface minerals.
- ~~10-11.~~ "Subsurface minerals" means all naturally occurring elements and their compounds, volcanic ash, precious metals, carbonates, and natural mineral salts of 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.
- ~~11-12.~~ "Waste" means the inefficient utilization of reserves of oil, gas, subsurface minerals, ~~or coal,~~ or commercial leonardite, as the case may be.

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

38-18-05. Definitions.

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

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

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

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

1. Unless the mineral lease, surface lease, or consent statement executed by the surface owner provides for payments to the surface owner, the mineral developer shall annually pay to the surface owner a sum of money equal to the amount of damages sustained by the surface owner for loss of agricultural production caused by mining activity, provided that it can be shown that the land disturbed or to be disturbed has regularly been used for agricultural production. The amount of damages may be determined by

any formula mutually agreeable between the surface owner and the mineral developer. The payments contemplated by this section only cover land actually mined, disturbed, or to be mined during the year or years during which agricultural production was actually interrupted and which land has not been restored to the level of agricultural productivity required by the plan submitted pursuant to chapter 38-14.1. The payments to be made hereunder must be made before December thirty-first of that calendar year in which the loss occurred.

2. Unless waived by the owner of a farm building, if the coal or commercial leonardite removal area of a surface mining operation comes within five hundred feet [152.4 meters] of any farm building, the mineral developer shall pay to the owner of the farm building either the fair market value of the farm building or the entire cost of removing the farm building to a location where the coal or commercial leonardite removal area of the mining operation will not come within five hundred feet [152.4 meters] of such building or buildings. The payments contemplated hereunder are in addition to any payments required by the terms of any mineral lease, unless the surface owner is a party to the lease and the lease provides for damages as contemplated in this subsection in an amount not less than the amount which would be recoverable under this section.
3. The rights granted to the surface owner by this section are hereby declared to be absolute and unwaivable, except as provided in subsection 2. Any instrument which purports to waive rights granted by this section is null and void and of no legal effect.

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

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

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

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

Renumber accordingly

April 2, 2015

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PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2377

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to create and enact section 57-61-01.9 of the North Dakota Century Code, relating to severance tax for commercial leonardite; to amend and reenact subsection 5 of section 38-11.2-01, sections 38-12.1-01, 38-12.1-02, 38-12.1-03, 38-12.1-04, 38-12.1-05, and 38-14.1-02, subsection 3 of section 38-14.1-05, subsection 3 of section 38-14.1-13, subdivisions r and s of subsection 1 of section 38-14.1-14, subdivision c of subsection 2 of section 38-14.1-14, paragraph 2 of subdivision e of subsection 3 of section 38-14.1-21, subdivision b of subsection 4 of section 38-14.1-21, subsections 1 and 1.1 of section 38-14.1-24, subdivision b of subsection 3 of section 38-14.1-24, subsections 5, 10, and 18 of section 38-14.1-24, section 38-14.1-25, subdivision b of subsection 1 of section 38-14.1-27, subsections 1, 3, and 4 of section 38-14.1-37, and section 38-15-01, 38-15-02, 38-18-07, and section 47-10-24 of the North Dakota Century Code, relating to the definition of coal and commercial leonardite; and to provide for application.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

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

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

38-12.1-01. Legislative findings.

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

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

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

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38-12.1-02. Declaration of policy.

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

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

38-12.1-03. Definitions.

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

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 commercial leonardite.
2. "Coal exploration" means:
 - a. The use of any technique which when applied to the surface of the land will aid in the discovery or evaluation of coal or commercial leonardite or aid in determining the quantity and quality of coal or commercial leonardite present. It includes drilling or digging, excavating, core sample drilling and collection, diamond drilling, trenching, or any other type of penetration of the surface of the earth; or
 - b. Environmental data gathering activities conducted for the purpose of establishing the conditions of an area prior to applying for a permit under chapter 38-14.1. The provisions of sections 38-12.1-04 and 38-12.1-05 are not applicable to such environmental data gathering activities unless the natural land surface will be substantially disturbed or such activities are located on lands designated unsuitable for mining under section 38-14.1-05.
3. "Commercial leonardite" means a dark-colored, soft, earthy rock formed from the oxidation of lignite coal, and is produced from a mine that has as its only function for supply for purposes other than gasification or combustion to generate electricity.
4. "Commission" means the industrial commission of the state of North Dakota.
- 4-5. "Permit area" means a county.
- 5-6. "Person" means and includes any natural person, corporation, limited liability company, association, partnership, receiver, trustee, executor, administrator, guardian, fiduciary, or other representative of any kind, and includes any department, agency, or instrumentality of the state or of any

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governmental subdivision thereof; the masculine gender, in referring to a person, includes the feminine and the neuter genders.

6-7. "Road" means a surface or right of way for purposes of travel by land vehicles used in coal or commercial leonardite exploration. A road consists of the entire area of the right of way, including the roadbed, shoulders, parking and side areas, approaches, structures, ditches, and surface.

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

38-12.1-04. Jurisdiction of commission.

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

1. To require:
 - a. The furnishing of a reasonable bond with good and sufficient surety, conditioned upon the full compliance with the provisions of this chapter, and the rules and orders of the commission prescribed to govern the exploration for coal or commercial leonardite on state and private lands and roads used in coal or commercial leonardite exploration within the state of North Dakota. The person required to furnish the bond may elect to deposit a collateral bond, self-bond, cash, or any alternative form of security approved by the commission, or combination thereof, by which a permittee assures faithful performance of all requirements of this chapter and the rules and orders of the industrial commission.
 - b. The delivery, free of charge, to the state geologist of the basic data collected during the course of the exploration within a reasonable time as may be prescribed by the state geologist. The data so submitted is confidential and available only to the office of the state geologist for official purposes for a period of two years, and such period of confidentiality must, upon application, be extended for one-year periods by the state geologist, for a total period not to exceed ten years unless it is demonstrated that such period should be further extended in order to prevent possible resulting harm to the person, or the person's successors and assigns, who delivered such basic data to the state geologist. The basic data must include, if specifically requested by the state geologist and if the information has been developed by or for a person conducting the exploration:
 - (1) Sample cuts.
 - (2) Drillers' logs, sample logs, radioactivity logs, resistivity logs, or other types of electrical or mechanical logs.
 - (3) Elevation and location information on the data collection points.

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

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

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

1. It is unlawful to commence operations for drilling for the exploration for coal or commercial leonardite without first obtaining a permit from the director of mineral resources, under such rules and regulations as may be prescribed by the commission, and paying to the commission a fee of one hundred dollars for each such permit area. The permit application must include a description of the exploration area and the period of proposed exploration. The permit must be granted within thirty days after a proper application has been submitted.
2. This permit may not be required:
 - a. In an area where a permit to conduct surface coal mining operations is in effect pursuant to chapter 38-14.1;
 - b. For holes drilled to guide excavating equipment in an operating mine;
 - c. In areas where a drill hole is required by any other state agency; or
 - d. For environmental data gathering activities that do not substantially disturb the land, unless the environmental data gathering activities are located on land designated unsuitable for mining under section 38-14.1-05.

- 3. No person may remove more than two hundred fifty tons [226.80 metric tons] of coal or commercial leonardite pursuant to an exploration permit without first obtaining a permit from the public service commission.

SECTION 7. 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 mining operations so that the reclaimed area closely resembles the general surface configuration of the land prior to being affected by surface coal 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 or not the material is enriched in radioactive materials. The term does not include commercial leonardite.
- 4. "Commercial leonardite" means a dark-colored, soft, earthy organic rock formed from the oxidation of lignite coal, and is produced from a mine that has as its only function for supply for purposes other than gasification or combustion to generate electricity.
- 5. "Commission" means the public service commission, or such other department, bureau, or commission as may lawfully succeed to the powers and duties of that commission. The commission is the state regulatory authority for all purposes relating to the Surface Mining Control and Reclamation Act of 1977 [Pub. L. 95-87; 91 Stat. 445; 30 U.S.C. 1201 et seq.].
- 5-6. "Extended mining plan" means a written statement setting forth the matters specified in section 38-14.1-15 and covering the estimated life of the surface coal mining operation.
- 6-7. "Final cut" means the last pit created in a surface mining pit sequence.

- 7-8. "Highwall" and "endwall" mean those sides of the pit adjacent to unmined land.
- 8-9. "Imminent danger to the health and safety of the public" means the existence of any condition or practice, or any violation of a permit or other requirement of this chapter in a surface coal mining and reclamation operation, which condition, practice, or violation could reasonably be expected to cause substantial physical harm to persons outside the permit area before such condition, practice, or violation can be abated. A reasonable expectation of death or serious injury before abatement exists if a rational person, subjected to the same conditions or practices giving rise to the peril, would not expose the person's self to the danger during the time necessary for abatement.
- 9-10. "Operator" means any individual, person, partnership, firm, association, society, joint stock company, company, cooperative, corporation, limited liability company, or other business organization, or any department, agency, or instrumentality of the state, local, or federal government, or any governmental subdivision thereof including any publicly owned utility or publicly owned corporation of the state, local, or federal government, engaged in or controlling a surface coal mining operation. Operator does not include those who remove or intend to remove two hundred fifty tons [226.80 metric tons] or less of coal or commercial leonardite from the earth by coal or commercial leonardite mining within twelve consecutive calendar months in any one location or who remove any coal or commercial leonardite pursuant to reclamation operations under chapter 38-14.2.
- 10-11. "Other minerals" means clay, stone, sand, gravel, metalliferous and nonmetalliferous ores, and any other solid material or substances of commercial value occurring within five hundred feet [152.4 meters] or less of the land surface and which are excavated in solid form from natural deposits on or in the earth, exclusive of coal or commercial leonardite and those minerals which occur naturally in liquid or gaseous form.
- 11-12. "Other suitable strata" means those portions of the overburden determined by the commission to be suitable for meeting the requirements of subsections 2 and 17 of section 38-14.1-24 and based on data submitted by the permit applicant.
- 12-13. "Overburden" means all of the earth and other materials, with the exception of suitable plant growth material, which lie above natural deposits of coal or commercial leonardite and also means such earth and other materials, with the exception of suitable plant growth material, disturbed from their natural state by surface coal or commercial leonardite mining operations.
- 12-1-14. "Performance bond" means a surety bond, collateral bond, self-bond, deposit, a bond issued under the state surface mining and reclamation bond fund, any alternative form of security approved by the commission, or combination thereof, by which a permittee assures faithful performance of all requirements of this chapter.

- 43-15. "Permit" means a permit to conduct surface coal mining and reclamation operations issued by the commission.
- 44-16. "Permit applicant" means a person or operator applying for a permit.
- 45-17. "Permit area" means the area of land approved by the commission for surface coal mining operations which shall be readily identifiable by appropriate markers on the site.
- 46-18. "Permit renewal" means the extension of the permit term for areas within the boundaries of the initial or existing permit, upon the expiration of the initial or existing permit term.
- 47-19. "Permit revision" means the modification of permit provisions during the term of the permit and includes changes in the mining and reclamation plans, incidental boundary extensions, and the transfer, assignment, or sale of rights granted under the permit.
- 48-20. "Permit term" means a period of time beginning with the date upon which a permit is given for surface coal mining and reclamation operations under the provisions of this chapter, and ending with the expiration of the next succeeding five years plus any renewal of the permit granted under this chapter.
- 49-21. "Permittee" means a person or operator holding a permit.
- 20-22. "Person" means an individual, partnership, firm, association, society, joint stock company, company, cooperative, corporation, limited liability company, or other business organization.
- 21-23. "Pit" means a tract of land, from which overburden, ~~or coal,~~ or commercial leonardite, or both, any combination of overburden, coal, or commercial leonardite has been or is being removed for the purpose of surface coal mining operations.
- 22-24. "Prime farmland" means lands as prescribed by commission regulation that have the soil characteristics and moisture supply needed to produce sustained high yields of adapted crops economically when treated and managed, including management of water, according to modern farming methods. Furthermore, such lands historically have been used for intensive agricultural purposes and are large enough in size to constitute a viable economic unit.
- 23-25. "Prime soils" means those soils that have the required soil characteristics (including slope and moisture supply) needed to produce sustained high yields of adapted crops, as determined by the state conservationist of the United States department of agriculture soil conservation service.
- 24-26. "Reclaimed" or "reclaim" means conditioning areas affected by surface coal mining operations to make them capable of supporting the uses which they were capable of supporting prior to any mining, or higher or better uses, pursuant to subsection 2 of section 38-14.1-24.

- 25-27. "Reclamation plan" means a plan submitted by an applicant for a permit which sets forth a plan for reclamation of the proposed surface coal mining operations pursuant to subsection 2 of section 38-14.1-14.
- 26-28. "Refuse" means all waste material directly connected with the production of coal or commercial leonardite mined by surface coal mining operations.
- 27-29. "Soil amendments" means those materials added by the operator to the replaced overburden or suitable plant growth material, or both, to improve the physical or chemical condition of the soil in its relation to plant growth capability.
- 28-30. "Soil classifier" means a professional soil classifier as defined in subsection 4 of section 43-36-01.
- 29-31. "Soil survey" means the identification and location of all suitable plant growth material within the proposed permit area and an accompanying report that describes, classifies, and interprets for use such materials.
- 30-32. "State program" means the program established by the state of North Dakota in accordance with the requirements of section 503 of the federal Surface Mining Control and Reclamation Act of 1977 [Pub. L. 95-87; 91 Stat. 470; 30 U.S.C. 1253] to regulate surface coal mining and reclamation operations on lands within the state of North Dakota.
- 31-33. "Suitable plant growth material" means that soil material (normally the A, B, and portions of the C horizons) located within the proposed permit area which, based upon a soil survey, is found by the commission to be the most acceptable as a medium for plant growth when respread on the surface of regraded areas.
- 32-34. "Surface coal mining and reclamation operations" means surface coal mining operations and all activities necessary and incidental to the reclamation of such operations after July 1, 1979.
- 33-35. "Surface coal mining operations" means:
 - a. Activities affecting the surface of lands in connection with a surface coal or commercial leonardite mine. Such activities include extraction of coal or commercial leonardite from coal or commercial leonardite refuse piles, excavation for the purpose of obtaining coal or commercial leonardite, including such common methods as contour, strip, auger, box cut, open pit, and area mining, the uses of explosives and blasting, and in situ distillation or retorting, leaching or other chemical or physical processing, and the cleaning, concentrating, or other processing or preparation, and loading of coal or commercial leonardite at or near the minesite, except that such activities do not include coal or commercial leonardite exploration subject to chapter 38-12.1, or the extraction of coal or commercial leonardite incidental to reclamation operations under chapter 38-14.2; and
 - b. The areas upon which such activities occur or where such activities disturb the natural land surface. Such areas shall also include any adjacent land the use of which is incidental to any such activities, all adjacent lands affected by the construction of new roads or the

improvement or use of existing roads to gain access to the site of such activities and for haulage, and excavations, workings, impoundments, dams, refuse banks, dumps, stockpiles, overburden piles, spoil banks, culm banks, tailings, holes or depressions, repair areas, storage areas, processing areas, shipping areas, and other areas upon which are sited structures, facilities, or other property or materials on the surface, resulting from or incident to such activities.

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

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

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

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

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

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

- r. Cross sections, maps or plans of the land to be affected, including the actual area to be mined, prepared by or under the direction of and certified by a registered professional engineer, a registered land surveyor, or a qualified professional geologist with assistance from experts in related fields, showing pertinent elevation and location of

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test borings or core samplings and depicting all of the following information:

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

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

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

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

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

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

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

SECTION 14. AMENDMENT. Subsections 1 and 1.1 of section 38-14.1-24 of the North 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 commercial leonardite being recovered so that reffecting 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 commercial 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 15. 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:

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- (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 commercial leonardite deposit;
- (2) The thickness of the coal or commercial 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 16. AMENDMENT. Subsections 5, 10, and 18 of section 38-14.1-24 of the North Dakota Century Code are amended and reenacted as follows:

5. Remove, segregate, and respread suitable plant growth material as required by the commission within the permit area. The commission may require the permittee to segregate suitable plant growth material in two or more soil layers. The commission shall determine the soil layer or layers to be removed based upon the quality and quantity of suitable plant growth material inventoried by the soil survey required in subdivision t of subsection 1 of section 38-14.1-14. Based on the soil survey, the commission shall also determine whether other suitable strata are necessary to meet revegetation requirements. If other strata can be shown to be suitable and necessary to meet revegetation requirements, the commission may require the permittee to determine the areal extent of other suitable strata within the proposed permit area, and to remove, segregate, protect, and respread such material. If the suitable plant growth material or other suitable strata cannot be replaced on an approved graded area within a time short enough to avoid deterioration of such material, the permittee shall stockpile and stabilize such materials by establishing a successful cover of quick-growing plants or by other means thereafter so that the suitable plant growth material or other suitable strata will be protected from wind and water erosion and will remain free from any contamination by toxic material. In the interest of achieving the maximum reclamation provided for in this chapter, the permittee may, or at the discretion of the commission shall, utilize such soil amendments as described in ~~subsection 27~~ of section 38-14.1-02.
10. Remove or bury all debris and other similar material resulting from the operation and bury all mine wastes and coal, and commercial leonardite processing wastes unless the commission approves the surface disposal of such wastes. If the commission approves the surface disposal of such wastes, the permittee shall stabilize all waste piles in designated areas through construction in compacted layers, including the use of incombustible and impervious materials if necessary, to assure that the final contour of the waste pile will be compatible with natural surroundings and that the site can and will be stabilized and revegetated according to the provisions of this chapter.
18. Assume the responsibility for successful revegetation, as required by subsection 17, for a period of ten full years after the last year of augmented seeding, fertilizing, irrigation, or other work, provided that, when the commission approves a long-term intensive agricultural

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

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

38-14.1-25. Prohibited mining practices.

1. ~~No~~A permittee may not use any coal or commercial leonardite mine waste piles consisting of mine wastes, tailings, coal processing wastes, or other liquid or solid wastes either temporarily or permanently as dams or embankments unless approved by the commission, after consultation with the state engineer.
2. ~~No~~A permittee may not locate any part of the surface coal mining and reclamation operations or deposit overburden, debris, or waste materials outside the permit area for which bond has been posted, except as provided in subsection 24 of section 38-14.1-03.
3. ~~No~~A permittee may not deposit overburden, debris, or waste materials in such a way that normal erosion or slides brought about by natural causes will permit the same to go beyond or outside the permit area for which bond has been posted.

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

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

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

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

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

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

38-15-01. Policy.

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

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

38-15-02. Definitions.

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

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

- 2. "Commercial leonardite" means a dark-colored, soft, earthy rock formed from the oxidation of lignite coal, and is produced from a mine that has as its only function for supply for purposes other than gasification or combustion to generate electricity.
- 3. "Commission" means the industrial commission.
- 3.4. "Conflicting interests" means those interests of producers which are in conflict, so that full production and utilization by one producer is prohibited or impeded by the interests of another producer of a separate natural resource.
- 4.5. "Gas" means all natural gas and other fluid hydrocarbons not hereinbelow defined as oil.
- 5.6. "Natural resources" means coal, oil, gas, and subsurface minerals as defined herein.
- 6.7. "Oil" means crude petroleum oil and other hydrocarbons, regardless of gravity, which are produced at the wellhead in liquid form, and the liquid hydrocarbons known as distillate or condensate recovered or extracted from gas other than gas produced in association with oil and commonly known as casinghead gas.
- 7.8. "Owner" means the person who has the right to produce natural resources either for that person or others.
- 8.9. "Person" means any natural person, corporation, limited liability company, association, partnership, receiver, trustee, executor, administrator, guardian, fiduciary, or other representative of any kind, and includes any department, agency, instrumentality, or political subdivision of the state. The masculine gender, in referring to a person, includes the feminine and the neuter genders.
- 9.10. "Producer" means the owner of a well or wells, or mine or mines, capable of producing coal, commercial leonardite, oil, gas, or subsurface minerals.
- 10.11. "Subsurface minerals" means all naturally occurring elements and their compounds, volcanic ash, precious metals, carbonates, and natural mineral salts of 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.
- 11.12. "Waste" means the inefficient utilization of reserves of oil, gas, subsurface minerals, ~~or coal,~~ or commercial leonardite, as the case may be.

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

38-18-05. Definitions.

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

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

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

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

1. Unless the mineral lease, surface lease, or consent statement executed by the surface owner provides for payments to the surface owner, the mineral developer shall annually pay to the surface owner a sum of money equal to the amount of damages sustained by the surface owner for loss of agricultural production caused by mining activity, provided that it can be shown that the land disturbed or to be disturbed has regularly been used for agricultural production. The amount of damages may be determined by

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any formula mutually agreeable between the surface owner and the mineral developer. The payments contemplated by this section only cover land actually mined, disturbed, or to be mined during the year or years during which agricultural production was actually interrupted and which land has not been restored to the level of agricultural productivity required by the plan submitted pursuant to chapter 38-14.1. The payments to be made hereunder must be made before December thirty-first of that calendar year in which the loss occurred.

- 2. Unless waived by the owner of a farm building, if the coal or commercial leonardite removal area of a surface mining operation comes within five hundred feet [152.4 meters] of any farm building, the mineral developer shall pay to the owner of the farm building either the fair market value of the farm building or the entire cost of removing the farm building to a location where the coal or commercial leonardite removal area of the mining operation will not come within five hundred feet [152.4 meters] of such building or buildings. The payments contemplated hereunder are in addition to any payments required by the terms of any mineral lease, unless the surface owner is a party to the lease and the lease provides for damages as contemplated in this subsection in an amount not less than the amount which would be recoverable under this section.
- 3. The rights granted to the surface owner by this section are hereby declared to be absolute and unwaivable, except as provided in subsection 2. Any instrument which purports to waive rights granted by this section is null and void and of no legal effect.

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

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

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

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

Renumber accordingly

Date: 4-2-15
Roll Call Vote #: 1

2015 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. HB 2377

House Energy and Natural Resources Committee

Subcommittee

Amendment LC# or Description: 15.1008 02004

Recommendation: Adopt Amendment *with correction*
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
Other Actions: Reconsider _____

Motion Made By Rep. Keiser Seconded By Rep. Hunskor

Representatives	Yes	No	Representatives	Yes	No
Chairman Porter			Rep Hunskor		
Vice Chairman Damschen			Rep Mock		
Rep D Anderson			Rep Muscha		
Rep Brabandt					
Rep Devlin					
Rep Froseth					
Rep Hofstad					
Rep Keiser					
Rep Lefor					
Rep Nathe					

*Voice Vote
Carries*

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:
On proposed amendments including to replace "center" with "cents."

Date: 4-2-15
Roll Call Vote #: 2

2015 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. HB 2377

House Energy and Natural Resources Committee

Subcommittee

Amendment LC# or Description: _____

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
Other Actions: Reconsider _____

Motion Made By Rep Keiser Seconded By Rep. Hunskor

Representatives	Yes	No	Representatives	Yes	No
Chairman Porter	✓		Rep Hunskor	✓	
Vice Chairman Damschen	✓		Rep Mock	✓	
Rep D Anderson	✓		Rep Muscha	✓	
Rep Brabandt	✓				
Rep Devlin	✓				
Rep Froseth	✓				
Rep Hofstad	✓				
Rep Keiser	✓				
Rep Lefor	✓				
Rep Nathe	✓				

Total (Yes) 13 No 0

Absent 0

Floor Assignment Rep. Keiser

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

SB 2377, as engrossed: Energy and Natural Resources Committee (Rep. Porter, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (13 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed SB 2377 was placed on the Sixth order on the calendar.

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to create and enact section 57-61-01.9 of the North Dakota Century Code, relating to severance tax for commercial leonardite; to amend and reenact subsection 5 of section 38-11.2-01, sections 38-12.1-01, 38-12.1-02, 38-12.1-03, 38-12.1-04, 38-12.1-05, and 38-14.1-02, subsection 3 of section 38-14.1-05, subsection 3 of section 38-14.1-13, subdivisions r and s of subsection 1 of section 38-14.1-14, subdivision c of subsection 2 of section 38-14.1-14, paragraph 2 of subdivision e of subsection 3 of section 38-14.1-21, subdivision b of subsection 4 of section 38-14.1-21, subsections 1 and 1.1 of section 38-14.1-24, subdivision b of subsection 3 of section 38-14.1-24, subsections 5, 10, and 18 of section 38-14.1-24, section 38-14.1-25, subdivision b of subsection 1 of section 38-14.1-27, subsections 1, 3, and 4 of section 38-14.1-37, and section 38-15-01, 38-15-02, 38-18-07, and section 47-10-24 of the North Dakota Century Code, relating to the definition of coal and commercial leonardite; and to provide for application.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

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

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

38-12.1-01. Legislative findings.

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

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

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

38-12.1-02. Declaration of policy.

It is hereby declared to be in the public interest to have persons engaged in coal or commercial leonardite exploration or evaluation report their findings to the office of the state geologist so that data on the location, quantity, and quality of coal or commercial leonardite, and the characteristics of associated material, will be

available to assist the state in determining what the attitude of the state should be regarding future development of coal or commercial leonardite resources.

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

38-12.1-03. Definitions.

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

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 commercial leonardite.
2. "Coal exploration" means:
 - a. The use of any technique which when applied to the surface of the land will aid in the discovery or evaluation of coal or commercial leonardite or aid in determining the quantity and quality of coal or commercial leonardite present. It includes drilling or digging, excavating, core sample drilling and collection, diamond drilling, trenching, or any other type of penetration of the surface of the earth; or
 - b. Environmental data gathering activities conducted for the purpose of establishing the conditions of an area prior to applying for a permit under chapter 38-14.1. The provisions of sections 38-12.1-04 and 38-12.1-05 are not applicable to such environmental data gathering activities unless the natural land surface will be substantially disturbed or such activities are located on lands designated unsuitable for mining under section 38-14.1-05.
3. "Commercial leonardite" means a dark-colored, soft, earthy rock formed from the oxidation of lignite coal, and is produced from a mine that has as its only function for supply for purposes other than gasification or combustion to generate electricity.
4. "Commission" means the industrial commission of the state of North Dakota.
- ~~4-5.~~ "Permit area" means a county.
- ~~5-6.~~ "Person" means and includes any natural person, corporation, limited liability company, association, partnership, receiver, trustee, executor, administrator, guardian, fiduciary, or other representative of any kind, and includes any department, agency, or instrumentality of the state or of any governmental subdivision thereof; the masculine gender, in referring to a person, includes the feminine and the neuter genders.
- ~~6-7.~~ "Road" means a surface or right of way for purposes of travel by land vehicles used in coal or commercial leonardite exploration. A road consists of the entire area of the right of way, including the roadbed, shoulders, parking and side areas, approaches, structures, ditches, and surface.

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

38-12.1-04. Jurisdiction of commission.

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

1. To require:
 - a. The furnishing of a reasonable bond with good and sufficient surety, conditioned upon the full compliance with the provisions of this chapter, and the rules and orders of the commission prescribed to govern the exploration for coal or commercial leonardite on state and private lands and roads used in coal or commercial leonardite exploration within the state of North Dakota. The person required to furnish the bond may elect to deposit a collateral bond, self-bond, cash, or any alternative form of security approved by the commission, or combination thereof, by which a permittee assures faithful performance of all requirements of this chapter and the rules and orders of the industrial commission.
 - b. The delivery, free of charge, to the state geologist of the basic data collected during the course of the exploration within a reasonable time as may be prescribed by the state geologist. The data so submitted is confidential and available only to the office of the state geologist for official purposes for a period of two years, and such period of confidentiality must, upon application, be extended for one-year periods by the state geologist, for a total period not to exceed ten years unless it is demonstrated that such period should be further extended in order to prevent possible resulting harm to the person, or the person's successors and assigns, who delivered such basic data to the state geologist. The basic data must include, if specifically requested by the state geologist and if the information has been developed by or for a person conducting the exploration:
 - (1) Sample cuts.
 - (2) Drillers' logs, sample logs, radioactivity logs, resistivity logs, or other types of electrical or mechanical logs.
 - (3) Elevation and location information on the data collection points.
 - (4) Other pertinent information as may be required by the state geologist.
2. To require the plugging, covering, or reburial in an appropriate manner so as to protect environmental quality, general health and safety, and economic values of all holes, pits, or trenches excavated during the course of coal or commercial leonardite exploration.
3. To promulgate and enforce rules, regulations, and orders to effectuate the provisions, purpose, and intent of this chapter.
4. To inspect all drilling or exploration sites. For the purposes of this subsection, the director of mineral resources or the director's representative shall have access to all drilling or exploration installations regulated by this chapter for the purpose of inspection and sampling and

shall have the authority to require the operators' aid if the director finds it necessary and requests it.

5. Notwithstanding any of the other provisions of this section, the commission acting through the director of mineral resources shall require that any lands substantially disturbed in coal or commercial leonardite exploration, including excavations, roads, and drill holes, and the removal of necessary facilities and equipment be reclaimed in accordance with the applicable performance standards of section 38-14.1-24. Reclamation must be accomplished to protect environmental quality, general health and safety, and economic values.

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

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

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

SECTION 7. 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 mining operations so that the reclaimed area closely resembles the general surface configuration of the land prior to being affected by surface coal 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 or not the material is enriched in radioactive materials. The term does not include commercial leonardite.
4. "Commercial leonardite" means a dark-colored, soft, earthy organic rock formed from the oxidation of lignite coal, and is produced from a mine that has as its only function for supply for purposes other than gasification or combustion to generate electricity.
5. "Commission" means the public service commission, or such other department, bureau, or commission as may lawfully succeed to the powers and duties of that commission. The commission is the state regulatory authority for all purposes relating to the Surface Mining Control and Reclamation Act of 1977 [Pub. L. 95-87; 91 Stat. 445; 30 U.S.C. 1201 et seq.].
- 5-6. "Extended mining plan" means a written statement setting forth the matters specified in section 38-14.1-15 and covering the estimated life of the surface coal mining operation.
- 6-7. "Final cut" means the last pit created in a surface mining pit sequence.
- 7-8. "Highwall" and "endwall" mean those sides of the pit adjacent to unmined land.
- 8-9. "Imminent danger to the health and safety of the public" means the existence of any condition or practice, or any violation of a permit or other requirement of this chapter in a surface coal mining and reclamation operation, which condition, practice, or violation could reasonably be expected to cause substantial physical harm to persons outside the permit area before such condition, practice, or violation can be abated. A reasonable expectation of death or serious injury before abatement exists if a rational person, subjected to the same conditions or practices giving rise to the peril, would not expose the person's self to the danger during the time necessary for abatement.
- 9-10. "Operator" means any individual, person, partnership, firm, association, society, joint stock company, company, cooperative, corporation, limited liability company, or other business organization, or any department, agency, or instrumentality of the state, local, or federal government, or any governmental subdivision thereof including any publicly owned utility or publicly owned corporation of the state, local, or federal government, engaged in or controlling a surface coal mining operation. Operator does not include those who remove or intend to remove two hundred fifty tons [226.80 metric tons] or less of coal or commercial leonardite from the earth by coal or commercial leonardite mining within twelve consecutive calendar months in any one location or who remove any coal or commercial leonardite pursuant to reclamation operations under chapter 38-14.2.

- ~~40-11.~~ "Other minerals" means clay, stone, sand, gravel, metalliferous and nonmetalliferous ores, and any other solid material or substances of commercial value occurring within five hundred feet [152.4 meters] or less of the land surface and which are excavated in solid form from natural deposits on or in the earth, exclusive of coal or commercial leonardite and those minerals which occur naturally in liquid or gaseous form.
- ~~41-12.~~ "Other suitable strata" means those portions of the overburden determined by the commission to be suitable for meeting the requirements of subsections 2 and 17 of section 38-14.1-24 and based on data submitted by the permit applicant.
- ~~42-13.~~ "Overburden" means all of the earth and other materials, with the exception of suitable plant growth material, which lie above natural deposits of coal or commercial leonardite and also means such earth and other materials, with the exception of suitable plant growth material, disturbed from their natural state by surface coal or commercial leonardite mining operations.
- ~~42-1-14.~~ "Performance bond" means a surety bond, collateral bond, self-bond, deposit, a bond issued under the state surface mining and reclamation bond fund, any alternative form of security approved by the commission, or combination thereof, by which a permittee assures faithful performance of all requirements of this chapter.
- ~~43-15.~~ "Permit" means a permit to conduct surface coal mining and reclamation operations issued by the commission.
- ~~44-16.~~ "Permit applicant" means a person or operator applying for a permit.
- ~~45-17.~~ "Permit area" means the area of land approved by the commission for surface coal mining operations which shall be readily identifiable by appropriate markers on the site.
- ~~46-18.~~ "Permit renewal" means the extension of the permit term for areas within the boundaries of the initial or existing permit, upon the expiration of the initial or existing permit term.
- ~~47-19.~~ "Permit revision" means the modification of permit provisions during the term of the permit and includes changes in the mining and reclamation plans, incidental boundary extensions, and the transfer, assignment, or sale of rights granted under the permit.
- ~~48-20.~~ "Permit term" means a period of time beginning with the date upon which a permit is given for surface coal mining and reclamation operations under the provisions of this chapter, and ending with the expiration of the next succeeding five years plus any renewal of the permit granted under this chapter.
- ~~49-21.~~ "Permittee" means a person or operator holding a permit.
- ~~20-22.~~ "Person" means an individual, partnership, firm, association, society, joint stock company, company, cooperative, corporation, limited liability company, or other business organization.
- ~~21-23.~~ "Pit" means a tract of land, from which overburden, ~~or coal, or commercial leonardite, or both,~~ any combination of overburden, coal, or commercial leonardite has been or is being removed for the purpose of surface coal mining operations.

- ~~22-24.~~ "Prime farmland" means lands as prescribed by commission regulation that have the soil characteristics and moisture supply needed to produce sustained high yields of adapted crops economically when treated and managed, including management of water, according to modern farming methods. Furthermore, such lands historically have been used for intensive agricultural purposes and are large enough in size to constitute a viable economic unit.
- ~~23-25.~~ "Prime soils" means those soils that have the required soil characteristics (including slope and moisture supply) needed to produce sustained high yields of adapted crops, as determined by the state conservationist of the United States department of agriculture soil conservation service.
- ~~24-26.~~ "Reclaimed" or "reclaim" means conditioning areas affected by surface coal mining operations to make them capable of supporting the uses which they were capable of supporting prior to any mining, or higher or better uses, pursuant to subsection 2 of section 38-14.1-24.
- ~~25-27.~~ "Reclamation plan" means a plan submitted by an applicant for a permit which sets forth a plan for reclamation of the proposed surface coal mining operations pursuant to subsection 2 of section 38-14.1-14.
- ~~26-28.~~ "Refuse" means all waste material directly connected with the production of coal or commercial leonardite mined by surface coal mining operations.
- ~~27-29.~~ "Soil amendments" means those materials added by the operator to the replaced overburden or suitable plant growth material, or both, to improve the physical or chemical condition of the soil in its relation to plant growth capability.
- ~~28-30.~~ "Soil classifier" means a professional soil classifier as defined in subsection 4 of section 43-36-01.
- ~~29-31.~~ "Soil survey" means the identification and location of all suitable plant growth material within the proposed permit area and an accompanying report that describes, classifies, and interprets for use such materials.
- ~~30-32.~~ "State program" means the program established by the state of North Dakota in accordance with the requirements of section 503 of the federal Surface Mining Control and Reclamation Act of 1977 [Pub. L. 95-87; 91 Stat. 470; 30 U.S.C. 1253] to regulate surface coal mining and reclamation operations on lands within the state of North Dakota.
- ~~31-33.~~ "Suitable plant growth material" means that soil material (normally the A, B, and portions of the C horizons) located within the proposed permit area which, based upon a soil survey, is found by the commission to be the most acceptable as a medium for plant growth when respread on the surface of regraded areas.
- ~~32-34.~~ "Surface coal mining and reclamation operations" means surface coal mining operations and all activities necessary and incidental to the reclamation of such operations after July 1, 1979.
- ~~33-35.~~ "Surface coal mining operations" means:
- a. Activities affecting the surface of lands in connection with a surface coal or commercial leonardite mine. Such activities include extraction of coal or commercial leonardite from coal or commercial leonardite refuse piles, excavation for the purpose of obtaining coal or commercial leonardite, including such common methods as contour,

strip, auger, box cut, open pit, and area mining, the uses of explosives and blasting, and in situ distillation or retorting, leaching or other chemical or physical processing, and the cleaning, concentrating, or other processing or preparation, and loading of coal or commercial leonardite at or near the minesite, except that such activities do not include coal or commercial leonardite exploration subject to chapter 38-12.1, or the extraction of coal or commercial leonardite incidental to reclamation operations under chapter 38-14.2; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SECTION 14. AMENDMENT. Subsections 1 and 1.1 of section 38-14.1-24 of the North 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 commercial leonardite being recovered so that reffecting 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 commercial 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 15. 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 commercial leonardite deposit;
- (2) The thickness of the coal or commercial 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 16. AMENDMENT. Subsections 5, 10, and 18 of section 38-14.1-24 of the North Dakota Century Code are amended and reenacted as follows:

5. Remove, segregate, and respread suitable plant growth material as required by the commission within the permit area. The commission may require the permittee to segregate suitable plant growth material in two or more soil layers. The commission shall determine the soil layer or layers to be removed based upon the quality and quantity of suitable plant growth material inventoried by the soil survey required in subdivision t of subsection 1 of section 38-14.1-14. Based on the soil survey, the commission shall also determine whether other suitable strata are necessary to meet revegetation requirements. If other strata can be shown to be suitable and necessary to meet revegetation requirements, the commission may require the permittee to determine the areal extent of other suitable strata within the proposed permit area, and to remove, segregate, protect, and respread such material. If the suitable plant growth material or other suitable strata cannot be replaced on an approved graded area within a time short enough to avoid deterioration of such material, the permittee shall stockpile and stabilize such materials by establishing a successful cover of quick-growing plants or by other means thereafter so that the suitable plant growth material or other suitable strata will be protected from wind and water erosion and will remain free from any contamination by toxic material. In the interest of achieving the maximum reclamation provided for in this chapter, the permittee may, or at the discretion of the commission shall, utilize such soil amendments as described in ~~subsection 27~~ of section 38-14.1-02.
10. Remove or bury all debris and other similar material resulting from the operation and bury all mine wastes ~~and~~ coal, and commercial leonardite processing wastes unless the commission approves the surface disposal of such wastes. If the commission approves the surface disposal of such wastes, the permittee shall stabilize all waste piles in designated areas through construction in compacted layers, including the use of incombustible and impervious materials if necessary, to assure that the final contour of the waste pile will be compatible with natural surroundings and that the site can and will be stabilized and revegetated according to the provisions of this chapter.
18. Assume the responsibility for successful revegetation, as required by subsection 17, for a period of ten full years after the last year of augmented seeding, fertilizing, irrigation, or other work, provided that, when the commission approves a long-term intensive agricultural postmining land use, the ten-year period of responsibility for revegetation commences at the date of initial planting. However, for previously mined

areas that are affected by remining, the operator's responsibility for successful revegetation will extend for a period of five full years after the last year of augmented seeding, fertilizing, irrigation, and other work in order to assure compliance with the applicable standards. For the purposes of this subsection, "previously mined areas" are lands that were affected by coal or commercial leonardite mining activities prior to January 1, 1970, and "augmented seeding, fertilizing, irrigation, or other work" does not include normal conservation practices recognized locally as good management for the postmining land use.

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

38-14.1-25. Prohibited mining practices.

1. ~~No~~A permittee may not use any coal or commercial leonardite mine waste piles consisting of mine wastes, tailings, coal processing wastes, or other liquid or solid wastes either temporarily or permanently as dams or embankments unless approved by the commission, after consultation with the state engineer.
2. ~~No~~A permittee may not locate any part of the surface coal mining and reclamation operations or deposit overburden, debris, or waste materials outside the permit area for which bond has been posted, except as provided in subsection 24 of section 38-14.1-03.
3. ~~No~~A permittee may not deposit overburden, debris, or waste materials in such a way that normal erosion or slides brought about by natural causes will permit the same to go beyond or outside the permit area for which bond has been posted.

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

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

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

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

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

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

38-15-01. Policy.

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

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

38-15-02. Definitions.

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

1. "Coal" means all kinds of coal, and includes what is known as lignite coal, unless a contrary intention plainly appears.
2. "Commercial leonardite" means a dark-colored, soft, earthy rock formed from the oxidation of lignite coal, and is produced from a mine that has as its only function for supply for purposes other than gasification or combustion to generate electricity.
3. "Commission" means the industrial commission.
- 3.4. "Conflicting interests" means those interests of producers which are in conflict, so that full production and utilization by one producer is prohibited or impeded by the interests of another producer of a separate natural resource.

- 4-5. "Gas" means all natural gas and other fluid hydrocarbons not hereinbelow defined as oil.
- 5-6. "Natural resources" means coal, oil, gas, and subsurface minerals as defined herein.
- 6-7. "Oil" means crude petroleum oil and other hydrocarbons, regardless of gravity, which are produced at the wellhead in liquid form, and the liquid hydrocarbons known as distillate or condensate recovered or extracted from gas other than gas produced in association with oil and commonly known as casinghead gas.
- 7-8. "Owner" means the person who has the right to produce natural resources either for that person or others.
- 8-9. "Person" means any natural person, corporation, limited liability company, association, partnership, receiver, trustee, executor, administrator, guardian, fiduciary, or other representative of any kind, and includes any department, agency, instrumentality, or political subdivision of the state. The masculine gender, in referring to a person, includes the feminine and the neuter genders.
- 9-10. "Producer" means the owner of a well or wells, or mine or mines, capable of producing coal, commercial leonardite, oil, gas, or subsurface minerals.
- 10-11. "Subsurface minerals" means all naturally occurring elements and their compounds, volcanic ash, precious metals, carbonates, and natural mineral salts of 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.
- 11-12. "Waste" means the inefficient utilization of reserves of oil, gas, subsurface minerals, ~~or coal,~~ or commercial leonardite, as the case may be.

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

38-18-05. Definitions.

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

1. "Agricultural production" means the production of any growing grass or crop attached to the surface of the land, whether or not the grass or crop is to be sold commercially, and the production of any farm animals, including farmed elk, whether or not the animals are to be sold commercially.
2. "Disturbed" means any alteration of the topsoil of the land whether the alteration is for the purpose of exploring for coal or commercial leonardite, or for the purpose of carrying out an actual mining operation.
3. "Mineral developer" means the person who acquires at least seventy-five percent of the mineral rights or a lease of at least seventy-five percent of the mineral rights for the purpose of extracting or using the mineral for nonagricultural purposes.
4. "Mineral estate" means an estate in or ownership of all or part of the minerals under a specified tract of land.

5. "Mineral lease" means any lease which purports to convey the minerals or rights relating to the minerals under a specified tract of land separate from the surface, and any other type of lease which gives or conveys rights to minerals.
6. "Mineral owner" means any person or persons who presently own the mineral estate, their successors, assigns, or predecessors in title, under a specified tract of land by means of a mineral deed, or by an exception or reservation in the deed, grant, or conveyance of the surface, or by any other means whatsoever.
7. "Minerals" means coal or commercial leonardite.
8. "Mining operation" means any type of activity, the aim of which is to discover the presence of minerals, or to remove the minerals so discovered from their original position on or in the land by any means whatsoever.
9. "Surface estate" means an estate in or ownership of the surface of a particular tract of land.
10. "Surface owner" means the person or persons who presently have valid title to the surface of the land, their successors, assigns, or predecessors in title, regardless of whether or not a portion of the land surface is occupied for a residence.

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

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

1. Unless the mineral lease, surface lease, or consent statement executed by the surface owner provides for payments to the surface owner, the mineral developer shall annually pay to the surface owner a sum of money equal to the amount of damages sustained by the surface owner for loss of agricultural production caused by mining activity, provided that it can be shown that the land disturbed or to be disturbed has regularly been used for agricultural production. The amount of damages may be determined by any formula mutually agreeable between the surface owner and the mineral developer. The payments contemplated by this section only cover land actually mined, disturbed, or to be mined during the year or years during which agricultural production was actually interrupted and which land has not been restored to the level of agricultural productivity required by the plan submitted pursuant to chapter 38-14.1. The payments to be made hereunder must be made before December thirty-first of that calendar year in which the loss occurred.
2. Unless waived by the owner of a farm building, if the coal or commercial leonardite removal area of a surface mining operation comes within five hundred feet [152.4 meters] of any farm building, the mineral developer shall pay to the owner of the farm building either the fair market value of the farm building or the entire cost of removing the farm building to a location where the coal or commercial leonardite removal area of the mining operation will not come within five hundred feet [152.4 meters] of such building or buildings. The payments contemplated hereunder are in addition to any payments required by the terms of any mineral lease, unless the surface owner is a party to the lease and the lease provides for damages as contemplated in this subsection in an amount not less than the amount which would be recoverable under this section.

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

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

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

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

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

Renumber accordingly

2015 CONFERENCE COMMITTEE

SB 2377

2015 SENATE STANDING COMMITTEE MINUTES

Energy and Natural Resources
Fort Lincoln Room, State Capitol

SB 2377
4/10/2015
26030

- Subcommittee
 Conference Committee

Committee Clerk Signature

Katie Awe

Explanation or reason for introduction of bill/resolution:

Relating to the definition of coal and leonardite.

Minutes:

1 Attachment

Chair Unruh brought the committee to order, roll was taken and all conference committee members were present.

Representative Keiser: The bill does look quite a bit different from the bill you sent over to the House. The industry people on all sides have worked really hard on this and are in agreement with what we have but they have done the bulk of the work. There was a commercial use of leonardite that created problems with the BLM for the royalty tax and were trying to find a way for the state to get around that. When we got the bill the coal companies had a major problem in trying to make a new mineral, leonardite, in the code and to create a new category made a lot of problems that related to wills, estates, etc. all became really problematic for the industry by the time the bill got to us. There were a few other issues that came forward, the taxation issue, the bill you sent us did have different tax rate for leonardite than for coal. What is the impact on our tax revenue that got to be very problematic in terms of managing it and had to find out how much was leonardite vs coal and that proved to not work for us, it is lengthy but simple. Many of the pages of revisions that you have are the result of the Public Service Commission and the Oil and Gas Division looking at this. We don't have it quite right in the code, a good 75% of the bill before you is just technical in nature and making sure we have the right things in code. What it comes down to is on page 16 trying to figure out at what percentage of oxidation it becomes leonardite. Create a definition for commercial definition of leonardite. The key for it, we segregated it for oxidation or anything else, with this approach it eliminated 99.9% of the concerns as it relates to transference. There would be no differential on the tax, there are lots of points in the bill where we insert commercial leonardite' language. I believe because of the Public Service Commission section and the oil and gas section that was what our intention was.

Vice Chair Unruh: I was worried that it addressed all parts of code that related to lignite previously and now needed to make sure that related to leonardite as well. My question is

just to make sure that the Public Service Commission reclamation division director was alright with this as well.

Jim Deutsch: Director of the Public Service Commission reclamation division. They note a few places where language was missed.

Chair Unruh: So you see some changes that should be made before we move forward?

Senator Armstrong: These cover all of your concerns?

Jim Deutsch: Yes, they do.

Amendments were handed out by Cherie Harms. See attachment #1.

Chairwoman Unruh: Take a look at this, make a few changes and revisit this next week.

Chairwoman Unruh then closed the conference committee on SB 2377.

2015 SENATE STANDING COMMITTEE MINUTES

Energy and Natural Resources
Fort Lincoln Room, State Capitol

SB 2377
4/14/2015
26100

- Subcommittee
 Conference Committee

Committee Clerk Signature

Kathie Oliver

Explanation or reason for introduction of bill/resolution:

Relating to the definition of coal and leonardite.

Minutes:

2 Attachments

Chairwoman Unruh called the committee to order, roll was taken and all committee members were present.

Chairwoman Unruh: We have had 2 technical corrections on this bill. Handed out amendment #15.1008.02007, explained the changes that it made to the bill see attachment #1.

Handed out bill version 15.1008.0300. See attachment #2.

Dee Wald: General Council, Office of State Tax Commissioner. As we were going through the coal severance tax chapter of the code we tried to figure out where to put leonardite. The best way to address this is add the language at the bottom of the page; it references 38-14.1-02, where leonardite is at in Code. They are already reporting and paying tax on that so it shouldn't affect leonardite products. On page 22 we are removing the tax on commercial leonardite and removing section 25.

Chairwoman Unruh: We can do whatever your wishes are; we can move the amendment that I handed out first and merge the second one from there.

Representative Lefor made a motion to adopt amendments 15.108.02007 and 15.1008.0300 with a second by Senator Armstrong.

Representative Keiser: On the second set of amendments I wonder if this doesn't mess with the intent of the legislation for commercial leonardite. We are now saying that commercial leonardite is coal. Before we had a separate section that said commercial leonardite will be taxed which is a subtle difference but a difference. Here you are taking you back into the coal section of the code.

Dee Wald: Right now under an old North Dakota Supreme Court case coal is leonardite. For many years lignite, no matter if it contains leonardite or leonardite itself has been subject to reporting under the coal severance tax, we are not doing anything different however with the additional definition of commercial leonardite we had to address the administrative issues.

Representative Keiser: I think that we have to be very careful and might bring us back to where we started.

Chairman Unruh: This is just for the purposes of taxation under chapter 57 it would include commercial leonardite in coal and all of the records there doesn't change the definition that we set previously. It doesn't change the definition; it would not have a negative effect. Do not want to undo all the good work by this.

Representative Keiser: This does take us back, what we tried to do was create a category for commercial leonardite, tax the same as coal and not put it back into the coal section.

Representative Lefor: I would withdraw my motion.

Senator Armstrong: Withdraw my second.

Senator Armstrong: This language is fine if we did it in subsections.

Representative Keiser: On page 35 we created a new subsection for commercial leonardite, tax is differently than coal, same rate but different areas.

Representative Lefor: It is worth the extra time to look into this.

There was no further discussion and Chairwoman Unruh closed the conference committee on SB 2377.

2015 SENATE STANDING COMMITTEE MINUTES

Energy and Natural Resources
Fort Lincoln Room, State Capitol

SB 2377
4/15/2015
26132

Subcommittee
 Conference Committee

Committee Clerk Signature

Explanation or reason for introduction of bill/resolution:

Relating to the definition of coal and lenardite.

Minutes:

1 Attachment

Chair Unruh called the committee to order, roll was taken and all committee members were present.

Chair Unruh handed out amendment #15.1008.02008. See attachment #1. I think that we have gotten to a point where this will work. Please look at section 24 on page 17 and take a look at the language change there, instead of saying that commercial lenardite is coal for the purposes of the taxation chapter it just says that it will be taxed in the same manner as coal so as to not further confuse the definition changes that we have made throughout other sections of the code. The changes from the tax department and the Public Service Commission are incorporated into the bill.

Representative Lefor: Is that the only change?

Chair Unruh: Two changes, the taxation change that we have been talking about and the changes from the Public Service Commission that we got after our first hearing.

Representative Lefor made a motion to recede from the House amendments and amend further with a second by Senator Murphy, there was no further discussion, roll was taken and the motion passed on a 6-0-0 vote. Chair Unruh will carry the bill to the floor of the Senate and Representative Keiser will carry the bill to the floor of the House.

April 14, 2015

1 of 20
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4/15/15

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2377

That the House recede from its amendments as printed on pages 1125-1140 of the Senate Journal and pages 1314-1328 of the House Journal and that Engrossed Senate Bill No. 2377 be amended as follows:

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

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

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

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

38-12.1-01. Legislative findings.

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

1. The discovery and evaluation of coal or commercial leonardite deposits is advantageous in an industrial society.
2. Coal or commercial leonardite occurs hidden under the ground and must be searched for by diverse techniques, and that the search, exploration, or prospecting for coal or commercial leonardite is a necessary and expensive prerequisite to coal or commercial leonardite extraction and for land use planning in coal-bearing or commercial leonardite-bearing areas.

- 3. It is to the benefit of society to allow coal or commercial leonardite exploration and to require the information generated from exploration to be available to the office of the state geologist.

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

38-12.1-02. Declaration of policy.

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

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

38-12.1-03. Definitions.

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

- 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 commercial leonardite.
- 2. "Coal exploration" means:
 - a. The use of any technique which when applied to the surface of the land will aid in the discovery or evaluation of coal or commercial leonardite or aid in determining the quantity and quality of coal or commercial leonardite present. It includes drilling or digging, excavating, core sample drilling and collection, diamond drilling, trenching, or any other type of penetration of the surface of the earth; or
 - b. Environmental data gathering activities conducted for the purpose of establishing the conditions of an area prior to applying for a permit under chapter 38-14.1. The provisions of sections 38-12.1-04 and 38-12.1-05 are not applicable to such environmental data gathering activities unless the natural land surface will be substantially disturbed or such activities are located on lands designated unsuitable for mining under section 38-14.1-05.
- 3. "Commercial leonardite" means a dark-colored, soft, earthy rock formed from the oxidation of lignite coal, and is produced from a mine that has as its only function for supply for purposes other than gasification or combustion to generate electricity.
- 4. "Commission" means the industrial commission of the state of North Dakota.

- 4-5. "Permit area" means a county.
- 5-6. "Person" means and includes any natural person, corporation, limited liability company, association, partnership, receiver, trustee, executor, administrator, guardian, fiduciary, or other representative of any kind, and includes any department, agency, or instrumentality of the state or of any governmental subdivision thereof; the masculine gender, in referring to a person, includes the feminine and the neuter genders.
- 6-7. "Road" means a surface or right of way for purposes of travel by land vehicles used in coal or commercial leonardite exploration. A road consists of the entire area of the right of way, including the roadbed, shoulders, parking and side areas, approaches, structures, ditches, and surface.

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

38-12.1-04. Jurisdiction of commission.

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

1. To require:
 - a. The furnishing of a reasonable bond with good and sufficient surety, conditioned upon the full compliance with the provisions of this chapter, and the rules and orders of the commission prescribed to govern the exploration for coal or commercial leonardite on state and private lands and roads used in coal or commercial leonardite exploration within the state of North Dakota. The person required to furnish the bond may elect to deposit a collateral bond, self-bond, cash, or any alternative form of security approved by the commission, or combination thereof, by which a permittee assures faithful performance of all requirements of this chapter and the rules and orders of the industrial commission.
 - b. The delivery, free of charge, to the state geologist of the basic data collected during the course of the exploration within a reasonable time as may be prescribed by the state geologist. The data so submitted is confidential and available only to the office of the state geologist for official purposes for a period of two years, and such period of confidentiality must, upon application, be extended for one-year periods by the state geologist, for a total period not to exceed ten years unless it is demonstrated that such period should be further extended in order to prevent possible resulting harm to the person, or the person's successors and assigns, who delivered such basic data to the state geologist. The basic data must include, if specifically requested by the state geologist and if the information has been developed by or for a person conducting the exploration:

- (1) Sample cuts.
 - (2) Drillers' logs, sample logs, radioactivity logs, resistivity logs, or other types of electrical or mechanical logs.
 - (3) Elevation and location information on the data collection points.
 - (4) Other pertinent information as may be required by the state geologist.
2. To require the plugging, covering, or reburial in an appropriate manner so as to protect environmental quality, general health and safety, and economic values of all holes, pits, or trenches excavated during the course of coal or commercial leonardite exploration.
 3. To promulgate and enforce rules, regulations, and orders to effectuate the provisions, purpose, and intent of this chapter.
 4. To inspect all drilling or exploration sites. For the purposes of this subsection, the director of mineral resources or the director's representative shall have access to all drilling or exploration installations regulated by this chapter for the purpose of inspection and sampling and shall have the authority to require the operators' aid if the director finds it necessary and requests it.
 5. Notwithstanding any of the other provisions of this section, the commission acting through the director of mineral resources shall require that any lands substantially disturbed in coal or commercial leonardite exploration, including excavations, roads, and drill holes, and the removal of necessary facilities and equipment be reclaimed in accordance with the applicable performance standards of section 38-14.1-24. Reclamation must be accomplished to protect environmental quality, general health and safety, and economic values.

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

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

1. It is unlawful to commence operations for drilling for the exploration for coal or commercial leonardite without first obtaining a permit from the director of mineral resources, under such rules and regulations as may be prescribed by the commission, and paying to the commission a fee of one hundred dollars for each such permit area. The permit application must include a description of the exploration area and the period of proposed exploration. The permit must be granted within thirty days after a proper application has been submitted.
2. This permit may not be required:
 - a. In an area where a permit to conduct surface coal mining operations is in effect pursuant to chapter 38-14.1;
 - b. For holes drilled to guide excavating equipment in an operating mine;

- c. In areas where a drill hole is required by any other state agency; or
 - d. For environmental data gathering activities that do not substantially disturb the land, unless the environmental data gathering activities are located on land designated unsuitable for mining under section 38-14.1-05.
3. No person may remove more than two hundred fifty tons [226.80 metric tons] of coal or commercial leonardite pursuant to an exploration permit without first obtaining a permit from the public service commission.

SECTION 7. 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 mining operations so that the reclaimed area closely resembles the general surface configuration of the land prior to being affected by surface coal 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 or not the material is enriched in radioactive materials. The term does not include commercial leonardite.
- 4. "Commercial leonardite" means a dark-colored, soft, earthy organic rock formed from the oxidation of lignite coal, and is produced from a mine that has as its only function for supply for purposes other than gasification or combustion to generate electricity.
- 5. "Commission" means the public service commission, or such other department, bureau, or commission as may lawfully succeed to the powers and duties of that commission. The commission is the state regulatory authority for all purposes relating to the Surface Mining Control and Reclamation Act of 1977 [Pub. L. 95-87; 91 Stat. 445; 30 U.S.C. 1201 et seq.].

- 5-6. "Extended mining plan" means a written statement setting forth the matters specified in section 38-14.1-15 and covering the estimated life of the surface coal mining operation.
- 6-7. "Final cut" means the last pit created in a surface mining pit sequence.
- 7-8. "Highwall" and "endwall" mean those sides of the pit adjacent to unmined land.
- 8-9. "Imminent danger to the health and safety of the public" means the existence of any condition or practice, or any violation of a permit or other requirement of this chapter in a surface coal mining and reclamation operation, which condition, practice, or violation could reasonably be expected to cause substantial physical harm to persons outside the permit area before such condition, practice, or violation can be abated. A reasonable expectation of death or serious injury before abatement exists if a rational person, subjected to the same conditions or practices giving rise to the peril, would not expose the person's self to the danger during the time necessary for abatement.
- 9-10. "Operator" means any individual, person, partnership, firm, association, society, joint stock company, company, cooperative, corporation, limited liability company, or other business organization, or any department, agency, or instrumentality of the state, local, or federal government, or any governmental subdivision thereof including any publicly owned utility or publicly owned corporation of the state, local, or federal government, engaged in or controlling a surface coal mining operation. Operator does not include those who remove or intend to remove two hundred fifty tons [226.80 metric tons] or less of coal or commercial leonardite from the earth by coal or commercial leonardite mining within twelve consecutive calendar months in any one location or who remove any coal or commercial leonardite pursuant to reclamation operations under chapter 38-14.2.
- 10-11. "Other minerals" means clay, stone, sand, gravel, metalliferous and nonmetalliferous ores, and any other solid material or substances of commercial value occurring within five hundred feet [152.4 meters] or less of the land surface and which are excavated in solid form from natural deposits on or in the earth, exclusive of coal or commercial leonardite and those minerals which occur naturally in liquid or gaseous form.
- 11-12. "Other suitable strata" means those portions of the overburden determined by the commission to be suitable for meeting the requirements of subsections 2 and 17 of section 38-14.1-24 and based on data submitted by the permit applicant.
- 12-13. "Overburden" means all of the earth and other materials, with the exception of suitable plant growth material, which lie above natural deposits of coal or commercial leonardite and also means such earth and other materials, with the exception of suitable plant growth material, disturbed from their natural state by surface coal or commercial leonardite mining operations.

- 12-1.14. "Performance bond" means a surety bond, collateral bond, self-bond, deposit, a bond issued under the state surface mining and reclamation bond fund, any alternative form of security approved by the commission, or combination thereof, by which a permittee assures faithful performance of all requirements of this chapter.
- 13-15. "Permit" means a permit to conduct surface coal mining and reclamation operations issued by the commission.
- 14-16. "Permit applicant" means a person or operator applying for a permit.
- 15-17. "Permit area" means the area of land approved by the commission for surface coal mining operations which shall be readily identifiable by appropriate markers on the site.
- 16-18. "Permit renewal" means the extension of the permit term for areas within the boundaries of the initial or existing permit, upon the expiration of the initial or existing permit term.
- 17-19. "Permit revision" means the modification of permit provisions during the term of the permit and includes changes in the mining and reclamation plans, incidental boundary extensions, and the transfer, assignment, or sale of rights granted under the permit.
- 18-20. "Permit term" means a period of time beginning with the date upon which a permit is given for surface coal mining and reclamation operations under the provisions of this chapter, and ending with the expiration of the next succeeding five years plus any renewal of the permit granted under this chapter.
- 19-21. "Permittee" means a person or operator holding a permit.
- 20-22. "Person" means an individual, partnership, firm, association, society, joint stock company, company, cooperative, corporation, limited liability company, or other business organization.
- 21-23. "Pit" means a tract of land, from which overburden, ~~or coal,~~ or commercial leonardite, or both, any combination of overburden, coal, or commercial leonardite has been or is being removed for the purpose of surface coal mining operations.
- 22-24. "Prime farmland" means lands as prescribed by commission regulation that have the soil characteristics and moisture supply needed to produce sustained high yields of adapted crops economically when treated and managed, including management of water, according to modern farming methods. Furthermore, such lands historically have been used for intensive agricultural purposes and are large enough in size to constitute a viable economic unit.
- 23-25. "Prime soils" means those soils that have the required soil characteristics (including slope and moisture supply) needed to produce sustained high yields of adapted crops, as determined by the state conservationist of the United States department of agriculture soil conservation service.

- 24-26. "Reclaimed" or "reclaim" means conditioning areas affected by surface coal mining operations to make them capable of supporting the uses which they were capable of supporting prior to any mining, or higher or better uses, pursuant to subsection 2 of section 38-14.1-24.
- 25-27. "Reclamation plan" means a plan submitted by an applicant for a permit which sets forth a plan for reclamation of the proposed surface coal mining operations pursuant to subsection 2 of section 38-14.1-14.
- 26-28. "Refuse" means all waste material directly connected with the production of coal or commercial leonardite mined by surface coal mining operations.
- 27-29. "Soil amendments" means those materials added by the operator to the replaced overburden or suitable plant growth material, or both, to improve the physical or chemical condition of the soil in its relation to plant growth capability.
- 28-30. "Soil classifier" means a professional soil classifier as defined in subsection 4 of section 43-36-01.
- 29-31. "Soil survey" means the identification and location of all suitable plant growth material within the proposed permit area and an accompanying report that describes, classifies, and interprets for use such materials.
- 30-32. "State program" means the program established by the state of North Dakota in accordance with the requirements of section 503 of the federal Surface Mining Control and Reclamation Act of 1977 [Pub. L. 95-87; 91 Stat. 470; 30 U.S.C. 1253] to regulate surface coal mining and reclamation operations on lands within the state of North Dakota.
- 31-33. "Suitable plant growth material" means that soil material (normally the A, B, and portions of the C horizons) located within the proposed permit area which, based upon a soil survey, is found by the commission to be the most acceptable as a medium for plant growth when respread on the surface of regraded areas.
- 32-34. "Surface coal mining and reclamation operations" means surface coal mining operations and all activities necessary and incidental to the reclamation of such operations after July 1, 1979.
- 33-35. "Surface coal mining operations" means:
- a. Activities affecting the surface of lands in connection with a surface coal or commercial leonardite mine. Such activities include extraction of coal or commercial leonardite from coal or commercial leonardite refuse piles, excavation for the purpose of obtaining coal or commercial leonardite, including such common methods as contour, strip, auger, box cut, open pit, and area mining, the uses of explosives and blasting, and in situ distillation or retorting, leaching or other chemical or physical processing, and the cleaning, concentrating, or other processing or preparation, and loading of coal or commercial leonardite at or near the minesite, except that such activities do not include coal or commercial leonardite exploration subject to chapter 38-12.1, or the extraction of coal or commercial leonardite incidental to reclamation operations under chapter 38-14.2; and

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

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

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

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

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

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

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

- r. Cross sections, maps or plans of the land to be affected, including the actual area to be mined, prepared by or under the direction of and

certified by a registered professional engineer, a registered land surveyor, or a qualified professional geologist with assistance from experts in related fields, showing pertinent elevation and location of test borings or core samplings and depicting all of the following information:

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

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

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

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

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

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

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

SECTION 14. AMENDMENT. Subsections 1 and 1.1 of section 38-14.1-24 of the North 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 commercial leonardite being recovered so that reffecting 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 commercial 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 commercial 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 15. 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 commercial leonardite deposit;
- (2) The thickness of the coal or commercial 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 16. AMENDMENT. Subsections 5, 10, and 18 of section 38-14.1-24 of the North Dakota Century Code are amended and reenacted as follows:

5. Remove, segregate, and respread suitable plant growth material as required by the commission within the permit area. The commission may require the permittee to segregate suitable plant growth material in two or more soil layers. The commission shall determine the soil layer or layers to be removed based upon the quality and quantity of suitable plant growth material inventoried by the soil survey required in subdivision t of subsection 1 of section 38-14.1-14. Based on the soil survey, the commission shall also determine whether other suitable strata are necessary to meet revegetation requirements. If other strata can be shown to be suitable and necessary to meet revegetation requirements, the commission may require the permittee to determine the areal extent of other suitable strata within the proposed permit area, and to remove, segregate, protect, and respread such material. If the suitable plant growth material or other suitable strata cannot be replaced on an approved graded area within a time short enough to avoid deterioration of such material, the permittee shall stockpile and stabilize such materials by establishing a successful cover of quick-growing plants or by other means thereafter so that the suitable plant growth material or other suitable strata will be protected from wind and water erosion and will remain free from any contamination by toxic material. In the interest of achieving the maximum reclamation provided for in this chapter, the permittee may, or at the discretion of the commission shall, utilize such soil amendments as described in ~~of subsection 27~~ section 38-14.1-02.
10. Remove or bury all debris and other similar material resulting from the operation and bury all mine wastes and, coal, and commercial leonardite processing wastes unless the commission approves the surface disposal of such wastes. If the commission approves the surface disposal of such wastes, the permittee shall stabilize all waste piles in designated areas through construction in compacted layers, including the use of incombustible and impervious materials if necessary, to assure that the final contour of the waste pile will be compatible with natural surroundings and that the site can and will be stabilized and revegetated according to the provisions of this chapter.

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

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

38-14.1-25. Prohibited mining practices.

1. ~~No~~A permittee may not use any coal or commercial leonardite mine waste piles consisting of mine wastes, tailings, coal processing wastes, or other liquid or solid wastes either temporarily or permanently as dams or embankments unless approved by the commission, after consultation with the state engineer.
2. ~~No~~A permittee may not locate any part of the surface coal mining and reclamation operations or deposit overburden, debris, or waste materials outside the permit area for which bond has been posted, except as provided in subsection 24 of section 38-14.1-03.
3. ~~No~~A permittee may not deposit overburden, debris, or waste materials in such a way that normal erosion or slides brought about by natural causes will permit the same to go beyond or outside the permit area for which bond has been posted.

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

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

- (3) Records of well logs and borehole data to be maintained.
- (4) Monitoring sites to record precipitation.

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

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

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

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

38-15-01. Policy.

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

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

38-15-02. Definitions.

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

- 1. "Coal" means all kinds of coal, and includes what is known as lignite coal, unless a contrary intention plainly appears.
- 2. "Commercial leonardite" means a dark-colored, soft, earthy rock formed from the oxidation of lignite coal, and is produced from a mine that has as its only function for supply for purposes other than gasification or combustion to generate electricity.
- 3. "Commission" means the industrial commission.
- ~~3.4.~~ "Conflicting interests" means those interests of producers which are in conflict, so that full production and utilization by one producer is prohibited or impeded by the interests of another producer of a separate natural resource.
- ~~4.5.~~ "Gas" means all natural gas and other fluid hydrocarbons not hereinbelow defined as oil.
- ~~5.6.~~ "Natural resources" means coal, oil, gas, and subsurface minerals as defined herein.
- ~~6.7.~~ "Oil" means crude petroleum oil and other hydrocarbons, regardless of gravity, which are produced at the wellhead in liquid form, and the liquid hydrocarbons known as distillate or condensate recovered or extracted from gas other than gas produced in association with oil and commonly known as casinghead gas.
- ~~7.8.~~ "Owner" means the person who has the right to produce natural resources either for that person or others.
- ~~8.9.~~ "Person" means any natural person, corporation, limited liability company, association, partnership, receiver, trustee, executor, administrator, guardian, fiduciary, or other representative of any kind, and includes any department, agency, instrumentality, or political subdivision of the state. The masculine gender, in referring to a person, includes the feminine and the neuter genders.
- ~~9.10.~~ "Producer" means the owner of a well or wells, or mine or mines, capable of producing coal, commercial leonardite, oil, gas, or subsurface minerals.
- ~~10.11.~~ "Subsurface minerals" means all naturally occurring elements and their compounds, volcanic ash, precious metals, carbonates, and natural mineral salts of 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.
- ~~11.12.~~ "Waste" means the inefficient utilization of reserves of oil, gas, subsurface minerals, ~~of coal, or commercial leonardite~~, as the case may be.

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

38-18-05. Definitions.

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

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

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

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

1. Unless the mineral lease, surface lease, or consent statement executed by the surface owner provides for payments to the surface owner, the mineral developer shall annually pay to the surface owner a sum of money equal to

the amount of damages sustained by the surface owner for loss of agricultural production caused by mining activity, provided that it can be shown that the land disturbed or to be disturbed has regularly been used for agricultural production. The amount of damages may be determined by any formula mutually agreeable between the surface owner and the mineral developer. The payments contemplated by this section only cover land actually mined, disturbed, or to be mined during the year or years during which agricultural production was actually interrupted and which land has not been restored to the level of agricultural productivity required by the plan submitted pursuant to chapter 38-14.1. The payments to be made hereunder must be made before December thirty-first of that calendar year in which the loss occurred.

2. Unless waived by the owner of a farm building, if the coal or commercial leonardite removal area of a surface mining operation comes within five hundred feet [152.4 meters] of any farm building, the mineral developer shall pay to the owner of the farm building either the fair market value of the farm building or the entire cost of removing the farm building to a location where the coal or commercial leonardite removal area of the mining operation will not come within five hundred feet [152.4 meters] of such building or buildings. The payments contemplated hereunder are in addition to any payments required by the terms of any mineral lease, unless the surface owner is a party to the lease and the lease provides for damages as contemplated in this subsection in an amount not less than the amount which would be recoverable under this section.
3. The rights granted to the surface owner by this section are hereby declared to be absolute and unwaivable, except as provided in subsection 2. Any instrument which purports to waive rights granted by this section is null and void and of no legal effect.

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

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

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

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

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

Coal or commercial leonardite is considered to be severed for the purposes of this chapter when it is first removed from where it was placed by nature, unless within thirty days of first removal it is placed into a long-term inventory storage deposit, in

which case it is considered to be severed when removed from the deposit or it is pledged as collateral on a loan. A long-term inventory storage deposit is one which is so identified in a mining plan approved by the public service commission pursuant to chapter 38-14.1 and which as part of that plan is covered with soil and subjected to reclamation requirements during the time it serves as a deposit and before coal or commercial leonardite is removed therefrom.

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

1. There is imposed upon all coal or commercial leonardite severed for sale or for industrial purposes by coal or commercial leonardite mines within the state a tax, separate from and additional to the tax imposed by section 57-61-01, of two cents per ton of two thousand pounds [907.18 kilograms]. All of the provisions of this chapter for administration of the coal or commercial leonardite severance tax apply to the tax imposed under this section. The state tax commissioner shall transfer revenue from the tax imposed by this section to the state treasurer for deposit in a special fund in the state treasury, known as the lignite research fund. Such moneys must be used for contracts for land reclamation research projects and for research, development, and marketing of lignite and products derived from lignite. The industrial commission shall adopt rules for submission and consideration of research, development, and marketing proposals and entering into contracts under the lignite research, development, and marketing program.

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

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

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

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

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

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

The severance tax as provided in this chapter is due within twenty-five days after the end of each month, and if not received by the twenty-fifth day, becomes delinquent and must be collected as herein provided. The tax commissioner, upon request and a proper showing of the necessity therefor, may grant an extension of time, not to exceed fifteen days, for paying the tax, and when such a request is granted, the tax is not delinquent until the extended period has expired. The tax commissioner shall require a report to be filed monthly by each owner or operator of a coal or commercial leonardite mine, in such form as the tax commissioner may specify, to list a full description of the mine, the number of tons of coal or commercial leonardite severed, the amount of tax due and remitted, and any other information deemed necessary by the tax commissioner for the proper administration of this chapter.

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

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

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

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

1. The tax commissioner has the power and authority to ascertain and determine whether or not any return or remittances filed with the tax commissioner are correct, and if the owner or operator has made an untrue or incorrect return or remittance or has failed to make the required return, the tax commissioner shall ascertain the correct amount of taxes due and give immediate notice to the owner or operator filing the incorrect return or remittance or who failed to file the required return. Any coal or commercial leonardite mine operator or owner receiving notice from the tax commissioner that the owner or operator has filed an incorrect return or remittance or failed to file the required return shall remit the tax assessed by the tax commissioner within fifteen days of such notice unless within fifteen days of the notice such person makes application in writing to the tax commissioner for a hearing under chapter 28-32 before the tax commissioner. The tax becomes delinquent if within fifteen days of the notice it is not paid or an application for a hearing is not made. Taxes assessed by decision of the tax commissioner pursuant to chapter 28-32, if not paid, become delinquent five days after the time for appeal from the tax

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commissioner's decision has expired, except that if an appeal from the tax commissioner's decision is taken to the district court of Burleigh County, such taxes if not paid become delinquent five days following final judicial determination."

Renumber accordingly

**2015 SENATE CONFERENCE COMMITTEE
ROLL CALL VOTES**

BILL/RESOLUTION NO. 2377 as (re) engrossed

Senate Energy and Natural Resources Committee

- Action Taken**
- SENATE accede to House Amendments
 - SENATE accede to House Amendments and further amend
 - HOUSE recede from House amendments
 - HOUSE recede from House amendments and amend as follows
 - Unable to agree, recommends that the committee be discharged and a new committee be appointed

Motion Made by: Representative Lefor Seconded by: Senator Murphy

Senators				Yes	No	Representatives				Yes	No
Chair Unruh	X			X		Representative Keiser	X			X	
Senator Armstrong	X			X		Representative Lefor	X			X	
Senator Murphy	X			X		Representative Hunsakor	X			X	
Total Senate Vote				3		Total Rep. Vote				3	

Vote Count Yes: 6 No: 0 Absent: 0

Senate Carrier Chair Unruh House Carrier Representative Keiser

LC Number 15.1008 . .02008 of amendment

LC Number _____ . 04000 of engrossment

Emergency clause added or deleted

Statement of purpose of amendment

REPORT OF CONFERENCE COMMITTEE

SB 2377, as engrossed: Your conference committee (Sens. Unruh, Armstrong, Murphy and Reps. Keiser, Lefor, Hunskor) recommends that the **HOUSE RECEDE** from the House amendments as printed on SJ pages 1125-1140, adopt amendments as follows, and place SB 2377 on the Seventh order:

That the House recede from its amendments as printed on pages 1125-1140 of the Senate Journal and pages 1314-1328 of the House Journal and that Engrossed Senate Bill No. 2377 be amended as follows:

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

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

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

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

38-12.1-01. Legislative findings.

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

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

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

38-12.1-02. Declaration of policy.

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

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

38-12.1-03. Definitions.

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

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 commercial leonardite.
2. "Coal exploration" means:
 - a. The use of any technique which when applied to the surface of the land will aid in the discovery or evaluation of coal or commercial leonardite or aid in determining the quantity and quality of coal or commercial leonardite present. It includes drilling or digging, excavating, core sample drilling and collection, diamond drilling, trenching, or any other type of penetration of the surface of the earth; or
 - b. Environmental data gathering activities conducted for the purpose of establishing the conditions of an area prior to applying for a permit under chapter 38-14.1. The provisions of sections 38-12.1-04 and 38-12.1-05 are not applicable to such environmental data gathering activities unless the natural land surface will be substantially disturbed or such activities are located on lands designated unsuitable for mining under section 38-14.1-05.
3. "Commercial leonardite" means a dark-colored, soft, earthy rock formed from the oxidation of lignite coal, and is produced from a mine that has as its only function for supply for purposes other than gasification or combustion to generate electricity.
4. "Commission" means the industrial commission of the state of North Dakota.
- ~~4-5.~~ "Permit area" means a county.
- ~~5-6.~~ "Person" means and includes any natural person, corporation, limited liability company, association, partnership, receiver, trustee, executor, administrator, guardian, fiduciary, or other representative of any kind, and includes any department, agency, or instrumentality of the state or of any governmental subdivision thereof; the masculine gender, in referring to a person, includes the feminine and the neuter genders.
- ~~6-7.~~ "Road" means a surface or right of way for purposes of travel by land vehicles used in coal or commercial leonardite exploration. A road consists of the entire area of the right of way, including the roadbed,

shoulders, parking and side areas, approaches, structures, ditches, and surface.

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

38-12.1-04. Jurisdiction of commission.

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

1. To require:
 - a. The furnishing of a reasonable bond with good and sufficient surety, conditioned upon the full compliance with the provisions of this chapter, and the rules and orders of the commission prescribed to govern the exploration for coal or commercial leonardite on state and private lands and roads used in coal or commercial leonardite exploration within the state of North Dakota. The person required to furnish the bond may elect to deposit a collateral bond, self-bond, cash, or any alternative form of security approved by the commission, or combination thereof, by which a permittee assures faithful performance of all requirements of this chapter and the rules and orders of the industrial commission.
 - b. The delivery, free of charge, to the state geologist of the basic data collected during the course of the exploration within a reasonable time as may be prescribed by the state geologist. The data so submitted is confidential and available only to the office of the state geologist for official purposes for a period of two years, and such period of confidentiality must, upon application, be extended for one-year periods by the state geologist, for a total period not to exceed ten years unless it is demonstrated that such period should be further extended in order to prevent possible resulting harm to the person, or the person's successors and assigns, who delivered such basic data to the state geologist. The basic data must include, if specifically requested by the state geologist and if the information has been developed by or for a person conducting the exploration:
 - (1) Sample cuts.
 - (2) Drillers' logs, sample logs, radioactivity logs, resistivity logs, or other types of electrical or mechanical logs.
 - (3) Elevation and location information on the data collection points.
 - (4) Other pertinent information as may be required by the state geologist.
2. To require the plugging, covering, or reburial in an appropriate manner so as to protect environmental quality, general health and safety, and economic values of all holes, pits, or trenches excavated during the course of coal or commercial leonardite exploration.

3. To promulgate and enforce rules, regulations, and orders to effectuate the provisions, purpose, and intent of this chapter.
4. To inspect all drilling or exploration sites. For the purposes of this subsection, the director of mineral resources or the director's representative shall have access to all drilling or exploration installations regulated by this chapter for the purpose of inspection and sampling and shall have the authority to require the operators' aid if the director finds it necessary and requests it.
5. Notwithstanding any of the other provisions of this section, the commission acting through the director of mineral resources shall require that any lands substantially disturbed in coal or commercial leonardite exploration, including excavations, roads, and drill holes, and the removal of necessary facilities and equipment be reclaimed in accordance with the applicable performance standards of section 38-14.1-24. Reclamation must be accomplished to protect environmental quality, general health and safety, and economic values.

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

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

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

SECTION 7. 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 mining operations so that the reclaimed area closely resembles the general surface configuration of the land prior to being affected by surface coal 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 or not the material is enriched in radioactive materials. The term does not include commercial leonardite.
4. "Commercial leonardite" means a dark-colored, soft, earthy organic rock formed from the oxidation of lignite coal, and is produced from a mine that has as its only function for supply for purposes other than gasification or combustion to generate electricity.
5. "Commission" means the public service commission, or such other department, bureau, or commission as may lawfully succeed to the powers and duties of that commission. The commission is the state regulatory authority for all purposes relating to the Surface Mining Control and Reclamation Act of 1977 [Pub. L. 95-87; 91 Stat. 445; 30 U.S.C. 1201 et seq.].
- ~~5-6.~~ "Extended mining plan" means a written statement setting forth the matters specified in section 38-14.1-15 and covering the estimated life of the surface coal mining operation.
- ~~6-7.~~ "Final cut" means the last pit created in a surface mining pit sequence.
- ~~7-8.~~ "Highwall" and "endwall" mean those sides of the pit adjacent to unmined land.
- ~~8-9.~~ "Imminent danger to the health and safety of the public" means the existence of any condition or practice, or any violation of a permit or other requirement of this chapter in a surface coal mining and reclamation operation, which condition, practice, or violation could reasonably be expected to cause substantial physical harm to persons outside the permit area before such condition, practice, or violation can be abated. A reasonable expectation of death or serious injury before abatement exists if a rational person, subjected to the same conditions or practices giving rise to the peril, would not expose the person's self to the danger during the time necessary for abatement.
- ~~9-10.~~ "Operator" means any individual, person, partnership, firm, association, society, joint stock company, company, cooperative, corporation, limited liability company, or other business organization, or any department, agency, or instrumentality of the state, local, or federal government, or any governmental subdivision thereof including any publicly owned utility

or publicly owned corporation of the state, local, or federal government, engaged in or controlling a surface coal mining operation. Operator does not include those who remove or intend to remove two hundred fifty tons [226.80 metric tons] or less of coal or commercial leonardite from the earth by coal or commercial leonardite mining within twelve consecutive calendar months in any one location or who remove any coal or commercial leonardite pursuant to reclamation operations under chapter 38-14.2.

- ~~40-11.~~ "Other minerals" means clay, stone, sand, gravel, metalliferous and nonmetalliferous ores, and any other solid material or substances of commercial value occurring within five hundred feet [152.4 meters] or less of the land surface and which are excavated in solid form from natural deposits on or in the earth, exclusive of coal or commercial leonardite and those minerals which occur naturally in liquid or gaseous form.
- ~~41-12.~~ "Other suitable strata" means those portions of the overburden determined by the commission to be suitable for meeting the requirements of subsections 2 and 17 of section 38-14.1-24 and based on data submitted by the permit applicant.
- ~~42-13.~~ "Overburden" means all of the earth and other materials, with the exception of suitable plant growth material, which lie above natural deposits of coal or commercial leonardite and also means such earth and other materials, with the exception of suitable plant growth material, disturbed from their natural state by surface coal or commercial leonardite mining operations.
- ~~42-1-14.~~ "Performance bond" means a surety bond, collateral bond, self-bond, deposit, a bond issued under the state surface mining and reclamation bond fund, any alternative form of security approved by the commission, or combination thereof, by which a permittee assures faithful performance of all requirements of this chapter.
- ~~43-15.~~ "Permit" means a permit to conduct surface coal mining and reclamation operations issued by the commission.
- ~~44-16.~~ "Permit applicant" means a person or operator applying for a permit.
- ~~45-17.~~ "Permit area" means the area of land approved by the commission for surface coal mining operations which shall be readily identifiable by appropriate markers on the site.
- ~~46-18.~~ "Permit renewal" means the extension of the permit term for areas within the boundaries of the initial or existing permit, upon the expiration of the initial or existing permit term.
- ~~47-19.~~ "Permit revision" means the modification of permit provisions during the term of the permit and includes changes in the mining and reclamation plans, incidental boundary extensions, and the transfer, assignment, or sale of rights granted under the permit.
- ~~48-20.~~ "Permit term" means a period of time beginning with the date upon which a permit is given for surface coal mining and reclamation operations under the provisions of this chapter, and ending with the expiration of the next succeeding five years plus any renewal of the permit granted under this chapter.
- ~~49-21.~~ "Permittee" means a person or operator holding a permit.

- ~~20-22.~~ "Person" means an individual, partnership, firm, association, society, joint stock company, company, cooperative, corporation, limited liability company, or other business organization.
- ~~21-23.~~ "Pit" means a tract of land, from which overburden, ~~or coal, or commercial leonardite,~~ or both, any combination of overburden, coal, or commercial leonardite has been or is being removed for the purpose of surface coal mining operations.
- ~~22-24.~~ "Prime farmland" means lands as prescribed by commission regulation that have the soil characteristics and moisture supply needed to produce sustained high yields of adapted crops economically when treated and managed, including management of water, according to modern farming methods. Furthermore, such lands historically have been used for intensive agricultural purposes and are large enough in size to constitute a viable economic unit.
- ~~23-25.~~ "Prime soils" means those soils that have the required soil characteristics (including slope and moisture supply) needed to produce sustained high yields of adapted crops, as determined by the state conservationist of the United States department of agriculture soil conservation service.
- ~~24-26.~~ "Reclaimed" or "reclaim" means conditioning areas affected by surface coal mining operations to make them capable of supporting the uses which they were capable of supporting prior to any mining, or higher or better uses, pursuant to subsection 2 of section 38-14.1-24.
- ~~25-27.~~ "Reclamation plan" means a plan submitted by an applicant for a permit which sets forth a plan for reclamation of the proposed surface coal mining operations pursuant to subsection 2 of section 38-14.1-14.
- ~~26-28.~~ "Refuse" means all waste material directly connected with the production of coal or commercial leonardite mined by surface coal mining operations.
- ~~27-29.~~ "Soil amendments" means those materials added by the operator to the replaced overburden or suitable plant growth material, or both, to improve the physical or chemical condition of the soil in its relation to plant growth capability.
- ~~28-30.~~ "Soil classifier" means a professional soil classifier as defined in subsection 4 of section 43-36-01.
- ~~29-31.~~ "Soil survey" means the identification and location of all suitable plant growth material within the proposed permit area and an accompanying report that describes, classifies, and interprets for use such materials.
- ~~30-32.~~ "State program" means the program established by the state of North Dakota in accordance with the requirements of section 503 of the federal Surface Mining Control and Reclamation Act of 1977 [Pub. L. 95-87; 91 Stat. 470; 30 U.S.C. 1253] to regulate surface coal mining and reclamation operations on lands within the state of North Dakota.
- ~~31-33.~~ "Suitable plant growth material" means that soil material (normally the A, B, and portions of the C horizons) located within the proposed permit area which, based upon a soil survey, is found by the commission to be the most acceptable as a medium for plant growth when respread on the surface of regraded areas.

- ~~32-34.~~ "Surface coal mining and reclamation operations" means surface coal mining operations and all activities necessary and incidental to the reclamation of such operations after July 1, 1979.
- ~~33-35.~~ "Surface coal mining operations" means:
- a. Activities affecting the surface of lands in connection with a surface coal or commercial leonardite mine. Such activities include extraction of coal or commercial leonardite from coal or commercial leonardite refuse piles, excavation for the purpose of obtaining coal or commercial leonardite, including such common methods as contour, strip, auger, box cut, open pit, and area mining, the uses of explosives and blasting, and in situ distillation or retorting, leaching or other chemical or physical processing, and the cleaning, concentrating, or other processing or preparation, and loading of coal or commercial leonardite at or near the minesite, except that such activities do not include coal or commercial leonardite exploration subject to chapter 38-12.1, or the extraction of coal or commercial leonardite incidental to reclamation operations under chapter 38-14.2; and
 - b. The areas upon which such activities occur or where such activities disturb the natural land surface. Such areas shall also include any adjacent land the use of which is incidental to any such activities, all adjacent lands affected by the construction of new roads or the improvement or use of existing roads to gain access to the site of such activities and for haulage, and excavations, workings, impoundments, dams, refuse banks, dumps, stockpiles, overburden piles, spoil banks, culm banks, tailings, holes or depressions, repair areas, storage areas, processing areas, shipping areas, and other areas upon which are sited structures, facilities, or other property or materials on the surface, resulting from or incident to such activities.
- ~~34-36.~~ "Unwarranted failure to comply" means the failure of a permittee to prevent the occurrence of any violation of the permittee's permit or any requirement of this chapter due to indifference, lack of diligence, or lack of reasonable care, or the failure to abate any violation of such permit or this chapter due to indifference, lack of diligence, or lack of reasonable care.

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

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

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

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

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

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

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

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

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

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

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

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

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

SECTION 14. AMENDMENT. Subsections 1 and 1.1 of section 38-14.1-24 of the North 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 commercial leonardite being recovered so that reffecting 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 commercial 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 commercial 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 15. 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 commercial leonardite deposit;
 - (2) The thickness of the coal or commercial 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 16. AMENDMENT. Subsections 5, 10, and 18 of section 38-14.1-24 of the North Dakota Century Code are amended and reenacted as follows:

5. Remove, segregate, and respread suitable plant growth material as required by the commission within the permit area. The commission may require the permittee to segregate suitable plant growth material in two or more soil layers. The commission shall determine the soil layer or layers to be removed based upon the quality and quantity of suitable plant growth material inventoried by the soil survey required in subdivision t of subsection 1 of section 38-14.1-14. Based on the soil survey, the commission shall also determine whether other suitable strata are necessary to meet revegetation requirements. If other strata can be shown to be suitable and necessary to meet revegetation requirements, the commission may require the permittee to determine the areal extent of other suitable strata within the proposed permit area, and to remove, segregate, protect, and respread such material. If the suitable plant growth material or other suitable strata cannot be replaced on an approved graded area within a time short enough to avoid deterioration of such material, the permittee shall stockpile and stabilize such materials by establishing a successful cover of quick-growing plants or by other means thereafter so that the suitable plant growth material or other suitable strata will be protected from wind and water erosion and will remain free from any contamination by toxic material. In the interest of achieving the maximum reclamation provided for in this chapter, the permittee may, or at the discretion of the commission shall, utilize such soil amendments as described in ~~of subsection 27~~ section 38-14.1-02.
10. Remove or bury all debris and other similar material resulting from the operation and bury all mine wastes ~~and~~ coal, and commercial leonardite processing wastes unless the commission approves the surface disposal of such wastes. If the commission approves the surface disposal of such wastes, the permittee shall stabilize all waste piles in designated areas

through construction in compacted layers, including the use of incombustible and impervious materials if necessary, to assure that the final contour of the waste pile will be compatible with natural surroundings and that the site can and will be stabilized and revegetated according to the provisions of this chapter.

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

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

38-14.1-25. Prohibited mining practices.

1. ~~No~~A permittee may not use any coal or commercial leonardite mine waste piles consisting of mine wastes, tailings, coal processing wastes, or other liquid or solid wastes either temporarily or permanently as dams or embankments unless approved by the commission, after consultation with the state engineer.
2. ~~No~~A permittee may not locate any part of the surface coal mining and reclamation operations or deposit overburden, debris, or waste materials outside the permit area for which bond has been posted, except as provided in subsection 24 of section 38-14.1-03.
3. ~~No~~A permittee may not deposit overburden, debris, or waste materials in such a way that normal erosion or slides brought about by natural causes will permit the same to go beyond or outside the permit area for which bond has been posted.

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

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

- (3) Records of well logs and borehole data to be maintained.
- (4) Monitoring sites to record precipitation.

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

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

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

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

38-15-01. Policy.

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

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

38-15-02. Definitions.

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

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

2. "Commercial leonardite" means a dark-colored, soft, earthy rock formed from the oxidation of lignite coal, and is produced from a mine that has as its only function for supply for purposes other than gasification or combustion to generate electricity.
3. "Commission" means the industrial commission.
- 3-4. "Conflicting interests" means those interests of producers which are in conflict, so that full production and utilization by one producer is prohibited or impeded by the interests of another producer of a separate natural resource.
- 4-5. "Gas" means all natural gas and other fluid hydrocarbons not hereinbelow defined as oil.
- 5-6. "Natural resources" means coal, oil, gas, and subsurface minerals as defined herein.
- 6-7. "Oil" means crude petroleum oil and other hydrocarbons, regardless of gravity, which are produced at the wellhead in liquid form, and the liquid hydrocarbons known as distillate or condensate recovered or extracted from gas other than gas produced in association with oil and commonly known as casinghead gas.
- 7-8. "Owner" means the person who has the right to produce natural resources either for that person or others.
- 8-9. "Person" means any natural person, corporation, limited liability company, association, partnership, receiver, trustee, executor, administrator, guardian, fiduciary, or other representative of any kind, and includes any department, agency, instrumentality, or political subdivision of the state. The masculine gender, in referring to a person, includes the feminine and the neuter genders.
- 9-10. "Producer" means the owner of a well or wells, or mine or mines, capable of producing coal, commercial leonardite, oil, gas, or subsurface minerals.
- 10-11. "Subsurface minerals" means all naturally occurring elements and their compounds, volcanic ash, precious metals, carbonates, and natural mineral salts of 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.
- 11-12. "Waste" means the inefficient utilization of reserves of oil, gas, subsurface minerals, ~~or coal,~~ or commercial leonardite, as the case may be.

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

38-18-05. Definitions.

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

1. "Agricultural production" means the production of any growing grass or crop attached to the surface of the land, whether or not the grass or crop is to be sold commercially, and the production of any farm animals, including farmed elk, whether or not the animals are to be sold commercially.

2. "Disturbed" means any alteration of the topsoil of the land whether the alteration is for the purpose of exploring for coal or commercial leonardite, or for the purpose of carrying out an actual mining operation.
3. "Mineral developer" means the person who acquires at least seventy-five percent of the mineral rights or a lease of at least seventy-five percent of the mineral rights for the purpose of extracting or using the mineral for nonagricultural purposes.
4. "Mineral estate" means an estate in or ownership of all or part of the minerals under a specified tract of land.
5. "Mineral lease" means any lease which purports to convey the minerals or rights relating to the minerals under a specified tract of land separate from the surface, and any other type of lease which gives or conveys rights to minerals.
6. "Mineral owner" means any person or persons who presently own the mineral estate, their successors, assigns, or predecessors in title, under a specified tract of land by means of a mineral deed, or by an exception or reservation in the deed, grant, or conveyance of the surface, or by any other means whatsoever.
7. "Minerals" means coal or commercial leonardite.
8. "Mining operation" means any type of activity, the aim of which is to discover the presence of minerals, or to remove the minerals so discovered from their original position on or in the land by any means whatsoever.
9. "Surface estate" means an estate in or ownership of the surface of a particular tract of land.
10. "Surface owner" means the person or persons who presently have valid title to the surface of the land, their successors, assigns, or predecessors in title, regardless of whether or not a portion of the land surface is occupied for a residence.

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

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

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

2. Unless waived by the owner of a farm building, if the coal or commercial leonardite removal area of a surface mining operation comes within five hundred feet [152.4 meters] of any farm building, the mineral developer shall pay to the owner of the farm building either the fair market value of the farm building or the entire cost of removing the farm building to a location where the coal or commercial leonardite removal area of the mining operation will not come within five hundred feet [152.4 meters] of such building or buildings. The payments contemplated hereunder are in addition to any payments required by the terms of any mineral lease, unless the surface owner is a party to the lease and the lease provides for damages as contemplated in this subsection in an amount not less than the amount which would be recoverable under this section.
3. The rights granted to the surface owner by this section are hereby declared to be absolute and unwaivable, except as provided in subsection 2. Any instrument which purports to waive rights granted by this section is null and void and of no legal effect.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The severance tax as provided in this chapter is due within twenty-five days after the end of each month, and if not received by the twenty-fifth day, becomes delinquent and must be collected as herein provided. The tax commissioner, upon request and a proper showing of the necessity therefor, may grant an extension of time, not to exceed fifteen days, for paying the tax, and when such a request is granted, the tax is not delinquent until the extended period has expired. The tax commissioner shall require a report to be filed monthly by each owner or operator of a coal or commercial leonardite mine, in such form as the tax commissioner may specify, to list a full description of the mine, the number of tons of coal or commercial leonardite severed, the amount of tax due and remitted, and any other information deemed necessary by the tax commissioner for the proper administration of this chapter.

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

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

The state tax commissioner has the power to require any person engaged in such production, and the agent or employee of such person, or purchaser of such coal or commercial leonardite, or the owner of any royalty interest therein, to furnish

any additional information the tax commissioner deems necessary for the purpose of correctly computing the amount of said tax; to examine the books, records, and files of such person; to conduct hearings and compel the attendance of witnesses, the production of books, records, and papers of any person; and to make any investigation or hold any inquest deemed necessary to a full and complete disclosure of the true facts as to the amount of production from any coal or commercial leonardite mine or of any company or other producer thereof and as to the rendition thereof for taxing purposes.

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

1. The tax commissioner has the power and authority to ascertain and determine whether or not any return or remittances filed with the tax commissioner are correct, and if the owner or operator has made an untrue or incorrect return or remittance or has failed to make the required return, the tax commissioner shall ascertain the correct amount of taxes due and give immediate notice to the owner or operator filing the incorrect return or remittance or who failed to file the required return. Any coal or commercial leonardite mine operator or owner receiving notice from the tax commissioner that the owner or operator has filed an incorrect return or remittance or failed to file the required return shall remit the tax assessed by the tax commissioner within fifteen days of such notice unless within fifteen days of the notice such person makes application in writing to the tax commissioner for a hearing under chapter 28-32 before the tax commissioner. The tax becomes delinquent if within fifteen days of the notice it is not paid or an application for a hearing is not made. Taxes assessed by decision of the tax commissioner pursuant to chapter 28-32, if not paid, become delinquent five days after the time for appeal from the tax commissioner's decision has expired, except that if an appeal from the tax commissioner's decision is taken to the district court of Burleigh County, such taxes if not paid become delinquent five days following final judicial determination."

Renumber accordingly

Engrossed SB 2377 was placed on the Seventh order of business on the calendar.

2015 TESTIMONY

SB 2377

SB 2377

February 20, 2015

Senate Energy and Natural Resources Committee

Hon. Senator Don Schaible, Chairman

Chairman Schaible and Committee Members,

Thank you for the opportunity to testify before you today on Senate Bill 2377. I am Brad Bekkedahl, Senator from District 1, and the prime sponsor of this bill on behalf of one of our Williston businesses. Leonardite Products is a company that provides a mined product to the agricultural industry as a fertilizer or soil amendment. They provide much needed employment diversity to a community that is heavily based upon oil industry jobs. They also assist the community in a rather unique way. The City of Williston has been able to use their excavated mining areas as pits for development as landfill cells for our refuse disposal. It significantly reduces our costs to place the cells into operation, and relieves the company of their burden of reclamation of the open pits. A win-win private public partnership.

The biggest threat to the continued operation and expansion of the company is the Federal government and its agency's interpretations of coal royalty assessments. Although the surface of the mined areas are privately owned, the coal rights are held by the Federal government since the time the land was homesteaded. The issue that SB 2377 addresses is the definition of Leonardite. North Dakota is the only State where leonardite is considered coal. The Bureau of Land Management reports that since leonardite is considered coal by definition in North Dakota, it must be treated as coal and requires a royalty payment by that standard in its mining. This royalty burden places the continued operation of this successful business operation in severe jeopardy. Leonardite Products has been and continues to aggressively pursue this issue with the Federal government, but believes changing the definition in State statute will be the most expeditious way to get the BLM to agree to drop the coal royalty issue, making mining the product and expanding the capacity cost effective to continue in North Dakota.

By changing the North Dakota Century Code to define Leonardite and removing three words from the definition of coal, we believe this company will have a better chance of negotiating settlements of the royalty issue with the Federal government, subsequently allowing the business to be successful and grow. I appreciate your consideration here today, and request a Do Pass recommendation for SB 2377.

I would be happy to take any questions at this time.

Williston

Economic Development

Testimony on SB2377

February 20, 2015

Shawn Wenko, Executive Director

Chairman and Members of the Committee:

My job as an economic development executive director is to promote a healthy balance of business and commerce. Its true economic developers spend time attracting businesses to our communities, yet at the same time we must recognize and sustain those companies that are already in our communities. It's even better when we can connect current business with our infrastructure and other opportunities.

While oil has had the most attention, we are proud to be able to boast of other businesses utilizing the natural resources found in our area.

Leonardite mining diversifies the Williston and ND economy and takes advantage of a natural resource truly unique to this state.

Leonardite has been mined in the Williston area since 1964 and has been a constant good paying employer since. Leonardite has been mined, before, during and after fluctuations in oil prices.

When Leonardite Products took over the facility in 2008, they diversified their market from oil to agriculture. Leonardite Products' predecessor sold 90% of their material as an additive for water-based drilling fluids; 95% of what Leonardite Products sells today is to the agricultural industry as a fertilizer additive or soil amendment.

Last year at the Williston Economic Development annual meeting, Leonardite Products was awarded the Small Business Development Center Agricultural Entrepreneur Award. A copy of that is attached to my testimony.

The Leonardite from North Dakota is reputed to be the best in the world and is used as a benchmark for quality of other humates. I understand the material coming from the two North Dakota Leonardite mines and the mine in Wyoming are the only Leonardite mines in North America with the proper alkaline solubility for use as an additive for oil drilling fluids. Mind you, not the drilling fluids generally

used in the Bakken. It is used as an additive in water-based drilling fluids used off-shore and farther south.

Leonardite is a primary sector company. All of their products are sold outside North Dakota and 17-25% of their sales are outside the United States. That means leonardite mining brings new money in to the community, into the state.

Currently Leonardite Products employs 30 people fulltime and operates 24/7. As an example of working with other business, and helping with Williston's infrastructure, a business in Williston has applied with the health department to use the pits emptied of leonardite for an inert landfill. As you can imagine because of the demands on Williston's entire infrastructure this is a real benefit.

It's come to our attention that the Federal Government has increased the royalties they pay per ton, drastically cutting into their margins. Leonardite Product would like to increase their markets and invest more in their facility yet are reluctant to do so due to the high overhead imposed by the federal government. As Williston's Economic Development Executive Director we'd like to see them grow and hate to hear the federal government is a threat to any legitimate business. There is something we can do to help Leonardite Products and other leonardite mining and processing companies in the state.

We ask you to excluded leonardite from the definition of coal by simply removing the term "Oxidized" and defining Leonardite as a dark colored, soft, earthy organic rock that is high in humic acid content formed from the oxidation of lignite.

Leonardite Products wins Agriculture Entrepreneur Award for 2014

Williston Economic Development

It may sound a bit odd now, but the winner of the outstanding agriculture business award actually got its start in the oil and gas industry. When this particular Williston business was founded in 1964 it created and sold an additive to water based drilling fluids.

By 2008, 90 percent of the company's materials went to the oil field; but at the time the price of oil price was fluctuating. It was that year that Karl Merk, Mary Mahar, Rod Smith and Cherie Harms collaborated with other investors and took over the operation with an eye on diversifying. They formed Leonardite Products and concentrated on agriculture.

They eventually developed three dry grades of Leonardite and two liquid products with the trade name "SOURCE."

Since 2008 the number of tons sold has increased by more than 250 percent and nearly 10,000 gallons of the liquid fertilizer additives are sold per year to fertilizer manufacturers around the world.

Leonardite is mined and processed east of Williston. It is a natural form of HUMATES, an oxidized lignite coal unique to this area. Leonardite Products has competitors all over the world, yet the material found in western North Dakota is favored because of the higher humic acid content.

According to Cherie Harms, the "SOURCE" line of products acts like a soil amendment, it lowers the pH of soil, adds organic material and helps with moisture retention.

"It makes fertilizers work better and acts as a chelator. The better the soil, the healthier the plants," she says.

Accepting the Small Business Development Center Agriculture Entrepreneur Award recently in Williston were Karl Merk and Mary Mahar of Leonardite Products.

PROPOSED AMENDMENTS SB 2377

PSC "technical amendments"

- P. 2 line 6, remove "or leonardite"
- P. 2 line 8, remove "or leonardite"
- P. 2 line 23, remove "or leonardite"
- P. 2 line 29, remove "or leonardite"
- P. 3 line 12, remove "or leonardite"
- P. 3 line 29, remove "or leonardite"
- P. 4 line 5, remove "or leonardite"
- P. 4 line 8-9, remove "or leonardite"
- P. 4 line 18, remove "or leonardite"
- P. 4 line 26, remove "or leonardite"
- P. 5 lines 7-8, remove "or leonardite"
- P. 5 line 12, remove "or leonardite"
- P. 6 line 3, remove "or leonardite"
- P. 7 line 5, insert after coal, "or leonardite"

Potential Severance Tax Amendments: (paid \$21,315 in 2013; \$14,210 at proposed rate)

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. A new section to chapter 57-61 of the North Dakota Century Code is amended and reenacted as follows:

57-61-01.9 Severance tax upon leonardite - Imposition - In lieu of sales and use taxes - Payment to the tax commissioner.

There is hereby imposed upon all leonardite severed for sale or for industrial purposes within the state a tax of twenty-five cents per ton of two thousand pounds [907.18 kilograms]. Such severance tax is in lieu of any sales or use taxes imposed by law. Each mine operator shall remit such tax for each month, within twenty-five days after the end of each month, to the state tax commissioner upon such reports and forms as the tax commissioner deems necessary.

LEONARDITE PRODUCTS-LLC

SB2377 Testimony

Cherie Harms, President
February 20, 2015

Chairman and Committee Members of the Senate Energy and Natural Resources
Committee,

What this bill does:

Removes leonardite from the definition of coal in North Dakota by removing three words:
"both oxidized and"

Defines Leonardite as follows:

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

**[For a definition of humic acids, refer to the cover page of the Humic Product Trade
Association newsletter attached with exhibits]**

The Bureau of Land Management (BLM) and the Office of Natural Resource Revenue
(ONRR) are charging exorbitant royalties on North Dakota leonardite using rules and
regulations that apply to Federal coal. This is creating economic hardship and competitive
disadvantages for Leonardite Products today and will do the same for other businesses
wishing to mine leonardite on federal coal and mineral reserves in North Dakota.

Why:

Officials from the BLM told Senator Hoeven's office and me that as long as leonardite is
considered to be coal in the State of North Dakota the BLM will consider Leonardite to be
coal when mined in this state. Leonardite is not considered coal in any other state in the
Union.

Currently, Leonardite Products has three appeals with the ONRR, since they ordered us to
pay 12.5% of our gross proceeds on each ton sold. This makes our per ton royalty
anywhere from \$9.93 to \$18.75 per ton, depending on the grade. That royalty rate leaves
no margin for profit.

In comparison private leonardite royalties range from \$.30 per ton to \$1.00 a ton. **[Exhibit
A - Historic and Current Royalty Rates for Leonardite severed in ND WY, NM and
Utah]**

Lignite coal companies pay between \$.27 to \$.50 per ton on State Trust lands and 2.2% of their selling price for the federal coal. Private lignite royalties range between \$.08 and \$.58 per ton. **[Exhibit B – Excerpt from Leonardite Products Royalty Rate Reduction Petition regarding lignite royalty rates]**

Currently Leonardite Products has a Category Five Royalty Rate Reduction petition with the BLM to enjoy the same royalty rate the three lignite mining companies in the state achieved through the process in 2004. However, a royalty rate reduction alone will not satisfy the inequality of charging Leonardite a coal royalty.

We're not arguing today about who owns the Leonardite, just that it not be defined as coal. In the *Maurice Tanner* decision, the Interior Board of Land Appeals ("IBLA") held that humate is a mineral that the United States reserved under the Stock Raising Homestead Act, and in the process of classifying humate, the IBLA equated Leonardite as humate and humate as a salable material. *Maurice Tanner*, 141 IBLA 373 (1997). In accordance with the *Maurice Tanner* decision, several Bureau of Land Management ("BLM") planning documents classify Leonardite and/or humate as salable minerals. In addition the IRS does not treat Leonardite as lignite (1971 Revenue Ruling 71-494) and the OSM has taken the position Leonardite is not coal (ND regulatory program Fed. Reg. 37423-01). **[Exhibit C is an excerpt from Leonardite Products ONRR appeal with more details on the Maurice Tanner decision and why Leonardite should be a saleable mineral.]**

The business models for mining lignite coal used in energy development and Leonardite mine and processing center are completely different. Using the same formulas for collecting coal royalties on Leonardite, do not take into consideration the differences in mining, volumes, customers, uses, processing, pricing and competition.

We have consulted the Public Service Commission Reclamation Division Director Jim Deutsch and with State Geologist, Edward Murphy. These two discussed how to make these changes work within the State and have contributed to the changes proposed today. The Office of Surface Mining, within the Department of the Interior, does not consider Leonardite coal and has deferred management of such to the ND PSC Reclamation division.

We contacted the North Dakota Land Department. Drew Combs, Director of Minerals Management, consulted their attorney, before telling me this proposed change in the Century Code would not affect the current coal leases the State holds with lignite or Leonardite companies.

We are not asking for this rate reduction in order to avoid working with reclamation or paying severance taxes. I met with the Tax Department last July and they were not overly concerned with our proposed reduction in the severance tax for Leonardite. **[The 2011-2014 Taxable Coal Severed by County is attached.]** Leonardite Products is in Williams County and American Colloid is in Bowman County.

I've been in contact with all three lignite mining companies, BNI, Westmoreland and North American Coal in North Dakota. BNI has been helpful by providing us with information for our BLM petition and ONRR appeals. They are aware of this pending legislation and have no objections.

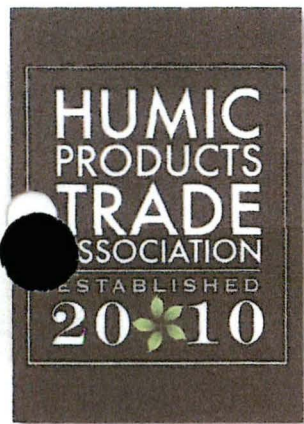
When leonardite is no longer included in the definition of coal:

Future mining expansion for American Colloid, Leonardite Products or others will be possible at reasonable royalty rates. Leonardite, a natural resource unique to North Dakota, reserved by a federal coal and mineral leases will not be ignored.

The BLM and ONRR will no longer be able to demand excessive royalties based on the argument they are following federal rules and regulations stipulated by North Dakota State Laws.

Our congressional delegation will be able to assist with Leonardite Products' negotiations without being told by the federal government that they are simply following North Dakota Law.

In 2008, when we invested in Leonardite Products, North Dakota was much different; there was no oil boom going on. We wanted to build a primary sector business to diversify and grow the local economy while providing employment and a return for our investors. Had we not bought the mine and plant, it would be shut down. We employ 30 people in Williston. We are proud to have built an agricultural market for leonardite and with a reasonable royalty rate, hope to expand our operation to keep up with the agricultural and oil demand for North Dakota Leonardite.



Humic Products News

OFFICIAL NEWSLETTER OF THE HPTA • SEPTEMBER 2012

Follow us on humictrade.org

Official terms/definitions approved

The efforts put forth by the HPTA in cooperation with Association of American Plant Food Control Officials (AAPFCO), starting in November of 2010, culminated on August 7, 2012 with the AAPFCO Terms and Definitions Committee officially approving the terms Humic Acids and Humates. Out of the thirteen terms submitted to the committee, the terms submitted by HPTA were the only items approved. The new official terms are;



T-64 Humic Acids – are the portions of the alkali extracted humic substances that are insoluble in strongly acidic solution. They will precipitate from the alkali extract in acid solutions of pH 2 or less. They can be used as either soil amendments, foliar application, or blended with liquid fertilizers.

T-65 Humates – are the salts of humic acids.

In almost all 48 states, Puerto Rico and Canada are members of AAPFCO, and as member states to the terms and definitions in the AAPFCO Official Publication for guidance in consistent fertilizing and labeling, the humic industry is now in a position of strength when using the terms humic acids and humates on fertilizer labels.



We may have missed you at the Southwest Fertilizer Conference.

The goal of the Humic Products Trade Association (HPTA) is to advance the commercial uses of humic products through scientific and regulatory cooperation.

Our members play a key role in establishing standards for the labeling of humic products for sale at retail and we invite you to join us.

As a fertilizer industry leader, we value your input in this fast-growing and influential trade organization.

For more information visit us at www.humictrade.org

2012 HPTA Upcoming Events

ASA, CCSA, SSSA Annual Meeting
Booth #433, October 21-24
Duke Energy Center & Hyatt Regency Hotel
Cincinnati OH
www.acsmeetings.org

HPTA General Membership Meeting
Wednesday, October 24, 8:00AM-12N
Buckeye AB, Hyatt Regency Hotel
Cincinnati OH
RSVP: info@humictrade.org

ARA Conference & Expo
Booth# 405, November 27-29
Manchester Grand Hyatt, San Diego CA

Membership drive continues

HPTA is growing through continuing efforts to reach out to humic product professionals. Pictured above is a postcard developed to contact potential members in the fertilizer industry who may have missed our booth at the Southwest Fertilizer Conference. Our presence at industry conferences, meetings and expos such as those listed above, is helping to increase HPTA membership.

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Exhibit A

Historic & Current Royalty Rates for Leonardite Severed in ND, WY, NM & Utah

	Company	Lease	Dates	Royalty	Per
	GeoResources/(Nelson Mine)	Constance Ryan Estate	May 1998	\$.30 per ton 1964-1974, \$.47 in 1980 and \$.56 per ton in 1988 to 2006.	160 acres, Williams County, ND
	GeoResources	Bureau of Land Management (Federal Lease)	December 1, 1964	\$.10 per ton year 1-5 \$.125 per ton year 6-10 \$.15 per ton year 11 on	320 Acres, Williams County, ND
	GeoResources	Hardy Salt Company		\$.35 ton first two years and \$.40per ton for eight years.	35 acres
	American Colloid	Edwin Tompkins	October 2006	\$1.00 per ton \$.50 applied to surface damage, \$.50 mineral production	One quarter (40 acres)
	American Colloid	State of ND/School Lands	December 30, 1999	\$.25 per ton	10 acres, Bowman County, ND
	American Colloid	Robert and Myrtice Perkins	April 4, 1997		16 acres, Bowman County, ND
	American Colloid	Leonard & Carol Page	May 1, 1991	\$1.00 per ton	1350 acres Adams and Bowman County, ND
	Morningstar, Pueblo Alto & Star Lake Mines /Mesa Verde, New Mexico		current	\$3-5.00 per ton, Includes lease Mined dry	15 acres open, San Juan county, New Mexico
	Miracle Rock Mining/ Live Earth , Utah		current	\$3-5.00 per ton, Include lease Mined dry	162 acres Emery, Utah
	Wyoming Black Hills Bentonite (leonardite mine)		2013 BLM rate	1.21 per ton	

Exhibit B

Excerpt from Leonardite Products Petition for a Royalty Rate Reduction regarding Lignite Royalty Rates

Submitted to the BLM in March 2014

Lignite Mine Royalty Rates- Non Federal

The non-federal royalty rates listed below were taken from the leases included in the NDPSC mining permits listed above. Each permit contains multiple leases. Many of the non-federal royalty rates for the North Dakota Lignite mines were established in the 1970's and have been renewed in twenty year increments since. The non-federal royalty rates listed below are representative of the various non-federal royalty rates for each lease yet do not include rates for every lease inside each permit area; a list of every lease and royalty would be lengthy and repetitive.

The Beulah Mine pays the State of North Dakota \$0.25 (25 cents) per ton or 6 percent of the price per ton of coal. Private coal leases vary in price from \$0.08 (8 cents) per ton to \$0.12 (12 cents) per ton or 1.2 percent of the average value per ton, less adjustments such as taxes and material used to mine to 62.5 percent of \$0.60 (60 cents) which equals \$0.375 (37.5 cents) or 3 & ½ the average value per ton of coal less materials and taxes.

The Freedom Mine pays the State of North Dakota \$0.25 (25 cents) per ton or 6 percent of the price per ton of coal.¹ It appears the highest royalty paid to private coal lease holders is \$0.12 (12 cents) per ton, yet the majority of private lease holders are paid \$0.08 (8 cents) or \$0.10 (10 cents) per ton mined.

Falkirk also pays the State of North Dakota \$0.25 (25 cents) per ton or 6 percent of the price per ton of coal. Consistently the private coal leases pay a royalty of \$0.10 (10 cents) per ton, which includes a \$0.02 (2 cent) allowance for surface damage, in essence paying a royalty of \$0.08 (8 cents) per ton mined.

According to BNI Coal, most Center Mine leases are either for \$0.10 (10 cents) per ton surface and \$0.10 (10 cents) or \$0.15 (15 cents) per ton for coal mined.

Between 1980 and 2012, the Savage Mine in Richland County, MT mined 9,724,528 tons of coal. *The Best Available Figures of Cumulate Royalty Payments from Montana Surface Mining* list the federal royalties paid by the Westmoreland Savage mine through December 2012 to be \$4,097,226.00, private royalties were \$1,506,109.00 totaling \$5,603,335.00. Assuming the two tables found on the State of Montana web site used to compile the information above are accurate and cover the same time period, the average royalty rate paid to both the US Government and private coal owners is \$0.58 (58 cents) per ton.

The contracts each mining company has with their customers is not readily public information, therefore the value of each ton of coal is not available for this report. Thus, the value determination for the royalty rates based on percentages of the value of the coal is not available in this petition. Nor are the deductions allowed such as materials and taxes deducted from the value of each ton mined and sold. However

¹ According to the North Dakota Department of State Lands, the royalty may have been renegotiated since this report was written.

according to the notice in the Federal Register, the federal royalty is 2.2 percent of the value of coal, thus the federal government should have access to the value of each ton of coal for the federal permitted coal.

Leonardite Products is paying a royalty of 12.5%. Until August of 2013 the unit value for that percentage was \$15.35 on each mined ton. The royalty paid on tons mined from the federal lease NDM-065329 between 2005 and August of 2013 was \$1.92 per mined ton. The Office of Natural Resource Revenue (ONRR) issued an order in August 2013 stipulating the 12.5% royalty be paid on the gross proceeds of tons sold. Thus the average royalty per ton sold is near \$13.00 per ton. ²

It is clear the royalty charge to Leonardite Products on the tons mined and sold is considerably higher than any of the royalty rates charge to the lignite mines in Mercer, McLean or Oliver counties in North Dakota or in Richland County, Montana.

² Since this was written in 2013, Leonardite Prices have raised their price per ton, thus the royalty rate on one grade of processed Leonardite is over \$18.75.

Exhibit C

Excerpt from Leonardite Products ONRR Appeal

Leonardite Should be treated as a Salable Mineral.

The substance known as leonardite does not constitute coal but is a mineral material such as peat, humus, or humate. Mineral materials, which are also known as salable minerals, are governed by the Minerals Material Act of 1947 and are not assessed royalty in same manner as coal, which is a leasable mineral. Thus, it is improper to assess royalties on leonardite based on the method for assessing royalty on coal.

In the *Maurice Tanner* decision, the Interior Board of Land Appeals (“IBLA”) held that humate is a mineral that the United States reserved under the Stock Raising Homestead Act, and in the process of classifying humate, the IBLA equated leonardite as humate and humate as a salable material. *Maurice Tanner*, 141 IBLA 373 (1997). In its analysis, the IBLA noted that “humate” is a broad term sometimes characterized as “carbonaceous claystone or shale rich in humic matter.” *Id.* at 376. The IBLA also noted that ever since 1979, the official statement of position from the BLM and the Solicitor’s Office was that “humate was a reserved salable mineral.” *Id.* at 378. More importantly, the IBLA equated humate with leonardite: “the term ‘humate’ has also been applied to a form of weathered coal called ‘leonardite’” *Id.* at 376. By noting that the terms “humate” and “leonardite” both indicate the same substance, the *Maurice Tanner* decision shows that leonardite is a salable mineral distinct from coal.

In accordance with the *Maurice Tanner* decision, several Bureau of Land Management (“BLM”) planning documents classify leonardite and/or humate as salable minerals. Specifically, the 2004 Mineral Occurrence and Development Potential Report, prepared in conjunction with the Resource Management Plan for the BLM Field Office in Casper, Wyoming, expressly lists leonardite as a mineral material:

“Mineral materials such as sand and gravel, moss rock, flagstone, rock aggregate, riprap, leonardite, and scoria are available on demand for sale or free use within the Casper Planning Area.” U.S. DEPARTMENT OF THE INTERIOR, BLM, MINERAL OCCURRENCE AND DEVELOPMENT POTENTIAL REPORT 3-37 (2004)

available at

<http://www.blm.gov/pgdata/etc/medialib/blm/wy/programs/planning/rmps/casper/docs.Par.64130.File.dat/mr.pdf> [hereinafter Wyoming BLM Mineral Report].

The Wyoming BLM Mineral Report goes on to list leonardite as one of the primary salable minerals within the Casper Planning Area, *id.* at 3-41, and characterizes leonardite as a substance with a high humic acid content, with primary uses being a drilling mud thinner and fertilizer, *id.* at 3-45.

Similarly, planning documents from other BLM field offices use the term “humate” to describe leonardite-like substances and categorize humate as a salable mineral. For example, the BLM Field Office in Rio Puerco, New Mexico uses the term “humate” to broadly encompass “oxidized coals, carbonaceous shales and mudstones, and organic rich sandstones” whose most desirable feature is a high humic acid

content. U.S. DEPARTMENT OF THE INTERIOR, BLM, MINERAL RESOURCE POTENTIAL AND REASONABLY FORESEEABLE DEVELOPMENT: FINAL REPORT 95 (2010) *available at* http://www.blm.gov/nm/st/en/fo/Rio_Puerco_Field_Office/rpfo_planning/rpfo_draft_rmp.html (follow “Mineral Potential Report 2010” hyperlink) [hereinafter New Mexico BLM Mineral Report]. The New Mexico BLM Mineral Report notes that the most common uses for humate include soil conditioners, plant nutrients, and drilling fluid additives, and that humate formations are located near coal seams. *Id.* at 95-96. The BLM Field Office in Moab, Utah, has a similar description of humate, and both the Rio Puerco and Moab field offices list humate as a salable mineral. New Mexico BLM Mineral Report, 79, 95; U.S. DEPARTMENT OF THE INTERIOR, BLM, MINERAL POTENTIAL REPORT 31, 32 (2005) *available at* http://www.blm.gov/pgdata/etc/medialib/blm/ut/moab_fo/rmp/background_documents/mineral_potential.Par.37493.File.dat/MineralPotentialReportComplete-NoMaps.pdf.

BLM’s treatment of leonardite as a mineral material distinct from coal is not limited to planning documents. There is at least one leonardite mine located in Wyoming, and BLM manages this mine under mineral materials regulations and not the regulations for leasable materials: “Attachment 1 shows a self-bond is being held in the matter of a mine permit for weathered lignite (leonardite) within the Casper Field Office. The BLM issued the subject leonardite sale under the mineral material regulations.” U.S. DEPARTMENT OF INTERIOR, BLM, INSTRUCTION MEMORANDUM NO. WY-2010-001, ACCEPTABLE FORMS OF FINANCIAL GUARANTEES FOR LOCATABLE MINERAL PLANS OF OPERATION AND NOTICES, AND EXCLUSIVE MINERAL MATERIAL SALES 3, *available at* <http://www.blm.gov/pgdata/etc/medialib/blm/wy/resources/efoia/IMs/2010.Par.35298.File.dat/wy2010-001.pdf>. Moreover, the serial register page for this leonardite mine (Serial No. WYW-175554) lists the commodity as a mineral materials in the same class as “soil/other, peat/humus.”

The *Maurice Tanner* decision and BLM’s treatment of leonardite is consistent with other federal agencies. The Office of Surface Mining Reclamation and Enforcement (“OSM”), and the Internal Revenue Service (“IRS”) also have taken positions that leonardite is distinct from coal. In a 1971 revenue ruling, the IRS determined that leonardite was a separately identifiable mineral distinct from lignite (a low quality coal) and would not be taxed as lignite: “The term ‘leonardite’ has a commonly understood commercial meaning as a separately identifiable mineral possessing properties and characteristics that distinguish it from lignite . . .” Rev. Rul. 71-494, 1971-2 C.B. 247. Similarly, the “OSM has taken the position that leonardite is not ‘coal . . .’” North Dakota Permanent Regulatory Program 59 Fed. Reg. 37423-01 (July 22, 1994). A letter sent to the Reclamation Director of the North Dakota Publix Service Commission confirming OSM has no jurisdiction over leonardite mining in North Dakota.

Leonardite is consistently classified as a separate mineral distinct from coal. Where coal is a leasable mineral, leonardite or humate constitutes a salable mineral under the Minerals Material Act of 1947. Thus, assessing royalties on leonardite, a salable mineral, based on the method for assessing royalty on coal, a leasable mineral, is improper.

Taxable Coal Recovered Per County

Qtr/Yr	Company	BOWMAN	MCCLEAN	MERCER	OLIVER	WILLIAMS
2011	American Colloid	78,015.24				
	BNI Coal Ltd.				4,201,554.00	
	Coteau Properties			13,639,122.00		
	Falkirk Mining Co.		7,377,408.00			
	Leonardite Products					8,028.00
	Dakota Westmoreland				2,919,954.48	
2011 Total	Total Tons	78,015.24	7,377,408.00	16,559,076.48	4,201,554.00	8,028.00
\$0.375	Severance Tax	\$ 29,255.72	\$ 2,766,528.00	\$ 6,209,653.68	\$ 1,575,582.75	\$ 3,010.50
\$0.02	Lignite Energy Research F	\$ 1,560.30	\$ 147,548.16	\$ 331,181.53	\$ 84,031.08	\$ 160.56
2012	American Colloid	108,620.99				
	BNI Coal Ltd.				4,373,589.00	
	Coteau Properties			12,974,746.00		
	Falkirk Mining Co.		7,815,624.00			
	Leonardite Products					7,316.00
	Dakota Westmoreland				2,310,577.29	
2012 Total	Total Tons	108,620.99	7,815,624.00	15,285,323.29	4,373,589.00	7,316.00
\$0.375	Severance Tax	\$ 40,732.87	\$ 2,930,859.00	\$ 5,731,996.23	\$ 1,640,095.88	\$ 2,743.50
\$0.02	Lignite Energy Research F	\$ 2,172.42	\$ 156,312.48	\$ 305,706.47	\$ 87,471.78	\$ 146.32
2013	American Colloid	41,947.00				
	BNI Coal Ltd.				3,652,547.00	
	Coteau Properties			13,782,716.00		
	Falkirk Mining Co.		7,537,847.00			
	Leonardite Products					14,893.50
	Dakota Westmoreland				2,473,234.14	
2013 Total	Total Tons	41,947.00	7,537,847.00	16,255,950.14	3,652,547.00	14,893.50
\$0.375	Severance Tax	\$ 15,730.13	\$ 2,826,692.63	\$ 6,095,981.30	\$ 1,369,705.13	\$ 5,585.06
\$0.02	Lignite Energy Research F	\$ 838.94	\$ 150,756.94	\$ 325,119.00	\$ 73,050.94	\$ 297.87
2014	American Colloid	86,366.00				
	BNI Coal Ltd.				3,927,735.00	
	Coteau Properties			14,432,335.00		
	Falkirk Mining Co.		7,860,470.00			
	Leonardite Products					9,644.00
	Dakota Westmoreland				2,759,399.92	
2014 Total	Total Tons	122,611.00	9,849,495.00	21,221,507.92	4,932,398.00	9,644.00
\$0.375	Severance Tax	\$ 45,979.13	\$ 3,693,560.63	\$ 7,958,065.47	\$ 1,849,649.25	\$ 3,616.50
\$0.02	Lignite Energy Research F	\$ 2,452.22	\$ 196,989.90	\$ 424,430.16	\$ 98,647.96	\$ 192.88

*Updated with information from <http://www.nd.gov/tax/coal/pubs/>

4.10

February 20, 2015

Testimony on Senate Bill #2377

Good morning,

Mr. Chairman and members of the Energy and Natural Resources Committee:

My name is Lyndon Bucher and I am employed by American Colloid Company (ACC). ACC is an 88 year old company that is probably best known as the world's leading supplier of bentonite products. It happens that leonardite is a complimentary mineral with bentonite products in the agriculture, drilling mud, and foundry markets. We have operated a leonardite processing plant in Gascoyne since 1957. Originally our leonardite was purchased from the Knife River Coal Mine across the road from our plant. It was simply considered overburden from their perspective. In the late '80s we procured a private mineral lease and permitted our own mine near the plant. Last year we shipped a whopping 58,000 tons of leonardite by rail and truck. I am here today to testify in support of Senate Bill #2377. American Colloid is asking for passage of this this Bill so we can remain competitive in the leonardite market. Since 1980 we have mined primarily private and some State mineral reserves near the plant in Gascoyne, however we have identified additional reserves nearby which are reserved to the United States. Federal minerals are managed by the Bureau of Land Management under three general mineral classifications; Locatable minerals, Leasable Minerals, and Salable Minerals. This authority is given to BLM by Congress under three primary laws including the General Mining Act of 1872, the Minerals Leasing Act of 1920, and the Materials Act of 1947. It stands to reason that the BLM would classify a given mineral in the same category across the United States. In other words, gold is a locatable mineral in all 50 states, coal is a leasable mineral in all 50 states, and



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gravel is a salable mineral in all 50 states. So you may appreciate my surprise to learn that this is not the case concerning leonardite.

For example, the Wyoming BLM considers leonardite a salable mineral under the Materials Act. However, the Montana - Dakotas BLM considers leonardite to be a leasable mineral under the Minerals Leasing Act. (Phil Perlewitz, BLM Montana State Office, Personal communication). According to the BLM, they are constrained to treat leonardite as a leasable mineral because of the broad definition of coal in the North Dakota Century Code.

Leonardite has been recognized as a distinct and different subsurface material from lignite coal since Dr. A.G. Leonard's early work in North Dakota's deposits in the early 1900's. It is the particularly high humic acid content in leonardite that makes it highly desirable for use in products serving the previously mentioned industries. According to Youngs and Frost at the U.S. Department of Interior Lignite Research Laboratory in Grand Forks, "*Leonardite is a coallike substance similar in structure to lignite, but significantly different in its oxygen and ash contents.*" emphasis added (Exhibit A, Humic Acids from Leonardites - - A soil conditioner and Organic Fertilizer, Roger Youngs & Clyde Frost, USDI Bureau of Mines, Grand Forks, ND)

Wyoming acknowledged the difference between leonardite and coal from a regulatory standpoint after the passage of the Surface Mine and Reclamation Control Act of 1977. In 1982, Wyoming Governor Ed Herschler wrote to the Director of Office of Surface Mining (OSM) in the Department of Interior explaining his State's justification for classifying leonardite as a "noncoal mineral". (Exhibit B, letter from Gov. Ed Herschler to J.R. Harris, Director of OSM) The



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Director's response letter acknowledges that leonardite has distinguishing physical characteristics compared to lignite. To quote from his letter, "*I would agree with you that these properties—lower Btu/lb values, higher oxygen and moisture content, a 20-fold increase in an alkaline solution base, and, more particularly, the fact that lignite is a compact material while leonardite is soft and earthlike—do, indeed, demonstrate that leonardite is a separate and distinct mineral.*" (Exhibit C, reply letter from J.R. Harris, Director of OSM to Gov. Ed Herschler) Shortly thereafter, a letter was received by Mr. Ed Englerth, Director of the Reclamation Division of the North Dakota PSC from the Northwest OSM Field Office indicating "that the three leonardite mines in North Dakota are no longer under OSM jurisdiction." (Exhibit D, letter from William Thomas, Director Northwest OSM Field Office to Mr. Ed Englerth) In 1984 Governor Herschler further clarified the classification of leonardite with the Department of Interior Bureau of Land Management (BLM) as a salable mineral. This is recognized in a Memorandum of Understanding between the State of Wyoming and BLM. This MOU specifically includes leonardite as mineral materials (salable minerals) along with the usual sand, gravel, scoria, etc. (Exhibit E, Page 2 of 7 Supplement to Memorandum of Understanding No. WY 19 for Management of Surface Mining and Exploration for Mineral Materials on Public Lands).

You may be asking yourself, "Why should North Dakota care what Wyoming is doing?" The answer lies in competition for economic development. The difference between the cost and permitting burden to develop federal salable mineral vs leasable mineral is astronomical. The disposal process for leasable minerals is conducted through what is known as a Lease By



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Application (LBA). This application approval process typically takes 4-5 years and requires significant investment in pre-lease exploration and environmental studies by the proponent before BLM will determine if they will lease the mineral. The proponent must hire a 3rd party consultant to write an Environmental Assessment or an Environmental Impact Statement. The current BLM royalty rate for federal leasable leonardite in North Dakota is over \$15 per ton.

On the other hand, the disposal process for a salable mineral is much more palatable. It is a fairly straightforward process where one simply requests BLM dispose of a certain deposit. The BLM will determine if there is any preclusion from selling the defined deposit and if not, proceed with either a competitive sale or non-competitive contract sale. A mine and reclamation plan must be submitted and approved. I am told that the entire process typically takes 6 – 18 months. The 2013 BLM published royalty rate for leonardite in Wyoming is \$1.21 per ton. Of course, in both cases, the project proponent must also comply with all State regulations for a mine permit application.

In conclusion, I hope I have been able to provide a good understanding of why this bill is important to American Colloid Company. Leonardite truly is a different material than lignite coal, not only in its physical properties, but also in the markets where it is applied because of those properties. What seems like a very straightforward application of policy can be clarified by the changing of just a few words in the North Dakota Century Code. Yet, the impact can make a substantial difference for small producers in North Dakota like American Colloid and Leonardite Products. It is extremely difficult to compete in the world market place when we must pay 12 times more than our competitors do to mine leonardite; only because of BLM's interpretation of North Dakota's Century Code.

Exhibit A

HUMIC ACIDS FROM LEONARDITE -- A SOIL CONDITIONER
AND ORGANIC FERTILIZER

Roger W. Youngs and Clyde M. Frost

U. S. Department of the Interior, Grand Forks
Lignite Research Laboratory, Bureau of Mines,
Grand Forks, N. Dak.

The term "humic acid" was first applied in 1826 by Sprengel (9) to that brown amorphous precipitate which is obtained by acidifying the alkali extract of decayed organic matter in soil. Since the inception of the term, humic acids have been extracted not only from soil but also from peat, brown coal, oxidized bituminous coal, and even from artificial materials obtained in the laboratory by action of inorganic acids or oxidizing agents on carbohydrates, proteins, and phenols. Odin (8) in 1922 redefined humic acids as yellow-brown to black-brown substances of unknown constitution, formed in nature by decomposition of organic materials under atmospheric influence or in the laboratory by chemical action. Humic acids can split off hydrogen ions and form typical salts with strong bases and usually are insoluble in water, soluble in alkali, and reprecipitated by acid. In general, humic acids are not chemically uniform substances, but are hydrophilic, reversible colloids with molecular weights varying from 300 to as high as 10,000 units. Their micelles carry a negative charge. The alkali solubility of humic acid is due to carboxyl and phenolic hydroxyl groups which account for about 22 percent of the weight of the molecule.

Humic acid is an essential part of soil. It is this material, present in good soil, that fixes nitrogen, makes available to the plant, through base exchange, the soil nutrients, and improves the physical structure of the soil. In recent years, much research has been conducted, particularly in India, Japan, Germany, Russia, and France, on replenishing the depleted humic acids of soils with the so-called "regenerated humic acids" obtained by oxidation of coal. These regenerated acids, which closely resemble the natural humic acids, have either been added directly to the soil or first supplemented with plant nutrients. Greenhouse and field tests have shown that these humic acid preparations improve plant yields (3), decrease loss of moisture from the soil (6), and increase the workability of the soil (2).

As a convenient and commercial source of humic acids, extensive reserves of naturally-oxidized lignite occur with virtually all lignite outcrops in North Dakota. This naturally-oxidized material, which contains up to 86 percent humic acids on a moisture-and-ash-free basis, has been given the name "leonardite," after A. G. Leonard, first director of the North Dakota Geological Survey, who did much of the early studies on these deposits (1). Leonardite is a coallike substance similar in structure to lignite, but significantly different in its oxygen and ash contents. In Table 1 the ultimate analyses of lignite, leonardite, lignite oxidized with air in the laboratory at 150° C, and humic acid extracted from leonardite with 1N NaOH are compared. The ash content of leonardite varies from mine to mine but is usually between 15 and 30 percent on a moisture-free basis.

TABLE 1. - Analyses of lignitic materials, percent

	Leonardite	Lignite	Oxidized lignite	Humic acid extracted from leonardite by 1N NaOH
Ash (mf)	18.7	10.0	10.7	3.9
Hydrogen (maf)	4.0	5.1	2.9	3.4
Carbon (maf)	65.2	72.8	65.4	63.5
Nitrogen (maf)	1.3	1.2	1.4	1.3
Oxygen (maf)	26.6	19.9	29.2	31.1
Sulfur (maf)	2.9	1.0	1.1	0.7

AMMONIATION OF LEONARDITE

Nitrogen-enriched coal humic fertilizers have received much emphasis in the past few years. Recent investigations have indicated that these products perform well as conventional fertilizers and release nitrogen more slowly. The main problem in technology is to develop a product with sufficiently-high nitrogen content (around 20 pct) which will still remain commercially competitive.

To determine if leonardite could be ammoniated to a product containing sufficient nitrogen for use as an organic fertilizer, samples were prepared by three different methods: (1) Ammoniation in an aqueous slurry, (2) ammoniation in an upward moving gas stream through a column of dried leonardite, and (3) ammoniation under pressure of 2,000 psig at 200° C. The nitrogen analyses of these variously ammoniated leonardite samples and the analysis of an aqueously ammoniated humic acid extracted from leonardite appear in table 2. The increase of nitrogen content of leonardite, even under radical conditions, is not sufficient for it to be used as an organic fertilizer. The nitrogen content of the ammoniated humic acid increased 2.5 times over that of the correspondingly ammoniated leonardite sample. The higher ash content, as well as the 15-percent nonhumic carbonaceous material in the leonardite, accounts for the decreased reactivity with ammonia. Therefore, to prepare a high-nitrogen organic fertilizer, the humic acids would first have to be extracted from the leonardite.

TABLE 2. - Nitrogen analyses of variously ammoniated samples, percent
(Moisture-free basis)

Sample	Method of ammoniation		
	1	2	3
Leonardite	3.87	2.82	11.15
Humic acid	8.13	-	-

RECOVERY OF HUMIC ACIDS FROM LEONARDITE

One part of the work at this laboratory was to find an inexpensive, rapid method for obtaining from leonardite bulk quantities of low-ash humic acids which could be used in preparing a soil conditioner and high-nitrogen-content organic fertilizer. The humic acids in leonardite are bound to the ash largely as insoluble calcium salts. Therefore, to recover the humic acids requires not only a physical means

of removing the clay and sand, but also a chemical treatment to displace the calcium ion. In the past, alkali extraction of the humic acids with removal of the insolubles by centrifuging the humate solution was the standard procedure for obtaining low-ash humic acids (5). The alkali extraction process, however, requires not only fresh alkali for each lot of humic acid prepared but also an equivalent amount of acid to set the humic acid free, both of which are used up in the process. The large volumes of water, which must be used to obtain a low-ash product, plus the unfilterable nature of the alkali humate solution and acid-precipitated humic acid, make the alkali extraction of humic acids unattractive. The problem of eliminating alkali extraction as the method of preparing low-ash humic acids was approached by two different routes: (1) Removing the ash physically and chemically from the leonardite, leaving a carbonaceous product containing around 85 percent humic acid, and (2) extracting the humic acid from the leonardite with an organic solvent that could be reclaimed for further extractions.

Float-Sink Process. Figure 1 schematically represents the process that was used in our experiments. Partially-dried, pulverized leonardite was added to a separatory funnel containing CCl_4 as the dense medium. The float fraction containing the humic acids was transferred to a filter, and the CCl_4 was removed. The product was washed first with a dilute H_2SO_4 solution, then with warm water. The results of this experiment appear in table 3. A ZnCl_2 solution was tried in place of CCl_4 , but absorption of the solution on the carbonaceous material caused the latter to sink, resulting in a low yield of humic material.

TABLE 3. - An examination of the float-sink process, moisture-free basis, results given in percent

Feed Ash	Product		Tailings	
	Yield	Ash	Humic Acid	Yield Ash
17.7	73.1	3.5	89.0	17.4 56.8

Note - Not included in data is loss of water-soluble material.

Flotation Process. The flotation process for ash separation is schematically depicted in figure 2. The as-received, pulverized leonardite was added to the flotation cell, which contained a lignite-tar creosote fraction as a frothing agent. The froth was collected on a filter, and the filter cake was washed with dilute H_2SO_4 , followed by warm water. Results of a typical experiment in this process appear in table 4.

TABLE 4. - Analysis of the flotation process, percent

Feed		Product		
Moisture	Ash (mf)	Moisture	Ash (mf)	Yield (mf)
9.5	18.2	6.0	11.3	13.6

Organic-Solvent Extraction Process. The use of an organic solvent for extraction of humic acids would be most attractive if the solvent could be reclaimed by distillation and reused without reaction with or being absorbed on the humic acids. Polansky and Kinney (7) made an extensive survey of organic solvents and solvent mixtures regarding their ability to disperse humic acids from nitric acid-oxidized bituminous coal. They concluded that the most economical and most easily handled solvent for the commercial extraction of humic acids is a mixture of

acetone and water. Fowkes and Frost (4) showed that an acetone-water solution would extract humic acids from leonardite provided the leonardite was pretreated with dilute mineral acid. The amount of humic acids extractable was directly proportional to the amount of mineral acid used in the pretreatment. The several preliminary experiments conducted revealed that the most efficient extraction was accomplished using one liter of 80-20 acetone-water (percent by volume) and 10 grams of HCl (basis: hydrogen chloride) per 100 grams of leonardite (moisture-free). Ten grams of HCl per 100 grams of leonardite is slightly in excess of the acid that will be necessary to replace the calcium ion with hydrogen ions in an average leonardite sample. Sulfuric acid was tried in place of HCl as the source for the displacing H-ions, but the resulting CaSO_4 , mixed with the humic acids, resulted in an unfilterable product with a high ash content. In the first experiments, the mode of extraction was a countercurrent column. An acetone-water-HCl pretreated leonardite slurry was added to the top of the column while a solution of acetone-water was forced slowly upward through the slurry. The yields of humic acids were good, but the ash content of the product was high, indicating some carryover of ash. Later experiments showed that sedimentation of ash and nonhumic carbonaceous material in an acetone-water-HCl solution is quite rapid; thus a simple settling tank replaced the countercurrent column in the process. A flow diagram of the process appears in figure 3. The results of the experiments appear in table 5.

TABLE 5. - Analysis of the acetone-water-HCl extraction of humic acid from leonardite, moisture-free basis, percent

Feed Ash (mf)	Product			Tailings	
	Yield (mf)	ash (mf)	NaOH-soluble (mf)	Yield (mf)	Ash (mf)
17.8	64.9	1.8	96.8	31.1	38.2
		Elemental (maf)	C	63.5	
			H	3.8	
			N	1.0	
			S	0.7	
			O	31.0	

Note - Not included in data is loss of water- and acid-soluble material

DISCUSSION

A comparison of the three processes investigated reveals the drawbacks of the float-sink and the flotation processes. The float-sink separation requires a non-polar medium, carbon tetrachloride, which is absorbed to some extent on the leonardite. The use of CCl_4 , plus the fact that the leonardite must be partially dried before separation, makes this process unattractive commercially. The flotation process did not produce the desired results. Owing to the low hydrophobicity of leonardite, caused by the large number of carboxyl and hydroxyl groups on the micelle's periphery, the yields of humic acids were low and their ash contents high. Attempts to precondition the leonardite with a light neutral fraction of coal tar to increase its hydrophobicity failed. Changing the frothing agents several times also gave poor results. The acetone-water-HCl extraction of humic acids lends itself most favorably to a commercial process. The yield of low-ash product is high. The acetone is easily recovered by distillation at a low temperature, and the loss is very small. Acetone does not react with, nor is it absorbed on, the humic acids. The process requires

simple equipment (a sedimentation setup works quite well), and the insolubles settle rapidly. The humic acids are easily filtered once the acetone is removed, and a minimum amount of wash water is needed to obtain a low-ash product.

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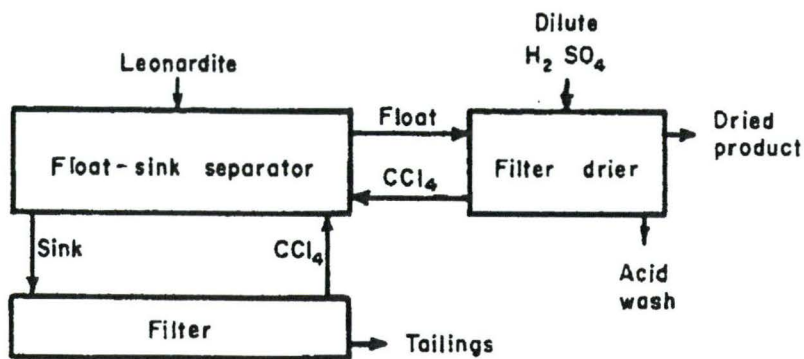


Fig. 1 Float-sink separation.

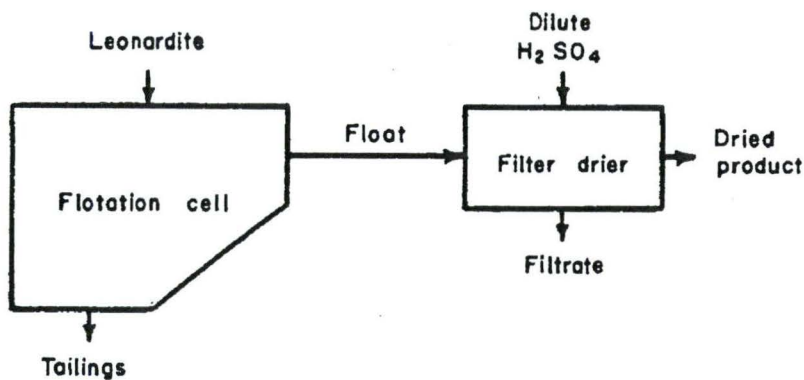


Fig. 2 Flotation process.

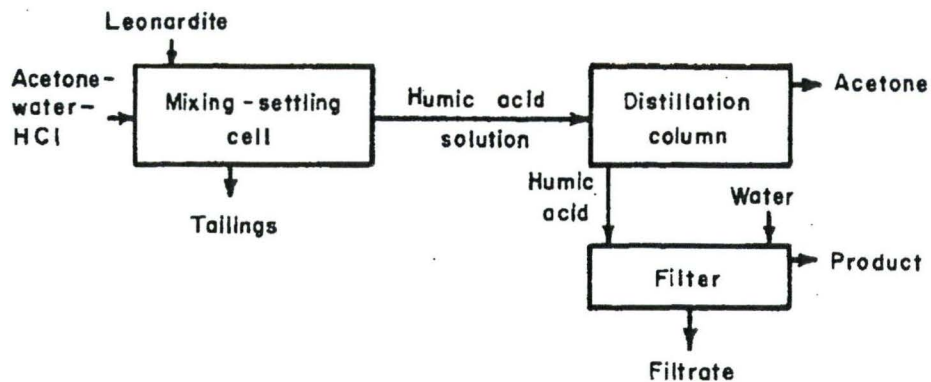


Fig. 3 Organic-solvent extraction.

Exhibit B



WYOMING
EXECUTIVE DEPARTMENT
CHEYENNE

September 2, 1982

ED HERSCHLER
GOVERNOR

J. R. Harris, Director
Office of Surface Mining
U.S. Department of the Interior
Washington, D.C. 20240

RE: Leonardite--Is It a Material Classified as
Coal/Lignite for Purposes of the Surface Mining
Control and Reclamation Act of 1977, P.L. 95-87?

Dear Director Harris:

It has come to my attention that the Wyoming Department of Environmental Quality is facing an easy issue, made difficult by old, brief policy statements from your office. Several State agencies, including the DEQ have been approached by a company, to develop, mine and process leonardite as a supplement to bentonite in oil and gas drilling. Milchem, Inc., has thoroughly demonstrated that the leonardite which it proposes to mine is quite different from lignite coals. This conclusion rested on several factors:

1) leonardite has a lower BTU/lb value than coal, with a range between 2,000 to 6,000 BTU/lb on an "as received" basis;

2) leonardite has a higher oxygen and moisture content as compared to lignite; and

3) due to the humic acid, it has a 20-fold increase in an alkaline solution base.

Please refer to the attachments for additional detail.

Based on this demonstration, the Wyoming Department of Revenue and Taxation classified the leonardite as "other valuable deposits," rather than coal. This decision would not have been made lightly, inasmuch as it drops the applicable severance tax rates from 10.5 percent for coal to 2 percent. Further, the State Board of Land Commissioners unanimously approved a request to lease the leonardite using the standard bentonite lease (altered to read "leonardite"), rather than the coal mining lease. The Board took this action based not only on the data supplied by Milchem, but also as confirmed by Mr. Gary Glass, Wyoming State Geologist.

5.13

J. R. Harris, Director
Page 2
September 2, 1982

I have reviewed your office's March and July, 1980, memoranda regarding the proper classification of leonardite. Based on these documents, it is apparent that leonardite should be considered coal/lignite for the purposes of SMCRA when, on the basis of the test methods identified in ASTM D 388-77 the Calorific Value limit (BTU/lb) is equal to or greater than 6,300 and equal to or less than 8,300 BTU/lb. By this letter then, I am advising you that Wyoming will regard this leonardite proposed to be mined by Milchem as a noncoal mineral, based on:

1) the BTU/lb value of the leonardite, which falls below the 6,300 BTU/lb floor;

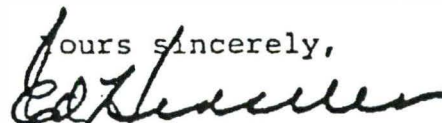
2) the fact that the material is unsuitable as fuel in the form in which it is found (although the leonardite might conceivably be processed to produce a substance which could be used as fuel, the processing would consume more fuel than it would generate);

3) the enclosed IRS Revenue Ruling 71-494, which concluded that the term "leonardite" has a commonly understood commercial meaning as a separately identifiable mineral possessing properties and characteristics that distinguish it from lignite for percentage depletion purposes; and

4) the clear necessity for conflicting statements from the different interested State agencies.

As you well know, this decision affects your office, both in its oversight posture and for the AML tax assessment duties. Therefore, to avoid problems with our approved State program, and problems with conflicting opinions which might substantially alter Milchem's future course of action, it is imperative that you respond on this issue as soon as possible. I am hopeful that a review of the enclosed material will result in your concurrence with this letter. However, if any questions or concerns do arise, please do not hesitate to contact either Nancy Freudenthal in this office (307) 777-7437, or Walter C. Ackerman in the Department of Environmental Quality (307) 777-7046.

I look forward to hearing from your office on this issue. With best regards, I am

Yours sincerely,


5.14

EH:nfp
Enclosures

cc: Walter C. Ackerman
Teno Roncalio

Exhibit C



United States Department of the Interior

OFFICE OF SURFACE MINING
Reclamation and Enforcement
WASHINGTON, D.C. 20240

NOV 22 1982



Honorable Ed Herschler
Governor of Wyoming
Cheyenne, Wyoming 82112

Dear Governor Herschler:

I am writing in response to your letter of September 2, 1982, regarding leonardite.

Let me begin by providing you with the reasoning which led to the decision by the Office of Surface Mining (OSM or the Office) that leonardite was "coal" and subject to the provisions of Title IV and Title V of the Surface Mining Control and Reclamation Act (SMCRA). I will then attempt to address the particular issues that you raised.

Leonardite is generally recognized as a naturally altered form of lignite which is one of the materials that Congress directed be regulated under SMCRA. For example, leonardite is defined as a "...coallike substance... a naturally oxidized form of lignite... Usually the material occurs at shallow depths, overlying or grading into the harder and more compact lignite...." (Bureau of Mines R.I. 5611, 1960, p.2) The reference to the thermal value of lignite coal occurs at Section 701(30) of SMCRA which defines lignite coal as "consolidated lignite coal having less than 8300 British thermal units per pound, moist and mineral matter free." Note that this definition does not provide a lower Btu limit. Thus, OSM concluded that leonardite was a form of lignite coal and therefore subject to both Title IV and Title V of SMCRA.

As a matter of Administration policy, OSM is now seeking to eliminate many burdensome aspects of our regulations, consistent, of course, with the bounds of SMCRA. Thus, I reviewed very carefully your arguments that leonardite should not be defined as coal, but as a separate and distinct mineral.

First, you state that Wyoming regards leonardite as a noncoal mineral because it is unsuitable as a fuel. However, SMCRA does not restrict the regulation of coal mining to those coals used as fuel.

Secondly, you write that leonardite should be defined as noncoal because of the IRS ruling that leonardite is not a form of lignite. While relevant, this in itself is not a compelling argument for a change in OSM's treatment of the material.

5.16

A third point you make about your decision on leonardite is the necessity to resolve conflicting statements from different State agencies. I would agree that uniformity in this matter is important, but I would not agree that the necessity for agreement among State agencies is a reason for OSM's defining leonardite differently than in the past.

Fourth, you pointed out some distinguishing characteristics of leonardite, as compared to lignite; and it was this argument that I found most convincing. I would agree with you that these properties--lower Btu/lb values, higher oxygen and moisture content, a 20-fold increase in an alkaline solution base, and, more particularly, the fact that lignite is a compact material while leonardite is soft and earthlike--do, indeed, demonstrate that leonardite is a separate and distinct mineral. I recognize that there are other agencies within the Department of the Interior that may treat leonardite differently than OSM. Please bear in mind that my decision pertains only to regulation under SMCRA.

I recognize that the situation presented in your letter is one which requires the exercise of judgment because of the fact that it is not a black or white problem. Unfortunately, there is little specificity provided in the attachment to your letter about the planned nature of the mining operations. Because of that, we will have to address your concerns in terms of a range of possible situations.

Situation 1. Leonardite occurs as a separate, and distinct mineral deposit and is mined by surface mining methods. In this situation leonardite would not be regulated under SMCRA because it is a material geologically distinct from the lignite coal addressed in Section 701.

Situation 2. If the extraction of lignite is incidental to the extraction of leonardite or other minerals and the lignite extracted does not exceed 16 2/3 per centum of the minerals removed for purposes of commercial use or sale, under the provisions of Section 701(28) of SMCRA, the surface mining operator will not be regulated under SMCRA.

Situation 3. A lignite mining operation is being conducted. Part of the deposit is leonardite. The leonardite is separated from the lignite prior to the first sale or use of the lignite and is then sold. In this situation, though the mining operation would be subject to the provisions of SMCRA, provided that adequate records are kept, the separately-sold leonardite would not be subject to the reclamation fee provisions of Title IV.

Honorable Herschler

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This third approach is consistent with our position that reclamation fees are not payable on ash, rock, water or other impurities so long as they are removed prior to first sale or use. (30 CFR 870.12(b)(3)(i), Federal Register, June 30, 1982, p. 28594)

I trust that this response provides you with the necessary guidance. If you have any questions, please do not hesitate to contact me.

Sincerely,

/s/J. R. Harris

Director

cc: New Mexico Field Office

5.18

Exhibit D

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5.20



United States Department of the Interior

OFFICE OF SURFACE MINING
Reclamation and Enforcement
WYOMING STATE OFFICE
P.O. BOX 1420
MILLS, WYOMING 82644
December 14, 1982

Mr. Ed Englerth
Director, Reclamation Division
PSC, State of North Dakota
Capitol Building
Bismark, North Dakota 58505

Dear Mr. Englerth:

Enclosed is a copy of a letter from J. R. Harris, Director, OSM, concerning the mining of leonardite. Washington has made the determination that the three leonardite mines in North Dakota are no longer under OSM jurisdiction. We will no longer require copies of inspection reports for those mines.

Sincerely,

William R. Thomas, Director
Northwest Field Office

Enclosure

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NORTH DAKOTA
PUBLIC SERVICE
COMMISSION
RECLAMATION DIVISION

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Exhibit E

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BLM MOU WY-920-1301

**SUPPLEMENT TO
MEMORANDUM OF UNDERSTANDING NO. WY 19**

BETWEEN THE

UNITED STATES DEPARTMENT OF THE INTERIOR

BUREAU OF LAND MANAGEMENT

WYOMING STATE OFFICE

AND THE

STATE OF WYOMING

DEPARTMENT OF ENVIRONMENTAL QUALITY

LAND QUALITY DIVISION

FOR

MANAGEMENT OF SURFACE MINING AND EXPLORATION FOR

MINERAL MATERIALS (Salable Minerals)

ON PUBLIC LANDS

This is a Supplemental Memorandum to the general statewide Memorandum of Understanding (MOU WY 19) dated October 28, 1975, between the Governor of Wyoming and the United States by and through the State Director, Bureau of Land Management, Wyoming, United States, Department of the Interior. This MOU (BLM MOU WY-920-1301) replaces MOU WY-93, signed by Governor Ed Herschler on August 8 1984, and signed by Bureau of Land Management State Director Hillary A. Oden on August 9, 1984.

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- 1. Background and Authority.** The Wyoming Department of Environmental Quality (WDEQ), Land Quality Division (LQD) and the Department of the Interior, Wyoming State Office, Bureau of Land Management (BLM) desire to work cooperatively to efficiently and effectively manage mineral material exploration and mining on BLM lands, including split estate lands. Split estate lands are lands where the surface and mineral owners are different. The typical case is where the surface ownership is private and the mineral ownership is BLM. For the purposes of this MOU, public lands under the administration of BLM will be termed BLM lands to differentiate from other public lands. The previous mineral materials MOU WY-93 between the BLM and LQD was signed in August of 1984. That MOU's purpose was to reduce duplication and foster coordination on bonding requirements for negotiated, competitive, and community pit mineral material sales on BLM surface. Since then, several bonding issues have arisen which require clarification, our respective regulations have changed, and permitting and inspection issues require coordination in a more comprehensive manner.

In Wyoming, mineral materials may include, but not be limited to, common varieties of sand, gravel, scoria (clinker), building stone, decorative stone, ballast, fill material, limestone, dolomite, clay, as well as petrified wood, leonardite, and other minerals not covered under the Mining Law of 1872 or Mineral Leasing Act of 1920. Common varieties may be disposed of under the Materials Act (Act) of July 31, 1947 (61 Stat. 681) as amended on July 23, 1955 (69 Stat. 367). Petrified wood is disposed of under the Act of September 28, 1962 (76 Stat. 652). These materials are also called saleable minerals and their use is authorized under 43 CFR 3600 through sales and free use permits. The regulations in 43 CFR 3814 govern coordination with the surface owner in split estate situations where the minerals are reserved to the United States but the surface is patented under the Stock Raising Homestead Act of 1916.

This MOU does not cover uncommon varieties of these minerals, which are administered under the 43 CFR 3800 Mining Law Regulations and the Supplement to MOU WY-19 between BLM and LQD for locatable minerals, signed November 19, 2003.

The State's participation in this MOU is authorized by W.S. § 9-2-121, 35-11-102, and §35-11-109(a)(ii), which recognize the policy of securing cooperation between agencies of the State and the Federal government in carrying out cooperative programs which are consistent with the constitution and laws of the State.

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2. **Purpose.** The purpose of this MOU Supplement, hereafter referred to as MOU, is to:
- A. Clarify procedures for cooperation between BLM and LQD in permitting, bonding, inspection, enforcement, and sharing of information for mineral material exploration, mining, and reclamation on BLM lands in Wyoming.
 - B. Foster Federal-State coordination of procedures to prevent unnecessary or undue degradation as defined in Section 302 of the Federal Lands Policy and Management Act of 1976 (Public Law 94-579) with respect to mineral materials operations on BLM lands and to foster responsible land use with respect to mineral materials operations on BLM lands under existing laws and regulations;
 - C. Prevent unnecessary administrative delay;
 - D. Prevent, to the degree allowed by law, duplication of administration and enforcement of reclamation regulations governing the exploration for, or mining of, mineral materials under the Federal regulations in 43 CFR 3600 and the State Noncoal Rules and Regulations; and
 - E. Minimize impacts to and ensure proper reclamation of those lands affected by exploration and/or mining, and assure that proper bonding is maintained.
3. **Scope.** This MOU covers use of mineral materials from BLM lands including split estate lands in Wyoming except Title 23 authorizations issued to the Wyoming Department of Transportation for road-building materials from BLM lands on Federally-funded highway projects. Those are covered by a separate MOU (WY920-08-07-192) among BLM, the Wyoming Department of Transportation, and the Federal Highway Administration, signed in August, 2007.
4. **Area of Cooperation.** The BLM and LQD jointly agree that:
- A. The BLM and LQD shall exercise appropriate responsibility and jurisdiction for the review and approval of all exploration and mining activity for mineral materials on BLM surface and split estate lands. Each agency shall coordinate separate authorizations and exchange information to the degree necessary to prevent inconsistent action.
 - B. The BLM and LQD shall assume responsibility for coordinating with the other agency for the review and approval of applications for all exploration and mining operations on BLM lands.
 - C. LQD will coordinate with BLM to verify surface and mineral ownership for all proposed mineral material mining activities and notify BLM of all actions involving BLM and split estate lands.

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- D. BLM will issue the free use permit, mineral material sale contract or letter of authorization for exploration. BLM will provide LQD with surface owner consent where BLM manages the surface.
- E. LQD will issue Licenses to Explore by Dozing, Drilling Notifications, Limited Mining Operations (LMOs), Small and Regular Mine Permits.
- F. The BLM will have lead responsibility for analyzing archeological and paleontological resources, noxious weed issues, National Environmental Policy Act (NEPA) requirements, and compliance with the Threatened and Endangered Species Act, the Migratory Bird Treaty Act, and the Bald and Golden Eagle Protection Act on BLM lands.
- G. The operator is responsible for submitting appropriate and complete forms and applications to BLM and LQD. To the extent possible, the application shall contain information to satisfy all the requirements of the BLM and LQD in one document.
- H. The review of any proposed exploration, mining, and reclamation plans, or applications for permits, contracts, or letters of authorization shall be in accordance with the schedules and processes set in the attached BLM and LQD "Wyoming Operating Guidelines: Management of Surface Mining & Exploration for Mineral Materials (Saleable Minerals) on BLM Lands". Each agency shall notify the other agency of its review schedule, and inform the other agency when additional time is needed. Lack of response will be interpreted as no comments, and the agency requesting the review will proceed with the permitting action.
- I. BLM and LQD will coordinate with one another prior to final approval of an authorization. LQD may conditionally approve an application that contains some private surface and minerals to allow mining on the private portion of the permit area, pending authorization from BLM for disturbance of BLM lands. LQD may also approve applications without BLM authorization to avoid compromising statutory deadlines. BLM stipulations and mitigation measures may be incorporated into the LQD permit, provided they are consistent with LQD statutes and rules. The LQD may not declare an application for a small or regular mine permit technically complete until BLM has supplied mineral owner consent, unless statutory deadlines will be compromised. This may be in the form of a separate consent, or the approved contract where BLM bond concurrence is not necessary.
- J. BLM will not approve a contract, Free Use Permit, or Letter of Authorization until the operator posts an approved reclamation bond with LQD, where bond concurrence is required. Because LQD approval of the bond instrument occurs when the permit is approved, the BLM will provide a separate surface owner consent to LQD.
- K. A committee consisting of representatives from BLM and LQD shall be established to review and/or modify operating guidelines established in this MOU as requested by either agency. The committee shall also be responsible for exchanging contact lists, unless such lists are maintained on agency web pages.

L. The BLM and LQD shall require any exclusive use access routes on BLM lands to be part of the acreage included in the mine area and included in the financial guarantee.

5. **Bonding (Financial Guarantee)**. The LQD shall establish the reclamation bond amount on BLM surface and split estate lands, where required by 43 CFR 3601.30(d), 3602.14, or 3604.25, and W.S. 35-11-417. BLM bond concurrence is only required when the BLM is the surface owner. The BLM shall review for bond adequacy and respond to LQD within 45 days. The bond will be redeemable by the Secretary of Interior and the State of Wyoming, Department of Environmental Quality, Land Quality Division. BLM may impose additional reclamation bonds for Limited Mining Operations where LQD is restricted by statute to a specified bond amount per acre. In this case, LQD will hold the entire bond. When possible, BLM and LQD will conduct joint inspections to verify reclamation adequacy. LQD shall hold all reclamation bonds until release is authorized in writing by both agencies. For split estate, the bond is payable solely to LQD.

LQD Annual Reports: The operator shall be responsible for providing updated reclamation bond estimates concurrently to both agencies when BLM surface is involved, on an annual basis. Both BLM and LQD shall review for bond adequacy. BLM will notify LQD within forty-five (45) days of receipt of the bonding information if the bond should be increased. If no response is received from BLM, LQD will proceed with the bond evaluation. LQD will copy BLM on the bond approval letter.

In the event of a bond forfeiture, LQD will administer the reclamation contract. Development of the reclamation plan will be coordinated between BLM and LQD where BLM is the surface owner.

BLM may impose additional performance bonds for payment of sale contracts or for damages to private surface owners on Stock Raising Homestead Act lands independent of this MOU (43 CFR 3814).

6. **Inspection and Enforcement**.

- A. Both agencies shall conduct inspections as needed to meet their individual regulatory requirements. Inspections should be conducted jointly when possible.
- B. All inspection reports and pertinent correspondence produced by one agency shall be promptly exchanged with the other as soon as they are complete. Inspection reports may be exchanged electronically, preferably with digital photos, GPS, and GIS data included.
- C. The BLM is responsible for production verification on BLM lands where a contract or free use permit has been issued.
- D. Each agency shall promptly notify the other of all violations of applicable laws, regulations, permits, and/or permit requirements, along with the enforcement actions proposed or taken with respect to such violations.

7. Administrative and Legal Provisions.

- A. Nothing in this MOU will be construed as limiting or affecting in any way the authority or responsibility of the LQD or BLM or as binding on either party to perform beyond their respective authority or to require either party to assume or expend any monies in excess of appropriations available.
- B. This MOU shall become effective as soon as signed by both parties and shall continue in force until formally terminated by either party. The termination shall follow a sixty (60) day notice in writing to the other agency regarding their desire to terminate the MOU. The MOU must be reviewed for adequacy and effectiveness as needed.
- C. Amendments to this MOU may be proposed by either party and shall become effective upon approval in writing by both parties.
- D. Any problems which cannot be resolved by the committee shall be referred to the next higher level of authority for resolution (LQD Administrator and BLM Deputy State Director of Minerals and Lands).
- E. Officials Not to Benefit: No member of, or delegate to, Congress or resident commissioner shall be admitted to any share or part of this MOU or to any benefit that may arise there from.
- F. Entirety of Agreement: This MOU consists of seven (7) pages and attached "Operating Guidelines for Management of Surface Minerals & Exploration for Mineral Materials (Saleable Minerals) on BLM Lands" consisting of a total of thirty two (32) pages. This is a Supplemental Memorandum to the general statewide Memorandum of Understanding (MOU NO. WY 19) dated October 28, 1975, between the Governor of Wyoming and the United States by and through the State Director, Bureau of Land Management, Wyoming, United States, Department of the Interior. This MOU (BLM MOU WY-920-1301) replaces MOU WY-93, signed by Governor Ed Herschler on August 8 1984, and signed by Bureau of Land Management State Director Hillary A. Oden on August 9, 1984.

All of the foregoing represent the entire and integrated agreement between the parties and supersede all prior negotiations, representations and agreements, whether written or oral.

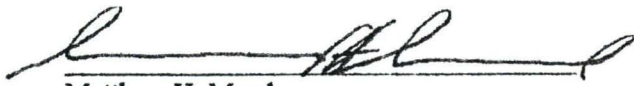
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8. **Signatures.** The parties to this MOU, through their duly authorized representatives, have executed this MOU on the dates set out below, and certify that they have read, understood, and agreed to the terms and conditions of this MOU as set forth herein.

The effective date of this MOU is the date of the signature last affixed to this page.

STATE OF WYOMING, by and through:


Matthew H. Mead
Governor

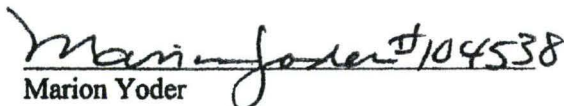
9/11/13
Date

U.S. DEPARTMENT OF INTERIOR, BUREAU OF LAND MANAGEMENT, by and through:


State Director, Bureau of Land Management

8/29/13
Date

ATTORNEY GENERAL'S OFFICE: APPROVAL AS TO FORM


Marion Yoder
Senior Assistant Attorney General

Aug. 23 2013
Date

Attachment: Wyoming Operating Guidelines: Management of Surface Mining & Exploration for Mineral Materials (Saleable Minerals) on BLM Lands

Senate Bill 2377

Presented by: Casey A. Furey, Attorney
Public Service Commission

Before: Senate Energy and Natural Resources Committee
The Honorable Donald Schaible, Chairman

Date: February 20, 2015

TESTIMONY

Mister Chairman and committee members, I am Casey Furey, Attorney with the Public Service Commission.

The Public Service Commission is neutral on Senate Bill 2377 with regard to the objective of the proposed changes to North Dakota Century Code Chapter 38.14.1, North Dakota's surface coal mining reclamation law. However, since the Commission administers this law, we believe some amendments are necessary to eliminate possible confusion that could be caused by the existing bill language.

Changes proposed by SB 2377 include changes to many of the definitions under Section 38-14.1-02. The definition of "coal" is being revised to exclude oxidized forms of lignite, or leonardite, from the existing definition. A new definition of "leonardite" is also being added. On page 6, the bill revises the definition of "Surface coal mining operations" to include lands affected by mining "leonardite" as well as "coal".

However, SB 2377, as originally drafted, proposes to insert the phrase "or leonardite" into several other definitions that use the term "surface coal mining operations." Inserting "or leonardite" when the term "surface coal mining operations" is used in other definitions may be confusing and subject to varying

interpretation, especially if that is not necessary to accomplish the purpose of the bill. There are also many instances where the term "surface coal mining operations" is used in parts of Chapter 38-14.1 where the phrase "or leonardite" is not being added by SB 2377.

To eliminate any confusion by adding "or leonardite" to the term "surface coal mining operations" in some places, but not in others, the Commission encourages you to amend SB 2377. The phrase "or leonardite" should be removed from the definitions of: "Approximate original contour," "Extended mining plan" and "Imminent danger to the health and safety of the public" on page 2; "Operator" and "Overburden" on page 3; "Permit," "Permit area," "Permit term," and "Pit" on page 4; "Reclaimed" or "reclaim," and "Reclamation plan" on page 5; and "Surface coal mining and reclamation operations" on page 6.

We have been informed the proponents of the bill will be proposing these amendments, but as of this writing, we have not yet seen any prepared amendments. We have attached a copy of the amendments we propose for your use in this regard. If additional amendments are proposed, the Commission requests an opportunity to review them and provide our comments to the committee.

Also, as you may know, any changes to North Dakota's surface coal mining reclamation law will have to be submitted to the federal Office of Surface Mining within the Department of the Interior for approval as an amendment to our approved coal regulatory program. We asked the Office of Surface Mining staff to review this bill and they informed us they did not have any problems with the

changes being proposed. However, they also recommend that some of the "or leonardite" insertions in definitions be omitted to eliminate possible confusion.

Mister Chairman, this concludes my testimony. I will be happy to answer any questions.

PROPOSED AMENDMENTS TO SENATE BILL NO. 2377

Page 2, line 6, remove "or leonardite"

Page 2, line 8, remove "or leonardite"

Page 2, line 23, remove "or leonardite"

Page 2, line 29, remove "or leonardite"

Page 3, line 12, remove "or leonardite"

Page 3, line 29, remove "or leonardite"

Page 4, line 5, remove "or leonardite"

Page 4, line 8, remove "or"

Page 4, line 9, remove "leonardite"

Page 4, line 18, remove "or leonardite"

Page 4, line 26, remove "leonardite"

Page 5, line 7, remove "or"

Page 5, line 8, remove "leonardite"

Page 5, line 12, remove "or leonardite"

Page 6, line 3, remove "or leonardite"

Renumber accordingly



Senate Bill 2377
Senate Energy and Natural Resources
February 20, 2015

Testimony of Edward C. Murphy, State Geologist
Department of Mineral Resources

Leonardite is currently defined as oxidized coal. As such, the Geological Survey regulates leonardite exploration under the state's coal exploration program (NDCC 38-12.1). Lines 11-17 of this bill amend the definition of coal in subsection 1 of section 38-12.1-03 in the North Dakota Century Code to exclude leonardite. In order to ensure that leonardite exploration continues to be regulated, I suggest that the following change be made to subsection 7 of section 38-12-01.

38-12-01(7). "Subsurface minerals" means all naturally occurring elements and their compounds, leonardite, volcanic ash, precious metals, carbonates, and natural mineral salts of 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.

As a result, leonardite exploration would then be regulated under the subsurface minerals program. Permit fees, bonding, reclamation, and data submission requirements would remain the same.

SENATE BILL 2377

To: Senate Energy and Natural Resources Committee

From: Brian Bjella, Lignite Energy Council

My name is Brian Bjella. I'm an attorney with the law firm of Crowley Fleck in Bismarck, North Dakota. I'm appearing on behalf of the Lignite Energy Council, which my law firm is a member of and I also serve on the Board of Directors.

I have over 30 years experience representing coal companies in mineral matters. This includes extensive experience in examination of title to mineral properties.

The Lignite Energy Council is opposed to Senate Bill 2377 for the following reasons:

1. As we understand, the United States of America reserved coal when it patented the lands that Leonardite Products is currently mining. Leonardite Products mines the land pursuant to a federal coal lease.

The title issue is whether leonardite is deemed to be a part of the coal pursuant to the federal coal reservation.

2. The determination as to what minerals are reserved in a federal mineral reservation is determined by federal law. For example, under North Dakota law gravel is not a mineral. But a federal reservation of "coal and other minerals" under a patent issued pursuant to the Stock-Raising Homestead Act of 1916 includes gravel according to the U.S. Supreme Court.

In the event of any ambiguity a court will seek to determine the intent of Congress when it passed the law mandating the mineral reservation. *Bedrock Limited LLC v United States*, 541 U.S. 176 (2004).

3. Changing state law to say that leonardite is not coal would make absolutely no difference. Whether the United States of America's reservation of coal either does or does not include leonardite is not a matter of state law.

If the United States of America does not own the leonardite as under federal law it is not part of the coal reserved, the BLM cannot lease it; and Leonardite Products' title problem would be solved.

However, if leonardite is considered part of coal under federal law, then the Bureau of Land Management has the right to lease it. Changing state law would not make any difference as the United States of America would still claim ownership.

4. The bill seeks to change the definition of coal under North Dakota's Surface Mining and Reclamation Operations Act (NDCC Chapter 38-14.1).

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However, North Dakota Century Code § 1-01-40 also provides a definition of coal which would appear to include leonardite in its definition. However, this statute is not sought to be changed by the bill.

This statute, NDCC § 1-01-40 was the subject of a North Dakota Supreme Court case in *GeoResources, Inc. v Tax Commissioner*, 288 N.W.2d 54 (N.D. 1980). The Supreme Court stated that given the definition of coal under NDCC § 1-01-40, that leonardite is coal under North Dakota law and is subject to the coal severance tax. This case involved the same mine that Leonardite Products now operates.

5. Other state statutes potentially affected are:
 - (a) Chapter 38-18, Coal Surface Owner Protection Act
 - (b) Chapter 57-61, Coal Severance Tax statutes
 - (c) Chapter 57-62, Impact Aid Program statutes
6. Under current North Dakota law, a coal mining company has the right to mine leonardite under coal leases it has secured from private coal owners. If this bill is passed the law would be changed to exclude leonardite from the definition of coal. The change could be detrimental to North Dakota coal mining operations as it raises a serious property law question as to who now owns the leonardite. If no longer deemed to be part of the coal, ownerships could change.
7. Federal regulations allow for a lessee of federal coal to pursue what is known as a category 5 royalty rate reduction from the Bureau of Land Management. Leonardite Products could attempt to use these regulations to obtain a royalty reduction for the coal it mines, and thus obtain the economic relief it states it needs.
8. The bill does not amend the state coal severance tax laws found in Chapter 57-61, North Dakota Century Code. As a result, if the bill would pass leonardite would be exempt from the coal severance tax. Thus, this bill does have a fiscal note.
9. It would appear that resolution can only come by virtue of a quiet title action by Leonardite Products against the United States of America to determine whether leonardite is considered part of the coal under federal law.

On behalf of the Lignite Energy Council, we urge a do not pass on Senate Bill 2377. Thank you.

21 24
Attachment 1

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, subsection
 3 1 of section 38-12.1-03, section 38-14.1-02, subsection 3 of section 38-14.1-05, subsection 3 of
 4 section 38-14.1-13, subdivisions r and s of subsection 1 of section 38-14.1-14, subdivision c of
 5 subsection 2 of section 38-14.1-14, paragraph 2 of subdivision e of subsection 3 of section
 6 38-14.1-21, subdivision b of subsection 4 of section 38-14.1-21, subsections 1 and 1.1 of
 7 section 38-14.1-24, subdivision b of subsection 3 of section 38-14.1-24, subsections 5, 10, and
 8 18 of section 38-14.1-24, section 38-14.1-25, subdivision b of subsection 1 of section
 9 38-14.1-27, ~~and~~ subsections 1, 3, and 4 of section 38-14.1-37, and section 47-10-24 of the
 10 North Dakota Century Code, relating to the definition of coal and leonardite.

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

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

14 **1-01-40. Coal - Definition.**

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

18 **SECTION 2. AMENDMENT.** Subsection 1 of section 38-12.1-03 of the North Dakota
 19 Century Code is amended and reenacted as follows:

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

1 **SECTION 3. 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 veneer 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 or leonardite mining
14 operations so that the reclaimed area closely resembles the general surface
15 configuration of the land prior to being affected by surface coal or leonardite mining
16 operations and blends into and complements 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 or leonardite
31 mining 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 or leonardite mining and reclamation operation, which condition,
- 6 practice, or violation could reasonably be expected to cause substantial physical harm
- 7 to persons outside the permit area before such condition, practice, or violation can be
- 8 abated. A reasonable expectation of death or serious injury before abatement exists if
- 9 a rational person, subjected to the same conditions or practices giving rise to the peril,
- 10 would not expose the person's self to the danger during the time necessary for
- 11 abatement.
- 12 9. "Leonardite" means a dark-colored, soft, earthy organic rock that is high in humic acid
- 13 content formed from the oxidation of lignite.
- 14 10. "Operator" means any individual, person, partnership, firm, association, society, joint
- 15 stock company, company, cooperative, corporation, limited liability company, or other
- 16 business organization, or any department, agency, or instrumentality of the state,
- 17 local, or federal government, or any governmental subdivision thereof including any
- 18 publicly owned utility or publicly owned corporation of the state, local, or federal
- 19 government, engaged in or controlling a surface coal or leonardite mining operation.
- 20 Operator does not include those who remove or intend to remove two hundred fifty
- 21 tons [226.80 metric tons] or less of coal or leonardite from the earth by coal or
- 22 leonardite mining within twelve consecutive calendar months in any one location or
- 23 who remove any coal or leonardite pursuant to reclamation operations under chapter
- 24 38-14.2.
- 25 10-11. "Other minerals" means clay, stone, sand, gravel, metalliferous and nonmetalliferous
- 26 ores, and any other solid material or substances of commercial value occurring within
- 27 five hundred feet [152.4 meters] or less of the land surface and which are excavated in
- 28 solid form from natural deposits on or in the earth, exclusive of coal or leonardite and
- 29 those minerals which occur naturally in liquid or gaseous form.

- 1 ~~44.12.~~ "Other suitable strata" means those portions of the overburden determined by the
2 commission to be suitable for meeting the requirements of subsections 2 and 17 of
3 section 38-14.1-24 and based on data submitted by the permit applicant.
- 4 ~~42.13.~~ "Overburden" means all of the earth and other materials, with the exception of suitable
5 plant growth material, which lie above natural deposits of coal or leonardite and also
6 means such earth and other materials, with the exception of suitable plant growth
7 material, disturbed from their natural state by surface coal or leonardite mining
8 operations.
- 9 ~~42.1.14.~~ "Performance bond" means a surety bond, collateral bond, self-bond, deposit, a bond
10 issued under the state surface mining and reclamation bond fund, any alternative form
11 of security approved by the commission, or combination thereof, by which a permittee
12 assures faithful performance of all requirements of this chapter.
- 13 ~~43.15.~~ "Permit" means a permit to conduct surface coal or leonardite mining and reclamation
14 operations issued by the commission.
- 15 ~~44.16.~~ "Permit applicant" means a person or operator applying for a permit.
- 16 ~~45.17.~~ "Permit area" means the area of land approved by the commission for surface coal or
17 leonardite mining operations which shall be readily identifiable by appropriate markers
18 on the site.
- 19 ~~46.18.~~ "Permit renewal" means the extension of the permit term for areas within the
20 boundaries of the initial or existing permit, upon the expiration of the initial or existing
21 permit term.
- 22 ~~47.19.~~ "Permit revision" means the modification of permit provisions during the term of the
23 permit and includes changes in the mining and reclamation plans, incidental boundary
24 extensions, and the transfer, assignment, or sale of rights granted under the permit.
- 25 ~~48.20.~~ "Permit term" means a period of time beginning with the date upon which a permit is
26 given for surface coal or leonardite mining and reclamation operations under the
27 provisions of this chapter, and ending with the expiration of the next succeeding five
28 years plus any renewal of the permit granted under this chapter.
- 29 ~~49.21.~~ "Permittee" means a person or operator holding a permit.

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- 1 ~~20-22.~~ "Person" means an individual, partnership, firm, association, society, joint stock
2 company, company, cooperative, corporation, limited liability company, or other
3 business organization.
- 4 ~~21-23.~~ "Pit" means a tract of land, from which overburden, or coal or leonardite, or both, has
5 been or is being removed for the purpose of surface coal leonardite-mining operations.
- 6 ~~22-24.~~ "Prime farmland" means lands as prescribed by commission regulation that have the
7 soil characteristics and moisture supply needed to produce sustained high yields of
8 adapted crops economically when treated and managed, including management of
9 water, according to modern farming methods. Furthermore, such lands historically
10 have been used for intensive agricultural purposes and are large enough in size to
11 constitute a viable economic unit.
- 12 ~~23-25.~~ "Prime soils" means those soils that have the required soil characteristics (including
13 slope and moisture supply) needed to produce sustained high yields of adapted crops,
14 as determined by the state conservationist of the United States department of
15 agriculture soil conservation service.
- 16 ~~24-26.~~ "Reclaimed" or "reclaim" means conditioning areas affected by surface coal or
17 leonardite-mining operations to make them capable of supporting the uses which they
18 were capable of supporting prior to any mining, or higher or better uses, pursuant to
19 subsection 2 of section 38-14.1-24.
- 20 ~~25-27.~~ "Reclamation plan" means a plan submitted by an applicant for a permit which sets
21 forth a plan for reclamation of the proposed surface coal or leonardite-mining
22 operations pursuant to subsection 2 of section 38-14.1-14.
- 23 ~~26-28.~~ "Refuse" means all waste material directly connected with the production of coal or
24 leonardite mined by surface coal mining operations.
- 25 ~~27-29.~~ "Soil amendments" means those materials added by the operator to the replaced
26 overburden or suitable plant growth material, or both, to improve the physical or
27 chemical condition of the soil in its relation to plant growth capability.
- 28 ~~28-30.~~ "Soil classifier" means a professional soil classifier as defined in subsection 4 of
29 section 43-36-01.

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

1 impoundments, dams, refuse banks, dumps, stockpiles, overburden piles, spoil
2 banks, culm banks, tailings, holes or depressions, repair areas, storage areas,
3 processing areas, shipping areas, and other areas upon which are sited
4 structures, facilities, or other property or materials on the surface, resulting from
5 or incident to such activities.

6 34.36. "Unwarranted failure to comply" means the failure of a permittee to prevent the
7 occurrence of any violation of the permittee's permit or any requirement of this chapter
8 due to indifference, lack of diligence, or lack of reasonable care, or the failure to abate
9 any violation of such permit or this chapter due to indifference, lack of diligence, or
10 lack of reasonable care.

11 **SECTION 4. AMENDMENT.** Subsection 3 of section 38-14.1-05 of the North Dakota
12 Century Code is amended and reenacted as follows:

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

19 **SECTION 5. AMENDMENT.** Subsection 3 of section 38-14.1-13 of the North Dakota
20 Century Code is amended and reenacted as follows:

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

1 period should be further extended in order to prevent possible resulting harm to the
2 permit applicant, or the applicant's successors and assigns.

3 **SECTION 6. AMENDMENT.** Subdivisions r and s of subsection 1 of section 38-14.1-14 of
4 the North Dakota Century Code are amended and reenacted as follows:

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

- 11 (1) The nature and depth of the various strata of overburden.
- 12 (2) The location of subsurface water, if encountered, and its quality.
- 13 (3) The nature and thickness of any coal, leonardite, or rider seam above the
14 coal or leonardite seam to be mined.
- 15 (4) The nature of the stratum immediately beneath the coal or leonardite seam
16 to be mined.
- 17 (5) All mineral crop lines and the strike and dip of the coal or leonardite to be
18 mined, within the area of land to be affected.
- 19 (6) Existing or previous surface mining limits.
- 20 (7) The location and extent of known workings of any underground mines,
21 including mine openings to the surface.
- 22 (8) The location of aquifers.
- 23 (9) The estimated elevation of the water table.
- 24 (10) The location of spoil, waste, or refuse areas, suitable plant growth material
25 stockpiling areas and, if necessary, stockpiling areas for other suitable
26 strata.
- 27 (11) The location of all impoundments for waste or erosion control.
- 28 (12) Any settling or water treatment facility.
- 29 (13) Constructed or natural drainways and the location of any discharges to any
30 surface body of water on the area of land to be affected or adjacent thereto.

1 commercial or institutional building, public road, stream, lake, or other public or
2 private property other than property subject to a coal or leonardite lease.

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

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

8 1.1. Conduct any auger mining associated with surface coal mining operations in a manner
9 that will maximize recoverability of coal or leonardite and other mineral reserves
10 remaining after mining activities and reclamation operations are completed, and seal
11 or fill all auger holes as necessary to ensure long-term stability of the area and
12 minimize any adverse impact to the environment or hazard to public health or safety.
13 The commission may prohibit auger mining if necessary to maximize the utilization,
14 recoverability, or conservation of coal or leonardite resources, to ensure long-term
15 stability, or to protect against any adverse impact to the environment or hazard to
16 public health or safety.

17 **SECTION 11. AMENDMENT.** Subdivision b of subsection 3 of section 38-14.1-24 of the
18 North Dakota Century Code is amended and reenacted as follows:

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

- 25 (1) Surface coal mining operations are carried out over a substantial period of
26 time at the same location where the operation transects the coal or
27 leonardite deposit;
- 28 (2) The thickness of the coal or leonardite deposits relative to the volume of
29 overburden is large; and
- 30 (3) The permittee demonstrates that the overburden and other spoil and waste
31 materials at a particular point in the permit area or otherwise available from

1 the entire permit area are insufficient, giving due consideration to volumetric
2 expansion, to restore the approximate original contour.

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

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

25 10. Remove or bury all debris and other similar material resulting from the operation and
26 bury all mine wastes ~~and~~ coal, and leonardite processing wastes unless the
27 commission approves the surface disposal of such wastes. If the commission
28 approves the surface disposal of such wastes, the permittee shall stabilize all waste
29 piles in designated areas through construction in compacted layers, including the use
30 of incombustible and impervious materials if necessary, to assure that the final contour

1 of the waste pile will be compatible with natural surroundings and that the site can and
2 will be stabilized and revegetated according to the provisions of this chapter.

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

16 **SECTION 13. AMENDMENT.** Section 38-14.1-25 of the North Dakota Century Code is
17 amended and reenacted as follows:

18 **38-14.1-25. Prohibited mining practices.**

- 19 1. ~~NeA~~ permittee may not use any coal or leonardite mine waste piles consisting of mine
20 wastes, tailings, coal processing wastes, or other liquid or solid wastes either
21 temporarily or permanently as dams or embankments unless approved by the
22 commission, after consultation with the state engineer.
- 23 2. ~~NeA~~ permittee may not locate any part of the surface coal mining and reclamation
24 operations or deposit overburden, debris, or waste materials outside the permit area
25 for which bond has been posted, except as provided in subsection 24 of section
26 38-14.1-03.
- 27 3. ~~NeA~~ permittee may not deposit overburden, debris, or waste materials in such a way
28 that normal erosion or slides brought about by natural causes will permit the same to
29 go beyond or outside the permit area for which bond has been posted.

30 **SECTION 14. AMENDMENT.** Subdivision b of subsection 1 of section 38-14.1-27 of the
31 North Dakota Century Code is amended and reenacted as follows:

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

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

16 **SECTION 15. AMENDMENT.** Subsections 1, 3, and 4 of section 38-14.1-37 of the North
17 Dakota Century Code are amended and reenacted as follows:

- 18 1. The provisions of this chapter do not apply to any of the following activities:
- 19 a. Extraction of coal or leonardite by a landowner for the landowner's own
20 noncommercial use from land owned or leased by the landowner.
- 21 b. Extraction of coal or leonardite as an incidental part of federal, state, or local
22 government-financed highway or other construction under regulations
23 established by the commission.
- 24 3. The commission may provide or assume the cost of training coal or leonardite
25 operators who meet the qualifications in subsection 2 concerning the preparation of
26 permit applications and compliance with the regulatory program.
- 27 4. An operator who has received assistance under subsection 2 or 3 shall reimburse the
28 commission for the cost of the services rendered if the commission finds that the
29 operator's actual and attributed annual production of coal or leonardite for all locations
30 exceeds three hundred thousand tons [272155.41 metric tons] during the twelve

1 months immediately following the date the operator is issued a surface coal mining
2 and reclamation permit.

3 **SECTION 16. AMENDMENT.** Section 47-10-24 of the North Dakota Century Code is
4 amended and reenacted as follows:

5 **47-10-24. Description and definition of minerals in leases and conveyances.**

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

12 2. ~~No~~ Except as provided in subsection 3, a lease of mineral rights in this state ~~shall~~ may
13 not be construed as passing any interest to any minerals except those minerals
14 specifically included and set forth by name in the lease. For the purposes of this
15 ~~paragraph~~ subsection, the naming of either a specific metalliferous element, or
16 nonmetalliferous element, and if so stated in lease, shall be deemed to include all of
17 its compounds and byproducts, and in the case of oil and gas, all associated
18 hydrocarbons produced in a liquid or gaseous form so named shall be deemed to be
19 included in the mineral named. The use of the words "all other minerals" or similar
20 words of an all-inclusive nature in any lease shall not be construed as leasing any
21 minerals except those minerals specifically named in the lease and their compounds
22 and byproducts.

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

27 **SECTION 17.** Section 57-61-01.9 of the North Dakota Century Code is created and enacted
28 as follows:

29 **57-61-01.9. Severance tax on leonardite in lieu of sales and use taxes.**

30 A tax of twenty-five cents per ton of two thousand pounds [907.18 kilograms] is imposed on
31 all leonardite severed for sale or for industrial purposes within this state. A mine operator shall

1 remit the tax for each month within twenty-five days after the end of each month to the state tax
2 commissioner. The mine operator shall submit the tax with any report or any form required by
3 the state tax commissioner.

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SB 2377

March 13, 2015

House Energy and Natural Resources Committee

Hon. Representative Todd Porter, Chairman

Chairman Porter and Committee Members,

Thank you for the opportunity to testify before you today on Senate Bill 2377. I am Brad Bekkedahl, Senator from District 1, and the prime sponsor of this bill on behalf of one of our Williston businesses. Leonardite Products is a company that provides a mined product to the agricultural industry as a fertilizer or soil amendment. They provide much needed employment diversity to a community that is heavily based upon oil industry jobs. They also assist the community in a rather unique way. The City of Williston has been able to use their excavated mining areas as pits for development as landfill cells for our refuse disposal. It significantly reduces our costs to place the cells into operation, and relieves the company of their burden of reclamation of the open pits. A win-win private public partnership.

The biggest threat to the continued operation and expansion of the company is the Federal government and its agency's interpretations of coal royalty assessments. Although the surface of the mined areas are privately owned, the coal rights are held by the Federal government since the time the land was homesteaded. The issue that SB 2377 addresses is the definition of Leonardite. North Dakota is the only State where Leonardite is considered coal. The Bureau of Land Management reports that since Leonardite is considered coal by definition in North Dakota, it must be treated as coal and requires a royalty payment by that standard in its mining. This royalty burden places the continued operation of this successful business operation in severe jeopardy. Leonardite Products has been and continues to aggressively pursue this issue with the Federal government, but believes changing the definition in State statute will be the most expeditious way to get the BLM to agree to drop the coal royalty issue, making mining the product and expanding the capacity cost effective to continue in North Dakota.

By changing the North Dakota Century Code to define Leonardite and removing three words from the definition of coal, we believe this company will have a better chance of negotiating settlements of the royalty issue with the Federal government, subsequently allowing the business to be successful and grow. I appreciate your consideration here today, and request a Do Pass recommendation for SB 2377.

I would be happy to take any questions at this time.

#1 PZ

LANDFILL ROAD

2



#2 p.1

#2
SB 2377
3-13-15

Testimony on SB2377

March 13, 2015

Chairman Porter and Members of the House Energy and Natural Resources Committee, my name is Representative Patrick Hatlestad, District One, Williston.

While oil has had the most attention in Williston, we are proud to be able to boast of another business utilizing the natural resources found in our area.

Leonardite mining has diversified our economy and has taken advantage of a natural resource truly unique to this state. Leonardite has been mined in the Williston area since 1964, providing steady employment thru the ups and downs of the oil industry.

When Leonardite Products took over the present facility in 2008 (formerly GeoResources), they diversified their market from just oil to both oil and agriculture. Leonardite Products' predecessor sold 90% of their material as an additive for water-based drilling fluids; 95% of what Leonardite Products sells today is to the agricultural industry as a fertilizer additive or soil amendment.

Leonardite from North Dakota is reputed to be the best in the world and is used as a benchmark for quality of other humates. From what I understand the two North Dakota leonardite mines and the mine in Wyoming are the only leonardite mines in North American with the proper alkaline solubility for use as an additive for oil drilling fluids (not the drilling fluids generally used in the Bakken). It is generally used as an additive in water-based drilling fluids used either farther south or off-shore.

#2 p. 2

Leonardite is a primary sector company. All of their products are sold outside North Dakota and 17-25% of their sales are outside the United States. That means leonardite mining brings new money in to the community and the State of North Dakota.

Currently Leonardite Products employs 30 people fulltime and operates 24/7. As an example of working with other business and helping with Williston's infrastructure, a neighboring business in Williston has applied to the health department to use the pits emptied of leonardite for an inert landfill. This is a real benefit because of the demands on Williston's entire infrastructure.

Leonardite Product would like to increase their markets and invest more in their facility yet are reluctant to do so due to the taxing structure imposed by the federal government. We'd like to see Leonardite Products grow but several changes need to take place.

There is something we can do to help Leonardite Products and other leonardite mining and processing companies in the state grow and prosper. It's called SB 2377 We ask you to excluded leonardite from the definition of coal and define Leonardite as a dark colored, soft, earthy organic rock that is high in humic acid content formed from lignite.

Thank you and I will stand for questions. However if you want the right answers you may want to ask those waiting to testify who have the expertise.

Mr. Chairman.

#3
SB 2377
3-13-15

#3 pl

THE HARMIS GROUP

March 13, 2015

Proposed Amendments to Engrossed SB 2377

Page 1, line 3, after "38-12-01," insert "section 38-12-02,"

P. 1, remove lines 16 through 18 and insert, 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.

P. 1, line 13 insert

SECTION 1. AMENDMENT. A new section to chapter 1-01 of the North Dakota Century Code is amended and reenacted as follows:

Leonardite – Definition.

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

Page 2, after line 2, insert:

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

38-12-02. Jurisdiction of commission.

The commission has jurisdiction and authority over all persons and property, public and private, necessary to enforce effectively the provisions of this chapter, to the extent not covered in chapter 38-14.1. Subject to the provisions of section 38-08-21, the director of mineral resources shall act as a supervisor charged with the duty of enforcing the regulations and orders of the commission applicable to the subsurface mineral resources of this state and the provisions of this chapter. The commission has authority to make such investigations as it deems proper to determine whether facts exist which justify action by the commission. The commission acting through he director of mineral resources has the authority:

1. To require:
 - a. The furnishing of a reasonable bond with good and sufficient surety, conditioned upon the full compliance with the provisions of this chapter, and the rules and orders of the commission prescribed to govern the exploration, development, and production of subsurface minerals on state and private lands within the state of North Dakota. The person required to furnish the bond may elect to deposit a collateral bond, self-bond, cash, or any

alternative form of security approved by the commission, or combination thereof, by which a permittee assures faithful performance of all requirements of this chapter and the rules and orders of the industrial commission.

- b. The delivery, free of charge, to the state geologist of the basic exploration data collected by the operator, within thirty days of field collection of such data. This data must include:
 - (1) Sample cuts, core chips, or whole cores.
 - (2) Sample logs, radioactivity logs, resistivity logs, or other types of electrical or mechanical logs.
 - (3) Elevation and location information on the data collection points.
 - (4) Other pertinent information as may be requested by the state geologist.

The data so submitted is confidential for a period of one year when so requested by the operator and such period may be further extended upon approval by the commission.

- c. The filing of monthly production reports in the manner prescribed by the commission and any other reports deemed necessary by the commission.
 - d. The conducting of all exploration, development, and production operations in such a manner as to prevent pollution of freshwater supplies, to provide for the protection of the environment and public safety, and to ensure the optimum recovery of the mineral resource.
 - e. The reclamation of all land disturbed by operations regulated by this chapter to a condition consistent with prior land use and productive capacity.
- 2. To regulate the drilling and abandonment of exploration test holes and producing wells and all other exploration, development, production, and reclamation operations.
 - 3. To promulgate and to enforce rules, regulations, and orders to effectuate the purposes and the intent of this chapter.
 - 4. To inspect all exploration, development, and production sites. For the purposes of this subsection, the director of mineral resources or the director's representative shall have access to all exploration, development, or production installations for purposes of inspection and shall have the authority to require the operator's aid if it is necessary and is requested."

Renumber accordingly

#4, p.1

#4
SB 2377
3-13-15

LEONARDITE PRODUCTS-LLC

SB2377 Testimony

Cherie Harms, President
cherie@leonarditeproducts.com
701-471-2704
March 13, 2015

Chairman Porter and Committee Members of the House Energy and Natural Resources Committee,

What this bill does:

Removes leonardite from the definition of coal in North Dakota by removing three words: "both oxidized and"

Defines Leonardite as follows:

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

[For a definition of humic acids, refer to the cover page of the Humic Product Trade Association newsletter attached with exhibits]

The Bureau of Land Management (BLM) and the Office of Natural Resource Revenue (ONRR) are charging exorbitant royalties on North Dakota leonardite using rules and regulations that apply to Federal coal. This is creating economic hardship and competitive disadvantages for Leonardite Products today and will do the same for other businesses wishing to mine leonardite on federal coal and mineral reserves in North Dakota.

Why:

Leonardite is not considered coal in any other state in the Union.

Officials from the BLM told Senator Hoeven's office and me that as long as leonardite is considered to be coal in the State of North Dakota the BLM will consider Leonardite to be coal when mined in this state.

Currently, Leonardite Products has three appeals with the ONRR, since they ordered us to pay 12.5% of our gross proceeds on each ton sold. This makes our per ton royalty anywhere from \$9.93 to \$18.75 per ton, depending on the grade. That royalty rate leaves no margin for profit.

In comparison private leonardite royalties range from \$.30 per ton to \$1.00 a ton. **[Exhibit A - Historic and Current Royalty Rates for Leonardite severed in ND WY, NM and Utah]**

Lignite coal companies pay between \$.27 to \$.50 per ton on State Trust lands and 2.2% of their selling price for the federal coal. Private lignite royalties range between \$.08 and \$.58 per ton. **[Exhibit B - Excerpt from Leonardite Products Royalty Rate Reduction Petition regarding lignite royalty rates]**

Currently, Leonardite Products has a Category Five Royalty Rate Reduction petition with the BLM to enjoy the same royalty rate the three lignite mining companies in the state achieved through the process in 2004. Leonardite Products petition for an application was submitted in March 2014 and is still being edited in the Billings, MT BLM office. From Billings the petition will go to Washington, DC and if DC approves, Leonardite Products will be allowed to apply for the royalty rate reduction. However, a royalty rate reduction alone will not satisfy the inequality of charging Leonardite a coal royalty.

We're not arguing today about who owns the Leonardite, just that it not be defined as coal. In the *Maurice Tanner* decision, the Interior Board of Land Appeals ("IBLA") held that humate is a mineral that the United States reserved under the Stock Raising Homestead Act, and in the process of classifying humate, the IBLA equated Leonardite as humate and humate as a salable material. *Maurice Tanner*, 141 IBLA 373 (1997). In accordance with the *Maurice Tanner* decision, several Bureau of Land Management ("BLM") planning documents classify Leonardite and/or humate as salable minerals. In addition the IRS does not treat Leonardite as lignite (1971 Revenue Ruling 71-494) and the OSM has taken the position Leonardite is not coal (ND regulatory program Fed. Reg. 37423-01). **[Exhibit C is an excerpt from Leonardite Products ONRR appeal with more details on the Maurice Tanner decision and why Leonardite should be a saleable mineral.]**

The business models for mining lignite coal used in energy development and Leonardite mine and processing center are completely different. Using the same formulas for collecting coal royalties on Leonardite, do not take into consideration the differences in mining, volumes, customers, uses, processing, pricing and competition.

We consulted the Public Service Commission Reclamation Division Director Jim Deutsch and with State Geologist, Edward Murphy. These two discussed how to make these changes work within the State and have contributed to the bill proposed today.

Attorneys within the PSC have suggested changes, which we've incorporated.

The Office of Surface Mining, within the Department of the Interior, does not consider Leonardite coal and has deferred management of such to the ND PSC Reclamation division.

We contacted the North Dakota Land Department. Drew Combs, Director of Minerals Management, consulted their attorney, before telling me this proposed change in the Century Code would not affect the current coal leases the State holds with lignite or Leonardite companies.

We are not asking for this rate reduction in order to avoid working with reclamation or paying severance taxes. I met with the Tax Department last July and again with Linda Leadbetter in February. There is no objection the revised severance tax we are proposing.

We are asking to be relieved of the \$.02 for the Lignite Research Fund and a 30 per cent reduction shrinkage in the drying process. **[The 2011-2014 Taxable Coal Severed by County is attached.]** Leonardite Products is in Williams County and American Colloid is in Bowman County.

I've been in contact with all three lignite mining companies, BNI, Westmoreland and North American Coal in North Dakota. BNI has been helpful by providing us with information for our BLM petition and ONRR appeals. BNI is aware of this pending legislation and have no objections. We've worked with the LEC and North American Coal to overcome their objections.

When leonardite is no longer included in the definition of coal:

Future mining expansion for American Colloid, Leonardite Products or others will be possible at reasonable royalty rates. Leonardite, a natural resource unique to North Dakota, reserved by a federal coal and mineral leases will not be ignored.

The BLM and ONRR will no longer be able to demand excessive royalties based on the argument they are following federal rules and regulations stipulated by North Dakota State Laws.

Our congressional delegation will be able to assist with Leonardite Products' negotiations without being told by the federal government that they are simply following North Dakota Law.

In 2008, when we invested in Leonardite Products, North Dakota was much different; there was no oil boom going on. We wanted to build a primary sector business to diversify and grow the local economy while providing employment and a return for our investors. Had we not bought the mine and plant, it would be shut down. We employ 30 people in Williston. We are proud to have built an agricultural market for leonardite. Last year at the Williston Economic Development annual meeting, Leonardite Products was awarded the Small Business Development Center Agricultural Entrepreneur Award. A copy of that is attached to my testimony. With a reasonable royalty rate, hope to expand our operation to keep up with the domestic and global agricultural and oil demand for North Dakota Leonardite.



Humic Products News

OFFICIAL NEWSLETTER OF THE HPTA • SEPTEMBER 2012

Follow us on humictrade.org

Official terms/definitions approved

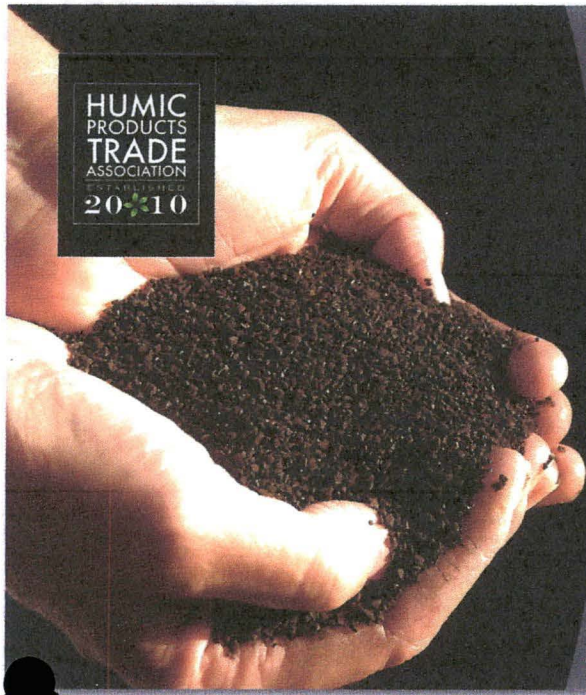
The efforts put forth by the HPTA in cooperation with Association of American Plant Food Control Officials (AAPFCO), starting in November of 2010, culminated on August 7, 2012 with the AAPFCO Terms and Definitions Committee officially approving the terms Humic Acids and Humates. Out of the thirteen terms submitted to the committee, the terms submitted by HPTA were the only items approved. The new official terms are;



T-64 Humic Acids – are the portions of the alkali extracted humic substances that are insoluble in strongly acidic solution. They will precipitate from the alkali extract in acid solutions of pH 2 or less. They can be used as either soil amendments, foliar application, or blended with liquid fertilizers.

T-65 Humates – are the salts of humic acids.

As almost all 48 states, Puerto Rico and Canada are members of AAPFCO, and as member states agree to the terms and definitions in the AAPFCO Official Publication for guidance in consistent fertilizer labeling, the humic industry is now in a position of strength when using the terms humic acids and humates on fertilizer labels.



We may have missed you at the Southwest Fertilizer Conference.

The goal of the Humic Products Trade Association (HPTA) is to advance the commercial uses of humic products through scientific and regulatory cooperation.

Our members play a key role in establishing standards for the labeling of humic products for sale at retail and we invite you to join us.

As a fertilizer industry leader, we value your input in this fast-growing and influential trade organization.

For more information visit us at www.humictrade.org

2012

HPTA Upcoming Events

ASA, CCSA, SSSA Annual Meeting
Booth #433, October 21–24
Duke Energy Center & Hyatt Regency Hotel
Cincinnati OH
www.acsmeetings.org

HPTA General Membership Meeting
Wednesday, October 24, 8:00AM–12N
Buckeye AB, Hyatt Regency Hotel
Cincinnati OH
RSVP: info@humictrade.org

ARA Conference & Expo
Booth# 405, November 27–29
Manchester Grand Hyatt, San Diego CA

Membership drive continues

HPTA is growing through continuing efforts to reach out to humic product professionals. Pictured above is a postcard developed to contact potential members in the fertilizer industry who may have missed our booth at the Southwest Fertilizer Conference. Our presence at industry conferences, meetings and expos such as those listed above, is helping to increase HPTA membership.

Exhibit A

Historic & Current Royalty Rates for Leonardite Severed in ND, WY, NM & Utah

	Company	Lease	Dates	Royalty	Per
	GeoResources/(Nelson Mine)	Constance Ryan Estate	May 1998	\$.30 per ton 1964-1974, \$.47 in 1980 and \$.56 per ton in 1988 to 2006.	160 acres, Williams County, ND
	GeoResources	Bureau of Land Management (Federal Lease)	December 1, 1964	\$.10 per ton year 1-5 \$.125 per ton year 6-10 \$.15 per ton year 11 on	320 Acres, Williams County, ND
	GeoResources	Hardy Salt Company		\$.35 ton first two years and \$.40per ton for eight years.	35 acres
	American Colloid	Edwin Tompkins	October 2006	\$1.00 per ton \$.50 applied to surface damage, \$.50 mineral production	One quarter (40 acres)
	American Colloid	State of ND/School Lands	December 30, 1999	\$.25 per ton	10 acres, Bowman County, ND
	American Colloid	Robert and Myrtice Perkins	April 4, 1997		16 acres, Bowman County, ND
	American Colloid	Leonard & Carol Page	May 1, 1991	\$1.00 per ton	1350 acres Adams and Bowman County, ND
	Morningstar, Pueblo Alto & Star Lake Mines /Mesa Verde, New Mexico		current	\$3-5.00 per ton, Includes lease Mined dry	15 acres open, San Juan county, New Mexico
	Miracle Rock Mining/ Live Earth, Utah		current	\$3-5.00 per ton, Include lease Mined dry	162 acres Emery, Utah
	Wyoming Black Hills Bentonite (leonardite mine)		2013 BLM rate	1.21 per ton	

Exhibit B

Excerpt from Leonardite Products Petition for a Royalty Rate Reduction regarding Lignite Royalty Rates

Submitted to the BLM in March 2014

Lignite Mine Royalty Rates- Non Federal

The non-federal royalty rates listed below were taken from the leases included in the NDPSC mining permits listed above. Each permit contains multiple leases. Many of the non-federal royalty rates for the North Dakota Lignite mines were established in the 1970's and have been renewed in twenty year increments since. The non-federal royalty rates listed below are representative of the various non-federal royalty rates for each lease yet do not include rates for every lease inside each permit area; a list of every lease and royalty would be lengthy and repetitive.

The Beulah Mine pays the State of North Dakota \$0.25 (25 cents) per ton or 6 percent of the price per ton of coal. Private coal leases vary in price from \$0.08 (8 cents) per ton to \$0.12 (12 cents) per ton or 1.2 percent of the average value per ton, less adjustments such as taxes and material used to mine to 62.5 percent of \$0.60 (60 cents) which equals \$0.375 (37.5 cents) or 3 & 1/2 the average value per ton of coal less materials and taxes.

The Freedom Mine pays the State of North Dakota \$0.25 (25 cents) per ton or 6 percent of the price per ton of coal.¹ It appears the highest royalty paid to private coal lease holders is \$0.12 (12 cents) per ton, yet the majority of private lease holders are paid \$0.08 (8 cents) or \$0.10 (10 cents) per ton mined.

Falkirk also pays the State of North Dakota \$0.25 (25 cents) per ton or 6 percent of the price per ton of coal. Consistently the private coal leases pay a royalty of \$0.10 (10 cents) per ton, which includes a \$0.02 (2 cent) allowance for surface damage, in essence paying a royalty of \$0.08 (8 cents) per ton mined.

According to BNI Coal, most Center Mine leases are either for \$0.10 (10 cents) per ton surface and \$0.10 (10 cents) or \$0.15 (15 cents) per ton for coal mined.

Between 1980 and 2012, the Savage Mine in Richland County, MT mined 9,724,528 tons of coal. *The Best Available Figures of Cumulate Royalty Payments from Montana Surface Mining* list the federal royalties paid by the Westmoreland Savage mine through December 2012 to be \$4,097,226.00, private royalties were \$1,506,109.00 totaling \$5,603,335.00. Assuming the two tables found on the State of Montana web site used to compile the information above are accurate and cover the same time period, the average royalty rate paid to both the US Government and private coal owners is \$0.58 (58 cents) per ton.

The contracts each mining company has with their customers is not readily public information, therefore the value of each ton of coal is not available for this report. Thus, the value determination for the royalty rates based on percentages of the value of the coal is not available in this petition. Nor are the deductions allowed such as materials and taxes deducted from the value of each ton mined and sold. However

¹ According to the North Dakota Department of State Lands, the royalty may have been renegotiated since this report was written.

according to the notice in the Federal Register, the federal royalty is 2.2 percent of the value of coal, thus the federal government should have access to the value of each ton of coal for the federal permitted coal.

Leonardite Products is paying a royalty of 12.5%. Until August of 2013 the unit value for that percentage was \$15.35 on each mined ton. The royalty paid on tons mined from the federal lease NDM-065329 between 2005 and August of 2013 was \$1.92 per mined ton. The Office of Natural Resource Revenue (ONRR) issued an order in August 2013 stipulating the 12.5% royalty be paid on the gross proceeds of tons sold. Thus the average royalty per ton sold is near \$13.00 per ton. ²

It is clear the royalty charge to Leonardite Products on the tons mined and sold is considerably higher than any of the royalty rates charge to the lignite mines in Mercer, McLean or Oliver counties in North Dakota or in Richland County, Montana.

² Since this was written in 2013, Leonardite Prices have raised their price per ton, thus the royalty rate on one grade of processed Leonardite is over \$18.75.

Excerpt from Leonardite Products ONRR Appeal

Leonardite Should be treated as a Salable Mineral.

The substance known as leonardite does not constitute coal but is a mineral material such as peat, humus, or humate. Mineral materials, which are also known as salable minerals, are governed by the Minerals Material Act of 1947 and are not assessed royalty in same manner as coal, which is a leasable mineral. Thus, it is improper to assess royalties on leonardite based on the method for assessing royalty on coal.

In the *Maurice Tanner* decision, the Interior Board of Land Appeals (“IBLA”) held that humate is a mineral that the United States reserved under the Stock Raising Homestead Act, and in the process of classifying humate, the IBLA equated leonardite as humate and humate as a salable material. *Maurice Tanner*, 141 IBLA 373 (1997). In its analysis, the IBLA noted that “humate” is a broad term sometimes characterized as “carbonaceous claystone or shale rich in humic matter.” *Id.* at 376. The IBLA also noted that ever since 1979, the official statement of position from the BLM and the Solicitor’s Office was that “humate was a reserved salable mineral.” *Id.* at 378. More importantly, the IBLA equated humate with leonardite: “the term ‘humate’ has also been applied to a form of weathered coal called ‘leonardite’” *Id.* at 376. By noting that the terms “humate” and “leonardite” both indicate the same substance, the *Maurice Tanner* decision shows that leonardite is a salable mineral distinct from coal.

In accordance with the *Maurice Tanner* decision, several Bureau of Land Management (“BLM”) planning documents classify leonardite and/or humate as salable minerals. Specifically, the 2004 Mineral Occurrence and Development Potential Report, prepared in conjunction with the Resource Management Plan for the BLM Field Office in Casper, Wyoming, expressly lists leonardite as a mineral material: “Mineral materials such as sand and gravel, moss rock, flagstone, rock aggregate, riprap, leonardite, and scoria are available on demand for sale or free use within the Casper Planning Area.” U.S. DEPARTMENT OF THE INTERIOR, BLM, MINERAL OCCURRENCE AND DEVELOPMENT POTENTIAL REPORT 3-37 (2004) available at <http://www.blm.gov/pgdata/etc/medialib/blm/wy/programs/planning/rmps/casper/docs.Par.64130.File.dat/mr.pdf> [hereinafter Wyoming BLM Mineral Report]. The Wyoming BLM Mineral Report goes on to list leonardite as one of the primary salable minerals within the Casper Planning Area, *id.* at 3-41, and characterizes leonardite as a substance with a high humic acid content, with primary uses being a drilling mud thinner and fertilizer, *id.* at 3-45.

Similarly, planning documents from other BLM field offices use the term “humate” to describe leonardite-like substances and categorize humate as a salable mineral. For example, the BLM Field Office in Rio Puerco, New Mexico uses the term “humate” to broadly encompass “oxidized coals, carbonaceous shales and mudstones, and organic rich sandstones” whose most desirable feature is a high humic acid

content. U.S. DEPARTMENT OF THE INTERIOR, BLM, MINERAL RESOURCE POTENTIAL AND REASONABLY FORESEEABLE DEVELOPMENT: FINAL REPORT 95 (2010) *available at* http://www.blm.gov/nm/st/en/fo/Rio_Puerco_Field_Office/rpfo_planning/rpfo_draft_rmp.html (follow “Mineral Potential Report 2010” hyperlink) [hereinafter New Mexico BLM Mineral Report]. The New Mexico BLM Mineral Report notes that the most common uses for humate include soil conditioners, plant nutrients, and drilling fluid additives, and that humate formations are located near coal seams. *Id.* at 95-96. The BLM Field Office in Moab, Utah, has a similar description of humate, and both the Rio Puerco and Moab field offices list humate as a salable mineral. New Mexico BLM Mineral Report, 79, 95; U.S. DEPARTMENT OF THE INTERIOR, BLM, MINERAL POTENTIAL REPORT 31, 32 (2005) *available at* http://www.blm.gov/pgdata/etc/medialib/blm/ut/moab_fo/rmp/background_documents/mineral_potential.Par.37493.File.dat/MineralPotentialReportComplete-NoMaps.pdf.

BLM’s treatment of leonardite as a mineral material distinct from coal is not limited to planning documents. There is at least one leonardite mine located in Wyoming, and BLM manages this mine under mineral materials regulations and not the regulations for leasable materials: “Attachment 1 shows a self-bond is being held in the matter of a mine permit for weathered lignite (leonardite) within the Casper Field Office. The BLM issued the subject leonardite sale under the mineral material regulations.” U.S. DEPARTMENT OF INTERIOR, BLM, INSTRUCTION MEMORANDUM NO. WY-2010-001, ACCEPTABLE FORMS OF FINANCIAL GUARANTEES FOR LOCATABLE MINERAL PLANS OF OPERATION AND NOTICES, AND EXCLUSIVE MINERAL MATERIAL SALES 3, *available at* <http://www.blm.gov/pgdata/etc/medialib/blm/wy/resources/efoia/IMs/2010.Par.35298.File.dat/wy2010-001.pdf>. Moreover, the serial register page for this leonardite mine (Serial No. WYW-175554) lists the commodity as a mineral materials in the same class as “soil/other, peat/humus.”

The *Maurice Tanner* decision and BLM’s treatment of leonardite is consistent with other federal agencies. The Office of Surface Mining Reclamation and Enforcement (“OSM”), and the Internal Revenue Service (“IRS”) also have taken positions that leonardite is distinct from coal. In a 1971 revenue ruling, the IRS determined that leonardite was a separately identifiable mineral distinct from lignite (a low quality coal) and would not be taxed as lignite: “The term ‘leonardite’ has a commonly understood commercial meaning as a separately identifiable mineral possessing properties and characteristics that distinguish it from lignite . . .” Rev. Rul. 71-494, 1971-2 C.B. 247. Similarly, the “OSM has taken the position that leonardite is not ‘coal’” North Dakota Permanent Regulatory Program 59 Fed. Reg. 37423-01 (July 22, 1994). A letter sent to the Reclamation Director of the North Dakota Publix Service Commission confirming OSM has no jurisdiction over leonardite mining in North Dakota.

Leonardite is consistently classified as a separate mineral distinct from coal. Where coal is a leasable mineral, leonardite or humate constitutes a salable mineral under the Minerals Material Act of 1947. Thus, assessing royalties on leonardite, a salable mineral, based on the method for assessing royalty on coal, a leasable mineral, is improper.

Taxable Coal Recovered Per County

Qtr/Yr	Company	BOWMAN	MCCLEAN	MERCER	OLIVER	WILLIAMS
2011	American Colloid	78,015.24				
	BNI Coal Ltd.				4,201,554.00	
	Coteau Properties			13,639,122.00		
	Falkirk Mining Co.		7,377,408.00			
	Leonardite Products					8,028.00
	Dakota Westmoreland				2,919,954.48	
2011 Total	Total Tons	78,015.24	7,377,408.00	16,559,076.48	4,201,554.00	8,028.00
\$0.375	Severance Tax	\$ 29,255.72	\$ 2,766,528.00	\$ 6,209,653.68	\$ 1,575,582.75	\$ 3,010.50
\$0.02	Lignite Energy Research F	\$ 1,560.30	\$ 147,548.16	\$ 331,181.53	\$ 84,031.08	\$ 160.56
2012	American Colloid	108,620.99				
	BNI Coal Ltd.				4,373,589.00	
	Coteau Properties			12,974,746.00		
	Falkirk Mining Co.		7,815,624.00			
	Leonardite Products					7,316.00
	Dakota Westmoreland				2,310,577.29	
2012 Total	Total Tons	108,620.99	7,815,624.00	15,285,323.29	4,373,589.00	7,316.00
\$0.375	Severance Tax	\$ 40,732.87	\$ 2,930,859.00	\$ 5,731,996.23	\$ 1,640,095.88	\$ 2,743.50
\$0.02	Lignite Energy Research F	\$ 2,172.42	\$ 156,312.48	\$ 305,706.47	\$ 87,471.78	\$ 146.32
2013	American Colloid	41,947.00				
	BNI Coal Ltd.				3,652,547.00	
	Coteau Properties			13,782,716.00		
	Falkirk Mining Co.		7,537,847.00			
	Leonardite Products					14,893.50
	Dakota Westmoreland				2,473,234.14	
2013 Total	Total Tons	41,947.00	7,537,847.00	16,255,950.14	3,652,547.00	14,893.50
\$0.375	Severance Tax	\$ 15,730.13	\$ 2,826,692.63	\$ 6,095,981.30	\$ 1,369,705.13	\$ 5,585.06
\$0.02	Lignite Energy Research F	\$ 838.94	\$ 150,756.94	\$ 325,119.00	\$ 73,050.94	\$ 297.87
2014	American Colloid	86,366.00				
	BNI Coal Ltd.				3,927,735.00	
	Coteau Properties			14,432,335.00		
	Falkirk Mining Co.		7,860,470.00			
	Leonardite Products					9,644.00
	Dakota Westmoreland				2,759,399.92	
2014 Total	Total Tons	122,611.00	9,849,495.00	21,221,507.92	4,932,398.00	9,644.00
\$0.375	Severance Tax	\$ 45,979.13	\$ 3,693,560.63	\$ 7,958,065.47	\$ 1,849,649.25	\$ 3,616.50
\$0.02	Lignite Energy Research F	\$ 2,452.22	\$ 196,989.90	\$ 424,430.16	\$ 98,647.96	\$ 192.88

*Updated with information from <http://www.nd.gov/tax/coal/pubs/>

10

#4 p10

Leonardite Products wins Agriculture Entrepreneur Award for 2014

Williston Economic Development

It may sound a bit odd now, but the winner of the outstanding agriculture business award actually got its start in the oil and gas industry. When this particular Williston business was founded in 1964 it created and sold an additive to water based drilling fluids.

By 2008, 90 percent of the company's materials went to the oil field; but at the time the price of oil price was fluctuating. It was that year that Karl Merk, Mary Mahar, Rod Smith and Cherie Harms collaborated with other investors and took over the operation with an eye on diversifying. They formed Leonardite Products and concentrated on agriculture.

They eventually developed three dry grades of Leonardite and two liquid products with the trade name "SOURCE."

Since 2008 the number of tons sold has increased by more than 250 percent and nearly 10,000 gallons of the liquid fertilizer additives are sold per year to fertilizer manufacturers around the world.

Leonardite is mined and processed east of Williston. It is a natural form of HUMATES, an oxidized lignite coal unique to this area. Leonardite Products has competitors all over the world, yet the material found in western North Dakota is favored because of the higher humic acid content.

According to Cherie Harms, the "SOURCE" line of products acts like a soil amendment, it lowers the pH of soil, adds organic material and helps with moisture retention.

"It makes fertilizers work better and acts as a chelator. The better the soil, the healthier the plants," she says.

Accepting the Small Business Development Center Agriculture Entrepreneur Award recently in Williston were Karl Merk and Mary Mahar of Leonardite Products.

#5
SB 2377

#5 pl

March 13, 2015

Testimony on Senate Bill #2377

Good morning,

Mr. Chairman and members of the House Energy and Natural Resources Committee:



AMERICAN COLLOID COMPANY

PERMITTING & RECLAMATION DEPARTMENT

P.O. Box 2010 • Belle Fourche, South Dakota 57717

(605) 892-6371 • FAX (605) 892-3178

My name is Lyndon Bucher and I am employed by American Colloid Company (ACC). ACC is an 88 year old company that is probably best known as the world's leading supplier of bentonite products. It happens that leonardite is a complimentary mineral with bentonite products in the agriculture, drilling mud, and foundry markets. We have operated a leonardite processing plant in Gascoyne since 1957. Originally our leonardite was purchased from the Knife River Coal Mine across the road from our plant. It was simply considered overburden from their perspective. In the late '80s we procured a private mineral lease and mine permit. Last year we shipped a whopping 58,000 tons of leonardite by rail and truck. I recognize it is not many tons relative to other industries, but it is a linchpin to our overall business in the markets we serve. Furthermore, this operation provides a good livelihood to 28 local employees. I am here today to testify in support of Senate Bill #2377. American Colloid is asking for passage of this Bill so we can remain competitive in the leonardite market. Since 1980 we have utilized primarily private and some State mineral reserves near the plant in Gascoyne however, we have identified additional reserves nearby which are reserved to the United States. Federal minerals are managed by the Bureau of Land Management (BLM) under three general mineral classifications; Locatable minerals, Leasable Minerals, and Salable Minerals. This authority is given to BLM by Congress under three primary laws including the General Mining Act of 1872, the Minerals Leasing Act of 1920, and the Materials Act of 1947. It stands to reason that the BLM would classify a given mineral in the same category across the United States. In other words, gold is a locatable mineral in all 50 states, coal is a leasable mineral in all 50 states, and gravel is a salable



mineral in all 50 states. So you may appreciate my surprise to learn that this is not the case concerning leonardite.

For example, the Wyoming BLM considers leonardite a salable mineral under the Materials Act and the Montana - Dakotas BLM considers leonardite to be a leasable mineral under the Minerals Leasing Act. (Phil Perlewitz, BLM Montana State Office, personal communication). According to the BLM, they are constrained to treat leonardite as a leasable mineral because of the broad definition of coal in the North Dakota Century Code.

Leonardite has been recognized as a distinct and different subsurface material from lignite coal since Dr. A.G. Leonard's work in North Dakota's deposits in the early 1900's. It is the particularly high humic acid content in leonardite that makes it highly desirable for use in products serving the previously mentioned industries. According to Youngs and Frost at the U.S. Department of Interior Lignite Research Laboratory in Grand Forks, "*Leonardite is a coallike substance similar in structure to lignite, but significantly different in its oxygen and ash contents.*" (emphasis added) ([Exhibit A, Humic Acids from Leonardites - - A soil conditioner and Organic Fertilizer, Roger Youngs & Clyde Frost, USDI Bureau of Mines, Grand Forks, ND](#))

Wyoming acknowledged the difference between leonardite and coal from a regulatory standpoint after the passage of the Surface Mine and Reclamation Control Act of 1977. In 1982, Wyoming Governor Ed Herschler wrote to the Director of Office of Surface Mining (OSM) in the Department of Interior explaining his State's justification for classifying leonardite as a "noncoal mineral". ([Exhibit B, letter from Gov. Ed Herschler to J.R. Harris, Director of OSM](#))



The Director's response letter acknowledges that leonardite has distinguishing physical characteristics compared to lignite. To quote from his letter, "*I would agree with you that these properties—lower Btu/lb values, higher oxygen and moisture content, a 20-fold increase in an alkaline solution base, and, more particularly, the fact that lignite is a compact material while leonardite is soft and earthlike—do, indeed, demonstrate that leonardite is a separate and distinct mineral.*" (Exhibit C, reply letter from J.R. Harris, Director of OSM to Gov. Ed Herschler) Shortly thereafter, a letter was received by Mr. Ed Englerth, Director of the Reclamation Division of the North Dakota PSC from the Northwest OSM Field Office indicating "that the three leonardite mines in North Dakota are no longer under OSM jurisdiction." (Exhibit D, letter from William Thomas, Director Northwest OSM Field Office to Mr. Ed Englerth) In 1984 Governor Herschler further clarified the classification of leonardite with the BLM as a salable mineral as demonstrated in a Memorandum of Understanding between the State of Wyoming and BLM. This MOU specifically includes leonardite as mineral materials (salable minerals) along with the usual sand, gravel, scoria, etc. (Exhibit E, Page 2 of 7 Supplement to Memorandum of Understanding No. WY 19 for Management of Surface Mining and Exploration for Mineral Materials on Public Lands).

You may be asking yourself, "Why should North Dakota care what Wyoming is doing?" The answer lies in competition for economic development. The difference between the cost and permitting burden to develop federal salable mineral vs leasable mineral is astronomical. The disposal process for leasable minerals is conducted through what is known as a Lease By Application (LBA).



This application approval process typically takes 4-5 years and requires significant investment in pre-lease exploration and environmental studies by the proponent before BLM will determine if they will lease the mineral. The proponent must hire a 3rd party consultant to write an Environmental Assessment or an Environmental Impact Statement. The current BLM royalty rate for federal leasable leonardite in North Dakota is over \$15 per ton.

On the other hand, the disposal process for a salable mineral is much more tolerable. It is a fairly straightforward process where one simply requests BLM dispose of a certain deposit. The BLM will determine if there is any preclusion from selling the defined deposit and if not, proceed with either a competitive sale or non-competitive contract sale. A mine and reclamation plan must be submitted and approved. I am told that the entire process typically takes 6 – 18 months. The 2013 BLM published royalty rate for leonardite in Wyoming is \$1.21 per ton. Of course, in both cases, the project proponent must also comply with all State regulations for a mine permit application.

In conclusion, I hope I have been able to provide a good understanding of why this bill is important to American Colloid Company. Leonardite truly is a different material than lignite coal, not only in its physical properties, but also in the markets where it is applied because of those properties. What seems like a very straightforward application of policy can be clarified by the changing of just a few words in the North Dakota Century Code. Yet, the impact can make a substantial difference for small producers in North Dakota like American Colloid and Leonardite Products. It is extremely difficult to compete in the world market place when we must pay 12 times more than our competitors for the raw material; only because of BLM's interpretation of North Dakota's Century Code.

#5 P5

Exhibit A

#5 pl6

HUMIC ACIDS FROM LEONARDITE -- A SOIL CONDITIONER
AND ORGANIC FERTILIZER

Roger W. Youngs and Clyde M. Frost

U. S. Department of the Interior, Grand Forks
Lignite Research Laboratory, Bureau of Mines,
Grand Forks, N. Dak.

The term "humic acid" was first applied in 1826 by Sprengel (9) to that brown amorphous precipitate which is obtained by acidifying the alkali extract of decayed organic matter in soil. Since the inception of the term, humic acids have been extracted not only from soil but also from peat, brown coal, oxidized bituminous coal, and even from artificial materials obtained in the laboratory by action of inorganic acids or oxidizing agents on carbohydrates, proteins, and phenols. Odin (8) in 1922 redefined humic acids as yellow-brown to black-brown substances of unknown constitution, formed in nature by decomposition of organic materials under atmospheric influence or in the laboratory by chemical action. Humic acids can split off hydrogen ions and form typical salts with strong bases and usually are insoluble in water, soluble in alkali, and reprecipitated by acid. In general, humic acids are not chemically uniform substances, but are hydrophilic, reversible colloids with molecular weights varying from 300 to as high as 10,000 units. Their micelles carry a negative charge. The alkali solubility of humic acid is due to carboxyl and phenolic hydroxyl groups which account for about 22 percent of the weight of the molecule.

Humic acid is an essential part of soil. It is this material, present in good soil, that fixes nitrogen, makes available to the plant, through base exchange, the soil nutrients, and improves the physical structure of the soil. In recent years, much research has been conducted, particularly in India, Japan, Germany, Russia, and France, on replenishing the depleted humic acids of soils with the so-called "regenerated humic acids" obtained by oxidation of coal. These regenerated acids, which closely resemble the natural humic acids, have either been added directly to the soil or first supplemented with plant nutrients. Greenhouse and field tests have shown that these humic acid preparations improve plant yields (3), decrease loss of moisture from the soil (6), and increase the workability of the soil (2).

As a convenient and commercial source of humic acids, extensive reserves of naturally-oxidized lignite occur with virtually all lignite outcrops in North Dakota. This naturally-oxidized material, which contains up to 86 percent humic acids on a moisture-and-ash-free basis, has been given the name "leonardite," after A. G. Leonard, first director of the North Dakota Geological Survey, who did much of the early studies on these deposits (1). Leonardite is a coallike substance similar in structure to lignite, but significantly different in its oxygen and ash contents. In Table 1 the ultimate analyses of lignite, leonardite, lignite oxidized with air in the laboratory at 150° C, and humic acid extracted from leonardite with 1N NaOH are compared. The ash content of leonardite varies from mine to mine but is usually between 15 and 30 percent on a moisture-free basis.

#5 P7

13.

TABLE 1. - Analyses of lignitic materials, percent

	Leonardite	Lignite	Oxidized lignite	Humic acid extracted from leonardite by 1N NaOH
Ash (mf)	18.7	10.0	10.7	3.9
Hydrogen (maf)	4.0	5.1	2.9	3.4
Carbon (maf)	65.2	72.8	65.4	63.5
Nitrogen (maf)	1.3	1.2	1.4	1.3
Oxygen (maf)	26.6	19.9	29.2	31.1
Sulfur (maf)	2.9	1.0	1.1	0.7

AMMONIATION OF LEONARDITE

Nitrogen-enriched coal humic fertilizers have received much emphasis in the past few years. Recent investigations have indicated that these products perform well as conventional fertilizers and release nitrogen more slowly. The main problem in technology is to develop a product with sufficiently-high nitrogen content (around 20 pct) which will still remain commercially competitive.

To determine if leonardite could be ammoniated to a product containing sufficient nitrogen for use as an organic fertilizer, samples were prepared by three different methods: (1) Ammoniation in an aqueous slurry, (2) ammoniation in an upward moving gas stream through a column of dried leonardite, and (3) ammoniation under pressure of 2,000 psig at 200° C. The nitrogen analyses of these variously ammoniated leonardite samples and the analysis of an aqueously ammoniated humic acid extracted from leonardite appear in table 2. The increase of nitrogen content of leonardite, even under radical conditions, is not sufficient for it to be used as an organic fertilizer. The nitrogen content of the ammoniated humic acid increased 2.5 times over that of the correspondingly ammoniated leonardite sample. The higher ash content, as well as the 15-percent nonhumic carbonaceous material in the leonardite, accounts for the decreased reactivity with ammonia. Therefore, to prepare a high-nitrogen organic fertilizer, the humic acids would first have to be extracted from the leonardite.

TABLE 2. - Nitrogen analyses of variously ammoniated samples, percent
(Moisture-free basis)

Sample	Method of ammoniation		
	1	2	3
Leonardite	3.87	2.82	11.15
Humic acid	8.13	-	-

RECOVERY OF HUMIC ACIDS FROM LEONARDITE

One part of the work at this laboratory was to find an inexpensive, rapid method for obtaining from leonardite bulk quantities of low-ash humic acids which could be used in preparing a soil conditioner and high-nitrogen-content organic fertilizer. The humic acids in leonardite are bound to the ash largely as insoluble calcium salts. Therefore, to recover the humic acids requires not only a physical means

of removing the clay and sand, but also a chemical treatment to displace the calcium ion. In the past, alkali extraction of the humic acids with removal of the insolubles by centrifuging the humate solution was the standard procedure for obtaining low-ash humic acids (5). The alkali extraction process, however, requires not only fresh alkali for each lot of humic acid prepared but also an equivalent amount of acid to set the humic acid free, both of which are used up in the process. The large volumes of water, which must be used to obtain a low-ash product, plus the unfilterable nature of the alkali humate solution and acid-precipitated humic acid, make the alkali extraction of humic acids unattractive. The problem of eliminating alkali extraction as the method of preparing low-ash humic acids was approached by two different routes: (1) Removing the ash physically and chemically from the leonardite, leaving a carbonaceous product containing around 85 percent humic acid, and (2) extracting the humic acid from the leonardite with an organic solvent that could be reclaimed for further extractions.

Float-Sink Process. Figure 1 schematically represents the process that was used in our experiments. Partially-dried, pulverized leonardite was added to a separatory funnel containing CCl_4 as the dense medium. The float fraction containing the humic acids was transferred to a filter, and the CCl_4 was removed. The product was washed first with a dilute H_2SO_4 solution, then with warm water. The results of this experiment appear in table 3. A $ZnCl_2$ solution was tried in place of CCl_4 , but absorption of the solution on the carbonaceous material caused the latter to sink, resulting in a low yield of humic material.

TABLE 3. - An examination of the float-sink process, moisture-free basis, results given in percent

<u>Feed</u> <u>Ash</u>	<u>Product</u>			<u>Tailings</u>	
	<u>Yield</u>	<u>Ash</u>	<u>Humic Acid</u>	<u>Yield</u>	<u>Ash</u>
17.7	73.1	3.5	89.0	17.4	56.8

Note - Not included in data is loss of water-soluble material.

Flotation Process. The flotation process for ash separation is schematically depicted in figure 2. The as-received, pulverized leonardite was added to the flotation cell, which contained a lignite-tar creosote fraction as a frothing agent. The froth was collected on a filter, and the filter cake was washed with dilute H_2SO_4 , followed by warm water. Results of a typical experiment in this process appear in table 4.

TABLE 4. - Analysis of the flotation process, percent

<u>Feed</u>		<u>Product</u>		
<u>Moisture</u>	<u>Ash (mf)</u>	<u>Moisture</u>	<u>Ash (mf)</u>	<u>Yield (mf)</u>
9.5	18.2	6.0	11.3	13.6

Organic-Solvent Extraction Process. The use of an organic solvent for extraction of humic acids would be most attractive if the solvent could be reclaimed by distillation and reused without reaction with or being absorbed on the humic acids. Polansky and Kinney (7) made an extensive survey of organic solvents and solvent mixtures regarding their ability to disperse humic acids from nitric acid-oxidized bituminous coal. They concluded that the most economical and most easily handled solvent for the commercial extraction of humic acids is a mixture of

#5 p9

acetone and water. Fowkes and Frost (4) showed that an acetone-water solution would extract humic acids from leonardite provided the leonardite was pretreated with dilute mineral acid. The amount of humic acids extractable was directly proportional to the amount of mineral acid used in the pretreatment. The several preliminary experiments conducted revealed that the most efficient extraction was accomplished using one liter of 80-20 acetone-water (percent by volume) and 10 grams of HCl (basis: hydrogen chloride) per 100 grams of leonardite (moisture-free). Ten grams of HCl per 100 grams of leonardite is slightly in excess of the acid that will be necessary to replace the calcium ion with hydrogen ions in an average leonardite sample. Sulfuric acid was tried in place of HCl as the source for the displacing H-ions, but the resulting CaSO₄, mixed with the humic acids, resulted in an unfilterable product with a high ash content. In the first experiments, the mode of extraction was a countercurrent column. An acetone-water-HCl pretreated leonardite slurry was added to the top of the column while a solution of acetone-water was forced slowly upward through the slurry. The yields of humic acids were good, but the ash content of the product was high, indicating some carryover of ash. Later experiments showed that sedimentation of ash and nonhumic carbonaceous material in an acetone-water-HCl solution is quite rapid; thus a simple settling tank replaced the countercurrent column in the process. A flow diagram of the process appears in figure 3. The results of the experiments appear in table 5.

TABLE 5. - Analysis of the acetone-water-HCl extraction of humic acid from leonardite, moisture-free basis, percent

Feed Ash (mf)	Product			Tailings	
	Yield (mf)	ash (mf)	NaOH-soluble (mf)	Yield (mf)	Ash (mf)
17.8	64.9	1.8	96.8	31.1	38.2
		Elemental (maf)	{ C 63.5		
			{ H 3.8		
			{ N 1.0		
			{ S 0.7		
			{ O 31.0		

Note - Not included in data is loss of water- and acid-soluble material

DISCUSSION

A comparison of the three processes investigated reveals the drawbacks of the float-sink and the flotation processes. The float-sink separation requires a non-polar medium, carbon tetrachloride, which is absorbed to some extent on the leonardite. The use of CCl₄, plus the fact that the leonardite must be partially dried before separation, makes this process unattractive commercially. The flotation process did not produce the desired results. Owing to the low hydrophobicity of leonardite, caused by the large number of carboxyl and hydroxyl groups on the micelle's periphery, the yields of humic acids were low and their ash contents high. Attempts to precondition the leonardite with a light neutral fraction of coal tar to increase its hydrophobicity failed. Changing the frothing agents several times also gave poor results. The acetone-water-HCl extraction of humic acids lends itself most favorably to a commercial process. The yield of low-ash product is high. The acetone is easily recovered by distillation at a low temperature, and the loss is very small. Acetone does not react with, nor is it absorbed on, the humic acids. The process requires

simple equipment (a sedimentation setup works quite well), and the insolubles settle rapidly. The humic acids are easily filtered once the acetone is removed, and a minimum amount of wash water is needed to obtain a low-ash product.

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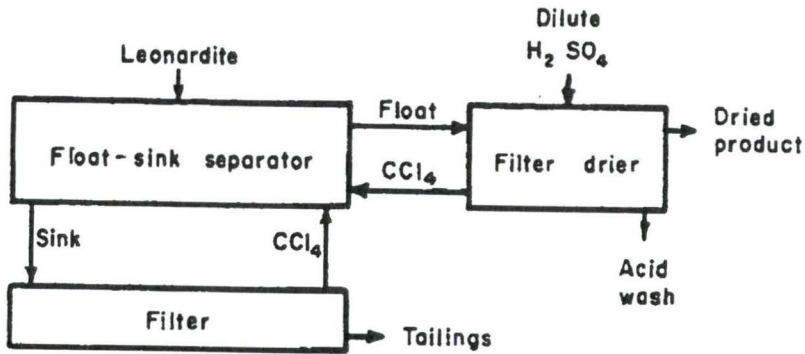


Fig. 1 Float-sink separation.

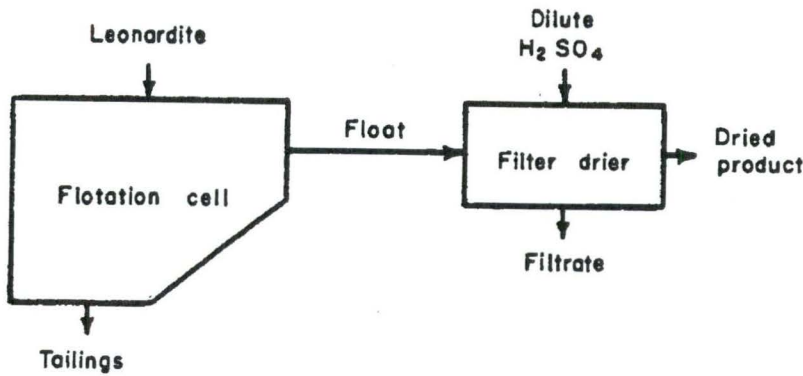


Fig. 2 Flotation process.

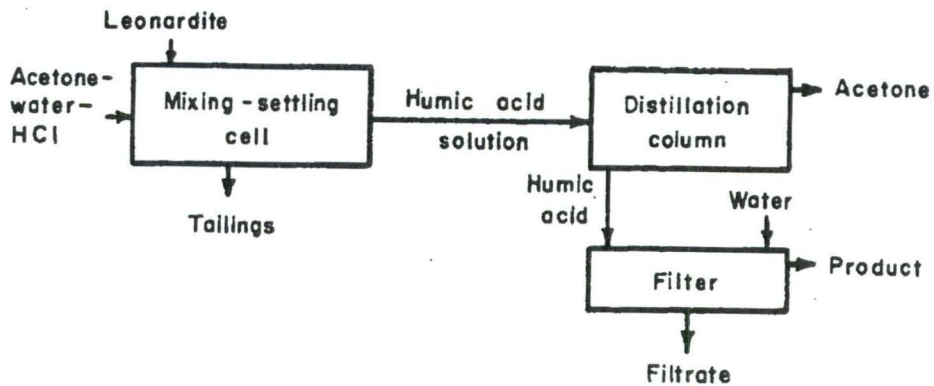


Fig. 3 Organic-solvent extraction.

#5 P12

Exhibit B



WYOMING
EXECUTIVE DEPARTMENT
CHEYENNE

September 2, 1982

#5 P13
HERSCHLER
GOVERNOR

J. R. Harris, Director
Office of Surface Mining
U.S. Department of the Interior
Washington, D.C. 20240

RE: Leonardite--Is It a Material Classified as
Coal/Lignite for Purposes of the Surface Mining
Control and Reclamation Act of 1977, P.L. 95-87?

Dear Director Harris:

It has come to my attention that the Wyoming Department of Environmental Quality is facing an easy issue, made difficult by old, brief policy statements from your office. Several State agencies, including the DEQ have been approached by a company, to develop, mine and process leonardite as a supplement to bentonite in oil and gas drilling. Milchem, Inc., has thoroughly demonstrated that the leonardite which it proposes to mine is quite different from lignite coals. This conclusion rested on several factors:

1) leonardite has a lower BTU/lb value than coal, with a range between 2,000 to 6,000 BTU/lb on an "as received" basis;

2) leonardite has a higher oxygen and moisture content as compared to lignite; and

3) due to the humic acid, it has a 20-fold increase in an alkaline solution base.

Please refer to the attachments for additional detail.

Based on this demonstration, the Wyoming Department of Revenue and Taxation classified the leonardite as "other valuable deposits," rather than coal. This decision would not have been made lightly, inasmuch as it drops the applicable severance tax rates from 10.5 percent for coal to 2 percent. Further, the State Board of Land Commissioners unanimously approved a request to lease the leonardite using the standard bentonite lease (altered to read "leonardite"), rather than the coal mining lease. The Board took this action based not only on the data supplied by Milchem, but also as confirmed by Mr. Gary Glass, Wyoming State Geologist.

#5 p14
J. R. Harris, Director

Page 2

September 2, 1982

I have reviewed your office's March and July, 1980, memoranda regarding the proper classification of leonardite. Based on these documents, it is apparent that leonardite should be considered coal/lignite for the purposes of SMCRA when, on the basis of the test methods identified in ASTM D 388-77 the Calorific Value limit (BTU/lb) is equal to or greater than 6,300 and equal to or less than 8,300 BTU/lb. By this letter then, I am advising you that Wyoming will regard this leonardite proposed to be mined by Milchem as a noncoal mineral, based on:

1) the BTU/lb value of the leonardite, which falls below the 6,300 BTU/lb floor;

2) the fact that the material is unsuitable as fuel in the form in which it is found (although the leonardite might conceivably be processed to produce a substance which could be used as fuel, the processing would consume more fuel than it would generate);

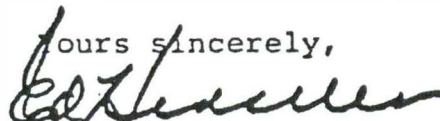
3) the enclosed IRS Revenue Ruling 71-494, which concluded that the term "leonardite" has a commonly understood commercial meaning as a separately identifiable mineral possessing properties and characteristics that distinguish it from lignite for percentage depletion purposes; and

4) the clear necessity for con conflicting statements from the different interested State agencies.

As you well know, this decision affects your office, both in its oversight posture and for the AML tax assessment duties. Therefore, to avoid problems with our approved State program, and problems with conflicting opinions which might substantially alter Milchem's future course of action, it is imperative that you respond on this issue as soon as possible. I am hopeful that a review of the enclosed material will result in your concurrence with this letter. However, if any questions or concerns do arise, please do not hesitate to contact either Nancy Freudenthal in this office (307) 777-7437, or Walter C. Ackerman in the Department of Environmental Quality (307) 777-7046.

I look forward to hearing from your office on this issue. With best regards, I am

Yours sincerely,



EH:nfp
Enclosures

cc: Walter C. Ackerman
Teno Roncalio

#5 P15

Exhibit C



United States Department of the Interior

OFFICE OF SURFACE MINING
Reclamation and Enforcement
WASHINGTON, D.C. 20240



NOV 22 1982

Honorable Ed Herschler
Governor of Wyoming
Cheyenne, Wyoming 82112

Dear Governor Herschler:

I am writing in response to your letter of September 2, 1982, regarding leonardite.

Let me begin by providing you with the reasoning which led to the decision by the Office of Surface Mining (OSM or the Office) that leonardite was "coal" and subject to the provisions of Title IV and Title V of the Surface Mining Control and Reclamation Act (SMCRA). I will then attempt to address the particular issues that you raised.

Leonardite is generally recognized as a naturally altered form of lignite which is one of the materials that Congress directed be regulated under SMCRA. For example, leonardite is defined as a "...coallike substance... a naturally oxidized form of lignite... Usually the material occurs at shallow depths, overlying or grading into the harder and more compact lignite...." (Bureau of Mines R.I. 5611, 1960, p.2) The reference to the thermal value of lignite coal occurs at Section 701(30) of SMCRA which defines lignite coal as "consolidated lignite coal having less than 8300 British thermal units per pound, moist and mineral matter free." Note that this definition does not provide a lower Btu limit. Thus, OSM concluded that leonardite was a form of lignite coal and therefore subject to both Title IV and Title V of SMCRA.

As a matter of Administration policy, OSM is now seeking to eliminate many burdensome aspects of our regulations, consistent, of course, with the bounds of SMCRA. Thus, I reviewed very carefully your arguments that leonardite should not be defined as coal, but as a separate and distinct mineral.

First, you state that Wyoming regards leonardite as a noncoal mineral because it is unsuitable as a fuel. However, SMCRA does not restrict the regulation of coal mining to those coals used as fuel.

Secondly, you write that leonardite should be defined as noncoal because of the IRS ruling that leonardite is not a form of lignite. While relevant, this in itself is not a compelling argument for a change in OSM's treatment of the material.

#5 P17
Honorable Herschler

2

A third point you make about your decision on leonardite is the necessity to resolve conflicting statements from different State agencies. I would agree that uniformity in this matter is important, but I would not agree that the necessity for agreement among State agencies is a reason for OSM's defining leonardite differently than in the past.

Fourth, you pointed out some distinguishing characteristics of leonardite, as compared to lignite; and it was this argument that I found most convincing. I would agree with you that these properties--lower Btu/lb values, higher oxygen and moisture content, a 20-fold increase in an alkaline solution base, and, more particularly, the fact that lignite is a compact material while leonardite is soft and earthlike--do, indeed, demonstrate that leonardite is a separate and distinct mineral. I recognize that there are other agencies within the Department of the Interior that may treat leonardite differently than OSM. Please bear in mind that my decision pertains only to regulation under SMCRA.

I recognize that the situation presented in your letter is one which requires the exercise of judgment because of the fact that it is not a black or white problem. Unfortunately, there is little specificity provided in the attachment to your letter about the planned nature of the mining operations. Because of that, we will have to address your concerns in terms of a range of possible situations.

Situation 1. Leonardite occurs as a separate and distinct mineral deposit and is mined by surface mining methods. In this situation leonardite would not be regulated under SMCRA because it is a material geologically distinct from the lignite coal addressed in Section 701.

Situation 2. If the extraction of lignite is incidental to the extraction of leonardite or other minerals and the lignite extracted does not exceed 16 2/3 per centum of the minerals removed for purposes of commercial use or sale, under the provisions of Section 701(28) of SMCRA, the surface mining operator will not be regulated under SMCRA.

Situation 3. A lignite mining operation is being conducted. Part of the deposit is leonardite. The leonardite is separated from the lignite prior to the first sale or use of the lignite and is then sold. In this situation, though the mining operation would be subject to the provisions of SMCRA, provided that adequate records are kept, the separately-sold leonardite would not be subject to the reclamation fee provisions of Title IV.

#5 p18
Honorable Herschler

3

This third approach is consistent with our position that reclamation fees are not payable on ash, rock, water or other impurities so long as they are removed prior to first sale or use. (30 CFR 870.12(b)(3)(i), Federal Register, June 30, 1982, p. 28594)

I trust that this response provides you with the necessary guidance. If you have any questions, please do not hesitate to contact me.

Sincerely,

/s/J. R. Harris

Director

cc: New Mexico Field Office

#5 p19

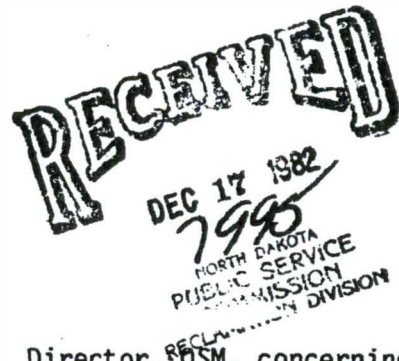
Exhibit D



United States Department of the Interior

OFFICE OF SURFACE MINING
Reclamation and Enforcement
WYOMING STATE OFFICE
P.O. BOX 1420
MILLS, WYOMING 82644
December 14, 1982

Mr. Ed Englerth
Director, Reclamation Division
PSC, State of North Dakota
Capitol Building
Bismark, North Dakota 58505



Dear Mr. Englerth:

Enclosed is a copy of a letter from J. R. Harris, Director, OSM, concerning the mining of leonardite. Washington has made the determination that the three leonardite mines in North Dakota are no longer under OSM jurisdiction. We will no longer require copies of inspection reports for those mines.

Sincerely,

William R. Thomas, Director
Northwest Field Office

Enclosure

#5 p21

Exhibit E

#5 P22

BLM MOU WY-920-1301

**SUPPLEMENT TO
MEMORANDUM OF UNDERSTANDING NO. WY 19**

BETWEEN THE
UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
WYOMING STATE OFFICE
AND THE
STATE OF WYOMING
DEPARTMENT OF ENVIRONMENTAL QUALITY
LAND QUALITY DIVISION
FOR
MANAGEMENT OF SURFACE MINING AND EXPLORATION FOR
MINERAL MATERIALS (Salable Minerals)
ON PUBLIC LANDS

This is a Supplemental Memorandum to the general statewide Memorandum of Understanding (MOU WY 19) dated October 28, 1975, between the Governor of Wyoming and the United States by and through the State Director, Bureau of Land Management, Wyoming, United States, Department of the Interior. This MOU (BLM MOU WY-920-1301) replaces MOU WY-93, signed by Governor Ed Herschler on August 8 1984, and signed by Bureau of Land Management State Director Hillary A. Oden on August 9, 1984.

#5 P23

1. **Background and Authority.** The Wyoming Department of Environmental Quality (WDEQ), Land Quality Division (LQD) and the Department of the Interior, Wyoming State Office, Bureau of Land Management (BLM) desire to work cooperatively to efficiently and effectively manage mineral material exploration and mining on BLM lands, including split estate lands. Split estate lands are lands where the surface and mineral owners are different. The typical case is where the surface ownership is private and the mineral ownership is BLM. For the purposes of this MOU, public lands under the administration of BLM will be termed BLM lands to differentiate from other public lands. The previous mineral materials MOU WY-93 between the BLM and LQD was signed in August of 1984. That MOU's purpose was to reduce duplication and foster coordination on bonding requirements for negotiated, competitive, and community pit mineral material sales on BLM surface. Since then, several bonding issues have arisen which require clarification, our respective regulations have changed, and permitting and inspection issues require coordination in a more comprehensive manner.

In Wyoming, mineral materials may include, but not be limited to, common varieties of sand, gravel, scoria (clinker), building stone, decorative stone, ballast, fill material, limestone, dolomite, clay, as well as petrified wood, leonardite, and other minerals not covered under the Mining Law of 1872 or Mineral Leasing Act of 1920. Common varieties may be disposed of under the Materials Act (Act) of July 31, 1947 (61 Stat. 681) as amended on July 23, 1955 (69 Stat. 367). Petrified wood is disposed of under the Act of September 28, 1962 (76 Stat. 652). These materials are also called saleable minerals and their use is authorized under 43 CFR 3600 through sales and free use permits. The regulations in 43 CFR 3814 govern coordination with the surface owner in split estate situations where the minerals are reserved to the United States but the surface is patented under the Stock Raising Homestead Act of 1916.

This MOU does not cover uncommon varieties of these minerals, which are administered under the 43 CFR 3800 Mining Law Regulations and the Supplement to MOU WY-19 between BLM and LQD for locatable minerals, signed November 19, 2003.

The State's participation in this MOU is authorized by W.S. § 9-2-121, 35-11-102, and §35-11-109(a)(ii), which recognize the policy of securing cooperation between agencies of the State and the Federal government in carrying out cooperative programs which are consistent with the constitution and laws of the State.

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#5 p24

2. **Purpose.** The purpose of this MOU Supplement, hereafter referred to as MOU, is to:
 - A. Clarify procedures for cooperation between BLM and LQD in permitting, bonding, inspection, enforcement, and sharing of information for mineral material exploration, mining, and reclamation on BLM lands in Wyoming.
 - B. Foster Federal-State coordination of procedures to prevent unnecessary or undue degradation as defined in Section 302 of the Federal Lands Policy and Management Act of 1976 (Public Law 94-579) with respect to mineral materials operations on BLM lands and to foster responsible land use with respect to mineral materials operations on BLM lands under existing laws and regulations;
 - C. Prevent unnecessary administrative delay;
 - D. Prevent, to the degree allowed by law, duplication of administration and enforcement of reclamation regulations governing the exploration for, or mining of, mineral materials under the Federal regulations in 43 CFR 3600 and the State Noncoal Rules and Regulations; and
 - E. Minimize impacts to and ensure proper reclamation of those lands affected by exploration and/or mining, and assure that proper bonding is maintained.
3. **Scope.** This MOU covers use of mineral materials from BLM lands including split estate lands in Wyoming except Title 23 authorizations issued to the Wyoming Department of Transportation for road-building materials from BLM lands on Federally-funded highway projects. Those are covered by a separate MOU (WY920-08-07-192) among BLM, the Wyoming Department of Transportation, and the Federal Highway Administration, signed in August, 2007.
4. **Area of Cooperation.** The BLM and LQD jointly agree that:
 - A. The BLM and LQD shall exercise appropriate responsibility and jurisdiction for the review and approval of all exploration and mining activity for mineral materials on BLM surface and split estate lands. Each agency shall coordinate separate authorizations and exchange information to the degree necessary to prevent inconsistent action.
 - B. The BLM and LQD shall assume responsibility for coordinating with the other agency for the review and approval of applications for all exploration and mining operations on BLM lands.
 - C. LQD will coordinate with BLM to verify surface and mineral ownership for all proposed mineral material mining activities and notify BLM of all actions involving BLM and split estate lands.

5 p25

- D. BLM will issue the free use permit, mineral material sale contract or letter of authorization for exploration. BLM will provide LQD with surface owner consent where BLM manages the surface.
- E. LQD will issue Licenses to Explore by Dozing, Drilling Notifications, Limited Mining Operations (LMOs), Small and Regular Mine Permits.
- F. The BLM will have lead responsibility for analyzing archeological and paleontological resources, noxious weed issues, National Environmental Policy Act (NEPA) requirements, and compliance with the Threatened and Endangered Species Act, the Migratory Bird Treaty Act, and the Bald and Golden Eagle Protection Act on BLM lands.
- G. The operator is responsible for submitting appropriate and complete forms and applications to BLM and LQD. To the extent possible, the application shall contain information to satisfy all the requirements of the BLM and LQD in one document.
- H. The review of any proposed exploration, mining, and reclamation plans, or applications for permits, contracts, or letters of authorization shall be in accordance with the schedules and processes set in the attached BLM and LQD "Wyoming Operating Guidelines: Management of Surface Mining & Exploration for Mineral Materials (Saleable Minerals) on BLM Lands". Each agency shall notify the other agency of its review schedule, and inform the other agency when additional time is needed. Lack of response will be interpreted as no comments, and the agency requesting the review will proceed with the permitting action.
- I. BLM and LQD will coordinate with one another prior to final approval of an authorization. LQD may conditionally approve an application that contains some private surface and minerals to allow mining on the private portion of the permit area, pending authorization from BLM for disturbance of BLM lands. LQD may also approve applications without BLM authorization to avoid compromising statutory deadlines. BLM stipulations and mitigation measures may be incorporated into the LQD permit, provided they are consistent with LQD statutes and rules. The LQD may not declare an application for a small or regular mine permit technically complete until BLM has supplied mineral owner consent, unless statutory deadlines will be compromised. This may be in the form of a separate consent, or the approved contract where BLM bond concurrence is not necessary.
- J. BLM will not approve a contract, Free Use Permit, or Letter of Authorization until the operator posts an approved reclamation bond with LQD, where bond concurrence is required. Because LQD approval of the bond instrument occurs when the permit is approved, the BLM will provide a separate surface owner consent to LQD.
- K. A committee consisting of representatives from BLM and LQD shall be established to review and/or modify operating guidelines established in this MOU as requested by either agency. The committee shall also be responsible for exchanging contact lists, unless such lists are maintained on agency web pages.

#5 P26

L. The BLM and LQD shall require any exclusive use access routes on BLM lands to be part of the acreage included in the mine area and included in the financial guarantee.

5. **Bonding (Financial Guarantee)**. The LQD shall establish the reclamation bond amount on BLM surface and split estate lands, where required by 43 CFR 3601.30(d), 3602.14, or 3604.25, and W.S. 35-11-417. BLM bond concurrence is only required when the BLM is the surface owner. The BLM shall review for bond adequacy and respond to LQD within 45 days. The bond will be redeemable by the Secretary of Interior and the State of Wyoming, Department of Environmental Quality, Land Quality Division. BLM may impose additional reclamation bonds for Limited Mining Operations where LQD is restricted by statute to a specified bond amount per acre. In this case, LQD will hold the entire bond. When possible, BLM and LQD will conduct joint inspections to verify reclamation adequacy. LQD shall hold all reclamation bonds until release is authorized **in writing** by both agencies. For split estate, the bond is payable solely to LQD.

LQD Annual Reports: The operator shall be responsible for providing updated reclamation bond estimates concurrently to both agencies when BLM surface is involved, on an annual basis. Both BLM and LQD shall review for bond adequacy. BLM will notify LQD within forty-five (45) days of receipt of the bonding information if the bond should be increased. If no response is received from BLM, LQD will proceed with the bond evaluation. LQD will copy BLM on the bond approval letter.

In the event of a bond forfeiture, LQD will administer the reclamation contract. Development of the reclamation plan will be coordinated between BLM and LQD where BLM is the surface owner.

BLM may impose additional performance bonds for payment of sale contracts or for damages to private surface owners on Stock Raising Homestead Act lands independent of this MOU (43 CFR 3814).

6. **Inspection and Enforcement.**

- A. Both agencies shall conduct inspections as needed to meet their individual regulatory requirements. Inspections should be conducted jointly when possible.
- B. All inspection reports and pertinent correspondence produced by one agency shall be promptly exchanged with the other as soon as they are complete. Inspection reports may be exchanged electronically, preferably with digital photos, GPS, and GIS data included.
- C. The BLM is responsible for production verification on BLM lands where a contract or free use permit has been issued.
- D. Each agency shall promptly notify the other of all violations of applicable laws, regulations, permits, and/or permit requirements, along with the enforcement actions proposed or taken with respect to such violations.

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#5 P27

7. Administrative and Legal Provisions.

- A. Nothing in this MOU will be construed as limiting or affecting in any way the authority or responsibility of the LQD or BLM or as binding on either party to perform beyond their respective authority or to require either party to assume or expend any monies in excess of appropriations available.
- B. This MOU shall become effective as soon as signed by both parties and shall continue in force until formally terminated by either party. The termination shall follow a sixty (60) day notice in writing to the other agency regarding their desire to terminate the MOU. The MOU must be reviewed for adequacy and effectiveness as needed.
- C. Amendments to this MOU may be proposed by either party and shall become effective upon approval in writing by both parties.
- D. Any problems which cannot be resolved by the committee shall be referred to the next higher level of authority for resolution (LQD Administrator and BLM Deputy State Director of Minerals and Lands).
- E. Officials Not to Benefit: No member of, or delegate to, Congress or resident commissioner shall be admitted to any share or part of this MOU or to any benefit that may arise there from.
- F. Entirety of Agreement: This MOU consists of seven (7) pages and attached "Operating Guidelines for Management of Surface Minerals & Exploration for Mineral Materials (Saleable Minerals) on BLM Lands" consisting of a total of thirty two (32) pages. This is a Supplemental Memorandum to the general statewide Memorandum of Understanding (MOU NO. WY 19) dated October 28, 1975, between the Governor of Wyoming and the United States by and through the State Director, Bureau of Land Management, Wyoming, United States, Department of the Interior. This MOU (BLM MOU WY-920-1301) replaces MOU WY-93, signed by Governor Ed Herschler on August 8 1984, and signed by Bureau of Land Management State Director Hillary A. Oden on August 9, 1984.

All of the foregoing represent the entire and integrated agreement between the parties and supersede all prior negotiations, representations and agreements, whether written or oral.


THE REMAINDER OF THIS PAGE WAS INTENTIONALLY LEFT BLANK

#5 928

8. **Signatures.** The parties to this MOU, through their duly authorized representatives, have executed this MOU on the dates set out below, and certify that they have read, understood, and agreed to the terms and conditions of this MOU as set forth herein.

The effective date of this MOU is the date of the signature last affixed to this page.

STATE OF WYOMING, by and through:


Matthew H. Mead
Governor

9/11/13
Date

U.S. DEPARTMENT OF INTERIOR, BUREAU OF LAND MANAGEMENT, by and through:


State Director, Bureau of Land Management

8/29/13
Date

ATTORNEY GENERAL'S OFFICE: APPROVAL AS TO FORM


Marion Yoder
Senior Assistant Attorney General

Aug. 23 2013
Date

Attachment: Wyoming Operating Guidelines: Management of Surface Mining & Exploration for Mineral Materials (Saleable Minerals) on BLM Lands

#6 p.1
SB 2377
3-13-15

Senate Bill 2377

Presented by: Illona A. Jeffcoat-Sacco, General Counsel
Public Service Commission

Before: House Energy and Natural Resources Committee
The Honorable Todd Porter, Chairman

Date: March 13, 2015

TESTIMONY

Mister Chairman and committee members, I am Illona Jeffcoat-Sacco, General Counsel with the Public Service Commission. The Public Service Commission asked me to appear today to request one small amendment to Engrossed Senate Bill 2377.

The provisions in the engrossed bill moving the jurisdiction over leonardite exploration from chapter 38-12.1 to chapter 38-12 (Sections 2 and 3 of the engrossed bill) raise an unintended jurisdictional conflict that we believe can be resolved with the proposed amendment. Chapter 38-12.1 governs only coal exploration. Chapter 38-12 governs exploration, development and production of subsurface minerals other than coal. However, today, development and production of leonardite is jurisdictional to the Public Service Commission via chapter 38-14.1, North Dakota's surface coal mining and reclamation law. It is our understanding that the bill was never intended to affect that jurisdiction. Consequently, the Commission asks for an amendment to correct the conflict raised by these provisions in the engrossed bill.

Mister Chairman, this concludes my testimony. I will be happy to answer any questions.

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2377

Page 1, line 3, after "38-12-01," insert "section 38-12-02,"

Page 2, after line 2, insert:

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

38-12-02. Jurisdiction of commission.

The commission has jurisdiction and authority over all persons and property, public and private, necessary to enforce effectively the provisions of this chapter, to the extent not covered in chapter 38-14.1. Subject to the provisions of section 38-08-21, the director of mineral resources shall act as a supervisor charged with the duty of enforcing the regulations and orders of the commission applicable to the subsurface mineral resources of this state and the provisions of this chapter. The commission has authority to make such investigations as it deems proper to determine whether facts exist which justify action by the commission. The commission acting through the director of mineral resources has the authority:

1. To require:
 - a. The furnishing of a reasonable bond with good and sufficient surety, conditioned upon the full compliance with the provisions of this chapter, and the rules and orders of the commission prescribed to govern the exploration, development, and production of subsurface minerals on state and private lands within the state of North Dakota. The person required to furnish the bond may elect to deposit a collateral bond, self-bond, cash, or any alternative form of security approved by the commission, or combination thereof, by which a permittee assures faithful performance of all requirements of this chapter and the rules and orders of the industrial commission.
 - b. The delivery, free of charge, to the state geologist of the basic exploration data collected by the operator, within thirty days of field collection of such data. This data must include:
 - (1) Sample cuts, core chips, or whole cores.
 - (2) Sample logs, radioactivity logs, resistivity logs, or other types of electrical or mechanical logs.
 - (3) Elevation and location information on the data collection points.

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

The data so submitted is confidential for a period of one year when so requested by the operator and such period may be further extended upon approval by the commission.

- c. The filing of monthly production reports in the manner prescribed by the commission and any other reports deemed necessary by the commission.
 - d. The conducting of all exploration, development, and production operations in such a manner as to prevent pollution of freshwater supplies, to provide for the protection of the environment and public safety, and to ensure the optimum recovery of the mineral resource.
 - e. The reclamation of all land disturbed by operations regulated by this chapter to a condition consistent with prior land use and productive capacity.
2. To regulate the drilling and abandonment of exploration test holes and producing wells and all other exploration, development, production, and reclamation operations.
 3. To promulgate and to enforce rules, regulations, and orders to effectuate the purposes and the intent of this chapter.
 4. To inspect all exploration, development, and production sites. For the purposes of this subsection, the director of mineral resources or the director's representative shall have access to all exploration, development, or production installations for purposes of inspection and shall have the authority to require the operator's aid if it is necessary and is requested."

Renumber accordingly

Date: 3/19/15

SB 23

Subcommittee
Committee: Energy And Natural Resources

REGISTRATION

PLEASE GIVE COPIES OF YOUR TESTIMONY TO THE COMMITTEE CLERK

BILL NO.	FOR	NEUTRAL	AGAINST	NAME (Please Print)	LOBBYIST REG. NO.	REPRESENTING
	X			EO MURPHY		DMR - GEOLOGICAL SURVEY
	X			Robert Harms		Leonardite Products
	X			Cherie Harms	524	Leonardite Products
	X			Jim Deutsch		PSC - Reclamation Division
	X			Ilona A. Woodruff		FSC -
	X			Casey Finkley		PSC
		X		Tyler Hamman	043	LEC
		X		Christopher Friez		North American Coal
		X		David Straley	367	" " "
		X		Tim Dawson		LC
		X		Jason Bohrer	4	Lignite Energy Council

#1 p1
3/19/15



Draft amendments to First Engrossment of Engrossed SB 2377

15.1008.02000

March 18, 2015 at 9:50 p.m.

Draft 2 from David Straley - Harms and Leonardite Products
comments in red.

SECTION 1

Remove SECTION 1 of the bill (existing law definition of Coal stays as is)

Does not include: "or is otherwise defined."

SECTION 2

(No change)

PSC and NDGS suggest this be removed from the amendment

SECTION 3.

Page 2, line 9, replace "The" with "For purposes of this chapter.
The rest of the sentence reads term does not include leonardite."

SECTION 4

Page 3, line 1, replace "The" with "For purposes of this chapter, the
The rest of the sentence reads term does not include leonardite."

Page 3, replace lines 21 and 22 with "Leonardite means a dark-colored, soft, earthy organic rock that formed from the oxidation of coal." "that" is not necessary

SECTION 5 through SECTION 16

(No changes)

SECTION 17

Page 14, replace lines 28-31 with "3.

This subsection does not affect contracts, reservations, conveyances, or leases prior to August 1, 2015, but applies to every contract, reservation, conveyance or lease of minerals thereafter. Any conveyance or lease of minerals grants, conveys, or leases any leonardite in the same real property, unless leonardite is excluded by name, and any reservation of minerals includes leonardite unless leonardite is excluded by name.

SECTION 18

Page 15, line 4, replace "twenty-five" with "thirty-seven and one-half"

Page 15, line 5 Remove " or for industrial purposes".

SECTION 19 AMENDMENT. Section 38-11.2-01 of the North Dakota Century Code is amended and reenacted as follows;

38-11.2-01. Definitions.

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

1. "Agricultural production" means the production of any grass or crop attached to the surface of the land, whether or not the grass or crop is to be sold commercially, and the production of any farm animals, whether or not the animals are to be sold commercially.
2. "Drilling operations" means the drilling of a subsurface mineral extraction well and the injection, production, and completion operations ensuing from the drilling which require entry upon the surface estate, and includes subsurface mineral exploration activities.
3. "Mineral developer" means the person who acquires the mineral estate or lease for the purpose of extracting or using the subsurface minerals for nonagricultural purposes.
4. "Mineral estate" means an estate in or ownership of all or part of the subsurface minerals underlying a specified tract of land.
5. "Subsurface mineral" means any naturally occurring element or compound recovered under the provisions of chapter 38-12, but for the purpose of this chapter excludes coal, leonardite, oil and gas, sand and gravel, and rocks crushed for sand and gravel.
6. "Subsurface mineral exploration activities" means any method of obtaining information relative to locating and defining subsurface minerals that results in surface disturbance.
7. "Surface estate" means an estate in or ownership of the surface of a particular tract of land.
8. "Surface owner" means any person who holds record title to the surface of the land as an owner.

SECTION 20 AMENDMENT. Sections 38-12.1-01 through 38-12.1-05 of the North Dakota Century Code are amended and reenacted as follows;

38-12.1-01. Legislative findings.

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

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

38-12.1-02. Declaration of policy.

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

38-12.1-03. Definitions.

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

- 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 form, whether or not the material is enriched in radioactive materials.
- 2. "Coal or leonardite exploration" means:
 - a. The use of any technique which when applied to the surface of the land will aid in the discovery or evaluation of coal or leonardite or aid in determining the quantity and quality of coal and-or leonardite present. It includes drilling or digging, excavating, core sample drilling and collection, diamond drilling, trenching, or any other type of penetration of the surface of the earth; or
 - b. Environmental data gathering activities conducted for the purpose of establishing the conditions of an area prior to applying for a permit under chapter 38-14.1. The provisions of sections 38-12.1-04 and 38-12.1-05 are not applicable to such environmental data gathering activities unless the natural land surface will be substantially disturbed or such activities are located on lands designated unsuitable for mining under section 38-14.1-05.
- 3. "Commission" means the industrial commission of the state of North Dakota.
- 4. "Leonardite" means a dark-colored, soft, earthy rock that formed from the oxidation of lignite.
- 45. "Permit area" means a county.
- 56. "Person" means and includes any natural person, corporation, limited liability company, association, partnership, receiver, trustee, executor, administrator, guardian, fiduciary, or other representative of any kind, and includes any department, agency, or instrumentality of the state

or of any governmental subdivision thereof; the masculine gender, in referring to a person, includes the feminine and the neuter genders.

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

38-12.1-04. Jurisdiction of commission.

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

1. To require:

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

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

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

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

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

4. To inspect all drilling or exploration sites. For the purposes of this subsection, the director of mineral resources or the director's representative shall have access to all drilling or

exploration installations regulated by this chapter for the purpose of inspection and sampling and shall have the authority to require the operators' aid if the director finds it necessary and requests it.

5. Notwithstanding any of the other provisions of this section, the commission acting through the director of mineral resources shall require that any lands substantially disturbed in coal or leonardite exploration, including excavations, roads, and drill holes, and the removal of necessary facilities and equipment be reclaimed in accordance with the applicable performance standards of section 38-14.1-24. Reclamation must be accomplished to protect environmental quality, general health and safety, and economic values.

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

1. It is unlawful to commence operations for drilling for the exploration for coal or leonardite without first obtaining a permit from the director of mineral resources, under such rules and regulations as may be prescribed by the commission, and paying to the commission a fee of one hundred dollars for each such permit area. The permit application must include a description of the exploration area and the period of proposed exploration. The permit must be granted within thirty days after a proper application has been submitted.

2. This permit may not be required:

- a. In an area where a permit to conduct either surface coal or leonardite mining operations is in effect pursuant to chapter 38-14.1;
- b. For holes drilled to guide excavating equipment in an operating mine;
- c. In areas where a drill hole is required by any other state agency; or
- d. For environmental data gathering activities that do not substantially disturb the land, unless the environmental data gathering activities are located on land designated unsuitable for mining under section 38-14.1-05.

3. No person may remove more than two hundred fifty tons [226.80 metric tons] of coal or leonardite pursuant to an exploration permit without first obtaining a permit from the public service commission.

SECTION 21 AMENDMENT. Sections 38-15-01 and 38-15-02 of the North Dakota Century Code are amended and reenacted as follows;

38-15-01. Policy.

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

38-15-02. Definitions.

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

- 1. "Coal" means all kinds of coal, and includes what is known as lignite coal, unless a

contrary intention plainly appears.

2. "Commission" means the industrial commission.

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

4. "Gas" means all natural gas and other fluid hydrocarbons not hereinbelow defined as oil.

5. "Leonardite" means a dark-colored, soft, earthy rock that formed from the oxidation of lignite.

56. "Natural resources" means coal, leonardite, oil, gas, and subsurface minerals as defined herein.

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

78. "Owner" means the person who has the right to produce natural resources either for that person or others.

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

910. "Producer" means the owner of a well or wells, or mine or mines, capable of producing coal, leonardite, oil, gas, or subsurface minerals.

1011. "Subsurface minerals" means all naturally occurring elements and their compounds, volcanic ash, precious metals, carbonates, and natural mineral salts of 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.

112. "Waste" means the inefficient utilization of reserves of oil, gas, subsurface minerals, or coal, leonardite, as the case may be.

SECTION 22 AMENDMENT Sections 38-18-05 and 38-18-07 of the North Dakota Century Code are amended and reenacted as follows;

38-18-05. Definitions.

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

1. "Agricultural production" means the production of any growing grass or crop attached to the surface of the land, whether or not the grass or crop is to be sold commercially, and the production of any farm animals, including farmed elk, whether or not the animals are to be sold commercially.

2. "Disturbed" means any alteration of the topsoil of the land whether the alteration is for the purpose of exploring for coal or leonardite or for the purpose of carrying out an actual mining operation.

3. "Mineral developer" means the person who acquires at least seventy-five percent of the mineral rights or a lease of at least seventy-five percent of the mineral rights for the purpose of extracting or using the mineral for nonagricultural purposes.

4. "Mineral estate" means an estate in or ownership of all or part of the minerals under a specified tract of land.

5. "Mineral lease" means any lease which purports to convey the minerals or rights

relating to the minerals under a specified tract of land separate from the surface, and any other type of lease which gives or conveys rights to minerals.

6. "Mineral owner" means any person or persons who presently own the mineral estate, their successors, assigns, or predecessors in title, under a specified tract of land by means of a mineral deed, or by an exception or reservation in the deed, grant, or conveyance of the surface, or by any other means whatsoever.

7. "Minerals" means coal or leonardite.

8. "Mining operation" means any type of activity, the aim of which is to discover the presence of minerals, or to remove the minerals so discovered from their original position on or in the land by any means whatsoever.

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

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

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

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

2. Unless waived by the owner of a farm building, if the coal or leonardite removal area of a surface mining operation comes within five hundred feet [152.4 meters] of any farm building, the mineral developer shall pay to the owner of the farm building either the fair market value of the farm building or the entire cost of removing the farm building to a location where the coal or leonardite removal area of the mining operation will not come within five hundred feet [152.4 meters] of such building or buildings. The payments contemplated hereunder are in addition to any payments required by the terms of any mineral lease, unless the surface owner is a party to the lease and the lease provides for damages as contemplated in this subsection in an amount not less than the amount which would be recoverable under this section.

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

1

Mar. 25, 2015

15.1008.02001

FIRST ENGROSSMENT

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~~ subsection 5 of section 38-11.2-01,
4 sections 38-12.1-01, 38-12.1-02, 38-12.1-03, ~~section 38-12.1-04, 38-12.1-05,~~ and 38-14.1-02,
5 subsection 3 of section 38-14.1-05, subsection 3 of section 38-14.1-13, subdivisions r and s of
6 subsection 1 of section 38-14.1-14, subdivision c of subsection 2 of section 38-14.1-14,
7 paragraph 2 of subdivision e of subsection 3 of section 38-14.1-21, subdivision b of
8 subsection 4 of section 38-14.1-21, subsections 1 and 1.1 of section 38-14.1-24, subdivision b
9 of subsection 3 of section 38-14.1-24, subsections 5, 10, and 18 of section 38-14.1-24, section
10 38-14.1-25, subdivision b of subsection 1 of section 38-14.1-27, subsections 1, 3, and 4 of
11 section 38-14.1-37, sections 38-15-01, 38-15-02, 38-18-05, and 38-18-07, and section 47-10-24
12 of the North Dakota Century Code, relating to the definition of coal and leonardite; and to
13 provide for application.

14 BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

15 ~~SECTION 1. AMENDMENT. Section 1-01-40 of the North Dakota Century Code is amended~~
16 ~~and reenacted as follows:~~

17 ~~1-01-40. Coal - Definition.~~

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

21 ~~SECTION 2. AMENDMENT. Subsection 7 of section 38-12-01 of the North Dakota Century~~
22 ~~Code is amended and reenacted as follows: _____~~

23 ~~7. "Subsurface minerals" means all naturally occurring elements and their~~
24 ~~compounds, leonardite, volcanic ash, precious metals, carbonates, and natural~~

1 ~~mineral salts of boron, bromine, calcium, fluorine, iodine, lithium, magnesium,~~
2 ~~phosphorus, potassium, sodium, thorium, uranium, and sulfur, and their compounds,~~
3 ~~but does not include sand and gravel and rocks crushed for sand and gravel.~~

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

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

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

11 **38-12.1-01. Legislative findings.**

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

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

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

24 **38-12.1-02. Declaration of policy.**

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

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

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

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

8 **38-12.1-03. Definitions.**

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

- 10 1. "Coal" means a dark-colored, compact, and earthy organic rock with less than forty
11 percent inorganic components, based on dry material, formed by the accumulation
12 and decomposition of plant material. The term includes lignite in ~~both oxidized and~~
13 nonoxidized ~~forms~~form, whether or not the material is enriched in radioactive
14 materials. For purposes of this chapter, the term does not include leonardite.
- 15 2. "Coal exploration" means:
- 16 a. The use of any technique which when applied to the surface of the land will aid in
17 the discovery or evaluation of coal or leonardite or aid in determining the quantity
18 and quality of coal or leonardite present. It includes drilling or digging, excavating,
19 core sample drilling and collection, diamond drilling, trenching, or any other type
20 of penetration of the surface of the earth; or
- 21 b. Environmental data gathering activities conducted for the purpose of establishing
22 the conditions of an area prior to applying for a permit under chapter 38-14.1. The
23 provisions of sections 38-12.1-04 and 38-12.1-05 are not applicable to such
24 environmental data gathering activities unless the natural land surface will be
25 substantially disturbed or such activities are located on lands designated
26 unsuitable for mining under section 38-14.1-05.
- 27 3. "Commission" means the industrial commission of the state of North Dakota.
- 28 4. "Leonardite" means a dark-colored, soft, earthy rock formed from the oxidation of
29 lignite.
- 30 5. "Permit area" means a county.

1 6-6. "Person" means and includes any natural person, corporation, limited liability
2 company, association, partnership, receiver, trustee, executor, administrator, guardian,
3 fiduciary, or other representative of any kind, and includes any department, agency, or
4 instrumentality of the state or of any governmental subdivision thereof; the masculine
5 gender, in referring to a person, includes the feminine and the neuter genders.

6 6-7. "Road" means a surface or right of way for purposes of travel by land vehicles used in
7 coal or leonardite exploration. A road consists of the entire area of the right of way,
8 including the roadbed, shoulders, parking and side areas, approaches, structures,
9 ditches, and surface.

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

12 **38-12.1-04. Jurisdiction of commission.**

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

20 1. To require:

- 21 a. The furnishing of a reasonable bond with good and sufficient surety, conditioned
22 upon the full compliance with the provisions of this chapter, and the rules and
23 orders of the commission prescribed to govern the exploration for coal or
24 leonardite on state and private lands and roads used in coal or leonardite
25 exploration within the state of North Dakota. The person required to furnish the
26 bond may elect to deposit a collateral bond, self-bond, cash, or any alternative
27 form of security approved by the commission, or combination thereof, by which a
28 permittee assures faithful performance of all requirements of this chapter and the
29 rules and orders of the industrial commission.
- 30 b. The delivery, free of charge, to the state geologist of the basic data collected
31 during the course of the exploration within a reasonable time as may be

- 1 prescribed by the state geologist. The data so submitted is confidential and
2 available only to the office of the state geologist for official purposes for a period
3 of two years, and such period of confidentiality must, upon application, be
4 extended for one-year periods by the state geologist, for a total period not to
5 exceed ten years unless it is demonstrated that such period should be further
6 extended in order to prevent possible resulting harm to the person, or the
7 person's successors and assigns, who delivered such basic data to the state
8 geologist. The basic data must include, if specifically requested by the state
9 geologist and if the information has been developed by or for a person
10 conducting the exploration:
- 11 (1) Sample cuts.
 - 12 (2) Drillers' logs, sample logs, radioactivity logs, resistivity logs, or other types
13 of electrical or mechanical logs.
 - 14 (3) Elevation and location information on the data collection points.
 - 15 (4) Other pertinent information as may be required by the state geologist.
- 16 2. To require the plugging, covering, or reburial in an appropriate manner so as to protect
17 environmental quality, general health and safety, and economic values of all holes,
18 pits, or trenches excavated during the course of coal or leonardite exploration.
 - 19 3. To promulgate and enforce rules, regulations, and orders to effectuate the provisions,
20 purpose, and intent of this chapter.
 - 21 4. To inspect all drilling or exploration sites. For the purposes of this subsection, the
22 director of mineral resources or the director's representative shall have access to all
23 drilling or exploration installations regulated by this chapter for the purpose of
24 inspection and sampling and shall have the authority to require the operators' aid if the
25 director finds it necessary and requests it.
 - 26 5. Notwithstanding any of the other provisions of this section, the commission acting
27 through the director of mineral resources shall require that any lands substantially
28 disturbed in coal or leonardite exploration, including excavations, roads, and drill
29 holes, and the removal of necessary facilities and equipment be reclaimed in
30 accordance with the applicable performance standards of section 38-14.1-24.

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

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

5 **38-12.1-05. Notice and drilling permit required - Exceptions - Limits on coal or**
6 **leonardite removal.**

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

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

27 **38-14.1-02. Definitions.**

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

- 30 1. "Alluvial valley floors" means the unconsolidated stream-laid deposits holding streams
31 where water availability is sufficient for subirrigation or flood irrigation agricultural

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

1 reasonable expectation of death or serious injury before abatement exists if a rational
2 person, subjected to the same conditions or practices giving rise to the peril, would not
3 expose the person's self to the danger during the time necessary for abatement.

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

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

16 ~~40-11.~~ "Other minerals" means clay, stone, sand, gravel, metalliferous and nonmetalliferous
17 ores, and any other solid material or substances of commercial value occurring within
18 five hundred feet [152.4 meters] or less of the land surface and which are excavated in
19 solid form from natural deposits on or in the earth, exclusive of coal or leonardite and
20 those minerals which occur naturally in liquid or gaseous form.

21 ~~44-12.~~ "Other suitable strata" means those portions of the overburden determined by the
22 commission to be suitable for meeting the requirements of subsections 2 and 17 of
23 section 38-14.1-24 and based on data submitted by the permit applicant.

24 ~~42-13.~~ "Overburden" means all of the earth and other materials, with the exception of suitable
25 plant growth material, which lie above natural deposits of coal or leonardite and also
26 means such earth and other materials, with the exception of suitable plant growth
27 material, disturbed from their natural state by surface coal or leonardite mining
28 operations.

29 ~~42-1-14.~~ "Performance bond" means a surety bond, collateral bond, self-bond, deposit, a bond
30 issued under the state surface mining and reclamation bond fund, any alternative form

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

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- 1 ~~23-25.~~ "Prime soils" means those soils that have the required soil characteristics (including
2 slope and moisture supply) needed to produce sustained high yields of adapted crops,
3 as determined by the state conservationist of the United States department of
4 agriculture soil conservation service.
- 5 ~~24-26.~~ "Reclaimed" or "reclaim" means conditioning areas affected by surface coal mining
6 operations to make them capable of supporting the uses which they were capable of
7 supporting prior to any mining, or higher or better uses, pursuant to subsection 2 of
8 section 38-14.1-24.
- 9 ~~25-27.~~ "Reclamation plan" means a plan submitted by an applicant for a permit which sets
10 forth a plan for reclamation of the proposed surface coal mining operations pursuant to
11 subsection 2 of section 38-14.1-14.
- 12 ~~26-28.~~ "Refuse" means all waste material directly connected with the production of coal or
13 leonardite mined by surface coal mining operations.
- 14 ~~27-29.~~ "Soil amendments" means those materials added by the operator to the replaced
15 overburden or suitable plant growth material, or both, to improve the physical or
16 chemical condition of the soil in its relation to plant growth capability.
- 17 ~~28-30.~~ "Soil classifier" means a professional soil classifier as defined in subsection 4 of
18 section 43-36-01.
- 19 ~~29-31.~~ "Soil survey" means the identification and location of all suitable plant growth material
20 within the proposed permit area and an accompanying report that describes,
21 classifies, and interprets for use such materials.
- 22 ~~30-32.~~ "State program" means the program established by the state of North Dakota in
23 accordance with the requirements of section 503 of the federal Surface Mining Control
24 and Reclamation Act of 1977 [Pub. L. 95-87; 91 Stat. 470; 30 U.S.C. 1253] to regulate
25 surface coal mining and reclamation operations on lands within the state of North
26 Dakota.
- 27 ~~31-33.~~ "Suitable plant growth material" means that soil material (normally the A, B, and
28 portions of the C horizons) located within the proposed permit area which, based upon
29 a soil survey, is found by the commission to be the most acceptable as a medium for
30 plant growth when respread on the surface of regraded areas.

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

4 ~~33-35.~~ "Surface coal mining operations" means:

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

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

30 **SECTION 8. AMENDMENT.** Subsection 3 of section 38-14.1-05 of the North Dakota

31 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 leonardite resources of the area;
4 b. The demand for coal or leonardite resources; and
5 c. The impact of such designation on the environment, the economy, and the supply
6 of coal or 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 leonardite (excepting information regarding such mineral or
14 elemental contents which is potentially toxic in the environment). Each request must
15 be accompanied by a statement specifying the need for nondisclosure, which
16 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.

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

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

23 1. Conduct surface coal mining operations so as to maximize the utilization and
24 conservation of the coal or leonardite being recovered so that reffecting the land in
25 the future through surface coal mining can be minimized.

26 1.1. Conduct any auger mining associated with surface coal mining operations in a manner
27 that will maximize recoverability of coal or leonardite and other mineral reserves
28 remaining after mining activities and reclamation operations are completed, and seal
29 or fill all auger holes as necessary to ensure long-term stability of the area and
30 minimize any adverse impact to the environment or hazard to public health or safety.

31 The commission may prohibit auger mining if necessary to maximize the utilization,

1 recoverability, or conservation of coal or leonardite resources, to ensure long-term
2 stability, or to protect against any adverse impact to the environment or hazard to
3 public health or safety.

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

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

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

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

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

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

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

- 1 determine the areal extent of other suitable strata within the proposed permit area, and
2 to remove, segregate, protect, and respread such material. If the suitable plant growth
3 material or other suitable strata cannot be replaced on an approved graded area within
4 a time short enough to avoid deterioration of such material, the permittee shall
5 stockpile and stabilize such materials by establishing a successful cover of
6 quick-growing plants or by other means thereafter so that the suitable plant growth
7 material or other suitable strata will be protected from wind and water erosion and will
8 remain free from any contamination by toxic material. In the interest of achieving the
9 maximum reclamation provided for in this chapter, the permittee may, or at the
10 discretion of the commission shall, utilize such soil amendments as described in
11 ~~subsection 27 of~~ section 38-14.1-02.
- 12 10. Remove or bury all debris and other similar material resulting from the operation and
13 bury all mine wastes ~~and~~ coal, and leonardite processing wastes unless the
14 commission approves the surface disposal of such wastes. If the commission
15 approves the surface disposal of such wastes, the permittee shall stabilize all waste
16 piles in designated areas through construction in compacted layers, including the use
17 of incombustible and impervious materials if necessary, to assure that the final contour
18 of the waste pile will be compatible with natural surroundings and that the site can and
19 will be stabilized and revegetated according to the provisions of this chapter.
- 20 18. Assume the responsibility for successful revegetation, as required by subsection 17,
21 for a period of ten full years after the last year of augmented seeding, fertilizing,
22 irrigation, or other work, provided that, when the commission approves a long-term
23 intensive agricultural postmining land use, the ten-year period of responsibility for
24 revegetation commences at the date of initial planting. However, for previously mined
25 areas that are affected by remining, the operator's responsibility for successful
26 revegetation will extend for a period of five full years after the last year of augmented
27 seeding, fertilizing, irrigation, and other work in order to assure compliance with the
28 applicable standards. For the purposes of this subsection, "previously mined areas"
29 are lands that were affected by coal or leonardite mining activities prior to January 1,
30 1970, and "augmented seeding, fertilizing, irrigation, or other work" does not include

1 normal conservation practices recognized locally as good management for the
2 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. ~~Not a~~ permittee may not use any coal or leonardite mine waste piles consisting of mine
7 wastes, tailings, coal processing wastes, or other liquid or solid wastes either
8 temporarily or permanently as dams or embankments unless approved by the
9 commission, after consultation with the state engineer.
- 10 2. ~~Not a~~ 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. ~~Not a~~ 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 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 leonardite by a landowner for the landowner's own
7 noncommercial use from land owned or leased by the landowner.
- 8 b. Extraction of coal or leonardite as an incidental part of federal, state, or local
9 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 leonardite
12 operators who meet the qualifications in subsection 2 concerning the preparation of
13 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 leonardite for all locations
17 exceeds three hundred thousand tons [272155.41 metric tons] during the twelve
18 months immediately following the date the operator is issued a surface coal mining
19 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, leonardite, oil, gas, and
25 subsurface minerals in a manner as will prevent waste and allow a greater ultimate recovery of
26 the natural resources, and to protect the rights of all owners so that the greatest possible
27 economic recovery of natural resources be obtained in the state, to the end that landowners,
28 royalty owners, producers, and the general public realize and enjoy the greatest possible good
29 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:

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38-15-02. Definitions.

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

1. "Coal" means all kinds of coal, and includes what is known as lignite coal, unless a contrary intention plainly appears.
2. "Commission" means the industrial commission.
3. "Conflicting interests" means those interests of producers which are in conflict, so that full production and utilization by one producer is prohibited or impeded by the interests of another producer of a separate natural resource.
4. "Gas" means all natural gas and other fluid hydrocarbons not hereinbelow defined as oil.
5. "Leonardite" means a dark-colored, soft, earthy rock formed from the oxidation of lignite.
6. "Natural resources" means coal, oil, gas, and subsurface minerals as defined herein.
- ~~6-7.~~ "Oil" means crude petroleum oil and other hydrocarbons, regardless of gravity, which are produced at the wellhead in liquid form, and the liquid hydrocarbons known as distillate or condensate recovered or extracted from gas other than gas produced in association with oil and commonly known as casinghead gas.
- ~~7-8.~~ "Owner" means the person who has the right to produce natural resources either for that person or others.
- ~~8-9.~~ "Person" means any natural person, corporation, limited liability company, association, partnership, receiver, trustee, executor, administrator, guardian, fiduciary, or other representative of any kind, and includes any department, agency, instrumentality, or political subdivision of the state. The masculine gender, in referring to a person, includes the feminine and the neuter genders.
- ~~9-10.~~ "Producer" means the owner of a well or wells, or mine or mines, capable of producing coal, leonardite, oil, gas, or subsurface minerals.
- ~~10-11.~~ "Subsurface minerals" means all naturally occurring elements and their compounds, volcanic ash, precious metals, carbonates, and natural mineral salts of 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.

1 ~~44.12.~~ "Waste" means the inefficient utilization of reserves of oil, gas, subsurface minerals, ~~or~~
2 coal, or leonardite, as the case may be.

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

5 **38-18-05. Definitions.**

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

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

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

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

6 **38-18-07. Surface damage and disruption payments.**

- 7 1. Unless the mineral lease, surface lease, or consent statement executed by the surface
8 owner provides for payments to the surface owner, the mineral developer shall
9 annually pay to the surface owner a sum of money equal to the amount of damages
10 sustained by the surface owner for loss of agricultural production caused by mining
11 activity, provided that it can be shown that the land disturbed or to be disturbed has
12 regularly been used for agricultural production. The amount of damages may be
13 determined by any formula mutually agreeable between the surface owner and the
14 mineral developer. The payments contemplated by this section only cover land
15 actually mined, disturbed, or to be mined during the year or years during which
16 agricultural production was actually interrupted and which land has not been restored
17 to the level of agricultural productivity required by the plan submitted pursuant to
18 chapter 38-14.1. The payments to be made hereunder must be made before
19 December thirty-first of that calendar year in which the loss occurred.
- 20 2. Unless waived by the owner of a farm building, if the coal or leonardite removal area of
21 a surface mining operation comes within five hundred feet [152.4 meters] of any farm
22 building, the mineral developer shall pay to the owner of the farm building either the
23 fair market value of the farm building or the entire cost of removing the farm building to
24 a location where the coal or leonardite removal area of the mining operation will not
25 come within five hundred feet [152.4 meters] of such building or buildings. The
26 payments contemplated hereunder are in addition to any payments required by the
27 terms of any mineral lease, unless the surface owner is a party to the lease and the
28 lease provides for damages as contemplated in this subsection in an amount not less
29 than the amount which would be recoverable under this section.

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

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

6 **47-10-24. Description and definition of minerals in leases and conveyances.**

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

13 ~~No~~

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

25 3. ~~Any conveyance or lease of coal in this state grants, conveys, or leases to the grantee~~
26 ~~any leonardite in the same real property, unless leonardite is excluded by name. This~~
27 ~~subsection applies to every conveyance or lease of coal in this state, regardless of~~
28 ~~when the conveyance or lease was or is made~~ This subsection does not apply to any
29 past, present, or future transfer of an interest in real property, including a contract,
30 reservation, conveyance, or lease, in a document created before August 1, 2015. After
31 July 31, 2015, a transfer of an interest of coal in real property, including contract,

1 reservation, conveyance, or lease, does not include leonardite, unless specifically
2 included. After July 31, 2015, a transfer of an interest of minerals in real property,
3 including contract, reservation, conveyance, or lease, includes leonardite, unless
4 specifically excluded.

5 **SECTION 25.** 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~~ thirty-seven and one-half cents per ton of two thousand pounds [907.18
9 kilograms] is imposed on all leonardite severed for sale or for industrial purposes within this
10 state. A mine operator shall remit the tax for each month within twenty-five days after the end of
11 each month to the state tax commissioner. The mine operator shall submit the tax with any
12 report or any form required by the state tax commissioner.

13 **SECTION 26. APPLICATION.** Notwithstanding any provision of this Act, the rates or
14 application of severance and conversion taxation of coal or leonardite are not amended except
15 as provided in section 25.

2
Mar. 25, 2015

15.1008.02001
Title.

Prepared by the Legislative Council staff for
Representative Keiser
March 20, 2015

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2377

Page 1, line 2, remove the first "and"

Page 1, line 2, remove "section 1-01-40,"

Page 1, line 3, replace "subsection 7 of section 38-12-01, subsection 1 of section" with
"subsection 5 of section 38-11.2-01, sections 38-12.1-01, 38-12.1-02,"

Page 1, line 3, replace the third "section" with "38-12.1-04, 38-12.1-05, and"

Page 1, line 10, after the first comma insert "sections 38-15-01, 38-15-02, 38-18-05, and
38-18-07,"

Page 1, line 11, after "leonardite" insert "; and to provide for application"

Page 1, remove lines 13 through 23

Page 2, replace lines 1 and 2 with:

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

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

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

38-12.1-01. Legislative findings.

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

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

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

38-12.1-02. Declaration of policy.

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

Page 2, replace lines 3 through 9 with:

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

38-12.1-03. Definitions.

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

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~~ form, whether or not the material is enriched in radioactive materials. For purposes of this chapter, the term does not include leonardite.
2. "Coal exploration" means:
 - a. The use of any technique which when applied to the surface of the land will aid in the discovery or evaluation of coal or leonardite or aid in determining the quantity and quality of coal or leonardite present. It includes drilling or digging, excavating, core sample drilling and collection, diamond drilling, trenching, or any other type of penetration of the surface of the earth; or
 - b. Environmental data gathering activities conducted for the purpose of establishing the conditions of an area prior to applying for a permit under chapter 38-14.1. The provisions of sections 38-12.1-04 and 38-12.1-05 are not applicable to such environmental data gathering activities unless the natural land surface will be substantially disturbed or such activities are located on lands designated unsuitable for mining under section 38-14.1-05.
3. "Commission" means the industrial commission of the state of North Dakota.
4. "Leonardite" means a dark-colored, soft, earthy rock formed from the oxidation of lignite.
5. "Permit area" means a county.
- ~~5-6.~~ "Person" means and includes any natural person, corporation, limited liability company, association, partnership, receiver, trustee, executor, administrator, guardian, fiduciary, or other representative of any kind, and includes any department, agency, or instrumentality of the state or of any

governmental subdivision thereof; the masculine gender, in referring to a person, includes the feminine and the neuter genders.

- 6-7. "Road" means a surface or right of way for purposes of travel by land vehicles used in coal or leonardite exploration. A road consists of the entire area of the right of way, including the roadbed, shoulders, parking and side areas, approaches, structures, ditches, and surface.

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

38-12.1-04. Jurisdiction of commission.

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

1. To require:
 - a. The furnishing of a reasonable bond with good and sufficient surety, conditioned upon the full compliance with the provisions of this chapter, and the rules and orders of the commission prescribed to govern the exploration for coal or leonardite on state and private lands and roads used in coal or leonardite exploration within the state of North Dakota. The person required to furnish the bond may elect to deposit a collateral bond, self-bond, cash, or any alternative form of security approved by the commission, or combination thereof, by which a permittee assures faithful performance of all requirements of this chapter and the rules and orders of the industrial commission.
 - b. The delivery, free of charge, to the state geologist of the basic data collected during the course of the exploration within a reasonable time as may be prescribed by the state geologist. The data so submitted is confidential and available only to the office of the state geologist for official purposes for a period of two years, and such period of confidentiality must, upon application, be extended for one-year periods by the state geologist, for a total period not to exceed ten years unless it is demonstrated that such period should be further extended in order to prevent possible resulting harm to the person, or the person's successors and assigns, who delivered such basic data to the state geologist. The basic data must include, if specifically requested by the state geologist and if the information has been developed by or for a person conducting the exploration:
 - (1) Sample cuts.
 - (2) Drillers' logs, sample logs, radioactivity logs, resistivity logs, or other types of electrical or mechanical logs.
 - (3) Elevation and location information on the data collection points.

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

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

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

1. It is unlawful to commence operations for drilling for the exploration for coal or leonardite without first obtaining a permit from the director of mineral resources, under such rules and regulations as may be prescribed by the commission, and paying to the commission a fee of one hundred dollars for each such permit area. The permit application must include a description of the exploration area and the period of proposed exploration. The permit must be granted within thirty days after a proper application has been submitted.
2. This permit may not be required:
 - a. In an area where a permit to conduct surface coal mining operations is in effect pursuant to chapter 38-14.1;
 - b. For holes drilled to guide excavating equipment in an operating mine;
 - c. In areas where a drill hole is required by any other state agency; or
 - d. For environmental data gathering activities that do not substantially disturb the land, unless the environmental data gathering activities are located on land designated unsuitable for mining under section 38-14.1-05.

3. No person may remove more than two hundred fifty tons [226.80 metric tons] of coal or leonardite pursuant to an exploration permit without first obtaining a permit from the public service commission.

Page 3, line 1, replace "The" with "For purposes of this chapter, the"

Page 3, line 21, remove "that is high in humic acid"

Page 3, line 22, remove "content"

Page 14, after line 6, insert:

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

38-15-01. Policy.

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

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

38-15-02. Definitions.

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

1. "Coal" means all kinds of coal, and includes what is known as lignite coal, unless a contrary intention plainly appears.
2. "Commission" means the industrial commission.
3. "Conflicting interests" means those interests of producers which are in conflict, so that full production and utilization by one producer is prohibited or impeded by the interests of another producer of a separate natural resource.
4. "Gas" means all natural gas and other fluid hydrocarbons not hereinbelow defined as oil.
5. "Leonardite" means a dark-colored, soft, earthy rock formed from the oxidation of lignite.
6. "Natural resources" means coal, oil, gas, and subsurface minerals as defined herein.
- ~~6-7.~~ "Oil" means crude petroleum oil and other hydrocarbons, regardless of gravity, which are produced at the wellhead in liquid form, and the liquid hydrocarbons known as distillate or condensate recovered or extracted

from gas other than gas produced in association with oil and commonly known as casinghead gas.

- ~~7-8.~~ "Owner" means the person who has the right to produce natural resources either for that person or others.
- ~~8-9.~~ "Person" means any natural person, corporation, limited liability company, association, partnership, receiver, trustee, executor, administrator, guardian, fiduciary, or other representative of any kind, and includes any department, agency, instrumentality, or political subdivision of the state. The masculine gender, in referring to a person, includes the feminine and the neuter genders.
- ~~9-10.~~ "Producer" means the owner of a well or wells, or mine or mines, capable of producing coal, leonardite, oil, gas, or subsurface minerals.
- ~~10-11.~~ "Subsurface minerals" means all naturally occurring elements and their compounds, volcanic ash, precious metals, carbonates, and natural mineral salts of 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.
- ~~11-12.~~ "Waste" means the inefficient utilization of reserves of oil, gas, subsurface minerals, or coal, or leonardite, as the case may be.

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

38-18-05. Definitions.

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

1. "Agricultural production" means the production of any growing grass or crop attached to the surface of the land, whether or not the grass or crop is to be sold commercially, and the production of any farm animals, including farmed elk, whether or not the animals are to be sold commercially.
2. "Disturbed" means any alteration of the topsoil of the land whether the alteration is for the purpose of exploring for coal or leonardite, or for the purpose of carrying out an actual mining operation.
3. "Mineral developer" means the person who acquires at least seventy-five percent of the mineral rights or a lease of at least seventy-five percent of the mineral rights for the purpose of extracting or using the mineral for nonagricultural purposes.
4. "Mineral estate" means an estate in or ownership of all or part of the minerals under a specified tract of land.
5. "Mineral lease" means any lease which purports to convey the minerals or rights relating to the minerals under a specified tract of land separate from the surface, and any other type of lease which gives or conveys rights to minerals.

6. "Mineral owner" means any person or persons who presently own the mineral estate, their successors, assigns, or predecessors in title, under a specified tract of land by means of a mineral deed, or by an exception or reservation in the deed, grant, or conveyance of the surface, or by any other means whatsoever.
7. "Minerals" means coal or leonardite.
8. "Mining operation" means any type of activity, the aim of which is to discover the presence of minerals, or to remove the minerals so discovered from their original position on or in the land by any means whatsoever.
9. "Surface estate" means an estate in or ownership of the surface of a particular tract of land.
10. "Surface owner" means the person or persons who presently have valid title to the surface of the land, their successors, assigns, or predecessors in title, regardless of whether or not a portion of the land surface is occupied for a residence.

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

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

1. Unless the mineral lease, surface lease, or consent statement executed by the surface owner provides for payments to the surface owner, the mineral developer shall annually pay to the surface owner a sum of money equal to the amount of damages sustained by the surface owner for loss of agricultural production caused by mining activity, provided that it can be shown that the land disturbed or to be disturbed has regularly been used for agricultural production. The amount of damages may be determined by any formula mutually agreeable between the surface owner and the mineral developer. The payments contemplated by this section only cover land actually mined, disturbed, or to be mined during the year or years during which agricultural production was actually interrupted and which land has not been restored to the level of agricultural productivity required by the plan submitted pursuant to chapter 38-14.1. The payments to be made hereunder must be made before December thirty-first of that calendar year in which the loss occurred.
2. Unless waived by the owner of a farm building, if the coal or leonardite removal area of a surface mining operation comes within five hundred feet [152.4 meters] of any farm building, the mineral developer shall pay to the owner of the farm building either the fair market value of the farm building or the entire cost of removing the farm building to a location where the coal or leonardite removal area of the mining operation will not come within five hundred feet [152.4 meters] of such building or buildings. The payments contemplated hereunder are in addition to any payments required by the terms of any mineral lease, unless the surface owner is a party to the lease and the lease provides for damages as contemplated in this subsection in an amount not less than the amount which would be recoverable under this section.

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

Page 14, line 28, remove "Any conveyance or lease of coal in this state grants, conveys, or leases to the grantee"

Page 14, replace lines 29 through 31 with "This subsection does not apply to any past, present, or future transfer of an interest in real property, including a contract, reservation, conveyance, or lease, in a document created before August 1, 2015. After July 31, 2015, a transfer of an interest of coal in real property, including contract, reservation, conveyance, or lease, does not include leonardite, unless specifically included. After July 31, 2015, a transfer of an interest of minerals in real property, including contract, reservation, conveyance, or lease, includes leonardite, unless specifically excluded."

Page 15, line 4, replace "twenty-five" with "thirty-seven and one-half"

Page 15, after line 8, insert:

"SECTION 26. APPLICATION. Notwithstanding any provision of this Act, the rates or application of severance and conversion taxation of coal or leonardite are not amended except as provided in section 25."

Renumber accordingly

#3
Mar. 25, 2015
SB 2377

Harms, Cherie

From: Harms, Cherie
Sent: Wednesday, March 25, 2015 1:11 PM
To: TylerHamman@lignite.com; Christopher Friez (Christopher.friez@nacoal.com); David.Straley@nacoal.com; Timothy J. Dawson (tdawson@nd.gov)
Cc: Robert Harms; Jeffcoat-Sacco, Illona; Furey, Casey A.; 'Edward C. Murphy (emurphy@nd.gov)'
Subject: FW: SB 2377
Importance: High

Hello everyone,
Excuse our delayed reaction to the last sentence in Chris' email to Tyler regarding North American Coal's last changes:

In addition to the above, we may need to think about leaving Section 1 of the bill as it was passed out of the Senate.

From the bill passed by the Senate, on page No. 1, Lines 17 and 18, under Section 1, we want to remove the words, "and leonardite,"

Otherwise we are OK with the changes as proposed by North American Coal in:

Section 24 of the bill. Beginning on Line 25, Page 22 of the current bill draft, we would like subsection 3 to read as follows:

Any transfer of an interest in real property of coal by lease, conveyance, contract, reservation or will, executed prior to August 1, 2015, shall be deemed to include leonardite unless leonardite is specifically excluded by name.

After July 31, 2015, any transfer of an interest in real property of coal by lease, conveyance, contract, reservation or will, does not include leonardite unless leonardite is specifically included by name.

Cherie

Cherie Harms

Leonardite Products

Mobile: 701-471-2704

Cherie@leonarditeproducts.com

From: Tyler Hamman [mailto:TylerHamman@lignite.com]
Sent: Tuesday, March 24, 2015 7:56 PM
To: Harms, Cherie
Cc: David Straley
Subject: Fwd: SB 2377

Cherie - I apologize for the delay but below is some proposed language regarding the title protections in the bill. Let us know if you want to get together to discuss before the subcommittee meeting tomorrow afternoon.

Begin forwarded message:

From: "Friez, Christopher" <Christopher.Friez@nacoal.com>
Date: March 24, 2015 at 7:02:45 PM CDT

Date: 3/25/15

SB 23

#4 pl
Subcommittee
Committee: Energy And Natural Resources

REGISTRATION

PLEASE GIVE COPIES OF YOUR TESTIMONY TO THE COMMITTEE CLERK

BILL NO.	FOR	NEUTRAL	AGAINST	NAME (Please Print)	LOBBYIST REG. NO.	REPRESENTING
	X			ED MURPHY		DNR-GEOLOGICAL SURVEY
		X		Tyler Hamman	043	LEC
	X	X		Illene A. Affenat Sacco		PSC
		X		Celsey Furey		PSC
		X		Chris Friez		NACoal
		X		BRIAN BJELLA		LIGNITE ENERGY COUNCIL
		X		David Straley		NACoal
	X			Robert Harnes		Leonardite Products
	/			Chere Harnes		Leonardite Products
		X		Jason Bohrer	4	LEC

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 commercial leonardite; ~~and to amend and reenact section 1-01-40,~~
3 ~~subsection 7 of section 38-12-01, subsection 1 of sections~~ subsection 5 of section 38-11.2-01,
4 sections 38-12.1-01, 38-12.1-02, 38-12.1-03, section 38-12.1-04, 38-12.1-05, and 38-14.1-02,
5 subsection 3 of section 38-14.1-05, subsection 3 of section 38-14.1-13, subdivisions r and s of
6 subsection 1 of section 38-14.1-14, subdivision c of subsection 2 of section 38-14.1-14,
7 paragraph 2 of subdivision e of subsection 3 of section 38-14.1-21, subdivision b of
8 subsection 4 of section 38-14.1-21, subsections 1 and 1.1 of section 38-14.1-24, subdivision b
9 of subsection 3 of section 38-14.1-24, subsections 5, 10, and 18 of section 38-14.1-24, section
10 38-14.1-25, subdivision b of subsection 1 of section 38-14.1-27, subsections 1, 3, and 4 of
11 section 38-14.1-37, sections 38-15-01, 38-15-02, 38-18-05, and 38-18-07, and section 47-10-24
12 of the North Dakota Century Code, relating to the definition of coal and commercial leonardite;
13 and to provide for application.

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

15 ~~SECTION 1. AMENDMENT. Section 1-01-40 of the North Dakota Century Code is amended~~
16 ~~and reenacted as follows:~~

17 ~~1-01-40. Coal - Definition.~~

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

21 ~~SECTION 2. AMENDMENT. Subsection 7 of section 38-12-01 of the North Dakota Century~~
22 ~~Code is amended and reenacted as follows: _____~~

23 ~~7. "Subsurface minerals" means all naturally occurring elements and their~~
24 ~~compounds, leonardite, volcanic ash, precious metals, carbonates, and natural~~

~~mineral salts of 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 1. AMENDMENT. Subsection 5 of section 38-11.2-01 of the North Dakota Century Code is amended and reenacted as follows:

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

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

38-12.1-01. Legislative findings.

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

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

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

38-12.1-02. Declaration of policy.

It is hereby declared to be in the public interest to have persons engaged in coal or commercial leonardite exploration or evaluation report their findings to the office of the state geologist so that data on the location, quantity, and quality of coal or commercial leonardite, and the characteristics of associated material, will be available to assist the state in determining

1 what the attitude of the state should be regarding future development of coal or commercial
2 leonardite resources.

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

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

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

12 **38-12.1-03. Definitions.**

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

- 14 1. "Coal" means a dark-colored, compact, and earthy organic rock with less than forty
15 percent inorganic components, based on dry material, formed by the accumulation
16 and decomposition of plant material. The term includes lignite in both oxidized and
17 nonoxidized ~~forms~~form, whether or not the material is enriched in radioactive
18 materials. For purposes of this chapter, the term does not include commercial
19 leonardite.
- 20 2. "Coal exploration" means:
- 21 a. The use of any technique which when applied to the surface of the land will aid in
22 the discovery or evaluation of coal or commercial leonardite or aid in determining
23 the quantity and quality of coal or commercial leonardite present. It includes
24 drilling or digging, excavating, core sample drilling and collection, diamond
25 drilling, trenching, or any other type of penetration of the surface of the earth; or
- 26 b. Environmental data gathering activities conducted for the purpose of establishing
27 the conditions of an area prior to applying for a permit under chapter 38-14.1. The
28 provisions of sections 38-12.1-04 and 38-12.1-05 are not applicable to such
29 environmental data gathering activities unless the natural land surface will be
30 substantially disturbed or such activities are located on lands designated
31 unsuitable for mining under section 38-14.1-05.

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

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

6 ~~4.5.~~ "Permit area" means a county.

7 ~~5.6.~~ "Person" means and includes any natural person, corporation, limited liability
8 company, association, partnership, receiver, trustee, executor, administrator, guardian,
9 fiduciary, or other representative of any kind, and includes any department, agency, or
10 instrumentality of the state or of any governmental subdivision thereof; the masculine
11 gender, in referring to a person, includes the feminine and the neuter genders.

12 ~~6.7.~~ "Road" means a surface or right of way for purposes of travel by land vehicles used in
13 coal or commercial leonardite exploration. A road consists of the entire area of the
14 right of way, including the roadbed, shoulders, parking and side areas, approaches,
15 structures, ditches, and surface.

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

18 **38-12.1-04. Jurisdiction of commission.**

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

26 1. To require:

27 a. The furnishing of a reasonable bond with good and sufficient surety, conditioned
28 upon the full compliance with the provisions of this chapter, and the rules and
29 orders of the commission prescribed to govern the exploration for coal or
30 commercial leonardite on state and private lands and roads used in coal or
31 commercial leonardite exploration within the state of North Dakota. The person

1 required to furnish the bond may elect to deposit a collateral bond, self-bond,
2 cash, or any alternative form of security approved by the commission, or
3 combination thereof, by which a permittee assures faithful performance of all
4 requirements of this chapter and the rules and orders of the industrial
5 commission.

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

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

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

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

29 4. To inspect all drilling or exploration sites. For the purposes of this subsection, the
30 director of mineral resources or the director's representative shall have access to all
31 drilling or exploration installations regulated by this chapter for the purpose of

1 inspection and sampling and shall have the authority to require the operators' aid if the
2 director finds it necessary and requests it.

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

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

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

12 **38-12.1-05. Notice and drilling permit required - Exceptions - Limits on coal or**
13 **commercial leonardite removal.**

14 1. It is unlawful to commence operations for drilling for the exploration for coal or
15 commercial leonardite without first obtaining a permit from the director of mineral
16 resources, under such rules and regulations as may be prescribed by the commission,
17 and paying to the commission a fee of one hundred dollars for each such permit area.
18 The permit application must include a description of the exploration area and the
19 period of proposed exploration. The permit must be granted within thirty days after a
20 proper application has been submitted.

21 2. This permit may not be required:

- 22 a. In an area where a permit to conduct surface coal mining operations is in effect
23 pursuant to chapter 38-14.1;
- 24 b. For holes drilled to guide excavating equipment in an operating mine;
- 25 c. In areas where a drill hole is required by any other state agency; or
- 26 d. For environmental data gathering activities that do not substantially disturb the
27 land, unless the environmental data gathering activities are located on land
28 designated unsuitable for mining under section 38-14.1-05.

29 3. No person may remove more than two hundred fifty tons [226.80 metric tons] of coal
30 or commercial leonardite pursuant to an exploration permit without first obtaining a
31 permit from the public service commission.

1 **SECTION 7. 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 veneer 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. TheFor purposes of this
23 chapter, the term does not include commercial leonardite.
- 24 4. "Commercial leonardite" means a dark-colored, soft, earthy organic rock formed from
25 the oxidation of lignite, and is produced from a mine that has as its only function to
26 provide leonardite for purposes other than gasification or combustion to generate
27 electricity.
- 28 5. "Commission" means the public service commission, or such other department,
29 bureau, or commission as may lawfully succeed to the powers and duties of that
30 commission. The commission is the state regulatory authority for all purposes relating

1 to the Surface Mining Control and Reclamation Act of 1977 [Pub. L. 95-87; 91 Stat.
2 445; 30 U.S.C. 1201 et seq.].

3 ~~5-6.~~ "Extended mining plan" means a written statement setting forth the matters specified
4 in section 38-14.1-15 and covering the estimated life of the surface coal mining
5 operation.

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

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

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

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

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

29 ~~40-11.~~ "Other minerals" means clay, stone, sand, gravel, metalliferous and nonmetalliferous
30 ores, and any other solid material or substances of commercial value occurring within
31 five hundred feet [152.4 meters] or less of the land surface and which are excavated in

- 1 solid form from natural deposits on or in the earth, exclusive of coal or commercial
2 leonardite and those minerals which occur naturally in liquid or gaseous form.
- 3 ~~41-12.~~ "Other suitable strata" means those portions of the overburden determined by the
4 commission to be suitable for meeting the requirements of subsections 2 and 17 of
5 section 38-14.1-24 and based on data submitted by the permit applicant.
- 6 ~~42-13.~~ "Overburden" means all of the earth and other materials, with the exception of suitable
7 plant growth material, which lie above natural deposits of coal or commercial
8 leonardite and also means such earth and other materials, with the exception of
9 suitable plant growth material, disturbed from their natural state by surface coal or
10 commercial leonardite mining operations.
- 11 ~~42-1-14.~~ "Performance bond" means a surety bond, collateral bond, self-bond, deposit, a bond
12 issued under the state surface mining and reclamation bond fund, any alternative form
13 of security approved by the commission, or combination thereof, by which a permittee
14 assures faithful performance of all requirements of this chapter.
- 15 ~~43-15.~~ "Permit" means a permit to conduct surface coal mining and reclamation operations
16 issued by the commission.
- 17 ~~44-16.~~ "Permit applicant" means a person or operator applying for a permit.
- 18 ~~45-17.~~ "Permit area" means the area of land approved by the commission for surface ~~coal~~
19 mining operations which shall be readily identifiable by appropriate markers on the
20 site.
- 21 ~~46-18.~~ "Permit renewal" means the extension of the permit term for areas within the
22 boundaries of the initial or existing permit, upon the expiration of the initial or existing
23 permit term.
- 24 ~~47-19.~~ "Permit revision" means the modification of permit provisions during the term of the
25 permit and includes changes in the mining and reclamation plans, incidental boundary
26 extensions, and the transfer, assignment, or sale of rights granted under the permit.
- 27 ~~48-20.~~ "Permit term" means a period of time beginning with the date upon which a permit is
28 given for surface ~~coal~~ mining and reclamation operations under the provisions of this
29 chapter, and ending with the expiration of the next succeeding five years plus any
30 renewal of the permit granted under this chapter.
- 31 ~~49-21.~~ "Permittee" means a person or operator holding a permit.

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- 1 20-22. "Person" means an individual, partnership, firm, association, society, joint stock
2 company, company, cooperative, corporation, limited liability company, or other
3 business organization.
- 4 21-23. "Pit" means a tract of land, from which overburden, or coal, or both, or overburden, or
5 commercial leonardite, or both, has been or is being removed for the purpose of
6 surface coal mining or surface commercial leonardite operations.
- 7 22-24. "Prime farmland" means lands as prescribed by commission regulation that have the
8 soil characteristics and moisture supply needed to produce sustained high yields of
9 adapted crops economically when treated and managed, including management of
10 water, according to modern farming methods. Furthermore, such lands historically
11 have been used for intensive agricultural purposes and are large enough in size to
12 constitute a viable economic unit.
- 13 23-25. "Prime soils" means those soils that have the required soil characteristics (including
14 slope and moisture supply) needed to produce sustained high yields of adapted crops,
15 as determined by the state conservationist of the United States department of
16 agriculture soil conservation service.
- 17 24-26. "Reclaimed" or "reclaim" means conditioning areas affected by surface coal mining
18 operations or surface commercial leonardite operations to make them capable of
19 supporting the uses which they were capable of supporting prior to any mining, or
20 higher or better uses, pursuant to subsection 2 of section 38-14.1-24.
- 21 25-27. "Reclamation plan" means a plan submitted by an applicant for a permit which sets
22 forth a plan for reclamation of the proposed surface ~~coal~~-mining operations pursuant to
23 subsection 2 of section 38-14.1-14.
- 24 26-28. "Refuse" means all waste material directly connected with the production of coal or
25 commercial leonardite mined by surface ~~coal~~-mining operations.
- 26 27-29. "Soil amendments" means those materials added by the operator to the replaced
27 overburden or suitable plant growth material, or both, to improve the physical or
28 chemical condition of the soil in its relation to plant growth capability.
- 29 28-30. "Soil classifier" means a professional soil classifier as defined in subsection 4 of
30 section 43-36-01.

1 ~~29~~.31. "Soil survey" means the identification and location of all suitable plant growth material
2 within the proposed permit area and an accompanying report that describes,
3 classifies, and interprets for use such materials.

4 ~~30~~.32. "State program" means the program established by the state of North Dakota in
5 accordance with the requirements of section 503 of the federal Surface Mining Control
6 and Reclamation Act of 1977 [Pub. L. 95-87; 91 Stat. 470; 30 U.S.C. 1253] to regulate
7 surface coal mining and reclamation operations on lands within the state of North
8 Dakota.

9 ~~31~~.33. "Suitable plant growth material" means that soil material (normally the A, B, and
10 portions of the C horizons) located within the proposed permit area which, based upon
11 a soil survey, is found by the commission to be the most acceptable as a medium for
12 plant growth when respread on the surface of regraded areas.

13 ~~32~~.34. "Surface coal mining and reclamation operations" means surface coal mining
14 operations and all activities necessary and incidental to the reclamation of such
15 operations after July 1, 1979.

16 ~~33~~.35. "Surface coal mining operations" means:

- 17 a. Activities affecting the surface of lands in connection with a surface coal or
18 commercial leonardite mine. Such activities include extraction of coal or
19 commercial leonardite from coal or commercial leonardite refuse piles,
20 excavation for the purpose of obtaining coal or commercial leonardite, including
21 such common methods as contour, strip, auger, box cut, open pit, and area
22 mining, the uses of explosives and blasting, and in situ distillation or retorting,
23 leaching or other chemical or physical processing, and the cleaning,
24 concentrating, or other processing or preparation, and loading of coal or
25 commercial leonardite at or near the minesite, except that such activities do not
26 include coal or commercial leonardite exploration subject to chapter 38-12.1, or
27 the extraction of coal or commercial leonardite incidental to reclamation
28 operations under chapter 38-14.2; and
- 29 b. The areas upon which such activities occur or where such activities disturb the
30 natural land surface. Such areas shall also include any adjacent land the use of
31 which is incidental to any such activities, all adjacent lands affected by the

1 construction of new roads or the improvement or use of existing roads to gain
2 access to the site of such activities and for haulage, and excavations, workings,
3 impoundments, dams, refuse banks, dumps, stockpiles, overburden piles, spoil
4 banks, culm banks, tailings, holes or depressions, repair areas, storage areas,
5 processing areas, shipping areas, and other areas upon which are sited
6 structures, facilities, or other property or materials on the surface, resulting from
7 or incident to such activities.

8 ~~34.36.~~ "Unwarranted failure to comply" means the failure of a permittee to prevent the
9 occurrence of any violation of the permittee's permit or any requirement of this chapter
10 due to indifference, lack of diligence, or lack of reasonable care, or the failure to abate
11 any violation of such permit or this chapter due to indifference, lack of diligence, or
12 lack of reasonable care.

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

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

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

- 23 3. Upon request by the permit applicant, the commission, in its discretion, may designate
24 specific information included in the plans required by subdivisions c and d of
25 subsection 1 as exempt from disclosure under section 44-04-18, provided such
26 specific information pertains only to the analysis of the chemical and physical
27 properties of the coal or commercial leonardite (excepting information regarding such
28 mineral or elemental contents which is potentially toxic in the environment). Each
29 request must be accompanied by a statement specifying the need for nondisclosure,
30 which statement must be considered part of the permit application to be filed for public
31 inspection as specified in subsection 2. The confidential information is exempt for a

1 period not to exceed ten years subsequent to the date on which the request for
2 nondisclosure was filed, unless it is demonstrated by the permit applicant that such
3 period should be further extended in order to prevent possible resulting harm to the
4 permit applicant, or the applicant's successors and assigns.

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

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

- 13 (1) The nature and depth of the various strata of overburden.
- 14 (2) The location of subsurface water, if encountered, and its quality.
- 15 (3) The nature and thickness of any coal, commercial leonardite, or rider seam
16 above the coal or commercial leonardite seam to be mined.
- 17 (4) The nature of the stratum immediately beneath the coal or commercial
18 leonardite seam to be mined.
- 19 (5) All mineral crop lines and the strike and dip of the coal or commercial
20 leonardite to be mined, within the area of land to be affected.
- 21 (6) Existing or previous surface mining limits.
- 22 (7) The location and extent of known workings of any underground mines,
23 including mine openings to the surface.
- 24 (8) The location of aquifers.
- 25 (9) The estimated elevation of the water table.
- 26 (10) The location of spoil, waste, or refuse areas, suitable plant growth material
27 stockpiling areas and, if necessary, stockpiling areas for other suitable
28 strata.
- 29 (11) The location of all impoundments for waste or erosion control.
- 30 (12) Any settling or water treatment facility.

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

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

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

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

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

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

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

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

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

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

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

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

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

- 1 (2) The thickness of the coal or commercial leonardite deposits relative to the
2 volume of overburden is large; and
- 3 (3) The permittee demonstrates that the overburden and other spoil and waste
4 materials at a particular point in the permit area or otherwise available from
5 the entire permit area are insufficient, giving due consideration to volumetric
6 expansion, to restore the approximate original contour.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

9 **38-15-01. Policy.**

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

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

19 **38-15-02. Definitions.**

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

- 21 1. "Coal" means all kinds of coal, and includes what is known as lignite coal, unless a
22 contrary intention plainly appears.
- 23 2. "Commercial leonardite" means a dark-colored, soft, earthy rock formed from the
24 oxidation of lignite, and is produced from a mine that has as its only function to provide
25 leonardite for purposes other than gasification or combustion to generate electricity.
- 26 3. "Commission" means the industrial commission.
- 27 ~~3.4.~~ "Conflicting interests" means those interests of producers which are in conflict, so that
28 full production and utilization by one producer is prohibited or impeded by the interests
29 of another producer of a separate natural resource.
- 30 ~~4.5.~~ "Gas" means all natural gas and other fluid hydrocarbons not hereinbelow defined as
31 oil.

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

22 **SECTION 22. AMENDMENT.** Section 38-18-05 of the North Dakota Century Code is

23 amended and reenacted as follows:

24 **38-18-05. Definitions.**

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

- 26 1. "Agricultural production" means the production of any growing grass or crop attached
- 27 to the surface of the land, whether or not the grass or crop is to be sold commercially,
- 28 and the production of any farm animals, including farmed elk, whether or not the
- 29 animals are to be sold commercially.

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

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

27 **38-18-07. Surface damage and disruption payments.**

- 28 1. Unless the mineral lease, surface lease, or consent statement executed by the surface
29 owner provides for payments to the surface owner, the mineral developer shall
30 annually pay to the surface owner a sum of money equal to the amount of damages
31 sustained by the surface owner for loss of agricultural production caused by mining

1 activity, provided that it can be shown that the land disturbed or to be disturbed has
2 regularly been used for agricultural production. The amount of damages may be
3 determined by any formula mutually agreeable between the surface owner and the
4 mineral developer. The payments contemplated by this section only cover land
5 actually mined, disturbed, or to be mined during the year or years during which
6 agricultural production was actually interrupted and which land has not been restored
7 to the level of agricultural productivity required by the plan submitted pursuant to
8 chapter 38-14.1. The payments to be made hereunder must be made before
9 December thirty-first of that calendar year in which the loss occurred.

- 10 2. Unless waived by the owner of a farm building, if the coal or commercial leonardite
11 removal area of a surface mining operation comes within five hundred feet [152.4
12 meters] of any farm building, the mineral developer shall pay to the owner of the farm
13 building either the fair market value of the farm building or the entire cost of removing
14 the farm building to a location where the coal or commercial leonardite removal area of
15 the mining operation will not come within five hundred feet [152.4 meters] of such
16 building or buildings. The payments contemplated hereunder are in addition to any
17 payments required by the terms of any mineral lease, unless the surface owner is a
18 party to the lease and the lease provides for damages as contemplated in this
19 subsection in an amount not less than the amount which would be recoverable under
20 this section.
- 21 3. The rights granted to the surface owner by this section are hereby declared to be
22 absolute and unwaivable, except as provided in subsection 2. Any instrument which
23 purports to waive rights granted by this section is null and void and of no legal effect.

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

26 ~~47-10-24. Description and definition of minerals in leases and conveyances.~~

27 ~~1. All conveyances of mineral rights or royalties in real property in this state, excluding~~
28 ~~leases, shall be construed to grant or convey to the grantee thereof all minerals of any~~
29 ~~nature whatsoever except those minerals specifically excluded by name in the deed,~~
30 ~~grant, or conveyance, and their compounds and byproducts, but shall not be~~

1 ~~construed to grant or convey to the grantee any interest in any gravel, clay, or scoria~~
2 ~~unless specifically included by name in the deed, grant, or conveyance.~~

3 ~~No~~

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

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

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

21 **57-61-01.9. Severance tax on commercial leonardite in lieu of sales and use taxes.**

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

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

March 31, 2015

Apr 1, 2015 #2

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2377

Page 1, line 2, after "for" insert "commercial"

Page 1, line 2, remove the first "and"

Page 1, line 2, remove "section 1-01-40,"

Page 1, line 3, replace "subsection 7 of section 38-12-01, subsection 1 of section" with
"subsection 5 of section 38-11.2-01, sections 38-12.1-01, 38-12.1-02,"

Page 1, line 3, replace the third "section" with "38-12.1-04, 38-12.1-05, and"

Page 1, line 10, after the first comma insert "sections 38-15-01, 38-15-02, 38-18-05, and
38-18-07,"

Page 1, line 11, after "and" insert "commercial"

Page 1, line 11, after "leonardite" insert "; and to provide for application"

Page 1, remove lines 13 through 23

Page 2, overstrike lines 1 and 2 and insert immediately thereafter

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

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

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

38-12.1-01. Legislative findings.

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

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

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

38-12.1-02. Declaration of policy.

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

Page 2, replace lines 3 through 9 with:

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

38-12.1-03. Definitions.

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

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 form, whether or not the material is enriched in radioactive materials. For purposes of this chapter, the term does not include commercial leonardite.
2. "Coal exploration" means:
 - a. The use of any technique which when applied to the surface of the land will aid in the discovery or evaluation of coal or commercial leonardite or aid in determining the quantity and quality of coal or commercial leonardite present. It includes drilling or digging, excavating, core sample drilling and collection, diamond drilling, trenching, or any other type of penetration of the surface of the earth; or
 - b. Environmental data gathering activities conducted for the purpose of establishing the conditions of an area prior to applying for a permit under chapter 38-14.1. The provisions of sections 38-12.1-04 and 38-12.1-05 are not applicable to such environmental data gathering activities unless the natural land surface will be substantially disturbed or such activities are located on lands designated unsuitable for mining under section 38-14.1-05.
3. "Commercial leonardite" means a dark-colored, soft, earthy rock formed from the oxidation of lignite coal, and is produced from a mine that has as its only function to provide leonardite for purposes other than gasification or combustion to generate electricity.
4. "Commission" means the industrial commission of the state of North Dakota.
- 4.5. "Permit area" means a county.

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

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

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

38-12.1-04. Jurisdiction of commission.

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

1. To require:
 - a. The furnishing of a reasonable bond with good and sufficient surety, conditioned upon the full compliance with the provisions of this chapter, and the rules and orders of the commission prescribed to govern the exploration for coal or commercial leonardite on state and private lands and roads used in coal or commercial leonardite exploration within the state of North Dakota. The person required to furnish the bond may elect to deposit a collateral bond, self-bond, cash, or any alternative form of security approved by the commission, or combination thereof, by which a permittee assures faithful performance of all requirements of this chapter and the rules and orders of the industrial commission.
 - b. The delivery, free of charge, to the state geologist of the basic data collected during the course of the exploration within a reasonable time as may be prescribed by the state geologist. The data so submitted is confidential and available only to the office of the state geologist for official purposes for a period of two years, and such period of confidentiality must, upon application, be extended for one-year periods by the state geologist, for a total period not to exceed ten years unless it is demonstrated that such period should be further extended in order to prevent possible resulting harm to the person, or the person's successors and assigns, who delivered such basic data to the state geologist. The basic data must include, if specifically requested by the state geologist and if the information has been developed by or for a person conducting the exploration:
 - (1) Sample cuts.

- (2) Drillers' logs, sample logs, radioactivity logs, resistivity logs, or other types of electrical or mechanical logs.
 - (3) Elevation and location information on the data collection points.
 - (4) Other pertinent information as may be required by the state geologist.
2. To require the plugging, covering, or reburial in an appropriate manner so as to protect environmental quality, general health and safety, and economic values of all holes, pits, or trenches excavated during the course of coal or commercial leonardite exploration.
 3. To promulgate and enforce rules, regulations, and orders to effectuate the provisions, purpose, and intent of this chapter.
 4. To inspect all drilling or exploration sites. For the purposes of this subsection, the director of mineral resources or the director's representative shall have access to all drilling or exploration installations regulated by this chapter for the purpose of inspection and sampling and shall have the authority to require the operators' aid if the director finds it necessary and requests it.
 5. Notwithstanding any of the other provisions of this section, the commission acting through the director of mineral resources shall require that any lands substantially disturbed in coal or commercial leonardite exploration, including excavations, roads, and drill holes, and the removal of necessary facilities and equipment be reclaimed in accordance with the applicable performance standards of section 38-14.1-24. Reclamation must be accomplished to protect environmental quality, general health and safety, and economic values.

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

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

1. It is unlawful to commence operations for drilling for the exploration for coal or commercial leonardite without first obtaining a permit from the director of mineral resources, under such rules and regulations as may be prescribed by the commission, and paying to the commission a fee of one hundred dollars for each such permit area. The permit application must include a description of the exploration area and the period of proposed exploration. The permit must be granted within thirty days after a proper application has been submitted.
2. This permit may not be required:
 - a. In an area where a permit to conduct surface coal mining operations is in effect pursuant to chapter 38-14.1;
 - b. For holes drilled to guide excavating equipment in an operating mine;
 - c. In areas where a drill hole is required by any other state agency; or

- d. For environmental data gathering activities that do not substantially disturb the land, unless the environmental data gathering activities are located on land designated unsuitable for mining under section 38-14.1-05.
3. No person may remove more than two hundred fifty tons [226.80 metric tons] of coal or commercial leonardite pursuant to an exploration permit without first obtaining a permit from the public service commission."

Page 2, line 29, remove the overstrike over "~~both oxidized and~~"

Page 3, line 1, replace "The" with "For purposes of this chapter, the"

Page 3, line 1, after "include" insert "commercial"

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

5."

Page 3, line 8, overstrike "5." and insert immediately thereafter "6."

Page 3, line 11, overstrike "6." and insert immediately thereafter "7."

Page 3, line 12, overstrike "7." and insert immediately thereafter "8."

Page 3, line 13, overstrike "8." and insert immediately thereafter "9."

Page 3, overstrike line 21 overstrike "9."

Page 3, line 21, remove "Leonardite means a dark-colored, soft, earthy organic rock that is high in humic acid"

Page 3, remove line 22

Page 3, line 30, after the first "or" insert "commercial"

Page 3, line 30, after the second "or" insert "commercial"

Page 4, line 2, after "or" insert "commercial"

Page 4, line 6, after "or" insert "commercial"

Page 4, line 12, after "or" insert "commercial"

Page 4, line 14, after "or" insert "commercial"

Page 4, line 23, overstrike "coal"

Page 5, line 2, overstrike "coal"

Page 5, line 9, after "coal" insert ", or both,"

Page 5, line 9, after "or" insert "overburden, or commercial"

Page 5, line 10, after "mining" insert "or surface commercial leonardite"

Page 5, line 22, after "operations" insert "or surface commercial leonardite operations"

Page 5, line 26, overstrike "coal"
Page 5, line 28, after "or" insert "commercial"
Page 5, line 29, overstrike "coal"
Page 6, line 22, after "or" insert "commercial"
Page 6, line 23, after "or" insert "commercial"
Page 6, line 24, after the first "or" insert "commercial"
Page 6, line 24, after the second "or" insert "commercial"
Page 6, line 28, after "or" insert "commercial"
Page 6, line 30, after the first "or" insert "commercial"
Page 6, line 30, after the second "or" insert "commercial"
Page 7, line 20, after "or" insert "commercial"
Page 7, line 21, after "or" insert "commercial"
Page 7, line 23, after "or" insert "commercial"
Page 7, line 30, after "or" insert "commercial"
Page 8, line 18, after the first underscored comma insert "commercial"
Page 8, line 19, after "or" insert "commercial"
Page 8, line 20, after "or" insert "commercial"
Page 8, line 22, after "or" insert "commercial"
Page 9, line 9, after "or" insert "commercial"
Page 9, line 10, after "or" insert "commercial"
Page 9, line 11, after "or" insert "commercial"
Page 9, line 13, after "or" insert "commercial"
Page 9, line 20, after "or" insert "commercial"
Page 9, line 27, after "or" insert "commercial"
Page 10, line 6, after "or" insert "commercial"
Page 10, line 10, after "or" insert "commercial"
Page 10, line 18, after "or" insert "commercial"
Page 10, line 29, overstrike "coal"
Page 10, line 30, after "or" insert "commercial"
Page 11, line 1, after "or" insert "commercial"
Page 11, line 30, after "and" insert "commercial"
Page 12, line 15, after "or" insert "commercial"

Page 12, line 22, after "or" insert "commercial"

Page 13, line 14, after "or" insert "commercial"

Page 13, line 24, after "or" insert "commercial"

Page 13, line 26, after "or" insert "commercial"

Page 13, line 29, after "or" insert "commercial"

Page 14, line 3, after "or" insert "commercial"

Page 14, line 5, overstrike "coal"

Page 14, after line 6, insert:

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

38-15-01. Policy.

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

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

38-15-02. Definitions.

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

1. "Coal" means all kinds of coal, and includes what is known as lignite coal, unless a contrary intention plainly appears.
2. "Commercial leonardite" means a dark-colored, soft, earthy rock formed from the oxidation of lignite, and is produced from a mine that has as its only function to provide leonardite for purposes other than gasification or combustion to generate electricity.
3. "Commission" means the industrial commission.
- ~~3.4.~~ "Conflicting interests" means those interests of producers which are in conflict, so that full production and utilization by one producer is prohibited or impeded by the interests of another producer of a separate natural resource.
- ~~4.5.~~ "Gas" means all natural gas and other fluid hydrocarbons not hereinbelow defined as oil.
- ~~5.6.~~ "Natural resources" means coal, oil, gas, and subsurface minerals as defined herein.

- 6-7. "Oil" means crude petroleum oil and other hydrocarbons, regardless of gravity, which are produced at the wellhead in liquid form, and the liquid hydrocarbons known as distillate or condensate recovered or extracted from gas other than gas produced in association with oil and commonly known as casinghead gas.
- 7-8. "Owner" means the person who has the right to produce natural resources either for that person or others.
- 8-9. "Person" means any natural person, corporation, limited liability company, association, partnership, receiver, trustee, executor, administrator, guardian, fiduciary, or other representative of any kind, and includes any department, agency, instrumentality, or political subdivision of the state. The masculine gender, in referring to a person, includes the feminine and the neuter genders.
- 9-10. "Producer" means the owner of a well or wells, or mine or mines, capable of producing coal, commercial leonardite, oil, gas, or subsurface minerals.
- 10-11. "Subsurface minerals" means all naturally occurring elements and their compounds, volcanic ash, precious metals, carbonates, and natural mineral salts of 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.
- 11-12. "Waste" means the inefficient utilization of reserves of oil, gas, subsurface minerals, or coal, or commercial leonardite, as the case may be.

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

38-18-05. Definitions.

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

1. "Agricultural production" means the production of any growing grass or crop attached to the surface of the land, whether or not the grass or crop is to be sold commercially, and the production of any farm animals, including farmed elk, whether or not the animals are to be sold commercially.
2. "Disturbed" means any alteration of the topsoil of the land whether the alteration is for the purpose of exploring for coal or commercial leonardite, or for the purpose of carrying out an actual mining operation.
3. "Mineral developer" means the person who acquires at least seventy-five percent of the mineral rights or a lease of at least seventy-five percent of the mineral rights for the purpose of extracting or using the mineral for nonagricultural purposes.
4. "Mineral estate" means an estate in or ownership of all or part of the minerals under a specified tract of land.
5. "Mineral lease" means any lease which purports to convey the minerals or rights relating to the minerals under a specified tract of land separate from

the surface, and any other type of lease which gives or conveys rights to minerals.

6. "Mineral owner" means any person or persons who presently own the mineral estate, their successors, assigns, or predecessors in title, under a specified tract of land by means of a mineral deed, or by an exception or reservation in the deed, grant, or conveyance of the surface, or by any other means whatsoever.
7. "Minerals" means coal or commercial leonardite.
8. "Mining operation" means any type of activity, the aim of which is to discover the presence of minerals, or to remove the minerals so discovered from their original position on or in the land by any means whatsoever.
9. "Surface estate" means an estate in or ownership of the surface of a particular tract of land.
10. "Surface owner" means the person or persons who presently have valid title to the surface of the land, their successors, assigns, or predecessors in title, regardless of whether or not a portion of the land surface is occupied for a residence.

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

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

1. Unless the mineral lease, surface lease, or consent statement executed by the surface owner provides for payments to the surface owner, the mineral developer shall annually pay to the surface owner a sum of money equal to the amount of damages sustained by the surface owner for loss of agricultural production caused by mining activity, provided that it can be shown that the land disturbed or to be disturbed has regularly been used for agricultural production. The amount of damages may be determined by any formula mutually agreeable between the surface owner and the mineral developer. The payments contemplated by this section only cover land actually mined, disturbed, or to be mined during the year or years during which agricultural production was actually interrupted and which land has not been restored to the level of agricultural productivity required by the plan submitted pursuant to chapter 38-14.1. The payments to be made hereunder must be made before December thirty-first of that calendar year in which the loss occurred.
2. Unless waived by the owner of a farm building, if the coal or commercial leonardite removal area of a surface mining operation comes within five hundred feet [152.4 meters] of any farm building, the mineral developer shall pay to the owner of the farm building either the fair market value of the farm building or the entire cost of removing the farm building to a location where the coal or commercial leonardite removal area of the mining operation will not come within five hundred feet [152.4 meters] of such building or buildings. The payments contemplated hereunder are in addition to any payments required by the terms of any mineral lease,

unless the surface owner is a party to the lease and the lease provides for damages as contemplated in this subsection in an amount not less than the amount which would be recoverable under this section.

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

Page 14, overstrike lines 7 through 9

Page 14, remove line 10 remove "1."

Page 14, line 10, overstrike "All conveyances of mineral rights or royalties in real property in this state, excluding"

Page 14, overstrike lines 11 through 16

Page 14, line 17, remove "2. Except as provided in subsection 3, a"

Page 14, line 17, overstrike "lease of mineral rights in this state shall"

Page 14, line 17, remove "may not"

Page 14, overstrike lines 18 and 19

Page 14, line 20, overstrike "paragraph"

Page 14, line 20, remove "subsection."

Page 14, line 20, overstrike "the naming of either a specific metalliferous element, or"

Page 14, overstrike lines 21 through 27

Page 14, remove lines 28 through 30

Page 14, remove line 31

Page 15, line 3, after the first "on" insert "commercial"

Page 15, line 4, replace "twenty-five" with "thirty-seven and one-half"

Page 15, line 5, after "all" insert "commercial"

Page 15, after line 8, insert:

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

Re-number accordingly

THE HARMS GROUP

April 1, 2015

Proposed amendments to Engrossed SB 2377

15.1008.02002

Consensus amendments (Leonardite Products; PSC; LEC)

P. 3 lines 18 and 19 remove "For purposes of this chapter, the term does not include commercial leonardite"

P. 7, lines 22-23 remove "For purposes of this chapter, the term does not include commercial leonardite"

P. 7 line 25 insert "coal" after lignite and insert "for supply" after function;

P. 7, line 26 remove "to provide leonardite"

P. 9 line 18 and 28 remove deletion of "coal" (retain "coal")

P. 10 lines 21 and 25 remove deletion of "coal" (retain "coal")

P. 10 line 6 remove "or surface commercial leonardite"

P. 10 line 18 remove "or surface commercial leonardite"

P. 15 line 28 remove deletion of "coal" (retain "coal")

P. 19 line 5 remove deletion of "coal" (retain "coal")

Leonardite Products' proposed amendments

P. 3 lines 16 and 17 remove "both oxidized and non-oxidized forms"

P. 7 lines 19 and 20 remove "in both oxidized and non-oxidized forms"

#4, p. 1
Apr. 1, 2015
SB 2377

Proposed amendments to Engrossed Senate Bill 2377, 15.1008.02002

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

Page 4, lines 2-3.

Strike "to provide leonardite" and insert "for supply"

Page 7, line 25.

After the word "lignite" insert "coal"

Lines 25-26.

Strike "to provide leonardite" and insert "for supply"

Page 19, line 24.

After the word "lignite" insert "coal"

Lines 24-25.

Strike "to provide leonardite" and insert "for supply"

Engrossed Senate Bill 2377

Presented by: Casey A. Furey, Attorney
Public Service Commission

Before: House Energy and Natural Resources Committee
SB 2377 Subcommittee
The Honorable George Keiser, Chairman

Date: April 1, 2015

COMMENTS and PROPOSED AMENDMENTS

Mister Chairman and committee members, I am Casey Furey, Attorney with the Public Service Commission.

Thank you for the opportunity to be part of the subcommittee deliberations intended to produce the best possible version of SB 2377 for all stakeholders. Thanks, also, to the other stakeholders for including the Public Service Commission in their discussions and sharing their proposals

As of today, we have not had a chance to review any of the stakeholders' most recent proposed amendments to Engrossed SB 2377. We have reviewed the most recent "Christmas Tree" version (15.1008.02002) distributed on March 31, 2015, and do have some proposed revisions to it that concern only the Commission's Coal Mining and Reclamation Program.

The amendments we offer below are amendments to the Christmas tree version of the Engrossed bill (15.1008.02002) distributed on March 31, 2015. These amendments are necessary in order to keep the Commission's coal regulatory program consistent with that of the Office of Surface Mining

Page 9, line 18, remove the overstrike over "coal"

Page 9, line 28, remove the overstrike over "coal"

Page 10, line 22, remove the overstrike over "eal"

Page 10, line 6, remove "or surface commercial leonardite"

Page 10, line 18, remove "or surface commercial leonardite operations"

Page 10, line 25, remove the overstrike over "eal"

Page 15, line 28, remove the overstrike over "eal"

Page 19, line 5, remove the overstrike over "eal"

Mister Chairman, this concludes my comments. I will be happy to answer any questions.

#1
Apr. 2, 2015

15.1008.02004

FIRST ENGROSSMENT

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

4 ~~1.1. Conduct any auger mining associated with surface coal mining operations in a manner~~
5 ~~that will maximize recoverability of coal or leonardite and other mineral reserves~~
6 ~~remaining after mining activities and reclamation operations are completed, and seal~~
7 ~~or fill all auger holes as necessary to ensure long-term stability of the area and~~
8 ~~minimize any adverse impact to the environment or hazard to public health or safety.~~
9 ~~The commission may prohibit auger mining if necessary to maximize the utilization,~~
10 ~~recoverability, or conservation of coal or leonardite resources, to ensure long-term~~
11 ~~stability, or to protect against any adverse impact to the environment or hazard to~~
12 ~~public health or safety.~~

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

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

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

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

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

30 ~~**SECTION 13. AMENDMENT.** Subsections 5, 10, and 18 of section 38-14.1-24 of the North~~
31 ~~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 re-mining, 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. No~~ 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. No~~ 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. No~~ 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 ~~10-11~~. "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 ~~11-12~~. "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 ~~12-13~~. "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 ~~12-1-14~~. "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.

- 1 (3) The nature and thickness of any coal commercial leonardite, or rider seam
- 2 above the coal or commercial leonardite seam to be mined.
- 3 (4) The nature of the stratum immediately beneath the coal or commercial
- 4 leonardite seam to be mined.
- 5 (5) All mineral crop lines and the strike and dip of the coal or commercial
- 6 leonardite to be mined, within the area of land to be affected.
- 7 (6) Existing or previous surface mining limits.
- 8 (7) The location and extent of known workings of any underground mines,
- 9 including mine openings to the surface.
- 10 (8) The location of aquifers.
- 11 (9) The estimated elevation of the water table.
- 12 (10) The location of spoil, waste, or refuse areas, suitable plant growth material
- 13 stockpiling areas and, if necessary, stockpiling areas for other suitable
- 14 strata.
- 15 (11) The location of all impoundments for waste or erosion control.
- 16 (12) Any settling or water treatment facility.
- 17 (13) Constructed or natural drainways and the location of any discharges to any
- 18 surface body of water on the area of land to be affected or adjacent thereto.
- 19 (14) Profiles at appropriate cross sections of the anticipated final surface
- 20 configuration that will be achieved pursuant to the applicant's proposed
- 21 reclamation plan.
- 22 s. A statement by the applicant of the result of test borings or core samplings from
- 23 the permit area, including logs of the drill holes, the thickness of the coal or
- 24 commercial leonardite seam found, an analysis of the chemical properties of
- 25 such coal or commercial leonardite, the sulfur content of any coal or commercial
- 26 leonardite seam, chemical analysis of potentially toxic forming sections of the
- 27 overburden, and chemical analysis of the stratum lying immediately underneath
- 28 the coal or commercial leonardite to be mined. The provisions of this subdivision
- 29 may be waived by the commission with respect to the specific application by a
- 30 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 ~~44.12.~~ "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 center 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.

#2
Apr. 2, 2015

15.1008.02004
Title.

Prepared by the Legislative Council staff for
Representative Keiser
April 1, 2015

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2377

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to create and enact section 57-61-01.9 of the North Dakota Century Code, relating to severance tax for commercial leonardite; to amend and reenact subsection 5 of section 38-11.2-01, sections 38-12.1-01, 38-12.1-02, 38-12.1-03, 38-12.1-04, 38-12.1-05, and 38-14.1-02, subsection 3 of section 38-14.1-05, subsection 3 of section 38-14.1-13, subdivisions r and s of subsection 1 of section 38-14.1-14, subdivision c of subsection 2 of section 38-14.1-14, paragraph 2 of subdivision e of subsection 3 of section 38-14.1-21, subdivision b of subsection 4 of section 38-14.1-21, subsections 1 and 1.1 of section 38-14.1-24, subdivision b of subsection 3 of section 38-14.1-24, subsections 5, 10, and 18 of section 38-14.1-24, section 38-14.1-25, subdivision b of subsection 1 of section 38-14.1-27, subsections 1, 3, and 4 of section 38-14.1-37, section 38-15-01, 38-15-02, 38-18-07, and section 47-10-24 of the North Dakota Century Code, relating to the definition of coal and commercial leonardite; and to provide for application.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

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

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

38-12.1-01. Legislative findings.

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

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

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

38-12.1-02. Declaration of policy.

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

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

38-12.1-03. Definitions.

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

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 commercial leonardite.
2. "Coal exploration" means:
 - a. The use of any technique which when applied to the surface of the land will aid in the discovery or evaluation of coal or commercial leonardite or aid in determining the quantity and quality of coal or commercial leonardite present. It includes drilling or digging, excavating, core sample drilling and collection, diamond drilling, trenching, or any other type of penetration of the surface of the earth;
or
 - b. Environmental data gathering activities conducted for the purpose of establishing the conditions of an area prior to applying for a permit under chapter 38-14.1. The provisions of sections 38-12.1-04 and 38-12.1-05 are not applicable to such environmental data gathering activities unless the natural land surface will be substantially disturbed or such activities are located on lands designated unsuitable for mining under section 38-14.1-05.
3. "Commercial leonardite" means a dark-colored, soft, earthy rock formed from the oxidation of lignite coal, and is produced from a mine that has as its only function for supply for purposes other than gasification or combustion to generate electricity.
4. "Commission" means the industrial commission of the state of North Dakota.
- ~~4-5.~~ "Permit area" means a county.
- ~~5-6.~~ "Person" means and includes any natural person, corporation, limited liability company, association, partnership, receiver, trustee, executor, administrator, guardian, fiduciary, or other representative of any kind, and includes any department, agency, or instrumentality of the state or of any

governmental subdivision thereof; the masculine gender, in referring to a person, includes the feminine and the neuter genders.

- 6-7. "Road" means a surface or right of way for purposes of travel by land vehicles used in coal or commercial leonardite exploration. A road consists of the entire area of the right of way, including the roadbed, shoulders, parking and side areas, approaches, structures, ditches, and surface.

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

38-12.1-04. Jurisdiction of commission.

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

1. To require:
 - a. The furnishing of a reasonable bond with good and sufficient surety, conditioned upon the full compliance with the provisions of this chapter, and the rules and orders of the commission prescribed to govern the exploration for coal or commercial leonardite on state and private lands and roads used in coal or commercial leonardite exploration within the state of North Dakota. The person required to furnish the bond may elect to deposit a collateral bond, self-bond, cash, or any alternative form of security approved by the commission, or combination thereof, by which a permittee assures faithful performance of all requirements of this chapter and the rules and orders of the industrial commission.
 - b. The delivery, free of charge, to the state geologist of the basic data collected during the course of the exploration within a reasonable time as may be prescribed by the state geologist. The data so submitted is confidential and available only to the office of the state geologist for official purposes for a period of two years, and such period of confidentiality must, upon application, be extended for one-year periods by the state geologist, for a total period not to exceed ten years unless it is demonstrated that such period should be further extended in order to prevent possible resulting harm to the person, or the person's successors and assigns, who delivered such basic data to the state geologist. The basic data must include, if specifically requested by the state geologist and if the information has been developed by or for a person conducting the exploration:
 - (1) Sample cuts.
 - (2) Drillers' logs, sample logs, radioactivity logs, resistivity logs, or other types of electrical or mechanical logs.
 - (3) Elevation and location information on the data collection points.

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

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

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

1. It is unlawful to commence operations for drilling for the exploration for coal or commercial leonardite without first obtaining a permit from the director of mineral resources, under such rules and regulations as may be prescribed by the commission, and paying to the commission a fee of one hundred dollars for each such permit area. The permit application must include a description of the exploration area and the period of proposed exploration. The permit must be granted within thirty days after a proper application has been submitted.
2. This permit may not be required:
 - a. In an area where a permit to conduct surface coal mining operations is in effect pursuant to chapter 38-14.1;
 - b. For holes drilled to guide excavating equipment in an operating mine;
 - c. In areas where a drill hole is required by any other state agency; or
 - d. For environmental data gathering activities that do not substantially disturb the land, unless the environmental data gathering activities are located on land designated unsuitable for mining under section 38-14.1-05.

3. No person may remove more than two hundred fifty tons [226.80 metric tons] of coal or commercial leonardite pursuant to an exploration permit without first obtaining a permit from the public service commission.

SECTION 7. 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 mining operations so that the reclaimed area closely resembles the general surface configuration of the land prior to being affected by surface coal 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 or not the material is enriched in radioactive materials. The term does not include commercial leonardite.
4. "Commercial leonardite" means a dark-colored, soft, earthy organic rock formed from the oxidation of lignite coal, and is produced from a mine that has as its only function for supply for purposes other than gasification or combustion to generate electricity.
5. "Commission" means the public service commission, or such other department, bureau, or commission as may lawfully succeed to the powers and duties of that commission. The commission is the state regulatory authority for all purposes relating to the Surface Mining Control and Reclamation Act of 1977 [Pub. L. 95-87; 91 Stat. 445; 30 U.S.C. 1201 et seq.].
- 5-6. "Extended mining plan" means a written statement setting forth the matters specified in section 38-14.1-15 and covering the estimated life of the surface coal mining operation.
- 6-7. "Final cut" means the last pit created in a surface mining pit sequence.

- 7.8. "Highwall" and "endwall" mean those sides of the pit adjacent to unmined land.
- 8.9. "Imminent danger to the health and safety of the public" means the existence of any condition or practice, or any violation of a permit or other requirement of this chapter in a surface coal mining and reclamation operation, which condition, practice, or violation could reasonably be expected to cause substantial physical harm to persons outside the permit area before such condition, practice, or violation can be abated. A reasonable expectation of death or serious injury before abatement exists if a rational person, subjected to the same conditions or practices giving rise to the peril, would not expose the person's self to the danger during the time necessary for abatement.
- 9.10 "Operator" means any individual, person, partnership, firm, association, society, joint stock company, company, cooperative, corporation, limited liability company, or other business organization, or any department, agency, or instrumentality of the state, local, or federal government, or any governmental subdivision thereof including any publicly owned utility or publicly owned corporation of the state, local, or federal government, engaged in or controlling a surface coal mining operation. Operator does not include those who remove or intend to remove two hundred fifty tons [226.80 metric tons] or less of coal or commercial leonardite from the earth by coal or commercial leonardite mining within twelve consecutive calendar months in any one location or who remove any coal or commercial leonardite pursuant to reclamation operations under chapter 38-14.2.
- 10.11. "Other minerals" means clay, stone, sand, gravel, metalliferous and nonmetalliferous ores, and any other solid material or substances of commercial value occurring within five hundred feet [152.4 meters] or less of the land surface and which are excavated in solid form from natural deposits on or in the earth, exclusive of coal or commercial leonardite and those minerals which occur naturally in liquid or gaseous form.
- 11.12. "Other suitable strata" means those portions of the overburden determined by the commission to be suitable for meeting the requirements of subsections 2 and 17 of section 38-14.1-24 and based on data submitted by the permit applicant.
- 12.13. "Overburden" means all of the earth and other materials, with the exception of suitable plant growth material, which lie above natural deposits of coal or commercial leonardite and also means such earth and other materials, with the exception of suitable plant growth material, disturbed from their natural state by surface coal or commercial leonardite mining operations.
- 12.1.14. "Performance bond" means a surety bond, collateral bond, self-bond, deposit, a bond issued under the state surface mining and reclamation bond fund, any alternative form of security approved by the commission, or combination thereof, by which a permittee assures faithful performance of all requirements of this chapter.

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

- ~~25-27.~~ "Reclamation plan" means a plan submitted by an applicant for a permit which sets forth a plan for reclamation of the proposed surface coal mining operations pursuant to subsection 2 of section 38-14.1-14.
- ~~26-28.~~ "Refuse" means all waste material directly connected with the production of coal or commercial leonardite mined by surface coal mining operations.
- ~~27-29.~~ "Soil amendments" means those materials added by the operator to the replaced overburden or suitable plant growth material, or both, to improve the physical or chemical condition of the soil in its relation to plant growth capability.
- ~~28-30.~~ "Soil classifier" means a professional soil classifier as defined in subsection 4 of section 43-36-01.
- ~~29-31.~~ "Soil survey" means the identification and location of all suitable plant growth material within the proposed permit area and an accompanying report that describes, classifies, and interprets for use such materials.
- ~~30-32.~~ "State program" means the program established by the state of North Dakota in accordance with the requirements of section 503 of the federal Surface Mining Control and Reclamation Act of 1977 [Pub. L. 95-87; 91 Stat. 470; 30 U.S.C. 1253] to regulate surface coal mining and reclamation operations on lands within the state of North Dakota.
- ~~31-33.~~ "Suitable plant growth material" means that soil material (normally the A, B, and portions of the C horizons) located within the proposed permit area which, based upon a soil survey, is found by the commission to be the most acceptable as a medium for plant growth when respread on the surface of regraded areas.
- ~~32-34.~~ "Surface coal mining and reclamation operations" means surface coal mining operations and all activities necessary and incidental to the reclamation of such operations after July 1, 1979.
- ~~33-35.~~ "Surface coal mining operations" means:
- a. Activities affecting the surface of lands in connection with a surface coal or commercial leonardite mine. Such activities include extraction of coal or commercial leonardite from coal or commercial leonardite refuse piles, excavation for the purpose of obtaining coal or commercial leonardite, including such common methods as contour, strip, auger, box cut, open pit, and area mining, the uses of explosives and blasting, and in situ distillation or retorting, leaching or other chemical or physical processing, and the cleaning, concentrating, or other processing or preparation, and loading of coal or commercial leonardite at or near the minesite, except that such activities do not include coal or commercial leonardite exploration subject to chapter 38-12.1, or the extraction of coal or commercial leonardite incidental to reclamation operations under chapter 38-14.2; and
 - b. The areas upon which such activities occur or where such activities disturb the natural land surface. Such areas shall also include any adjacent land the use of which is incidental to any such activities, all adjacent lands affected by the construction of new roads or the

improvement or use of existing roads to gain access to the site of such activities and for haulage, and excavations, workings, impoundments, dams, refuse banks, dumps, stockpiles, overburden piles, spoil banks, culm banks, tailings, holes or depressions, repair areas, storage areas, processing areas, shipping areas, and other areas upon which are sited structures, facilities, or other property or materials on the surface, resulting from or incident to such activities.

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

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

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

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

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

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

- r. Cross sections, maps or plans of the land to be affected, including the actual area to be mined, prepared by or under the direction of and certified by a registered professional engineer, a registered land surveyor, or a qualified professional geologist with assistance from experts in related fields, showing pertinent elevation and location of

test borings or core samplings and depicting all of the following information:

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

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

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

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

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

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

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

SECTION 14. AMENDMENT. Subsections 1 and 1.1 of section 38-14.1-24 of the North 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 commercial leonardite being recovered so that reffecting 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 commercial 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 15. 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 commercial leonardite deposit;
- (2) The thickness of the coal or commercial 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 16. AMENDMENT. Subsections 5, 10, and 18 of section 38-14.1-24 of the North Dakota Century Code are amended and reenacted as follows:

5. Remove, segregate, and respread suitable plant growth material as required by the commission within the permit area. The commission may require the permittee to segregate suitable plant growth material in two or more soil layers. The commission shall determine the soil layer or layers to be removed based upon the quality and quantity of suitable plant growth material inventoried by the soil survey required in subdivision t of subsection 1 of section 38-14.1-14. Based on the soil survey, the commission shall also determine whether other suitable strata are necessary to meet revegetation requirements. If other strata can be shown to be suitable and necessary to meet revegetation requirements, the commission may require the permittee to determine the areal extent of other suitable strata within the proposed permit area, and to remove, segregate, protect, and respread such material. If the suitable plant growth material or other suitable strata cannot be replaced on an approved graded area within a time short enough to avoid deterioration of such material, the permittee shall stockpile and stabilize such materials by establishing a successful cover of quick-growing plants or by other means thereafter so that the suitable plant growth material or other suitable strata will be protected from wind and water erosion and will remain free from any contamination by toxic material. In the interest of achieving the maximum reclamation provided for in this chapter, the permittee may, or at the discretion of the commission shall, utilize such soil amendments as described in ~~subsection 27~~ of section 38-14.1-02.
10. Remove or bury all debris and other similar material resulting from the operation and bury all mine wastes ~~and~~, coal, and commercial leonardite processing wastes unless the commission approves the surface disposal of such wastes. If the commission approves the surface disposal of such wastes, the permittee shall stabilize all waste piles in designated areas through construction in compacted layers, including the use of incombustible and impervious materials if necessary, to assure that the final contour of the waste pile will be compatible with natural surroundings and that the site can and will be stabilized and revegetated according to the provisions of this chapter.
18. Assume the responsibility for successful revegetation, as required by subsection 17, for a period of ten full years after the last year of augmented seeding, fertilizing, irrigation, or other work, provided that, when the commission approves a long-term intensive agricultural

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

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

38-14.1-25. Prohibited mining practices.

1. ~~No~~A permittee may not use any coal or commercial leonardite mine waste piles consisting of mine wastes, tailings, coal processing wastes, or other liquid or solid wastes either temporarily or permanently as dams or embankments unless approved by the commission, after consultation with the state engineer.
2. ~~No~~A permittee may not locate any part of the surface coal mining and reclamation operations or deposit overburden, debris, or waste materials outside the permit area for which bond has been posted, except as provided in subsection 24 of section 38-14.1-03.
3. ~~No~~A permittee may not deposit overburden, debris, or waste materials in such a way that normal erosion or slides brought about by natural causes will permit the same to go beyond or outside the permit area for which bond has been posted.

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

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

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

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

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

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

38-15-01. Policy.

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

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

38-15-02. Definitions.

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

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

2. "Commercial leonardite" means a dark-colored, soft, earthy rock formed from the oxidation of lignite coal, and is produced from a mine that has as its only function for supply for purposes other than gasification or combustion to generate electricity.
3. "Commission" means the industrial commission.
- ~~3-4.~~ "Conflicting interests" means those interests of producers which are in conflict, so that full production and utilization by one producer is prohibited or impeded by the interests of another producer of a separate natural resource.
- ~~4-5.~~ "Gas" means all natural gas and other fluid hydrocarbons not hereinbelow defined as oil.
- ~~5-6.~~ "Natural resources" means coal, oil, gas, and subsurface minerals as defined herein.
- ~~6-7.~~ "Oil" means crude petroleum oil and other hydrocarbons, regardless of gravity, which are produced at the wellhead in liquid form, and the liquid hydrocarbons known as distillate or condensate recovered or extracted from gas other than gas produced in association with oil and commonly known as casinghead gas.
- ~~7-8.~~ "Owner" means the person who has the right to produce natural resources either for that person or others.
- ~~8-9.~~ "Person" means any natural person, corporation, limited liability company, association, partnership, receiver, trustee, executor, administrator, guardian, fiduciary, or other representative of any kind, and includes any department, agency, instrumentality, or political subdivision of the state. The masculine gender, in referring to a person, includes the feminine and the neuter genders.
- ~~9-10.~~ "Producer" means the owner of a well or wells, or mine or mines, capable of producing coal, commercial leonardite, oil, gas, or subsurface minerals.
- ~~10-11.~~ "Subsurface minerals" means all naturally occurring elements and their compounds, volcanic ash, precious metals, carbonates, and natural mineral salts of 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.
- ~~11-12.~~ "Waste" means the inefficient utilization of reserves of oil, gas, subsurface minerals, ~~or coal,~~ or commercial leonardite, as the case may be.

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

38-18-05. Definitions.

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

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

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

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

1. Unless the mineral lease, surface lease, or consent statement executed by the surface owner provides for payments to the surface owner, the mineral developer shall annually pay to the surface owner a sum of money equal to the amount of damages sustained by the surface owner for loss of agricultural production caused by mining activity, provided that it can be shown that the land disturbed or to be disturbed has regularly been used for agricultural production. The amount of damages may be determined by

any formula mutually agreeable between the surface owner and the mineral developer. The payments contemplated by this section only cover land actually mined, disturbed, or to be mined during the year or years during which agricultural production was actually interrupted and which land has not been restored to the level of agricultural productivity required by the plan submitted pursuant to chapter 38-14.1. The payments to be made hereunder must be made before December thirty-first of that calendar year in which the loss occurred.

2. Unless waived by the owner of a farm building, if the coal or commercial leonardite removal area of a surface mining operation comes within five hundred feet [152.4 meters] of any farm building, the mineral developer shall pay to the owner of the farm building either the fair market value of the farm building or the entire cost of removing the farm building to a location where the coal or commercial leonardite removal area of the mining operation will not come within five hundred feet [152.4 meters] of such building or buildings. The payments contemplated hereunder are in addition to any payments required by the terms of any mineral lease, unless the surface owner is a party to the lease and the lease provides for damages as contemplated in this subsection in an amount not less than the amount which would be recoverable under this section.
3. The rights granted to the surface owner by this section are hereby declared to be absolute and unwaivable, except as provided in subsection 2. Any instrument which purports to waive rights granted by this section is null and void and of no legal effect.

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

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

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

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

Renumber accordingly

Cherie Howard

Attachment 1
SB 2377
4-10-15

1. Although the bill defines "commercial leonardite" and uses the term throughout Senate Bill 2377, the phrase "or leonardite" still appears on page 14 under Section 14. AMENDMENT, subsection 1.1. This phrase should be revised accordingly for purposes of consistency.

2. Along those same lines, Section 25. APPLICATION., regarding application of severance and conversion taxation refers only to "coal or leonardite" rather than coal or "commercial leonardite."

2. At the top of page 16, a typographical error appears in the language that reads "soil amendments as described in ~~subsection 27~~ of section 38-14.1-02." The deletion results in incorrect grammar.

April 13, 2015

4/14/15
Attachment 1

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2377

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to create and enact section 57-61-01.9 of the North Dakota Century Code, relating to severance tax for commercial leonardite; and to amend and reenact subsection 5 of section 38-11.2-01, sections 38-12.1-01, 38-12.1-02, 38-12.1-03, 38-12.1-04, 38-12.1-05, and 38-14.1-02, subsection 3 of section 38-14.1-05, subsection 3 of section 38-14.1-13, subdivisions r and s of subsection 1 of section 38-14.1-14, subdivision c of subsection 2 of section 38-14.1-14, paragraph 2 of subdivision e of subsection 3 of section 38-14.1-21, subdivision b of subsection 4 of section 38-14.1-21, subsections 1 and 1.1 of section 38-14.1-24, subdivision b of subsection 3 of section 38-14.1-24, subsections 5, 10, and 18 of section 38-14.1-24, section 38-14.1-25, subdivision b of subsection 1 of section 38-14.1-27, subsections 1, 3, and 4 of section 38-14.1-37, sections 38-15-01, 38-15-02, 38-18-05, 38-18-07, and 57-61-01.2, subsection 1 of section 57-61-01.5, sections 57-61-01.7, 57-61-02, and 57-61-03, and subsection 1 of section 57-61-04 of the North Dakota Century Code, relating to the definition of coal and commercial leonardite.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

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

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

38-12.1-01. Legislative findings.

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

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

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

38-12.1-02. Declaration of policy.

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

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

38-12.1-03. Definitions.

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

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 commercial leonardite.
2. "Coal exploration" means:
 - a. The use of any technique which when applied to the surface of the land will aid in the discovery or evaluation of coal or commercial leonardite or aid in determining the quantity and quality of coal or commercial leonardite present. It includes drilling or digging, excavating, core sample drilling and collection, diamond drilling, trenching, or any other type of penetration of the surface of the earth; or
 - b. Environmental data gathering activities conducted for the purpose of establishing the conditions of an area prior to applying for a permit under chapter 38-14.1. The provisions of sections 38-12.1-04 and 38-12.1-05 are not applicable to such environmental data gathering activities unless the natural land surface will be substantially disturbed or such activities are located on lands designated unsuitable for mining under section 38-14.1-05.
3. "Commercial leonardite" means a dark-colored, soft, earthy rock formed from the oxidation of lignite coal, and is produced from a mine that has as its only function for supply for purposes other than gasification or combustion to generate electricity.
4. "Commission" means the industrial commission of the state of North Dakota.
- 4.5. "Permit area" means a county.

5-6. "Person" means and includes any natural person, corporation, limited liability company, association, partnership, receiver, trustee, executor, administrator, guardian, fiduciary, or other representative of any kind, and includes any department, agency, or instrumentality of the state or of any governmental subdivision thereof; the masculine gender, in referring to a person, includes the feminine and the neuter genders.

6-7. "Road" means a surface or right of way for purposes of travel by land vehicles used in coal or commercial leonardite exploration. A road consists of the entire area of the right of way, including the roadbed, shoulders, parking and side areas, approaches, structures, ditches, and surface.

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

38-12.1-04. Jurisdiction of commission.

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

1. To require:
 - a. The furnishing of a reasonable bond with good and sufficient surety, conditioned upon the full compliance with the provisions of this chapter, and the rules and orders of the commission prescribed to govern the exploration for coal or commercial leonardite on state and private lands and roads used in coal or commercial leonardite exploration within the state of North Dakota. The person required to furnish the bond may elect to deposit a collateral bond, self-bond, cash, or any alternative form of security approved by the commission, or combination thereof, by which a permittee assures faithful performance of all requirements of this chapter and the rules and orders of the industrial commission.
 - b. The delivery, free of charge, to the state geologist of the basic data collected during the course of the exploration within a reasonable time as may be prescribed by the state geologist. The data so submitted is confidential and available only to the office of the state geologist for official purposes for a period of two years, and such period of confidentiality must, upon application, be extended for one-year periods by the state geologist, for a total period not to exceed ten years unless it is demonstrated that such period should be further extended in order to prevent possible resulting harm to the person, or the person's successors and assigns, who delivered such basic data to the state geologist. The basic data must include, if specifically requested by the state geologist and if the information has been developed by or for a person conducting the exploration:
 - (1) Sample cuts.

- (2) Drillers' logs, sample logs, radioactivity logs, resistivity logs, or other types of electrical or mechanical logs.
 - (3) Elevation and location information on the data collection points.
 - (4) Other pertinent information as may be required by the state geologist.
2. To require the plugging, covering, or reburial in an appropriate manner so as to protect environmental quality, general health and safety, and economic values of all holes, pits, or trenches excavated during the course of coal or commercial leonardite exploration.
3. To promulgate and enforce rules, regulations, and orders to effectuate the provisions, purpose, and intent of this chapter.
4. To inspect all drilling or exploration sites. For the purposes of this subsection, the director of mineral resources or the director's representative shall have access to all drilling or exploration installations regulated by this chapter for the purpose of inspection and sampling and shall have the authority to require the operators' aid if the director finds it necessary and requests it.
5. Notwithstanding any of the other provisions of this section, the commission acting through the director of mineral resources shall require that any lands substantially disturbed in coal or commercial leonardite exploration, including excavations, roads, and drill holes, and the removal of necessary facilities and equipment be reclaimed in accordance with the applicable performance standards of section 38-14.1-24. Reclamation must be accomplished to protect environmental quality, general health and safety, and economic values.

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

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

1. It is unlawful to commence operations for drilling for the exploration for coal or commercial leonardite without first obtaining a permit from the director of mineral resources, under such rules and regulations as may be prescribed by the commission, and paying to the commission a fee of one hundred dollars for each such permit area. The permit application must include a description of the exploration area and the period of proposed exploration. The permit must be granted within thirty days after a proper application has been submitted.
2. This permit may not be required:
 - a. In an area where a permit to conduct surface coal mining operations is in effect pursuant to chapter 38-14.1;
 - b. For holes drilled to guide excavating equipment in an operating mine;
 - c. In areas where a drill hole is required by any other state agency; or

- d. For environmental data gathering activities that do not substantially disturb the land, unless the environmental data gathering activities are located on land designated unsuitable for mining under section 38-14.1-05.
3. No person may remove more than two hundred fifty tons [226.80 metric tons] of coal or commercial leonardite pursuant to an exploration permit without first obtaining a permit from the public service commission.

SECTION 7. 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 mining operations so that the reclaimed area closely resembles the general surface configuration of the land prior to being affected by surface coal 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 or not the material is enriched in radioactive materials. The term does not include commercial leonardite.
4. "Commercial leonardite" means a dark-colored, soft, earthy organic rock formed from the oxidation of lignite coal, and is produced from a mine that has as its only function for supply for purposes other than gasification or combustion to generate electricity.
5. "Commission" means the public service commission, or such other department, bureau, or commission as may lawfully succeed to the powers and duties of that commission. The commission is the state regulatory authority for all purposes relating to the Surface Mining Control and Reclamation Act of 1977 [Pub. L. 95-87; 91 Stat. 445; 30 U.S.C. 1201 et seq.].

- ~~5-6.~~ "Extended mining plan" means a written statement setting forth the matters specified in section 38-14.1-15 and covering the estimated life of the surface coal mining operation.
- ~~6-7.~~ "Final cut" means the last pit created in a surface mining pit sequence.
- ~~7-8.~~ "Highwall" and "endwall" mean those sides of the pit adjacent to unmined land.
- ~~8-9.~~ "Imminent danger to the health and safety of the public" means the existence of any condition or practice, or any violation of a permit or other requirement of this chapter in a surface coal mining and reclamation operation, which condition, practice, or violation could reasonably be expected to cause substantial physical harm to persons outside the permit area before such condition, practice, or violation can be abated. A reasonable expectation of death or serious injury before abatement exists if a rational person, subjected to the same conditions or practices giving rise to the peril, would not expose the person's self to the danger during the time necessary for abatement.
- ~~9-10.~~ "Operator" means any individual, person, partnership, firm, association, society, joint stock company, company, cooperative, corporation, limited liability company, or other business organization, or any department, agency, or instrumentality of the state, local, or federal government, or any governmental subdivision thereof including any publicly owned utility or publicly owned corporation of the state, local, or federal government, engaged in or controlling a surface coal mining operation. Operator does not include those who remove or intend to remove two hundred fifty tons [226.80 metric tons] or less of coal or commercial leonardite from the earth by coal or commercial leonardite mining within twelve consecutive calendar months in any one location or who remove any coal or commercial leonardite pursuant to reclamation operations under chapter 38-14.2.
- ~~10-11.~~ "Other minerals" means clay, stone, sand, gravel, metalliferous and nonmetalliferous ores, and any other solid material or substances of commercial value occurring within five hundred feet [152.4 meters] or less of the land surface and which are excavated in solid form from natural deposits on or in the earth, exclusive of coal or commercial leonardite and those minerals which occur naturally in liquid or gaseous form.
- ~~11-12.~~ "Other suitable strata" means those portions of the overburden determined by the commission to be suitable for meeting the requirements of subsections 2 and 17 of section 38-14.1-24 and based on data submitted by the permit applicant.
- ~~12-13.~~ "Overburden" means all of the earth and other materials, with the exception of suitable plant growth material, which lie above natural deposits of coal or commercial leonardite and also means such earth and other materials, with the exception of suitable plant growth material, disturbed from their natural state by surface coal or commercial leonardite mining operations.

- ~~12-14.~~ 14. "Performance bond" means a surety bond, collateral bond, self-bond, deposit, a bond issued under the state surface mining and reclamation bond fund, any alternative form of security approved by the commission, or combination thereof, by which a permittee assures faithful performance of all requirements of this chapter.
- ~~13-15.~~ 15. "Permit" means a permit to conduct surface coal mining and reclamation operations issued by the commission.
- ~~14-16.~~ 16. "Permit applicant" means a person or operator applying for a permit.
- ~~15-17.~~ 17. "Permit area" means the area of land approved by the commission for surface coal mining operations which shall be readily identifiable by appropriate markers on the site.
- ~~16-18.~~ 18. "Permit renewal" means the extension of the permit term for areas within the boundaries of the initial or existing permit, upon the expiration of the initial or existing permit term.
- ~~17-19.~~ 19. "Permit revision" means the modification of permit provisions during the term of the permit and includes changes in the mining and reclamation plans, incidental boundary extensions, and the transfer, assignment, or sale of rights granted under the permit.
- ~~18-20.~~ 20. "Permit term" means a period of time beginning with the date upon which a permit is given for surface coal mining and reclamation operations under the provisions of this chapter, and ending with the expiration of the next succeeding five years plus any renewal of the permit granted under this chapter.
- ~~19-21.~~ 21. "Permittee" means a person or operator holding a permit.
- ~~20-22.~~ 22. "Person" means an individual, partnership, firm, association, society, joint stock company, company, cooperative, corporation, limited liability company, or other business organization.
- ~~21-23.~~ 23. "Pit" means a tract of land, from which overburden, ~~or coal, or commercial leonardite,~~ or both; any combination of overburden, coal, or commercial leonardite has been or is being removed for the purpose of surface coal mining operations.
- ~~22-24.~~ 24. "Prime farmland" means lands as prescribed by commission regulation that have the soil characteristics and moisture supply needed to produce sustained high yields of adapted crops economically when treated and managed, including management of water, according to modern farming methods. Furthermore, such lands historically have been used for intensive agricultural purposes and are large enough in size to constitute a viable economic unit.
- ~~23-25.~~ 25. "Prime soils" means those soils that have the required soil characteristics (including slope and moisture supply) needed to produce sustained high yields of adapted crops, as determined by the state conservationist of the United States department of agriculture soil conservation service.

- 24-26. "Reclaimed" or "reclaim" means conditioning areas affected by surface coal mining operations to make them capable of supporting the uses which they were capable of supporting prior to any mining, or higher or better uses, pursuant to subsection 2 of section 38-14.1-24.
- 25-27. "Reclamation plan" means a plan submitted by an applicant for a permit which sets forth a plan for reclamation of the proposed surface coal mining operations pursuant to subsection 2 of section 38-14.1-14.
- 26-28. "Refuse" means all waste material directly connected with the production of coal or commercial leonardite mined by surface coal mining operations.
- 27-29. "Soil amendments" means those materials added by the operator to the replaced overburden or suitable plant growth material, or both, to improve the physical or chemical condition of the soil in its relation to plant growth capability.
- 28-30. "Soil classifier" means a professional soil classifier as defined in subsection 4 of section 43-36-01.
- 29-31. "Soil survey" means the identification and location of all suitable plant growth material within the proposed permit area and an accompanying report that describes, classifies, and interprets for use such materials.
- 30-32. "State program" means the program established by the state of North Dakota in accordance with the requirements of section 503 of the federal Surface Mining Control and Reclamation Act of 1977 [Pub. L. 95-87; 91 Stat. 470; 30 U.S.C. 1253] to regulate surface coal mining and reclamation operations on lands within the state of North Dakota.
- 31-33. "Suitable plant growth material" means that soil material (normally the A, B, and portions of the C horizons) located within the proposed permit area which, based upon a soil survey, is found by the commission to be the most acceptable as a medium for plant growth when respread on the surface of regraded areas.
- 32-34. "Surface coal mining and reclamation operations" means surface coal mining operations and all activities necessary and incidental to the reclamation of such operations after July 1, 1979.
- 33-35. "Surface coal mining operations" means:
- a. Activities affecting the surface of lands in connection with a surface coal or commercial leonardite mine. Such activities include extraction of coal or commercial leonardite from coal or commercial leonardite refuse piles, excavation for the purpose of obtaining coal or commercial leonardite, including such common methods as contour, strip, auger, box cut, open pit, and area mining, the uses of explosives and blasting, and in situ distillation or retorting, leaching or other chemical or physical processing, and the cleaning, concentrating, or other processing or preparation, and loading of coal or commercial leonardite at or near the minesite, except that such activities do not include coal or commercial leonardite exploration subject to chapter 38-12.1, or the extraction of coal or commercial leonardite incidental to reclamation operations under chapter 38-14.2; and

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

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

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

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

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

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

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

- r. Cross sections, maps or plans of the land to be affected, including the actual area to be mined, prepared by or under the direction of and

certified by a registered professional engineer, a registered land surveyor, or a qualified professional geologist with assistance from experts in related fields, showing pertinent elevation and location of test borings or core samplings and depicting all of the following information:

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

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

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

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

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

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

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

SECTION 14. AMENDMENT. Subsections 1 and 1.1 of section 38-14.1-24 of the North 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 commercial leonardite being recovered so that reffecting 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 commercial 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 commercial 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 15. 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 commercial leonardite deposit;
- (2) The thickness of the coal or commercial 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 16. AMENDMENT. Subsections 5, 10, and 18 of section 38-14.1-24 of the North Dakota Century Code are amended and reenacted as follows:

5. Remove, segregate, and respread suitable plant growth material as required by the commission within the permit area. The commission may require the permittee to segregate suitable plant growth material in two or more soil layers. The commission shall determine the soil layer or layers to be removed based upon the quality and quantity of suitable plant growth material inventoried by the soil survey required in subdivision t of subsection 1 of section 38-14.1-14. Based on the soil survey, the commission shall also determine whether other suitable strata are necessary to meet revegetation requirements. If other strata can be shown to be suitable and necessary to meet revegetation requirements, the commission may require the permittee to determine the areal extent of other suitable strata within the proposed permit area, and to remove, segregate, protect, and respread such material. If the suitable plant growth material or other suitable strata cannot be replaced on an approved graded area within a time short enough to avoid deterioration of such material, the permittee shall stockpile and stabilize such materials by establishing a successful cover of quick-growing plants or by other means thereafter so that the suitable plant growth material or other suitable strata will be protected from wind and water erosion and will remain free from any contamination by toxic material. In the interest of achieving the maximum reclamation provided for in this chapter, the permittee may, or at the discretion of the commission shall, utilize such soil amendments as described in ~~of subsection 27-~~section 38-14.1-02.
10. Remove or bury all debris and other similar material resulting from the operation and bury all mine wastes ~~and~~ coal, and commercial leonardite processing wastes unless the commission approves the surface disposal of such wastes. If the commission approves the surface disposal of such wastes, the permittee shall stabilize all waste piles in designated areas through construction in compacted layers, including the use of incombustible and impervious materials if necessary, to assure that the final contour of the waste pile will be compatible with natural surroundings and that the site can and will be stabilized and revegetated according to the provisions of this chapter.

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

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

38-14.1-25. Prohibited mining practices.

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

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

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

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

(4) Monitoring sites to record precipitation.

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

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

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

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

38-15-01. Policy.

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

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

38-15-02. Definitions.

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

1. "Coal" means all kinds of coal, and includes what is known as lignite coal, unless a contrary intention plainly appears.
2. "Commercial leonardite" means a dark-colored, soft, earthy rock formed from the oxidation of lignite coal, and is produced from a mine that has as its only function for supply for purposes other than gasification or combustion to generate electricity.
3. "Commission" means the industrial commission.
- ~~3.4.~~ "Conflicting interests" means those interests of producers which are in conflict, so that full production and utilization by one producer is prohibited or impeded by the interests of another producer of a separate natural resource.
- ~~4.5.~~ "Gas" means all natural gas and other fluid hydrocarbons not hereinbelow defined as oil.
- ~~5.6.~~ "Natural resources" means coal, oil, gas, and subsurface minerals as defined herein.
- ~~6.7.~~ "Oil" means crude petroleum oil and other hydrocarbons, regardless of gravity, which are produced at the wellhead in liquid form, and the liquid hydrocarbons known as distillate or condensate recovered or extracted from gas other than gas produced in association with oil and commonly known as casinghead gas.
- ~~7.8.~~ "Owner" means the person who has the right to produce natural resources either for that person or others.
- ~~8.9.~~ "Person" means any natural person, corporation, limited liability company, association, partnership, receiver, trustee, executor, administrator, guardian, fiduciary, or other representative of any kind, and includes any department, agency, instrumentality, or political subdivision of the state. The masculine gender, in referring to a person, includes the feminine and the neuter genders.
- ~~9.10.~~ "Producer" means the owner of a well or wells, or mine or mines, capable of producing coal, commercial leonardite, oil, gas, or subsurface minerals.
- ~~10.11.~~ "Subsurface minerals" means all naturally occurring elements and their compounds, volcanic ash, precious metals, carbonates, and natural mineral salts of 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.
- ~~11.12.~~ "Waste" means the inefficient utilization of reserves of oil, gas, subsurface minerals, ~~or coal,~~ or commercial leonardite, as the case may be.

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

38-18-05. Definitions.

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

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

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

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

1. Unless the mineral lease, surface lease, or consent statement executed by the surface owner provides for payments to the surface owner, the mineral developer shall annually pay to the surface owner a sum of money equal to

the amount of damages sustained by the surface owner for loss of agricultural production caused by mining activity, provided that it can be shown that the land disturbed or to be disturbed has regularly been used for agricultural production. The amount of damages may be determined by any formula mutually agreeable between the surface owner and the mineral developer. The payments contemplated by this section only cover land actually mined, disturbed, or to be mined during the year or years during which agricultural production was actually interrupted and which land has not been restored to the level of agricultural productivity required by the plan submitted pursuant to chapter 38-14.1. The payments to be made hereunder must be made before December thirty-first of that calendar year in which the loss occurred.

2. Unless waived by the owner of a farm building, if the coal or commercial leonardite removal area of a surface mining operation comes within five hundred feet [152.4 meters] of any farm building, the mineral developer shall pay to the owner of the farm building either the fair market value of the farm building or the entire cost of removing the farm building to a location where the coal or commercial leonardite removal area of the mining operation will not come within five hundred feet [152.4 meters] of such building or buildings. The payments contemplated hereunder are in addition to any payments required by the terms of any mineral lease, unless the surface owner is a party to the lease and the lease provides for damages as contemplated in this subsection in an amount not less than the amount which would be recoverable under this section.
3. The rights granted to the surface owner by this section are hereby declared to be absolute and unwaivable, except as provided in subsection 2. Any instrument which purports to waive rights granted by this section is null and void and of no legal effect.

SECTION 24. AMENDMENT. Section 57-61-01.2 of the North Dakota Century Code is amended and reenacted as follows:

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

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

SECTION 25. AMENDMENT. Subsection 1 of section 57-61-01.5 of the North Dakota Century Code is amended and reenacted as follows:

1. There is imposed upon all coal or commercial leonardite severed for sale or for industrial purposes by coal or commercial leonardite mines within the state a tax, separate from and additional to the tax imposed by section 57-61-01, of two cents per ton of two thousand pounds [907.18 kilograms]. All of the provisions of this chapter for administration of the coal or

commercial leonardite severance tax apply to the tax imposed under this section. The state tax commissioner shall transfer revenue from the tax imposed by this section to the state treasurer for deposit in a special fund in the state treasury, known as the lignite research fund. Such moneys must be used for contracts for land reclamation research projects and for research, development, and marketing of lignite and products derived from lignite. The industrial commission shall adopt rules for submission and consideration of research, development, and marketing proposals and entering into contracts under the lignite research, development, and marketing program.

SECTION 26. AMENDMENT. Section 57-61-01.7 of the North Dakota Century Code is amended and reenacted as follows:

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

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

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

SECTION 27. Section 57-61-01.9 of the North Dakota Century Code is created and enacted as follows:

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

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

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

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

The severance tax as provided in this chapter is due within twenty-five days after the end of each month, and if not received by the twenty-fifth day, becomes delinquent and must be collected as herein provided. The tax commissioner, upon request and a proper showing of the necessity therefor, may grant an extension of time, not to exceed fifteen days, for paying the tax, and when such a request is granted, the tax is not delinquent until the extended period has expired. The tax commissioner shall require a report to be filed monthly by each owner or operator of a coal or commercial leonardite mine, in such form as the tax commissioner may specify, to list a full description of the mine, the number of tons of coal or commercial leonardite severed, the amount of tax due and remitted, and any other information deemed necessary by the tax commissioner for the proper administration of this chapter.

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

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

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

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

1. The tax commissioner has the power and authority to ascertain and determine whether or not any return or remittances filed with the tax commissioner are correct, and if the owner or operator has made an untrue or incorrect return or remittance or has failed to make the required return, the tax commissioner shall ascertain the correct amount of taxes due and give immediate notice to the owner or operator filing the incorrect return or remittance or who failed to file the required return. Any coal or commercial leonardite mine operator or owner receiving notice from the tax commissioner that the owner or operator has filed an incorrect return or remittance or failed to file the required return shall remit the tax assessed by the tax commissioner within fifteen days of such notice unless within fifteen days of the notice such person makes application in writing to the tax commissioner for a hearing under chapter 28-32 before the tax commissioner. The tax becomes delinquent if within fifteen days of the notice it is not paid or an application for a hearing is not made. Taxes assessed by decision of the tax commissioner pursuant to chapter 28-32, if not paid, become delinquent five days after the time for appeal from the tax commissioner's decision has expired, except that if an appeal from the tax commissioner's decision is taken to the district court of Burleigh County,

such taxes if not paid become delinquent five days following final judicial determination."

Renumber accordingly

**FIRST ENGROSSMENT
with House Amendments
ENGROSSED SENATE BILL NO. 2377**

Introduced by

Senators Bekkedahl, Bowman, Rust

Representative Hatlestad

4-14-15
Attachment Z
Senator Unruh

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

14 4.5. "Permit area" means a county.

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

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

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

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

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

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

3 1. To require:

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

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

26 (1) Sample cuts.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

11 5.6. "Extended mining plan" means a written statement setting forth the matters specified
12 in section 38-14.1-15 and covering the estimated life of the surface coal mining
13 operation.

14 6.7. "Final cut" means the last pit created in a surface mining pit sequence.

15 7.8. "Highwall" and "endwall" mean those sides of the pit adjacent to unmined land.

16 8.9. "Imminent danger to the health and safety of the public" means the existence of any
17 condition or practice, or any violation of a permit or other requirement of this chapter in
18 a surface coal mining and reclamation operation, which condition, practice, or violation
19 could reasonably be expected to cause substantial physical harm to persons outside
20 the permit area before such condition, practice, or violation can be abated. A
21 reasonable expectation of death or serious injury before abatement exists if a rational
22 person, subjected to the same conditions or practices giving rise to the peril, would not
23 expose the person's self to the danger during the time necessary for abatement.

24 9.10. "Operator" means any individual, person, partnership, firm, association, society, joint
25 stock company, company, cooperative, corporation, limited liability company, or other
26 business organization, or any department, agency, or instrumentality of the state,
27 local, or federal government, or any governmental subdivision thereof including any
28 publicly owned utility or publicly owned corporation of the state, local, or federal
29 government, engaged in or controlling a surface coal mining operation. Operator does
30 not include those who remove or intend to remove two hundred fifty tons [226.80
31 metric tons] or less of coal or commercial leonardite from the earth by coal or

- 1 commercial leonardite mining within twelve consecutive calendar months in any one
2 location or who remove any coal or commercial leonardite pursuant to reclamation
3 operations under chapter 38-14.2.
- 4 ~~10-11.~~ "Other minerals" means clay, stone, sand, gravel, metalliferous and nonmetalliferous
5 ores, and any other solid material or substances of commercial value occurring within
6 five hundred feet [152.4 meters] or less of the land surface and which are excavated in
7 solid form from natural deposits on or in the earth, exclusive of coal or commercial
8 leonardite and those minerals which occur naturally in liquid or gaseous form.
- 9 ~~11-12.~~ "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 ~~12-13.~~ "Overburden" means all of the earth and other materials, with the exception of suitable
13 plant growth material, which lie above natural deposits of coal or commercial
14 leonardite and also means such earth and other materials, with the exception of
15 suitable plant growth material, disturbed from their natural state by surface coal or
16 commercial leonardite mining operations.
- 17 ~~12-1-14.~~ "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 ~~13-15.~~ "Permit" means a permit to conduct surface coal mining and reclamation operations
22 issued by the commission.
- 23 ~~14-16.~~ "Permit applicant" means a person or operator applying for a permit.
- 24 ~~15-17.~~ "Permit area" means the area of land approved by the commission for surface coal
25 mining operations which shall be readily identifiable by appropriate markers on the
26 site.
- 27 ~~16-18.~~ "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.

Sixty-fourth
Legislative Assembly

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

Sixty-fourth
Legislative Assembly

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

26 **SECTION 12. AMENDMENT.** Paragraph 2 of subdivision e of subsection 3 of section
27 38-14.1-21 of the North Dakota Century Code is amended and reenacted as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 2. ~~No~~A permittee may not locate any part of the surface coal mining and reclamation
2 operations or deposit overburden, debris, or waste materials outside the permit area
3 for which bond has been posted, except as provided in subsection 24 of section
4 38-14.1-03.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

15 2. Unless waived by the owner of a farm building, if the coal or commercial leonardite
16 removal area of a surface mining operation comes within five hundred feet [152.4
17 meters] of any farm building, the mineral developer shall pay to the owner of the farm
18 building either the fair market value of the farm building or the entire cost of removing
19 the farm building to a location where the coal or commercial leonardite removal area of
20 the mining operation will not come within five hundred feet [152.4 meters] of such
21 building or buildings. The payments contemplated hereunder are in addition to any
22 payments required by the terms of any mineral lease, unless the surface owner is a
23 party to the lease and the lease provides for damages as contemplated in this
24 subsection in an amount not less than the amount which would be recoverable under
25 this section.

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

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

1 **57-61-01.9. Severance tax on commercial leonardite in lieu of sales and use taxes.**

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

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

April 14, 2015

4-15

Attachments 1

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2377

That the House recede from its amendments as printed on pages 1125-1140 of the Senate Journal and pages 1314-1328 of the House Journal and that Engrossed Senate Bill No. 2377 be amended as follows:

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

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

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

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

38-12.1-01. Legislative findings.

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

1. The discovery and evaluation of coal or commercial leonardite deposits is advantageous in an industrial society.
2. Coal or commercial leonardite occurs hidden under the ground and must be searched for by diverse techniques, and that the search, exploration, or prospecting for coal or commercial leonardite is a necessary and expensive prerequisite to coal or commercial leonardite extraction and for land use planning in coal-bearing or commercial leonardite-bearing areas.

3. It is to the benefit of society to allow coal or commercial leonardite exploration and to require the information generated from exploration to be available to the office of the state geologist.

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

38-12.1-02. Declaration of policy.

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

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

38-12.1-03. Definitions.

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

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 commercial leonardite.
2. "Coal exploration" means:
 - a. The use of any technique which when applied to the surface of the land will aid in the discovery or evaluation of coal or commercial leonardite or aid in determining the quantity and quality of coal or commercial leonardite present. It includes drilling or digging, excavating, core sample drilling and collection, diamond drilling, trenching, or any other type of penetration of the surface of the earth; or
 - b. Environmental data gathering activities conducted for the purpose of establishing the conditions of an area prior to applying for a permit under chapter 38-14.1. The provisions of sections 38-12.1-04 and 38-12.1-05 are not applicable to such environmental data gathering activities unless the natural land surface will be substantially disturbed or such activities are located on lands designated unsuitable for mining under section 38-14.1-05.
3. "Commercial leonardite" means a dark-colored, soft, earthy rock formed from the oxidation of lignite coal, and is produced from a mine that has as its only function for supply for purposes other than gasification or combustion to generate electricity.
4. "Commission" means the industrial commission of the state of North Dakota.

~~4-5.~~ "Permit area" means a county.

~~5-6.~~ "Person" means and includes any natural person, corporation, limited liability company, association, partnership, receiver, trustee, executor, administrator, guardian, fiduciary, or other representative of any kind, and includes any department, agency, or instrumentality of the state or of any governmental subdivision thereof; the masculine gender, in referring to a person, includes the feminine and the neuter genders.

~~6-7.~~ "Road" means a surface or right of way for purposes of travel by land vehicles used in coal or commercial leonardite exploration. A road consists of the entire area of the right of way, including the roadbed, shoulders, parking and side areas, approaches, structures, ditches, and surface.

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

38-12.1-04. Jurisdiction of commission.

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

1. To require:
 - a. The furnishing of a reasonable bond with good and sufficient surety, conditioned upon the full compliance with the provisions of this chapter, and the rules and orders of the commission prescribed to govern the exploration for coal or commercial leonardite on state and private lands and roads used in coal or commercial leonardite exploration within the state of North Dakota. The person required to furnish the bond may elect to deposit a collateral bond, self-bond, cash, or any alternative form of security approved by the commission, or combination thereof, by which a permittee assures faithful performance of all requirements of this chapter and the rules and orders of the industrial commission.
 - b. The delivery, free of charge, to the state geologist of the basic data collected during the course of the exploration within a reasonable time as may be prescribed by the state geologist. The data so submitted is confidential and available only to the office of the state geologist for official purposes for a period of two years, and such period of confidentiality must, upon application, be extended for one-year periods by the state geologist, for a total period not to exceed ten years unless it is demonstrated that such period should be further extended in order to prevent possible resulting harm to the person, or the person's successors and assigns, who delivered such basic data to the state geologist. The basic data must include, if specifically requested by the state geologist and if the information has been developed by or for a person conducting the exploration:

- (1) Sample cuts.
 - (2) Drillers' logs, sample logs, radioactivity logs, resistivity logs, or other types of electrical or mechanical logs.
 - (3) Elevation and location information on the data collection points.
 - (4) Other pertinent information as may be required by the state geologist.
2. To require the plugging, covering, or reburial in an appropriate manner so as to protect environmental quality, general health and safety, and economic values of all holes, pits, or trenches excavated during the course of coal or commercial leonardite exploration.
 3. To promulgate and enforce rules, regulations, and orders to effectuate the provisions, purpose, and intent of this chapter.
 4. To inspect all drilling or exploration sites. For the purposes of this subsection, the director of mineral resources or the director's representative shall have access to all drilling or exploration installations regulated by this chapter for the purpose of inspection and sampling and shall have the authority to require the operators' aid if the director finds it necessary and requests it.
 5. Notwithstanding any of the other provisions of this section, the commission acting through the director of mineral resources shall require that any lands substantially disturbed in coal or commercial leonardite exploration, including excavations, roads, and drill holes, and the removal of necessary facilities and equipment be reclaimed in accordance with the applicable performance standards of section 38-14.1-24. Reclamation must be accomplished to protect environmental quality, general health and safety, and economic values.

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

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

1. It is unlawful to commence operations for drilling for the exploration for coal or commercial leonardite without first obtaining a permit from the director of mineral resources, under such rules and regulations as may be prescribed by the commission, and paying to the commission a fee of one hundred dollars for each such permit area. The permit application must include a description of the exploration area and the period of proposed exploration. The permit must be granted within thirty days after a proper application has been submitted.
2. This permit may not be required:
 - a. In an area where a permit to conduct surface coal mining operations is in effect pursuant to chapter 38-14.1;
 - b. For holes drilled to guide excavating equipment in an operating mine;

- c. In areas where a drill hole is required by any other state agency; or
 - d. For environmental data gathering activities that do not substantially disturb the land, unless the environmental data gathering activities are located on land designated unsuitable for mining under section 38-14.1-05.
3. No person may remove more than two hundred fifty tons [226.80 metric tons] of coal or commercial leonardite pursuant to an exploration permit without first obtaining a permit from the public service commission.

SECTION 7. 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 mining operations so that the reclaimed area closely resembles the general surface configuration of the land prior to being affected by surface coal 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 or not the material is enriched in radioactive materials. The term does not include commercial leonardite.
4. "Commercial leonardite" means a dark-colored, soft, earthy organic rock formed from the oxidation of lignite coal, and is produced from a mine that has as its only function for supply for purposes other than gasification or combustion to generate electricity.
5. "Commission" means the public service commission, or such other department, bureau, or commission as may lawfully succeed to the powers and duties of that commission. The commission is the state regulatory authority for all purposes relating to the Surface Mining Control and Reclamation Act of 1977 [Pub. L. 95-87; 91 Stat. 445; 30 U.S.C. 1201 et seq.].

- ~~5-6.~~ "Extended mining plan" means a written statement setting forth the matters specified in section 38-14.1-15 and covering the estimated life of the surface coal mining operation.
- ~~6-7.~~ "Final cut" means the last pit created in a surface mining pit sequence.
- ~~7-8.~~ "Highwall" and "endwall" mean those sides of the pit adjacent to unmined land.
- ~~8-9.~~ "Imminent danger to the health and safety of the public" means the existence of any condition or practice, or any violation of a permit or other requirement of this chapter in a surface coal mining and reclamation operation, which condition, practice, or violation could reasonably be expected to cause substantial physical harm to persons outside the permit area before such condition, practice, or violation can be abated. A reasonable expectation of death or serious injury before abatement exists if a rational person, subjected to the same conditions or practices giving rise to the peril, would not expose the person's self to the danger during the time necessary for abatement.
- ~~9-10.~~ "Operator" means any individual, person, partnership, firm, association, society, joint stock company, company, cooperative, corporation, limited liability company, or other business organization, or any department, agency, or instrumentality of the state, local, or federal government, or any governmental subdivision thereof including any publicly owned utility or publicly owned corporation of the state, local, or federal government, engaged in or controlling a surface coal mining operation. Operator does not include those who remove or intend to remove two hundred fifty tons [226.80 metric tons] or less of coal or commercial leonardite from the earth by coal or commercial leonardite mining within twelve consecutive calendar months in any one location or who remove any coal or commercial leonardite pursuant to reclamation operations under chapter 38-14.2.
- ~~10-11.~~ "Other minerals" means clay, stone, sand, gravel, metalliferous and nonmetalliferous ores, and any other solid material or substances of commercial value occurring within five hundred feet [152.4 meters] or less of the land surface and which are excavated in solid form from natural deposits on or in the earth, exclusive of coal or commercial leonardite and those minerals which occur naturally in liquid or gaseous form.
- ~~11-12.~~ "Other suitable strata" means those portions of the overburden determined by the commission to be suitable for meeting the requirements of subsections 2 and 17 of section 38-14.1-24 and based on data submitted by the permit applicant.
- ~~12-13.~~ "Overburden" means all of the earth and other materials, with the exception of suitable plant growth material, which lie above natural deposits of coal or commercial leonardite and also means such earth and other materials, with the exception of suitable plant growth material, disturbed from their natural state by surface coal or commercial leonardite mining operations.

- ~~12-1-14.~~ "Performance bond" means a surety bond, collateral bond, self-bond, deposit, a bond issued under the state surface mining and reclamation bond fund, any alternative form of security approved by the commission, or combination thereof, by which a permittee assures faithful performance of all requirements of this chapter.
- ~~13-15.~~ "Permit" means a permit to conduct surface coal mining and reclamation operations issued by the commission.
- ~~14-16.~~ "Permit applicant" means a person or operator applying for a permit.
- ~~15-17.~~ "Permit area" means the area of land approved by the commission for surface coal mining operations which shall be readily identifiable by appropriate markers on the site.
- ~~16-18.~~ "Permit renewal" means the extension of the permit term for areas within the boundaries of the initial or existing permit, upon the expiration of the initial or existing permit term.
- ~~17-19.~~ "Permit revision" means the modification of permit provisions during the term of the permit and includes changes in the mining and reclamation plans, incidental boundary extensions, and the transfer, assignment, or sale of rights granted under the permit.
- ~~18-20.~~ "Permit term" means a period of time beginning with the date upon which a permit is given for surface coal mining and reclamation operations under the provisions of this chapter, and ending with the expiration of the next succeeding five years plus any renewal of the permit granted under this chapter.
- ~~19-21.~~ "Permittee" means a person or operator holding a permit.
- ~~20-22.~~ "Person" means an individual, partnership, firm, association, society, joint stock company, company, cooperative, corporation, limited liability company, or other business organization.
- ~~21-23.~~ "Pit" means a tract of land, from which overburden, ~~or coal, or commercial leonardite~~, or both, any combination of overburden, coal, or commercial leonardite has been or is being removed for the purpose of surface coal mining operations.
- ~~22-24.~~ "Prime farmland" means lands as prescribed by commission regulation that have the soil characteristics and moisture supply needed to produce sustained high yields of adapted crops economically when treated and managed, including management of water, according to modern farming methods. Furthermore, such lands historically have been used for intensive agricultural purposes and are large enough in size to constitute a viable economic unit.
- ~~23-25.~~ "Prime soils" means those soils that have the required soil characteristics (including slope and moisture supply) needed to produce sustained high yields of adapted crops, as determined by the state conservationist of the United States department of agriculture soil conservation service.

- ~~24~~.26. "Reclaimed" or "reclaim" means conditioning areas affected by surface coal mining operations to make them capable of supporting the uses which they were capable of supporting prior to any mining, or higher or better uses, pursuant to subsection 2 of section 38-14.1-24.
- ~~25~~.27. "Reclamation plan" means a plan submitted by an applicant for a permit which sets forth a plan for reclamation of the proposed surface coal mining operations pursuant to subsection 2 of section 38-14.1-14.
- ~~26~~.28. "Refuse" means all waste material directly connected with the production of coal or commercial leonardite mined by surface coal mining operations.
- ~~27~~.29. "Soil amendments" means those materials added by the operator to the replaced overburden or suitable plant growth material, or both, to improve the physical or chemical condition of the soil in its relation to plant growth capability.
- ~~28~~.30. "Soil classifier" means a professional soil classifier as defined in subsection 4 of section 43-36-01.
- ~~29~~.31. "Soil survey" means the identification and location of all suitable plant growth material within the proposed permit area and an accompanying report that describes, classifies, and interprets for use such materials.
- ~~30~~.32. "State program" means the program established by the state of North Dakota in accordance with the requirements of section 503 of the federal Surface Mining Control and Reclamation Act of 1977 [Pub. L. 95-87; 91 Stat. 470; 30 U.S.C. 1253] to regulate surface coal mining and reclamation operations on lands within the state of North Dakota.
- ~~31~~.33. "Suitable plant growth material" means that soil material (normally the A, B, and portions of the C horizons) located within the proposed permit area which, based upon a soil survey, is found by the commission to be the most acceptable as a medium for plant growth when respread on the surface of regraded areas.
- ~~32~~.34. "Surface coal mining and reclamation operations" means surface coal mining operations and all activities necessary and incidental to the reclamation of such operations after July 1, 1979.
- ~~33~~.35. "Surface coal mining operations" means:
- a. Activities affecting the surface of lands in connection with a surface coal or commercial leonardite mine. Such activities include extraction of coal or commercial leonardite from coal or commercial leonardite refuse piles, excavation for the purpose of obtaining coal or commercial leonardite, including such common methods as contour, strip, auger, box cut, open pit, and area mining, the uses of explosives and blasting, and in situ distillation or retorting, leaching or other chemical or physical processing, and the cleaning, concentrating, or other processing or preparation, and loading of coal or commercial leonardite at or near the minesite, except that such activities do not include coal or commercial leonardite exploration subject to chapter 38-12.1, or the extraction of coal or commercial leonardite incidental to reclamation operations under chapter 38-14.2; and

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

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

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

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

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

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

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

- r. Cross sections, maps or plans of the land to be affected, including the actual area to be mined, prepared by or under the direction of and

certified by a registered professional engineer, a registered land surveyor, or a qualified professional geologist with assistance from experts in related fields, showing pertinent elevation and location of test borings or core samplings and depicting all of the following information:

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

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

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

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

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

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

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

SECTION 14. AMENDMENT. Subsections 1 and 1.1 of section 38-14.1-24 of the North 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 commercial 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 commercial 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 commercial 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 15. 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 commercial leonardite deposit;
- (2) The thickness of the coal or commercial 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 16. AMENDMENT. Subsections 5, 10, and 18 of section 38-14.1-24 of the North Dakota Century Code are amended and reenacted as follows:

5. Remove, segregate, and respread suitable plant growth material as required by the commission within the permit area. The commission may require the permittee to segregate suitable plant growth material in two or more soil layers. The commission shall determine the soil layer or layers to be removed based upon the quality and quantity of suitable plant growth material inventoried by the soil survey required in subdivision t of subsection 1 of section 38-14.1-14. Based on the soil survey, the commission shall also determine whether other suitable strata are necessary to meet revegetation requirements. If other strata can be shown to be suitable and necessary to meet revegetation requirements, the commission may require the permittee to determine the areal extent of other suitable strata within the proposed permit area, and to remove, segregate, protect, and respread such material. If the suitable plant growth material or other suitable strata cannot be replaced on an approved graded area within a time short enough to avoid deterioration of such material, the permittee shall stockpile and stabilize such materials by establishing a successful cover of quick-growing plants or by other means thereafter so that the suitable plant growth material or other suitable strata will be protected from wind and water erosion and will remain free from any contamination by toxic material. In the interest of achieving the maximum reclamation provided for in this chapter, the permittee may, or at the discretion of the commission shall, utilize such soil amendments as described in ~~ef subsection 27~~ section 38-14.1-02.
10. Remove or bury all debris and other similar material resulting from the operation and bury all mine wastes and coal, and commercial leonardite processing wastes unless the commission approves the surface disposal of such wastes. If the commission approves the surface disposal of such wastes, the permittee shall stabilize all waste piles in designated areas through construction in compacted layers, including the use of incombustible and impervious materials if necessary, to assure that the final contour of the waste pile will be compatible with natural surroundings and that the site can and will be stabilized and revegetated according to the provisions of this chapter.

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

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

38-14.1-25. Prohibited mining practices.

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

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

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

- (3) Records of well logs and borehole data to be maintained.
- (4) Monitoring sites to record precipitation.

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

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

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

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

38-15-01. Policy.

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

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

38-15-02. Definitions.

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

1. "Coal" means all kinds of coal, and includes what is known as lignite coal, unless a contrary intention plainly appears.
2. "Commercial leonardite" means a dark-colored, soft, earthy rock formed from the oxidation of lignite coal, and is produced from a mine that has as its only function for supply for purposes other than gasification or combustion to generate electricity.
3. "Commission" means the industrial commission.
- ~~3-4.~~ "Conflicting interests" means those interests of producers which are in conflict, so that full production and utilization by one producer is prohibited or impeded by the interests of another producer of a separate natural resource.
- ~~4-5.~~ "Gas" means all natural gas and other fluid hydrocarbons not hereinbelow defined as oil.
- ~~5-6.~~ "Natural resources" means coal, oil, gas, and subsurface minerals as defined herein.
- ~~6-7.~~ "Oil" means crude petroleum oil and other hydrocarbons, regardless of gravity, which are produced at the wellhead in liquid form, and the liquid hydrocarbons known as distillate or condensate recovered or extracted from gas other than gas produced in association with oil and commonly known as casinghead gas.
- ~~7-8.~~ "Owner" means the person who has the right to produce natural resources either for that person or others.
- ~~8-9.~~ "Person" means any natural person, corporation, limited liability company, association, partnership, receiver, trustee, executor, administrator, guardian, fiduciary, or other representative of any kind, and includes any department, agency, instrumentality, or political subdivision of the state. The masculine gender, in referring to a person, includes the feminine and the neuter genders.
- ~~9-10.~~ "Producer" means the owner of a well or wells, or mine or mines, capable of producing coal, commercial leonardite, oil, gas, or subsurface minerals.
- ~~10-11.~~ "Subsurface minerals" means all naturally occurring elements and their compounds, volcanic ash, precious metals, carbonates, and natural mineral salts of 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.
- ~~11-12.~~ "Waste" means the inefficient utilization of reserves of oil, gas, subsurface minerals, ~~or coal,~~ or commercial leonardite, as the case may be.

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

38-18-05. Definitions.

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

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

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

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

1. Unless the mineral lease, surface lease, or consent statement executed by the surface owner provides for payments to the surface owner, the mineral developer shall annually pay to the surface owner a sum of money equal to

the amount of damages sustained by the surface owner for loss of agricultural production caused by mining activity, provided that it can be shown that the land disturbed or to be disturbed has regularly been used for agricultural production. The amount of damages may be determined by any formula mutually agreeable between the surface owner and the mineral developer. The payments contemplated by this section only cover land actually mined, disturbed, or to be mined during the year or years during which agricultural production was actually interrupted and which land has not been restored to the level of agricultural productivity required by the plan submitted pursuant to chapter 38-14.1. The payments to be made hereunder must be made before December thirty-first of that calendar year in which the loss occurred.

2. Unless waived by the owner of a farm building, if the coal or commercial leonardite removal area of a surface mining operation comes within five hundred feet [152.4 meters] of any farm building, the mineral developer shall pay to the owner of the farm building either the fair market value of the farm building or the entire cost of removing the farm building to a location where the coal or commercial leonardite removal area of the mining operation will not come within five hundred feet [152.4 meters] of such building or buildings. The payments contemplated hereunder are in addition to any payments required by the terms of any mineral lease, unless the surface owner is a party to the lease and the lease provides for damages as contemplated in this subsection in an amount not less than the amount which would be recoverable under this section.
3. The rights granted to the surface owner by this section are hereby declared to be absolute and unwaivable, except as provided in subsection 2. Any instrument which purports to waive rights granted by this section is null and void and of no legal effect.

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

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

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

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

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

Coal or commercial leonardite is considered to be severed for the purposes of this chapter when it is first removed from where it was placed by nature, unless within thirty days of first removal it is placed into a long-term inventory storage deposit, in

which case it is considered to be severed when removed from the deposit or it is pledged as collateral on a loan. A long-term inventory storage deposit is one which is so identified in a mining plan approved by the public service commission pursuant to chapter 38-14.1 and which as part of that plan is covered with soil and subjected to reclamation requirements during the time it serves as a deposit and before coal or commercial leonardite is removed therefrom.

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

1. There is imposed upon all coal or commercial leonardite severed for sale or for industrial purposes by coal or commercial leonardite mines within the state a tax, separate from and additional to the tax imposed by section 57-61-01, of two cents per ton of two thousand pounds [907.18 kilograms]. All of the provisions of this chapter for administration of the coal or commercial leonardite severance tax apply to the tax imposed under this section. The state tax commissioner shall transfer revenue from the tax imposed by this section to the state treasurer for deposit in a special fund in the state treasury, known as the lignite research fund. Such moneys must be used for contracts for land reclamation research projects and for research, development, and marketing of lignite and products derived from lignite. The industrial commission shall adopt rules for submission and consideration of research, development, and marketing proposals and entering into contracts under the lignite research, development, and marketing program.

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

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

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

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

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

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

The severance tax as provided in this chapter is due within twenty-five days after the end of each month, and if not received by the twenty-fifth day, becomes delinquent and must be collected as herein provided. The tax commissioner, upon request and a proper showing of the necessity therefor, may grant an extension of time, not to exceed fifteen days, for paying the tax, and when such a request is granted, the tax is not delinquent until the extended period has expired. The tax commissioner shall require a report to be filed monthly by each owner or operator of a coal or commercial leonardite mine, in such form as the tax commissioner may specify, to list a full description of the mine, the number of tons of coal or commercial leonardite severed, the amount of tax due and remitted, and any other information deemed necessary by the tax commissioner for the proper administration of this chapter.

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

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

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

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

1. The tax commissioner has the power and authority to ascertain and determine whether or not any return or remittances filed with the tax commissioner are correct, and if the owner or operator has made an untrue or incorrect return or remittance or has failed to make the required return, the tax commissioner shall ascertain the correct amount of taxes due and give immediate notice to the owner or operator filing the incorrect return or remittance or who failed to file the required return. Any coal or commercial leonardite mine operator or owner receiving notice from the tax commissioner that the owner or operator has filed an incorrect return or remittance or failed to file the required return shall remit the tax assessed by the tax commissioner within fifteen days of such notice unless within fifteen days of the notice such person makes application in writing to the tax commissioner for a hearing under chapter 28-32 before the tax commissioner. The tax becomes delinquent if within fifteen days of the notice it is not paid or an application for a hearing is not made. Taxes assessed by decision of the tax commissioner pursuant to chapter 28-32, if not paid, become delinquent five days after the time for appeal from the tax

commissioner's decision has expired, except that if an appeal from the tax commissioner's decision is taken to the district court of Burleigh County, such taxes if not paid become delinquent five days following final judicial determination."

Renumber accordingly