Sixty-fourth Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 6, 2015

SENATE BILL NO. 2377
(Senators Bekkedahl, Bowman, Rust)
(Representative Hatlestad)

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<u>, commercial leonardite,</u> or rider seam above the coal <u>or commercial leonardite</u> seam to be mined.

(4) The nature of the stratum immediately beneath the coal <u>or commercial leonardite</u> seam to be mined.

(5) All mineral crop lines and the strike and dip of the coal <u>or commercial leonardite</u> 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 <u>or commercial leonardite</u> seam found, an analysis of the chemical properties of such coal <u>or commercial leonardite</u>, the sulfur content of any coal <u>or commercial leonardite</u> seam, chemical analysis of potentially toxic forming sections of the overburden, and chemical analysis of the stratum lying immediately underneath the coal <u>or commercial leonardite</u> 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 reaffecting 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 reaffecting 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, ~~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 <u>or commercial leonardite,</u> 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 <u>or commercial leonardite</u>.

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 <u>or commercial leonardite</u> 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.

President of the Senate

Speaker of the House

Secretary of the Senate

Chief Clerk of the House

This certifies that the within bill originated in the Senate of the Sixty-fourth Legislative Assembly of North Dakota and is known on the records of that body as Senate Bill No. 2377.

Senate Vote:	Yeas 46	Nays 0	Absent 1
House Vote:	Yeas 91	Nays 0	Absent 3

Secretary of the Senate

Received by the Governor at 8:16 A.M. on April 21, 2015.

Approved at 2:19 P.M. on April 23, 2015.

Governor

Filed in this office this 23rd day of April, 2015,

at 4:12 o'clock P.M.

Secretary of State