

## Hamre, John G.

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**From:** Deutsch, James R.  
**Sent:** Tuesday, February 02, 2016 10:59 AM  
**To:** Bekkedahl, Brad; Bowman, Bill L.; Rust, David S.; Hatlestad, Patrick R.  
**Cc:** Jeffcoat-Sacco, Illona; Hamre, John G.; Jangula, Esther A.  
**Subject:** Proposed rule changes in PSC Case No. RC-15-737 that are associated with Senate Bill 2377 - Leonardite  
**Attachments:** Long\_notice.pdf; Rule\_changes.pdf; SB2377-final.pdf

Senators Bekkedahl, Bowman and Rust and Representative Hatlestad,

Attached is the Notice of Intent to Amend Administrative Rules and Notice of Public Hearing as well as a copy of rule changes that the Commission is proposing as the result of the statutory changes made to the reclamation law by Senate Bill 2377 during the 2015 Legislative session. The rule changes relate to the new definition of "commercial leonardite" and associated changes. The rulemaking hearing will be held on **February 18<sup>th</sup> beginning at 10:00 a.m.** in the Commission Hearing Room on the 12<sup>th</sup> floor of the State Capitol. A copy of SB 2377 as enacted is also attached for your convenience.

Please contact me if you have any questions.

*Jim Deutsch*

Director, Reclamation and AML Divisions  
North Dakota Public Service Commission  
(701) 328-2251 / [jdeutsch@nd.gov](mailto:jdeutsch@nd.gov)

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**STATE OF NORTH DAKOTA  
PUBLIC SERVICE COMMISSION**

**Public Service Commission  
Gas Pipeline Safety  
Rulemaking**

**Case No. GS-15-187**

**Public Service Commission  
Reclamation  
Rulemaking**

**Case No. RC-15-737**

**NOTICE OF INTENT TO AMEND ADMINISTRATIVE RULES  
AND NOTICE OF PUBLIC HEARING**

**January 5, 2016**

**PLEASE TAKE NOTICE** that the Public Service Commission will hold a public hearing to address proposed amendments to North Dakota Administrative Code Section 69-09-03-02 and Article 69-05.2. The hearing will be held at **10:00 a.m., CST on February 18, 2016, in the Commission Hearing Room, 12th floor, State Capitol, Bismarck, North Dakota.** The proposed revisions to the North Dakota Administrative Code are as follows:

**Gas Pipeline Safety – Case No. GS-15-187 – Section 69-09-03-02**

The purpose of this rulemaking is to adopt by reference the most recent amendments to pipeline safety regulations adopted by the United States Department of Transportation, Pipeline and Hazardous Materials Safety Administration (PHMSA).

This rule change adopts amendments to safety regulations that have been adopted by PHMSA since November 6, 2014, current to December 31, 2015.

For Title 49 Code of Federal Regulations Part 194 – Response Plans for Onshore Oil Pipelines, the Public Service Commission currently has statutory authority concerning pipeline safety of hazardous liquids pipelines, but hasn't initiated that safety program agreement with PHMSA. In order to implement such a program, the Public Service Commission must adopt all pipeline safety rules adopted by PHMSA. The Commission is proposing to adopt all PHMSA regulations for hazardous liquids pipeline safety in effect as of December 31, 2015, including adoption of Part 194.

**Reclamation - Case No. RC-12-166 - Article 69-05.2**

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Notice of Intent to Amend Administrative Rules and Notice of Public Hearing  
Public Service Commission
- 4 GS-15-187 Filed 01/05/2016 Pages: 2  
Notice of Intent to Amend Administrative Rules and Notice of Public Hearing  
Public Service Commission

Numerous provisions of North Dakota Administrative Code Article 69-05.2 pertaining to surface coal mining and reclamation operations must be amended as a result of statutory changes made during the 2015 Legislative session by Senate Bill No. 2377. The statutory changes added a definition of "commercial leonardite" to the list of definitions in the code, and also added this phrase to other sections of the reclamation law as appropriate. In addition, the statutory changes excluded leonardite, an oxidized form of lignite, from the definition of "coal." Due to these statutory changes, numerous changes need to be made throughout the Commission's surface coal mining and reclamation rules.

The proposed rule changes primarily consist of adding the phrase "or commercial leonardite" immediately after the word "coal" when commercial leonardite is not part of a definition or a phrase that doesn't otherwise include commercial leonardite. No new or additional requirements are proposed for these or other mining activities.

The proposed rule changes and the statements concerning the Regulatory Analysis, Small Entity Regulatory Analysis and Economic Impact, and Takings Assessment may be reviewed at the Public Service Commission's offices on the 12th floor of the State Capitol, Bismarck, North Dakota. To obtain a copy of the proposed rule changes or the statements contact the Public Service Commission at 600 East Boulevard Avenue, Dept. 408, Bismarck, North Dakota 58505-0480, 701-328-2400, toll free 1-877-245-6685, Relay North Dakota TTY 1-800-366-6888, or [ndpsc@nd.gov](mailto:ndpsc@nd.gov). This information is also available to view on the Commission's web site at [www.psc.nd.gov](http://www.psc.nd.gov) under "Formal Notices".

Interested persons may submit written comments on the proposed rules. Written comments should be filed with Darrell Nitschke, Executive Secretary, Public Service Commission, 600 East Boulevard Avenue, Department 408, Bismarck, North Dakota 58505-0480, or [ndpsc@nd.gov](mailto:ndpsc@nd.gov). The comment period closes 10 days after the hearing. Comments must be received by the close of business on February 29, 2016.

If you require any auxiliary aids or services, such as readers, signers, or Braille materials, please notify the Commission at least 24 hours in advance.

**PUBLIC SERVICE COMMISSION**

  
Randy Christmann  
Commissioner

  
Julie Fedorchak  
Chairman

  
Brian P. Kalk  
Commissioner

**State of North Dakota  
Public Service Commission**

**Public Service Commission  
Reclamation  
Rulemaking**

**Case No. RC-15-737**

**January 5, 2016**

**ARTICLE 69-05.2  
SURFACE COAL MINING AND RECLAMATION OPERATIONS**

**69-05.2-01-01. Applicability of article.** This article applies to any person conducting surface coal mining operations; and to all surface coal mining operations conducted after August 1, 1980, on lands from which the coal or commercial leonardite had not yet been removed and to any other lands subject to North Dakota Century Code chapter 38-14.1 or this article.

1. This article does not apply to:
  - a. The 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. Coal or commercial leonardite removal for reclamation operations under North Dakota Century Code chapter 38-14.2.
  - c. Coal or commercial leonardite extraction as an incidental part of federal, state, or local government-financed highway or other construction, except as provided by chapter 69-05.2-03.
  - d. Coal or commercial leonardite extraction of two hundred fifty tons [226.80 metric tons] or less under a coal exploration permit issued by the office of the state geologist.

**History:** Effective August 1, 1980; amended effective May 1, 1990; January 1, 1993: \_\_\_\_\_.

**General Authority:** NDCC 38-14.1-03

**Law Implemented:** NDCC 38-14.1-02, 38-14.1-10, 38-14.1-37

**69-05.2-01-02. Definitions.** The definitions in North Dakota Century Code section 38-14.1-02 apply to this article and the following terms have the specified meaning except where otherwise indicated:

9. "Coal mining operation" means, for purposes of restrictions on financial interests of employees, the business of developing, producing, preparing, or loading bituminous coal, subbituminous coal, anthracite, or lignite or commercial leonardite, or of reclaiming the areas upon which such activities occur.
10. "Coal preparation" means chemical or physical processing and the cleaning, concentrating, or other processing or preparation of coal or commercial leonardite.
11. "Coal preparation plant" means a facility where coal or commercial leonardite is subjected to chemical or physical processing or the cleaning, concentrating, or other processing or preparation. It includes facilities associated with coal preparation activities, including, but not limited to the following: loading facilities, storage and stockpile facilities, sheds, shops and other buildings, water treatment and water-storage facilities, settling basins and impoundments, and coal or commercial leonardite processing and other waste disposal areas.
12. "Coal processing waste" means earth materials which are wasted and separated from product coal or commercial leonardite during cleaning, concentrating, or other processing or preparation of coal or commercial leonardite.
32. "Extraction of coal or commercial leonardite as an incidental part" means the extraction of coal or commercial leonardite which is necessary to enable government-financed construction to be accomplished. Only that coal or commercial leonardite extracted from within the right of way, in the case of a road, railroad, utility line or other such construction, or within the boundaries of the area directly affected by other types of government-financed construction, may be considered incidental to that construction. Extraction of coal or commercial leonardite outside the right of way or boundary of the area directly affected by the construction shall be subject to the requirements of North Dakota Century Code chapter 38-14.1 and this article.
64. "Owned or controlled" and "owns or controls" mean any one or a combination of the relationships specified in subdivisions a and b:
  - a. Being a permittee of a surface coal mining operation; based on instrument of ownership or voting securities, owning of record in excess of fifty percent of an entity; or having any other relationship which gives one person authority directly or indirectly to determine the manner in which an applicant,

operator, or other entity conducts surface coal mining operations.

b. The following relationships are presumed to constitute ownership or control unless a person can demonstrate that the person subject to the presumption does not in fact have the authority directly or indirectly to determine the manner in which the relevant surface coal mining operation is conducted:

- (1) Being an officer or director of an entity;
- (2) Being the operator of a surface coal mining operation;
- (3) Having the ability to commit the financial or real property assets or working resources of an entity;
- (4) Being a general partner in a partnership;
- (5) Based on the instruments of ownership or the voting securities of a corporate entity, owning of record ten through fifty percent of the entity; or
- (6) Owning or controlling coal or commercial leonardite to be mined by another person under a lease, sublease or other contract and having the right to receive the coal or commercial leonardite after mining or having authority to determine the manner in which that person or another person conducts a surface coal mining operation.

88. "Refuse pile" means a surface deposit of coal or commercial leonardite mine waste that does not impound water, slurry, or other liquid or semiliquid material.

93. "Road" means a surface right of way used, constructed, reconstructed, improved, or maintained for travel by land vehicles for use in surface coal mining and reclamation operations. The term includes access and haul roads used in surface coal mining and reclamation operations, including use by coal or commercial leonardite hauling vehicles to and from transfer, processing, or storage areas. A road consists of the entire area within the right of way, including the roadbed, shoulders, parking and side areas, approaches, structures, ditches, and surface. The term does not include ramps and routes of travel within the immediate mining area

or within spoil or coal or commercial leonardite mine waste disposal areas.

104. "Substantial legal and financial commitments in a surface coal mining operation" means significant investments that have been made on the basis of a long-term coal or commercial leonardite contract in power plants, railroads, coal or commercial leonardite handling, preparation, extraction or storage facilities, and other capital-intensive activities.
108. "Surface mining activities" means those surface coal mining and reclamation operations incident to the extraction of coal or commercial leonardite from the earth by removing the materials over a coal or commercial leonardite seam, before recovering the coal or commercial leonardite, or by recovery of coal or commercial leonardite from a deposit that is not in its original geologic location.
120. "Valid existing rights" means: a set of circumstances under which a person, subject to commission approval, may conduct surface coal mining operations on lands where North Dakota Century Code section 38-14.1-07 and section 69-05.2-04-01.1 would otherwise prohibit such operations. Possession of valid existing rights confers an exception from these prohibitions. A person seeking to exercise valid existing rights must comply with all other pertinent requirements of North Dakota Century Code chapter 38-14.1 and this article.
  - a. Property rights demonstration. Except as provided in subdivision c, a person claiming valid existing rights must demonstrate that a legally binding conveyance, lease, deed, contract, or other document vests that person, or a predecessor in interest, with the right to conduct the type of surface coal mining operations intended. This right must exist at the time that the land came under the protection of North Dakota Century Code section 38-14.1-07 and section 69-05.2-04-01.1. Applicable state statutory or case law will govern interpretation of documents relied upon to establish property rights, unless federal law provides otherwise. If no applicable state law exists, custom and generally accepted usage at the time and place that the documents came into existence will govern their interpretation.
  - b. Except as provided in subdivision c, a person claiming valid existing rights must also demonstrate compliance with one of the following standards:

- (1) All permits or good-faith standard. All permits and other authorizations required to conduct surface coal mining operations had been obtained or a good-faith effort to obtain all necessary permits and authorizations had been made, before the land came under the protection of North Dakota Century Code section 38-14.1-07 and section 69-05.2-04-1.1. At a minimum, an application must have been submitted for the permit required under this article.
  
- (2) Needed for and adjacent standard. The land is needed for and immediately adjacent to a surface coal mining operation for which all permits and other authorizations required to conduct surface coal mining operations had been obtained or a good-faith attempt to obtain all permits and authorizations had been made, before the land came under the protection of North Dakota Century Code section 38-14.1-07 and section 69-05.2-04-01.1. To meet this standard, a person must demonstrate that prohibiting expansion of the operation onto that land would unfairly impact the viability of the operation as originally planned before the land came under the protection of North Dakota Century Code section 38-14.1-07 and section 69-05.2-04-01.1. Except for operations in existence before August 3, 1977, or for which a good-faith effort to obtain all necessary permits had been made before August 3, 1977, this standard does not apply to lands already under the protection of North Dakota Century Code section 38-14.1-07 and section 69-05.2-04-01.1 when the commission approved the permit for the original operation or when the good-faith effort to obtain all necessary permits for the original operation was made. In evaluating whether a person meets this standard, the commission may consider factors such as:
  - (a) The extent to which coal or commercial leonardite supply contracts or other legal and business commitments that predate the time that the land came under the protection of North Dakota Century Code section 38-14.1-07 and section 69-05.2-04-01.1 depend upon use of that land for surface coal mining operations.

- (b) The extent to which plans used to obtain financing for the operation before the land came under the protection of North Dakota Century Code section 38-14.1-07 and section 69-05.2-04-01.1 rely upon use of that land for surface coal mining operations.
  - (c) The extent to which investments in the operation before the land came under the protection of North Dakota Century Code section 38-14.1-07 and section 69-05.2-04-01.1 rely upon use of that land for surface coal mining operations.
  - (d) Whether the land lies within the area identified on the life-of-mine map submitted under chapter 69-05.2-07 before the land came under the protection of North Dakota Century Code section 38-14.1-07 and section 69-05.2-04-01.1.
- c. Roads. A person who claims valid existing rights to use or construct a road across the surface of lands protected by North Dakota Century Code section 38-14.1-07 and section 69-05.2-04-01.1 must demonstrate that one or more of the following circumstances exist if the road is included within the definition of "surface coal mining operations" in subsection 33 of North Dakota Century Code section 38-14.1-02:
- (1) The road existed when the land upon which it is located came under the protection of North Dakota Century Code section 38-14.1-07 and section 69-05.2-04-01.1 and the person has a legal right to use the road for surface coal mining operations.
  - (2) A properly recorded right of way or easement for a road in that location existed when the land came under the protection of North Dakota Century Code section 38-14.1-07 and section 69-05.2-04-01.1, and, under the document creating the right of way or easement, and under subsequent conveyances, the person has a legal right to use or construct a road across the right of way or easement for surface coal mining operations.

(3) A valid permit for use or construction of a road in that location for surface coal mining operations existed when the land came under the protection of North Dakota Century Code section 38-14.1-07 and section 69-05.2-04-01.1.

(4) Valid existing rights exist under subdivisions a and b.

**History:** Effective August 1, 1980; amended effective June 1, 1983; April 1, 1985; June 1, 1986; January 1, 1987; May 1, 1990; May 1, 1992; June 1, 1997; May 1, 1999; March 1, 2004:\_\_\_\_\_.

**General Authority:** NDCC 38-14.1-03, 38-14.1-38

**Law Implemented:** NDCC 38-14.1-02, 38-14.1-03, 38-14.1-21, 38-14.1-38

**69-05.2-02-06. Gifts and gratuities.**

1. Except as provided in subsection 2, employees shall not solicit or accept, directly or indirectly, any gift, gratuity, favor, entertainment, loan, or any other thing of monetary value from a coal or commercial leonardite company which:
  - a. Conducts, or is seeking to conduct, operations or activities regulated by the commission; or
  - b. Has interests that may be substantially affected by the performance or nonperformance of the employee's official duty.

**History:** Effective August 1, 1980; amended effective May 1, 1990;\_\_\_\_\_.

**General Authority:** NDCC 38-14.1-38

**Law Implemented:** NDCC 38-14.1-38

**69-05.2-03-01. Incidental coal or commercial leonardite extraction - Possession of documents.** Any person conducting coal or commercial leonardite extraction as an incidental part of government-financed construction is responsible for possessing, onsite, the documentation required by section 69-05.2-03-02.

**History:** Effective August 1, 1980; amended effective May 1, 1990;\_\_\_\_\_.

**General Authority:** NDCC 38-14.1-03

**Law Implemented:** NDCC 38-14.1-37

**69-05.2-03-02. Incidental coal or commercial leonardite extraction - Information to be maintained onsite.** Any person extracting coal or commercial leonardite incident to government-financed highway or other

construction who extracts more than two hundred fifty tons [226.80 metric tons] shall maintain, onsite, documents which:

1. Describe the project.
2. Show the exact location of the construction, right of way, or the boundaries of the area which will be directly affected.
3. Identify the government agency providing the financing and the kind and amount of public financing, including the percentage of all costs represented by the government financing.

**History:** Effective August 1, 1980; amended effective May 1, 1990; \_\_\_\_\_.

**General Authority:** NDCC 38-14.1-03

**Law Implemented:** NDCC 38-14.1-37

**69-05.2-04-01.5. Areas unsuitable for mining - Submission of requests for valid existing rights determinations.**

2. A request for a valid existing rights determination may be submitted before preparing and submitting an application for a permit or incidental boundary revision for the land. The request must include the following:
  - a. A property rights demonstration under subdivision a of the definition of valid existing rights of section 69-05.2-01-02 if the request relies upon the "all permits or good-faith standard" or the "needed for and adjacent standard" in subdivision b of that definition. The demonstration must include the following items:
    - (1) A legal description of the land to which the request pertains.
    - (2) Complete documentation of the character and extent of the applicant's current interests in the surface and mineral estates of the land to which the request pertains.
    - (3) A complete chain of title for the surface and mineral estates of the land to which the request pertains.
    - (4) A description of the nature and effect of each title instrument that forms the basis for the request, including any provision pertaining to the type or

method of mining or mining-related surface disturbances and facilities.

- (5) A description of the type and extent of surface coal mining operations that the applicant claims the right to conduct, including the method of mining, any mining-related surface activities and facilities, and an explanation of how those operations would be consistent with state property law.
- (6) Complete documentation of the nature and ownership, as of the date that the land came under the protection of North Dakota Century Code section 38-14.1-07 and section 69-05.2-04-01.1, of all property rights for the surface and mineral estates of the land to which the request pertains.
- (7) Names and addresses of the current owners of the surface and mineral estates of the land to which the request pertains.
- (8) If the coal or commercial leonardite interests have been severed from other property interests, documentation that the applicant has notified and provided reasonable opportunity for the owners of other property interests in the land to which the request pertains to comment on the validity of claimed property rights.
- (9) Any comments that the applicant receives in response to the notification provided under paragraph 8.

**History:** Effective March 1, 2004; \_\_\_\_\_.

**General Authority:** NDCC 38-14.1-03

**Law Implemented:** NDCC 38-14.1-02, 38-14.1-04, 38-14.1-07

**69-05.2-04-04. Areas unsuitable for mining - Initial processing - Recordkeeping - Notification requirements for designating lands unsuitable.**

2. The commission will determine whether any identified coal or commercial leonardite resources exist in the area covered by the petition, without requiring any showing from the petitioner. If the commission finds no identified coal or commercial leonardite resources in that area, it will return the petition with a statement of findings.

**History:** Effective August 1, 1980; amended effective May 1, 1990;\_\_\_\_\_.

**General Authority:** NDCC 38-14.1-03

**Law Implemented:** NDCC 38-14.1-04, 38-14.1-06, 38-14.1-09, 38-14.1-18

**69-05.2-04-07. Areas unsuitable for mining - Data base and inventory system for designating lands unsuitable.**

3. The commission will add to the data base and inventory system information:
  - a. On potential coal or commercial leonardite resources of the state, demand for those resources, the environment, the economy, and the supply of coal or commercial leonardite, sufficient to enable the commission to prepare the statements required by subsection 3 of North Dakota Century Code section 38.14.1-05; and
  - b. That becomes available from petitions, publications, experiments, permit applications, mining and reclamation operations, and other sources.

**History:** Effective August 1, 1980; amended effective May 1, 1990; July 1, 1995;\_\_\_\_\_.

**General Authority:** NDCC 38-14.1-03

**Law Implemented:** NDCC 38-14.1-04

**69-05.2-04-09. Areas unsuitable for mining - Commission responsibility for implementation for designating lands unsuitable. The commission will:**

3. Make available to any person information within its control regarding designations, including mineral or elemental content which is potentially toxic in the environment, but excepting proprietary information on the chemical and physical properties of the coal or commercial leonardite according to subsection 3 of North Dakota Century Code section 38-14.1-13.

**History:** Effective August 1, 1980; amended effective May 1, 1990;\_\_\_\_\_.

**General Authority:** NDCC 38-14.1-03

**Law Implemented:** NDCC 38-14.1-04

**69-05.2-05-08. Permit applications - Permit term.**

1. A permit will be issued for a fixed term not to exceed five years except as provided in subsection 3. The permit area shall be no larger than a logical pit sequence and include lands used for activities incidental to coal or commercial leonardite extraction. Coal or commercial leonardite removal boundaries cannot go beyond those approved for the permit term without obtaining a revision under section 69-05.2-11-02.

**History:** Effective August 1, 1980; amended effective June 1, 1983; May 1, 1990; January 1, 1993; April 1, 2013; \_\_\_\_\_.

**General Authority:** NDCC 38-14.1-03

**Law Implemented:** NDCC 38-14.1-12

#### **69-05.2-06-01. Permit applications - Identification of interests.**

1. In addition to satisfying the applicable requirements of subsection 1 of North Dakota Century Code section 38-14.1-14, each application must contain:
  - a. The names and addresses of the owner of record of surface and coal or commercial leonardite subsurface rights contiguous to the permit area extending one-fourth mile [402.33 meters] from the permit boundary.

**History:** Effective August 1, 1980; amended effective June 1, 1983; May 1, 1990; May 1, 1992; July 1, 1995; April 1, 2013; \_\_\_\_\_.

**General Authority:** NDCC 38-14.1-03

**Law Implemented:** NDCC 38-14.1-14

#### **69-05.2-06-03. Permit applications - Right of entry and operation information.**

2. Following completion of coal or commercial leonardite removal operations on the lands covered by a coal or commercial leonardite lease, the copy of the lease may be deleted from an approved permit if:
  - a. The lease is no longer needed to show the surface right of entry for carrying out reclamation operations; or
  - b. The lease has expired or has been terminated.

If a coal or commercial leonardite lease is no longer provided for surface right of entry, other documents granting the permittee surface right of entry must be added to the permit.

**History:** Effective August 1, 1980; amended effective June 1, 1983; May 1, 1990; April 1, 2007;\_\_\_\_\_.

**General Authority:** NDCC 38-14.1-03

**Law Implemented:** NDCC 38-14.1-14

**69-05.2-08-01. Permit applications - Permit area - Environmental resources information.**

2. When the permit area contains a logical pit sequence where the coal or commercial leonardite removal area is larger than that needed for the initial five-year term, the applicant shall identify the size, sequence, and timing of mining individual coal or commercial leonardite removal subareas.

**History:** Effective August 1, 1980; amended effective June 1, 1983; May 1, 1990; January 1, 1993;\_\_\_\_\_.

**General Authority:** NDCC 38-14.1-03

**Law Implemented:** NDCC 38-14.1-14

**69-05.2-08-02. Permit applications - Permit area - General map requirements.**

1. The application must include a 1:4,800 planimetric mine map, together with as many separate detail maps as necessary, to show:
  - i. Location and dimensions of existing areas of spoil, coal, commercial leonardite and noncoal waste disposal, dams, embankments, other impoundments, and water treatment and air pollution control facilities within the permit area.

**History:** Effective August 1, 1980; amended effective May 1, 1990; January 1, 1993;\_\_\_\_\_.

**General Authority:** NDCC 38-14.1-03

**Law Implemented:** NDCC 38-14.1-14

**69-05.2-08-04. Permit applications - Permit area - Description of hydrology and geology - General requirements.**

3. Enough detailed geologic information must be included to determine:
  - a. The probable hydrologic consequences (PHC) of the operation on the quality and quantity of surface and ground water in the permit and adjacent areas, including the extent to which surface and ground water monitoring is necessary;

- b. All potentially toxic-forming strata down through the lowest coal or commercial leonardite seam to be mined; and
- c. Whether reclamation can be accomplished and whether the proposed operation has been designed to prevent material damage to the hydrologic balance outside the permit area.

**History:** Effective August 1, 1980; amended effective May 1, 1990; \_\_\_\_\_.

**General Authority:** NDCC 38-14.1-03

**Law Implemented:** NDCC 38-14.1-14, 38-14.1-15

**69-05.2-08-05. Permit applications - Permit area - Geology description.**

1. The description must include a general statement of the geology within the permit area down through the deeper of either the stratum immediately below the deepest coal or commercial leonardite seam to be mined or any lower aquifer which may be adversely affected by mining.
2. Test borings or core samples from the permit area must be collected and analyzed down through the deeper of either the stratum immediately below the lowest coal or commercial leonardite seam to be mined or any lower aquifer which may be adversely affected by mining. The minimum density is one drill hole per forty acres [16.19 hectares] or a comparable spacing, or as specified by the commission. Overburden samples must be taken at five-foot [1.52-meter] intervals and taken dry whenever possible. Laboratory analyses must be made by the methods in United States department of agriculture handbook 525, Laboratory Methods Recommended for Chemical Analyses of Mined Land Spoils and Overburden in Western United States, by Sandoval and Power, or United States department of agriculture handbook 60, Diagnosis and Improvement of Saline and Alkali Soils, by the United States salinity laboratory staff, both available from the United States government printing office, Washington, D. C. The following information must be provided:
  - a. Location of subsurface water encountered.
  - b. Drill hole logs with gamma ray and density logs included as verification showing the lithologic characteristics and thickness of each stratum and coal or commercial leonardite seam.

- c. Physical and chemical analyses of each overburden sample taken at five-foot [1.52-meter] intervals to identify horizons containing potential toxic-forming materials. Physical and chemical analyses of strata below the lowest coal or commercial leonardite seam to be mined must include one sample from each stratum. The analyses must include:
- (1) pH.
  - (2) Sodium adsorption ratio (include calcium, magnesium, and sodium cation concentrations).
  - (3) Electrical conductivity of the saturation extract.
  - (4) Texture (by pipette or hydrometer method). Include percentage of sand, silt, and clay along with a general description of the physical properties of each stratum within the overburden.
  - (5) Saturation percentage if the sodium adsorption ratio is greater than twelve and less than twenty.
- d. Coal or commercial leonardite seam analyses including sodium, ash, British thermal unit, and sulfur content.
- e. Cross sections sufficient to show the major subsurface variations within the permit area down through the deeper of either the stratum immediately below the lowest coal or commercial leonardite seam to be mined or any lower aquifer which may be adversely affected by mining. The horizontal scale must be 1:4,800 and the vertical scale one inch [2.54 centimeters] equals twenty feet [6.10 meters]. To assess pit suitability for disposal of refuse, ash and other residue from coal or commercial leonardite utilization processes, the information presented in this subsection must extend to a depth determined by the commission or to the base of the next confining clay stratum beneath the lowest coal or commercial leonardite seam to be mined.
- f. A thickness (isopach) map of the overburden to the top of the deepest seam to be mined. The contour interval must be ten feet [3.05 meters] and the horizontal scale 1:4,800.
- g. All coal or commercial leonardite crop lines and the strike and dip of the coal or commercial leonardite to be mined.

**History:** Effective August 1, 1980; amended effective January 1, 1987; May 1, 1990; May 1, 1992: \_\_\_\_\_.

**General Authority:** NDCC 38-14.1-03

**Law Implemented:** NDCC 38-14.1-14

**69-05.2-08-06. Permit applications - Permit area - Ground water information.**

1. The applicant shall analyze the ground water hydrology and ground water resources of the potentially affected area. The application must contain a description of the ground water hydrology for the permit and adjacent areas including:
  - d. Contour maps or maps showing the water table or piezometric surface in each aquifer (including water-bearing coal and commercial leonardite seams) down to and including the lowest water-bearing coal or commercial leonardite seam to be mined and any lower aquifer which may be adversely affected by mining. The applicant shall prepare 1:24,000 scale maps covering the permit and adjacent areas, using at least one data point (a piezometer nest) per four square miles [6.44 square kilometers], unless the commission requires a greater density. Data points must be shown on the map to the nearest ten acres [4.05 hectares]. Accompanying data should include lithologic and geophysical (gamma ray and density) logs of the piezometer holes, piezometer construction details, and water level and land surface elevations to the accuracy necessary for valid analysis of the ground water hydrology of the permit and adjacent areas.

**History:** Effective August 1, 1980; amended effective May 1, 1990; \_\_\_\_\_.

**General Authority:** NDCC 38-14.1-03

**Law Implemented:** NDCC 38-14.1-14

**69-05.2-09-01. Permit applications - Operation plans - General requirements.** Each application must contain a detailed description of the proposed mining operations, including:

1. A narrative of mining procedures and engineering techniques, anticipated annual and total coal or commercial leonardite production, and major equipment.

2. A plan stating the anticipated or actual starting and termination date of each phase of mining activities and the amount of land to be affected for each phase over the life of the permit.
3. A narrative for each operations plan explaining the plan in detail and the construction, modification, use and maintenance of each mine facility, water and air pollution control facilities or structures, transportation and coal or commercial leonardite handling facilities, and other structures required for implementing the plans.
4. A plan for each support facility to be constructed, used, or maintained within the permit area including maps, appropriate cross sections, design drawings, and specifications of each facility sufficient to demonstrate compliance with section 69-05.2-24-08 or 69-05.2-24-09 as applicable.
5. If coal or commercial leonardite removal areas are proposed within five hundred feet [152.40 meters] of any farm building, the applicant must provide documentation showing compliance or plans to comply with North Dakota Century Code section 38-18-07.

**History:** Effective August 1, 1980; amended effective May 1, 1990; May 1, 1992; June 1, 1994; March 1, 2004; \_\_\_\_\_.

**General Authority:** NDCC 38-14.1-03

**Law Implemented:** NDCC 38-14.1-14, 38-18-07

**69-05.2-09-02. Permit applications - Operation plans - Maps and plans.** Each application must contain an appropriate combination of 1:4,800 scale topographic maps, planimetric maps, and plans of the proposed permit and adjacent areas showing:

3. The boundaries of areas to be affected during the permit term according to the sequence of mining and reclamation operations and a description of size and timing of operations for each coal or commercial leonardite removal subarea.
6. Location of coal or commercial leonardite processing waste dams and embankments under section 69-05.2-09-09, and fill areas for the disposal of initial cut and other excess spoil under section 69-05.2-09-14 and North Dakota Century Code section 38-14.1-24.
8. Each coal or commercial leonardite storage, cleaning and loading area, and each coal or commercial leonardite waste and noncoal waste storage area. For noncoal wastes that will be disposed of in the proposed permit area, the applicant must provide a description of any wastes listed under subdivision i of subsection 2 of section

33-20-02.1-01 and any other wastes requiring a permit from the state department of health. The location of any such disposal areas must be shown on a map of the permit area.

12. Each source of waste and each waste disposal facility relating to coal or commercial leonardite processing or pollution control.
14. If an applicant proposes to remine or otherwise disturb lands that were affected by coal or commercial leonardite mining activities prior to January 1, 1970:
  - a. Detailed maps and other available information that clearly depicts the boundaries of the site that was previously affected by mining activities before January 1, 1970. This includes the identification of any sinkholes and other features that are the result of any past underground coal or commercial leonardite mining activities.
  - b. The applicant must identify and describe potential environmental and safety problems related to prior mining activity at the site and those that could be reasonably anticipated to occur. This identification must be based on a due diligence investigation which includes visual observations at the site, a record review of past mining at the site, and any necessary environmental sampling tailored to the current condition of the site.
  - c. With regard to potential environmental and safety problems referred to in subdivision b, a description of the mitigative measures that will be taken to ensure that the applicable reclamation requirements can be met.

**History:** Effective August 1, 1980; amended effective June 1, 1983; June 1, 1986; May 1, 1990; June 1, 1997; April 1, 2011; \_\_\_\_\_.

**General Authority:** NDCC 38-14.1-03

**Law Implemented:** NDCC 38-14.1-14

**69-05.2-09-09. Permit applications - Operation plans - Surface water management - Ponds, impoundments, banks, dams, embankments, and diversions.**

1. Each application must include a surface water management plan describing each water management structure intended to meet the requirements of chapter 69-05.2-16. Each plan must:

- f. Identify the location of proposed temporary coal or commercial leonardite processing waste disposal areas, along with design specifications to meet the requirements in section 69-05.2-19-03.
  
- g. Identify the location of proposed coal or commercial leonardite processing waste dams and embankments along with design specifications to meet the requirements in chapter 69-05.2-20. The plan must include the results of a geotechnical investigation of each proposed coal or commercial leonardite dam or embankment foundation area, to determine the structural competence of the foundation which will support the proposed dam or embankment and the impounded material. The geotechnical investigation must be planned and supervised by an engineer or engineering geologist, as follows:
  - (1) Determine the number, location, and depth of borings and test pits using current prudent engineering practice for the size of the dam or embankment, quantity of material to be impounded, and subsurface conditions.
  - (2) Consider the character of the overburden, the proposed abutment sites, and any adverse geotechnical conditions which may affect the particular dam, embankment, or reservoir site.
  - (3) Identify springs, seepage, and ground water flow observed or anticipated during wet periods in the proposed dam or embankment area.
  - (4) Consider the possibility of mudflows or other landslides into the dam, embankment, or impounded material.

**History:** Effective August 1, 1980; amended effective June 1, 1983; June 1, 1986; May 1, 1990; May 1, 1992; January 1, 1993; May 1, 1999; \_\_\_\_\_.

**General Authority:** NDCC 38-14.1-03

**Law Implemented:** NDCC 38-14.1-14

**69-05.2-09-18. Permit applications - Operation and reclamation plans - Auger mining.** If applicable, the applicant shall submit a plan explaining how the applicant intends to comply with section 69-05.2-13-12 and subsection 1.1 of North Dakota Century Code section 38-14.1-24. This plan must contain:

3. A description of how the applicant intends to ensure the long-term stability of the augered area. This description should contain specific engineering designs ensuring that:
  - a. Material backfilled into the holes can be compacted to provide sufficient strength to prevent subsidence;
  - b. The coal or commercial leonardite remaining between the auger holes and the overlying overburden is sufficiently strong to prevent subsidence; or
  - c. The auger mined area can be collapsed in a controlled manner through the use of explosive or other techniques to eliminate future subsidence.

**History:** Effective September 1, 1984; amended effective May 1, 1990; \_\_\_\_\_.

**General Authority:** NDCC 38-14.1-03

**Law Implemented:** NDCC 38-14.1-14, 38-14.1-24

**69-05.2-09-19. Permit applications - Operation and reclamation plans - Coal preparation plants not located within the permit area of a mine.**

1. This section applies to any person who operates or intends to operate a coal preparation plant in connection with a coal or commercial leonardite mine but outside the permit area mine for a specific mine. A permit to operate must be obtained from the commission.

**History:** Effective January 1, 1987; amended effective May 1, 1990; May 1, 1992; \_\_\_\_\_.

**General Authority:** NDCC 38-14.1-03

**Law Implemented:** NDCC 38-14.1-14

**69-05.2-10-01. Permit applications - Public notices of filing and entering data into the applicant violator system.**

1. The advertisement required by North Dakota Century Code section 38-14.1-18 must also include:
  - b. A map or description which must:
    - (4) State the name of each owner of record of surface rights and, if the applicant proposes to mine coal or commercial leonardite or conduct activities that may

impact future coal or commercial leonardite recovery, the names of each owner of record of coal or commercial leonardite rights within the permit boundaries.

6. The commission will provide notice and opportunity for hearing for persons seeking and opposing disclosure prior to declaring any permit information confidential. Notice will be published in the official county newspaper of the county where the proposed operations will be located at least fifteen days prior to the hearing. Information requested to be held confidential must be clearly identified by the applicant and submitted separately. Confidential information is limited to:
  - a. Analysis of the chemical and physical properties of the coal or commercial leonardite to be mined, except information on coal or commercial leonardite components potentially toxic in the environment.

**History:** Effective August 1, 1980; amended effective June 1, 1983; May 1, 1990; June 1, 1997; April 1, 2007; April 1, 2013; \_\_\_\_\_.

**General Authority:** NDCC 38-14.1-03

**Law Implemented:** NDCC 38-14.1-18

#### **69-05.2-11-02. Permit revisions.**

1. A permit revision is required:
  - c. When a new coal or commercial leonardite removal subarea of the existing permit area is proposed to be disturbed in accordance with the timing and sequence approved in the permit. The revision is considered a significant alteration to the mining and reclamation plan.

**History:** Effective August 1, 1980; amended effective June 1, 1983; May 1, 1990, May 1 1992; January 1, 1993; July 1, 1995; \_\_\_\_\_.

**General Authority:** NDCC 38-14.1-03

**Law Implemented:** NDCC 38-14.1-23

**69-05.2-13-05. Performance standards - General requirements - Minimize disturbances - Best technology currently available.** All surface coal mining and reclamation operations must be conducted to minimize disturbances on lands where coal or commercial leonardite is not removed and utilize the best technology currently available.

**History:** Effective August 1, 1980; amended effective May 1, 1990; \_\_\_\_\_.

**General Authority:** NDCC 38-14.1-03

**Law Implemented:** NDCC 38-14.1-03, 38-14.1-24

**69-05.2-13-08. Performance standards - General requirements - Protection of fish, wildlife, and related environmental values.**

6. The permittee shall, to the extent possible using the best technology currently available:

h. To the extent possible prevent, control, and suppress range, forest, and coal or commercial leonardite fires not approved by the commission as part of a management plan.

**History:** Effective August 1, 1980; amended effective June 1, 1983; May 1, 1990, May 1, 1992; January 1, 1993; June 1, 1994; May 1, 1999; \_\_\_\_\_.

**General Authority:** NDCC 38-14.1-03

**Law Implemented:** NDCC 38-14.1-24

**69-05.2-13-12. Performance standards - General requirements - Auger mining.** The operator shall:

1. Conduct auger mining to maximize the utilization and conservation of coal or commercial leonardite.

**History:** Effective September 1, 1984; amended effective June 1, 1986; May 1, 1990; May 1, 1992; \_\_\_\_\_.

**General Authority:** NDCC 38-14.1-03

**Law Implemented:** NDCC 38-14.1-24

**69-05.2-13-13. Performance Standards - General requirements - Coal preparation plants not located within the permit area of a mine.** Each person who operates a coal preparation plant in connection with a coal or commercial leonardite mine but outside the permit area for a specific mine shall obtain a permit in accordance with section 69-05.2-09-19, obtain a bond in accordance with chapter 69-05.2-12, and comply with the following:

1. Signs and markers for coal preparation plants, coal processing waste disposal areas, and water-treatment facilities must comply with section 69-05.2-13-04.

2. Stream channel diversions must comply with section 69-05.2-16-07.

3. Drainage from any disturbed areas related to coal preparation plants must comply with chapter 69-05.2-16.
4. Permanent impoundments associated with coal preparation plants must comply with section 69-05.2-16-12. Dams constructed of or impounding coal processing waste must comply with chapter 69-05.2-20.
5. Disposal of coal processing waste, non-coal mine waste and excess spoil must comply with chapters 69-05.2-19 and 69-05.2-18, respectively.
6. Fish, wildlife and related environmental values must be protected in accordance with section 69-05.2-13-08.
7. Support facilities related to coal preparation plants must comply with section 69-05.2-24-09.
8. Roads associated with coal preparation plants must comply with chapter 69-05.2-24.
9. Cessation of operations must be in accordance with sections 69-05.2-13-10 and 69-05.2-13-11.
10. Erosion and attendant air pollution must be controlled in accordance with sections 69-05.2-15-06 and 69-05.2-13-07, respectively.
11. Underground mine areas must be avoided in accordance with section 69-05.2-13-06.
12. Reclamation must follow proper suitable plant growth material handling, backfilling and grading, revegetation, and postmining land use procedures in accordance with chapters 69-05.2-15, 69-05.2-21, 69-05.2-22 and 69-05.2-23, respectively.

**History:** Effective January 1, 1987; amended effective May 1, 1990 May 1, 1992; \_\_\_\_\_.

**General Authority:** NDCC 38-14.1-03

**Law Implemented:** NDCC 38-14.1-24

**69-05.2-18-01. Performance standards - Disposal of excess spoil - Requirements.** In addition to satisfying subsection 19 of North Dakota Century Code section 38-14.1-24, the operator shall:

13. Provide an underdrain system, if required by subsection 19 of North Dakota Century Code section 38-14.1-24, that is protected by an adequate filter and designed and constructed using standard geotechnical engineering methods. Underdrains must consist of nondegradable, non-toxic-forming rock such as natural sand and gravel, sandstone, limestone, or other durable rock that will not slake in water and will be free of coal, commercial leonardite, clay, or shale.

**History:** Effective August 1, 1980; amended effective May 1, 1990; May 1, 1992;\_\_\_\_\_.

**General Authority:** NDCC 38-14.1-03

**Law Implemented:** NDCC 38-14.1-24

**69-05.2-19-02. Performance standards - Waste materials - Permanent disposal of coal or commercial leonardite wastes.**

1. All coal processing waste and waste materials from coal or commercial leonardite utilization processes and coal conversion facilities to be permanently disposed of within a permit area and that are required to be permitted under the solid waste management rules of the North Dakota state department of health must be disposed of according to those rules and this chapter.
  - a. The permittee or operator shall file application for and design the disposal site as required by the state department of health and concurrently submit a copy of the application to the commission.
  - b. The permittee or operator shall also submit to the commission a permit revision that will incorporate the disposal activities into the operations and reclamation plan. The commission will not approve the revision until the state department of health issues a solid waste permit.

**History:** Effective August 1, 1980; amended effective June 1, 1983; May 1, 1990; June 1, 1997;\_\_\_\_\_.

**General Authority:** NDCC 38-14.1-03

**Law Implemented:** NDCC 38-14.1-24

**69-05.2-19-04. Performance standards - Waste materials - Disposal of noncoal wastes.**

4. At no time may any solid waste material be deposited at embankment or impoundment sites, nor may any excavation for solid waste disposal be located within eight feet [2.44 meters] of

any coal or commercial leonardite outcrop or coal or commercial leonardite storage area.

**History:** Effective August 1, 1980; amended effective June 1, 1983; May 1, 1990; June 1, 1997; May 1, 1999;\_\_\_\_\_.

**General Authority:** NDCC 38-14.1-03

**Law Implemented:** NDCC 38-14.1-24

**69-05.2-21-01. Performance standards - Backfilling and grading - Timing requirements.**

2. Area surface mining. Rough backfilling and grading must be completed within one hundred eighty days following coal or commercial leonardite removal and may not be more than four spoil ridges behind the pit being worked, the spoil from the active pit being considered the first ridge. The commission may grant additional time or distance for rough backfilling and grading if the permittee can demonstrate, through a detailed written analysis under subsection 3 of section 69-05.2-09-11, that additional time or distance is necessary.

**History:** Effective August 1, 1980; amended effective May 1, 1990; July 1, 1995;\_\_\_\_\_.

**General Authority:** NDCC 38-14.1-03

**Law Implemented:** NDCC 38-14.1-24

**69-05.2-21-03. Performance standards - Backfilling and grading - Covering coal, commercial leonardite and toxic-forming materials.** All exposed coal seams, commercial leonardite seams, and toxic-forming and combustible materials exposed, used, or produced during mining must be adequately covered with nontoxic and noncombustible materials, or treated, to control the impact on surface and ground water in accordance with chapter 69-05.2-16, to prevent sustained combustion, and to minimize adverse effects on plant growth and the approved postmining land use.

**History:** Effective August 1, 1980; amended effective January 1, 1987; May 1, 1990;\_\_\_\_\_.

**General Authority:** NDCC 38-14.1-03

**Law Implemented:** NDCC 38-14.1-24

**69-05.2-21-04. Performance standards - Backfilling and grading - Thin overburden.** The provisions of this section apply only to mining activities where the final thickness of all available spoil and waste materials over the permit area is less than 0.8 of the initial thickness of the overburden and the coal or commercial leonardite prior to coal or commercial leonardite removal. The final thickness is the product of the overburden thickness prior to coal or commercial leonardite removal.

commercial leonardite removal times the overburden swell factor. When the demonstration is made that thin overburden exists over the permit area, in addition to meeting subdivision b of subsection 3 of North Dakota Century Code section 38-14.1-24, the operator shall:

1. Transport, backfill, and grade, using all available spoil and suitable waste materials from the entire permit area, to attain the lowest practicable stable grade, to achieve a static safety factor of 1.3 to provide adequate drainage and long-term stability of the regraded areas, and to cover all toxic-forming materials.
2. Eliminate highwalls by grading or backfilling to stable slopes not exceeding thirty-five percent, or lesser slopes as the commission may specify to reduce erosion, maintain the hydrologic balance, or achieve the approved postmining land use.
3. Transport, backfill, grade, and revegetate to achieve an ecologically sound land use compatible with the prevailing use in unmined areas surrounding the permit area.
4. Transport, backfill, and grade to ensure that impoundments are constructed only where:
  - a. It has been demonstrated to the commission that all requirements of chapter 69-05.2-16 have been met; and
  - b. The impoundments have been approved by the commission as suitable for the approved postmining land use and meet the requirements of this article and all other applicable state laws and regulations.

**History:** Effective August 1, 1980; amended effective June 1, 1983; May 1, 1990; \_\_\_\_\_.

**General Authority:** NDCC 38-14.1-03

**Law Implemented:** NDCC 38-14.1-24

**69-05.2-22-07. Performance standards - Revegetation - Standards for success.**

4. The success of revegetation on the permit area at the time of final bond release must be determined for each postmining land use according to the following:
  - i. For previously mined areas that were not reclaimed to the requirements of this chapter, any reclamation requirements in effect when the areas were mined must be met. In

addition, the ground cover must not be less than can be supported by the best available plant growth material in the reaffected area, nor less than the ground cover existing before redisturbance. Adequate measures must be in place to control erosion as approved by the commission. If lands affected by coal or commercial leonardite mining activities prior to January 1, 1970 are remined or otherwise redisturbed, the applicable standard must be met for the last two consecutive years of the minimum five year responsibility period that applies to remined lands. However, if the postmining land use for the remined area is woodlands, shelterbelts or fish and wildlife habitat, the applicable standard must be met for just the last year of the responsibility period.

**History:** Effective August 1, 1980; amended effective June 1, 1983; May 1, 1990; May 1, 1992; January 1, 1993; June 1, 1997; May 1, 1999; May 1, 2001; March 1, 2004; April 1, 2007; April 1, 2011; \_\_\_\_\_.

**General Authority:** NDCC 38-14.1-03

**Law Implemented:** NDCC 38-14.1-24

**69-05.2-24-01. Performance standards - Roads - General requirements.**

1. Each road, as defined in subsection 93 of section 69-05.2-01-02, must be classified as either a primary or ancillary road.
  - a. A primary road is any road which is:
    - (1) Used for transporting coal or commercial leonardite or spoil;
    - (2) Frequently used for access or other purposes for a period in excess of six months; or
    - (3) To be retained for an approved postmining land use.
  - b. An ancillary road is any road not classified as a primary road.

**History:** Effective August 1, 1980; amended effective May 1, 1992; April 1, 2007; \_\_\_\_\_.

**General Authority:** NDCC 38-14.1-03

**Law Implemented:** NDCC 38-14.1-24

**69-05.2-24-09. Performance standards – Support facilities and utility installations.**

1. Support facilities required for, or used incidentally to, the operation of the mine, including mine buildings, coal or commercial leonardite loading facilities at or near the minesite, coal or commercial leonardite storage facilities, equipment storage facilities, fan buildings, hoist buildings, preparation plants, sheds, shops, and other buildings, must be designed, constructed or reconstructed, and located to prevent or control erosion and siltation, water pollution, and damage to public or private property.

**History:** Effective August 1, 1980; amended effective; May 1, 1992;\_\_\_\_\_.

**General Authority:** NDCC 38-14.1-03

**Law Implemented:** NDCC 38-14.1-24

**69-05.2-25-04. Performance standards – Alluvial valley floors – Protection of farming and water supplies.**

2. Paragraphs 1 and 2 of subdivision e of subsection 3 of North Dakota Century Code section 38-14.1-21 do not apply to lands identified in a reclamation plan approved by the commission prior to July 1, 1979, for any operation that, in the year preceding July 1, 1979:
  - a. Produced coal or commercial leonardite in commercial quantities and was located within or adjacent to an alluvial valley floor; or
  - b. Obtained specific permit approval to conduct operations within an alluvial valley floor.

**History:** Effective August 1, 1980; amended effective May 1, 1990; January 1, 1993;\_\_\_\_\_.

**General Authority:** NDCC 38-14.1-03

**Law Implemented:** NDCC 38-14.1-21, 38-14.1-24, 38-14.1-28

**69-05.2-26-06. Performance standards - Prime farmland - Exemptions.** This chapter does not apply to:

3. Lands included in any existing surface coal mining operations for which a permit was issued for all or any part before July 1, 1979; provided that:
  - c. The lands contain part of a continuous recoverable coal or commercial leonardite seam that was being mined in a

single continuous mining operation begun under a permit issued prior to July 1, 1979.

**History:** Effective June 1, 1983; amended effective May 1, 1990;\_\_\_\_\_.

**General Authority:** NDCC 38-14.1-03

**Law Implemented:** NDCC 38-14.1-24

**69-05.2-31-01. Training of blasters.**

3. Training courses must be given by competent, experienced persons at a frequency not to exceed one every three months. Courses developed and taught by coal or commercial leonardite mining industry personnel may be approved by the commission for training persons seeking to become certified blasters.

**History:** Effective April 1, 1985; amended effective May 1, 1990;\_\_\_\_\_.

**General Authority:** NDCC 38-14.1-03

**Law Implemented:** NDCC 38-14.1-24

**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.

~~34-33.~~ "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 re-mining, 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.

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President of the Senate

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Speaker of the House

\_\_\_\_\_  
Secretary of the Senate

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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

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Secretary of the Senate

Received by the Governor at \_\_\_\_\_ M. on \_\_\_\_\_, 2015.

Approved at \_\_\_\_\_ M. on \_\_\_\_\_, 2015.

\_\_\_\_\_  
Governor

Filed in this office this \_\_\_\_\_ day of \_\_\_\_\_, 2015,

at \_\_\_\_\_ o'clock \_\_\_\_\_ M.

\_\_\_\_\_  
Secretary of State