

SENATE BILL NO. 2377

Introduced by

Senators Bekkedahl, Bowman, Rust

Representative Hatlestad

1 A BILL for an Act to amend and reenact subsection 1 of section 38-12.1-03, section 38-14.1-02,
2 subsection 3 of section 38-14.1-05, subsection 3 of section 38-14.1-13, subdivisions r and s of
3 subsection 1 of section 38-14.1-14, subdivision c of subsection 2 of section 38-14.1-14,
4 paragraph 2 of subdivision e of subsection 3 of section 38-14.1-21, subdivision b of
5 subsection 4 of section 38-14.1-21, subsections 1 and 1.1 of section 38-14.1-24, subdivision b
6 of subsection 3 of section 38-14.1-24, subsections 5, 10, and 18 of section 38-14.1-24, section
7 38-14.1-25, subdivision b of subsection 1 of section 38-14.1-27, and subsections 1, 3, and 4 of
8 section 38-14.1-37 of the North Dakota Century Code, relating to the definition of coal and
9 leonardite.

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

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

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

18 **SECTION 2. AMENDMENT.** Section 38-14.1-02 of the North Dakota Century Code is
19 amended and reenacted as follows:

20 **38-14.1-02. Definitions.**

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

- 23 1. "Alluvial valley floors" means the unconsolidated stream-laid deposits holding streams
24 where water availability is sufficient for subirrigation or flood irrigation agricultural

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

1 abated. A reasonable expectation of death or serious injury before abatement exists if
2 a rational person, subjected to the same conditions or practices giving rise to the peril,
3 would not expose the person's self to the danger during the time necessary for
4 abatement.

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

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

18 ~~40-11.~~ "Other minerals" means clay, stone, sand, gravel, metalliferous and nonmetalliferous
19 ores, and any other solid material or substances of commercial value occurring within
20 five hundred feet [152.4 meters] or less of the land surface and which are excavated in
21 solid form from natural deposits on or in the earth, exclusive of coal or leonardite and
22 those minerals which occur naturally in liquid or gaseous form.

23 ~~41-12.~~ "Other suitable strata" means those portions of the overburden determined by the
24 commission to be suitable for meeting the requirements of subsections 2 and 17 of
25 section 38-14.1-24 and based on data submitted by the permit applicant.

26 ~~42-13.~~ "Overburden" means all of the earth and other materials, with the exception of suitable
27 plant growth material, which lie above natural deposits of coal or leonardite and also
28 means such earth and other materials, with the exception of suitable plant growth
29 material, disturbed from their natural state by surface coal or leonardite mining
30 operations.

- 1 ~~12-1-14.~~ "Performance bond" means a surety bond, collateral bond, self-bond, deposit, a bond
2 issued under the state surface mining and reclamation bond fund, any alternative form
3 of security approved by the commission, or combination thereof, by which a permittee
4 assures faithful performance of all requirements of this chapter.
- 5 ~~13-15.~~ "Permit" means a permit to conduct surface coal or leonardite mining and reclamation
6 operations issued by the commission.
- 7 ~~14-16.~~ "Permit applicant" means a person or operator applying for a permit.
- 8 ~~15-17.~~ "Permit area" means the area of land approved by the commission for surface coal or
9 leonardite mining operations which shall be readily identifiable by appropriate markers
10 on the site.
- 11 ~~16-18.~~ "Permit renewal" means the extension of the permit term for areas within the
12 boundaries of the initial or existing permit, upon the expiration of the initial or existing
13 permit term.
- 14 ~~17-19.~~ "Permit revision" means the modification of permit provisions during the term of the
15 permit and includes changes in the mining and reclamation plans, incidental boundary
16 extensions, and the transfer, assignment, or sale of rights granted under the permit.
- 17 ~~18-20.~~ "Permit term" means a period of time beginning with the date upon which a permit is
18 given for surface coal or leonardite mining and reclamation operations under the
19 provisions of this chapter, and ending with the expiration of the next succeeding five
20 years plus any renewal of the permit granted under this chapter.
- 21 ~~19-21.~~ "Permittee" means a person or operator holding a permit.
- 22 ~~20-22.~~ "Person" means an individual, partnership, firm, association, society, joint stock
23 company, company, cooperative, corporation, limited liability company, or other
24 business organization.
- 25 ~~21-23.~~ "Pit" means a tract of land, from which overburden, or coal or leonardite, or both, has
26 been or is being removed for the purpose of surface coal leonardite mining operations.
- 27 ~~22-24.~~ "Prime farmland" means lands as prescribed by commission regulation that have the
28 soil characteristics and moisture supply needed to produce sustained high yields of
29 adapted crops economically when treated and managed, including management of
30 water, according to modern farming methods. Furthermore, such lands historically

- 1 have been used for intensive agricultural purposes and are large enough in size to
2 constitute a viable economic unit.
- 3 ~~23-25.~~ "Prime soils" means those soils that have the required soil characteristics (including
4 slope and moisture supply) needed to produce sustained high yields of adapted crops,
5 as determined by the state conservationist of the United States department of
6 agriculture soil conservation service.
- 7 ~~24-26.~~ "Reclaimed" or "reclaim" means conditioning areas affected by surface coal or
8 leonardite mining operations to make them capable of supporting the uses which they
9 were capable of supporting prior to any mining, or higher or better uses, pursuant to
10 subsection 2 of section 38-14.1-24.
- 11 ~~25-27.~~ "Reclamation plan" means a plan submitted by an applicant for a permit which sets
12 forth a plan for reclamation of the proposed surface coal or leonardite mining
13 operations pursuant to subsection 2 of section 38-14.1-14.
- 14 ~~26-28.~~ "Refuse" means all waste material directly connected with the production of coal or
15 leonardite mined by surface coal mining operations.
- 16 ~~27-29.~~ "Soil amendments" means those materials added by the operator to the replaced
17 overburden or suitable plant growth material, or both, to improve the physical or
18 chemical condition of the soil in its relation to plant growth capability.
- 19 ~~28-30.~~ "Soil classifier" means a professional soil classifier as defined in subsection 4 of
20 section 43-36-01.
- 21 ~~29-31.~~ "Soil survey" means the identification and location of all suitable plant growth material
22 within the proposed permit area and an accompanying report that describes,
23 classifies, and interprets for use such materials.
- 24 ~~30-32.~~ "State program" means the program established by the state of North Dakota in
25 accordance with the requirements of section 503 of the federal Surface Mining Control
26 and Reclamation Act of 1977 [Pub. L. 95-87; 91 Stat. 470; 30 U.S.C. 1253] to regulate
27 surface coal mining and reclamation operations on lands within the state of North
28 Dakota.
- 29 ~~31-33.~~ "Suitable plant growth material" means that soil material (normally the A, B, and
30 portions of the C horizons) located within the proposed permit area which, based upon

1 a soil survey, is found by the commission to be the most acceptable as a medium for
2 plant growth when respread on the surface of regraded areas.

3 ~~32-34.~~ "Surface coal mining and reclamation operations" means surface coal or leonardite
4 mining operations and all activities necessary and incidental to the reclamation of such
5 operations after July 1, 1979.

6 ~~33-35.~~ "Surface coal mining operations" means:

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

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

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

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

9 **SECTION 4. AMENDMENT.** Subsection 3 of section 38-14.1-13 of the North Dakota
10 Century Code is amended and reenacted as follows:

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

24 **SECTION 5. AMENDMENT.** Subdivisions r and s of subsection 1 of section 38-14.1-14 of
25 the North Dakota Century Code are amended and reenacted as follows:

- 26 r. Cross sections, maps or plans of the land to be affected, including the actual area
27 to be mined, prepared by or under the direction of and certified by a registered
28 professional engineer, a registered land surveyor, or a qualified professional
29 geologist with assistance from experts in related fields, showing pertinent
30 elevation and location of test borings or core samplings and depicting all of the
31 following information:

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

1 the specific application by a written determination that such requirements are
2 unnecessary.

3 **SECTION 6. AMENDMENT.** Subdivision c of subsection 2 of section 38-14.1-14 of the
4 North Dakota Century Code is amended and reenacted as follows:

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

8 **SECTION 7. AMENDMENT.** Paragraph 2 of subdivision e of subsection 3 of section
9 38-14.1-21 of the North Dakota Century Code is amended and reenacted as follows:

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

17 **SECTION 8. AMENDMENT.** Subdivision b of subsection 4 of section 38-14.1-21 of the
18 North Dakota Century Code is amended and reenacted as follows:

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

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

25 1. Conduct surface coal mining operations so as to maximize the utilization and
26 conservation of the coal or leonardite being recovered so that reffecting the land in
27 the future through surface coal mining can be minimized.

28 1.1. Conduct any auger mining associated with surface coal mining operations in a manner
29 that will maximize recoverability of coal or leonardite and other mineral reserves
30 remaining after mining activities and reclamation operations are completed, and seal
31 or fill all auger holes as necessary to ensure long-term stability of the area and

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

6 **SECTION 10. AMENDMENT.** Subdivision b of subsection 3 of section 38-14.1-24 of the
7 North Dakota Century Code is amended and reenacted as follows:

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

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

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

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

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

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

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

1 1970, and "augmented seeding, fertilizing, irrigation, or other work" does not include
2 normal conservation practices recognized locally as good management for the
3 postmining land use.

4 **SECTION 12. AMENDMENT.** Section 38-14.1-25 of the North Dakota Century Code is
5 amended and reenacted as follows:

6 **38-14.1-25. Prohibited mining practices.**

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

18 **SECTION 13. AMENDMENT.** Subdivision b of subsection 1 of section 38-14.1-27 of the
19 North Dakota Century Code is amended and reenacted as follows:

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

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

5 **SECTION 14. AMENDMENT.** Subsections 1, 3, and 4 of section 38-14.1-37 of the North
6 Dakota Century Code are amended and reenacted as follows:

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