

**FIRST ENGROSSMENT  
with House Amendments  
ENGROSSED SENATE BILL NO. 2327**

Introduced by

Senators Unruh, Armstrong, Wardner

Representatives Carlson, Kempenich, Porter

1 A BILL for an Act to create and enact a new subdivision to subsection 2 of section 12-60-24,  
2 title 23.1, and subdivision v of subsection 1 of section 54-06-04 of the North Dakota Century  
3 Code, relating to the creation of the department of environmental quality, the transfer of duties  
4 and responsibilities of the state department of health relating to environmental quality to the  
5 department of environmental quality, and biennial reports of the department of environmental  
6 quality; to amend and reenact section 4-35.2-01, subdivision b of subsection 5 of section  
7 6-09.4-03, sections 11-33-01, 11-33-02.1, and 11-33-22, subdivision d of subsection 2 of section  
8 12.1-06.1-01, section 15-05-16, sections 20.1-13-05, 20.1-17-01, and 23-01-02, subsection 8 of  
9 section 23-01.3-01, sections 23-20.2-02, 23-20.2-03, and 24-03-23, subsection 5 of section  
10 28-32-50, sections 38-08-04.5, 38-11.1-03.1, 38-11.1-04.1, and 38-11.2-02, subsection 12 of  
11 section 38-14.1-03, subsection 2 of section 38-14.1-21, sections 38-22-07, 38-22-12, 40-47-01,  
12 43-18-02, 43-18-09, 43-35-03, 43-35-19, 43-35-19.1, 43-35-19.2, 43-35-20, and 43-35-23,  
13 subsection 11 of section 43-48-03, sections 43-62-01 and 43-62-03, subsection 1 of  
14 section 43-62-15, subsection 3 of section 44-04-18.4, section 44-04-32, subsection 1 of section  
15 54-07-01.2, subsection 3 of section 54-12-08, section 54-44.3-30, subsection 33 of section  
16 57-43.2-01, sections 58-03-11, 58-03-11.1, and 58-03-17, subsection 13 of section 58-06-01,  
17 section 61-04.1-04, subsections 1 and 2 of section 61-28-02, subsection 2 of  
18 section 61-28.1-02, subsection 15 of section 61-28.1-03, subsection 2 of section 61-28.2-01,  
19 and sections 61-29-04, 61-33-09, and 61-35-24 of the North Dakota Century Code, relating to  
20 the transfer of duties and responsibilities of the state department of health to the department of  
21 environmental quality and the regulation of x-ray operators; to repeal chapters 19-10 and  
22 19-16.1, sections 23-01-01.2, 23-01-04.1, 23-01-23, 23-01-30, and 23-01-36, chapters 23-20,  
23 23-20.1, 23-20.3, 23-20.5, 23-25, 23-26, 23-29, 23-29.1, 23-31, 23-32, 23-33, 23-37, and 39-26,  
24 and sections 61-28-03 and 61-28-05 of the North Dakota Century Code, relating to the transfer  
25 of duties and responsibilities of the state department of health to the department of

1 environmental quality; to provide a penalty; to provide a continuing appropriation; to provide for  
2 transition; and to provide an effective date.

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

4 **SECTION 1. STATE DEPARTMENT OF HEALTH TRANSITION OF ENVIRONMENTAL**  
5 **QUALITY FUNCTIONS.** Notwithstanding any other provision of law, during the 2017-18 interim,  
6 the state department of health shall take all necessary and appropriate steps to transfer the  
7 authority, powers, and duties of the department related to environmental quality, as provided in  
8 this Act, to the department of environmental quality before the start of the sixty-sixth legislative  
9 assembly. Before July 1, 2019, the state department of health shall obtain the required  
10 approvals from, and amend the necessary agreements with, federal agencies and other public  
11 and private entities to ensure the state will continue to meet all primacy requirements. When the  
12 chief of the environmental health section of the state department of health has assurance from  
13 the necessary federal agencies that the state will meet all the primacy requirements after the  
14 transfer of authority, powers, and duties to the new department, the chief shall certify the same  
15 to the legislative management. Until the time of the certification, the chief of the environmental  
16 health section of the state department of health has the authority to operate, administer,  
17 manage, and restructure the environmental health section, reassign employees of the section,  
18 and control the funds appropriated for the section, to operate the section in the most efficient  
19 manner possible. To the extent required by the environmental health section, the state  
20 department of health shall continue to provide support and administrative services to the  
21 section. The chief of the environmental health section may adopt rules under this Act contingent  
22 and effective upon the establishment of the department of environmental quality.

23 Upon the transition of the authority, powers, and duties of the state department of health to  
24 the department of environmental quality under this Act, any special funds or accounts  
25 administered or under the control of the state department of health which relate to  
26 environmental quality functions transferred to the department of environmental quality must be  
27 transferred to the administration and control of the department of environmental quality.

28 The legislative council may replace appropriate references to the state department of health  
29 in any measure enacted by the sixty-fifth legislative assembly with references to the department  
30 of environmental quality.

1 All orders, determinations, permits, grants, contracts, agreements, certificates, licenses,  
2 waivers, bonds, authorizations, and privileges relating to the functions transferred which have  
3 been lawfully issued or made before the date of the transition of functions, continue to be  
4 effective until revised, amended, repealed, or rescinded. The transition of functions does not  
5 abate any suit, action, or other proceeding lawfully commenced by, against, or before an entity  
6 affected by the transition of functions. A suit, action, or other proceeding may be maintained by,  
7 against, or before the appropriate successor of an entity affected by the transition of functions.

8 **SECTION 2. AMENDMENT.** Section 4-35.2-01 of the North Dakota Century Code is  
9 amended and reenacted as follows:

10 **4-35.2-01. Pesticide and pesticide container disposal program - Pesticide container**  
11 **management - Compensation.**

- 12 1. The definitions contained in section 4-35-05 apply to this section.
- 13 2. In consultation with an advisory board consisting of the ~~state health officer~~director of  
14 the department of environmental quality, director of the North Dakota state university  
15 extension service, two individuals representing agribusiness organizations, and two  
16 individuals representing farm organizations, all of whom must be selected by the  
17 agriculture commissioner, the commissioner shall continue to implement the project  
18 authorized by section 1 of chapter 77 of the 2001 Session Laws, which is known as  
19 project safe send. The purpose of the project is to:
- 20 a. Collect and either recycle or dispose of unusable pesticides and unusable  
21 pesticide containers. The commissioner shall provide for the establishment and  
22 operation of temporary collection sites for the pesticides and pesticide containers.  
23 The commissioner may limit the type and quantity of pesticides and pesticide  
24 containers acceptable for collection.
- 25 b. Promote proper pesticide container management. In consultation with the director  
26 of the North Dakota state university extension service, the commissioner shall  
27 evaluate and promote proper methods of pesticide container management,  
28 including information on the variety of pesticide containers available.
- 29 3. Any entity collecting pesticide containers or unusable pesticides shall manage and  
30 dispose of the containers and pesticides in compliance with applicable federal and

1 state requirements. When called upon, any state agency shall assist the commissioner  
2 in implementing the project.

3 4. For services rendered in connection with the design and implementation of this  
4 project, the members selected by the commissioner are entitled to reimbursement for  
5 mileage and travel expenses in the same manner and for the same amounts provided  
6 for state employees and officials. Compensation and expense reimbursement must be  
7 paid from the environment and rangeland protection fund.

8 **SECTION 3. AMENDMENT.** Subdivision b of subsection 5 of section 6-09.4-03 of the North  
9 Dakota Century Code is amended and reenacted as follows:

10 b. The state department of health environmental quality, or any other state agency or  
11 authority, or any member-owned association or publicly owned and nonprofit  
12 corporation:

13 (1) Operating any public water system that is subject to chapter 61-28.1.

14 (2) Operating any facility, system, or other related activity that is eligible for  
15 financial assistance under chapter 61-28.2.

16 **SECTION 4. AMENDMENT.** Section 11-33-01 of the North Dakota Century Code is  
17 amended and reenacted as follows:

18 **11-33-01. County power to regulate property.**

19 For the purpose of promoting health, safety, morals, public convenience, general prosperity,  
20 and public welfare, the board of county commissioners of any county may regulate and restrict  
21 within the county, subject to section 11-33-20 and chapter 54-21.3, the location and the use of  
22 buildings and structures and the use, condition of use, or occupancy of lands for residence,  
23 recreation, and other purposes. The board of county commissioners and a county zoning  
24 commission shall state the grounds upon which any request for a zoning amendment or  
25 variance is approved or disapproved, and written findings upon which the decision is based  
26 must be included within the records of the board or commission. The board of county  
27 commissioners shall establish zoning requirements for solid waste disposal and incineration  
28 facilities before July 1, 1994. The board of county commissioners may impose tipping or other  
29 fees on solid waste management and incineration facilities. The board of county commissioners  
30 may not impose any fee under this section on an energy conversion facility or coal mining  
31 operation that disposes of its waste onsite. The board of county commissioners may establish

1 institutional controls that address environmental concerns with the state department of  
2 ~~health~~environmental quality as provided in section ~~23-20.3-03-123.1-04-04~~.

3 **SECTION 5. AMENDMENT.** Section 11-33-02.1 of the North Dakota Century Code is  
4 amended and reenacted as follows:

5 **11-33-02.1. Farming and ranching regulations - Requirements - Limitations -**  
6 **Definitions.**

7 1. For purposes of this section:

8 a. "Concentrated feeding operation" means any livestock feeding, handling, or  
9 holding operation, or feed yard, where animals are concentrated in an area that is  
10 not normally used for pasture or for growing crops and in which animal wastes  
11 may accumulate. The term does not include normal wintering operations for  
12 cattle.

13 b. "Farming or ranching" means cultivating land for the production of agricultural  
14 crops or livestock, or raising, feeding, or producing livestock, poultry, milk, or fruit.

15 The term does not include:

16 (1) The production of timber or forest products; or

17 (2) The provision of grain harvesting or other farm services by a processor or  
18 distributor of farm products or supplies in accordance with the terms of a  
19 contract.

20 c. "Livestock" includes beef cattle, dairy cattle, sheep, swine, poultry, horses, bison,  
21 elk, fur animals raised for their pelts, and any other animals that are raised, fed,  
22 or produced as a part of farming or ranching activities.

23 d. "Location" means the setback distance between a structure, fence, or other  
24 boundary enclosing a concentrated feeding operation, including its animal waste  
25 collection system, and the nearest occupied residence, the nearest buildings  
26 used for nonfarm or nonranch purposes, or the nearest land zoned for residential,  
27 recreational, or commercial purposes. The term does not include the setback  
28 distance for the application of manure or for the application of other recycled  
29 agricultural material under a nutrient management plan approved by the  
30 department of ~~health~~environmental quality.

31 2. For purposes of this section, animal units are determined as follows:

Sixty-fifth  
Legislative Assembly

- 1 a. One mature dairy cow, whether milking or dry, equals 1.33 animal units;
- 2 b. One dairy cow, heifer, or bull, other than an animal described in paragraph 1
- 3 equals 1.0 animal unit;
- 4 c. One weaned beef animal, whether a calf, heifer, steer, or bull, equals 0.75 animal
- 5 unit;
- 6 d. One cow-calf pair equals 1.0 animal unit;
- 7 e. One swine weighing fifty-five pounds [24.948 kilograms] or more equals 0.4
- 8 animal unit;
- 9 f. One swine weighing less than fifty-five pounds [24.948 kilograms] equals 0.1
- 10 animal unit;
- 11 g. One horse equals 2.0 animal units;
- 12 h. One sheep or lamb equals 0.1 animal unit;
- 13 i. One turkey equals 0.0182 animal unit;
- 14 j. One chicken, other than a laying hen, equals 0.008 animal unit;
- 15 k. One laying hen equals 0.012 animal unit;
- 16 l. One duck equals 0.033 animal unit; and
- 17 m. Any livestock not listed in subdivisions a through l equals 1.0 animal unit per
- 18 each one thousand pounds [453.59 kilograms] whether single or combined
- 19 animal weight.
- 20 3. A board of county commissioners may not prohibit or prevent the use of land or
- 21 buildings for farming or ranching and may not prohibit or prevent any of the normal
- 22 incidents of farming or ranching.
- 23 4. A board of county commissioners may not preclude the development of a
- 24 concentrated feeding operation in the county.
- 25 5. A board of county commissioners may not prohibit the reasonable diversification or
- 26 expansion of a farming or ranching operation.
- 27 6. A board of county commissioners may adopt regulations that establish different
- 28 standards for the location of concentrated feeding operations based on the size of the
- 29 operation and the species and type being fed.
- 30 7. If a regulation would impose a substantial economic burden on a concentrated feeding
- 31 operation in existence before the effective date of the regulation, the board of county

1 commissioners shall declare that the regulation is ineffective with respect to any  
2 concentrated feeding operation in existence before the effective date of the regulation.

- 3 8. a. A board of county commissioners may establish high-density agricultural  
4 production districts in which setback distances for concentrated feeding  
5 operations and related agricultural operations are less than those in other  
6 districts.
- 7 b. A board of county commissioners may establish, around areas zoned for  
8 residential, recreational, or nonagricultural commercial uses, low-density  
9 agricultural production districts in which setback distances for concentrated  
10 feeding operations and related agricultural operations are greater than those in  
11 other districts; provided, the low-density agricultural production districts may not  
12 extend more than one and one-half miles [2.40 kilometers] from the edge of the  
13 area zoned for residential, recreational, or nonagricultural commercial uses.
- 14 c. The setbacks provided for in this subsection may not vary by more than fifty  
15 percent from those established in subdivision a of subsection 7 of section  
16 ~~23-25-11~~23.1-06-15.
- 17 d. For purposes of this subsection, a "related agricultural operation" means a facility  
18 that produces a product or byproduct used by a concentrated feeding operation.

19 **SECTION 6. AMENDMENT.** Section 11-33-22 of the North Dakota Century Code is  
20 amended and reenacted as follows:

21 **11-33-22. Regulation of concentrated animal feeding operations - Central repository.**

- 22 1. Any zoning regulation that pertains to a concentrated animal feeding operation and  
23 ~~which is promulgated by a county after July 31, 2007,~~ is not effective until filed with the  
24 ~~state department of health~~environmental quality for inclusion in the central repository  
25 ~~established under section 23-01-30~~23.1-01-10. ~~Any zoning regulation that pertains to~~  
26 ~~concentrated animal feeding operations and which was promulgated by a county~~  
27 ~~before August 1, 2007,~~ may not be enforced until the regulation is filed with the state  
28 ~~department of health for inclusion in the central repository.~~
- 29 2. For purposes of this section:
- 30 a. "Concentrated animal feeding operation" means any livestock feeding, handling,  
31 or holding operation, or feed yard, where animals are concentrated in an area

1 that is not normally used for pasture or for growing crops and in which animal  
2 wastes may accumulate, or in an area where the space per animal unit is less  
3 than six hundred square feet [55.74 square meters]. The term does not include  
4 normal wintering operations for cattle.

5 b. "Livestock" includes beef cattle, dairy cattle, sheep, swine, poultry, horses, and  
6 fur animals raised for their pelts.

7 **SECTION 7.** A new subdivision to subsection 2 of section 12-60-24 of the North Dakota  
8 Century Code is created and enacted as follows:

9 The department of environmental quality for a final applicant for or an employee  
10 specified in occupation with the department; an individual being investigated by  
11 the department; or, when requested by the department, an applicant for  
12 registration, certification, or licensure by the department.

13 **SECTION 8. AMENDMENT.** Subdivision d of subsection 2 of section 12.1-06.1-01 of the  
14 North Dakota Century Code is amended and reenacted as follows:

15 d. "Illegal transportation or disposal of radioactive waste material or hazardous  
16 waste" means the transportation or disposal into a nonhazardous waste landfill or  
17 the intentional and unlawful dumping into or on any land or water of radioactive  
18 waste material in violation of section 23-20.2-09 or rules adopted pursuant to that  
19 section which were in effect on January 1, 1997, or hazardous waste in willful  
20 violation of chapter ~~23-20.3~~23.1-04 or the rules adopted pursuant to that chapter  
21 which were in effect on January 1, 1997, except for the handling of conditionally  
22 exempt small quantities of hazardous waste as was referenced in section  
23 33-24-02-05 of the North Dakota Administrative Code.

24 **SECTION 9. AMENDMENT.** Section 15-05-16 of the North Dakota Century Code is  
25 amended and reenacted as follows:

26 **15-05-16. Reports - State geologist - State department of health - Department of**  
27 **environmental quality.**

28 The state geologist ~~or the~~ state department of health, or department of environmental  
29 quality, on the request of the board of university and school lands, shall visit any land leased  
30 under section 15-05-09 and shall make a report of the visit to the board. The state geologist ~~or~~  
31 ~~the~~ state department of health, or department of environmental quality may not receive a fee

1 for making the examination and report but must be paid necessary expenses incurred in  
2 connection therewithwith the examination.

3 **SECTION 10. AMENDMENT.** Section 20.1-13-05 of the North Dakota Century Code is  
4 amended and reenacted as follows:

5 **20.1-13-05. Equipment - Penalty.**

6 1. Every vessel must have aboard:

- 7 a. If equipped with a marine toilet or other similar device for the disposition of  
8 sewage or other wastes, only that type of marine toilet equipped with a treatment  
9 device meeting standards established by the ~~state water pollution control~~  
10 ~~board~~department of environmental quality. The department of  
11 ~~health~~environmental quality shall furnish a list of the types of treatment devices  
12 currently available and considered acceptable for use with marine toilets under  
13 this subdivision. No person owning or operating a vessel upon the waters of this  
14 state may use, operate, or permit the use or operation of any marine toilet or  
15 similar device unless it is approved under this subdivision. No person may  
16 discharge into the waters of this state, directly or indirectly from a vessel, any  
17 untreated sewage or other wastes. No container of untreated sewage or other  
18 wastes may be placed, left, discharged, or caused to be placed, left, or  
19 discharged in or near any waters of this state from a vessel in such a manner or  
20 quantity as to create a nuisance or health hazard, or pollute such waters.
- 21 b. Such additional equipment designed to promote the safety of navigation and of  
22 persons as the game and fish department may find appropriate and for which it  
23 has provided in its rules.

24 2. No person may operate or give permission for the operation of a vessel that is not  
25 equipped as required by this section.

26 3. Any person who violates this section is guilty of a class 2 noncriminal offense.

27 **SECTION 11. AMENDMENT.** Section 20.1-17-01 of the North Dakota Century Code is  
28 amended and reenacted as follows:

29 **20.1-17-01. Prevention and control of aquatic nuisance species.**

30 The director, to prevent and control aquatic nuisance species, shall:

- 1           1.    Prepare a statewide management plan for aquatic nuisance species to be approved  
2                    by the governor.
- 3           2.    Organize an aquatic nuisance species committee, as provided for in the statewide  
4                    management plan, composed of the director or the director's designee;  
5                    representatives of the agriculture commissioner, state water commission, parks and  
6                    recreation department, ~~state department of health~~department of environmental quality,  
7                    and tourism division; up to five private entities or individuals; and a representative of  
8                    tribal entities. The director or the director's designee is the chairman of the aquatic  
9                    nuisance species committee.
- 10          3.    Develop and adopt the state's list of aquatic nuisance species after consulting with the  
11                    aquatic nuisance species committee. The list must be updated annually.
- 12          4.    Provide for a permitting system to import listed aquatic nuisance species into or move  
13                    those species within the state.
- 14          5.    Develop rules to prevent the movement of aquatic nuisance species into or within the  
15                    state. In addition to requirements under chapter 28-32, the department shall conduct a  
16                    cost-benefit analysis for any rule proposed for adoption under this chapter.
- 17          6.    Conduct aquatic nuisance species education and prevention efforts.
- 18          7.    Provide for the partnership of the federal government, state agencies, and private or  
19                    public organizations to fund aquatic nuisance species prevention efforts.

20           **SECTION 12. AMENDMENT.** Section 23-01-02 of the North Dakota Century Code is  
21 amended and reenacted as follows:

22           **23-01-02. Health council - Members, terms of office, vacancies, compensation,**  
23 **officers, meetings.**

24           The health council consists of ~~eleven~~nine members appointed by the governor ~~in the~~  
25 ~~following manner:~~ including four persons from the health care field, and five persons  
26 representing consumer interests, ~~one person from the energy industry, and one from the~~  
27 ~~manufacturing and processing industry.~~ The governor may select members to the council from  
28 recommendations submitted by trade, professional, and consumer organizations. On the  
29 expiration of the term of any member, the governor, in the manner provided by this section, shall  
30 appoint for a term of three years, persons to take the place of members whose terms on the  
31 council are about to expire. The officers of the council must be elected annually. Any state

1 agency may serve in an advisory capacity to the health council at the discretion of the council.  
2 The council shall meet at least twice each year and at other times as the council or its chairman  
3 may direct. The health council shall have as standing committees any committees the council  
4 may find necessary. The chairman of the council shall select the members of these committees.  
5 The members of the council are entitled to receive sixty-two dollars and fifty cents as  
6 compensation per day and their necessary mileage and travel expenses as provided in sections  
7 44-08-04 and 54-06-09 while attending council meetings or in the performance of any special  
8 duties as the council may direct. The per diem and expenses must be audited and paid in the  
9 manner in which the expenses of state officers are audited and paid. The compensation  
10 provided for in this section may not be paid to any member of the council who received salary or  
11 other compensation as a regular employee of the state, or any of its political subdivisions, or  
12 any institution or industry operated by the state.

13 **SECTION 13. AMENDMENT.** Subsection 8 of section 23-01.3-01 of the North Dakota  
14 Century Code is amended and reenacted as follows:

15 8. "Public health authority" means the state department of health, department of  
16 environmental quality, a local public health unit, and any authority or instrumentality of  
17 the United States, a tribal government, a state, or a political subdivision of a state, a  
18 foreign nation, or a political subdivision of a foreign nation, which is:  
19 a. Primarily responsible for public health matters; and  
20 b. Primarily engaged in activities such as injury reporting, public health surveillance,  
21 and public health investigation or intervention.

22 **SECTION 14. AMENDMENT.** Section 23-20.2-02 of the North Dakota Century Code is  
23 amended and reenacted as follows:

24 **23-20.2-02. Definitions.**

25 As used in this chapter:

26 1. "Commission" means the industrial commission of North Dakota.  
27 2. "Person" includes any natural person, corporation, limited liability company,  
28 association, partnership, receiver, trustee, executor, administrator, guardian, fiduciary,  
29 or other representative of any kind, and includes any department, agency, or  
30 instrumentality of the state or of any governmental subdivision thereof.

- 1           3. "Underground disposal facility" means any drilled, bored, or excavated device or  
2           installation to provide for the subsurface disposal of waste. The term does not include  
3           a solid waste management facility authorized under chapter ~~23-29~~23.1-08.
- 4           4. "Underground storage and retrieval facility" means any drilled, bored, or excavated  
5           device or installation to provide for the subsurface emplacement and recovery of  
6           materials.
- 7           5. "Waste" includes liquid wastes, gaseous wastes, and solid wastes as defined in  
8           section ~~23-29-03~~23.1-08-02 and all unusable industrial material including spent  
9           nuclear fuels and other unusable radioactive material not brought into this state for  
10          disposal.

11           **SECTION 15. AMENDMENT.** Section 23-20.2-03 of the North Dakota Century Code is  
12          amended and reenacted as follows:

13           **23-20.2-03. Jurisdiction of the industrial commission.**

14           The commission has jurisdiction and authority and is charged with the responsibility to  
15          enforce the provisions of this chapter. This chapter does not apply to any activity regulated  
16          under chapters ~~23-29~~23.1-08, 38-08, 38-12, 61-28, and 61-28.1. The commission acting  
17          through the office of the state geologist has the authority:

- 18           1. To require:
- 19           a. Identification of ownership of all facilities and equipment used for the  
20           underground storage and retrieval of material and waste disposal.
- 21           b. The making and filing of all logs and reports on facility location, drilling, boring,  
22           excavating, and construction and the filing, free of charge, of samples, core  
23           chips, and complete cores, when requested, in the office of the state geologist.
- 24           c. The drilling, boring, excavating, and construction of facilities in a manner to  
25           prevent contamination and pollution of surface and ground water sources and the  
26           environment.
- 27           d. The furnishing of a reasonable bond with good and sufficient surety, conditioned  
28           upon the full compliance with the provisions of this chapter, and the rules of the  
29           commission relating to the underground storage and retrieval of material and  
30           waste disposal.

- 1 e. Metering or other measuring of all material injected, emplaced, stored, disposed  
2 into, or retrieved from any facility regulated by this chapter.
- 3 f. That every person who operates a facility for the underground storage and  
4 retrieval of material or for waste disposal in this state shall keep and maintain  
5 complete and accurate records of the quantities and nature of material stored,  
6 retrieved, or disposed of, which records must be available to the commission or  
7 its agents at all times, and that every such person file with the commission such  
8 reports as it may prescribe.
- 9 g. That upon termination of the operation of any facility or activity regulated by this  
10 chapter, the operator of such facility shall restore the surface as nearly as  
11 possible to its original condition and productivity.
- 12 2. To regulate:
- 13 a. The drilling, boring, excavating, and construction of all underground storage,  
14 retrieval, and waste disposal facilities.
- 15 b. Operations to assure the optimum performance of all facilities regulated by this  
16 chapter.
- 17 3. To limit and prescribe the nature, quantity, and source of materials to be stored in,  
18 whether as waste or otherwise, or retrieved from any facility regulated by this chapter.
- 19 4. To promulgate and to enforce rules, regulations, and orders to effectuate the purposes  
20 of this chapter.

21 The jurisdiction granted the commission by this chapter is not exclusive and does not affect the  
22 jurisdiction of other governmental entities.

23 **SECTION 16.** Chapter 23.1-01 of the North Dakota Century Code is created and enacted  
24 as follows:

25 **23.1-01-01. Department of environmental quality established - Director appointment.**

26 The department of environmental quality is established and is the primary state  
27 environmental agency. The governor shall appoint a director of the department who shall serve  
28 at the pleasure of the governor. The director must have a bachelor of science degree or higher  
29 from an accredited college in a natural or physical science area of study or be a registered  
30 professional engineer. The governor shall seek to appoint a director with at least seven years of  
31 environmental health or relevant engineering work experience. Three years of the work

1 experience must include administrative and management responsibilities. Direct work  
2 experience in North Dakota is preferred. The director may not engage in any other occupation  
3 or business that may conflict with the statutory duties of the director. The position of director of  
4 the department is not a classified position, and the governor shall set the salary of the director  
5 within the limits of legislative appropriations.

6 **23.1-01-02. Environmental review advisory council - Members, powers, and duties.**

- 7 1. The environmental review advisory council is established to advise the department of  
8 environmental quality in carrying out its duties. The council consists of the state  
9 engineer, state geologist, and director of the game and fish department, who serve as  
10 ex officio members, and ten members appointed by the governor. The director of the  
11 department of environmental quality or the director's designee shall serve as the  
12 executive secretary for the council. The appointed members must be:
- 13 a. A representative of county or municipal government;
  - 14 b. A representative of manufacturing or agricultural processing;
  - 15 c. A representative of the solid fuels industry;
  - 16 d. A representative of the liquid and gas fuels industry;
  - 17 e. A representative of crop agriculture;
  - 18 f. A representative of the waste management industry;
  - 19 g. A representative with an agronomy or soil sciences degree;
  - 20 h. A representative of the thermal electric generators industry;
  - 21 i. A representative of the environmental sciences; and
  - 22 j. A representative of the livestock industry.
- 23 2. Each appointive member of the council shall serve a four-year term. The governor  
24 may fill any vacancy in the membership of the council, and may remove an appointed  
25 member of the council for cause. The council members shall select a chairman from  
26 among the council members.
- 27 3. Council members must be reimbursed by the department of environmental quality for  
28 necessary travel and other expenses incurred in the performance of official duties.
- 29 4. The council shall hold at least two meetings per year and any other meetings deemed  
30 necessary by the chairman or a majority of the council.
- 31 5. The council shall:

- 1           a. Review and make recommendations to the department of environmental quality  
2           regarding rules and standards relating to environmental quality and the duties of  
3           the department. The department may not take final action on any rule or standard  
4           without first consulting the council.
- 5           b. Consider any other matter related to the purposes of this title and chapters 61-28,  
6           61-28.1, and 61-28.2 the council deems appropriate and make any  
7           recommendation on its own initiative to the department of environmental quality  
8           concerning the administration of this title and chapters 61-28, 61-28.1, and  
9           61-28.2.

10       **23.1-01-03. Director - Powers and duties.**

11       The director of the department of environmental quality shall:

- 12       1. Enforce all rules adopted by the department;  
13       2. Hire employees as necessary to carry out the duties of the department and director;  
14       3. Organize the department in the most efficient and effective manner;  
15       4. Maintain, in conjunction with the state department of health, a laboratory to carry out  
16       the necessary tests and examinations for purposes of this title, and establish a fee  
17       schedule for the tests and examinations;  
18       5. Issue bulletins, news releases, or reports as necessary to inform the public of  
19       environmental hazards;  
20       6. Establish rules necessary for maintaining sanitation, including rules for approving  
21       plans for water works and sewage systems;  
22       7. Maintain a central environmental laboratory and, if necessary, branch laboratories for  
23       the standard function of diagnostic, sanitary, and chemical examinations; and  
24       8. Any other action, including the collection and distribution of environmental quality data,  
25       necessary and appropriate for the administration of this title and chapters 61-28,  
26       61-28.1, and 61-28.2.

27       **23.1-01-04. Rulemaking authority - Limitations.**

- 28       1. Except as provided in subsection 2, the department of environmental quality may not  
29       adopt any rule for the purpose of the state administering a program under the federal  
30       Clean Air Act [42 U.S.C. 7401 et seq.]; federal Clean Water Act [33 U.S.C. 1251 et  
31       seq.]; federal Safe Drinking Water Act [42 U.S.C. 300 et seq.]; federal Resource

1           Conservation and Recovery Act [42 U.S.C. 6901 et seq.]; federal Comprehensive  
2           Environmental Response, Compensation, and Liability Act [42 U.S.C. 9601 et seq.];  
3           federal Emergency Planning and Community Right to Know Act of 1986 [42 U.S.C.  
4           11001 et seq.]; federal Toxic Substances Control Act [42 U.S.C. 2601 et seq.]; or  
5           federal Atomic Energy Act of 1954 [42 U.S.C. 2011 et seq.]; which is more stringent  
6           than corresponding federal regulations that address the same circumstances. In  
7           adopting the rules, the department may incorporate by reference corresponding  
8           federal regulations.

9           2. The department may adopt rules more stringent than corresponding federal  
10           regulations or adopt rules where there are no corresponding federal regulations, for  
11           the purposes described in subsection 1, only if the department makes a written finding  
12           after public comment and hearing and based upon evidence in the record, that  
13           corresponding federal regulations are not adequate to protect the public health and  
14           the environment of the state. Those findings must be supported by an opinion of the  
15           department referring to and evaluating the public health and environmental information  
16           and studies contained in the record which form the basis for the department's  
17           conclusions.

18           3. If the department, upon petition by any person affected by a rule of the department,  
19           identifies rules more stringent than federal regulations or rules where there are no  
20           corresponding federal regulations, the department shall review and revise those rules  
21           to comply with this section within nine months of the filing of the petition.

22           4. Any person issued a notice of violation, or a denial of a permit or other approval,  
23           based upon a rule of the department which is more stringent than a corresponding  
24           federal regulation or where there is no corresponding federal regulation, may assert a  
25           partial defense to that notice, or a partial challenge to that denial, on the basis and to  
26           the extent the department's rule violates this section by imposing requirements more  
27           stringent than corresponding federal regulations, unless the more stringent rule of the  
28           department has been adopted in compliance with this section.

1        **23.1-01-05. Department of environmental quality authorized to transfer future**  
2 **accumulated fees.**

3        The department of environmental quality may from time to time transfer unclaimed fees on  
4 deposit with the Bank of North Dakota or other authorized depository to the state general fund  
5 when the unclaimed status has existed for a period of at least three years.

6        **23.1-01-06. Department to employ waste management facility inspectors.**

7        The department of environmental quality shall employ and establish the qualifications,  
8 duties, and compensation of at least one full-time inspector for each commercial, nonpublicly  
9 owned waste management disposal or incineration facility that accepts more than twenty-five  
10 thousand tons [22679.5 kilograms] per year of hazardous waste, industrial waste, nuclear  
11 waste, or ash resulting from the incineration of municipal solid waste. This section does not  
12 apply to any energy conversion facility or coal mining operation that disposes of its solid waste  
13 onsite. The department may require inspectors for those facilities that accept less than  
14 twenty-five thousand tons [22679.5 kilograms] per year. The facility inspector shall conduct  
15 regular inspections of the operating procedure and conditions of the facility and report the  
16 findings to the department on a regular basis. If an inspector discovers a condition at a facility  
17 that is likely to cause imminent harm to the health and safety of the public or environment, the  
18 inspector shall notify the department. The department shall proceed as provided by sections  
19 23.1-08-19 and 23.1-08-20.

20        The department shall assess the owner or operator of a waste management facility that  
21 accepts hazardous waste, industrial waste, nuclear waste, or ash resulting from the incineration  
22 of municipal solid waste an annual fee to pay the salaries, wages, and operating expenses  
23 associated with employing an inspector for the facility. The owner or operator of the facility shall  
24 submit the fee to the department by July first of each year. Any fees collected must be  
25 deposited in the department's operating fund in the state treasury and any expenditures from  
26 the fund are subject to appropriation by the legislative assembly. If a facility begins operation  
27 after July first of any year, the owner or operator of the facility shall pay to the department a  
28 prorated fee for the fiscal year before the facility may begin accepting waste. Moneys in the  
29 waste management facility account may be spent by the department within the limits of  
30 legislative appropriation.

1        **23.1-01-07. Permit or investigatory hearings - Exemption from chapters 28-32 and**  
2 **54-57.**

3        A permit hearing conducted for purposes of receiving public comment or an investigatory  
4 hearing conducted under chapters 23.1-03, 23.1-04, 23.1-06, 23.1-08, 61-28, and 61-28.1 is not  
5 an adjudicative proceeding under chapter 28-32 and is not subject to the requirements of  
6 chapter 54-57.

7        **23.1-01-08. Commercial feed, insecticide, fungicide, rodenticide, fertilizer, and soil**  
8 **conditioner laws - Laboratory function.**

9        Notwithstanding any other provision of law, any laboratory test or analysis required under  
10 chapter 19-13.1, 19-18, or 19-20.1 must be performed by the department of environmental  
11 quality for the agriculture commissioner at no charge.

12        **23.1-01-09. Department of environmental quality - Indirect cost recoveries.**

13        Notwithstanding section 54-44.1-15, the department of environmental quality may deposit  
14 indirect cost recoveries in its operating account.

15        **23.1-01-10. Zoning regulation of concentrated animal feeding operations - Central**  
16 **repository.**

17        The department of environmental quality shall establish, operate, and maintain an  
18 electronically accessible central repository for all county and township zoning regulations that  
19 pertain to concentrated animal feeding operations. The county auditor of a county and a  
20 township clerk of a township having a zoning regulation that pertains to concentrated animal  
21 feeding operations shall file the regulation with the department of environmental quality for  
22 inclusion in the central repository.

23        **23.1-01-11. Appeal from permit proceedings.**

24        An appeal from the issuance, denial, modification, or revocation of a permit issued under  
25 chapter 23.1-03, 23.1-04, 23.1-06, 23.1-08, or 61-28 may be made by the person who filed the  
26 permit application, or by any person who is aggrieved by the permit application decision,  
27 provided that person participated in or provided comments during the hearing process for the  
28 permit application, modification, or revocation. An appeal must be taken within thirty days after  
29 the final permit application determination is mailed by first-class mail to the permit applicant and  
30 to any interested person who has requested a copy of the final permit determination during the  
31 permit hearing process. Except as provided in this section, an appeal of the final permit

1 determination is governed by sections 28-32-40, 28-32-42, 28-32-43, 28-32-44, 28-32-46, and  
2 28-32-49. The department may substitute final permit conditions and written responses to public  
3 comments for findings of fact and conclusions of law. Except for a violation of chapter 23.1-03,  
4 23.1-04, 23.1-06, 23.1-08, or 61-28 which occurs after the permit is issued, or any permit  
5 condition, rule, order, limitation, or other applicable requirement implementing those chapters  
6 which occurs after the permit is issued, any challenge to the department's issuance,  
7 modification, or revocation of the permit or permit conditions must be made in the permit  
8 hearing process and may not be raised on any collateral or subsequent legal proceeding, and  
9 the applicant and any aggrieved person may raise on appeal only issues that were raised to the  
10 department in the permit hearing process.

11 **23.1-01-12. Rules.**

12 The department may adopt rules consistent with national or regional standards which relate  
13 to the promotion of plastic bottle recycling and the maintenance of safe plastic bottle recycling  
14 practices in the state.

15 **23.1-01-13. Contracts for inspections.**

16 The department may contract with public health units and other appropriate entities to  
17 conduct inspections on behalf of the department or provide other services.

18 **SECTION 17.** Chapter 23.1-02 of the North Dakota Century Code is created and enacted  
19 as follows:

20 **23.1-02-01. Definitions.**

21 For the purposes of this chapter:

- 22 1. "Department" means the department of environmental quality.
- 23 2. "Radiation" means gamma rays and x-rays, alpha and beta particles, high-speed  
24 electrons, neutrons, protons, and other nuclear particles; but not sound or radio  
25 waves, or visible, infrared, or ultraviolet light.
- 26 3. "Radiation machine" means any device that produces radiation when the associated  
27 control devices are operated.
- 28 4. "Radioactive material" means any material, solid, liquid, or gas, that emits radiation  
29 spontaneously.

1        **23.1-02-02. Registration agency.**

2        The department is designated as the agency to receive registration applications and to  
3 issue certificates of registration.

4        **23.1-02-03. Registration required.**

5        Each manufacturer, processor, and refiner of radioactive isotopes and each hospital, clinic,  
6 manufacturing establishment, research or educational institution, agricultural experiment station  
7 or center, processing mill, or other institution or place of business or process in which radiation  
8 is produced or radioactive materials are used, manufactured, processed, packaged, refined,  
9 produced, disposed, or concentrated shall register with the department. To register, each  
10 manager or officer in charge of any institution or establishment concerned with radioactive  
11 materials shall obtain a registration form from the department, complete it, and return it to the  
12 department.

13        **23.1-02-04. Certificate of registration.**

14        Upon satisfactory completion and submission of the registration form, the department shall  
15 issue the applicant a certificate of registration. A completed registration form must provide  
16 sufficient information to determine whether the health of the public or persons working in the  
17 applicant establishment may be adversely affected by using, manufacturing, processing,  
18 packing, refining, disposing, producing, or concentrating of radioactive isotopes and materials.

19        **23.1-02-05. Penalty.**

20        Any person required to register under section 23.1-02-03 that fails to register and obtain a  
21 certificate of registration is guilty of a class A misdemeanor.

22        **SECTION 18.** Chapter 23.1-03 of the North Dakota Century Code is created and enacted  
23 as follows:

24        **23.1-03-01. Definitions.**

25        For the purposes of this chapter:

- 26        1. "Byproduct material" means any radioactive material, except special nuclear material,  
27 yielded in or made radioactive by exposure to the radiation incident to the process of  
28 producing or utilizing special nuclear material; and the tailings or wastes produced by  
29 the extraction, or concentration of uranium or thorium from any ore processed  
30 primarily for its source material content.
- 31        2. "Commission" means United States nuclear regulatory commission or any successor.

- 1       3. "Department" means the department of environmental quality.
- 2       4. "General license" means a license effective under rules adopted by the department  
3       without the filing of an application to transfer, acquire, own, possess, or use quantities  
4       of, or devices or equipment utilizing byproduct, source, special nuclear materials, or  
5       other radioactive material occurring naturally or produced artificially.
- 6       5. "Ionizing radiation" means gamma rays and x-rays, alpha and beta particles,  
7       high-speed electrons, protons, neutrons, and other nuclear particles; but not sound or  
8       radio waves, or visible, infrared, or ultraviolet light.
- 9       6. "Person" has the same meaning as under section 1-01-49, except it does not mean  
10       the commission or federal government agencies licensed by the commission.
- 11       7. "Radioactive material" means any solid, liquid, or gas that emits ionizing radiation  
12       spontaneously.
- 13       8. "Registration" means submitting a satisfactory registration form and receiving a  
14       certificate of registration under chapter 23.1-02.
- 15       9. "Special nuclear material" means:
- 16       a. Plutonium, uranium-233, uranium enriched in the isotope-233 or in the  
17       isotope-235, and any other material the department declares by rule to be special  
18       nuclear material after the commission has determined the material to be such,  
19       but does not include source material; or
- 20       b. Any material, other than source material, that is artificially enriched by plutonium,  
21       uranium-233, uranium enriched in the isotope-233 or in the isotope-235, and any  
22       other material the department declares by rule to be special nuclear material after  
23       the commission has determined the material to be such.
- 24       10. "Specific license" means a license issued after application, to process, generate,  
25       dispose, use, manufacture, produce, transfer, receive, acquire, own, or possess  
26       quantities of, or devices or equipment utilizing byproduct, source, special nuclear  
27       materials, or other radioactive material occurring naturally or produced artificially.
- 28       11. "Source material" means uranium, thorium, or any other material the department  
29       declares by rule to be source material after the commission has determined the  
30       material to be such; or ores containing one or more of those materials, in such

1           concentration as the department declares by rule to be source material after the  
2           commission has determined the material in such concentration to be source material.

3       12. "Surety" means cash deposits, surety bonds, certificates of deposit, deposits of  
4           government securities, letters of credit, and other surety mechanisms deemed  
5           acceptable by the department.

6       **23.1-03-02. State radiation control agency.**

7           The department of environmental quality shall administer the statewide licensing and  
8       regulatory radiation program under this chapter.

9       **23.1-03-03. Powers and duties of the department.**

10          For the protection of the public health and safety, the department shall:

- 11       1. Evaluate hazards associated with the use of sources of ionizing radiation by inspection  
12          and other means.
- 13       2. Conduct programs compatible with federal programs for the licensing and regulation of  
14          byproduct, source, special nuclear materials, and other radioactive materials.
- 15       3. Advise, consult, and cooperate with other public agencies and with affected groups  
16          and industries.
- 17       4. Administer the statewide licensing and regulatory radiation program.

18       **23.1-03-04. Licensing and registration of sources of ionizing radiation.**

- 19       1. The department shall adopt rules for the department to provide general or specific  
20          licensing of persons to process, generate, dispose, use, manufacture, produce,  
21          acquire, own, receive, possess, or transfer byproduct, source, special nuclear  
22          material, and other radioactive materials occurring naturally or produced artificially, or  
23          devices or equipment utilizing such materials. The rules must allow the department to  
24          amend, suspend, and revoke licenses.
- 25       2. The department may exempt certain sources of ionizing radiation or kinds of uses or  
26          users from the licensing or registration requirements under this section and in chapter  
27          23.1-02 when the department makes a finding that the exemption of such sources of  
28          ionizing radiation or kinds of uses or users will not constitute a significant risk to the  
29          health and safety of the public.

1        **23.1-03-05. Custody of disposal sites.**

2        1. Any radioactive materials license issued or renewed for any activity that results in  
3        processing, generating, or disposing of source material, byproduct material, or other  
4        radioactive material occurring naturally or produced artificially must contain any terms  
5        and conditions the department finds necessary to assure that, prior to termination of  
6        the license:

7        a. The licensee will comply with any decontamination, decommissioning, and  
8        stabilization standards prescribed by the department, which must be equivalent  
9        to or more stringent than those of the commission for sites, structures, and  
10       equipment used in conjunction with the processing, generation, or disposal of  
11       source material, byproduct material, or other radioactive material occurring  
12       naturally or produced artificially; and

13       b. Ownership of any disposal site and source material, byproduct material, or other  
14       radioactive material occurring naturally or produced artificially which resulted  
15       from the licensed activity must, subject to subsection 2, be transferred to the  
16       United States if provided by federal law, or this state if the state exercises the  
17       option to acquire land used for the disposal of the source material, byproduct  
18       material, or other radioactive material occurring naturally or produced artificially.

19       2. a. The department shall require by rule or order that before the termination of any  
20       license, title to the land and any interests in the land, other than land held in trust  
21       by the United States for any Indian tribe or owned by an Indian tribe subject to a  
22       restriction against alienation imposed by the United States or land already owned  
23       by the United States or by the state, used for the disposal of source material,  
24       byproduct material, or other radioactive material occurring naturally or produced  
25       artificially pursuant to a license, must be transferred to the United States if  
26       provided by federal law, or this state, unless the commission and the department  
27       determine before the termination that transfer of title is not necessary to protect  
28       the public health, safety, or welfare, or to minimize danger to life or property.

29       b. If transfer to the state of title to the land, source material, byproduct material, or  
30       other radioactive material occurring naturally or produced artificially is required,

1           the department shall maintain the material and land in a manner that will protect  
2           the public health, safety, and the environment.

3           c. The department may undertake any monitoring, maintenance, and emergency  
4           measures necessary to protect the public health and safety for materials and  
5           property for which it has assumed custody under this chapter.

6           d. The transfer of title to land or source material, byproduct material, or other  
7           radioactive material occurring naturally or produced artificially, to the state does  
8           not relieve any licensee of liability for any fraudulent or negligent acts done prior  
9           to the transfer.

10          e. Material and land transferred to either the United States or the state under this  
11          section must be transferred without cost to the United States or the state other  
12          than administrative and legal costs incurred by the United States or the state in  
13          carrying out the transfer.

14          3. Land used for the disposal of technologically enhanced naturally occurring radioactive  
15          material is not subject to subsection 2.

16          **23.1-03-06. Surety requirements.**

17          1. The department shall establish by rule standards and instructions it deems necessary  
18          or appropriate to ensure:

19          a. The licensee will provide adequate surety for the completion of all requirements  
20          established by the department for the decontamination, decommissioning, and  
21          stabilization of sites, structures, and equipment used in conjunction with the  
22          processing, generation, or disposal of source material, byproduct material, or  
23          other radioactive material occurring naturally or produced artificially; and

24          b. If the department determines any long-term maintenance and monitoring is  
25          necessary, the licensee will make available the funds required for the necessary  
26          maintenance and monitoring, before termination of any license for source  
27          material, byproduct material, or other radioactive material occurring naturally or  
28          produced artificially.

29          2. Any funds for long-term site surveillance and control must be available to the state if  
30          title and custody of source material, byproduct material, or other radioactive material  
31          occurring naturally or produced artificially and its disposal site is transferred to the

1 state under subsection 1 of section 23.1-03-05. The funds must be transferred to the  
2 United States if title and custody of the source material, byproduct material, or other  
3 radioactive material occurring naturally or produced artificially and its disposal site is  
4 transferred to the United States upon termination of any license for source material,  
5 byproduct material, or other radioactive material occurring naturally or produced  
6 artificially. These funds include sums collected for long-term surveillance and if  
7 necessary, maintenance. The funds do not include moneys held as surety where no  
8 default had occurred and the reclamation or other bonded activity has been  
9 performed.

- 10 3. If the department requires a surety for stabilization or funds for long-term surveillance  
11 or maintenance, the amounts must be sufficient to ensure compliance with the  
12 standards established by the commission and the department pertaining to financial  
13 arrangements to ensure adequate stabilization and long-term management of source  
14 material, byproduct material, or other radioactive material occurring naturally or  
15 produced artificially and its disposal site.

16 **23.1-03-07. Procedural requirements.**

17 In licensing and regulating the processing, generation, or disposal of source material,  
18 byproduct material, or other radioactive material occurring naturally or produced artificially, the  
19 department shall provide:

20 1. In the cases of licenses:

- 21 a. An opportunity, after public notice, for written comments and a public hearing,  
22 with a transcript.
- 23 b. A written determination of the action to be taken which is based upon findings  
24 included in the determination and upon evidence presented during the public  
25 comment period, and which is subject to judicial review.
- 26 c. For each licensed activity that has a significant impact on the human  
27 environment, a written analysis prepared by the department which must be  
28 available to the public before commencement of hearings, of the impact of the  
29 licensed activity on the environment. The analysis must include:
- 30 (1) An assessment of the radiological and nonradiological impacts to the public  
31 health.

1                   (2) An assessment of any impact on any waterway and ground water.

2                   (3) Consideration of alternatives to the activities to be conducted.

3                   (4) Consideration of the long-term impacts of the licensed activities.

4           d. A prohibition of any major construction related to the licensed activities before  
5           completing the action under this subsection.

6           e. An assurance that management of source material, byproduct material, or other  
7           radioactive material occurring naturally or produced artificially is carried out in  
8           conformance with applicable standards adopted by the department, the  
9           commission, and the United States environmental protection agency.

10          2. In the case of rulemaking:

11           a. An opportunity for public participation through written comments or a public  
12           hearing.

13           b. An opportunity for judicial review.

14          **23.1-03-08. Additional authorities.**

15          The department may require persons exempt from licensing to conduct monitoring, perform  
16          remedial work, and to comply with any other measures the department deems necessary or  
17          desirable to protect health or minimize danger to life or property.

18          **23.1-03-09. Fees deposited in operating fund.**

19          The department, by rule, may prescribe and provide for the payment and collection of  
20          reasonable fees to issue licenses and registration certificates. The fees must be based on the  
21          anticipated cost of filing and processing the application, of taking action on the requested  
22          license or registration certificate, and of conducting an inspection program to determine  
23          compliance or noncompliance with the license or registration certificate.

24          Any moneys collected for permit or registration fees must be deposited in the department's  
25          operating fund in the state treasury and must be spent subject to appropriation by the legislative  
26          assembly.

27          **23.1-03-10. Federal-state agreements.**

28          1. The governor, on behalf of this state, may enter agreements with the federal  
29          government for discontinuance of certain responsibilities of the federal government  
30          with respect to sources of ionizing radiation and the assumption of the responsibilities  
31          by the state.

1       2. Any person who, on the effective date of an agreement under subsection 1, possesses  
2       a license issued by the federal government must be deemed to possess the same  
3       license issued under this chapter, and the license must expire either ninety days after  
4       receipt from the department of a notice of expiration of such license or on the date of  
5       expiration specified in the federal license, whichever is earlier.

6       **23.1-03-11. Administrative procedures and judicial review.**

7       Any proceeding under this chapter to issue or modify rules, including emergency orders  
8       relating to control of sources of ionizing radiation; grant, suspend, revoke, or amend any  
9       license; or determine compliance with rules of the department must be conducted in  
10      accordance with chapter 28-32. If an emergency exists requiring immediate action to protect the  
11      public health and safety, the department may, without notice or hearing, issue an order reciting  
12      the existence of such emergency and requiring action necessary to meet the emergency be  
13      taken. Notwithstanding any provision of this chapter, the order must be effective immediately. A  
14      person to which the order is directed shall comply with the order immediately, but may apply to  
15      the department for a hearing. The department shall provide the hearing within ten days of the  
16      application. On the basis of such hearing, the emergency order must be continued, modified, or  
17      revoked within thirty days after such hearing.

18      **23.1-03-12. Injunction proceedings.**

19      Whenever, in the judgment of the department, any person has engaged in or is about to  
20      engage in any acts or practices that constitute or will constitute a violation of this chapter, or any  
21      rule or order issued under this chapter, the department may initiate an action in the name of the  
22      state enjoining the acts or practices, or requesting an order directing compliance. Upon a  
23      showing by the department that the person has engaged or is about to engage in the acts or  
24      practices, a permanent or temporary injunction, restraining order, or other order may be  
25      granted.

26      **23.1-03-13. Prohibited uses.**

27      It is unlawful for any person to use, manufacture, produce, transport, transfer, receive,  
28      acquire, own, or possess any source of ionizing radiation unless registered with or licensed by  
29      the department under this chapter.

1        **23.1-03-14. Impounding of materials.**

2        In the event of an emergency, the department may impound or order the impounding of  
3 sources of ionizing radiation in the possession of any person not equipped to observe or which  
4 fails to observe the provisions of this chapter or any rules issued under this chapter.

5        **23.1-03-15. Penalties.**

- 6        1. Any person violating this chapter or any permit condition, rule, order, limitation, or  
7 other applicable requirement implementing this chapter is subject to a civil penalty not  
8 to exceed twelve thousand five hundred dollars per day per violation, unless the  
9 penalty for the violation is otherwise specifically provided for and made exclusive in  
10 this chapter.
- 11        2. Any person willfully violating any provision of this chapter or any permit condition, rule,  
12 order, limitation, or other applicable requirement implementing this chapter is guilty of  
13 a class C felony, unless the penalty for the violation is otherwise specifically provided  
14 for and made exclusive in this chapter.
- 15        3. Any person willfully making any false statement, representation, or certification in any  
16 application, record, report, plan, or other document filed or required to be maintained  
17 under this chapter or any permit condition, rule, order, limitation, or other applicable  
18 requirement implementing this chapter or falsifying, tampering with, or willfully  
19 rendering inaccurate any monitoring device or method required to be maintained  
20 under this chapter or any permit condition, rule, order, limitation, or other applicable  
21 requirement implementing this chapter is guilty of a class C felony, unless the penalty  
22 for the violation is otherwise specifically provided for and made exclusive in this  
23 chapter.

24        **SECTION 19.** Chapter 23.1-04 of the North Dakota Century Code is created and enacted  
25 as follows:

26        **23.1-04-01. Declaration of purpose.**

27        The department of environmental quality shall administer this chapter to:

- 28        1. Protect human health and the environment from the effects of the improper,  
29 inadequate, or unsafe past or present management of hazardous waste and  
30 underground storage tanks.

- 1       2. Establish a program to regulate hazardous waste from the time of generation through
- 2           transportation, storage, treatment, and disposal.
- 3       3. Promote reduction of hazardous waste generation, reuse, recovery, and treatment as
- 4           preferable alternatives to landfill disposal.
- 5       4. Assure the safe and adequate management of hazardous waste with a minimum of
- 6           hazardous waste disposal sites within the state.
- 7       5. Establish a program to regulate underground storage tanks.
- 8       6. Promote reduction of surface and ground water contamination resulting from leaking
- 9           underground storage tanks.

10       **23.1-04-02. Definitions.**

11       For purposes of this chapter, unless the context otherwise requires:

- 12       1. "Commercial facility" means all contiguous land, structures, appurtenances, and
- 13           improvements on the land used for treatment and disposal of hazardous waste
- 14           received from offsite generators.
- 15       2. "Department" means the department of environmental quality.
- 16       3. "Disposal" means the discharge, deposit, injection, dumping, spilling, leaking, or
- 17           placing of any solid waste or hazardous waste into or on any land or water so the solid
- 18           waste or hazardous waste or any hazardous constituent of the waste may enter the
- 19           environment or be emitted into the air or discharged into any waters, including ground
- 20           water.
- 21       4. "Facility" means all contiguous land and structures, other appurtenances, and
- 22           improvements on the land, used for treating, storing, or disposing of hazardous waste.
- 23           A facility may consist of several contiguous treatment, storage, or disposal operational
- 24           units.
- 25       5. "Generator" means any person, by site, through act or process produces hazardous
- 26           waste or first causes a hazardous waste to become subject to regulation.
- 27       6. "Hazardous waste" means any waste or combination of wastes of a solid, liquid,
- 28           contained gaseous, or semisolid form that:
- 29           a. Because of its quantity, concentration, or physical, chemical, or other
- 30           characteristic, in the judgment of the department may:

- 1           (1) Cause, or significantly contribute to, an increase in mortality or an increase  
2                     in serious irreversible or incapacitating reversible illness; or  
3           (2) Pose a substantial present or potential hazard to human health or the  
4                     environment when improperly treated, stored, disposed of, or otherwise  
5                     managed; or  
6           b. Is identified by the mechanisms established in this chapter, including those that  
7                     exhibit extraction procedure toxicity, corrosivity, ignitability, or reactivity.  
8        7. "Hazardous waste management" means the systematic control of the collection,  
9           source separation, storage, transportation, processing, treatment, recovery, and  
10           disposal of hazardous waste.  
11        8. "Manifest" means the document used for identifying the quantity, composition, origin,  
12           routing, and destination of hazardous waste during transportation from the site of  
13           generation to the site of storage, treatment, or disposal.  
14        9. "Owner" means, in the case of an underground storage tank:  
15           a. In use after November 7, 1984, any person that owns or operates an  
16                     underground storage tank used for the storage, use, or dispensing of regulated  
17                     substances.  
18           b. In use before November 8, 1984, but no longer in use after that date, any person  
19                     that owned or operated such a tank immediately before the discontinuation of the  
20                     tank's use.  
21        10. "Regulated substance" means:  
22           a. Any substance defined in section 101(14) of the Comprehensive Environmental  
23                     Response, Compensation, and Liability Act of 1980 [42 U.S.C. 9601 et seq.], as  
24                     amended, but not including any substance regulated as a hazardous waste under  
25                     subtitle C of the Resource Conservation and Recovery Act [42 U.S.C. 6901 et  
26                     seq.], as amended.  
27           b. Petroleum, including crude oil or any fraction of crude oil that is liquid at standard  
28                     conditions of temperature and pressure (sixty degrees Fahrenheit [16 degrees  
29                     Celsius] and fourteen and seven-tenths pounds [6.66 kilograms] per square inch  
30                     [6.45 square centimeters] absolute).

- 1        11. "Release" means any spilling, leaking, emitting, discharging, escaping, leaching, or  
2        disposing from an underground storage tank into ground water, surface water, or  
3        subsurface soils.
- 4        12. "Storage" means the holding of hazardous waste at a site for a temporary period, at  
5        the end of which the hazardous waste is treated, disposed of, or transported and  
6        retained elsewhere.
- 7        13. "Transportation" means the offsite movement of hazardous wastes to any intermediate  
8        site or to any site of storage, treatment, or disposal.
- 9        14. "Treatment" means any method, technique, or process, including neutralization,  
10       designed to change the physical, chemical, or biological character or composition of  
11       any hazardous waste to neutralize the waste, to recover energy or material resources  
12       from the waste, or to render the waste nonhazardous or less hazardous; safer to  
13       transport, store, or dispose of; or amenable for recovery, amenable for storage, or  
14       reduced in volume.
- 15       15. "Treatment, storage, or disposal facility" means a location at which hazardous waste is  
16       subjected to treatment, storage, or disposal, and may include a facility at which  
17       hazardous waste has been generated.
- 18       16. "Underground storage tank" means any one or combination of underground tanks,  
19       including underground pipes connected to an underground tank, used to contain an  
20       accumulation of regulated substances, and the volume of which, including the volume  
21       of the underground pipes connected to it, is ten percent or more beneath the surface  
22       of the ground. Exemptions from this definition and rules adopted under this chapter  
23       include:
- 24       a. Farm or residential tanks of one thousand one hundred gallons [4163.94 liters] or  
25       less capacity used for storing motor fuel for noncommercial purposes.
- 26       b. Tanks used for storing heating oil for consumptive use on the premises where  
27       stored.
- 28       c. Septic tanks.
- 29       d. A pipeline facility, including gathering lines, regulated under:
- 30       (1) The Natural Gas Pipeline Safety Act of 1968 [P. Law 90-481].

- 1                   (2) The Hazardous Liquid Pipeline Safety Act of 1979 [P. Law 96-129, 49  
2                   U.S.C. 60101 et seq.].
- 3                   (3) An interstate pipeline facility regulated under state laws comparable to the  
4                   provisions of law in paragraph 1 or 2.
- 5                   e. Surface impoundments, pits, ponds, or lagoons.  
6                   f. Storm water or wastewater collection systems.  
7                   g. Flow-through process tanks.  
8                   h. Liquid traps or associated gathering lines directly related to oil or gas production  
9                   and gathering operations.  
10                  i. Storage tanks situated in an underground area such as a basement, cellar, mine  
11                  working, drift, shaft, or tunnel if the storage tank is situated on or above the  
12                  surface of the floor.
- 13                  17. "Waste" means any garbage, refuse, sludge from a waste treatment plant, water  
14                  supply treatment plant, or air pollution control facility; and other discarded material,  
15                  including solid, liquid, semisolid, or contained gaseous material resulting from  
16                  commercial, industrial, or other chemical, biological, or physical activities. It does not  
17                  include solid or dissolved material in domestic sewage or solid or dissolved material in  
18                  irrigation return flows or industrial discharges, which are point sources subject to  
19                  permits under section 402 of the Federal Clean Water Act [P. Law 95-217; 22 U.S.C.  
20                  1251 et seq.], as amended, or source, special nuclear, or byproduct material as  
21                  defined by the Atomic Energy Act of 1954 [P. Law 83-703; 42 U.S.C. 2011 et seq.], as  
22                  amended, or to coal mining wastes or overburden for which a surface coal mining and  
23                  reclamation permit is issued or approved under the Surface Mining Control and  
24                  Reclamation Act of 1977 [P. Law 95-87; 30 U.S.C. 1201 et seq.].

25                  **23.1-04-03. Powers and duties of the department.**

26                  The department shall administer and enforce this chapter. The department shall:

- 27                  1. Administer the state hazardous waste management and underground storage tank  
28                  programs under this chapter.
- 29                  2. Survey hazardous waste generation and management practices in the state.
- 30                  3. Adopt, modify, repeal, and enforce rules governing the management of hazardous  
31                  waste and underground storage tanks.

1       4. Enter agreements with other local, state, or federal agencies regarding responsibilities  
2       for regulating hazardous wastes and underground storage tanks to promote  
3       consistency in enforcement and avoid duplication in regulation.

4       **23.1-04-04. Institutional controls, responsibility exemptions, and regulatory**  
5       **assurances for contaminated properties - Continuing appropriation.**

6       1. The department may establish institutional controls or give site-specific responsibility  
7       exemptions or regulatory assurances to owners, operators, or lenders, under this  
8       section for real property contaminated by regulated substances, other pollution, or  
9       contamination regulated by the department under this chapter or chapter 61-28. To  
10      qualify for a site-specific responsibility exemption, the owner of the property, or the  
11      political subdivision establishing institutional controls under this section through its  
12      zoning authority, shall:

13      a. Delineate the vertical and horizontal extent and concentration of the pollution or  
14      contamination in soil and ground water;

15      b. Identify potential persons or receptors that may be impacted by the pollution or  
16      contamination, evaluate the potential for movement or migration of the pollution  
17      or contamination and potential pathways of exposure, and identify potential  
18      health or environmental impacts to persons or receptors based on the proposed  
19      property use;

20      c. Identify the past and current uses of the property, the current uses of contiguous  
21      properties, and zoning restrictions or regulations that apply to the property and  
22      contiguous properties;

23      d. Identify any surface water or ground water uses, or ground water wells, that may  
24      be impacted by the pollution or contamination;

25      e. Agree to comply with and complete any remediation or monitoring plan agreed to  
26      or ordered by the department as a condition of receiving a site-specific  
27      responsibility exemption, including monitoring of natural attenuation of pollution  
28      or contamination;

29      f. If remediation or monitoring of pollution or contamination is being conducted by a  
30      responsible party or governmental body other than the landowner or operator,

- 1 agree to allow access for all monitoring or remedial activities reasonably related  
2 to the identified pollution or contamination;
- 3 g. Agree to any other reasonable institutional controls necessary to protect public  
4 health and welfare from pollution or contamination on the property or to satisfy  
5 environmental standards enforced by the department; and
- 6 h. Agree to comply with all institutional controls, letters of no further remediation,  
7 letters of no further action, or letters of regulatory assurance established or  
8 instituted under this section as a condition of receiving a property-specific or site-  
9 specific responsibility exemption or regulatory assurance.
- 10 2. "Institutional controls" are restrictions on the use and management of real property,  
11 including buildings or fixtures, which contain or prevent migration of regulated  
12 substances or other pollution or contamination, or protect receptors from exposure or  
13 the threat of exposure to regulated substances or other pollution or contamination.  
14 Institutional controls may apply during environmental remediation activities, or to  
15 residual regulated substances, pollutants, or other pollution or contamination or their  
16 byproducts that may remain on property after active environmental remediation  
17 activities are concluded or while natural attenuation of regulated substances or other  
18 pollution or contamination is occurring.
- 19 3. Institutional controls may be established by the department as follows:
- 20 a. When an area made subject to institutional controls involves two or more  
21 property owners and an area larger than either one city block or ten acres  
22 [4.05 hectares], the department and the political subdivision having zoning  
23 authority over the property may agree to institutional controls relating to the  
24 identified area impacted by the pollution or the contamination. Before the  
25 institutional controls become effective, the controls must be the subject of a  
26 public hearing and be established in the same manner as zoning regulations are  
27 established by that political subdivision. The political subdivision is responsible  
28 for providing all notices under this subdivision, but any public hearing must be  
29 held jointly by the political subdivision and the department.
- 30 b. The department also may establish institutional controls by agreement to an  
31 environmental covenant with the owner of the real property. Before agreeing to

1           any environmental covenants under this subdivision, all contiguous landowners  
2           to the property to which the covenants will attach must be notified by certified  
3           mail or by service by publication as provided in the North Dakota Rules of Civil  
4           Procedure. An environmental covenant must state that it is an environmental  
5           covenant that runs with the land, have a legally sufficient description of the real  
6           property subject to the covenant, describe activity or use limitations and terms of  
7           access for any monitoring or remediation, identify every holder who is a grantee  
8           of the covenant, be signed by every holder and the owner of the property before  
9           a notary public, and describe the name and location of any administrative record  
10          for the environmental response or remediation identified for the property under  
11          subsection 1. All environmental covenants must be filed with the county recorder  
12          of the county in which the property is located.

- 13          4. After completion of the assessments and requirements of subsection 1, the  
14          department may issue a letter of no further remediation or a letter of no further action  
15          to a property owner when an environmental remediation is completed on the site or  
16          property, or when no institutional controls are necessary to protect public health or  
17          welfare or to come into compliance with an environmental standard that has been  
18          violated and later corrected on the site or property.
- 19          5. Notwithstanding any institutional controls established for any real property, the  
20          department has access for inspection and enforcement for environmental violations as  
21          provided by law.
- 22          6. If there is any additional discharge or release of a regulated substance, pollutant, or  
23          contaminant on the property subject to institutional controls or regulatory exemptions  
24          that intermingles with the delineated pollution or contamination identified under  
25          subsection 1, or if the owner or operator of the property manages the property in a  
26          manner that causes the contamination to migrate to a neighboring contiguous property  
27          or results in the exposure of contaminants to receptors on the property, then  
28          institutional controls or regulatory exemptions established under this section are  
29          voidable by the department after a public investigatory hearing by giving written notice  
30          to the political subdivision and the current owner of the property subject to the  
31          institutional controls, as well as any lender holding a lien on the property identified

1           under subsections 8 and 9. Culpability of the owner or operator of the property for any  
2           new or additional discharge, release, or movement of pollution or contamination, as  
3           well as responsibility for any offsite discharge or release or culpability for exposure of  
4           onsite or offsite receptors to pollution or contamination, must be considered by the  
5           department in determining whether to void any institutional controls, and any final  
6           determination by the department to void an institutional control is subject to review  
7           under chapter 28-32. If the institutional control is an environmental covenant  
8           established under subdivision b of subsection 3, the written notice voiding the  
9           environmental covenant as well as a copy of the covenant being voided by the  
10          department must be filed with the county recorder of the appropriate county.

11         7. Institutional controls may also be terminated or amended at any time by written  
12         agreement between the department, the relevant political subdivision, the owner of the  
13         property, or other body or person subject to the institutional controls, as well as any  
14         identified lender, after giving notice as described in subsection 3. Letters of no further  
15         remediation, of no further action, or regulatory assurance may be amended by written  
16         agreement of the participating parties.

17         8. Before agreeing to any institutional controls or responsibility exemptions, the  
18         department may require insurance coverage or other financial assurance for any  
19         additional environmental monitoring or remediation that may become necessary on the  
20         property after the site-specific responsibility exemptions and institutional controls are  
21         established, and must require such insurance coverage or other financial assurance  
22         when the projected cost of an active monitoring or remediation program exceeds five  
23         hundred thousand dollars. The department may terminate the requirement for financial  
24         assurance if the person required to have financial assurance demonstrates to the  
25         department that the property no longer presents a significant threat to public health or  
26         the environment. The department may enter a joint agreement with affected political  
27         subdivisions, state or federal agencies, property owners, lenders, the administrator of  
28         the petroleum tank release compensation fund, or any responsible or potentially  
29         responsible party concerning payment for or funding of any insurance coverage or  
30         other financial assurance for any additional environmental monitoring or remediation  
31         that may become necessary on contaminated or affected properties. The agreements

1           do not waive the liability limitations that apply by law to the state, to state agencies, or  
2           to political subdivisions, except up to the amounts, and subject to the terms,  
3           conditions, and limitations of any insurance policy or any financial assurance fund  
4           created by the joint agreement of the parties under this subsection. Any financial  
5           assurance fund must comply with chapters 59-09, 59-10, 59-11, 59-12, 59-13, 59-14,  
6           59-15, 59-16, 59-17, 59-18, and 59-19 and be managed for the benefit of the affected  
7           persons or community, but liability of the fund may not exceed the amount deposited  
8           with the fund.

9           9. Participation by a lender in an agreement under this section may not be construed as  
10           management of the property under chapter 32-40.1. Lenders that participate in an  
11           agreement under this section may not be held responsible for any environmental  
12           remediation on the site or property except as provided in subsection 3 of section  
13           32-40.1-02. As part of an agreement under subsection 8, the department may issue a  
14           letter of regulatory assurance to a lender which states that the lender is not  
15           responsible for environmental remediation on the property or site, and which  
16           addresses other issues relating to responsibility, notice, violation of agreement under  
17           subsection 8 by the owner or operator, default, or other matters affecting potential  
18           environmental liability, investment, or redevelopment. A responsibility exemption of  
19           regulatory assurance given or granted to a lender under this section also applies to a  
20           lender's transferees or assigns, if the party has had no prior involvement with or  
21           responsibility for the site of the environmental release, and uses and manages the  
22           property after the transfer or assignment in compliance with institutional controls or  
23           other conditions established under this section and the requirements of this chapter  
24           and chapter 61-28.

25           10. The department may adopt rules to implement this section. The department may  
26           assess administrative fees in an amount and manner established by rule against  
27           responsible parties. In addition, by agreement of the participants, under subsection 8  
28           the department may collect an administrative fee for a specific site or project to  
29           address the department's costs and expenses at that site or project, in an amount  
30           agreed to under subsection 8, or may collect an administrative fee in an amount set by  
31           rule from a person making a request for a responsibility exemption or regulatory

1           assurance under this section. Any administrative fees collected under this section  
2           must be deposited by the department in a separate account in the department's  
3           operating fund and used only for administration of remediation activities under this  
4           chapter or chapter 61-28 and moneys deposited in this account are appropriated to  
5           the department on a continuing basis. Administrative fees may not be collected out of  
6           federal moneys or against the petroleum tank release compensation fund.

7        11. The administrator of the petroleum tank release compensation fund under chapter  
8        23.1-12 may request recovery of expenditures the administrator has made at a  
9        remediation site from the separate account in the department's operating fund from  
10       fees collected under this section if recovery may not be made from a responsible party  
11       or as provided in chapter 23.1-12. If the department determines sufficient funds are  
12       available without compromising the remediation project at the site, moneys in the  
13       separate account may be used to reimburse the petroleum tank release compensation  
14       fund for expenditures the administrator has made at the remediation site.

15       12. All letters of partial or complete exemption from responsibility for remediation or further  
16       action issued by the department under this section may be revoked by the department  
17       if any condition of the letters is violated; if institutional controls on the property are not  
18       complied with; or if the person, governmental body, or entity violates any provision of  
19       this chapter or chapter 61-28.

20       13. "Environmental covenant" means a covenant running with the land as established  
21       under this section.

22       14. "Natural attenuation" means the reduction in the mass or concentration in soils or  
23       ground water of a regulated substance, pollutant, contaminant, and the products into  
24       which a substance breaks down, due to naturally occurring physical, chemical, and  
25       biological processes, without human intervention. "Enhanced natural attenuation"  
26       means the enhancement of natural attenuation at a site by the addition of chemicals,  
27       biota, or other substances or processes. "Monitored natural attenuation" means the  
28       monitoring of natural attenuation as it occurs. The department may consider natural  
29       attenuation or enhanced or monitored natural attenuation as remediation alternatives  
30       for a site when pollution or contamination on a site or property does not pose a threat

1           to human health or the environment, and reasonable safeguards are established  
2           under this section or other provisions of state or federal law.

3       15. "Regulatory assurance" means an assurance issued by the department concerning  
4           enforcement relating to existing contamination or pollution on a property or site based  
5           on compliance with conditions stated in a letter of regulatory assurance. A regulatory  
6           assurance is not voidable under subsection 6.

7       16. "Responsibility exemption" means a partial or complete exemption from responsibility  
8           for remediation or further action on a contaminated property or at a contaminated site  
9           based on compliance with the conditions identified in a letter of no further remediation  
10           or a letter of no further action. A responsibility exemption is voidable only against a  
11           person that violates an institutional control or a condition of a letter of no further action  
12           or no further remediation, or that is responsible for a new or additional release or  
13           migration of a regulated substance or pollutant on the property or site, or whose  
14           actions or negligence cause the violation, release, or migration.

15       17. "Responsible party" means a person that causes or contributes to an onsite or offsite  
16           release or discharge, or which is responsible for an illegal or unpermitted storage, of a  
17           pollutant or regulated substance in violation of this chapter or chapter 61-28, that  
18           results in the contamination or pollution of a property or site. "Potentially responsible  
19           party" means a person identified as a possible cause of, or contributor to,  
20           contamination or pollution on a site or property.

21       18. This section does not affect the authority of the department, the state, or its political  
22           subdivisions to exercise any powers or duties under state law with respect to any new  
23           or additional discharge or release or threatened discharge or release of a pollutant or  
24           regulated substance on a property or site regulated under this section, or the right of  
25           the department or any other person to seek legal or equitable relief against a person  
26           not subject to a liability protection provided under this section.

27       **23.1-04-05. Hazardous waste regulations.**

28       Under chapter 28-32, the department shall adopt rules:

- 29       1. For determining whether any waste is hazardous.  
30       2. Prescribing procedures for generators of hazardous waste.

- 1        3. For the issuance of permits for the storage, treatment, and disposal of hazardous
- 2            waste in an environmentally sound manner, utilizing best scientific and engineering
- 3            judgment.
- 4        4. Prescribing procedures under which the department shall issue, renew, modify,
- 5            suspend, revoke, or deny permits required by this chapter. The rules must provide that
- 6            no permit may be revoked until the department has provided the affected party with
- 7            written notice of the intent of the department to revoke the permit, the reasons for the
- 8            revocation, and an opportunity for a hearing.
- 9        5. For the location, design, construction, operation, and maintenance of treatment,
- 10           storage, and disposal facilities.
- 11       6. For the transportation, containerization, and labeling of hazardous wastes which must
- 12           be consistent with those issued by the United States department of transportation and
- 13           the public service commission and department of transportation.
- 14       7. Prescribing procedures and requirements for a manifest system.
- 15       8. Prescribing procedures and requirements for the following:
- 16           a. Recordkeeping.
- 17           b. Reporting.
- 18           c. Sampling.
- 19           d. Performing analysis.
- 20           e. Monitoring.
- 21       9. Requiring the owner or operator of any hazardous waste treatment, storage, or
- 22           disposal facility to demonstrate evidence of financial responsibility in the form and
- 23           amount determined by the department to be necessary to ensure that, upon
- 24           abandonment, cessation, or interruption of the operation of the facility, all appropriate
- 25           measures are taken to prevent damage to human health and the environment.
- 26       10. Any other rules necessary to carry out the purposes of this chapter.

27        **23.1-04-06. Underground storage tank regulations.**

28        Under chapter 28-32, the department shall adopt rules:

- 29           1. For maintaining a leak detection system, an inventory control system together with
- 30           tank testing, or a comparable system or method designed to identify releases in a
- 31           manner consistent with the protection of human health and the environment.

- 1        2. For maintaining records of any monitoring of a leak detection system, inventory control
- 2            system, or tank testing system.
- 3        3. For reporting of any releases and corrective action taken in response to a release from
- 4            an underground tank.
- 5        4. For taking corrective action in response to a release from an underground storage
- 6            tank.
- 7        5. For the closure of tanks to prevent releases of regulated substances into the
- 8            environment.
- 9        6. For maintaining evidence of financial responsibility for taking corrective action and
- 10           compensating third parties for bodily injury and property damage caused by sudden
- 11           and nonsudden accidental releases arising from operating an underground storage
- 12           tank.
- 13        7. Establishing standards for installation of underground storage tanks.
- 14        8. Establishing standards for construction and performance of new underground storage
- 15           tanks.
- 16        9. For notifying the department or designated local agency of the existence of any
- 17           operational or nonoperational underground storage tank.
- 18        10. For a permit fee system to own, install, or operate an underground storage tank.

19 However, regulations adopted by the department may not be more stringent than applicable  
20 requirements of the federal Resource Conservation and Recovery Act [42 U.S.C. 6901 et seq.]  
21 and the federal Energy Policy Act of 2005 [P. Law 109-58; 42 U.S.C. 15801 et seq.] in effect on  
22 August 1, 2007.

23        **23.1-04-07. Municipal underground storage tank ordinances.**

24        A county, city, or township may not enact and enforce an underground storage tank  
25 ordinance if the ordinance is more stringent than this chapter and the rules authorized to be  
26 adopted under this chapter.

27        **23.1-04-08. Permits.**

- 28        1. A person may not construct, substantially alter, or operate any hazardous waste
- 29            treatment, storage, or disposal facility, nor may any person treat, store, or dispose of
- 30            any hazardous waste without obtaining a permit from the department for the facility or
- 31            activity. A hazardous waste treatment, storage, or disposal facility may not be issued a

- 1           permit unless the applicant demonstrates to the satisfaction of the department that a  
2           need for the facility exists and the facility can comply with all applicable requirements  
3           under this chapter.
- 4           2. Permits must contain the terms and conditions the department deems necessary.
- 5           3. Permits must be issued for a period of five years.
- 6           4. Any permit issued under this section may be revoked by the department according to  
7           the rules adopted under subsection 3 of section 23.1-04-05 at any time if the permittee  
8           fails to comply with the terms and conditions of the permit, or with applicable  
9           requirements under this chapter.
- 10          5. If a permit applicant proposes modifications of an existing facility or the department  
11          determines modifications are necessary to conform to the requirements established  
12          under this chapter, the permit must specify the time allowed to complete the  
13          modifications.
- 14          6. a. Before the issuing of a permit the department shall:
- 15               (1) Publish in the official county newspaper of the county in which the proposed  
16               facility will be located and in major local newspapers of general circulation  
17               and broadcast over local radio stations notice of the department's intention  
18               to issue the permit; and
- 19               (2) Transmit in writing notice of the department's intention to issue the permit to  
20               each unit of local government having jurisdiction over the area in which the  
21               facility is proposed to be located and to each state agency having any  
22               authority under state law regarding the construction or operation of the  
23               facility.
- 24          b. If within forty-five days the department receives written notice of opposition to the  
25          department's intention to issue a permit and a request for a hearing, or if the  
26          department determines on its own initiative, the department shall hold an informal  
27          public hearing, including an opportunity for presentation of written and oral views,  
28          on whether the department should issue a permit for the proposed facility.  
29          Whenever possible the department shall schedule the hearing at a location  
30          convenient to the nearest population center to the proposed facility. Notice of the

1           hearing must be published in the manner provided in subdivision a. The notice  
2           must contain the date, time, place, and subject matter of the hearing.

3        7.   Any facility required to have a permit under this chapter is exempt from the permit  
4           requirements of chapter 23.1-08.

5        **23.1-04-09. Fees - Deposit in operating fund.**

6        The department by rule may provide for the payment and collection of reasonable fees for  
7        the issuance of permits or registration certificates for registering, licensing, or permitting  
8        hazardous waste generators, transporters, and treatment, storage, recycling, or disposal  
9        facilities. The permit or registration certificate fees must be based on the anticipated cost of  
10       filing and processing the application, taking action on the requested permit or registration  
11       certificate, and conducting a monitoring and inspection program to determine compliance or  
12       noncompliance with the permit or registration certificate. Any moneys collected for permit  
13       licensing or registration fees must be deposited in the department operating fund in the state  
14       treasury and any expenditure from the fund is subject to appropriation by the legislative  
15       assembly.

16        **23.1-04-10. Commercial facility permits and ordinances.**

17        1.   Counties and cities may issue permits for commercial facilities pursuant to section  
18           23.1-04-08 and may enact and enforce commercial facility ordinances if the  
19           ordinances are equal to or more stringent than this chapter and the rules adopted  
20           under this chapter.

21        2.   In addition to the requirements for obtaining a permit under this chapter, a person may  
22           not construct, substantially alter, or operate any commercial facility nor may any  
23           person dispose of any hazardous waste without first obtaining a permit from the  
24           department and from the county, or a city if the commercial facility is located or  
25           proposed to be located within the territorial zoning authority of the city. The  
26           department, in conjunction with the governing body of the county or city in which the  
27           commercial facility is located or proposed to be located, shall hold a public hearing in  
28           the manner provided in section 23.1-04-08.

1        **23.1-04-11. Disclosure of information before issuance, renewal, transfer, or major**  
2 **modification of permit.**

3        Before an application for the issuance, renewal, transfer, or major modification of a permit  
4 under this chapter may be granted, the applicant shall submit to the department a disclosure  
5 statement executed under oath or affirmation. The department shall verify and may investigate  
6 the information in the statement and shall deny an application for the issuance, renewal,  
7 transfer, or major modification of a permit if the applicant has intentionally misrepresented or  
8 concealed any material fact in a statement required under this section, a judgment of criminal  
9 conviction for violation of any federal or state environmental laws has been entered against the  
10 applicant within five years before the date of submission of the application, or the applicant has  
11 knowingly and repeatedly violated any state or federal environmental protection laws. The  
12 disclosure statement must include:

- 13        1. The name and business address of the applicant.
- 14        2. A description of the applicant's experience in managing the type of waste that will be  
15 managed under the permit.
- 16        3. A description of every civil and administrative complaint against the applicant for the  
17 violation of any state or federal environmental protection law which has resulted in a  
18 fine or penalty of more than ten thousand dollars within five years before the date of  
19 the submission of the application.
- 20        4. A description of every pending criminal complaint alleging the violation of any state or  
21 federal environmental protection law.
- 22        5. A description of every judgment of criminal conviction entered against the applicant  
23 within five years before the date of submission of the application for the violation of  
24 any state or federal environmental protection law.
- 25        6. A description of every judgment of criminal conviction of a felony constituting a crime  
26 involving fraud or misrepresentation under the laws of any state or of the United States  
27 which has been entered against the applicant within five years before the date of  
28 submission of the application.

1        **23.1-04-12. Inspections - Right of entry.**

2        To develop or enforce any rule authorized by this chapter or enforce a requirement of this  
3 chapter, any duly authorized representative or employee of the department may, upon  
4 presentation of appropriate credentials, at any reasonable time:

5        1. Enter any place, facility, or site at which wastes or substances that the department has  
6 reason to believe may be hazardous or regulated are, may be, or may have been  
7 generated, stored, transported, treated, disposed of, or otherwise handled.

8        2. Inspect and obtain samples of any waste or substance that the department has reason  
9 to believe may be hazardous or regulated, including samples from any vehicles in  
10 which wastes are being transported as well as samples of any containers or labels.

11        3. Inspect and copy any records, reports, information, or test results relating to the  
12 purposes of this chapter.

13        **23.1-04-13. Monitoring, analysis, and testing - Civil penalty.**

14        1. If the department determines, upon receipt of any information, that:

15        a. The presence of any hazardous waste, hazardous constituent, or regulated  
16 substance at a facility or site at which hazardous waste or regulated substance  
17 is, or has been, stored, treated, or disposed of; or

18        b. The release of any such waste or regulated substance from a facility or site may  
19 present a substantial hazard to human health or the environment, the department  
20 may issue an order requiring the owner or operator of the facility or site to  
21 conduct any monitoring, testing, analysis, and reporting with respect to the facility  
22 or site which the department deems reasonable to ascertain the nature and  
23 extent of the hazard.

24        2. In the case of any facility or site not in operation at the time a determination is made  
25 under subsection 1 with respect to the facility or site, if the department finds the owner  
26 or operator of the facility or site could not reasonably be expected to have actual  
27 knowledge of the presence of hazardous waste or regulated substance at the facility  
28 or site and of its potential for release, the department may issue an order requiring the  
29 most recent previous owner or operator of the facility or site which could reasonably  
30 be expected to have such actual knowledge to carry out the actions referred to in  
31 subsection 1.

1       3. A person that violates this section is subject to a civil penalty of five thousand dollars  
2           per day of violation.

3       **23.1-04-14. Imminent hazard.**

4       Upon receipt of information that the past or present handling, storage, transportation,  
5 treatment, or disposal of any waste or regulated substance may present an imminent and  
6 substantial endangerment to health or the environment, the department may take emergency  
7 action necessary to protect health or the environment.

8       **23.1-04-15. Enforcement penalties and citizen participation.**

9       1. If the department finds a person is in violation of a permit, rule, standard, or  
10 requirement of this chapter, the department may issue an order requiring the person to  
11 comply with the permit, rule, standard, or requirement, and the department may bring  
12 an action for a civil or criminal penalty, including an action for injunctive relief. An  
13 action under this chapter must be brought in the district court for the county in which  
14 the violation occurred or in which the party in violation has the party's residence or  
15 principal office in the state.

16       2. A person that violates a provision of this chapter or any rule, standard, or permit  
17 condition adopted under to this chapter is subject to a civil penalty not to exceed  
18 twenty-five thousand dollars per day of violation. Each day of noncompliance  
19 constitutes a separate violation for purposes of penalty assessments.

20       3. A person that knowingly violates a provision of this chapter or a rule, standard, or  
21 permit condition adopted under this chapter, or that knowingly makes a false  
22 statement or representation in documentation required by this chapter, is subject to a  
23 fine not to exceed twenty-five thousand dollars per day of violation, to imprisonment  
24 for a period not to exceed one year, or both.

25       4. A person that knowingly violates a provision of this chapter in a manner that manifests  
26 extreme indifference to human life and places an individual in imminent danger of  
27 death or serious bodily injury, is subject to a fine not to exceed fifty thousand dollars  
28 per day of violation, to imprisonment for a period not to exceed two years, or both.

29       5. a. A person having an interest that may be adversely affected by a violation of this  
30 chapter may commence a civil action to compel compliance with this chapter, or  
31 a rule, order, or permit issued under this chapter.

- 1           b. Notice of the violation must be given to the department and to an alleged violator  
2           sixty days before commencement of a citizen suit brought under this subsection.  
3           c. A person with an interest that may be adversely affected by a violation of this  
4           chapter may intervene as a matter of right in a civil action brought by the  
5           department to require compliance with this chapter.  
6           6. An administrative action brought under this chapter must be conducted in accordance  
7           with North Dakota Administrative Code article 33-22.

8           **23.1-04-16. Applicability.**

- 9           1. The hazardous waste provisions of this chapter do not apply to the following wastes to  
10           the degree to which they are exempted from regulation by sections 3001(b)(2) and  
11           3001(b)(3)(A) of the Resource Conservation and Recovery Act, as amended by the  
12           Solid Waste Disposal Act Amendments of 1980 [Pub. L. 96-482; 42 U.S.C. 6901 et  
13           seq.]:  
14           a. Drilling fluids, produced water, and other wastes associated with the exploration,  
15           development, or production of crude oil or natural gas or geothermal energy.  
16           b. Fly ash waste, bottom ash waste, slag waste, and flue gas emission control  
17           waste generated primarily from the combustion or gasification of coal or other  
18           fossil fuels.  
19           c. Solid waste from the extraction, beneficiation, and processing of ores and  
20           minerals, including phosphate rock and overburden from the mining of uranium  
21           ore.  
22           d. Cement kiln dust waste.  
23           2. If a waste disposal site for any of the wastes specified in subsection 1 is to be closed,  
24           the owner or operator shall file a plat of the disposal site with the recorder of each  
25           county in which the facility is located, together with a description of the wastes placed  
26           in the site.

27           **23.1-04-17. Limited liability for subsequent owners of property.**

- 28           1. Notwithstanding any other provision of law and except as expressly provided by  
29           federal law, a person that acquires property is not liable for any existing hazardous  
30           waste or substance on the property if:

- 1           a. The person acquired the property after the disposal or placement of the  
2           hazardous waste or substance on, in, or at the property, and at the time the  
3           person acquired the property that person did not know and had no reason to  
4           know any hazardous waste or substance was disposed of on, in, or at the  
5           property:
- 6           b. The person is a governmental entity that acquired the property by escheat, by tax  
7           sale, foreclosure, or through any other involuntary transfer or acquisition, or  
8           through the exercise of eminent domain authority by purchase or condemnation;  
9           or
- 10          c. The person acquired the property by inheritance or bequest and that person did  
11          not know and had no reason to know that any hazardous waste or substance  
12          was disposed of on, in, or at the property.
- 13          2. To establish the person had no reason to know, the person must have undertaken, at  
14          the time of acquisition, all appropriate inquiry into the previous ownership and uses of  
15          the property consistent with good commercial or customary practice in an effort to  
16          minimize liability. For purposes of this requirement, a court shall take into account any  
17          specialized knowledge or experience on the part of the person, the relationship of the  
18          purchase price to the value of the property as uncontaminated, commonly known or  
19          reasonably ascertainable information about the property, the obviousness of the  
20          presence or likely presence of contamination at the property, and the ability to detect  
21          the contamination by appropriate inspection.
- 22          3. A person that has acquired real property may establish a rebuttable presumption that  
23          the person has made all appropriate inquiry if the person establishes that, immediately  
24          before or at the time of acquisition, the person performed an investigation of the  
25          property, conducted by an environmental professional, to determine or discover the  
26          obviousness of the presence or likely presence of a release or threatened release of  
27          hazardous waste or substances on the property.
- 28          4. The presumption does not arise unless the person has maintained a compilation of the  
29          information reviewed in the course of the investigation.
- 30          5. This section does not diminish the liability of any previous owner or operator of the  
31          property which would otherwise be liable under this chapter, and nothing in this section

1 affects the liability under this chapter of a person that, by any act or omission, caused  
2 or contributed to the release or threatened release of a hazardous waste or substance  
3 the subject of the action relating to the property.

4 6. As used in this section, environmental professional means an individual, or entity  
5 managed or controlled by an individual, who, through academic training, occupational  
6 experience, and reputation, such as engineers, environmental consultants, and  
7 attorneys, can objectively conduct one or more aspects of an environmental  
8 investigation.

9 **SECTION 20.** Chapter 23.1-05 of the North Dakota Century Code is created and enacted  
10 as follows:

11 **23.1-05-01. Southwestern low-level radioactive waste disposal compact.**

12 The southwestern low-level radioactive waste disposal compact is entered with all  
13 jurisdictions legally joining the compact, in the form substantially as follows:

14 **ARTICLE I - COMPACT POLICY AND FORMATION**

15 The party states hereby find and declare all of the following:

16 1. The United States Congress, by enacting the Low-Level Radioactive Waste Policy Act,  
17 Public Law 96-573, as amended by the Low-Level Radioactive Waste Policy  
18 Amendments Act of 1985 [42 U.S.C. 2021b - 2021j], has encouraged the use of  
19 interstate compacts to provide for the establishment and operation of facilities for  
20 regional management of low-level radioactive waste.

21 2. It is the purpose of this compact to provide the means for such a cooperative effort  
22 between or among party states to protect the citizens of the states and the states'  
23 environments.

24 3. It is the policy of party states to this compact to encourage the reduction of the volume  
25 of low-level radioactive waste requiring disposal within the compact region.

26 4. It is the policy of the party states that the protection of the health and safety of their  
27 citizens and the most ecological and economical management of low-level radioactive  
28 wastes can be accomplished through cooperation of the states by minimizing the  
29 amount of handling and transportation required to dispose of these wastes and by  
30 providing facilities that serve the compact region.



- 1           b. The waste is not uranium mining or mill tailings.
- 2           c. The waste is not any waste for which the federal government is responsible  
3           pursuant to subdivision (b) of section 3 of the Low-Level Radioactive Waste  
4           Policy Amendments Act of 1985 [42 U.S.C. 2021c(b)].
- 5           d. The waste is not an alpha-emitting transuranic nuclide with a half-life greater than  
6           five years and with a concentration greater than one hundred nanocuries per  
7           gram, or plutonium-241 with a concentration greater than three thousand five  
8           hundred nanocuries per gram, or curium-242 with a concentration greater than  
9           twenty thousand nanocuries per gram.
- 10        10. "Major generator state" means a party state that generates ten percent of the total  
11        amount of low-level radioactive waste produced within the compact region and  
12        disposed of at the regional disposal facility. If no party state other than California  
13        generates at least ten percent of the total amount, "major generator state" means the  
14        party state that is second to California in the amount of waste produced within the  
15        compact region and disposed of at the regional disposal facility.
- 16        11. "Management" means collection, consolidation, storage, packaging, or treatment.
- 17        12. "Operator" means a person who operates a regional disposal facility.
- 18        13. "Party state" means any state that has become a party in accordance with Article VII of  
19        this compact.
- 20        14. "Person" means an individual, corporation, partnership, or other legal entity, whether  
21        public or private.
- 22        15. "Postclosure period" means that period of time after completion of closure of a  
23        disposal facility during which the licensee observes, monitors, and carries out  
24        necessary maintenance and repairs at the disposal facility to assure that the disposal  
25        facility will remain stable and will not need ongoing active maintenance. This period  
26        ends with the beginning of the institutional control period.
- 27        16. "Regional disposal facility" means a nonfederal low-level radioactive waste disposal  
28        facility established and operated under this compact.
- 29        17. "Site closure and stabilization" means the activities of the disposal facility operator  
30        taken at the end of the disposal facility's operating life to assure the continued



- 1           county commissioners in whose district the regional disposal facility is located or  
2           being developed. If the board of county commissioners of the host county does  
3           not provide a list to the governor of at least seven candidates from which to  
4           choose, the governor shall appoint a resident of the host county as the host  
5           county member.
- 6           f. The host county member is subject to confirmation by the senate of the host state  
7           and serves at the pleasure of the governor of the host state.
- 8           2. The commission is a legal entity separate and distinct from the party states and is  
9           liable for its actions. Members of the commission are not personally liable for actions  
10           taken in their official capacity. The liabilities of the commission are not to be deemed  
11           liabilities of the party states.
- 12           3. The commission shall conduct its business affairs pursuant to the laws of the host  
13           state and disputes arising out of commission action must be governed by the laws of  
14           the host state. The commission must be located in the capital city of the host state in  
15           which the regional disposal facility is located.
- 16           4. The commission's records are subject to the host state's public records law, and the  
17           meetings of the commission must be open and public in accordance with the host  
18           state's open meeting law.
- 19           5. The commission members are public officials of the appointing state and are subject to  
20           the conflict of interest laws, as well as any other law, of the appointing state. The  
21           commission members must be compensated according to the appointing state's law.
- 22           6. Each commission member is entitled to one vote. A majority of the commission  
23           constitutes a quorum. Unless otherwise provided in this capacity, a majority of the total  
24           number of votes on the commission is necessary for the commission to take any  
25           action.
- 26           7. The commission has all of the following duties and authority:
- 27           a. The commission shall do, pursuant to the authority granted by this compact,  
28           whatever is reasonably necessary to ensure that low-level radioactive wastes are  
29           safely disposed of and managed within the region.
- 30           b. The commission shall meet at least once a year and otherwise as business  
31           requires.

1           c. The commission shall establish a compact surcharge to be imposed upon party  
2           state generators. The surcharge must be based upon the cubic feet of low-level  
3           radioactive waste and the radioactivity of the low-level radioactive waste and  
4           must be collected by the operator of the disposal facility.

5                     The host state shall set, and the commission shall impose, the surcharge  
6           after congressional approval of the compact. The amount of the surcharge must  
7           be sufficient to establish and maintain a reasonable level of funds for all of the  
8           following purposes:

9           (1) The activities of the commission and commission staff.

10          (2) At the discretion of the host state, a third-party liability fund to provide  
11          compensation for injury to persons or property during the operational,  
12          closure, stabilization, and postclosure and institutional control periods of the  
13          regional disposal facility. This paragraph does not limit the responsibility or  
14          liability of the operator, who shall comply with any federal or host state  
15          statutes or regulations regarding third-party liability claims.

16          (3) A local government reimbursement fund, for the purpose of reimbursing the  
17          local governmental entity or entities hosting the regional disposal facility for  
18          any costs or increased burdens on the local governmental entity for  
19          services, including, general fund expenses, the improvement and  
20          maintenance of roads and bridges, fire protection, law enforcement,  
21          monitoring by local health officials, and emergency preparation and  
22          response related to the hosting of the regional disposal facility.

23          d. The surcharges imposed by the commission for purposes of paragraphs 2 and 3  
24          of subdivision c and surcharges pursuant to subdivision c of subsection 5 of  
25          Article IV must be transmitted on a monthly basis to the host state for distribution  
26          to the proper accounts.

27          e. The commission shall establish a fiscal year that conforms to the fiscal years of  
28          the party states to the extent possible.

29          f. The commission shall keep an accurate account of all receipts and  
30          disbursements. An annual audit of the books of the commission must be

1           conducted by an independent certified public accountant, and the audit report  
2           must be made a part of the annual report of the commission.

3           g. The commission shall prepare and include in the annual report a budget showing  
4           anticipated receipts and disbursements for the subsequent fiscal year.

5           h. The commission may accept any grants, equipment, supplies, materials, or  
6           services, conditional or otherwise, from the federal government or a state  
7           government. The nature, amount and condition, if any, of any donation, grant, or  
8           other resources accepted pursuant to this subdivision and the identity of the  
9           donor or grantor must be detailed in the annual report of the commission.

10                   However, the host state is entitled to receive, for the uses specified in  
11                   subparagraph E of paragraph 2 of subsection d of section 2021e of title 42 of the  
12                   United States Code, any payments paid from the special escrow account for  
13                   which the secretary of energy is trustee pursuant to subparagraph A of  
14                   paragraph 2 of subsection d of section 2021e of title 42 of the United States  
15                   Code.

16           i. The commission shall submit communications to the governors and to the  
17           presiding officers of the legislative assemblies of the party states regarding the  
18           activities of the commission, including an annual report to be submitted on or  
19           before January fifteenth of each year. The commission shall include in the annual  
20           report a review of, and recommendations for, low-level radioactive waste disposal  
21           methods that are alternative technologies to the shallow land burial of low-level  
22           radioactive waste.

23           j. The commission shall assemble and make available to the party states, and to  
24           the public, information concerning low-level radioactive waste management  
25           needs, technologies, and problems.

26           k. The commission shall keep a current inventory of all generators within the region,  
27           based upon information provided by the party states.

28           l. The commission shall keep a current inventory of all regional disposal facilities,  
29           including information on the size, capacity, location, specific low-level radioactive  
30           wastes capable of being managed, and the projected useful life of each regional  
31           disposal facility.

- 1           m. The commission may establish advisory committees for the purpose of advising  
2           the commission on the disposal and management of low-level radioactive waste.
- 3           n. The commission may enter into contracts to carry out its duties and authority,  
4           subject to projected resources. No contract made by the commission may bind a  
5           party state.
- 6           o. The commission shall prepare contingency plans, with the cooperation and  
7           approval of the host state, for the disposal and management of low-level  
8           radioactive waste in the event that any regional disposal facility should be closed.
- 9           p. The commission may sue and be sued and, when authorized by a majority vote  
10           of the members, may seek to intervene in an administrative or judicial proceeding  
11           related to this compact.
- 12           q. The commission must be managed by an appropriate staff, including an  
13           executive director. Notwithstanding any other provision of law, the commission  
14           may hire or retain, or both, legal counsel.
- 15           r. The commission may, subject to applicable federal and state laws, recommend to  
16           the appropriate host state authority suitable land and rail transportation routes for  
17           low-level radioactive waste carriers.
- 18           s. The commission may enter into an agreement to import low-level radioactive  
19           waste into the region only if both of the following requirements are met:
- 20           (1) The commission approves the importation agreement by a two-thirds vote of  
21           the commission.
- 22           (2) The commission and the host state assess the affected regional disposal  
23           facilities' capability to handle imported low-level radioactive wastes and any  
24           relevant environmental or economic factors, as defined by the host state's  
25           appropriate regulatory authorities.
- 26           t. The commission may, upon petition, allow an individual generator, a group of  
27           generators, or the host state of the compact, to export low-level radioactive  
28           wastes to a low-level radioactive waste disposal facility located outside the  
29           region. The commission may approve the petition only by a two-thirds vote of the  
30           commission. The permission to export low-level radioactive wastes is effective for

- 1           that period of time and for the amount of low-level radioactive waste, and subject  
2           to any other term or condition, which may be determined by the commission.  
3           u. The commission may approve, only by a two-thirds vote of the commission, the  
4           exportation outside the region of material, which otherwise meets the criteria of  
5           low-level radioactive waste, if the sole purpose of the exportation is to process  
6           the material for recycling.  
7           v. The commission shall, not later than ten years before the closure of the initial or  
8           subsequent regional disposal facility, prepare a plan for the establishment of the  
9           next regional disposal facility.

10       **ARTICLE IV - RIGHTS, RESPONSIBILITIES, AND OBLIGATIONS OF PARTY STATES**

- 11       1. There must be regional disposal facilities sufficient to dispose of the low-level  
12       radioactive waste generated within the region.  
13       2. Low-level radioactive waste generated within the region must be disposed of at  
14       regional disposal facilities and each party state must have access to any regional  
15       disposal facility without discrimination.  
16       3. a. Upon the effective date of this compact, California must serve as the host state  
17       and must comply with the requirements of subsection 5 for at least thirty years  
18       from the date the regional disposal facility begins to accept low-level radioactive  
19       waste for disposal. The extension of the obligation and duration is at the option of  
20       California.  
21               If California does not extend this obligation, the party state, other than  
22       California, which is the largest major generator state, must then serve as the host  
23       state for the second regional disposal facility.  
24               The obligation of a host state which hosts the second regional disposal  
25       facility must also run for thirty years from the date the second regional disposal  
26       facility begins operations.  
27       b. The host state may close its regional disposal facility when necessary for public  
28       health or safety.  
29       4. The party states of this compact cannot be members of another regional low-level  
30       radioactive waste compact entered into pursuant to the Low-Level Radioactive Waste

1 Policy Act, as amended by the Low-Level Radioactive Waste Policy Amendments Act  
2 of 1985 [42 U.S.C. 2021b - 2021j].

3 5. A host state shall do all of the following:

- 4 a. Cause a regional disposal facility to be developed on a timely basis.  
5 b. Ensure by law, consistent with any applicable federal laws, the protection and  
6 preservation of public health and safety in the siting, design, development,  
7 licensing, regulation, operation, closure, decommissioning, and long-term care of  
8 the regional disposal facilities within the state.  
9 c. Ensure that charges for disposal of low-level radioactive waste at the regional  
10 disposal facility are reasonably sufficient to do all of the following:  
11 (1) Ensure the safe disposal of low-level radioactive waste and long-term care  
12 of the regional disposal facility.  
13 (2) Pay for the cost of inspection, enforcement, and surveillance activities at the  
14 regional disposal facility.  
15 (3) Assure that charges are assessed without discrimination as to the party  
16 state of origin.  
17 d. Submit an annual report to the commission on the status of the regional disposal  
18 facility including projections of the facility's anticipated future capacity.  
19 e. The host state and the operator shall notify the commission immediately upon the  
20 occurrence of any event which could cause a possible temporary or permanent  
21 closure of a regional disposal facility.

22 6. Each party state is subject to the following duties and authority:

- 23 a. To the extent authorized by federal law, each party state shall develop and  
24 enforce procedures requiring low-level radioactive waste shipments originating  
25 within its borders and destined for a regional disposal facility to conform to  
26 packaging and transportation requirements and regulations. These procedures  
27 must include all of the following requirements:  
28 (1) Periodic inspections of packaging and shipping practices.  
29 (2) Periodic inspections of low-level radioactive waste containers while in the  
30 custody of transporters.  
31 (3) Appropriate enforcement actions with respect to violations.

- 1           b. A party state may impose a surcharge on the low-level radioactive waste  
2           generators within the state to pay for activities required by subdivision a.
- 3           c. To the extent authorized by federal law, each party state shall, after receiving  
4           notification from a host state that a person in a party state has violated  
5           packaging, shipping, or transportation requirements or regulations, take  
6           appropriate actions to ensure that these violations do not continue. Appropriate  
7           actions include requiring that a bond be posted by the violator to pay the cost of  
8           repackaging at the regional disposal facility and prohibiting future shipments to  
9           the regional disposal facility.
- 10          d. Each party state shall maintain a registry of all generators within the state that  
11          may have low-level radioactive waste to be disposed of at a regional disposal  
12          facility, including the amount of low-level radioactive waste and the class of  
13          low-level radioactive waste generated by each generator.
- 14          e. Each party state shall encourage generators within its borders to minimize the  
15          volume of low-level radioactive waste requiring disposal.
- 16          f. Each party state may rely on the good-faith performance of the other party states  
17          to perform those acts that are required by this compact to provide regional  
18          disposal facilities, including the use of the regional disposal facilities in a manner  
19          consistent with this compact.
- 20          g. Each party state shall provide the commission with any data and information  
21          necessary for the implementation of the commission's responsibilities, including  
22          taking those actions necessary to obtain this data or information.
- 23          h. Each party state shall agree that only low-level radioactive waste generated  
24          within the jurisdiction of the party states may be disposed of in the regional  
25          disposal facility, except as provided in subdivision s of subsection 7 of Article III.
- 26          i. Each party state shall agree that if there is any injury to persons or property  
27          resulting from the operation of a regional disposal facility, the damages resulting  
28          from the injury may be paid from the third-party liability fund pursuant to  
29          paragraph 2 of subdivision c of subsection 7 of Article III, only to the extent that  
30          the damages exceed the limits of liability insurance carried by the operator. No  
31          party state, by joining this compact, assumes any liability resulting from the siting.

1           operation, maintenance, long-term care, or other activity relating to a regional  
2           facility, and no party state is liable for any harm or damage resulting from a  
3           regional facility not located within the state.

4                           **ARTICLE V - APPROVAL OF REGIONAL FACILITIES**

5           A regional disposal facility must be approved by the host state in accordance with its laws.  
6    This compact does not confer any authority on the commission regarding the siting, design,  
7    development, licensing, or other regulation, or the operation, closure, decommissioning, or  
8    long-term care of, any regional disposal facility within a party state.

9                           **ARTICLE VI - PROHIBITED ACTS AND PENALTIES**

- 10          1.   No person may dispose of low-level radioactive waste within the region unless the  
11            disposal is at a regional disposal facility, except as otherwise provided in subdivisions t  
12            and u of subsection 7 of Article III.
- 13          2.   No person may dispose of or manage any low-level radioactive waste within the region  
14            unless the low-level radioactive waste was generated within the region, except as  
15            provided in subdivisions s, t, and u of subsection 7 of Article III.
- 16          3.   Violations of this section must be reported to the appropriate law enforcement agency  
17            within the party state's jurisdiction.
- 18          4.   Violations of this section may result in prohibiting the violator from disposing of  
19            low-level radioactive waste in the regional disposal facility, as determined by the  
20            commission or the host state.

21                           **ARTICLE VII - ELIGIBILITY, ENTRY INTO EFFECT,**

22                           **CONGRESSIONAL CONSENT, WITHDRAWAL, EXCLUSION**

- 23          1.   Arizona, North Dakota, South Dakota, and California are eligible to become parties to  
24            this compact. Any other state may be made eligible by a majority vote of the  
25            commission and ratification by the legislative assemblies of all of the party states by  
26            statute, and upon compliance with those terms and conditions for eligibility which the  
27            host state may establish. The host state may establish all terms and conditions for the  
28            entry of any state, other than the states named in this subsection, as a member of this  
29            compact.
- 30          2.   Upon compliance with the other provisions of this compact, an eligible state may  
31            become a party state by legislative enactment of this compact or by executive order of

1           the governor of the state adopting this compact. A state becoming a party state by  
2           executive order ceases to be a party state upon adjournment of the first general  
3           session of its legislative assembly convened after the executive order is issued, unless  
4           before the adjournment the legislative assembly enacts this compact.

- 5           3. A party state, other than the host state, may withdraw from the compact by repealing  
6           the enactment of this compact, but this withdrawal does not become effective until two  
7           years after the effective date of the repealing legislation. If a party state which is a  
8           major generator of low-level radioactive waste voluntarily withdraws from the compact  
9           pursuant to this subsection, that state shall make arrangements for the disposal of the  
10           other party states' low-level radioactive waste for a time period equal the period of  
11           time it was a member of this compact.

12                   If the host state withdraws from the compact, the withdrawal does not become  
13           effective until five years after the effective date of the repealing legislation.

- 14           4. A party state may be excluded from this compact by a two-thirds vote of the  
15           commission members, acting in a meeting, if the state to be excluded has failed to  
16           carry out any obligations required by this compact.

- 17           5. This compact takes effect upon the enactment by statute by the legislatures of  
18           California and at least one other eligible state and upon the consent of Congress and  
19           remains in effect until otherwise provided by federal law. This compact is subject to  
20           review by Congress and the withdrawal of the consent of Congress every five years  
21           after its effective date, pursuant to federal law.

#### 22                   **ARTICLE VIII - CONSTRUCTION AND SEVERABILITY**

- 23           1. This compact must be broadly construed to carry out the purposes of the compact, but  
24           the sovereign powers of a party state may not be infringed unnecessarily.  
25           2. This compact does not affect any judicial proceeding pending on the effective date of  
26           this compact.  
27           3. If any provision of this compact or the application thereof to any person or  
28           circumstances is held invalid, that invalidity does not affect other provisions or  
29           applications of the compact which can be given effect without the invalid provision or  
30           application, and to this end the provisions of this compact are severable.

- 1       4. Nothing in this compact diminishes or otherwise impairs the jurisdiction, authority, or  
2       discretion of either of the following:  
3       a. The nuclear regulatory commission pursuant to the Atomic Energy Act of 1954,  
4       as amended [42 U.S.C. 2011 et seq.].  
5       b. An agreement state under section 274 of the Atomic Energy Act of 1954, as  
6       amended [42 U.S.C. 2021].  
7       5. Nothing in this compact confers any new authority on the states or commission to do  
8       any of the following:  
9       a. Regulate the packaging or transportation of low-level radioactive waste in a  
10       manner inconsistent with the regulations of the nuclear regulatory commission or  
11       the United States department of transportation.  
12       b. Regulate health, safety, or environmental hazards from source, byproduct, or  
13       special nuclear material.  
14       c. Inspect the activities of licensees of the agreement states or of the nuclear  
15       regulatory commission.

16       **SECTION 21.** Chapter 23.1-06 of the North Dakota Century Code is created and enacted  
17 as follows:

18       **23.1-06-01. Definitions.**

19       For purposes of this chapter:

- 20       1. "Air contaminant" means any solid, liquid, gas, or odorous substance, or any  
21       combination of solid, liquid, gas, or odorous substance.  
22       2. "Air pollution" means the presence in the outdoor atmosphere of one or more air  
23       contaminants in such quantities and duration as may be injurious to human health,  
24       welfare, or property, animal or plant life, or which unreasonably interferes with the  
25       enjoyment of life or property.  
26       3. "Air quality standard" means an established concentration, exposure time, or  
27       frequency of occurrence of a contaminant or multiple contaminants in the ambient air  
28       which may not be exceeded.  
29       4. "Ambient air" means the surrounding outside air.  
30       5. "Asbestos abatement" means any demolition, renovation, salvage, repair, or  
31       construction activity which involves the repair, enclosure, encapsulation, removal,

1 handling, or disposal of more than three square feet [0.28 square meter] or three linear  
2 feet [0.91 meter] of friable asbestos material. Asbestos abatement also means any  
3 inspections, preparation of management plans, and abatement project design for both  
4 friable and nonfriable asbestos material.

5 6. "Asbestos contractor" means any person that contracts to perform asbestos  
6 abatement for another.

7 7. "Asbestos worker" means any individual engaged in the abatement of more than three  
8 square feet [0.28 square meter] or three linear feet [0.91 meter] of friable asbestos  
9 material, except for individuals engaged in abatement at their private residence.

10 8. "Department" means the department of environmental quality.

11 9. "Emission" means a release of air contaminants into the ambient air.

12 10. "Emission standard" means a limitation on the release of any air contaminant into the  
13 ambient air.

14 11. "Friable asbestos material" means any material containing more than one percent  
15 asbestos that hand pressure or mechanical forces expected to act on the material can  
16 crumble, pulverize, or reduce to powder when dry.

17 12. "Indirect air contaminant source" means any facility, building, structure, or installation,  
18 or any combination that can reasonably be expected to cause or induce emissions of  
19 air contaminants.

20 13. "Lead-based paint" means paint or other surface coatings that contain lead equal to or  
21 in excess of one milligram per square centimeter or more than one-half percent by  
22 weight.

23 **23.1-06-02. Declaration of public policy and legislative intent.**

24 It is the public policy of this state and the legislative intent of this chapter to achieve and  
25 maintain the best air quality possible, consistent with the best available control technology, to  
26 protect human health, welfare, and property, to prevent injury to plant and animal life, to  
27 promote the economic and social development of this state, to foster the comfort and  
28 convenience of the people, and to facilitate the enjoyment of the natural attractions of this state.

1        **23.1-06-03. Environmental review advisory council - Public hearing and rule**  
2 **recommendations.**

3        The environmental review advisory council shall hold a public hearing to consider and  
4 recommend the adoption, amendment, or repeal of rules and standards under this chapter.  
5 Notice of the public hearing must be given by publication in each of the official county  
6 newspapers within the state on at least two occasions, one week apart, the last publication  
7 being at least thirty days before the first hearing. The hearing must be held in the state capitol,  
8 and interested parties may present witnesses and other evidence relevant to proposed rules  
9 and standards under this chapter. The council shall consider any other matters related to this  
10 chapter and may make recommendations to the department concerning the administration of  
11 this chapter.

12        **23.1-06-04. Power and duties of the department.**

- 13        1. The department shall develop and coordinate a statewide program of air pollution  
14 control. To accomplish this, the department shall:
- 15        a. Encourage the voluntary cooperation of persons to achieve the purposes of this  
16 chapter.
  - 17        b. Determine by scientifically oriented field studies and sampling the degree of air  
18 pollution in the state and the several parts thereof.
  - 19        c. Encourage and conduct studies, investigations, and research relating to air  
20 pollution and its causes, effects, prevention, abatement, and control.
  - 21        d. Advise, consult, and cooperate with other public agencies and with affected  
22 groups and industries.
  - 23        e. Issue orders necessary to effectuate the purposes of this chapter and enforce the  
24 orders by all appropriate administrative and judicial procedures.
  - 25        f. Provide rules relating to the construction of any new direct or indirect air  
26 contaminant source or modification of any existing direct or indirect air  
27 contaminant source which the department determines will prevent the attainment  
28 or maintenance of any ambient air quality standard, and require that before  
29 commencing construction or modification of any such source, the owner or  
30 operator shall submit the information necessary to permit the department to make  
31 this determination.

- 1           g. Establish ambient air quality standards for the state which may vary according to  
2           appropriate areas.
- 3           h. Formulate and adopt emission control requirements for the prevention,  
4           abatement, and control of air pollution in this state including achievement of  
5           ambient air quality standards.
- 6           i. Hold hearings relating to the administration of this chapter, and compel the  
7           attendance of witnesses and the production of evidence.
- 8           j. Require the owner or operator of a regulated air contaminant source to establish  
9           and maintain records; make reports; install, use, and maintain monitoring  
10           equipment or methods; sample emissions in accordance with those methods at  
11           designated locations and intervals, and using designated procedures; and  
12           provide other information as may be required.
- 13           k. Provide by rules a procedure for handling applications for a variance for any  
14           person that owns or is in control of any plant, establishment, process, or  
15           equipment. The granting of a variance is not a right of the applicant but must be  
16           in the discretion of the department.
- 17           l. Provide by rules any procedures necessary and appropriate to develop,  
18           implement, and enforce any air pollution prevention and control program  
19           established by the federal Clean Air Act [42 U.S.C. 7401 et seq.], as amended,  
20           the authorities and responsibilities of which are delegatable to the state by the  
21           United States environmental protection agency. The rules may include  
22           enforceable ambient standards, emission limitations, and other control measures,  
23           means, techniques, or economic incentives, including fees, marketable permits,  
24           and auctions of emissions rights, as provided by the Act. The department shall  
25           develop and implement the federal programs if the department determines that  
26           doing so benefits the state.
- 27           m. Provide by rules a program for implementing lead-based paint remediation  
28           training, certification, and performance requirements in accordance with title 40,  
29           Code of Federal Regulations, part 745, sections 220, 223, 225, 226, 227, and  
30           233.

1       2. After consultation with the advisory council, the department may adopt, amend, and  
2       repeal rules under this chapter.

3       **23.1-06-05. Licensing of asbestos and lead-based paint contractors and certification**  
4 **of asbestos and lead-based paint workers.**

5       1. The department shall administer and enforce a licensing program for asbestos  
6       contractors and lead-based paint contractors and a certification program for asbestos  
7       workers and lead-based paint workers. To do so, the department shall:

8       a. Require training of, and to examine, asbestos workers and lead-based paint  
9       workers.

10      b. Establish standards and procedures for the licensing of contractors, and the  
11      certification of asbestos workers engaging in the abatement of friable asbestos  
12      materials or nonfriable asbestos materials that become friable during abatement,  
13      and establish performance standards for asbestos abatement. The performance  
14      standards will be as stringent as those standards adopted by the United States  
15      environmental protection agency pursuant to section 112 of the federal Clean Air  
16      Act [42 U.S.C. 7401 et seq.], as amended.

17      c. Establish standards and procedures for licensing contractors and certifying  
18      lead-based paint workers engaging in the abatement of lead-based paint, and  
19      establish performance standards for lead-based paint abatement in accordance  
20      with title 40, Code of Federal Regulations, part 745, sections 220, 223, 225, 226,  
21      227, and 233.

22      d. Issue certificates to all applicants who satisfy the requirements for certification  
23      under this section and any rules under this section, renew certificates, and  
24      suspend or revoke certificates for cause after notice and opportunity for hearing.

25      e. Establish an annual fee and renewal fees for licensing asbestos contractors and  
26      lead-based paint contractors and certifying asbestos and lead-based paint  
27      workers, and establish examination fees for asbestos and lead-based paint  
28      workers under section 23.1-06-10. The annual, renewal, and examination fees for  
29      lead-based contractors and workers may not exceed those charged to asbestos  
30      contractors and workers.

- 1           f. Establish indoor environmental nonoccupational air quality standards for  
2           asbestos.
- 3           g. Adopt and enforce rules as necessary for the implementation of this section.
- 4           2. For nonpublic employees performing asbestos abatement in facilities or on facility  
5           components owned or leased by their employer, only the provisions of rules adopted in  
6           accordance with the federal Asbestos Hazard Emergency Response Act of 1986 [Pub.  
7           L. 99-519; 100 Stat. 2970; 15 U.S.C. 2641 et seq.], as amended, or the federal Clean  
8           Air Act [Pub. L. 95-95; 91 Stat. 685; 42 U.S.C. 7401 et seq.], as amended, apply to this  
9           section. This does not include ownership that was acquired solely to effect a  
10          demolition or renovation.

11           **23.1-06-06. Sulfur dioxide ambient air quality standards more strict than federal**  
12           **standards prohibited.**

13           The department may not adopt ambient air quality rules or standards for sulfur dioxide that  
14           affect coal conversion facilities or petroleum refineries that are more strict than federal rules or  
15           standards under the federal Clean Air Act [42 U.S.C. 7401 et seq.], nor may the department  
16           adopt ambient air quality rules or standards for sulfur dioxide that affect these facilities and  
17           refineries when there are no corresponding federal rules or standards. Any ambient air quality  
18           standards that have been adopted by the department for sulfur dioxide that are more strict than  
19           federal rules or standards under the federal Clean Air Act, or for which there are no  
20           corresponding federal rules or standards, are void as to coal conversion facilities and petroleum  
21           refineries. However, the department may adopt rules for dealing with exposures of less than  
22           one hour to sulfur dioxide emissions on a source-by-source basis pursuant to any regulatory  
23           program for dealing with short-term exposures to sulfur dioxide that may be established under  
24           the federal Clean Air Act. Any intervention levels or standards set forth in the rules may not be  
25           more strict than federal levels or standards recommended or adopted under the federal  
26           program. In adopting the rules, the department shall follow all other provisions of state law  
27           governing the department's adoption of ambient air quality rules when there are no mandatory  
28           corresponding federal rules or standards.

1       **23.1-06-07. Requirements for adoption of air quality rules more strict than federal**  
2 **standards.**

3       1. Notwithstanding any other provisions of this title, the department may not adopt air  
4 quality rules or standards affecting coal conversion and associated facilities, petroleum  
5 refineries, or oil and gas production and processing facilities which are more strict than  
6 federal rules or standards under the federal Clean Air Act [42 U.S.C. 7401 et seq.], nor  
7 may the department adopt air quality rules or standards affecting such facilities when  
8 there are no corresponding federal rules or standards, unless the more strict or  
9 additional rules or standards are based on a risk assessment that demonstrates a  
10 substantial probability of significant impacts to public health or property, a cost-benefit  
11 analysis that affirmatively demonstrates that the benefits of the more stringent or  
12 additional state rules and standards will exceed the anticipated costs, and the  
13 independent peer reviews required by this section.

14       2. The department shall hold a hearing on any rules or standards proposed for adoption  
15 under this section on not less than ninety days' notice. The notice of hearing must  
16 specify all studies, opinions, and data that have been relied upon by the department  
17 and must state that the studies, risk assessment, and cost-benefit analysis that  
18 support the proposed rules or standards are available at the department for inspection  
19 and copying. If the department intends to rely upon any studies, opinions, risk  
20 assessments, cost-benefit analyses, or other information not available from the  
21 department when it gave its notice of hearing, the department shall give a new notice  
22 of hearing not less than ninety days before the hearing which clearly identifies the  
23 additional or amended studies, analyses, opinions, data, or information upon which the  
24 department intends to rely and conduct an additional hearing if the first hearing has  
25 already been held.

26       3. In this section:

27       a. "Cost-benefit analysis" means both the analysis and the written document that  
28 contains:

29       (1) A description and comparison of the benefits and costs of the rule and of the  
30 reasonable alternatives to the rule. The analysis must include a  
31 quantification or numerical estimate of the quantifiable benefits and costs.

1                   The quantification or numerical estimate must use comparable assumptions,  
2                   including time periods, specify the ranges of predictions, and explain the  
3                   margins of error involved in the quantification methods and estimates being  
4                   used. The costs that must be considered include the social, environmental,  
5                   and economic costs that are expected to result directly or indirectly from  
6                   implementation or compliance with the proposed rule.

7                   (2) A reasonable determination whether as a whole the benefits of the rule  
8                   justify the costs of the rule and that the rule will achieve the rulemaking  
9                   objectives in a more cost-effective manner than other reasonable  
10                  alternatives, including the alternative of no government action. In evaluating  
11                  and comparing the costs and benefits, the department may not rely on cost,  
12                  benefit, or risk assessment information that is not accompanied by data,  
13                  analysis, or supporting materials that would enable the department and  
14                  other persons interested in the rulemaking to assess the accuracy, reliability,  
15                  and uncertainty factors applicable to the information.

16                  b. "Risk assessment" means both the process used by the department to identify  
17                  and quantify the degree of toxicity, exposure, or other risk posed for the exposed  
18                  individuals, populations, or resources, and the written document containing an  
19                  explanation of how the assessment process has been applied to an individual  
20                  substance, activity, or condition. The risk assessment must include a discussion  
21                  that characterizes the risks being assessed. The risk characterization must  
22                  include the following elements:

23                  (1) A description of the exposure scenarios used, the natural resources or  
24                  subpopulations being exposed, and the likelihood of these exposure  
25                  scenarios expressed in terms of probability.

26                  (2) A hazard identification that demonstrates whether exposure to the  
27                  substance, activity, or condition identified is causally linked to an adverse  
28                  effect.

29                  (3) The major sources of uncertainties in the hazard identification,  
30                  dose-response, and exposure assessment portions of the risk assessment.

- 1           (4) When a risk assessment involves a choice of any significant assumption,  
2           inference, or model, the department, in preparing the risk assessment, shall:  
3           (a) Rely only upon environmental protection agency-approved air  
4           dispersion models.  
5           (b) Identify the assumptions, inferences, and models that materially affect  
6           the outcome.  
7           (c) Explain the basis for any choices.  
8           (d) Identify any policy decisions or assumptions.  
9           (e) Indicate the extent to which any model has been validated by, or  
10          conflicts with, empirical data.  
11          (f) Describe the impact of alternative choices of assumptions, inferences,  
12          or mathematical models.  
13          (5) The range and distribution of exposures and risks derived from the risk  
14          assessment.  
15          c. The risk assessment and cost-benefit analysis performed by the department  
16          must be independently peer reviewed by qualified experts selected by the  
17          environmental review advisory council.  
18          4. This section applies to any petition submitted to the department under section  
19          23.1-01-04 which identifies air quality rules or standards affecting coal conversion  
20          facilities or petroleum refineries that are more strict than federal rules or standards  
21          under the federal Clean Air Act [42 U.S.C. 7401 et seq.] or for which there are no  
22          corresponding federal rules or standards, regardless of whether the department has  
23          previously adopted the more strict or additional rules or standards pursuant to section  
24          23.1-01-04. This section also applies to any petitions filed under section 23.1-01-04  
25          affecting coal conversion facilities or petroleum refineries that are pending on the  
26          effective date of this section for which new rules or standards have not been adopted,  
27          and the department shall have a reasonable amount of additional time to comply with  
28          the more stringent requirements of this section. To the extent section 23.1-01-04.1  
29          conflicts with this section, the provisions of this section govern. This section does not  
30          apply to existing rules that set air quality standards for odor, hydrogen sulfide, visible

1           and fugitive emissions, or emission standards for particulate matter and sulfur dioxide,  
2           but does apply to new rules governing those standards.

3           **23.1-06-08. Classification and reporting of air pollution sources.**

- 4           1. After consultation with the environmental review advisory council the department, by  
5           rule, may classify air contaminant sources according to levels and types of emissions  
6           and other criteria that relate to air pollution, and may require reporting for any class.  
7           Classifications made under this subsection may apply to the state as a whole or to any  
8           designated area of the state, and must be made with special reference to effects on  
9           health, economic, and social factors and physical effects on property.  
10          2. A person operating or responsible for the operation of air contaminant sources of any  
11          class for which reporting is required shall make reports containing information the  
12          department deems relevant to air pollution.

13          **23.1-06-09. Permits or registration.**

- 14          1. A person may not construct, install, modify, use, or operate an air contaminant source  
15          designated by regulation, capable of causing or contributing to air pollution, either  
16          directly or indirectly, without a permit from the department or in violation of any  
17          conditions imposed by the permit.  
18          2. The department shall provide for the issuance, suspension, revocation, and renewal of  
19          permits that it requires under this section.  
20          3. The department may require applications for permits to be accompanied by plans,  
21          specifications, and other information it deems necessary.  
22          4. Possession of an approved permit or registration certificate does not relieve any  
23          person of the responsibility to comply with applicable emission limitations or with any  
24          other law or rule, and does not relieve any person from the requirement to possess a  
25          valid contractor's license issued under chapter 43-07.  
26          5. The department by rule may provide for registration and registration renewal of certain  
27          air contaminant sources in lieu of a permit.  
28          6. The department may exempt by rule certain air contaminant sources from the permit  
29          or registration requirements in this section when the department makes a finding the  
30          exemption will not be contrary to section 23.1-06-02.

1        **23.1-06-10. Fees - Deposit in operating fund.**

2        The department by rule may prescribe and provide for the payment and collection of  
3 reasonable fees for of permits and registration certificates. The fees must be based on the  
4 anticipated cost of filing and processing the application, taking action on the requested permit or  
5 registration certificate, and conducting an inspection program to determine compliance or  
6 noncompliance with the permit or registration certificate. Any moneys collected for permit or  
7 registration fees must be deposited in the department operating fund in the state treasury and  
8 must be spent subject to appropriation by the legislative assembly.

9        **23.1-06-11. Right of onsite inspection.**

- 10        1. Any duly authorized officer, employee, or agent of the department may enter and  
11 inspect any property, premise, or place on or at which an air contaminant source is  
12 located or is being constructed, installed, or established at any reasonable time for the  
13 purpose of ascertaining the state of compliance with this chapter and related rules. If  
14 requested, the owner or operator of the premises must receive a report setting forth all  
15 facts found which relate to compliance status.
- 16        2. The department may conduct tests and take samples of air contaminants, fuel,  
17 process material, and other materials that may affect emission of air contaminants  
18 from any source, and may have access to and copy any records required by  
19 department rules to be maintained, and may inspect monitoring equipment located on  
20 the premises. Upon request of the department, the person responsible for the source  
21 to be tested shall provide necessary holes in stacks or ducts and other safe and  
22 proper sampling, and testing facilities exclusive of instruments and sensing devices  
23 necessary for proper determination of the emission of air contaminants. If an  
24 authorized representative of the department, during the course of an inspection,  
25 obtains a sample of air contaminant, fuel, process material, or other material, the  
26 representative shall issue a receipt for the sample obtained to the owner or operator  
27 of, or person responsible for, the source tested.
- 28        3. To ascertain the state of compliance with this chapter and any applicable rules, a duly  
29 authorized officer, employee, or agent of the department may enter and inspect, at any  
30 reasonable time, any property, premises, or place on or at which a lead-based paint  
31 remediation activity is ongoing. If requested, the department shall provide to the owner

1           or operator of the premises a report that sets forth all facts found which relate to  
2           compliance status.

3           **23.1-06-12. Confidentiality of records.**

4           1. Any record, report, or information obtained under this chapter must be available to the  
5           public. However, upon a showing satisfactory to the department that disclosure to the  
6           public of a part of the record, report, or information, other than emission data, to which  
7           the department has access under this chapter, would divulge trade secrets, the  
8           department shall consider that part of the record, report, or information confidential.

9           2. This section may not prevent disclosure of any report, or record of information to  
10           federal, state, or local agencies when necessary for purposes of administration of any  
11           federal, state, or local air pollution control laws, or when relevant in any proceeding  
12           under this chapter.

13           **23.1-06-13. Administrative procedure and judicial review.**

14           Any proceeding under this chapter for the issuance or modification of rules and regulations,  
15           including emergency orders relating to control of air pollution, or determining compliance with  
16           rules and regulations of the department, must be conducted in accordance with chapter 28-32.  
17           Appeals from the proceeding may be taken under chapter 28-32. When an emergency exists  
18           requiring immediate action to protect the public health and safety, the department may, without  
19           notice or hearing, issue an order reciting the existence of the emergency and requiring action  
20           be taken as necessary to meet the emergency. Notwithstanding any provision of this chapter,  
21           the order must be effective immediately, but on application to the department an interested  
22           person must be afforded a hearing before the environmental review advisory council within ten  
23           days. On the basis of the hearing, the emergency order must be continued, modified, or  
24           revoked within thirty days after the hearing. Except as provided for in this section, notice of any  
25           hearing held under this chapter must be issued at least thirty days before the date specified for  
26           the hearing.

27           **23.1-06-14. Enforcement - Penalties - Injunctions.**

28           1. A person that willfully violates this chapter, or any permit condition, rule, order,  
29           limitation, or other applicable requirement implementing this chapter, is subject to a  
30           fine of not more than ten thousand dollars per day per violation, or by imprisonment for  
31           not more than one year, or both. If the conviction is for a violation committed after a

1 first conviction of the person under this subsection, punishment must be a fine of not  
2 more than twenty thousand dollars per day per violation, or by imprisonment for not  
3 more than two years, or both.

4 2. A person that violates this chapter, or any permit condition, rule, order, limitation, or  
5 other applicable requirement implementing this chapter, with criminal negligence, is  
6 subject to a fine of not more than ten thousand dollars per day per violation, or by  
7 imprisonment for not more than six months, or both.

8 3. A person that knowingly makes any false statement, representation, or certification in  
9 any application, record, report, plan, or other document filed or required to be  
10 maintained under this chapter or any permit condition, rule, order, limitation, or other  
11 applicable requirement implementing this chapter, or that falsifies, tampers with, or  
12 knowingly renders inaccurate any monitoring device or method required to be  
13 maintained under this chapter or any permit condition, rule, order, limitation, or other  
14 applicable requirement implementing this chapter, upon conviction, is subject to a fine  
15 of not more than ten thousand dollars per day per violation, or by imprisonment for not  
16 more than six months, or both.

17 4. A person the violates this chapter, or any permit condition, rule, order, limitation, or  
18 other applicable requirement implementing this chapter, is subject to a civil penalty not  
19 to exceed ten thousand dollars per day per violation.

20 5. Without prior revocation of any pertinent permits, the department, in accordance with  
21 the laws of this state governing injunction or other process, may maintain an action in  
22 the name of the state against any person to enjoin a threatened or continuing violation  
23 of any provision of this chapter or any permit condition, rule, order, limitation, or other  
24 applicable requirement implementing this chapter.

25 **23.1-06-15. Regulation of odors - Rules.**

26 1. In areas located within a city or the area over which a city has exercised extraterritorial  
27 zoning as defined in section 40-47-01.1, a person may not discharge into the ambient  
28 air any objectionable odorous air contaminant that measures seven odor concentration  
29 units or higher outside the property boundary where the discharge is occurring. If an  
30 agricultural operation as defined by section 42-04-01 has been in operation for more  
31 than one year, as provided by section 42-04-02, and the person making the odor

1 complaint was built or established after the agricultural operation was established, the  
2 measurement for compliance with the seven odor concentration units standard must  
3 be taken within one hundred feet [30.48 meters] of the subsequently established  
4 residence, church, school, business, or public building making the complaint rather  
5 than at the property boundary of the agricultural operation. The measurement may not  
6 be taken within five hundred feet [.15 kilometer] of the property boundary of the  
7 agricultural operation.

8 2. In areas located outside a city or outside the area over which a city has exercised  
9 extraterritorial zoning as defined in section 40-47-01.1, a person may not discharge  
10 into the ambient air any objectionable odorous air contaminant that causes odors that  
11 measure seven odor concentration units or higher as measured at any of the following  
12 locations:

13 a. Within one hundred feet [30.48 meters] of any residence, church, school,  
14 business, or public building, or within a campground or public park. An odor  
15 measurement may not be taken at the residence of the owner or operator of the  
16 source of the odor, or at any residence, church, school, business, or public  
17 building, or within a campground or public park, that is built or established within  
18 one-half mile [.80 kilometer] of the source of the odor after the source of the odor  
19 has been built or established;

20 b. At any point located beyond one-half mile [.80 kilometer] from the source of the  
21 odor, except for property owned by the owner or operator of the source of the  
22 odor, or over which the owner or operator of the source of the odor has  
23 purchased an odor easement; or

24 c. If a county or township has zoned or established a setback distance for an animal  
25 feeding operation which is greater than one-half mile [.80 kilometer] under either  
26 section 11-33-02.1 or 58-03-11.1, or if the setback distance under subsection 7 is  
27 greater than one-half mile [.80 kilometer], measurements for compliance with the  
28 seven odor concentration units standard must be taken at the setback distance  
29 rather than one-half mile [.80 kilometer] from the facility under subdivision b,  
30 except for any residence, church, school, business, public building, park, or  
31 campground within the setback distance which was built or established before

- 1           the animal feeding operation was established, unless the animal feeding  
2           operation has obtained an odor easement from the pre-existing facility.
- 3       3. An odor measurement may be taken only with a properly maintained scentometer, by  
4       an odor panel, or by another instrument or method approved by the department of  
5       environmental quality, and only by inspectors certified by the department who have  
6       successfully completed a department-sponsored odor certification course and  
7       demonstrated the ability to distinguish various odor samples and concentrations. If a  
8       certified inspector measures a violation of this section, the department may send a  
9       certified letter of apparent noncompliance to the person causing the apparent violation  
10       and may negotiate with the owner or operator for the establishment of an odor  
11       management plan and best management practices to address the apparent violation.  
12       The department shall give the owner or operator at least fifteen days to implement the  
13       odor management plan. If the odor problem persists, the department may proceed  
14       with an enforcement action provided at least two certified inspectors at the same time  
15       each measure a violation and then confirm the violation by a second odor  
16       measurement taken by each certified inspector, at least fifteen minutes, but no more  
17       than two hours, after the first measurement.
- 18       4. A person is exempt from this section while spreading or applying animal manure or  
19       other recycled agricultural material to land in accordance with a nutrient management  
20       plan approved by the department of environmental quality. A person is exempt from  
21       this section while spreading or applying animal manure or other recycled agricultural  
22       material to land owned or leased by that person in accordance with rules adopted by  
23       the department. An owner or operator of a lagoon or waste storage pond permitted by  
24       the department is exempt from this section in the spring from the time when the cover  
25       of the permitted lagoon or pond begins to melt until fourteen days after all the ice  
26       cover on the lagoon or pond has completely melted. Notwithstanding these  
27       exemptions, all persons shall manage their property and systems to minimize the  
28       impact of odors on their neighbors.
- 29       5. This section does not apply to chemical compounds that can be individually measured  
30       by instruments, other than a scentometer, that have been designed and proven to  
31       measure the individual chemical or chemical compound, such as hydrogen sulfide, to

1           a reasonable degree of scientific certainty, and for which the department of  
2           environmental quality has established a specific limitation by rule.

3           6. For purposes of this section, a public park is a park established by the federal  
4           government, the state, or a political subdivision of the state in the manner prescribed  
5           by law. For purposes of this section, a campground is a public or private area of land  
6           used exclusively for camping and open to the public for a fee on a regular or seasonal  
7           basis.

8           7. a. In a county that does not regulate the nature, scope, and location of an animal  
9           feeding operation under section 11-33-02, the department shall require that any  
10           new animal feeding operation permitted under chapter 61-28 be set back from  
11           any existing residence, church, school, business, public building, park, or  
12           campground.

13           (1) If there are fewer than three hundred animal units, there is no minimum  
14           setback requirement.

15           (2) If there are at least three hundred animal units but no more than one  
16           thousand animal units, the setback for any animal operation is one-half mile  
17           [.80 kilometer].

18           (3) If there are at least one thousand one animal units but no more than two  
19           thousand animal units, the setback for a hog operation is three-fourths mile  
20           [1.20 kilometers], and the setback for any other animal operation is one-half  
21           mile [.80 kilometer].

22           (4) If there are at least two thousand one animal units but no more than five  
23           thousand animal units, the setback for a hog operation is one mile [1.60  
24           kilometers], and the setback for any other animal operation is three-fourths  
25           mile [1.20 kilometers].

26           (5) If there are five thousand one or more animal units, the setback for a hog  
27           operation is one and one-half miles [2.40 kilometers], and the setback for  
28           any other animal operation is one mile [1.60 kilometers].

29           b. The setbacks set forth in subdivision a do not apply if the owner or operator  
30           applying for the permit obtains an odor easement from the pre-existing use that is  
31           closer.

- 1           c. For purposes of this section:
- 2           (1) One mature dairy cow, whether milking or dry, equals 1.33 animal units;
- 3           (2) One dairy cow, heifer or bull, other than an animal described in paragraph 1
- 4                 equals 1.0 animal unit;
- 5           (3) One weaned beef animal, whether a calf, heifer, steer, or bull, equals
- 6                 0.75 animal unit;
- 7           (4) One cow-calf pair equals 1.0 animal unit;
- 8           (5) One swine weighing fifty-five pounds [24.948 kilograms] or more equals
- 9                 0.4 animal unit;
- 10          (6) One swine weighing less than fifty-five pounds [24.948 kilograms] equals
- 11                 0.1 animal unit;
- 12          (7) One horse equals 2.0 animal units;
- 13          (8) One sheep or lamb equals 0.1 animal unit;
- 14          (9) One turkey equals 0.0182 animal unit;
- 15          (10) One chicken, other than a laying hen, equals 0.008 animal unit;
- 16          (11) One laying hen equals 0.012 animal unit;
- 17          (12) One duck equals 0.033 animal unit; and
- 18          (13) Any livestock not listed in paragraphs 1 through 12 equals 1.0 animal unit
- 19                 per each one thousand pounds [453.59 kilograms], whether single or
- 20                 combined animal weight.
- 21          8. A permitted animal feeding operation may expand its permitted capacity by twenty-five
- 22                 percent on one occasion without triggering a higher setback distance.
- 23          9. A county or township may not regulate or impose restrictions or requirements on
- 24                 animal feeding operations or other agricultural operations except as permitted under
- 25                 sections 11-33-02 and 58-03-11.

26          **SECTION 22.** Chapter 23.1-07 of the North Dakota Century Code is created and enacted  
27 as follows:

28          **23.1-07-01. Statement of policy.**

29          It is the policy of the state of North Dakota to protect the public health and welfare of the  
30 people of the state and the state's water resources by classifying all public water supply and

1 wastewater disposal systems in the state and by requiring the examination of operators and the  
2 certification of their competency to supervise the operations of such facilities.

3 **23.1-07-02. Definitions.**

4 For the purpose of this chapter, unless the context otherwise requires:

- 5 1. "Certificate" means a certificate of competency issued by the department stating that  
6 the operator holding the certificate meets the requirements for the specified operator  
7 grade in the certification program.
- 8 2. "Department" means the department of environmental quality.
- 9 3. "Ground water under the direct influence of surface water" means water beneath the  
10 surface of the ground with significant occurrence of insects or other macro-organisms,  
11 algae, or large-diameter pathogens such as Giardia lamblia, or significant and  
12 relatively rapid shifts in water characteristics such as turbidity, temperature,  
13 conductivity, or pH which closely correlate to climatological or surface water  
14 conditions.
- 15 4. "Operator" means the person in direct responsible charge of the operation of a water  
16 treatment plant, a water distribution system, a wastewater treatment plant, or a  
17 wastewater collection system.
- 18 5. "Population equivalent" for a wastewater collection system or treatment plant means  
19 the calculated population that would normally contribute the same amount of  
20 biochemical oxygen demand per day computed on the basis of seventeen hundredths  
21 of one pound [77.11 grams] of five-day, sixty-eight-degree Fahrenheit [20-degree  
22 Celsius] biochemical oxygen demand per capita per day.
- 23 6. "Wastewater collection system" means that portion of the wastewater disposal system  
24 in which wastewater is conveyed to a wastewater treatment plant from the premises of  
25 a contributor.
- 26 7. "Wastewater disposal system" means the system of pipes, structures, and facilities  
27 through which wastewater from a public sewer system or industry is collected and  
28 treated for final disposal. The system must serve a population equivalent of twenty-five  
29 or more persons.

- 1       8. "Wastewater treatment plant" means that portion of the wastewater disposal system  
2       used for the treatment and disposal of wastewater and the solids removed from  
3       wastewater.
- 4       9. "Water distribution system" means that portion of the water supply system in which  
5       water is conveyed from the water treatment plant or other supply point to the premises  
6       of the consumer.
- 7       10. "Water supply system" means the system of pipes, structures, and facilities through  
8       which a public water supply is obtained, treated, and sold or distributed for human  
9       consumption or household use. The system must have at least fifteen service  
10      connections or regularly serve an average of twenty-five or more persons for at least  
11      sixty days a year.
- 12      11. "Water treatment plant" means that portion of the water supply system that in some  
13      way alters the physical, chemical, or bacteriological quality of the water.

14      **23.1-07-03. Classification of plants and systems.**

15      The department shall classify all water treatment plants, water distribution systems,  
16      wastewater treatment plants, and wastewater collection systems with due regard to the size,  
17      type, character of water and wastewater to be treated, and other physical conditions affecting  
18      such facilities, and according to the skill, knowledge, and experience that an operator in  
19      responsible charge must have to successfully supervise the operation of such facilities, so as to  
20      protect the public health and prevent pollution of the waters of the state.

21      **23.1-07-04. Certification.**

22      When the department is satisfied an applicant is qualified by examination or otherwise to  
23      supervise the operation of treatment plants and systems, the department shall issue a  
24      certificate attesting to the competency of the applicant as an operator. The certificate must  
25      indicate the classification of treatment plant or system the operator is qualified to supervise.

- 26      1. A certificate issued under this chapter is valid for only one year and expires on the first  
27      day of July of the year after which it was issued.
- 28      2. The department may revoke or suspend the certificate of an operator issued under this  
29      chapter if the operator has practiced fraud or deception in obtaining the certificate or in  
30      the performance of the operator's duty as an operator; if reasonable care, judgment, or  
31      the application of the operator's knowledge or ability was not used in the performance

1           of the operator's duties; or if the operator is incompetent and unable to perform  
2           properly the operator's duties as an operator. A certificate may not be revoked or  
3           suspended except after a hearing before the director of the department, or the  
4           director's designated representative. If a certificate is suspended or revoked, a new  
5           application for certification may be considered by the department only after the  
6           conditions causing the suspension or revocation have been corrected, and evidence of  
7           this fact has been satisfactorily submitted to the department. A new certificate may  
8           then be granted by the department.

9           3. Certificates in appropriate classification issued to operators before the effective date of  
10           this chapter continue in effect.

11           **23.1-07-05. Fees.**

12           The department may charge a fee for certificates issued under this chapter, but the fees  
13           may not exceed fifty dollars for the initial certificate, or twenty-five dollars for the annual renewal  
14           certificate. All receipts from the fees must be deposited in the state treasury to be credited to a  
15           special fund to be known as the "operators' certification fund" to be used by the department to  
16           administer and enforce this chapter and financially assist the department in conducting operator  
17           training programs. Any surplus at the end of the fiscal year must be retained by the department  
18           for future expenditures.

19           **23.1-07-06. Duties of the department.**

20           The department shall:

- 21           1. Hold at least one examination each year at a designated time and place for the  
22           purpose of examining candidates for certification.
- 23           2. Promote the program of certification of water supply and wastewater disposal system  
24           operators.
- 25           3. Distribute notices and applications and to receive and evaluate applications.
- 26           4. Collect fees for initial certification and annual renewal.
- 27           5. Prepare, conduct, and grade examinations.
- 28           6. Maintain records of operator qualifications, certification examination results, and a  
29           register of certified operators.
- 30           7. Promote and schedule regular training schools and programs.
- 31           8. Adopt rules necessary to carry out this chapter.

1        **23.1-07-07. Unlawful operation.**

2        Except as provided in this section, it is unlawful for any person to operate a water treatment  
3 plant or water distribution system serving twenty-five or more individuals or a wastewater  
4 treatment plant or wastewater collection system serving a population equivalent of twenty-five  
5 or more individuals unless the competency of the operator to operate such a plant or system is  
6 certified by the department in a grade corresponding to the classification of that portion of the  
7 system to be supervised. Operators of wastewater collection systems and wastewater  
8 stabilization ponds or other nonmechanical wastewater treatment plants that serve a population  
9 equivalent of less than five hundred individuals are excluded from this chapter. Operators of  
10 water supply systems that serve other than year-round residents are excluded from this chapter  
11 if all of the following conditions are met:

- 12        1. The water supply is obtained solely from ground water sources not under the direct  
13 influence of surface water.
- 14        2. Treatment, if provided, consists strictly of disinfection, fluoridation, sequestration,  
15 corrosion control, or other processes that involve simple chemical addition and minor  
16 operational control.
- 17        3. The water supply system is not required by the federal Safe Drinking Water Act or its  
18 implementing regulations to be operated by qualified personnel.

19        **23.1-07-08. Violations - Penalty.**

20        Any person violating this chapter or the rules adopted under this chapter, after written notice  
21 of the violation by the department, is guilty of a class A misdemeanor.

22        **SECTION 23.** Chapter 23.1-08 of the North Dakota Century Code is created and enacted  
23 as follows:

24        **23.1-08-01. Finding of necessity.**

25        The legislative assembly finds that:

- 26        1. The people of North Dakota have a right to a clean environment, and the costs of  
27 maintaining a clean environment through the efficient environmentally acceptable  
28 management of solid wastes should be borne by those who use such services.
- 29        2. Serious economic, management, and technical problems exist in the management of  
30 solid wastes resulting from residential, commercial, industrial, agricultural, and other  
31 activities carried on in said jurisdictions.

- 1       3. Inefficient and improper methods of managing solid wastes create serious hazards to  
2       the public health, result in scenic blights, cause pollution of air and water resources,  
3       cause accident hazards, increase rodent and insect disease vectors, have an adverse  
4       effect on land values, create public nuisances, and otherwise interfere with community  
5       life and development.
- 6       4. While the management of solid wastes is the responsibility of each person, problems  
7       of solid waste management have become a matter statewide in scope and concern,  
8       and necessitate state action through technical assistance and leadership in the  
9       application of new improved methods and processes to reduce the amount of solid  
10       wastes and unsalvageable materials and to promote environmentally acceptable and  
11       economical solid waste management.

12       **23.1-08-02. Definitions.**

- 13       1. "Collection" means the aggregation of solid waste from the places at which the waste  
14       was generated.
- 15       2. "Department" means the department of environmental quality.
- 16       3. "Disposal" means the discharge, deposit, injection, dumping, spilling, leaking, or  
17       placing of any solid waste into or on any land or water including ground water.
- 18       4. "Industrial waste" means solid waste, which is not a hazardous waste regulated under  
19       chapter 23.1-04, generated from the combustion or gasification of municipal waste and  
20       from industrial and manufacturing processes. The term does not include municipal  
21       waste or special waste.
- 22       5. "Infectious waste" means solid waste that may contain pathogens with sufficient  
23       virulence and in sufficient quantity that exposure of a susceptible human or animal to  
24       the solid waste could cause the human or animal to contract an infectious disease.
- 25       6. "Landfill" means a publicly or privately owned area of land where solid wastes are  
26       permanently disposed.
- 27       7. "Litter" means discarded and abandoned solid waste materials that are not special  
28       waste or industrial waste.
- 29       8. "Major appliance" means an air conditioner, clothes dryer, clothes washer, dishwasher,  
30       freezer, microwave oven, oven, refrigerator, stove, furnace, water heater, humidifier,  
31       dehumidifier, garbage disposal, trash compactor, or similar appliance.

- 1        9. "Municipal waste" means solid waste that includes garbage; refuse; and trash  
2        generated by households, motels, hotels, recreation facilities, public and private  
3        facilities; and commercial, wholesale, private, and retail businesses. The term does  
4        not include special waste or industrial waste.
- 5        10. "Open burning" means the combustion of solid waste without control of combustion air  
6        to maintain adequate temperature for efficient combustion, containment of the  
7        combustion reaction in an enclosed device to provide sufficient residence time and  
8        mixing for complete combustion, and control of the emission of the combustion  
9        products.
- 10       11. "Political subdivision" means a city, county, township, or solid waste management  
11       authority.
- 12       12. "Resource recovery" means the use, reuse, or recycling of materials, substances,  
13       energy, or products contained within or derived from solid waste.
- 14       13. "Solid waste" means any garbage; refuse; sludge from a waste treatment plant, water  
15       supply treatment plant, or air pollution control facility; and other discarded material,  
16       including solid, liquid, semisolid, or contained gaseous material resulting from  
17       industrial, commercial, mining, and agricultural operations, and from community  
18       activities. The term does not include:
- 19       a. Agricultural waste, including manures and crop residues, returned to the soil as  
20       fertilizer or soil conditioners; or
- 21       b. Solid or dissolved materials in domestic sewage, or solid or dissolved material in  
22       irrigation return flows or industrial discharges that are point sources subject to  
23       permits under section 402 of the Federal Water Pollution Control Act, as  
24       amended [Pub. L. 92-500; 86 Stat. 816; 33 U.S.C. 1251 et seq.], or source,  
25       special nuclear, or byproduct material as defined by the Atomic Energy Act of  
26       1954, as amended [68 Stat. 919; 42 U.S.C. 2011 et seq.].
- 27       14. "Solid waste management" means the purposeful systematic control of the storage,  
28       collection, transport, composting, resource recovery, land treatment, and disposal of  
29       solid waste.
- 30       15. "Special waste" means solid waste that is not a hazardous waste regulated under  
31       chapter 23.1-04 and includes waste generated from energy conversion facilities; waste

1 from crude oil and natural gas exploration and production; waste from mineral and ore  
2 mining, beneficiation, and extraction; and waste generated by surface coal mining  
3 operations. The term does not include municipal waste or industrial waste.

4 16. "Storage" means the containment and holding of solid waste after generation for a  
5 temporary period, at the end of which the solid waste is processed for resource  
6 recovery, treated, disposed of, or stored elsewhere.

7 17. "Transport" means the offsite movement of solid waste.

8 **23.1-08-03. Powers and duties of the department.**

9 The department shall:

- 10 1. Administer and enforce the state solid waste management program under this chapter.  
11 2. Provide technical assistance on request to political subdivisions of the state and  
12 cooperate with appropriate federal agencies in carrying out the duties under this  
13 chapter. On request, the department may provide technical assistance to other  
14 persons.  
15 3. Encourage and recommend procedures for using self-financing solid waste  
16 management systems and intermunicipal agencies.  
17 4. Promote the planning and application of resource recovery facilities and systems that  
18 preserve and enhance the quality of air, water, and all resources.  
19 5. Serve as the official state representative for all purposes of the Federal Solid Waste  
20 Disposal Act [Pub. L. 89-272; 79 Stat. 997; 42 U.S.C. 6901 et seq.], as amended, and  
21 for other state or federal legislation to assist in the management of solid wastes.  
22 6. Survey the solid waste management needs within the state and maintain and upgrade  
23 the North Dakota solid waste management plan.  
24 7. Require any person within the state to submit for review and approval a solid waste  
25 management plan to show that solid wastes will be disposed of in accordance with the  
26 provisions of this chapter.  
27 8. Adopt and enforce rules governing solid waste management to conserve the air, water,  
28 and land resources of the state; protect the public health; prevent environmental  
29 pollution and public nuisances; and enable the department to administer this chapter,  
30 the adopted solid waste management plan, and delegated federal programs.

- 1        9. Establish procedures for permits governing the design, construction, operation, and  
2        closure of solid waste management facilities and systems.
- 3        10. Prepare, issue, modify, revoke, and enforce orders, after investigation, inspection,  
4        notice, and hearing, prohibiting violation of this chapter or of any rules issued under  
5        this chapter, and requiring remedial measures for solid waste management as may be  
6        necessary or appropriate under this chapter.
- 7        11. Adopt rules to establish categories and classifications of solid waste and solid waste  
8        management facilities based on waste type and quantity, facility operation, or other  
9        facility characteristics and to limit, restrict, or prohibit the disposal of solid wastes  
10       based on environmental or public health rationale.
- 11       12. Adopt rules to establish standards and requirements for each category of solid waste  
12       management facility.
- 13       13. Adopt rules to establish financial assurance requirements to be met by any person  
14       proposing construction or operation of a solid waste management facility sufficient to  
15       provide for closure and postclosure activities. Financial assurance requirements may  
16       include: insurance, trust funds, surety bonds, letters of credit, personal bonds,  
17       certificates of deposit, and financial tests or corporate guarantees.
- 18       14. Conduct an environmental compliance background review of any applicant for any  
19       permit. In conducting the review, if the department finds an applicant for a permit has  
20       intentionally misrepresented or concealed any material fact from the department, or  
21       has obtained a permit by intentional misrepresentation or concealment of a material  
22       fact, has been convicted of a felony or pleaded guilty or nolo contendere to a felony  
23       within three years preceding the application for the permit, or has been adjudicated in  
24       contempt of an order of any court within three years preceding the application for the  
25       permit, the department may deny the application. The department shall consider the  
26       relevance of the offense to the business to which the permit is issued, the nature and  
27       seriousness of the offense, the circumstances under which the offense occurred, the  
28       date of the offense, and the ownership and management structure in place at the time  
29       of the offense.

1        **23.1-08-04. Coal combustion residues - Present use and disposal deemed acceptable.**

2        Notwithstanding any other provision of law, the legislative assembly deems the present use  
3 and disposal of coal combustion residues to be acceptable and that present regulation allows  
4 for the beneficial use of coal combustion residues in concrete, for other construction  
5 applications, and for other innovative uses and allows for safe disposal without coal combustion  
6 residues being regulated as a hazardous waste. If a federal law or regulation is adopted  
7 pertaining to the use and disposal of coal combustion residues, this section does not prohibit  
8 the state from seeking state primacy of the federal program.

9        **23.1-08-05. Commercial oilfield special waste recycling facilities - Action against well**  
10 **operators restricted.**

- 11        1. By June 1, 2015, the department shall select at least one commercial oilfield special  
12 waste recycling facility having a pending beneficial use application, for authorization of  
13 operation of the facility as a pilot project and to assist the department to develop  
14 standards for recycling of oilfield special waste. The pending beneficial use application  
15 of the pilot project facility must be supported by scientific findings from a third-party  
16 source focused on the anticipated environmental performance of the end products of  
17 the recycled oilfield special waste and the practical utility of those end products.
- 18        2. Any pilot project facility and any commercial oilfield special waste recycling facility  
19 permitted after June 30, 2017, shall obtain a solid waste permit from the department  
20 and a treating plant permit from the industrial commission for treatment of oilfield  
21 special waste.
- 22        3. Any selected pilot project facility may operate as an oilfield special waste recycling  
23 facility through June 30, 2017, and may implement beneficial use demonstration  
24 projects using processed materials under the guidance of the department. A selected  
25 pilot project facility operator shall cooperate with the department to monitor and  
26 analyze impacts to the environment.
- 27        4. By July 1, 2017, based upon the results of any pilot projects, the department shall  
28 make recommendations either to adopt rules under chapter 28-32 governing  
29 operations and permitting of commercial oilfield special waste recycling facilities, or to  
30 develop written guidelines on recycling and beneficial use of oilfield special waste  
31 under the department's beneficial use approval process. The rules or guidelines must

- 1           assure compliance with federal and state laws and rules for protection of the state's  
2           water and air and public health in the handling and subsequent use of oilfield special  
3           waste.
- 4        5. Upon presentation of official credentials, an employee authorized by the department  
5        may:
- 6           a. Examine the premises and facilities and copy books, papers, records,  
7           memoranda, or data of a commercial oilfield special waste recycling facility.
- 8           b. Enter upon public or private property to take action authorized by this chapter  
9           and rules adopted under this chapter, including obtaining information from any  
10          person, conducting surveys and investigations, and taking corrective action.
- 11       6. The operator of the commercial oilfield special waste recycling facility is liable for the  
12       cost of any inspection and corrective action required by the department.
- 13       7. As a condition of permitting, the department may require the operator of a commercial  
14       oilfield special waste recycling facility to post a bond or other financial assurance  
15       payable to the state in a sufficient amount for remediation of any release or disposal of  
16       oilfield special waste in violation of the rules of the department, on the premises or  
17       property of the facility or at a place where treated or untreated materials from the  
18       facility are taken for use or disposal.
- 19       8. As used in this section:
- 20           a. "Commercial oilfield special waste recycling facility" means a commercial  
21           recycling facility permitted, or a commercial recycling facility pilot project  
22           authorized, under this section for extraction of reusable solids and fluids from any  
23           or all types of oilfield special waste.
- 24           b. "Drilling operation" means oil and gas drilling and production operations and any  
25           associated activities that generate oilfield special waste.
- 26           c. "Oilfield special waste" means special waste associated with oil and gas drilling  
27           operations, exploration, development, or production and specifically includes drill  
28           cuttings, saltwater, and other solids and fluids from drilling operations.
- 29       9. Upon delivery of oilfield special waste to a commercial oilfield special waste recycling  
30       facility that is permitted or authorized to conduct recycling operations under this  
31       section and is not affiliated with the well operator, acceptance of the oilfield special

1 waste by the recycling facility, and after the oilfield special waste has been treated and  
2 converted to a beneficial use as a usable product or legitimate substitute for a usable  
3 product, the well operator is not liable in any civil or criminal action for any subsequent  
4 claim or charge regarding the material converted to a beneficial use.

5 **23.1-08-06. Local government ordinances.**

6 Any political subdivision of the state may enact and enforce a solid waste management  
7 ordinance that is equal to or more stringent than this chapter and the rules adopted under this  
8 chapter.

9 **23.1-08-07. Littering and open burning prohibited - Penalty.**

- 10 1. A person may not discard and abandon litter, furniture, or major appliances upon  
11 public property or upon private property not owned by that person, unless the property  
12 is designated for the disposal of litter, furniture, or major appliances and that person is  
13 authorized to use the property for that purpose.
- 14 2. A person may not engage in the open burning of solid waste, unless the burning is  
15 conducted in accordance with rules adopted by the department.
- 16 3. A person violating this section is guilty of an infraction for which a minimum fine of two  
17 hundred dollars must be imposed, except if the litter discarded and abandoned  
18 amounted to more than one cubic foot [0.0283 cubic meter] in volume or if the litter  
19 consisted of furniture or a major appliance, the offense is a class B misdemeanor and  
20 the person is subject to the civil penalty provided in section 23.1-08-23.

21 **23.1-08-08. Prohibition in landfill disposal - Lead-acid batteries accepted as trade-ins.**

- 22 1. Infectious waste must be properly treated before disposal by methods approved by the  
23 department. A person may not knowingly deposit in a landfill untreated infectious  
24 waste.
- 25 2. Except as provided in subsection 3, a person may not place in municipal waste or  
26 discard or dispose of in a landfill lead-acid batteries, used motor oil, or major  
27 appliances.
- 28 3. If resource recovery markets are not available for the items listed in subsection 2, the  
29 items must be disposed of in a manner approved by the department.
- 30 4. Lead-acid batteries must be accepted as trade-ins for new lead-acid batteries by any  
31 person who sells lead-acid batteries at retail.

1       **23.1-08-09. Permits.**

2       1. The department may issue permits for solid waste management facilities and solid  
3 waste transporters. A person may not own, operate, or use a facility for solid waste  
4 disposal or transport solid wastes without a valid permit. Upon receipt of a permit  
5 application, the department shall give public notice, in the official newspaper of the  
6 county in which the facility is to be located, that the department is considering an  
7 application for a solid waste management facility. The notice must state the name of  
8 the applicant, the location of the facility, and a description of the facility. The  
9 department shall require as a condition of a permit for a solid waste management  
10 facility, not owned or operated by the state or a political subdivision, that any entity that  
11 controls the permitholder agrees to accept responsibility for any remedial measures,  
12 closure and postclosure care, or penalties incurred by the permitholder. For purposes  
13 of this section, "control" means ownership or control, directly, indirectly, or through the  
14 actions of one or more persons of the power to vote twenty-five percent or more of any  
15 class of voting shares of a permitholder, or the direct or indirect power to control in any  
16 manner the election of a majority of the directors of a permitholder, or to direct the  
17 management or policies of a permitholder, whether by individuals, corporations,  
18 partnerships, trusts, or other entities or organizations of any type. All permits are  
19 nontransferable, are for a term of not more than ten years from the date of issuance,  
20 and are conditioned upon the observance of the laws of the state and the rules  
21 adopted under this chapter.

22       2. For each permit application, the department shall notify the board of county  
23 commissioners of a county in which a new solid waste management facility will be  
24 located of the department's intention to issue a permit for the facility. The board of  
25 county commissioners may call a special election to be held within sixty days after  
26 receiving notice from the department to allow the qualified electors of the county to  
27 vote to approve or disapprove of the facility based on public interest and impact on the  
28 environment. If a majority of the qualified electors voting on the question in the election  
29 vote to disapprove of the facility, the department may not issue the permit and the  
30 facility may not be located in that county.

1       3. Notwithstanding subsection 2, if the new solid waste management facility will be  
2       owned or operated by a solid waste management authority, a special election to  
3       approve or disapprove of a facility may be called only if the boards of county  
4       commissioners from a majority of the counties in the solid waste management district  
5       call for a special election. However, a special election must be conducted in each  
6       county within the authority. If a majority of the qualified electors voting on the question  
7       in the election vote to disapprove of the facility, the department may not issue the  
8       permit.

9       4. Subsections 2 and 3 do not apply to a solid waste management facility operated as  
10      part of an energy conversion facility or part of a surface coal mining and reclamation  
11      operation, if the solid waste management facility disposes of only waste generated by  
12      the energy conversion facility or surface coal mining and reclamation operation.

13      **23.1-08-10. Fees - Deposit in operating fund.**

14      The department by rule may prescribe the payment and collection of reasonable fees to  
15      issue permits or registration certificates for registering, licensing, or permitting solid waste  
16      generators, transporters, and treatment, storage, recycling, or disposal facilities. The fees must  
17      be based on the anticipated cost of filing and processing the application, taking action on the  
18      requested permit or registration certificate, and conducting a monitoring and inspection program  
19      to determine compliance or noncompliance with the permit or registration certificate. Any  
20      moneys collected for permit licensing or registration fees must be deposited in the department  
21      operating fund in the state treasury, and any expenditures from the fund are subject to  
22      appropriation by the legislative assembly. Applicants for special use solid waste management  
23      facilities shall submit a minimum fee as follows:

24      1. Twenty thousand dollars for any facility that receives on average one hundred tons  
25      [90718 kilograms] or more per day.

26      2. Ten thousand dollars for any facility which receives on average more than ten tons  
27      [9071.80 kilograms] but less than one hundred tons [90718 kilograms] per day.

28      **23.1-08-11. Solid waste management fund - Administration.**

29      The solid waste management fund is a special fund in the state treasury. The Bank of North  
30      Dakota shall administer the fund. The fund is a revolving fund, subject to appropriation by the  
31      legislative assembly. The Bank may annually deduct up to one-half of one percent of the fund

1 balance including the principal balance of the outstanding loans as a service fee for  
2 administering the fund. The Bank shall contract with a certified public accounting firm to audit  
3 the fund once every two years. The cost of the audit and any other actual costs incurred by the  
4 Bank on behalf of the fund must be paid from the fund. Section 54-44.1-11 does not apply to the  
5 fund.

6 **23.1-08-12. Applications for grants or loans - Loan terms.**

7 Moneys in the solid waste management fund may be used to make grants or low-interest  
8 loans to political subdivisions for waste reduction, planning, resource recovery, and recycling  
9 projects with an emphasis on marketing. An application for a grant or loan out of moneys in the  
10 solid waste management fund must be made to the department. The department shall review  
11 an application to determine if the purpose of the grant or loan is consistent with the purposes of  
12 the fund and the district solid waste management plan. The department shall adopt rules to  
13 implement this section. If the department approves an application, the department shall forward  
14 the application and the results of the department's review of the application to the Bank of North  
15 Dakota. The Bank, in consultation with the department, shall determine the financial criteria that  
16 must be met for an application to be approved. A loan must be repaid within a period not  
17 exceeding twenty years at an interest rate of four percent.

18 **23.1-08-13. Preconstruction site review.**

19 The department, in cooperation with the state engineer and the state geologist, shall  
20 develop criteria for siting a solid waste disposal facility based upon potential impact on  
21 environmental resources. Any application for a landfill permit received after the department  
22 develops siting criteria as required by this section must be reviewed for site suitability by the  
23 department after consultation with the state engineer and state geologist before any site  
24 development. Site development does not include the assessment or monitoring associated with  
25 the review as required by the department in consultation with the state engineer and state  
26 geologist.

27 **23.1-08-14. Waste characterization.**

28 The department may not allow the storage or disposal of solid waste from outside this state,  
29 unless it is demonstrated that the governing authority or the generator of the solid waste from  
30 outside this state has an effective program for waste quality control and for waste  
31 characterization.

1        **23.1-08-15. Municipal waste landfills and incinerators - Certification.**

2        A municipal waste landfill and a municipal waste incinerator must have at least one  
3 individual certified by the department onsite at all times during the operation of the landfill or  
4 incinerator. The department shall adopt training standards and certification requirements.

5        **23.1-08-16. Public educational materials - Municipal waste reduction and recycling.**

6        The department, after consulting with the superintendent of public instruction, shall develop  
7 and disseminate educational materials to encourage voluntary municipal waste reduction,  
8 source separation, reuse of materials, recycling efforts, and appropriate management of  
9 municipal waste.

10       **23.1-08-17. Disclosure of information before issuance, renewal, transfer, or major**  
11 **modification of permit.**

12       Before an application for the issuance, renewal, transfer, or major modification of a permit  
13 under this chapter may be granted, the applicant shall submit to the department a disclosure  
14 statement executed under oath or affirmation. The department shall verify and may investigate  
15 the information in the statement and shall deny an application for the issuance, renewal,  
16 transfer, or major modification of a permit if the applicant has intentionally misrepresented or  
17 concealed any material fact in a statement required under this section, a judgment of criminal  
18 conviction for violation of any federal or state environmental laws has been entered against the  
19 applicant within five years before the date of submission of the application, or the applicant has  
20 knowingly and repeatedly violated any state or federal environmental protection laws. The  
21 disclosure statement must include:

- 22        1. The name and business address of the applicant.
- 23        2. A description of the applicant's experience in managing the type of solid waste that will  
24        be managed under the permit.
- 25        3. A description of every civil and administrative complaint against the applicant for the  
26        violation of any state or federal environmental protection law which has resulted in a  
27        fine or penalty of more than ten thousand dollars within five years before the date of  
28        the submission of the application.
- 29        4. A description of every pending criminal complaint alleging the violation of any state or  
30        federal environmental protection law.

1        5. A description of every judgment of criminal conviction entered against the applicant  
2        within five years before the date of submission of the application for the violation of  
3        any state or federal environmental protection law.

4        6. A description of every judgment of criminal conviction of a felony constituting a crime  
5        involving fraud or misrepresentation which has been entered against the applicant  
6        within five years before the date of submission of the application.

7        **23.1-08-18. Inspections.**

8        The department may inspect all solid waste management activities and facilities, at all  
9        reasonable times, to ensure compliance with the laws of this state, the provisions of this  
10       chapter, and the rules authorized under this chapter.

11       **23.1-08-19. Administrative procedure and judicial review.**

12       A proceeding under this chapter to adopt or modify rules, including emergency orders  
13       relating to solid waste management and land protection, or determine compliance with rules of  
14       the department, must be conducted in accordance with the provisions of chapter 28-32, and  
15       appeals may be taken as provided under that chapter. When an emergency exists requiring  
16       immediate action to protect the public health and safety, the department may, without notice or  
17       hearing, issue an order reciting the existence of the emergency and requiring action be taken as  
18       necessary to meet the emergency. Notwithstanding any provision of this chapter, the order is  
19       effective immediately, but on application to the department must be afforded a hearing before  
20       the environmental review advisory council within ten days. On the basis of the hearing, the  
21       emergency order must be continued, modified, or revoked within thirty days after the hearing.

22       **23.1-08-20. Injunction proceedings.**

23       The violation of any provision of this chapter, or any rule or order issued under the chapter  
24       is declared a nuisance inimical to the public health, welfare, and safety. Whenever in the  
25       judgment of the department a person has engaged in or is about to engage in any acts that  
26       constitute or will constitute a violation of this chapter, or any rule or order issued under the  
27       chapter, the department, in accordance with the laws governing injunctions and other process,  
28       may maintain an action in the name of the state enjoining the action or for an order directing  
29       compliance, and upon a showing by the department that the person has engaged or is about to  
30       engage in the acts or practices, a permanent or temporary injunction, restraining order, or other  
31       order may be granted.

1       **23.1-08-21. Plats.**

2       A person operating a solid waste management facility for disposal under a permit issued  
3 under this chapter shall, upon completion of the operation at each site, file a plat of the area  
4 with the recorder of each county in which the facility is located, together with a description of the  
5 wastes placed therein.

6       **23.1-08-22. Exemption.**

7       The provisions of this chapter, and the rules or orders authorized under the chapter, do not  
8 prevent an individual who resides on unplatted land in unincorporated areas of this state from  
9 disposing of that individual's normal household wastes on that individual's property, so long as  
10 doing so does not create a health hazard or nuisance.

11       **23.1-08-23. Penalties.**

- 12       1. Any person that violates this chapter or any permit condition, rule, order, limitation, or  
13 other applicable requirement implementing this chapter is subject to a civil penalty not  
14 to exceed twelve thousand five hundred dollars per day per violation, unless the  
15 penalty for the violation is otherwise specifically provided for and made exclusive in  
16 this chapter.
- 17       2. Any person that willfully violates any provision of this chapter or any permit condition,  
18 rule, order, limitation, or other applicable requirement implementing this chapter is  
19 guilty of a class C felony, unless the penalty for the violation is otherwise specifically  
20 provided for and made exclusive in this chapter.
- 21       3. Any person that willfully makes any false statement, representation, or certification in  
22 any application, record, report, plan, or other document filed or required to be  
23 maintained under this chapter or any permit condition, rule, order, limitation, or other  
24 applicable requirement implementing this chapter or that falsifies, tampers with, or  
25 willfully renders inaccurate any monitoring device or method required to be maintained  
26 under this chapter or any permit condition, rule, order, limitation, or other applicable  
27 requirement implementing this chapter is guilty of a class C felony, unless the penalty  
28 for the violation is otherwise specifically provided for and made exclusive in this  
29 chapter.

30       **SECTION 24.** Chapter 23.1-09 of the North Dakota Century Code is created and enacted  
31 as follows:

1       **23.1-09-01. Definitions.**

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

- 3       1. "Actually incurred" means in the case of corrective action expenditures, the owner, the  
4       operator, an insurer of the owner or operator, or a contractor hired by the owner,  
5       operator, or insurer has made a payment, or a contractor has expended time and  
6       materials.
- 7       2. "Corrective action" means an action taken to minimize, contain, eliminate, remediate,  
8       mitigate, or clean up a release, including any remedial emergency measures. The  
9       term includes the repair of the closure of a municipal waste landfill on which the action  
10      occurs.
- 11      3. "Department" means the department of environmental quality.
- 12      4. "Fund" means the municipal waste landfill release compensation fund.
- 13      5. "Operator" means any person in control of, or having responsibility for, the daily  
14      operation of a municipal waste landfill under this chapter.
- 15      6. "Owner" means any person who holds title to, controls, or possesses an interest in the  
16      municipal waste landfill before or after the discontinuation of its use.
- 17      7. "Release" means any unintentional leaking, emitting, discharging, or escaping of  
18      leachate from a municipal waste landfill into the environment occurring after July 1,  
19      1993, but does not include discharges or designed venting allowed under federal or  
20      state law or under adopted rules.

21      **23.1-09-02. Municipal waste landfill release fund created - Administration of fund.**

22      A municipal waste landfill release compensation fund is created and the department shall  
23      administer the fund according to this chapter. The department may employ any assistance and  
24      staff to administer the fund within the limits of legislative appropriation.

25      **23.1-09-03. Adoption of rules.**

26      The department shall adopt rules regarding its practices and procedures, the form and  
27      procedure for applications for compensation from the fund, procedures for investigation of  
28      claims, procedures for determining the amount and type of costs eligible for reimbursement  
29      from the fund, and procedures for persons to perform services for the fund.

1        **23.1-09-04. Release discovery.**

2        An owner or operator shall notify the department if it has reason to believe that a release  
3 has occurred. The department may require corrective action as provided by subsection 10 of  
4 section 23.1-08-03.

5        **23.1-09-05. Owner or operator not identified.**

6        The department may initiate legal action to compel performance of a corrective action if an  
7 identified owner or operator fails or refuses to comply with section 23.1-09-04, or the  
8 department may engage the services of qualified contractors for performance of a corrective  
9 action if an owner or operator cannot be identified.

10       **23.1-09-06. Imminent hazard.**

11       Upon receipt of information that a release has occurred which may present an imminent or  
12 substantial endangerment of public health or environmental resources, the department may  
13 take such emergency action as it determines necessary to protect the public health or the  
14 environmental resources.

15       **23.1-09-07. Duty to take action.**

16       Nothing in this chapter limits any person's duty to take action related to a release. However,  
17 payment for corrective actions required as a result of a release is governed by this chapter.  
18 Nothing in this chapter limits remediation activities taken or directed by any state or federal  
19 agency under other environmental statutes.

20       **23.1-09-08. Providing of information.**

21       A person that the department has reason to believe is an owner or operator, or the owner of  
22 real property where corrective action is ordered to be taken, or a person that may have  
23 information concerning wastes placed into a municipal waste landfill, or a person that may have  
24 information concerning a release, if requested by the department, must furnish to the  
25 department any information that person has or may reasonably obtain which is relevant to the  
26 release.

27       **23.1-09-09. Examination of records.**

28       An employee of the department may, upon presentation of official credentials:

- 29       1. Examine and copy books, papers, records, memoranda, or data that may be related to  
30 a release which belong to a person that has a duty to provide information to the  
31 department under section 23.1-09-08; and

1       2. Enter upon public or private property for the purpose of taking action authorized by this  
2           section, including obtaining information from any person that has a duty to provide the  
3           information under section 23.1-09-08, conducting surveys and investigations, and  
4           taking corrective action.

5       **23.1-09-10. Responsibility for cost.**

6       The owner or operator is liable for the cost of corrective action required by the department,  
7       including the cost of investigating the releases, and for legal actions of the department  
8       regarding the release. This chapter does not create any new cause of action for damages on  
9       behalf of third parties against the fund.

10      **23.1-09-11. Liability avoided.**

11      An owner or operator may not avoid liability under this chapter or other state environmental  
12      law by means of a conveyance of any right, title, or interest in real property or by an  
13      indemnification, hold harmless agreement, or similar agreement. However, the provisions of this  
14      chapter do not:

- 15          1. Prohibit a person that may be liable from entering an agreement by which the person  
16             is insured or is a member of a risk retention group, and is thereby indemnified for part  
17             or all of the liability;  
18          2. Prohibit the enforcement of an insurance, hold harmless, or indemnification  
19             agreement; or  
20          3. Bar a cause of action by a person that may be liable or by an insurer or guarantor,  
21             whether by right of subrogation or otherwise.

22      **23.1-09-12. Other remedies.**

23      Nothing in this chapter limits the powers of the department, or precludes the pursuit of any  
24      administrative, civil, injunctive, or criminal remedies by the department or any other person.  
25      Administrative remedies need not be exhausted to proceed under this chapter. The remedies  
26      provided by this chapter are in addition to those provided under existing statutory or common  
27      law.

28      **23.1-09-13. Revenue to the fund.**

29      Revenue from the following sources must be deposited in the state treasury and credited to  
30      the fund:

- 31          1. Any premium fee collected under section 23.1-09-15;

- 1       2. Any money recovered by the fund under section 23.1-09-20, and any money paid
- 2           under an agreement, stipulation, or settlement;
- 3       3. Any interest attributable to investment of money in the fund; and
- 4       4. Any money received by the department in the form of gifts, grants, reimbursements, or
- 5           appropriations from any source intended to be used for the purposes of the fund.

6       **23.1-09-14. Eligibility.**

- 7       1. An owner or operator of an active disposal unit at a municipal waste landfill site, or of a
- 8           new disposal unit allowed by permit under chapter 23.1-08, shall participate in the fund
- 9           for that unit provided:
- 10       a. The disposal unit is designed, constructed, operated, and closed to comply with
- 11           federal and state statutes and adopted rules in effect as of October 9, 1993;
- 12       b. The owner or operator has notified the board of the local solid waste
- 13           management district, and the board has acknowledged and approved the
- 14           municipal waste landfill site to comply with chapter 23.1-08; and
- 15       c. The owner or operator pays the annual premium fee under section 23.1-09-15
- 16           during the duration of operation of the landfill site, except as provided by section
- 17           23.1-09-22.
- 18       2. An owner or operator that does not comply with this section or with section 23.1-09-15
- 19           is ineligible for reimbursement of claims for corrective action.

20       **23.1-09-15. Premium fee.**

- 21       1. An owner or operator of a municipal waste landfill site that is eligible and participates
- 22           in the fund shall:
- 23       a. Notify the department, on forms to be made available by the department, of its
- 24           intent to participate in the fund at the time of application for permit under chapter
- 25           23.1-08 for new disposal units;
- 26       b. Demonstrate that the disposal unit and the landfill site comply with applicable
- 27           laws and rules; and
- 28       c. Pay an annual premium fee of one dollar per ton [907.18 kilograms] or
- 29           thirty-three cents per cubic yard [0.76 cubic meter] for all solid waste disposed at
- 30           the landfill site during the premium fee period.

1       2.   The premium fee is payable annually by January thirtieth for a premium fee period  
2           corresponding to the previous calendar year.

3       3.   The premium fees collected under this section must be paid to the department for  
4           deposit in the state treasury for credit to the fund.

5       **23.1-09-16. Reimbursement for corrective action.**

6       The department shall reimburse an eligible owner or operator for the costs of corrective  
7       action, including the investigation, which are greater than one hundred thousand dollars. A  
8       reimbursement may not be made unless the department determines that:

9       1.   At the time the release was discovered the owner or operator and the landfill site were  
10           in compliance with applicable federal and state statutes and adopted rules, including  
11           rules relating to financial responsibility;

12       2.   The department was given notice of the release as required by this chapter and other  
13           applicable federal and state statutes;

14       3.   The release occurred from the active disposal unit or a new disposal unit under  
15           section 23.1-09-14;

16       4.   The owner or operator has paid the first one hundred thousand dollars of cost of  
17           corrective action; and

18       5.   The owner or operator, to the extent possible, fully cooperated with the department in  
19           responding to the release.

20       **23.1-09-17. Application for reimbursement.**

21       An eligible owner or operator that has undertaken corrective action in response to a  
22       release, the time of release being unknown, may apply to the department for partial or full  
23       reimbursement under section 23.1-09-16 and applicable rules. An owner or operator may be  
24       reimbursed only for releases discovered and reported after April 1, 1994.

25       **23.1-09-18. Department to determine costs.**

26       A reimbursement may not be made from the fund until the department has determined the  
27       costs for which reimbursement is requested were actually incurred and were reasonable. A  
28       reimbursement may be made to only one person for a release.

29       **23.1-09-19. Liability of responsible person.**

30       The right to apply for reimbursement and the receipt of reimbursement does not limit the  
31       liability of an owner or operator for damages or costs as a result of a release.

1       **23.1-09-20. Recovery of expenses.**

2       Any reasonable and necessary expenses incurred by the fund as provided by sections  
3 23.1-09-05, 23.1-09-06, 23.1-09-09, and 23.1-09-10 in taking corrective action, including costs  
4 of investigating a release, and in taking legal actions may be recovered in a civil action in district  
5 court brought by the department against the owner or operator. The certification of expenses by  
6 an approved agent of the fund is prima facie evidence that the expenses are reasonable and  
7 necessary. Any expenses that are recovered under this section must be deposited in the fund.

8       **23.1-09-21. Coordination of benefits.**

9       If an eligible owner or operator has financial assurance that provides coverage for  
10 corrective action, the department shall pay the share of the covered loss or damage for which  
11 the fund is responsible. The share that must be paid from the fund is equal to the proportion that  
12 the applicable limit of coverage under the fund bears to the limits of all financial assurance on  
13 the same basis.

14       **23.1-09-22. Fund ceiling.**

15       When the fund balance exceeds fifteen million dollars, the department shall suspend  
16 collection of the premium fee. When the fund balance becomes less than five million dollars  
17 through appropriations authorized by this chapter, the department shall resume collection of the  
18 fee.

19       **23.1-09-23. Fund appropriation.**

20       Money in the fund is appropriated to the department as a standing and continuing  
21 appropriation for the purposes of this chapter.

22       **SECTION 25.** Chapter 23.1-10 of the North Dakota Century Code is created and enacted  
23 as follows:

24       **23.1-10-01. Environmental emergency cost recovery.**

25       Except as provided in section 23.1-04-17, the department of environmental quality may  
26 recover from the parties responsible for an environmental emergency the reasonable and  
27 necessary state costs incurred in assessment, removal, corrective action, or monitoring as a  
28 result of an environmental emergency in violation of chapter 23.1-03, 23.1-04, 23.1-06, 23.1-08,  
29 61-28, or 61-28.1. As used in this chapter, "environmental emergency" means a release into the  
30 environment of a substance requiring an immediate response to protect public health or welfare  
31 or the environment from an imminent and substantial endangerment and which is in violation of

1 chapter 23.1-03, 23.1-04, 23.1-06, 23.1-08, 61-28, or 61-28.1, and "reasonable and necessary  
2 costs" means those costs incurred by the department as a result of the failure of the parties  
3 responsible for the environmental emergency to implement appropriate assessment and  
4 corrective action after receipt of written notice from the department. If assessment, removal,  
5 monitoring, or corrective action must be initiated before identification of the responsible parties.  
6 the department may assess those prior costs to the responsible parties at the time they are  
7 identified.

8 **23.1-10-02. Environmental quality restoration fund.**

9 There is established an environmental quality restoration fund into which the funds  
10 recovered in this chapter may be deposited. The fund is to be administered by the department  
11 of environmental quality and may be used by the department for costs of environmental  
12 assessment, removal, corrective action, or monitoring as determined on a case-by-case basis.

13 **23.1-10-03. Rules adoption.**

14 The department of environmental quality may adopt rules to implement this chapter.

15 **SECTION 26.** Chapter 23.1-11 of the North Dakota Century Code is created and enacted  
16 as follows:

17 **23.1-11-01. Degradation prevention program - Maintenance of waters.**

18 This chapter establishes a degradation prevention program to protect ground water  
19 resources, encourage the wise use of agricultural chemicals, provide for public education  
20 regarding preservation of ground water resources, and provide for safe disposal of wastes in a  
21 manner that will not endanger the state's ground water resource. Waters of the state must be  
22 maintained within standards established under this chapter unless it can be affirmatively  
23 demonstrated that a change in quality is justifiable to provide necessary economic or social  
24 development and will not adversely affect the beneficial uses of water.

25 **23.1-11-02. Administration of chapter.**

26 The department of environmental quality shall administer this chapter. For purposes of this  
27 chapter, "commissioner" means the agriculture commissioner and "department" means the  
28 department of environmental quality. Notwithstanding section 4-35-06, the agriculture  
29 commissioner shall administer chapter 4-35 as it relates to pesticide usage.

1        **23.1-11-03. Education program.**

2        The department, the commissioner, the North Dakota state university extension service,  
3 and the North Dakota agricultural experiment station shall cooperate with other state and  
4 federal agencies on the development of a ground water protection education program.

5        **23.1-11-04. Chemical use data and confidentiality requirement.**

6        The department may require chemical use data from product registrants on products that  
7 have been or may likely be found in ground water to conduct its ground water protection  
8 program. This information must include chemical registration data and sales information. The  
9 department shall keep this information confidential.

10       **23.1-11-05. Ground water standards.**

11       The department shall establish standards for compounds in ground water as set forth by  
12 other states and the United States environmental protection agency unless new scientifically  
13 confirmed data provides justification for changing these standards.

14       **23.1-11-06. Ground water quality monitoring.**

15       The department shall conduct ground water quality monitoring activities in cooperation with  
16 the state engineer and other state agencies. Based on monitoring results, the department shall  
17 implement or require appropriate mitigation activities or remedial action to prevent future  
18 contamination of ground water. The commissioner may implement or require appropriate  
19 mitigation activities pursuant to chapter 4-35 to prevent future contamination of ground water as  
20 it relates to the use of pesticides.

21       **23.1-11-07. Notification requirement.**

22       A person with verifiable information on the presence of contamination of ground water within  
23 the state shall notify the department regarding the contamination.

24       **23.1-11-08. Access for ground water monitoring.**

25       The department may request landowners or operators allow access for monitoring of  
26 ground water and of soils at a depth where pesticides may threaten ground water. If the  
27 department is denied access by the landowner or operator, the department may apply to any  
28 court of competent jurisdiction for authorization to obtain access. The court, upon the  
29 application and compliance with chapter 29-29.1, may issue the authorization for the purposes  
30 requested. After consultation with the landowner or operator, the department shall conduct the  
31 monitoring in a manner that causes the least possible economic impact or hindrance to the

1 landowner's or operator's operations. The names and addresses of landowners and operators  
2 who participate in a ground water monitoring program may not be linked, in any public  
3 disclosure, to the findings of the program unless it is determined by rule that a compelling public  
4 interest justifies the disclosure. Without that determination, disclosure of the information is a  
5 violation of section 12.1-13-01.

6 **23.1-11-09. Pollution prevention criteria.**

7 The commissioner, in cooperation with the department, North Dakota state university  
8 extension service, and the North Dakota agricultural experiment station, may develop pollution  
9 prevention criteria for areas utilized for mixing and storing agricultural chemicals at the retail  
10 and end use levels.

11 **23.1-11-10. Wellhead protection program.**

12 The department, in cooperation with the state engineer and state geologist, shall assist in  
13 implementing a public water supply wellhead protection program for protection of ground water  
14 resources utilizing existing state and local statutory authority.

15 **23.1-11-11. Rules.**

16 The department, with the approval of the commissioner and the state engineer, shall adopt  
17 rules necessary for implementation of this chapter.

18 **23.1-11-12. Producer liability.**

19 Liability may not be imposed upon an agricultural producer for costs of active cleanup, or for  
20 any damage associated with or resulting from the detection in ground water, of a pesticide if the  
21 applicator has complied with label instructions and other precautions for application of the  
22 pesticide and the applicator has a valid appropriate applicator's certification. Compliance with  
23 these requirements may be raised as an affirmative defense by an agricultural producer.

24 **SECTION 27.** Chapter 23.1-12 of the North Dakota Century Code is created and enacted  
25 as follows:

26 **23.1-12-01. Petroleum tank release compensation fund - Established.**

27 A petroleum tank release compensation fund is established.

28 **23.1-12-02. Definitions.**

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

- 30 1. "Actually incurred" means, in the case of corrective action expenditures, the owner,  
31 operator, landowner, an insurer, or a contractor hired by the owner, operator, or the

- 1            landlord has expended time and materials, and only that person is receiving  
2            reimbursement from the fund.
- 3            2. "Administrator" means the manager of the state fire and tornado fund.
- 4            3. "Board" means the petroleum release compensation board.
- 5            4. "Commissioner" means the insurance commissioner.
- 6            5. "Corrective action" means an action required by the department to minimize, contain,  
7            eliminate, remediate, mitigate, or clean up a release, including any remedial  
8            emergency measures. The term does not include the repair or replacement of  
9            equipment or preconstructed property.
- 10           6. "Dealer" means a person licensed by the tax commissioner to sell motor vehicle fuel or  
11           special fuels within the state.
- 12           7. "Department" means the department of environmental quality.
- 13           8. "Fund" means the petroleum release compensation fund.
- 14           9. "Location" means a physical address or site that has contiguous properties.  
15           Noncontiguous properties within a municipality or other governmental jurisdiction are  
16           considered separate locations.
- 17           10. "Operator" means a person in control of, or having responsibility for, the daily  
18           operation of a tank under this chapter.
- 19           11. "Owner" means a person who holds title to, controls, or possesses an interest in the  
20           tank before the discontinuation of its use.
- 21           12. "Petroleum" means any of the following:
- 22           a. Gasoline and petroleum products as defined in chapter 23.1-13.
- 23           b. Constituents of gasoline and fuel oil under subdivision a.
- 24           c. Oil sludge and oil refuse.
- 25           13. "Portable tank" means a storage tank along with its piping and wiring that is not  
26           stationary or affixed, including a tank that is on skids.
- 27           14. "Release" means any unintentional spilling, leaking, emitting, discharging, escaping,  
28           leaching, or disposing of petroleum from a tank into the environment whether  
29           occurring before or after the effective date of this chapter, but does not include  
30           discharges or designed venting allowed under federal or state law or under adopted  
31           rules.

- 1        15. "Tank" means any one or a combination of containers, vessels, and enclosures,  
2        whether aboveground or underground, including associated piping or appurtenances  
3        used to contain an accumulation of petroleum. The term does not include:
- 4        a. Tanks owned by the federal government.  
5        b. Tanks used for the transportation of petroleum.  
6        c. A pipeline facility, including gathering lines:  
7            (1) Regulated under the Natural Gas Pipeline Safety Act of 1968.  
8            (2) Regulated under the Hazardous Liquid Pipeline Safety Act of 1979.  
9            (3) Regulated under state laws comparable to the provisions of law in  
10            paragraph 1 or 2, if the facility is an interstate pipeline facility.
- 11        d. An underground farm or residential tank with a capacity of one thousand one  
12        hundred gallons [4163.94 liters] or less or an aboveground farm or residential  
13        tank of any capacity used for storing motor fuel for noncommercial purposes.  
14        However, the owner of an aboveground farm or residential tank may, upon  
15        application, register the tank and be eligible for reimbursement under this  
16        chapter.
- 17        e. A tank used for storing heating oil for consumptive use on the premises where  
18        stored.
- 19        f. A surface impoundment, pit, pond, or lagoon.  
20        g. A flowthrough process tank.  
21        h. A liquid trap or associated gathering lines directly related to oil or gas production  
22        or gathering operations.
- 23        i. A storage tank situated in an underground area such as a basement, cellar, mine  
24        working, drift, shaft, or tunnel, if the storage tank is situated upon or above the  
25        surface of the floor.
- 26        j. A tank used for the storage of propane.  
27        k. A tank used to fuel rail locomotives or surface coal mining equipment.  
28        l. An aboveground tank used to feed diesel fuel generators. Upon application, the  
29        owner or operator of an aboveground tank used to feed diesel fuel generators  
30        may register the tank and is eligible for reimbursement under this chapter.
- 31        m. A portable tank.

1           n. A tank with a capacity under one thousand three hundred twenty gallons  
2           [4996.728 liters] used to store lubricating oil.

3       16. "Tank integrity test" means a test to determine that a tank is sound and not leaking.  
4       For an underground tank, the term means a certified third-party test that meets  
5       environmental protection agency leak detection requirements. For an aboveground  
6       tank, the term means a test conducted according to steel tank institute SP 001 or  
7       American petroleum institute 653.

8       17. "Third party" means a person who is damaged by the act of a registered owner,  
9       operator, or dealer requiring corrective action, or a person who suffers bodily injury or  
10       property damage caused by a petroleum release.

11       **23.1-12-03. Petroleum release compensation board.**

12       The petroleum release compensation advisory board shall review claims against the fund.  
13       The board consists of five members appointed by the governor, three of whom are active in  
14       petroleum marketing; one of whom is active in the petroleum, crude oil, or refining industry; and  
15       one of whom is active in the insurance industry. A member active in petroleum marketing must  
16       be appointed from a list of three recommended by the North Dakota retail petroleum marketers  
17       association. A member active in the petroleum, crude oil, or refining industry must be appointed  
18       from a list of three recommended by the North Dakota petroleum council. A member active in  
19       the insurance industry must be appointed from a list of three recommended by the North Dakota  
20       professional insurance agents association. Members must be appointed to terms of three years  
21       with the terms arranged so the term of at least one member, but no more than two members,  
22       expires June thirtieth of each year. A member shall hold office until a successor is duly  
23       appointed and qualified. Each member of the board is entitled to receive sixty-two dollars and  
24       fifty cents per diem for each day actually spent in the performance of official duties, plus  
25       mileage and expenses as allowed to other state officers.

26       **23.1-12-04. Administration of fund - Staff.**

27       The administrator shall administer the fund according to this chapter. The administrator  
28       shall convene the board as may be necessary to keep the board apprised of the fund's general  
29       operations. However, the board shall meet at least once each half of each calendar year to  
30       review and to advise the administrator regarding the administration of the fund, the fund's  
31       general operations, and to hear and decide denials of claims by the administrator which may be

1 appealed to the board, and to discuss all claims against the fund. The administrator may employ  
2 any assistance and staff necessary to administer the fund within the limits of legislative  
3 appropriation. A claimant aggrieved by a decision of the administrator regarding a claim upon  
4 the fund may appeal the decision to the board. The board may sustain, modify, or reverse the  
5 decision of the administrator. The claimant or the administrator may appeal the board's decision  
6 to the commissioner. The decision of the commissioner may be appealed under chapter 28-32.

7 **23.1-12-05. Adoption of rules.**

8 The administrator shall adopt rules regarding the practices and procedures of the fund, the  
9 form and procedure for applications for compensation from the fund, procedures for  
10 investigation of claims, procedures for determining the amount and type of costs that are  
11 eligible for reimbursement from the fund, procedures for persons to perform services for the  
12 fund, procedures for appeals to the board by claimants aggrieved by an adverse decision of the  
13 administrator, and any other rules as may be appropriate to administer this chapter.

14 **23.1-12-06. Release discovery.**

15 If the department has reason to believe a release has occurred, it shall notify the  
16 administrator. The department shall direct the owner or operator to take reasonable and  
17 necessary corrective actions as provided under federal or state law or under adopted rules.

18 **23.1-12-07. Owner or operator not identified.**

19 The department may cause legal action to be brought to compel performance of a  
20 corrective action if an identified owner or operator fails or refuses to comply with an order of the  
21 department, or the department may engage the services of qualified contractors for  
22 performance of a corrective action if an owner or operator cannot be identified.

23 **23.1-12-08. Imminent hazard.**

24 Upon receipt of information that a petroleum release has occurred which may present an  
25 imminent or substantial endangerment of health or the environment, the department may take  
26 emergency action necessary to protect health or the environment.

27 **23.1-12-09. Duty to notify.**

28 This chapter does not limit a person's duty to notify the department and to take action  
29 related to a release. However, payment for corrective actions required as a result of a petroleum  
30 release is governed by this chapter.

1        **23.1-12-10. Providing of information.**

2        A person the administrator or the department has reason to believe is an owner or operator,  
3 the owner of real property where corrective action is ordered to be taken, or a person that may  
4 have information concerning a release shall, if requested by the administrator or the  
5 department, or any member, employee, or agent of the administrator or the department, furnish  
6 to the administrator or the department any information that person has or may reasonably  
7 obtain which is relevant to the release.

8        **23.1-12-11. Examination of records.**

9        Any employee of the administrator or the department may, upon presentation of official  
10 credentials:

- 11        1. Examine and copy books, papers, records, memoranda, or data of any person that  
12        has a duty to provide information to the administrator or the department under section  
13        23.1-12-10; and
- 14        2. Enter upon public or private property to take action authorized by this section,  
15        including obtaining information from a person that has a duty to provide the  
16        information under section 23.1-12-10, conducting surveys and investigations, and  
17        taking corrective action.

18        **23.1-12-12. Responsibility for cost.**

19        The owner or operator is liable for the cost of the corrective action required by the  
20 department, including the cost of investigating the releases. This chapter does not create any  
21 new cause of action for damages on behalf of third parties for release of petroleum products  
22 against the fund or licensed dealers.

23        **23.1-12-13. Liability avoided.**

24        An owner or operator may not avoid liability by means of a conveyance of any right, title, or  
25 interest in real property or by any indemnification, hold harmless agreement, or similar  
26 agreement. However, this chapter does not:

- 27        1. Prohibit a person that may be liable from entering an agreement by which the person  
28        is insured or is a member of a risk retention group, and is thereby indemnified for part  
29        or all of the liability;
- 30        2. Prohibit the enforcement of an insurance, hold harmless, or indemnification  
31        agreement; or

1       3. Bar a claim for relief brought by a person that may be liable or by an insurer or  
2           guarantor, whether by right of subrogation or otherwise.

3       **23.1-12-14. Other remedies.**

4       This chapter does not limit the powers of the administrator or department, or preclude the  
5 pursuit of any other administrative, civil, injunctive, or criminal remedies by the administrator or  
6 department or any other person. Administrative remedies need not be exhausted to proceed  
7 under this chapter. The remedies provided by this chapter are in addition to those provided  
8 under existing statutory or common law.

9       **23.1-12-15. Revenue to the fund.**

10       Revenue from the following sources must be deposited in the state treasury and credited to  
11 the fund:

- 12       1. Any registration fees collected under section 23.1-12-17;
- 13       2. Any money recovered by the fund under section 23.1-12-23, and any money paid  
14       under an agreement, stipulation, or settlement;
- 15       3. Any interest attributable to investment of money in the fund; and
- 16       4. Any money received by the administrator in the form of gifts, grants, reimbursements,  
17       or appropriations from any source intended to be used for the purposes of the fund.

18       **23.1-12-16. Penalty.**

19       A tank owner violating section 23.1-12-17 is guilty of a class B misdemeanor unless another  
20 penalty is specifically provided.

21       **23.1-12-17. Registration fee.**

- 22       1. An owner or operator of a tank shall pay an annual registration fee of fifty dollars for  
23       each aboveground or underground tank owned or operated by that person. If after the  
24       fiscal year has been closed and all expenses relating to the fiscal year have been  
25       accounted for, the fund balance is less than six million dollars, the annual registration  
26       fee of fifty dollars is increased to one hundred dollars. If after the fiscal year has been  
27       closed and all expenses relating to the fiscal year have been accounted for, the fund  
28       balance is five million five hundred thousand dollars or more and the annual  
29       registration fee has been increased to one hundred dollars, the fee must be reduced  
30       to fifty dollars. If after the fiscal year has been closed and all expenses relating to the  
31       fiscal year have been accounted for, the fund balance exceeds nine million dollars, the

- 1           annual registration fee is reduced to five dollars. Annual registration fees must  
2           continue at five dollars until the fund balance does not exceed nine million dollars.
- 3           2. An owner or operator of an existing tank that is discovered at a location that currently  
4           and previously has had tanks registered with the fund shall pay an additional  
5           twenty-five dollar penalty fee in addition to the registration fee for each aboveground  
6           tank and each underground tank owned or operated by that person for each previous  
7           year that the tank was required to be registered for which a fee was not paid. The  
8           payment includes the fees and the penalty for the failure to register.
- 9           3. An owner or operator of an existing tank at a location that was not previously and  
10           continuously registered with the fund, whether the registration was required by law or  
11           not must provide the fund with a phase two environmental study conducted by a  
12           qualified firm according to American society for testing materials standards. A tank  
13           integrity test must also be performed. The environmental study and tank integrity test  
14           must be reviewed by the commissioner along with the application for registration with  
15           the fund. If the commissioner rejects the application, the applicant is denied eligibility  
16           to the fund. However, if the site is remediated and the leaking tank is replaced, the  
17           applicant may reapply for registration with the fund. A new installation that is using a  
18           used tank must provide tank integrity test results for the used tank. Use of a synthetic  
19           liner in an aboveground dike system negates the need for a tank integrity test. The  
20           owner or operator of a new tank at a new site or a new tank at an existing site that had  
21           a tank registered at the site previously need only pay the required fees for registration  
22           with the fund.
- 23           4. If accepted for registration with the fund, the owner or operator of the tank shall pay an  
24           additional twenty-five dollar penalty fee in addition to the registration fee for each  
25           aboveground tank and underground tank owned or operated by that person for each  
26           previous year that the tank was required to be registered for which a fee was not paid,  
27           regardless of ownership in each of those years. The payment includes the fees and  
28           the penalty for the failure to register.
- 29           5. The registration fees collected under this section must be paid to the fund  
30           administrator for deposit in the state treasury for the dedicated credit to the petroleum  
31           release compensation fund.

1       6. If a registration payment is not received within sixty days of July first by the  
2           commissioner, a late fee of twenty-five dollars per tank per month must be imposed on  
3           the tank owner or operator.

4       **23.1-12-18. Reimbursement for corrective action.**

5       1. The administrator shall reimburse an eligible owner or operator for ninety percent of  
6           the costs of corrective action, including the investigation, which are greater than five  
7           thousand dollars and less than one million dollars per occurrence and two million  
8           dollars in the aggregate. An eligible tank owner or operator may not be liable for more  
9           than twenty thousand dollars out-of-pocket expenses for any one release. A  
10          reimbursement may not be made unless the administrator determines that:

11       a. At the time the release was discovered the owner or operator and the tank were  
12           in compliance with state and federal rules and rules applicable to the tank,  
13           including rules relating to financial responsibility, rules relating to infrastructure  
14           compatibility, and all rules relating to health and safety which were in effect at the  
15           time of the release;

16       b. The department was given notice of the release as required by federal and state  
17           law;

18       c. The owner or operator has paid the first five thousand dollars of the cost of  
19           corrective action; and

20       d. The owner or operator, to the extent possible, fully cooperated with the  
21           department and the administrator in responding to the release.

22       2. The fund shall compensate third parties for corrective action taken for a petroleum  
23           release if the provisions of subdivisions a, b, c, and d of subsection 1 were met at the  
24           time the release was discovered. Compensation for third-party corrective action  
25           includes compensation for costs incurred in returning the real estate to that level  
26           deemed duly remediated by the department.

27       3. The fund shall reimburse the tank owner, operator, or dealer for bodily injuries to a  
28           third party caused by a petroleum release if the provisions of subdivisions a, b, c, and  
29           d of subsection 1 were met at the time the release was discovered in an amount  
30           determined by:

- 1           a. Findings reduced to judgment in federal or state district court or such other court  
2           having jurisdiction over the matter in a proceeding in which the fund has been  
3           made a party:
- 4           b. Findings by an arbitration panel agreed upon in writing by the parties in a  
5           proceeding in which the fund has been made a party; or
- 6           c. A written settlement entered into by the parties in which the commissioner or the  
7           commissioner's agent has participated. The settlement must be reviewed and  
8           approved by the commissioner.
- 9           4. In any civil action against the owner, operator, or dealer for damages resulting from a  
10           petroleum release, if the pre-leak condition of real estate is an issue, and if there is no  
11           reasonable means of determining the pre-leak condition of real estate, the condition is  
12           that which exists at the time the department determines the real estate has been duly  
13           remediated.
- 14           5. The fund may not compensate for attorney's fees of owners, operators, or dealers, nor  
15           may the fund compensate for exemplary damages, criminal fines, or administrative  
16           penalties.
- 17           6. A third party accepting monetary compensation directly from the fund for damages due  
18           to a release caused by a tank owner, operator, or dealer covered by the fund is  
19           deemed to have waived any cause of action against the fund or against the tank  
20           owner, operator, or dealer.
- 21           7. The fund shall reimburse the department for all costs, attorney's fees, and other legal  
22           expenses relating to administrative and adjudicative proceedings under this chapter  
23           and any subsequent legal proceeding. Any monies reimbursed must be deposited in  
24           the department's operating fund in the state treasury and must be spent subject to  
25           appropriation by the legislative assembly.

26           **23.1-12-19. Application for reimbursement.**

27           An owner or operator that is a first-party claimant and that proposes to take corrective  
28           action or has undertaken corrective action in response to a release, the time of the release  
29           being unknown, may apply to the administrator for partial or full reimbursement under section  
30           23.1-12-18. An owner or operator who is a first-party claimant may be reimbursed only for costs

1 incurred after July 1, 1989, even if the releases were discovered before July 1, 1989, up to the  
2 maximum of twenty-five thousand dollars per location.

3 **23.1-12-20. Administrator to determine costs.**

4 A reimbursement for corrective actions taken by an owner, operator, or dealer may not be  
5 made from the fund until the administrator has determined that the costs for which  
6 reimbursement is requested were actually incurred and were reasonable. All necessary loss  
7 adjustment expenses must be included as a component of the loss and must be paid out of the  
8 fund.

9 **23.1-12-21. Liability of responsible person.**

10 The right to apply for reimbursement and the receipt of reimbursement does not limit the  
11 liability of an owner or operator for damages or costs incurred as the result of a release.

12 **23.1-12-22. Reimbursement not subject to attachment.**

13 The amount of reimbursement to be paid for corrective action that was done by a third party  
14 is not subject to legal process or attachment if actually paid to a third party that performed the  
15 corrective action.

16 **23.1-12-23. Recovery of expenses.**

17 Any reasonable and necessary expenses incurred by the fund, which exceed the coverage  
18 limits provided by section 23.1-12-18, in taking a corrective action, including costs of  
19 investigating a release, and in taking legal actions, may be recovered in a civil action in district  
20 court brought by the administrator against an owner or operator. The certification of expenses  
21 by an approved agent of the fund is prima facie evidence that the expenses are reasonable and  
22 necessary. Any expenses that are recovered under this section must be deposited in the fund.

23 **23.1-12-24. Costs exceeding reimbursement.**

24 If the cost of any extraordinary authorized action under this chapter exceeds amounts  
25 awarded to the administrator or the department from the federal government, the administrator  
26 may pay the department the cost of the corrective actions, including the cost of investigating a  
27 release, if the board finds that the cause was a petroleum substance, that an adequate amount  
28 exists in the fund to pay for the corrective action, that the occurrence was extraordinary in  
29 scope and size, and that a danger to the health and safety of citizens exists.

1        **23.1-12-25. Coordination of benefits.**

2        If an owner or operator has an insurance policy that provides the same coverage as the  
3 fund, the administrator of the fund shall pay the share of the covered loss or damage for which  
4 the fund is responsible. The share that must be paid from the fund is equal to the proportion that  
5 the applicable limit of coverage under the fund bears to the limits of insurance of all insurance  
6 coverage on the same basis.

7        **23.1-12-26. Third-party damages - Participation in actions and review of settlements.**

8        1. An owner or operator sued for damages resulting from a release shall notify the  
9 administrator within fourteen days of being served with a summons and complaint.

10        The owner or operator also shall advise the administrator if any insurer is defending  
11 the owner or operator and provide to the administrator the name of that insurer.

12        2. An owner or operator that, before litigation, enters negotiations with a third party that  
13 claims to have been damaged by a release, or that receives a demand for payment of  
14 damages to a third party that claims to have been damaged by a release, shall notify  
15 the administrator within fourteen days of the demand or the negotiations.

16        3. The administrator and the board shall review the conduct of any litigation or  
17 negotiation. The administrator may not assume any legal costs incurred by the  
18 defendant or plaintiff, but may participate in discovery, trial proceedings, or settlement  
19 negotiations of either disputed liability or damages that bear on the determination of a  
20 plaintiff's damages.

21        4. The administrator and the board shall review any settlement negotiations to determine  
22 the dollar amount of bodily injury or property damage actually, necessarily, and  
23 reasonably incurred by third parties which, if paid by the defendant, would be  
24 considered eligible costs.

25        **23.1-12-27. Third-party damages - Documentation.**

26        1. An applicant's payments for third-party damages pursuant to a judgment entered in a  
27 court must include copies of the notice of entry of judgment and abstract of costs.

28        2. An applicant's payments for third-party damages made by agreement in settlement of  
29 litigation must include copies of the settlement agreement and supporting documents  
30 required by the administrator.

- 1       3. An applicant's payments for third-party damages made by agreement without  
2       reference to litigation must include copies of the settlement and supporting documents  
3       required by the administrator.
- 4       4. The administrator and the board may require a third party who claims bodily injury to  
5       be examined by a physician and require that the physician's report to be submitted to  
6       the administrator. The administrator may require a third party that claims property  
7       damage to permit a property appraiser or claims adjuster retained by the administrator  
8       to inspect the property and report to the administrator.
- 9       5. The fund shall pay a judgment against an owner, operator, or dealer awarded to a third  
10      party as a result of a third-party claim and property damage against an owner,  
11      operator, or dealer registered by the fund.
- 12      6. The fund shall pay for corrective action as awarded to a third party in any judgment  
13      against an owner, operator, or dealer.
- 14      7. Liability of the tank owner, operator, dealer, or fund to third parties for corrective action  
15      or personal injuries and property damage may not exceed, per person, one million  
16      dollars. Maximum liability of the fund, including all claims by third parties, may not  
17      exceed, for any release site, the maximum provided in section 23.1-12-18.
- 18      8. A third party may not bring an action against an owner, operator, or dealer more than  
19      three years after a corrective action plan has been approved by the department if the  
20      owner, operator, or dealer fully implements and complies with the corrective action  
21      plan.
- 22      9. In investigating a release site or reviewing the implementation of a corrective action  
23      plan approved by the department, the department shall determine whether the release  
24      threatens public health or the environment. The department shall require, based on  
25      science and technology appropriate for the site, any monitoring, remediation, or other  
26      appropriate corrective action that is reasonably necessary to protect public health or  
27      the environment. The department may require corrective action at a release site at any  
28      time after a release occurs.

1        **23.1-12-28. Matching federal funds.**

2        The administrator and the board may annually allow the department a ten percent matching  
3 grant for federal leaking underground storage tank funds to be paid out of the fund if the  
4 moneys are available and the administrator and the board determine the allowance appropriate.

5        **23.1-12-29. Fund appropriations.**

6        Money in the fund is continuously appropriated to the administrator for the purpose of  
7 making reimbursements under this chapter.

8        **23.1-12-30. Investment of fund.**

9        Investment of the fund is under the supervision of the state investment board in accordance  
10 with chapter 21-10. The commissioner may purchase a contract for reinsurance of any risk to be  
11 paid by the fund. The administrator may investigate the purchase of insurance that reimburses  
12 an owner or operator for property damage claims by third parties other than claims for costs of  
13 corrective action.

14        **SECTION 28.** Chapter 23.1-13 of the North Dakota Century Code is created and enacted  
15 as follows:

16        **23.1-13-01. Definitions.**

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

- 18        1. "Adulterated", when used to describe any petroleum or alternative fuel product, means  
19        a petroleum or alternative fuel product that fails to meet the specifications prescribed  
20        by this chapter.
- 21        2. "Alternative fuel" means a fuel for an engine or vehicle, or used as heating oil, other  
22        than a petroleum-based fuel. The term includes biodiesel and green diesel as defined  
23        in section 57-43.2-01.
- 24        3. "Department" means the department of environmental quality.
- 25        4. "Diesel fuel" means any petroleum product intended for use or offered for sale as a  
26        fuel for engines in which the fuel is injected into the combustion chamber and ignited  
27        by pressure without electric spark.
- 28        5. "Gasoline" means a refined petroleum naphtha which by its composition is suitable for  
29        use as a carburant in internal combustion engines.
- 30        6. "Heating oil" means any product intended for use or offered for sale as a furnace oil,  
31        range oil, or fuel oil for heating and cooking purposes to be used in burners other than

1 wick burners regardless of whether the product is designated as furnace oil, range oil,  
2 fuel oil, gas oil, or is given any other name or designation.

3 7. "Kerosene" means a petroleum fraction which is free from water, additives, foreign or  
4 suspended matter, and is suitable for use as an illuminating oil.

5 8. "Lubricating oil" means any petroleum, or other product, used for the purpose of  
6 reducing friction, heat, or wear in automobiles, tractors, gasoline engines, diesel  
7 engines, and other machines.

8 9. "Misbranded", when used in connection with any petroleum or alternative fuel product,  
9 means a petroleum or alternative fuel product that is not labeled as required under the  
10 provisions of this chapter.

11 10. "Sell" and "sale" include the keeping, offering, or exposing for sale, transportation, or  
12 exchange of the restricted or prohibited article.

13 11. "Tractor fuel" means any product, other than gasoline or kerosene, intended for use or  
14 offered for sale as a fuel for tractors, regardless of whether the product is designated  
15 as distillate, gas oil, fuel oil, or is given any other name or designation.

16 **23.1-13-02. Department to enforce law - Regulation of petroleum products.**

17 This chapter must be enforced by the department. The department may adopt rules under  
18 chapter 28-32 for the interpretation of this chapter.

19 **23.1-13-03. Sale of adulterated and misbranded gasoline, kerosene, tractor fuel,**  
20 **heating oil, diesel fuel, or lubricating oil prohibited.**

21 A person may not sell or offer or expose for sale any kerosene, gasoline, or other petroleum  
22 product intended to be used as kerosene, gasoline, any tractor fuel, heating oil, diesel fuel, or  
23 lubricating oil that is adulterated or misbranded.

24 **23.1-13-04. Retail sale of alcohol-blended gasoline - Label requirements.**

25 A dealer may not sell at retail alcohol-blended gasoline unless the dispensing unit and any  
26 price advertising bear the name of the alcohol blended with the gasoline if the alcohol-blended  
27 gasoline consists of one percent or more by volume of any alcohol. The disclosure must be in  
28 letters at least the same size as those used for the label of the basic grade of gasoline and must  
29 be next to the gasoline grade label. A producer of alcohol-blended gasoline may provide a  
30 retailer with a label promoting the benefits of alcohol-blended gasoline, if the label at least  
31 meets the requirements of this section.

1        **23.1-13-05. Retail sale of gasoline containing methyl tertiary butyl ether - Restriction.**

2        A person may not sell, offer for sale, supply, or offer for supply gasoline that contains methyl  
3 tertiary butyl ether in quantities greater than five-tenths of one percent by volume. However, a  
4 person may ship gasoline containing methyl tertiary butyl ether within the state for disposition  
5 outside the state, including storage coincident to shipment.

6        **23.1-13-06. Retail sale of alternative fuels - Notice required.**

7        A dealer may not sell at retail alternative fuel unless the dispensing unit and price  
8 advertising contains the name and main components of the alternative fuel or alternative fuel  
9 blend. The disclosure must follow the same labeling specifications that apply for  
10 petroleum-based fuels. The department shall adopt rules under chapter 28-32 for labeling of  
11 petroleum products and alternative fuels. A producer of alternative fuels or alternative fuel  
12 blends may provide a retailer with a label promoting the benefits of the alternative fuel if the  
13 label meets the requirements of this section.

14        **23.1-13-07. Labeling gasoline containers - Gasoline pipeline.**

15        Every package, barrel, filling station pump, and every tank wagon, truck, or car containing  
16 gasoline for sale or consignment or held with intent to sell or consign the same within this state  
17 or to transport it into this state must be clearly and distinctly stamped, labeled, or tagged with  
18 the word "gasoline". Every oil station pipeline for gasoline must be painted red. The fittings upon  
19 such lines; however, may be painted other colors to designate grades. Pipelines for gasoline  
20 must be entirely separate from lines for kerosene or for any other high flash product. Every can,  
21 bucket, barrel, or other container of less than sixty gallons [227.12 liters] capacity used for  
22 storage or delivery of gasoline, benzine, or benzine products, unless the same is made of glass,  
23 must be painted bright red, and such containers may not be used for the storage or delivery of  
24 kerosene. In the case of glass containers, the contents must be designated by a red label  
25 securely pasted on or attached to the containers bearing the name of the product.

26        **23.1-13-08. Labeling kerosene - Containers - Pipeline.**

27        Every package, barrel, filling station pump, and every tank wagon, truck, or car containing  
28 kerosene for sale or consignment when held within this state or transported into this state must  
29 be clearly and distinctly stamped, labeled, or tagged with the word "kerosene". Every oil station  
30 pipeline for kerosene must be painted aluminum and must be entirely separate from lines for  
31 gasoline or other low flash products.

1        **23.1-13-09. Labeling tractor fuel.**

2        Every package, barrel, pump, and every truck, tank wagon, or car containing tractor fuel oil,  
3 other than gasoline or kerosene, for sale or consignment, when held within this state or when  
4 being transported into this state must be clearly and distinctly tagged, marked, and labeled with  
5 the legend "Tractor fuel oil, not for illuminating purposes nor wick burners". Every oil station  
6 pipeline for tractor fuel must be painted yellow and must be entirely separate from lines for  
7 kerosene or other high flash product.

8        **23.1-13-10. Labeling heating oil.**

9        Every package, barrel, pump, and every tank wagon, truck, or car containing heating oil for  
10 sale or consignment, when held within this state or when being transported into this state, must  
11 be clearly and distinctly tagged, marked, or labeled with the designation of grade established by  
12 the department. Every oil station pipeline for heating oil must be painted green.

13        **23.1-13-11. Labeling diesel fuel.**

14        Every package, barrel, pump, and every tank wagon, truck, or car containing diesel fuel for  
15 sale or consignment, when held within this state or transported into this state, must be clearly  
16 and distinctly tagged, marked, or labeled with the designation "diesel fuel" together with its  
17 cetane number and the grade established by the department. Every oil station pipeline for  
18 diesel fuel must be painted green.

19        **23.1-13-12. Specifications for petroleum products - Tests used.**

20        Specifications for gasoline, kerosene, tractor fuel, diesel oil, heating oil, lubricating oil,  
21 alternative fuels, and liquefied petroleum gases, including propane, propylene, normal butane or  
22 isobutane, and butylene, must be determined by the department and must be based upon  
23 nationally recognized standards. When so determined by the department and adopted and  
24 promulgated as regulations and orders of the department in accordance with chapter 28-32,  
25 such specifications must be the specifications for such petroleum products sold in this state and  
26 official tests of such petroleum products must be based upon test specifications so determined  
27 adopted and promulgated.

28        **23.1-13-13. How volume of heating oil determined.**

29        In case of a dispute, heating oil must be sold on the basis of the United States gallon  
30 containing two hundred thirty-one cubic inches [3785.41 milliliters] at sixty degrees Fahrenheit  
31 [15.56 degrees Celsius]. The volume of the delivered oil; however, may be calculated from its

1 weight and gravity degrees API in accordance with the national standard petroleum oil tables  
2 prepared by the national bureau of standards.

3 **23.1-13-14. Department may prohibit sale of certain gasolines or motor fuels.**

4 The department may prohibit the sale of any "gasoline improver" or motor fuel dope, oil  
5 additive, and of any gasoline mixed or compounded with any other chemical, substance, or  
6 solution which may be detrimental to the public health, injurious to internal combustion engines,  
7 or concerning which unsubstantiated claims are made. However, it may not prohibit the sale of  
8 any material, substance, or solution that has been favorably reported on by the United States  
9 bureau of standards or by the surgeon general or bureau of public health of the United States.

10 **23.1-13-15. Sale of prohibited gasolines - Penalty.**

11 Any person violating any of the provisions of section 23.1-13-14 is guilty of a class B  
12 misdemeanor.

13 **23.1-13-16. Inspection fees.**

14 Every person licensed by the tax commissioner as a motor vehicle fuel or special fuels  
15 dealer shall pay to the tax commissioner an inspection fee of one-fortieth of one cent per gallon  
16 [3.79 liters] for every gallon [3.79 liters] of gasoline, kerosene, tractor fuel, heating oil, or diesel  
17 fuel sold or used during a calendar month except those gallons sold out of state or those  
18 gallons sold as original package sales as defined in chapters 57-43.1 and 57-43.2. The fee  
19 must accompany the monthly report required in the following section and is due no later than  
20 the twenty-fifth day of each calendar month for the preceding month. The tax commissioner  
21 shall forward all money collected under this section to the state treasurer monthly, and the state  
22 treasurer shall place the money in the general fund of the state. The tax commissioner shall  
23 make available annually a report by licensed dealer listing the number of gallons [liters] of motor  
24 vehicle fuel and special fuels upon which the inspection fee has been paid. The provisions of  
25 chapters 57-43.1 and 57-43.2 pertaining to the administration of motor vehicle fuel and special  
26 fuels taxes not in conflict with the provisions of this chapter govern the administration of the  
27 inspection fee levied by this chapter.

28 **23.1-13-17. Report to tax commissioner of petroleum products - Contents.**

29 No later than the twenty-fifth day of each calendar month, every person licensed by the tax  
30 commissioner as a motor vehicle fuel, special fuels, or liquefied petroleum wholesale dealer  
31 shall send to the tax commissioner a correct report of all purchases and sales of gasoline.

1 kerosene, tractor fuel, heating oil, or diesel fuel during the preceding month. The report must  
2 include the same information as required in chapters 57-43.1 and 57-43.2 for motor vehicle fuel  
3 and special fuels tax collection purposes. Failure to send the report and inspection fee required  
4 by the preceding section to the tax commissioner constitutes a violation of the provisions of this  
5 chapter.

6 **23.1-13-18. Bond may be required of dealer in petroleum products.**

7 The tax commissioner may require any person licensed by the tax commissioner as a motor  
8 vehicle fuel, special fuels, or liquefied petroleum wholesale dealer to furnish a surety bond  
9 payable to the state in the sum of five hundred dollars, or twice the amount of inspection fees  
10 due for any calendar month, whichever amount is the greater, guaranteeing to the state true  
11 reports of purchases and sales of gasoline, kerosene, tractor fuel, heating oil, and diesel fuel  
12 and the payment of all inspection fees provided for in this chapter. The tax commissioner shall  
13 determine the sufficiency of the bond. A single bond may cover dealing in one or all of the  
14 petroleum products mentioned in this chapter. When any inspection fee is not paid within twenty  
15 days after it has become delinquent, the person bonding the delinquent may be called upon to  
16 make good upon the bond for such delinquent fees.

17 **23.1-13-19. Department may designate ports of entry and hold cars for inspection -**  
18 **Penalty.**

19 The department may designate ports of entry of all transportation companies carrying  
20 petroleum products into this state for sale or consignment and may hold or delay any car or  
21 other vehicle of transportation entering this state carrying such products for sale or consignment  
22 until samples thereof have been obtained for inspection and analysis and until any other  
23 required information regarding the products contained in the shipment has been secured. The  
24 department may not hold or delay any shipment or consignment of petroleum products at the  
25 port of entry if the transportation company carrying such products will permit proper inspection  
26 and sampling of shipments or consignments at convenient designated points without the state,  
27 and will permit the inspection of transportation records and provide adequate information  
28 regarding the records of cars or other vehicles carrying such products at division points or at  
29 other places within or without the state where such cars or other vehicles, in normal practice,  
30 are stopped and held for switching and rearrangement or where ample opportunity is provided  
31 for proper inspection and sampling. The failure on the part of a transportation company or any

1 of its officers or employees to hold car or other vehicle of transportation for inspection is a  
2 class B misdemeanor.

3 **23.1-13-20. Penalties.**

4 A person violating or failing to comply with any of the provisions of this chapter, or with any  
5 rule issued under this chapter, is, unless another penalty is specifically provided, guilty of a  
6 class B misdemeanor.

7 **SECTION 29.** Chapter 23.1-14 of the North Dakota Century Code is created and enacted  
8 as follows:

9 **23.1-14-01. Administration.**

10 The department of environmental quality shall administer this chapter.

11 **23.1-14-02. Definitions.**

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

- 13 1. "Antifreeze" means any substance or preparation sold, distributed, or intended for use  
14 as the cooling liquid, or to be added to the cooling liquid, in the cooling system of  
15 internal combustion engines to prevent freezing of the cooling liquid, to lower its  
16 freezing point, or to raise its boiling point.
- 17 2. "Department" means the department of environmental quality.
- 18 3. "Distribute" means to hold with intent to sell to the consumer, offer for sale, to sell,  
19 barter, or otherwise supply.
- 20 4. "Label" means any display of written, printed, or graphic matter on, or attached to, a  
21 package or the outside individual container or wrapper of the package.
- 22 5. "Package" means a sealed retail package, drum, or other container in which antifreeze  
23 is distributed to the consumer or a container holding no more than fifty-five gallons  
24 [208.20 liters] from which the antifreeze is directly installed in the cooling system by  
25 seller or reseller.

26 **23.1-14-03. Registration - Penalty.**

27 Before antifreeze may be distributed in this state, the manufacturer or person whose name  
28 appears on the label shall apply to the department on forms provided by the department for  
29 registration for each antifreeze the manufacturer or person whose name appears on the label  
30 desires to distribute. All registrations expire on June thirtieth of each year. The application for  
31 registration must be accompanied by an inspection fee of forty dollars for each product, and by

1 a label or other printed matter describing the product. Upon approval by the department, a copy  
2 of the registration must be furnished to the applicant. The department shall remit inspection fees  
3 received by the department to the state treasurer for deposit in the state general fund. A penalty  
4 of fifty percent of the registration fee must be imposed if the certificate of registration is not  
5 applied for on or before July first of each year or within the same month such antifreeze is first  
6 manufactured or sold within this state.

7 **23.1-14-04. Adulteration.**

8 Antifreeze is adulterated:

- 9 1. If, in the form in which it is sold and directed to be used, it would be injurious to the  
10 cooling system of an internal combustion engine, or if, when used in the cooling  
11 system of such an engine, it would make the operation of the engine dangerous to the  
12 user; or
- 13 2. If its strength, quality, or purity falls below the standard of strength, quality, or purity  
14 under which it is sold or offered for sale.

15 **23.1-14-05. Misbranding.**

16 Antifreeze is misbranded:

- 17 1. If it does not bear a label which specifically identifies the product, states the name and  
18 place of business of the registrant, states the net quantity of contents in terms of liquid  
19 measure separately and accurately in a uniform location under the principal display  
20 panel, and contains a statement warning of any hazard of substantial injury to human  
21 beings which may result from the intended use or reasonably foreseeable misuse of  
22 the antifreeze;
- 23 2. If the product is to be diluted with another substance for use and its labeling does not  
24 contain a statement or chart showing appropriate amounts of each substance to be  
25 used to provide protection from freezing at various degrees of temperature;
- 26 3. If the labeling contains a corrosion protection claim and does not include a statement  
27 of the amount to be used to provide such protection;
- 28 4. If its labeling contains any claim that it has been approved or recommended by the  
29 department; or
- 30 5. If its labeling is false, deceptive, misleading, or is illegal under any law.

1       **23.1-14-06. Rules and regulations.**

2       The department may adopt reasonable rules and standards under chapter 28-32 as  
3 necessary to administer this chapter.

4       **23.1-14-07. Inspection, sampling, and analysis.**

5       The department may, at reasonable hours, enter, inspect, and examine all places and  
6 property where antifreeze is stored or distributed for the purpose of taking reasonable samples  
7 of antifreeze for analysis together with specimens of labeling. The department shall examine  
8 promptly all samples received in connection with the administration and enforcement of this  
9 chapter and report the results to the owner and the registrant of the antifreeze.

10       **23.1-14-08. Prohibited acts.**

11       It is unlawful to:

- 12       1. Distribute any antifreeze that has not been registered under this chapter or for which  
13       the label is different from that accepted for registration.
- 14       2. Distribute any antifreeze that is adulterated or misbranded.
- 15       3. Refuse to permit entry or inspection or refuse to permit the acquisition of a sample of  
16       any antifreeze under this chapter.
- 17       4. Dispose of any antifreeze under "withdrawal from distribution" order under this  
18       chapter, except as provided in this chapter.
- 19       5. Distribute any antifreeze unless it is in the registrant's or manufacturer's package,  
20       except a distributor may obtain written authorization from the department annually to  
21       distribute antifreeze in bulk using a container supplied by the customer, provided the  
22       distributor attaches to the container a label bearing all of the information required by  
23       this chapter.
- 24       6. Use the term "ethylene glycol" on the label of a product which contains other glycols  
25       unless it is qualified by the word "base", "type", or wording of similar import and unless  
26       the product contains a minimum ethylene glycol content of seventy-five percent by  
27       regulation weight and a minimum total glycol content of ninety-three percent by weight.  
28       The product also must have a corrected specific gravity to give reliable freezing point  
29       readings on a commercial ethylene glycol type hydrometer and a freezing point, when  
30       mixed with an equal volume of water, of thirty-two degrees Fahrenheit [53.33 degrees  
31       Celsius] below zero or lower.

1       **23.1-14-09. Enforcement.**

2       When the department finds any antifreeze being distributed in violation of this chapter or  
3 any rules adopted under this chapter, it may issue and enforce a written or printed "withdrawal  
4 from distribution" order, warning the distributor not to dispose of any of the lot of antifreeze in  
5 any manner until written permission is given by the department or a court of competent  
6 jurisdiction. Copies of the order must also be sent by registered or certified mail to the registrant  
7 or to the person whose name and address appear on the label of the antifreeze. The  
8 department shall release for distribution the lot of antifreeze so withdrawn upon compliance with  
9 applicable rules, or for return to the registrant or the person whose name and address appears  
10 on the label for reprocessing or relabeling as may be required. If compliance is not obtained  
11 within thirty days, the department may begin proceedings for condemnation. Any lot of  
12 antifreeze not in compliance with the law is subject to seizure upon complaint of the department  
13 in the district court of the county in which it is located or in the district court of Burleigh County.

14       **23.1-14-10. Submission of formula.**

15       The department may require an applicant for registration to furnish a statement of the  
16 formula of the applicant's antifreeze, unless the applicant can furnish other satisfactory  
17 evidence that the antifreeze is not adulterated or misbranded. The statement need not include  
18 inhibitor or other ingredients that total less than five percent by weight of the antifreeze. All  
19 statements of formula and other trade secrets furnished under this section are privileged and  
20 confidential and may not be made public or open to the inspection of any persons other than the  
21 department. No statement is subject to subpoena. Nor may a statement be exhibited or  
22 disclosed before any administrative or judicial tribunal by virtue of any order or subpoena of  
23 such tribunal without the consent of the applicant furnishing the statement to the department.

24       **23.1-14-11. Penalty.**

25       Any person that violates or fails to comply with this chapter, for which another penalty has  
26 not been specifically provided, is guilty of a class B misdemeanor.

27       **23.1-14-12. Prosecutions - State's attorney.**

28       Each state's attorney to whom the department reports any violation of this chapter shall  
29 institute appropriate proceedings in court without delay. However, nothing in this chapter may be  
30 construed as requiring the department to report minor violations for the institution of

1 proceedings under this chapter whenever it believes the public interest will be served  
2 adequately by suitable written notice or warning.

3 **23.1-14-13. Injunction proceedings.**

4 In addition to other remedies, the department may apply to the district court of Burleigh  
5 County for a temporary or permanent injunction restraining any person from violating a  
6 provision of this chapter regardless of whether there exists an adequate remedy at law, and  
7 appropriate costs must be taxed by the court for all expenses to the department for the  
8 injunctive proceedings.

9 **23.1-14-14. Reports by department.**

10 Except as otherwise provided, the department may publish reports of any analyses,  
11 inspections, or research done under this chapter for the information of the public.

12 **SECTION 30.** Chapter 23.1-15 of the North Dakota Century Code is created and enacted  
13 as follows:

14 **23.1-15-01. Definitions.**

15 For purposes of this chapter, unless the context otherwise requires:

- 16 1. "Abandoned motor vehicle" means a motor vehicle, as defined in section 39-01-01,  
17 that has remained for a period of more than forty-eight hours on public property  
18 illegally or lacking vital component parts, or has remained for a period of more than  
19 forty-eight hours on private property without consent of the person in control of the  
20 property or in an inoperable condition such that it has no substantial potential further  
21 use consistent with its usual functions, unless it is kept in an enclosed garage or  
22 storage building. It also means a motor vehicle voluntarily surrendered by its owner to  
23 a person duly licensed under section 23.1-15-09. An antique automobile, as defined in  
24 section 39-04-10.4, and other motor vehicles to include parts car and special interest  
25 vehicles, may not be considered an abandoned motor vehicle within the meaning of  
26 this chapter.
- 27 2. "Collector" means the owner of one or more special interest vehicles that collects,  
28 purchases, acquires, trades, or disposes of special interest vehicles or parts of special  
29 interest vehicles for the person's own use in order to restore, preserve, and maintain a  
30 special interest vehicle or antique vehicle.
- 31 3. "Department" means the department of environmental quality.

1       4. "Parts car" means a motor vehicle generally in nonoperable condition which is owned  
2       by the collector to furnish parts to restore, preserve, and maintain a special interest  
3       vehicle or antique vehicle.

4       5. "Special interest vehicle" means a motor vehicle that is at least twenty years old and  
5       has not been altered or modified from original manufacturer's specifications and,  
6       because of its historic interest, is being preserved by hobbyists.

7       6. "Unit of government" includes a state department or agency, a county, city, township,  
8       or other political subdivision.

9       7. "Vital component parts" means those parts of a motor vehicle that are essential to the  
10       mechanical functioning of the vehicle, including, but not limited to, the motor, drive  
11       train, and wheels.

12       **23.1-15-02. Penalty for abandoning a motor vehicle.**

13       Any person that abandons a motor vehicle on any public or private property, without the  
14       consent of the person in control of the property, is guilty of a class A misdemeanor.

15       **23.1-15-03. Custody of abandoned vehicle.**

16       Units of government may take into custody and impound an abandoned motor vehicle.

17       **23.1-15-04. Conditions under which an abandoned vehicle may be sold immediately.**

18       When an abandoned motor vehicle is more than seven model years of age, is lacking vital  
19       component parts, and does not display a license plate currently valid in North Dakota or any  
20       other state or foreign country, it is immediately eligible for disposition and must be disposed of  
21       to a scrap iron processor licensed under section 23.1-15-09, and is not subject to the  
22       notification, reclamation, or title provisions of this chapter. Any license plate displayed on an  
23       abandoned vehicle must be removed and destroyed prior to the purchaser taking possession of  
24       the vehicle.

25       **23.1-15-05. Notice to owner of abandoned vehicle.**

26       1. When an abandoned motor vehicle does not fall within the provisions of section  
27       23.1-15-04, the unit of government taking it into custody shall give notice of the taking  
28       within ten days. The notice must set forth the date and place of the taking, the year,  
29       make, model, and serial number of the abandoned motor vehicle, and the place where  
30       the vehicle is being held, must inform the owner and any lienholders or secured  
31       parties of their right to reclaim the vehicle under section 23.1-15-06, and must state

1           that failure of the owner or lienholders or secured parties to exercise their right to  
2           reclaim the vehicle is deemed a waiver by them of all right, title, and interest in the  
3           vehicle and a consent to the sale of the vehicle at a public auction pursuant to section  
4           23.1-15-07.

5           2. The notice must be sent by mail to the registered owner, if any, of the abandoned  
6           motor vehicle and to all readily identifiable lienholders or secured parties of record. If it  
7           is impossible to determine with reasonable certainty the identity and address of the  
8           registered owner and all lienholders, the notice must be published once in a  
9           newspaper of general circulation in the area where the motor vehicle was abandoned.  
10          Published notices may be grouped together for convenience and economy.

11          **23.1-15-06. Right of owner to reclaim abandoned vehicle.**

12          1. The owner, secured parties, or any lienholder of an abandoned motor vehicle has a  
13          right to reclaim such vehicle from the unit of government taking it into custody upon  
14          payment of all towing and storage charges resulting from taking the vehicle into  
15          custody within fifteen days after the date of the notice required by section 23.1-15-05.  
16          2. Nothing in this chapter may be construed to impair any lien of a garagekeeper under  
17          the laws of this state or the right of a lienholder or secured parties to foreclose. For the  
18          purposes of this section, "garagekeeper" is an operator of a parking place or  
19          establishment, an operator of a motor vehicle storage facility, or an operator of an  
20          establishment for the servicing, repair, or maintenance of motor vehicles.

21          **23.1-15-07. Public sale - Disposition of proceeds.**

22          1. An abandoned motor vehicle not more than seven model years of age taken into  
23          custody and not reclaimed under section 23.1-15-06 must be sold to the highest  
24          bidder at public auction or sale, following reasonable published notice. The purchaser  
25          must be given a receipt in a form prescribed by the department which is sufficient title  
26          to dispose of the vehicle. The receipt also entitles the purchaser to register the vehicle  
27          and receive a certificate of title, free and clear of all liens and claims of ownership. The  
28          license plates displayed on an abandoned vehicle must be removed and destroyed  
29          prior to the purchaser taking possession of the vehicle.  
30          2. From the proceeds of the sale of an abandoned motor vehicle, the unit of government  
31          shall reimburse itself for the cost of towing, preserving, and storing the vehicle, and all

1           notice and publication costs incurred pursuant to this chapter. Any remainder from the  
2           proceeds of a sale must be held for the owner of the vehicle or entitled lienholder or  
3           secured parties for ninety days and then must be deposited in the state treasury as  
4           provided in section 1 of article IX of the Constitution of North Dakota and credited to  
5           the permanent school fund.

6           **23.1-15-08. Disposal of vehicles not sold.**

7           When no bid has been received for an abandoned motor vehicle, the unit of government  
8           may dispose of it pursuant to contract under section 23.1-15-09.

9           **23.1-15-09. Contracts for disposal - Issuance of licenses by department of**  
10          **environmental quality - Reimbursement of units of government for costs.**

- 11          1.   A unit of government may contract with any qualified licensed scrap iron processor for  
12          collection, storage, incineration, volume reduction, transportation, or other services  
13          necessary to prepare abandoned motor vehicles and other scrap metal for recycling or  
14          other methods of disposal. The contract may authorize the contracting scrap iron  
15          processor to pay to the owner of any abandoned motor vehicle an incentive payment  
16          for vehicle if it is voluntarily surrendered and delivered to the scrap iron processor. For  
17          purposes of this section, an owner of an abandoned motor vehicle includes only a  
18          person that has owned and operated the vehicle for the person's personal or business  
19          use.
- 20          2.   The department may issue a license to any qualified scrap iron processor desiring to  
21          participate in a contract under this section that meets the requirements for solid waste  
22          disposers established by the department.
- 23          3.   When a unit of government enters a contract with a scrap iron processor duly licensed  
24          by the department, the department may review the contract to determine whether it  
25          conforms to the department's plan for solid waste disposal. A contract that does  
26          conform may be approved by the department. When a contract has been approved,  
27          the department may reimburse the unit of government for the costs incurred under the  
28          contract, including incentive payments authorized and made under the contract,  
29          subject to the limitations of legislative appropriations.
- 30          4.   The department may demand that a unit of government contract for the disposal of  
31          abandoned motor vehicles and other scrap metal under the department's plan for solid

1           waste disposal. When the unit of government fails to contract within one hundred  
2           eighty days of the demand, the department, on behalf of the unit of government, may  
3           contract with any scrap iron processor duly licensed by the department for such  
4           disposal.

5           **23.1-15-10. Abandoned motor vehicle disposal fund.**

6           The abandoned motor vehicle disposal fund is established in the state treasury. All moneys  
7           derived from the investment of the fund are to be credited to the fund.

8           **23.1-15-11. Tax on initial motor vehicle certificates of title.**

9           A tax of one dollar and fifty cents is imposed on each initial North Dakota certificate of title  
10          issued to a passenger motor vehicle or a truck motor vehicle. The proceeds of the tax must be  
11          paid into the abandoned motor vehicle disposal fund. No registration plates or title certificate  
12          may be issued unless the tax is paid. Expenses of the fund arising under this chapter must be  
13          paid from the fund within the limits of legislative appropriation. If, on the first day of July in any  
14          year, the amount of uncommitted money in the abandoned motor vehicle disposal fund is two  
15          hundred fifty thousand dollars or more, the amount in excess of two hundred fifty thousand  
16          dollars must be transferred to the highway fund.

17          **23.1-15-12. Storage of vehicles by collector - Limitations.**

18          A collector may store unlicensed, operable or inoperable, vehicles and parts cars on the  
19          collector's property provided the vehicles and parts cars and the outdoor storage area are  
20          maintained so they do not constitute a health hazard and are screened from ordinary public  
21          view by means of a fence, trees, shrubbery, or other appropriate means.

22          **SECTION 31. AMENDMENT.** Section 24-03-23 of the North Dakota Century Code is  
23          amended and reenacted as follows:

24          **24-03-23. Encroachments on state highways.**

25          No part of the right of way for state highways may be encroached upon by erection thereon  
26          of any structure, or placing thereon any personal property, other than a temporary parking of a  
27          motor vehicle, without a written permit from the director. Any encroachment may be caused to  
28          be removed, obliterated, or corrected by order of the director and the total cost thereof must be  
29          paid by the person responsible for the encroachment. Property other than motor vehicles left  
30          upon highway right of way for a period exceeding seventy-two hours, the ownership of which  
31          cannot be determined after reasonable effort has been made to do so, must be deemed

1 abandoned and may be removed from the right of way and stored at the nearest site available  
2 for thirty days and if it is not claimed by the owner during such period, and the cost of removal  
3 and storage paid, it may be disposed of in the manner prescribed by the director. Abandoned  
4 motor vehicles are subject to the provisions of ~~sections 39-26-01 through 39-26-11~~chapter  
5 23.1-15. If such property is disposed of it must, except as otherwise provided by this section, be  
6 sold or disposed of in the manner provided in ~~sections 39-26-05 through 39-26-09~~chapter  
7 23.1-15. The receipts therefrom must be deposited in the state treasury as provided in section 1  
8 of article IX of the Constitution of North Dakota and credited to the permanent school fund.

9 **SECTION 32. AMENDMENT.** Subsection 5 of section 28-32-50 of the North Dakota  
10 Century Code is amended and reenacted as follows:

11 5. In any civil judicial proceeding involving adverse parties to an appeal or enforcement  
12 action involving an environmental permit issued under chapter ~~23-20.3, 23-25,~~  
13 23-2923.1-04, 23.1-06, 23.1-08, or 61-28 in which two or more of the adverse parties  
14 are not an administrative agency or an agent of an administrative agency, the court  
15 may award the prevailing nonagency party reasonable attorney's fees and costs if the  
16 court finds in favor of that party and determines that the nonprevailing nonagency  
17 party acted without substantial justification, or on the basis of claims or allegations that  
18 are factually unsupported. The court shall award reasonable attorney's fees and costs  
19 if the court determines that the nonprevailing nonagency party's claims or allegations  
20 are frivolous as provided in section 28-26-01. If the appeal or civil judicial proceeding  
21 covered by this subsection involves multiple claims or allegations, the court may  
22 apportion attorney's fees and costs in proportion to the time reasonably spent by a  
23 prevailing party relating to claims pursued by the nonprevailing party that were  
24 frivolous, factually unsupported, or without substantial justification.

25 **SECTION 33. AMENDMENT.** Section 38-08-04.5 of the North Dakota Century Code is  
26 amended and reenacted as follows:

27 **38-08-04.5. Abandoned oil and gas well plugging and site reclamation fund - Budget**  
28 **section report.**

29 There is hereby created an abandoned oil and gas well plugging and site reclamation fund.

30 1. Revenue to the fund must include:

- 1 a. Fees collected by the oil and gas division of the industrial commission for permits
- 2 or other services.
- 3 b. Moneys received from the forfeiture of drilling and reclamation bonds.
- 4 c. Moneys received from any federal agency for the purpose of this section.
- 5 d. Moneys donated to the commission for the purposes of this section.
- 6 e. Moneys received from the state's oil and gas impact fund.
- 7 f. Moneys recovered under the provisions of section 38-08-04.8.
- 8 g. Moneys recovered from the sale of equipment and oil confiscated under section
- 9 38-08-04.9.
- 10 h. Moneys transferred from the cash bond fund under section 38-08-04.11.
- 11 i. Such other moneys as may be deposited in the fund for use in carrying out the
- 12 purposes of plugging or replugging of wells or the restoration of well sites.
- 13 j. Civil penalties assessed under section 38-08-16.
- 14 2. Moneys in the fund may be used for the following purposes:
- 15 a. Contracting for the plugging of abandoned wells.
- 16 b. Contracting for the reclamation of abandoned drilling and production sites,
- 17 saltwater disposal pits, drilling fluid pits, and access roads.
- 18 c. To pay mineral owners their royalty share in confiscated oil.
- 19 d. Defraying costs incurred under section 38-08-04.4 in reclamation of oil and
- 20 gas-related pipelines and associated facilities.
- 21 e. Reclamation and restoration of land and water resources impacted by oil and gas
- 22 development, including related pipelines and facilities that were abandoned or
- 23 were left in an inadequate reclamation status before August 1, 1983, and for
- 24 which there is not any continuing reclamation responsibility under state law. Land
- 25 and water degraded by any willful act of the current or any former surface owner
- 26 are not eligible for reclamation or restoration. The commission may expend up to
- 27 one million five hundred thousand dollars per biennium from the fund in the
- 28 following priority:
- 29 (1) For the restoration of eligible land and water that are degraded by the
- 30 adverse effects of oil and gas development including related pipelines and
- 31 facilities.

- 1                   (2) For the development of publicly owned land adversely affected by oil and  
2                   gas development including related pipelines and facilities.
- 3                   (3) For administrative expenses and cost in developing an abandoned site  
4                   reclamation plan and the program.
- 5                   (4) Demonstration projects for the development of reclamation and water  
6                   quality control program methods and techniques for oil and gas  
7                   development, including related pipelines and facilities.
- 8                   f. For transfer by the office of management and budget, upon request of the  
9                   industrial commission, to the environmental quality restoration fund for use by the  
10                  ~~state department of health~~department of environmental quality for the purposes  
11                  provided under chapter ~~23-31~~23.1-10, if to address environmental emergencies  
12                  relating to oil and natural gas development, including the disposal of oilfield  
13                  waste and oil or natural gas production and transportation by rail, road, or  
14                  pipeline. If a transfer requested by the industrial commission has been made  
15                  under this subdivision, the ~~state department of health~~department of  
16                  environmental quality shall request the office of management and budget to  
17                  transfer from subsequent deposits in the environmental quality restoration fund  
18                  an amount sufficient to restore the amount transferred from the abandoned oil  
19                  and gas well plugging and site reclamation fund.
- 20                  3. This fund must be maintained as a special fund and all moneys transferred into the  
21                  fund are appropriated and must be used and disbursed solely for the purposes in this  
22                  section.
- 23                  4. The commission shall report to the budget section of the legislative management on  
24                  the balance of the fund and expenditures from the fund each biennium.

25                  **SECTION 34. AMENDMENT.** Section 38-11.1-03.1 of the North Dakota Century Code is  
26                  amended and reenacted as follows:

27                  **38-11.1-03.1. Inspection of well site.**

28                  Upon request of the surface owner or adjacent landowner, the ~~state department of~~  
29                  ~~health~~department of environmental quality shall inspect and monitor the well site on the surface  
30                  owner's land for the presence of hydrogen sulfide. If the presence of hydrogen sulfide is  
31                  indicated, the state department of health shall issue appropriate orders under chapter

1 ~~23-25~~23.1-06 to protect the health and safety of the surface owner's health, welfare, and  
2 property.

3 **SECTION 35. AMENDMENT.** Section 38-11.1-04.1 of the North Dakota Century Code is  
4 amended and reenacted as follows:

5 **38-11.1-04.1. Notice of operations.**

6 1. Before the initial entry upon the land for activities that do not disturb the surface,  
7 including inspections, staking, surveys, measurements, and general evaluation of  
8 proposed routes and sites for oil and gas drilling operations, the mineral developer  
9 shall provide at least seven days' notice by registered mail or hand delivery to the  
10 surface owner unless waived by mutual agreement of both parties. The notice must  
11 include:

- 12 a. The name, address, telephone number, and, if available, the electronic mail  
13 address of the mineral developer or the mineral developer's designee;  
14 b. An offer to discuss and agree to consider accommodating any proposed changes  
15 to the proposed plan of work and oil and gas operations before commencement  
16 of oil and gas operations; and  
17 c. A sketch of the approximate location of the proposed drilling site.

18 2. Except for exploration activities governed by chapter 38-08.1, the mineral developer  
19 shall give the surface owner written notice by registered mail or hand delivery of the oil  
20 and gas drilling operations contemplated at least twenty days before commencement  
21 of drilling operations unless mutually waived by agreement of both parties. If the  
22 mineral developer plans to commence drilling operations within twenty days of the  
23 termination date of the mineral lease, the required notice under this section may be  
24 given at any time before commencement of drilling operations. The notice must  
25 include:

- 26 a. Sufficient disclosure of the plan of work and operations to enable the surface  
27 owner to evaluate the effect of drilling operations on the surface owner's use of  
28 the property;  
29 b. A plat map showing the location of the proposed well; and  
30 c. A form prepared by the director of the oil and gas division advising the surface  
31 owner of the surface owner's rights and options under this chapter, including the

1 right to request the ~~state department of health~~department of environmental  
2 quality to inspect and monitor the well site for the presence of hydrogen sulfide.

3 3. The notice required by this section must be given to the surface owner at the address  
4 shown by the records of the county treasurer's office at the time the notice is given  
5 and is deemed to have been received seven days after mailing by registered mail or  
6 immediately upon hand delivery.

7 4. If a mineral developer fails to give notice as provided in this section, the surface owner  
8 may seek appropriate relief in the court of proper jurisdiction and may receive punitive  
9 as well as actual damages.

10 **SECTION 36. AMENDMENT.** Section 38-11.2-02 of the North Dakota Century Code is  
11 amended and reenacted as follows:

12 **38-11.2-02. Inspection of well site.**

13 Upon request of another state agency, the surface owner, or an adjacent landowner, the  
14 ~~state department of health~~department of environmental quality shall conduct a site visit and  
15 evaluate site-specific environmental data as necessary to ensure compliance with applicable  
16 environmental protection laws and regulations relating to air, water, and land management  
17 under the jurisdiction of the department.

18 **SECTION 37. AMENDMENT.** Subsection 12 of section 38-14.1-03 of the North Dakota  
19 Century Code is amended and reenacted as follows:

20 12. To ~~promulgate regulations~~adopt rules consistent with state law, in consultation with the  
21 state geologist, ~~state department of health~~department of environmental quality, and  
22 the state engineer for the protection of the quality and quantity of waters affected by  
23 surface coal mining operations.

24 **SECTION 38. AMENDMENT.** Subsection 2 of section 38-14.1-21 of the North Dakota  
25 Century Code is amended and reenacted as follows:

26 2. The commission's approval or modification of the permit or permit revision application  
27 must include consideration of the advice and technical assistance of the state  
28 historical society, the ~~state department of health~~department of environmental quality,  
29 the ~~state~~ soil conservation committee, the ~~state~~ game and fish department, the state  
30 forester, the state geologist, and the state engineer, and may also include those state

1 agencies versed in soils, agronomy, ecology, geology, and hydrology, and other  
2 agencies and individuals experienced in reclaiming surface mined lands.

3 **SECTION 39. AMENDMENT.** Section 38-22-07 of the North Dakota Century Code is  
4 amended and reenacted as follows:

5 **38-22-07. Permit consultation.**

6 Before issuing a permit, the commission shall consult the ~~state department of~~  
7 ~~health~~department of environmental quality.

8 **SECTION 40. AMENDMENT.** Section 38-22-12 of the North Dakota Century Code is  
9 amended and reenacted as follows:

10 **38-22-12. Environmental protection - Reservoir integrity.**

- 11 1. The commission shall take action to ensure that a storage facility does not cause  
12 pollution or create a nuisance. For the purposes of this provision and in applying other  
13 laws, carbon dioxide stored, and which remains in storage under a commission permit,  
14 is not a pollutant nor does it constitute a nuisance.
- 15 2. The commission's authority in subsection 1 does not limit the jurisdiction held by the  
16 ~~state department of health~~department of environmental quality. Nothing else in this  
17 chapter limits the jurisdiction held by the ~~state department of health~~department of  
18 environmental quality.
- 19 3. The commission shall take action to ensure that substances that compromise the  
20 objectives of this chapter or the integrity of a storage reservoir do not enter a storage  
21 reservoir.
- 22 4. The commission shall take action to ensure that carbon dioxide does not escape from  
23 a storage facility.

24 **SECTION 41. AMENDMENT.** Section 40-47-01 of the North Dakota Century Code is  
25 amended and reenacted as follows:

26 **40-47-01. Cities may zone - Application of regulations.**

27 For the purpose of promoting health, safety, morals, or the general welfare of the  
28 community, the governing body of any city may, subject to the provisions of chapter 54-21.3,  
29 regulate and restrict the height, number of stories, and the size of buildings and other  
30 structures, the percentage of lot that may be occupied, the size of yards, courts, and other open  
31 spaces, the density of population, and the location and use of buildings, structures, and land for

1 trade, industry, residence, or other purposes. Such regulations may provide that a board of  
2 adjustment may determine and vary the application of the regulations in harmony with their  
3 general purpose and intent and in accordance with general or specific rules therein contained.  
4 The governing body of a city may establish institutional controls that address environmental  
5 concerns with the ~~state department of health~~department of environmental quality as provided in  
6 section ~~23-20-3-03.1~~23.1-04-04.

7 **SECTION 42. AMENDMENT.** Section 43-18-02 of the North Dakota Century Code is  
8 amended and reenacted as follows:

9 **43-18-02. State board of plumbing - Members - Appointment - Qualifications.**

10 The state board of plumbing shall consist of the chief sanitary engineer, or the head of any  
11 ~~division of the state department of health who may be named by the chief sanitary engineer to~~  
12 ~~act in the chief sanitary engineer's stead~~director of the department of environmental quality, and  
13 four persons appointed by the governor. All of the appointed members must have been  
14 residents of this state for at least five years immediately preceding their appointment, and one  
15 of them must be a master plumber with at least five years of experience in North Dakota, one  
16 must be a journeyman plumber with at least five years of experience in North Dakota, one must  
17 be a registered professional engineer practicing mechanical engineering in North Dakota, and  
18 one must be a representative of the consuming public.

19 **SECTION 43. AMENDMENT.** Section 43-18-09 of the North Dakota Century Code is  
20 amended and reenacted as follows:

21 **43-18-09. Board to adopt plumbing code - Provisions have force of law.**

22 The board shall formulate, prepare, and circulate among all plumbers within this state a  
23 state plumbing code, which must contain the minimum basic standards for plumbing, drainage,  
24 and ventilation of plumbing in buildings of all classes. Such code must be approved by the ~~state~~  
25 ~~department of health~~department of environmental quality. The provisions of said code have the  
26 force and effect of law and any violation thereof constitutes a violation of this chapter.

27 **SECTION 44. AMENDMENT.** Section 43-35-03 of the North Dakota Century Code is  
28 amended and reenacted as follows:

1           **43-35-03. State board of water well contractors - Members' appointment -**

2   **Qualification.**

3           The state board of water well contractors consists of the state engineer and the ~~state health-~~  
4 ~~officer~~director of the department of environmental quality, or their duly authorized designees,  
5 two water well contractors appointed by the governor, one geothermal system driller appointed  
6 by the governor, one water well pump and pitless unit installer appointed by the governor, and  
7 one member appointed at large by the governor.

8           **SECTION 45. AMENDMENT.** Section 43-35-19 of the North Dakota Century Code is  
9 amended and reenacted as follows:

10           **43-35-19. Standards for well drilling - Reports required.**

11           All construction of water wells must comply with the rules adopted by the ~~state department-~~  
12 ~~of health~~department of environmental quality. Within thirty days after the completion of each  
13 well, each water well contractor shall furnish to the board on forms provided by the board  
14 ~~such~~any information as ~~the state department of health shall require~~required by the department  
15 of environmental quality, including a log of formations penetrated, well depth, and casing size  
16 and weight. A copy of each report also must ~~also~~ be furnished to the customer. All information  
17 submitted must remain the property of the board.

18           **SECTION 46. AMENDMENT.** Section 43-35-19.1 of the North Dakota Century Code is  
19 amended and reenacted as follows:

20           **43-35-19.1. Standards for installation of water well pumps and pitless units.**

21           All installation of water well pumps and pitless units must comply with the rules adopted by  
22 ~~the state department of health~~department of environmental quality and the board.

23           **SECTION 47. AMENDMENT.** Section 43-35-19.2 of the North Dakota Century Code is  
24 amended and reenacted as follows:

25           **43-35-19.2. Standards for installation of monitoring wells - Reports required.**

26           All monitoring wells constructed must comply with the rules adopted by the ~~state-~~  
27 ~~department of health~~department of environmental quality and the board. Each monitoring well  
28 contractor shall furnish all reports required by the rules of the ~~state department of-~~  
29 ~~health~~department of environmental quality or the board.

30           **SECTION 48. AMENDMENT.** Section 43-35-20 of the North Dakota Century Code is  
31 amended and reenacted as follows:

1           **43-35-20. Revocation or suspension of certificate - Grounds for - How reinstated.**

2           The board may suspend or revoke any certificate issued under ~~the provisions of this~~  
3 chapter if the holder is found guilty by the board of any violation of the rules adopted by the  
4 ~~state department of health~~department of environmental quality or the board after a hearing duly  
5 held substantially in conformance with chapter 28-32. Six months after any certificate has been  
6 revoked, an application may be made for another certificate in the same manner as a new  
7 certificate is obtained.

8           **SECTION 49. AMENDMENT.** Section 43-35-23 of the North Dakota Century Code is  
9 amended and reenacted as follows:

10           **43-35-23. Continuing education - Preapproval requirements.**

11           Each certificate holder shall earn at least six hours of board-approved continuing education  
12 during every two-year reporting cycle to qualify for certificate renewal, except a new certificate  
13 holder is not required to earn continuing education until the second renewal year following initial  
14 certification. Continuing education coursework may be provided by the national ground water  
15 association, the North Dakota well drillers association, incorporated, a board-sponsored  
16 workshop, the ~~state department of health~~department of environmental quality, the state water  
17 commission, or by any board-approved course provider. A continuing education course must be  
18 preapproved by the board unless otherwise provided under this section. A continuing education  
19 course provider or a certificate holder shall request preapproval of continuing education  
20 coursework by submitting to the board a course outline, the instructor's name, the length of the  
21 training, and an explanation of how the training relates to the construction and service of water  
22 wells. A certificate holder may request approval of education that was not preapproved by  
23 submitting to the board verification of attendance, a course outline, and an explanation of why  
24 preapproval was not obtained. The board shall determine on a case-by-case basis whether to  
25 approve education that was not preapproved.

26           **SECTION 50. AMENDMENT.** Subsection 11 of section 43-48-03 of the North Dakota  
27 Century Code is amended and reenacted as follows:

28           11. Personnel of the division of laboratory services of the state department of health or  
29 department of environmental quality who are participating in the centers for disease  
30 control and prevention's chemical terrorism toxic metals determination program.

1       **SECTION 51. AMENDMENT.** Section 43-62-01 of the North Dakota Century Code is  
2 amended and reenacted as follows:

3       **43-62-01. Definitions.**

- 4       1. "Board" means the North Dakota medical imaging and radiation therapy board of  
5       examiners.
- 6       2. "Certification organization" means a national certification organization that specializes  
7       in the certification and registration of ~~certification~~ of medical imaging and radiation  
8       therapy technical personnel and which has programs accredited by the national  
9       commission for certifying agencies, American national standards institute or the  
10      international organization for standardization, or other accreditation organization  
11      recognized by the board.
- 12     3. "Licensed practitioner" means a licensed physician, advanced practice registered  
13      nurse, surgeon, chiropractor, dentist, or podiatrist.
- 14     4. "Licensee" means an individual licensed by the board to perform medical imaging or  
15      radiation therapy procedures and operate medical imaging or radiation therapy  
16      equipment, including a nuclear medicine technologist, radiation therapist,  
17      radiographer, radiologist assistant, x-ray operator, or sonographer.
- 18     5. "Medical imaging" means the performance of any diagnostic or interventional  
19      procedure or operation of medical imaging equipment intended for use in the  
20      diagnosis or visualization of disease or other medical conditions in human beings,  
21      including fluoroscopy, nuclear medicine, sonography, or x-rays.
- 22     6. "Medical physicist" means an individual who is certified by the American board of  
23      radiology, American board of medical physics, American board of science in nuclear  
24      medicine, or Canadian college of physics in medicine in radiological physics or one of  
25      the subspecialties of radiological physics.
- 26     7. "Radiation therapy" means the performance of any procedure or operation of radiation  
27      therapy equipment intended for use in the treatment of disease or other medical  
28      conditions in human beings.
- 29     8. "Radiation therapist" means a nonphysician licensed by the board to perform radiation  
30      therapy procedures and operate radiation therapy equipment.

1       **SECTION 52. AMENDMENT.** Section 43-62-03 of the North Dakota Century Code is  
2 amended and reenacted as follows:

3       **43-62-03. Exemptions.**

4       This chapter does not apply to the following:

- 5       1. A licensed practitioner performing medical imaging or radiation therapy.
- 6       2. A dental assistant or dental hygienist licensed under chapter 43-20.
- 7       3. A student enrolled in and attending a school or college of medicine, medical imaging,  
8       or radiation therapy who performs medical imaging or radiation therapy procedures on  
9       humans while under the supervision of a licensed practitioner or a radiographer,  
10       radiation therapist, nuclear medicine technologist, radiologist assistant, or  
11       sonographer holding a license in the medical imaging or radiation therapy modality  
12       which the student is enrolled or attending under this chapter.
- 13       4. An individual administering medical imaging or radiation procedures and who is  
14       employed by the United States government when performing duties associated with  
15       that employment.
- 16       5. A nurse licensed under chapter 43-12.1 who performs sonography on a focused  
17       imaging target to assess specific and limited information about a patient's immediate  
18       medical condition or to provide real-time visual guidance for another procedure.
- 19       6. ~~A limited x-ray machine operator who meets the requirements of rules adopted by the~~  
20       ~~state department of health under section 23-20.1-04.~~
- 21       7. Medical imaging performed as a part of a post-mortem examination or on other  
22       nonliving remains.
- 23       8. ~~7.~~ Medical imaging performed by emergency medical services personnel certified or  
24       licensed under section 23-27-04.3.

25       **SECTION 53. AMENDMENT.** Subsection 1 of section 43-62-15 of the North Dakota  
26 Century Code is amended and reenacted as follows:

- 27       1. The board shall establish licensure standards for the following medical imaging and  
28       radiation therapy modalities:
  - 29       a. Nuclear medicine technologist.
  - 30       b. Radiation therapist.
  - 31       c. Radiographer.

1 d. Radiologist assistant.

2 e. Sonographer.

3 f. X-ray operator.

4 **SECTION 54. AMENDMENT.** Subsection 3 of section 44-04-18.4 of the North Dakota  
5 Century Code is amended and reenacted as follows:

6 3. This section does not limit or otherwise affect a record pertaining to any rule of the  
7 state department of health or department of environmental quality or to any record  
8 pertaining to the application for a permit or license necessary to do business or to  
9 expand business operations within this state, except as otherwise provided by law.

10 **SECTION 55. AMENDMENT.** Section 44-04-32 of the North Dakota Century Code is  
11 amended and reenacted as follows:

12 **44-04-32. Animal feeding operation record requests.**

13 The ~~state department of health~~ department of environmental quality shall keep a written  
14 record of each individual who requests information and the type of information requested  
15 regarding an animal feeding operation permit. Within seven business days of receiving the  
16 request, the department shall provide written notice to the owner and operator of the animal  
17 feeding operation describing the type of information that has been requested and the name and  
18 address of the requester. If an individual makes inquiries on more than three files in any one  
19 request, the department shall charge the individual a fee sufficient to cover the cost of mailing  
20 the notice to the owners and operators whose files are being examined and a fee for copying  
21 the records as allowed under section 44-04-18.

22 **SECTION 56.** Subdivision v of subsection 1 of section 54-06-04 the North Dakota Century  
23 Code is created and enacted as follows:

24 v. Department of environmental quality.

25 **SECTION 57. AMENDMENT.** Subsection 1 of section 54-07-01.2 of the North Dakota  
26 Century Code is amended and reenacted as follows:

27 1. Notwithstanding sections 2-05-01, 4.1-05-02, 4.1-26-02, 6-01-03, 6-09-02.1,  
28 12-55.1-02, 12-59-01, 15-39.1-05.1, 15.1-01-01, 15.1-13-02, 20.1-02-23, 23-01-02,  
29 ~~23-25-02~~ 23.1-01-02, 36-01-01, 37-18.1-01, 50-06-05.6, 50-06.1-16, 54-34.3-10,  
30 54-54-02, 55-01-01, and 61-02-04, ~~and 61-28-03~~, all members of the following boards  
31 and commissions must, subject to the limitations of this section, be considered to have

- 1           resigned from such boards and commissions effective January first of the first year of  
2           each four-year term of the governor:
- 3           a.    The aeronautics commission.
  - 4           b.    The milk marketing board.
  - 5           c.    The dairy promotion commission.
  - 6           d.    The state banking board.
  - 7           e.    The state credit union board.
  - 8           f.    The advisory board of directors to the Bank of North Dakota.
  - 9           g.    The pardon advisory board.
  - 10          h.    The state parole board.
  - 11          i.    The state board of public school education.
  - 12          j.    The education standards and practices board.
  - 13          k.    The board of trustees of the teachers' fund for retirement.
  - 14          l.    The state game and fish advisory board.
  - 15          m.    The health council.
  - 16          n.    The ~~air pollution control~~environmental review advisory council.
  - 17          o.    The board of animal health.
  - 18          p.    The administrative committee on veterans' affairs.
  - 19          q.    The committee on aging.
  - 20          r.    The committee on employment of people with disabilities.
  - 21          s.    The commission on the status of women.
  - 22          t.    The North Dakota council on the arts.
  - 23          u.    The state historical board.
  - 24          v.    The state water commission.
  - 25          w.    The state water pollution control board.

26           **SECTION 58. AMENDMENT.** Subsection 3 of section 54-12-08 of the North Dakota  
27 Century Code is amended and reenacted as follows:

- 28           3.    The attorney general may require payment for legal services rendered by any  
29           assistant or special assistant attorney general to any state official, board, department,  
30           agency, or commission and those entities shall make the required payment to the  
31           attorney general. Moneys received by the attorney general in payment for legal

1 services rendered must be deposited into the attorney general's operating fund.  
2 General fund moneys may not be utilized for the payment of legal services provided by  
3 the attorneys employed by the attorney general, except for those payments required of  
4 the department of human services, state department of health, department of  
5 environmental quality, and the state hospital.

6 **SECTION 59. AMENDMENT.** Section 54-44.3-30 of the North Dakota Century Code is  
7 amended and reenacted as follows:

8 **54-44.3-30. Agencies subject to merit system.**

9 All personnel employed by the department of human services, the regional offices of that  
10 department, job service North Dakota, North Dakota human resource management services,  
11 the state department of health, department of environmental quality, and other agencies or  
12 political subdivisions as may by federal law or rule be required to be subject to a merit system in  
13 order to obtain federal grants-in-aid are covered by the merit system provided in this chapter.  
14 Merit system coverage must also be provided to personnel employed as purchasing agents or  
15 buyers in the purchasing division of the office of management and budget. Other agencies,  
16 departments, or divisions and positions must be placed under a merit system in the manner and  
17 to the extent required by law.

18 **SECTION 60. AMENDMENT.** Subsection 33 of section 57-43.2-01 of the North Dakota  
19 Century Code is amended and reenacted as follows:

20 33. "Special fuel" means all combustible gases and liquids suitable for the generation of  
21 power for propulsion of motor vehicles and includes compressed natural gas,  
22 kerosene, liquefied petroleum gases, all gases and liquids which meet the  
23 specifications as determined by the ~~state department of health pursuant to the~~  
24 ~~provisions of section 19-10-10~~department of environmental quality under chapter  
25 23.1-13, as well as all liquids determined by the ~~state department of health~~department  
26 of environmental quality to be heating oil ~~pursuant to the provisions of section~~  
27 ~~19-10-10~~under chapter 23.1-13, except that it does not include either motor vehicle  
28 fuels as defined in section 57-43.1-01, aviation fuels as defined in section 57-43.3-01,  
29 or antifreeze as defined by section ~~19-16.1-02~~23.1-14-02.

30 **SECTION 61. AMENDMENT.** Section 58-03-11 of the North Dakota Century Code is  
31 amended and reenacted as follows:

1           **58-03-11. Establishment of zoning districts - Uniformity.**

2           For the purpose of promoting the health, safety, morals, or the general welfare, or to secure  
3 the orderly development of approaches to municipalities, the board of township supervisors may  
4 establish one or more zoning districts and within such districts may, subject to the provisions of  
5 chapter 54-21.3 and section 58-03-11.1, regulate and restrict the erection, construction,  
6 reconstruction, alteration, repair, or use of buildings and structures, the height, number of  
7 stories, and size of buildings and structures, the percentage of lot that may be occupied, the  
8 size of courts, yards, and other open spaces, the density of population, and the location and  
9 use of buildings, structures, and land for trade, industry, residence, or other purposes. All such  
10 regulations and restrictions must be uniform throughout each district, but the regulations and  
11 restrictions in one district may differ from those in other districts. The board of township  
12 supervisors may establish institutional controls that address environmental concerns with the  
13 ~~state department of health~~ department of environmental quality as provided in section  
14 ~~23-20-3-03.1-04-04.~~

15           **SECTION 62. AMENDMENT.** Section 58-03-11.1 of the North Dakota Century Code is  
16 amended and reenacted as follows:

17           **58-03-11.1. Farming and ranching regulations - Requirements - Limitations -**

18 **Definitions.**

- 19           1. For purposes of this section:
- 20           a. "Concentrated feeding operation" means any livestock feeding, handling, or  
21 holding operation, or feed yard, where animals are concentrated in an area that is  
22 not normally used for pasture or for growing crops and in which animal wastes  
23 may accumulate. The term does not include normal wintering operations for  
24 cattle.
- 25           b. "Farming or ranching" means cultivating land for the production of agricultural  
26 crops or livestock, or raising, feeding, or producing livestock, poultry, milk, or fruit.  
27 The term does not include:
- 28           (1) The production of timber or forest products; or  
29           (2) The provision of grain harvesting or other farm services by a processor or  
30 distributor of farm products or supplies in accordance with the terms of a  
31 contract.

- 1           c. "Livestock" includes beef cattle, dairy cattle, sheep, swine, poultry, horses, bison,  
2           elk, fur animals raised for their pelts, and any other animals that are raised, fed,  
3           or produced as a part of farming or ranching activities.
- 4           d. "Location" means the setback distance between a structure, fence, or other  
5           boundary enclosing a concentrated feeding operation, including its animal waste  
6           collection system, and the nearest occupied residence, the nearest buildings  
7           used for nonfarm or nonranch purposes, or the nearest land zoned for residential,  
8           recreational, or commercial purposes. The term does not include the setback  
9           distance for the application of manure or for the application of other recycled  
10          agricultural material under a nutrient management plan approved by the ~~state-~~  
11          ~~department of health~~department of environmental quality.
- 12          2. For purposes of this section, animal units are determined as follows:
- 13           a. One mature dairy cow, whether milking or dry, equals 1.33 animal units;  
14           b. One dairy cow, heifer, or bull, other than an animal described in subdivision a  
15           equals 1.0 animal unit;  
16           c. One weaned beef animal, whether a calf, heifer, steer, or bull, equals 0.75 animal  
17           unit;  
18           d. One cow-calf pair equals 1.0 animal unit;  
19           e. One swine weighing fifty-five pounds [24.948 kilograms] or more equals 0.4  
20           animal unit;  
21           f. One swine weighing less than fifty-five pounds [24.948 kilograms] equals 0.1  
22           animal unit;  
23           g. One horse equals 2.0 animal units;  
24           h. One sheep or lamb equals 0.1 animal unit;  
25           i. One turkey equals 0.0182 animal unit;  
26           j. One chicken, other than a laying hen, equals 0.008 animal unit;  
27           k. One laying hen equals 0.012 animal unit;  
28           l. One duck equals 0.033 animal unit; and  
29           m. Any livestock not listed in subdivisions a through l equals 1.0 animal unit per  
30           each one thousand pounds [453.59 kilograms] whether single or combined  
31           animal weight.

- 1       3. A board of township supervisors may not prohibit or prevent the use of land or
- 2           buildings for farming or ranching or any of the normal incidents of farming or ranching.
- 3       4. A regulation may not preclude the development of a concentrated feeding operation in
- 4           the township.
- 5       5. A board of township supervisors may not prohibit the reasonable diversification or
- 6           expansion of a farming or ranching operation.
- 7       6. A board of township supervisors may adopt regulations that establish different
- 8           standards for the location of concentrated feeding operations based on the size of the
- 9           operation and the species and type being fed.
- 10      7. If a regulation would impose a substantial economic burden on a concentrated feeding
- 11         operation in existence before the effective date of the regulation, the board of township
- 12         supervisors shall declare that the regulation is ineffective with respect to any
- 13         concentrated feeding operation in existence before the effective date of the regulation.
- 14      8. a. A board of township supervisors may establish high-density agricultural
- 15         production districts in which setback distances for concentrated feeding
- 16         operations and related agricultural operations are less than those in other
- 17         districts.
- 18        b. A board of township supervisors may establish, around areas zoned for
- 19         residential, recreational, or nonagricultural commercial uses, low-density
- 20         agricultural production districts in which setback distances for concentrated
- 21         feeding operations and related agricultural operations are greater than those in
- 22         other districts; provided, the low-density agricultural production districts may not
- 23         extend more than one-half mile [0.80 kilometer] from the edge of the area zoned
- 24         for residential, recreational, or nonagricultural commercial uses.
- 25        c. The setbacks provided for in this subsection may not vary by more than fifty
- 26         percent from those established in subdivision a of subsection 7 of section
- 27         ~~23-25-11~~23.1-06-15.
- 28        d. For purposes of this subsection, a "related agricultural operation" means a facility
- 29         that produces a product or byproduct used by a concentrated feeding operation.

30        **SECTION 63. AMENDMENT.** Section 58-03-17 of the North Dakota Century Code is  
31        amended and reenacted as follows:

1       **58-03-17. Regulation of concentrated animal feeding operations - Central repository.**

2       1. Any zoning regulation that pertains to a concentrated animal feeding operation and  
3       which is promulgated by a township after July 31, 2007, is not effective until filed with  
4       the ~~state department of health~~department of environmental quality for inclusion in the  
5       central repository established under section ~~23-01-30~~23.1-01-10. Any zoning  
6       regulation that pertains to a concentrated animal feeding operation and which was  
7       promulgated by a county or a township before August 1, 2007, may not be enforced  
8       until the regulation is filed with the ~~state department of health~~department of  
9       environmental quality for inclusion in the central repository.

10      2. For purposes of this section:

11      a. "Concentrated animal feeding operation" means any livestock feeding, handling,  
12      or holding operation, or feed yard, where animals are concentrated in an area  
13      that is not normally used for pasture or for growing crops and in which animal  
14      wastes may accumulate, or in an area where the space per animal unit is less  
15      than six hundred square feet [55.74 square meters]. The term does not include  
16      normal wintering operations for cattle.

17      b. "Livestock" includes beef cattle, dairy cattle, sheep, swine, poultry, horses, and  
18      fur animals raised for their pelts.

19      **SECTION 64. AMENDMENT.** Subsection 13 of section 58-06-01 of the North Dakota  
20      Century Code is amended and reenacted as follows:

21      13. To request assistance from a county or district board of health or the ~~state department~~  
22      ~~of health~~department of environmental quality.

23      **SECTION 65. AMENDMENT.** Section 61-04.1-04 of the North Dakota Century Code is  
24      amended and reenacted as follows:

25      **61-04.1-04. North Dakota atmospheric resource board created - Membership.**

26      There is hereby created a North Dakota atmospheric resource board which shall be a  
27      division of the state water commission. The board ~~shall be~~is composed of the director of the  
28      state aeronautics commission, a representative of the department of environmental quality  
29      section of the state department of health, the state engineer, and one additional board member  
30      from each of seven districts established by section 61-04.1-05. The governor shall initially

1 appoint one board member for each of the seven districts from a list of three candidates given  
2 to the governor by weather modification authorities in each district and:

- 3 1. When the term of office of any board member from any district is about to expire.
- 4 2. When a vacancy has occurred, or is about to occur, in the term of office of a board  
5 member from any district for any reason other than expiration of term of office.

6 Beginning on July 1, 1983, the term of office for the board shall be arranged so that not less  
7 than three nor more than four terms shall expire on the first day of July of each odd-numbered  
8 year. Therefore, board members appointed on July 1, 1983, from districts II, IV, and VI shall  
9 serve for two-year terms, and board members appointed on July 1, 1983, from districts I, III, V,  
10 and VII shall serve for four-year terms. Thereafter, board members from each district shall serve  
11 for a four-year term of office except in the event the governor shall appoint a member for an  
12 unexpired term, in which case the member shall serve only for the unexpired portion of the  
13 term. In the event any district fails to furnish a list to the governor, or if there are no weather  
14 modification authorities under this chapter within a district, the ~~then~~ governor shall appoint a  
15 board member of the governor's choice residing within such district.

16 **SECTION 66. AMENDMENT.** Subsection 1 of section 61-28-02 of the North Dakota Century  
17 Code is amended and reenacted as follows:

- 18 1. ~~"Board" means the state water pollution control board~~ "Council" means the  
19 environmental review advisory council.

20 **SECTION 67. AMENDMENT.** Subsection 2 of section 61-28-02 of the North Dakota  
21 Century Code is amended and reenacted as follows:

- 22 2. "Department" means the ~~state department of health~~ department of environmental  
23 quality.

24 **SECTION 68. AMENDMENT.** Subsection 2 of section 61-28.1-02 of the North Dakota  
25 Century Code is amended and reenacted as follows:

- 26 2. "Department" means the ~~state department of health~~ department of environmental  
27 quality.

28 **SECTION 69. AMENDMENT.** Subsection 15 of section 61-28.1-03 of the North Dakota  
29 Century Code is amended and reenacted as follows:

- 30 15. Designate the ~~state department of health~~ department of environmental quality as the  
31 state safe drinking water agency for all purposes of the federal Safe Drinking Water

1 Act and is authorized to take all actions necessary and appropriate to secure for the  
2 state the benefit of such Act and any grants made thereunder.

3 **SECTION 70. AMENDMENT.** Subsection 2 of section 61-28.2-01 of the North Dakota  
4 Century Code is amended and reenacted as follows:

5 2. There is established the water pollution control revolving loan fund, which must be  
6 maintained and operated by the ~~state department of health~~department of  
7 environmental quality. Grants from the federal government or its agencies allotted to  
8 the state for the capitalization of the revolving loan fund, and state matching funds  
9 when required, must be deposited directly in the revolving loan fund in compliance  
10 with the terms of the federal grant. Money in the revolving loan fund must be  
11 expended in a manner consistent with terms and conditions of the grants received by  
12 the state and may be used to offer loan guarantees; to provide payments to reduce  
13 interest on loans and loan guarantees; to make bond interest subsidies; to provide  
14 bond guarantees on behalf of municipalities, other local political subdivisions, and  
15 intermunicipal or interstate agencies; to provide assistance to a municipality, other  
16 local political subdivisions, or intermunicipal or interstate agencies with respect to the  
17 nonfederal share of the costs of a project; to finance the cost of facility planning and  
18 the preparation of plans, specifications, and estimates for construction of publicly  
19 owned treatment works or public water supply systems; to provide financial assistance  
20 for the construction and rehabilitation of a project on the state priority list; to secure  
21 principal and interest on bonds issued by a public trust having the state of North  
22 Dakota as its beneficiary, or the public finance authority if the proceeds of such bonds  
23 are deposited in the revolving loan fund and to the extent provided in the terms of the  
24 federal grant; to provide for loan guarantees for similar revolving funds established by  
25 municipalities, other local political subdivisions, or intermunicipal agencies; to  
26 purchase debt incurred by municipalities or other local political subdivisions for  
27 wastewater treatment projects or public water supply systems; to improve credit  
28 market access by guaranteeing or purchasing insurance or other credit enhancement  
29 devices for local obligations or obligations of a public trust having the state of North  
30 Dakota as its beneficiary or the public finance authority; to fund other programs which  
31 the federal government authorizes by the terms of its grants; to fund the administrative

1 expenses of the department associated with the revolving loan fund; and to provide for  
2 any other expenditure consistent with the federal grant program and state law. Money  
3 not currently needed for the operation of the revolving loan fund or otherwise  
4 dedicated may be invested. All interest earned on investments must be credited to the  
5 revolving loan fund.

6 **SECTION 71. AMENDMENT.** Section 61-29-04 of the North Dakota Century Code is  
7 amended and reenacted as follows:

8 **61-29-04. Administration.**

9 This chapter must be administered by a Little Missouri River commission composed of the  
10 director of the parks and recreation department, the ~~state health officer~~director of the ~~state~~  
11 ~~department of health~~department of environmental quality, the chief engineer of the state water  
12 commission, or their designated representatives, and one member from each of the following  
13 counties: McKenzie, Billings, Slope, Golden Valley, Dunn, and Bowman. The commission  
14 members representing the above-mentioned counties must be appointed by their respective  
15 boards of county commissioners and shall serve without compensation except that each  
16 appointing board of county commissioners may reimburse its county representative for actual  
17 and necessary mileage to and from meetings of the commission at the same rate as state  
18 officers. The county representatives appointed must be resident landowners who live adjacent  
19 to the Little Missouri River with the exception of the Golden Valley County representative. A  
20 county representative unable to attend a meeting of the commission may be represented by a  
21 person who has a written proxy from the representative authorizing that person to act and vote  
22 for the representative. The proxy must be a resident landowner of the county that the proxy is  
23 representing, but need not live adjacent to the Little Missouri River. The county members shall  
24 serve terms of office as follows: two members shall serve one-year terms, two members shall  
25 serve two-year terms, and two members shall serve three-year terms.

26 **SECTION 72. AMENDMENT.** Section 61-33-09 of the North Dakota Century Code is  
27 amended and reenacted as follows:

28 **61-33-09. Members of the board - Organization - Meetings.**

29 1. The board consists of the manager of the Garrison Diversion Conservancy District, the  
30 state engineer, the commissioner of university and school lands, the director of the  
31 parks and recreation department, the director of the game and fish department, and

1           the ~~state health officer~~director of the department of environmental quality, or their  
2           representatives.

3           2. The state engineer is the board's secretary.

4           3. The board shall meet at least once a year or at the call of the state engineer or two or  
5           more members of the board. The board shall meet at the office of the state engineer or  
6           at any other place decided upon by the board.

7           4. The board may adopt rules to govern its activities.

8           **SECTION 73. AMENDMENT.** Section 61-35-24 of the North Dakota Century Code is  
9           amended and reenacted as follows:

10           **61-35-24. Not exempt from other requirements.**

11           This chapter does not exempt any district from the requirements of any other statute,  
12           ~~whether enacted before or after August 1, 1995,~~ under which the district is required to obtain the  
13           permission or approval of, or to notify, the state water commission, or the ~~state department of~~  
14           ~~health~~department of environmental quality, or any other agency of this state or of any of its  
15           political subdivisions before proceeding with construction, acquisition, operation, enlargement,  
16           extension, or alteration of any works or facilities that the district is authorized to undertake under  
17           this chapter.

18           **SECTION 74. REPEAL.** Chapters 19-10 and 19-16.1 and sections 23-01-01.2, 23-01-04.1,  
19           23-01-23, 23-01-30, and 23-01-36 and chapters 23-20, 23-20.1, 23-20.3, 23-20.5, 23-25, 23-26,  
20           23-29, 23-29.1, 23-31, 23-32, 23-33, 23-37, and 39-26 and sections 61-28-03 and 61-28-05 of  
21           the North Dakota Century Code are repealed.

22           **SECTION 75. EFFECTIVE DATE.** Sections 2 through 74 of this Act are effective upon the  
23           receipt by the legislative council of the certification by the chief of the environmental health  
24           section of the state department of health attesting that all necessary federal approvals have  
25           been obtained and all necessary federal and other agreements have been amended to ensure  
26           the state will continue to meet the primacy requirements it currently satisfies after the transfer of  
27           authority, powers, and duties from the state department of health to the department of  
28           environmental quality provided under this Act.