

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 and
2 title 23.1 of the North Dakota Century Code, relating to the creation of the department of
3 environmental quality and the transfer of duties and responsibilities of the state department of
4 health relating to environmental quality to the department of environmental quality; to amend
5 and reenact section 4-35.2-01, subdivision b of subsection 5 of section 6-09.4-03, sections
6 11-33-01, 11-33-02.1, and 11-33-22, subdivision d of subsection 2 of section 12.1-06.1-01,
7 section 15-05-16, subsection 1 of section 19-01-01, sections 20.1-13-05, 20.1-17-01, and
8 23-01-02, subsection 8 of section 23-01.3-01, sections 23-20.2-02, 23-20.2-03, and 24-03-23,
9 subsection 5 of section 28-32-50, sections 38-08-04.5, 38-11.1-03.1, 38-11.1-04.1, and
10 38-11.2-02, subsection 12 of section 38-14.1-03, subsection 2 of section 38-14.1-21, sections
11 38-22-07, 38-22-12, 40-47-01, 43-18-02, 43-18-09, 43-35-03, 43-35-19, 43-35-19.1, 43-35-19.2,
12 43-35-20, and 43-35-23, subsection 11 of section 43-48-03, subsection 6 of section 43-62-03,
13 subsection 3 of section 44-04-18.4, section 44-04-32, subsection 1 of section 54-07-01.2,
14 subsection 3 of section 54-12-08, section 54-44.3-30, subsection 33 of section 57-43.2-01,
15 sections 58-03-11, 58-03-11.1, and 58-03-17, subsection 13 of section 58-06-01, and sections
16 61-04.1-04, 61-29-04, 61-33-09, and 61-35-24 of the North Dakota Century Code, relating to
17 the transfer of duties and responsibilities of the state department of health to the department of
18 environmental quality; to repeal chapters 19-10 and 19-16.1, 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 of the North Dakota Century Code,
21 relating to the transfer of duties and responsibilities of the state department of health to the
22 department of environmental quality; to provide a penalty; to provide a continuing appropriation;
23 to provide for transition; and to provide an effective date.

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

1 **SECTION 1. STATE DEPARTMENT OF HEALTH TRANSITION OF ENVIRONMENTAL**

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

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

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

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

1 **4-35.2-01. Pesticide and pesticide container disposal program - Pesticide container**
2 **management - Compensation.**

- 3 1. The definitions contained in section 4-35-05 apply to this section.
- 4 2. In consultation with an advisory board consisting of the ~~state health officer~~director of
5 the department of environmental quality, director of the North Dakota state university
6 extension service, two individuals representing agribusiness organizations, and two
7 individuals representing farm organizations, all of whom must be selected by the
8 agriculture commissioner, the commissioner shall continue to implement the project
9 authorized by section 1 of chapter 77 of the 2001 Session Laws, which is known as
10 project safe send. The purpose of the project is to:
- 11 a. Collect and either recycle or dispose of unusable pesticides and unusable
12 pesticide containers. The commissioner shall provide for the establishment and
13 operation of temporary collection sites for the pesticides and pesticide containers.
14 The commissioner may limit the type and quantity of pesticides and pesticide
15 containers acceptable for collection.
- 16 b. Promote proper pesticide container management. In consultation with the director
17 of the North Dakota state university extension service, the commissioner shall
18 evaluate and promote proper methods of pesticide container management,
19 including information on the variety of pesticide containers available.
- 20 3. Any entity collecting pesticide containers or unusable pesticides shall manage and
21 dispose of the containers and pesticides in compliance with applicable federal and
22 state requirements. When called upon, any state agency shall assist the commissioner
23 in implementing the project.
- 24 4. For services rendered in connection with the design and implementation of this
25 project, the members selected by the commissioner are entitled to reimbursement for
26 mileage and travel expenses in the same manner and for the same amounts provided
27 for state employees and officials. Compensation and expense reimbursement must be
28 paid from the environment and rangeland protection fund.

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

1 b. The state department of health~~environmental quality~~, or any other state agency or
2 authority, or any member-owned association or publicly owned and nonprofit
3 corporation:

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

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

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

9 **11-33-01. County power to regulate property.**

10 For the purpose of promoting health, safety, morals, public convenience, general prosperity,
11 and public welfare, the board of county commissioners of any county may regulate and restrict
12 within the county, subject to section 11-33-20 and chapter 54-21.3, the location and the use of
13 buildings and structures and the use, condition of use, or occupancy of lands for residence,
14 recreation, and other purposes. The board of county commissioners and a county zoning
15 commission shall state the grounds upon which any request for a zoning amendment or
16 variance is approved or disapproved, and written findings upon which the decision is based
17 must be included within the records of the board or commission. The board of county
18 commissioners shall establish zoning requirements for solid waste disposal and incineration
19 facilities before July 1, 1994. The board of county commissioners may impose tipping or other
20 fees on solid waste management and incineration facilities. The board of county commissioners
21 may not impose any fee under this section on an energy conversion facility or coal mining
22 operation that disposes of its waste onsite. The board of county commissioners may establish
23 institutional controls that address environmental concerns with the state department of
24 health~~environmental quality~~ as provided in section ~~23-20.3-03.1~~23.1-04-03.

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

27 **11-33-02.1. Farming and ranching regulations - Requirements - Limitations -**

28 **Definitions.**

29 1. For purposes of this section:

30 a. "Concentrated feeding operation" means any livestock feeding, handling, or
31 holding operation, or feed yard, where animals are concentrated in an area that is

1 not normally used for pasture or for growing crops and in which animal wastes
2 may accumulate. The term does not include normal wintering operations for
3 cattle.

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

6 The term does not include:

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

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

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

14 d. "Location" means the setback distance between a structure, fence, or other
15 boundary enclosing a concentrated feeding operation, including its animal waste
16 collection system, and the nearest occupied residence, the nearest buildings
17 used for nonfarm or nonranch purposes, or the nearest land zoned for residential,
18 recreational, or commercial purposes. The term does not include the setback
19 distance for the application of manure or for the application of other recycled
20 agricultural material under a nutrient management plan approved by the
21 department of ~~health~~environmental quality.

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

23 a. One mature dairy cow, whether milking or dry, equals 1.33 animal units;

24 b. One dairy cow, heifer, or bull, other than an animal described in paragraph 1
25 equals 1.0 animal unit;

26 c. One weaned beef animal, whether a calf, heifer, steer, or bull, equals 0.75 animal
27 unit;

28 d. One cow-calf pair equals 1.0 animal unit;

29 e. One swine weighing fifty-five pounds [24.948 kilograms] or more equals 0.4
30 animal unit;

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- 1 f. One swine weighing less than fifty-five pounds [24.948 kilograms] equals 0.1
2 animal unit;
- 3 g. One horse equals 2.0 animal units;
- 4 h. One sheep or lamb equals 0.1 animal unit;
- 5 i. One turkey equals 0.0182 animal unit;
- 6 j. One chicken, other than a laying hen, equals 0.008 animal unit;
- 7 k. One laying hen equals 0.012 animal unit;
- 8 l. One duck equals 0.033 animal unit; and
- 9 m. Any livestock not listed in subdivisions a through l equals 1.0 animal unit per
10 each one thousand pounds [453.59 kilograms] whether single or combined
11 animal weight.
- 12 3. A board of county commissioners may not prohibit or prevent the use of land or
13 buildings for farming or ranching and may not prohibit or prevent any of the normal
14 incidents of farming or ranching.
- 15 4. A board of county commissioners may not preclude the development of a
16 concentrated feeding operation in the county.
- 17 5. A board of county commissioners may not prohibit the reasonable diversification or
18 expansion of a farming or ranching operation.
- 19 6. A board of county commissioners may adopt regulations that establish different
20 standards for the location of concentrated feeding operations based on the size of the
21 operation and the species and type being fed.
- 22 7. If a regulation would impose a substantial economic burden on a concentrated feeding
23 operation in existence before the effective date of the regulation, the board of county
24 commissioners shall declare that the regulation is ineffective with respect to any
25 concentrated feeding operation in existence before the effective date of the regulation.
- 26 8. a. A board of county commissioners may establish high-density agricultural
27 production districts in which setback distances for concentrated feeding
28 operations and related agricultural operations are less than those in other
29 districts.
- 30 b. A board of county commissioners may establish, around areas zoned for
31 residential, recreational, or nonagricultural commercial uses, low-density

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

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

13 **11-33-22. Regulation of concentrated animal feeding operations - Central repository.**

- 14 1. Any zoning regulation that pertains to a concentrated animal feeding operation and
15 ~~which is promulgated by a county after July 31, 2007,~~ is not effective until filed with the
16 ~~state~~ department of ~~health~~environmental quality for inclusion in the central repository
17 established under section ~~23-01-30~~23.1-01-10. ~~Any zoning regulation that pertains to~~
18 ~~concentrated animal feeding operations and which was promulgated by a county~~
19 ~~before August 1, 2007, may not be enforced until the regulation is filed with the state~~
20 ~~department of health for inclusion in the central repository.~~
- 21 2. For purposes of this section:
- 22 a. "Concentrated animal feeding operation" means any livestock feeding, handling,
23 or holding operation, or feed yard, where animals are concentrated in an area
24 that is not normally used for pasture or for growing crops and in which animal
25 wastes may accumulate, or in an area where the space per animal unit is less
26 than six hundred square feet [55.74 square meters]. The term does not include
27 normal wintering operations for cattle.
- 28 b. "Livestock" includes beef cattle, dairy cattle, sheep, swine, poultry, horses, and
29 fur animals raised for their pelts.

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

1 The department of environmental quality for a final applicant for or an employee
2 specified in occupation with the department; an individual being investigated by
3 the department; or, when requested by the department, an applicant for
4 registration, certification, or licensure by the department.

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

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

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

18 **15-05-16. Reports - State geologist - State department of health - Department of**
19 **environmental quality.**

20 The state geologist ~~or the~~ state department of health, or department of environmental
21 quality, on the request of the board of university and school lands, shall visit any land leased
22 under section 15-05-09 and shall make a report of the visit to the board. The state geologist ~~or~~
23 ~~the~~ state department of health, or department of environmental quality may not receive a fee
24 for making the examination and report but must be paid necessary expenses incurred in
25 connection ~~therewith~~with the examination.

26 **SECTION 10. AMENDMENT.** Subsection 1 of section 19-01-01 of the North Dakota
27 Century Code is amended and reenacted as follows:

28 1. "Department" means the ~~state department of health~~department of environmental
29 quality.

30 **SECTION 11. AMENDMENT.** Section 20.1-13-05 of the North Dakota Century Code is
31 amended and reenacted as follows:

1 **20.1-13-05. Equipment - Penalty.**

2 1. Every vessel must have aboard:

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

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

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

23 **SECTION 12. AMENDMENT.** Section 20.1-17-01 of the North Dakota Century Code is
24 amended and reenacted as follows:

25 **20.1-17-01. Prevention and control of aquatic nuisance species.**

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

- 27 1. Prepare a statewide management plan for aquatic nuisance species to be approved
28 by the governor.
- 29 2. Organize an aquatic nuisance species committee, as provided for in the statewide
30 management plan, composed of the director or the director's designee;
31 representatives of the agriculture commissioner, state water commission, parks and

1 recreation department, ~~state department of health~~department of environmental quality,
2 and tourism division; up to five private entities or individuals; and a representative of
3 tribal entities. The director or the director's designee is the chairman of the aquatic
4 nuisance species committee.

5 3. Develop and adopt the state's list of aquatic nuisance species after consulting with the
6 aquatic nuisance species committee. The list must be updated annually.

7 4. Provide for a permitting system to import listed aquatic nuisance species into or move
8 those species within the state.

9 5. Develop rules to prevent the movement of aquatic nuisance species into or within the
10 state. In addition to requirements under chapter 28-32, the department shall conduct a
11 cost-benefit analysis for any rule proposed for adoption under this chapter.

12 6. Conduct aquatic nuisance species education and prevention efforts.

13 7. Provide for the partnership of the federal government, state agencies, and private or
14 public organizations to fund aquatic nuisance species prevention efforts.

15 **SECTION 13. AMENDMENT.** Section 23-01-02 of the North Dakota Century Code is
16 amended and reenacted as follows:

17 **23-01-02. Health council - Members, terms of office, vacancies, compensation,**
18 **officers, meetings.**

19 The health council consists of ~~eleven~~nine members appointed by the governor ~~in the~~
20 ~~following manner:~~ including four persons from the health care field, and five persons
21 representing consumer interests, ~~one person from the energy industry, and one from the~~
22 ~~manufacturing and processing industry.~~ The governor may select members to the council from
23 recommendations submitted by trade, professional, and consumer organizations. On the
24 expiration of the term of any member, the governor, in the manner provided by this section, shall
25 appoint for a term of three years, persons to take the place of members whose terms on the
26 council are about to expire. The officers of the council must be elected annually. Any state
27 agency may serve in an advisory capacity to the health council at the discretion of the council.
28 The council shall meet at least twice each year and at other times as the council or its chairman
29 may direct. The health council shall have as standing committees any committees the council
30 may find necessary. The chairman of the council shall select the members of these committees.
31 The members of the council are entitled to receive sixty-two dollars and fifty cents as

1 compensation per day and their necessary mileage and travel expenses as provided in sections
2 44-08-04 and 54-06-09 while attending council meetings or in the performance of any special
3 duties as the council may direct. The per diem and expenses must be audited and paid in the
4 manner in which the expenses of state officers are audited and paid. The compensation
5 provided for in this section may not be paid to any member of the council who received salary or
6 other compensation as a regular employee of the state, or any of its political subdivisions, or
7 any institution or industry operated by the state.

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

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

17 **SECTION 15. AMENDMENT.** Section 23-20.2-02 of the North Dakota Century Code is
18 amended and reenacted as follows:

19 **23-20.2-02. Definitions.**

20 As used in this chapter:

- 21 1. "Commission" means the industrial commission of North Dakota.
- 22 2. "Person" includes any natural person, corporation, limited liability company,
23 association, partnership, receiver, trustee, executor, administrator, guardian, fiduciary,
24 or other representative of any kind, and includes any department, agency, or
25 instrumentality of the state or of any governmental subdivision thereof.
- 26 3. "Underground disposal facility" means any drilled, bored, or excavated device or
27 installation to provide for the subsurface disposal of waste. The term does not include
28 a solid waste management facility authorized under chapter ~~23-29~~23.1-08.
- 29 4. "Underground storage and retrieval facility" means any drilled, bored, or excavated
30 device or installation to provide for the subsurface emplacement and recovery of
31 materials.

1 5. "Waste" includes liquid wastes, gaseous wastes, and solid wastes as defined in
2 section ~~23-29-03~~23.1-08-02 and all unusable industrial material including spent
3 nuclear fuels and other unusable radioactive material not brought into this state for
4 disposal.

5 **SECTION 16. AMENDMENT.** Section 23-20.2-03 of the North Dakota Century Code is
6 amended and reenacted as follows:

7 **23-20.2-03. Jurisdiction of the industrial commission.**

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

- 12 1. To require:
- 13 a. Identification of ownership of all facilities and equipment used for the
14 underground storage and retrieval of material and waste disposal.
 - 15 b. The making and filing of all logs and reports on facility location, drilling, boring,
16 excavating, and construction and the filing, free of charge, of samples, core
17 chips, and complete cores, when requested, in the office of the state geologist.
 - 18 c. The drilling, boring, excavating, and construction of facilities in a manner to
19 prevent contamination and pollution of surface and ground water sources and the
20 environment.
 - 21 d. The furnishing of a reasonable bond with good and sufficient surety, conditioned
22 upon the full compliance with the provisions of this chapter, and the rules of the
23 commission relating to the underground storage and retrieval of material and
24 waste disposal.
 - 25 e. Metering or other measuring of all material injected, emplaced, stored, disposed
26 into, or retrieved from any facility regulated by this chapter.
 - 27 f. That every person who operates a facility for the underground storage and
28 retrieval of material or for waste disposal in this state shall keep and maintain
29 complete and accurate records of the quantities and nature of material stored,
30 retrieved, or disposed of, which records must be available to the commission or

- 1 its agents at all times, and that every such person file with the commission such
2 reports as it may prescribe.
- 3 g. That upon termination of the operation of any facility or activity regulated by this
4 chapter, the operator of such facility shall restore the surface as nearly as
5 possible to its original condition and productivity.
- 6 2. To regulate:
- 7 a. The drilling, boring, excavating, and construction of all underground storage,
8 retrieval, and waste disposal facilities.
- 9 b. Operations to assure the optimum performance of all facilities regulated by this
10 chapter.
- 11 3. To limit and prescribe the nature, quantity, and source of materials to be stored in,
12 whether as waste or otherwise, or retrieved from any facility regulated by this chapter.
- 13 4. To promulgate and to enforce rules, regulations, and orders to effectuate the purposes
14 of this chapter.

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

17 **SECTION 17.** Chapter 23.1-01 of the North Dakota Century Code is created and enacted
18 as follows:

19 **23.1-01-01. Department of environmental quality established.**

20 The department of environmental quality is established and is the primary state
21 environmental agency.

22 **23.1-01-02. Environmental review advisory council - Members, powers, and duties.**

- 23 1. The environmental review advisory council is established to advise the department of
24 environmental quality in carrying out its duties. The council consists of nine members
25 appointed by the governor, and the director of the department of environmental quality
26 or the director's designee shall serve as the executive secretary for the council. The
27 members must be:
- 28 a. A representative of county or municipal government;
- 29 b. A representative of manufacturing and processing;
- 30 c. A representative of the solid fuels industry;
- 31 d. A representative of the liquid and gas fuels industry;

- 1 e. A representative of agriculture;
- 2 f. Two representatives of environmental sciences;
- 3 g. The state engineer; and
- 4 h. The state geologist.
- 5 2. Each appointive member of the council shall serve a four-year term. The governor
6 may fill any vacancy in the membership of the council, and may remove a member of
7 the council for cause. The council members shall select a chairman from among the
8 council members.
- 9 3. Council members must be reimbursed by the department of environmental quality for
10 necessary travel and other expenses incurred in the performance of official duties.
- 11 4. The council shall hold at least two meetings per year and any other meetings deemed
12 necessary by the chairman or a majority of the council.
- 13 5. The council shall:
 - 14 a. Review and make recommendations to the department of environmental quality
15 regarding rules and standards relating to environmental quality and the duties of
16 the department. The department may not take final action on any rule or standard
17 without first consulting the council.
 - 18 b. Consider any other matter related to the purposes of this title the council deems
19 appropriate and make any recommendation on its own initiative to the
20 department of environmental quality concerning the administration of this title.

21 **23.1-01-03. Director - Powers and duties.**

22 The director of the department of environmental quality shall:

- 23 1. Enforce all rules adopted by the department;
- 24 2. Hire employees as necessary to carry out the duties of the department and director;
- 25 3. Organize the department in the most efficient and effective manner;
- 26 4. Maintain, in conjunction with the state department of health, a laboratory to carry out
27 the necessary tests and examinations for purposes of this title, and establish a fee
28 schedule for the tests and examinations;
- 29 5. Issue bulletins, news releases, or reports as necessary to inform the public of
30 environmental hazards;

- 1 6. Establish rules necessary for maintaining sanitation, including rules for approving
2 plans for water works and sewage systems;
- 3 7. Maintain a central environmental laboratory and, if necessary, branch laboratories for
4 the standard function of diagnostic, sanitary, and chemical examinations; and
- 5 8. Any other action, including the collection and distribution of environmental quality data,
6 necessary and appropriate for the administration of this title.

7 **23.1-01-04. Rulemaking authority - Limitations.**

- 8 1. Except as provided in subsection 2, the department of environmental quality may not
9 adopt any rule for the purpose of the state administering a program under the federal
10 Clean Air Act [42 U.S.C. 7401 et seq.]; federal Clean Water Act [33 U.S.C. 1251 et
11 seq.]; federal Safe Drinking Water Act [42 U.S.C. 300 et seq.]; federal Resource
12 Conservation and Recovery Act [42 U.S.C. 6901 et seq.]; federal Comprehensive
13 Environmental Response, Compensation, and Liability Act [42 U.S.C. 9601 et seq.];
14 federal Emergency Planning and Community Right to Know Act of 1986 [42 U.S.C.
15 11001 et seq.]; federal Toxic Substances Control Act [42 U.S.C. 2601 et seq.]; or
16 federal Atomic Energy Act of 1954 [42 U.S.C. 2011 et seq.]; which is more stringent
17 than corresponding federal regulations that address the same circumstances. In
18 adopting the rules, the department may incorporate by reference corresponding
19 federal regulations.
- 20 2. The department may adopt rules more stringent than corresponding federal
21 regulations or adopt rules where there are no corresponding federal regulations, for
22 the purposes described in subsection 1, only if the department makes a written finding
23 after public comment and hearing and based upon evidence in the record, that
24 corresponding federal regulations are not adequate to protect the public health and
25 the environment of the state. Those findings must be supported by an opinion of the
26 department referring to and evaluating the public health and environmental information
27 and studies contained in the record which form the basis for the department's
28 conclusions.
- 29 3. If the department, upon petition by any person affected by a rule of the department,
30 identifies rules more stringent than federal regulations or rules where there are no

1 corresponding federal regulations, the department shall review and revise those rules
2 to comply with this section within nine months of the filing of the petition.

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

10 **23.1-01-05. Department of environmental quality authorized to transfer future**
11 **accumulated fees.**

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

15 **23.1-01-06. Department to employ waste management facility inspectors.**

16 The department of environmental quality shall employ and establish the qualifications,
17 duties, and compensation of at least one full-time inspector for each commercial, nonpublicly
18 owned waste management disposal or incineration facility that accepts more than twenty-five
19 thousand tons [22679.5 kilograms] per year of hazardous waste, industrial waste, nuclear
20 waste, or ash resulting from the incineration of municipal solid waste. This section does not
21 apply to any energy conversion facility or coal mining operation that disposes of its solid waste
22 onsite. The department may require inspectors for those facilities that accept less than
23 twenty-five thousand tons [22679.5 kilograms] per year. The facility inspector shall conduct
24 regular inspections of the operating procedure and conditions of the facility and report the
25 findings to the department on a regular basis. If an inspector discovers a condition at a facility
26 that is likely to cause imminent harm to the health and safety of the public or environment, the
27 inspector shall notify the department. The department shall proceed as provided by sections
28 23.1-08-20 and 23.1-08-21.

29 The department shall assess the owner or operator of a waste management facility that
30 accepts hazardous waste, industrial waste, nuclear waste, or ash resulting from the incineration
31 of municipal solid waste an annual fee to pay the salaries, wages, and operating expenses.

1 associated with employing an inspector for the facility. The owner or operator of the facility shall
2 submit the fee to the department by July first of each year. Any fees collected must be
3 deposited in the department's operating fund in the state treasury and any expenditures from
4 the fund are subject to appropriation by the legislative assembly. If a facility begins operation
5 after July first of any year, the owner or operator of the facility shall pay to the department a
6 prorated fee for the fiscal year before the facility may begin accepting waste. Moneys in the
7 waste management facility account may be spent by the department within the limits of
8 legislative appropriation.

9 **23.1-01-07. Permit or investigatory hearings - Exemption from chapters 28-32 and**
10 **54-57.**

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

15 **23.1-01-08. Commercial feed, insecticide, fungicide, rodenticide, fertilizer, and soil**
16 **conditioner laws - Laboratory function.**

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

20 **23.1-01-09. Department of environmental quality - Indirect cost recoveries.**

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

23 **23.1-01-10. Zoning regulation of concentrated animal feeding operations - Central**
24 **repository.**

25 The department of environmental quality shall establish, operate, and maintain an
26 electronically accessible central repository for all county and township zoning regulations that
27 pertain to concentrated animal feeding operations. The county auditor of a county and a
28 township clerk of a township having a zoning regulation that pertains to concentrated animal
29 feeding operations shall file the regulation with the department of environmental quality for
30 inclusion in the central repository.

1 **23.1-01-11. Appeal from permit proceedings.**

2 An appeal from the issuance, denial, modification, or revocation of a permit issued under
3 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
4 permit application, or by any person who is aggrieved by the permit application decision,
5 provided that person participated in or provided comments during the hearing process for the
6 permit application, modification, or revocation. An appeal must be taken within thirty days after
7 the final permit application determination is mailed by first-class mail to the permit applicant and
8 to any interested person who has requested a copy of the final permit determination during the
9 permit hearing process. Except as provided in this section, an appeal of the final permit
10 determination is governed by sections 28-32-40, 28-32-42, 28-32-43, 28-32-44, 28-32-46, and
11 28-32-49. The department may substitute final permit conditions and written responses to public
12 comments for findings of fact and conclusions of law. Except for a violation of chapter 23.1-03,
13 23.1-04, 23.1-06, 23.1-08, or 61-28 which occurs after the permit is issued, or any permit
14 condition, rule, order, limitation, or other applicable requirement implementing those chapters
15 which occurs after the permit is issued, any challenge to the department's issuance,
16 modification, or revocation of the permit or permit conditions must be made in the permit
17 hearing process and may not be raised on any collateral or subsequent legal proceeding, and
18 the applicant and any aggrieved person may raise on appeal only issues that were raised to the
19 department in the permit hearing process.

20 **23.1-01-02. Rules.**

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

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

26 **23.1-02-01. Definitions.**

27 For the purposes of this chapter:

- 28 1. "Department" means the department of environmental quality.
29 2. "Radiation" means gamma rays and x-rays, alpha and beta particles, high-speed
30 electrons, neutrons, protons, and other nuclear particles; but not sound or radio
31 waves, or visible, infrared, or ultraviolet light.

1 3. "Radiation machine" means any device that produces radiation when the associated
2 control devices are operated.

3 4. "Radioactive material" means any material, solid, liquid, or gas, that emits radiation
4 spontaneously.

5 **23.1-02-02. Registration agency.**

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

8 **23.1-02-03. Registration required.**

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

17 **23.1-02-04. Certificate of registration.**

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

23 **23.1-02-05. Penalty.**

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

26 **SECTION 19.** Chapter 23.1-03 of the North Dakota Century Code is created and enacted
27 as follows:

28 **23.1-03-01. Definitions.**

29 For the purposes of this chapter:

30 1. "Byproduct material" means any radioactive material, except special nuclear material,
31 yielded in or made radioactive by exposure to the radiation incident to the process of

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

- 1 11. "Source material" means uranium, thorium, or any other material the department
2 declares by rule to be source material after the commission has determined the
3 material to be such; or ores containing one or more of those materials, in such
4 concentration as the department declares by rule to be source material after the
5 commission has determined the material in such concentration to be source material.
- 6 12. "Surety" means cash deposits, surety bonds, certificates of deposit, deposits of
7 government securities, letters of credit, and other surety mechanisms deemed
8 acceptable by the department.

9 **23.1-03-02. State radiation control agency.**

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

12 **23.1-03-03. Powers and duties of the department.**

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

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

21 **23.1-03-04. Licensing and registration of sources of ionizing radiation.**

- 22 1. The department shall adopt rules for the department to provide general or specific
23 licensing of persons to process, generate, dispose, use, manufacture, produce,
24 acquire, own, receive, possess, or transfer byproduct, source, special nuclear
25 material, and other radioactive materials occurring naturally or produced artificially, or
26 devices or equipment utilizing such materials. The rule must allow the department to
27 amend, suspend, and revoke licenses.
- 28 2. The department may exempt certain sources of ionizing radiation or kinds of uses or
29 users from the licensing or registration requirements under this section and in chapter
30 23.1-02 when the department makes a finding that the exemption of such sources of

1 ionizing radiation or kinds of uses or users will not constitute a significant risk to the
2 health and safety of the public.

3 **23.1-03-05. Custody of disposal sites.**

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

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

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

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

- 1 b. If transfer to the state of title to the land, source material, byproduct material, or
2 other radioactive material occurring naturally or produced artificially is required,
3 the department shall maintain the material and land in a manner that will protect
4 the public health, safety, and the environment.
- 5 c. The department may undertake any monitoring, maintenance, and emergency
6 measures necessary to protect the public health and safety for materials and
7 property for which it has assumed custody under this chapter.
- 8 d. The transfer of title to land or source material, byproduct material, or other
9 radioactive material occurring naturally or produced artificially, to the state does
10 not relieve any licensee of liability for any fraudulent or negligent acts done prior
11 to the transfer.
- 12 e. Material and land transferred to either the United States or the state under this
13 section must be transferred without cost to the United States or the state other
14 than administrative and legal costs incurred by the United States or the state in
15 carrying out the transfer.
- 16 3. Land used for the disposal of technologically enhanced naturally occurring radioactive
17 material is not subject to subsection 2.

18 **23.1-03-06. Surety requirements.**

- 19 1. The department shall establish by rule standards and instructions it deems necessary
20 or appropriate to ensure:
- 21 a. The licensee will provide adequate surety for the completion of all requirements
22 established by the department for the decontamination, decommissioning, and
23 stabilization of sites, structures, and equipment used in conjunction with the
24 processing, generation, or disposal of source material, byproduct material, or
25 other radioactive material occurring naturally or produced artificially; and
- 26 b. If the department determines any long-term maintenance and monitoring is
27 necessary, the licensee will make available the funds required for the necessary
28 maintenance and monitoring, before termination of any license for source
29 material, byproduct material, or other radioactive material occurring naturally or
30 produced artificially.

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

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

19 **23.1-03-07. Procedural requirements.**

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

23 1. In the cases of licenses:

24 a. An opportunity, after public notice, for written comments and a public hearing,
25 with a transcript.

26 b. A written determination of the action to be taken which is based upon findings
27 included in the determination and upon evidence presented during the public
28 comment period, and which is subject to judicial review.

29 c. For each licensed activity that has a significant impact on the human
30 environment, a written analysis prepared by the department which must be

- 1 available to the public before commencement of hearings, of the impact of the
2 licensed activity on the environment. The analysis must include:
3 (1) An assessment of the radiological and nonradiological impacts to the public
4 health.
5 (2) An assessment of any impact on any waterway and ground water.
6 (3) Consideration of alternatives to the activities to be conducted.
7 (4) Consideration of the long-term impacts of the licensed activities.
8 d. A prohibition of any major construction related to the licensed activities before
9 completing the action under subdivision c.
10 e. An assurance that management of source material, byproduct material, or other
11 radioactive material occurring naturally or produced artificially is carried out in
12 conformance with applicable standards adopted by the department, the
13 commission, and the United States environmental protection agency.

14 2. In the case of rulemaking:

- 15 a. An opportunity for public participation through written comments or a public
16 hearing.
17 b. An opportunity for judicial review.

18 **23.1-03-08. Additional authorities.**

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

22 **23.1-03-09. Fees deposited in operating fund.**

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

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

1 **23.1-03-10. X-ray operators - Rules.**

2 The environmental review advisory council shall adopt rules to require x-ray operators to
3 obtain continuing education every two years and to establish minimum standards for limited
4 pediatric examinations by x-ray operators.

5 **23.1-03-11. Federal-state agreements.**

6 1. The governor, on behalf of this state, may enter agreements with the federal
7 government for discontinuance of certain responsibilities of the federal government
8 with respect to sources of ionizing radiation and the assumption of the responsibilities
9 by the state.

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

15 **23.1-03-12. Administrative procedures and judicial review.**

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

27 **23.1-03-13. Injunction proceedings.**

28 Whenever, in the judgment of the department, any person has engaged in or is about to
29 engage in any acts or practices that constitute or will constitute a violation of this chapter, or any
30 rule or order issued under this chapter, the department may initiate an action in the name of the
31 state enjoining the acts or practices, or requesting an order directing compliance. Upon a

1 showing by the department that the person has engaged or is about to engage in the acts or
2 practices, a permanent or temporary injunction, restraining order, or other order may be
3 granted.

4 **23.1-03-14. Prohibited uses.**

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

8 **23.1-03-15. Impounding of materials.**

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

12 **23.1-03-16. Penalties.**

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

1 **SECTION 20.** Chapter 23.1-04 of the North Dakota Century Code is created and enacted
2 as follows:

3 **23.1-04-01. Declaration of purpose.**

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

- 5 1. Protect human health and the environment from the effects of the improper,
6 inadequate, or unsafe past or present management of hazardous waste and
7 underground storage tanks.
- 8 2. Establish a program to regulate hazardous waste from the time of generation through
9 transportation, storage, treatment, and disposal.
- 10 3. Promote reduction of hazardous waste generation, reuse, recovery, and treatment as
11 preferable alternatives to landfill disposal.
- 12 4. Assure the safe and adequate management of hazardous waste with a minimum of
13 hazardous waste disposal sites within the state.
- 14 5. Establish a program to regulate underground storage tanks.
- 15 6. Promote reduction of surface and ground water contamination resulting from leaking
16 underground storage tanks.

17 **23.1-04-02. Definitions.**

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

- 19 1. "Commercial facility" means all contiguous land, structures, appurtenances, and
20 improvements on the land used for treatment and disposal of hazardous waste
21 received from offsite generators.
- 22 2. "Department" means the department of environmental quality.
- 23 3. "Disposal" means the discharge, deposit, injection, dumping, spilling, leaking, or
24 placing of any solid waste or hazardous waste into or on any land or water so the
25 waste or any hazardous constituent of the waste may enter the environment or be
26 emitted into the air or discharged into any waters, including ground water.
- 27 4. "Facility" means all contiguous land and structures, other appurtenances, and
28 improvements on the land, used for treating, storing, or disposing of hazardous waste.
29 A facility may consist of several contiguous treatment, storage, or disposal operational
30 units.

- 1 5. "Generator" means any person, by site, producing hazardous waste or acting to cause
2 a hazardous waste to become subject to regulation.
- 3 6. "Hazardous waste" means any waste or combination of wastes of a solid, liquid,
4 contained gaseous, or semisolid form that:
- 5 a. Because of its quantity, concentration, or physical, chemical, or other
6 characteristic, in the judgment of the department may:
- 7 (1) Cause, or significantly contribute to, an increase in mortality or an increase
8 in serious irreversible or incapacitating reversible illness; or
- 9 (2) Pose a substantial present or potential hazard to human health or the
10 environment when improperly treated, stored, disposed of, or otherwise
11 managed; or
- 12 b. Is identified by the mechanisms established in this chapter, including those that
13 exhibit extraction procedure toxicity, corrosivity, ignitability, or reactivity.
- 14 7. "Hazardous waste management" means the systematic control of the collection,
15 source separation, storage, transportation, processing, treatment, recovery, and
16 disposal of hazardous waste.
- 17 8. "Manifest" means the document used for identifying the quantity, composition, origin,
18 routing, and destination of hazardous waste during transportation from the site of
19 generation to the site of storage, treatment, or disposal.
- 20 9. "Owner" means, in the case of an underground storage tank, any person that owns or
21 operates an underground storage tank used for the storage, use, or dispensing of
22 regulated substances.
- 23 10. "Regulated substance" means:
- 24 a. Any substance defined in section 101(14) of the Comprehensive Environmental
25 Response, Compensation, and Liability Act of 1980 [42 U.S.C. 9601 et seq.], as
26 amended, but not including any substance regulated as a hazardous waste under
27 subtitle C of the Resource Conservation and Recovery Act [42 U.S.C. 6901 et
28 seq.], as amended.
- 29 b. Petroleum, including crude oil or any fraction of crude oil that is liquid at sixty
30 degrees Fahrenheit [16 degrees Celsius] and fourteen and seven-tenths pounds
31 [6.66 kilograms] per square inch [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 23.1-09. 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 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 21.** 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 22.** 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 23.** 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 24.** 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 25.** 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 26.** 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 27.** 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 28.** 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 29.** 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 30.** 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 31.** 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 32. 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 33. 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 34. 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 35. 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 36. 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 37. 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 38. 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 39. 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 40. 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 41. 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 42. 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 43. 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 44. 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 45. 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 46. 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 47. 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 48. 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 49. 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 50. 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 51. 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 52. AMENDMENT.** Subsection 6 of section 43-62-03 of the North Dakota
2 Century Code is amended and reenacted as follows:

3 6. A limited x-ray machine operator who meets the requirements of rules adopted by the
4 ~~state department of health~~department of environmental quality under section
5 ~~23-20.1-04~~23.1-03-04.

6 **SECTION 53. AMENDMENT.** Subsection 3 of section 44-04-18.4 of the North Dakota
7 Century Code is amended and reenacted as follows:

8 3. This section does not limit or otherwise affect a record pertaining to any rule of the
9 state department of health or department of environmental quality or to any record
10 pertaining to the application for a permit or license necessary to do business or to
11 expand business operations within this state, except as otherwise provided by law.

12 **SECTION 54. AMENDMENT.** Section 44-04-32 of the North Dakota Century Code is
13 amended and reenacted as follows:

14 **44-04-32. Animal feeding operation record requests.**

15 The ~~state department of health~~department of environmental quality shall keep a written
16 record of each individual who requests information and the type of information requested
17 regarding an animal feeding operation permit. Within seven business days of receiving the
18 request, the department shall provide written notice to the owner and operator of the animal
19 feeding operation describing the type of information that has been requested and the name and
20 address of the requester. If an individual makes inquiries on more than three files in any one
21 request, the department shall charge the individual a fee sufficient to cover the cost of mailing
22 the notice to the owners and operators whose files are being examined and a fee for copying
23 the records as allowed under section 44-04-18.

24 **SECTION 55. AMENDMENT.** Subsection 1 of section 54-07-01.2 of the North Dakota
25 Century Code is amended and reenacted as follows:

26 1. Notwithstanding sections 2-05-01, 4.1-05-02, 4.1-26-02, 6-01-03, 6-09-02.1,
27 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,
28 ~~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,
29 54-54-02, 55-01-01, 61-02-04, and 61-28-03, all members of the following boards and
30 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 56. 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 57. 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 58. 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 59. 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 60. 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 61. 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 62. 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 healthdepartment of environmental quality.

23 **SECTION 63. 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 64. AMENDMENT.** Section 61-29-04 of the North Dakota Century Code is
17 amended and reenacted as follows:

18 **61-29-04. Administration.**

19 This chapter must be administered by a Little Missouri River commission composed of the
20 director of the parks and recreation department, the ~~state health officer~~ director of the state
21 ~~department of health~~ department of environmental quality, the chief engineer of the state water
22 commission, or their designated representatives, and one member from each of the following
23 counties: McKenzie, Billings, Slope, Golden Valley, Dunn, and Bowman. The commission
24 members representing the above-mentioned counties must be appointed by their respective
25 boards of county commissioners and shall serve without compensation except that each
26 appointing board of county commissioners may reimburse its county representative for actual
27 and necessary mileage to and from meetings of the commission at the same rate as state
28 officers. The county representatives appointed must be resident landowners who live adjacent
29 to the Little Missouri River with the exception of the Golden Valley County representative. A
30 county representative unable to attend a meeting of the commission may be represented by a
31 person who has a written proxy from the representative authorizing that person to act and vote

1 for the representative. The proxy must be a resident landowner of the county that the proxy is
2 representing, but need not live adjacent to the Little Missouri River. The county members shall
3 serve terms of office as follows: two members shall serve one-year terms, two members shall
4 serve two-year terms, and two members shall serve three-year terms.

5 **SECTION 65. AMENDMENT.** Section 61-33-09 of the North Dakota Century Code is
6 amended and reenacted as follows:

7 **61-33-09. Members of the board - Organization - Meetings.**

- 8 1. The board consists of the manager of the Garrison Diversion Conservancy District, the
9 state engineer, the commissioner of university and school lands, the director of the
10 parks and recreation department, the director of the game and fish department, and
11 the ~~state health officer~~director of the department of environmental quality, or their
12 representatives.
- 13 2. The state engineer is the board's secretary.
- 14 3. The board shall meet at least once a year or at the call of the state engineer or two or
15 more members of the board. The board shall meet at the office of the state engineer or
16 at any other place decided upon by the board.
- 17 4. The board may adopt rules to govern its activities.

18 **SECTION 66. AMENDMENT.** Section 61-35-24 of the North Dakota Century Code is
19 amended and reenacted as follows:

20 **61-35-24. Not exempt from other requirements.**

21 This chapter does not exempt any district from the requirements of any other statute,
22 ~~whether enacted before or after August 1, 1995~~, under which the district is required to obtain the
23 permission or approval of, or to notify, the state water commission, or the ~~state department of~~
24 ~~health~~department of environmental quality, or any other agency of this state or of any of its
25 political subdivisions before proceeding with construction, acquisition, operation, enlargement,
26 extension, or alteration of any works or facilities that the district is authorized to undertake under
27 this chapter.

28 **SECTION 67. REPEAL.** Chapters 19-10 and 19-16.1 and sections 23-01-01.2, 23-01-04.1,
29 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,
30 23-29, 23-29.1, 23-31, 23-32, 23-33, 23-37, and 39-26 of the North Dakota Century Code are
31 repealed.

1 **SECTION 68. EFFECTIVE DATE.** Sections 2 through 67 of this Act are effective upon the
2 receipt by the legislative council of the certification by the chief of the environmental health
3 section of the state department of health attesting that all necessary federal approvals have
4 been obtained and all necessary federal and other agreements have been amended to ensure
5 the state will continue to meet the primacy requirements it currently satisfies after the transfer of
6 authority, powers, and duties from the state department of health to the department of
7 environmental quality provided under this Act.