

Sixty-sixth  
Legislative Assembly  
of North Dakota

## ENGROSSED SENATE BILL NO. 2109

Introduced by

Energy and Natural Resources Committee

(At the request of the State Department of Health)

1 A BILL for an Act to create and enact a new subsection to section 23.1-04-08 of the North  
2 Dakota Century Code, relating to the duties and responsibilities of the department of  
3 environmental quality; to amend and reenact section 23.1-01-11, subsection 6 of section  
4 23.1-04-15, and section 23.1-08-10 of the North Dakota Century Code, relating to the duties  
5 and responsibilities of the department of environmental quality; to repeal section 23.1-06-03 and  
6 chapters 23.1-09 and 61-30 of the North Dakota Century Code, relating to the duties and  
7 responsibilities of the department of environmental quality; to provide an effective date; and to  
8 declare an emergency.

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

10 **SECTION 1. AMENDMENT.** Section 23.1-01-11 of the North Dakota Century Code is  
11 amended and reenacted as follows:

12 **23.1-01-11. Appeal from permit proceedings. (Contingent effective date - [See note](#))**

13 1. An appeal from the issuance, denial, modification, or revocation of a permit issued  
14 under chapter 23.1-03, 23.1-04, 23.1-06, 23.1-08, or 61-28 may be made by the  
15 person who filed the permit application, or by any person who is aggrieved by the  
16 permit application decision, provided that person participated in or provided comments  
17 during the hearing process for the permit application, modification, or revocation. An  
18 appeal must be taken within thirty days after the final permit application determination  
19 is mailed by first-class mail to the permit applicant and to any interested person who  
20 has requested a copy of the final permit determination during the permit hearing  
21 process. Except as provided in this section, an appeal of the final permit determination  
22 is governed by sections 28-32-40, 28-32-42, 28-32-43, 28-32-44, 28-32-46, and  
23 28-32-49. The department may substitute final permit conditions and written  
24 responses to public comments for findings of fact and conclusions of law. Except for a

1 violation of chapter 23.1-03, 23.1-04, 23.1-06, 23.1-08, or 61-28 which occurs after the  
2 permit is issued, or any permit condition, rule, order, limitation, or other applicable  
3 requirement implementing those chapters which occurs after the permit is issued, any  
4 challenge to the department's issuance, modification, or revocation of the permit or  
5 permit conditions must be made in the permit hearing process and may not be raised  
6 on any collateral or subsequent legal proceeding, and the applicant and any aggrieved  
7 person may raise on appeal only issues that were raised to the department in the  
8 permit hearing process.

9 2. Notwithstanding subsection 1, the department may adopt any procedures governing  
10 appeals it determines are necessary and appropriate to develop, implement, or  
11 enforce a federally delegated, authorized, or approved program.

12 **SECTION 2.** A new subsection to section 23.1-04-08 of the North Dakota Century Code is  
13 created and enacted as follows:

14 Any facility required to have a permit under this section which was in existence on  
15 July 1, 1981, or the effective date of any statutory or regulatory change in the  
16 hazardous waste management which requires the facility to have a permit, and has  
17 made an application for a permit under this section must be treated as having been  
18 issued the permit until the final administrative disposition of the application is made.

19 **SECTION 3. AMENDMENT.** Subsection 6 of section 23.1-04-15 of the North Dakota  
20 Century Code is amended and reenacted as follows:

21 6. An administrative action brought under this chapter must be conducted in accordance  
22 with ~~North Dakota Administrative Code article 33-22~~chapter 28-32.

23 **SECTION 4. AMENDMENT.** Section 23.1-08-10 of the North Dakota Century Code is  
24 amended and reenacted as follows:

25 **23.1-08-10. Fees - Deposit in operating fund. (Contingent effective date - [See note](#))**

26 The department by rule may prescribe the payment and collection of reasonable fees to  
27 issue permits or registration certificates for registering, licensing, or permitting solid waste  
28 generators, transporters, and treatment, storage, recycling, or disposal facilities. The fees must  
29 be based on the anticipated cost of filing and processing the application, taking action on the  
30 requested permit or registration certificate, and conducting a monitoring and inspection program  
31 to determine compliance or noncompliance with the permit or registration certificate. Any

1 moneys collected for permit licensing or registration fees must be deposited in the department  
2 operating fund in the state treasury, and any expenditures from the fund are subject to  
3 appropriation by the legislative assembly. Applicants for special usewaste solid waste  
4 management facilities shall submit a minimum fee as follows:

- 5 1. Twenty thousand dollars for any facility that receives on average one hundred tons  
6 [90718 kilograms] or more per day.
- 7 2. Ten thousand dollars for any facility which receives on average more than ten tons  
8 [9071.80 kilograms] but less than one hundred tons [90718 kilograms] per day.

9 **SECTION 5. REPEAL.** Section 23.1-06-03 and chapters 23.1-09 and 61-30 of the North  
10 Dakota Century Code are repealed.

11 **SECTION 6. EFFECTIVE DATE.** This Act is effective upon filing with the secretary of state,  
12 if the legislative council has received certification from the chief of the environmental health  
13 section of the state department of health that all authority, powers, and duties from the  
14 environmental health section of the state department of health have been transferred to the  
15 department of environmental quality. If the certification is not received before filing with the  
16 secretary of state, this Act is effective on the date certification is received.

17 **SECTION 7. EMERGENCY.** This Act is declared to be an emergency measure.