23.1-01-01. Department of environmental quality established - Director appointment. (Contingent effective date - See note)

The department of environmental quality is established and is the primary state environmental agency. The governor shall appoint a director of the department who shall serve at the pleasure of the governor. The director must have a bachelor of science degree or higher from an accredited college in a natural or physical science area of study or be a registered professional engineer. The governor shall seek to appoint a director with at least seven years of environmental health or relevant engineering work experience. Three years of the work experience must include administrative and management responsibilities. Direct work experience in North Dakota is preferred. The director may not engage in any other occupation or business that may conflict with the statutory duties of the director. The position of director of the department is not a classified position, and the governor shall set the salary of the director within the limits of legislative appropriations.

23.1-01-02. Environmental review advisory council - Members, powers, and duties. (Contingent effective date - See note)

1. The environmental review advisory council is established to advise the department of environmental quality in carrying out its duties. The council consists of the state engineer, state geologist, and director of the game and fish department, who serve as ex officio members, and ten members appointed by the governor. The director of the department of environmental quality or the director's designee shall serve as the executive secretary for the council. The appointed members must be:
   a. A representative of county or municipal government;
   b. A representative of manufacturing or agricultural processing;
   c. A representative of the solid fuels industry;
   d. A representative of the liquid and gas fuels industry;
   e. A representative of crop agriculture;
   f. A representative of the waste management industry;
   g. A representative with an agronomy or soil sciences degree;
   h. A representative of the thermal electric generators industry;
   i. A representative of the environmental sciences; and
   j. A representative of the livestock industry.

2. Each appointive member of the council shall serve a four-year term. The governor may fill any vacancy in the membership of the council, and may remove an appointed member of the council for cause. The council members shall select a chairman from among the council members.

3. Council members must be reimbursed by the department of environmental quality for necessary travel and other expenses incurred in the performance of official duties.

4. The council shall hold at least two meetings per year and any other meetings deemed necessary by the chairman or a majority of the council.

5. The council shall:
   a. Review and make recommendations to the department of environmental quality regarding rules and standards relating to environmental quality and the duties of the department. The department may not take final action on any rule or standard without first consulting the council.
   b. Consider any other matter related to the purposes of this title and chapters 61-28, 61-28.1, and 61-28.2 the council deems appropriate and make any recommendation on its own initiative to the department of environmental quality concerning the administration of this title and chapters 61-28, 61-28.1, and 61-28.2.
23.1-01-03. Director - Powers and duties. (Contingent effective date - See note)
The director of the department of environmental quality shall:
1. Enforce all rules adopted by the department;
2. Hire employees as necessary to carry out the duties of the department and director;
3. Organize the department in the most efficient and effective manner;
4. Maintain, in conjunction with the state department of health, a laboratory to carry out
   the necessary tests and examinations for purposes of this title, and establish a fee
   schedule for the tests and examinations;
5. Issue bulletins, news releases, or reports as necessary to inform the public of
   environmental hazards;
6. Establish rules necessary for maintaining sanitation, including rules for approving
   plans for water works and sewage systems;
7. Maintain a central environmental laboratory and, if necessary, branch laboratories for
   the standard function of diagnostic, sanitary, and chemical examinations; and
8. Any other action, including the collection and distribution of environmental quality data,
   necessary and appropriate for the administration of this title and chapters 61-28, 61-28.1, and 61-28.2.

23.1-01-04. Rulemaking authority - Limitations. (Contingent effective date - See note)
1. Except as provided in subsection 2, the department of environmental quality may not
   adopt any rule for the purpose of the state administering a program under the federal
   Clean Air Act [42 U.S.C. 7401 et seq.]; federal Clean Water Act [33 U.S.C. 1251 et
   seq.]; federal Safe Drinking Water Act [42 U.S.C. 300 et seq.]; federal Resource
   Conservation and Recovery Act [42 U.S.C. 6901 et seq.]; federal Comprehensive
   Environmental Response, Compensation, and Liability Act [42 U.S.C. 9601 et seq.];
   federal Emergency Planning and Community Right to Know Act of 1986 [42 U.S.C.
   11001 et seq.]; federal Toxic Substances Control Act [42 U.S.C. 2601 et seq.]; or
   federal Atomic Energy Act of 1954 [42 U.S.C. 2011 et seq.]; which is more stringent
   than corresponding federal regulations that address the same circumstances. In
   adopting the rules, the department may incorporate by reference corresponding
   federal regulations.
2. The department may adopt rules more stringent than corresponding federal
   regulations or adopt rules where there are no corresponding federal regulations, for
   the purposes described in subsection 1, only if the department makes a written finding
   after public comment and hearing and based upon evidence in the record, that
   corresponding federal regulations are not adequate to protect the public health and the
   environment of the state. Those findings must be supported by an opinion of the
   department referring to and evaluating the public health and environmental information
   and studies contained in the record which form the basis for the department's
   conclusions.
3. If the department, upon petition by any person affected by a rule of the department,
   identifies rules more stringent than federal regulations or rules where there are no
   corresponding federal regulations, the department shall review and revise those rules
   to comply with this section within nine months of the filing of the petition.
4. Any person issued a notice of violation, or a denial of a permit or other approval,
   based upon a rule of the department which is more stringent than a corresponding
   federal regulation or where there is no corresponding federal regulation, may assert a
   partial defense to that notice, or a partial challenge to that denial, on the basis and to
   the extent the department's rule violates this section by imposing requirements more
   stringent than corresponding federal regulations, unless the more stringent rule of the
   department has been adopted in compliance with this section.
23.1-01-05. Department of environmental quality authorized to transfer future accumulated fees. (Contingent effective date - See note)

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

23.1-01-06. Department to employ waste management facility inspectors. (Contingent effective date - See note)

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

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

23.1-01-07. Permit or investigatory hearings - Exemption from chapters 28-32 and 54-57. (Contingent effective date - See note)

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

23.1-01-08. Commercial feed, insecticide, fungicide, rodenticide, fertilizer, and soil conditioner laws - Laboratory function. (Contingent effective date - See note)

Notwithstanding any other provision of law, any laboratory test or analysis required under chapter 4.1-34, 4.1-40, or 4.1-41 must be performed by the department of environmental quality for the agriculture commissioner at no charge.

23.1-01-09. Department of environmental quality - Indirect cost recoveries. (Contingent effective date - See note)

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

23.1-01-10. Zoning regulation of concentrated animal feeding operations - Central repository. (Contingent effective date - See note)

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

23.1-01-11. Appeal from permit proceedings. (Contingent effective date - See note)
An appeal from the issuance, denial, modification, or revocation of a permit issued under 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 permit application, or by any person who is aggrieved by the permit application decision, provided that person participated in or provided comments during the hearing process for the permit application, modification, or revocation. An appeal must be taken within thirty days after the final permit application determination is mailed by first-class mail to the permit applicant and to any interested person who has requested a copy of the final permit determination during the permit hearing process. Except as provided in this section, an appeal of the final permit determination is governed by sections 28-32-40, 28-32-42, 28-32-43, 28-32-44, 28-32-46, and 28-32-49. The department may substitute final permit conditions and written responses to public comments for findings of fact and conclusions of law. Except for a violation of chapter 23.1-03, 23.1-04, 23.1-06, 23.1-08, or 61-28 which occurs after the permit is issued, or any permit condition, rule, order, limitation, or other applicable requirement implementing those chapters which occurs after the permit is issued, any challenge to the department's issuance, modification, or revocation of the permit or permit conditions must be made in the permit hearing process and may not be raised on any collateral or subsequent legal proceeding, and the applicant and any aggrieved person may raise on appeal only issues that were raised to the department in the permit hearing process.

23.1-01-12. Rules. (Contingent effective date - See note)
The department may adopt rules consistent with national or regional standards which relate to the promotion of plastic bottle recycling and the maintenance of safe plastic bottle recycling practices in the state.

23.1-01-13. Contracts for inspections. (Contingent effective date - See note)
The department may contract with public health units and other appropriate entities to conduct inspections on behalf of the department or provide other services.