

CHAPTER 23.1-08
SOLID WASTE MANAGEMENT AND LAND PROTECTION

23.1-08-01. Finding of necessity.

The legislative assembly finds that:

1. The people of North Dakota have a right to a clean environment, and the costs of maintaining a clean environment through the efficient environmentally acceptable management of solid wastes should be borne by those who use such services.
2. Serious economic, management, and technical problems exist in the management of solid wastes resulting from residential, commercial, industrial, agricultural, and other activities carried on in said jurisdictions.
3. Inefficient and improper methods of managing solid wastes create serious hazards to the public health, result in scenic blights, cause pollution of air and water resources, cause accident hazards, increase rodent and insect disease vectors, have an adverse effect on land values, create public nuisances, and otherwise interfere with community life and development.
4. While the management of solid wastes is the responsibility of each person, problems of solid waste management have become a matter statewide in scope and concern, and necessitate state action through technical assistance and leadership in the application of new improved methods and processes to reduce the amount of solid wastes and unsalvageable materials and to promote environmentally acceptable and economical solid waste management.

23.1-08-02. Definitions.

1. "Auxiliary container" means a bag, cup, bottle, straw, or other packaging, whether reusable or single-use, which is:
 - a. Made of cloth, paper, plastic, corrugated material, aluminum, glass, postconsumer recycled material, or a similar material or substrate, including a coated, laminated, or multilayer substrate; and
 - b. Designated for transporting, consuming, or protecting merchandise, food, or beverages from or at a food service or retail facility.
2. "Collection" means the aggregation of solid waste from the places at which the waste was generated.
3. "Department" means the department of environmental quality.
4. "Disposal" means the discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste into or on any land or water including ground water.
5. "Industrial waste" means solid waste, which is not a hazardous waste regulated under chapter 23.1-04, generated from the combustion or gasification of municipal waste and from industrial and manufacturing processes. The term does not include municipal waste or special waste.
6. "Infectious waste" means solid waste that may contain pathogens with sufficient virulence and in sufficient quantity that exposure of a susceptible human or animal to the solid waste could cause the human or animal to contract an infectious disease.
7. "Landfill" means a publicly or privately owned area of land where solid wastes are permanently disposed.
8. "Litter" means discarded and abandoned solid waste materials that are not special waste or industrial waste.
9. "Major appliance" means an air conditioner, clothes dryer, clothes washer, dishwasher, freezer, microwave oven, oven, refrigerator, stove, furnace, water heater, humidifier, dehumidifier, garbage disposal, trash compactor, or similar appliance.
10. "Municipal waste" means solid waste that includes garbage; refuse; and trash generated by households, motels, hotels, recreation facilities, public and private facilities; and commercial, wholesale, private, and retail businesses. The term does not include special waste or industrial waste.
11. "Open burning" means the combustion of solid waste without control of combustion air to maintain adequate temperature for efficient combustion, containment of the

combustion reaction in an enclosed device to provide sufficient residence time and mixing for complete combustion, and control of the emission of the combustion products.

12. "Political subdivision" means a city, county, township, or solid waste management authority.
13. "Resource recovery" means the use, reuse, or recycling of materials, substances, energy, or products contained within or derived from solid waste.
14. "Solid waste" means any garbage; refuse; sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility; and other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from industrial, commercial, mining, and agricultural operations, and from community activities. The term does not include:
 - a. Agricultural waste, including manures and crop residues, returned to the soil as fertilizer or soil conditioners; or
 - b. Solid or dissolved materials in domestic sewage, or solid or dissolved material in irrigation return flows or industrial discharges that are point sources subject to permits under section 402 of the Federal Water Pollution Control Act, as amended [Pub. L. 92-500; 86 Stat. 816; 33 U.S.C. 1251 et seq.], or source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954, as amended [68 Stat. 919; 42 U.S.C. 2011 et seq.].
15. "Solid waste management" means the purposeful systematic control of the storage, collection, transport, composting, resource recovery, land treatment, and disposal of solid waste.
16. "Special waste" means solid waste that is not a hazardous waste regulated under chapter 23.1-04 and includes waste generated from energy conversion facilities; waste from crude oil and natural gas exploration and production; waste from mineral and ore mining, beneficiation, and extraction; and waste generated by surface coal mining operations. The term does not include municipal waste or industrial waste.
17. "Storage" means the containment and holding of solid waste after generation for a temporary period, at the end of which the solid waste is processed for resource recovery, treated, disposed of, or stored elsewhere.
18. "Transport" means the offsite movement of solid waste.

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

The department shall:

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

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

23.1-08-04. Coal combustion residuals - Present use and disposal deemed acceptable.

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

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

1. By June 1, 2015, the department shall select at least one commercial oilfield special waste recycling facility having a pending beneficial use application, for authorization of operation of the facility as a pilot project and to assist the department to develop standards for recycling of oilfield special waste. The pending beneficial use application of the pilot project facility must be supported by scientific findings from a third-party source focused on the anticipated environmental performance of the end products of the recycled oilfield special waste and the practical utility of those end products.
2. Any pilot project facility and any commercial oilfield special waste recycling facility permitted after June 30, 2017, shall obtain a solid waste permit from the department and a treating plant permit from the industrial commission for treatment of oilfield special waste.
3. Any selected pilot project facility may operate as an oilfield special waste recycling facility through June 30, 2017, and may implement beneficial use demonstration projects using processed materials under the guidance of the department. A selected

- pilot project facility operator shall cooperate with the department to monitor and analyze impacts to the environment.
4. By July 1, 2017, based upon the results of any pilot projects, the department shall make recommendations either to adopt rules under chapter 28-32 governing operations and permitting of commercial oilfield special waste recycling facilities, or to develop written guidelines on recycling and beneficial use of oilfield special waste under the department's beneficial use approval process. The rules or guidelines must assure compliance with federal and state laws and rules for protection of the state's water and air and public health in the handling and subsequent use of oilfield special waste.
 5. Upon presentation of official credentials, an employee authorized by the department may:
 - a. Examine the premises and facilities and copy books, papers, records, memoranda, or data of a commercial oilfield special waste recycling facility.
 - b. Enter upon public or private property to take action authorized by this chapter and rules adopted under this chapter, including obtaining information from any person, conducting surveys and investigations, and taking corrective action.
 6. The operator of the commercial oilfield special waste recycling facility is liable for the cost of any inspection and corrective action required by the department.
 7. As a condition of permitting, the department may require the operator of a commercial oilfield special waste recycling facility to post a bond or other financial assurance payable to the state in a sufficient amount for remediation of any release or disposal of oilfield special waste in violation of the rules of the department, on the premises or property of the facility or at a place where treated or untreated materials from the facility are taken for use or disposal.
 8. As used in this section:
 - a. "Commercial oilfield special waste recycling facility" means a commercial recycling facility permitted, or a commercial recycling facility pilot project authorized, under this section for extraction of reusable solids and fluids from any or all types of oilfield special waste.
 - b. "Drilling operation" means oil and gas drilling and production operations and any associated activities that generate oilfield special waste.
 - c. "Oilfield special waste" means special waste associated with oil and gas drilling operations, exploration, development, or production and specifically includes drill cuttings, saltwater, and other solids and fluids from drilling operations.
 9. Upon delivery of oilfield special waste to a commercial oilfield special waste recycling facility that is permitted or authorized to conduct recycling operations under this section and is not affiliated with the well operator, acceptance of the oilfield special waste by the recycling facility, and after the oilfield special waste has been treated and converted to a beneficial use as a usable product or legitimate substitute for a usable product, the well operator is not liable in any civil or criminal action for any subsequent claim or charge regarding the material converted to a beneficial use.

23.1-08-06. Local government ordinances.

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

23.1-08-06.1. Prohibition on political subdivision ordinance regulating auxiliary containers.

1. Notwithstanding any other provision of law, a political subdivision may not adopt or enforce an ordinance that:
 - a. Regulates the use or disposition of an auxiliary container;
 - b. Prohibits or restricts an auxiliary container; or
 - c. Imposes a fee, charge, or tax on an auxiliary container.
2. This section may not be construed to prohibit or restrict:

- a. A curbside or commercial recycling program;
- b. A designated residential or commercial recycling location;
- c. A political subdivision from adopting or enforcing an ordinance prohibiting littering; or
- d. A political subdivision or a public or private facility from using or regulating an auxiliary container on property owned by the respective political subdivision or public or private facility.

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

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

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

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

23.1-08-09. Permits.

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

2. For each permit application, the department shall notify the board of county commissioners of a county in which a new solid waste management facility will be located of the department's intention to issue a permit for the facility. The board of county commissioners may call a special election to be held within sixty days after receiving notice from the department to allow the qualified electors of the county to vote to approve or disapprove of the facility based on public interest and impact on the environment. If a majority of the qualified electors voting on the question in the election vote to disapprove of the facility, the department may not issue the permit and the facility may not be located in that county.
3. Notwithstanding subsection 2, if the new solid waste management facility will be owned or operated by a solid waste management authority, a special election to approve or disapprove of a facility may be called only if the boards of county commissioners from a majority of the counties in the solid waste management district call for a special election. However, a special election must be conducted in each county within the authority. If a majority of the qualified electors voting on the question in the election vote to disapprove of the facility, the department may not issue the permit.
4. Subsections 2 and 3 do not apply to a solid waste management facility operated as part of an energy conversion facility or part of a surface coal mining and reclamation operation, if the solid waste management facility disposes of only waste generated by the energy conversion facility or surface coal mining and reclamation operation.

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

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

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

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

The solid waste management fund is a special fund in the state treasury. The Bank of North Dakota shall administer the fund. The fund is a revolving fund, subject to appropriation by the legislative assembly. The Bank may annually deduct up to one-half of one percent of the fund balance including the principal balance of the outstanding loans as a service fee for administering the fund. The Bank shall contract with a certified public accounting firm to audit the fund once every two years. The cost of the audit and any other actual costs incurred by the Bank on behalf of the fund must be paid from the fund. Section 54-44.1-11 does not apply to the fund.

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

Moneys in the solid waste management fund may be used to make grants or low-interest loans to political subdivisions for waste reduction, planning, resource recovery, and recycling projects with an emphasis on marketing. An application for a grant or loan out of moneys in the solid waste management fund must be made to the department. The department shall review an application to determine if the purpose of the grant or loan is consistent with the purposes of the fund and the district solid waste management plan. The department shall adopt rules to

implement this section. If the department approves an application, the department shall forward the application and the results of the department's review of the application to the Bank of North Dakota. The Bank, in consultation with the department, shall determine the financial criteria that must be met for an application to be approved. A loan must be repaid within a period not exceeding twenty years at an interest rate of four percent.

23.1-08-13. Preconstruction site review.

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

23.1-08-14. Waste characterization.

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

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

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

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

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

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

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

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

5. A description of every judgment of criminal conviction entered against the applicant within five years before the date of submission of the application for the violation of any state or federal environmental protection law.
6. A description of every judgment of criminal conviction of a felony constituting a crime involving fraud or misrepresentation which has been entered against the applicant within five years before the date of submission of the application.

23.1-08-18. Inspections.

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

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

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

23.1-08-20. Injunction proceedings.

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

23.1-08-21. Plats.

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

23.1-08-22. Exemption.

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

23.1-08-23. Penalties.

1. Any person that violates this chapter or any permit condition, rule, order, limitation, or other applicable requirement implementing this chapter is subject to a civil penalty not to exceed twelve thousand five hundred dollars per day per violation, unless the penalty for the violation is otherwise specifically provided for and made exclusive in this chapter.
2. Any person that willfully violates any provision of this chapter or any permit condition, rule, order, limitation, or other applicable requirement implementing this chapter is

- guilty of a class C felony, unless the penalty for the violation is otherwise specifically provided for and made exclusive in this chapter.
3. Any person that willfully makes any false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under this chapter or any permit condition, rule, order, limitation, or other applicable requirement implementing this chapter or that falsifies, tampers with, or willfully renders inaccurate any monitoring device or method required to be maintained under this chapter or any permit condition, rule, order, limitation, or other applicable requirement implementing this chapter is guilty of a class C felony, unless the penalty for the violation is otherwise specifically provided for and made exclusive in this chapter.
 4. The following citizen participation provisions apply to violations of this chapter relating to coal combustion residuals or any permit condition, rule, order, limitation, or other applicable requirement implementing this chapter relating to coal combustion residuals:
 - a. A person having an interest that may be affected adversely by a violation of this chapter may commence a civil action to compel compliance with this chapter, or a rule, order, or permit issued under this chapter.
 - b. Notice of the violation must be given to the department and to an alleged violator sixty days before commencement of a citizen suit brought under this subsection.
 - c. A person with an interest that may be affected adversely by a violation of this chapter may intervene as a matter of right in a civil action brought by the department to require compliance with this chapter.