

**SECOND ENGROSSMENT
with Conference Committee Amendments
REENGROSSED SENATE BILL NO. 2037**

Introduced by

Legislative Management

(Natural Resources Committee)

1 A BILL for an Act to create and enact chapters 38-23 and 38-24 of the North Dakota Century
2 Code, relating to the disposal and storage of high-level radioactive waste and subsurface
3 storage and retrieval of nonhydrocarbons; to amend and reenact sections 12.1-06.1-01 and
4 38-19-09 of the North Dakota Century Code, relating to the definition of illegal transportation or
5 disposal of radioactive waste material or hazardous waste and disposition of unusable products;
6 to repeal chapter 23-20.2 of the North Dakota Century Code, relating to the disposal of nuclear
7 waste material; to provide a penalty; and to provide a continuing appropriation.

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

9 **SECTION 1. AMENDMENT.** Section 12.1-06.1-01 of the North Dakota Century Code is
10 amended and reenacted as follows:

11 **12.1-06.1-01. Definitions.**

12 1. For the purpose of section 12.1-06.1-02:

13 a. "Combination" means persons who collaborate in carrying on or furthering the
14 activities or purposes of a criminal association even though those persons may
15 not know each other's identity or membership in the combination may change
16 from time to time or one or more members may stand in a wholesaler-retailer or
17 other arm's-length relationship with others as to activities or dealings between or
18 among themselves in an illicit operation.

19 b. "Criminal association" means any combination of persons or enterprises
20 engaging, or having the purpose of engaging, on a continuing basis in conduct
21 which violates any one or more provisions of any felony statute of this state or
22 which is the willful and illegal transportation or disposal of radioactive waste
23 material or hazardous waste.

- 1 2. For the purposes of sections 12.1-06.1-02 through 12.1-06.1-07, unless the context
2 otherwise requires:
- 3 a. "Control" means the possession of a sufficient interest to permit substantial
4 direction over the affairs of an enterprise.
- 5 b. "Enterprise" means any corporation, limited liability company, association, labor
6 union, or other legal entity or any group of persons associated in fact although
7 not a legal entity.
- 8 c. "Financial institution" means any bank, trust company, savings and loan
9 association, credit union, or moneylender under the jurisdiction of the state
10 department of financial institutions or its commissioner, or the state banking
11 board, or the state credit union board.
- 12 d. "Illegal transportation or disposal of radioactive waste material or hazardous
13 waste" means the transportation or disposal into a nonhazardous waste landfill or
14 the intentional and unlawful dumping into or on any land or water of radioactive
15 waste material in violation of ~~section 23-20.2-09~~ chapter 38-23 or the rules
16 adopted pursuant to that section which were in effect on January 1, 1997 ~~chapter,~~
17 ~~or hazardous waste in willful violation of chapter 23-20.3 or the rules adopted~~
18 ~~pursuant to that chapter which were in effect on January 1, 1997, except for the~~
19 ~~handling of conditionally exempt small quantities of hazardous waste as~~
20 ~~referenced in section 33-24-02-05 of the North Dakota Administrative Code.~~
- 21 e. "Pattern of racketeering activity" requires at least two acts of racketeering activity,
22 one of which occurred after July 8, 1987, and the last of which occurred within
23 ten years, excluding any period of imprisonment, after the commission of a prior
24 act of racketeering activity.
- 25 f. "Racketeering" means any act including any criminal attempt, facilitation,
26 solicitation, or conspiracy, committed for financial gain, which is chargeable or
27 indictable under the laws of the state in which the act occurred and, if the act
28 occurred in a state other than this state, would be chargeable or indictable under
29 the laws of this state had the act occurred in this state and punishable by
30 imprisonment for more than one year, regardless of whether such act is charged
31 or indicted, involving:

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- 1 (1) Homicide.
- 2 (2) Robbery.
- 3 (3) Kidnapping.
- 4 (4) Forgery.
- 5 (5) Theft.
- 6 (6) Bribery.
- 7 (7) Gambling.
- 8 (8) Usury.
- 9 (9) Extortion.
- 10 (10) Unlawful delivery of controlled substances.
- 11 (11) Trafficking in explosives, weapons, or stolen property.
- 12 (12) Leading a criminal association.
- 13 (13) Obstructing or hindering criminal investigations or prosecutions.
- 14 (14) Asserting false claims including, but not limited to, false claims asserted
- 15 through fraud or arson.
- 16 (15) Fraud.
- 17 (16) Sale of unregistered securities or real property securities and transactions
- 18 involving such securities by unregistered dealers or salesmen.
- 19 (17) Obscenity.
- 20 (18) Child pornography.
- 21 (19) Prostitution.
- 22 (20) Human trafficking.
- 23 g. "Records" means any book, paper, writing, record, computer program, or other
- 24 material.
- 25 3. For the purposes of section 12.1-06.1-08:
- 26 a. "Access" means to approach, instruct, communicate with, store data in, retrieve
- 27 data from, or otherwise make use of any resources of a computer, computer
- 28 system, or computer network.
- 29 b. "Computer" means an electronic device which performs work using programmed
- 30 instruction and which has one or more of the capabilities of storage, logic,
- 31 arithmetic, communication, or memory and includes all input, output, processing,

- 1 storage, software, or communication facilities that are connected or related to
2 such a device in a system or network.
- 3 c. "Computer network" means the interconnection of communication lines, including
4 microwave, fiber optics, light beams, or other means of electronic or optic data
5 communication, with a computer through remote terminals or a complex
6 consisting of two or more interconnected computers.
- 7 d. "Computer program" means a series of instructions or statements, in a form
8 acceptable to a computer, which permits the functioning of a computer system in
9 a manner designed to provide appropriate products from such computer system.
- 10 e. "Computer software" means a set of computer programs, procedures, and
11 associated documentation concerned with the operation of a computer system.
- 12 f. "Computer system" means a set of related, connected, or unconnected computer
13 equipment, devices, and software.
- 14 g. "Financial instrument" means any credit card, debit card, or electronic fund
15 transfer card, code, or other means of access to an account for the purpose of
16 initiating electronic fund transfers, or any check, draft, money order, certificate of
17 deposit, letter of credit, bill of exchange, marketable security, or any other written
18 instrument which is transferable for value.
- 19 h. "Property" includes financial instruments, information, electronically produced or
20 stored data, supporting documentation, computer software, and computer
21 programs in either machine or human readable form, and any other tangible or
22 intangible item of value.
- 23 i. "Services" includes computer time, data processing, storage functions, and other
24 uses of a computer, computer system, or computer network to perform useful
25 work.

26 **(Contingent effective date - See note) Definitions.**

- 27 1. For the purpose of section 12.1-06.1-02:
- 28 a. "Combination" means persons who collaborate in carrying on or furthering the
29 activities or purposes of a criminal association even though those persons may
30 not know each other's identity or membership in the combination may change
31 from time to time or one or more members may stand in a wholesaler-retailer or

1 other arm's-length relationship with others as to activities or dealings between or
2 among themselves in an illicit operation.

3 b. "Criminal association" means any combination of persons or enterprises
4 engaging, or having the purpose of engaging, on a continuing basis in conduct
5 which violates any one or more provisions of any felony statute of this state or
6 which is the willful and illegal transportation or disposal of radioactive waste
7 material or hazardous waste.

8 2. For the purposes of sections 12.1-06.1-02 through 12.1-06.1-07, unless the context
9 otherwise requires:

10 a. "Control" means the possession of a sufficient interest to permit substantial
11 direction over the affairs of an enterprise.

12 b. "Enterprise" means any corporation, limited liability company, association, labor
13 union, or other legal entity or any group of persons associated in fact although
14 not a legal entity.

15 c. "Financial institution" means any bank, trust company, savings and loan
16 association, credit union, or moneylender under the jurisdiction of the state
17 department of financial institutions or its commissioner, or the state banking
18 board, or the state credit union board.

19 d. "Illegal transportation or disposal of radioactive waste material or hazardous
20 waste" means the transportation or disposal into a nonhazardous waste landfill or
21 the intentional and unlawful dumping into or on any land or water of radioactive
22 waste material in violation of ~~section 23-20.2-09~~chapter 38-23 or the rules
23 adopted pursuant to that ~~section which were in effect on January 1, 1997~~chapter,
24 or hazardous waste in willful violation of chapter 23.1-04 or the rules adopted
25 ~~which were in effect on January 1, 1997, except for the handling of conditionally-~~
26 ~~exempt small quantities of hazardous waste as was referenced in section~~
27 ~~33-24-02-05 of the North Dakota Administrative Code~~pursuant to that chapter.

28 e. "Pattern of racketeering activity" requires at least two acts of racketeering activity,
29 one of which occurred after July 8, 1987, and the last of which occurred within
30 ten years, excluding any period of imprisonment, after the commission of a prior
31 act of racketeering activity.

- 1 f. "Racketeering" means any act including any criminal attempt, facilitation,
2 solicitation, or conspiracy, committed for financial gain, which is chargeable or
3 indictable under the laws of the state in which the act occurred and, if the act
4 occurred in a state other than this state, would be chargeable or indictable under
5 the laws of this state had the act occurred in this state and punishable by
6 imprisonment for more than one year, regardless of whether such act is charged
7 or indicted, involving:
- 8 (1) Homicide.
9 (2) Robbery.
10 (3) Kidnapping.
11 (4) Forgery.
12 (5) Theft.
13 (6) Bribery.
14 (7) Gambling.
15 (8) Usury.
16 (9) Extortion.
17 (10) Unlawful delivery of controlled substances.
18 (11) Trafficking in explosives, weapons, or stolen property.
19 (12) Leading a criminal association.
20 (13) Obstructing or hindering criminal investigations or prosecutions.
21 (14) Asserting false claims including, but not limited to, false claims asserted
22 through fraud or arson.
23 (15) Fraud.
24 (16) Sale of unregistered securities or real property securities and transactions
25 involving such securities by unregistered dealers or salesmen.
26 (17) Obscenity.
27 (18) Child pornography.
28 (19) Prostitution.
29 (20) Human trafficking.
- 30 g. "Records" means any book, paper, writing, record, computer program, or other
31 material.

- 1 3. For the purposes of section 12.1-06.1-08:
- 2 a. "Access" means to approach, instruct, communicate with, store data in, retrieve
- 3 data from, or otherwise make use of any resources of a computer, computer
- 4 system, or computer network.
- 5 b. "Computer" means an electronic device which performs work using programmed
- 6 instruction and which has one or more of the capabilities of storage, logic,
- 7 arithmetic, communication, or memory and includes all input, output, processing,
- 8 storage, software, or communication facilities that are connected or related to
- 9 such a device in a system or network.
- 10 c. "Computer network" means the interconnection of communication lines, including
- 11 microwave, fiber optics, light beams, or other means of electronic or optic data
- 12 communication, with a computer through remote terminals or a complex
- 13 consisting of two or more interconnected computers.
- 14 d. "Computer program" means a series of instructions or statements, in a form
- 15 acceptable to a computer, which permits the functioning of a computer system in
- 16 a manner designed to provide appropriate products from such computer system.
- 17 e. "Computer software" means a set of computer programs, procedures, and
- 18 associated documentation concerned with the operation of a computer system.
- 19 f. "Computer system" means a set of related, connected, or unconnected computer
- 20 equipment, devices, and software.
- 21 g. "Financial instrument" means any credit card, debit card, or electronic fund
- 22 transfer card, code, or other means of access to an account for the purpose of
- 23 initiating electronic fund transfers, or any check, draft, money order, certificate of
- 24 deposit, letter of credit, bill of exchange, marketable security, or any other written
- 25 instrument which is transferable for value.
- 26 h. "Property" includes financial instruments, information, electronically produced or
- 27 stored data, supporting documentation, computer software, and computer
- 28 programs in either machine or human readable form, and any other tangible or
- 29 intangible item of value.

- 1 i. "Services" includes computer time, data processing, storage functions, and other
2 uses of a computer, computer system, or computer network to perform useful
3 work.

4 **SECTION 2. AMENDMENT.** Section 38-19-09 of the North Dakota Century Code is
5 amended and reenacted as follows:

6 **38-19-09. Disposition of unusable products.**

7 Products for which there is no beneficial use and which the commission determines to be
8 hazardous must be disposed of in accordance with the provisions of chapter ~~23-20~~238-23 and
9 other state laws and regulations regarding the management of hazardous waste.

10 **SECTION 3.** Chapter 38-23 of the North Dakota Century Code is created and enacted as
11 follows:

12 **38-23-01. General prohibition.**

13 The placement, storage, exploration, testing, or disposal of high-level radioactive waste
14 within the exterior boundaries of North Dakota is prohibited. If this provision is superseded by
15 federal law, the remaining provisions of this chapter continue to apply. This section does not
16 limit the authority of the legislative assembly or the commission to issue a notice of disapproval
17 under this chapter.

18 **38-23-02. Definitions.**

19 As used in this chapter:

- 20 1. "Commission" means the industrial commission.
21 2. "High-level radioactive waste" means:
22 a. Highly radioactive material resulting from the reprocessing of spent nuclear fuel,
23 and other highly radioactive material, containing fission products in sufficient
24 concentrations to require permanent isolation, including liquid waste produced
25 directly in reprocessing and any solid material derived from the liquid waste; or
26 b. Highly radioactive material that the commission, consistent with existing law and
27 rules, determines requires permanent isolation.
28 3. "High-level radioactive waste disposal" means the emplacement in a repository of
29 high-level radioactive waste with no foreseeable intent of recovery.

- 1 4. "High-level radioactive waste facility" means a premises, building, structure, fixture, or
2 improvements used or operated for the storage or disposal of high-level radioactive
3 waste.
- 4 5. "High-level radioactive waste storage" means the retention of high-level radioactive
5 waste with the intent to recover the waste for subsequent use, processing, or disposal.

6 **38-23-03. Jurisdiction of the commission and duties.**

- 7 1. The commission has jurisdiction and authority over any person or property, public or
8 private, necessary to enforce this chapter. The commission may investigate and
9 determine whether facts exist justifying action by the commission. The state geologist
10 shall act as a supervisor charged with the duty of enforcing the regulations and orders
11 of the commission applicable to this chapter.
- 12 2. The commission acting through the state geologist may:
- 13 a. Serve as the point of contact for the federal department of energy or any other
14 federal agency on any matter related to the long-term or temporary storage or
15 permanent disposal of high-level radioactive waste.
- 16 b. Issue a notice of disapproval regarding a proposed high-level radioactive waste
17 facility in accordance with federal law when the legislative assembly is not in
18 session. Before issuing a notice of disapproval, the commission shall consult with
19 the high-level radioactive waste advisory council and the local government
20 entities with jurisdiction over the area where the proposed high-level radioactive
21 waste facility is to be located.
- 22 3. Only the legislative assembly may issue a notice of disapproval during a legislative
23 session.
- 24 4. The commission, acting through the state geologist, may:
- 25 a. Take any action necessary to assert the state's rights relating to the exploration of
26 a suitable location for a high-level radioactive waste facility within the state,
27 including providing comments to a federal agency or initiating litigation.
- 28 b. Enter agreements with the federal government regarding high-level radioactive
29 waste regulation and facility siting and accept available funds for deposit into the
30 high-level radioactive waste fund.

- 1 c. Adopt and enforce rules and orders to effectuate the purpose and intent of this
2 chapter.
- 3 d. Require:
- 4 (1) Identification of ownership of all high-level radioactive waste facilities and
5 equipment used for high-level radioactive waste storage or disposal.
- 6 (2) The delivery to the state geologist of basic exploration data collected, within
7 thirty days of field collection of such data, free of charge. Data includes:
- 8 (a) Sample cuts, core chips, or whole cores;
- 9 (b) Sample logs, radioactivity logs, resistivity logs, or other types of
10 electrical or mechanical logs;
- 11 (c) Elevation and location information on data collection points; and
- 12 (d) Other pertinent information required by the state geologist.
- 13 (3) The filing of monthly reports in the manner prescribed by the commission
14 and any other reports deemed necessary by the commission.
- 15 (4) The conducting of all exploration, storage, and disposal operations in a
16 manner to prevent pollution of freshwater supplies and to provide for the
17 protection of the environment, public safety, and economic interests.
- 18 (5) The reclamation of all land disturbed by operations regulated by this chapter
19 to a condition consistent with prior land use and productive capacity. A
20 permanent marker is to be erected and maintained over the disposal site.
- 21 (6) The furnishing of a reasonable bond with good and sufficient surety,
22 conditioned upon the full compliance with this chapter, and the rules and
23 orders of the commission. The person required to furnish the bond may
24 elect to deposit under such terms as the commission may prescribe a
25 collateral bond, cash, or any alternative form of security approved by the
26 commission, or combination thereof, by which an operator assures faithful
27 performance of all requirements of this chapter and the rules and orders of
28 the commission.
- 29 (7) The payment of fees for services performed by the commission, including
30 costs associated with the investigation, review, and processing of the
31 application; monitoring and inspection of the exploration site; monitoring and

1 inspection of the facility; and environmental and monetary impact of the
2 facility. The commission shall set the amount of the fee based on the
3 anticipated actual cost of services rendered and impact to the state and
4 local area. The commission shall set the annual operating fee for a facility
5 permit to be dependent on the size and scope of the facility, but the fee may
6 not be less than one million dollars. Unless otherwise provided by statute,
7 fees collected by the commission must be deposited in the high-level
8 radioactive waste fund, according to procedures established by the state
9 treasurer.

10 e. Regulate:

11 (1) The drilling, boring, excavating, and abandonment of all exploration holes
12 drilled for the purpose of obtaining information regarding high-level
13 radioactive waste storage or disposal.

14 (2) The drilling, boring, excavating, construction, and operation of all high-level
15 radioactive waste facilities.

16 f. Inspect all exploration, development, and high-level radioactive waste facility
17 sites. For purposes of this subsection, the commission may access all
18 exploration, development, or operational records of inspection and may require
19 the operator's assistance if necessary.

20 **38-23-04. Permit required.**

21 1. A person may not commence any actions for testing, exploring, excavating, drilling,
22 boring, or operating a high-level radioactive waste facility without obtaining a permit
23 from the commission.

24 2. A notice of opportunity for a position paper from the commissioners of the county must
25 be attached to the permit application. A county position paper must be made public at
26 the time the permit application is submitted.

27 3. A permit may be issued only after notice and hearing and payment of a fee. Notice
28 must be provided in accordance with Rule 3 of the North Dakota Rules of Civil
29 Procedure.

30 4. An applicant for a permit shall provide notice to a surface owner and any resident of a
31 permanently occupied dwelling located within two miles [3.22 kilometers] of the

1 proposed location, the county commissioners and mayor of any municipality within
2 thirty miles [48.28 kilometers], and publish a notice in the official county newspaper
3 and any county newspaper within thirty miles [48.28 kilometers] of the proposed
4 location.

5 5. The commission shall give written notice of an application for exploration or facility
6 permit to the county in which exploration is sought or a facility is proposed at least
7 sixty days before the hearing. The commission shall adopt rules establishing deadlines
8 for the issuance of permits.

9 6. A permit application for a high-level radioactive waste facility must include:

- 10 a. A description of the facility to be permitted.
11 b. A detailed description of the material to be stored or disposed.
12 c. A detailed description of the mechanical construction and operating procedures
13 of the facility.
14 d. A justification for the need for the facility to be permitted, including economic
15 impact.
16 e. A detailed discussion and description of the subsurface geology and hydrology of
17 the area to be affected by the construction and operation of the facility to be
18 permitted.
19 f. A detailed discussion and description of a monitoring system to be used to
20 ascertain the integrity of the facility and to ensure compliance with this chapter.
21 g. A detailed description and discussion of a reclamation program for the restoration
22 of the surface as nearly as possible to its original condition and productivity upon
23 expiration of the permit or termination of any activities regulated by this chapter.
24 h. Any other information required by the commission.

25 7. Following a hearing, the commission may deny an application if the commission
26 determines the testing, exploration, excavating, drilling, or operation poses a threat to
27 human health or the environment or because of concerns related to economic
28 impacts. A person denied a permit may appeal the denial in accordance with chapter
29 28-32.

1 8. The commission may include conditions in a permit which the commission deems
2 necessary to ensure protection of human health and the environment or to address
3 economic impacts.

4 9. A permit holder shall furnish and maintain a reasonable bond with good and sufficient
5 surety, conditioned upon the full compliance with the permit, this chapter, and rules
6 adopted by the commission.

7 10. The commission shall establish the term of a permit, but the term of a permit may not
8 exceed five years. An application for a permit renewal must be made at least one
9 hundred twenty days before the expiration of the valid permit and is subject to all the
10 procedures and requirements of this section.

11 **38-23-05. Procedure.**

12 The administrative procedure involved in adopting rules or the issuance of orders by the
13 commission under this chapter must be in accordance with chapter 38-08. If the commission
14 determines an emergency exists which requires the making, revoking, changing, amending,
15 modifying, altering, enlarging, renewal, or extension of a rule or order without first having a
16 hearing, the emergency rule or order has the same validity as a hearing held after due notice.
17 The emergency rule or order may remain in force up to fifteen days from its effective date, and
18 expires when a rule or order made after due notice and hearing becomes effective.

19 **38-23-06. Penalty - Injunction - Applicable provisions.**

20 Sections 38-08-16 and 38-08-17 are applicable to the provisions of this chapter and to the
21 rules and orders of the commission adopted or issued under this chapter.

22 **38-23-07. High-level radioactive waste fund - Continuing appropriation.**

23 There is established a high-level radioactive waste fund into which funds received under an
24 agreement entered under this chapter, permit fees, and civil penalties must be deposited. The
25 commission shall administer the fund and may use the fund to fulfill any of the commission's
26 powers and duties under this chapter. This fund must be maintained as a special fund and all
27 moneys transferred into the fund are hereby appropriated and must be used and disbursed
28 solely for the purposes of this chapter.

1 **38-23-08. High-level radioactive waste advisory council - Members, powers, and**
2 **duties.**

3 1. The high-level radioactive waste advisory council is established to advise the
4 commission in carrying out its duties. The council consists of the state engineer, state
5 health officer, director of the department of transportation, director of the game and
6 fish department, the commerce commissioner, and director of the department of
7 environmental quality, who serve as ex officio members. The state geologist shall
8 serve as the executive secretary for the council. Additional members on the council
9 are:

- 10 a. A representative of county government, appointed by the governor;
11 b. A representative of city government, appointed by the governor;
12 c. A representative of the agricultural community, appointed by the governor;
13 d. Two senators, appointed by the majority leader of the senate of the legislative
14 assembly; and
15 e. Two representatives, appointed by the majority leader of the house of
16 representatives of the legislative assembly.

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

21 3. An appointed council member must be reimbursed by the commission for necessary
22 travel and other expenses incurred in the performance of official duties.

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

25 5. The council shall:

- 26 a. Review site suitability and issue a report for a proposed high-level radioactive
27 waste facility to the legislative assembly or commission.
28 b. Review and make recommendations to the commission regarding rules and
29 standards relating to high-level radioactive waste and the duties of the
30 commission.

1 c. Consider any other matter related to this chapter the council deems appropriate,
2 and may make any recommendation to the commission concerning the
3 administration of this chapter.

4 d. Report its findings biennially to the commission and to the legislative
5 management.

6 **38-23-09. County zoning authority.**

7 A county zoning regulation may not prohibit a high-level radioactive waste disposal
8 exploratory drilling permit or a high-level radioactive waste facility permitted by the commission,
9 but may regulate the size, scope, and location.

10 **SECTION 4.** Chapter 38-24 of the North Dakota Century Code is created and enacted as
11 follows:

12 **38-24-01. Definitions.**

13 As used in this chapter:

- 14 1. "Commission" means the industrial commission.
15 2. "Underground storage and retrieval facility" means a drilled, bored, or excavated
16 device or installation providing for the subsurface emplacement and recovery of
17 nonhydrocarbons.
18 3. "Nonhydrocarbons" include compressed air, nitrogen, and other gases and liquids not
19 otherwise regulated by title 38.

20 **38-24-02. Jurisdiction of the commission and duties.**

21 The commission has jurisdiction and authority over any person or property, public or private,
22 necessary to enforce this chapter. The commission acting through the office of the state
23 geologist may:

- 24 1. Require:
25 a. Identification of ownership of all facilities and equipment used for the
26 underground storage and retrieval of nonhydrocarbons.
27 b. The making and filing of all logs and reports on facility location, drilling, boring,
28 excavating, and construction and the filing of samples, core chips, and complete
29 cores, when requested, free of charge, in the office of the state geologist.

- 1 c. The drilling, boring, excavating, and construction of facilities in a manner
2 preventing contamination and pollution of surface and ground water sources and
3 the environment.
- 4 d. The furnishing of a reasonable bond with good and sufficient surety, conditioned
5 upon the full compliance with this chapter, and the rules and orders of the
6 commission.
- 7 e. Metering or other measuring of all nonhydrocarbons injected, emplaced, stored,
8 or retrieved from a facility regulated by this chapter.
- 9 f. A person operating a facility for the underground storage and retrieval of
10 nonhydrocarbons in this state to keep and maintain complete and accurate
11 records of the quantities and nature of material stored and retrieved, which
12 records must be available to the commission or its agents at all times, and may
13 require every such person to file prescribed reports with the commission.
- 14 g. Upon termination of the operation of a facility or activity regulated by this chapter,
15 the operator of the facility to restore the surface as nearly as possible to its
16 original condition and productivity.

17 2. Regulate:

- 18 a. The testing, exploration, drilling, boring, excavating, and construction of
19 underground storage and retrieval.
 - 20 b. Operations to assure the optimum performance of a facility regulated by this
21 chapter.
- 22 3. Prescribe the nature, quantity, and source of nonhydrocarbons to be stored in or
23 retrieved from a facility regulated by this chapter.
 - 24 4. Adopt and enforce rules and orders to effectuate the purposes of this chapter.

25 **38-24-03. Permit required.**

26 A person may not commence operations for the testing, exploration, excavating, drilling,
27 boring, or construction of an underground storage and retrieval facility or the conversion of an
28 existing facility for use in an activity regulated by this chapter, without obtaining a permit from
29 the commission. A permit may be issued only after notice and hearing, and payment of a fee in
30 an amount to be prescribed by the commission. A permit application must include:

- 31 1. A description of the activity to be permitted.

- 1 2. A detailed description of the nature of the nonhydrocarbons to be stored and retrieved.
- 2 3. A detailed description of the mechanical construction and operating procedures of the
- 3 facility.
- 4 4. A justification for the need for the facility.
- 5 5. A detailed description of the subsurface geology and hydrology of the area to be
- 6 affected by the construction and operation of the facility.
- 7 6. A detailed description of the monitoring system assuring the integrity of the facility and
- 8 compliance with this chapter.
- 9 7. A detailed description of the reclamation and the restoration of the surface as nearly
- 10 as possible to its original condition and productivity upon expiration of the permit or
- 11 termination of any activity regulated by this chapter.
- 12 8. Any other information required by the commission.

13 **38-24-04. Denial of permit - Review.**

- 14 1. Following a hearing, the commission may deny an application if the commission
- 15 determines the facility or activity poses a threat to ground or surface waters or the
- 16 environment. A person denied a permit may appeal the denial in accordance with
- 17 chapter 28-32.
- 18 2. All fees collected pursuant to this chapter, must be deposited in the general fund in the
- 19 state treasury.
- 20 3. A permit required by this chapter is in addition to all other permits required by law.

21 **38-24-05. Action to restrain violation or threatened violation.**

22 The commission may bring action against a person violating or threatening to violate a
23 provision of this chapter, or a rule, regulation, or order of the commission. The action must
24 commence in the district court of the county where the violation occurred or is threatened.
25 Without the filing of a bond or other undertaking by the commission, the court may issue an
26 injunction, including a temporary restraining order, a preliminary injunction, or a temporary,
27 preliminary, or final order restraining the person from continuing the violation or from carrying
28 out the threat of violation.

29 **38-24-06. Penalties.**

- 30 1. A person that violates this chapter, or a rule, regulation, or order of the commission
- 31 adopted under this chapter is subject to a civil penalty of not more than twelve

1 thousand five hundred dollars for each violation and for each day the violation
2 occurred.

3 2. It is a class C felony for a person, for the purpose of evading this chapter, or a rule,
4 regulation, or order of the commission to:

5 a. Make or cause a false entry or statement in a report required by this chapter or
6 by a rule, regulation, or order issued or adopted by the commission;

7 b. Make or cause a false entry in a record, account, or memorandum required by
8 this chapter, or by any rule, regulation, or order of the commission;

9 c. Omit, or cause to be omitted, from a record, account, or memorandum, full, true,
10 and correct entries as required by this chapter or by any rule, regulation, or order
11 of the commission; or

12 d. Remove from this state or destroy, mutilate, alter, or falsify a record, account, or
13 memorandum.

14 3. The civil penalties provided in subsection 1 are recoverable by civil action filed by the
15 attorney general on behalf of the commission. The civil action must commence in the
16 district court of the county in which:

17 a. The defendant resides;

18 b. Any defendant resides, if there is more than one defendant; or

19 c. The violation occurred.

20 4. The payment of penalties does not relieve a person on whom the penalty is imposed
21 from liability to any other person for damages arising out of the violation.

22 **38-24-07. Administrative procedure and judicial review.**

23 A proceeding under this chapter for the issuance or modification of rules, including
24 emergency orders relating to underground storage and retrieval and determining compliance
25 with rules of the commission, must be conducted in accordance with chapter 28-32. If the
26 commission determines an emergency requiring immediate action exists, the commission may
27 issue an emergency order without notice or hearing, which is effective upon adoption. An
28 emergency order may not remain in force for more than fifteen days. A person aggrieved by
29 action of the commission, or by its rules or orders, may appeal to the district court of the county
30 in which the person resides, or in Burleigh County, in accordance with chapter 28-32.

31 **SECTION 5. REPEAL.** Chapter 23-20.2 of the North Dakota Century Code is repealed.