CHAPTER 23-20.2
DISPOSAL OF NUCLEAR AND OTHER WASTE MATERIAL

23-20.2-01. Declaration of policy.

It is hereby declared to be in the public interest to encourage and promote the proper emplacement of material into subsurface strata for the purpose of storage and retrieval of material and to promote the terminal disposal of municipal, industrial, and domestic waste in such a manner as to prevent the contamination or pollution of surface and ground water sources or any other segment of the environment and to avoid creation of secondary hazards of a geologic nature.

23-20.2-02. Definitions.

As used in this chapter:

1. "Commission" means the industrial commission of North Dakota.
2. "Person" includes any natural person, corporation, limited liability company, association, partnership, receiver, trustee, executor, administrator, guardian, fiduciary, or other representative of any kind, and includes any department, agency, or instrumentality of the state or of any governmental subdivision thereof.
3. "Underground disposal facility" means any drilled, bored, or excavated device or installation to provide for the subsurface disposal of waste. The term does not include a solid waste management facility authorized under chapter 23-29.
4. "Underground storage and retrieval facility" means any drilled, bored, or excavated device or installation to provide for the subsurface emplacement and recovery of materials.
5. "Waste" includes liquid wastes, gaseous wastes, and solid wastes as defined in section 23-29-03 and all unusable industrial material including spent nuclear fuels and other unusable radioactive material not brought into this state for disposal.

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

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

1. To require:
   a. Identification of ownership of all facilities and equipment used for the underground storage and retrieval of material and waste disposal.
   b. The making and filing of all logs and reports on facility location, drilling, boring, excavating, and construction and the filing, free of charge, of samples, core chips, and complete cores, when requested, in the office of the state geologist.
   c. The drilling, boring, excavating, and construction of facilities in a manner to prevent contamination and pollution of surface and ground water sources and the environment.
   d. The furnishing of a reasonable bond with good and sufficient surety, conditioned upon the full compliance with the provisions of this chapter, and the rules of the commission relating to the underground storage and retrieval of material and waste disposal.
   e. Metering or other measuring of all material injected, emplaced, stored, disposed into, or retrieved from any facility regulated by this chapter.
   f. That every person who operates a facility for the underground storage and retrieval of material or for waste disposal in this state shall keep and maintain complete and accurate records of the quantities and nature of material stored, retrieved, or disposed of, which records must be available to the commission or its agents at all times, and that every such person file with the commission such reports as it may prescribe.

g. That upon termination of the operation of any facility or activity regulated by this chapter, the operator of such facility shall restore the surface as nearly as possible to its original condition and productivity.

2. To regulate:
   a. The drilling, boring, excavating, and construction of all underground storage, retrieval, and waste disposal facilities.
   b. Operations to assure the optimum performance of all facilities regulated by this chapter.
3. To limit and prescribe the nature, quantity, and source of materials to be stored in, whether as waste or otherwise, or retrieved from any facility regulated by this chapter.
4. To promulgate and to enforce rules, regulations, and orders to effectuate the purposes of this chapter.

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

23-20.2-04. Permit required - Denial of permit - Review.

It is unlawful to commence any operations for the excavating, drilling, boring, or construction of an underground storage and retrieval facility; an underground waste disposal facility; or the conversion of any existing facility for use in any activity regulated by this chapter, without first securing a permit from the commission. A permit may not be issued until after notice and hearing, and payment of a fee for each permit in an amount to be prescribed by the commission, but not in excess of one thousand dollars. Each permit application must include:

1. A general discussion or description of the activity to be permitted.
2. A detailed description and discussion of the nature of the material to be stored, retrieved, or disposed of.
3. A detailed description and discussion of the mechanical construction and operating procedures of the facility.
4. A justification for the need for the facility to be permitted.
5. A detailed discussion and description of the subsurface geology and hydrology of the area to be affected by the construction and operation of the facility to be permitted.
6. A detailed description and discussion of a monitoring system to be used to ascertain the integrity of the facility and to ensure compliance with the provisions of this chapter.
7. A detailed description and discussion of a reclamation program for the restoration of the surface as nearly as possible to its original condition and productivity upon expiration of the permit or termination of any activities regulated by this chapter.
8. Any other information required by the commission.

The commission may, following the hearing required herein, deny an application and refund the license fee. A person denied a permit may appeal such denial in accordance with the provisions of sections 28-32-42 through 28-32-49. All fees collected pursuant to this section, or penalties collected pursuant to section 23-20.2-06, must be deposited in the general fund in the state treasury. The permit required by this chapter is in addition to all other permits required by law.

23-20.2-05. Action to restrain violation or threatened violation.

Whenever it appears that any person is violating or threatening to violate any provision of this chapter, or any rule, regulation, or order of the commission, the commission may bring action against that person, in the district court of the county where the violation occurs or is threatened, to restrain that person from continuing the violation or from carrying out the threat of violation. In any such action, the court has jurisdiction to issue, without the filing of a bond or other undertaking by the commission, such prohibitory and mandatory injunctions as are necessary, including temporary restraining orders, preliminary injunctions, temporary, preliminary, or final orders restraining the person from continuing the violation or from carrying out the threat of violation.

23-20.2-06. Penalties.

1. Any person who violates any provision of this chapter, or any rule, regulation, or order of the commission promulgated under this chapter, is subject to a civil penalty of not more than one thousand dollars for each act of violation and for each day that the violation continues.
2. It is a class B misdemeanor for any person, for the purpose of evading this chapter, or any rule, regulation, or order of the commission, to make or cause to be made any false entry or statement in a report required by this chapter or by any rule, regulation, or order issued or promulgated by the commission, or to make or cause to be made any false entry in any record, account, or memorandum required by this chapter, or by any rule, regulation, or order of the commission, or to omit, or cause to be omitted, from any such record, account, or memorandum, full, true, and correct entries as required by this chapter or by any rule, regulation, or order of the commission, or to remove from this state or destroy, mutilate, alter, or falsify any record, account, or memorandum.
3. The civil penalties provided in subsection 1 are recoverable by suit filed by the attorney general in the name and on behalf of the commission, in the district court of the county in which the defendant resides, or in which any defendant resides, if there is more than one defendant, or in the district court of any county in which the violation occurred. The payment of any such penalty does not operate to relieve a person on whom the penalty is imposed from liability to any other person for damages arising out of such violation.

23-20.2-07. Exemption.

The provisions of this chapter, and the rules or orders authorized herein, do not apply to any natural person residing on unplatted land in unincorporated areas of this state disposing of that person's normal household wastes on that person's property.

23-20.2-08. Administrative procedure and judicial review.

Any proceedings under this chapter for the issuance or modification of rules, including emergency orders relating to underground storage, retrieval, and waste disposal and determining compliance with rules of the commission, must be conducted in accordance with the provisions of chapter 28-32. When an emergency requiring immediate action is found to exist, the commission is authorized to issue an emergency order without notice or hearing, which is effective upon promulgation. No emergency order may remain effective for more than fifteen days. Any person aggrieved by action of the commission, or by its rules or orders, may appeal to the district court of the county in which the person resides, or in Burleigh County, in accordance with sections 28-32-42 through 28-32-49.

23-20.2-09. Deposit of radioactive waste material - Legislative approval required.

No person, firm, corporation, limited liability company, or other legal entity may deposit, or cause or permit to be deposited in this state, any radioactive waste material which has been brought into this state for that purpose unless prior approval has been granted by concurrent resolution passed by the legislative assembly. Radioactive waste material means waste either from the generation of electrical power through the utilization of radioactive materials or from the manufacture of nuclear grade weapons and includes fission products and actinides and materials contaminated by fission products and actinides.