

## **CHAPTER 43-02-13 HIGH-LEVEL RADIOACTIVE WASTE**

### **Section**

43-02-13-01	Definitions
43-02-13-02	Scope of Chapter
43-02-13-03	Enforcement of Laws, Rules, and Regulations Dealing With Exploration, Development, and Storage or Disposal of High-Level Radioactive Wastes
43-02-13-04	Waste Prohibited
43-02-13-05	Forms Upon Request
43-02-13-06	Authority to Cooperate With Other Agencies
43-02-13-07	Organization Reports
43-02-13-08	Geotechnical and Geophysical Surveys
43-02-13-09	Access to Property and Records
43-02-13-10	Test Well Bond
43-02-13-11	Facility Bond
43-02-13-12	Exploration Permit
43-02-13-13	Facility Permit
43-02-13-14	County Zoning Authority in the Permitting Process
43-02-13-15	Notice and Hearing
43-02-13-16	Permit Review Timelines
43-02-13-17	Notice of Disapproval
43-02-13-18	Federal Agencies and Federal Regulations
43-02-13-19	Site Construction
43-02-13-20	Geologic Data
43-02-13-21	Reports
43-02-13-22	Facility Annual Operating Fee
43-02-13-23	Reclamation of Exploration Test Wells
43-02-13-24	Reclamation of Facilities
43-02-13-25	Hearings - Complaint Proceedings - Emergency Proceedings - Other Proceedings
43-02-13-26	Investigatory Hearings
43-02-13-27	Official Record
43-02-13-28	Petitions for Review of Recommended Order and Oral Arguments Prohibited
43-02-13-29	Notice of Order by Mail
43-02-13-30	Service and Filing
43-02-13-31	Designation of Examiners
43-02-13-32	Powers and Duties of Examiner
43-02-13-33	Report of Examiner
43-02-13-34	Commission Order From Examiner Hearing
43-02-13-35	Prehearing Motion Practice

### **43-02-13-01. Definitions.**

The terms used throughout this chapter have the same meaning as in North Dakota Century Code chapters 38-23 and 38-08 except:

1. "Active institutional controls" are the means used to control access to an open or closed high-level radioactive waste disposal site by anything other than passive institutional controls. Active institutional controls include fencing, guards, security cameras, etc.
2. "Certified or registered mail" means any form of service by the United States postal service, federal express, Pitney Bowes, and any other commercial, nationwide delivery service that provides the mailer with a document showing the date of delivery or refusal to accept delivery.

3. "High-level radioactive waste facility" as defined in North Dakota Century Code section 38-23-02 also includes all surface structures (buildings, slabs or pads, tunnels, pipelines, etc.) for either a storage or a disposal facility as well as all subsurface structures, disposal wells, and caverns.
4. "Occupied dwelling" or "permanently occupied dwelling" means a residence that is lived in by a person at least six months throughout a calendar year.
5. "Passive institutional controls" are permanent markers or structures intended to reduce the likelihood of humans unintentionally intruding into a high-level radioactive waste disposal site for thousands of years after it is closed.
6. "Well" means any hole drilled for the purpose of information gathering, storage, or disposal of high-level radioactive waste.

**History:** Effective October 1, 2020.

**General Authority:** NDCC 38-23-03

**Law Implemented:** NDCC 38-23-03

#### **43-02-13-02. Scope of chapter.**

This chapter contains general rules of statewide application which have been adopted by the industrial commission to regulate the exploration, testing, placement, storage, and disposal of high-level radioactive waste to provide for operation in a manner as to protect the citizens of North Dakota. The commission may grant exceptions to this chapter, after due notice and hearing, when such exceptions will result in effectuating the purpose and intent of North Dakota Century Code chapter 38-23.

**History:** Effective October 1, 2020.

**General Authority:** NDCC 38-23-03

**Law Implemented:** NDCC 38-23-03

#### **43-02-13-03. Enforcement of laws, rules, and regulations dealing with exploration, development, and storage or disposal of high-level radioactive wastes.**

The commission, its agents, representatives, and employees are charged with the duty and obligation of enforcing all rules and statutes of North Dakota relating to high-level radioactive waste. However, it shall be the responsibility of all owners, operators, and contractors of high-level radioactive waste facilities to obtain information pertaining to the regulation of high-level radioactive waste disposal before operations have begun.

**History:** Effective October 1, 2020.

**General Authority:** NDCC 38-23-03

**Law Implemented:** NDCC 38-23-03

#### **43-02-13-04. Waste prohibited.**

All operators, contractors, drillers, carriers, service companies, and all other persons at all times shall conduct their operations in the drilling, plugging, storage, disposal, and site reclamation of high-level radioactive waste in a manner that will prevent waste and prevent the release of radioactive materials into the environment.

**History:** Effective October 1, 2020.

**General Authority:** NDCC 38-23-03

**Law Implemented:** NDCC 38-23-03

#### **43-02-13-05. Forms upon request.**

Forms for written notices, requests, and reports required by the commission must be furnished upon request. These forms must be of such nature as prescribed by the commission to cover proposed work and to report the results of completed work.

**History:** Effective October 1, 2020.

**General Authority:** NDCC 38-23-03

**Law Implemented:** NDCC 38-23-03

#### **43-02-13-06. Authority to cooperate with other agencies.**

The commission from time to time may enter arrangements with state and federal government agencies, industry committees, and individuals with respect to special projects, services, and studies relating to high-level radioactive waste disposal.

**History:** Effective October 1, 2020.

**General Authority:** NDCC 38-23-03

**Law Implemented:** NDCC 38-23-03

#### **43-02-13-07. Organization reports.**

Every person acting as principal or agent for another or independently engaged in the exploration, drilling, testing, placement, storage, and disposal of high-level radioactive waste or retains ownership of equipment used for high-level radioactive waste storage or disposal or retains ownership of high-level radioactive waste facilities in North Dakota immediately shall file with the state geologist the name under which such business is being conducted and operated; the name and post office address of such person; the business or businesses in which the person is engaged; the plan of organization, and in case of a corporation, the law under which it is chartered; and the names and post office addresses of any person acting as trustee, together with the names and post-office addresses of any officials on an organization report. If such business is conducted under an assumed name, such organization report must show the names and post office addresses of all owners in addition to the other information required. A new organization report must be filed when there is a change in any of the information contained in the report.

**History:** Effective October 1, 2020.

**General Authority:** NDCC 38-23-03

**Law Implemented:** NDCC 38-23-03

#### **43-02-13-08. Geotechnical and geophysical surveys.**

By special order of the commission, periodic surveys may be made of both the rock containing high-level radioactive waste and the rocks above and below it. These surveys must be thorough and complete and must be made using methods approved by the director. The condition of the rocks containing high-level radioactive waste and the practices and methods employed by the operators must be investigated. All operators shall permit and assist the agents of the commission in making any and all special tests that may be required by the commission on any or all exploration wells, disposal wells, disposal caverns, or storage sites. All geophysical operations shall comply with North Dakota Century Code chapter 38-08.1.

**History:** Effective October 1, 2020.

**General Authority:** NDCC 38-23-03

**Law Implemented:** NDCC 38-23-03

#### **43-02-13-09. Access to property and records.**

The commission, director, and their representatives shall have access to all exploration test well, storage and disposal well, and high-level radioactive waste facility records wherever located. All owners, operators, drilling contractors, drillers, service companies, or other persons engaged in drilling, completing, or servicing wells or constructing, servicing, and maintaining facilities shall permit the commission, director, and their representatives to come upon any property, well, or drilling rig operated or controlled by them, complying with state safety rules and to inspect the records and operation of such wells, and to have access at all times to any and all records of wells. If requested, copies of such records must be filed with the commission.

**History:** Effective October 1, 2020.

**General Authority:** NDCC 38-23-03

**Law Implemented:** NDCC 38-23-03

#### **43-02-13-10. Test well bond.**

Before any person receives a permit to drill a test well or perform a test that causes surface disturbance while exploring for a high-level radioactive waste disposal site, the person shall submit to the commission and obtain its approval of a surety bond or cash bond. An alternate form of security may be approved by the commission after notice and hearing, as provided by law. The operator of a test well or other types of exploration or testing that causes surface disturbance shall be the principal on the bond covering such activity. Each such surety bond must be executed by a responsible surety company authorized to transact business in North Dakota. The bond must be based upon the estimated costs to plug the test well at the projected total depth and the surface restoration costs. Bonds must be conditioned upon full compliance with North Dakota Century Code chapter 38-23, and all administrative rules and orders of the commission, and continues until the test well has been satisfactorily plugged which must include practical reclamation of the well site and appurtenances, and all logs, plugging records, and other pertinent data required by statute or rules and orders of the commission are filed and approved.

**Bond termination.** The commission, in writing, shall advise the principal and any sureties on any bond as to whether the plugging and reclamation is approved. If approved, liability under such bond may be terminated formally upon receipt of a written request by the principal. The request must be signed by an officer of the principal or a person authorized to sign for the principal.

**Director's authority.** The director is vested with the power to act for the commission as to all matters within this section, except requests for alternative forms of security, which only may be approved by the commission. The commission may refuse to accept a bond if the operator or surety company has failed in the past to comply with statutes, rules, or orders relating to the operation of wells or high-level radioactive waste facilities; if a civil or administrative action brought by the commission is pending against the operator or surety company; or for other good cause.

**History:** Effective October 1, 2020.

**General Authority:** NDCC 38-23-03

**Law Implemented:** NDCC 38-23-03

#### **43-02-13-11. Facility bond.**

Before any person receives a permit to construct a high-level radioactive waste facility, the person shall submit to the commission and obtain its approval of a surety bond or cash bond. An alternate form of security may be approved by the commission after notice and hearing, as provided by law. The operator of a high-level radioactive waste facility shall be the principal on the bond covering such activity. Each such surety bond must be executed by a responsible surety company authorized to transact business in North Dakota. The amount of the bond must be based upon the size and scope of the facility and all costs associated with its reclamation. Bonds must be conditioned upon full

compliance with North Dakota Century Code chapter 38-23, and all administrative rules and orders of the commission, and continues until the high-level radioactive waste facility, including surface facilities and all disposal wells or subsurface caverns have been satisfactorily plugged and reclaimed pursuant to chapter 43-02-03 and all logs, plugging records, and other pertinent data required by statute or rules and orders of the commission are filed and approved.

**Bond termination.** The commission, in writing, shall advise the principal and any sureties on any bond as to whether the plugging and reclamation is approved. If approved, liability under such bond may be terminated formally upon receipt of a written request by the principal. The request must be signed by an officer of the principal or a person authorized to sign for the principal.

**Director's authority.** The director is vested with the power to act for the commission as to all matters within this section, except requests for alternative forms of security, which only may be approved by the commission. The commission may refuse to accept a bond if the operator or surety company has failed in the past to comply with statutes, rules, or orders relating to the operation of high-level radioactive waste facilities; if a civil or administrative action brought by the commission is pending against the operator or surety company; or for other good cause.

The size and the scope of the operation must be evaluated annually and the department may increase or decrease the bond amount to reflect the results of the evaluation.

**History:** Effective October 1, 2020.

**General Authority:** NDCC 38-23-03

**Law Implemented:** NDCC 38-23-03

#### **43-02-13-12. Exploration permit.**

A permit is required prior to commencement of operations for the drilling, boring, excavating, testing, and either land-based or airborne geophysical surveying for the purpose of exploring for a high-level radioactive waste facility. It is unlawful to proceed with these activities without first obtaining an exploration permit from the commission.

The application for a permit to drill must be filed with the director, together with a permit fee to be determined by the state geologist based upon the cost for the commission to review, investigate, and process the application. The permit application must be accompanied by a notice of opportunity for a position paper, from the commissioners of the county where the proposed exploration drilling will take place. No activity may commence until such application is approved and a permit to explore is issued by the commission. The application must be accompanied by the bond pursuant to section 43-02-13-11 or the applicant previously must have filed such bond with the commission, otherwise the application is incomplete. An incomplete application received by the commission has no standing and will not be deemed filed until it is complete.

A permit is required for each test well or each method of exploration. The area to be explored must be outlined on the application and the permit shall be valid in the area so outlined. The application for permit to drill must be accompanied by an accurate plat certified by a registered surveyor showing the location of the proposed well with reference to true north and the nearest lines of a governmental section. The plat also must include latitude and longitude of the proposed test well location to the nearest tenth of a second. Information to be included in such application must be the proposed depth to which the test well will be drilled; estimated depth to the top of important stratigraphic markers; estimated depth to the top of objective horizons; the proposed mud program; the proposed casing program, including size and weight; the depth at which each casing string is to be set; the proposed pad layout, including cut and fill diagrams; and the proposed amount of cement to be used, including the estimated top of the cement, the proposed procedure, and the estimated completed total depth. The drilling, testing, and plugging of exploratory test wells must comply with all applicable rules in section 43-02-03.

The exploration permit is in effect for one year.

**History:** Effective October 1, 2020.

**General Authority:** NDCC 38-23-04

**Law Implemented:** NDCC 38-23-04

#### **43-02-13-13. Facility permit.**

A facility permit application is required prior to commencement of operations to create or construct a high-level radioactive waste facility. The application for a high-level radioactive waste facility permit must be filed with the director, together with a permit fee. The amount of the permit fee is determined by the state geologist based upon the cost for the commission to review, investigate, and process the application. The permit application must be accompanied by a notice of opportunity for a position paper, from the commissioners of the county where the proposed facility will be located. No activity may commence until such application is approved and a permit to explore is issued by the director. The application must be accompanied by the bond pursuant to section 43-02-13-12 or the applicant previously must have filed such bond with the commission, otherwise the application is incomplete. An incomplete application received by the commission has no standing and may not be deemed filed until it is complete.

Prior to the issuance of a permit, the operator shall deposit one hundred million dollars or one million dollars per permitted acre, whichever is the greater amount, into the high-level radioactive waste fund. The deposit amount is to be adjusted to reflect any increase in the consumer price index published by the United States department of labor from the year 2020 to the consumer price index published by the department of labor at the time of the construction of the project. The half-lives of some of the radioactive waste will be dangerous much longer than any sign, monument, or avoidance structures would remain unless they are maintained in perpetuity. This money is to be used to ensure the passive institutional controls are maintained for thousands of years.

The high-level radioactive waste facility permit application must include:

1. A description of the high-level radioactive waste facility to be permitted. The area of the facility must be outlined on the application and the permit shall be valid in the area so outlined. The facility application must be accompanied by an accurate plat certified by a registered surveyor showing the location of the proposed facility and well with reference to true north and the nearest lines of a governmental section. The plat also must include latitude and longitude of the proposed storage or disposal location to the nearest tenth of a second.
2. High-level radioactive waste facility information will include the proposed depth to which the storage or disposal hole will be drilled; estimated depth to the top of important stratigraphic markers; estimated depth to the top of objective horizons; the proposed mud program; the proposed casing program, including size and weight; the depth at which each casing string is to be set; the proposed pad layout, including cut and fill diagrams; and the proposed amount of cement to be used, including the estimated top of the cement, the proposed procedure, and the estimated completed total depth. The drilling, testing, disposal, and plugging of high-level radioactive waste facility disposal wells must comply with all applicable rules in chapter 43-02-03.
3. A detailed description of the high-level radioactive material to be stored or disposed.
4. A detailed description of the mechanical construction and operating procedures of the high-level radioactive waste facility.
5. A justification for the need for the high-level radioactive waste facility to be permitted, including economic impact.

6. A detailed discussion and description of the subsurface geology and hydrology of the area to be affected by the construction and operation of the high-level radioactive waste facility.
7. A detailed discussion and description of the monitoring system to be used to ascertain the integrity of the high-level radioactive waste facility and to ensure compliance with this chapter.
8. 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 North Dakota Century Code chapter 38-23 and this chapter.
9. A detailed discussion and description of the active institutional controls that would be used while the facility is in operation.
10. A detailed discussion and description of the active institutional controls that would be used for a specified period of time after the facility has closed.
11. A detailed discussion and description of the passive institutional controls that would be constructed after the facility has closed, including estimated costs and the projected durability of the controls over thousands of years.
12. Architectural plans for all buildings and infrastructure within the facility boundaries.
13. Any other information required by the commission.

The length and terms of the permit must be decided by the commission but may not exceed five years. An application for a permit renewal must be made at least one hundred twenty days before the expiration of the valid permit and is subject to all of the procedures and requirements of this chapter.

**History:** Effective October 1, 2020.

**General Authority:** NDCC 38-23-04

**Law Implemented:** NDCC 38-23-04

#### **43-02-13-14. County zoning authority in the permitting process.**

Prior to a person submitting either an exploration permit or a facility permit, the person shall confirm the size, scope, and location of the project conforms to the county zoning regulations.

**History:** Effective October 1, 2020.

**General Authority:** NDCC 38-23-09

**Law Implemented:** NDCC 38-23-09

#### **43-02-13-15. Notice and hearing.**

A permit may be issued only after notice and hearing and the notice must follow Rule 4 of the North Dakota Rules of Civil Procedure. The permit applicant must follow the notification and publication requirements in North Dakota Century Code section 38-23-04.

**History:** Effective October 1, 2020.

**General Authority:** NDCC 38-23-04

**Law Implemented:** NDCC 38-23-04

#### **43-02-13-16. Permit review timelines.**

The commission may take up to six months to review and approve or deny an exploration permit. During that time, the commission shall review the exploration permit, bring the exploration permit application before the advisory council, and hold a hearing on the exploration permit application.

The commission may take up to twelve months to review and approve or deny a high-level radioactive waste facility permit. During that time, the commission shall review the high-level radioactive waste facility permit, bring the high-level radioactive waste facility permit application before the advisory council, and hold a hearing on the high-level radioactive waste facility permit application.

**History:** Effective October 1, 2020.

**General Authority:** NDCC 38-23-04

**Law Implemented:** NDCC 38-23-04

#### **43-02-13-17. Notice of disapproval.**

The notice of disapproval to be issued to Congress within the time period mandated by the federal Nuclear Waste Policy Act. The notice of disapproval to be accompanied by a statement of reasons explaining why the commission disapproved of the recommended repository site.

**History:** Effective October 1, 2020.

**General Authority:** NDCC 38-23-03

**Law Implemented:** NDCC 38-23-03

#### **43-02-13-18. Federal agencies and federal regulations.**

Any high-level radioactive waste facility shall comply with all applicable federal regulations including those of the nuclear regulatory commission, Title 10, Code of Federal Regulations, and the environmental protection agency, 40 Code of Federal Regulations, Part 191.

**History:** Effective October 1, 2020.

**General Authority:** NDCC 38-23-03

**Law Implemented:** NDCC 38-23-03

#### **43-02-13-19. Site construction.**

In the construction of a well site, access road, and all associated facilities, the topsoil must be removed, stockpiled, and stabilized or otherwise reserved for use when the area is reclaimed. "Topsoil" means the suitable plant growth material on the surface; however, in no event may this be deemed to be more than the top twelve inches [30.48 centimeters] of soil or deeper than the depth of cultivation, whichever is greater. Soil stabilization materials, liners, fabrics, and other materials to be used onsite, on access roads or associated facilities, must be reported on a sundry notice to the director within thirty days after application. The reclamation plan for such materials also must be included. When necessary to prevent pollution of the land surface and freshwaters, the director may require the site to be sloped and diked. Sites may not be located in, or hazardously near, bodies of water, nor may the sites block natural drainages. Sites and associated facilities must be designed to divert surface drainage from entering the site. Sites or appropriate parts thereof must be fenced if required by the director. Sites must be stabilized to prevent erosion.

**History:** Effective October 1, 2020.

**General Authority:** NDCC 38-23-04

**Law Implemented:** NDCC 38-23-04

#### **43-02-13-20. Geologic data.**

The following basic data collected by the operator must be delivered, free of charge, to the state geologist within thirty days of collection:

1. Washed and packaged sample cuts.



2. Cores, except those portions used for necessary testing or analysis, in which case the results of testing, the analysis, and the description of missing portions must be submitted to the state geologist.
3. Copies of all logs, including sample logs, radioactivity logs, resistivity logs, and other types of electrical or mechanical logs.
4. Elevation and location information on the data collection points.
5. Other pertinent information required by the state geologist.

**History:** Effective October 1, 2020.

**General Authority:** NDCC 38-23-03

**Law Implemented:** NDCC 38-23-03

#### **43-02-13-21. Reports.**

Monthly reports on well activities, including drilling, completion, waste insertion, and plugging must be submitted to the state geologist. The amount of high-level radioactive waste in temporary storage, long-term storage, or has been disposed also must be reported on a monthly basis, due on the fifth day of the following month. Forms for written notices, requests, and reports required by the commission must be furnished upon request. These forms must be of such nature as prescribed by the commission to cover proposed work and to report the results of completed work.

**History:** Effective October 1, 2020.

**General Authority:** NDCC 38-23-03

**Law Implemented:** NDCC 38-23-03

#### **43-02-13-22. Facility annual operating fee.**

The amount of the annual operating fee, pursuant to North Dakota Century Code section 38-23-03, is due on January fifteenth. The one million dollar minimum fee threshold to be adjusted to reflect any increase in the consumer price index published by the United States department of labor from the year 2020 to the consumer price index published by the United States department of labor at the time the fee is imposed.

**History:** Effective October 1, 2020.

**General Authority:** NDCC 38-23-03

**Law Implemented:** NDCC 38-23-03

#### **43-02-13-23. Reclamation of exploration test wells.**

The plugging and reclamation of exploration test wells must comply with all applicable rules in chapter 43-02-03, including plugging and site reclamation. The commission may require the well bore to be filled with concrete or another approved plugging material from the base of the hole to the ground surface.

All lands disturbed during exploration must be reclaimed to a condition consistent with prior land use and productive capacity.

**History:** Effective October 1, 2020.

**General Authority:** NDCC 38-23-03

**Law Implemented:** NDCC 38-23-03

#### **43-02-13-24. Reclamation of facilities.**

The plugging and reclamation of high-level radioactive waste facilities must comply with all applicable rules in chapter 43-02-03. Well bore must be filled with concrete or another plugging material approved by the commission from the top of the waste to the ground surface.

All buildings and infrastructure not used for either site monitoring or security must be removed. All disturbed lands must be reclaimed to a condition consistent with prior land use and productive capacity. The exceptions to this is the area that contains signs or structures that are to be placed over the site to warn or dissuade future generations from occupying the surface, drilling into the subsurface, or disturbing the disposal wells, shafts, or chambers given the long-term nature of the high-level radioactive waste.

Upon final closure of the waste disposal site, both active and passive institutional controls must be implemented in and around the site. The means and the length of time that active institutional controls are maintained must be determined by the commission after consulting with the advisory council. The signs and structures comprising the passive institutional controls must be determined by the commission after consulting with the advisory council. Documents containing the location and depth of the waste, well construction, plugging and reclamation information, years of operation, half-lives of the radioactive waste, and other pertinent data must be permanently stored in the local, state, and national archives.

**History:** Effective October 1, 2020.

**General Authority:** NDCC 38-23-03

**Law Implemented:** NDCC 38-23-03

#### **43-02-13-25. Hearings - Complaint proceedings - Emergency proceedings - Other proceedings.**

1. Except as more specifically provided in North Dakota Century Code section 38-08-11, the rules of procedure established in subsection 1 of North Dakota Century Code section 28-32-21 apply to proceedings involving a complaint and a specific-named respondent.
2. For proceedings that do not involve a complaint and a specific-named respondent the commission shall give at least fifteen days' notice, except in emergency, of the time and place of hearing thereon by one publication of such notice in a newspaper of general circulation in Bismarck, North Dakota, and in a newspaper of general circulation in the county where the land affected or some part thereof is situated, unless in some particular proceeding a longer period of time or a different method of publication is required by law, in which event such period of time and method of publication prevails. The notice must issue in the name of the commission and must conform to the other requirements provided by law.

**History:** Effective October 1, 2020.

**General Authority:** NDCC 38-23-03

**Law Implemented:** NDCC 38-23-03

#### **43-02-13-26. Investigatory hearings.**

The commission may hold investigatory hearings upon the institution of a proceeding or by motion of the commission. Notice of the hearing must be served upon all parties personally or by certified mail at least five days before the hearing.

**History:** Effective October 1, 2020.

**General Authority:** NDCC 38-23-03

**Law Implemented:** NDCC 38-23-03

#### **43-02-13-27. Official record.**

The evidence in each case heard by the commission, unless specifically excluded by the hearing officer, includes the certified directional surveys, and all oil, water, and gas production records, and all injection records on file with the commission.

Any interested party may submit written comments on or objections to the application prior to the hearing date. Such submissions must be received no later than five p.m. on the last business day prior to the hearing date and may be part of the record in the case if allowed by the hearing examiner. Settlement negotiations between parties to a contested case are admissible only as governed by North Dakota Century Code section 28-32-24, although the hearing officer may strike such testimony from the record for good cause.

**History:** Effective October 1, 2020.

**General Authority:** NDCC 38-23-03

**Law Implemented:** NDCC 38-23-03

#### **43-02-13-28. Petitions for review of recommended order and oral arguments prohibited.**

Neither petitions for review of a recommended order nor oral arguments following issuance of a recommended order and pending issuance of a final order are allowed.

**History:** Effective October 1, 2020.

**General Authority:** NDCC 38-23-03

**Law Implemented:** NDCC 38-23-03

#### **43-02-13-29. Notice of order by mail.**

The commission may give notice of an order by mailing the order, and findings and conclusions upon which it is based, to all parties by regular mail provided it files an affidavit of service by mail indicating upon whom the order was served.

**History:** Effective October 1, 2020.

**General Authority:** NDCC 38-23-03

**Law Implemented:** NDCC 38-23-03

#### **43-02-13-30. Service and filing.**

All pleadings, notices, written motions, requests, petitions, briefs, and correspondence to the commission or commission employee from a party, or vice versa, relating to a proceeding after its commencement, must be filed with the director and entered in the commission's official record of the procedure provided the record is open at the time of receipt. All parties are entitled to receive copies upon request of any or all of the evidence in the record of the proceedings. The commission may charge for the actual cost of providing copies of evidence in the record. Unless otherwise provided by law, filing is complete when the material is entered in the record of the proceeding.

**History:** Effective October 1, 2020.

**General Authority:** NDCC 38-23-03

**Law Implemented:** NDCC 38-23-03

#### **43-02-13-31. Designation of examiners.**

The commission by motion may designate and appoint qualified individuals to serve as examiners. The commission may refer any matter or proceeding to any legally designated and appointed examiner or examiners.

**History:** Effective October 1, 2020.

**General Authority:** NDCC 38-23-03

**Law Implemented:** NDCC 38-23-03

**43-02-13-32. Powers and duties of examiner.**

The commission by motion may limit the powers and duties of any examiner in any particular case to such issues or to the performance of such acts as the commission deems expedient; however, subject only to such limitation as may be ordered by the commission, the examiner or examiners to whom any matter or proceeding is referred under this chapter have full authority to hold hearings on such matter or proceeding in accordance with and pursuant to this chapter. The examiner may regulate all proceedings before the examiner and to perform all acts and take all measures necessary or proper for the efficient and orderly conduct of such hearing, including ruling on prehearing motions, the swearing of witnesses, receiving of testimony and exhibits offered in evidence, subject to such objections as may be imposed, and shall cause a complete record of the proceeding to be made and retained.

**History:** Effective October 1, 2020.

**General Authority:** NDCC 38-23-03

**Law Implemented:** NDCC 38-23-03

**43-02-13-33. Report of examiner.**

Upon the conclusion of any hearing before an examiner, the examiner promptly shall consider the proceedings in such hearing, and based upon the record of such hearing, the examiner shall prepare a report and recommendations for the disposition of the matter or proceeding by the commission. Such report and recommendations either must be accompanied by a proposed order or must be in the form of a proposed order and must be submitted to the commission.

**History:** Effective October 1, 2020.

**General Authority:** NDCC 38-23-03

**Law Implemented:** NDCC 38-23-03

**43-02-13-34. Commission order from examiner hearing.**

After receipt of the report and recommendations of the examiner, the commission shall enter its order disposing of the matter or proceeding.

**History:** Effective October 1, 2020.

**General Authority:** NDCC 38-23-03

**Law Implemented:** NDCC 38-23-03

**43-02-13-35. Prehearing motion practice.**

In a matter pending before the commission, all prehearing motions must be served by the moving party upon all parties affected by the motion. Service must be upon a party unless a party is represented by an attorney, in which case service must be upon the attorney. Service must be made by delivering a copy of the motion and all supporting papers in conformance with one of the means of service provided for in Rule 5(b) of the North Dakota Rules of Civil Procedure. Proof of service must be made as provided in Rule 4 of the North Dakota Rules of Civil Procedure or by the certificate of an attorney showing that service has been made. Proof of service must accompany the filing of a motion. Any motion filed without proof of service is not properly before the commission.

**History:** Effective October 1, 2020.

**General Authority:** NDCC 38-23-03

**Law Implemented:** NDCC 38-23-03