

Sixty-sixth
Legislative Assembly
of North Dakota

ENGROSSED 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; and to provide a penalty.

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. Definitions.**

13 As used in this chapter:

- 14 1. "Commission" means the industrial commission.
15 2. "High-level radioactive waste" means:
16 a. Highly radioactive material resulting from the reprocessing of spent nuclear fuel,
17 and other highly radioactive material, containing fission products in sufficient
18 concentrations to require permanent isolation, including liquid waste produced
19 directly in reprocessing and any solid material derived from the liquid waste; or
20 b. Highly radioactive material that the commission, consistent with existing law and
21 rules, determines requires permanent isolation.
22 3. "High-level radioactive waste disposal" means the emplacement in a repository of
23 high-level radioactive waste with no foreseeable intent of recovery.
24 4. "High-level radioactive waste facility" means a premises, building, structure, fixture, or
25 improvements used or operated for the storage or disposal of high-level radioactive
26 waste.
27 5. "High-level radioactive waste storage" means the retention of high-level radioactive
28 waste with the intent to recover the waste for subsequent use, processing, or disposal.

29 **38-23-02. Jurisdiction of the commission and duties.**

- 30 1. The commission has jurisdiction and authority over any person or property, public or
31 private, necessary to enforce this chapter. The commission may investigate and

1 determine whether facts exist justifying action by the commission. The state geologist
2 shall act as a supervisor charged with the duty of enforcing the regulations and orders
3 of the commission applicable to this chapter.

4 2. The commission acting through the state geologist may:

5 a. Serve as the point of contact for the federal department of energy or any other
6 federal agency on any matter related to the long-term or temporary storage or
7 permanent disposal of high-level radioactive waste.

8 b. Issue a notice of disapproval regarding a proposed high-level radioactive waste
9 facility in accordance with federal law when the legislative assembly is not in
10 session. Before issuing a notice of disapproval, the commission shall consult with
11 the high-level radioactive waste advisory council and the local government
12 entities with jurisdiction over the area where the proposed high-level radioactive
13 waste facility is to be located.

14 3. Only the legislative assembly may issue a notice of disapproval during a legislative
15 session.

16 4. The commission, acting through the state geologist, may:

17 a. Take any action necessary to assert the state's rights relating to the exploration of
18 a suitable location for a high-level radioactive waste facility within the state,
19 including providing comments to a federal agency or initiating litigation.

20 b. Enter agreements with the federal government regarding high-level radioactive
21 waste regulation and facility siting and accept available funds for deposit into the
22 high-level radioactive waste fund.

23 c. Adopt and enforce rules and orders to effectuate the purpose and intent of this
24 chapter.

25 d. Require:

26 (1) Identification of ownership of all high-level radioactive waste facilities and
27 equipment used for high-level radioactive waste storage or disposal.

28 (2) The delivery to the state geologist of basic exploration data collected, within
29 thirty days of field collection of such data, free of charge. Data includes:

30 (a) Sample cuts, core chips, or whole cores;

- 1 (b) Sample logs, radioactivity logs, resistivity logs, or other types of
2 electrical or mechanical logs;
3 (c) Elevation and location information on data collection points; and
4 (d) Other pertinent information required by the state geologist.
5 (3) The filing of monthly reports in the manner prescribed by the commission
6 and any other reports deemed necessary by the commission.
7 (4) The conducting of all exploration, storage, and disposal operations in a
8 manner to prevent pollution of freshwater supplies and to provide for the
9 protection of the environment, public safety, and economic interests.
10 (5) The reclamation of all land disturbed by operations regulated by this chapter
11 to a condition consistent with prior land use and productive capacity. A
12 permanent marker is to be erected and maintained over the disposal site.
13 (6) The furnishing of a reasonable bond with good and sufficient surety,
14 conditioned upon the full compliance with this chapter, and the rules and
15 orders of the commission. The person required to furnish the bond may
16 elect to deposit under such terms as the commission may prescribe a
17 collateral bond, cash, or any alternative form of security approved by the
18 commission, or combination thereof, by which an operator assures faithful
19 performance of all requirements of this chapter and the rules and orders of
20 the commission.
21 (7) The payment of fees for services performed by the commission, including
22 costs associated with the investigation, review, and processing of the
23 application; monitoring and inspection of the exploration site; monitoring and
24 inspection of the facility; and environmental and monetary impact of the
25 facility. The commission shall set the amount of the fee based on the
26 anticipated actual cost of services rendered and impact to the state and
27 local area. The commission shall set the annual operating fee for a facility
28 permit to be dependent on the size and scope of the facility, but the fee may
29 not be less than one million dollars. Unless otherwise provided by statute,
30 fees collected by the commission must be deposited in the high-level

1 radioactive waste fund, according to procedures established by the state
2 treasurer.

3 e. Regulate:

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

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

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

13 **38-23-03. Permit required.**

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

17 2. A notice of opportunity for a position paper from the commissioners of the county must
18 be attached to the permit application.

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

22 4. An applicant for a permit shall provide notice to a surface owner and any resident of a
23 permanently occupied dwelling located within two miles [3.22 kilometers] of the
24 proposed location, the county commissioners and mayor of any municipality within
25 thirty miles [48.28 kilometers], and publish a notice in the official county newspaper
26 and any county newspaper within thirty miles [48.28 kilometers] of the proposed
27 location.

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

- 1 6. A permit application for a high-level radioactive waste facility must include:
- 2 a. A description of the facility to be permitted.
- 3 b. A detailed description of the material to be stored or disposed.
- 4 c. A detailed description of the mechanical construction and operating procedures
- 5 of the facility.
- 6 d. A justification for the need for the facility to be permitted, including economic
- 7 impact.
- 8 e. A detailed discussion and description of the subsurface geology and hydrology of
- 9 the area to be affected by the construction and operation of the facility to be
- 10 permitted.
- 11 f. A detailed discussion and description of a monitoring system to be used to
- 12 ascertain the integrity of the facility and to ensure compliance with this chapter.
- 13 g. A detailed description and discussion of a reclamation program for the restoration
- 14 of the surface as nearly as possible to its original condition and productivity upon
- 15 expiration of the permit or termination of any activities regulated by this chapter.
- 16 h. Any other information required by the commission.
- 17 7. Following a hearing, the commission may deny an application if the commission
- 18 determines the testing, exploration, excavating, drilling, or operation poses a threat to
- 19 human health or the environment or because of concerns related to economic
- 20 impacts. A person denied a permit may appeal the denial in accordance with chapter
- 21 28-32.
- 22 8. The commission may include conditions in a permit which the commission deems
- 23 necessary to ensure protection of human health and the environment or to address
- 24 economic impacts.
- 25 9. A permit holder shall furnish and maintain a reasonable bond with good and sufficient
- 26 surety, conditioned upon the full compliance with the permit, this chapter, and rules
- 27 adopted by the commission.
- 28 10. The commission shall establish the term of a permit, but the term of a permit may not
- 29 exceed five years. An application for a permit renewal must be made at least one
- 30 hundred twenty days before the expiration of the valid permit and is subject to all the
- 31 procedures and requirements of this section.

1 **38-23-04. Procedure.**

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

9 **38-23-05. Penalty - Injunction - Applicable provisions.**

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

12 **38-23-06. High-level radioactive waste fund.**

13 There is established a high-level radioactive waste fund into which funds received under an
14 agreement entered under this chapter, permit fees, and civil penalties must be deposited. The
15 commission shall administer the fund and may use the fund to fulfill any of the commission's
16 powers and duties under this chapter.

17 **38-23-07. High-level radioactive waste advisory council - Members, powers, and**
18 **duties.**

- 19 1. The high-level radioactive waste advisory council is established to advise the
20 commission in carrying out its duties. The council consists of the state engineer, state
21 health officer, director of the department of transportation, director of the game and
22 fish department, the commerce commissioner, and director of the department of
23 environmental quality, who serve as ex officio members. The state geologist shall
24 serve as the executive secretary for the council. Additional members on the council
25 are:
- 26 a. A representative of county government, appointed by the governor;
 - 27 b. A representative of city government, appointed by the governor;
 - 28 c. A representative of the agricultural community, appointed by the governor;
 - 29 d. One senator, appointed by the majority leader of the senate of the legislative
30 assembly; and

- 1 e. One representative, appointed by the majority leader of the house of
2 representatives of the legislative assembly.
- 3 2. Each appointed member of the council shall serve a four-year term. The governor may
4 fill a vacancy in the membership of the council and remove an appointed member of
5 the council for cause. The council members shall select a chairman from among the
6 council members.
- 7 3. An appointed council member must be reimbursed by the commission for necessary
8 travel and other expenses incurred in the performance of official duties.
- 9 4. The council shall hold at least one meeting per year and any other meetings deemed
10 necessary by the chairman or a majority of the council.
- 11 5. The council shall:
 - 12 a. Review site suitability and issue a report for a proposed high-level radioactive
13 waste facility to the legislative assembly or commission.
 - 14 b. Review and make recommendations to the commission regarding rules and
15 standards relating to high-level radioactive waste and the duties of the
16 commission.
 - 17 c. Consider any other matter related to this chapter the council deems appropriate,
18 and may make any recommendation to the commission concerning the
19 administration of this chapter.

20 **38-23-08. County zoning authority.**

21 A county zoning regulation may not prohibit a high-level radioactive waste disposal
22 exploratory drilling permit or a high-level radioactive waste facility permitted by the commission,
23 but may regulate the size, scope, and location ~~of a facility.~~

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

26 **38-24-01. Definitions.**

27 As used in this chapter:

- 28 1. "Commission" means the industrial commission.
- 29 2. "Underground storage and retrieval facility" means a drilled, bored, or excavated
30 device or installation providing for the subsurface emplacement and recovery of
31 nonhydrocarbons.

1 3. "Nonhydrocarbons" include compressed air, nitrogen, and other gases and liquids not
2 otherwise regulated by title 38.

3 **38-24-02. Jurisdiction of the commission and duties.**

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

7 1. Require:

8 a. Identification of ownership of all facilities and equipment used for the
9 underground storage and retrieval of nonhydrocarbons.

10 b. The making and filing of all logs and reports on facility location, drilling, boring,
11 excavating, and construction and the filing of samples, core chips, and complete
12 cores, when requested, free of charge, in the office of the state geologist.

13 c. The drilling, boring, excavating, and construction of facilities in a manner
14 preventing contamination and pollution of surface and ground water sources and
15 the environment.

16 d. The furnishing of a reasonable bond with good and sufficient surety, conditioned
17 upon the full compliance with this chapter, and the rules and orders of the
18 commission.

19 e. Metering or other measuring of all nonhydrocarbons injected, emplaced, stored,
20 or retrieved from a facility regulated by this chapter.

21 f. A person operating a facility for the underground storage and retrieval of
22 nonhydrocarbons in this state to keep and maintain complete and accurate
23 records of the quantities and nature of material stored and retrieved, which
24 records must be available to the commission or its agents at all times, and may
25 require every such person to file prescribed reports with the commission.

26 g. Upon termination of the operation of a facility or activity regulated by this chapter,
27 the operator of the facility to restore the surface as nearly as possible to its
28 original condition and productivity.

29 2. Regulate:

30 a. The testing, exploration, drilling, boring, excavating, and construction of
31 underground storage and retrieval.

1 b. Operations to assure the optimum performance of a facility regulated by this
2 chapter.

3 3. Prescribe the nature, quantity, and source of nonhydrocarbons to be stored in or
4 retrieved from a facility regulated by this chapter.

5 4. Adopt and enforce rules and orders to effectuate the purposes of this chapter.

6 **38-24-03. Permit required.**

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

12 1. A description of the activity to be permitted.

13 2. A detailed description of the nature of the nonhydrocarbons to be stored and retrieved.

14 3. A detailed description of the mechanical construction and operating procedures of the
15 facility.

16 4. A justification for the need for the facility.

17 5. A detailed description of the subsurface geology and hydrology of the area to be
18 affected by the construction and operation of the facility.

19 6. A detailed description of the monitoring system assuring the integrity of the facility and
20 compliance with this chapter.

21 7. A detailed description of the reclamation and the restoration of the surface as nearly
22 as possible to its original condition and productivity upon expiration of the permit or
23 termination of any activity regulated by this chapter.

24 8. Any other information required by the commission.

25 **38-24-04. Denial of permit - Review.**

26 1. Following a hearing, the commission may deny an application if the commission
27 determines the facility or activity poses a threat to ground or surface waters or the
28 environment. A person denied a permit may appeal the denial in accordance with
29 chapter 28-32.

30 2. All fees collected pursuant to this chapter, must be deposited in the general fund in the
31 state treasury.

1 3. A permit required by this chapter is in addition to all other permits required by law.

2 **38-24-05. Action to restrain violation or threatened violation.**

3 The commission may bring action against a person violating or threatening to violate a

4 provision of this chapter, or a rule, regulation, or order of the commission. The action must

5 commence in the district court of the county where the violation occurred or is threatened.

6 Without the filing of a bond or other undertaking by the commission, the court may issue an

7 injunction, including a temporary restraining order, a preliminary injunction, or a temporary,

8 preliminary, or final order restraining the person from continuing the violation or from carrying

9 out the threat of violation.

10 **38-24-06. Penalties.**

11 1. A person that violates this chapter, or a rule, regulation, or order of the commission

12 adopted under this chapter is subject to a civil penalty of not more than twelve

13 thousand five hundred dollars for each violation and for each day the violation

14 occurred.

15 2. It is a class C felony for a person, for the purpose of evading this chapter, or a rule,

16 regulation, or order of the commission to:

17 a. Make or cause a false entry or statement in a report required by this chapter or

18 by a rule, regulation, or order issued or adopted by the commission;

19 b. Make or cause a false entry in a record, account, or memorandum required by

20 this chapter, or by any rule, regulation, or order of the commission;

21 c. Omit, or cause to be omitted, from a record, account, or memorandum, full, true,

22 and correct entries as required by this chapter or by any rule, regulation, or order

23 of the commission; or

24 d. Remove from this state or destroy, mutilate, alter, or falsify a record, account, or

25 memorandum.

26 3. The civil penalties provided in subsection 1 are recoverable by civil action filed by the

27 attorney general on behalf of the commission. The civil action must commence in the

28 district court of the county in which:

29 a. The defendant resides;

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

31 c. The violation occurred.

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

3 **38-24-07. Administrative procedure and judicial review.**

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

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