

Sixty-sixth  
Legislative Assembly  
of North Dakota

**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; 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:

Sixty-sixth  
Legislative Assembly

- 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, including storage, treatment, 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 **38-23-0338-23-04. 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      **38-23-0438-23-05. 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      **38-23-0538-23-06. 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      **38-23-0638-23-07. High-level radioactive waste fund.**

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.

27      **38-23-0738-23-08. High-level radioactive waste advisory council - Members, powers,**  
28      **and duties.**

29      1. The high-level radioactive waste advisory council is established to advise the  
30      commission in carrying out its duties. The council consists of the state engineer, state  
31      health officer, director of the department of transportation, director of the game and

1 fish department, the commerce commissioner, and director of the department of  
2 environmental quality, who serve as ex officio members. The state geologist shall  
3 serve as the executive secretary for the council. Additional members on the council  
4 are:

- 5 a. A representative of county government, appointed by the governor;  
6 b. A representative of city government, appointed by the governor;  
7 c. A representative of the agricultural community, appointed by the governor;  
8 d. ~~One senator~~ Two senators, appointed by the majority leader of the senate of the  
9 legislative assembly; and  
10 e. ~~One representative~~ Two representatives, appointed by the majority leader of the  
11 house of representatives of the legislative assembly.

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

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

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

20 5. The council shall:

- 21 a. Review site suitability and issue a report for a proposed high-level radioactive  
22 waste facility to the legislative assembly or commission.  
23 b. Review and make recommendations to the commission regarding rules and  
24 standards relating to high-level radioactive waste and the duties of the  
25 commission.  
26 c. Consider any other matter related to this chapter the council deems appropriate,  
27 and may make any recommendation to the commission concerning the  
28 administration of this chapter.  
29 d. Report its findings biennially to the commission and to the legislative  
30 management.

1 **38-23-0838-23-09. County zoning authority.**

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

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

7 **38-24-01. Definitions.**

8 As used in this chapter:

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

15 **38-24-02. Jurisdiction of the commission and duties.**

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

- 19 1. Require:
  - 20 a. Identification of ownership of all facilities and equipment used for the  
21 underground storage and retrieval of nonhydrocarbons.
  - 22 b. The making and filing of all logs and reports on facility location, drilling, boring,  
23 excavating, and construction and the filing of samples, core chips, and complete  
24 cores, when requested, free of charge, in the office of the state geologist.
  - 25 c. The drilling, boring, excavating, and construction of facilities in a manner  
26 preventing contamination and pollution of surface and ground water sources and  
27 the environment.
  - 28 d. The furnishing of a reasonable bond with good and sufficient surety, conditioned  
29 upon the full compliance with this chapter, and the rules and orders of the  
30 commission.

- 1 e. Metering or other measuring of all nonhydrocarbons injected, emplaced, stored,  
2 or retrieved from a facility regulated by this chapter.
- 3 f. A person operating a facility for the underground storage and retrieval of  
4 nonhydrocarbons in this state to keep and maintain complete and accurate  
5 records of the quantities and nature of material stored and retrieved, which  
6 records must be available to the commission or its agents at all times, and may  
7 require every such person to file prescribed reports with the commission.
- 8 g. Upon termination of the operation of a facility or activity regulated by this chapter,  
9 the operator of the facility to restore the surface as nearly as possible to its  
10 original condition and productivity.
- 11 2. Regulate:
  - 12 a. The testing, exploration, drilling, boring, excavating, and construction of  
13 underground storage and retrieval.
  - 14 b. Operations to assure the optimum performance of a facility regulated by this  
15 chapter.
- 16 3. Prescribe the nature, quantity, and source of nonhydrocarbons to be stored in or  
17 retrieved from a facility regulated by this chapter.
- 18 4. Adopt and enforce rules and orders to effectuate the purposes of this chapter.

19 **38-24-03. Permit required.**

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

- 25 1. A description of the activity to be permitted.
- 26 2. A detailed description of the nature of the nonhydrocarbons to be stored and retrieved.
- 27 3. A detailed description of the mechanical construction and operating procedures of the  
28 facility.
- 29 4. A justification for the need for the facility.
- 30 5. A detailed description of the subsurface geology and hydrology of the area to be  
31 affected by the construction and operation of the facility.

- 1       6. A detailed description of the monitoring system assuring the integrity of the facility and  
2           compliance with this chapter.
- 3       7. A detailed description of the reclamation and the restoration of the surface as nearly  
4           as possible to its original condition and productivity upon expiration of the permit or  
5           termination of any activity regulated by this chapter.
- 6       8. Any other information required by the commission.

7       **38-24-04. Denial of permit - Review.**

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

15      **38-24-05. Action to restrain violation or threatened violation.**

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

23      **38-24-06. Penalties.**

- 24      1. A person that violates this chapter, or a rule, regulation, or order of the commission  
25          adopted under this chapter is subject to a civil penalty of not more than twelve  
26          thousand five hundred dollars for each violation and for each day the violation  
27          occurred.
- 28      2. It is a class C felony for a person, for the purpose of evading this chapter, or a rule,  
29          regulation, or order of the commission to:
  - 30          a. Make or cause a false entry or statement in a report required by this chapter or  
31             by a rule, regulation, or order issued or adopted by the commission;

- 1           b. Make or cause a false entry in a record, account, or memorandum required by  
2           this chapter, or by any rule, regulation, or order of the commission;
- 3           c. Omit, or cause to be omitted, from a record, account, or memorandum, full, true,  
4           and correct entries as required by this chapter or by any rule, regulation, or order  
5           of the commission; or
- 6           d. Remove from this state or destroy, mutilate, alter, or falsify a record, account, or  
7           memorandum.
- 8        3. The civil penalties provided in subsection 1 are recoverable by civil action filed by the  
9        attorney general on behalf of the commission. The civil action must commence in the  
10       district court of the county in which:
- 11        a. The defendant resides;
- 12        b. Any defendant resides, if there is more than one defendant; or
- 13        c. The violation occurred.
- 14        4. The payment of penalties does not relieve a person on whom the penalty is imposed  
15        from liability to any other person for damages arising out of the violation.

16        **38-24-07. Administrative procedure and judicial review.**

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

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