

**FISCAL NOTE**  
**Requested by Legislative Council**  
**02/14/2017**

Amendment to: SB 2327

- 1 A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2015-2017 Biennium		2017-2019 Biennium		2019-2021 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures						
Appropriations						

- 1 B. **County, city, school district and township fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

	2015-2017 Biennium	2017-2019 Biennium	2019-2021 Biennium
Counties			
Cities			
School Districts			
Townships			

- 2 A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

The Bill creates the Department of Environmental Quality (DEQ) and transfers duties and responsibilities from the Department of Health (DoH) relating to environmental quality to the DEQ.

- B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

Section 1 of the bill requires the DoH to take the necessary steps to transfer the authority, powers, and duties of the department related to environmental quality as outlined in the bill. The DoH is to obtain all necessary approvals from and amend the necessary agreements with the federal agencies and other public and private entities to ensure the state continues to meet primacy requirements before July 1, 2019.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

- A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

Revenues are not impacted by the creation of the new state agency. Permits and license fees which once were deposited within the operating fund of the DoH will now be deposited into the operating fund of the DEQ.

- B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

2017- 2019 – There is no fiscal impact based on an effective date by July 1, 2019.

2019 – 2021- It is anticipated that additional FTE will be needed to handle the accounting / fiscal and the human resources functions that are needed to operate as a separate agency beyond the resources that can be transferred. The DoH will work together with the Chief of the Environmental Health Section to establish the new agency with no costs by restructuring and repurposing current positions beyond any that may be transferred.

- C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation or a part of the appropriation is included in the executive budget or relates to a continuing appropriation.*

**Name:** Brenda M. Weisz

**Agency:** DoH

**Telephone:** 328-4542

**Date Prepared:** 02/14/2017

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**Date Prepared:** 02/14/2017

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**Name:** Brenda M. Weisz

**Agency:** DoH

**Telephone:** 328-4542

**Date Prepared:** 02/09/2017

**2017 SENATE ENERGY AND NATURAL RESOURCES**

**SB 2327**

# 2017 SENATE STANDING COMMITTEE MINUTES

## Energy and Natural Resources Committee Fort Lincoln Room, State Capitol

SB 2327  
2/10/2017  
Job #28190

☐ Subcommittee  
☐ Conference Committee

Committee Clerk Signature

*Pam Dever*

**Explanation or reason for introduction of bill/resolution:** Relating to the creation of the department of environment quality & the transfer of duties & responsibilities of the department of health relating to environmental quality to the department of environmental quality; to provide a penalty; to provide a continuing appropriation; to provide for transition; & provide an effective date.

### Minutes:

Attch#1=David Glatt; Attch#2=Claire Ness;  
Attch#3=Justin Dever; Attch#4= Pete  
Hanebutt; Attch#5=Edward C. Murphy

**Vice Chair Kreun:** Let's open the hearing on SB 2327.

**Chairwoman Unruh:** (.20-4.22) I am the prime sponsor of SB 2327. This lays the ground work for the creation of a department of environmental quality for ND for the upcoming biennium. It allows for a transition. This department would be fully function standalone department. It would have a newly appointed cabinet position reporting to the governor. This department would maintain strong state primacy over all federal and state environmental programs. We need to include the newest EPA regulation like clean power plants, quod A, quad O-A, and future regulations. The development of DEQ would sent the message to EPA that we are serious about our state primacy and this is our jurisdiction. This bill has very little new language. The creation of an advisory committee for the DEQ, is new and separate from the ND Health Council. The Environmental Review Council will have 9 members and come from different regulated parts of the industry and allow for experts in environmental sciences. This looks like a long bill, but it just transfers existing authority from one section of code and creating a new section of code. Please do pass.

**David Glatt,** Interim Co-Director of ND Dept. of Health and Environmental Health Section Chief: (4.5-8.57) (see Attch#1). Here in support of SB2327 and to explain the new department. I refer to my charts I handed with my testimony. We will have a few amendments because this will be housekeeping.

**Sen. Cook:** I am thinking of the money. Is there one appropriation for the department of health for this biennium?

**David:** One Appropriations as we move forward, until we certify the break would occur.

**Sen. Oban:** Could you summarize this. Are there content changes between what you doing now and what you would be doing under this bill?

**Chairwoman Unruh:** May I interject that Claire from L.C. is here to explain the amendments.

**Dave:** The intent is to break out into a department of environmental quality intact. There is some requirement to go to the Health Council. It would go to the Environmental Review Council.

**Clair Ness**, Legislative Council: I come here neutral and to just explain the amendments and give an overview of the bill's intent. I agree with Chairwoman Unruh and David. (see Attch#2) She explained the amendment. (11.00-16.25)

**Justin Dever**, Dept. of Commerce, Co-Deputy: (see Attch#3) On behalf of EmPower ND Commission, I am here in favor of SB 2327. (16.54-18.26)

**Chairwoman Unruh:** Any questions? Any more in support? We will begin those opposed.

**Pete Hanebutt**, ND Farm Bureau: (see Attch#4) Here in opposition to SB 2327. We see this as a solution looking for a problem. Make this into a study. Do not pass.

**Sen. Oban:** (22.42) Can you tell me that not all state cooperate groups were not involved in this process?

**Pete:** We were not invited to the table.

**Sen. Oban:** Do you know who was involved?

**Pete:** Not completely.

**Chairwoman Unruh:** Any more opposition? Any agency testimony?

**Edward C. Murphy**, State Geologist: Here neutral and here to explain and give information. (see Attch#5) (23.50-25.35) We were glad that the environmental health section was being pulled out in whole. That is a real positive. I have had 30 years of interaction with the Health Dept. and I am surprised that this has not happened 30 years ago. It has been talked about for 30 years.

**Chairwoman Unruh:** You are proposing to be part of the Advisory Council?

**Edward:** That's correct. For decades, we have been on the Water Pollution Prevention Board as well as the Air Quality Board. We bring unique experiences to that because, we between industry and health department. I have taken thousands of water samples to the Health Dept. lab. We have vast experience in the environmental side.

**Chairwoman Unruh:** Any other agency testimony. Seeing none, we will close this hearing.

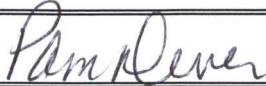
# 2017 SENATE STANDING COMMITTEE MINUTES

## Energy and Natural Resources Committee Fort Lincoln Room, State Capitol

SB 2327  
2/10/2017  
Job #28211

☐ Subcommittee  
☐ Conference Committee

Committee Clerk Signature



**Explanation or reason for introduction of bill/resolution:** Relating to the creation of the department of environments quality & transfer of duties & responsibilities of the department of health relating to environmental quality to the department of environmental quality; provide a penalty; to provide a continuing appropriation; to provide for transition; to provide an effective date.

**Minutes:**

Committee work Atch#1=Sen Unruh

**Chairwoman Unruh:** We have two amendments in front of us. The first one is what I handed out during the hearing. They corrected some language and should or should not have been moved. The chapters were tough to do. The governor had to pick was changed. I do not see the date change in here. We will have to do a separate amendment. Final effect that would make it on page 2, line 6. We have amendment 17.860.01001. (see Atch#1)

**Sen. Armstrong:** I move this amendment. **Vice Chair Kreun:** I second.

**Chairwoman Unruh:** Please take the roll. YES 7 No -0- -0- Absent

**Amendment passes.**

**Chairwoman Unruh:** Let's look at the date. I intended to have it later. Page 2, line 6.

**Sen. Armstrong:** I move to change the word January to "July" on line 6, pg. 2.

**Vice Chair Kreun:** I second.

**Chairwoman Unruh:** We will call this the Armstrong amendment.

**Sen. Cook:** If you compare this to section 68 effective date, this bill could become effective well before?

**Chairwoman Unruh:** Yes. Maybe in six months. Please call the roll on Armstrong amendment. YES 7 NO 0 -0- absent. **Amendment passes**

**Chairwoman Unruh:** We now have the 3<sup>rd</sup> amendment that Morgan passed out

**Sen. Armstrong:** I move amendment 17.0860.01000. **Vice Chair Kreun:** I second

**Roll call:** YES 7 NO 0 -0- Absent **Amendment passes**

**Chairwoman Unruh:** We have SB2327 before us as amended. Call the roll.

YES 6 NO 1 -0- absent **Bill passed as amended Sen. Armstrong will carry.**

February 7, 2017

PROPOSED AMENDMENTS TO SENATE BILL NO. 2327

Page 1, line 1, replace the second "and" with a comma

Page 1, line 2, after "23.1" insert ", and subdivision v of subsection 1 of section 54-06-04"

Page 1, line 3, replace the first "and" with a comma

Page 1, line 4, after the second "quality" insert ", and biennial reports of the department of environmental quality"

Page 1, line 15, replace "and sections" with "section"

Page 1, line 16, after the first comma insert "subsections 1 and 2 of section 61-28-02, sections 61-28-03 and 61-28-05, subsection 2 of section 61-28.1-02, subsection 15 of section 61-28.1-03, subsection 2 of section 61-28.2-01, and sections"

Page 13, line 19, after "**established**" insert " - **Director appointment**"

Page 13, line 21, after the underscored period, insert "The governor shall appoint a director of the department who shall serve at the pleasure of the governor. The position of director of the department is not a classified position, and the governor shall set the salary of the director within the limits of legislative appropriations."

Page 140, after line 23, insert:

"**SECTION 55.** Subdivision v of subsection 1 of section 54-06-04 the North Dakota Century Code is created and enacted as follows:

v. Department of environmental quality."

Page 147, after line 15, insert:

"**SECTION 65. AMENDMENT.** Subsection 1 of section 61-28-02 of the North Dakota Century Code is amended and reenacted as follows:

1. ~~"Board" means the state water pollution control board~~ "Council" means the environmental review advisory council.

**SECTION 66. AMENDMENT.** Subsection 2 of section 61-28-02 of the North Dakota Century Code is amended and reenacted as follows:

2. "Department" means the ~~state department of health~~ department of environmental quality.

**SECTION 67. AMENDMENT.** Section 61-28-03 of the North Dakota Century Code is amended and reenacted as follows:

**61-28-03. State water pollution prevention agency - ~~Board~~Council.**

1. ~~The state water pollution control board consists of thirteen persons. The board must include the state health officer, state engineer, director of the game and fish department, state geologist, and nine other members~~

appointed by the governor, three of whom must be representatives of production agriculture, two of whom must be representatives of manufacturing and processing, one of whom must be a representative of the solid fuels industry, one of whom must be a representative of the fluid and gas fuels industry, one of whom must be a representative of the environmental sciences, and one of whom must be a representative of county or municipal government.

2. ~~Of the nine members appointed by the governor, each shall serve six-year terms. The governor may fill any vacancy in the appointed membership of the board, and may remove any appointed member for cause.~~
3. ~~The board shall select its own chairman from among its members. The heads of departments on the board may, by official order filed with the executive secretary of the board, designate a representative of the person's department to perform the duties of the member making the designation. That person, if any, shall have the powers and be subject to the duties and responsibilities of the appointing office.~~
4. ~~All members of the board shall serve without compensation for their duties, but must be reimbursed for necessary travel and other expenses incurred in the performance of their official duties. Reimbursement must be paid out of funds allocated to the department for water pollution control.~~
5. ~~The department shall provide the boardcouncil with copies of maps, plans, documents, studies, surveys, and all other necessary information in order that the boardso the council may be fully cognizant of the current status of water pollution and its control in the state and to enable the board to advise the department in development of programs for the prevention and control of pollution of waters in the state.~~
6. ~~The board shall hold at least one regular meeting each year, and any additional meetings the chairman deems necessary, at a time and place to be determined by the chairman. Upon written request of any three members, the chairman shall call a special meeting. Seven members constitute a quorum.~~
- 7.2. ~~The boardcouncil shall consider and make recommendations regarding any rules and standards relating to water quality or pollution, ground water protection, and safe drinking of water that are adopted by the department. The department may not take final action on any rules or standards without consulting the boardcouncil. The boardcouncil shall consider any other matters related to the purposes of this chapter and may make recommendations on its own initiative to the department concerning the administration of this chapter.~~

**SECTION 68. AMENDMENT.** Section 61-28-05 of the North Dakota Century Code is amended and reenacted as follows:

**61-28-05. Rules and standards.**

The department may adopt rules and, jointly with the boardcouncil, shall hold public hearings regarding the adoption, amendment, or repeal of rules and standards of quality of the waters of the state as provided in this chapter.

**SECTION 69. AMENDMENT.** Subsection 2 of section 61-28.1-02 of the North Dakota Century Code is amended and reenacted as follows:

2. "Department" means the ~~state department of health~~department of environmental quality.

**SECTION 70. AMENDMENT.** Subsection 15 of section 61-28.1-03 of the North Dakota Century Code is amended and reenacted as follows:

15. Designate the ~~state department of health~~department of environmental quality as the state safe drinking water agency for all purposes of the federal Safe Drinking Water Act and is authorized to take all actions necessary and appropriate to secure for the state the benefit of such Act and any grants made thereunder.

**SECTION 71. AMENDMENT.** Subsection 2 of section 61-28.2-01 of the North Dakota Century Code is amended and reenacted as follows:

2. There is established the water pollution control revolving loan fund, which must be maintained and operated by the ~~state department of health~~department of environmental quality. Grants from the federal government or its agencies allotted to the state for the capitalization of the revolving loan fund, and state matching funds when required, must be deposited directly in the revolving loan fund in compliance with the terms of the federal grant. Money in the revolving loan fund must be expended in a manner consistent with terms and conditions of the grants received by the state and may be used to offer loan guarantees; to provide payments to reduce interest on loans and loan guarantees; to make bond interest subsidies; to provide bond guarantees on behalf of municipalities, other local political subdivisions, and intermunicipal or interstate agencies; to provide assistance to a municipality, other local political subdivisions, or intermunicipal or interstate agencies with respect to the nonfederal share of the costs of a project; to finance the cost of facility planning and the preparation of plans, specifications, and estimates for construction of publicly owned treatment works or public water supply systems; to provide financial assistance for the construction and rehabilitation of a project on the state priority list; to secure principal and interest on bonds issued by a public trust having the state of North Dakota as its beneficiary, or the public finance authority if the proceeds of such bonds are deposited in the revolving loan fund and to the extent provided in the terms of the federal grant; to provide for loan guarantees for similar revolving funds established by municipalities, other local political subdivisions, or intermunicipal agencies; to purchase debt incurred by municipalities or other local political subdivisions for wastewater treatment projects or public water supply systems; to improve credit market access by guaranteeing or purchasing insurance or other credit enhancement devices for local obligations or obligations of a public trust having the state of North Dakota as its beneficiary or the public finance authority; to fund other programs which the federal government authorizes by the terms of its grants; to fund the administrative expenses of the department associated with the revolving loan fund; and to provide for any other expenditure consistent with the federal grant program and state law. Money not currently needed for the operation of the revolving loan fund or otherwise dedicated may be

invested. All interest earned on investments must be credited to the revolving loan fund."

Page 149, line 1, replace "67" with "75"

Renumber accordingly

17.0860.01000

Sixty-fifth  
Legislative Assembly  
of North Dakota

*Amend - 3* *g/b*

INTERN DRAFT AMENDMENT FOR SB 2327

Page 13,—change list starting at line 28

*The section will now read:*

**23.1 - 01 - 02. Environmental review advisory council - Members, powers, and duties.**

1. The environmental review advisory council is established to advise the department of environmental quality in carrying out its duties. The council consists of eleven members appointed by the governor, and the director of the department of environmental quality or the director's designee shall serve as the executive secretary for the council. The members must be:

1. A representative of agriculture;
2. A representative of manufacturing and processing;
3. A representative of thermal electric generators industry;
4. A representative of the solid fuels industry;
5. A representative of the liquid and gas fuels industry;
6. A representative of the solid waste industry;
7. A representative of the hazardous waste industry;
8. A representative of county or municipal government;
9. A representative of the environmental sciences;
10. The state engineer; and
11. The state geologist.

February 10, 2017

C1  
2-10-17  
p. 1 of 4

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Page 13, line 21, after the underscored period, insert "The governor shall appoint a director of the department who shall serve at the pleasure of the governor. The position of director of the department is not a classified position, and the governor shall set the salary of the director within the limits of legislative appropriations."

Page 13, line 24, replace "nine" with "eleven"

Page 14, line 2, replace "Two representative of environmental sciences" with "A representative of the solid waste industry"

Page 14, line 3, replace "The state engineer; and" with "A representative of the hazardous waste industry."

Page 14, line 4, replace "The state geologist." with "A representative of the thermal electric generators industry."

i. A representative of the environmental sciences;

j. The state engineer; and

k. The state geologist."

Page 140, after line 23, insert:

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2. ~~Of the nine members appointed by the governor, each shall serve six-year terms. The governor may fill any vacancy in the appointed membership of the board, and may remove any appointed member for cause.~~
3. ~~The board shall select its own chairman from among its members. The heads of departments on the board may, by official order filed with the executive secretary of the board, designate a representative of the person's department to perform the duties of the member making the designation. That person, if any, shall have the powers and be subject to the duties and responsibilities of the appointing office.~~
4. ~~All members of the board shall serve without compensation for their duties, but must be reimbursed for necessary travel and other expenses incurred in the performance of their official duties. Reimbursement must be paid out of funds allocated to the department for water pollution control.~~
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- 7-2. The ~~board~~council shall consider and make recommendations regarding any rules and standards relating to water quality or pollution, ground water protection, and safe drinking of water that are adopted by the department. The department may not take final action on any rules or standards without consulting the ~~board~~council. The ~~board~~council shall consider any other matters related to the purposes of this chapter and may make recommendations on its own initiative to the department concerning the administration of this chapter.

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15. Designate the ~~state department of health~~department of environmental quality as the state safe drinking water agency for all purposes of the federal Safe Drinking Water Act and is authorized to take all actions necessary and appropriate to secure for the state the benefit of such Act and any grants made thereunder.

**SECTION 71. AMENDMENT.** Subsection 2 of section 61-28.2-01 of the North Dakota Century Code is amended and reenacted as follows:

2. There is established the water pollution control revolving loan fund, which must be maintained and operated by the ~~state department of health~~department of environmental quality. Grants from the federal government or its agencies allotted to the state for the capitalization of the revolving loan fund, and state matching funds when required, must be deposited directly in the revolving loan fund in compliance with the terms of the federal grant. Money in the revolving loan fund must be expended in a manner consistent with terms and conditions of the grants received by the state and may be used to offer loan guarantees; to provide payments to reduce interest on loans and loan guarantees; to make bond interest subsidies; to provide bond guarantees on behalf of municipalities, other local political subdivisions, and intermunicipal or interstate agencies; to provide assistance to a municipality, other local political subdivisions, or intermunicipal or interstate agencies with respect to the nonfederal share of the costs of a project; to finance the cost of facility planning and the preparation of plans, specifications, and estimates for construction of publicly owned treatment works or public water supply systems; to provide financial assistance for the construction and rehabilitation of a project on

C1  
2-10-17  
p. 4 of 4

the state priority list; to secure principal and interest on bonds issued by a public trust having the state of North Dakota as its beneficiary, or the public finance authority if the proceeds of such bonds are deposited in the revolving loan fund and to the extent provided in the terms of the federal grant; to provide for loan guarantees for similar revolving funds established by municipalities, other local political subdivisions, or intermunicipal agencies; to purchase debt incurred by municipalities or other local political subdivisions for wastewater treatment projects or public water supply systems; to improve credit market access by guaranteeing or purchasing insurance or other credit enhancement devices for local obligations or obligations of a public trust having the state of North Dakota as its beneficiary or the public finance authority; to fund other programs which the federal government authorizes by the terms of its grants; to fund the administrative expenses of the department associated with the revolving loan fund; and to provide for any other expenditure consistent with the federal grant program and state law. Money not currently needed for the operation of the revolving loan fund or otherwise dedicated may be invested. All interest earned on investments must be credited to the revolving loan fund."

Page 149, line 1, replace "67" with "75"

Renumber accordingly

Date: 2-10-17  
Roll Call Vote #: 1

2017 SENATE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. SB 2327

Senate Energy and Natural Resources Committee

☐ Subcommittee

Amendment LC# or Description: 17.0860.01001

Recommendation: ☒ Adopt Amendment  
☐ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation  
☐ As Amended ☐ Rerefer to Appropriations  
☐ Place on Consent Calendar  
Other Actions: ☐ Reconsider ☐

Motion Made By Sen Armstrong Seconded By Sen Kreun

Senators	Yes	No	Senators	Yes	No
Chair Jessica Unruh	/		Sen. Erin Oban	/	
Vice Chair Curt Kreun	/				
Sen. Kelly Armstrong	/				
Sen. Dwight Cook	/				
Sen. Jim Roers	/				
Sen. Don Schaible	/				

Total (Yes) 7 No -0-

Absent -0-

Floor Assignment \_\_\_\_\_

If the vote is on an amendment, briefly indicate intent:

*Amendment passed*

Date: 2-10-17  
Roll Call Vote #: 2

2017 SENATE STANDING COMMITTEE

ROLL CALL VOTES  
BILL/RESOLUTION NO. SB 2327

Senate Energy and Natural Resources

Committee

☐ Subcommittee

Amendment LC# or Description: change page 2, line 6 from Jan. to July  
(strike January add July)

Recommendation: ☒ Adopt Amendment  
☐ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation  
☐ As Amended ☐ Rerefer to Appropriations  
☐ Place on Consent Calendar  
Other Actions: ☐ Reconsider ☐ \_\_\_\_\_

Motion Made By \_\_\_\_\_ Seconded By \_\_\_\_\_

Senators	Yes	No	Senators	Yes	No
Chair Jessica Unruh	/		Sen. Erin Oban	/	
Vice Chair Curt Kreun	/				
Sen. Kelly Armstrong	/				
Sen. Dwight Cook	/				
Sen. Jim Roers	/				
Sen. Don Schaible	/				

Total (Yes) 7 No -0-

Absent -0-

Floor Assignment \_\_\_\_\_

If the vote is on an amendment, briefly indicate intent:

*amendment passed*

Date: 2-10-17  
Roll Call Vote #: 3

2017 SENATE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. SB 2327

Senate Energy and Natural Resources Committee

☐ Subcommittee

Amendment LC# or Description: 17.0860.01002

Recommendation: ☒ Adopt Amendment  
☐ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation  
☐ As Amended ☐ Rerefer to Appropriations  
☐ Place on Consent Calendar  
Other Actions: ☐ Reconsider ☐ \_\_\_\_\_

Motion Made By Sen. Armstrong Seconded By Sen. Kreun

Senators	Yes	No	Senators	Yes	No
Chair Jessica Unruh	/		Sen. Erin Oban	/	
Vice Chair Curt Kreun	/				
Sen. Kelly Armstrong	/				
Sen. Dwight Cook	/				
Sen. Jim Roers	/				
Sen. Don Schaible	/				

Total (Yes) 7 No -0-

Absent -0-

Floor Assignment \_\_\_\_\_

If the vote is on an amendment, briefly indicate intent:

*Amendment passed*

Date: 2-10-17  
Roll Call Vote #: 4

2017 SENATE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. SB 2327

Senate Energy and Natural Resources Committee

☐ Subcommittee

Amendment LC# or Description: 17.0860.61002

Recommendation: ☐ Adopt Amendment  
☒ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation  
☒ As Amended ☐ Rerefer to Appropriations  
☐ Place on Consent Calendar  
Other Actions: ☐ Reconsider ☐ \_\_\_\_\_

Motion Made By Sen. Kreun Seconded By Sen. Armstrong

Senators	Yes	No	Senators	Yes	No
Chair Jessica Unruh	/		Sen. Erin Oban		/
Vice Chair Curt Kreun	/				
Sen. Kelly Armstrong	/				
Sen. Dwight Cook	/				
Sen. Jim Roers	/				
Sen. Don Schaible	/				

Total (Yes) 6 No -1-

Absent -0-

Floor Assignment Sen. Armstrong

If the vote is on an amendment, briefly indicate intent:

**REPORT OF STANDING COMMITTEE**

**SB 2327: Energy and Natural Resources Committee (Sen. Unruh, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (6 YEAS, 1 NAYS, 0 ABSENT AND NOT VOTING). SB 2327 was placed on the Sixth order on the calendar.

Page 1, line 1, replace the second "and" with an underscored comma

Page 1, line 2, after "23.1" insert ", and subdivision v of subsection 1 of section 54-06-04"

Page 1, line 3, replace the first "and" with an underscored comma

Page 1, line 4, after the second "quality" insert ", and biennial reports of the department of environmental quality"

Page 1, line 15, replace "and sections" with "section"

Page 1, line 16, after the first comma insert "subsections 1 and 2 of section 61-28-02, sections 61-28-03 and 61-28-05, subsection 2 of section 61-28.1-02, subsection 15 of section 61-28.1-03, subsection 2 of section 61-28.2-01, and sections"

Page 2, line 6, replace "January" with "July"

Page 13, line 19, after "**established**" insert " - **Director appointment**"

Page 13, line 21, after the underscored period, insert "The governor shall appoint a director of the department who shall serve at the pleasure of the governor. The position of director of the department is not a classified position, and the governor shall set the salary of the director within the limits of legislative appropriations."

Page 13, line 24, replace "nine" with "eleven"

Page 14, line 2, replace "Two representative of environmental sciences" with "A representative of the solid waste industry"

Page 14, line 3, replace "The state engineer; and" with "A representative of the hazardous waste industry."

Page 14, line 4, replace "The state geologist." with "A representative of the thermal electric generators industry."

i. A representative of the environmental sciences;

j. The state engineer; and

k. The state geologist."

Page 140, after line 23, insert:

**"SECTION 55.** Subdivision v of subsection 1 of section 54-06-04 the North Dakota Century Code is created and enacted as follows:

v. Department of environmental quality."

Page 147, after line 15, insert:

**"SECTION 65. AMENDMENT.** Subsection 1 of section 61-28-02 of the North Dakota Century Code is amended and reenacted as follows:

1. ~~"Board" means the state water pollution control board~~ "Council" means the environmental review advisory council.

**SECTION 66. AMENDMENT.** Subsection 2 of section 61-28-02 of the North Dakota Century Code is amended and reenacted as follows:

2. "Department" means the ~~state department of health~~department of environmental quality.

**SECTION 67. AMENDMENT.** Section 61-28-03 of the North Dakota Century Code is amended and reenacted as follows:

**61-28-03. State water pollution prevention agency - ~~Board~~Council.**

1. ~~The state water pollution control board consists of thirteen persons. The board must include the state health officer, state engineer, director of the game and fish department, state geologist, and nine other members appointed by the governor, three of whom must be representatives of production agriculture, two of whom must be representatives of manufacturing and processing, one of whom must be a representative of the solid fuels industry, one of whom must be a representative of the fluid and gas fuels industry, one of whom must be a representative of the environmental sciences, and one of whom must be a representative of county or municipal government.~~
2. ~~Of the nine members appointed by the governor, each shall serve six year terms. The governor may fill any vacancy in the appointed membership of the board, and may remove any appointed member for cause.~~
3. ~~The board shall select its own chairman from among its members. The heads of departments on the board may, by official order filed with the executive secretary of the board, designate a representative of the person's department to perform the duties of the member making the designation. That person, if any, shall have the powers and be subject to the duties and responsibilities of the appointing office.~~
4. ~~All members of the board shall serve without compensation for their duties, but must be reimbursed for necessary travel and other expenses incurred in the performance of their official duties. Reimbursement must be paid out of funds allocated to the department for water pollution control.~~
5. The department shall provide the ~~board~~council with copies of maps, plans, documents, studies, surveys, and all other necessary information ~~in order that the board~~so the council may be fully cognizant of the current status of water pollution and its control in the state and to enable the board to advise the department in development of programs for the prevention and control of pollution of waters in the state.
6. ~~The board shall hold at least one regular meeting each year, and any additional meetings the chairman deems necessary, at a time and place to be determined by the chairman. Upon written request of any three members, the chairman shall call a special meeting. Seven members constitute a quorum.~~
7. ~~2.~~ The ~~board~~council shall consider and make recommendations regarding any rules and standards relating to water quality or pollution, ground water protection, and safe drinking of water that are adopted by the department. The department may not take final action on any rules or standards without consulting the ~~board~~council. The ~~board~~council shall consider any other matters related to the purposes of this chapter and may make recommendations on its own initiative to the department concerning the administration of this chapter.

**SECTION 68. AMENDMENT.** Section 61-28-05 of the North Dakota Century Code is amended and reenacted as follows:

**61-28-05. Rules and standards.**

The department may adopt rules and, jointly with the ~~board~~council, shall hold public hearings regarding the adoption, amendment, or repeal of rules and standards of quality of the waters of the state as provided in this chapter.

**SECTION 69. AMENDMENT.** Subsection 2 of section 61-28.1-02 of the North Dakota Century Code is amended and reenacted as follows:

2. "Department" means the ~~state department of health~~department of environmental quality.

**SECTION 70. AMENDMENT.** Subsection 15 of section 61-28.1-03 of the North Dakota Century Code is amended and reenacted as follows:

15. Designate the ~~state department of health~~department of environmental quality as the state safe drinking water agency for all purposes of the federal Safe Drinking Water Act and is authorized to take all actions necessary and appropriate to secure for the state the benefit of such Act and any grants made thereunder.

**SECTION 71. AMENDMENT.** Subsection 2 of section 61-28.2-01 of the North Dakota Century Code is amended and reenacted as follows:

2. There is established the water pollution control revolving loan fund, which must be maintained and operated by the ~~state department of health~~department of environmental quality. Grants from the federal government or its agencies allotted to the state for the capitalization of the revolving loan fund, and state matching funds when required, must be deposited directly in the revolving loan fund in compliance with the terms of the federal grant. Money in the revolving loan fund must be expended in a manner consistent with terms and conditions of the grants received by the state and may be used to offer loan guarantees; to provide payments to reduce interest on loans and loan guarantees; to make bond interest subsidies; to provide bond guarantees on behalf of municipalities, other local political subdivisions, and intermunicipal or interstate agencies; to provide assistance to a municipality, other local political subdivisions, or intermunicipal or interstate agencies with respect to the nonfederal share of the costs of a project; to finance the cost of facility planning and the preparation of plans, specifications, and estimates for construction of publicly owned treatment works or public water supply systems; to provide financial assistance for the construction and rehabilitation of a project on the state priority list; to secure principal and interest on bonds issued by a public trust having the state of North Dakota as its beneficiary, or the public finance authority if the proceeds of such bonds are deposited in the revolving loan fund and to the extent provided in the terms of the federal grant; to provide for loan guarantees for similar revolving funds established by municipalities, other local political subdivisions, or intermunicipal agencies; to purchase debt incurred by municipalities or other local political subdivisions for wastewater treatment projects or public water supply systems; to improve credit market access by guaranteeing or purchasing insurance or other credit enhancement devices for local obligations or obligations of a public trust having the state of North Dakota as its beneficiary or the public finance authority; to fund other programs which the federal government authorizes by the terms of its grants; to fund the administrative expenses of the department associated with the revolving loan fund; and to provide for any other expenditure consistent with the federal grant program and

state law. Money not currently needed for the operation of the revolving loan fund or otherwise dedicated may be invested. All interest earned on investments must be credited to the revolving loan fund."

Page 149, line 1, replace "67" with "75"

Renumber accordingly

**2017 HOUSE ENERGY AND NATURAL RESOURCES**

**SB 2327**

# 2017 HOUSE STANDING COMMITTEE MINUTES

## Energy and Natural Resources Committee Coteau –A Room, State Capitol

SB 2327  
3/3/2017  
28683

☐ Subcommittee  
☐ Conference Committee

Committee Clerk Signature

*Kathleen Davis*

### Explanation or reason for introduction of bill/resolution:

Relating to the creation of the department of environment quality & the transfer of duties & responsibilities of the department of health relating to environmental quality to the department of environmental quality; to provide a penalty; to provide a continuing appropriation; to provide for transition; & provide an effective date

### Minutes:

Attachments 1-12

**Vice Chairman Damschen:** Called the committee to order on SB 2327. The clerk took roll call and read the short title of the bill.

**Sen. Jessica Unruh,** Dist 33: Sponsor of the bill SB2327 presented Attachment 1 and 1A . This bill lays the groundwork for the creation of a Dept. of Environmental Quality for the state of ND.

**Rep. Lefor:** You made a statement, "maintain our state's strong primacy." What do you mean by that?

**Sen. Unruh:** Primacy is what allows the state of ND, be it through the PSC, Industrial Commission, or the health department, to take a federal regulation and implement it here at the state level. So the state will through these departments create additional rules to make sure we are following all of the federal regulations at the federal levels. If we don't have primacy, the EPA would be able to come in to the state of ND and regulate our industries, rather than having our own state health department in the version of the DEQ regulating our industries.

**Vice Chairman Damschen:** I think of the MN DNR. The Minnesotans say that means darn near Russia. I'm wondering, what is the potential for this to turn into something like that? Are we safeguarded against that in this language?

**Sen. Unruh:** what this really does only makes a few changes. Everything the health department, the environmental quality with the health department was doing before, they will do under this new structure. It changes the head of the environmental quality division to a governor appointee, from what I know, Mr. Glatt, has already been attending a lot of the cabinet meetings with the governor. So this would be elevating that position to a level that

really it's already performing. It just doesn't have that specific title. It also allows for us to focus more on the environmental end of things rather than having our medical health section of the board pick the person who should be responsible for environmental quality and enforcement in our state and elevates that to a new level so that we can show how important we think the environment is. Environmental specialists say, I've trained in this, I think it's a very very good thing, but I also think the legislature maintains the same level of control that it had over the department before and if there are things we think are getting out of hand, all of these rules have to go through the administrative rules process, just like they did before, and will of course always have oversight over them. So I don't see that as a concern given it really isn't changing much of the structure. It'll function the same.

**11:43**

**Rep. Heinert:** Would any additional FTE's added to this department?

**Sen. Unruh:** I do not believe that would be the case but will allow Mr. Glatt speak to that.

**Rep. Seibel:** How many states have their DEQ separate from their Dept. of Public Health, do you know?

**Sen. Unruh:** I don't have a total number for you. As we looked at how to do this, Oklahoma made a recent transition to a Dept. of Environmental Quality. It took them a couple of years to do the same thing. They're the most recent state to make the transition. We also looked at states like MS and TX to see how they have their structure. We tried to make sure if there was anything they were doing better that we would try to implement it into this, but we're also balancing those investigations with what the current structure is because nothing is broken here. Things are working the way they should but we just want the importance of the department to be seen. I think we can shift the structure over, elevate the importance of the department and then down the road as we continue to make this transition, if there are changes to make in what the purview of what the Dept. of Environment Quality oversees, we can start to make those changes. We've already started to reinvent government this legislative session but this gets us one step closer to make any other changes from any departments and move them here. If we see other changes that need to be made. This step has to be done here and done dutifully and that's what this bill does.

**Vice Chairman Damschen:** Are we taking a lot for granted when we say we can have primacy without the federal agency giving it up?

**Sen. Unruh:** Primacy is the #1 concern. If we can't retain primacy of our programs through the environmental quality section, then this- there's 2 triggers with this bill. One is we retain primacy for all of the federal program implemented through the department of environment quality department of health, or the hard deadline which is after the next legislative session. So primacy is the #1 concern here. This structure, in my conversation with others, appears to be satisfactory for the EPA for us to be able to continue to do that and I think provides a strong message to them that we are taking this very very seriously.

**Rep. Roers Jones:** This plan has been discussed with the EPA? Is that what you're stating? This is a process we're developing in conjunction with the EPA to maintain control over our environmental quality standards so we don't have them breathing down our neck all the time?

**Sen. Unruh:** I have not had those conversations. As we developed how this bill would look, we had a lot of conversations with Mr. Glatt. He's the expert on this, certainly not me. He did not have any concerns regarding the EPAs approve for our state's primacy programs.

**Rep. Devlin:** When you had it on the Senate side did you talk about dividing agriculture and oil so to speak, the energy industry from the agriculture industry, and having two divisions in this? The area I represent, they're very concerned about this, and I don't think just putting one more livestock person on the advisory board or whatever does them no early good. I would much rather, and I'm not convinced we should, but maybe we need a division of livestock and nutrient management is once suggestion, two equal divisions. Obviously ag has always been the largest industry in the state. In more recent years that may have changed but I don't think you can leave them at the table with such a small representation. I don't think that makes any sense at all for the ag industry. I was wondering if you had any discussions because OK did not take ag in it when they did it. I was thinking a better approach if we going to go down this road.

**Rep. Unruh:** Two points to make. One to make this transition an easy one for the environmental section of the health department, we wanted to keep everything the same. All the functions they did before they do under this bill. They are simply calling themselves something different with a different structure that overseas their rule making process. We did not look at pulling out any sections, whether ag, oil and gas, or coal. We wanted to start this transition simply by shuffling all of the same duties into this new department. We had requests to take some of those different industries and do something a little different here, and that isn't what I wanted to do. I want it to function exactly as it was as the step one in making this new department of environment quality. I think it's important for us to take our time and keep everything the same. And when we come back in two years and see something not working right, we can make more changers, whether in ag industry or any of our fossil fuels industry. I think agriculture still is the No.1 ND industry which of course I love because I come from an agriculture district. As to the structure of the new board, I mention in my testimony, there were 2 advisory councils previous to this bill. The air pollution control advisory council, which ag did not have a representative on, and the water pollution control board, which ag had 3 representatives on, and also the committee that oversaw the rule making process on ND Health Council, also had no ag representation on it. So as I took a look at the previous structure and the previous makeup of the boards, I wanted to make sure everybody was equally represented and we missed some of that in the first round. We had to make some changes on the Senate side to include solid waste and hazardous waste because they had representation on one of the boards before but I didn't have them on the new board. I think one could argue when you're going from those 33 positions down to 11 in an effort to create, to eliminate some of those bureaucratic positions. That was my goal here to eliminate some of the bureaucracy that all of conservatives complain about all the time. To reduce that number down to as minimal possible and still make sure everyone had representation. That's why the boards is structured the way it is. We made changes on the Senate side to better reflects what the health department will be working on, if the committee decides to make some changes to that too, I'm sure we can talk about that as we move forward on this bill.

**Rep. Marschall:** You mentioned this will eliminate some redundant agencies. Is there specific language in here that eliminates those agencies?

**Rep. Unruh:** It doesn't eliminate any agencies, but it does eliminate the oversight board, the advisory boards that were previously in place. The house council stays the same as it did prior to. But the air pollution control advisory board and the state water pollution control board are eliminated somewhere in the bill. Off the top of my head I cannot reference the page number. I'm certain we can find that and get you that information.

**Chairman Porter:** Mr. Glatt can find that as he's doing his testimony. Further questions for Sen. Unruh? The only question I have is inside of the bill; we talk about making sure we keep primacy. In those areas where we want to gain primacy, was there a discussion on what would be required inside of the bill to go after primacy in other areas that we don't have primacy from the federal government?

**Sen. Unruh:** That's a great question. It's my understanding that the health department have the same ability that they previously had to obtain any new programs as before so long as they have the staff to do it within the budget. I'm sure Mr. Glatt can answer that better than I. That would be great if this would result in us taking over primacy for more federal programs and not having the EPA and others knocking at our doors here in this state I think would be fabulous.

22:40

**Rep. Keith Kempenich,** which includes Adams, Bowman, Slope, Golden Valley, parts of Dunn, and McKenzie Counties, co-sponsor of the bill: This started about last summer with a conversation and got involved later in the later. It's an idea floated looking at other states and how they handle the environmental section of the health department. A lot of the states have separated out those agencies into individual agencies. That's what this bill is basically trying to do. It was apparent right away this was going to take a longer time than trying to do something in on biennium. It's been brought up the board make up was one of the concerns. That becomes a blended issue and that's one of the things this committee will have to look into to see what is the right mix of this. One of the question on the board make up, there's 3 at the bottom, it's blended in, there's an environmental scientist, a state engineer, and a state geologist. They're already in state agencies. How the board is made up is one of the more contentious issues of what this committee will have to look at. Right now in ND there isn't an issue of how the environmental section of the health departments, they've been pretty autonomous and it's been working. The idea of this bill is to keep that type of culture going forward. Keep politics out of it. Keep it more science based and more common sense which become an oxymoron on some days but that's the intent of what this bill is trying to do is to keep what we have today in the future. We do have a known factor of how the state of ND, and how we want to keep the environment safe. We also need a culture within that realm that will work with what's happening within the state of ND. That's the intent of what this bill is trying to do to keep that. It was brought up about primacy issues and that's one of the issues. This bill will not save any money and will probably cost more in the future to do that because the whole idea is to get the right quality type of people in this agency and running with the science based and some common sense of what's going on. Not just a one size fits

all mentality. Tried to delay the effective date. The two departments, you're splitting up the environmental section, you're splitting up the health department too. So there's two divisions here. Some operate autonomous already and some like the human resources are melded together and that's why it's going to take time to separate this out. We want to make sure we don't jeopardize what we have today with the relationship with the EPA and don't lose anything and actually gain in the process.

28:00

**Rep. Mitskog:** Have you all consulted with the governor since it's my understand that he's got a plan to reinvent state government and improve efficiencies and lower costs? I'm curious if he's been part of these conversations.

**Rep. Kempenich:** This genius started last summer so the current governor wasn't involved in conversations. He's aware. It hasn't been formal. My understanding that he supports kinda what this is attempting to do but outside of that we haven't had any in depth conversations. The governors involved when you look at the makeup of the advisory board. There's been conversations with the EPA but that's been mainly with conversations with the chief environmental officer, Dave Glatt. That's been the conversation since the beginning of the session, actually before that. The biggest thing is to preserve what's been going on in the state. People say you're trying to fix something that's not broken and in a way that's probably true. But on the other side we want stability in this agency going forward into the years to come. Right now you have a medical doctor that's basically over all. They're interested in what's going on but in the past, and I'm talking 6-8-10 years ago, the former health officer decided that air quality wasn't something they wanted to get in to. The budgets were tight so they decided not to take that on from the EPA and let the EPA keep it. That's just one example of different types of thinking that goes on when you have different types of officers. It isn't going to save us any money but will enhance what we're trying to do. This state being agriculture and energy producing state which is our bread and butter, this agency probably has more impact on any one agency in the state as far as how things move forward. This bill is an attempt to have stability going in to the future as what we know today.

**Rep. Mitskog:** I look at this organizational chart is a big organization. I can see where off to the right, Mr. Glatt's environmental health department, is probably operated autonomously and been able to do independent things and preserving that is important. I look at this, the opportunity with our limited state funds and budget issues, to comprehensively look at the whole department and rather than just chopping off one part of it. So that's why I was curious about conversations with the governor and if he had a plan for restructuring departments. My fear when we look at changes like this, and now essentially a new department, it could be perceived that we are growing government.

**Rep. Kempenich:** It could. But we're not recreating any, in a way we are. We're not creating something from scratch. It's something that's existing. Going forward this probably isn't going to save anything per say as far as money wise on the health department side. That's another. I haven't looked into the health department side of the coin if there's something. That's a whole other conversation. This bill is mainly focused on the environmental section. Like I said you're splitting 2, you're creating 2 agencies with it so I, that's one questions we probably should have got into a little deeper is how it affects the health department more because this

has been mainly conversation about the environmental section of the health department. You know the health department in general hasn't been as big a conversation. Probably but I think that's what's going to come out here the details will come out as we move forward with this. I think the intent though was to have an environmental section, an environmental agency that is autonomous from the health department, of the management type structure that's currently there today. That's basically what this bill is attempting to do. There's a fiscal note to it obviously. I don't think it's big but it, like I said, going forward this is, I think the intent is to get quality people and get people at a level they're at today and have it where it's functioning where the state ND is at today.

**Rep. Devlin:** I appreciate your honesty when you say it's going to cost more money. I'm just trying to think of any other time in state history where we split up agencies that we ended up with a more efficient smaller form of government. I can't think of that happening. Perhaps you can.

**Rep. Kempenich:** No, like I said, it might become more efficient in the way of operation but as far as decreasing people, it'd be nice if it would stay the same and you wouldn't increase but I don't envision it decreasing anything. Truthfully it all depends on what the federal, because this agency, this environmental section is driven by the federal government. The sandbox that's getting played in is dictated by the federal government. We can play around the edges as far as the state goes but at the end of the day the federal government unless the current administration decides to do away with EPA and throw it back on the state's coffers which is very possible. Truthfully that's probably, I heard the person that actually started the EPA, one of the champions back in the 70's said federally this organization should disappear and it should be back in the state preview. That's another issue. I think the idea behind it that we have people in there that the regulated community can work with and not something that's going out to punish and work with and that's what I think this bill is trying to do so that we have people that are working with the regulated community and can function within our economy. Like I said that's agriculture and energy, manufacturing. Like I said the committee with play more around with that advisory board as far as what's comfortable of the regulated community. That's advisory board, the function is only going to work to a point, because the environment chief and the people within the agency can only move so far. That advisory board isn't going to change, liberalize federal policies or anything like that so that's just what, that's why I see that kind of as an advisory board. This box is only going to be so big. That's what we get to live with. I don't see this getting any smaller or grow a lot either because as far as FTEs and stuff in it.

**38:35**

**David Glatt,** Environmental Health Section Chief for ND Dept. of Health, presented Attachment 2 in support of SB 2327.

**Chairman Porter:** Before you start, I want to draw attention to the committee of the analysis that legislative council did for Sen. Unruh. As Mr. Glatt walks through the sections, that would be a great place to put your cliff notes into and see the relevant changes, section by section in the bill. This is the complete breakdown provided to us by LC.

**David Glatt:** What I plan to do is go through testimony and we have some amendments that will walk through it by section and have Maggie Olson, our representative walk you through that where the changes are. In general, the vast majority is changes in name to DEQ to show the breadth of activities that the health department, through the DEQ, or environmental health have been involved in.

**47:45**

**Chairman Porter:** explain the current process of rules and regulations and how the environmental health section interacts with the state health council. I passed out to all the members the responsibilities of the health council and the membership makeup of the council so that it's important everyone understand the current chain you run through and how this lays out the new pathway of regulation.

**48:29**

**Glatt:** continued with his presentation

**50:43**

**Chairman Porter:** Over your experience inside of the environmental health section, you end up in front of the health council on two sides of this equation. When I look up the membership of the health council there's only 1 member that's an energy member. All the rest seem to be consumers and hospitals, nursing homes kind of health care. It appears the level of expertise you're going to is more on the health care side and designed for hospitals and nursing homes than it is on the environmental health side.

**Glatt:** That's correct. If you look back in history, the 50s-60s when we're developing the health department, even the laws they reference sanitary engineer. A lot of the environmental work done at that time had a direct public health medical issue. It was inappropriate handling of human waste, trash, etc. It was appropriate at that time to talk to doctors, and to make sure diseases weren't being transmitted, etc. Where we're at now that the technology, the issues with environmental quality has so far gone beyond that. If we meet with the council, back in the 50s-60s, that made sense. Now we meet with the council and no disparaging of the health council, we're out of the power zone. They really don't understand many of the very complex issues we deal with. They have a tendency to look, yep that looks good and move on rather than looking into it. With this environmental quality advisory board, you're going to have people on that board involved in the industry. They're involved in the science and understand the regulations, the why and why not they should be put into place. That's our fundamental difference as we move forward and we're looking for expertise involved in the industry and environmental protection. They understand the science minded.

**Chairman Porter:** Your group deals a lot with local public health units on food, lodging, components, etc on safety in the public health side. The public health units also have their component as the patient care side of the nurses, doing vaccines. How do you see the interaction from your agency in working in conjunction with those local public health units doing their functions they choose to do?

**Glatt:** Food and lodging will stay with the health department. I think it's appropriate to stay in that area. We believe local public health units are important to the work we do. In many cases our first eyes and ears at a major spill. They're located there, they'll go out and give us an indication how severe it is. They help on some of the inspections on water systems. We currently contract with public health units to continue to do that. In one of our amendments we put in there we want the ability to continue to contract with local health units to help us out in some of the environmental protection at the local level. I see that continuing going forward. Through contracts, memorandums of understanding which we currently have with a lot of other agencies. To make sure we coordinate our activities, get the best product moving forward because we're all going to be strapped for cash at the local and state level and need to lean on each other as we move forward.

**Rep. Roers Jones:** Looking at the organizational chart, you have 5 departments. The laboratory services, air quality division, municipal facilities, waste management and water quality. The lab services seem to be the only portion that would remain with the department of health. I'm guessing that must have those community health facilities under their purview. Is that accurate?

56:05

**Glatt:** The laboratory services, we're looking at as part of the reorganization. The chemistry end of it is very integral to what we do. Lot of chemical analysis for air, water, and waste. One thing we're looking at is move the microbiology aspect over to disease control, staying with the health department because they deal more with the diseases. We'll keep a portion of the lab which is chemistry.

**Rep. Roers Jones:** Of your 174 employees, how many of those employees will go with the new section, how many will remain or will there be a complete separation of services? I was wonder specifically with the laboratory services or will there be cross utilization of some of those employees?

**Glatt:** we'll probably get down to 152 (150?) employees that will remain in the department of environmental quality. Those other employees are related to the microbiology and they'll stay with the health department. We'll be in that range of 150 FTEs. There are a couple shared services at the lab. One is water testing. There is crossover the other way with chemistry or analytical equipment the microbiology lab can benefit from. So we're looking at working cooperatively and moving that forward and they're housed in the same location.

58:23

**Rep. Bosch:** I'm wondering about the proposed department of environment quality board. Would it be possible to make that change without doing the restructure, the reorganization?

**Glatt:** there's always that possibility. I think at this time when you're looking at making a large change, we felt it was good to combine those 2 into 1. The potential is there; laws would have to be changed as related to the health council. The more you do that the more you just have a separate agency operating under one umbrella. As the environment health section is concerned, in recent history, we've been operating as a separate agency. We share

accountants and those types of things which is beneficial to us. But as it relates to technical decisions, policy made, we've been operating as a standalone.

**59:28**

**Rep. Mitskog:** the new administration, there are propose potential cuts that could affect grants to state governments. Are you concerned about potential reductions?

**Glatt:** always. As any state agency person will tell you, we try to make the most of the money we have. At the end of the day the legislative bodies, federal or state, will tell us how much we have. That necessitates we set priorities that get the major core issues done. On the federal level we're in tune. When you look at the landscape now, the states do 90-95% of the work now as required by the federal government. They're looking at giving the states more responsibility. I personally feel we're going to have some challenges ahead of us regardless of whether we're under the umbrella of the health department or off on our own will be a challenge for everybody.

**1:00:46**

**Rep. Mitskog:** Looking at the state health department budget, grants are a substantial part of the budget. Potentially at the national level with the proposals federally, how could that impact your division?

**Glatt:** It could be a major impact. We're going to the position to have to decide what's important to the state, what environmental protections activities should we be concentrating on, how are they going to be paid for and how much involvement do we want the federal government. There's some exciting times ahead of us. I look at it as we have opportunities here. When we're being tasked on the budget end of it, it really opens the door to what kind of opportunities to make ourselves more efficient and still provide the same services.

**Chairman Porter:** regardless of what the agency looks like, those concerns are there regardless.

**Glatt:** that's right. No matter where we're located we're going to have to address those issue and doesn't change how we're funded.

**1:03:12**

**Maggie Olson,** Attorney General's office: spoke specifically to Attachment 2A which was handed out with David Glatt's Attachment 2.

**1:25:00**

**Chairman Porter:** questions for Ms. Olson? Mr. Glatt, in regards to primacy. In early discussions we talked about running this by Denver through the feds to make sure we were ok in not giving up any primacy. That's one side of the question. The other side is for us to gain primacy in areas where we currently don't have it, how does that model for the future in the crystal ball?

**Glatt:** on the primacy end of it, it's an agreement between us and the EPA. The EPA has evaluated our capacity through having the appropriate laws, rules, staffing and infrastructure to implement the rule and the law. If they feel comfortable with that they give us a primacy agreement. I've talked to the acting regional administrator regarding this potential move. I said if we move everything in a block without changing any laws or rules, would they have any issues with that. She said they'd have to look at it but that doesn't sound like something that would jeopardize our primacy. We've been a strong advocate of state's rights. In many cases pushing back very hard against the EPA. We don't want to give them any opportunity to rescind primacy so we'll be working hard to maintain that. If we want to accept new primacy, we have to go through the same process and it's a long process. Do you have the right laws in place, staffing? Once we go through a review process which takes 1-2 years, then they would give us that authority to implement it at the state level, only if we show we have the capacity and legal authority to do that.

**1.28:00**

**Rep. Brandenburg,** Dist.28, Emmons, Logan, McIntosh, part of Dickey and LaMoure and Burleigh County, presented Attachment 3, pages 13 and 14 of 17.0860.02000 and Attachment 3A, proposed amendments 17.0860.02003, making the number of board members 13.

**1.33.19**

**Rep. Bosch:** You mention primacy and other states that have made this switch. Are you aware of any primacy advantages they've got since they've made the switch we haven't been able to reach here?

**Rep. Brandenburg:** In this state, we gave up a fee directive primacy in the ag department and now we're dealing in court with all the fee (?) feed (?) directives trying to get that primacy back. Air quality issues dealing with coal. We gave that up years ago and we're trying to get that back which we need back. We're in a law suit with both of those issues right now. Has it happened in other states, I'm sure it has. I'd just have to dig it up and find out. We need to have the right structure to have the right people in place so we have common sense people that know what's happening in ND instead of in the feds. We used to years ago have common sense people that understand what's going on. Now we have young people coming in and young people think different than I do. All of a sudden that common sense I think I have is a whole other generation or two that think different. That generation of that thinking process is that person that's in WDC or Denver or wherever, is completely different from the thought process here. Yet we need to prove we are doing things right. We want to have the people in place, the process in place that we're doing the right things for ag, for coal, for oil to protect the environment that it's being done right.

**1:35:42**

**Rep. Heinert:** Talking about your amendment in reference to the committee, the number of people on the committee and the number from agriculture. Mr. Glatt has asked for the director of Game and Fish to be placed on the committee which would make 12 members. I'm not

supportive of a 12-member committee. I like the odd number theory. Would 2 members from the ag industry be sufficient?

**Rep. Brandenburg:** That's a good question. I got caught off guard because I didn't know the Game and Fish was coming with another one. I know you don't want an even board. An even board is not going to work, and you could look at that. You could also look at the manufacturing processing from the ag committee and have 2 people and have your odd number board. You'd need 3 people. He had 3 people on here from the water pollution board and you know, had I chaired and kept this bill, it wouldn't be that way. I think there's a lot of people sitting behind me in the ag committee that feel that way. We want to get this bill passed. I think 3 is the number. 1/3 of this state runs on agriculture. The rest of those players play on agriculture land. You can't do oil unless you play on ag land, you can't do coal unless you're on ag land. You can't do a waste/garbage disposal pit or whatever. It all involves ag land. One person is not enough, 2 is not quite enough. You have to deal with animal ag, processing, and deal with the producer too.

**Rep. Heinert:** That would put us at a 14-member committee. Do you have a recommendation for a 15<sup>th</sup> member?

**Rep. Brandenburg:** That's what I was recommending to you. If you look at the makeup I have here on Page 14, the number B, a representative of manufacturing and processing, should be AG processing. So you could have 2 members from ag, add two instead of one on #E and then put AG processing on B there. Then you'll have 3 and then you'll be at

**Rep. Heinert:** 14.

**Rep. Brandenburg:** No because you're adding Fish and Game too.

**Rep. Heinert:** You'd be adding 2 for ag, 1 for Game and Fish which gives you 14.

**Rep. Brandenburg:** But if you change #B, add ag processing. Add the word ag then you'd be at an odd number.

**Rep. Heinert:** So if we put in their member of manufacturing and or ag processing, they could put someone in from manufacturing that wouldn't necessarily be ag.

**Rep. Brandenburg:** it's going to cross over so you're going to have someone involved with that industry. It's true. If you're looking for an odd number board to try to get there, I would compromise with that because I think that you're going to have someone involved with agriculture. Whether it's processing, whatever you're doing, they're tied to ag.

1.39:00

**Rep. Devlin:** When Oklahoma did theirs, they left out agriculture completely. Is there some reason you wanted it left in here? There's some people in the ag community that don't want to be involved in this at all.

**Rep. Brandenburg:** I know what they did in Oklahoma and TX, whether right or wrong, that's how they did it. I'd like to do it right in ND. I know there's a lot of people that don't like this at all. In the ag sector, there's a lot of push back. I think it's important to get it passed and involving the ag section in this would only benefit ND. At the end of the day, this is not going to go away. We can say right now with the current administration, things are going to get easier, things may not be as much of a problem, but years from now, whenever, it's going to be back here.

**Rep. Devlin:** In referencing to adding 3 members to the board, Mr. Glatt made the argument, essentially now, ag has no one on the air pollution control advisory committee, or no defined ag representation and none on the state health council, which has 11 members, 3 on the water pollution control board. When he's looking at, or when you combine all those big boards into a smaller board, then ag has more voice because they're talking to all 3, before they only had input on 1.

**Rep. Brandenburg:** I would be it this would have stated HB1209, you would have had a different answer. I don't agree.

**Rep. Devlin:** Would you be open to dividing it so we split ag and energy and have a division of livestock and nutrient management?

**Rep. Brandenburg:** However you want to do enough for ag I would encourage you to, really we're dealing with livestock, production, and producers. However, you want to split that up I have no problem.

**Chairman Porter:** Further testimony in support. How many are planning on testifying?

1.42.56

**Justin Dever,** Co-Deputy Commission, ND Dept. of Commerce, presented Attachment #4 in favor of SB 2327.

1.44:26

**Edward Murphy,** State Geologist, presented Attachment #5 in support of the bill.

**Chairman Porter:** Your overview of those sections that were relative back and forth are all contained in the new bill and everything passed your checks and balances? And we know there will be administrative codes that will need to be changed through the administrative process as this moves forward?

**Murphy:** That's correct on both.

1:46:36

**Mike McEnroe,** ND Wildlife Federation, presented Attachment #6 in support.

**Chairman Porter:** Questions for Mr. McEnroe? Further testimony in support? Opposition?

**1.49.26**

**Pete Hanebutt**, ND Farm Bureau: opposes SB 2327 and presented Attachment #7 urging the committee to give this bill a Do Not Pass. Agriculture needs to be in on writing the legislation not just on the board.

**1:56:50**

**Sara Lovas**, farmer and agronomist, Hillsboro, ND, presented Attachment 8.

**Chairman Porter:** Questions? Further testimony in opposition?

**2:03:34**

**Val Wagner**, farmer, cattlegwoman and mother of 4 boys, Monango, ND: presented Attachment 9 and asked for a Do Not Pass.

**Chairman Porter:** Questions? Further testimony in opposition?

**2:07:40**

**Lisa Club**, First District Health Unit, Minot ND but serve 7 surrounding counties: Presented the ND Environmental Health Association testimony, **Attachment 10**.

**2:19:00**

**Rep. Heinert:** Little scenario here, we're in an emergency situation and under the current system we have, we have our environment chief who goes to an assistant director who then goes to the director who then can go to the governor. Is that a better system than having an environmental person who goes directly to the governor so we can get the governor's office involved in an emergency condition much faster with direct information instead of 4<sup>th</sup> parth information?

**Lisa Clute:** my concern is that they're looking at aspects of health when it goes to the governor. I don't believe either of those entities, or the knowledge base to be separated from each other. So however that is structured, I'd be happy to work on that, I think it's important that the 2 are talking and looking at all aspects of a disaster.

**Chairman Porter:** further testimony in opposition? Closed the hearing.

Testimony submitted but did not have anyone testify are as follows:

11. Karla Pulvermacher, ND Farmers Union
12. Brent Bogar, Great ND Chamber

Minutes of the

(HOUSE) (SENATE) BILL NO. 2327 SUBCOMMITTEE OF THE

HNAT STANDING COMMITTEE

Meeting location: Coteau

Date of meeting: 3-10-17

Time meeting called to order: 8 AM

Members present: Chairman Devlin, Rep Lefor, Rep Koers Jones,  
Rep Mitskog, Rep Seibel, Pete Hanebutt, ND Farm Bureau

Others present (may attach attendance sheet):

Dave Ghatt; Keith Johnson, administrator for public health;

Topics discussed:

• primacy • litigation possibilities • cost savings • fiscal note  
• advisory board • ag seats on the advisory board • sharing some  
responsibilities, employees, FTEs, Lab • most of the bill is name  
changes • place emergency response with health department  
• environmental health practitioner on advisory board.  
• reference Attachment 1

Motion and vote:

Replefor recommended put this into a new engrossed  
version of the bill.

Rep Seibel - second

Voice vote carried.

Time of adjournment: 8:45 AM

Note: If a motion is made, a description of the motion must be provided along with the member seconding the motion. A recorded roll call vote must be taken and reported for any nonprocedural motion.

# 2017 HOUSE STANDING COMMITTEE MINUTES

## Energy and Natural Resources Committee Coteau –A Room, State Capitol

SB 2327  
3/10/2017  
29049

☐ Subcommittee  
☐ Conference Committee

Committee Clerk Signature

*Kathleen Davis*

### Explanation or reason for introduction of bill/resolution:

Relating to the creation of the department of environment quality & the transfer of duties & responsibilities of the department of health relating to environmental quality to the department of environmental quality; to provide a penalty; to provide a continuing appropriation; to provide for transition; & provide an effective date

### Minutes:

### Attachment #1-#2

**Chairman Porter:** Called the committee to order on SB 2327. Rep. Devlin do you recall if Mr. Glatt's amendments were numbered? They were the colored version?

**Rep. Devlin:** they were the colored one not number.

**Chairman Porter:** ok committee inside of SB 2327 we have an amendment (Attachment 1) that had the colors on them that the subcommittee asked to be adopted to SB 2327.

**Rep. Devlin:** I will make that a motion that we adopt these and get an engrossed bill (Attachment 2) with those included.

**Rep. Seibel:** second

**Chairman Porter:** I have a motion from Rep. Devlin, second from Rep. Seibel to adopt the amendment to SB 2327 as presented by Mr. Glatt. Is there discussion?  
All those in favor say Aye, opposed? Motion carried.

**Chairman Porter:** inside of this bill there's an amendment I was working on that had to deal directly with one of the functions of the state health department. Last session we created the board of medical imaging that regulated the people taking x-rays. In that bill which Rep. Keiser had in IBL there was a component that was left inside of the health department that's called a limited x-ray operator. All other people that push the button are regulated by the board of imaging except them. This bill would move that small group of small operators into the board of medical imaging away from the department of health.

**Rep. Keiser:** move to adopt the amendment.

**Rep. Devlin:** second

**Chairman Porter:** We have a motion and a second to adopt amendment 02001.  
Discussion? All those in favor say Aye, opposed? Motion carries.

**Rep. Devlin:** The Public Health had some concerns with this bill and we asked them to present those concerns to us in writing. We will meet with them at 8 AM next Thursday morning (3/16/2017). The ag industry also has some concerns with the bill and I've asked groups that have any concerns or suggestion that we might look at, to meet with the subcommittee at we will at 2 PM on Thursday (3/16/17).

(HOUSE) (SENATE) BILL NO. 2327 SUBCOMMITTEE OF THE  
\_\_\_\_\_ STANDING COMMITTEE

Meeting location: Coteau

Date of meeting: 3-16-17 Thursday

Time meeting called to order: 8 AM

Members present: Chairman Devlin Rep Seibel Rep Lefor  
Rep Roers Jones Rep Mitskog

Others present (may attach attendance sheet):

Keith Johnson, Custer Health; Dave Glatt, Environmental Health Chief,  
ND Health Dept

Topics discussed:

- K Johnson presented attachment #2 • Food and Lodging • location in  
existing building • open door to make changes next session • director  
position  
Chairman Devlin handed out Attachments 1 and 1A

Motion and vote:

Time of adjournment: 8:18 AM

Note: If a motion is made, a description of the motion must be provided along with the member seconding the motion. A recorded roll call vote must be taken and reported for any nonprocedural motion.

(HOUSE) (SENATE) BILL NO. 2327 SUBCOMMITTEE OF THE #29347  
STANDING COMMITTEE

Meeting location: Coteau

Date of meeting: 3-16-17

Time meeting called to order: 2:25 PM

Members present: Chairman Devlin, Rep Seibel, Rep Lefor  
Rep Roers-Jones, Rep Mitskog

Others present (may attach attendance sheet):

Pete Hanebutt, ND Farm Bureau; Kayla Pulvermacher, NDFarmers Union;  
Jillie Ellington, ND Stockman Assn; Sarah Lovas, agronomist; Gary Knutson, ND  
Aq Assn; Tray Coons, NW Landowners Assn, Val Wagner, Dave Glatt, Section Chief  
Sara Lovas

Topics discussed:

• suggest 3 aq representatives to board • head of dept aq-energy-engineering background,  
• science background • represent crop production industry • happy with relationship now  
and hope to maintain that relationship. • director needs that scientific background.  
• not what's important today but tomorrow • working knowledge of hands in  
the soil • don't make so restrictive can't find someone • science  
work experience, not necessarily a P.E. •

Motion and vote:

Pete Hanebutt, NDFB - Attachment 1  
Sara Lovas - Attachment 2

Time of adjournment: 3:10

Note: If a motion is made, a description of the motion must be provided along with the member seconding the motion. A recorded roll call vote must be taken and reported for any nonprocedural motion.

# 2017 HOUSE STANDING COMMITTEE MINUTES

## Energy and Natural Resources Committee

Coteau –A Room, State Capitol

SB 2327  
3/23/2017  
29573

☒ Subcommittee  
☐ Conference Committee

Committee Clerk Signature

*Kathleen Davis*

### Explanation or reason for introduction of bill/resolution:

Relating to the creation of the department of environment quality & the transfer of duties & responsibilities of the department of health relating to environmental quality to the department of environmental quality; to provide a penalty; to provide a continuing appropriation; to provide for transition; & provide an effective date

### Minutes:

Attachments 1-2

**Chairman Devlin:** called the subcommittee meeting to order. Attachment 1

**Dave Glatt,** environmental health section chief for the ND Dept. of Health: after the last meeting we felt we could address (1) representation on the advisory board, (2) qualifications for that director. Attachment 2.

3:57

**Rep. Roers Jones:** It looks like this has been circulated and is everyone to your knowledge on board with this setup?

**Glatt:** yes. I got one comment as related to someone more local public health. The way I look at it public health could be considered under 2 of these, (1) under the county/municipal government, a local public health person as part of that; (2) a representative of environmental sciences, that could be a consideration as well. To be fair it could be on a list of potential list of candidates from different areas that if the governor so chooses, could pick someone from that area. If we get too concerned, we could have a hundred and still be short somebody. Some would like more representation but I think they're ok with it.

**Rep. Devlin:** Let's talk about the descriptions of the director's positions.

**Glatt:** They want someone with a technical background because of the wide range of activities, very scientific engineering based decisions. At least has a rudimentary or working knowledge of scientific principles and also of technology and you get the longevity of them staying. Nationally if you don't put some guidelines on it they tend to be attorneys that run the agencies. There was some discussion on a master's degree in the biological or natural physical sciences or profession engineering registration. If too descriptive you won't find

somebody. There's also discussion on 7 years of environmental health or relevant engineering work experience. The position I have now that is the requirement with 3 years of management experience as part of that for a total of 7 years, not that that has to transfer forward. We want to encourage to get someone with experience in ND, they've worked here, know the issues, know the economy, the social structure and culture, and it says the director may not engage in any other occupation or business that may conflict with the statutory duties of the director. That's basic language you don't want anyone with a conflict of interest. This morning having discussion on the masters, if there's concern you could look at language as having a masters or equivalent relevant work experience. In other places a masters can take place of two years of work experience, or keep it or change it. The intent is to get someone with technical background, scientific process, knowledge, and/or engineering experience.

**Rep. Seibel:** When you first got this position would you have met these requirements.

**Glatt:** No. I had to go get my PE which was a pain.

**Rep. Seibel:** that's what scares me, if we pigeon hole it we would have missed out on you when this first open. I struggle with that. We want to leave it open enough to get good qualifying people but we also want them to have background in the appropriate area.

**Glatt:** I will tell you it was an experience I would never want to go through again in my life; having the pressure of the job and having to getting the PE on top of that, but also an experience I wouldn't have wanted to miss. That really focused me in certain areas and appreciated the requirement to have that PE. My personal experience is it's really important to have somebody with the engineering and technical background. So how do you judge that professional engineer? Registration, licensing is one way.

**Rep. Lefor:** Even when you're talking about a masters, a Bachelor of Science degree, must have 7 years of environmental health or relevant engineering experience plus 3 years of those must include administrative management responsibilities. I think those are restrictive enough. I'm totally comfortable with it.

**Rep. Devlin:** further concerns or questions? If someone has a real concern where we're at right now I'd like to know. Otherwise it's going to the full committee, then conference committee.

**Kari Cutting,** VP of ND Petroleum Council: I'm not sure in your conversation if you asked Mr. Glatt where you're landing. I heard a lot of mixed views. I want to add that we did have a little discussion over here. The ability of the state to find someone to fill this position is going to be very dependent where we are in the job market. If we look at 3 years ago when the job market was tight, you would struggle mightily to find somebody with a PE, or someone with a masters of science degree with that many years of experience who is unable to find employment elsewhere that may be more lucrative than the state of ND. Therefore, I am concerned that masters level or PE with that level of experience may be too prescriptive. If you say minimum requirements are 7 years of relevant experience and 3 years of managerial experience and even with a bachelor's degree, that's your minimum. You can always go up from there. If you have somebody that applies that has a master's

degree or a PE or PHD, you can still consider their relevant experience. Starting out with that masters in science or PE I think, though good, and that's the kind of person we hope to get in the next 20 years, we may be writing this a little difficult and may end up with somebody who isn't necessarily the people person, the negotiator that we have in Mr. Glatt.

**Glatt:** I understand the comments. The balance we're trying to find is in my estimation. This is one of the best jobs you can have but it's really pretty high level and you don't want to sell yourself short. I will tell you with have people with BS, masters, excellent employees. But are they ready to tackle the bigger issue? I question that. To find some balance in there to get that experience. If there's some way to provide an out in there that this is what we want to achieve, and if we can't, there's a fallback position. That might be something to look at. Similar with the current health officer. It used to be a medical doctor and was very tough to get a medical doctor. So when they couldn't get a medical doctor, then you have someone in there that goes to a 3 person board they go to. I'm not advocating more people, but trying to find that balance, you want to make sure it's somebody who understands the technical end of it. I'm still learning.

**Rep. Lefor:** If we adopt this amendment and you don't get the applicants you're looking for, how much leeway does the department have to do something else? Or do you need legislative authority?

**Glatt:** the way I understand it now, it's the governor's job to appoint somebody. It's wouldn't be the department not having that ability to be flexible, it's giving the governor the flexibility to get someone else.

**Rep. Seibel:** the first line says the director **MUST** have these things. I'm not sure it gives anybody any leeway to fill that position. That word **MUST** to me doesn't allow anybody to fill that position.

**Glatt:** If they're not available. It allows people that have the desire

**Rep. Seibel:** but if nobody comes forward

**Rep. Mitskog:** That's a minimum. I think we need to have somebody that has at least a bachelor's degree so that educational background in the areas they're going to give oversight to. We can always use, shall, but I think there's got to be a minimum of a bachelor's degree.

**Tyler Hammond, Lignite Energy Council:** The Empower Commission met this week and this bill was a topic of discussion, the amendment as drafted. Someone asked the question, "who in this room would qualify for that position?" With the Empower Commission, you have some of the best and brightest from all the industries who will be regulated by this agency with a long history and plenty of experience in the state and not a single one of them would qualify under those terms. I think moving back from a masters to a bachelor as a minimum is a good step. I think there's still ongoing concern of getting too descriptive and setting those minimum time requirements into code.

**Rep. Roers Jones:** the amendment you were looking at did it have a requirement for a master's degree? Because the one we're looking at had a bachelor's degree. If we had the requirement for the bachelors or being a register professional engineer, and then 7 years of environmental health or related work experience, then the 3 years of managerial work experience, do you think someone in that realm would qualify under those standards or do you think that's still too stringent?

**Tyler:** The amendment we saw had the master's degree. Everyone's aware it's moved back to bachelor's degree or register professional engineer. We think that's a good minimum to set. There still remains concern over setting those prescriptive time limits in the century code. There's no wiggle room there as it's currently drafted.

**Rep. Lefor:** what if we add verbiage that states the governor has the authority to change the job requirements necessary?

**Rep. Seibel:** not going there.

**Rep. Mitskog:** so if we're struggling with the "must" of years of experience, can't we just use preferred, to give some flexibility?

**Glatt:** I was heading down that same direction. Or have the discretion that equivalent work experience. You may have 20 years work in the field, might not have all the managerial experience, but give that flexibility to take that into consideration. I thinking having a bachelors or PE gives you pretty broad candidates and then you narrow it down. I think you change that director from MUST to SHOULD and the governor should take into consideration all relevant or equivalent work experience, something to that effect. You don't want to make it so broad you get anybody in there but you want somebody that's going to be a good candidate for the state of ND.

**Rep. Seibel:** I don't so much have a problem with the first MUST, a bachelor degree or higher, natural physical science or registered PE. Where I have the problem is the next to MUSTs, must have 7 years, probably could stay, but the 3 of those years administrative, like Tyler said, you could have a great candidate but only has 2-2.5 years managerial experience. I think we're pigeon holing that a little too much.

**Rep. Lefor:** I'm going to take another shot at an idea. Change the work MUST to SHOULD, after "director should" and 3 years of work experience "should include".

**Rep. Devlin:** So you're talking about the must on the 3<sup>rd</sup> line?

**Rep. Lefor:** 3<sup>rd</sup> and 4<sup>th</sup> lines

**Rep. Devlin:** yes, so it would read, "the director should also have 7 years"

**Rep. Lefor:** and "3 years of work experience should include". I'm thinking that gives more flexibility.

**Rep. Devlin:** Sarah (Lovas), did you drive all this way to visit?

**Sarah Lovas**, agronomist and farmer, Hillsboro: I have a masters and I actually started my career out in 2004 with a bachelor of science in ag systems management. I went back to school about 5 years later to get my masters. I worked in the industry without a masters and now with it. I wanted to point out why the difference of a masters might be important. When you get a master's degree, you do a research project. That makes you go to the scientific method so that you actually have to think about questions from a science based standpoint. Our industry gets plagued by bogus science. I don't have a problem with environmental regulation if based in good science. I think a candidate with a master's degree or higher for the degrees specifically of natural or physical sciences. Those are the sciences particular where we should have a masters designated. I think that would help those individuals think through the concept of a scientific protocol. I've had very interesting conversations with people over the past who only have BS, and those particularly dealing with some of the people in the NRCS world, and sometimes the way environmental issues get quantified out in the countryside are a little bit questionable. I don't think they've had the change. Once they get more experience, then things get better but I don't think they've necessarily had the chance to really think that through. If you've had to go through that research experience, that helps you make good decisions. Having said that, if you've got someone who has an engineering degree, who has a bachelor of science, I do think that's a little different because the deal in calculus, numbers, etc. The purpose of the masters and why I think it's so important is because it helps you think in terms of statistics and what is a good research protocol and what is a good research question.

**Rep. Devlin:** What do you want to do with this, Rep. Lefor's proposal?

**Rep. Lefor:** I would change the words on Line 3, change the word must to SHOULD, on Line 4 after the words work experience, change the word must to SHOULD. I really appreciate all the great comments. We're all acutely aware of the importance of this position because it affects so many different industries. We have to give the governor enough latitude to hire the right person and have confidence that he or she will hire the right person. I would recommend that change be forwarded on this amendment to the full committee.

**Rep. Seibel:** second

**Rep. Devlin:** We have a motion to change the word must to SHOULD on lines 3 and 4 from Rep. Lefor and seconded by Seibel. Discussion. All in favor say aye, opposed? Voice vote motion carries.

I think there was some confusion that we were looking for someone with 7 years of experience plus 3 years on top for a total of 10. That isn't what it is. The 3 years is included in the work experience.

**Rep. Roers Jones:** I think changing the MUSTs to SHOULD make this as flexible as it needs to be. Taking into consideration expressed by Ms. Lovas, leaving it at a bachelor's degree also gives us that flexibility. They can always post with a higher requirement.

**Rep. Devlin:** I think we're at the point where we need to recommend this to the full committee. Any changes on this one?

**Rep. Roers Jones:** I'll make that motion.

**Rep. Lefor:** second

**Rep. Devlin:** the motion is made and seconded. Discussion? All those in favor say Aye, opposed. Voice vote, motion carried. Hearing closed.

# 2017 HOUSE STANDING COMMITTEE MINUTES

## Energy and Natural Resources Committee

Coteau -A Room, State Capitol

SB 2327

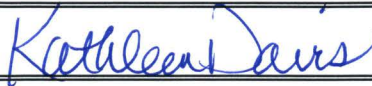
3/23/2017

29591

☐ Subcommittee

☐ Conference Committee

Committee Clerk Signature



### Explanation or reason for introduction of bill/resolution:

Relating to the creation of the department of environment quality & the transfer of duties & responsibilities of the department of health relating to environmental quality to the department of environmental quality; to provide a penalty; to provide a continuing appropriation; to provide for transition; & provide an effective date

Minutes:

Attachment 1-2

**Chairman Porter:** Called the committee to order on SB 2327.

**Rep. Devlin:** You have the committee's recommendations here in front of you. The biggest issue we had was from the ag side and to get them representations. Presented Attachment 1. B could be manufacturing or ag processing; E we added a representative for livestock ag; F a representative of crop ag; G a representative with ag or soil science degree. The board size is essential the same 13 the board is replacing, and then you eliminate the air quality board that had 11. We've heard that we're growing government. As you look at this we've reduced board numbers in the consolidation and nowhere does it add any more employees. It moves them from one area to another.

**Chairman Porter:** questions?

**Vice Chairman Damschen:** I was thinking if it said crop ag and said production ag.

**Rep. Devlin:** this was the language the agricultural people came up with they felt represented their industry best. We left it at that. We had a great working relationship with all segments to come to this and I'm would suggest we leave it at that.

**Rep. Devlin:** Attachment 2, the job description evolved. We knew what it needed. We felt the BS degree and then be would give us more opportunity to fill this position. We still want them to have the 7 years of relevant environmental health and engineering work experience. We didn't make it so restrictive that you couldn't get anybody but restrictive enough. We want specific qualifications, skills and education.

**Chairman Porter:** that last sentence is after they're appointed because it would conflict with the direct work experience in the state. That's after they're appointment.

**Rep. Devlin:** yes

**Chairman Porter:** questions?

**Glatt, environmental section chief to the Dept. of Health:** this was a good working relationship, addressed concerns, good balance, comfortable with this.

**Rep. Devlin:** going back to the 1<sup>st</sup> Attachment, the subcommittee voted to recommend both of these to the committee, I would move a do pass on the proposed amendment.

**Rep. Mock:** second

**Chairman Porter:** discussion? Seeing no discussion, all those in favor say aye, opposed. Voice vote. Motion carries.

**Rep. Devlin:** I would move the job description be adopted as well.

**Rep. Mock:** second

**Chairman Porter:** I have a motion from Rep. Devlin for the job description on Page 13 Line 24, second from Rep. Mock. Discussion? Seeing no further discussion, all in favor aye, opposed. Voice vote, motion carries.

**Rep. Devlin:** The full committee did adopt earlier the other ones presented by the attorney general's office. This is the only thing we had left and we were charged with. I would like to say, how good it was to work with the various groups. We had everybody at the table and it was excellent. I've come full circle on this bill. I will move a Do Pass as Amended.

**Rep. Roers Jones:** second

**Chairman Porter:** I have a motioned from Rep. Devlin, second from Rep. Roers Jones for a Do Pass as Amended Engrossed SB 2327. Discussion?

**Rep. Mitskog:** I really have been conflicted with this. I can embrace the proposal because a standalone agency and department makes sense because how things are functioning right now it is essentially stand alone with the health department. I go back to our budget situation. When you add a department and agency, how can we not spend any more money? I don't have that assurance that the move will be a neutral fiscal impact.

**Chairman Porter:** I would add to that and others are more than welcome, the move is really to elevate a section within the health department to a cabinet level position. We haven't increased the number of employees, they're already paying rent in a building, already kind of standalone by themselves. They have the interim to work through the moving and shifting of employees even though they don't have anything to add or subtract within either of the two. What it does set us up for, Rep. Kempenich's discussion, this is something that in the future may reduce the size of government. As we have the opportunities to look at primacy and other issues as the current administration says they

are going to push more opportunities back to the states to regulate within their states, we will have to as a legislature, we will have to look at each one of those issues, and decide if we are going to meet that federal requirement to take that component of what's made available, say we're going to leave it the way it is or take that back into the state. That's what we're setting ourselves up for.

**Rep. Mitskog:** I do understand that. I think there's a lot of unknowns coming down from the federal government with the proposed cuts though EPA. What could that mean to this budget?

**Chairman Porter:** that's good point. If the feds in cutting their budget say the states have to take it, here's the requirements and push it out as a mandate, it doesn't matter where it lives, we'd have to increase the budget of the health department or increase the budget of environmental quality, we wouldn't have a choice. That wouldn't change either and would come back to the legislative assembly.

**Rep. Lefor:** I concur with that. I would like to have primacy as much as we can, have regulations out of Bismarck rather than WDC. The regulators here are the people we have talked to are understanding of the balance that needs to be struck between a person's ability to do business and the government's right to say, here's the limits. This is common sense. The argument about expanding government is there. I agree how can there be no fiscal note? At the end of the day, they are staying in their same offices and creating a new structure so we have the ability to elevate our state for primacy in several different areas. I support this as we have amended it.

**Rep. Seibel:** I too have come full circle on this because at the time I was appointed to the subcommittee, I was not in favor of this. But sitting on the subcommittee and everybody work together, I could not have supported it without the ag getting the representation they are getting. Ag is still our #1 industry and we need to remember that. I like the idea that right now Mr. Glatt is working under a medical professional who doesn't want much to do or know a lot about the environmental science side of it. I think I like the idea that is being elevated to a cabinet position. For not it's not growing government. I'm supporting the bill now.

**Rep. Mock:** Rep. Lefor is spot on. I think it's fortunate we are taking ownership of regulation and oversight with ND. Bismarck should be the primary agent and not someone in WDC. The budget for the Dept. of Health for this division, is roughly 53% federal funds, 25% general funds, with the rest of special. As we are making these recommendations, are they preparing for and anticipating certain losses through recent budget proposals? If we're moving this away from the Dept. of Health, and there are larger reductions from the federal government that have implications, are we losing some cost efficiencies by taking it away from the Dept. of Health? If they cut federal funds, the fact that it's now a standalone agency, does it prevent it from working with the Dept. of Health to pick up some of the case load and ride out some loss of funding?

**Glatt:** As we start seeing budget cuts, we are going to see those reductions. We have very little crossover between the environmental health section and the rest of the health

department. Where we do is the accounting and administrative. We will have to work through that. We want 0 impact. There will be challenges. Minimal activities crossover.

**Rep. Mock:** Have you done any estimates of the loss if this goes through?

**Glatt:** We have looked at the President's budget. We will see some budget cuts. There are several grants we don't expect at all. On the Corp programs like the Clean Water Act, your water and waste water discharges, safe drinking water act, if they cut those, it'll be a challenge.

**Rep. Mock:** If that 31% reduction happens, how much will it affect ND?

**Glatt:** It depends where they cut. If they cut grants where we do a lot of work in that area, it would have an impact. At this point we don't know.

**Vice Chairman Damschen:** The existing department, is that singled out in the department of health, in the budget?

**Glatt:** Do you mean our budget as the Environmental budget; each section has their own budget under the Health department.

**Vice Chairman Damschen:** Is that singled out to transferred to this new department?

**Glatt:** yes. Some mixing of funds in the areas of crossover we'll have to break those out.

**Chairman Porter:** questions? Discussion?

**Rep. Marschall:** I like what I hear but it has the potential to increase the size of government. Each time it grows you come up with a logical reason why. At some point we have to say enough, stop growing government. Even though this is good, this could cost and cause the government to grow.

**Rep. Lefor:** Most people are not comfortable with change. If we stay the same we may not keep up with changes in regulations, etc. Government pays 53%, special funds pays a 25%, so we're down to 22% potential because right now we don't know. Even if this increases size of government, we need to look at 2019, that's a decision to be made then. How do we establish primacy? We have to focus, embrace change, or stay stagnant.

**Rep. Heinert:** This legislative assembly is going to shrink government. It's not unilateral. The growth may come in this area because it's necessary. Some agencies are more important; some have a tighter budget. Who really needs to be shrunk and who needs to be part of the future of the state of ND. I believe this is a good move in more than one area. I think it's an excellent move to make this a cabinet level, emergency response mode, environmental services, appointed by the governor. Overall our responsibility is held at a reasonable rate but not unilaterally necessarily.

**Rep. Mock:** While it may not have an immediate fiscal impact, will this be referred to appropriations? If not, can it?

**Chairman Porter:** no and no. This is all policy. They have the budget. This has no fiscal effect on the budget.

**Rep. Mock:** I would prefer if it were possible, that it would. As they're setting their budget for the 2019 biennium, they're looking at everything. Fiscal impact will not be felt in this biennium but the next. We don't want to come back and rewrite.

**Chairman Porter:** further discussion? The clerk will call the roll on a Do Pass as Amended to Engrossed SB 2327. Roll call vote 12 yes, 1 no, 1 absent. Motion carries. Rep. Roers Jones will be the carrier.

**Rep. Devlin:** Rep. Roers Jones graciously agreed to carry this. Other members of the subcommittee agreed to provide backup and you will see that on the house floor. I did mention earlier, I think all the farm groups, the Farm Bureau, Farmers Union and Stockman's Association, the landowners were very involved. I want to take a moment to thank Sarah Lovas, from Trail County that has been here for every one of our meetings and provided valuable input, drove over 3 hours each time to do it. I want to thank her too.

PROPOSED AMENDMENTS TO SENATE BILL NO. 2327

Page 1, line 8, remove "subsection 1 of section 19-01-01"

Page 1, line 18, remove "sections 61-28-03 and 61-28-05"

Page 1, line 24, remove "and" and after "39-26" insert ", 61-28-03, and 61-28-05"

Page 2, after line 30, insert:

"All orders, determinations, permits, grants, contracts, agreements, certificates, licenses, waivers, bonds, authorizations, and privileges relating to the functions transferred, which have been which have been lawfully issued or made prior to the date of the transition of functions, shall continue to be effective until revised, amended, repealed, or rescinded."

"The transition of functions shall not abate any suit, action, or other proceeding lawfully commenced by, against, or before any entity affected by the transition of functions. Any suit, action, or other proceeding may be maintained by, against, or before the appropriate successor of an entity affected by the transition of functions."

Page 4, line 26, replace "23.1-04-03" with "23.1-04-04"

Page 8, remove lines 28-31 (note: title 19 is staying with the Health Department)

Page 9, line 8, replace "environmental review advisory council" with "department of environmental quality"

Page 13, line 29, replace "eleven" with "twelve"

Page 14, line 12, remove "and"

Page 14, line 13, replace "geologist." with "geologist; and"

Page 14, after line 13, insert:

"I. director of the game and fish department."

Page 14, line 27, after "title" add "and chapters 61-28, 61-28.1, and 61-28.2"

Page 14, line 29, after "title" add "and chapters 61-28, 61-28.1, and 61-28.2"

Page 15, line 14, after "title" insert "and chapters 61-28, 61-28.1, and 61-28.2"

Page 17, line 4, replace "23.1-08-20 and 23.1-08-21" with "23.1-08-19 and 23.1-08-20"

Page 18, line 28, replace "23.1-01-02" with "23.1-01-12"

Page 18, after line 31, insert:

**23.1-01-13. Contract for Inspections.**

The department may contract with public health units and other appropriate entities to conduct inspections on behalf of the department or provide other services.

Page 22, line 6, replace "rule" with "rules"

Page 25, line 21, replace "subdivision c" with "subdivisions a, b, c, and e"

Page 26, line 15, replace "environmental review advisory council" with "department"  
(note: refers to environmental review advisory council but is not consistent with ch. 23.1-01 and creates confusion)

Page 29, line 6, after "the" insert "solid waste or hazardous"

Page 29, line 7, replace "of the waste" with "thereof"

Page 29, replace lines 13 through 14 with:

"5. "Generator" means any person, by site, whose act or process produces hazardous waste or whose act first causes a hazardous waste to become subject to regulation."

Page 30, replace lines 1 through 3 with:

"9. "Owner" means, in the case of an underground storage tank:

- a. In use on or after November 8, 1984, any person who owns or operates an underground storage tank used for the storage, use, or dispensing of regulated substances.
- b. In use before November 8, 1984, but no longer in use after that date, any person who owned or operated such a tank immediately before the discontinuation of its use."

Page 30, line 10, after "liquid at" insert "standard conditions of temperature and pressure ("

Page 30, line 12, after "absolute" insert ")"

Page 37, line 24, replace "23.1-09" with "23.1-12"

Page 40, line 26, after "performance of" insert "new"

Page 41, after line 16 insert:

“a. Any facility required to have a permit under this section which facility is in existence on July 1, 1981, or was in existence on the effective date of any statutory or regulatory change in the hazardous waste management that requires it to have a permit, and has made an application for a permit under this section must be treated as having been issued such permit until such time as final administrative disposition of such application is made.

b. The department, by regulation, shall require that any person who owns or operates a facility which is treated as having been issued a permit under subdivision a meet all applicable requirements of section 23.1-04-05.”

Page 44, replace lines 25 through 30 with:

“b. The release of any such waste or regulated substance from a facility or site may present a substantial hazard to human health or the environment,

the department may issue an order requiring the owner or operator of the facility or site to conduct any monitoring, testing, analysis, and reporting with respect to the facility or site which the department deems reasonable to ascertain the nature and extent of the hazard.”

Page 63, remove lines 13-23 (note: discusses environmental review advisory council but is not consistent with ch. 23.1-01 and creates confusion)

Page 65, remove lines 13-14 (note: discusses environmental review advisory council and is repetitive of ch. 23.1-01)

Page 70, line 5, replace “23.1-01-04.1” with “23.1-01-04”

Page 71, line 10, after “for” insert “the issuance of”

Page 72, line 29, replace “environmental review advisory council” with “department” (note: to be consistent with other programs and so that there isn't confusion about whether the hearing should be conducted by the office of administrative hearings as required by 54-57-03)

Page 73, line 24, replace “the” with “that”

Page 74, line 7, replace “person” with “business or residence”

Page 82, after line 21 insert:

**23.1-08-02. Declaration of purpose.**

It is hereby declared to be the purposes of this chapter to:

1. Plan for and regulate the storage, collection, transportation, resource recovery, and disposal of solid wastes in order to protect the public health, safety, and welfare and to enhance the environment for the people of the state.
2. Establish and maintain a cooperative state program of planning and technical assistance for solid waste management.
3. Provide the authority to and require persons to plan and provide efficient, environmentally acceptable solid waste management.
4. Provide the authority for the review of plans and facilities for solid waste management.
5. Provide the authority to issue permits for the operation of solid waste management activities.
6. Promote the application of resource recovery systems which preserve and enhance the quality of air, water, and land resources.
7. Promote and assist in the development of markets for recovered and recycled materials.
8. Encourage by 1995 at least a ten percent reduction in volume of municipal waste deposited in landfills, by 1997 at least a twenty-five percent reduction, and by 2000 at least a forty percent reduction.

Page 91, remove lines 8 through 28 (note: sections obsolete as the fund was not created)

Page 94, line 1, replace "environmental review advisory council" with "department" (note: to be consistent with other programs and so that there isn't confusion about whether the hearing should be conducted by the office of administrative hearings as required by 54-57-03)

Page 95, remove lines 12 through 31 (note: chapter obsolete as the fund was not created)

Page 96, remove lines 1 through 30 (same)

Page 97, remove lines 1 through 30 (same)

Page 98, remove lines 1 through 30 (same)

Page 99, remove lines 1 through 30 (same)

Page 100, remove lines 1 through 30 (same)

Page 101, remove lines 1 through 3 (same)

Page 108, line 13, replace "emergency action necessary" with "such emergency action as it determines necessary"

Page 126, line 16, after "delay" insert a period

Page 126, after line 30, insert:

**23.1-15-01. Statement of legislative intent concerning abandoned motor vehicles.**

Abandoned motor vehicles constitute a hazard to the health and welfare of the people of the state in that such vehicles can harbor noxious diseases, furnish shelter and breeding places for vermin, and present physical dangers to the safety and well-being of children and other citizens. Abandoned motor vehicles and other scrap metals also constitute a blight on the landscape of the state and therefore a detriment to the environment. The abandonment and retirement of motor vehicles and other scrap metals constitutes a waste of a valuable source of useful metal. It is therefore in the public interest and the intent of the legislative assembly that the present accumulation of abandoned motor vehicles and other scrap metals be eliminated, that future abandonment of motor vehicles and other scrap metals be prevented, that the expansion of existing scrap recycling facilities be developed, and that other acceptable and economically useful methods for the disposal of abandoned motor vehicles and other forms of scrap metal be developed.

Page 141, line 23, after "55-01-01," insert "and" and overstrike "and 61-28-03,"

Page 142, overstrike line 18 (note: references water pollution control board)

Page 147, lines 15 through 16, remove the overstrike over "state department of health" and insert immediately thereafter "and" (note: both agencies should be referenced)

Page 147, line 23, overstrike "section of the state department of health"

Page 148, line 11, overstrike "1."

Page 148, remove lines 11 through 12, remove "“Council” means the environmental review advisory council" (note: refers to environmental review advisory council but is not consistent with ch. 23.1-01 and creates confusion)

Page 148, line 12, overstrike the period (note: same)

Page 148, remove lines 17 through 31 (note: same)

Page 149, remove lines 1 through 28 (note: same)

Page 150, remove lines 1 through 4 (note: same)

Page 150, after line 14, insert:

**"SECTION 71. AMENDMENT.** Section 61-28.1-07 of the North Dakota Century Code is amended and reenacted as follows:

**61-28.1-07. Certification of laboratories.**

No laboratory analysis of water taken from a public water system or any report of such analysis required by this chapter or any rule adopted pursuant to this chapter shall be accepted by the department unless such analysis or report shall be made by the department, the state department of health, or by any other laboratory certified by the department or the state department of health for such purposes. The department, in conjunction with the state department of health, shall provide for the certification of any laboratory, for the purposes of this section, which meets such criteria as the department or the state department of health may establish to ensure the accuracy of laboratory analyses."

Page 152, after line 6, insert:

**"SECTION 73. AMENDMENT.** Subsection 1 of section 61-30-01 of the North Dakota Century Code is amended and reenacted as follows:

1. "Department" means the ~~state department of health~~department of environmental quality."

Page 152, after line 29, insert:

**"SECTION 74. AMENDMENT.** Section 61-38-03 of the North Dakota Century Code is amended and reenacted as follows:

The state engineer may not issue a permit under this chapter without a certification from the ~~state department of health~~department of environmental quality that the permitted activity will not adversely affect water quality."

Page 153, line 1, remove "and" and after "39-26" insert ", 61-28-03, and 61-28-05"

Renumber accordingly

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2327

Page 1, line 14, replace "subsection 6 of section" with "sections 43-62-01 and"

Page 1, line 14, after the first comma insert "subsection 1 of section 43-62-15,"

Page 26, overstrike lines 14 through 17

Page 26, line 18, replace "23.1-03-11." with "23.1-03-10."

Page 26, line 28, replace "23.1-03-12." with "23.1-03-11."

Page 27, line 9, replace "23.1-03-13." with "23.1-03-12."

Page 27, line 17, replace "23.1-03-14." with "23.1-03-13."

Page 27, line 21, replace "23.1-03-15." with "23.1-03-14."

Page 27, line 25, replace "23.1-03-16." with "23.1-03-15."

Page 140, after line 21, insert:

**"SECTION 52. AMENDMENT.** Section 43-62-01 of the North Dakota Century Code is amended and reenacted as follows:

**43-62-01. Definitions.**

1. "Board" means the North Dakota medical imaging and radiation therapy board of examiners.
2. "Certification organization" means a national certification organization that specializes in the certification and registration of ~~certification of~~ medical imaging and radiation therapy technical personnel and which has programs accredited by the national commission for certifying agencies, American national standards institute or the international organization for standardization, or other accreditation organization recognized by the board.
3. "Licensed practitioner" means a licensed physician, advanced practice registered nurse, surgeon, chiropractor, dentist, or podiatrist.
4. "Licensee" means an individual licensed by the board to perform medical imaging or radiation therapy procedures and operate medical imaging or radiation therapy equipment, including a nuclear medicine technologist, radiation therapist, radiographer, radiologist assistant, x-ray operator, or sonographer.
5. "Medical imaging" means the performance of any diagnostic or interventional procedure or operation of medical imaging equipment intended for use in the diagnosis or visualization of disease or other medical conditions in human beings, including fluoroscopy, nuclear medicine, sonography, or x-rays.

6. "Medical physicist" means an individual who is certified by the American board of radiology, American board of medical physics, American board of science in nuclear medicine, or Canadian college of physics in medicine in radiological physics or one of the subspecialties of radiological physics.
7. "Radiation therapy" means the performance of any procedure or operation of radiation therapy equipment intended for use in the treatment of disease or other medical conditions in human beings.
8. "Radiation therapist" means a nonphysician licensed by the board to perform radiation therapy procedures and operate radiation therapy equipment.

**SECTION 53. AMENDMENT.** Section 43-62-03 of the North Dakota Century Code is amended and reenacted as follows:

**43-62-03. Exemptions.**

This chapter does not apply to the following:

1. A licensed practitioner performing medical imaging or radiation therapy.
2. A dental assistant or dental hygienist licensed under chapter 43-20.
3. A student enrolled in and attending a school or college of medicine, medical imaging, or radiation therapy who performs medical imaging or radiation therapy procedures on humans while under the supervision of a licensed practitioner or a radiographer, radiation therapist, nuclear medicine technologist, radiologist assistant, or sonographer holding a license in the medical imaging or radiation therapy modality which the student is enrolled or attending under this chapter.
4. An individual administering medical imaging or radiation procedures and who is employed by the United States government when performing duties associated with that employment.
5. A nurse licensed under chapter 43-12.1 who performs sonography on a focused imaging target to assess specific and limited information about a patient's immediate medical condition or to provide real-time visual guidance for another procedure.
6. ~~A limited x-ray machine operator who meets the requirements of rules adopted by the state department of health under section 23-20.1-04.~~
7. Medical imaging performed as a part of a post-mortem examination or on other nonliving remains.
- 8-7. Medical imaging performed by emergency medical services personnel certified or licensed under section 23-27-04.3."

Page 140, replace lines 22 through 26 with:

**"SECTION 54. AMENDMENT.** Subsection 1 of section 43-62-15 of the North Dakota Century Code is amended and reenacted as follows:

1. The board shall establish licensure standards for the following medical imaging and radiation therapy modalities:
  - a. Nuclear medicine technologist.
  - b. Radiation therapist.
  - c. Radiographer.
  - d. Radiologist assistant.
  - e. Sonographer.
  - f. X-ray operator."

Renumber accordingly

PROPOSED AMENDMENT TO ENGROSSED SENATE BILL NO. 2327:

Page 14.

Environmental quality or the director's designee shall serve as the executive secretary for the council.  
The members must be:

- a. A representative of county or municipal government;
- b. A representative of manufacturing or agricultural processing;
- c. A representative of solid fuels industry;
- d. A representative of the liquid and gas fuels industry;
- e. A representative of livestock agriculture;
- f. A representative of crop agriculture;
- g. A representative with an Agronomy or soil science degree;
- h. A representative of the solid waste management industry;
- ~~i. A representative of the hazardous waste industry;~~
- i. A representative of the Thermal electric generator industry;
- j. A representative of the environmental sciences;
- k. The state engineer;
- l. The state geologist; and
- m. The director of the North Dakota Game and Fish Department;

Note: We noted that fertilizer and manure management would also be an expected area of knowledge for the livestock and crop agriculture representatives. As a result we have suggested that one of the agricultural representatives on the Advisory Board be a in the business of Agronomy. It is our interpretation that this could be a person involved in soil testing, crop consulting, fertilizer, chemical or seed sales. We are open to comments or thoughts on this subject.

Proposed Amendment to SB 2327

-Rep Devlin

Page 13, line 24, after the underscored period, insert:

“The director must have a Bachelor of Science degree or higher from an accredited college in a natural or physical science or be a registered professional engineer. The director should also have seven years of environmental health or relevant engineering work experience. Three years of the work experience should include administrative and management responsibilities. Direct work experience in the State of North Dakota is preferred. The director may not engage in any other occupation or business that may conflict with the statutory duties of the director.

March 23, 2017

3/24/17 DP

1 of 5

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2327

Page 1, line 8, remove "subsection 1 of section 19-01-01,"

Page 1, line 14, replace "subsection 6 of section" with "sections 43-62-01 and"

Page 1, line 14, after the first comma insert "subsection 1 of section 43-62-15,"

Page 1, line 18, remove "sections 61-28-03 and 61-28-05,"

Page 1, line 21, after "quality" insert "and the regulation of x-ray operators"

Page 1, line 23, replace "and" with a comma

Page 1, line 24, after "39-26" insert ", and sections 61-28-03 and 61-28-05"

Page 2, after line 30, insert:

"All orders, determinations, permits, grants, contracts, agreements, certificates, licenses, waivers, bonds, authorizations, and privileges relating to the functions transferred which have been lawfully issued or made before the date of the transition of functions, continue to be effective until revised, amended, repealed, or rescinded. The transition of functions does not abate any suit, action, or other proceeding lawfully commenced by, against, or before an entity affected by the transition of functions. A suit, action, or other proceeding may be maintained by, against, or before the appropriate successor of an entity affected by the transition of functions."

Page 4, line 26, replace "23.1-04-03" with "23.1-04-04"

Page 8, remove lines 28 through 31

Page 9, line 8, replace "environmental review advisory council" with "department of environmental quality"

Page 13, line 24, after the underscored period insert "The director must have a bachelor of science degree or higher from an accredited college in a natural or physical science area of study or be a registered professional engineer. The governor shall seek to appoint a director with at least seven years of environmental health or relevant engineering work experience. Three years of the work experience must include administrative and management responsibilities. Direct work experience in North Dakota is preferred. The director may not engage in any other occupation or business that may conflict with the statutory duties of the director."

Page 13, line 29, replace "eleven" with "the state engineer, state geologist, and director of the game and fish department, who serve as ex officio members, and ten"

Page 13, line 30, replace ", and the" with ". The"

Page 14, line 2, after "The" insert "appointed"

Page 14, line 4, replace "and" with "or agricultural"

Page 14, line 7, after "of" insert "crop"

Page 14, line 8, remove "solid"

3/27/17 DF  
2 of 5

Page 14, line 8, after "waste" insert "management"

Page 14, line 9, replace "of the hazardous waste industry" with "with an agronomy or soil sciences degree"

Page 14, line 11, after the underscored semicolon insert "and"

Page 14, line 12, remove "The state engineer; and"

Page 14, line 13, replace "k. The state geologist" with "A representative of the livestock industry"

Page 14, line 15, replace "a" with "an appointed"

Page 14, line 27, after "title" insert "and chapters 61-28, 61-28.1, and 61-28.2"

Page 14, line 29, after "title" insert "and chapters 61-28, 61-28.1, and 61-28.2"

Page 15, line 14, after "title" insert "and chapters 61-28, 61-28.1, and 61-28.2"

Page 17, line 3, after "sections" insert "23.1-08-19 and"

Page 17, line 4, remove "and 23.1-08-21"

Page 18, line 28, replace "23.1-01-02" with "23.1-01-12"

Page 18, after line 31, insert:

**"23.1-01-13. Contracts for inspections.**

The department may contract with public health units and other appropriate entities to conduct inspections on behalf of the department or provide other services.

Page 22, line 6, replace "rule" with "rules"

Page 25, line 21, replace "subdivision c" with "this subsection"

Page 26, overstrike lines 14 through 17

Page 26, line 18, replace "23.1-03-11." with "23.1-03-10."

Page 26, line 28, replace "23.1-03-12." with "23.1-03-11."

Page 27, line 9, replace "23.1-03-13." with "23.1-03-12."

Page 27, line 17, replace "23.1-03-14." with "23.1-03-13."

Page 27, line 21, replace "23.1-03-15." with "23.1-03-14."

Page 27, line 25, replace "23.1-03-16." with "23.1-03-15."

Page 29, line 6, after "the" insert "solid waste or hazardous"

Page 29, line 13, remove "producing hazardous waste or acting to cause"

Page 29, line 14, replace "a hazardous waste" with "through act or process produces hazardous waste or first causes a hazardous waste"

Page 30, line 1, remove ", any person that owns or"

Page 30, replace lines 2 and 3 with ":

3/29/17 DPA  
3 of 5

- a. In use after November 7, 1984, any person that owns or operates an underground storage tank used for the storage, use, or dispensing of regulated substances.
- b. In use before November 8, 1984, but no longer in use after that date, any person that owned or operated such a tank immediately before the discontinuation of the tank's use."

Page 30, line 10, after "at" insert "standard conditions of temperature and pressure ("

Page 30, line 12, after "absolute" insert an underscored closing parenthesis

Page 37, line 24, replace "23.1-09" with "23.1-12"

Page 40, line 26, after "of" insert "new"

Page 140, replace lines 22 through 26 with:

**"SECTION 51. AMENDMENT.** Section 43-62-01 of the North Dakota Century Code is amended and reenacted as follows:

**43-62-01. Definitions.**

1. "Board" means the North Dakota medical imaging and radiation therapy board ~~of examiners~~.
2. "Certification organization" means a national certification organization that specializes in the certification and registration of ~~certification of~~ medical imaging and radiation therapy technical personnel and which has programs accredited by the national commission for certifying agencies, American national standards institute or the international organization for standardization, or other accreditation organization recognized by the board.
3. "Licensed practitioner" means a licensed physician, advanced practice registered nurse, surgeon, chiropractor, dentist, or podiatrist.
4. "Licensee" means an individual licensed by the board to perform medical imaging or radiation therapy procedures and operate medical imaging or radiation therapy equipment, including a nuclear medicine technologist, radiation therapist, radiographer, radiologist assistant, x-ray operator, or sonographer.
5. "Medical imaging" means the performance of any diagnostic or interventional procedure or operation of medical imaging equipment intended for use in the diagnosis or visualization of disease or other medical conditions in human beings, including fluoroscopy, nuclear medicine, sonography, or x-rays.
6. "Medical physicist" means an individual who is certified by the American board of radiology, American board of medical physics, American board of science in nuclear medicine, or Canadian college of physics in medicine in radiological physics or one of the subspecialties of radiological physics.
7. "Radiation therapy" means the performance of any procedure or operation of radiation therapy equipment intended for use in the treatment of disease or other medical conditions in human beings.

- 3/27/17 DR  
4 of 5
8. "Radiation therapist" means a nonphysician licensed by the board to perform radiation therapy procedures and operate radiation therapy equipment.

**SECTION 52. AMENDMENT.** Section 43-62-03 of the North Dakota Century Code is amended and reenacted as follows:

**43-62-03. Exemptions.**

This chapter does not apply to the following:

1. A licensed practitioner performing medical imaging or radiation therapy.
2. A dental assistant or dental hygienist licensed under chapter 43-20.
3. A student enrolled in and attending a school or college of medicine, medical imaging, or radiation therapy who performs medical imaging or radiation therapy procedures on humans while under the supervision of a licensed practitioner or a radiographer, radiation therapist, nuclear medicine technologist, radiologist assistant, or sonographer holding a license in the medical imaging or radiation therapy modality which the student is enrolled or attending under this chapter.
4. An individual administering medical imaging or radiation procedures and who is employed by the United States government when performing duties associated with that employment.
5. A nurse licensed under chapter 43-12.1 who performs sonography on a focused imaging target to assess specific and limited information about a patient's immediate medical condition or to provide real-time visual guidance for another procedure.
6. ~~A limited x-ray machine operator who meets the requirements of rules adopted by the state department of health under section 23-20.1-04.~~
7. Medical imaging performed as a part of a post-mortem examination or on other nonliving remains.
8. 7. Medical imaging performed by emergency medical services personnel certified or licensed under section 23-27-04.3.

**SECTION 53. AMENDMENT.** Subsection 1 of section 43-62-15 of the North Dakota Century Code is amended and reenacted as follows:

1. The board shall establish licensure standards for the following medical imaging and radiation therapy modalities:
  - a. Nuclear medicine technologist.
  - b. Radiation therapist.
  - c. Radiographer.
  - d. Radiologist assistant.
  - e. Sonographer.

3/28/17 DA  
S of S

f. X-ray operator."

Page 141, line 23, after the second comma insert "and"

Page 141, line 23, overstrike ", and 61-28-03"

Page 148, remove lines 17 through 31

Page 149, overstrike lines 1 through 28

Page 150, overstrike lines 1 through 4

Page 152, line 30, replace the second "and" with a comma

Page 152, line 31, replace the second "and" with a comma

Page 153, line 1, after "39-26" insert ", and sections 61-28-03 and 61-28-05"

Page 153, line 3, replace "75" with "74"

Renumber accordingly

Date: 3-10-17Roll Call Vote #: 1

**2017 HOUSE STANDING COMMITTEE**  
**ROLL CALL VOTES**  
**BILL/RESOLUTION NO. 2327**

House \_\_\_\_\_ Energy & Natural Resources \_\_\_\_\_ Committee☒ SubcommitteeAmendment LC# or  
Description: \_\_\_\_\_

## Recommendation

- ☐ Adopt Amendment  
☐ Do Pass    ☐ Do Not Pass    ☐ Without Committee Recommendation  
☐ As Amended    ☐ Rerefer to Appropriations  
☐ Place on Consent Calendar

Other Actions

☐ Reconsider☒ see belowMotion Made By Rep Lefor Seconded By Rep Seibel

Representatives	Yes	No	Representatives	Yes	No
Chairman Porter			Rep. Lefor		
Vice Chairman Damschen			Rep. Marschall		
Rep. Anderson			Rep. Roers Jones		
Rep. Bosch			Rep. Ruby		
Rep. Devlin			Rep. Seibel		
Rep. Heinert					
Rep. Keiser			Rep. Mitskog		
			Rep. Mock		

Total (Yes) \_\_\_\_\_ No \_\_\_\_\_

Absent \_\_\_\_\_

Floor  
Assignment \_\_\_\_\_

If the vote is on an amendment, briefly indicate intent:

*recommended putting the colored attorney  
 general paper into a new engrossed bill*

Date: 3-10-17

Roll Call Vote #: 1

2017 HOUSE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. 2327

House Energy & Natural Resources Committee

☐ Subcommittee

Amendment LC# or  
Description: \_\_\_\_\_

Recommendation

- ☒ Adopt Amendment  
☐ Do Pass    ☐ Do Not Pass    ☐ Without Committee Recommendation  
☐ As Amended    ☐ Rerefer to Appropriations  
☐ Place on Consent Calendar  
Other Actions    ☐ Reconsider    ☐ \_\_\_\_\_

Motion Made By Rep Devlin Seconded By Rep Seibel

Representatives	Yes	No	Representatives	Yes	No
Chairman Porter			Rep. Lefor		
Vice Chairman Damschen			Rep. Marschall		
Rep. Anderson			Rep. Roers Jones		
Rep. Bosch			Rep. Ruby		
Rep. Devlin			Rep. Seibel		
Rep. Heinert					
Rep. Keiser			Rep. Mitskog		
			Rep. Mock		

Total (Yes) \_\_\_\_\_ No \_\_\_\_\_

Absent \_\_\_\_\_

Floor  
Assignment \_\_\_\_\_

If the vote is on an amendment, briefly indicate intent:

as presented by Mr. Glatl, the ones with colors  
that Maggie Olson went through

Date: 3-10-17Roll Call Vote #: 2

**2017 HOUSE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. SB 2327**

House Energy & Natural Resources Committee☐ SubcommitteeAmendment LC# or  
Description:17.0860.02001

Recommendation

- ☒ Adopt Amendment  
☐ Do Pass    ☐ Do Not Pass    ☐ Without Committee Recommendation  
☐ As Amended    ☐ Rerefer to Appropriations  
☐ Place on Consent Calendar

Other Actions

☐ Reconsider☐ \_\_\_\_\_

Motion Made By

Rep Keiser

Seconded By

Rep Devlin

Representatives	Yes	No	Representatives	Yes	No
Chairman Porter			Rep. Lefor		
Vice Chairman Damschen			Rep. Marschall		
Rep. Anderson			Rep. Roers Jones		
Rep. Bosch			Rep. Ruby		
Rep. Devlin			Rep. Seibel		
Rep. Heinert					
Rep. Keiser			Rep. Mitskog		
			Rep. Mock		

Total (Yes) \_\_\_\_\_ No \_\_\_\_\_

Absent \_\_\_\_\_

Floor

Assignment \_\_\_\_\_

If the vote is on an amendment, briefly indicate intent:

02001

Date: 3-23-17Roll Call Vote #: 1

**2017 HOUSE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. 2327**

House Energy & Natural Resources Committee☒ SubcommitteeAmendment LC# or  
Description: \_\_\_\_\_**Recommendation**

- ☐ Adopt Amendment  
☐ Do Pass    ☐ Do Not Pass    ☐ Without Committee Recommendation  
☐ As Amended    ☐ Rerefer to Appropriations  
☐ Place on Consent Calendar

**Other Actions**☐ Reconsider

☒ recommend changing "must" to  
should on lines 3+4

Motion Made By Rep Lefor Seconded By Rep Seibel"X" committee members

Representatives	Yes	No	Representatives	Yes	No
Chairman Porter			Rep. Lefor	<input checked="" type="checkbox"/>	
Vice Chairman Damschen			Rep. Marschall		
Rep. Anderson			Rep. Roers Jones	<input checked="" type="checkbox"/>	
Rep. Bosch			Rep. Ruby		
Rep. Devlin	<input checked="" type="checkbox"/>		Rep. Seibel	<input checked="" type="checkbox"/>	
Rep. Heinert					
Rep. Keiser			Rep. Mitskog	<input checked="" type="checkbox"/>	
			Rep. Mock		

Total (Yes) \_\_\_\_\_ No \_\_\_\_\_

Absent \_\_\_\_\_

Floor  
Assignment \_\_\_\_\_

If the vote is on an amendment, briefly indicate intent:

Date: 3-23-17Roll Call Vote #: 2

**2017 HOUSE STANDING COMMITTEE**  
**ROLL CALL VOTES**  
**BILL/RESOLUTION NO. 2327**

House Energy & Natural Resources Committee☒ SubcommitteeAmendment LC# or  
Description: \_\_\_\_\_

## Recommendation

- ☐ Adopt Amendment  
☐ Do Pass    ☐ Do Not Pass    ☐ Without Committee Recommendation  
☐ As Amended    ☐ Rerefer to Appropriations  
☐ Place on Consent Calendar

## Other Actions

☐ Reconsider☒ recommmend attachments 1+2  
to full committeeMotion Made By Rep Roers Jones Seconded By Rep Lefor

Representatives	Yes	No	Representatives	Yes	No
Chairman Porter			Rep. Lefor		
Vice Chairman Damschen			Rep. Marschall		
Rep. Anderson			Rep. Roers Jones		
Rep. Bosch			Rep. Ruby		
Rep. Devlin			Rep. Seibel		
Rep. Heinert					
Rep. Keiser			Rep. Mitskog		
			Rep. Mock		

*voice  
vote  
making  
carried*

Total (Yes) \_\_\_\_\_ No \_\_\_\_\_

Absent \_\_\_\_\_

Floor  
Assignment \_\_\_\_\_

If the vote is on an amendment, briefly indicate intent:

recommmend attachments 1+2 to full  
committee

Date: 3-23-17

Roll Call Vote #: 1

2017 HOUSE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. SB 2327

House \_\_\_\_\_ Energy & Natural Resources \_\_\_\_\_ Committee

☐ Subcommittee

Amendment LC# or  
Description:

*Proposed amendment pg 14 environmental  
quality A-M*

Recommendation

- ☒ Adopt Amendment  
☐ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation  
☐ As Amended ☐ Rerefer to Appropriations  
☐ Place on Consent Calendar

Other Actions

☐ Reconsider ☐ \_\_\_\_\_

Motion Made By Rep Devlin Seconded By Rep Mock

Representatives	Yes	No	Representatives	Yes	No
Chairman Porter			Rep. Lefor		
Vice Chairman Damschen			Rep. Marschall		
Rep. Anderson			Rep. Roers Jones		
Rep. Bosch			Rep. Ruby		
Rep. Devlin			Rep. Seibel		
Rep. Heinert					
Rep. Keiser			Rep. Mitskog		
			Rep. Mock		

*motion  
carries*

Total (Yes) \_\_\_\_\_ No \_\_\_\_\_

Absent \_\_\_\_\_

Floor  
Assignment \_\_\_\_\_

If the vote is on an amendment, briefly indicate intent:

*Committee structure*

Date: 3-23-17Roll Call Vote #: 2

**2017 HOUSE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. SB 2327**

House Energy & Natural Resources Committee☐ SubcommitteeAmendment LC# or  
Description:adopt job description on page 13 line 24  
of proposed amendment

Recommendation

☒ Adopt Amendment☐ Do Pass ☐ Do Not Pass☐ Without Committee Recommendation☐ As Amended☐ Rerefer to Appropriations☐ Place on Consent Calendar

Other Actions

☐ Reconsider☐

Motion Made By

Rep Devlin

Seconded By

Rep Mock

Representatives	Yes	No	Representatives	Yes	No
Chairman Porter			Rep. Lefor		
Vice Chairman Damschen			Rep. Marschall		
Rep. Anderson			Rep. Roers Jones		
Rep. Bosch			Rep. Ruby		
Rep. Devlin			Rep. Seibel		
Rep. Heinert					
Rep. Keiser			Rep. Mitskog		
			Rep. Mock		

*Voice  
Vote  
motion  
carries*

Total (Yes) \_\_\_\_\_ No \_\_\_\_\_

Absent \_\_\_\_\_

Floor  
Assignment \_\_\_\_\_

If the vote is on an amendment, briefly indicate intent:

*job description*

Date: 3-23-17Roll Call Vote #: 3

**2017 HOUSE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. SB 2327**

House Energy & Natural Resources Committee☐ SubcommitteeAmendment LC# or  
Description: \_\_\_\_\_

## Recommendation

- ☐ Adopt Amendment  
☒ Do Pass    ☐ Do Not Pass    ☐ Without Committee Recommendation  
☒ As Amended    ☐ Rerefer to Appropriations  
☐ Place on Consent Calendar

## Other Actions

- ☐ Reconsider    ☐ \_\_\_\_\_

 Motion Made By Rep Devlin Seconded By Rep Roers Jones

Representatives	Yes	No	Representatives	Yes	No
Chairman Porter	✓		Rep. Lefor	✓	
Vice Chairman Damschen	✓		Rep. Marschall	✓	
Rep. Anderson	✓		Rep. Roers Jones	✓	
Rep. Bosch	✓		Rep. Ruby		✓
Rep. Devlin	✓		Rep. Seibel	✓	
Rep. Heinert	✓				
Rep. Keiser	AB		Rep. Mitskog	✓	
			Rep. Mock	✓	

Total (Yes) 12 No 1Absent 1
 Floor Assignment Rep Devlin Rep Roers Jones

If the vote is on an amendment, briefly indicate intent:

**REPORT OF STANDING COMMITTEE**

**SB 2327, as engrossed: Energy and Natural Resources Committee (Rep. Porter, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (12 YEAS, 1 NAYS, 1 ABSENT AND NOT VOTING). Engrossed SB 2327 was placed on the Sixth order on the calendar.

Page 1, line 8, remove "subsection 1 of section 19-01-01,"

Page 1, line 14, replace "subsection 6 of section" with "sections 43-62-01 and"

Page 1, line 14, after the first comma insert "subsection 1 of section 43-62-15,"

Page 1, line 18, remove "sections 61-28-03 and 61-28-05,"

Page 1, line 21, after "quality" insert "and the regulation of x-ray operators"

Page 1, line 23, replace "and" with a comma

Page 1, line 24, after "39-26" insert ", and sections 61-28-03 and 61-28-05"

Page 2, after line 30, insert:

"All orders, determinations, permits, grants, contracts, agreements, certificates, licenses, waivers, bonds, authorizations, and privileges relating to the functions transferred which have been lawfully issued or made before the date of the transition of functions, continue to be effective until revised, amended, repealed, or rescinded. The transition of functions does not abate any suit, action, or other proceeding lawfully commenced by, against, or before an entity affected by the transition of functions. A suit, action, or other proceeding may be maintained by, against, or before the appropriate successor of an entity affected by the transition of functions."

Page 4, line 26, replace "23.1-04-03" with "23.1-04-04"

Page 8, remove lines 28 through 31

Page 9, line 8, replace "environmental review advisory council" with "department of environmental quality"

Page 13, line 24, after the underscored period insert "The director must have a bachelor of science degree or higher from an accredited college in a natural or physical science area of study or be a registered professional engineer. The governor shall seek to appoint a director with at least seven years of environmental health or relevant engineering work experience. Three years of the work experience must include administrative and management responsibilities. Direct work experience in North Dakota is preferred. The director may not engage in any other occupation or business that may conflict with the statutory duties of the director."

Page 13, line 29, replace "eleven" with "the state engineer, state geologist, and director of the game and fish department, who serve as ex officio members, and ten"

Page 13, line 30, replace ", and the" with ". The"

Page 14, line 2, after "The" insert "appointed"

Page 14, line 4, replace "and" with "or agricultural"

Page 14, line 7, after "of" insert "crop"

Page 14, line 8, remove "solid"

Page 14, line 8, after "waste" insert "management"

Page 14, line 9, replace "of the hazardous waste industry" with "with an agronomy or soil sciences degree"

Page 14, line 11, after the underscored semicolon insert "and"

Page 14, line 12, remove "The state engineer; and"

Page 14, line 13, replace "k. The state geologist" with "A representative of the livestock industry"

Page 14, line 15, replace "a" with "an appointed"

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Page 17, line 4, remove "and 23.1-08-21"

Page 18, line 28, replace "23.1-01-02" with "23.1-01-12"

Page 18, after line 31, insert:

**"23.1-01-13. Contracts for inspections.**

The department may contract with public health units and other appropriate entities to conduct inspections on behalf of the department or provide other services."

Page 22, line 6, replace "rule" with "rules"

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Page 26, overstrike lines 14 through 17

Page 26, line 18, replace "23.1-03-11." with "23.1-03-10."

Page 26, line 28, replace "23.1-03-12." with "23.1-03-11."

Page 27, line 9, replace "23.1-03-13." with "23.1-03-12."

Page 27, line 17, replace "23.1-03-14." with "23.1-03-13."

Page 27, line 21, replace "23.1-03-15." with "23.1-03-14."

Page 27, line 25, replace "23.1-03-16." with "23.1-03-15."

Page 29, line 6, after "the" insert "solid waste or hazardous"

Page 29, line 13, remove "producing hazardous waste or acting to cause"

Page 29, line 14, replace "a hazardous waste" with "through act or process produces hazardous waste or first causes a hazardous waste"

Page 30, line 1, remove ", any person that owns or"

Page 30, replace lines 2 and 3 with ":

- a. In use after November 7, 1984, any person that owns or operates an underground storage tank used for the storage, use, or dispensing of regulated substances.
- b. In use before November 8, 1984, but no longer in use after that date, any person that owned or operated such a tank immediately before the discontinuation of the tank's use."

Page 30, line 10, after "at" insert "standard conditions of temperature and pressure ("

Page 30, line 12, after "absolute" insert an underscored closing parenthesis

Page 37, line 24, replace "23.1-09" with "23.1-12"

Page 40, line 26, after "of" insert "new"

Page 140, replace lines 22 through 26 with:

**"SECTION 51. AMENDMENT.** Section 43-62-01 of the North Dakota Century Code is amended and reenacted as follows:

**43-62-01. Definitions.**

1. "Board" means the North Dakota medical imaging and radiation therapy board ~~of examiners~~.
2. "Certification organization" means a national certification organization that specializes in the certification and registration of ~~certification of~~ medical imaging and radiation therapy technical personnel and which has programs accredited by the national commission for certifying agencies, American national standards institute or the international organization for standardization, or other accreditation organization recognized by the board.
3. "Licensed practitioner" means a licensed physician, advanced practice registered nurse, surgeon, chiropractor, dentist, or podiatrist.
4. "Licensee" means an individual licensed by the board to perform medical imaging or radiation therapy procedures and operate medical imaging or radiation therapy equipment, including a nuclear medicine technologist, radiation therapist, radiographer, radiologist assistant, x-ray operator, or sonographer.
5. "Medical imaging" means the performance of any diagnostic or interventional procedure or operation of medical imaging equipment intended for use in the diagnosis or visualization of disease or other medical conditions in human beings, including fluoroscopy, nuclear medicine, sonography, or x-rays.
6. "Medical physicist" means an individual who is certified by the American board of radiology, American board of medical physics, American board of science in nuclear medicine, or Canadian college of physics in medicine in radiological physics or one of the subspecialties of radiological physics.
7. "Radiation therapy" means the performance of any procedure or operation of radiation therapy equipment intended for use in the treatment of disease or other medical conditions in human beings.

8. "Radiation therapist" means a nonphysician licensed by the board to perform radiation therapy procedures and operate radiation therapy equipment.

**SECTION 52. AMENDMENT.** Section 43-62-03 of the North Dakota Century Code is amended and reenacted as follows:

**43-62-03. Exemptions.**

This chapter does not apply to the following:

1. A licensed practitioner performing medical imaging or radiation therapy.
2. A dental assistant or dental hygienist licensed under chapter 43-20.
3. A student enrolled in and attending a school or college of medicine, medical imaging, or radiation therapy who performs medical imaging or radiation therapy procedures on humans while under the supervision of a licensed practitioner or a radiographer, radiation therapist, nuclear medicine technologist, radiologist assistant, or sonographer holding a license in the medical imaging or radiation therapy modality which the student is enrolled or attending under this chapter.
4. An individual administering medical imaging or radiation procedures and who is employed by the United States government when performing duties associated with that employment.
5. A nurse licensed under chapter 43-12.1 who performs sonography on a focused imaging target to assess specific and limited information about a patient's immediate medical condition or to provide real-time visual guidance for another procedure.
6. ~~A limited x-ray machine operator who meets the requirements of rules adopted by the state department of health under section 23-20.1-04.~~
7. Medical imaging performed as a part of a post-mortem examination or on other nonliving remains.
- ~~8.~~ 7. Medical imaging performed by emergency medical services personnel certified or licensed under section 23-27-04.3.

**SECTION 53. AMENDMENT.** Subsection 1 of section 43-62-15 of the North Dakota Century Code is amended and reenacted as follows:

1. The board shall establish licensure standards for the following medical imaging and radiation therapy modalities:
  - a. Nuclear medicine technologist.
  - b. Radiation therapist.
  - c. Radiographer.
  - d. Radiologist assistant.
  - e. Sonographer.
  - f. X-ray operator."

Page 141, line 23, after the second comma insert "and"

Page 141, line 23, overstrike ", and 61-28-03"

Page 148, remove lines 17 through 31

Page 149, overstrike lines 1 through 28

Page 150, overstrike lines 1 through 4

Page 152, line 30, replace the second "and" with a comma

Page 152, line 31, replace the second "and" with a comma

Page 153, line 1, after "39-26" insert ", and sections 61-28-03 and 61-28-05"

Page 153, line 3, replace "75" with "74"

Renumber accordingly

**2017 TESTIMONY**

**SB 2327**

SB 2327  
2-10-17  
AHch #1

**Testimony**  
**Senate Bill 2327**  
**Senate Energy and Natural Resources Committee**  
**February 10, 2017, 9:30 a.m.**  
**North Dakota Department of Health**

Good morning Chairman Unruh and members of the Senate Energy and Natural Resources Committee. My name is David Glatt, and I am the Interim Co-Director for the North Dakota Department of Health and Environmental Health Section Chief. I am here today to testify in support of SB 2327.

The Environmental Health Section implements a variety of state and federally mandated environmental protection programs. We implement federal programs at the state level through primacy agreements associated with the Clean Water Act; Safe Drinking Water Act; Resource Conservation and Recovery Act and the Clean Air Act. We also implement a radiation program through an agreement with the Nuclear Regulatory Commission. Our programs are based on following the applicable science and the law and implemented by a current professional staff of 174.25 FTE's comprised of engineers, scientists, chemists, microbiologists and administrative support staff.

Many of our programs operate at a complex technical level requiring highly trained staff to conduct permitting, inspections, enforcement, monitoring and analyses. I have included a current organizational chart of the Department of Health, Environmental Health Section and a contact list for specific programs and activities. As currently organized, environmental protection programs are implemented through a section of the North Dakota Department of Health.

SB 2327 proposes to create a new stand-alone Department of Environmental Quality, which would continue to implement the same environmental protection programs as the existing Environmental Health Section. SB 2327 acknowledges the importance of environmental programs and their critical job functions in the state by:

- > Identifying a stand-alone Department of Environmental Quality able to set and establish critical policy and standards.
- > Elevate the Department of Environmental Quality to a cabinet level agency, the Director of which would to be appointed by the Governor.

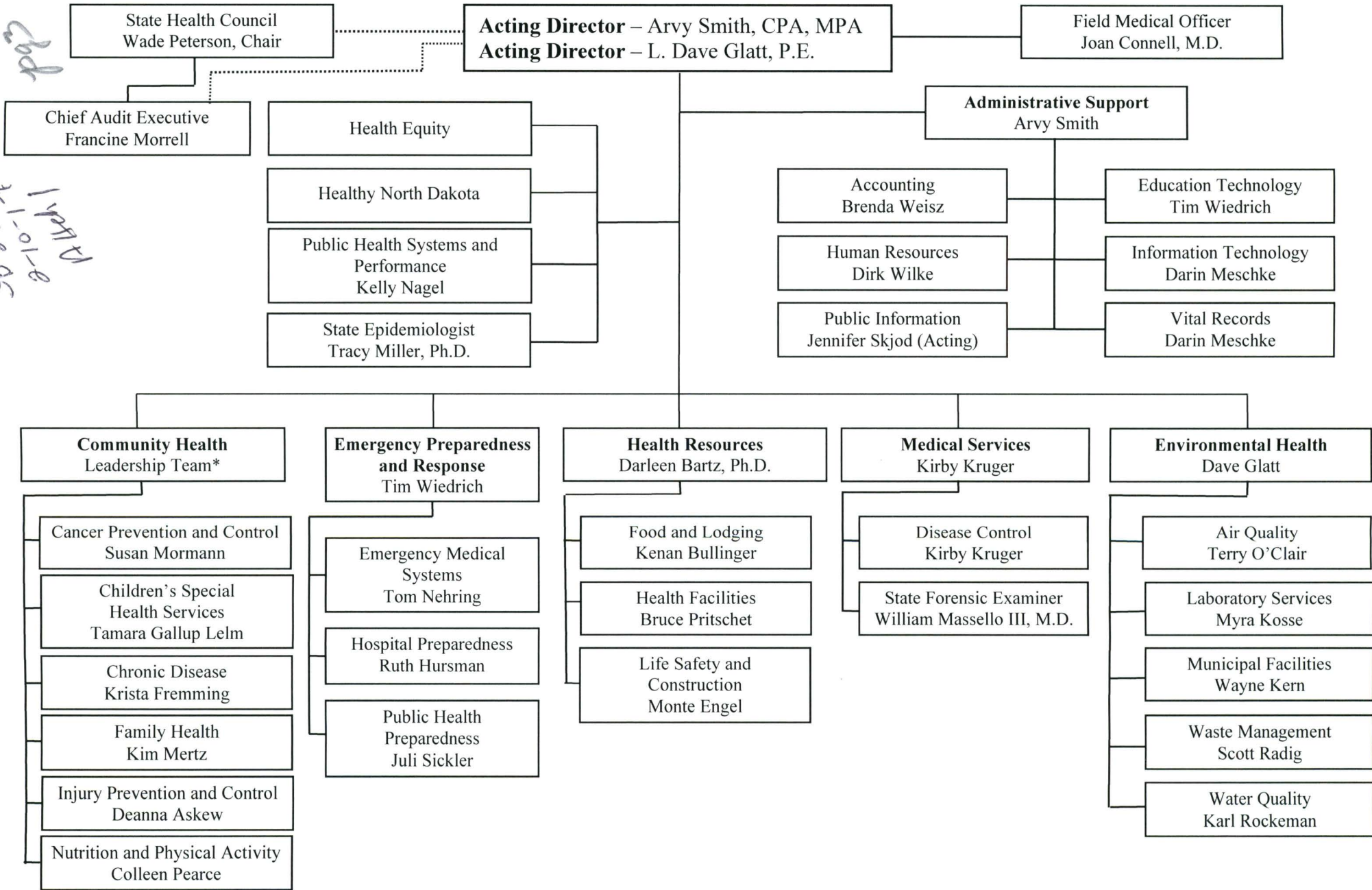
Establishing a new Department with the current scope of responsibilities will require up to two years to implement to:

- > Allow time for the U.S. Environmental Protection Agency and the Nuclear Regulatory Commission to review and approve the reorganization to ensure all federal/state primacy agreements remain intact and are not disrupted.
- > Amend all environmental laws and rules to reflect the new organization.
- > Evaluate how best to reorganize both the proposed Department of Environmental Quality and the existing Department of Health to address anticipated internal fiscal impacts with the goal to show a zero state fiscal impact.
- > Consolidate the Air Quality Advisory Board and the Water Pollution Control Advisory Board into a new Environmental Quality Advisory Board appointed by the Governor.

Upon meeting the goals and necessary approvals of the transition to a new Department of Environmental Quality, the Environmental Health Section Chief must certify all work has been satisfactorily accomplished pursuant to SB 2327.

This concludes my testimony. I am happy to answer any questions.

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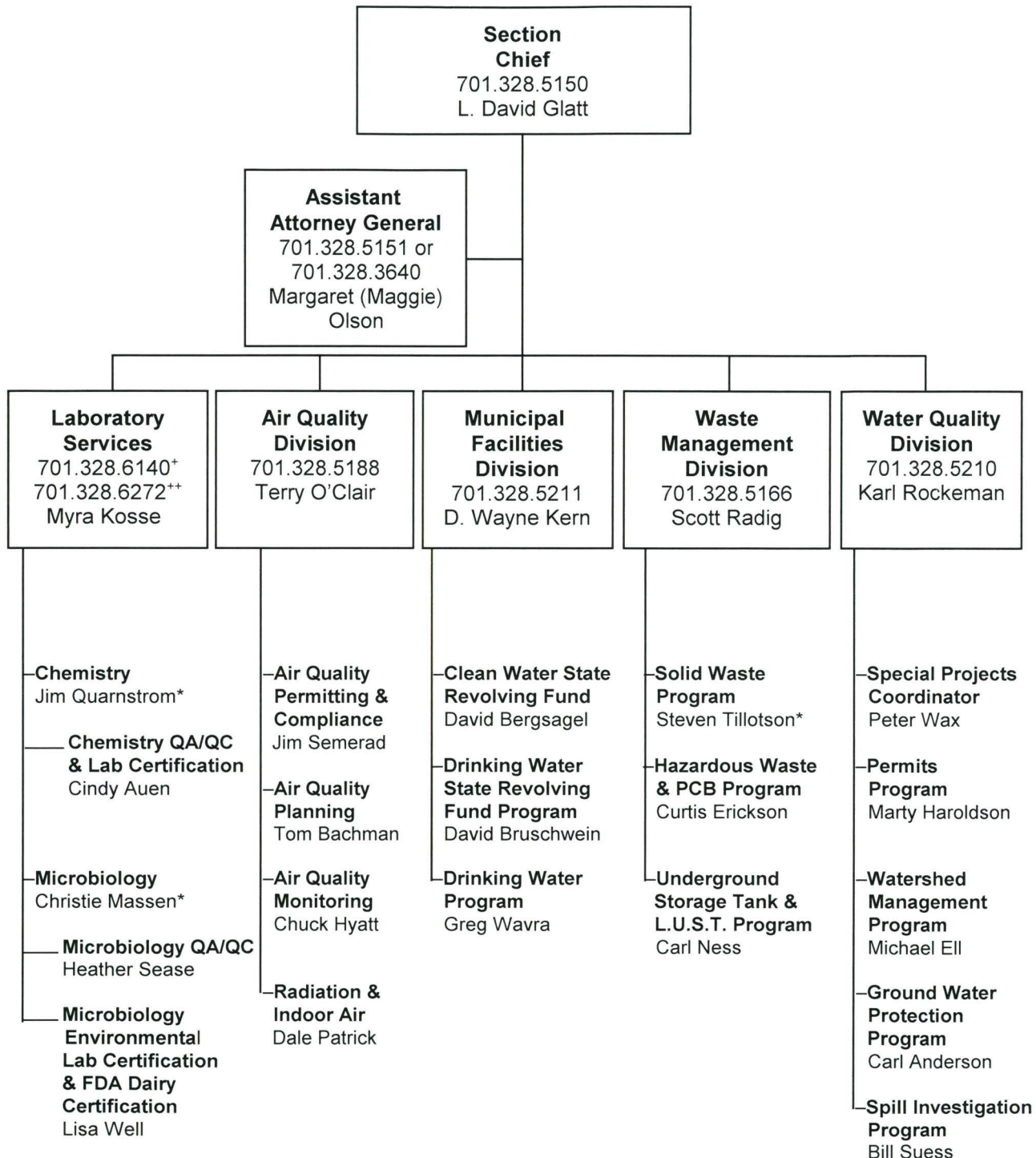


\*The six division directors share responsibility for management of the Community Health Section.



# North Dakota Department of Health Environmental Health Section

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\*Assistant Director  
+Chemistry Phone #  
++Microbiology Phone #

September 2016



# North Dakota Department of Health

## Environmental Health Section

Gold Seal Center, 918 East Divide Avenue, Bismarck, ND 58501-1947

Fax Number (701) 328-5200

Website: [www.ndhealth.gov/ehs](http://www.ndhealth.gov/ehs)

### Information Directory



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#### Environmental Health Section Chief's Office (701) 328-5150

**Chief: L. David Glatt**

**Performance Partnership Agreement & Grants Coordination - Teri Lunde**

**Information Technology Coordination - Gold Seal Center Campus - Allen Johnson**

**Lab Campus - Kevin Kosse**

**Data Management - Gary Haberstroh**

**Public Communication/Information, Development & Staff Training - Melissa Miller**

**Legal - Margaret Olson (701) 328-5151**

#### Division of Air Quality (701) 328-5188

**Director: Terry O'Clair**

##### Air Quality Permitting & Compliance -

**Jim Semerad**

- > Air Quality Permits
- > Air Quality Inspections
- > Emission/Stack Testing
- > Emission Inventory
- > Open Burning (other than landfills)
- > Visible Emission/Odor Certification
- > Oil and Gas Wells
- > Air Quality Questions and Complaints

##### Air Quality Planning - Tom Bachman

- > Dispersion Modeling
- > State Implementation Planning

##### Air Quality Monitoring - Chuck Hyatt

- > Ambient Air Quality Data
- > Ambient Network Operations

##### Radiation & Indoor Air Quality - Dale Patrick

- > Radioactive Materials
- > Radon
- > X-Ray Machines
- > Asbestos
- > Indoor Air Quality
- > Mammography Quality Assurance
- > Lead Paint

#### Laboratory Services

2635 East Main, P.O. Box 5520, Bismarck, ND 58506-5520, Fax: (701) 328-6280

**Director: Myra Kosse**

##### Division of Chemistry (701) 328-6140

**Assistant Director: Jim Quarnstrom**

**Quality Assurance/Quality Control: Cindy Auen**

Analysis of Environmental Samples  
Environmental Laboratory Certification

##### Division of Microbiology (701) 328-6272

**Assistant Director: Christie Massen**

**Quality Assurance/Quality Control: Heather Sease**

Analysis of Clinical Public Health Specimens and  
Environmental Microbiology Including Laboratory  
Certification

**Environmental Microbiology: Lisa Well**

#### Division of Municipal Facilities (701) 328-5211

(701) 328-6628 (Environmental Training Center)

**Director: D. Wayne Kern**

##### Clean Water State Revolving Loan Fund

**Program - Dave Bergsagel**

- > Clean Water Revolving Loan Fund
- > Plan Review (wastewater systems)

##### Drinking Water State Revolving Loan Fund

**Program - David Bruschwein**

- > Drinking Water Revolving Loan Fund
- > Plan Review (water systems)

##### Drinking Water Program - Greg Wavra

- > Safe Drinking Water Act
- > Community Fluoridation Program
- > Training and Certification of Water & Wastewater Facility Operators
- > Inspections of Water & Wastewater Facilities
- > North Dakota Water & Pollution Control Conference
- > Publication of the *Official Bulletin*

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**Division of Waste Management** (701) 328-5166**Director: Scott Radig**   **Assistant Director: Steve Tillotson****Solid Waste Program - Steve Tillotson**

Solid Waste Management:  
Municipal, Industrial, Special & Inert Waste  
> Permits, Inspections  
> Operator Training & Certification  
> Open Burning (at solid waste facilities)  
> Transfer Stations  
Coal Combustion & Offsite Oilfield Waste  
Land Treatment  
Scrap Tires & Tire Recycling  
Waste Reduction, Recycling & Composting  
Energy Recovery  
Biomass (waste wood, etc.)  
Nutrient Management (Ag Processing)  
Emergency Waste & Debris Management  
Abandoned & Dangerous Buildings  
Abandoned Motor Vehicle Projects, Auto  
Salvage & Scrap Metal  
Pollution Prevention (P2)  
Solid Waste Planning

**Hazardous Waste Program & Toxic  
Substance Control Act - Curt Erickson**

Hazardous Waste  
> Permits  
> Inspections  
> Corrective Action  
Superfund  
> CERCLIS Sites  
> Emergency Response  
Emergency Spill Response  
> Site Assessment  
> Site Remediation  
Brownfields  
Laboratory/Agricultural/Household Chemical  
Wastes  
Polychlorinated Biphenyls (PCBs)  
Used Oil  
Infectious Waste  
Waste Transporter Permits

**Underground Storage Tank Program - Carl Ness**

Underground Storage Tanks (USTs)  
> Petroleum  
> Hazardous Substances  
Above-ground Storage Tanks (ASTs)  
> Spills, Assessments  
> Certification of Biofuels Blender Pump Installation

Leaking Underground Storage Tank (L.U.S.T.)  
Trust Fund  
> Assessment, Remediation  
Antifreeze Registration  
Petroleum Products Testing  
Spill Response

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**Division of Water Quality** (701) 328-5210**Director: Karl Rockeman****Watershed Management - Michael Ell**

> Water Quality Standards  
> Nonpoint Source Pollution Management  
> Rivers and Stream Monitoring and Assessment  
> Clean Lakes Assessments  
> Fish Consumption Advisory  
> Watershed Management  
> Water Quality Modeling

**Water Quality Special Projects - Peter Wax**

> 404 Dredge & Fill  
> 401 Water Quality Certification  
> Environmental Impact Statements  
(EIS) Review  
> Water Quality Standards

**Spill Investigation Program - Bill Suess**

> Spill Response

**Wastewater Facility/Permits - Marty Haroldson**

> North Dakota Pollutant Discharge Elimination  
System (NDPDES) Permits  
> Wastewater Releases  
> Stormwater Regulations  
> Feedlot Inspections/Approval/Runoff  
> Septic Pumps  
> Small Business Assistance  
> Pretreatment

**Groundwater Protection Program - Carl  
Anderson**

> Underground Injection Control (UIC) Program  
> Source Water Protection  
> Groundwater Remediation and Assessment

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**OTHER Environmental Information****Environmental Health Section**

**Fargo Office**, 1120 28<sup>th</sup> Ave. N., Suite B, Fargo, ND 58102, (701) 499-5207, Fax (701) 235-7394

**Towner Office**, 314 Main St. S. #2, Towner, ND 58788, (701) 537-2043, Fax (701) 537-2044

**Environmental Hot Line** 1-800-755-1625

**Environmental Training Center** 2639 E. Main Ave., Bismarck, ND 58501, (701) 328-6628, Fax (701) 328-6206

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**Approvals of Anhydrous Ammonia Facilities - State Ag Dept.** (701) 328-2231

**Emergency Response Spills - State Radio** 1-800-472-2121 (in-state) or (701) 328-9921 (out-of-state)

**Oil Field Related Spills - Oil & Gas Division** (701) 328-8020

**Petroleum Tank Release Compensation Fund (PTRCF) - Jeff Bitz - ND Insurance Dept.** (701) 328-9600

**SARA Title III - Department of Emergency Services** Fraire Barracks, P.O. Box 5511, Bismarck, ND 58506-5511, (701) 328-8100

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February 7, 2017

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PROPOSED AMENDMENTS TO SENATE BILL NO. 2327

Page 1, line 1, replace the second "and" with a comma

Page 1, line 2, after "23.1" insert ", and subdivision v of subsection 1 of section 54-06-04"

Page 1, line 3, replace the first "and" with a comma

Page 1, line 4, after the second "quality" insert ", and biennial reports of the department of environmental quality"

Page 1, line 15, replace "and sections" with "section"

Page 1, line 16, after the first comma insert "subsections 1 and 2 of section 61-28-02, sections 61-28-03 and 61-28-05, subsection 2 of section 61-28.1-02, subsection 15 of section 61-28.1-03, subsection 2 of section 61-28.2-01, and sections"

Page 13, line 19, after "established" insert " - Director appointment"

Page 13, line 21, after the underscored period, insert "The governor shall appoint a director of the department who shall serve at the pleasure of the governor. The position of director of the department is not a classified position, and the governor shall set the salary of the director within the limits of legislative appropriations."

Page 140, after line 23, insert:

"**SECTION 55.** Subdivision v of subsection 1 of section 54-06-04 the North Dakota Century Code is created and enacted as follows:

v. Department of environmental quality."

Page 147, after line 15, insert:

"**SECTION 65. AMENDMENT.** Subsection 1 of section 61-28-02 of the North Dakota Century Code is amended and reenacted as follows:

1. ~~"Board" means the state water pollution control board~~ "Council" means the environmental review advisory council.

**SECTION 66. AMENDMENT.** Subsection 2 of section 61-28-02 of the North Dakota Century Code is amended and reenacted as follows:

2. ~~"Department" means the state department of health~~ department of environmental quality.

**SECTION 67. AMENDMENT.** Section 61-28-03 of the North Dakota Century Code is amended and reenacted as follows:

**61-28-03. State water pollution prevention agency - ~~Board~~Council.**

1. ~~The state water pollution control board consists of thirteen persons. The board must include the state health officer, state engineer, director of the game and fish department, state geologist, and nine other members~~

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~~appointed by the governor, three of whom must be representatives of production agriculture, two of whom must be representatives of manufacturing and processing, one of whom must be a representative of the solid fuels industry, one of whom must be a representative of the fluid and gas fuels industry, one of whom must be a representative of the environmental sciences, and one of whom must be a representative of county or municipal government.~~

- ~~2. Of the nine members appointed by the governor, each shall serve six-year terms. The governor may fill any vacancy in the appointed membership of the board, and may remove any appointed member for cause.~~
- ~~3. The board shall select its own chairman from among its members. The heads of departments on the board may, by official order filed with the executive secretary of the board, designate a representative of the person's department to perform the duties of the member making the designation. That person, if any, shall have the powers and be subject to the duties and responsibilities of the appointing office.~~
- ~~4. All members of the board shall serve without compensation for their duties, but must be reimbursed for necessary travel and other expenses incurred in the performance of their official duties. Reimbursement must be paid out of funds allocated to the department for water pollution control.~~
- ~~5. The department shall provide the boardcouncil with copies of maps, plans, documents, studies, surveys, and all other necessary information in order that the boardso the council may be fully cognizant of the current status of water pollution and its control in the state and to enable the board to advise the department in development of programs for the prevention and control of pollution of waters in the state.~~
- ~~6. The board shall hold at least one regular meeting each year, and any additional meetings the chairman deems necessary, at a time and place to be determined by the chairman. Upon written request of any three members, the chairman shall call a special meeting. Seven members constitute a quorum.~~
- ~~7.2. The boardcouncil shall consider and make recommendations regarding any rules and standards relating to water quality or pollution, ground water protection, and safe drinking of water that are adopted by the department. The department may not take final action on any rules or standards without consulting the boardcouncil. The boardcouncil shall consider any other matters related to the purposes of this chapter and may make recommendations on its own initiative to the department concerning the administration of this chapter.~~

**SECTION 68. AMENDMENT.** Section 61-28-05 of the North Dakota Century Code is amended and reenacted as follows:

**61-28-05. Rules and standards.**

The department may adopt rules and, jointly with the boardcouncil, shall hold public hearings regarding the adoption, amendment, or repeal of rules and standards of quality of the waters of the state as provided in this chapter.

**SECTION 69. AMENDMENT.** Subsection 2 of section 61-28.1-02 of the North Dakota Century Code is amended and reenacted as follows:

2. "Department" means the ~~state department of health~~department of environmental quality.

**SECTION 70. AMENDMENT.** Subsection 15 of section 61-28.1-03 of the North Dakota Century Code is amended and reenacted as follows:

15. Designate the ~~state department of health~~department of environmental quality as the state safe drinking water agency for all purposes of the federal Safe Drinking Water Act and is authorized to take all actions necessary and appropriate to secure for the state the benefit of such Act and any grants made thereunder.

**SECTION 71. AMENDMENT.** Subsection 2 of section 61-28.2-01 of the North Dakota Century Code is amended and reenacted as follows:

2. There is established the water pollution control revolving loan fund, which must be maintained and operated by the ~~state department of health~~department of environmental quality. Grants from the federal government or its agencies allotted to the state for the capitalization of the revolving loan fund, and state matching funds when required, must be deposited directly in the revolving loan fund in compliance with the terms of the federal grant. Money in the revolving loan fund must be expended in a manner consistent with terms and conditions of the grants received by the state and may be used to offer loan guarantees; to provide payments to reduce interest on loans and loan guarantees; to make bond interest subsidies; to provide bond guarantees on behalf of municipalities, other local political subdivisions, and intermunicipal or interstate agencies; to provide assistance to a municipality, other local political subdivisions, or intermunicipal or interstate agencies with respect to the nonfederal share of the costs of a project; to finance the cost of facility planning and the preparation of plans, specifications, and estimates for construction of publicly owned treatment works or public water supply systems; to provide financial assistance for the construction and rehabilitation of a project on the state priority list; to secure principal and interest on bonds issued by a public trust having the state of North Dakota as its beneficiary, or the public finance authority if the proceeds of such bonds are deposited in the revolving loan fund and to the extent provided in the terms of the federal grant; to provide for loan guarantees for similar revolving funds established by municipalities, other local political subdivisions, or intermunicipal agencies; to purchase debt incurred by municipalities or other local political subdivisions for wastewater treatment projects or public water supply systems; to improve credit market access by guaranteeing or purchasing insurance or other credit enhancement devices for local obligations or obligations of a public trust having the state of North Dakota as its beneficiary or the public finance authority; to fund other programs which the federal government authorizes by the terms of its grants; to fund the administrative expenses of the department associated with the revolving loan fund; and to provide for any other expenditure consistent with the federal grant program and state law. Money not currently needed for the operation of the revolving loan fund or otherwise dedicated may be

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invested. All interest earned on investments must be credited to the revolving loan fund."

Page 149, line 1, replace "67" with "75"

Renumber accordingly



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pg 1

**DEPARTMENT OF COMMERCE TESTIMONY ON SENATE BILL 2327**  
**FEBRUARY 10, 2017, 9:30 A.M.**  
**SENATE ENERGY & NATURAL RESOURCES COMMITTEE**  
**SENATOR JESSICA UNRUH, CHAIR**

**JUSTIN DEVER – CO-DEPUTY COMMISSIONER, ND DEPARTMENT OF COMMERCE**

Good morning, Madam Chairman and members of the committee, my name is Justin Dever and I serve as a Co-Deputy Commissioner for the North Dakota Department of Commerce. The Commissioner of Commerce serves as chairman of the EmPower North Dakota Commission.

On behalf of the EmPower ND Commission, I am here today to speak in favor of Senate Bill 2286. The EmPower ND Commission has endorsed this bill as being related to a recommendation outlined in their 2016 Policy Updates and Recommendations report. Their full report is available at [www.EmPowerND.com](http://www.EmPowerND.com).

The EmPower ND Commission recommends that the State:

- Provide adequate funding and staffing levels for North Dakota Department of Health – Environmental Health Section to ensure it will be able to properly manage its respective programs and maintain primacy.

Senate Bill 2327 would elevate the Environmental Health Section into its own cabinet-level state agency. This bill does so in a manner that would allow adequate time for approvals to ensure that the state maintains primacy in regards to federal regulations.

The EmPower ND Commission believes that elevating the Environmental Health Section to become its own cabinet-level agency is appropriate given its important work of protecting North Dakota's clean air, water and land. The Commission also believes that this move would help in maintaining state primacy in the long-term by providing appropriate focus on the mission and activities of a Department of Environmental Quality.

Madam Chairman and members of the Energy and Natural Resources Committee, the EmPower ND Commission respectfully request your favorable consideration of Senate Bill 2327. That concludes my testimony and I am happy to entertain any questions.

## North Dakota Farm Bureau opposes Senate Bill 2327.

Madam Chair and members of the committee;

North Dakota Farm Bureau sees this bill as the proverbial solution looking for a problem. The current North Dakota Department of Health does an excellent job, not only in looking out for public health, but most importantly from our farm organization's point of view; the DoH does an excellent job of applying sound science to their decisions regarding agriculture and other industries that involve water, land, and private property rights within our state. If these changes are warranted it would be our contention that all the stakeholder groups should have been involved in the process. And we would encourage you to give this bill a Do Not Pass recommendation.

We question the wisdom in making this sweeping change, which has the potential to impact our states Agriculture and Energy sectors, particularly when the bill is interpreted to have no fiscal impact. How can we create a new state agency without expanding the role of government and cost of government in our lives?

Furthermore we disagree with the contention that this bill would insulate current staff from political or partisan public policy decisions. Political winds ebb and flow; currently, the system that is working so well, is not a politically appointed position. If this segment of the Health Department is removed and set up within a Department of Environmental Quality, we foresee a time when those hired will reflect a purely political interpretation of regulations and not reflect practical sound science.

If this bill passes, and we create our own state EPA, we foresee a day when the agency will not question the wisdom of federal EPA regulations, but would rather rubber-stamp federal initiatives which will have a distinctively negative impact on our states Energy and Agricultural Industries.

What's the problem?

Is it a problem?

Will this solve the problem?

How many more problems will this create?

For more information on the stance of North Dakota Farm Bureau regarding this bill please contact:

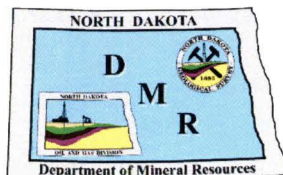
Peter F. Hanebutt  
Director of Public Policy  
North Dakota Farm Bureau  
4900 Ottawa Street  
Bismarck, ND 58503  
pete@ndfb.org  
(701) 224-0330 office  
(701) 371-0027 cell

### Fargo

1101 1st Ave. N. | PO Box 2064, Fargo, ND 58107-2064  
Phone: 701-298-2200 | 1-800-367-9668

### Bismarck

4900 Ottawa St. | PO Box 2793, Bismarck, ND 58502-2793  
Phone: 701-224-0330 | 1-800-932-8869



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**Senate Bill 2327**  
**House Energy and Natural Resources Committee**  
February 10, 2017

Testimony of Edward C. Murphy, State Geologist

The North Dakota Industrial Commission – Department of Mineral Resources supports Senate Bill 2327. The Department has reviewed SB 2327 to see that those portions of the Century Code where the Department of Health interacts with the Geological Survey and the Oil and Gas Division have been transferred:

**GEOLOGICAL SURVEY**

	<u>Existing</u>	<u>New</u>	<u>Section</u>	<u>Page</u>
<b>Class III Underground Injection Control</b>	<b>NDCC 38-12</b>		1	2
<b>Leasing Coal, Oil, Gas, and Other Rights</b>	<b>NDCC 15-05</b>			
<b>Reports-State geologist-State department of health</b>	<b>NDCC 15-05-16</b>		9	8
<b>Disposal of Nuclear and Other Waste Material</b>	<b>NDCC 23-20.2</b>			
<b>Jurisdiction of the industrial commission</b>	<b>NDCC 23-20.2-03</b>		16	12
<b>Environmental review advisory council – Members, powers, and duties</b>		<b>NDCC 23.1-02</b>	17	13
<b>State air pollution control agency – Advisory council</b>	<b>NDCC 23-25-02</b>			
<b>State water pollution prevention agency- board</b>	<b>NDCC 61-28-03</b>			
<b>Solid Waste Management and Land Protection</b>	<b>NDCC 23-29</b>			
<b>Preconstruction site review</b>	<b>NDCC 23-29-07.6</b>	<b>NDCC 23.1-08-13</b>	24	91
<b>Ground Water Protection</b>	<b>NDCC 23-33</b>			
<b>Wellhead protection program</b>	<b>NDCC 23-33-10</b>	<b>NDCC 23.1-11-10</b>	27	103
<b>Subsurface Exploration Damages</b>	<b>NDCC 38-11.2</b>			
<b>Inspection of well site</b>	<b>NDCC 38-11.2-02</b>		37	135
<b>Surface Mining and Reclamation Operations</b>	<b>NDCC 38-14.1</b>			
<b>Powers and duties of the commission</b>	<b>NDCC 38-14.1-03 (12)</b>		38	135
<b>Permit approval or denial standards</b>	<b>NDCC 38-14.1-21 (2)</b>		39	135
<i>Subsurface Mineral Exploration and Development</i>	<i>NDAC 43-02-02</i>			
<i>Underground Injection Control Program (Class III)</i>	<i>NDAC 43-02-02.1</i>			
<i>In Situ Leach Uranium Mining Rules</i>	<i>NDAC 43-02-02.2</i>			
<i>Surface Mining (Non-Coal)</i>	<i>NDAC 43-02-02.3</i>			
<i>Solution Mining</i>	<i>NDAC 43-02-02.4</i>			
<i>Geothermal Energy Production</i>	<i>NDAC 43-02-07</i>			

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# OIL AND GAS DIVISION

	<u>Existing</u>	<u>New</u>	<u>Section</u>	<u>Page</u>
<b>Control of Gas and Oil Resources Class II &amp; Primacy</b>	<b>NDCC 38-08-04</b>		1	2
<b>Carbon Dioxide Underground Storage Class VI &amp; Primacy</b>	<b>NDCC 38-22</b>		1	2
Definitions		NDCC 23.1-04-02		
Underground Storage Tank Exemptions		NDCC 23.1-04-02 (16)	17	31
Hazardous Waste Applicability	<b>NDCC 38-08-04.5 (2f)</b>	NDCC 23.1-04-16	17	46
<b>Definitions "Special Waste"</b>	<b>NDCC 38-08-04</b>	NDCC 23.1-08-02 (15)	24	83
Commercial oilfield special waste recycling facilities		NDCC 23.1-08-05	24	86
<b>Definitions "Tank" does not include</b>		NDCC 23.1-12-02 (15)	28	105
<b>Petroleum Release Compensation Fund</b>		NDCC 23.1-12-03	28	107
<b>Abandoned oil and gas well plugging and site reclamation fund</b>	<b>NDCC 38-08-04.5</b>		34	131
<b>Inspection of Well Site</b>	<b>NDCC 38-11.1-03.1</b>		35	133
<b>Notice of Operations</b>	<b>NDCC 38-11.1-04.1</b>		36	134
<b>Permit Consultation</b>	<b>NDCC 38-22-07</b>		40	136
<b>Environmental protection</b>	<b>NDCC 38-22-12</b>		41	136

For years the Geological Survey and the Oil and Gas Division have worked with all five divisions of the Environmental Health Section (Air Quality, Laboratory Services, Municipal Facilities, Waste Management, and Water Quality). We feel it is important to keep the Environmental Health Section intact, which this bill does.

February 7, 2017

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PROPOSED AMENDMENTS TO SENATE BILL NO. 2327

Page 1, line 1, replace the second "and" with a comma

Page 1, line 2, after "23.1" insert ", and subdivision v of subsection 1 of section 54-06-04"

Page 1, line 3, replace the first "and" with a comma

Page 1, line 4, after the second "quality" insert ", and biennial reports of the department of environmental quality"

Page 1, line 15, replace "and sections" with "section"

Page 1, line 16, after the first comma insert "subsections 1 and 2 of section 61-28-02, sections 61-28-03 and 61-28-05, subsection 2 of section 61-28.1-02, subsection 15 of section 61-28.1-03, subsection 2 of section 61-28.2-01, and sections"

Page 13, line 19, after "established" insert " - Director appointment"

Page 13, line 21, after the underscored period, insert "The governor shall appoint a director of the department who shall serve at the pleasure of the governor. The position of director of the department is not a classified position, and the governor shall set the salary of the director within the limits of legislative appropriations."

Page 140, after line 23, insert:

"**SECTION 55.** Subdivision v of subsection 1 of section 54-06-04 the North Dakota Century Code is created and enacted as follows:

v. Department of environmental quality."

Page 147, after line 15, insert:

"**SECTION 65. AMENDMENT.** Subsection 1 of section 61-28-02 of the North Dakota Century Code is amended and reenacted as follows:

1. ~~"Board" means the state water pollution control board~~ "Council" means the environmental review advisory council.

**SECTION 66. AMENDMENT.** Subsection 2 of section 61-28-02 of the North Dakota Century Code is amended and reenacted as follows:

2. ~~"Department" means the state department of health~~ department of environmental quality.

**SECTION 67. AMENDMENT.** Section 61-28-03 of the North Dakota Century Code is amended and reenacted as follows:

**61-28-03. State water pollution prevention agency - ~~Board~~Council.**

1. ~~The state water pollution control board consists of thirteen persons. The board must include the state health officer, state engineer, director of the game and fish department, state geologist, and nine other members~~

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appointed by the governor, three of whom must be representatives of production agriculture, two of whom must be representatives of manufacturing and processing, one of whom must be a representative of the solid fuels industry, one of whom must be a representative of the fluid and gas fuels industry, one of whom must be a representative of the environmental sciences, and one of whom must be a representative of county or municipal government.

2. ~~Of the nine members appointed by the governor, each shall serve six-year terms. The governor may fill any vacancy in the appointed membership of the board, and may remove any appointed member for cause.~~
3. ~~The board shall select its own chairman from among its members. The heads of departments on the board may, by official order filed with the executive secretary of the board, designate a representative of the person's department to perform the duties of the member making the designation. That person, if any, shall have the powers and be subject to the duties and responsibilities of the appointing office.~~
4. ~~All members of the board shall serve without compensation for their duties, but must be reimbursed for necessary travel and other expenses incurred in the performance of their official duties. Reimbursement must be paid out of funds allocated to the department for water pollution control.~~
5. ~~The department shall provide the boardcouncil with copies of maps, plans, documents, studies, surveys, and all other necessary information in order that the board so the council may be fully cognizant of the current status of water pollution and its control in the state and to enable the board to advise the department in development of programs for the prevention and control of pollution of waters in the state.~~
6. ~~The board shall hold at least one regular meeting each year, and any additional meetings the chairman deems necessary, at a time and place to be determined by the chairman. Upon written request of any three members, the chairman shall call a special meeting. Seven members constitute a quorum.~~
- 7.2. ~~The boardcouncil shall consider and make recommendations regarding any rules and standards relating to water quality or pollution, ground water protection, and safe drinking of water that are adopted by the department. The department may not take final action on any rules or standards without consulting the boardcouncil. The boardcouncil shall consider any other matters related to the purposes of this chapter and may make recommendations on its own initiative to the department concerning the administration of this chapter.~~

**SECTION 68. AMENDMENT.** Section 61-28-05 of the North Dakota Century Code is amended and reenacted as follows:

**61-28-05. Rules and standards.**

The department may adopt rules and, jointly with the boardcouncil, shall hold public hearings regarding the adoption, amendment, or repeal of rules and standards of quality of the waters of the state as provided in this chapter.

**SECTION 69. AMENDMENT.** Subsection 2 of section 61-28.1-02 of the North Dakota Century Code is amended and reenacted as follows:

2. "Department" means the ~~state department of health~~department of environmental quality.

**SECTION 70. AMENDMENT.** Subsection 15 of section 61-28.1-03 of the North Dakota Century Code is amended and reenacted as follows:

15. Designate the ~~state department of health~~department of environmental quality as the state safe drinking water agency for all purposes of the federal Safe Drinking Water Act and is authorized to take all actions necessary and appropriate to secure for the state the benefit of such Act and any grants made thereunder.

**SECTION 71. AMENDMENT.** Subsection 2 of section 61-28.2-01 of the North Dakota Century Code is amended and reenacted as follows:

2. There is established the water pollution control revolving loan fund, which must be maintained and operated by the ~~state department of health~~department of environmental quality. Grants from the federal government or its agencies allotted to the state for the capitalization of the revolving loan fund, and state matching funds when required, must be deposited directly in the revolving loan fund in compliance with the terms of the federal grant. Money in the revolving loan fund must be expended in a manner consistent with terms and conditions of the grants received by the state and may be used to offer loan guarantees; to provide payments to reduce interest on loans and loan guarantees; to make bond interest subsidies; to provide bond guarantees on behalf of municipalities, other local political subdivisions, and intermunicipal or interstate agencies; to provide assistance to a municipality, other local political subdivisions, or intermunicipal or interstate agencies with respect to the nonfederal share of the costs of a project; to finance the cost of facility planning and the preparation of plans, specifications, and estimates for construction of publicly owned treatment works or public water supply systems; to provide financial assistance for the construction and rehabilitation of a project on the state priority list; to secure principal and interest on bonds issued by a public trust having the state of North Dakota as its beneficiary, or the public finance authority if the proceeds of such bonds are deposited in the revolving loan fund and to the extent provided in the terms of the federal grant; to provide for loan guarantees for similar revolving funds established by municipalities, other local political subdivisions, or intermunicipal agencies; to purchase debt incurred by municipalities or other local political subdivisions for wastewater treatment projects or public water supply systems; to improve credit market access by guaranteeing or purchasing insurance or other credit enhancement devices for local obligations or obligations of a public trust having the state of North Dakota as its beneficiary or the public finance authority; to fund other programs which the federal government authorizes by the terms of its grants; to fund the administrative expenses of the department associated with the revolving loan fund; and to provide for any other expenditure consistent with the federal grant program and state law. Money not currently needed for the operation of the revolving loan fund or otherwise dedicated may be

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invested. All interest earned on investments must be credited to the revolving loan fund."

Page 149, line 1, replace "67" with "75"

Renumber accordingly

## Testimony SB 2327

Senator Jessica Unruh, District 33

3-3-1.7  
SB 2327  
UNRUH

Chairman Porter and committee members:

**The Bill before the Legislature:** SB 2327 lays the ground work for the creation a Department of Environmental Quality (DEQ) for the state of North Dakota during the upcoming biennium. Rather than immediate creation, the bill allows a two-year timeline for a thoughtful transition from inside the Department of Health to a fully functioning stand-alone department, whose head is a newly appointed cabinet position, reporting to the Governor. Page two of the bill provides all the directive language to establish the department, and I would particularly like to draw your attention to lines 6-15.

**Purpose:** To establish and maintain strong state primacy over all federal and state environmental programs. To ensure sufficient manpower resources and environmental expertise are in place to maintain that primacy. Many states have DEQs separate from their Departments of Public Health, this places an emphasis on the environment separate from the medical world of public health issues. The establishment of a ND DEQ would send a message to EPA: We are serious about our state primacy; this is our jurisdiction.

**Timing:** The current acting co-director Dave Glatt will oversee this transition. His extensive experience with the department ensures this transition will be successful, it will be thoughtful, it will be thorough and comprehensive, ensuring all duties that should be in the new DEQ are encompassed, making this perfect timing. Many of us in this room recognize that we have a potential reprieve from the regulation tsunami promulgated from the last President's administration. However, that reprieve may be as brief as four years and a plan to guarantee strong state primacy should be important to all of us now, not down the road. The creation of a North Dakota DEQ is the first step in that planning process. The bill allows for up to two years before implementation occurs, with the final transition not coming into effect until after the next legislative session. The Health Department's budget handles all of the costs associated with the transition during the next interim, and we all have the same goal. Efficiencies. This move will allow the director the complete authority to restructure the department and focus on technical positions to implement and enforce rules, resulting in a more efficient delivery of services and doing more with less resources. Given our budget situation, the timing to make this department more efficient under this structure couldn't be more perfect.

**DEQ Responsibilities:** The bill contains a lot of lined language, however, very little new content. The vast majority is language lined due to the move into new section creating the Department of Environmental Quality, taking the language from one chapter and putting it into a new chapter.

One change and new addition is the creation of an advisory committee for the DEQ as found on pages 13 and 14, replacing previous oversight of the Air Pollution Control Advisory Council, State Water Pollution Control Board, both of which are proposed to be eliminated, and the ND Health Council. The new council, called Environmental Review Council, replaces these three boards' oversight and reduces the overall positions number 33 to 11, providing efficiency and reduced levels of bureaucracy. These terms are four years long and all are appointed by the governor, just as they were before. These new board positions are proposed as follows:

- a. A representative of county or municipal government;
- b. A representative of manufacturing and processing;
- c. A representative of the solid fuels industry;
- d. A representative of the liquid and gas fuels industry;
- e. A representative of agriculture;
- f. A representative of the solid waste industry;
- g. A representative of the hazardous waste industry;
- h. A representative of the thermal electric generators industry;
- i. A representative of the environmental sciences;
- j. The state engineer; and
- k. The state geologist

As you can see, the Environmental Review Council has equal representation from all economic sectors regulated by the department. This will provide balanced input and evaluation of all rules as promulgated by the DEQ. This board does not have approval authority for the rule making process by the DEQ, but must be consulted to review and recommend any changes to rules or standards.

As outlined in the bill, the DEQ would maintain the following responsibilities, including the permitting, inspection, enforcement, rulemaking, public comment and appeal aspects of each:

- 1. Protection of air quality
- 2. Water protection
- 3. Underground & above ground refined petroleum product storage tank program
- 4. Solid Waste Management programs
- 5. Radioactive Waste Management programs
- 6. Livestock/Feedlot permitting and setback requirements

Giving the environmental health section autonomy isn't growing government. It makes government more responsive to the needs of the citizens. For the past few years, agriculture, coal, oil and gas have been under an onslaught of federal regulations from EPA. The Environmental Section of the Health Department has been our state's first line of defense against EPA's overreach into the state's right to regulate. North Dakota industries, the North Dakota Ag Department and the North Dakota Attorney General's office have partnered with the department in this fight, be it WOTUS, the Clean Power Plan, methane regs, or a litany of other items. Frankly, the State of North Dakota has been at war against the federal government, especially against the EPA. These state implementation plans should be the State of North Dakota's number one priority to protect our Constitutional right to implement rules and regulations, and to show we take primacy of EPA rules now and in the future very seriously.

**SECTION ANALYSIS OF 17.0860.01001**

The attached chart is a section-by-section analysis of 2017 Senate Bill No. 2327, which establishes a new Department of Environmental Quality, as the bill existed when it left the Senate Environment and Natural Resources Committee with amendments. For each of the 76 sections of the bill, the chart contains a brief explanation of what the section does and any cross references to sections of the North Dakota Century Code it would replace or amend.

<b>Section of 17.0860.01001</b>	<b>Function of the Section</b>
Section 1	<p>This section is new language that accomplishes the following:</p> <ul style="list-style-type: none"> <li>• The Chief of the Environmental Health Section of the State Department of Health shall take all necessary and appropriate steps to transfer the powers and duties of the current environmental health section to a new Department of Environmental Quality during the 2017-18 interim, and, by July 1, 2019, shall obtain the necessary federal approvals and contract changes to ensure a continuation of primacy after the establishment of the new department.</li> <li>• The Chief of the Environmental Health Section has the authority to reorganize the section for greater efficiency and to promulgate rules for the new department contingent on the establishment of the new department.</li> <li>• State Department of Health funds related to environmental quality functions that will fall under the new department will be transferred to the new department.</li> <li>• Legislative Council staff may replace appropriate references to the State Department of Health in the Century Code with references to the new Department of Environmental Quality. This will serve as a cleanup measure only.</li> </ul>
Section 2	Amends Section 04-35.2-01 to change reference to the State Health Officer to the Director of the Department of Environmental Quality.
Section 3	Amends Section 06-09.4-03(5)(b) to change reference to the State Department of Health to the Department of Environmental Quality.
Section 4	Amends Section 11-33-01 to change reference to the State Department of Health to the Department of Environmental Quality and to update a cross reference.
Section 5	Amends Section 11-33-02.1 to change reference to the State Department of Health to the Department of Environmental Quality and to update a cross reference.
Section 6	Amends Section 11-33-22 to change reference to the State Department of Health to the Department of Environmental Quality and to remove obsolete language referring to regulations promulgated before 2007.
Section 7	Creates a new subdivision to Section 12-60-24(2) that adds the new Department of Environmental Quality to a list of agencies that can receive criminal history background check information from Bureau of Criminal Investigations. This section of the bill repeats language that currently exists for the State Department of Health.
Section 8	Amends Section 12.1-06.1-01(2)(d) to update a cross reference and to make language consistent with current Century Code style.
Section 9	Amends Section 15-05-16 to change references to the State Department of Health to the Department of Environmental Quality.
Section 10	Amends Section 19-01-01(1) to change reference to the State Department of Health to the Department of Environmental Quality.
Section 11	Amends Section 20.1-13-05 to change reference to the State Water Pollution Control Board to the Environmental Review Advisory Council and to change reference to the State Department of Health to the Department of Environmental Quality.

Section 12	Amends Section 20.1-17-01 to change reference to the State Department of Health to the Department of Environmental Quality.
Section 13	Amends Section 23-01-02 to update membership of the Health Council, removing members from the energy industry and the manufacturing and processing industry.
Section 14	Amends Section 23-01.3-01(8) to change reference to the State Department of Health to the Department of Environmental Quality.
Section 15	Amends Section 23-20.2-02 to update cross references.
Section 16	Amends Section 23-20.2-03 to update a cross reference.
Section 17	<p>Creates Chapter 23.1-01 for the Department of Environmental Quality.</p> <p>Sections 23.1-01-01 through 23.1-01-03 establish the Environmental Review Advisory Council and the Department of Environmental Quality. They establish the Director of the department as a cabinet-level position and sets out the Director's powers and duties.</p> <p>Section 23.1-01-04 replaces Section 23-01-04.1, which places limits on the state's regulatory authority under various federal environmental laws.</p> <p>Section 23.1-01-05 repeats Section 23-01-14. It gives the new department the same authority as the Department of Health currently has.</p> <p>Section 23.1-01-06 replaces Section 23-01-06. It transfers authority from the State Department of Health to the new department.</p> <p>Section 23.1-01-07 replaces Section 23-01-23. It transfers language regarding the State Department of Health to the new department.</p> <p>Section 23.1-01-08 repeats Section 23-01-25. It gives the new department the same authority as the State Department of Health.</p> <p>Section 23.1-01-09 repeats Section 23-01-26. It gives the new department the same authority as the State Department of Health.</p> <p>Section 23.1-01-10 replaces Section 11-33-22. It transfers authority from the State Department of Health to the new department.</p> <p>Section 23.1-01-11 replaces Section 23-01-36. It transfers authority from the State Department of Health to the new department.</p> <p>Section 23.1-01-12 replaces Section 23-32-03. It transfers authority from the State Department of Health to the new department.</p>
Section 18	Chapter 23.1-02 replaces Chapter 23-20, which governs "Radiation." It transfers powers and duties from the State Department of Health to the new department.
Section 19	Chapter 23.1-03 replaces chapter 23-20.1, which governs "Ionizing Radiation Development." It transfers powers and duties from the State Department of Health to the new department.
Section 20	Chapter 23.1-04 replaces Chapter 23-20.3, which governs "Hazardous Waste Management." It transfers powers and duties from the State Department of Health to the new department.
Section 21	Chapter 23.1-05 replaces Chapter 23-20.5, which is the Southwestern low-level radioactive waste disposal compact.
Section 22	Chapter 23.1-06 replaces Chapter 23-25, which governs "Air Pollution Control." It transfers powers and duties from the State Department of Health to the new department.
Section 23	Chapter 23.1-07 replaces Chapter 23-26, which governs "Water Distribution and Wastewater Systems Operators." It transfers powers and duties from the State Department of Health to the new department.

Section 24	Chapter 23.1-08 replaces chapter 23-29, which governs "Solid Waste Management and Land Protection." It transfers powers and duties from the State Department of Health to the new department.
Section 25	Chapter 23.1-09 replaces Chapter 23-29.1, which governs the "Municipal Waste Landfill Release Compensation Fund." It transfers powers and duties from the State Department of Health to the new department.
Section 26	Chapter 23.1-10 replaces Chapter 23-31, which governs "Environmental Emergency Costs." It transfers powers and duties from the State Department of Health to the new department.
Section 27	Chapter 23.1-11 replaces Chapter 23-33, which governs "Ground Water Protection." It transfers powers and duties from the State Department of Health to the new department.
Section 28	Chapter 23.1-12 replaces Chapter 23-37, which governs "Petroleum Release Remediation." It transfers powers and duties from the State Department of Health to the new department.
Section 29	Chapter 23.1-13 replaces Chapter 19-10, which governs "Petroleum Products." It transfers powers and duties from the State Department of Health to the new department.
Section 30	Chapter 23.1-14 replaces Chapter 19-16.1, which governs "Antifreeze Regulation." It transfers powers and duties from the State Department of Health to the new department.
Section 31	Chapter 23.1-15 replaces Chapter 39-26, which governs "Abandoned Motor Vehicles." It transfers powers and duties from the State Department of Health to the new department.
Section 32	Amends Section 24-03-23 to update cross references.
Section 33	Amends Section 28-32-50(5) to update cross references.
Section 34	Amends Section 38-08-04.5 to change reference to the State Department of Health to the Department of Environmental Quality and update cross references.
Section 35	Amends Section 38-11.1-03.1 to change reference to the State Department of Health to the Department of Environmental Quality and update a cross reference.
Section 36	Amends Section 38-11.1-04.1 to change reference to the State Department of Health to the Department of Environmental Quality.
Section 37	Amends Section 38-11.2-02 to change reference to the State Department of Health to the Department of Environmental Quality.
Section 38	Amends Section 38-14.1-03(12) to conform to current Century Code style and to change reference to the State Department of Health to the Department of Environmental Quality.
Section 39	Amends Section 38-14-21(2) to change reference to the State Department of Health to the Department of Environmental Quality.
Section 40	Amends Section 38-22-07 to change reference to the State Department of Health to the Department of Environmental Quality.
Section 41	Amends Section 38-22-12 to change references to the State Department of Health to the Department of Environmental Quality.
Section 42	Amends Section 40-47-01 to change reference to the State Department of Health to the Department of Environmental Quality and update a cross reference.

Section 43	Amends Section 43-18-02 to change reference to a State Department of Health employee to the Director of the new department.
Section 44	Amends Section 43-18-09 to change reference to the State Department of Health to the Department of Environmental Quality.
Section 45	Amends Section 43-35-03 to change reference to the State Health Officer to the Director of the Department of Environmental Quality.
Section 46	Amends Section 43-35-19 to change references to the State Department of Health to the Department of Environmental Quality.
Section 47	Amends Section 43-35-19.1 to change reference to the State Department of Health to the Department of Environmental Quality.
Section 48	Amends Section 43-35-19.2 to change references to the State Department of Health to the Department of Environmental Quality.
Section 49	Amends Section 43-35-20 to change reference to the State Department of Health to the Department of Environmental Quality and update style.
Section 50	Amends Section 43-35-23 to change reference to the State Department of Health to the Department of Environmental Quality.
Section 51	Amends Section 43-48-03(11) to exempt Department of Environmental Quality personnel involved in a CDC program from certain licensing requirements. The State Department of Health personnel involved in the CDC program currently have this exemption.
Section 52	Amends Section 43-62-03(6) to change reference to the State Department of Health to the Department of Environmental Quality and update a cross reference.
Section 53	Amends Section 44-04-18.4(3) to add the new department. This subsection already applies to the State Department of Health.
Section 54	Amends Section 44-04-32 to change reference to the State Department of Health to the Department of Environmental Quality.
Section 55	Amends Section 54-06-04(1)(v) to add the new department to a list of agencies that submit biennial reports to the Governor and Secretary of State.
Section 56	Amends Section 54-07-01.2(1) to replace reference to the Air Pollution Control Advisory Council to the Environmental Review Advisory Council and to update a cross reference.
Section 57	Amends Section 54-12-08(3) to add the new department to a list of departments that may receive legal services from the Attorney General's office.
Section 58	Amends Section 54-44.3-30 to add the new department to a list of agencies subject to the merit system.
Section 59	Amends Section 57-43.2-01(33) to change references to the State Department of Health to the Department of Environmental Quality and update cross references.
Section 60	Amends Section 58-03-11 to change reference to the State Department of Health to the Department of Environmental Quality and update a cross reference.
Section 61	Amends Section 58-03-11.1 to change reference to the State Department of Health to the Department of Environmental Quality and update a cross reference.

Section 62	Amends Section 58-03-17 to change references to the State Department of Health to the Department of Environmental Quality.
Section 63	Amends Section 58-06-01(13) to change reference to the State Department of Health to the Department of Environmental Quality.
Section 64	Amends Section 61-04.1-04 to change reference to the State Department of Health to the Department of Environmental Quality.
Section 65	Amends Section 61-28-02(1) to change reference to the Water Pollution Control Board to the Environmental Review Advisory Council for Chapter 61-28, which governs "Control, Prevention, and Abatement of Pollution of Surface Waters."
Section 66	Amends Section 61-28-02(2) to change reference to the State Department of Health to the Department of Environmental Quality for Chapter 61-28, which governs "Control, Prevention, and Abatement of Pollution of Surface Waters."
Section 67	Amends Section 61-28-03 to transfer powers and duties of the State Water Pollution Control Board to the Environmental Review Advisory Council and eliminate the Water Pollution Control Board.
Section 68	Amends Section 61-28-05 to change reference to the Water Pollution Control Board to the Environmental Review Advisory Council.
Section 69	Amends Section 61-28.1-02(2) to change reference to the State Department of Health to the Department of Environmental Quality for Chapter 61-28.1, which implements the Safe Drinking Water Act.
Section 70	Amends Section 61-28.1-03(15) to change reference to the State Department of Health to the Department of Environmental Quality.
Section 71	Amends Section 61-28.2-01(2) to change reference to the State Department of Health to the Department of Environmental Quality for purposes of the Water Pollution Control Revolving Loan Fund.
Section 72	Amends Section 61-29-04 to change reference to the State Department of Health to the Department of Environmental Quality and to change reference to the State Health Officer to the Director of the new department.
Section 73	Amends Section 61-33-09 to change reference to the State Health Officer to the Director of the new department.
Section 74	Amends Section 61-35-24 to change reference to the State Department of Health to the Department of Environmental Quality, to remove unnecessary language regarding enactments of other statutes, and to update language to match current Century Code style.
Section 75	Repeals several sections and chapters that were relocated in the new Title 23.1.
Section 76	Makes Sections 2 through 75 effective upon the receipt by the Legislative Council of the certification from the Chief Of The Environmental Health Section that everything is in place to maintain primacy under the new department.

**Testimony**  
**Senate Bill 2327**  
**House Energy and Natural Resources Committee**  
**March 3, 2017, 9:00 a.m.**  
**North Dakota Department of Health**

Good morning Chairman Porter and members of the House Energy and Natural Resources Committee. My name is David Glatt, and I am the Environmental Health Section Chief for the North Dakota Department of Health. I am here today to testify in support of SB 2327.

The department's Environmental Health Section has been in existence for more than 40 years, implementing a variety of state and federally mandated environmental protection programs. Historically, we have implemented federal programs at the state level through primacy agreements associated with the Clean Water Act, Safe Drinking Water Act, Resource Conservation and Recovery Act, and the Clean Air Act. We also implement a radiation program through an agreement with the Nuclear Regulatory Commission. The Environmental Health Section has been at the leading edge of efforts designed to protect the air, land and water to ensure a safe and quality environment. Our programs are based on following the applicable science and the law and are implemented by a current professional staff of 174.25 FTEs. Our staff includes engineers, scientists, chemists, microbiologists and administrative support staff.

Many of our programs operate at a complex technical level requiring highly trained professionals to conduct permitting, inspection, enforcement, monitoring and analysis activities. I have included a current organizational chart of the department's Environmental Health Section and a contact list for specific programs and activities.

SB 2327 proposes to create a new stand-alone Department of Environmental Quality which would continue to implement the same environmental protection programs as the existing Environmental Health Section. As identified in this proposed legislation, no new programs would be created or eliminated. It would maintain the status quo but under a different and separate organizational structure. SB 2327 acknowledges the vital function of environmental programs in the state by:

- > Identifying a stand-alone Department of Environmental Quality able to establish and implement critical policies and standards.

- > Elevating the Department of Environmental Quality to a cabinet level agency, the director of which would be appointed by the Governor.

Establishing a new department with the current scope of responsibilities will require up to two years to:

- > Allow the U.S. Environmental Protection Agency and the Nuclear Regulatory Commission time to review and approve the reorganization to ensure all federal/state primacy agreements remain intact and are not disrupted.
- > Amend all environmental laws and rules to reflect the new organization. The majority of the amendments in the 153-page bill relate to changing the name from Department of Health to Department of Environmental Quality.
- > Evaluate how to best organize both the proposed Department of Environmental Quality and the existing Department of Health to address anticipated internal fiscal impacts while showing a zero state fiscal impact.
- > Consolidate the Air Quality Advisory Board and the Water Pollution Control Advisory Board into a new Environmental Quality Advisory Board appointed by the Governor.

Upon meeting the goals and necessary approvals of the transition to a new Department of Environmental Quality, the Environmental Health Section Chief must certify all work has been satisfactorily accomplished pursuant to SB 2327.

Since proposed, there have been some concerns expressed regarding SB 2327. I will take a few minutes to address these.

- > "SB 2327 will establish a 'mini EPA'."

As indicated earlier in my testimony, North Dakota has historically implemented environmental protection programs via state legislation. The state has chosen to implement many federal environmental protection laws and rules rather than turn that responsibility back to a federal bureaucracy located out of Denver or Washington, D.C. This approach has resulted in a more cost-effective, responsive, transparent and accountable regulatory framework serving the citizens of the state.

In recent history, the Environmental Health Section has followed a more independent operational path due to its complex and functionally separate priorities and mission, as compared to the Department of Health. SB 2327 does not establish a “mini” EPA; rather it acknowledges the importance of environmental protection in the state, elevating that responsibility to a cabinet level agency designed to maintain and continue with existing programs that have been operating in the state for decades. It does not create new or eliminate existing programs; it only transfers an existing section from the Department of Health to a newly formed Department of Environmental Quality.

- > “The creation of a Department of Environmental Quality will result in more regulations.”

First and foremost, the Environmental Health Section follows the law and applicable science in the pursuit of common-sense environmental protection. Secondly, the laws which set the boundaries within which any state agency operates are established by this legislative body.

Legislation allows an agency to pursue the development of rules to implement the laws. Before rules are considered approved, they must go through an exhaustive process which includes an agency and public input/comment period, in addition to a review by the administrative rules committee (chaired by legislative members). This process can take up to a year to complete in many cases. In addition, Environmental Health Section rules must have a strong science-based foundation and identify realistic outcomes to protect public health and the environment before they are considered. This has resulted in the implementation of straightforward, common-sense rules in the state. This process of legislative and public oversight will continue in the proposed Department of Environmental Quality.

- > “Agricultural interests are not adequately represented in the new Department of Environmental Quality.”

The North Dakota Department of Health - Environmental Health Section currently interacts with two advisory committees (the Air Pollution Control Advisory Council and the Water Pollution Control Board) and the State Health Council when determining regulatory policies. Of the 22 members on the two advisory committees, the Air Pollution Control Advisory Council does not have any defined agricultural representation. There are three

agricultural representatives on the Water Pollution Control Advisory Board. The State Health Council, which has 11 members, does not have any agricultural industry representation.

As proposed, the Department of Environmental Quality Advisory Board will consist of nine appointed positions, the State Engineer, State Geologist and the director of the North Dakota Game and Fish Department. The board will have at least one agricultural representative. When compared to the existing organization, agricultural interests may actually have a greater voice as this board will be advising on all agency activities and not a select subset (e.g., water).

This concludes my testimony. Before we go over our proposed amendments to SB 2327 I am happy to answer any questions relating to my testimony.

PROPOSED AMENDMENTS TO SENATE BILL NO. 2327

2A  
3-3-17  
SB 2327  
OLSON-  
GLATT

Page 1, line 8, remove "subsection 1 of section 19-01-01"

Page 1, line 18, remove "sections 61-28-03 and 61-28-05"

Page 1, line 24, remove "and" and after "39-26" insert ", 61-28-03, and 61-28-05"

Page 2, after line 30, insert:

"All orders, determinations, permits, grants, contracts, agreements, certificates, licenses, waivers, bonds, authorizations, and privileges relating to the functions transferred, which have been which have been lawfully issued or made prior to the date of the transition of functions, shall continue to be effective until revised, amended, repealed, or rescinded."

"The transition of functions shall not abate any suit, action, or other proceeding lawfully commenced by, against, or before any entity affected by the transition of functions. Any suit, action, or other proceeding may be maintained by, against, or before the appropriate successor of an entity affected by the transition of functions."

Page 4, line 26, replace "23.1-04-03" with "23.1-04-04"

Page 8, remove lines 28-31 (note: title 19 is staying with the Health Department)

Page 9, line 8, replace "environmental review advisory council" with "department of environmental quality"

Page 13, line 29, replace "eleven" with "twelve"

Page 14, line 12, remove "and"

Page 14, line 13, replace "geologist." with "geologist; and"

Page 14, after line 13, insert:

"1. director of the game and fish department."

Page 14, line 27, after "title" add "and chapters 61-28, 61-28.1, and 61-28.2"

Page 14, line 29, after "title" add "and chapters 61-28, 61-28.1, and 61-28.2"

Page 15, line 14, after "title" insert "and chapters 61-28, 61-28.1, and 61-28.2"

Page 17, line 4, replace "23.1-08-20 and 23.1-08-21" with "23.1-08-19 and 23.1-08-20"

Page 18, line 28, replace "23.1-01-02" with "23.1-01-12"

Page 18, after line 31, insert:

**23.1-01-13. Contract for Inspections.**

The department may contract with public health units and other appropriate entities to conduct inspections on behalf of the department or provide other services.

Page 22, line 6, replace "rule" with "rules"

Page 25, line 21, replace "subdivision c" with "subdivisions a, b, c, and e"

Page 26, line 15, replace "environmental review advisory council" with "department" (note: refers to environmental review advisory council but is not consistent with ch. 23.1-01 and creates confusion)

Page 29, line 6, after "the" insert "solid waste or hazardous"

Page 29, line 7, replace "of the waste" with "thereof"

Page 29, replace lines 13 through 14 with:

"5. "Generator" means any person, by site, whose act or process produces hazardous waste or whose act first causes a hazardous waste to become subject to regulation."

Page 30, replace lines 1 through 3 with:

"9. "Owner" means, in the case of an underground storage tank:

- a. In use on or after November 8, 1984, any person who owns or operates an underground storage tank used for the storage, use, or dispensing of regulated substances.
- b. In use before November 8, 1984, but no longer in use after that date, any person who owned or operated such a tank immediately before the discontinuation of its use."

Page 30, line 10, after "liquid at" insert "standard conditions of temperature and pressure ("

Page 30, line 12, after "absolute" insert ")"

Page 37, line 24, replace "23.1-09" with "23.1-12"

Page 40, line 26, after "performance of" insert "new"

Page 41, after line 16 insert:

“a. Any facility required to have a permit under this section which facility is in existence on July 1, 1981, or was in existence on the effective date of any statutory or regulatory change in the hazardous waste management that requires it to have a permit, and has made an application for a permit under this section must be treated as having been issued such permit until such time as final administrative disposition of such application is made.

b. The department, by regulation, shall require that any person who owns or operates a facility which is treated as having been issued a permit under subdivision a meet all applicable requirements of section 23.1-04-05.”

Page 44, replace lines 25 through 30 with:

“b. The release of any such waste or regulated substance from a facility or site may present a substantial hazard to human health or the environment,

the department may issue an order requiring the owner or operator of the facility or site to conduct any monitoring, testing, analysis, and reporting with respect to the facility or site which the department deems reasonable to ascertain the nature and extent of the hazard.”

Page 63, remove lines 13-23 (note: discusses environmental review advisory council but is not consistent with ch. 23.1-01 and creates confusion)

Page 65, remove lines 13-14 (note: discusses environmental review advisory council and is repetitive of ch. 23.1-01)

Page 70, line 5, replace “23.1-01-04.1” with “23.1-01-04”

Page 71, line 10, after “for” insert “the issuance of”

Page 72, line 29, replace “environmental review advisory council” with “department” (note: to be consistent with other programs and so that there isn’t confusion about whether the hearing should be conducted by the office of administrative hearings as required by 54-57-03)

Page 73, line 24, replace “the” with “that”

Page 74, line 7, replace “person” with “business or residence”

Page 82, after line 21 insert:

**23.1-08-02. Declaration of purpose.**

It is hereby declared to be the purposes of this chapter to:

1. Plan for and regulate the storage, collection, transportation, resource recovery, and disposal of solid wastes in order to protect the public health, safety, and welfare and to enhance the environment for the people of the state.
2. Establish and maintain a cooperative state program of planning and technical assistance for solid waste management.
3. Provide the authority to and require persons to plan and provide efficient, environmentally acceptable solid waste management.
4. Provide the authority for the review of plans and facilities for solid waste management.
5. Provide the authority to issue permits for the operation of solid waste management activities.
6. Promote the application of resource recovery systems which preserve and enhance the quality of air, water, and land resources.
7. Promote and assist in the development of markets for recovered and recycled materials.
8. Encourage by 1995 at least a ten percent reduction in volume of municipal waste deposited in landfills, by 1997 at least a twenty-five percent reduction, and by 2000 at least a forty percent reduction.

Page 91, remove lines 8 through 28 (note: sections obsolete as the fund was not created)

Page 94, line 1, replace “environmental review advisory council” with “department” (note: to be consistent with other programs and so that there isn’t confusion about whether the hearing should be conducted by the office of administrative hearings as required by 54-57-03)

Page 95, remove lines 12 through 31 (note: chapter obsolete as the fund was not created)

Page 96, remove lines 1 through 30 (same)

Page 97, remove lines 1 through 30 (same)

Page 98, remove lines 1 through 30 (same)

Page 99, remove lines 1 through 30 (same)

Page 100, remove lines 1 through 30 (same)

Page 101, remove lines 1 through 3 (same)

Page 108, line 13, replace “emergency action necessary” with “such emergency action as it determines necessary”

Page 126, line 16, after “delay” insert a period

Page 126, after line 30, insert:

**23.1-15-01. Statement of legislative intent concerning abandoned motor vehicles.**

Abandoned motor vehicles constitute a hazard to the health and welfare of the people of the state in that such vehicles can harbor noxious diseases, furnish shelter and breeding places for vermin, and present physical dangers to the safety and well-being of children and other citizens. Abandoned motor vehicles and other scrap metals also constitute a blight on the landscape of the state and therefore a detriment to the environment. The abandonment and retirement of motor vehicles and other scrap metals constitutes a waste of a valuable source of useful metal. It is therefore in the public interest and the intent of the legislative assembly that the present accumulation of abandoned motor vehicles and other scrap metals be eliminated, that future abandonment of motor vehicles and other scrap metals be prevented, that the expansion of existing scrap recycling facilities be developed, and that other acceptable and economically useful methods for the disposal of abandoned motor vehicles and other forms of scrap metal be developed.

Page 141, line 23, after “55-01-01,” insert “and” and overstrike “and 61-28-03,”

Page 142, overstrike line 18 (note: references water pollution control board)

Page 147, lines 15 through 16, remove the overstrike over “state department of health” and insert immediately thereafter “and” (note: both agencies should be referenced)

Page 147, line 23, overstrike “section of the state department of health”

Page 148, line 11, overstrike “1.”

Page 148, remove lines 11 through 12, remove ““Council” means the environmental review advisory council” (note: refers to environmental review advisory council but is not consistent with ch. 23.1-01 and creates confusion)

Page 148, line 12, overstrike the period (note: same)

Page 148, remove lines 17 through 31 (note: same)

Page 149, remove lines 1 through 28 (note: same)

Page 150, remove lines 1 through 4 (note: same)

Page 150, after line 14, insert:

**“SECTION 71. AMENDMENT.** Section 61-28.1-07 of the North Dakota Century Code is amended and reenacted as follows:

**61-28.1-07. Certification of laboratories.**

No laboratory analysis of water taken from a public water system or any report of such analysis required by this chapter or any rule adopted pursuant to this chapter shall be accepted by the department unless such analysis or report shall be made by the department, the state department of health, or by any other laboratory certified by the department or the state department of health for such purposes. The department, in conjunction with the state department of health, shall provide for the certification of any laboratory, for the purposes of this section, which meets such criteria as the department or the state department of health may establish to ensure the accuracy of laboratory analyses.”

Page 152, after line 6, insert:

**“SECTION 73. AMENDMENT.** Subsection 1 of section 61-30-01 of the North Dakota Century Code is amended and reenacted as follows:

1. “Department” means the ~~state department of health~~department of environmental quality.”

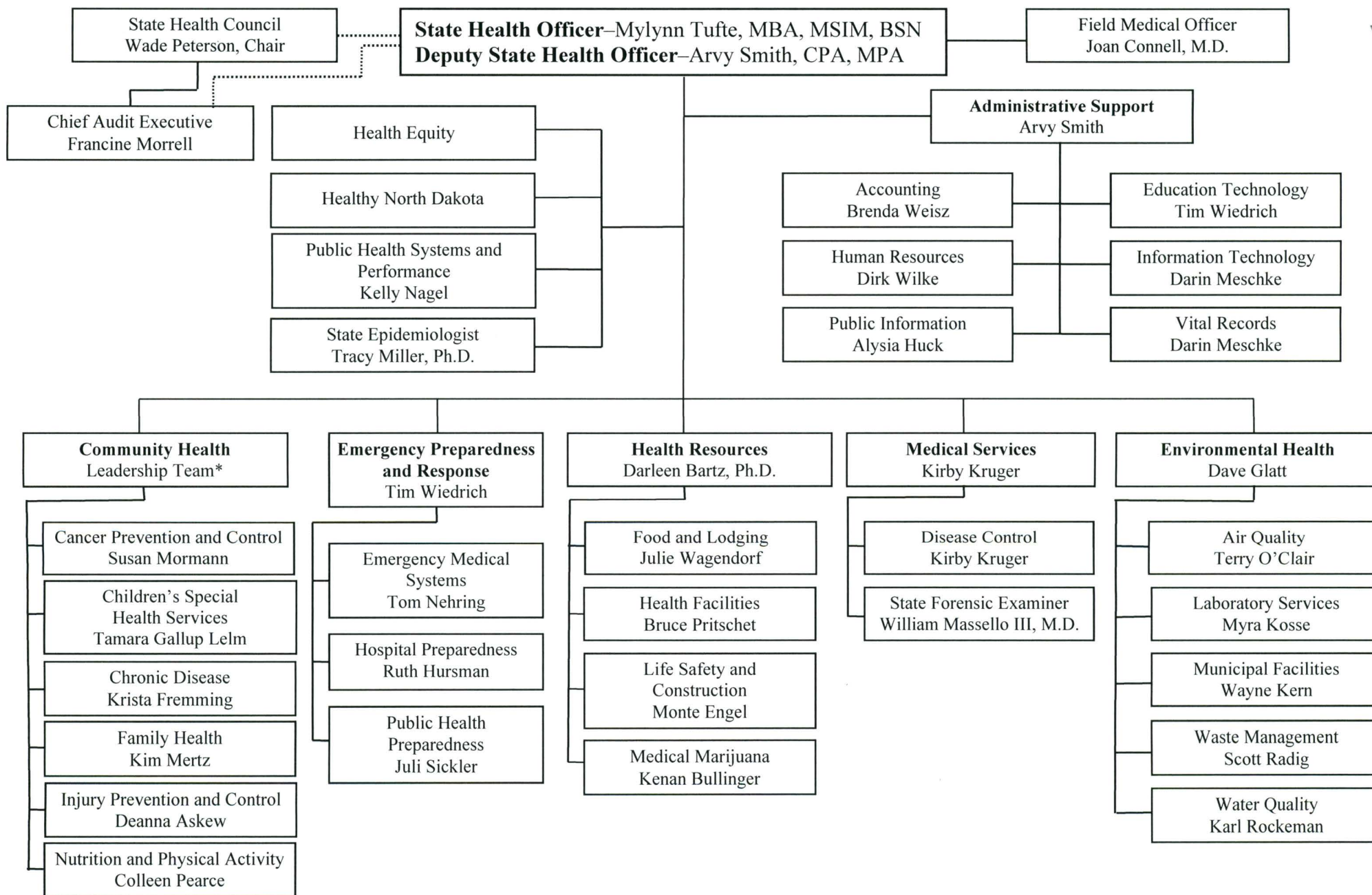
Page 152, after line 29, insert:

**“SECTION 74. AMENDMENT.** Section 61-38-03 of the North Dakota Century Code is amended and reenacted as follows:

The state engineer may not issue a permit under this chapter without a certification from the ~~state department of health~~department of environmental quality that the permitted activity will not adversely affect water quality.”

Page 153, line 1, remove “and” and after “39-26” insert “, 61-28-03, and 61-28-05”

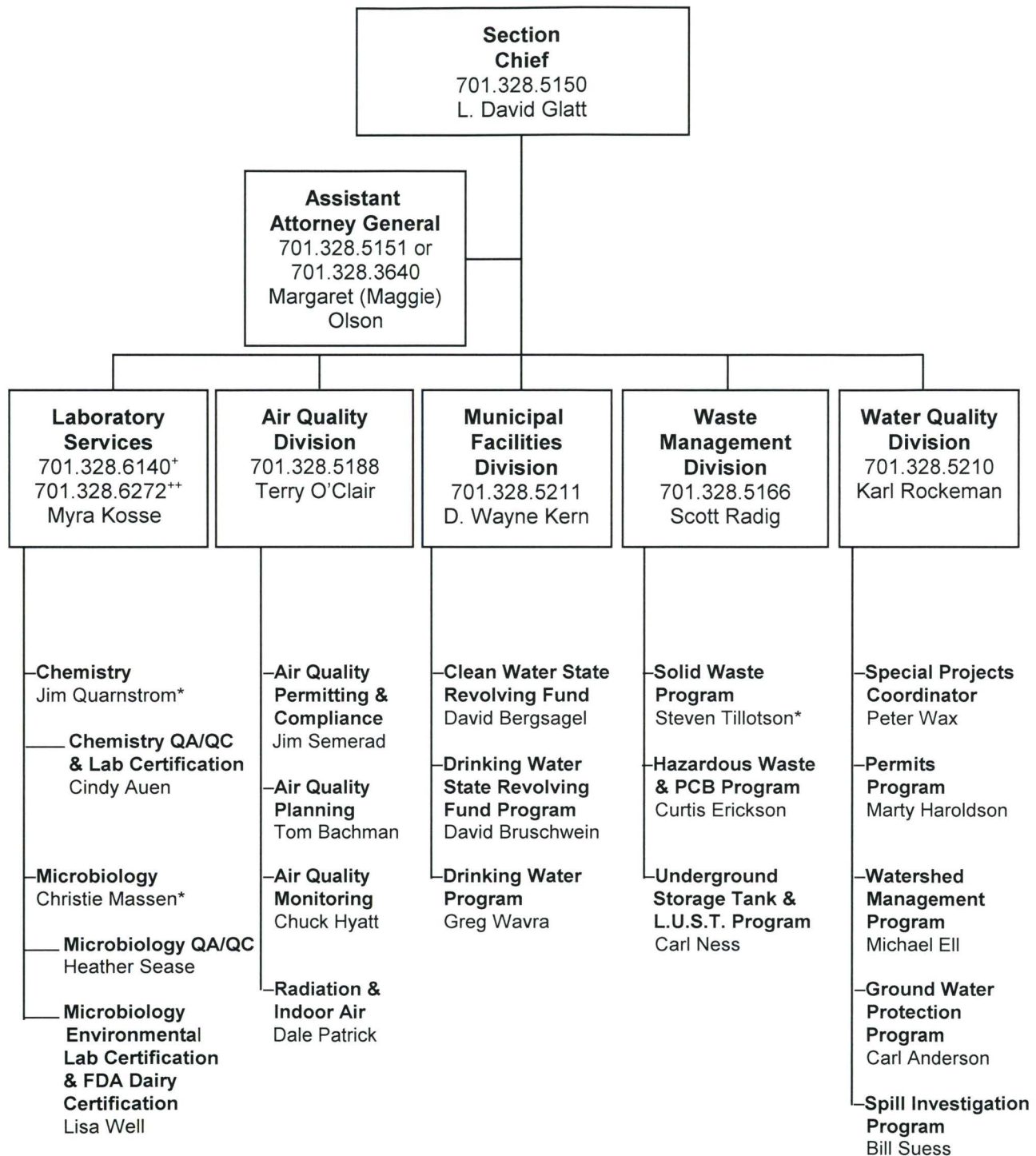
Renumber accordingly



\*The six division directors share responsibility for management of the Community Health Section.



# North Dakota Department of Health Environmental Health Section



\*Assistant Director  
+Chemistry Phone #  
++Microbiology Phone #

September 2016



# North Dakota Department of Health

## Environmental Health Section

Gold Seal Center, 918 East Divide Avenue, Bismarck, ND 58501-1947

Fax Number (701) 328-5200

Website: [www.ndhealth.gov/ehs](http://www.ndhealth.gov/ehs)



### *Information Directory*

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#### **Environmental Health Section Chief's Office** (701) 328-5150

**Chief: L. David Glatt**

**Performance Partnership Agreement & Grants Coordination - Teri Lunde**

**Information Technology Coordination - Gold Seal Center Campus - Allen Johnson**

**Lab Campus - Kevin Kosse**

**Data Management - Gary Haberstroh**

**Public Communication/Information, Development & Staff Training - Melissa Miller**

**Legal - Margaret Olson** (701) 328-5151

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#### **Division of Air Quality** (701) 328-5188

**Director: Terry O'Clair**

##### **Air Quality Permitting & Compliance - Jim Semerad**

- > Air Quality Permits
- > Air Quality Inspections
- > Emission/Stack Testing
- > Emission Inventory
- > Open Burning (other than landfills)
- > Visible Emission/Odor Certification
- > Oil and Gas Wells
- > Air Quality Questions and Complaints

##### **Air Quality Planning - Tom Bachman**

- > Dispersion Modeling
- > State Implementation Planning

##### **Air Quality Monitoring - Chuck Hyatt**

- > Ambient Air Quality Data
- > Ambient Network Operations

##### **Radiation & Indoor Air Quality - Dale Patrick**

- > Radioactive Materials
  - > Radon
  - > X-Ray Machines
  - > Asbestos
  - > Indoor Air Quality
  - > Mammography Quality Assurance
  - > Lead Paint
- 

#### **Laboratory Services**

2635 East Main, P.O. Box 5520, Bismarck, ND 58506-5520, Fax: (701) 328-6280

**Director: Myra Kosse**

##### **Division of Chemistry** (701) 328-6140

**Assistant Director: Jim Quarnstrom**

**Quality Assurance/Quality Control: Cindy Auen**

Analysis of Environmental Samples

Environmental Laboratory Certification

##### **Division of Microbiology** (701) 328-6272

**Assistant Director: Christie Massen**

**Quality Assurance/Quality Control: Heather Sease**

Analysis of Clinical Public Health Specimens and  
Environmental Microbiology Including Laboratory  
Certification

**Environmental Microbiology: Lisa Well**

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#### **Division of Municipal Facilities** (701) 328-5211

(701) 328-6628 (Environmental Training Center)

**Director: D. Wayne Kern**

##### **Clean Water State Revolving Loan Fund Program - Dave Bergsagel**

- > Clean Water Revolving Loan Fund
- > Plan Review (wastewater systems)

##### **Drinking Water State Revolving Loan Fund Program - David Bruschwein**

- > Drinking Water Revolving Loan Fund
- > Plan Review (water systems)

##### **Drinking Water Program - Greg Wavra**

- > Safe Drinking Water Act
  - > Community Fluoridation Program
  - > Training and Certification of Water & Wastewater Facility Operators
  - > Inspections of Water & Wastewater Facilities
  - > North Dakota Water & Pollution Control Conference
  - > Publication of the *Official Bulletin*
-

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## **Division of Waste Management (701) 328-5166**

**Director: Scott Radig Assistant Director: Steve Tillotson**

### **Solid Waste Program - Steve Tillotson**

Solid Waste Management:  
Municipal, Industrial, Special & Inert Waste  
> Permits, Inspections  
> Operator Training & Certification  
> Open Burning (at solid waste facilities)  
> Transfer Stations  
Coal Combustion & Offsite Oilfield Waste  
Land Treatment  
Scrap Tires & Tire Recycling  
Waste Reduction, Recycling & Composting  
Energy Recovery  
Biomass (waste wood, etc.)  
Nutrient Management (Ag Processing)  
Emergency Waste & Debris Management  
Abandoned & Dangerous Buildings  
Abandoned Motor Vehicle Projects, Auto  
Salvage & Scrap Metal  
Pollution Prevention (P2)  
Solid Waste Planning

### **Hazardous Waste Program & Toxic Substance Control Act - Curt Erickson**

Hazardous Waste  
> Permits  
> Inspections  
> Corrective Action  
Superfund  
> CERCLIS Sites  
> Emergency Response  
Emergency Spill Response  
> Site Assessment  
> Site Remediation  
Brownfields  
Laboratory/Agricultural/Household Chemical  
Wastes  
Polychlorinated Biphenyls (PCBs)  
Used Oil  
Infectious Waste  
Waste Transporter Permits

### **Underground Storage Tank Program - Carl Ness**

Underground Storage Tanks (USTs)  
> Petroleum  
> Hazardous Substances  
Above-ground Storage Tanks (ASTs)  
> Spills, Assessments  
> Certification of Biofuels Blender Pump Installation  
Leaking Underground Storage Tank (L.U.S.T.)  
Trust Fund  
> Assessment, Remediation  
Antifreeze Registration  
Petroleum Products Testing  
Spill Response

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## **Division of Water Quality (701) 328-5210**

**Director: Karl Rockeman**

### **Watershed Management - Michael Ell**

> Water Quality Standards  
> Nonpoint Source Pollution Management  
> Rivers and Stream Monitoring and Assessment  
> Clean Lakes Assessments  
> Fish Consumption Advisory  
> Watershed Management  
> Water Quality Modeling

### **Water Quality Special Projects - Peter Wax**

> 404 Dredge & Fill  
> 401 Water Quality Certification  
> Environmental Impact Statements (EIS) Review  
> Water Quality Standards

### **Spill Investigation Program - Bill Suess**

> Spill Response

### **Wastewater Facility/Permits - Marty Haroldson**

> North Dakota Pollutant Discharge Elimination System (NDPDES) Permits  
> Wastewater Releases  
> Stormwater Regulations  
> Feedlot Inspections/Approval/Runoff  
> Septic Pumps  
> Small Business Assistance  
> Pretreatment

### **Groundwater Protection Program - Carl Anderson**

> Underground Injection Control (UIC) Program  
> Source Water Protection  
> Groundwater Remediation and Assessment

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## **OTHER Environmental Information**

### **Environmental Health Section**

**Fargo Office**, 1120 28<sup>th</sup> Ave. N., Suite B, Fargo, ND 58102, (701) 499-5207, Fax (701) 235-7394

**Towner Office**, 314 Main St. S. #2, Towner, ND 58788, (701) 537-2043, Fax (701) 537-2044

**Environmental Hot Line** 1-800-755-1625

**Environmental Training Center** 2639 E. Main Ave., Bismarck, ND 58501, (701) 328-6628, Fax (701) 328-6206

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**Approvals of Anhydrous Ammonia Facilities - State Ag Dept.** (701) 328-2231

**Emergency Response Spills - State Radio** 1-800-472-2121 (in-state) or (701) 328-9921 (out-of-state)

**Oil Field Related Spills - Oil & Gas Division** (701) 328-8020

**Petroleum Tank Release Compensation Fund (PTRCF) - Jeff Bitz - ND Insurance Dept.** (701) 328-9600

**SARA Title III - Department of Emergency Services** Fraine Barracks, P.O. Box 5511, Bismarck, ND 58506-5511, (701) 328-8100

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2b  
3-3-17  
SB 2327

**TITLE 23  
HEALTH AND SAFETY**

**CHAPTER 23-01  
STATE DEPARTMENT OF HEALTH**

**23-01-01. State department of health - Officers.**

The state department of health consists of a health council, a state health officer, section chiefs, directors of divisions, and other employees of the department.

**23-01-01.1. State department of health to replace state department of health and consolidated laboratories.**

Wherever the terms "North Dakota state department of health", "department of health", "health department", "state department of health and consolidated laboratories", "North Dakota state laboratories department", "state laboratories department", "state laboratories department director", or "state laboratories director" appear in this code, the term "state department of health" must be substituted therefor.

Wherever the terms "state food commissioner and chemist" and "commissioner" when referring to the state food commissioner and chemist appear in chapters 19-17 and 19-18, the term "state department of health" must be substituted therefor.

**23-01-01.2. State department of health designated primary state environmental agency.**

The state department of health is the primary state environmental agency.

**23-01-02. Health council - Members, terms of office, vacancies, compensation, officers, meetings.**

The health council consists of eleven members appointed by the governor in the following manner: four persons from the health care field, five persons representing consumer interests, one person from the energy industry, and one from the manufacturing and processing industry. The governor may select members to the council from recommendations submitted by trade, professional, and consumer organizations. On the expiration of the term of any member, the governor, in the manner provided by this section, shall appoint for a term of three years, persons to take the place of members whose terms on the council are about to expire. The officers of the council must be elected annually. Any state agency may serve in an advisory capacity to the health council at the discretion of the council. The council shall meet at least twice each year and at other times as the council or its chairman may direct. The health council shall have as standing committees any committees the council may find necessary. The chairman of the council shall select the members of these committees. The members of the council are entitled to receive sixty-two dollars and fifty cents as compensation per day and their necessary mileage and travel expenses as provided in sections 44-08-04 and 54-06-09 while attending council meetings or in the performance of any special duties as the council may direct. The per diem and expenses must be audited and paid in the manner in which the expenses of state officers are audited and paid. The compensation provided for in this section may not be paid to any member of the council who received salary or other compensation as a regular employee of the state, or any of its political subdivisions, or any institution or industry operated by the state.

**23-01-02.1. Hospital utilization committees - Internal quality assurance review committees - Reports - Immunity.**

Repealed by S.L. 1997, ch. 234, § 5.

**23-01-03. Powers and duties of the health council.**

The health council shall:

1. Fix, subject to the provisions of section 23-01-02, the time and place of the meetings of the council.



## State Health Council

The State Health Council (<http://www.governor.nd.gov/boards/BoardDetails.aspx?boardid=42>) serves as the North Dakota Department of Health's governing and advisory body. The council's 11 members are appointed by the governor for three-year terms. Four members are appointed from the health-care provider community, five from the public sector, one from the energy industry and one from the manufacturing and process industry.

To better inform consumers and help them make quality health care decisions, the SHC has created a Long-term Care Fact Sheet. ([LTC DecisionTree FINAL.pdf?v=2](#)) The content was contributed by experts working with the public and long-term care facilities and is intended to help consumers determine the best type of facility for their needs.

### Duties

The State Health Council's duties include monitoring overall health-care costs and quality of health-care in North Dakota. The council establishes standards, rules and regulations which are found necessary for the maintenance of public health. They provide for the development, establishment and enforcement of basic standards for hospitals and related medical institutions which render medical and nursing care, and for the construction and maintenance of such institutions. These standards cover matters pertaining to sanitation, building construction, fire protection measures, nursing procedures and preservation of medical records. The council also holds hearings on all matters brought before it by applicants and licensees of medical hospitals.

#### Chair

- Wade Peterson (Health Care)

#### Vice Chair

- Genny Dienstmann (Consumer)

#### Secretary

- Leona Koch (Consumer)

#### Members

- Greg Allen (Manufacturing and Processing)
- Howard C. Anderson, R.Ph. (Health Care)
- Mike Jones (Energy)
- Jerry Jurena (Health Care)
- Gordon Myerchin (Consumer)
- Duane Pool (Consumer)
- Jennifer Schaeffer (Consumer)
- Dennis E. Wolf, M.D. (Health Care)

Messages or questions for any member of the State Health Council can be sent to [health@nd.gov](mailto:health@nd.gov) (<mailto:health@nd.gov>). Please indicate in your e-mail which Health Council member the message is for.

1 complete and accurate records of the quantities and nature of material stored,  
2 retrieved, or disposed of, which records must be available to the commission or  
3 its agents at all times, and that every such person file with the commission such  
4 reports as it may prescribe.

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

8 2. To regulate:

9 a. The drilling, boring, excavating, and construction of all underground storage,  
10 retrieval, and waste disposal facilities.

11 b. Operations to assure the optimum performance of all facilities regulated by this  
12 chapter.

13 3. To limit and prescribe the nature, quantity, and source of materials to be stored in,  
14 whether as waste or otherwise, or retrieved from any facility regulated by this chapter.

15 4. To promulgate and to enforce rules, regulations, and orders to effectuate the purposes  
16 of this chapter.

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

19 **SECTION 17.** Chapter 23.1-01 of the North Dakota Century Code is created and enacted  
20 as follows:

21 **23.1-01-01. Department of environmental quality established - Director appointment.**

22 The department of environmental quality is established and is the primary state  
23 environmental agency. The governor shall appoint a director of the department who shall serve  
24 at the pleasure of the governor. The position of director of the department is not a classified  
25 position, and the governor shall set the salary of the director within the limits of legislative  
26 appropriations.

27 **23.1-01-02. Environmental review advisory council - Members, powers, and duties.**

28 1. The environmental review advisory council is established to advise the department of  
29 environmental quality in carrying out its duties. The council consists of eleven  
30 members appointed by the governor, and the director of the department of

2327

- 1 environmental quality or the director's designee shall serve as the executive secretary
- 2 for the council. The members must be:
- 3 a. A representative of county or municipal government;
- 4 b. A representative of manufacturing and processing;
- 5 c. A representative of the solid fuels industry;
- 6 d. A representative of the liquid and gas fuels industry;
- 7 e. A representative of agriculture;
- 8 f. A representative of the solid waste industry;
- 9 g. A representative of the hazardous waste industry;
- 10 h. A representative of the thermal electric generators industry;
- 11 i. A representative of the environmental sciences;
- 12 j. The state engineer; and
- 13 k. The state geologist.
- 14 2. Each appointive member of the council shall serve a four-year term. The governor
- 15 may fill any vacancy in the membership of the council, and may remove a member of
- 16 the council for cause. The council members shall select a chairman from among the
- 17 council members.
- 18 3. Council members must be reimbursed by the department of environmental quality for
- 19 necessary travel and other expenses incurred in the performance of official duties.
- 20 4. The council shall hold at least two meetings per year and any other meetings deemed
- 21 necessary by the chairman or a majority of the council.
- 22 5. The council shall:
- 23 a. Review and make recommendations to the department of environmental quality
- 24 regarding rules and standards relating to environmental quality and the duties of
- 25 the department. The department may not take final action on any rule or standard
- 26 without first consulting the council.
- 27 b. Consider any other matter related to the purposes of this title the council deems
- 28 appropriate and make any recommendation on its own initiative to the
- 29 department of environmental quality concerning the administration of this title.
- 30 **23.1-01-03. Director - Powers and duties.**
- 31 The director of the department of environmental quality shall:

17.0860.02003  
Title.

Prepared by the Legislative Council staff for  
Representative Brandenburg  
March 2, 2017

3A  
3-3-17  
SP 2327  
Brandenburg

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2327

Page 13, line 29, replace "eleven" with "thirteen"

Page 14, line 7, replace "A representative" with "Three representatives"

Renumber accordingly

# EMPOWER



4  
3-3-17  
SB 2327  
Dever

## DEPARTMENT OF COMMERCE TESTIMONY ON SENATE BILL 2327

MARCH 3, 2017, 9:00 A.M.

### HOUSE ENERGY & NATURAL RESOURCES COMMITTEE

REPRESENTATIVE TODD PORTER, CHAIR

#### JUSTIN DEVER – CO-DEPUTY COMMISSIONER, ND DEPARTMENT OF COMMERCE

Good morning, Mr. Chairman and members of the committee, my name is Justin Dever and I serve as a Co-Deputy Commissioner for the North Dakota Department of Commerce. The Commissioner of Commerce serves as chairman of the EmPower North Dakota Commission.

On behalf of the EmPower ND Commission, I am here today to speak in favor of Senate Bill 2286. The EmPower ND Commission has endorsed this bill as being related to a recommendation outlined in their 2016 Policy Updates and Recommendations report. Their full report is available at [www.EmPowerND.com](http://www.EmPowerND.com).

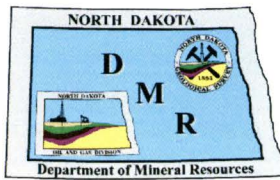
The EmPower ND Commission recommends that the State:

- Provide adequate funding and staffing levels for North Dakota Department of Health – Environmental Health Section to ensure it will be able to properly manage its respective programs and maintain primacy.

Senate Bill 2327 would elevate the Environmental Health Section into its own cabinet-level state agency. This bill does so in a manner that would allow adequate time for approvals to ensure that the state maintains primacy in regards to federal regulations.

The EmPower ND Commission believes that elevating the Environmental Health Section to become its own cabinet-level agency is appropriate given its important work of protecting North Dakota's clean air, water and land. The Commission also believes that this move would help in maintaining state primacy in the long-term by providing appropriate focus on the mission and activities of a Department of Environmental Quality.

Madam Chairman and members of the Energy and Natural Resources Committee, the EmPower ND Commission respectfully request your favorable consideration of Senate Bill 2327. That concludes my testimony and I am happy to entertain any questions.



5  
3-3-17  
SB2327  
MURPHY

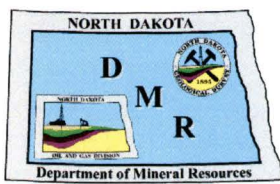
**Senate Bill 2327**  
**House Energy and Natural Resources Committee**  
March 3, 2017

Testimony of Edward C. Murphy, State Geologist

The North Dakota Industrial Commission – Department of Mineral Resources supports Senate Bill 2327. We have checked this bill to see that those portions of the Century Code where the Environmental Health Section of the Health Department interacts with the Geological Survey and the Oil and Gas Division have been transferred:

**GEOLOGICAL SURVEY**

	<u>Existing</u>	<u>New</u>	<u>Section</u>	<u>Page</u>
<b>Class III Underground Injection Control</b>	<b>NDCC 38-12-02</b>		1	2
<b>Board of University and School Lands Leasing Coal, Oil, Gas, and Other Rights Reports-State geologist-State department of Health</b>	<b>NDCC 15-05-07</b> <b>NDCC 15-05-16</b>		9	8
<b>Disposal of Nuclear and Other Waste Material Jurisdiction of the industrial commission</b>	<b>NDCC 23-20.2</b> <b>NDCC 23-20.2-03</b>		16	12
Environmental review advisory council – Members, powers, and duties		NDCC 23.1-02	17	14
State air pollution control agency – Advisory council	<b>NDCC 23-25-02</b>			
State water pollution prevention agency- board	<b>NDCC 61-28-03</b>			
<b>Solid Waste Management and Land Protection</b>	<b>NDCC 23-29</b>			
<b>Preconstruction site review</b>	<b>NDCC 23-29-07.6</b>	NDCC 23.1-08-13	24	91
<b>Ground Water Protection</b>	<b>NDCC 23-33</b>			
<b>Wellhead protection program</b>	NDCC 23-33-10	NDCC 23.1-11-10	27	103
<b>Subsurface Exploration Damages</b>	<b>NDCC 38-11.2</b>			
<b>Inspection of well site</b>	<b>NDCC 38-11.2-02</b>		37	136
<b>Surface Mining and Reclamation Operations</b>	<b>NDCC 38-14.1</b>			
<b>Powers and duties of the commission</b>	<b>NDCC 38-14.1-03 (12)</b>		38	136
<b>Permit approval or denial standards</b>	<b>NDCC 38-14.1-21 (2)</b>		39	136
Subsurface Mineral Exploration and Development	NDAC 43-02-02			
Underground Injection Control Program (Class III)	NDAC 43-02-02.1			
In Situ Leach Uranium Mining Rules	NDAC 43-02-02.2			
Surface Mining (Noncoal)	NDAC 43-02-02.3			
Solution Mining	NDAC 43-02-02.4			
Geothermal Energy Production	NDAC 43-02-07			



## OIL AND GAS DIVISION

	<u>Existing</u>	<u>New</u>	<u>Section</u>	<u>Page</u>
<b>Control of Gas and Oil Resources Class II &amp; Primacy</b>	<b>NDCC 38-08-04</b>		1	2
<b>Carbon Dioxide Underground Storage Class VI &amp; Primacy</b>	<b>NDCC 38-22</b>		1	2
Definitions		NDCC 23.1-04-02		
Underground Storage Tank Exemptions		NDCC 23.1-04-02 (16)	17	31
 Hazardous Waste Applicability	 <b>NDCC 38-08-04.5 (2f)</b>	 NDCC 23.1-04-16	 17	 46
<b>Definitions "Special Waste"</b>	<b>NDCC 38-08-04</b>	NDCC 23.1-08-02 (15)	24	84
Commercial oilfield special waste recycling facilities		NDCC 23.1-08-05	24	86
 <b>Definitions "Tank" does not include</b>		NDCC 23.1-12-02 (15)	28	105
<b>Petroleum Release Compensation Fund</b>		NDCC 23.1-12-03	28	106
 Abandoned oil and gas well plugging and site reclamation fund	 <b>NDCC 38-08-04.5</b>		34	132
<b>Inspection of Well Site</b>	<b>NDCC 38-11.1-03.1</b>		35	134
<b>Notice of Operations</b>	<b>NDCC 38-11.1-04.1</b>		36	134
<b>Permit Consultation</b>	<b>NDCC 38-22-07</b>		40	136
<b>Environmental protection</b>	<b>NDCC 38-22-12</b>		41	137

Over the years the Geological Survey and the Oil and Gas Division have worked with all five divisions of the Environmental Health Section (Air Quality, Laboratory Services, Municipal Facilities, Waste Management, and Water Quality). We feel it is important to keep the Environmental Health Section intact which this bill does.

# North Dakota Wildlife Federation

Ensuring abundant wildlife, wildlife habitat, and access to wildlife recreational opportunities



## TESTIMONY OF MICHAEL McENROE NORTH DAKOTA WILDLIFE FEDERATION SENATE BILL 2327 ENERGY AND NATURAL RESOURCES COMMITTEE MARCH 3, 2017

Chairman Porter and Members of the House Energy and Natural Resources Committee:

For the record, Mike McEnroe representing the North Dakota Wildlife Federation. The Federation supports SB 2327, especially Section 24 on page 82 that states "The legislative assembly finds that: 1. The people of North Dakota have a right to a clean environment."

We do however several suggested revisions:

On pages 13-14, Section 17 describes the Environmental Review Advisory Council consisting of eleven members. The original bill had an advisory council of nine members including three from industry. The proposed advisory council now has six of eleven members coming from the industries being regulated. The original SB2327 recommended two environmental scientists; the current bill has one environmental scientist on the council. We prefer the original version. We also recommend that a representative from the public at large be appointed to the council if indeed the people have a right to a clean environment. The people or the public should be represented on the council that advises the department committed to protecting and maintaining a clean environment.



Pages 101-103, Section 27, describe a degradation prevention program for ground water resources. Chapter 23.1-11-11 on Rules goes on to state that the department (of environmental quality), with approval of the commissioner (of agriculture) and the state engineer, shall adopt rules necessary for this chapter. We have concerns or disagree with the idea that the department of environmental quality's rule making authority should be subject to two other state agencies that may not have the technical expertise of the department.

I have three edits or typos that could/should be corrected:

Page 16, lines 25-26, regarding waste management facilities; references facilities that accept 25,000 tons or 22,679 kilograms. I suspect kilograms should be replaced with metric tons. A kilogram is 2.2 pounds; 22,679 kilograms would be 50,000 pounds or 25 tons.

Page 134, line 24; state department of health should be replaced by department of environmental quality.

Page 147, line 23; the "section of the state department of health" should be deleted

Thank you for the opportunity to comment on SB 2327. We strongly support the creation of a Department of Environmental Quality. I would stand for any questions from the Committee



**North Dakota House Energy and Natural Resources Committee  
Testimony opposing Senate Bill 2327**

7  
3-3-17  
SB 2327

HANE BUTT

North Dakota Farm Bureau opposes SB 2327 for a variety of reasons:

First and foremost, as the bill stands today and in our opinion, Agriculture is being completely short changed regarding how this bill was developed – without any representatives of the agriculture community at the table. Furthermore, within the framework of this bill, energy and environmental interests are highly represented, but production agriculture is treated as an afterthought and we do not believe this is the right approach for an Ag state like North Dakota. The interest of fairness for Agriculture needs to be addressed if this bill is allowed to move forward.

Many parts of this bill have been taken directly from Oklahoma code, and it has been said that this model works well. The problem with those statements is that Oklahoma DEQ does nothing with agriculture or directly with animal agriculture. Livestock feeding in Oklahoma is covered by their Ag Department – but even at that, our colleagues at OK Farm Bureau tell us there has been discussion of combining departments to gain efficiencies.

If SB 2327 passes, it will set up the people of North Dakota with another state agency. In a time when we are concerned with state budgets, how can we believe that this move will save taxpayer dollars? We are more likely to gain state bureaucrats, autocrats and regulators who will eventually be more responsive to the EPA in Washington than the citizens of North Dakota. In a time when most stakeholders acknowledge that the current ND Department of Health is doing an excellent job regulating the segments of production agriculture they are responsible for, why are we so eager to make this drastic change and add yet another state agency?

More importantly, we need to ask what we're opening ourselves up for. Does starting a new state agency call into question primacy? We currently have agreements with federal agencies which may have to change. Does changing the regulatory function of a one agency cause us to renegotiate those agreements and do those discussions then welcome participation from folks who would prefer to harm production Ag and fossil fuel energy?

A review of this bill reveals it has been cobbled together from rules and statutes in other states: States which would obviously have different soil types, water resources demands, coal and mining differences, a different type of oil being pumped, and certainly a different agricultural base which would be impacted by this legislation. We believe North Dakota should be looking for ways to expand our agricultural base, rather than looking for ways to increase regulation and drive production to South Dakota or Minnesota.

This bill has many problems: problems with duplication of language, problems with language which has been cut and pasted from Oklahoma that has no relevance to our Century Code, and problems with fairness as it relates to the stakeholders impacted by this statute change, and it may open a can of worms regarding the primacy question. We urge the committee to give this bill a Do Not Pass recommendation. If changes can be proposed, we certainly willing to be involved with making amendments, but as the bill stands today, we feel that farmers and ranchers in North Dakota would be harmed by the creation of a state department of environmental quality.

If you need more information on the stance of NDFB regarding SB 2327 please contact:

Peter F. Hanebutt  
Director of Public Policy  
North Dakota Farm Bureau  
[pete@ndfb.org](mailto:pete@ndfb.org)  
(701) 371-0027 cell

**Fargo**

1101 1st Ave. N. | PO Box 2064, Fargo, ND 58107-2064  
Phone: 701-298-2200 | 1-800-367-9668

**Bismarck**

4900 Ottawa St. | PO Box 2793, Bismarck, ND 58502-2793  
Phone: 701-224-0330 | 1-800-932-8869

3-3-17  
SB 2327  
8  
LOVAS

March 1<sup>st</sup>, 2017

North Dakota House Energy and Natural Resources Committee

Coteau A Room, State Capitol

Bismarck, ND 58505

RE: Oppose SB 2327

My name is Sarah Lovas and I am a farmer and agronomist from Hillsboro, ND. I urge you to oppose SB 2327. Natural resources are important to my farm and my agronomy clients' farms. Natural resources are so important that I utilize crop scouting, integrated pest management, soil sampling, and precision agriculture to create management recommendations including pesticide and fertilizer use recommendations. I also invest time and money into continuing education so that I'm constantly learning how to improve these recommendations. Managing these management decisions properly is important, not just for the current year's crop, but for the future of any farming operation. My husband and I are 4<sup>th</sup> generation farmers. The land is our most precious resource and it's important that we take care of it properly for the future of our farm.

Creating a State Department of Environmental Quality is concerning for a few reasons:

- 1) SB2327 would have this new state agency supervised by a governor appointed director and an 11 member, governor appointed advisory board. Many of our other state agencies are supervised by elected officials, such as the Commissioner of Agriculture in the Department of Agriculture. The people of North Dakota should have democratic input to how this new agency is operated.
- 2) Agriculture is not fairly represented on the advisory board of this new agency. SB 2327 creates an 11 member, governor appointed advisory board to oversee this new department. There is only 1 seat on this board representing agriculture. North Dakota agriculture is diverse across the state. Ranching near Dickinson is quite different than raising corn and soybeans near Hillsboro, ND. Also, the environmental impacts from livestock and crop production are different. This board should have 50% of its representation from agriculture and this representation should reflect North Dakota's diverse agriculture.
- 3) Does SB2327 create this new state department with the correct departmental structure? I understand that this bill would simply take a subsection of the Department of Health and set it as its own division. While it seems like this subsection functions quite well within the Department of Health, is this how we want a brand new, stand-alone agency to operate? Keep in mind the state programs dealing with pesticides and fertilizers are currently part of the Department of Agriculture. We may or may not want those programs moved into this new department. We may or may not want the environmental regulations concerning agriculture to be moved into the Department of Agriculture.

- a. Government Agencies, generally don't get smaller. They only get larger and tend to create more regulation. It's important to acknowledge that this new state agency will impact North Dakota Agriculture. Therefore, we must set up this agency properly at its inception so that agriculture has a fair seat at the table when these regulations are created.
- 4) What's the rush? According to senate floor debate, the Senate Committee for Energy and Natural Resources only took 90 minutes to discuss and recommend a DO PASS. It seems like the legislature needs to slow down and carefully consider the many aspects of this department's creation.
- 5) SB 2327 has no money appropriated for the creation of this new agency. Even with a simple transfer of existing personnel, there are still costs incurred from creating a state agency. When the state realizes that this will cost money, where will those dollars come from?

Farmers are good stewards of the land. We must maintain our natural resources for future generations that will farm our land and feed the growing population. I personally have many hours into soil sampling, crop scouting and continuing education so I can make good decisions and recommendations regarding natural resource management for our farm and my agronomy clients' farms. I hope that the ND Legislature will acknowledge the impact that this department will have on ND agriculture. North Dakota agriculture needs to be involved in the development and management of this new proposed department. SB 2327 does not accomplish this. Please oppose SB 2327.

Sincerely,

Sarah Lovas

607 5<sup>th</sup> Ave SE

Hillsboro, ND 58045

701-866-1704

Good morning, Chairman and members of the Energy and Natural Resources committee. My name is Val Wagner and I come before you as a farmer and cattlegrower from Monango, ND. I am also a mother of four boys, and I have taken the role of protecting their future in farming very seriously. I come before you today to ask that you consider carefully Senate Bill 2327. This bill will basically create a state Environmental Protection Agency. Moving forward with this bill as presented gives me many reasons for concern.

- 1) The creation of any new division of government needs to be carefully considered and weighed. In a time where our state is needing to buckle down and be smart about our decisions, can we afford to take on another agency? From the outside looking in, it appears that current staff and space will just be housed under a new title, but there are costs to that as well.
- 2) The bill is mostly copy and paste from current century code. Are we sure this is what we need if there are no other changes made? Why is the change needed if the current situation is working?
- 3) A council and department head made up solely of governor-appointed members concerns me. I want to look towards the future. How can we be sure that the future of agriculture as far as air quality rules and setbacks are safe if we don't have an adequate representation at the table? How can one person represent the vast differences in methods and farms found throughout our state? There is more than one person representing energy...why not agriculture?

My farm and other farms just like mine take environmental quality and environmental concerns very seriously. Our farm will rely on this division of our state government to make sound decisions regarding agriculture for both raising crops as well as raising cattle. The choices that my children will have in the future, if they decide to come back to the farm, will rest in the hands of this division. My 10-year-old dreams of starting his own pig farm one day. I must do my part and my due diligence to ensure that agriculture is adequately represented, so his dreams can be realized.

I'm not certain where the answers to these questions lie. And I'm certain I must not be the only one who questions the necessity, timing and fiscal impact of this bill. I don't deny that there are probably many reasons for making changes and many ways that we can streamline our state agencies and find more efficient ways in which to run our state, but will creating another agency accomplish this?

I am a farmer, rancher and mother of four boys. I have been tasked with raising them, protecting their best interests and future, I do the best that I can with the tools, knowledge and experiences that I have. As an elected official of this state, you have been chosen by your constituents to accomplish those same goals. I ask you to consider this bill very carefully. I am asking for you to recommend a DO NOT PASS on SB 2327.

Thank you for your time and consideration.



# NORTH DAKOTA ENVIRONMENTAL HEALTH ASSOCIATION

10  
3-3-17  
SB 2327  
LARSON

February 27, 2017

To: Representative Todd Porter, Chairman  
House Energy and Natural Resources Committee

Re: SB #2327 Department of Environmental Quality

Dear Representative Porter,

On behalf of the North Dakota Environmental Association (NDEHA), I would like to convey two key requests associated with Senate Bill #2327. This bill relates to the creation of an individual Department of Environmental Quality with the transfer and separation of the duties and responsibilities from the North Dakota Department of Health.

The NDEHA board, and its membership, asks for your consideration to amend the following sections:

**23.1-01-01 – Director appointment.**

- The NDEHA membership is comprised of environmental health practitioners and scientists from across the state that are committed to environmental protection through sound scientific processes and methods. Environmental Health Practitioners are required to have a solid science education to qualify for the position, and further solidify this science base through a required national board licensure exam.
- The NDEHA requests that the Director of Environmental Quality position be equally committed to pursuing environmental protection through science, as well as possess a physical science degree similar to those whom they would oversee.

**23.1-01-02 – Environmental review advisory council.**

- Local Public Health agencies face unique environmental challenges that require the attention of the State Environmental Quality Division. However, most local environmental programs are managed differently than their state level counterparts, and some, such as the onsite sewage treatment systems and aquatic facilities, do not even exist at the state level. Uniform regulation can only be attained through consistent communication between the local environmental health departments and the State Environmental Quality Division.
- This bill includes an environmental review advisory council which is established to advise the department of environmental quality in carrying out its duties.
- The NDEHA requests an additional appointed position be specifically developed for a local environmental health representative on the advisory council.
- This singularly distinctive local environmental health position would ensure that the opinion of local public health agencies across North Dakota will be heard at the state level.

If you have any questions or would like additional information, please feel free to contact me.

Respectfully submitted,

Grant Larson, President  
North Dakota Environmental Health Association  
(701) 241-1388



11  
3-3-17  
SB2327  
PULVERMACHER

March 3, 2017

**SB 2327**

**House Energy and Natural Resources**

Chairman Porter and Members of the House Energy and Natural Resources Committee:

My name is Kayla Pulvermacher and I'm here representing the North Dakota Farmers Union. I'm here to present a concern that NDFU has with HB 2327.

In Section 17 of the bill, the Environmental Review Advisory Council is named. While the board makeup acknowledges the many sectors of energy that are affected by environmental regulations, agriculture is similarly affected and is only allotted one seat. North Dakota Farmers Union believes adding a number of agricultural seats similar to energy's number of seats on the board would contribute vital information in regards to agricultural issues.

Thank you for the opportunity to testify today. I can take any questions that you may have.



**March 3, 2017**

**The Honorable Representative Todd Porter**  
**Energy and Natural Resources Committee**  
**Re: Support for Senate Bill 2327**

Chairman Porter and members of the committee:

My name is Brent Bogar and I am representing the Greater North Dakota Chamber. The GNDC works on behalf of all our members to support building a strong, vibrant business climate in North Dakota. GNDC stands today in support of SB 2327.

GNDC has worked with many of our members over the years to support appropriate and fair regulations that support development and growth while maintaining protection of our environment and resources. The state has seen the benefits of this effort in the growth of the state's agricultural and energy industries specifically, but throughout all sectors of the economy. GNDC believes that the state is best equipped to create the environmental regulations and rules since they have the experience, knowledge, resources, and understanding of North Dakota.

GNDC works with businesses of all sizes and industries. One lesson that can be learned from business is that it is often the smaller companies that can take advantage and adapt to change. There are many examples of larger companies, or conglomerates, that have a hard time being as responsive to the needs in the marketplace. Often it will be the decision of that large company to "spin-off" a business units. Through that process the emphasis is on finding efficiency in the operations to produce stronger results. They do that by focusing on that specific segment or product and both the original and new business find success as they are dedicated to a single purpose.

With SB 2327 GNDC sees an opportunity to create that type of result by creating the Department of Environmental Quality. Having an agency that is a cabinet level position that is focused solely on environmental quality highlights the priority the North Dakota puts on its environment. It also allows for the Health Department to focus on its priorities while maintaining its position of importance as a cabinet level agency. GNDC believes that these agencies will be more efficient, responsive, and effective not just for the state but also for the people and industries that call North Dakota home.

Chairman, members of the committee GNDC urges a Do Pass on SB 2327.

Champions  Business

PO Box 2639 P: 701-222-0929  
Bismarck, ND 58502 F: 701-222-1611

[www.ndchamber.com](http://www.ndchamber.com)

PROPOSED AMENDMENTS TO SENATE BILL NO. 2327

1  
SB 2327  
3-10-17

Glatf/Olson  
AG attachment

Page 1, line 8, remove "subsection 1 of section 19-01-01"

Page 1, line 18, remove "sections 61-28-03 and 61-28-05"

Page 1, line 24, remove "and" and after "39-26" insert ", 61-28-03, and 61-28-05"

Page 2, after line 30, insert:

"All orders, determinations, permits, grants, contracts, agreements, certificates, licenses, waivers, bonds, authorizations, and privileges relating to the functions transferred, which have been which have been lawfully issued or made prior to the date of the transition of functions, shall continue to be effective until revised, amended, repealed, or rescinded."

"The transition of functions shall not abate any suit, action, or other proceeding lawfully commenced by, against, or before any entity affected by the transition of functions. Any suit, action, or other proceeding may be maintained by, against, or before the appropriate successor of an entity affected by the transition of functions."

Page 4, line 26, replace "23.1-04-03" with "23.1-04-04"

Page 8, remove lines 28-31 (note: title 19 is staying with the Health Department)

Page 9, line 8, replace "environmental review advisory council" with "department of environmental quality"

Page 13, line 29, replace "eleven" with "twelve"

Page 14, line 12, remove "and"

Page 14, line 13, replace "geologist." with "geologist; and"

Page 14, after line 13, insert:

"I. director of the game and fish department."

Page 14, line 27, after "title" add "and chapters 61-28, 61-28.1, and 61-28.2"

Page 14, line 29, after "title" add "and chapters 61-28, 61-28.1, and 61-28.2"

Page 15, line 14, after "title" insert "and chapters 61-28, 61-28.1, and 61-28.2"

Page 17, line 4, replace "23.1-08-20 and 23.1-08-21" with "23.1-08-19 and 23.1-08-20"

Page 18, line 28, replace "23.1-01-02" with "23.1-01-12"

Page 18, after line 31, insert:

**23.1-01-13. Contract for Inspections.**

The department may contract with public health units and other appropriate entities to conduct inspections on behalf of the department or provide other services.

Page 22, line 6, replace "rule" with "rules"

Page 25, line 21, replace "subdivision c" with "subdivisions a, b, c, and e"

Page 26, line 15, replace "environmental review advisory council" with "department"  
(note: refers to environmental review advisory council but is not consistent with ch. 23.1-01 and creates confusion)

Page 29, line 6, after "the" insert "solid waste or hazardous"

Page 29, line 7, replace "of the waste" with "thereof"

Page 29, replace lines 13 through 14 with:

"5. "Generator" means any person, by site, whose act or process produces hazardous waste or whose act first causes a hazardous waste to become subject to regulation."

Page 30, replace lines 1 through 3 with:

"9. "Owner" means, in the case of an underground storage tank:

- a. In use on or after November 8, 1984, any person who owns or operates an underground storage tank used for the storage, use, or dispensing of regulated substances.
- b. In use before November 8, 1984, but no longer in use after that date, any person who owned or operated such a tank immediately before the discontinuation of its use."

Page 30, line 10, after "liquid at" insert "standard conditions of temperature and pressure ("

Page 30, line 12, after "absolute" insert ")"

Page 37, line 24, replace "23.1-09" with "23.1-12"

Page 40, line 26, after "performance of" insert "new"

Page 41, after line 16 insert:

"a. Any facility required to have a permit under this section which facility is in existence on July 1, 1981, or was in existence on the effective date of any statutory or regulatory change in the hazardous waste management that requires it to have a permit, and has made an application for a permit under this section must be treated as having been issued such permit until such time as final administrative disposition of such application is made.

b. The department, by regulation, shall require that any person who owns or operates a facility which is treated as having been issued a permit under subdivision a meet all applicable requirements of section 23.1-04-05."

Page 44, replace lines 25 through 30 with:

"b. The release of any such waste or regulated substance from a facility or site may present a substantial hazard to human health or the environment,

the department may issue an order requiring the owner or operator of the facility or site to conduct any monitoring, testing, analysis, and reporting with respect to the facility or site which the department deems reasonable to ascertain the nature and extent of the hazard."

Page 63, remove lines 13-23 (note: discusses environmental review advisory council but is not consistent with ch. 23.1-01 and creates confusion)

Page 65, remove lines 13-14 (note: discusses environmental review advisory council and is repetitive of ch. 23.1-01)

Page 70, line 5, replace "23.1-01-04.1" with "23.1-01-04"

Page 71, line 10, after "for" insert "the issuance of"

Page 72, line 29, replace "environmental review advisory council" with "department" (note: to be consistent with other programs and so that there isn't confusion about whether the hearing should be conducted by the office of administrative hearings as required by 54-57-03)

Page 73, line 24, replace "the" with "that"

Page 74, line 7, replace "person" with "business or residence"

Page 82, after line 21 insert:

**23.1-08-02. Declaration of purpose.**

It is hereby declared to be the purposes of this chapter to:

1. Plan for and regulate the storage, collection, transportation, resource recovery, and disposal of solid wastes in order to protect the public health, safety, and welfare and to enhance the environment for the people of the state.
2. Establish and maintain a cooperative state program of planning and technical assistance for solid waste management.
3. Provide the authority to and require persons to plan and provide efficient, environmentally acceptable solid waste management.
4. Provide the authority for the review of plans and facilities for solid waste management.
5. Provide the authority to issue permits for the operation of solid waste management activities.
6. Promote the application of resource recovery systems which preserve and enhance the quality of air, water, and land resources.
7. Promote and assist in the development of markets for recovered and recycled materials.
8. Encourage by 1995 at least a ten percent reduction in volume of municipal waste deposited in landfills, by 1997 at least a twenty-five percent reduction, and by 2000 at least a forty percent reduction.

Page 91, remove lines 8 through 28 (note: sections obsolete as the fund was not created)

Page 94, line 1, replace "environmental review advisory council" with "department" (note: to be consistent with other programs and so that there isn't confusion about whether the hearing should be conducted by the office of administrative hearings as required by 54-57-03)

Page 95, remove lines 12 through 31 (note: chapter obsolete as the fund was not created)

Page 96, remove lines 1 through 30 (same)

Page 97, remove lines 1 through 30 (same)

Page 98, remove lines 1 through 30 (same)

Page 99, remove lines 1 through 30 (same)

Page 100, remove lines 1 through 30 (same)

Page 101, remove lines 1 through 3 (same)

Page 108, line 13, replace "emergency action necessary" with "such emergency action as it determines necessary"

Page 126, line 16, after "delay" insert a period

Page 126, after line 30, insert:

**23.1-15-01. Statement of legislative intent concerning abandoned motor vehicles.**

Abandoned motor vehicles constitute a hazard to the health and welfare of the people of the state in that such vehicles can harbor noxious diseases, furnish shelter and breeding places for vermin, and present physical dangers to the safety and well-being of children and other citizens. Abandoned motor vehicles and other scrap metals also constitute a blight on the landscape of the state and therefore a detriment to the environment. The abandonment and retirement of motor vehicles and other scrap metals constitutes a waste of a valuable source of useful metal. It is therefore in the public interest and the intent of the legislative assembly that the present accumulation of abandoned motor vehicles and other scrap metals be eliminated, that future abandonment of motor vehicles and other scrap metals be prevented, that the expansion of existing scrap recycling facilities be developed, and that other acceptable and economically useful methods for the disposal of abandoned motor vehicles and other forms of scrap metal be developed.

Page 141, line 23, after "55-01-01," insert "and" and overstrike "and 61-28-03,"

Page 142, overstrike line 18 (note: references water pollution control board)

Page 147, lines 15 through 16, remove the overstrike over "state department of health" and insert immediately thereafter "and" (note: both agencies should be referenced)

Page 147, line 23, overstrike "section of the state department of health"

Page 148, line 11, overstrike "1."

Page 148, remove lines 11 through 12, remove "“Council” means the environmental review advisory council" (note: refers to environmental review advisory council but is not consistent with ch. 23.1-01 and creates confusion)

Page 148, line 12, overstrike the period (note: same)

Page 148, remove lines 17 through 31 (note: same)

Page 149, remove lines 1 through 28 (note: same)

Page 150, remove lines 1 through 4 (note: same)

Page 150, after line 14, insert:

**"SECTION 71. AMENDMENT.** Section 61-28.1-07 of the North Dakota Century Code is amended and reenacted as follows:

**61-28.1-07. Certification of laboratories.**

No laboratory analysis of water taken from a public water system or any report of such analysis required by this chapter or any rule adopted pursuant to this chapter shall be accepted by the department unless such analysis or report shall be made by the department, the state department of health, or by any other laboratory certified by the department or the state department of health for such purposes. The department, in conjunction with the state department of health, shall provide for the certification of any laboratory, for the purposes of this section, which meets such criteria as the department or the state department of health may establish to ensure the accuracy of laboratory analyses."

Page 152, after line 6, insert:

**"SECTION 73. AMENDMENT.** Subsection 1 of section 61-30-01 of the North Dakota Century Code is amended and reenacted as follows:

1. "Department" means the ~~state department of health~~ department of environmental quality."

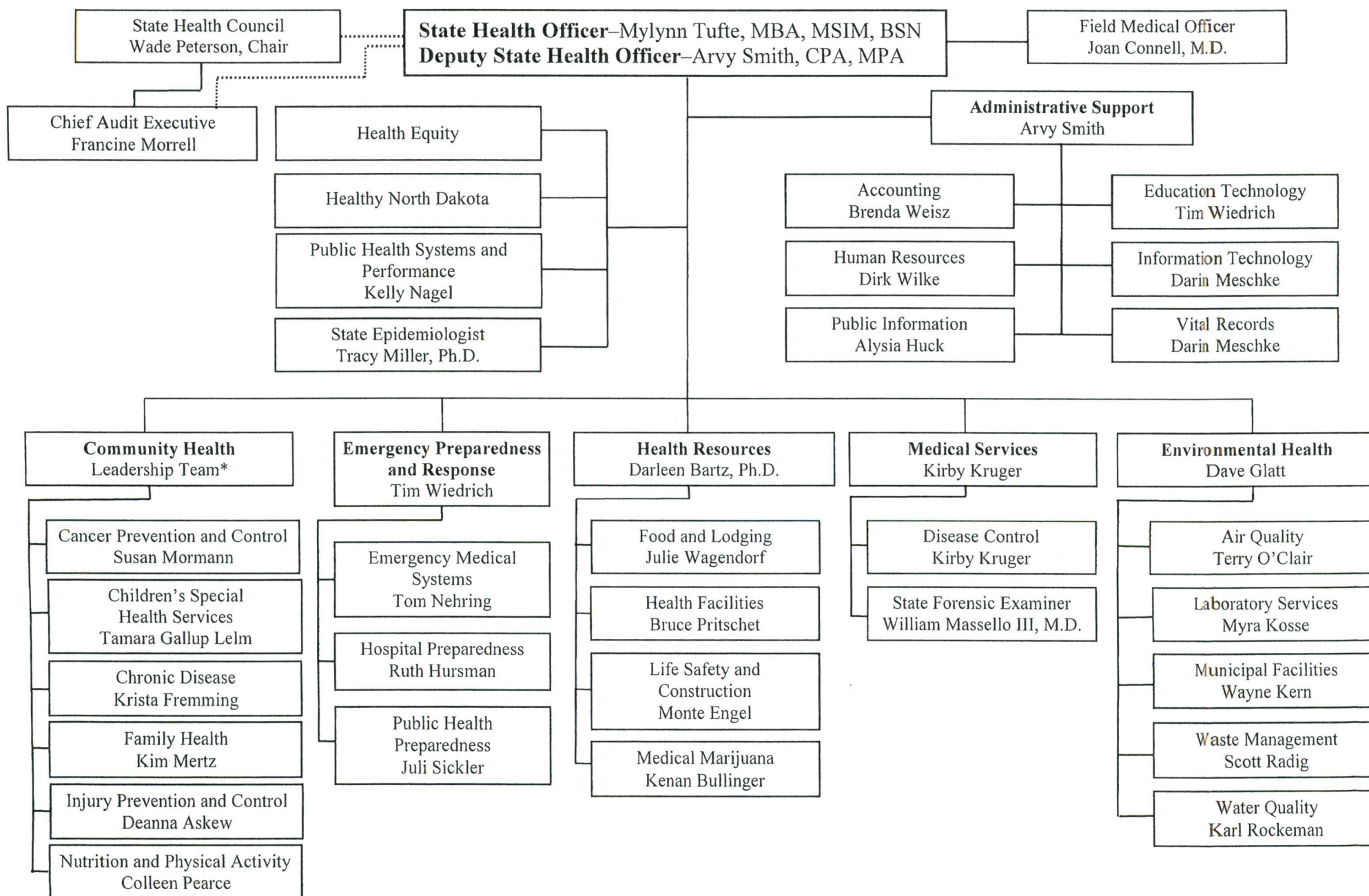
Page 152, after line 29, insert:

**"SECTION 74. AMENDMENT.** Section 61-38-03 of the North Dakota Century Code is amended and reenacted as follows:

The state engineer may not issue a permit under this chapter without a certification from the ~~state department of health~~ department of environmental quality that the permitted activity will not adversely affect water quality."

Page 153, line 1, remove "and" and after "39-26" insert ", 61-28-03, and 61-28-05"

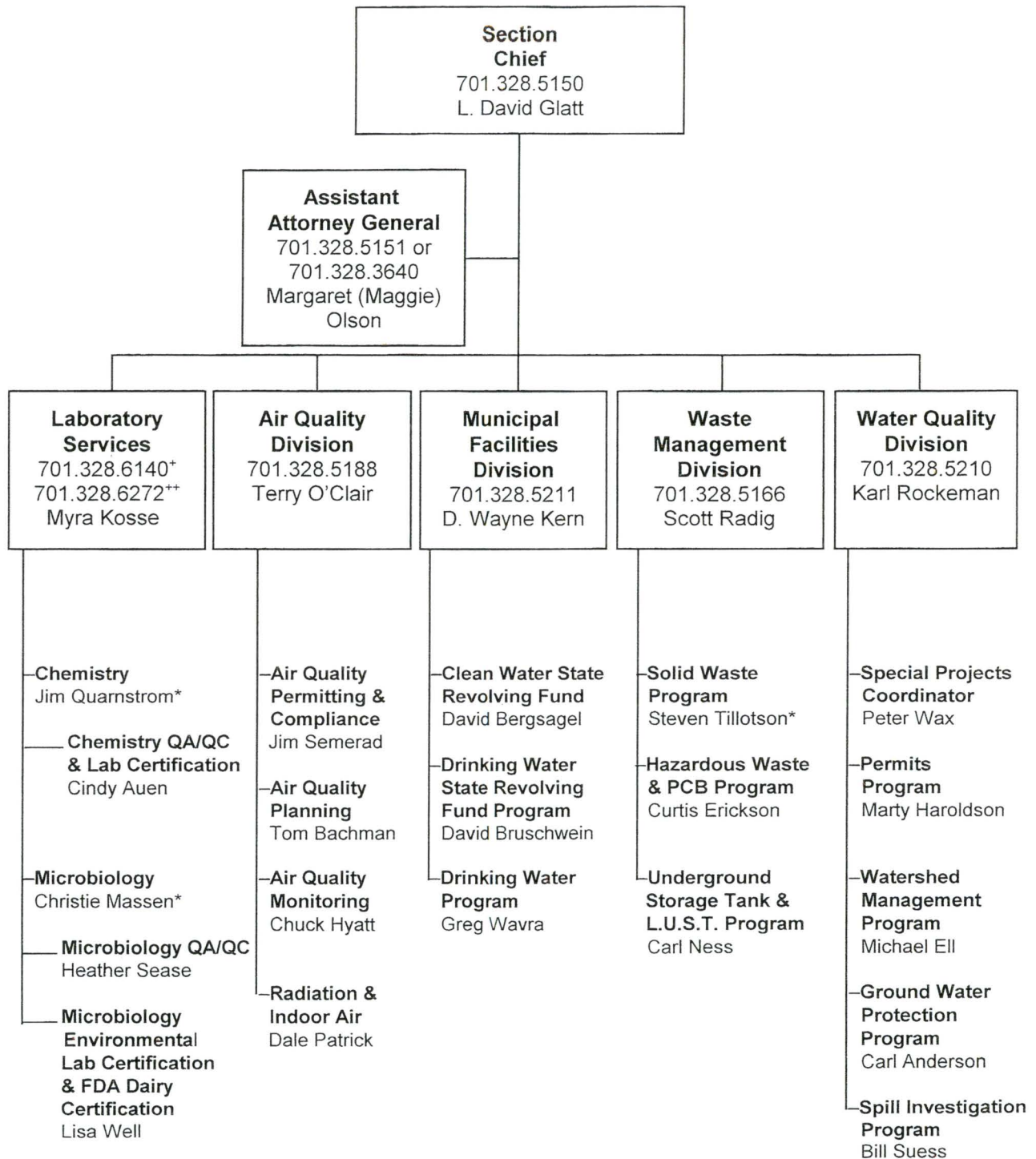
Renumber accordingly



\*The six division directors share responsibility for management of the Community Health Section.



**North Dakota Department of Health**  
**Environmental Health Section**



\*Assistant Director  
+Chemistry Phone #  
++Microbiology Phone #

September 2016

8



# North Dakota Department of Health

## Environmental Health Section

Gold Seal Center, 918 East Divide Avenue, Bismarck, ND 58501-1947

Fax Number (701) 328-5200

Website: [www.ndhealth.gov/ehs](http://www.ndhealth.gov/ehs)



### *Information Directory*

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#### **Environmental Health Section Chief's Office** (701) 328-5150

**Chief: L. David Glatt**

**Performance Partnership Agreement & Grants Coordination - Teri Lunde**

**Information Technology Coordination - Gold Seal Center Campus - Allen Johnson**

**Lab Campus - Kevin Kosse**

**Data Management - Gary Haberstroh**

**Public Communication/Information, Development & Staff Training - Melissa Miller**

**Legal - Margaret Olson** (701) 328-5151

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#### **Division of Air Quality** (701) 328-5188

**Director: Terry O'Clair**

##### **Air Quality Permitting & Compliance -**

**Jim Semerad**

- > Air Quality Permits
- > Air Quality Inspections
- > Emission/Stack Testing
- > Emission Inventory
- > Open Burning (other than landfills)
- > Visible Emission/Odor Certification
- > Oil and Gas Wells
- > Air Quality Questions and Complaints

##### **Air Quality Planning - Tom Bachman**

- > Dispersion Modeling
- > State Implementation Planning

##### **Air Quality Monitoring - Chuck Hyatt**

- > Ambient Air Quality Data
- > Ambient Network Operations

##### **Radiation & Indoor Air Quality - Dale Patrick**

- > Radioactive Materials
  - > Radon
  - > X-Ray Machines
  - > Asbestos
  - > Indoor Air Quality
  - > Mammography Quality Assurance
  - > Lead Paint
- 

#### **Laboratory Services**

2635 East Main, P.O. Box 5520, Bismarck, ND 58506-5520, Fax: (701) 328-6280

**Director: Myra Kosse**

##### **Division of Chemistry** (701) 328-6140

**Assistant Director: Jim Quarnstrom**

**Quality Assurance/Quality Control: Cindy Auen**

Analysis of Environmental Samples  
Environmental Laboratory Certification

##### **Division of Microbiology** (701) 328-6272

**Assistant Director: Christie Massen**

**Quality Assurance/Quality Control: Heather Sease**

Analysis of Clinical Public Health Specimens and  
Environmental Microbiology Including Laboratory  
Certification

**Environmental Microbiology: Lisa Well**

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#### **Division of Municipal Facilities** (701) 328-5211

(701) 328-6628 (Environmental Training Center)

**Director: D. Wayne Kern**

##### **Clean Water State Revolving Loan Fund**

**Program - Dave Bergsagel**

- > Clean Water Revolving Loan Fund
- > Plan Review (wastewater systems)

##### **Drinking Water State Revolving Loan Fund**

**Program - David Bruschwein**

- > Drinking Water Revolving Loan Fund
- > Plan Review (water systems)

##### **Drinking Water Program - Greg Wavra**

- > Safe Drinking Water Act
  - > Community Fluoridation Program
  - > Training and Certification of Water & Wastewater Facility Operators
  - > Inspections of Water & Wastewater Facilities
  - > North Dakota Water & Pollution Control Conference
  - > Publication of the *Official Bulletin*
-

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## **Division of Waste Management (701) 328-5166**

**Director: Scott Radig Assistant Director: Steve Tillotson**

### **Solid Waste Program - Steve Tillotson**

Solid Waste Management:  
Municipal, Industrial, Special & Inert Waste  
> Permits, Inspections  
> Operator Training & Certification  
> Open Burning (at solid waste facilities)  
> Transfer Stations  
Coal Combustion & Offsite Oilfield Waste  
Land Treatment  
Scrap Tires & Tire Recycling  
Waste Reduction, Recycling & Composting  
Energy Recovery  
Biomass (waste wood, etc.)  
Nutrient Management (Ag Processing)  
Emergency Waste & Debris Management  
Abandoned & Dangerous Buildings  
Abandoned Motor Vehicle Projects, Auto  
Salvage & Scrap Metal  
Pollution Prevention (P2)  
Solid Waste Planning

### **Hazardous Waste Program & Toxic Substance Control Act - Curt Erickson**

Hazardous Waste  
> Permits  
> Inspections  
> Corrective Action  
Superfund  
> CERCLIS Sites  
> Emergency Response  
Emergency Spill Response  
> Site Assessment  
> Site Remediation  
Brownfields  
Laboratory/Agricultural/Household Chemical  
Wastes  
Polychlorinated Biphenyls (PCBs)  
Used Oil  
Infectious Waste  
Waste Transporter Permits

### **Underground Storage Tank Program - Carl Ness**

Underground Storage Tanks (USTs) > Petroleum > Hazardous Substances Above-ground Storage Tanks (ASTs) > Spills, Assessments > Certification of Biofuels Blender Pump Installation	Leaking Underground Storage Tank (L.U.S.T.) Trust Fund > Assessment, Remediation Antifreeze Registration Petroleum Products Testing Spill Response
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## **Division of Water Quality (701) 328-5210**

**Director: Karl Rockeman**

### **Watershed Management - Michael Ell**

> Water Quality Standards  
> Nonpoint Source Pollution Management  
> Rivers and Stream Monitoring and Assessment  
> Clean Lakes Assessments  
> Fish Consumption Advisory  
> Watershed Management  
> Water Quality Modeling

### **Water Quality Special Projects - Peter Wax**

> 404 Dredge & Fill  
> 401 Water Quality Certification  
> Environmental Impact Statements  
(EIS) Review  
> Water Quality Standards

### **Spill Investigation Program - Bill Suess**

> Spill Response

### **Wastewater Facility/Permits - Marty Haroldson**

> North Dakota Pollutant Discharge Elimination  
System (NDPDES) Permits  
> Wastewater Releases  
> Stormwater Regulations  
> Feedlot Inspections/Approval/Runoff  
> Septic Pumps  
> Small Business Assistance  
> Pretreatment

### **Groundwater Protection Program - Carl Anderson**

> Underground Injection Control (UIC) Program  
> Source Water Protection  
> Groundwater Remediation and Assessment

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## **OTHER Environmental Information**

### **Environmental Health Section**

**Fargo Office**, 1120 28<sup>th</sup> Ave. N., Suite B, Fargo, ND 58102, (701) 499-5207, Fax (701) 235-7394

**Towner Office**, 314 Main St. S. #2, Towner, ND 58788, (701) 537-2043, Fax (701) 537-2044

**Environmental Hot Line** 1-800-755-1625

**Environmental Training Center** 2639 E. Main Ave., Bismarck, ND 58501, (701) 328-6628, Fax (701) 328-6206

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**Approvals of Anhydrous Ammonia Facilities - State Ag Dept.** (701) 328-2231

**Emergency Response Spills - State Radio** 1-800-472-2121 (in-state) or (701) 328-9921 (out-of-state)

**Oil Field Related Spills - Oil & Gas Division** (701) 328-8020

**Petroleum Tank Release Compensation Fund (PTRCF) - Jeff Bitz - ND Insurance Dept.** (701) 328-9600

**SARA Title III - Department of Emergency Services** Fraine Barracks, P.O. Box 5511, Bismarck, ND 58506-5511, (701) 328-8100

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PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2327

Page 1, line 14, replace "subsection 6 of section" with "sections 43-62-01 and"

Page 1, line 14, after the first comma insert "subsection 1 of section 43-62-15,"

Page 26, overstrike lines 14 through 17

Page 26, line 18, replace "23.1-03-11." with "23.1-03-10."

Page 26, line 28, replace "23.1-03-12." with "23.1-03-11."

Page 27, line 9, replace "23.1-03-13." with "23.1-03-12."

Page 27, line 17, replace "23.1-03-14." with "23.1-03-13."

Page 27, line 21, replace "23.1-03-15." with "23.1-03-14."

Page 27, line 25, replace "23.1-03-16." with "23.1-03-15."

Page 140, after line 21, insert:

**"SECTION 52. AMENDMENT.** Section 43-62-01 of the North Dakota Century Code is amended and reenacted as follows:

**43-62-01. Definitions.**

1. "Board" means the North Dakota medical imaging and radiation therapy board of examiners.
2. "Certification organization" means a national certification organization that specializes in the certification and registration of ~~certification of~~ medical imaging and radiation therapy technical personnel and which has programs accredited by the national commission for certifying agencies, American national standards institute or the international organization for standardization, or other accreditation organization recognized by the board.
3. "Licensed practitioner" means a licensed physician, advanced practice registered nurse, surgeon, chiropractor, dentist, or podiatrist.
4. "Licensee" means an individual licensed by the board to perform medical imaging or radiation therapy procedures and operate medical imaging or radiation therapy equipment, including a nuclear medicine technologist, radiation therapist, radiographer, radiologist assistant, x-ray operator, or sonographer.
5. "Medical imaging" means the performance of any diagnostic or interventional procedure or operation of medical imaging equipment intended for use in the diagnosis or visualization of disease or other medical conditions in human beings, including fluoroscopy, nuclear medicine, sonography, or x-rays.

6. "Medical physicist" means an individual who is certified by the American board of radiology, American board of medical physics, American board of science in nuclear medicine, or Canadian college of physics in medicine in radiological physics or one of the subspecialties of radiological physics.
7. "Radiation therapy" means the performance of any procedure or operation of radiation therapy equipment intended for use in the treatment of disease or other medical conditions in human beings.
8. "Radiation therapist" means a nonphysician licensed by the board to perform radiation therapy procedures and operate radiation therapy equipment.

**SECTION 53. AMENDMENT.** Section 43-62-03 of the North Dakota Century Code is amended and reenacted as follows:

**43-62-03. Exemptions.**

This chapter does not apply to the following:

1. A licensed practitioner performing medical imaging or radiation therapy.
2. A dental assistant or dental hygienist licensed under chapter 43-20.
3. A student enrolled in and attending a school or college of medicine, medical imaging, or radiation therapy who performs medical imaging or radiation therapy procedures on humans while under the supervision of a licensed practitioner or a radiographer, radiation therapist, nuclear medicine technologist, radiologist assistant, or sonographer holding a license in the medical imaging or radiation therapy modality which the student is enrolled or attending under this chapter.
4. An individual administering medical imaging or radiation procedures and who is employed by the United States government when performing duties associated with that employment.
5. A nurse licensed under chapter 43-12.1 who performs sonography on a focused imaging target to assess specific and limited information about a patient's immediate medical condition or to provide real-time visual guidance for another procedure.
6. ~~A limited x-ray machine operator who meets the requirements of rules adopted by the state department of health under section 23-20.1-04.~~
7. Medical imaging performed as a part of a post-mortem examination or on other nonliving remains.
- ~~8-7.~~ Medical imaging performed by emergency medical services personnel certified or licensed under section 23-27-04.3."

Page 140, replace lines 22 through 26 with:

**"SECTION 54. AMENDMENT.** Subsection 1 of section 43-62-15 of the North Dakota Century Code is amended and reenacted as follows:

1. The board shall establish licensure standards for the following medical imaging and radiation therapy modalities:
  - a. Nuclear medicine technologist.
  - b. Radiation therapist.
  - c. Radiographer.
  - d. Radiologist assistant.
  - e. Sonographer.
  - f. X-ray operator."

Renumber accordingly

March 10, 2017

1  
SB 2327  
Subcommittee  
8AM  
Devlin  
3-16-17

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2327

Page 1, line 8, remove "subsection 1 of section 19-01-01,"

Page 1, line 14, replace "subsection 6 of section" with "sections 43-62-01 and"

Page 1, line 14, after the first comma insert "subsection 1 of section 43-62-15,"

Page 1, line 18, remove "sections 61-28-03 and 61-28-05,"

Page 1, line 24, remove "and"

Page 1, line 24, after "39-26" insert ", 61-28-03, and 61-28-05"

Page 2, after line 30, insert:

"All orders, determinations, permits, grants, contracts, agreements, certificates, licenses, waivers, bonds, authorizations, and privileges relating to the functions transferred, which have been lawfully issued or made prior to the date of the transition of functions, shall continue to be effective until revised, amended, repealed, or rescinded. The transition of functions shall not abate any suit, action, or other proceeding lawfully commenced by, against, or before any entity affected by the transition of functions. Any suit, action, or other proceeding may be maintained by, against, or before the appropriate successor of an entity affected by the transition of functions. "

Page 4, line 26, replace "23.1-04-03" with "23.1-04-04"

Page 8, replace line 28 with ""

Page 8, remove line 29

Page 8, line 30, overstrike "1. "Department" means the", overstrike "state department of health" and remove "department of environmental"

Page 8, remove line 31 remove "quality" and overstrike the period

Page 9, line 8, replace "environmental review advisory council" with "department of environmental quality"

Page 13, line 29, replace "eleven" with "twelve"

Page 14, line 12, remove "and"

Page 14, line 13, replace the second underscored period with "and;" I.  
director of the game and fish department."

Page 14, line 27, after "title" insert "and chapters 61-28, 61-28.1, and 61-28.2"

Page 14, line 29, after "title" insert "and 61-28, 61-28.1, and 61-28.2"

Page 15, line 14, after "title" insert "and chapters 61-28, 61-28.1, and 61-28.2"

Page 17, line 4, replace "23.1-08-20 and 23.1-08-21" with "21.1-08-19 and 23.1-08-20"

Page 18, line 28, replace "23.1-01-02" with "23.1-01-12"

Page 18, after line 31, insert:

"23.1-01-13. Contracts for Inspections.

The department may contract with public health units and other appropriate entities to conduct inspections on behalf of the department or provide other services."

Page 22, line 6, replace "rule" with "rules"

Page 22, line 12,

Page 25, line 21, replace "subdivision c" with "subdivisions a, b, c, and e"

Page 26, remove lines 14 through 17

Page 26, line 18, replace "23.1-03-11." with "23.1-03-10."

Page 26, line 28, replace "23.1-03-12." with "23.1-03-11."

Page 27, line 9, replace "23.1-03-13." with "23.1-03-12."

Page 27, line 17, replace "23.1-03-14." with "23.1-03-13."

Page 27, line 21, replace "23.1-03-15." with "23.1-03-14."

Page 27, line 25, replace "23.1-03-16." with "23.1-03-15."

Page 29, line 6, after "the" insert "solid waste or hazardous"

Page 29, line 7, replace "of the waste" with "thereof"

Page 29, line 13, remove "producing hazardous waste or acting to cause"

Page 29, line 14, replace "a hazardous waste" with "whose act or process produces hazardous waste or whose act first causes a hazardous waste"

Page 30, line 1, remove ", any person that owns or"

Page 30, replace lines 2 and 3 with "a. In use on or after November 8, 1984, any person who owns or operates an underground storage tank used for the storage, use, or dispensing of regulated substances. b. In use before November 8, 1984, but no longer in use after that date, any person who owned or operated such a tank immediately before the discontinuation of its use."

Page 30, line 10, after "at" insert "standard conditions of temperature and pressure ("

Page 30, line 12, after "absolute" insert an underscored closing parenthesis

Page 37, line 24, replace "23.1-09" with "23.1-12"

Page 40, line 26, after "of" insert "new"

Page 140, after line 21, insert:

**"SECTION 52. AMENDMENT.** Section 43-62-01 of the North Dakota Century Code is amended and reenacted as follows:

**43-62-01. Definitions.**

1. "Board" means the North Dakota medical imaging and radiation therapy board ~~of examiners~~.

2. "Certification organization" means a national certification organization that specializes in the certification and registration of ~~certification of~~ medical imaging and radiation therapy technical personnel and which has programs accredited by the national commission for certifying agencies, American national standards institute or the international organization for standardization, or other accreditation organization recognized by the board.
3. "Licensed practitioner" means a licensed physician, advanced practice registered nurse, surgeon, chiropractor, dentist, or podiatrist.
4. "Licensee" means an individual licensed by the board to perform medical imaging or radiation therapy procedures and operate medical imaging or radiation therapy equipment, including a nuclear medicine technologist, radiation therapist, radiographer, radiologist assistant, x-ray operator, or sonographer.
5. "Medical imaging" means the performance of any diagnostic or interventional procedure or operation of medical imaging equipment intended for use in the diagnosis or visualization of disease or other medical conditions in human beings, including fluoroscopy, nuclear medicine, sonography, or x-rays.
6. "Medical physicist" means an individual who is certified by the American board of radiology, American board of medical physics, American board of science in nuclear medicine, or Canadian college of physics in medicine in radiological physics or one of the subspecialties of radiological physics.
7. "Radiation therapy" means the performance of any procedure or operation of radiation therapy equipment intended for use in the treatment of disease or other medical conditions in human beings.
8. "Radiation therapist" means a nonphysician licensed by the board to perform radiation therapy procedures and operate radiation therapy equipment.

**SECTION 53. AMENDMENT.** Section 43-62-03 of the North Dakota Century Code is amended and reenacted as follows:

**43-62-03. Exemptions.**

This chapter does not apply to the following:

1. A licensed practitioner performing medical imaging or radiation therapy.
2. A dental assistant or dental hygienist licensed under chapter 43-20.
3. A student enrolled in and attending a school or college of medicine, medical imaging, or radiation therapy who performs medical imaging or radiation therapy procedures on humans while under the supervision of a licensed practitioner or a radiographer, radiation therapist, nuclear medicine technologist, radiologist assistant, or sonographer holding a license in the medical imaging or radiation therapy modality which the student is enrolled or attending under this chapter.

4. An individual administering medical imaging or radiation procedures and who is employed by the United States government when performing duties associated with that employment.
5. A nurse licensed under chapter 43-12.1 who performs sonography on a focused imaging target to assess specific and limited information about a patient's immediate medical condition or to provide real-time visual guidance for another procedure.
6. ~~A limited x-ray machine operator who meets the requirements of rules adopted by the state department of health under section 23-20.1-04.~~
7. Medical imaging performed as a part of a post-mortem examination or on other nonliving remains.
- ~~8-7.~~ Medical imaging performed by emergency medical services personnel certified or licensed under section 23-27-04.3.

**SECTION 54. AMENDMENT.** Subsection 1 of section 43-62-15 of the North Dakota Century Code is amended and reenacted as follows:

1. The board shall establish licensure standards for the following medical imaging and radiation therapy modalities:
  - a. Nuclear medicine technologist.
  - b. Radiation therapist.
  - c. Radiographer.
  - d. Radiologist assistant.
  - e. Sonographer.
  - f. X-ray operator."

Renumber accordingly

Sixty-fifth  
Legislative Assembly  
of North Dakota

## ENGROSSED SENATE BILL NO. 2327

Introduced by

Senators Unruh, Armstrong, Wardner

Representatives Carlson, Kempenich, Porter

1 A BILL for an Act to create and enact a new subdivision to subsection 2 of section 12-60-24,  
2 title 23.1, and subdivision v of subsection 1 of section 54-06-04 of the North Dakota Century  
3 Code, relating to the creation of the department of environmental quality, the transfer of duties  
4 and responsibilities of the state department of health relating to environmental quality to the  
5 department of environmental quality, and biennial reports of the department of environmental  
6 quality; to amend and reenact section 4-35.2-01, subdivision b of subsection 5 of section  
7 6-09.4-03, sections 11-33-01, 11-33-02.1, and 11-33-22, subdivision d of subsection 2 of section  
8 12.1-06.1-01, section 15-05-16, ~~subsection 1 of section 19-01-01~~, sections 20.1-13-05,  
9 20.1-17-01, and 23-01-02, subsection 8 of section 23-01.3-01, sections 23-20.2-02, 23-20.2-03,  
10 and 24-03-23, subsection 5 of section 28-32-50, sections 38-08-04.5, 38-11.1-03.1,  
11 38-11.1-04.1, and 38-11.2-02, subsection 12 of section 38-14.1-03, subsection 2 of section  
12 38-14.1-21, sections 38-22-07, 38-22-12, 40-47-01, 43-18-02, 43-18-09, 43-35-03, 43-35-19,  
13 43-35-19.1, 43-35-19.2, 43-35-20, and 43-35-23, subsection 11 of section 43-48-03,  
14 ~~subsection 6 of section~~sections 43-62-01 and 43-62-03, subsection 1 of section 43-62-15,  
15 subsection 3 of section 44-04-18.4, section 44-04-32, subsection 1 of section 54-07-01.2,  
16 subsection 3 of section 54-12-08, section 54-44.3-30, subsection 33 of section 57-43.2-01,  
17 sections 58-03-11, 58-03-11.1, and 58-03-17, subsection 13 of section 58-06-01, section  
18 61-04.1-04, subsections 1 and 2 of section 61-28-02, ~~sections 61-28-03 and 61-28-05~~,  
19 subsection 2 of section 61-28.1-02, subsection 15 of section 61-28.1-03, subsection 2 of  
20 section 61-28.2-01, and sections 61-29-04, 61-33-09, and 61-35-24 of the North Dakota  
21 Century Code, relating to the transfer of duties and responsibilities of the state department of  
22 health to the department of environmental quality and the regulation of x-ray operators; to  
23 repeal chapters 19-10 and 19-16.1, sections 23-01-01.2, 23-01-04.1, 23-01-23, 23-01-30, and  
24 23-01-36 ~~and~~, chapters 23-20, 23-20.1, 23-20.3, 23-20.5, 23-25, 23-26, 23-29, 23-29.1, 23-31,  
25 23-32, 23-33, 23-37, and 39-26, and sections 61-28-03 and 61-28-05 of the North Dakota

1 Century Code, relating to the transfer of duties and responsibilities of the state department of  
2 health to the department of environmental quality; to provide a penalty; to provide a continuing  
3 appropriation; to provide for transition; and to provide an effective date.

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

5 **SECTION 1. STATE DEPARTMENT OF HEALTH TRANSITION OF ENVIRONMENTAL**  
6 **QUALITY FUNCTIONS.** Notwithstanding any other provision of law, during the 2017-18 interim,  
7 the state department of health shall take all necessary and appropriate steps to transfer the  
8 authority, powers, and duties of the department related to environmental quality, as provided in  
9 this Act, to the department of environmental quality before the start of the sixty-sixth legislative  
10 assembly. Before July 1, 2019, the state department of health shall obtain the required  
11 approvals from, and amend the necessary agreements with, federal agencies and other public  
12 and private entities to ensure the state will continue to meet all primacy requirements. When the  
13 chief of the environmental health section of the state department of health has assurance from  
14 the necessary federal agencies that the state will meet all the primacy requirements after the  
15 transfer of authority, powers, and duties to the new department, the chief shall certify the same  
16 to the legislative management. Until the time of the certification, the chief of the environmental  
17 health section of the state department of health has the authority to operate, administer,  
18 manage, and restructure the environmental health section, reassign employees of the section,  
19 and control the funds appropriated for the section, to operate the section in the most efficient  
20 manner possible. To the extent required by the environmental health section, the state  
21 department of health shall continue to provide support and administrative services to the  
22 section. The chief of the environmental health section may adopt rules under this Act contingent  
23 and effective upon the establishment of the department of environmental quality.

24 Upon the transition of the authority, powers, and duties of the state department of health to  
25 the department of environmental quality under this Act, any special funds or accounts  
26 administered or under the control of the state department of health which relate to  
27 environmental quality functions transferred to the department of environmental quality must be  
28 transferred to the administration and control of the department of environmental quality.

1 The legislative council may replace appropriate references to the state department of health  
2 in any measure enacted by the sixty-fifth legislative assembly with references to the department  
3 of environmental quality.

4 All orders, determinations, permits, grants, contracts, agreements, certificates, licenses,  
5 waivers, bonds, authorizations, and privileges relating to the functions transferred which have  
6 been lawfully issued or made before the date of the transition of functions, continue to be  
7 effective until revised, amended, repealed, or rescinded. The transition of functions does not  
8 abate any suit, action, or other proceeding lawfully commenced by, against, or before an entity  
9 affected by the transition of functions. A suit, action, or other proceeding may be maintained by,  
10 against, or before the appropriate successor of an entity affected by the transition of functions.

11 **SECTION 2. AMENDMENT.** Section 4-35.2-01 of the North Dakota Century Code is  
12 amended and reenacted as follows:

13 **4-35.2-01. Pesticide and pesticide container disposal program - Pesticide container**  
14 **management - Compensation.**

- 15 1. The definitions contained in section 4-35-05 apply to this section.
- 16 2. In consultation with an advisory board consisting of the ~~state health officer~~director of  
17 the department of environmental quality, director of the North Dakota state university  
18 extension service, two individuals representing agribusiness organizations, and two  
19 individuals representing farm organizations, all of whom must be selected by the  
20 agriculture commissioner, the commissioner shall continue to implement the project  
21 authorized by section 1 of chapter 77 of the 2001 Session Laws, which is known as  
22 project safe send. The purpose of the project is to:
  - 23 a. Collect and either recycle or dispose of unusable pesticides and unusable  
24 pesticide containers. The commissioner shall provide for the establishment and  
25 operation of temporary collection sites for the pesticides and pesticide containers.  
26 The commissioner may limit the type and quantity of pesticides and pesticide  
27 containers acceptable for collection.
  - 28 b. Promote proper pesticide container management. In consultation with the director  
29 of the North Dakota state university extension service, the commissioner shall  
30 evaluate and promote proper methods of pesticide container management,  
31 including information on the variety of pesticide containers available.

- 1        3. Any entity collecting pesticide containers or unusable pesticides shall manage and  
2        dispose of the containers and pesticides in compliance with applicable federal and  
3        state requirements. When called upon, any state agency shall assist the commissioner  
4        in implementing the project.
- 5        4. For services rendered in connection with the design and implementation of this  
6        project, the members selected by the commissioner are entitled to reimbursement for  
7        mileage and travel expenses in the same manner and for the same amounts provided  
8        for state employees and officials. Compensation and expense reimbursement must be  
9        paid from the environment and rangeland protection fund.

10       **SECTION 3. AMENDMENT.** Subdivision b of subsection 5 of section 6-09.4-03 of the North  
11       Dakota Century Code is amended and reenacted as follows:

- 12       b. The ~~state~~ department of ~~health~~environmental quality, or any other state agency or  
13       authority, or any member-owned association or publicly owned and nonprofit  
14       corporation:
- 15       (1) Operating any public water system that is subject to chapter 61-28.1.  
16       (2) Operating any facility, system, or other related activity that is eligible for  
17       financial assistance under chapter 61-28.2.

18       **SECTION 4. AMENDMENT.** Section 11-33-01 of the North Dakota Century Code is  
19       amended and reenacted as follows:

20       **11-33-01. County power to regulate property.**

21       For the purpose of promoting health, safety, morals, public convenience, general prosperity,  
22       and public welfare, the board of county commissioners of any county may regulate and restrict  
23       within the county, subject to section 11-33-20 and chapter 54-21.3, the location and the use of  
24       buildings and structures and the use, condition of use, or occupancy of lands for residence,  
25       recreation, and other purposes. The board of county commissioners and a county zoning  
26       commission shall state the grounds upon which any request for a zoning amendment or  
27       variance is approved or disapproved, and written findings upon which the decision is based  
28       must be included within the records of the board or commission. The board of county  
29       commissioners shall establish zoning requirements for solid waste disposal and incineration  
30       facilities before July 1, 1994. The board of county commissioners may impose tipping or other  
31       fees on solid waste management and incineration facilities. The board of county commissioners

may not impose any fee under this section on an energy conversion facility or coal mining operation that disposes of its waste onsite. The board of county commissioners may establish institutional controls that address environmental concerns with the state department of health environmental quality as provided in section ~~23-20-3-03.1~~ ~~23.1-04-03~~ 23.1-04-04.

**SECTION 5. AMENDMENT.** Section 11-33-02.1 of the North Dakota Century Code is amended and reenacted as follows:

**11-33-02.1. Farming and ranching regulations - Requirements - Limitations - Definitions.**

1. For purposes of this section:

- a. "Concentrated feeding operation" means any livestock feeding, handling, or holding operation, or feed yard, where animals are concentrated in an area that is not normally used for pasture or for growing crops and in which animal wastes may accumulate. The term does not include normal wintering operations for cattle.
- b. "Farming or ranching" means cultivating land for the production of agricultural crops or livestock, or raising, feeding, or producing livestock, poultry, milk, or fruit. The term does not include:
  - (1) The production of timber or forest products; or
  - (2) The provision of grain harvesting or other farm services by a processor or distributor of farm products or supplies in accordance with the terms of a contract.
- c. "Livestock" includes beef cattle, dairy cattle, sheep, swine, poultry, horses, bison, elk, fur animals raised for their pelts, and any other animals that are raised, fed, or produced as a part of farming or ranching activities.
- d. "Location" means the setback distance between a structure, fence, or other boundary enclosing a concentrated feeding operation, including its animal waste collection system, and the nearest occupied residence, the nearest buildings used for nonfarm or nonranch purposes, or the nearest land zoned for residential, recreational, or commercial purposes. The term does not include the setback distance for the application of manure or for the application of other recycled

agricultural material under a nutrient management plan approved by the  
department of health ~~and~~ environmental quality.

2. For purposes of this section, animal units are determined as follows:

- a. One mature dairy cow, whether milking or dry, equals 1.33 animal units;
- b. One dairy cow, heifer, or bull, other than an animal described in paragraph 1 equals 1.0 animal unit;
- c. One weaned beef animal, whether a calf, heifer, steer, or bull, equals 0.75 animal unit;
- d. One cow-calf pair equals 1.0 animal unit;
- e. One swine weighing fifty-five pounds [24.948 kilograms] or more equals 0.4 animal unit;
- f. One swine weighing less than fifty-five pounds [24.948 kilograms] equals 0.1 animal unit;
- g. One horse equals 2.0 animal units;
- h. One sheep or lamb equals 0.1 animal unit;
- i. One turkey equals 0.0182 animal unit;
- j. One chicken, other than a laying hen, equals 0.008 animal unit;
- k. One laying hen equals 0.012 animal unit;
- l. One duck equals 0.033 animal unit; and
- m. Any livestock not listed in subdivisions a through l equals 1.0 animal unit per each one thousand pounds [453.59 kilograms] whether single or combined animal weight.

3. A board of county commissioners may not prohibit or prevent the use of land or buildings for farming or ranching and may not prohibit or prevent any of the normal incidents of farming or ranching.

4. A board of county commissioners may not preclude the development of a concentrated feeding operation in the county.

5. A board of county commissioners may not prohibit the reasonable diversification or expansion of a farming or ranching operation.

- 1       6.   A board of county commissioners may adopt regulations that establish different
- 2           standards for the location of concentrated feeding operations based on the size of the
- 3           operation and the species and type being fed.
- 4       7.   If a regulation would impose a substantial economic burden on a concentrated feeding
- 5           operation in existence before the effective date of the regulation, the board of county
- 6           commissioners shall declare that the regulation is ineffective with respect to any
- 7           concentrated feeding operation in existence before the effective date of the regulation.
- 8       8.   a.   A board of county commissioners may establish high-density agricultural
- 9           production districts in which setback distances for concentrated feeding
- 10          operations and related agricultural operations are less than those in other
- 11          districts.
- 12       b.   A board of county commissioners may establish, around areas zoned for
- 13          residential, recreational, or nonagricultural commercial uses, low-density
- 14          agricultural production districts in which setback distances for concentrated
- 15          feeding operations and related agricultural operations are greater than those in
- 16          other districts; provided, the low-density agricultural production districts may not
- 17          extend more than one and one-half miles [2.40 kilometers] from the edge of the
- 18          area zoned for residential, recreational, or nonagricultural commercial uses.
- 19       c.   The setbacks provided for in this subsection may not vary by more than fifty
- 20          percent from those established in subdivision a of subsection 7 of section
- 21          ~~23-25-11~~23.1-06-15.
- 22       d.   For purposes of this subsection, a "related agricultural operation" means a facility
- 23          that produces a product or byproduct used by a concentrated feeding operation.

24       **SECTION 6. AMENDMENT.** Section 11-33-22 of the North Dakota Century Code is  
25 amended and reenacted as follows:

26       **11-33-22. Regulation of concentrated animal feeding operations - Central repository.**

- 27       1.   Any zoning regulation that pertains to a concentrated animal feeding operation and
- 28          ~~which is promulgated by a county after July 31, 2007,~~ is not effective until filed with the
- 29          ~~state~~ department of ~~health~~environmental quality for inclusion in the central repository
- 30          established under section ~~23-01-30~~23.1-01-10. ~~Any zoning regulation that pertains to~~
- 31          ~~concentrated animal feeding operations and which was promulgated by a county~~

1           ~~before August 1, 2007, may not be enforced until the regulation is filed with the state~~  
2           ~~department of health for inclusion in the central repository.~~

3           2. For purposes of this section:

- 4           a. "Concentrated animal feeding operation" means any livestock feeding, handling,  
5           or holding operation, or feed yard, where animals are concentrated in an area  
6           that is not normally used for pasture or for growing crops and in which animal  
7           wastes may accumulate, or in an area where the space per animal unit is less  
8           than six hundred square feet [55.74 square meters]. The term does not include  
9           normal wintering operations for cattle.
- 10          b. "Livestock" includes beef cattle, dairy cattle, sheep, swine, poultry, horses, and  
11          fur animals raised for their pelts.

12          **SECTION 7.** A new subdivision to subsection 2 of section 12-60-24 of the North Dakota  
13 Century Code is created and enacted as follows:

14           The department of environmental quality for a final applicant for or an employee  
15           specified in occupation with the department; an individual being investigated by  
16           the department; or, when requested by the department, an applicant for  
17           registration, certification, or licensure by the department.

18          **SECTION 8. AMENDMENT.** Subdivision d of subsection 2 of section 12.1-06.1-01 of the  
19 North Dakota Century Code is amended and reenacted as follows:

- 20          d. "Illegal transportation or disposal of radioactive waste material or hazardous  
21          waste" means the transportation or disposal into a nonhazardous waste landfill or  
22          the intentional and unlawful dumping into or on any land or water of radioactive  
23          waste material in violation of section 23-20.2-09 or rules adopted pursuant to that  
24          section which were in effect on January 1, 1997, or hazardous waste in willful  
25          violation of chapter ~~23-20.3~~23.1-04 or the rules adopted ~~pursuant to that chapter~~  
26          which were in effect on January 1, 1997, except for the handling of conditionally  
27          exempt small quantities of hazardous waste as was referenced in section  
28          33-24-02-05 of the North Dakota Administrative Code.

29          **SECTION 9. AMENDMENT.** Section 15-05-16 of the North Dakota Century Code is  
30 amended and reenacted as follows:

**15-05-16. Reports - State geologist - State department of health - Department of environmental quality.**

The state geologist ~~or the~~ state department of health, or department of environmental quality, on the request of the board of university and school lands, shall visit any land leased under section 15-05-09 and shall make a report of the visit to the board. The state geologist ~~or the~~ state department of health, or department of environmental quality may not receive a fee for making the examination and report but must be paid necessary expenses incurred in connection ~~therewith~~ with the examination.

~~SECTION 10. AMENDMENT. Subsection 1 of section 19-01-01 of the North Dakota Century Code is amended and reenacted as follows: —~~

~~1. "Department" means the state department of health~~ department of environmental quality.

**SECTION 10. AMENDMENT.** Section 20.1-13-05 of the North Dakota Century Code is amended and reenacted as follows:

**20.1-13-05. Equipment - Penalty.**

1. Every vessel must have aboard:

- a. If equipped with a marine toilet or other similar device for the disposition of sewage or other wastes, only that type of marine toilet equipped with a treatment device meeting standards established by the ~~state water pollution control board~~ environmental review advisory council department of environmental quality.

The department of ~~health~~ environmental quality shall furnish a list of the types of treatment devices currently available and considered acceptable for use with marine toilets under this subdivision. No person owning or operating a vessel upon the waters of this state may use, operate, or permit the use or operation of any marine toilet or similar device unless it is approved under this subdivision. No person may discharge into the waters of this state, directly or indirectly from a vessel, any untreated sewage or other wastes. No container of untreated sewage or other wastes may be placed, left, discharged, or caused to be placed, left, or discharged in or near any waters of this state from a vessel in such a manner or quantity as to create a nuisance or health hazard, or pollute such waters.

1           b. Such additional equipment designed to promote the safety of navigation and of  
2           persons as the game and fish department may find appropriate and for which it  
3           has provided in its rules.

4           2. No person may operate or give permission for the operation of a vessel that is not  
5           equipped as required by this section.

6           3. Any person who violates this section is guilty of a class 2 noncriminal offense.

7           **SECTION 11. AMENDMENT.** Section 20.1-17-01 of the North Dakota Century Code is  
8 amended and reenacted as follows:

9           **20.1-17-01. Prevention and control of aquatic nuisance species.**

10          The director, to prevent and control aquatic nuisance species, shall:

- 11          1. Prepare a statewide management plan for aquatic nuisance species to be approved  
12             by the governor.
- 13          2. Organize an aquatic nuisance species committee, as provided for in the statewide  
14             management plan, composed of the director or the director's designee;  
15             representatives of the agriculture commissioner, state water commission, parks and  
16             recreation department, ~~state department of health~~department of environmental quality,  
17             and tourism division; up to five private entities or individuals; and a representative of  
18             tribal entities. The director or the director's designee is the chairman of the aquatic  
19             nuisance species committee.
- 20          3. Develop and adopt the state's list of aquatic nuisance species after consulting with the  
21             aquatic nuisance species committee. The list must be updated annually.
- 22          4. Provide for a permitting system to import listed aquatic nuisance species into or move  
23             those species within the state.
- 24          5. Develop rules to prevent the movement of aquatic nuisance species into or within the  
25             state. In addition to requirements under chapter 28-32, the department shall conduct a  
26             cost-benefit analysis for any rule proposed for adoption under this chapter.
- 27          6. Conduct aquatic nuisance species education and prevention efforts.
- 28          7. Provide for the partnership of the federal government, state agencies, and private or  
29             public organizations to fund aquatic nuisance species prevention efforts.

30          **SECTION 12. AMENDMENT.** Section 23-01-02 of the North Dakota Century Code is  
31 amended and reenacted as follows:

**23-01-02. Health council - Members, terms of office, vacancies, compensation, officers, meetings.**

The health council consists of ~~eleven~~nine members appointed by the governor ~~in the following manner: including~~ four persons from the health care field, and five persons representing consumer interests, ~~one person from the energy industry, and one from the manufacturing and processing industry.~~ The governor may select members to the council from recommendations submitted by trade, professional, and consumer organizations. On the expiration of the term of any member, the governor, in the manner provided by this section, shall appoint for a term of three years, persons to take the place of members whose terms on the council are about to expire. The officers of the council must be elected annually. Any state agency may serve in an advisory capacity to the health council at the discretion of the council. The council shall meet at least twice each year and at other times as the council or its chairman may direct. The health council shall have as standing committees any committees the council may find necessary. The chairman of the council shall select the members of these committees. The members of the council are entitled to receive sixty-two dollars and fifty cents as compensation per day and their necessary mileage and travel expenses as provided in sections 44-08-04 and 54-06-09 while attending council meetings or in the performance of any special duties as the council may direct. The per diem and expenses must be audited and paid in the manner in which the expenses of state officers are audited and paid. The compensation provided for in this section may not be paid to any member of the council who received salary or other compensation as a regular employee of the state, or any of its political subdivisions, or any institution or industry operated by the state.

**SECTION 13. AMENDMENT.** Subsection 8 of section 23-01.3-01 of the North Dakota Century Code is amended and reenacted as follows:

8. "Public health authority" means the state department of health, department of environmental quality, a local public health unit, and any authority or instrumentality of the United States, a tribal government, a state, or a political subdivision of a state, a foreign nation, or a political subdivision of a foreign nation, which is:
  - a. Primarily responsible for public health matters; and
  - b. Primarily engaged in activities such as injury reporting, public health surveillance, and public health investigation or intervention.

1       **SECTION 14. AMENDMENT.** Section 23-20.2-02 of the North Dakota Century Code is  
2 amended and reenacted as follows:

3       **23-20.2-02. Definitions.**

4       As used in this chapter:

- 5       1. "Commission" means the industrial commission of North Dakota.
- 6       2. "Person" includes any natural person, corporation, limited liability company,  
7       association, partnership, receiver, trustee, executor, administrator, guardian, fiduciary,  
8       or other representative of any kind, and includes any department, agency, or  
9       instrumentality of the state or of any governmental subdivision thereof.
- 10      3. "Underground disposal facility" means any drilled, bored, or excavated device or  
11      installation to provide for the subsurface disposal of waste. The term does not include  
12      a solid waste management facility authorized under chapter ~~23-29~~23.1-08.
- 13      4. "Underground storage and retrieval facility" means any drilled, bored, or excavated  
14      device or installation to provide for the subsurface emplacement and recovery of  
15      materials.
- 16      5. "Waste" includes liquid wastes, gaseous wastes, and solid wastes as defined in  
17      section ~~23-29-03~~23.1-08-02 and all unusable industrial material including spent  
18      nuclear fuels and other unusable radioactive material not brought into this state for  
19      disposal.

20      **SECTION 15. AMENDMENT.** Section 23-20.2-03 of the North Dakota Century Code is  
21 amended and reenacted as follows:

22      **23-20.2-03. Jurisdiction of the industrial commission.**

23      The commission has jurisdiction and authority and is charged with the responsibility to  
24 enforce the provisions of this chapter. This chapter does not apply to any activity regulated  
25 under chapters ~~23-29~~23.1-08, 38-08, 38-12, 61-28, and 61-28.1. The commission acting  
26 through the office of the state geologist has the authority:

- 27      1. To require:
  - 28          a. Identification of ownership of all facilities and equipment used for the  
29          underground storage and retrieval of material and waste disposal.

- 1           b.   The making and filing of all logs and reports on facility location, drilling, boring,  
2               excavating, and construction and the filing, free of charge, of samples, core  
3               chips, and complete cores, when requested, in the office of the state geologist.
- 4           c.   The drilling, boring, excavating, and construction of facilities in a manner to  
5               prevent contamination and pollution of surface and ground water sources and the  
6               environment.
- 7           d.   The furnishing of a reasonable bond with good and sufficient surety, conditioned  
8               upon the full compliance with the provisions of this chapter, and the rules of the  
9               commission relating to the underground storage and retrieval of material and  
10              waste disposal.
- 11          e.   Metering or other measuring of all material injected, emplaced, stored, disposed  
12               into, or retrieved from any facility regulated by this chapter.
- 13          f.   That every person who operates a facility for the underground storage and  
14               retrieval of material or for waste disposal in this state shall keep and maintain  
15               complete and accurate records of the quantities and nature of material stored,  
16               retrieved, or disposed of, which records must be available to the commission or  
17               its agents at all times, and that every such person file with the commission such  
18               reports as it may prescribe.
- 19          g.   That upon termination of the operation of any facility or activity regulated by this  
20               chapter, the operator of such facility shall restore the surface as nearly as  
21               possible to its original condition and productivity.
- 22          2.   To regulate:
  - 23              a.   The drilling, boring, excavating, and construction of all underground storage,  
24                   retrieval, and waste disposal facilities.
  - 25              b.   Operations to assure the optimum performance of all facilities regulated by this  
26                   chapter.
- 27          3.   To limit and prescribe the nature, quantity, and source of materials to be stored in,  
28               whether as waste or otherwise, or retrieved from any facility regulated by this chapter.
- 29          4.   To promulgate and to enforce rules, regulations, and orders to effectuate the purposes  
30               of this chapter.

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

**SECTION 16.** Chapter 23.1-01 of the North Dakota Century Code is created and enacted as follows:

**23.1-01-01. Department of environmental quality established - Director appointment.**

The department of environmental quality is established and is the primary state environmental agency. The governor shall appoint a director of the department who shall serve at the pleasure of the governor. The position of director of the department is not a classified position, and the governor shall set the salary of the director within the limits of legislative appropriations.

**23.1-01-02. Environmental review advisory council - Members, powers, and duties.**

1. The environmental review advisory council is established to advise the department of environmental quality in carrying out its duties. The council consists of ~~eleven~~the state engineer, state geologist, and director of the game and fish department, who serve as ex officio members, and nine members appointed by the governor, ~~and the~~. The director of the department of environmental quality or the director's designee shall serve as the executive secretary for the council. The ~~appointed~~ members must be:

- a. A representative of county or municipal government;
- b. A representative of manufacturing and processing;
- c. A representative of the solid fuels industry;
- d. A representative of the liquid and gas fuels industry;
- e. A representative of agriculture;
- f. A representative of the solid waste industry;
- g. A representative of the hazardous waste industry;
- h. A representative of the thermal electric generators industry; and
- i. A representative of the environmental sciences;
- ~~j. The state engineer; and~~
- ~~k. The state geologist.~~

2. Each appointive member of the council shall serve a four-year term. The governor may fill any vacancy in the membership of the council, and may remove ~~a~~an appointed

1           member of the council for cause. The council members shall select a chairman from  
2           among the council members.

3       3. Council members must be reimbursed by the department of environmental quality for  
4       necessary travel and other expenses incurred in the performance of official duties.

5       4. The council shall hold at least two meetings per year and any other meetings deemed  
6       necessary by the chairman or a majority of the council.

7       5. The council shall:

8           a. Review and make recommendations to the department of environmental quality  
9           regarding rules and standards relating to environmental quality and the duties of  
10          the department. The department may not take final action on any rule or standard  
11          without first consulting the council.

12          b. Consider any other matter related to the purposes of this title and chapters 61-28,  
13          61-28.1, and 61-28.2 the council deems appropriate and make any  
14          recommendation on its own initiative to the department of environmental quality  
15          concerning the administration of this title and chapters 61-28, 61-28.1, and  
16          61-28.2.

17       **23.1-01-03. Director - Powers and duties.**

18       The director of the department of environmental quality shall:

19          1. Enforce all rules adopted by the department;

20          2. Hire employees as necessary to carry out the duties of the department and director;

21          3. Organize the department in the most efficient and effective manner;

22          4. Maintain, in conjunction with the state department of health, a laboratory to carry out  
23          the necessary tests and examinations for purposes of this title, and establish a fee  
24          schedule for the tests and examinations;

25          5. Issue bulletins, news releases, or reports as necessary to inform the public of  
26          environmental hazards;

27          6. Establish rules necessary for maintaining sanitation, including rules for approving  
28          plans for water works and sewage systems;

29          7. Maintain a central environmental laboratory and, if necessary, branch laboratories for  
30          the standard function of diagnostic, sanitary, and chemical examinations; and

- 1       8. Any other action, including the collection and distribution of environmental quality data,  
2       necessary and appropriate for the administration of this title and chapters 61-28,  
3       61-28.1, and 61-28.2.

4       **23.1-01-04. Rulemaking authority - Limitations.**

- 5       1. Except as provided in subsection 2, the department of environmental quality may not  
6       adopt any rule for the purpose of the state administering a program under the federal  
7       Clean Air Act [42 U.S.C. 7401 et seq.]; federal Clean Water Act [33 U.S.C. 1251 et  
8       seq.]; federal Safe Drinking Water Act [42 U.S.C. 300 et seq.]; federal Resource  
9       Conservation and Recovery Act [42 U.S.C. 6901 et seq.]; federal Comprehensive  
10      Environmental Response, Compensation, and Liability Act [42 U.S.C. 9601 et seq.];  
11      federal Emergency Planning and Community Right to Know Act of 1986 [42 U.S.C.  
12      11001 et seq.]; federal Toxic Substances Control Act [42 U.S.C. 2601 et seq.]; or  
13      federal Atomic Energy Act of 1954 [42 U.S.C. 2011 et seq.]; which is more stringent  
14      than corresponding federal regulations that address the same circumstances. In  
15      adopting the rules, the department may incorporate by reference corresponding  
16      federal regulations.
- 17      2. The department may adopt rules more stringent than corresponding federal  
18      regulations or adopt rules where there are no corresponding federal regulations, for  
19      the purposes described in subsection 1, only if the department makes a written finding  
20      after public comment and hearing and based upon evidence in the record, that  
21      corresponding federal regulations are not adequate to protect the public health and  
22      the environment of the state. Those findings must be supported by an opinion of the  
23      department referring to and evaluating the public health and environmental information  
24      and studies contained in the record which form the basis for the department's  
25      conclusions.
- 26      3. If the department, upon petition by any person affected by a rule of the department,  
27      identifies rules more stringent than federal regulations or rules where there are no  
28      corresponding federal regulations, the department shall review and revise those rules  
29      to comply with this section within nine months of the filing of the petition.
- 30      4. Any person issued a notice of violation, or a denial of a permit or other approval,  
31      based upon a rule of the department which is more stringent than a corresponding

1 federal regulation or where there is no corresponding federal regulation, may assert a  
2 partial defense to that notice, or a partial challenge to that denial, on the basis and to  
3 the extent the department's rule violates this section by imposing requirements more  
4 stringent than corresponding federal regulations, unless the more stringent rule of the  
5 department has been adopted in compliance with this section.

6 **23.1-01-05. Department of environmental quality authorized to transfer future**  
7 **accumulated fees.**

8 The department of environmental quality may from time to time transfer unclaimed fees on  
9 deposit with the Bank of North Dakota or other authorized depository to the state general fund  
10 when the unclaimed status has existed for a period of at least three years.

11 **23.1-01-06. Department to employ waste management facility inspectors.**

12 The department of environmental quality shall employ and establish the qualifications,  
13 duties, and compensation of at least one full-time inspector for each commercial, nonpublicly  
14 owned waste management disposal or incineration facility that accepts more than twenty-five  
15 thousand tons [22679.5 kilograms] per year of hazardous waste, industrial waste, nuclear  
16 waste, or ash resulting from the incineration of municipal solid waste. This section does not  
17 apply to any energy conversion facility or coal mining operation that disposes of its solid waste  
18 onsite. The department may require inspectors for those facilities that accept less than  
19 twenty-five thousand tons [22679.5 kilograms] per year. The facility inspector shall conduct  
20 regular inspections of the operating procedure and conditions of the facility and report the  
21 findings to the department on a regular basis. If an inspector discovers a condition at a facility  
22 that is likely to cause imminent harm to the health and safety of the public or environment, the  
23 inspector shall notify the department. The department shall proceed as provided by sections  
24 23.1-08-19 and 23.1-08-20 and ~~23.1-08-21.~~

25 The department shall assess the owner or operator of a waste management facility that  
26 accepts hazardous waste, industrial waste, nuclear waste, or ash resulting from the incineration  
27 of municipal solid waste an annual fee to pay the salaries, wages, and operating expenses  
28 associated with employing an inspector for the facility. The owner or operator of the facility shall  
29 submit the fee to the department by July first of each year. Any fees collected must be  
30 deposited in the department's operating fund in the state treasury and any expenditures from  
31 the fund are subject to appropriation by the legislative assembly. If a facility begins operation

1 after July first of any year, the owner or operator of the facility shall pay to the department a  
2 prorated fee for the fiscal year before the facility may begin accepting waste. Moneys in the  
3 waste management facility account may be spent by the department within the limits of  
4 legislative appropriation.

5 **23.1-01-07. Permit or investigatory hearings - Exemption from chapters 28-32 and**  
6 **54-57.**

7 A permit hearing conducted for purposes of receiving public comment or an investigatory  
8 hearing conducted under chapters 23.1-03, 23.1-04, 23.1-06, 23.1-08, 61-28, and 61-28.1 is not  
9 an adjudicative proceeding under chapter 28-32 and is not subject to the requirements of  
10 chapter 54-57.

11 **23.1-01-08. Commercial feed, insecticide, fungicide, rodenticide, fertilizer, and soil**  
12 **conditioner laws - Laboratory function.**

13 Notwithstanding any other provision of law, any laboratory test or analysis required under  
14 chapter 19-13.1, 19-18, or 19-20.1 must be performed by the department of environmental  
15 quality for the agriculture commissioner at no charge.

16 **23.1-01-09. Department of environmental quality - Indirect cost recoveries.**

17 Notwithstanding section 54-44.1-15, the department of environmental quality may deposit  
18 indirect cost recoveries in its operating account.

19 **23.1-01-10. Zoning regulation of concentrated animal feeding operations - Central**  
20 **repository.**

21 The department of environmental quality shall establish, operate, and maintain an  
22 electronically accessible central repository for all county and township zoning regulations that  
23 pertain to concentrated animal feeding operations. The county auditor of a county and a  
24 township clerk of a township having a zoning regulation that pertains to concentrated animal  
25 feeding operations shall file the regulation with the department of environmental quality for  
26 inclusion in the central repository.

27 **23.1-01-11. Appeal from permit proceedings.**

28 An appeal from the issuance, denial, modification, or revocation of a permit issued under  
29 chapter 23.1-03, 23.1-04, 23.1-06, 23.1-08, or 61-28 may be made by the person who filed the  
30 permit application, or by any person who is aggrieved by the permit application decision,  
31 provided that person participated in or provided comments during the hearing process for the

1 permit application, modification, or revocation. An appeal must be taken within thirty days after  
2 the final permit application determination is mailed by first-class mail to the permit applicant and  
3 to any interested person who has requested a copy of the final permit determination during the  
4 permit hearing process. Except as provided in this section, an appeal of the final permit  
5 determination is governed by sections 28-32-40, 28-32-42, 28-32-43, 28-32-44, 28-32-46, and  
6 28-32-49. The department may substitute final permit conditions and written responses to public  
7 comments for findings of fact and conclusions of law. Except for a violation of chapter 23.1-03,  
8 23.1-04, 23.1-06, 23.1-08, or 61-28 which occurs after the permit is issued, or any permit  
9 condition, rule, order, limitation, or other applicable requirement implementing those chapters  
10 which occurs after the permit is issued, any challenge to the department's issuance,  
11 modification, or revocation of the permit or permit conditions must be made in the permit  
12 hearing process and may not be raised on any collateral or subsequent legal proceeding, and  
13 the applicant and any aggrieved person may raise on appeal only issues that were raised to the  
14 department in the permit hearing process.

15 **23.1-01-0223.1-01-12. Rules.**

16 The department may adopt rules consistent with national or regional standards which relate  
17 to the promotion of plastic bottle recycling and the maintenance of safe plastic bottle recycling  
18 practices in the state.

19 **23.1-01-13. Contracts for inspections.**

20 The department may contract with public health units and other appropriate entities to  
21 conduct inspections on behalf of the department or provide other services.

22 **SECTION 17.** Chapter 23.1-02 of the North Dakota Century Code is created and enacted  
23 as follows:

24 **23.1-02-01. Definitions.**

25 For the purposes of this chapter:

- 26 1. "Department" means the department of environmental quality.
- 27 2. "Radiation" means gamma rays and x-rays, alpha and beta particles, high-speed  
28 electrons, neutrons, protons, and other nuclear particles; but not sound or radio  
29 waves, or visible, infrared, or ultraviolet light.
- 30 3. "Radiation machine" means any device that produces radiation when the associated  
31 control devices are operated.

1       4.   "Radioactive material" means any material, solid, liquid, or gas, that emits radiation  
2           spontaneously.

3       **23.1-02-02. Registration agency.**

4       The department is designated as the agency to receive registration applications and to  
5       issue certificates of registration.

6       **23.1-02-03. Registration required.**

7       Each manufacturer, processor, and refiner of radioactive isotopes and each hospital, clinic,  
8       manufacturing establishment, research or educational institution, agricultural experiment station  
9       or center, processing mill, or other institution or place of business or process in which radiation  
10       is produced or radioactive materials are used, manufactured, processed, packaged, refined,  
11       produced, disposed, or concentrated shall register with the department. To register, each  
12       manager or officer in charge of any institution or establishment concerned with radioactive  
13       materials shall obtain a registration form from the department, complete it, and return it to the  
14       department.

15       **23.1-02-04. Certificate of registration.**

16       Upon satisfactory completion and submission of the registration form, the department shall  
17       issue the applicant a certificate of registration. A completed registration form must provide  
18       sufficient information to determine whether the health of the public or persons working in the  
19       applicant establishment may be adversely affected by using, manufacturing, processing,  
20       packing, refining, disposing, producing, or concentrating of radioactive isotopes and materials.

21       **23.1-02-05. Penalty.**

22       Any person required to register under section 23.1-02-03 that fails to register and obtain a  
23       certificate of registration is guilty of a class A misdemeanor.

24       **SECTION 18.** Chapter 23.1-03 of the North Dakota Century Code is created and enacted  
25       as follows:

26       **23.1-03-01. Definitions.**

27       For the purposes of this chapter:

28       1.   "Byproduct material" means any radioactive material, except special nuclear material,  
29           yielded in or made radioactive by exposure to the radiation incident to the process of  
30           producing or utilizing special nuclear material; and the tailings or wastes produced by

1           the extraction, or concentration of uranium or thorium from any ore processed  
2           primarily for its source material content.

3       2. "Commission" means United States nuclear regulatory commission or any successor.

4       3. "Department" means the department of environmental quality.

5       4. "General license" means a license effective under rules adopted by the department  
6           without the filing of an application to transfer, acquire, own, possess, or use quantities  
7           of, or devices or equipment utilizing byproduct, source, special nuclear materials, or  
8           other radioactive material occurring naturally or produced artificially.

9       5. "Ionizing radiation" means gamma rays and x-rays, alpha and beta particles,  
10           high-speed electrons, protons, neutrons, and other nuclear particles; but not sound or  
11           radio waves, or visible, infrared, or ultraviolet light.

12       6. "Person" has the same meaning as under section 1-01-49, except it does not mean  
13           the commission or federal government agencies licensed by the commission.

14       7. "Radioactive material" means any solid, liquid, or gas that emits ionizing radiation  
15           spontaneously.

16       8. "Registration" means submitting a satisfactory registration form and receiving a  
17           certificate of registration under chapter 23.1-02.

18       9. "Special nuclear material" means:

19           a. Plutonium, uranium-233, uranium enriched in the isotope-233 or in the  
20           isotope-235, and any other material the department declares by rule to be special  
21           nuclear material after the commission has determined the material to be such,  
22           but does not include source material; or

23           b. Any material, other than source material, that is artificially enriched by plutonium,  
24           uranium-233, uranium enriched in the isotope-233 or in the isotope-235, and any  
25           other material the department declares by rule to be special nuclear material after  
26           the commission has determined the material to be such.

27       10. "Specific license" means a license issued after application, to process, generate,  
28           dispose, use, manufacture, produce, transfer, receive, acquire, own, or possess  
29           quantities of, or devices or equipment utilizing byproduct, source, special nuclear  
30           materials, or other radioactive material occurring naturally or produced artificially.

- 1       11.   "Source material" means uranium, thorium, or any other material the department  
2       declares by rule to be source material after the commission has determined the  
3       material to be such; or ores containing one or more of those materials, in such  
4       concentration as the department declares by rule to be source material after the  
5       commission has determined the material in such concentration to be source material.  
6       12.   "Surety" means cash deposits, surety bonds, certificates of deposit, deposits of  
7       government securities, letters of credit, and other surety mechanisms deemed  
8       acceptable by the department.

9       **23.1-03-02. State radiation control agency.**

10       The department of environmental quality shall administer the statewide licensing and  
11       regulatory radiation program under this chapter.

12       **23.1-03-03. Powers and duties of the department.**

13       For the protection of the public health and safety, the department shall:

- 14       1.   Evaluate hazards associated with the use of sources of ionizing radiation by inspection  
15       and other means.  
16       2.   Conduct programs compatible with federal programs for the licensing and regulation of  
17       byproduct, source, special nuclear materials, and other radioactive materials.  
18       3.   Advise, consult, and cooperate with other public agencies and with affected groups  
19       and industries.  
20       4.   Administer the statewide licensing and regulatory radiation program.

21       **23.1-03-04. Licensing and registration of sources of ionizing radiation.**

- 22       1.   The department shall adopt rules for the department to provide general or specific  
23       licensing of persons to process, generate, dispose, use, manufacture, produce,  
24       acquire, own, receive, possess, or transfer byproduct, source, special nuclear  
25       material, and other radioactive materials occurring naturally or produced artificially, or  
26       devices or equipment utilizing such materials. The ~~rule~~rules must allow the department  
27       to amend, suspend, and revoke licenses.  
28       2.   The department may exempt certain sources of ionizing radiation or kinds of uses or  
29       users from the licensing or registration requirements under this section and in chapter  
30       23.1-02 when the department makes a finding that the exemption of such sources of

ionizing radiation or kinds of uses or users will not constitute a significant risk to the health and safety of the public.

**23.1-03-05. Custody of disposal sites.**

1. Any radioactive materials license issued or renewed for any activity that results in processing, generating, or disposing of source material, byproduct material, or other radioactive material occurring naturally or produced artificially must contain any terms and conditions the department finds necessary to assure that, prior to termination of the license:
  - a. The licensee will comply with any decontamination, decommissioning, and stabilization standards prescribed by the department, which must be equivalent to or more stringent than those of the commission for sites, structures, and equipment used in conjunction with the processing, generation, or disposal of source material, byproduct material, or other radioactive material occurring naturally or produced artificially; and
  - b. Ownership of any disposal site and source material, byproduct material, or other radioactive material occurring naturally or produced artificially which resulted from the licensed activity must, subject to subsection 2, be transferred to the United States if provided by federal law, or this state if the state exercises the option to acquire land used for the disposal of the source material, byproduct material, or other radioactive material occurring naturally or produced artificially.
2. a. The department shall require by rule or order that before the termination of any license, title to the land and any interests in the land, other than land held in trust by the United States for any Indian tribe or owned by an Indian tribe subject to a restriction against alienation imposed by the United States or land already owned by the United States or by the state, used for the disposal of source material, byproduct material, or other radioactive material occurring naturally or produced artificially pursuant to a license, must be transferred to the United States if provided by federal law, or this state, unless the commission and the department determine before the termination that transfer of title is not necessary to protect the public health, safety, or welfare, or to minimize danger to life or property.

b. If transfer to the state of title to the land, source material, byproduct material, or other radioactive material occurring naturally or produced artificially is required, the department shall maintain the material and land in a manner that will protect the public health, safety, and the environment.

c. The department may undertake any monitoring, maintenance, and emergency measures necessary to protect the public health and safety for materials and property for which it has assumed custody under this chapter.

d. The transfer of title to land or source material, byproduct material, or other radioactive material occurring naturally or produced artificially, to the state does not relieve any licensee of liability for any fraudulent or negligent acts done prior to the transfer.

e. Material and land transferred to either the United States or the state under this section must be transferred without cost to the United States or the state other than administrative and legal costs incurred by the United States or the state in carrying out the transfer.

3. Land used for the disposal of technologically enhanced naturally occurring radioactive material is not subject to subsection 2.

**23.1-03-06. Surety requirements.**

1. The department shall establish by rule standards and instructions it deems necessary or appropriate to ensure:

a. The licensee will provide adequate surety for the completion of all requirements established by the department for the decontamination, decommissioning, and stabilization of sites, structures, and equipment used in conjunction with the processing, generation, or disposal of source material, byproduct material, or other radioactive material occurring naturally or produced artificially; and

b. If the department determines any long-term maintenance and monitoring is necessary, the licensee will make available the funds required for the necessary maintenance and monitoring, before termination of any license for source material, byproduct material, or other radioactive material occurring naturally or produced artificially.

1       2. Any funds for long-term site surveillance and control must be available to the state if  
2       title and custody of source material, byproduct material, or other radioactive material  
3       occurring naturally or produced artificially and its disposal site is transferred to the  
4       state under subsection 1 of section 23.1-03-05. The funds must be transferred to the  
5       United States if title and custody of the source material, byproduct material, or other  
6       radioactive material occurring naturally or produced artificially and its disposal site is  
7       transferred to the United States upon termination of any license for source material,  
8       byproduct material, or other radioactive material occurring naturally or produced  
9       artificially. These funds include sums collected for long-term surveillance and if  
10      necessary, maintenance. The funds do not include moneys held as surety where no  
11      default had occurred and the reclamation or other bonded activity has been  
12      performed.

13      3. If the department requires a surety for stabilization or funds for long-term surveillance  
14      or maintenance, the amounts must be sufficient to ensure compliance with the  
15      standards established by the commission and the department pertaining to financial  
16      arrangements to ensure adequate stabilization and long-term management of source  
17      material, byproduct material, or other radioactive material occurring naturally or  
18      produced artificially and its disposal site.

19      **23.1-03-07. Procedural requirements.**

20      In licensing and regulating the processing, generation, or disposal of source material,  
21      byproduct material, or other radioactive material occurring naturally or produced artificially, the  
22      department shall provide:

23      1. In the cases of licenses:

24          a. An opportunity, after public notice, for written comments and a public hearing,  
25          with a transcript.

26          b. A written determination of the action to be taken which is based upon findings  
27          included in the determination and upon evidence presented during the public  
28          comment period, and which is subject to judicial review.

29          c. For each licensed activity that has a significant impact on the human  
30          environment, a written analysis prepared by the department which must be

1           available to the public before commencement of hearings, of the impact of the  
2           licensed activity on the environment. The analysis must include:

3           (1) An assessment of the radiological and nonradiological impacts to the public  
4           health.

5           (2) An assessment of any impact on any waterway and ground water.

6           (3) Consideration of alternatives to the activities to be conducted.

7           (4) Consideration of the long-term impacts of the licensed activities.

8           d. A prohibition of any major construction related to the licensed activities before  
9           completing the action under ~~subdivision c~~ this subsection.

10          e. An assurance that management of source material, byproduct material, or other  
11          radioactive material occurring naturally or produced artificially is carried out in  
12          conformance with applicable standards adopted by the department, the  
13          commission, and the United States environmental protection agency.

14          2. In the case of rulemaking:

15           a. An opportunity for public participation through written comments or a public  
16           hearing.

17           b. An opportunity for judicial review.

18          **23.1-03-08. Additional authorities.**

19          The department may require persons exempt from licensing to conduct monitoring, perform  
20          remedial work, and to comply with any other measures the department deems necessary or  
21          desirable to protect health or minimize danger to life or property.

22          **23.1-03-09. Fees deposited in operating fund.**

23          The department, by rule, may prescribe and provide for the payment and collection of  
24          reasonable fees to issue licenses and registration certificates. The fees must be based on the  
25          anticipated cost of filing and processing the application, of taking action on the requested  
26          license or registration certificate, and of conducting an inspection program to determine  
27          compliance or noncompliance with the license or registration certificate.

28          Any moneys collected for permit or registration fees must be deposited in the department's  
29          operating fund in the state treasury and must be spent subject to appropriation by the legislative  
30          assembly.

~~23.1-03-10. X-ray operators – Rules.~~

~~The environmental review advisory council shall adopt rules to require x-ray operators to obtain continuing education every two years and to establish minimum standards for limited pediatric examinations by x-ray operators.~~

~~23.1-03-11.~~**23.1-03-10. Federal-state agreements.**

1. The governor, on behalf of this state, may enter agreements with the federal government for discontinuance of certain responsibilities of the federal government with respect to sources of ionizing radiation and the assumption of the responsibilities by the state.
2. Any person who, on the effective date of an agreement under subsection 1, possesses a license issued by the federal government must be deemed to possess the same license issued under this chapter, and the license must expire either ninety days after receipt from the department of a notice of expiration of such license or on the date of expiration specified in the federal license, whichever is earlier.

~~23.1-03-12.~~**23.1-03-11. Administrative procedures and judicial review.**

Any proceeding under this chapter to issue or modify rules, including emergency orders relating to control of sources of ionizing radiation; grant, suspend, revoke, or amend any license; or determine compliance with rules of the department must be conducted in accordance with chapter 28-32. If an emergency exists requiring immediate action to protect the public health and safety, the department may, without notice or hearing, issue an order reciting the existence of such emergency and requiring action necessary to meet the emergency be taken. Notwithstanding any provision of this chapter, the order must be effective immediately. A person to which the order is directed shall comply with the order immediately, but may apply to the department for a hearing. The department shall provide the hearing within ten days of the application. On the basis of such hearing, the emergency order must be continued, modified, or revoked within thirty days after such hearing.

~~23.1-03-13.~~**23.1-03-12. Injunction proceedings.**

Whenever, in the judgment of the department, any person has engaged in or is about to engage in any acts or practices that constitute or will constitute a violation of this chapter, or any rule or order issued under this chapter, the department may initiate an action in the name of the state enjoining the acts or practices, or requesting an order directing compliance. Upon a

1 showing by the department that the person has engaged or is about to engage in the acts or  
2 practices, a permanent or temporary injunction, restraining order, or other order may be  
3 granted.

4 **~~23.1-03-14.~~23.1-03-13. Prohibited uses.**

5 It is unlawful for any person to use, manufacture, produce, transport, transfer, receive,  
6 acquire, own, or possess any source of ionizing radiation unless registered with or licensed by  
7 the department under this chapter.

8 **~~23.1-03-15.~~23.1-03-14. Impounding of materials.**

9 In the event of an emergency, the department may impound or order the impounding of  
10 sources of ionizing radiation in the possession of any person not equipped to observe or which  
11 fails to observe the provisions of this chapter or any rules issued under this chapter.

12 **~~23.1-03-16.~~23.1-03-15. Penalties.**

- 13 1. Any person violating this chapter or any permit condition, rule, order, limitation, or  
14 other applicable requirement implementing this chapter is subject to a civil penalty not  
15 to exceed twelve thousand five hundred dollars per day per violation, unless the  
16 penalty for the violation is otherwise specifically provided for and made exclusive in  
17 this chapter.
- 18 2. Any person willfully violating any provision of this chapter or any permit condition, rule,  
19 order, limitation, or other applicable requirement implementing this chapter is guilty of  
20 a class C felony, unless the penalty for the violation is otherwise specifically provided  
21 for and made exclusive in this chapter.
- 22 3. Any person willfully making any false statement, representation, or certification in any  
23 application, record, report, plan, or other document filed or required to be maintained  
24 under this chapter or any permit condition, rule, order, limitation, or other applicable  
25 requirement implementing this chapter or falsifying, tampering with, or willfully  
26 rendering inaccurate any monitoring device or method required to be maintained  
27 under this chapter or any permit condition, rule, order, limitation, or other applicable  
28 requirement implementing this chapter is guilty of a class C felony, unless the penalty  
29 for the violation is otherwise specifically provided for and made exclusive in this  
30 chapter.

1       **SECTION 19.** Chapter 23.1-04 of the North Dakota Century Code is created and enacted  
2 as follows:

3       **23.1-04-01. Declaration of purpose.**

4       The department of environmental quality shall administer this chapter to:

- 5       1. Protect human health and the environment from the effects of the improper,  
6       inadequate, or unsafe past or present management of hazardous waste and  
7       underground storage tanks.
- 8       2. Establish a program to regulate hazardous waste from the time of generation through  
9       transportation, storage, treatment, and disposal.
- 10      3. Promote reduction of hazardous waste generation, reuse, recovery, and treatment as  
11      preferable alternatives to landfill disposal.
- 12      4. Assure the safe and adequate management of hazardous waste with a minimum of  
13      hazardous waste disposal sites within the state.
- 14      5. Establish a program to regulate underground storage tanks.
- 15      6. Promote reduction of surface and ground water contamination resulting from leaking  
16      underground storage tanks.

17      **23.1-04-02. Definitions.**

18      For purposes of this chapter, unless the context otherwise requires:

- 19      1. "Commercial facility" means all contiguous land, structures, appurtenances, and  
20      improvements on the land used for treatment and disposal of hazardous waste  
21      received from offsite generators.
- 22      2. "Department" means the department of environmental quality.
- 23      3. "Disposal" means the discharge, deposit, injection, dumping, spilling, leaking, or  
24      placing of any solid waste or hazardous waste into or on any land or water so the **solid**  
25      **waste or hazardous** waste or any hazardous constituent of the waste may enter the  
26      environment or be emitted into the air or discharged into any waters, including ground  
27      water.
- 28      4. "Facility" means all contiguous land and structures, other appurtenances, and  
29      improvements on the land, used for treating, storing, or disposing of hazardous waste.  
30      A facility may consist of several contiguous treatment, storage, or disposal operational  
31      units.

1       5. "Generator" means any person, by site, ~~producing hazardous waste or acting to cause~~  
2       ~~a hazardous waste~~ through act or process produces hazardous waste or first causes a  
3       hazardous waste to become subject to regulation.

4       6. "Hazardous waste" means any waste or combination of wastes of a solid, liquid,  
5       contained gaseous, or semisolid form that:

6       a. Because of its quantity, concentration, or physical, chemical, or other  
7       characteristic, in the judgment of the department may:

8       (1) Cause, or significantly contribute to, an increase in mortality or an increase  
9       in serious irreversible or incapacitating reversible illness; or

10       (2) Pose a substantial present or potential hazard to human health or the  
11       environment when improperly treated, stored, disposed of, or otherwise  
12       managed; or

13       b. Is identified by the mechanisms established in this chapter, including those that  
14       exhibit extraction procedure toxicity, corrosivity, ignitability, or reactivity.

15       7. "Hazardous waste management" means the systematic control of the collection,  
16       source separation, storage, transportation, processing, treatment, recovery, and  
17       disposal of hazardous waste.

18       8. "Manifest" means the document used for identifying the quantity, composition, origin,  
19       routing, and destination of hazardous waste during transportation from the site of  
20       generation to the site of storage, treatment, or disposal.

21       9. "Owner" means, in the case of an underground storage tank, ~~any person that owns or~~  
22       ~~operates an underground storage tank used for the storage, use, or dispensing of~~  
23       ~~regulated substances.~~

24       a. In use after November 7, 1984, any person that owns or operates an  
25       underground storage tank used for the storage, use, or dispensing of regulated  
26       substances.

27       b. In use before November 8, 1984, but no longer in use after that date, any person  
28       that owned or operated such a tank immediately before the discontinuation of the  
29       tank's use.

30       10. "Regulated substance" means:

a. Any substance defined in section 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 [42 U.S.C. 9601 et seq.], as amended, but not including any substance regulated as a hazardous waste under subtitle C of the Resource Conservation and Recovery Act [42 U.S.C. 6901 et seq.], as amended.

b. Petroleum, including crude oil or any fraction of crude oil that is liquid at **standard conditions of temperature and pressure** (sixty degrees Fahrenheit [16 degrees Celsius] and fourteen and seven-tenths pounds [6.66 kilograms] per square inch [6.45 square centimeters] absolute).

11. "Release" means any spilling, leaking, emitting, discharging, escaping, leaching, or disposing from an underground storage tank into ground water, surface water, or subsurface soils.

12. "Storage" means the holding of hazardous waste at a site for a temporary period, at the end of which the hazardous waste is treated, disposed of, or transported and retained elsewhere.

13. "Transportation" means the offsite movement of hazardous wastes to any intermediate site or to any site of storage, treatment, or disposal.

14. "Treatment" means any method, technique, or process, including neutralization, designed to change the physical, chemical, or biological character or composition of any hazardous waste to neutralize the waste, to recover energy or material resources from the waste, or to render the waste nonhazardous or less hazardous; safer to transport, store, or dispose of; or amenable for recovery, amenable for storage, or reduced in volume.

15. "Treatment, storage, or disposal facility" means a location at which hazardous waste is subjected to treatment, storage, or disposal, and may include a facility at which hazardous waste has been generated.

16. "Underground storage tank" means any one or combination of underground tanks, including underground pipes connected to an underground tank, used to contain an accumulation of regulated substances, and the volume of which, including the volume of the underground pipes connected to it, is ten percent or more beneath the surface

of the ground. Exemptions from this definition and rules adopted under this chapter include:

- a. Farm or residential tanks of one thousand one hundred gallons [4163.94 liters] or less capacity used for storing motor fuel for noncommercial purposes.
- b. Tanks used for storing heating oil for consumptive use on the premises where stored.
- c. Septic tanks.
- d. A pipeline facility, including gathering lines, regulated under:
  - (1) The Natural Gas Pipeline Safety Act of 1968 [P. Law 90-481].
  - (2) The Hazardous Liquid Pipeline Safety Act of 1979 [P. Law 96-129, 49 U.S.C. 60101 et seq.].
  - (3) An interstate pipeline facility regulated under state laws comparable to the provisions of law in paragraph 1 or 2.
- e. Surface impoundments, pits, ponds, or lagoons.
- f. Storm water or wastewater collection systems.
- g. Flow-through process tanks.
- h. Liquid traps or associated gathering lines directly related to oil or gas production and gathering operations.
- i. Storage tanks situated in an underground area such as a basement, cellar, mine working, drift, shaft, or tunnel if the storage tank is situated on or above the surface of the floor.

17. "Waste" means any garbage, refuse, sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility; and other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from commercial, industrial, or other chemical, biological, or physical activities. It does not include solid or dissolved material in domestic sewage or solid or dissolved material in irrigation return flows or industrial discharges, which are point sources subject to permits under section 402 of the Federal Clean Water Act [P. Law 95-217; 22 U.S.C. 1251 et seq.], as amended, or source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954 [P. Law 83-703; 42 U.S.C. 2011 et seq.], as amended, or to coal mining wastes or overburden for which a surface coal mining and

1           reclamation permit is issued or approved under the Surface Mining Control and  
2           Reclamation Act of 1977 [P. Law 95-87; 30 U.S.C. 1201 et seq.].

3           **23.1-04-03. Powers and duties of the department.**

4           The department shall administer and enforce this chapter. The department shall:

- 5           1. Administer the state hazardous waste management and underground storage tank  
6           programs under this chapter.  
7           2. Survey hazardous waste generation and management practices in the state.  
8           3. Adopt, modify, repeal, and enforce rules governing the management of hazardous  
9           waste and underground storage tanks.  
10          4. Enter agreements with other local, state, or federal agencies regarding responsibilities  
11          for regulating hazardous wastes and underground storage tanks to promote  
12          consistency in enforcement and avoid duplication in regulation.

13          **23.1-04-04. Institutional controls, responsibility exemptions, and regulatory**  
14          **assurances for contaminated properties - Continuing appropriation.**

- 15          1. The department may establish institutional controls or give site-specific responsibility  
16          exemptions or regulatory assurances to owners, operators, or lenders, under this  
17          section for real property contaminated by regulated substances, other pollution, or  
18          contamination regulated by the department under this chapter or chapter 61-28. To  
19          qualify for a site-specific responsibility exemption, the owner of the property, or the  
20          political subdivision establishing institutional controls under this section through its  
21          zoning authority, shall:  
22          a. Delineate the vertical and horizontal extent and concentration of the pollution or  
23          contamination in soil and ground water;  
24          b. Identify potential persons or receptors that may be impacted by the pollution or  
25          contamination, evaluate the potential for movement or migration of the pollution  
26          or contamination and potential pathways of exposure, and identify potential  
27          health or environmental impacts to persons or receptors based on the proposed  
28          property use;  
29          c. Identify the past and current uses of the property, the current uses of contiguous  
30          properties, and zoning restrictions or regulations that apply to the property and  
31          contiguous properties;

- d. Identify any surface water or ground water uses, or ground water wells, that may be impacted by the pollution or contamination;
  - e. Agree to comply with and complete any remediation or monitoring plan agreed to or ordered by the department as a condition of receiving a site-specific responsibility exemption, including monitoring of natural attenuation of pollution or contamination;
  - f. If remediation or monitoring of pollution or contamination is being conducted by a responsible party or governmental body other than the landowner or operator, agree to allow access for all monitoring or remedial activities reasonably related to the identified pollution or contamination;
  - g. Agree to any other reasonable institutional controls necessary to protect public health and welfare from pollution or contamination on the property or to satisfy environmental standards enforced by the department; and
  - h. Agree to comply with all institutional controls, letters of no further remediation, letters of no further action, or letters of regulatory assurance established or instituted under this section as a condition of receiving a property-specific or site-specific responsibility exemption or regulatory assurance.
2. "Institutional controls" are restrictions on the use and management of real property, including buildings or fixtures, which contain or prevent migration of regulated substances or other pollution or contamination, or protect receptors from exposure or the threat of exposure to regulated substances or other pollution or contamination. Institutional controls may apply during environmental remediation activities, or to residual regulated substances, pollutants, or other pollution or contamination or their byproducts that may remain on property after active environmental remediation activities are concluded or while natural attenuation of regulated substances or other pollution or contamination is occurring.
3. Institutional controls may be established by the department as follows:
- a. When an area made subject to institutional controls involves two or more property owners and an area larger than either one city block or ten acres [4.05 hectares], the department and the political subdivision having zoning authority over the property may agree to institutional controls relating to the

1 identified area impacted by the pollution or the contamination. Before the  
2 institutional controls become effective, the controls must be the subject of a  
3 public hearing and be established in the same manner as zoning regulations are  
4 established by that political subdivision. The political subdivision is responsible  
5 for providing all notices under this subdivision, but any public hearing must be  
6 held jointly by the political subdivision and the department.

7 b. The department also may establish institutional controls by agreement to an  
8 environmental covenant with the owner of the real property. Before agreeing to  
9 any environmental covenants under this subdivision, all contiguous landowners  
10 to the property to which the covenants will attach must be notified by certified  
11 mail or by service by publication as provided in the North Dakota Rules of Civil  
12 Procedure. An environmental covenant must state that it is an environmental  
13 covenant that runs with the land, have a legally sufficient description of the real  
14 property subject to the covenant, describe activity or use limitations and terms of  
15 access for any monitoring or remediation, identify every holder who is a grantee  
16 of the covenant, be signed by every holder and the owner of the property before  
17 a notary public, and describe the name and location of any administrative record  
18 for the environmental response or remediation identified for the property under  
19 subsection 1. All environmental covenants must be filed with the county recorder  
20 of the county in which the property is located.

21 4. After completion of the assessments and requirements of subsection 1, the  
22 department may issue a letter of no further remediation or a letter of no further action  
23 to a property owner when an environmental remediation is completed on the site or  
24 property, or when no institutional controls are necessary to protect public health or  
25 welfare or to come into compliance with an environmental standard that has been  
26 violated and later corrected on the site or property.

27 5. Notwithstanding any institutional controls established for any real property, the  
28 department has access for inspection and enforcement for environmental violations as  
29 provided by law.

30 6. If there is any additional discharge or release of a regulated substance, pollutant, or  
31 contaminant on the property subject to institutional controls or regulatory exemptions

1        that intermingles with the delineated pollution or contamination identified under  
2        subsection 1, or if the owner or operator of the property manages the property in a  
3        manner that causes the contamination to migrate to a neighboring contiguous property  
4        or results in the exposure of contaminants to receptors on the property, then  
5        institutional controls or regulatory exemptions established under this section are  
6        voidable by the department after a public investigatory hearing by giving written notice  
7        to the political subdivision and the current owner of the property subject to the  
8        institutional controls, as well as any lender holding a lien on the property identified  
9        under subsections 8 and 9. Culpability of the owner or operator of the property for any  
10       new or additional discharge, release, or movement of pollution or contamination, as  
11       well as responsibility for any offsite discharge or release or culpability for exposure of  
12       onsite or offsite receptors to pollution or contamination, must be considered by the  
13       department in determining whether to void any institutional controls, and any final  
14       determination by the department to void an institutional control is subject to review  
15       under chapter 28-32. If the institutional control is an environmental covenant  
16       established under subdivision b of subsection 3, the written notice voiding the  
17       environmental covenant as well as a copy of the covenant being voided by the  
18       department must be filed with the county recorder of the appropriate county.

19       7. Institutional controls may also be terminated or amended at any time by written  
20       agreement between the department, the relevant political subdivision, the owner of the  
21       property, or other body or person subject to the institutional controls, as well as any  
22       identified lender, after giving notice as described in subsection 3. Letters of no further  
23       remediation, of no further action, or regulatory assurance may be amended by written  
24       agreement of the participating parties.

25       8. Before agreeing to any institutional controls or responsibility exemptions, the  
26       department may require insurance coverage or other financial assurance for any  
27       additional environmental monitoring or remediation that may become necessary on the  
28       property after the site-specific responsibility exemptions and institutional controls are  
29       established, and must require such insurance coverage or other financial assurance  
30       when the projected cost of an active monitoring or remediation program exceeds five  
31       hundred thousand dollars. The department may terminate the requirement for financial

1           assurance if the person required to have financial assurance demonstrates to the  
2           department that the property no longer presents a significant threat to public health or  
3           the environment. The department may enter a joint agreement with affected political  
4           subdivisions, state or federal agencies, property owners, lenders, the administrator of  
5           the petroleum tank release compensation fund, or any responsible or potentially  
6           responsible party concerning payment for or funding of any insurance coverage or  
7           other financial assurance for any additional environmental monitoring or remediation  
8           that may become necessary on contaminated or affected properties. The agreements  
9           do not waive the liability limitations that apply by law to the state, to state agencies, or  
10          to political subdivisions, except up to the amounts, and subject to the terms,  
11          conditions, and limitations of any insurance policy or any financial assurance fund  
12          created by the joint agreement of the parties under this subsection. Any financial  
13          assurance fund must comply with chapters 59-09, 59-10, 59-11, 59-12, 59-13, 59-14,  
14          59-15, 59-16, 59-17, 59-18, and 59-19 and be managed for the benefit of the affected  
15          persons or community, but liability of the fund may not exceed the amount deposited  
16          with the fund.

17          9. Participation by a lender in an agreement under this section may not be construed as  
18          management of the property under chapter 32-40.1. Lenders that participate in an  
19          agreement under this section may not be held responsible for any environmental  
20          remediation on the site or property except as provided in subsection 3 of section  
21          32-40.1-02. As part of an agreement under subsection 8, the department may issue a  
22          letter of regulatory assurance to a lender which states that the lender is not  
23          responsible for environmental remediation on the property or site, and which  
24          addresses other issues relating to responsibility, notice, violation of agreement under  
25          subsection 8 by the owner or operator, default, or other matters affecting potential  
26          environmental liability, investment, or redevelopment. A responsibility exemption of  
27          regulatory assurance given or granted to a lender under this section also applies to a  
28          lender's transferees or assigns, if the party has had no prior involvement with or  
29          responsibility for the site of the environmental release, and uses and manages the  
30          property after the transfer or assignment in compliance with institutional controls or

other conditions established under this section and the requirements of this chapter and chapter 61-28.

10. The department may adopt rules to implement this section. The department may assess administrative fees in an amount and manner established by rule against responsible parties. In addition, by agreement of the participants, under subsection 8 the department may collect an administrative fee for a specific site or project to address the department's costs and expenses at that site or project, in an amount agreed to under subsection 8, or may collect an administrative fee in an amount set by rule from a person making a request for a responsibility exemption or regulatory assurance under this section. Any administrative fees collected under this section must be deposited by the department in a separate account in the department's operating fund and used only for administration of remediation activities under this chapter or chapter 61-28 and moneys deposited in this account are appropriated to the department on a continuing basis. Administrative fees may not be collected out of federal moneys or against the petroleum tank release compensation fund.

11. The administrator of the petroleum tank release compensation fund under chapter 23.1-12 may request recovery of expenditures the administrator has made at a remediation site from the separate account in the department's operating fund from fees collected under this section if recovery may not be made from a responsible party or as provided in chapter ~~23.1-09~~23.1-12. If the department determines sufficient funds are available without compromising the remediation project at the site, moneys in the separate account may be used to reimburse the petroleum tank release compensation fund for expenditures the administrator has made at the remediation site.

12. All letters of partial or complete exemption from responsibility for remediation or further action issued by the department under this section may be revoked by the department if any condition of the letters is violated; if institutional controls on the property are not complied with; or if the person, governmental body, or entity violates any provision of this chapter or chapter 61-28.

13. "Environmental covenant" means a covenant running with the land as established under this section.

- 1        14. "Natural attenuation" means the reduction in the mass or concentration in soils or  
2        ground water of a regulated substance, pollutant, contaminant, and the products into  
3        which a substance breaks down, due to naturally occurring physical, chemical, and  
4        biological processes, without human intervention. "Enhanced natural attenuation"  
5        means the enhancement of natural attenuation at a site by the addition of chemicals,  
6        biota, or other substances or processes. "Monitored natural attenuation" means the  
7        monitoring of natural attenuation as it occurs. The department may consider natural  
8        attenuation or enhanced or monitored natural attenuation as remediation alternatives  
9        for a site when pollution or contamination on a site or property does not pose a threat  
10       to human health or the environment, and reasonable safeguards are established  
11       under this section or other provisions of state or federal law.
- 12       15. "Regulatory assurance" means an assurance issued by the department concerning  
13       enforcement relating to existing contamination or pollution on a property or site based  
14       on compliance with conditions stated in a letter of regulatory assurance. A regulatory  
15       assurance is not voidable under subsection 6.
- 16       16. "Responsibility exemption" means a partial or complete exemption from responsibility  
17       for remediation or further action on a contaminated property or at a contaminated site  
18       based on compliance with the conditions identified in a letter of no further remediation  
19       or a letter of no further action. A responsibility exemption is voidable only against a  
20       person that violates an institutional control or a condition of a letter of no further action  
21       or no further remediation, or that is responsible for a new or additional release or  
22       migration of a regulated substance or pollutant on the property or site, or whose  
23       actions or negligence cause the violation, release, or migration.
- 24       17. "Responsible party" means a person that causes or contributes to an onsite or offsite  
25       release or discharge, or which is responsible for an illegal or unpermitted storage, of a  
26       pollutant or regulated substance in violation of this chapter or chapter 61-28, that  
27       results in the contamination or pollution of a property or site. "Potentially responsible  
28       party" means a person identified as a possible cause of, or contributor to,  
29       contamination or pollution on a site or property.
- 30       18. This section does not affect the authority of the department, the state, or its political  
31       subdivisions to exercise any powers or duties under state law with respect to any new

1 or additional discharge or release or threatened discharge or release of a pollutant or  
2 regulated substance on a property or site regulated under this section, or the right of  
3 the department or any other person to seek legal or equitable relief against a person  
4 not subject to a liability protection provided under this section.

5 **23.1-04-05. Hazardous waste regulations.**

6 Under chapter 28-32, the department shall adopt rules:

- 7 1. For determining whether any waste is hazardous.
- 8 2. Prescribing procedures for generators of hazardous waste.
- 9 3. For the issuance of permits for the storage, treatment, and disposal of hazardous  
10 waste in an environmentally sound manner, utilizing best scientific and engineering  
11 judgment.
- 12 4. Prescribing procedures under which the department shall issue, renew, modify,  
13 suspend, revoke, or deny permits required by this chapter. The rules must provide that  
14 no permit may be revoked until the department has provided the affected party with  
15 written notice of the intent of the department to revoke the permit, the reasons for the  
16 revocation, and an opportunity for a hearing.
- 17 5. For the location, design, construction, operation, and maintenance of treatment,  
18 storage, and disposal facilities.
- 19 6. For the transportation, containerization, and labeling of hazardous wastes which must  
20 be consistent with those issued by the United States department of transportation and  
21 the public service commission and department of transportation.
- 22 7. Prescribing procedures and requirements for a manifest system.
- 23 8. Prescribing procedures and requirements for the following:
  - 24 a. Recordkeeping.
  - 25 b. Reporting.
  - 26 c. Sampling.
  - 27 d. Performing analysis.
  - 28 e. Monitoring.
- 29 9. Requiring the owner or operator of any hazardous waste treatment, storage, or  
30 disposal facility to demonstrate evidence of financial responsibility in the form and  
31 amount determined by the department to be necessary to ensure that, upon

1            abandonment, cessation, or interruption of the operation of the facility, all appropriate  
2            measures are taken to prevent damage to human health and the environment.

3    10. Any other rules necessary to carry out the purposes of this chapter.

4    **23.1-04-06. Underground storage tank regulations.**

5    Under chapter 28-32, the department shall adopt rules:

6        1. For maintaining a leak detection system, an inventory control system together with  
7        tank testing, or a comparable system or method designed to identify releases in a  
8        manner consistent with the protection of human health and the environment.

9        2. For maintaining records of any monitoring of a leak detection system, inventory control  
10       system, or tank testing system.

11       3. For reporting of any releases and corrective action taken in response to a release from  
12       an underground tank.

13       4. For taking corrective action in response to a release from an underground storage  
14       tank.

15       5. For the closure of tanks to prevent releases of regulated substances into the  
16       environment.

17       6. For maintaining evidence of financial responsibility for taking corrective action and  
18       compensating third parties for bodily injury and property damage caused by sudden  
19       and nonsudden accidental releases arising from operating an underground storage  
20       tank.

21       7. Establishing standards for installation of underground storage tanks.

22       8. Establishing standards for construction and performance of new underground storage  
23       tanks.

24       9. For notifying the department or designated local agency of the existence of any  
25       operational or nonoperational underground storage tank.

26       10. For a permit fee system to own, install, or operate an underground storage tank.

27    However, regulations adopted by the department may not be more stringent than applicable  
28    requirements of the federal Resource Conservation and Recovery Act [42 U.S.C. 6901 et seq.]  
29    and the federal Energy Policy Act of 2005 [P. Law 109-58; 42 U.S.C. 15801 et seq.] in effect on  
30    August 1, 2007.

31    **23.1-04-07. Municipal underground storage tank ordinances.**

1 A county, city, or township may not enact and enforce an underground storage tank  
2 ordinance if the ordinance is more stringent than this chapter and the rules authorized to be  
3 adopted under this chapter.

4 **23.1-04-08. Permits.**

- 5 1. A person may not construct, substantially alter, or operate any hazardous waste  
6 treatment, storage, or disposal facility, nor may any person treat, store, or dispose of  
7 any hazardous waste without obtaining a permit from the department for the facility or  
8 activity. A hazardous waste treatment, storage, or disposal facility may not be issued a  
9 permit unless the applicant demonstrates to the satisfaction of the department that a  
10 need for the facility exists and the facility can comply with all applicable requirements  
11 under this chapter.
- 12 2. Permits must contain the terms and conditions the department deems necessary.
- 13 3. Permits must be issued for a period of five years.
- 14 4. Any permit issued under this section may be revoked by the department according to  
15 the rules adopted under subsection 3 of section 23.1-04-05 at any time if the permittee  
16 fails to comply with the terms and conditions of the permit, or with applicable  
17 requirements under this chapter.
- 18 5. If a permit applicant proposes modifications of an existing facility or the department  
19 determines modifications are necessary to conform to the requirements established  
20 under this chapter, the permit must specify the time allowed to complete the  
21 modifications.
- 22 6. a. Before the issuing of a permit the department shall:
- 23 (1) Publish in the official county newspaper of the county in which the proposed  
24 facility will be located and in major local newspapers of general circulation  
25 and broadcast over local radio stations notice of the department's intention  
26 to issue the permit; and
- 27 (2) Transmit in writing notice of the department's intention to issue the permit to  
28 each unit of local government having jurisdiction over the area in which the  
29 facility is proposed to be located and to each state agency having any  
30 authority under state law regarding the construction or operation of the  
31 facility.

b. If within forty-five days the department receives written notice of opposition to the department's intention to issue a permit and a request for a hearing, or if the department determines on its own initiative, the department shall hold an informal public hearing, including an opportunity for presentation of written and oral views, on whether the department should issue a permit for the proposed facility. Whenever possible the department shall schedule the hearing at a location convenient to the nearest population center to the proposed facility. Notice of the hearing must be published in the manner provided in subdivision a. The notice must contain the date, time, place, and subject matter of the hearing.

7. Any facility required to have a permit under this chapter is exempt from the permit requirements of chapter 23.1-08.

**23.1-04-09. Fees - Deposit in operating fund.**

The department by rule may provide for the payment and collection of reasonable fees for the issuance of permits or registration certificates for registering, licensing, or permitting hazardous waste generators, transporters, and treatment, storage, recycling, or disposal facilities. The permit or registration certificate fees must be based on the anticipated cost of filing and processing the application, taking action on the requested permit or registration certificate, and conducting a monitoring and inspection program to determine compliance or noncompliance with the permit or registration certificate. Any moneys collected for permit licensing or registration fees must be deposited in the department operating fund in the state treasury and any expenditure from the fund is subject to appropriation by the legislative assembly.

**23.1-04-10. Commercial facility permits and ordinances.**

1. Counties and cities may issue permits for commercial facilities pursuant to section 23.1-04-08 and may enact and enforce commercial facility ordinances if the ordinances are equal to or more stringent than this chapter and the rules adopted under this chapter.

2. In addition to the requirements for obtaining a permit under this chapter, a person may not construct, substantially alter, or operate any commercial facility nor may any person dispose of any hazardous waste without first obtaining a permit from the department and from the county, or a city if the commercial facility is located or

1           proposed to be located within the territorial zoning authority of the city. The  
2           department, in conjunction with the governing body of the county or city in which the  
3           commercial facility is located or proposed to be located, shall hold a public hearing in  
4           the manner provided in section 23.1-04-08.

5           **23.1-04-11. Disclosure of information before issuance, renewal, transfer, or major**  
6           **modification of permit.**

7           Before an application for the issuance, renewal, transfer, or major modification of a permit  
8           under this chapter may be granted, the applicant shall submit to the department a disclosure  
9           statement executed under oath or affirmation. The department shall verify and may investigate  
10          the information in the statement and shall deny an application for the issuance, renewal,  
11          transfer, or major modification of a permit if the applicant has intentionally misrepresented or  
12          concealed any material fact in a statement required under this section, a judgment of criminal  
13          conviction for violation of any federal or state environmental laws has been entered against the  
14          applicant within five years before the date of submission of the application, or the applicant has  
15          knowingly and repeatedly violated any state or federal environmental protection laws. The  
16          disclosure statement must include:

- 17          1.   The name and business address of the applicant.
- 18          2.   A description of the applicant's experience in managing the type of waste that will be  
19               managed under the permit.
- 20          3.   A description of every civil and administrative complaint against the applicant for the  
21               violation of any state or federal environmental protection law which has resulted in a  
22               fine or penalty of more than ten thousand dollars within five years before the date of  
23               the submission of the application.
- 24          4.   A description of every pending criminal complaint alleging the violation of any state or  
25               federal environmental protection law.
- 26          5.   A description of every judgment of criminal conviction entered against the applicant  
27               within five years before the date of submission of the application for the violation of  
28               any state or federal environmental protection law.
- 29          6.   A description of every judgment of criminal conviction of a felony constituting a crime  
30               involving fraud or misrepresentation under the laws of any state or of the United States

1           which has been entered against the applicant within five years before the date of  
2           submission of the application.

3           **23.1-04-12. Inspections - Right of entry.**

4           To develop or enforce any rule authorized by this chapter or enforce a requirement of this  
5           chapter, any duly authorized representative or employee of the department may, upon  
6           presentation of appropriate credentials, at any reasonable time:

- 7           1.   Enter any place, facility, or site at which wastes or substances that the department has  
8               reason to believe may be hazardous or regulated are, may be, or may have been  
9               generated, stored, transported, treated, disposed of, or otherwise handled.
- 10          2.   Inspect and obtain samples of any waste or substance that the department has reason  
11               to believe may be hazardous or regulated, including samples from any vehicles in  
12               which wastes are being transported as well as samples of any containers or labels.
- 13          3.   Inspect and copy any records, reports, information, or test results relating to the  
14               purposes of this chapter.

15          **23.1-04-13. Monitoring, analysis, and testing - Civil penalty.**

- 16          1.   If the department determines, upon receipt of any information, that:
  - 17              a.   The presence of any hazardous waste, hazardous constituent, or regulated  
18                 substance at a facility or site at which hazardous waste or regulated substance  
19                 is, or has been, stored, treated, or disposed of; or
  - 20              b.   The release of any such waste or regulated substance from a facility or site may  
21                 present a substantial hazard to human health or the environment, the department  
22                 may issue an order requiring the owner or operator of the facility or site to  
23                 conduct any monitoring, testing, analysis, and reporting with respect to the facility  
24                 or site which the department deems reasonable to ascertain the nature and  
25                 extent of the hazard.
- 26          2.   In the case of any facility or site not in operation at the time a determination is made  
27               under subsection 1 with respect to the facility or site, if the department finds the owner  
28               or operator of the facility or site could not reasonably be expected to have actual  
29               knowledge of the presence of hazardous waste or regulated substance at the facility  
30               or site and of its potential for release, the department may issue an order requiring the  
31               most recent previous owner or operator of the facility or site which could reasonably

1           be expected to have such actual knowledge to carry out the actions referred to in  
2           subsection 1.

3           3. A person that violates this section is subject to a civil penalty of five thousand dollars  
4           per day of violation.

5           **23.1-04-14. Imminent hazard.**

6           Upon receipt of information that the past or present handling, storage, transportation,  
7           treatment, or disposal of any waste or regulated substance may present an imminent and  
8           substantial endangerment to health or the environment, the department may take emergency  
9           action necessary to protect health or the environment.

10          **23.1-04-15. Enforcement penalties and citizen participation.**

11          1. If the department finds a person is in violation of a permit, rule, standard, or  
12          requirement of this chapter, the department may issue an order requiring the person to  
13          comply with the permit, rule, standard, or requirement, and the department may bring  
14          an action for a civil or criminal penalty, including an action for injunctive relief. An  
15          action under this chapter must be brought in the district court for the county in which  
16          the violation occurred or in which the party in violation has the party's residence or  
17          principal office in the state.

18          2. A person that violates a provision of this chapter or any rule, standard, or permit  
19          condition adopted under to this chapter is subject to a civil penalty not to exceed  
20          twenty-five thousand dollars per day of violation. Each day of noncompliance  
21          constitutes a separate violation for purposes of penalty assessments.

22          3. A person that knowingly violates a provision of this chapter or a rule, standard, or  
23          permit condition adopted under this chapter, or that knowingly makes a false  
24          statement or representation in documentation required by this chapter, is subject to a  
25          fine not to exceed twenty-five thousand dollars per day of violation, to imprisonment  
26          for a period not to exceed one year, or both.

27          4. A person that knowingly violates a provision of this chapter in a manner that manifests  
28          extreme indifference to human life and places an individual in imminent danger of  
29          death or serious bodily injury, is subject to a fine not to exceed fifty thousand dollars  
30          per day of violation, to imprisonment for a period not to exceed two years, or both.

- 1       5.   a.   A person having an interest that may be adversely affected by a violation of this  
2           chapter may commence a civil action to compel compliance with this chapter, or  
3           a rule, order, or permit issued under this chapter.
- 4       b.   Notice of the violation must be given to the department and to an alleged violator  
5           sixty days before commencement of a citizen suit brought under this subsection.
- 6       c.   A person with an interest that may be adversely affected by a violation of this  
7           chapter may intervene as a matter of right in a civil action brought by the  
8           department to require compliance with this chapter.
- 9       6.   An administrative action brought under this chapter must be conducted in accordance  
10       with North Dakota Administrative Code article 33-22.

11       **23.1-04-16. Applicability.**

- 12       1.   The hazardous waste provisions of this chapter do not apply to the following wastes to  
13       the degree to which they are exempted from regulation by sections 3001(b)(2) and  
14       3001(b)(3)(A) of the Resource Conservation and Recovery Act, as amended by the  
15       Solid Waste Disposal Act Amendments of 1980 [Pub. L. 96-482; 42 U.S.C. 6901 et  
16       seq.]:
- 17       a.   Drilling fluids, produced water, and other wastes associated with the exploration,  
18       development, or production of crude oil or natural gas or geothermal energy.
- 19       b.   Fly ash waste, bottom ash waste, slag waste, and flue gas emission control  
20       waste generated primarily from the combustion or gasification of coal or other  
21       fossil fuels.
- 22       c.   Solid waste from the extraction, beneficiation, and processing of ores and  
23       minerals, including phosphate rock and overburden from the mining of uranium  
24       ore.
- 25       d.   Cement kiln dust waste.
- 26       2.   If a waste disposal site for any of the wastes specified in subsection 1 is to be closed,  
27       the owner or operator shall file a plat of the disposal site with the recorder of each  
28       county in which the facility is located, together with a description of the wastes placed  
29       in the site.

**23.1-04-17. Limited liability for subsequent owners of property.**

1. Notwithstanding any other provision of law and except as expressly provided by federal law, a person that acquires property is not liable for any existing hazardous waste or substance on the property if:

  - a. The person acquired the property after the disposal or placement of the hazardous waste or substance on, in, or at the property, and at the time the person acquired the property that person did not know and had no reason to know any hazardous waste or substance was disposed of on, in, or at the property;
  - b. The person is a governmental entity that acquired the property by escheat, by tax sale, foreclosure, or through any other involuntary transfer or acquisition, or through the exercise of eminent domain authority by purchase or condemnation; or
  - c. The person acquired the property by inheritance or bequest and that person did not know and had no reason to know that any hazardous waste or substance was disposed of on, in, or at the property.
2. To establish the person had no reason to know, the person must have undertaken, at the time of acquisition, all appropriate inquiry into the previous ownership and uses of the property consistent with good commercial or customary practice in an effort to minimize liability. For purposes of this requirement, a court shall take into account any specialized knowledge or experience on the part of the person, the relationship of the purchase price to the value of the property as uncontaminated, commonly known or reasonably ascertainable information about the property, the obviousness of the presence or likely presence of contamination at the property, and the ability to detect the contamination by appropriate inspection.
3. A person that has acquired real property may establish a rebuttable presumption that the person has made all appropriate inquiry if the person establishes that, immediately before or at the time of acquisition, the person performed an investigation of the property, conducted by an environmental professional, to determine or discover the obviousness of the presence or likely presence of a release or threatened release of hazardous waste or substances on the property.

1       4.   The presumption does not arise unless the person has maintained a compilation of the  
2       information reviewed in the course of the investigation.

3       5.   This section does not diminish the liability of any previous owner or operator of the  
4       property which would otherwise be liable under this chapter, and nothing in this section  
5       affects the liability under this chapter of a person that, by any act or omission, caused  
6       or contributed to the release or threatened release of a hazardous waste or substance  
7       the subject of the action relating to the property.

8       6.   As used in this section, environmental professional means an individual, or entity  
9       managed or controlled by an individual, who, through academic training, occupational  
10      experience, and reputation, such as engineers, environmental consultants, and  
11      attorneys, can objectively conduct one or more aspects of an environmental  
12      investigation.

13      **SECTION 20.** Chapter 23.1-05 of the North Dakota Century Code is created and enacted  
14 as follows:

15      **23.1-05-01. Southwestern low-level radioactive waste disposal compact.**

16      The southwestern low-level radioactive waste disposal compact is entered with all  
17      jurisdictions legally joining the compact, in the form substantially as follows:

18                   **ARTICLE I - COMPACT POLICY AND FORMATION**

19      The party states hereby find and declare all of the following:

20      1.   The United States Congress, by enacting the Low-Level Radioactive Waste Policy Act,  
21      Public Law 96-573, as amended by the Low-Level Radioactive Waste Policy  
22      Amendments Act of 1985 [42 U.S.C. 2021b - 2021j], has encouraged the use of  
23      interstate compacts to provide for the establishment and operation of facilities for  
24      regional management of low-level radioactive waste.

25      2.   It is the purpose of this compact to provide the means for such a cooperative effort  
26      between or among party states to protect the citizens of the states and the states'  
27      environments.

28      3.   It is the policy of party states to this compact to encourage the reduction of the volume  
29      of low-level radioactive waste requiring disposal within the compact region.

30      4.   It is the policy of the party states that the protection of the health and safety of their  
31      citizens and the most ecological and economical management of low-level radioactive

1 wastes can be accomplished through cooperation of the states by minimizing the  
2 amount of handling and transportation required to dispose of these wastes and by  
3 providing facilities that serve the compact region.

4 5. Each party state, if an agreement state pursuant to section 2021 of title 42 of the  
5 United States Code, or the nuclear regulatory commission if not an agreement state, is  
6 responsible for the primary regulation of radioactive materials within its jurisdiction.

## 7 **ARTICLE II - DEFINITIONS**

8 As used in this compact, unless the context clearly indicates otherwise, the following  
9 definitions apply:

10 1. "Commission" means the southwestern low-level radioactive waste commission  
11 established in Article III of this compact.

12 2. "Compact region" or "region" means the combined geographical area within the  
13 boundaries of the party states.

14 3. "Disposal" means the permanent isolation of low-level radioactive waste pursuant to  
15 requirements established by the nuclear regulatory commission and the environmental  
16 protection agency under applicable laws, or by a party state if the state hosts a  
17 disposal facility.

18 4. "Generate", when used in relation to low-level radioactive waste, means to produce  
19 low-level radioactive waste.

20 5. "Generator" means a person whose activity, excluding the management of low-level  
21 radioactive waste, results in the production of low-level radioactive waste.

22 6. "Host county" means a county, or other similar political subdivision of a party state, in  
23 which a regional disposal facility is located or being developed.

24 7. "Host state" means a party state in which a regional disposal facility is located or being  
25 developed. California is the host state under this compact for the first thirty years from  
26 the date the California regional disposal facility commences operations.

27 8. "Institutional control period" means that period of time in which the facility license is  
28 transferred to the disposal site owner in compliance with the appropriate regulations  
29 for long-term observation and maintenance following the postclosure period.

30 9. "Low-level radioactive waste" means regulated radioactive material that meets all of  
31 the following requirements:

- 1           a. The waste is not high-level radioactive waste, spent nuclear fuel, or byproduct  
2           material as defined in section 11e(2) of the Atomic Energy Act of 1954 [42 U.S.C.  
3           2014(e)(2)].
- 4           b. The waste is not uranium mining or mill tailings.
- 5           c. The waste is not any waste for which the federal government is responsible  
6           pursuant to subdivision (b) of section 3 of the Low-Level Radioactive Waste  
7           Policy Amendments Act of 1985 [42 U.S.C. 2021c(b)].
- 8           d. The waste is not an alpha-emitting transuranic nuclide with a half-life greater than  
9           five years and with a concentration greater than one hundred nanocuries per  
10          gram, or plutonium-241 with a concentration greater than three thousand five  
11          hundred nanocuries per gram, or curium-242 with a concentration greater than  
12          twenty thousand nanocuries per gram.

13       10. "Major generator state" means a party state that generates ten percent of the total  
14       amount of low-level radioactive waste produced within the compact region and  
15       disposed of at the regional disposal facility. If no party state other than California  
16       generates at least ten percent of the total amount, "major generator state" means the  
17       party state that is second to California in the amount of waste produced within the  
18       compact region and disposed of at the regional disposal facility.

19       11. "Management" means collection, consolidation, storage, packaging, or treatment.

20       12. "Operator" means a person who operates a regional disposal facility.

21       13. "Party state" means any state that has become a party in accordance with Article VII of  
22       this compact.

23       14. "Person" means an individual, corporation, partnership, or other legal entity, whether  
24       public or private.

25       15. "Postclosure period" means that period of time after completion of closure of a  
26       disposal facility during which the licensee observes, monitors, and carries out  
27       necessary maintenance and repairs at the disposal facility to assure that the disposal  
28       facility will remain stable and will not need ongoing active maintenance. This period  
29       ends with the beginning of the institutional control period.

30       16. "Regional disposal facility" means a nonfederal low-level radioactive waste disposal  
31       facility established and operated under this compact.

1       17. "Site closure and stabilization" means the activities of the disposal facility operator  
2       taken at the end of the disposal facility's operating life to assure the continued  
3       protection of the public from any residual radioactive or other potential hazards  
4       present at the disposal facility.

5       18. "Transporter" means a person who transports low-level radioactive waste.

6       19. "Uranium mine and mill tailings" means waste resulting from mining and processing of  
7       ores containing uranium.

### 8                               **ARTICLE III - THE COMMISSION**

9       1. There is hereby established the southwestern low-level radioactive waste commission.

10       a. The commission consists of one voting member from each party state to be  
11       appointed by the governor, confirmed by the senate of that party state, and to  
12       serve at the pleasure of the governor of each party state, and one voting member  
13       from the host county. The appointing authority of each party state shall notify the  
14       commission in writing of the identity of the member and of any alternates. An  
15       alternate may act in the member's absence.

16       b. The host state shall also appoint that number of additional voting members of the  
17       commission which is necessary for the host state's members to compose at least  
18       fifty-one percent of the membership on the commission. The host state's  
19       additional members must be appointed by the host state governor and confirmed  
20       by the host state senate.

21               If there is more than one host state, only the state in which is located the  
22       regional disposal facility actively accepting low-level radioactive waste pursuant  
23       to this compact may appoint these additional members.

24       c. If the host county has not been selected at the time the commission is appointed,  
25       the governor of the host state shall appoint an interim local government member,  
26       who must be an elected representative of a local government. After a host county  
27       is selected, the interim local government member shall resign and the governor  
28       shall appoint the host county member pursuant to subdivision d.

29       d. The governor shall appoint the host county member from a list of at least seven  
30       candidates compiled by the board of county commissioners of the host county.

1           e. In recommending and appointing the host county member pursuant to  
2           subdivision d, the board of county commissioners and the governor shall give first  
3           consideration to recommending and appointing the members of the board of  
4           county commissioners in whose district the regional disposal facility is located or  
5           being developed. If the board of county commissioners of the host county does  
6           not provide a list to the governor of at least seven candidates from which to  
7           choose, the governor shall appoint a resident of the host county as the host  
8           county member.

9           f. The host county member is subject to confirmation by the senate of the host state  
10          and serves at the pleasure of the governor of the host state.

11        2. The commission is a legal entity separate and distinct from the party states and is  
12        liable for its actions. Members of the commission are not personally liable for actions  
13        taken in their official capacity. The liabilities of the commission are not to be deemed  
14        liabilities of the party states.

15        3. The commission shall conduct its business affairs pursuant to the laws of the host  
16        state and disputes arising out of commission action must be governed by the laws of  
17        the host state. The commission must be located in the capital city of the host state in  
18        which the regional disposal facility is located.

19        4. The commission's records are subject to the host state's public records law, and the  
20        meetings of the commission must be open and public in accordance with the host  
21        state's open meeting law.

22        5. The commission members are public officials of the appointing state and are subject to  
23        the conflict of interest laws, as well as any other law, of the appointing state. The  
24        commission members must be compensated according to the appointing state's law.

25        6. Each commission member is entitled to one vote. A majority of the commission  
26        constitutes a quorum. Unless otherwise provided in this capacity, a majority of the total  
27        number of votes on the commission is necessary for the commission to take any  
28        action.

29        7. The commission has all of the following duties and authority:

- 1           a. The commission shall do, pursuant to the authority granted by this compact,  
2           whatever is reasonably necessary to ensure that low-level radioactive wastes are  
3           safely disposed of and managed within the region.
- 4           b. The commission shall meet at least once a year and otherwise as business  
5           requires.
- 6           c. The commission shall establish a compact surcharge to be imposed upon party  
7           state generators. The surcharge must be based upon the cubic feet of low-level  
8           radioactive waste and the radioactivity of the low-level radioactive waste and  
9           must be collected by the operator of the disposal facility.

10                 The host state shall set, and the commission shall impose, the surcharge  
11                 after congressional approval of the compact. The amount of the surcharge must  
12                 be sufficient to establish and maintain a reasonable level of funds for all of the  
13                 following purposes:

- 14                 (1) The activities of the commission and commission staff.
- 15                 (2) At the discretion of the host state, a third-party liability fund to provide  
16                 compensation for injury to persons or property during the operational,  
17                 closure, stabilization, and postclosure and institutional control periods of the  
18                 regional disposal facility. This paragraph does not limit the responsibility or  
19                 liability of the operator, who shall comply with any federal or host state  
20                 statutes or regulations regarding third-party liability claims.
- 21                 (3) A local government reimbursement fund, for the purpose of reimbursing the  
22                 local governmental entity or entities hosting the regional disposal facility for  
23                 any costs or increased burdens on the local governmental entity for  
24                 services, including, general fund expenses, the improvement and  
25                 maintenance of roads and bridges, fire protection, law enforcement,  
26                 monitoring by local health officials, and emergency preparation and  
27                 response related to the hosting of the regional disposal facility.
- 28           d. The surcharges imposed by the commission for purposes of paragraphs 2 and 3  
29           of subdivision c and surcharges pursuant to subdivision c of subsection 5 of  
30           Article IV must be transmitted on a monthly basis to the host state for distribution  
31           to the proper accounts.

- 1           e. The commission shall establish a fiscal year that conforms to the fiscal years of  
2           the party states to the extent possible.
- 3           f. The commission shall keep an accurate account of all receipts and  
4           disbursements. An annual audit of the books of the commission must be  
5           conducted by an independent certified public accountant, and the audit report  
6           must be made a part of the annual report of the commission.
- 7           g. The commission shall prepare and include in the annual report a budget showing  
8           anticipated receipts and disbursements for the subsequent fiscal year.
- 9           h. The commission may accept any grants, equipment, supplies, materials, or  
10          services, conditional or otherwise, from the federal government or a state  
11          government. The nature, amount and condition, if any, of any donation, grant, or  
12          other resources accepted pursuant to this subdivision and the identity of the  
13          donor or grantor must be detailed in the annual report of the commission.
- 14                 However, the host state is entitled to receive, for the uses specified in  
15          subparagraph E of paragraph 2 of subsection d of section 2021e of title 42 of the  
16          United States Code, any payments paid from the special escrow account for  
17          which the secretary of energy is trustee pursuant to subparagraph A of  
18          paragraph 2 of subsection d of section 2021e of title 42 of the United States  
19          Code.
- 20          i. The commission shall submit communications to the governors and to the  
21          presiding officers of the legislative assemblies of the party states regarding the  
22          activities of the commission, including an annual report to be submitted on or  
23          before January fifteenth of each year. The commission shall include in the annual  
24          report a review of, and recommendations for, low-level radioactive waste disposal  
25          methods that are alternative technologies to the shallow land burial of low-level  
26          radioactive waste.
- 27          j. The commission shall assemble and make available to the party states, and to  
28          the public, information concerning low-level radioactive waste management  
29          needs, technologies, and problems.
- 30          k. The commission shall keep a current inventory of all generators within the region,  
31          based upon information provided by the party states.

- 1           l. The commission shall keep a current inventory of all regional disposal facilities,  
2           including information on the size, capacity, location, specific low-level radioactive  
3           wastes capable of being managed, and the projected useful life of each regional  
4           disposal facility.
- 5           m. The commission may establish advisory committees for the purpose of advising  
6           the commission on the disposal and management of low-level radioactive waste.
- 7           n. The commission may enter into contracts to carry out its duties and authority,  
8           subject to projected resources. No contract made by the commission may bind a  
9           party state.
- 10          o. The commission shall prepare contingency plans, with the cooperation and  
11          approval of the host state, for the disposal and management of low-level  
12          radioactive waste in the event that any regional disposal facility should be closed.
- 13          p. The commission may sue and be sued and, when authorized by a majority vote  
14          of the members, may seek to intervene in an administrative or judicial proceeding  
15          related to this compact.
- 16          q. The commission must be managed by an appropriate staff, including an  
17          executive director. Notwithstanding any other provision of law, the commission  
18          may hire or retain, or both, legal counsel.
- 19          r. The commission may, subject to applicable federal and state laws, recommend to  
20          the appropriate host state authority suitable land and rail transportation routes for  
21          low-level radioactive waste carriers.
- 22          s. The commission may enter into an agreement to import low-level radioactive  
23          waste into the region only if both of the following requirements are met:
- 24               (1) The commission approves the importation agreement by a two-thirds vote of  
25               the commission.
- 26               (2) The commission and the host state assess the affected regional disposal  
27               facilities' capability to handle imported low-level radioactive wastes and any  
28               relevant environmental or economic factors, as defined by the host state's  
29               appropriate regulatory authorities.
- 30          t. The commission may, upon petition, allow an individual generator, a group of  
31          generators, or the host state of the compact, to export low-level radioactive

1 wastes to a low-level radioactive waste disposal facility located outside the  
2 region. The commission may approve the petition only by a two-thirds vote of the  
3 commission. The permission to export low-level radioactive wastes is effective for  
4 that period of time and for the amount of low-level radioactive waste, and subject  
5 to any other term or condition, which may be determined by the commission.

6 u. The commission may approve, only by a two-thirds vote of the commission, the  
7 exportation outside the region of material, which otherwise meets the criteria of  
8 low-level radioactive waste, if the sole purpose of the exportation is to process  
9 the material for recycling.

10 v. The commission shall, not later than ten years before the closure of the initial or  
11 subsequent regional disposal facility, prepare a plan for the establishment of the  
12 next regional disposal facility.

#### 13 **ARTICLE IV - RIGHTS, RESPONSIBILITIES, AND OBLIGATIONS OF PARTY STATES**

14 1. There must be regional disposal facilities sufficient to dispose of the low-level  
15 radioactive waste generated within the region.

16 2. Low-level radioactive waste generated within the region must be disposed of at  
17 regional disposal facilities and each party state must have access to any regional  
18 disposal facility without discrimination.

19 3. a. Upon the effective date of this compact, California must serve as the host state  
20 and must comply with the requirements of subsection 5 for at least thirty years  
21 from the date the regional disposal facility begins to accept low-level radioactive  
22 waste for disposal. The extension of the obligation and duration is at the option of  
23 California.

24 If California does not extend this obligation, the party state, other than  
25 California, which is the largest major generator state, must then serve as the host  
26 state for the second regional disposal facility.

27 The obligation of a host state which hosts the second regional disposal  
28 facility must also run for thirty years from the date the second regional disposal  
29 facility begins operations.

30 b. The host state may close its regional disposal facility when necessary for public  
31 health or safety.

- 1       4. The party states of this compact cannot be members of another regional low-level  
2       radioactive waste compact entered into pursuant to the Low-Level Radioactive Waste  
3       Policy Act, as amended by the Low-Level Radioactive Waste Policy Amendments Act  
4       of 1985 [42 U.S.C. 2021b - 2021j].
- 5       5. A host state shall do all of the following:
  - 6       a. Cause a regional disposal facility to be developed on a timely basis.
  - 7       b. Ensure by law, consistent with any applicable federal laws, the protection and  
8       preservation of public health and safety in the siting, design, development,  
9       licensing, regulation, operation, closure, decommissioning, and long-term care of  
10       the regional disposal facilities within the state.
  - 11       c. Ensure that charges for disposal of low-level radioactive waste at the regional  
12       disposal facility are reasonably sufficient to do all of the following:
    - 13       (1) Ensure the safe disposal of low-level radioactive waste and long-term care  
14       of the regional disposal facility.
    - 15       (2) Pay for the cost of inspection, enforcement, and surveillance activities at the  
16       regional disposal facility.
    - 17       (3) Assure that charges are assessed without discrimination as to the party  
18       state of origin.
  - 19       d. Submit an annual report to the commission on the status of the regional disposal  
20       facility including projections of the facility's anticipated future capacity.
  - 21       e. The host state and the operator shall notify the commission immediately upon the  
22       occurrence of any event which could cause a possible temporary or permanent  
23       closure of a regional disposal facility.
- 24       6. Each party state is subject to the following duties and authority:
  - 25       a. To the extent authorized by federal law, each party state shall develop and  
26       enforce procedures requiring low-level radioactive waste shipments originating  
27       within its borders and destined for a regional disposal facility to conform to  
28       packaging and transportation requirements and regulations. These procedures  
29       must include all of the following requirements:
    - 30       (1) Periodic inspections of packaging and shipping practices.

1           (2) Periodic inspections of low-level radioactive waste containers while in the  
2           custody of transporters.

3           (3) Appropriate enforcement actions with respect to violations.

4           b. A party state may impose a surcharge on the low-level radioactive waste  
5           generators within the state to pay for activities required by subdivision a.

6           c. To the extent authorized by federal law, each party state shall, after receiving  
7           notification from a host state that a person in a party state has violated  
8           packaging, shipping, or transportation requirements or regulations, take  
9           appropriate actions to ensure that these violations do not continue. Appropriate  
10          actions include requiring that a bond be posted by the violator to pay the cost of  
11          repackaging at the regional disposal facility and prohibiting future shipments to  
12          the regional disposal facility.

13          d. Each party state shall maintain a registry of all generators within the state that  
14          may have low-level radioactive waste to be disposed of at a regional disposal  
15          facility, including the amount of low-level radioactive waste and the class of  
16          low-level radioactive waste generated by each generator.

17          e. Each party state shall encourage generators within its borders to minimize the  
18          volume of low-level radioactive waste requiring disposal.

19          f. Each party state may rely on the good-faith performance of the other party states  
20          to perform those acts that are required by this compact to provide regional  
21          disposal facilities, including the use of the regional disposal facilities in a manner  
22          consistent with this compact.

23          g. Each party state shall provide the commission with any data and information  
24          necessary for the implementation of the commission's responsibilities, including  
25          taking those actions necessary to obtain this data or information.

26          h. Each party state shall agree that only low-level radioactive waste generated  
27          within the jurisdiction of the party states may be disposed of in the regional  
28          disposal facility, except as provided in subdivision s of subsection 7 of Article III.

29          i. Each party state shall agree that if there is any injury to persons or property  
30          resulting from the operation of a regional disposal facility, the damages resulting  
31          from the injury may be paid from the third-party liability fund pursuant to

paragraph 2 of subdivision c of subsection 7 of Article III, only to the extent that the damages exceed the limits of liability insurance carried by the operator. No party state, by joining this compact, assumes any liability resulting from the siting, operation, maintenance, long-term care, or other activity relating to a regional facility, and no party state is liable for any harm or damage resulting from a regional facility not located within the state.

#### **ARTICLE V - APPROVAL OF REGIONAL FACILITIES**

A regional disposal facility must be approved by the host state in accordance with its laws. This compact does not confer any authority on the commission regarding the siting, design, development, licensing, or other regulation, or the operation, closure, decommissioning, or long-term care of, any regional disposal facility within a party state.

#### **ARTICLE VI - PROHIBITED ACTS AND PENALTIES**

1. No person may dispose of low-level radioactive waste within the region unless the disposal is at a regional disposal facility, except as otherwise provided in subdivisions t and u of subsection 7 of Article III.
2. No person may dispose of or manage any low-level radioactive waste within the region unless the low-level radioactive waste was generated within the region, except as provided in subdivisions s, t, and u of subsection 7 of Article III.
3. Violations of this section must be reported to the appropriate law enforcement agency within the party state's jurisdiction.
4. Violations of this section may result in prohibiting the violator from disposing of low-level radioactive waste in the regional disposal facility, as determined by the commission or the host state.

#### **ARTICLE VII - ELIGIBILITY, ENTRY INTO EFFECT,**

#### **CONGRESSIONAL CONSENT, WITHDRAWAL, EXCLUSION**

1. Arizona, North Dakota, South Dakota, and California are eligible to become parties to this compact. Any other state may be made eligible by a majority vote of the commission and ratification by the legislative assemblies of all of the party states by statute, and upon compliance with those terms and conditions for eligibility which the host state may establish. The host state may establish all terms and conditions for the

1 entry of any state, other than the states named in this subsection, as a member of this  
2 compact.

3 2. Upon compliance with the other provisions of this compact, an eligible state may  
4 become a party state by legislative enactment of this compact or by executive order of  
5 the governor of the state adopting this compact. A state becoming a party state by  
6 executive order ceases to be a party state upon adjournment of the first general  
7 session of its legislative assembly convened after the executive order is issued, unless  
8 before the adjournment the legislative assembly enacts this compact.

9 3. A party state, other than the host state, may withdraw from the compact by repealing  
10 the enactment of this compact, but this withdrawal does not become effective until two  
11 years after the effective date of the repealing legislation. If a party state which is a  
12 major generator of low-level radioactive waste voluntarily withdraws from the compact  
13 pursuant to this subsection, that state shall make arrangements for the disposal of the  
14 other party states' low-level radioactive waste for a time period equal the period of  
15 time it was a member of this compact.

16 If the host state withdraws from the compact, the withdrawal does not become  
17 effective until five years after the effective date of the repealing legislation.

18 4. A party state may be excluded from this compact by a two-thirds vote of the  
19 commission members, acting in a meeting, if the state to be excluded has failed to  
20 carry out any obligations required by this compact.

21 5. This compact takes effect upon the enactment by statute by the legislatures of  
22 California and at least one other eligible state and upon the consent of Congress and  
23 remains in effect until otherwise provided by federal law. This compact is subject to  
24 review by Congress and the withdrawal of the consent of Congress every five years  
25 after its effective date, pursuant to federal law.

#### 26 **ARTICLE VIII - CONSTRUCTION AND SEVERABILITY**

27 1. This compact must be broadly construed to carry out the purposes of the compact, but  
28 the sovereign powers of a party state may not be infringed unnecessarily.

29 2. This compact does not affect any judicial proceeding pending on the effective date of  
30 this compact.

- 1       3. If any provision of this compact or the application thereof to any person or  
2       circumstances is held invalid, that invalidity does not affect other provisions or  
3       applications of the compact which can be given effect without the invalid provision or  
4       application, and to this end the provisions of this compact are severable.
- 5       4. Nothing in this compact diminishes or otherwise impairs the jurisdiction, authority, or  
6       discretion of either of the following:
  - 7       a. The nuclear regulatory commission pursuant to the Atomic Energy Act of 1954,  
8       as amended [42 U.S.C. 2011 et seq.].
  - 9       b. An agreement state under section 274 of the Atomic Energy Act of 1954, as  
10       amended [42 U.S.C. 2021].
- 11       5. Nothing in this compact confers any new authority on the states or commission to do  
12       any of the following:
  - 13       a. Regulate the packaging or transportation of low-level radioactive waste in a  
14       manner inconsistent with the regulations of the nuclear regulatory commission or  
15       the United States department of transportation.
  - 16       b. Regulate health, safety, or environmental hazards from source, byproduct, or  
17       special nuclear material.
  - 18       c. Inspect the activities of licensees of the agreement states or of the nuclear  
19       regulatory commission.

20       **SECTION 21.** Chapter 23.1-06 of the North Dakota Century Code is created and enacted  
21 as follows:

22       **23.1-06-01. Definitions.**

23       For purposes of this chapter:

- 24       1. "Air contaminant" means any solid, liquid, gas, or odorous substance, or any  
25       combination of solid, liquid, gas, or odorous substance.
- 26       2. "Air pollution" means the presence in the outdoor atmosphere of one or more air  
27       contaminants in such quantities and duration as may be injurious to human health,  
28       welfare, or property, animal or plant life, or which unreasonably interferes with the  
29       enjoyment of life or property.

- 1       3. "Air quality standard" means an established concentration, exposure time, or  
2       frequency of occurrence of a contaminant or multiple contaminants in the ambient air  
3       which may not be exceeded.
- 4       4. "Ambient air" means the surrounding outside air.
- 5       5. "Asbestos abatement" means any demolition, renovation, salvage, repair, or  
6       construction activity which involves the repair, enclosure, encapsulation, removal,  
7       handling, or disposal of more than three square feet [0.28 square meter] or three linear  
8       feet [0.91 meter] of friable asbestos material. Asbestos abatement also means any  
9       inspections, preparation of management plans, and abatement project design for both  
10      friable and nonfriable asbestos material.
- 11      6. "Asbestos contractor" means any person that contracts to perform asbestos  
12      abatement for another.
- 13      7. "Asbestos worker" means any individual engaged in the abatement of more than three  
14      square feet [0.28 square meter] or three linear feet [0.91 meter] of friable asbestos  
15      material, except for individuals engaged in abatement at their private residence.
- 16      8. "Department" means the department of environmental quality.
- 17      9. "Emission" means a release of air contaminants into the ambient air.
- 18      10. "Emission standard" means a limitation on the release of any air contaminant into the  
19      ambient air.
- 20      11. "Friable asbestos material" means any material containing more than one percent  
21      asbestos that hand pressure or mechanical forces expected to act on the material can  
22      crumble, pulverize, or reduce to powder when dry.
- 23      12. "Indirect air contaminant source" means any facility, building, structure, or installation,  
24      or any combination that can reasonably be expected to cause or induce emissions of  
25      air contaminants.
- 26      13. "Lead-based paint" means paint or other surface coatings that contain lead equal to or  
27      in excess of one milligram per square centimeter or more than one-half percent by  
28      weight.

29      **23.1-06-02. Declaration of public policy and legislative intent.**

30      It is the public policy of this state and the legislative intent of this chapter to achieve and  
31      maintain the best air quality possible, consistent with the best available control technology, to

protect human health, welfare, and property, to prevent injury to plant and animal life, to promote the economic and social development of this state, to foster the comfort and convenience of the people, and to facilitate the enjoyment of the natural attractions of this state.

**23.1-06-03. Environmental review advisory council - Public hearing and rule recommendations.**

The environmental review advisory council shall hold a public hearing to consider and recommend the adoption, amendment, or repeal of rules and standards under this chapter. Notice of the public hearing must be given by publication in each of the official county newspapers within the state on at least two occasions, one week apart, the last publication being at least thirty days before the first hearing. The hearing must be held in the state capitol, and interested parties may present witnesses and other evidence relevant to proposed rules and standards under this chapter. The council shall consider any other matters related to this chapter and may make recommendations to the department concerning the administration of this chapter.

**23.1-06-04. Power and duties of the department.**

1. The department shall develop and coordinate a statewide program of air pollution control. To accomplish this, the department shall:
  - a. Encourage the voluntary cooperation of persons to achieve the purposes of this chapter.
  - b. Determine by scientifically oriented field studies and sampling the degree of air pollution in the state and the several parts thereof.
  - c. Encourage and conduct studies, investigations, and research relating to air pollution and its causes, effects, prevention, abatement, and control.
  - d. Advise, consult, and cooperate with other public agencies and with affected groups and industries.
  - e. Issue orders necessary to effectuate the purposes of this chapter and enforce the orders by all appropriate administrative and judicial procedures.
  - f. Provide rules relating to the construction of any new direct or indirect air contaminant source or modification of any existing direct or indirect air contaminant source which the department determines will prevent the attainment or maintenance of any ambient air quality standard, and require that before

1 commencing construction or modification of any such source, the owner or  
2 operator shall submit the information necessary to permit the department to make  
3 this determination.

4 g. Establish ambient air quality standards for the state which may vary according to  
5 appropriate areas.

6 h. Formulate and adopt emission control requirements for the prevention,  
7 abatement, and control of air pollution in this state including achievement of  
8 ambient air quality standards.

9 i. Hold hearings relating to the administration of this chapter, and compel the  
10 attendance of witnesses and the production of evidence.

11 j. Require the owner or operator of a regulated air contaminant source to establish  
12 and maintain records; make reports; install, use, and maintain monitoring  
13 equipment or methods; sample emissions in accordance with those methods at  
14 designated locations and intervals, and using designated procedures; and  
15 provide other information as may be required.

16 k. Provide by rules a procedure for handling applications for a variance for any  
17 person that owns or is in control of any plant, establishment, process, or  
18 equipment. The granting of a variance is not a right of the applicant but must be  
19 in the discretion of the department.

20 l. Provide by rules any procedures necessary and appropriate to develop,  
21 implement, and enforce any air pollution prevention and control program  
22 established by the federal Clean Air Act [42 U.S.C. 7401 et seq.], as amended,  
23 the authorities and responsibilities of which are delegatable to the state by the  
24 United States environmental protection agency. The rules may include  
25 enforceable ambient standards, emission limitations, and other control measures,  
26 means, techniques, or economic incentives, including fees, marketable permits,  
27 and auctions of emissions rights, as provided by the Act. The department shall  
28 develop and implement the federal programs if the department determines that  
29 doing so benefits the state.

30 m. Provide by rules a program for implementing lead-based paint remediation  
31 training, certification, and performance requirements in accordance with title 40,

Code of Federal Regulations, part 745, sections 220, 223, 225, 226, 227, and  
233.

2. After consultation with the advisory council, the department may adopt, amend, and  
repeal rules under this chapter.

**23.1-06-05. Licensing of asbestos and lead-based paint contractors and certification  
of asbestos and lead-based paint workers.**

1. The department shall administer and enforce a licensing program for asbestos  
contractors and lead-based paint contractors and a certification program for asbestos  
workers and lead-based paint workers. To do so, the department shall:
  - a. Require training of, and to examine, asbestos workers and lead-based paint  
workers.
  - b. Establish standards and procedures for the licensing of contractors, and the  
certification of asbestos workers engaging in the abatement of friable asbestos  
materials or nonfriable asbestos materials that become friable during abatement,  
and establish performance standards for asbestos abatement. The performance  
standards will be as stringent as those standards adopted by the United States  
environmental protection agency pursuant to section 112 of the federal Clean Air  
Act [42 U.S.C. 7401 et seq.], as amended.
  - c. Establish standards and procedures for licensing contractors and certifying  
lead-based paint workers engaging in the abatement of lead-based paint, and  
establish performance standards for lead-based paint abatement in accordance  
with title 40, Code of Federal Regulations, part 745, sections 220, 223, 225, 226,  
227, and 233.
  - d. Issue certificates to all applicants who satisfy the requirements for certification  
under this section and any rules under this section, renew certificates, and  
suspend or revoke certificates for cause after notice and opportunity for hearing.
  - e. Establish an annual fee and renewal fees for licensing asbestos contractors and  
lead-based paint contractors and certifying asbestos and lead-based paint  
workers, and establish examination fees for asbestos and lead-based paint  
workers under section 23.1-06-10. The annual, renewal, and examination fees for

1           lead-based contractors and workers may not exceed those charged to asbestos  
2           contractors and workers.

3           f. Establish indoor environmental nonoccupational air quality standards for  
4           asbestos.

5           g. Adopt and enforce rules as necessary for the implementation of this section.

6           2. For nonpublic employees performing asbestos abatement in facilities or on facility  
7           components owned or leased by their employer, only the provisions of rules adopted in  
8           accordance with the federal Asbestos Hazard Emergency Response Act of 1986 [Pub.  
9           L. 99-519; 100 Stat. 2970; 15 U.S.C. 2641 et seq.], as amended, or the federal Clean  
10          Air Act [Pub. L. 95-95; 91 Stat. 685; 42 U.S.C. 7401 et seq.], as amended, apply to this  
11          section. This does not include ownership that was acquired solely to effect a  
12          demolition or renovation.

13          **23.1-06-06. Sulfur dioxide ambient air quality standards more strict than federal**  
14          **standards prohibited.**

15          The department may not adopt ambient air quality rules or standards for sulfur dioxide that  
16          affect coal conversion facilities or petroleum refineries that are more strict than federal rules or  
17          standards under the federal Clean Air Act [42 U.S.C. 7401 et seq.], nor may the department  
18          adopt ambient air quality rules or standards for sulfur dioxide that affect these facilities and  
19          refineries when there are no corresponding federal rules or standards. Any ambient air quality  
20          standards that have been adopted by the department for sulfur dioxide that are more strict than  
21          federal rules or standards under the federal Clean Air Act, or for which there are no  
22          corresponding federal rules or standards, are void as to coal conversion facilities and petroleum  
23          refineries. However, the department may adopt rules for dealing with exposures of less than  
24          one hour to sulfur dioxide emissions on a source-by-source basis pursuant to any regulatory  
25          program for dealing with short-term exposures to sulfur dioxide that may be established under  
26          the federal Clean Air Act. Any intervention levels or standards set forth in the rules may not be  
27          more strict than federal levels or standards recommended or adopted under the federal  
28          program. In adopting the rules, the department shall follow all other provisions of state law  
29          governing the department's adoption of ambient air quality rules when there are no mandatory  
30          corresponding federal rules or standards.

**23.1-06-07. Requirements for adoption of air quality rules more strict than federal standards.**

1. Notwithstanding any other provisions of this title, the department may not adopt air quality rules or standards affecting coal conversion and associated facilities, petroleum refineries, or oil and gas production and processing facilities which are more strict than federal rules or standards under the federal Clean Air Act [42 U.S.C. 7401 et seq.], nor may the department adopt air quality rules or standards affecting such facilities when there are no corresponding federal rules or standards, unless the more strict or additional rules or standards are based on a risk assessment that demonstrates a substantial probability of significant impacts to public health or property, a cost-benefit analysis that affirmatively demonstrates that the benefits of the more stringent or additional state rules and standards will exceed the anticipated costs, and the independent peer reviews required by this section.
2. The department shall hold a hearing on any rules or standards proposed for adoption under this section on not less than ninety days' notice. The notice of hearing must specify all studies, opinions, and data that have been relied upon by the department and must state that the studies, risk assessment, and cost-benefit analysis that support the proposed rules or standards are available at the department for inspection and copying. If the department intends to rely upon any studies, opinions, risk assessments, cost-benefit analyses, or other information not available from the department when it gave its notice of hearing, the department shall give a new notice of hearing not less than ninety days before the hearing which clearly identifies the additional or amended studies, analyses, opinions, data, or information upon which the department intends to rely and conduct an additional hearing if the first hearing has already been held.
3. In this section:

  - a. "Cost-benefit analysis" means both the analysis and the written document that contains:

    - (1) A description and comparison of the benefits and costs of the rule and of the reasonable alternatives to the rule. The analysis must include a quantification or numerical estimate of the quantifiable benefits and costs.

1                   The quantification or numerical estimate must use comparable assumptions,  
2                   including time periods, specify the ranges of predictions, and explain the  
3                   margins of error involved in the quantification methods and estimates being  
4                   used. The costs that must be considered include the social, environmental,  
5                   and economic costs that are expected to result directly or indirectly from  
6                   implementation or compliance with the proposed rule.

7                   (2) A reasonable determination whether as a whole the benefits of the rule  
8                   justify the costs of the rule and that the rule will achieve the rulemaking  
9                   objectives in a more cost-effective manner than other reasonable  
10                  alternatives, including the alternative of no government action. In evaluating  
11                  and comparing the costs and benefits, the department may not rely on cost,  
12                  benefit, or risk assessment information that is not accompanied by data,  
13                  analysis, or supporting materials that would enable the department and  
14                  other persons interested in the rulemaking to assess the accuracy, reliability,  
15                  and uncertainty factors applicable to the information.

16                  b. "Risk assessment" means both the process used by the department to identify  
17                  and quantify the degree of toxicity, exposure, or other risk posed for the exposed  
18                  individuals, populations, or resources, and the written document containing an  
19                  explanation of how the assessment process has been applied to an individual  
20                  substance, activity, or condition. The risk assessment must include a discussion  
21                  that characterizes the risks being assessed. The risk characterization must  
22                  include the following elements:

23                  (1) A description of the exposure scenarios used, the natural resources or  
24                  subpopulations being exposed, and the likelihood of these exposure  
25                  scenarios expressed in terms of probability.

26                  (2) A hazard identification that demonstrates whether exposure to the  
27                  substance, activity, or condition identified is causally linked to an adverse  
28                  effect.

29                  (3) The major sources of uncertainties in the hazard identification,  
30                  dose-response, and exposure assessment portions of the risk assessment.

(4) When a risk assessment involves a choice of any significant assumption, inference, or model, the department, in preparing the risk assessment, shall:

(a) Rely only upon environmental protection agency-approved air dispersion models.

(b) Identify the assumptions, inferences, and models that materially affect the outcome.

(c) Explain the basis for any choices.

(d) Identify any policy decisions or assumptions.

(e) Indicate the extent to which any model has been validated by, or conflicts with, empirical data.

(f) Describe the impact of alternative choices of assumptions, inferences, or mathematical models.

(5) The range and distribution of exposures and risks derived from the risk assessment.

c. The risk assessment and cost-benefit analysis performed by the department must be independently peer reviewed by qualified experts selected by the environmental review advisory council.

4. This section applies to any petition submitted to the department under section 23.1-01-04 which identifies air quality rules or standards affecting coal conversion facilities or petroleum refineries that are more strict than federal rules or standards under the federal Clean Air Act [42 U.S.C. 7401 et seq.] or for which there are no corresponding federal rules or standards, regardless of whether the department has previously adopted the more strict or additional rules or standards pursuant to section 23.1-01-04. This section also applies to any petitions filed under section 23.1-01-04 affecting coal conversion facilities or petroleum refineries that are pending on the effective date of this section for which new rules or standards have not been adopted, and the department shall have a reasonable amount of additional time to comply with the more stringent requirements of this section. To the extent section 23.1-01-04.1 conflicts with this section, the provisions of this section govern. This section does not apply to existing rules that set air quality standards for odor, hydrogen sulfide, visible

1 and fugitive emissions, or emission standards for particulate matter and sulfur dioxide,  
2 but does apply to new rules governing those standards.

3 **23.1-06-08. Classification and reporting of air pollution sources.**

4 1. After consultation with the environmental review advisory council the department, by  
5 rule, may classify air contaminant sources according to levels and types of emissions  
6 and other criteria that relate to air pollution, and may require reporting for any class.  
7 Classifications made under this subsection may apply to the state as a whole or to any  
8 designated area of the state, and must be made with special reference to effects on  
9 health, economic, and social factors and physical effects on property.

10 2. A person operating or responsible for the operation of air contaminant sources of any  
11 class for which reporting is required shall make reports containing information the  
12 department deems relevant to air pollution.

13 **23.1-06-09. Permits or registration.**

14 1. A person may not construct, install, modify, use, or operate an air contaminant source  
15 designated by regulation, capable of causing or contributing to air pollution, either  
16 directly or indirectly, without a permit from the department or in violation of any  
17 conditions imposed by the permit.

18 2. The department shall provide for the issuance, suspension, revocation, and renewal of  
19 permits that it requires under this section.

20 3. The department may require applications for permits to be accompanied by plans,  
21 specifications, and other information it deems necessary.

22 4. Possession of an approved permit or registration certificate does not relieve any  
23 person of the responsibility to comply with applicable emission limitations or with any  
24 other law or rule, and does not relieve any person from the requirement to possess a  
25 valid contractor's license issued under chapter 43-07.

26 5. The department by rule may provide for registration and registration renewal of certain  
27 air contaminant sources in lieu of a permit.

28 6. The department may exempt by rule certain air contaminant sources from the permit  
29 or registration requirements in this section when the department makes a finding the  
30 exemption will not be contrary to section 23.1-06-02.

1       **23.1-06-10. Fees - Deposit in operating fund.**

2       The department by rule may prescribe and provide for the payment and collection of  
3 reasonable fees for of permits and registration certificates. The fees must be based on the  
4 anticipated cost of filing and processing the application, taking action on the requested permit or  
5 registration certificate, and conducting an inspection program to determine compliance or  
6 noncompliance with the permit or registration certificate. Any moneys collected for permit or  
7 registration fees must be deposited in the department operating fund in the state treasury and  
8 must be spent subject to appropriation by the legislative assembly.

9       **23.1-06-11. Right of onsite inspection.**

- 10      1. Any duly authorized officer, employee, or agent of the department may enter and  
11      inspect any property, premise, or place on or at which an air contaminant source is  
12      located or is being constructed, installed, or established at any reasonable time for the  
13      purpose of ascertaining the state of compliance with this chapter and related rules. If  
14      requested, the owner or operator of the premises must receive a report setting forth all  
15      facts found which relate to compliance status.
- 16      2. The department may conduct tests and take samples of air contaminants, fuel,  
17      process material, and other materials that may affect emission of air contaminants  
18      from any source, and may have access to and copy any records required by  
19      department rules to be maintained, and may inspect monitoring equipment located on  
20      the premises. Upon request of the department, the person responsible for the source  
21      to be tested shall provide necessary holes in stacks or ducts and other safe and  
22      proper sampling, and testing facilities exclusive of instruments and sensing devices  
23      necessary for proper determination of the emission of air contaminants. If an  
24      authorized representative of the department, during the course of an inspection,  
25      obtains a sample of air contaminant, fuel, process material, or other material, the  
26      representative shall issue a receipt for the sample obtained to the owner or operator  
27      of, or person responsible for, the source tested.
- 28      3. To ascertain the state of compliance with this chapter and any applicable rules, a duly  
29      authorized officer, employee, or agent of the department may enter and inspect, at any  
30      reasonable time, any property, premises, or place on or at which a lead-based paint  
31      remediation activity is ongoing. If requested, the department shall provide to the owner

1           or operator of the premises a report that sets forth all facts found which relate to  
2           compliance status.

3           **23.1-06-12. Confidentiality of records.**

4           1. Any record, report, or information obtained under this chapter must be available to the  
5           public. However, upon a showing satisfactory to the department that disclosure to the  
6           public of a part of the record, report, or information, other than emission data, to which  
7           the department has access under this chapter, would divulge trade secrets, the  
8           department shall consider that part of the record, report, or information confidential.

9           2. This section may not prevent disclosure of any report, or record of information to  
10          federal, state, or local agencies when necessary for purposes of administration of any  
11          federal, state, or local air pollution control laws, or when relevant in any proceeding  
12          under this chapter.

13          **23.1-06-13. Administrative procedure and judicial review.**

14          Any proceeding under this chapter for the issuance or modification of rules and regulations,  
15          including emergency orders relating to control of air pollution, or determining compliance with  
16          rules and regulations of the department, must be conducted in accordance with chapter 28-32.  
17          Appeals from the proceeding may be taken under chapter 28-32. When an emergency exists  
18          requiring immediate action to protect the public health and safety, the department may, without  
19          notice or hearing, issue an order reciting the existence of the emergency and requiring action  
20          be taken as necessary to meet the emergency. Notwithstanding any provision of this chapter,  
21          the order must be effective immediately, but on application to the department an interested  
22          person must be afforded a hearing before the environmental review advisory council within ten  
23          days. On the basis of the hearing, the emergency order must be continued, modified, or  
24          revoked within thirty days after the hearing. Except as provided for in this section, notice of any  
25          hearing held under this chapter must be issued at least thirty days before the date specified for  
26          the hearing.

27          **23.1-06-14. Enforcement - Penalties - Injunctions.**

28          1. A person that willfully violates this chapter, or any permit condition, rule, order,  
29          limitation, or other applicable requirement implementing this chapter, is subject to a  
30          fine of not more than ten thousand dollars per day per violation, or by imprisonment for  
31          not more than one year, or both. If the conviction is for a violation committed after a

1 first conviction of the person under this subsection, punishment must be a fine of not  
2 more than twenty thousand dollars per day per violation, or by imprisonment for not  
3 more than two years, or both.

4 2. A person that violates this chapter, or any permit condition, rule, order, limitation, or  
5 other applicable requirement implementing this chapter, with criminal negligence, is  
6 subject to a fine of not more than ten thousand dollars per day per violation, or by  
7 imprisonment for not more than six months, or both.

8 3. A person that knowingly makes any false statement, representation, or certification in  
9 any application, record, report, plan, or other document filed or required to be  
10 maintained under this chapter or any permit condition, rule, order, limitation, or other  
11 applicable requirement implementing this chapter, or that falsifies, tampers with, or  
12 knowingly renders inaccurate any monitoring device or method required to be  
13 maintained under this chapter or any permit condition, rule, order, limitation, or other  
14 applicable requirement implementing this chapter, upon conviction, is subject to a fine  
15 of not more than ten thousand dollars per day per violation, or by imprisonment for not  
16 more than six months, or both.

17 4. A person the violates this chapter, or any permit condition, rule, order, limitation, or  
18 other applicable requirement implementing this chapter, is subject to a civil penalty not  
19 to exceed ten thousand dollars per day per violation.

20 5. Without prior revocation of any pertinent permits, the department, in accordance with  
21 the laws of this state governing injunction or other process, may maintain an action in  
22 the name of the state against any person to enjoin a threatened or continuing violation  
23 of any provision of this chapter or any permit condition, rule, order, limitation, or other  
24 applicable requirement implementing this chapter.

25 **23.1-06-15. Regulation of odors - Rules.**

26 1. In areas located within a city or the area over which a city has exercised extraterritorial  
27 zoning as defined in section 40-47-01.1, a person may not discharge into the ambient  
28 air any objectionable odorous air contaminant that measures seven odor concentration  
29 units or higher outside the property boundary where the discharge is occurring. If an  
30 agricultural operation as defined by section 42-04-01 has been in operation for more  
31 than one year, as provided by section 42-04-02, and the person making the odor

complaint was built or established after the agricultural operation was established, the measurement for compliance with the seven odor concentration units standard must be taken within one hundred feet [30.48 meters] of the subsequently established residence, church, school, business, or public building making the complaint rather than at the property boundary of the agricultural operation. The measurement may not be taken within five hundred feet [.15 kilometer] of the property boundary of the agricultural operation.

2. In areas located outside a city or outside the area over which a city has exercised extraterritorial zoning as defined in section 40-47-01.1, a person may not discharge into the ambient air any objectionable odorous air contaminant that causes odors that measure seven odor concentration units or higher as measured at any of the following locations:

- a. Within one hundred feet [30.48 meters] of any residence, church, school, business, or public building, or within a campground or public park. An odor measurement may not be taken at the residence of the owner or operator of the source of the odor, or at any residence, church, school, business, or public building, or within a campground or public park, that is built or established within one-half mile [.80 kilometer] of the source of the odor after the source of the odor has been built or established;
- b. At any point located beyond one-half mile [.80 kilometer] from the source of the odor, except for property owned by the owner or operator of the source of the odor, or over which the owner or operator of the source of the odor has purchased an odor easement; or
- c. If a county or township has zoned or established a setback distance for an animal feeding operation which is greater than one-half mile [.80 kilometer] under either section 11-33-02.1 or 58-03-11.1, or if the setback distance under subsection 7 is greater than one-half mile [.80 kilometer], measurements for compliance with the seven odor concentration units standard must be taken at the setback distance rather than one-half mile [.80 kilometer] from the facility under subdivision b, except for any residence, church, school, business, public building, park, or campground within the setback distance which was built or established before

1           the animal feeding operation was established, unless the animal feeding  
2           operation has obtained an odor easement from the pre-existing facility.

3       3. An odor measurement may be taken only with a properly maintained scentometer, by  
4       an odor panel, or by another instrument or method approved by the department of  
5       environmental quality, and only by inspectors certified by the department who have  
6       successfully completed a department-sponsored odor certification course and  
7       demonstrated the ability to distinguish various odor samples and concentrations. If a  
8       certified inspector measures a violation of this section, the department may send a  
9       certified letter of apparent noncompliance to the person causing the apparent violation  
10       and may negotiate with the owner or operator for the establishment of an odor  
11       management plan and best management practices to address the apparent violation.  
12       The department shall give the owner or operator at least fifteen days to implement the  
13       odor management plan. If the odor problem persists, the department may proceed  
14       with an enforcement action provided at least two certified inspectors at the same time  
15       each measure a violation and then confirm the violation by a second odor  
16       measurement taken by each certified inspector, at least fifteen minutes, but no more  
17       than two hours, after the first measurement.

18       4. A person is exempt from this section while spreading or applying animal manure or  
19       other recycled agricultural material to land in accordance with a nutrient management  
20       plan approved by the department of environmental quality. A person is exempt from  
21       this section while spreading or applying animal manure or other recycled agricultural  
22       material to land owned or leased by that person in accordance with rules adopted by  
23       the department. An owner or operator of a lagoon or waste storage pond permitted by  
24       the department is exempt from this section in the spring from the time when the cover  
25       of the permitted lagoon or pond begins to melt until fourteen days after all the ice  
26       cover on the lagoon or pond has completely melted. Notwithstanding these  
27       exemptions, all persons shall manage their property and systems to minimize the  
28       impact of odors on their neighbors.

29       5. This section does not apply to chemical compounds that can be individually measured  
30       by instruments, other than a scentometer, that have been designed and proven to  
31       measure the individual chemical or chemical compound, such as hydrogen sulfide, to

1           a reasonable degree of scientific certainty, and for which the department of  
2           environmental quality has established a specific limitation by rule.

3       6. For purposes of this section, a public park is a park established by the federal  
4       government, the state, or a political subdivision of the state in the manner prescribed  
5       by law. For purposes of this section, a campground is a public or private area of land  
6       used exclusively for camping and open to the public for a fee on a regular or seasonal  
7       basis.

8       7. a. In a county that does not regulate the nature, scope, and location of an animal  
9       feeding operation under section 11-33-02, the department shall require that any  
10       new animal feeding operation permitted under chapter 61-28 be set back from  
11       any existing residence, church, school, business, public building, park, or  
12       campground.

13           (1) If there are fewer than three hundred animal units, there is no minimum  
14           setback requirement.

15           (2) If there are at least three hundred animal units but no more than one  
16           thousand animal units, the setback for any animal operation is one-half mile  
17           [.80 kilometer].

18           (3) If there are at least one thousand one animal units but no more than two  
19           thousand animal units, the setback for a hog operation is three-fourths mile  
20           [1.20 kilometers], and the setback for any other animal operation is one-half  
21           mile [.80 kilometer].

22           (4) If there are at least two thousand one animal units but no more than five  
23           thousand animal units, the setback for a hog operation is one mile [1.60  
24           kilometers], and the setback for any other animal operation is three-fourths  
25           mile [1.20 kilometers].

26           (5) If there are five thousand one or more animal units, the setback for a hog  
27           operation is one and one-half miles [2.40 kilometers], and the setback for  
28           any other animal operation is one mile [1.60 kilometers].

29       b. The setbacks set forth in subdivision a do not apply if the owner or operator  
30       applying for the permit obtains an odor easement from the pre-existing use that is  
31       closer.

c. For purposes of this section:

(1) One mature dairy cow, whether milking or dry, equals 1.33 animal units;

(2) One dairy cow, heifer or bull, other than an animal described in paragraph 1 equals 1.0 animal unit;

(3) One weaned beef animal, whether a calf, heifer, steer, or bull, equals 0.75 animal unit;

(4) One cow-calf pair equals 1.0 animal unit;

(5) One swine weighing fifty-five pounds [24.948 kilograms] or more equals 0.4 animal unit;

(6) One swine weighing less than fifty-five pounds [24.948 kilograms] equals 0.1 animal unit;

(7) One horse equals 2.0 animal units;

(8) One sheep or lamb equals 0.1 animal unit;

(9) One turkey equals 0.0182 animal unit;

(10) One chicken, other than a laying hen, equals 0.008 animal unit;

(11) One laying hen equals 0.012 animal unit;

(12) One duck equals 0.033 animal unit; and

(13) Any livestock not listed in paragraphs 1 through 12 equals 1.0 animal unit per each one thousand pounds [453.59 kilograms], whether single or combined animal weight.

8. A permitted animal feeding operation may expand its permitted capacity by twenty-five percent on one occasion without triggering a higher setback distance.

9. A county or township may not regulate or impose restrictions or requirements on animal feeding operations or other agricultural operations except as permitted under sections 11-33-02 and 58-03-11.

**SECTION 22.** Chapter 23.1-07 of the North Dakota Century Code is created and enacted as follows:

**23.1-07-01. Statement of policy.**

It is the policy of the state of North Dakota to protect the public health and welfare of the people of the state and the state's water resources by classifying all public water supply and

1 wastewater disposal systems in the state and by requiring the examination of operators and the  
2 certification of their competency to supervise the operations of such facilities.

3 **23.1-07-02. Definitions.**

4 For the purpose of this chapter, unless the context otherwise requires:

- 5 1. "Certificate" means a certificate of competency issued by the department stating that  
6 the operator holding the certificate meets the requirements for the specified operator  
7 grade in the certification program.
- 8 2. "Department" means the department of environmental quality.
- 9 3. "Ground water under the direct influence of surface water" means water beneath the  
10 surface of the ground with significant occurrence of insects or other macro-organisms,  
11 algae, or large-diameter pathogens such as Giardia lamblia, or significant and  
12 relatively rapid shifts in water characteristics such as turbidity, temperature,  
13 conductivity, or pH which closely correlate to climatological or surface water  
14 conditions.
- 15 4. "Operator" means the person in direct responsible charge of the operation of a water  
16 treatment plant, a water distribution system, a wastewater treatment plant, or a  
17 wastewater collection system.
- 18 5. "Population equivalent" for a wastewater collection system or treatment plant means  
19 the calculated population that would normally contribute the same amount of  
20 biochemical oxygen demand per day computed on the basis of seventeen hundredths  
21 of one pound [77.11 grams] of five-day, sixty-eight-degree Fahrenheit [20-degree  
22 Celsius] biochemical oxygen demand per capita per day.
- 23 6. "Wastewater collection system" means that portion of the wastewater disposal system  
24 in which wastewater is conveyed to a wastewater treatment plant from the premises of  
25 a contributor.
- 26 7. "Wastewater disposal system" means the system of pipes, structures, and facilities  
27 through which wastewater from a public sewer system or industry is collected and  
28 treated for final disposal. The system must serve a population equivalent of twenty-five  
29 or more persons.

1       8. "Wastewater treatment plant" means that portion of the wastewater disposal system  
2       used for the treatment and disposal of wastewater and the solids removed from  
3       wastewater.

4       9. "Water distribution system" means that portion of the water supply system in which  
5       water is conveyed from the water treatment plant or other supply point to the premises  
6       of the consumer.

7       10. "Water supply system" means the system of pipes, structures, and facilities through  
8       which a public water supply is obtained, treated, and sold or distributed for human  
9       consumption or household use. The system must have at least fifteen service  
10      connections or regularly serve an average of twenty-five or more persons for at least  
11      sixty days a year.

12      11. "Water treatment plant" means that portion of the water supply system that in some  
13      way alters the physical, chemical, or bacteriological quality of the water.

14      **23.1-07-03. Classification of plants and systems.**

15      The department shall classify all water treatment plants, water distribution systems,  
16      wastewater treatment plants, and wastewater collection systems with due regard to the size,  
17      type, character of water and wastewater to be treated, and other physical conditions affecting  
18      such facilities, and according to the skill, knowledge, and experience that an operator in  
19      responsible charge must have to successfully supervise the operation of such facilities, so as to  
20      protect the public health and prevent pollution of the waters of the state.

21      **23.1-07-04. Certification.**

22      When the department is satisfied an applicant is qualified by examination or otherwise to  
23      supervise the operation of treatment plants and systems, the department shall issue a  
24      certificate attesting to the competency of the applicant as an operator. The certificate must  
25      indicate the classification of treatment plant or system the operator is qualified to supervise.

26      1. A certificate issued under this chapter is valid for only one year and expires on the first  
27      day of July of the year after which it was issued.

28      2. The department may revoke or suspend the certificate of an operator issued under this  
29      chapter if the operator has practiced fraud or deception in obtaining the certificate or in  
30      the performance of the operator's duty as an operator; if reasonable care, judgment, or  
31      the application of the operator's knowledge or ability was not used in the performance

1           of the operator's duties; or if the operator is incompetent and unable to perform  
2           properly the operator's duties as an operator. A certificate may not be revoked or  
3           suspended except after a hearing before the director of the department, or the  
4           director's designated representative. If a certificate is suspended or revoked, a new  
5           application for certification may be considered by the department only after the  
6           conditions causing the suspension or revocation have been corrected, and evidence of  
7           this fact has been satisfactorily submitted to the department. A new certificate may  
8           then be granted by the department.

9           3. Certificates in appropriate classification issued to operators before the effective date of  
10           this chapter continue in effect.

11           **23.1-07-05. Fees.**

12           The department may charge a fee for certificates issued under this chapter, but the fees  
13           may not exceed fifty dollars for the initial certificate, or twenty-five dollars for the annual renewal  
14           certificate. All receipts from the fees must be deposited in the state treasury to be credited to a  
15           special fund to be known as the "operators' certification fund" to be used by the department to  
16           administer and enforce this chapter and financially assist the department in conducting operator  
17           training programs. Any surplus at the end of the fiscal year must be retained by the department  
18           for future expenditures.

19           **23.1-07-06. Duties of the department.**

20           The department shall:

- 21           1. Hold at least one examination each year at a designated time and place for the  
22           purpose of examining candidates for certification.
- 23           2. Promote the program of certification of water supply and wastewater disposal system  
24           operators.
- 25           3. Distribute notices and applications and to receive and evaluate applications.
- 26           4. Collect fees for initial certification and annual renewal.
- 27           5. Prepare, conduct, and grade examinations.
- 28           6. Maintain records of operator qualifications, certification examination results, and a  
29           register of certified operators.
- 30           7. Promote and schedule regular training schools and programs.
- 31           8. Adopt rules necessary to carry out this chapter.

1       **23.1-07-07. Unlawful operation.**

2       Except as provided in this section, it is unlawful for any person to operate a water treatment  
3 plant or water distribution system serving twenty-five or more individuals or a wastewater  
4 treatment plant or wastewater collection system serving a population equivalent of twenty-five  
5 or more individuals unless the competency of the operator to operate such a plant or system is  
6 certified by the department in a grade corresponding to the classification of that portion of the  
7 system to be supervised. Operators of wastewater collection systems and wastewater  
8 stabilization ponds or other nonmechanical wastewater treatment plants that serve a population  
9 equivalent of less than five hundred individuals are excluded from this chapter. Operators of  
10 water supply systems that serve other than year-round residents are excluded from this chapter  
11 if all of the following conditions are met:

- 12       1. The water supply is obtained solely from ground water sources not under the direct  
13 influence of surface water.  
14       2. Treatment, if provided, consists strictly of disinfection, fluoridation, sequestration,  
15 corrosion control, or other processes that involve simple chemical addition and minor  
16 operational control.  
17       3. The water supply system is not required by the federal Safe Drinking Water Act or its  
18 implementing regulations to be operated by qualified personnel.

19       **23.1-07-08. Violations - Penalty.**

20       Any person violating this chapter or the rules adopted under this chapter, after written notice  
21 of the violation by the department, is guilty of a class A misdemeanor.

22       **SECTION 23.** Chapter 23.1-08 of the North Dakota Century Code is created and enacted  
23 as follows:

24       **23.1-08-01. Finding of necessity.**

25       The legislative assembly finds that:

- 26       1. The people of North Dakota have a right to a clean environment, and the costs of  
27 maintaining a clean environment through the efficient environmentally acceptable  
28 management of solid wastes should be borne by those who use such services.  
29       2. Serious economic, management, and technical problems exist in the management of  
30 solid wastes resulting from residential, commercial, industrial, agricultural, and other  
31 activities carried on in said jurisdictions.

3. Inefficient and improper methods of managing solid wastes create serious hazards to the public health, result in scenic blights, cause pollution of air and water resources, cause accident hazards, increase rodent and insect disease vectors, have an adverse effect on land values, create public nuisances, and otherwise interfere with community life and development.
4. While the management of solid wastes is the responsibility of each person, problems of solid waste management have become a matter statewide in scope and concern, and necessitate state action through technical assistance and leadership in the application of new improved methods and processes to reduce the amount of solid wastes and unsalvageable materials and to promote environmentally acceptable and economical solid waste management.

**23.1-08-02. Definitions.**

1. "Collection" means the aggregation of solid waste from the places at which the waste was generated.
2. "Department" means the department of environmental quality.
3. "Disposal" means the discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste into or on any land or water including ground water.
4. "Industrial waste" means solid waste, which is not a hazardous waste regulated under chapter 23.1-04, generated from the combustion or gasification of municipal waste and from industrial and manufacturing processes. The term does not include municipal waste or special waste.
5. "Infectious waste" means solid waste that may contain pathogens with sufficient virulence and in sufficient quantity that exposure of a susceptible human or animal to the solid waste could cause the human or animal to contract an infectious disease.
6. "Landfill" means a publicly or privately owned area of land where solid wastes are permanently disposed.
7. "Litter" means discarded and abandoned solid waste materials that are not special waste or industrial waste.
8. "Major appliance" means an air conditioner, clothes dryer, clothes washer, dishwasher, freezer, microwave oven, oven, refrigerator, stove, furnace, water heater, humidifier, dehumidifier, garbage disposal, trash compactor, or similar appliance.

- 1        9. "Municipal waste" means solid waste that includes garbage; refuse; and trash  
2        generated by households, motels, hotels, recreation facilities, public and private  
3        facilities; and commercial, wholesale, private, and retail businesses. The term does  
4        not include special waste or industrial waste.
- 5        10. "Open burning" means the combustion of solid waste without control of combustion air  
6        to maintain adequate temperature for efficient combustion, containment of the  
7        combustion reaction in an enclosed device to provide sufficient residence time and  
8        mixing for complete combustion, and control of the emission of the combustion  
9        products.
- 10       11. "Political subdivision" means a city, county, township, or solid waste management  
11       authority.
- 12       12. "Resource recovery" means the use, reuse, or recycling of materials, substances,  
13       energy, or products contained within or derived from solid waste.
- 14       13. "Solid waste" means any garbage; refuse; sludge from a waste treatment plant, water  
15       supply treatment plant, or air pollution control facility; and other discarded material,  
16       including solid, liquid, semisolid, or contained gaseous material resulting from  
17       industrial, commercial, mining, and agricultural operations, and from community  
18       activities. The term does not include:
- 19       a. Agricultural waste, including manures and crop residues, returned to the soil as  
20       fertilizer or soil conditioners; or
- 21       b. Solid or dissolved materials in domestic sewage, or solid or dissolved material in  
22       irrigation return flows or industrial discharges that are point sources subject to  
23       permits under section 402 of the Federal Water Pollution Control Act, as  
24       amended [Pub. L. 92-500; 86 Stat. 816; 33 U.S.C. 1251 et seq.], or source,  
25       special nuclear, or byproduct material as defined by the Atomic Energy Act of  
26       1954, as amended [68 Stat. 919; 42 U.S.C. 2011 et seq.].
- 27       14. "Solid waste management" means the purposeful systematic control of the storage,  
28       collection, transport, composting, resource recovery, land treatment, and disposal of  
29       solid waste.
- 30       15. "Special waste" means solid waste that is not a hazardous waste regulated under  
31       chapter 23.1-04 and includes waste generated from energy conversion facilities; waste

1           from crude oil and natural gas exploration and production; waste from mineral and ore  
2           mining, beneficiation, and extraction; and waste generated by surface coal mining  
3           operations. The term does not include municipal waste or industrial waste.

4    16.   "Storage" means the containment and holding of solid waste after generation for a  
5           temporary period, at the end of which the solid waste is processed for resource  
6           recovery, treated, disposed of, or stored elsewhere.

7    17.   "Transport" means the offsite movement of solid waste.

8       **23.1-08-03. Powers and duties of the department.**

9       The department shall:

- 10      1.   Administer and enforce the state solid waste management program under this chapter.
- 11      2.   Provide technical assistance on request to political subdivisions of the state and  
12           cooperate with appropriate federal agencies in carrying out the duties under this  
13           chapter. On request, the department may provide technical assistance to other  
14           persons.
- 15      3.   Encourage and recommend procedures for using self-financing solid waste  
16           management systems and intermunicipal agencies.
- 17      4.   Promote the planning and application of resource recovery facilities and systems that  
18           preserve and enhance the quality of air, water, and all resources.
- 19      5.   Serve as the official state representative for all purposes of the Federal Solid Waste  
20           Disposal Act [Pub. L. 89-272; 79 Stat. 997; 42 U.S.C. 6901 et seq.], as amended, and  
21           for other state or federal legislation to assist in the management of solid wastes.
- 22      6.   Survey the solid waste management needs within the state and maintain and upgrade  
23           the North Dakota solid waste management plan.
- 24      7.   Require any person within the state to submit for review and approval a solid waste  
25           management plan to show that solid wastes will be disposed of in accordance with the  
26           provisions of this chapter.
- 27      8.   Adopt and enforce rules governing solid waste management to conserve the air, water,  
28           and land resources of the state; protect the public health; prevent environmental  
29           pollution and public nuisances; and enable the department to administer this chapter,  
30           the adopted solid waste management plan, and delegated federal programs.

- 1        9. Establish procedures for permits governing the design, construction, operation, and  
2        closure of solid waste management facilities and systems.
- 3        10. Prepare, issue, modify, revoke, and enforce orders, after investigation, inspection,  
4        notice, and hearing, prohibiting violation of this chapter or of any rules issued under  
5        this chapter, and requiring remedial measures for solid waste management as may be  
6        necessary or appropriate under this chapter.
- 7        11. Adopt rules to establish categories and classifications of solid waste and solid waste  
8        management facilities based on waste type and quantity, facility operation, or other  
9        facility characteristics and to limit, restrict, or prohibit the disposal of solid wastes  
10       based on environmental or public health rationale.
- 11       12. Adopt rules to establish standards and requirements for each category of solid waste  
12       management facility.
- 13       13. Adopt rules to establish financial assurance requirements to be met by any person  
14       proposing construction or operation of a solid waste management facility sufficient to  
15       provide for closure and postclosure activities. Financial assurance requirements may  
16       include: insurance, trust funds, surety bonds, letters of credit, personal bonds,  
17       certificates of deposit, and financial tests or corporate guarantees.
- 18       14. Conduct an environmental compliance background review of any applicant for any  
19       permit. In conducting the review, if the department finds an applicant for a permit has  
20       intentionally misrepresented or concealed any material fact from the department, or  
21       has obtained a permit by intentional misrepresentation or concealment of a material  
22       fact, has been convicted of a felony or pleaded guilty or nolo contendere to a felony  
23       within three years preceding the application for the permit, or has been adjudicated in  
24       contempt of an order of any court within three years preceding the application for the  
25       permit, the department may deny the application. The department shall consider the  
26       relevance of the offense to the business to which the permit is issued, the nature and  
27       seriousness of the offense, the circumstances under which the offense occurred, the  
28       date of the offense, and the ownership and management structure in place at the time  
29       of the offense.

1       **23.1-08-04. Coal combustion residues - Present use and disposal deemed acceptable.**

2       Notwithstanding any other provision of law, the legislative assembly deems the present use  
3 and disposal of coal combustion residues to be acceptable and that present regulation allows  
4 for the beneficial use of coal combustion residues in concrete, for other construction  
5 applications, and for other innovative uses and allows for safe disposal without coal combustion  
6 residues being regulated as a hazardous waste. If a federal law or regulation is adopted  
7 pertaining to the use and disposal of coal combustion residues, this section does not prohibit  
8 the state from seeking state primacy of the federal program.

9       **23.1-08-05. Commercial oilfield special waste recycling facilities - Action against well**  
10 **operators restricted.**

- 11       1. By June 1, 2015, the department shall select at least one commercial oilfield special  
12 waste recycling facility having a pending beneficial use application, for authorization of  
13 operation of the facility as a pilot project and to assist the department to develop  
14 standards for recycling of oilfield special waste. The pending beneficial use application  
15 of the pilot project facility must be supported by scientific findings from a third-party  
16 source focused on the anticipated environmental performance of the end products of  
17 the recycled oilfield special waste and the practical utility of those end products.
- 18       2. Any pilot project facility and any commercial oilfield special waste recycling facility  
19 permitted after June 30, 2017, shall obtain a solid waste permit from the department  
20 and a treating plant permit from the industrial commission for treatment of oilfield  
21 special waste.
- 22       3. Any selected pilot project facility may operate as an oilfield special waste recycling  
23 facility through June 30, 2017, and may implement beneficial use demonstration  
24 projects using processed materials under the guidance of the department. A selected  
25 pilot project facility operator shall cooperate with the department to monitor and  
26 analyze impacts to the environment.
- 27       4. By July 1, 2017, based upon the results of any pilot projects, the department shall  
28 make recommendations either to adopt rules under chapter 28-32 governing  
29 operations and permitting of commercial oilfield special waste recycling facilities, or to  
30 develop written guidelines on recycling and beneficial use of oilfield special waste  
31 under the department's beneficial use approval process. The rules or guidelines must

assure compliance with federal and state laws and rules for protection of the state's water and air and public health in the handling and subsequent use of oilfield special waste.

5. Upon presentation of official credentials, an employee authorized by the department may:

a. Examine the premises and facilities and copy books, papers, records, memoranda, or data of a commercial oilfield special waste recycling facility.

b. Enter upon public or private property to take action authorized by this chapter and rules adopted under this chapter, including obtaining information from any person, conducting surveys and investigations, and taking corrective action.

6. The operator of the commercial oilfield special waste recycling facility is liable for the cost of any inspection and corrective action required by the department.

7. As a condition of permitting, the department may require the operator of a commercial oilfield special waste recycling facility to post a bond or other financial assurance payable to the state in a sufficient amount for remediation of any release or disposal of oilfield special waste in violation of the rules of the department, on the premises or property of the facility or at a place where treated or untreated materials from the facility are taken for use or disposal.

8. As used in this section:

a. "Commercial oilfield special waste recycling facility" means a commercial recycling facility permitted, or a commercial recycling facility pilot project authorized, under this section for extraction of reusable solids and fluids from any or all types of oilfield special waste.

b. "Drilling operation" means oil and gas drilling and production operations and any associated activities that generate oilfield special waste.

c. "Oilfield special waste" means special waste associated with oil and gas drilling operations, exploration, development, or production and specifically includes drill cuttings, saltwater, and other solids and fluids from drilling operations.

9. Upon delivery of oilfield special waste to a commercial oilfield special waste recycling facility that is permitted or authorized to conduct recycling operations under this section and is not affiliated with the well operator, acceptance of the oilfield special

1 waste by the recycling facility, and after the oilfield special waste has been treated and  
2 converted to a beneficial use as a usable product or legitimate substitute for a usable  
3 product, the well operator is not liable in any civil or criminal action for any subsequent  
4 claim or charge regarding the material converted to a beneficial use.

5 **23.1-08-06. Local government ordinances.**

6 Any political subdivision of the state may enact and enforce a solid waste management  
7 ordinance that is equal to or more stringent than this chapter and the rules adopted under this  
8 chapter.

9 **23.1-08-07. Littering and open burning prohibited - Penalty.**

- 10 1. A person may not discard and abandon litter, furniture, or major appliances upon  
11 public property or upon private property not owned by that person, unless the property  
12 is designated for the disposal of litter, furniture, or major appliances and that person is  
13 authorized to use the property for that purpose.
- 14 2. A person may not engage in the open burning of solid waste, unless the burning is  
15 conducted in accordance with rules adopted by the department.
- 16 3. A person violating this section is guilty of an infraction for which a minimum fine of two  
17 hundred dollars must be imposed, except if the litter discarded and abandoned  
18 amounted to more than one cubic foot [0.0283 cubic meter] in volume or if the litter  
19 consisted of furniture or a major appliance, the offense is a class B misdemeanor and  
20 the person is subject to the civil penalty provided in section 23.1-08-23.

21 **23.1-08-08. Prohibition in landfill disposal - Lead-acid batteries accepted as trade-ins.**

- 22 1. Infectious waste must be properly treated before disposal by methods approved by the  
23 department. A person may not knowingly deposit in a landfill untreated infectious  
24 waste.
- 25 2. Except as provided in subsection 3, a person may not place in municipal waste or  
26 discard or dispose of in a landfill lead-acid batteries, used motor oil, or major  
27 appliances.
- 28 3. If resource recovery markets are not available for the items listed in subsection 2, the  
29 items must be disposed of in a manner approved by the department.
- 30 4. Lead-acid batteries must be accepted as trade-ins for new lead-acid batteries by any  
31 person who sells lead-acid batteries at retail.

**23.1-08-09. Permits.**

1. The department may issue permits for solid waste management facilities and solid waste transporters. A person may not own, operate, or use a facility for solid waste disposal or transport solid wastes without a valid permit. Upon receipt of a permit application, the department shall give public notice, in the official newspaper of the county in which the facility is to be located, that the department is considering an application for a solid waste management facility. The notice must state the name of the applicant, the location of the facility, and a description of the facility. The department shall require as a condition of a permit for a solid waste management facility, not owned or operated by the state or a political subdivision, that any entity that controls the permitholder agrees to accept responsibility for any remedial measures, closure and postclosure care, or penalties incurred by the permitholder. For purposes of this section, "control" means ownership or control, directly, indirectly, or through the actions of one or more persons of the power to vote twenty-five percent or more of any class of voting shares of a permitholder, or the direct or indirect power to control in any manner the election of a majority of the directors of a permitholder, or to direct the management or policies of a permitholder, whether by individuals, corporations, partnerships, trusts, or other entities or organizations of any type. All permits are nontransferable, are for a term of not more than ten years from the date of issuance, and are conditioned upon the observance of the laws of the state and the rules adopted under this chapter.
2. For each permit application, the department shall notify the board of county commissioners of a county in which a new solid waste management facility will be located of the department's intention to issue a permit for the facility. The board of county commissioners may call a special election to be held within sixty days after receiving notice from the department to allow the qualified electors of the county to vote to approve or disapprove of the facility based on public interest and impact on the environment. If a majority of the qualified electors voting on the question in the election vote to disapprove of the facility, the department may not issue the permit and the facility may not be located in that county.

1       3. Notwithstanding subsection 2, if the new solid waste management facility will be  
2       owned or operated by a solid waste management authority, a special election to  
3       approve or disapprove of a facility may be called only if the boards of county  
4       commissioners from a majority of the counties in the solid waste management district  
5       call for a special election. However, a special election must be conducted in each  
6       county within the authority. If a majority of the qualified electors voting on the question  
7       in the election vote to disapprove of the facility, the department may not issue the  
8       permit.

9       4. Subsections 2 and 3 do not apply to a solid waste management facility operated as  
10       part of an energy conversion facility or part of a surface coal mining and reclamation  
11       operation, if the solid waste management facility disposes of only waste generated by  
12       the energy conversion facility or surface coal mining and reclamation operation.

13       **23.1-08-10. Fees - Deposit in operating fund.**

14       The department by rule may prescribe the payment and collection of reasonable fees to  
15       issue permits or registration certificates for registering, licensing, or permitting solid waste  
16       generators, transporters, and treatment, storage, recycling, or disposal facilities. The fees must  
17       be based on the anticipated cost of filing and processing the application, taking action on the  
18       requested permit or registration certificate, and conducting a monitoring and inspection program  
19       to determine compliance or noncompliance with the permit or registration certificate. Any  
20       moneys collected for permit licensing or registration fees must be deposited in the department  
21       operating fund in the state treasury, and any expenditures from the fund are subject to  
22       appropriation by the legislative assembly. Applicants for special use solid waste management  
23       facilities shall submit a minimum fee as follows:

24       1. Twenty thousand dollars for any facility that receives on average one hundred tons  
25       [90718 kilograms] or more per day.

26       2. Ten thousand dollars for any facility which receives on average more than ten tons  
27       [9071.80 kilograms] but less than one hundred tons [90718 kilograms] per day.

28       **23.1-08-11. Solid waste management fund - Administration.**

29       The solid waste management fund is a special fund in the state treasury. The Bank of North  
30       Dakota shall administer the fund. The fund is a revolving fund, subject to appropriation by the  
31       legislative assembly. The Bank may annually deduct up to one-half of one percent of the fund

balance including the principal balance of the outstanding loans as a service fee for administering the fund. The Bank shall contract with a certified public accounting firm to audit the fund once every two years. The cost of the audit and any other actual costs incurred by the Bank on behalf of the fund must be paid from the fund. Section 54-44.1-11 does not apply to the fund.

**23.1-08-12. Applications for grants or loans - Loan terms.**

Moneys in the solid waste management fund may be used to make grants or low-interest loans to political subdivisions for waste reduction, planning, resource recovery, and recycling projects with an emphasis on marketing. An application for a grant or loan out of moneys in the solid waste management fund must be made to the department. The department shall review an application to determine if the purpose of the grant or loan is consistent with the purposes of the fund and the district solid waste management plan. The department shall adopt rules to implement this section. If the department approves an application, the department shall forward the application and the results of the department's review of the application to the Bank of North Dakota. The Bank, in consultation with the department, shall determine the financial criteria that must be met for an application to be approved. A loan must be repaid within a period not exceeding twenty years at an interest rate of four percent.

**23.1-08-13. Preconstruction site review.**

The department, in cooperation with the state engineer and the state geologist, shall develop criteria for siting a solid waste disposal facility based upon potential impact on environmental resources. Any application for a landfill permit received after the department develops siting criteria as required by this section must be reviewed for site suitability by the department after consultation with the state engineer and state geologist before any site development. Site development does not include the assessment or monitoring associated with the review as required by the department in consultation with the state engineer and state geologist.

**23.1-08-14. Waste characterization.**

The department may not allow the storage or disposal of solid waste from outside this state, unless it is demonstrated that the governing authority or the generator of the solid waste from outside this state has an effective program for waste quality control and for waste characterization.

1       **23.1-08-15. Municipal waste landfills and incinerators - Certification.**

2       A municipal waste landfill and a municipal waste incinerator must have at least one  
3 individual certified by the department onsite at all times during the operation of the landfill or  
4 incinerator. The department shall adopt training standards and certification requirements.

5       **23.1-08-16. Public educational materials - Municipal waste reduction and recycling.**

6       The department, after consulting with the superintendent of public instruction, shall develop  
7 and disseminate educational materials to encourage voluntary municipal waste reduction,  
8 source separation, reuse of materials, recycling efforts, and appropriate management of  
9 municipal waste.

10       **23.1-08-17. Disclosure of information before issuance, renewal, transfer, or major**  
11 **modification of permit.**

12       Before an application for the issuance, renewal, transfer, or major modification of a permit  
13 under this chapter may be granted, the applicant shall submit to the department a disclosure  
14 statement executed under oath or affirmation. The department shall verify and may investigate  
15 the information in the statement and shall deny an application for the issuance, renewal,  
16 transfer, or major modification of a permit if the applicant has intentionally misrepresented or  
17 concealed any material fact in a statement required under this section, a judgment of criminal  
18 conviction for violation of any federal or state environmental laws has been entered against the  
19 applicant within five years before the date of submission of the application, or the applicant has  
20 knowingly and repeatedly violated any state or federal environmental protection laws. The  
21 disclosure statement must include:

- 22       1.   The name and business address of the applicant.
- 23       2.   A description of the applicant's experience in managing the type of solid waste that will  
24       be managed under the permit.
- 25       3.   A description of every civil and administrative complaint against the applicant for the  
26       violation of any state or federal environmental protection law which has resulted in a  
27       fine or penalty of more than ten thousand dollars within five years before the date of  
28       the submission of the application.
- 29       4.   A description of every pending criminal complaint alleging the violation of any state or  
30       federal environmental protection law.

1        5. A description of every judgment of criminal conviction entered against the applicant  
2        within five years before the date of submission of the application for the violation of  
3        any state or federal environmental protection law.

4        6. A description of every judgment of criminal conviction of a felony constituting a crime  
5        involving fraud or misrepresentation which has been entered against the applicant  
6        within five years before the date of submission of the application.

7        **23.1-08-18. Inspections.**

8        The department may inspect all solid waste management activities and facilities, at all  
9        reasonable times, to ensure compliance with the laws of this state, the provisions of this  
10       chapter, and the rules authorized under this chapter.

11       **23.1-08-19. Administrative procedure and judicial review.**

12       A proceeding under this chapter to adopt or modify rules, including emergency orders  
13       relating to solid waste management and land protection, or determine compliance with rules of  
14       the department, must be conducted in accordance with the provisions of chapter 28-32, and  
15       appeals may be taken as provided under that chapter. When an emergency exists requiring  
16       immediate action to protect the public health and safety, the department may, without notice or  
17       hearing, issue an order reciting the existence of the emergency and requiring action be taken as  
18       necessary to meet the emergency. Notwithstanding any provision of this chapter, the order is  
19       effective immediately, but on application to the department must be afforded a hearing before  
20       the environmental review advisory council within ten days. On the basis of the hearing, the  
21       emergency order must be continued, modified, or revoked within thirty days after the hearing.

22       **23.1-08-20. Injunction proceedings.**

23       The violation of any provision of this chapter, or any rule or order issued under the chapter  
24       is declared a nuisance inimical to the public health, welfare, and safety. Whenever in the  
25       judgment of the department a person has engaged in or is about to engage in any acts that  
26       constitute or will constitute a violation of this chapter, or any rule or order issued under the  
27       chapter, the department, in accordance with the laws governing injunctions and other process,  
28       may maintain an action in the name of the state enjoining the action or for an order directing  
29       compliance, and upon a showing by the department that the person has engaged or is about to  
30       engage in the acts or practices, a permanent or temporary injunction, restraining order, or other  
31       order may be granted.

1       **23.1-08-21. Plats.**

2       A person operating a solid waste management facility for disposal under a permit issued  
3 under this chapter shall, upon completion of the operation at each site, file a plat of the area  
4 with the recorder of each county in which the facility is located, together with a description of the  
5 wastes placed therein.

6       **23.1-08-22. Exemption.**

7       The provisions of this chapter, and the rules or orders authorized under the chapter, do not  
8 prevent an individual who resides on unplatted land in unincorporated areas of this state from  
9 disposing of that individual's normal household wastes on that individual's property, so long as  
10 doing so does not create a health hazard or nuisance.

11       **23.1-08-23. Penalties.**

12       1. Any person that violates this chapter or any permit condition, rule, order, limitation, or  
13 other applicable requirement implementing this chapter is subject to a civil penalty not  
14 to exceed twelve thousand five hundred dollars per day per violation, unless the  
15 penalty for the violation is otherwise specifically provided for and made exclusive in  
16 this chapter.

17       2. Any person that willfully violates any provision of this chapter or any permit condition,  
18 rule, order, limitation, or other applicable requirement implementing this chapter is  
19 guilty of a class C felony, unless the penalty for the violation is otherwise specifically  
20 provided for and made exclusive in this chapter.

21       3. Any person that willfully makes any false statement, representation, or certification in  
22 any application, record, report, plan, or other document filed or required to be  
23 maintained under this chapter or any permit condition, rule, order, limitation, or other  
24 applicable requirement implementing this chapter or that falsifies, tampers with, or  
25 willfully renders inaccurate any monitoring device or method required to be maintained  
26 under this chapter or any permit condition, rule, order, limitation, or other applicable  
27 requirement implementing this chapter is guilty of a class C felony, unless the penalty  
28 for the violation is otherwise specifically provided for and made exclusive in this  
29 chapter.

30       **SECTION 24.** Chapter 23.1-09 of the North Dakota Century Code is created and enacted  
31 as follows:

1       **23.1-09-01. Definitions.**

2       As used in this chapter, unless the context otherwise requires:

3       1. "Actually incurred" means in the case of corrective action expenditures, the owner, the  
4       operator, an insurer of the owner or operator, or a contractor hired by the owner,  
5       operator, or insurer has made a payment, or a contractor has expended time and  
6       materials.

7       2. "Corrective action" means an action taken to minimize, contain, eliminate, remediate,  
8       mitigate, or clean up a release, including any remedial emergency measures. The  
9       term includes the repair of the closure of a municipal waste landfill on which the action  
10      occurs.

11      3. "Department" means the department of environmental quality.

12      4. "Fund" means the municipal waste landfill release compensation fund.

13      5. "Operator" means any person in control of, or having responsibility for, the daily  
14      operation of a municipal waste landfill under this chapter.

15      6. "Owner" means any person who holds title to, controls, or possesses an interest in the  
16      municipal waste landfill before or after the discontinuation of its use.

17      7. "Release" means any unintentional leaking, emitting, discharging, or escaping of  
18      leachate from a municipal waste landfill into the environment occurring after July 1,  
19      1993, but does not include discharges or designed venting allowed under federal or  
20      state law or under adopted rules.

21      **23.1-09-02. Municipal waste landfill release fund created - Administration of fund.**

22      A municipal waste landfill release compensation fund is created and the department shall  
23      administer the fund according to this chapter. The department may employ any assistance and  
24      staff to administer the fund within the limits of legislative appropriation.

25      **23.1-09-03. Adoption of rules.**

26      The department shall adopt rules regarding its practices and procedures, the form and  
27      procedure for applications for compensation from the fund, procedures for investigation of  
28      claims, procedures for determining the amount and type of costs eligible for reimbursement  
29      from the fund, and procedures for persons to perform services for the fund.

1       **23.1-09-04. Release discovery.**

2       An owner or operator shall notify the department if it has reason to believe that a release  
3 has occurred. The department may require corrective action as provided by subsection 10 of  
4 section 23.1-08-03.

5       **23.1-09-05. Owner or operator not identified.**

6       The department may initiate legal action to compel performance of a corrective action if an  
7 identified owner or operator fails or refuses to comply with section 23.1-09-04, or the  
8 department may engage the services of qualified contractors for performance of a corrective  
9 action if an owner or operator cannot be identified.

10       **23.1-09-06. Imminent hazard.**

11       Upon receipt of information that a release has occurred which may present an imminent or  
12 substantial endangerment of public health or environmental resources, the department may  
13 take such emergency action as it determines necessary to protect the public health or the  
14 environmental resources.

15       **23.1-09-07. Duty to take action.**

16       Nothing in this chapter limits any person's duty to take action related to a release. However,  
17 payment for corrective actions required as a result of a release is governed by this chapter.  
18 Nothing in this chapter limits remediation activities taken or directed by any state or federal  
19 agency under other environmental statutes.

20       **23.1-09-08. Providing of information.**

21       A person that the department has reason to believe is an owner or operator, or the owner of  
22 real property where corrective action is ordered to be taken, or a person that may have  
23 information concerning wastes placed into a municipal waste landfill, or a person that may have  
24 information concerning a release, if requested by the department, must furnish to the  
25 department any information that person has or may reasonably obtain which is relevant to the  
26 release.

27       **23.1-09-09. Examination of records.**

28       An employee of the department may, upon presentation of official credentials:

- 29       1. Examine and copy books, papers, records, memoranda, or data that may be related to  
30 a release which belong to a person that has a duty to provide information to the  
31 department under section 23.1-09-08; and

2. Enter upon public or private property for the purpose of taking action authorized by this section, including obtaining information from any person that has a duty to provide the information under section 23.1-09-08, conducting surveys and investigations, and taking corrective action.

**23.1-09-10. Responsibility for cost.**

The owner or operator is liable for the cost of corrective action required by the department, including the cost of investigating the releases, and for legal actions of the department regarding the release. This chapter does not create any new cause of action for damages on behalf of third parties against the fund.

**23.1-09-11. Liability avoided.**

An owner or operator may not avoid liability under this chapter or other state environmental law by means of a conveyance of any right, title, or interest in real property or by an indemnification, hold harmless agreement, or similar agreement. However, the provisions of this chapter do not:

1. Prohibit a person that may be liable from entering an agreement by which the person is insured or is a member of a risk retention group, and is thereby indemnified for part or all of the liability;
2. Prohibit the enforcement of an insurance, hold harmless, or indemnification agreement; or
3. Bar a cause of action by a person that may be liable or by an insurer or guarantor, whether by right of subrogation or otherwise.

**23.1-09-12. Other remedies.**

Nothing in this chapter limits the powers of the department, or precludes the pursuit of any administrative, civil, injunctive, or criminal remedies by the department or any other person. Administrative remedies need not be exhausted to proceed under this chapter. The remedies provided by this chapter are in addition to those provided under existing statutory or common law.

**23.1-09-13. Revenue to the fund.**

Revenue from the following sources must be deposited in the state treasury and credited to the fund:

1. Any premium fee collected under section 23.1-09-15;

2. Any money recovered by the fund under section 23.1-09-20, and any money paid under an agreement, stipulation, or settlement;
3. Any interest attributable to investment of money in the fund; and
4. Any money received by the department in the form of gifts, grants, reimbursements, or appropriations from any source intended to be used for the purposes of the fund.

**23.1-09-14. Eligibility.**

1. An owner or operator of an active disposal unit at a municipal waste landfill site, or of a new disposal unit allowed by permit under chapter 23.1-08, shall participate in the fund for that unit provided:
  - a. The disposal unit is designed, constructed, operated, and closed to comply with federal and state statutes and adopted rules in effect as of October 9, 1993;
  - b. The owner or operator has notified the board of the local solid waste management district, and the board has acknowledged and approved the municipal waste landfill site to comply with chapter 23.1-08; and
  - c. The owner or operator pays the annual premium fee under section 23.1-09-15 during the duration of operation of the landfill site, except as provided by section 23.1-09-22.
2. An owner or operator that does not comply with this section or with section 23.1-09-15 is ineligible for reimbursement of claims for corrective action.

**23.1-09-15. Premium fee.**

1. An owner or operator of a municipal waste landfill site that is eligible and participates in the fund shall:
  - a. Notify the department, on forms to be made available by the department, of its intent to participate in the fund at the time of application for permit under chapter 23.1-08 for new disposal units;
  - b. Demonstrate that the disposal unit and the landfill site comply with applicable laws and rules; and
  - c. Pay an annual premium fee of one dollar per ton [907.18 kilograms] or thirty-three cents per cubic yard [0.76 cubic meter] for all solid waste disposed at the landfill site during the premium fee period.

2. The premium fee is payable annually by January thirtieth for a premium fee period corresponding to the previous calendar year.

3. The premium fees collected under this section must be paid to the department for deposit in the state treasury for credit to the fund.

**23.1-09-16. Reimbursement for corrective action.**

The department shall reimburse an eligible owner or operator for the costs of corrective action, including the investigation, which are greater than one hundred thousand dollars. A reimbursement may not be made unless the department determines that:

1. At the time the release was discovered the owner or operator and the landfill site were in compliance with applicable federal and state statutes and adopted rules, including rules relating to financial responsibility;

2. The department was given notice of the release as required by this chapter and other applicable federal and state statutes;

3. The release occurred from the active disposal unit or a new disposal unit under section 23.1-09-14;

4. The owner or operator has paid the first one hundred thousand dollars of cost of corrective action; and

5. The owner or operator, to the extent possible, fully cooperated with the department in responding to the release.

**23.1-09-17. Application for reimbursement.**

An eligible owner or operator that has undertaken corrective action in response to a release, the time of release being unknown, may apply to the department for partial or full reimbursement under section 23.1-09-16 and applicable rules. An owner or operator may be reimbursed only for releases discovered and reported after April 1, 1994.

**23.1-09-18. Department to determine costs.**

A reimbursement may not be made from the fund until the department has determined the costs for which reimbursement is requested were actually incurred and were reasonable. A reimbursement may be made to only one person for a release.

**23.1-09-19. Liability of responsible person.**

The right to apply for reimbursement and the receipt of reimbursement does not limit the liability of an owner or operator for damages or costs as a result of a release.

1       **23.1-09-20. Recovery of expenses.**

2       Any reasonable and necessary expenses incurred by the fund as provided by sections  
3 23.1-09-05, 23.1-09-06, 23.1-09-09, and 23.1-09-10 in taking corrective action, including costs  
4 of investigating a release, and in taking legal actions may be recovered in a civil action in district  
5 court brought by the department against the owner or operator. The certification of expenses by  
6 an approved agent of the fund is prima facie evidence that the expenses are reasonable and  
7 necessary. Any expenses that are recovered under this section must be deposited in the fund.

8       **23.1-09-21. Coordination of benefits.**

9       If an eligible owner or operator has financial assurance that provides coverage for  
10 corrective action, the department shall pay the share of the covered loss or damage for which  
11 the fund is responsible. The share that must be paid from the fund is equal to the proportion that  
12 the applicable limit of coverage under the fund bears to the limits of all financial assurance on  
13 the same basis.

14       **23.1-09-22. Fund ceiling.**

15       When the fund balance exceeds fifteen million dollars, the department shall suspend  
16 collection of the premium fee. When the fund balance becomes less than five million dollars  
17 through appropriations authorized by this chapter, the department shall resume collection of the  
18 fee.

19       **23.1-09-23. Fund appropriation.**

20       Money in the fund is appropriated to the department as a standing and continuing  
21 appropriation for the purposes of this chapter.

22       **SECTION 25.** Chapter 23.1-10 of the North Dakota Century Code is created and enacted  
23 as follows:

24       **23.1-10-01. Environmental emergency cost recovery.**

25       Except as provided in section 23.1-04-17, the department of environmental quality may  
26 recover from the parties responsible for an environmental emergency the reasonable and  
27 necessary state costs incurred in assessment, removal, corrective action, or monitoring as a  
28 result of an environmental emergency in violation of chapter 23.1-03, 23.1-04, 23.1-06, 23.1-08,  
29 61-28, or 61-28.1. As used in this chapter, "environmental emergency" means a release into the  
30 environment of a substance requiring an immediate response to protect public health or welfare  
31 or the environment from an imminent and substantial endangerment and which is in violation of

chapter 23.1-03, 23.1-04, 23.1-06, 23.1-08, 61-28, or 61-28.1, and "reasonable and necessary costs" means those costs incurred by the department as a result of the failure of the parties responsible for the environmental emergency to implement appropriate assessment and corrective action after receipt of written notice from the department. If assessment, removal, monitoring, or corrective action must be initiated before identification of the responsible parties, the department may assess those prior costs to the responsible parties at the time they are identified.

**23.1-10-02. Environmental quality restoration fund.**

There is established an environmental quality restoration fund into which the funds recovered in this chapter may be deposited. The fund is to be administered by the department of environmental quality and may be used by the department for costs of environmental assessment, removal, corrective action, or monitoring as determined on a case-by-case basis.

**23.1-10-03. Rules adoption.**

The department of environmental quality may adopt rules to implement this chapter.

**SECTION 26.** Chapter 23.1-11 of the North Dakota Century Code is created and enacted as follows:

**23.1-11-01. Degradation prevention program - Maintenance of waters.**

This chapter establishes a degradation prevention program to protect ground water resources, encourage the wise use of agricultural chemicals, provide for public education regarding preservation of ground water resources, and provide for safe disposal of wastes in a manner that will not endanger the state's ground water resource. Waters of the state must be maintained within standards established under this chapter unless it can be affirmatively demonstrated that a change in quality is justifiable to provide necessary economic or social development and will not adversely affect the beneficial uses of water.

**23.1-11-02. Administration of chapter.**

The department of environmental quality shall administer this chapter. For purposes of this chapter, "commissioner" means the agriculture commissioner and "department" means the department of environmental quality. Notwithstanding section 4-35-06, the agriculture commissioner shall administer chapter 4-35 as it relates to pesticide usage.

1       **23.1-11-03. Education program.**

2       The department, the commissioner, the North Dakota state university extension service,  
3       and the North Dakota agricultural experiment station shall cooperate with other state and  
4       federal agencies on the development of a ground water protection education program.

5       **23.1-11-04. Chemical use data and confidentiality requirement.**

6       The department may require chemical use data from product registrants on products that  
7       have been or may likely be found in ground water to conduct its ground water protection  
8       program. This information must include chemical registration data and sales information. The  
9       department shall keep this information confidential.

10       **23.1-11-05. Ground water standards.**

11       The department shall establish standards for compounds in ground water as set forth by  
12       other states and the United States environmental protection agency unless new scientifically  
13       confirmed data provides justification for changing these standards.

14       **23.1-11-06. Ground water quality monitoring.**

15       The department shall conduct ground water quality monitoring activities in cooperation with  
16       the state engineer and other state agencies. Based on monitoring results, the department shall  
17       implement or require appropriate mitigation activities or remedial action to prevent future  
18       contamination of ground water. The commissioner may implement or require appropriate  
19       mitigation activities pursuant to chapter 4-35 to prevent future contamination of ground water as  
20       it relates to the use of pesticides.

21       **23.1-11-07. Notification requirement.**

22       A person with verifiable information on the presence of contamination of ground water within  
23       the state shall notify the department regarding the contamination.

24       **23.1-11-08. Access for ground water monitoring.**

25       The department may request landowners or operators allow access for monitoring of  
26       ground water and of soils at a depth where pesticides may threaten ground water. If the  
27       department is denied access by the landowner or operator, the department may apply to any  
28       court of competent jurisdiction for authorization to obtain access. The court, upon the  
29       application and compliance with chapter 29-29.1, may issue the authorization for the purposes  
30       requested. After consultation with the landowner or operator, the department shall conduct the  
31       monitoring in a manner that causes the least possible economic impact or hindrance to the

landowner's or operator's operations. The names and addresses of landowners and operators who participate in a ground water monitoring program may not be linked, in any public disclosure, to the findings of the program unless it is determined by rule that a compelling public interest justifies the disclosure. Without that determination, disclosure of the information is a violation of section 12.1-13-01.

**23.1-11-09. Pollution prevention criteria.**

The commissioner, in cooperation with the department, North Dakota state university extension service, and the North Dakota agricultural experiment station, may develop pollution prevention criteria for areas utilized for mixing and storing agricultural chemicals at the retail and end use levels.

**23.1-11-10. Wellhead protection program.**

The department, in cooperation with the state engineer and state geologist, shall assist in implementing a public water supply wellhead protection program for protection of ground water resources utilizing existing state and local statutory authority.

**23.1-11-11. Rules.**

The department, with the approval of the commissioner and the state engineer, shall adopt rules necessary for implementation of this chapter.

**23.1-11-12. Producer liability.**

Liability may not be imposed upon an agricultural producer for costs of active cleanup, or for any damage associated with or resulting from the detection in ground water, of a pesticide if the applicator has complied with label instructions and other precautions for application of the pesticide and the applicator has a valid appropriate applicator's certification. Compliance with these requirements may be raised as an affirmative defense by an agricultural producer.

**SECTION 27.** Chapter 23.1-12 of the North Dakota Century Code is created and enacted as follows:

**23.1-12-01. Petroleum tank release compensation fund - Established.**

A petroleum tank release compensation fund is established.

**23.1-12-02. Definitions.**

As used in this chapter, unless the context otherwise requires:

1. "Actually incurred" means, in the case of corrective action expenditures, the owner, operator, landowner, an insurer, or a contractor hired by the owner, operator, or the

1           landlord has expended time and materials, and only that person is receiving  
2           reimbursement from the fund.

3       2.   "Administrator" means the manager of the state fire and tornado fund.

4       3.   "Board" means the petroleum release compensation board.

5       4.   "Commissioner" means the insurance commissioner.

6       5.   "Corrective action" means an action required by the department to minimize, contain,  
7           eliminate, remediate, mitigate, or clean up a release, including any remedial  
8           emergency measures. The term does not include the repair or replacement of  
9           equipment or preconstructed property.

10      6.   "Dealer" means a person licensed by the tax commissioner to sell motor vehicle fuel or  
11           special fuels within the state.

12      7.   "Department" means the department of environmental quality.

13      8.   "Fund" means the petroleum release compensation fund.

14      9.   "Location" means a physical address or site that has contiguous properties.  
15           Noncontiguous properties within a municipality or other governmental jurisdiction are  
16           considered separate locations.

17      10.   "Operator" means a person in control of, or having responsibility for, the daily  
18           operation of a tank under this chapter.

19      11.   "Owner" means a person who holds title to, controls, or possesses an interest in the  
20           tank before the discontinuation of its use.

21      12.   "Petroleum" means any of the following:

22           a.   Gasoline and petroleum products as defined in chapter 23.1-13.

23           b.   Constituents of gasoline and fuel oil under subdivision a.

24           c.   Oil sludge and oil refuse.

25      13.   "Portable tank" means a storage tank along with its piping and wiring that is not  
26           stationary or affixed, including a tank that is on skids.

27      14.   "Release" means any unintentional spilling, leaking, emitting, discharging, escaping,  
28           leaching, or disposing of petroleum from a tank into the environment whether  
29           occurring before or after the effective date of this chapter, but does not include  
30           discharges or designed venting allowed under federal or state law or under adopted  
31           rules.

- 1       15. "Tank" means any one or a combination of containers, vessels, and enclosures,  
2       whether aboveground or underground, including associated piping or appurtenances  
3       used to contain an accumulation of petroleum. The term does not include:
- 4       a. Tanks owned by the federal government.  
5       b. Tanks used for the transportation of petroleum.  
6       c. A pipeline facility, including gathering lines:  
7           (1) Regulated under the Natural Gas Pipeline Safety Act of 1968.  
8           (2) Regulated under the Hazardous Liquid Pipeline Safety Act of 1979.  
9           (3) Regulated under state laws comparable to the provisions of law in  
10          paragraph 1 or 2, if the facility is an interstate pipeline facility.
- 11       d. An underground farm or residential tank with a capacity of one thousand one  
12       hundred gallons [4163.94 liters] or less or an aboveground farm or residential  
13       tank of any capacity used for storing motor fuel for noncommercial purposes.  
14       However, the owner of an aboveground farm or residential tank may, upon  
15       application, register the tank and be eligible for reimbursement under this  
16       chapter.
- 17       e. A tank used for storing heating oil for consumptive use on the premises where  
18       stored.
- 19       f. A surface impoundment, pit, pond, or lagoon.  
20       g. A flowthrough process tank.  
21       h. A liquid trap or associated gathering lines directly related to oil or gas production  
22       or gathering operations.
- 23       i. A storage tank situated in an underground area such as a basement, cellar, mine  
24       working, drift, shaft, or tunnel, if the storage tank is situated upon or above the  
25       surface of the floor.
- 26       j. A tank used for the storage of propane.  
27       k. A tank used to fuel rail locomotives or surface coal mining equipment.  
28       l. An aboveground tank used to feed diesel fuel generators. Upon application, the  
29       owner or operator of an aboveground tank used to feed diesel fuel generators  
30       may register the tank and is eligible for reimbursement under this chapter.
- 31       m. A portable tank.

n. A tank with a capacity under one thousand three hundred twenty gallons [4996.728 liters] used to store lubricating oil.

16. "Tank integrity test" means a test to determine that a tank is sound and not leaking. For an underground tank, the term means a certified third-party test that meets environmental protection agency leak detection requirements. For an aboveground tank, the term means a test conducted according to steel tank institute SP 001 or American petroleum institute 653.

17. "Third party" means a person who is damaged by the act of a registered owner, operator, or dealer requiring corrective action, or a person who suffers bodily injury or property damage caused by a petroleum release.

**23.1-12-03. Petroleum release compensation board.**

The petroleum release compensation advisory board shall review claims against the fund. The board consists of five members appointed by the governor, three of whom are active in petroleum marketing; one of whom is active in the petroleum, crude oil, or refining industry; and one of whom is active in the insurance industry. A member active in petroleum marketing must be appointed from a list of three recommended by the North Dakota retail petroleum marketers association. A member active in the petroleum, crude oil, or refining industry must be appointed from a list of three recommended by the North Dakota petroleum council. A member active in the insurance industry must be appointed from a list of three recommended by the North Dakota professional insurance agents association. Members must be appointed to terms of three years with the terms arranged so the term of at least one member, but no more than two members, expires June thirtieth of each year. A member shall hold office until a successor is duly appointed and qualified. Each member of the board is entitled to receive sixty-two dollars and fifty cents per diem for each day actually spent in the performance of official duties, plus mileage and expenses as allowed to other state officers.

**23.1-12-04. Administration of fund - Staff.**

The administrator shall administer the fund according to this chapter. The administrator shall convene the board as may be necessary to keep the board apprised of the fund's general operations. However, the board shall meet at least once each half of each calendar year to review and to advise the administrator regarding the administration of the fund, the fund's general operations, and to hear and decide denials of claims by the administrator which may be

1 appealed to the board, and to discuss all claims against the fund. The administrator may employ  
2 any assistance and staff necessary to administer the fund within the limits of legislative  
3 appropriation. A claimant aggrieved by a decision of the administrator regarding a claim upon  
4 the fund may appeal the decision to the board. The board may sustain, modify, or reverse the  
5 decision of the administrator. The claimant or the administrator may appeal the board's decision  
6 to the commissioner. The decision of the commissioner may be appealed under chapter 28-32.

7 **23.1-12-05. Adoption of rules.**

8 The administrator shall adopt rules regarding the practices and procedures of the fund, the  
9 form and procedure for applications for compensation from the fund, procedures for  
10 investigation of claims, procedures for determining the amount and type of costs that are  
11 eligible for reimbursement from the fund, procedures for persons to perform services for the  
12 fund, procedures for appeals to the board by claimants aggrieved by an adverse decision of the  
13 administrator, and any other rules as may be appropriate to administer this chapter.

14 **23.1-12-06. Release discovery.**

15 If the department has reason to believe a release has occurred, it shall notify the  
16 administrator. The department shall direct the owner or operator to take reasonable and  
17 necessary corrective actions as provided under federal or state law or under adopted rules.

18 **23.1-12-07. Owner or operator not identified.**

19 The department may cause legal action to be brought to compel performance of a  
20 corrective action if an identified owner or operator fails or refuses to comply with an order of the  
21 department, or the department may engage the services of qualified contractors for  
22 performance of a corrective action if an owner or operator cannot be identified.

23 **23.1-12-08. Imminent hazard.**

24 Upon receipt of information that a petroleum release has occurred which may present an  
25 imminent or substantial endangerment of health or the environment, the department may take  
26 emergency action necessary to protect health or the environment.

27 **23.1-12-09. Duty to notify.**

28 This chapter does not limit a person's duty to notify the department and to take action  
29 related to a release. However, payment for corrective actions required as a result of a petroleum  
30 release is governed by this chapter.

1       **23.1-12-10. Providing of information.**

2       A person the administrator or the department has reason to believe is an owner or operator,  
3 the owner of real property where corrective action is ordered to be taken, or a person that may  
4 have information concerning a release shall, if requested by the administrator or the  
5 department, or any member, employee, or agent of the administrator or the department, furnish  
6 to the administrator or the department any information that person has or may reasonably  
7 obtain which is relevant to the release.

8       **23.1-12-11. Examination of records.**

9       Any employee of the administrator or the department may, upon presentation of official  
10 credentials:

- 11       1. Examine and copy books, papers, records, memoranda, or data of any person that  
12 has a duty to provide information to the administrator or the department under section  
13 23.1-12-10; and  
14       2. Enter upon public or private property to take action authorized by this section,  
15 including obtaining information from a person that has a duty to provide the  
16 information under section 23.1-12-10, conducting surveys and investigations, and  
17 taking corrective action.

18       **23.1-12-12. Responsibility for cost.**

19       The owner or operator is liable for the cost of the corrective action required by the  
20 department, including the cost of investigating the releases. This chapter does not create any  
21 new cause of action for damages on behalf of third parties for release of petroleum products  
22 against the fund or licensed dealers.

23       **23.1-12-13. Liability avoided.**

24       An owner or operator may not avoid liability by means of a conveyance of any right, title, or  
25 interest in real property or by any indemnification, hold harmless agreement, or similar  
26 agreement. However, this chapter does not:

- 27       1. Prohibit a person that may be liable from entering an agreement by which the person  
28 is insured or is a member of a risk retention group, and is thereby indemnified for part  
29 or all of the liability;  
30       2. Prohibit the enforcement of an insurance, hold harmless, or indemnification  
31 agreement; or

3. Bar a claim for relief brought by a person that may be liable or by an insurer or guarantor, whether by right of subrogation or otherwise.

**23.1-12-14. Other remedies.**

This chapter does not limit the powers of the administrator or department, or preclude the pursuit of any other administrative, civil, injunctive, or criminal remedies by the administrator or department or any other person. Administrative remedies need not be exhausted to proceed under this chapter. The remedies provided by this chapter are in addition to those provided under existing statutory or common law.

**23.1-12-15. Revenue to the fund.**

Revenue from the following sources must be deposited in the state treasury and credited to the fund:

1. Any registration fees collected under section 23.1-12-17;
2. Any money recovered by the fund under section 23.1-12-23, and any money paid under an agreement, stipulation, or settlement;
3. Any interest attributable to investment of money in the fund; and
4. Any money received by the administrator in the form of gifts, grants, reimbursements, or appropriations from any source intended to be used for the purposes of the fund.

**23.1-12-16. Penalty.**

A tank owner violating section 23.1-12-17 is guilty of a class B misdemeanor unless another penalty is specifically provided.

**23.1-12-17. Registration fee.**

1. An owner or operator of a tank shall pay an annual registration fee of fifty dollars for each aboveground or underground tank owned or operated by that person. If after the fiscal year has been closed and all expenses relating to the fiscal year have been accounted for, the fund balance is less than six million dollars, the annual registration fee of fifty dollars is increased to one hundred dollars. If after the fiscal year has been closed and all expenses relating to the fiscal year have been accounted for, the fund balance is five million five hundred thousand dollars or more and the annual registration fee has been increased to one hundred dollars, the fee must be reduced to fifty dollars. If after the fiscal year has been closed and all expenses relating to the fiscal year have been accounted for, the fund balance exceeds nine million dollars, the

1           annual registration fee is reduced to five dollars. Annual registration fees must  
2           continue at five dollars until the fund balance does not exceed nine million dollars.

3           2. An owner or operator of an existing tank that is discovered at a location that currently  
4           and previously has had tanks registered with the fund shall pay an additional  
5           twenty-five dollar penalty fee in addition to the registration fee for each aboveground  
6           tank and each underground tank owned or operated by that person for each previous  
7           year that the tank was required to be registered for which a fee was not paid. The  
8           payment includes the fees and the penalty for the failure to register.

9           3. An owner or operator of an existing tank at a location that was not previously and  
10          continuously registered with the fund, whether the registration was required by law or  
11          not must provide the fund with a phase two environmental study conducted by a  
12          qualified firm according to American society for testing materials standards. A tank  
13          integrity test must also be performed. The environmental study and tank integrity test  
14          must be reviewed by the commissioner along with the application for registration with  
15          the fund. If the commissioner rejects the application, the applicant is denied eligibility  
16          to the fund. However, if the site is remediated and the leaking tank is replaced, the  
17          applicant may reapply for registration with the fund. A new installation that is using a  
18          used tank must provide tank integrity test results for the used tank. Use of a synthetic  
19          liner in an aboveground dike system negates the need for a tank integrity test. The  
20          owner or operator of a new tank at a new site or a new tank at an existing site that had  
21          a tank registered at the site previously need only pay the required fees for registration  
22          with the fund.

23          4. If accepted for registration with the fund, the owner or operator of the tank shall pay an  
24          additional twenty-five dollar penalty fee in addition to the registration fee for each  
25          aboveground tank and underground tank owned or operated by that person for each  
26          previous year that the tank was required to be registered for which a fee was not paid,  
27          regardless of ownership in each of those years. The payment includes the fees and  
28          the penalty for the failure to register.

29          5. The registration fees collected under this section must be paid to the fund  
30          administrator for deposit in the state treasury for the dedicated credit to the petroleum  
31          release compensation fund.

- 1       6. If a registration payment is not received within sixty days of July first by the  
2       commissioner, a late fee of twenty-five dollars per tank per month must be imposed on  
3       the tank owner or operator.

4       **23.1-12-18. Reimbursement for corrective action.**

- 5       1. The administrator shall reimburse an eligible owner or operator for ninety percent of  
6       the costs of corrective action, including the investigation, which are greater than five  
7       thousand dollars and less than one million dollars per occurrence and two million  
8       dollars in the aggregate. An eligible tank owner or operator may not be liable for more  
9       than twenty thousand dollars out-of-pocket expenses for any one release. A  
10      reimbursement may not be made unless the administrator determines that:  
11      a. At the time the release was discovered the owner or operator and the tank were  
12      in compliance with state and federal rules and rules applicable to the tank,  
13      including rules relating to financial responsibility, rules relating to infrastructure  
14      compatibility, and all rules relating to health and safety which were in effect at the  
15      time of the release;  
16      b. The department was given notice of the release as required by federal and state  
17      law;  
18      c. The owner or operator has paid the first five thousand dollars of the cost of  
19      corrective action; and  
20      d. The owner or operator, to the extent possible, fully cooperated with the  
21      department and the administrator in responding to the release.  
22      2. The fund shall compensate third parties for corrective action taken for a petroleum  
23      release if the provisions of subdivisions a, b, c, and d of subsection 1 were met at the  
24      time the release was discovered. Compensation for third-party corrective action  
25      includes compensation for costs incurred in returning the real estate to that level  
26      deemed duly remediated by the department.  
27      3. The fund shall reimburse the tank owner, operator, or dealer for bodily injuries to a  
28      third party caused by a petroleum release if the provisions of subdivisions a, b, c, and  
29      d of subsection 1 were met at the time the release was discovered in an amount  
30      determined by:

- 1           a. Findings reduced to judgment in federal or state district court or such other court
- 2           having jurisdiction over the matter in a proceeding in which the fund has been
- 3           made a party;
- 4           b. Findings by an arbitration panel agreed upon in writing by the parties in a
- 5           proceeding in which the fund has been made a party; or
- 6           c. A written settlement entered into by the parties in which the commissioner or the
- 7           commissioner's agent has participated. The settlement must be reviewed and
- 8           approved by the commissioner.
- 9       4. In any civil action against the owner, operator, or dealer for damages resulting from a
- 10       petroleum release, if the pre-leak condition of real estate is an issue, and if there is no
- 11       reasonable means of determining the pre-leak condition of real estate, the condition is
- 12       that which exists at the time the department determines the real estate has been duly
- 13       remediated.
- 14       5. The fund may not compensate for attorney's fees of owners, operators, or dealers, nor
- 15       may the fund compensate for exemplary damages, criminal fines, or administrative
- 16       penalties.
- 17       6. A third party accepting monetary compensation directly from the fund for damages due
- 18       to a release caused by a tank owner, operator, or dealer covered by the fund is
- 19       deemed to have waived any cause of action against the fund or against the tank
- 20       owner, operator, or dealer.
- 21       7. The fund shall reimburse the department for all costs, attorney's fees, and other legal
- 22       expenses relating to administrative and adjudicative proceedings under this chapter
- 23       and any subsequent legal proceeding. Any monies reimbursed must be deposited in
- 24       the department's operating fund in the state treasury and must be spent subject to
- 25       appropriation by the legislative assembly.

26       **23.1-12-19. Application for reimbursement.**

27       An owner or operator that is a first-party claimant and that proposes to take corrective  
28       action or has undertaken corrective action in response to a release, the time of the release  
29       being unknown, may apply to the administrator for partial or full reimbursement under section  
30       23.1-12-18. An owner or operator who is a first-party claimant may be reimbursed only for costs

1 incurred after July 1, 1989, even if the releases were discovered before July 1, 1989, up to the  
2 maximum of twenty-five thousand dollars per location.

3 **23.1-12-20. Administrator to determine costs.**

4 A reimbursement for corrective actions taken by an owner, operator, or dealer may not be  
5 made from the fund until the administrator has determined that the costs for which  
6 reimbursement is requested were actually incurred and were reasonable. All necessary loss  
7 adjustment expenses must be included as a component of the loss and must be paid out of the  
8 fund.

9 **23.1-12-21. Liability of responsible person.**

10 The right to apply for reimbursement and the receipt of reimbursement does not limit the  
11 liability of an owner or operator for damages or costs incurred as the result of a release.

12 **23.1-12-22. Reimbursement not subject to attachment.**

13 The amount of reimbursement to be paid for corrective action that was done by a third party  
14 is not subject to legal process or attachment if actually paid to a third party that performed the  
15 corrective action.

16 **23.1-12-23. Recovery of expenses.**

17 Any reasonable and necessary expenses incurred by the fund, which exceed the coverage  
18 limits provided by section 23.1-12-18, in taking a corrective action, including costs of  
19 investigating a release, and in taking legal actions, may be recovered in a civil action in district  
20 court brought by the administrator against an owner or operator. The certification of expenses  
21 by an approved agent of the fund is prima facie evidence that the expenses are reasonable and  
22 necessary. Any expenses that are recovered under this section must be deposited in the fund.

23 **23.1-12-24. Costs exceeding reimbursement.**

24 If the cost of any extraordinary authorized action under this chapter exceeds amounts  
25 awarded to the administrator or the department from the federal government, the administrator  
26 may pay the department the cost of the corrective actions, including the cost of investigating a  
27 release, if the board finds that the cause was a petroleum substance, that an adequate amount  
28 exists in the fund to pay for the corrective action, that the occurrence was extraordinary in  
29 scope and size, and that a danger to the health and safety of citizens exists.

1       **23.1-12-25. Coordination of benefits.**

2       If an owner or operator has an insurance policy that provides the same coverage as the  
3 fund, the administrator of the fund shall pay the share of the covered loss or damage for which  
4 the fund is responsible. The share that must be paid from the fund is equal to the proportion that  
5 the applicable limit of coverage under the fund bears to the limits of insurance of all insurance  
6 coverage on the same basis.

7       **23.1-12-26. Third-party damages - Participation in actions and review of settlements.**

8       1. An owner or operator sued for damages resulting from a release shall notify the  
9 administrator within fourteen days of being served with a summons and complaint.

10       The owner or operator also shall advise the administrator if any insurer is defending  
11 the owner or operator and provide to the administrator the name of that insurer.

12       2. An owner or operator that, before litigation, enters negotiations with a third party that  
13 claims to have been damaged by a release, or that receives a demand for payment of  
14 damages to a third party that claims to have been damaged by a release, shall notify  
15 the administrator within fourteen days of the demand or the negotiations.

16       3. The administrator and the board shall review the conduct of any litigation or  
17 negotiation. The administrator may not assume any legal costs incurred by the  
18 defendant or plaintiff, but may participate in discovery, trial proceedings, or settlement  
19 negotiations of either disputed liability or damages that bear on the determination of a  
20 plaintiff's damages.

21       4. The administrator and the board shall review any settlement negotiations to determine  
22 the dollar amount of bodily injury or property damage actually, necessarily, and  
23 reasonably incurred by third parties which, if paid by the defendant, would be  
24 considered eligible costs.

25       **23.1-12-27. Third-party damages - Documentation.**

26       1. An applicant's payments for third-party damages pursuant to a judgment entered in a  
27 court must include copies of the notice of entry of judgment and abstract of costs.

28       2. An applicant's payments for third-party damages made by agreement in settlement of  
29 litigation must include copies of the settlement agreement and supporting documents  
30 required by the administrator.

- 1       3. An applicant's payments for third-party damages made by agreement without  
2       reference to litigation must include copies of the settlement and supporting documents  
3       required by the administrator.
- 4       4. The administrator and the board may require a third party who claims bodily injury to  
5       be examined by a physician and require that the physician's report to be submitted to  
6       the administrator. The administrator may require a third party that claims property  
7       damage to permit a property appraiser or claims adjuster retained by the administrator  
8       to inspect the property and report to the administrator.
- 9       5. The fund shall pay a judgment against an owner, operator, or dealer awarded to a third  
10       party as a result of a third-party claim and property damage against an owner,  
11       operator, or dealer registered by the fund.
- 12       6. The fund shall pay for corrective action as awarded to a third party in any judgment  
13       against an owner, operator, or dealer.
- 14       7. Liability of the tank owner, operator, dealer, or fund to third parties for corrective action  
15       or personal injuries and property damage may not exceed, per person, one million  
16       dollars. Maximum liability of the fund, including all claims by third parties, may not  
17       exceed, for any release site, the maximum provided in section 23.1-12-18.
- 18       8. A third party may not bring an action against an owner, operator, or dealer more than  
19       three years after a corrective action plan has been approved by the department if the  
20       owner, operator, or dealer fully implements and complies with the corrective action  
21       plan.
- 22       9. In investigating a release site or reviewing the implementation of a corrective action  
23       plan approved by the department, the department shall determine whether the release  
24       threatens public health or the environment. The department shall require, based on  
25       science and technology appropriate for the site, any monitoring, remediation, or other  
26       appropriate corrective action that is reasonably necessary to protect public health or  
27       the environment. The department may require corrective action at a release site at any  
28       time after a release occurs.

1       **23.1-12-28. Matching federal funds.**

2       The administrator and the board may annually allow the department a ten percent matching  
3 grant for federal leaking underground storage tank funds to be paid out of the fund if the  
4 moneys are available and the administrator and the board determine the allowance appropriate.

5       **23.1-12-29. Fund appropriations.**

6       Money in the fund is continuously appropriated to the administrator for the purpose of  
7 making reimbursements under this chapter.

8       **23.1-12-30. Investment of fund.**

9       Investment of the fund is under the supervision of the state investment board in accordance  
10 with chapter 21-10. The commissioner may purchase a contract for reinsurance of any risk to be  
11 paid by the fund. The administrator may investigate the purchase of insurance that reimburses  
12 an owner or operator for property damage claims by third parties other than claims for costs of  
13 corrective action.

14       **SECTION 28.** Chapter 23.1-13 of the North Dakota Century Code is created and enacted  
15 as follows:

16       **23.1-13-01. Definitions.**

17       In this chapter, unless the context or subject matter otherwise requires:

- 18       1. "Adulterated", when used to describe any petroleum or alternative fuel product, means  
19       a petroleum or alternative fuel product that fails to meet the specifications prescribed  
20       by this chapter.
- 21       2. "Alternative fuel" means a fuel for an engine or vehicle, or used as heating oil, other  
22       than a petroleum-based fuel. The term includes biodiesel and green diesel as defined  
23       in section 57-43.2-01.
- 24       3. "Department" means the department of environmental quality.
- 25       4. "Diesel fuel" means any petroleum product intended for use or offered for sale as a  
26       fuel for engines in which the fuel is injected into the combustion chamber and ignited  
27       by pressure without electric spark.
- 28       5. "Gasoline" means a refined petroleum naphtha which by its composition is suitable for  
29       use as a carburant in internal combustion engines.
- 30       6. "Heating oil" means any product intended for use or offered for sale as a furnace oil,  
31       range oil, or fuel oil for heating and cooking purposes to be used in burners other than

1           wick burners regardless of whether the product is designated as furnace oil, range oil,  
2           fuel oil, gas oil, or is given any other name or designation.

3           7. "Kerosene" means a petroleum fraction which is free from water, additives, foreign or  
4           suspended matter, and is suitable for use as an illuminating oil.

5           8. "Lubricating oil" means any petroleum, or other product, used for the purpose of  
6           reducing friction, heat, or wear in automobiles, tractors, gasoline engines, diesel  
7           engines, and other machines.

8           9. "Misbranded", when used in connection with any petroleum or alternative fuel product,  
9           means a petroleum or alternative fuel product that is not labeled as required under the  
10          provisions of this chapter.

11          10. "Sell" and "sale" include the keeping, offering, or exposing for sale, transportation, or  
12          exchange of the restricted or prohibited article.

13          11. "Tractor fuel" means any product, other than gasoline or kerosene, intended for use or  
14          offered for sale as a fuel for tractors, regardless of whether the product is designated  
15          as distillate, gas oil, fuel oil, or is given any other name or designation.

16          **23.1-13-02. Department to enforce law - Regulation of petroleum products.**

17          This chapter must be enforced by the department. The department may adopt rules under  
18          chapter 28-32 for the interpretation of this chapter.

19          **23.1-13-03. Sale of adulterated and misbranded gasoline, kerosene, tractor fuel,**  
20          **heating oil, diesel fuel, or lubricating oil prohibited.**

21          A person may not sell or offer or expose for sale any kerosene, gasoline, or other petroleum  
22          product intended to be used as kerosene, gasoline, any tractor fuel, heating oil, diesel fuel, or  
23          lubricating oil that is adulterated or misbranded.

24          **23.1-13-04. Retail sale of alcohol-blended gasoline - Label requirements.**

25          A dealer may not sell at retail alcohol-blended gasoline unless the dispensing unit and any  
26          price advertising bear the name of the alcohol blended with the gasoline if the alcohol-blended  
27          gasoline consists of one percent or more by volume of any alcohol. The disclosure must be in  
28          letters at least the same size as those used for the label of the basic grade of gasoline and must  
29          be next to the gasoline grade label. A producer of alcohol-blended gasoline may provide a  
30          retailer with a label promoting the benefits of alcohol-blended gasoline, if the label at least  
31          meets the requirements of this section.

1       **23.1-13-05. Retail sale of gasoline containing methyl tertiary butyl ether - Restriction.**

2       A person may not sell, offer for sale, supply, or offer for supply gasoline that contains methyl  
3 tertiary butyl ether in quantities greater than five-tenths of one percent by volume. However, a  
4 person may ship gasoline containing methyl tertiary butyl ether within the state for disposition  
5 outside the state, including storage coincident to shipment.

6       **23.1-13-06. Retail sale of alternative fuels - Notice required.**

7       A dealer may not sell at retail alternative fuel unless the dispensing unit and price  
8 advertising contains the name and main components of the alternative fuel or alternative fuel  
9 blend. The disclosure must follow the same labeling specifications that apply for  
10 petroleum-based fuels. The department shall adopt rules under chapter 28-32 for labeling of  
11 petroleum products and alternative fuels. A producer of alternative fuels or alternative fuel  
12 blends may provide a retailer with a label promoting the benefits of the alternative fuel if the  
13 label meets the requirements of this section.

14       **23.1-13-07. Labeling gasoline containers - Gasoline pipeline.**

15       Every package, barrel, filling station pump, and every tank wagon, truck, or car containing  
16 gasoline for sale or consignment or held with intent to sell or consign the same within this state  
17 or to transport it into this state must be clearly and distinctly stamped, labeled, or tagged with  
18 the word "gasoline". Every oil station pipeline for gasoline must be painted red. The fittings upon  
19 such lines; however, may be painted other colors to designate grades. Pipelines for gasoline  
20 must be entirely separate from lines for kerosene or for any other high flash product. Every can,  
21 bucket, barrel, or other container of less than sixty gallons [227.12 liters] capacity used for  
22 storage or delivery of gasoline, benzine, or benzine products, unless the same is made of glass,  
23 must be painted bright red, and such containers may not be used for the storage or delivery of  
24 kerosene. In the case of glass containers, the contents must be designated by a red label  
25 securely pasted on or attached to the containers bearing the name of the product.

26       **23.1-13-08. Labeling kerosene - Containers - Pipeline.**

27       Every package, barrel, filling station pump, and every tank wagon, truck, or car containing  
28 kerosene for sale or consignment when held within this state or transported into this state must  
29 be clearly and distinctly stamped, labeled, or tagged with the word "kerosene". Every oil station  
30 pipeline for kerosene must be painted aluminum and must be entirely separate from lines for  
31 gasoline or other low flash products.

1       **23.1-13-09. Labeling tractor fuel.**

2       Every package, barrel, pump, and every truck, tank wagon, or car containing tractor fuel oil,  
3 other than gasoline or kerosene, for sale or consignment, when held within this state or when  
4 being transported into this state must be clearly and distinctly tagged, marked, and labeled with  
5 the legend "Tractor fuel oil, not for illuminating purposes nor wick burners". Every oil station  
6 pipeline for tractor fuel must be painted yellow and must be entirely separate from lines for  
7 kerosene or other high flash product.

8       **23.1-13-10. Labeling heating oil.**

9       Every package, barrel, pump, and every tank wagon, truck, or car containing heating oil for  
10 sale or consignment, when held within this state or when being transported into this state, must  
11 be clearly and distinctly tagged, marked, or labeled with the designation of grade established by  
12 the department. Every oil station pipeline for heating oil must be painted green.

13       **23.1-13-11. Labeling diesel fuel.**

14       Every package, barrel, pump, and every tank wagon, truck, or car containing diesel fuel for  
15 sale or consignment, when held within this state or transported into this state, must be clearly  
16 and distinctly tagged, marked, or labeled with the designation "diesel fuel" together with its  
17 cetane number and the grade established by the department. Every oil station pipeline for  
18 diesel fuel must be painted green.

19       **23.1-13-12. Specifications for petroleum products - Tests used.**

20       Specifications for gasoline, kerosene, tractor fuel, diesel oil, heating oil, lubricating oil,  
21 alternative fuels, and liquefied petroleum gases, including propane, propylene, normal butane or  
22 isobutane, and butylene, must be determined by the department and must be based upon  
23 nationally recognized standards. When so determined by the department and adopted and  
24 promulgated as regulations and orders of the department in accordance with chapter 28-32,  
25 such specifications must be the specifications for such petroleum products sold in this state and  
26 official tests of such petroleum products must be based upon test specifications so determined  
27 adopted and promulgated.

28       **23.1-13-13. How volume of heating oil determined.**

29       In case of a dispute, heating oil must be sold on the basis of the United States gallon  
30 containing two hundred thirty-one cubic inches [3785.41 milliliters] at sixty degrees Fahrenheit  
31 [15.56 degrees Celsius]. The volume of the delivered oil; however, may be calculated from its

1 weight and gravity degrees API in accordance with the national standard petroleum oil tables  
2 prepared by the national bureau of standards.

3 **23.1-13-14. Department may prohibit sale of certain gasolines or motor fuels.**

4 The department may prohibit the sale of any "gasoline improver" or motor fuel dope, oil  
5 additive, and of any gasoline mixed or compounded with any other chemical, substance, or  
6 solution which may be detrimental to the public health, injurious to internal combustion engines,  
7 or concerning which unsubstantiated claims are made. However, it may not prohibit the sale of  
8 any material, substance, or solution that has been favorably reported on by the United States  
9 bureau of standards or by the surgeon general or bureau of public health of the United States.

10 **23.1-13-15. Sale of prohibited gasolines - Penalty.**

11 Any person violating any of the provisions of section 23.1-13-14 is guilty of a class B  
12 misdemeanor.

13 **23.1-13-16. Inspection fees.**

14 Every person licensed by the tax commissioner as a motor vehicle fuel or special fuels  
15 dealer shall pay to the tax commissioner an inspection fee of one-fortieth of one cent per gallon  
16 [3.79 liters] for every gallon [3.79 liters] of gasoline, kerosene, tractor fuel, heating oil, or diesel  
17 fuel sold or used during a calendar month except those gallons sold out of state or those  
18 gallons sold as original package sales as defined in chapters 57-43.1 and 57-43.2. The fee  
19 must accompany the monthly report required in the following section and is due no later than  
20 the twenty-fifth day of each calendar month for the preceding month. The tax commissioner  
21 shall forward all money collected under this section to the state treasurer monthly, and the state  
22 treasurer shall place the money in the general fund of the state. The tax commissioner shall  
23 make available annually a report by licensed dealer listing the number of gallons [liters] of motor  
24 vehicle fuel and special fuels upon which the inspection fee has been paid. The provisions of  
25 chapters 57-43.1 and 57-43.2 pertaining to the administration of motor vehicle fuel and special  
26 fuels taxes not in conflict with the provisions of this chapter govern the administration of the  
27 inspection fee levied by this chapter.

28 **23.1-13-17. Report to tax commissioner of petroleum products - Contents.**

29 No later than the twenty-fifth day of each calendar month, every person licensed by the tax  
30 commissioner as a motor vehicle fuel, special fuels, or liquefied petroleum wholesale dealer  
31 shall send to the tax commissioner a correct report of all purchases and sales of gasoline.

kerosene, tractor fuel, heating oil, or diesel fuel during the preceding month. The report must include the same information as required in chapters 57-43.1 and 57-43.2 for motor vehicle fuel and special fuels tax collection purposes. Failure to send the report and inspection fee required by the preceding section to the tax commissioner constitutes a violation of the provisions of this chapter.

**23.1-13-18. Bond may be required of dealer in petroleum products.**

The tax commissioner may require any person licensed by the tax commissioner as a motor vehicle fuel, special fuels, or liquefied petroleum wholesale dealer to furnish a surety bond payable to the state in the sum of five hundred dollars, or twice the amount of inspection fees due for any calendar month, whichever amount is the greater, guaranteeing to the state true reports of purchases and sales of gasoline, kerosene, tractor fuel, heating oil, and diesel fuel and the payment of all inspection fees provided for in this chapter. The tax commissioner shall determine the sufficiency of the bond. A single bond may cover dealing in one or all of the petroleum products mentioned in this chapter. When any inspection fee is not paid within twenty days after it has become delinquent, the person bonding the delinquent may be called upon to make good upon the bond for such delinquent fees.

**23.1-13-19. Department may designate ports of entry and hold cars for inspection - Penalty.**

The department may designate ports of entry of all transportation companies carrying petroleum products into this state for sale or consignment and may hold or delay any car or other vehicle of transportation entering this state carrying such products for sale or consignment until samples thereof have been obtained for inspection and analysis and until any other required information regarding the products contained in the shipment has been secured. The department may not hold or delay any shipment or consignment of petroleum products at the port of entry if the transportation company carrying such products will permit proper inspection and sampling of shipments or consignments at convenient designated points without the state, and will permit the inspection of transportation records and provide adequate information regarding the records of cars or other vehicles carrying such products at division points or at other places within or without the state where such cars or other vehicles, in normal practice, are stopped and held for switching and rearrangement or where ample opportunity is provided for proper inspection and sampling. The failure on the part of a transportation company or any

1 of its officers or employees to hold car or other vehicle of transportation for inspection is a  
2 class B misdemeanor.

3 **23.1-13-20. Penalties.**

4 A person violating or failing to comply with any of the provisions of this chapter, or with any  
5 rule issued under this chapter, is, unless another penalty is specifically provided, guilty of a  
6 class B misdemeanor.

7 **SECTION 29.** Chapter 23.1-14 of the North Dakota Century Code is created and enacted  
8 as follows:

9 **23.1-14-01. Administration.**

10 The department of environmental quality shall administer this chapter.

11 **23.1-14-02. Definitions.**

12 In this chapter, unless the context or subject matter otherwise requires:

- 13 1. "Antifreeze" means any substance or preparation sold, distributed, or intended for use  
14 as the cooling liquid, or to be added to the cooling liquid, in the cooling system of  
15 internal combustion engines to prevent freezing of the cooling liquid, to lower its  
16 freezing point, or to raise its boiling point.
- 17 2. "Department" means the department of environmental quality.
- 18 3. "Distribute" means to hold with intent to sell to the consumer, offer for sale, to sell,  
19 barter, or otherwise supply.
- 20 4. "Label" means any display of written, printed, or graphic matter on, or attached to, a  
21 package or the outside individual container or wrapper of the package.
- 22 5. "Package" means a sealed retail package, drum, or other container in which antifreeze  
23 is distributed to the consumer or a container holding no more than fifty-five gallons  
24 [208.20 liters] from which the antifreeze is directly installed in the cooling system by  
25 seller or reseller.

26 **23.1-14-03. Registration - Penalty.**

27 Before antifreeze may be distributed in this state, the manufacturer or person whose name  
28 appears on the label shall apply to the department on forms provided by the department for  
29 registration for each antifreeze the manufacturer or person whose name appears on the label  
30 desires to distribute. All registrations expire on June thirtieth of each year. The application for  
31 registration must be accompanied by an inspection fee of forty dollars for each product, and by

1 a label or other printed matter describing the product. Upon approval by the department, a copy  
2 of the registration must be furnished to the applicant. The department shall remit inspection fees  
3 received by the department to the state treasurer for deposit in the state general fund. A penalty  
4 of fifty percent of the registration fee must be imposed if the certificate of registration is not  
5 applied for on or before July first of each year or within the same month such antifreeze is first  
6 manufactured or sold within this state.

7 **23.1-14-04. Adulteration.**

8 Antifreeze is adulterated:

- 9 1. If, in the form in which it is sold and directed to be used, it would be injurious to the  
10 cooling system of an internal combustion engine, or if, when used in the cooling  
11 system of such an engine, it would make the operation of the engine dangerous to the  
12 user; or
- 13 2. If its strength, quality, or purity falls below the standard of strength, quality, or purity  
14 under which it is sold or offered for sale.

15 **23.1-14-05. Misbranding.**

16 Antifreeze is misbranded:

- 17 1. If it does not bear a label which specifically identifies the product, states the name and  
18 place of business of the registrant, states the net quantity of contents in terms of liquid  
19 measure separately and accurately in a uniform location under the principal display  
20 panel, and contains a statement warning of any hazard of substantial injury to human  
21 beings which may result from the intended use or reasonably foreseeable misuse of  
22 the antifreeze;
- 23 2. If the product is to be diluted with another substance for use and its labeling does not  
24 contain a statement or chart showing appropriate amounts of each substance to be  
25 used to provide protection from freezing at various degrees of temperature;
- 26 3. If the labeling contains a corrosion protection claim and does not include a statement  
27 of the amount to be used to provide such protection;
- 28 4. If its labeling contains any claim that it has been approved or recommended by the  
29 department; or
- 30 5. If its labeling is false, deceptive, misleading, or is illegal under any law.

1       **23.1-14-06. Rules and regulations.**

2       The department may adopt reasonable rules and standards under chapter 28-32 as  
3 necessary to administer this chapter.

4       **23.1-14-07. Inspection, sampling, and analysis.**

5       The department may, at reasonable hours, enter, inspect, and examine all places and  
6 property where antifreeze is stored or distributed for the purpose of taking reasonable samples  
7 of antifreeze for analysis together with specimens of labeling. The department shall examine  
8 promptly all samples received in connection with the administration and enforcement of this  
9 chapter and report the results to the owner and the registrant of the antifreeze.

10       **23.1-14-08. Prohibited acts.**

11       It is unlawful to:

- 12       1. Distribute any antifreeze that has not been registered under this chapter or for which  
13       the label is different from that accepted for registration.
- 14       2. Distribute any antifreeze that is adulterated or misbranded.
- 15       3. Refuse to permit entry or inspection or refuse to permit the acquisition of a sample of  
16       any antifreeze under this chapter.
- 17       4. Dispose of any antifreeze under "withdrawal from distribution" order under this  
18       chapter, except as provided in this chapter.
- 19       5. Distribute any antifreeze unless it is in the registrant's or manufacturer's package,  
20       except a distributor may obtain written authorization from the department annually to  
21       distribute antifreeze in bulk using a container supplied by the customer, provided the  
22       distributor attaches to the container a label bearing all of the information required by  
23       this chapter.
- 24       6. Use the term "ethylene glycol" on the label of a product which contains other glycols  
25       unless it is qualified by the word "base", "type", or wording of similar import and unless  
26       the product contains a minimum ethylene glycol content of seventy-five percent by  
27       regulation weight and a minimum total glycol content of ninety-three percent by weight.  
28       The product also must have a corrected specific gravity to give reliable freezing point  
29       readings on a commercial ethylene glycol type hydrometer and a freezing point, when  
30       mixed with an equal volume of water, of thirty-two degrees Fahrenheit [53.33 degrees  
31       Celsius] below zero or lower.

1       **23.1-14-09. Enforcement.**

2       When the department finds any antifreeze being distributed in violation of this chapter or  
3 any rules adopted under this chapter, it may issue and enforce a written or printed "withdrawal  
4 from distribution" order, warning the distributor not to dispose of any of the lot of antifreeze in  
5 any manner until written permission is given by the department or a court of competent  
6 jurisdiction. Copies of the order must also be sent by registered or certified mail to the registrant  
7 or to the person whose name and address appear on the label of the antifreeze. The  
8 department shall release for distribution the lot of antifreeze so withdrawn upon compliance with  
9 applicable rules, or for return to the registrant or the person whose name and address appears  
10 on the label for reprocessing or relabeling as may be required. If compliance is not obtained  
11 within thirty days, the department may begin proceedings for condemnation. Any lot of  
12 antifreeze not in compliance with the law is subject to seizure upon complaint of the department  
13 in the district court of the county in which it is located or in the district court of Burleigh County.

14       **23.1-14-10. Submission of formula.**

15       The department may require an applicant for registration to furnish a statement of the  
16 formula of the applicant's antifreeze, unless the applicant can furnish other satisfactory  
17 evidence that the antifreeze is not adulterated or misbranded. The statement need not include  
18 inhibitor or other ingredients that total less than five percent by weight of the antifreeze. All  
19 statements of formula and other trade secrets furnished under this section are privileged and  
20 confidential and may not be made public or open to the inspection of any persons other than the  
21 department. No statement is subject to subpoena. Nor may a statement be exhibited or  
22 disclosed before any administrative or judicial tribunal by virtue of any order or subpoena of  
23 such tribunal without the consent of the applicant furnishing the statement to the department.

24       **23.1-14-11. Penalty.**

25       Any person that violates or fails to comply with this chapter, for which another penalty has  
26 not been specifically provided, is guilty of a class B misdemeanor.

27       **23.1-14-12. Prosecutions - State's attorney.**

28       Each state's attorney to whom the department reports any violation of this chapter shall  
29 institute appropriate proceedings in court without delay. However, nothing in this chapter may be  
30 construed as requiring the department to report minor violations for the institution of

proceedings under this chapter whenever it believes the public interest will be served adequately by suitable written notice or warning.

**23.1-14-13. Injunction proceedings.**

In addition to other remedies, the department may apply to the district court of Burleigh County for a temporary or permanent injunction restraining any person from violating a provision of this chapter regardless of whether there exists an adequate remedy at law, and appropriate costs must be taxed by the court for all expenses to the department for the injunctive proceedings.

**23.1-14-14. Reports by department.**

Except as otherwise provided, the department may publish reports of any analyses, inspections, or research done under this chapter for the information of the public.

**SECTION 30.** Chapter 23.1-15 of the North Dakota Century Code is created and enacted as follows:

**23.1-15-01. Definitions.**

For purposes of this chapter, unless the context otherwise requires:

1. "Abandoned motor vehicle" means a motor vehicle, as defined in section 39-01-01, that has remained for a period of more than forty-eight hours on public property illegally or lacking vital component parts, or has remained for a period of more than forty-eight hours on private property without consent of the person in control of the property or in an inoperable condition such that it has no substantial potential further use consistent with its usual functions, unless it is kept in an enclosed garage or storage building. It also means a motor vehicle voluntarily surrendered by its owner to a person duly licensed under section 23.1-15-09. An antique automobile, as defined in section 39-04-10.4, and other motor vehicles to include parts car and special interest vehicles, may not be considered an abandoned motor vehicle within the meaning of this chapter.
2. "Collector" means the owner of one or more special interest vehicles that collects, purchases, acquires, trades, or disposes of special interest vehicles or parts of special interest vehicles for the person's own use in order to restore, preserve, and maintain a special interest vehicle or antique vehicle.
3. "Department" means the department of environmental quality.

1       4. "Parts car" means a motor vehicle generally in nonoperable condition which is owned  
2       by the collector to furnish parts to restore, preserve, and maintain a special interest  
3       vehicle or antique vehicle.

4       5. "Special interest vehicle" means a motor vehicle that is at least twenty years old and  
5       has not been altered or modified from original manufacturer's specifications and,  
6       because of its historic interest, is being preserved by hobbyists.

7       6. "Unit of government" includes a state department or agency, a county, city, township,  
8       or other political subdivision.

9       7. "Vital component parts" means those parts of a motor vehicle that are essential to the  
10       mechanical functioning of the vehicle, including, but not limited to, the motor, drive  
11       train, and wheels.

12       **23.1-15-02. Penalty for abandoning a motor vehicle.**

13       Any person that abandons a motor vehicle on any public or private property, without the  
14       consent of the person in control of the property, is guilty of a class A misdemeanor.

15       **23.1-15-03. Custody of abandoned vehicle.**

16       Units of government may take into custody and impound an abandoned motor vehicle.

17       **23.1-15-04. Conditions under which an abandoned vehicle may be sold immediately.**

18       When an abandoned motor vehicle is more than seven model years of age, is lacking vital  
19       component parts, and does not display a license plate currently valid in North Dakota or any  
20       other state or foreign country, it is immediately eligible for disposition and must be disposed of  
21       to a scrap iron processor licensed under section 23.1-15-09, and is not subject to the  
22       notification, reclamation, or title provisions of this chapter. Any license plate displayed on an  
23       abandoned vehicle must be removed and destroyed prior to the purchaser taking possession of  
24       the vehicle.

25       **23.1-15-05. Notice to owner of abandoned vehicle.**

26       1. When an abandoned motor vehicle does not fall within the provisions of section  
27       23.1-15-04, the unit of government taking it into custody shall give notice of the taking  
28       within ten days. The notice must set forth the date and place of the taking, the year,  
29       make, model, and serial number of the abandoned motor vehicle, and the place where  
30       the vehicle is being held, must inform the owner and any lienholders or secured  
31       parties of their right to reclaim the vehicle under section 23.1-15-06, and must state

1        that failure of the owner or lienholders or secured parties to exercise their right to  
2        reclaim the vehicle is deemed a waiver by them of all right, title, and interest in the  
3        vehicle and a consent to the sale of the vehicle at a public auction pursuant to section  
4        23.1-15-07.

5        2. The notice must be sent by mail to the registered owner, if any, of the abandoned  
6        motor vehicle and to all readily identifiable lienholders or secured parties of record. If it  
7        is impossible to determine with reasonable certainty the identity and address of the  
8        registered owner and all lienholders, the notice must be published once in a  
9        newspaper of general circulation in the area where the motor vehicle was abandoned.  
10       Published notices may be grouped together for convenience and economy.

11       **23.1-15-06. Right of owner to reclaim abandoned vehicle.**

12       1. The owner, secured parties, or any lienholder of an abandoned motor vehicle has a  
13       right to reclaim such vehicle from the unit of government taking it into custody upon  
14       payment of all towing and storage charges resulting from taking the vehicle into  
15       custody within fifteen days after the date of the notice required by section 23.1-15-05.  
16       2. Nothing in this chapter may be construed to impair any lien of a garagekeeper under  
17       the laws of this state or the right of a lienholder or secured parties to foreclose. For the  
18       purposes of this section, "garagekeeper" is an operator of a parking place or  
19       establishment, an operator of a motor vehicle storage facility, or an operator of an  
20       establishment for the servicing, repair, or maintenance of motor vehicles.

21       **23.1-15-07. Public sale - Disposition of proceeds.**

22       1. An abandoned motor vehicle not more than seven model years of age taken into  
23       custody and not reclaimed under section 23.1-15-06 must be sold to the highest  
24       bidder at public auction or sale, following reasonable published notice. The purchaser  
25       must be given a receipt in a form prescribed by the department which is sufficient title  
26       to dispose of the vehicle. The receipt also entitles the purchaser to register the vehicle  
27       and receive a certificate of title, free and clear of all liens and claims of ownership. The  
28       license plates displayed on an abandoned vehicle must be removed and destroyed  
29       prior to the purchaser taking possession of the vehicle.  
30       2. From the proceeds of the sale of an abandoned motor vehicle, the unit of government  
31       shall reimburse itself for the cost of towing, preserving, and storing the vehicle, and all

notice and publication costs incurred pursuant to this chapter. Any remainder from the proceeds of a sale must be held for the owner of the vehicle or entitled lienholder or secured parties for ninety days and then must be deposited in the state treasury as provided in section 1 of article IX of the Constitution of North Dakota and credited to the permanent school fund.

**23.1-15-08. Disposal of vehicles not sold.**

When no bid has been received for an abandoned motor vehicle, the unit of government may dispose of it pursuant to contract under section 23.1-15-09.

**23.1-15-09. Contracts for disposal - Issuance of licenses by department of environmental quality - Reimbursement of units of government for costs.**

1. A unit of government may contract with any qualified licensed scrap iron processor for collection, storage, incineration, volume reduction, transportation, or other services necessary to prepare abandoned motor vehicles and other scrap metal for recycling or other methods of disposal. The contract may authorize the contracting scrap iron processor to pay to the owner of any abandoned motor vehicle an incentive payment for vehicle if it is voluntarily surrendered and delivered to the scrap iron processor. For purposes of this section, an owner of an abandoned motor vehicle includes only a person that has owned and operated the vehicle for the person's personal or business use.
2. The department may issue a license to any qualified scrap iron processor desiring to participate in a contract under this section that meets the requirements for solid waste disposers established by the department.
3. When a unit of government enters a contract with a scrap iron processor duly licensed by the department, the department may review the contract to determine whether it conforms to the department's plan for solid waste disposal. A contract that does conform may be approved by the department. When a contract has been approved, the department may reimburse the unit of government for the costs incurred under the contract, including incentive payments authorized and made under the contract, subject to the limitations of legislative appropriations.
4. The department may demand that a unit of government contract for the disposal of abandoned motor vehicles and other scrap metal under the department's plan for solid

1 waste disposal. When the unit of government fails to contract within one hundred  
2 eighty days of the demand, the department, on behalf of the unit of government, may  
3 contract with any scrap iron processor duly licensed by the department for such  
4 disposal.

5 **23.1-15-10. Abandoned motor vehicle disposal fund.**

6 The abandoned motor vehicle disposal fund is established in the state treasury. All moneys  
7 derived from the investment of the fund are to be credited to the fund.

8 **23.1-15-11. Tax on initial motor vehicle certificates of title.**

9 A tax of one dollar and fifty cents is imposed on each initial North Dakota certificate of title  
10 issued to a passenger motor vehicle or a truck motor vehicle. The proceeds of the tax must be  
11 paid into the abandoned motor vehicle disposal fund. No registration plates or title certificate  
12 may be issued unless the tax is paid. Expenses of the fund arising under this chapter must be  
13 paid from the fund within the limits of legislative appropriation. If, on the first day of July in any  
14 year, the amount of uncommitted money in the abandoned motor vehicle disposal fund is two  
15 hundred fifty thousand dollars or more, the amount in excess of two hundred fifty thousand  
16 dollars must be transferred to the highway fund.

17 **23.1-15-12. Storage of vehicles by collector - Limitations.**

18 A collector may store unlicensed, operable or inoperable, vehicles and parts cars on the  
19 collector's property provided the vehicles and parts cars and the outdoor storage area are  
20 maintained so they do not constitute a health hazard and are screened from ordinary public  
21 view by means of a fence, trees, shrubbery, or other appropriate means.

22 **SECTION 31. AMENDMENT.** Section 24-03-23 of the North Dakota Century Code is  
23 amended and reenacted as follows:

24 **24-03-23. Encroachments on state highways.**

25 No part of the right of way for state highways may be encroached upon by erection thereon  
26 of any structure, or placing thereon any personal property, other than a temporary parking of a  
27 motor vehicle, without a written permit from the director. Any encroachment may be caused to  
28 be removed, obliterated, or corrected by order of the director and the total cost thereof must be  
29 paid by the person responsible for the encroachment. Property other than motor vehicles left  
30 upon highway right of way for a period exceeding seventy-two hours, the ownership of which  
31 cannot be determined after reasonable effort has been made to do so, must be deemed

1 abandoned and may be removed from the right of way and stored at the nearest site available  
2 for thirty days and if it is not claimed by the owner during such period, and the cost of removal  
3 and storage paid, it may be disposed of in the manner prescribed by the director. Abandoned  
4 motor vehicles are subject to the provisions of ~~sections 39-26-01 through 39-26-11~~chapter  
5 23.1-15. If such property is disposed of it must, except as otherwise provided by this section, be  
6 sold or disposed of in the manner provided in ~~sections 39-26-05 through 39-26-09~~chapter  
7 23.1-15. The receipts therefrom must be deposited in the state treasury as provided in section 1  
8 of article IX of the Constitution of North Dakota and credited to the permanent school fund.

9 **SECTION 32. AMENDMENT.** Subsection 5 of section 28-32-50 of the North Dakota  
10 Century Code is amended and reenacted as follows:

- 11 5. In any civil judicial proceeding involving adverse parties to an appeal or enforcement  
12 action involving an environmental permit issued under chapter ~~23-20-3, 23-25,~~  
13 ~~23-29~~23.1-04, 23.1-06, 23.1-08, or 61-28 in which two or more of the adverse parties  
14 are not an administrative agency or an agent of an administrative agency, the court  
15 may award the prevailing nonagency party reasonable attorney's fees and costs if the  
16 court finds in favor of that party and determines that the nonprevailing nonagency  
17 party acted without substantial justification, or on the basis of claims or allegations that  
18 are factually unsupported. The court shall award reasonable attorney's fees and costs  
19 if the court determines that the nonprevailing nonagency party's claims or allegations  
20 are frivolous as provided in section 28-26-01. If the appeal or civil judicial proceeding  
21 covered by this subsection involves multiple claims or allegations, the court may  
22 apportion attorney's fees and costs in proportion to the time reasonably spent by a  
23 prevailing party relating to claims pursued by the nonprevailing party that were  
24 frivolous, factually unsupported, or without substantial justification.

25 **SECTION 33. AMENDMENT.** Section 38-08-04.5 of the North Dakota Century Code is  
26 amended and reenacted as follows:

27 **38-08-04.5. Abandoned oil and gas well plugging and site reclamation fund - Budget**  
28 **section report.**

29 There is hereby created an abandoned oil and gas well plugging and site reclamation fund.

- 30 1. Revenue to the fund must include:

- 1           a. Fees collected by the oil and gas division of the industrial commission for permits
- 2           or other services.
- 3           b. Moneys received from the forfeiture of drilling and reclamation bonds.
- 4           c. Moneys received from any federal agency for the purpose of this section.
- 5           d. Moneys donated to the commission for the purposes of this section.
- 6           e. Moneys received from the state's oil and gas impact fund.
- 7           f. Moneys recovered under the provisions of section 38-08-04.8.
- 8           g. Moneys recovered from the sale of equipment and oil confiscated under section
- 9           38-08-04.9.
- 10          h. Moneys transferred from the cash bond fund under section 38-08-04.11.
- 11          i. Such other moneys as may be deposited in the fund for use in carrying out the
- 12          purposes of plugging or replugging of wells or the restoration of well sites.
- 13          j. Civil penalties assessed under section 38-08-16.
- 14      2. Moneys in the fund may be used for the following purposes:
- 15          a. Contracting for the plugging of abandoned wells.
- 16          b. Contracting for the reclamation of abandoned drilling and production sites,
- 17          saltwater disposal pits, drilling fluid pits, and access roads.
- 18          c. To pay mineral owners their royalty share in confiscated oil.
- 19          d. Defraying costs incurred under section 38-08-04.4 in reclamation of oil and
- 20          gas-related pipelines and associated facilities.
- 21          e. Reclamation and restoration of land and water resources impacted by oil and gas
- 22          development, including related pipelines and facilities that were abandoned or
- 23          were left in an inadequate reclamation status before August 1, 1983, and for
- 24          which there is not any continuing reclamation responsibility under state law. Land
- 25          and water degraded by any willful act of the current or any former surface owner
- 26          are not eligible for reclamation or restoration. The commission may expend up to
- 27          one million five hundred thousand dollars per biennium from the fund in the
- 28          following priority:
- 29              (1) For the restoration of eligible land and water that are degraded by the
- 30              adverse effects of oil and gas development including related pipelines and
- 31              facilities.

- 1                   (2) For the development of publicly owned land adversely affected by oil and  
2                   gas development including related pipelines and facilities.
- 3                   (3) For administrative expenses and cost in developing an abandoned site  
4                   reclamation plan and the program.
- 5                   (4) Demonstration projects for the development of reclamation and water  
6                   quality control program methods and techniques for oil and gas  
7                   development, including related pipelines and facilities.
- 8               f. For transfer by the office of management and budget, upon request of the  
9               industrial commission, to the environmental quality restoration fund for use by the  
10              ~~state department of health~~department of environmental quality for the purposes  
11              provided under chapter ~~23-34~~23.1-10, if to address environmental emergencies  
12              relating to oil and natural gas development, including the disposal of oilfield  
13              waste and oil or natural gas production and transportation by rail, road, or  
14              pipeline. If a transfer requested by the industrial commission has been made  
15              under this subdivision, the ~~state department of health~~department of  
16              environmental quality shall request the office of management and budget to  
17              transfer from subsequent deposits in the environmental quality restoration fund  
18              an amount sufficient to restore the amount transferred from the abandoned oil  
19              and gas well plugging and site reclamation fund.
- 20           3. This fund must be maintained as a special fund and all moneys transferred into the  
21           fund are appropriated and must be used and disbursed solely for the purposes in this  
22           section.
- 23           4. The commission shall report to the budget section of the legislative management on  
24           the balance of the fund and expenditures from the fund each biennium.

25       **SECTION 34. AMENDMENT.** Section 38-11.1-03.1 of the North Dakota Century Code is  
26       amended and reenacted as follows:

27       **38-11.1-03.1. Inspection of well site.**

28       Upon request of the surface owner or adjacent landowner, the ~~state department of~~  
29       ~~health~~department of environmental quality shall inspect and monitor the well site on the surface  
30       owner's land for the presence of hydrogen sulfide. If the presence of hydrogen sulfide is  
31       indicated, the state department of health shall issue appropriate orders under chapter

~~23-25~~23.1-06 to protect the health and safety of the surface owner's health, welfare, and property.

**SECTION 35. AMENDMENT.** Section 38-11.1-04.1 of the North Dakota Century Code is amended and reenacted as follows:

**38-11.1-04.1. Notice of operations.**

1. Before the initial entry upon the land for activities that do not disturb the surface, including inspections, staking, surveys, measurements, and general evaluation of proposed routes and sites for oil and gas drilling operations, the mineral developer shall provide at least seven days' notice by registered mail or hand delivery to the surface owner unless waived by mutual agreement of both parties. The notice must include:
  - a. The name, address, telephone number, and, if available, the electronic mail address of the mineral developer or the mineral developer's designee;
  - b. An offer to discuss and agree to consider accommodating any proposed changes to the proposed plan of work and oil and gas operations before commencement of oil and gas operations; and
  - c. A sketch of the approximate location of the proposed drilling site.
2. Except for exploration activities governed by chapter 38-08.1, the mineral developer shall give the surface owner written notice by registered mail or hand delivery of the oil and gas drilling operations contemplated at least twenty days before commencement of drilling operations unless mutually waived by agreement of both parties. If the mineral developer plans to commence drilling operations within twenty days of the termination date of the mineral lease, the required notice under this section may be given at any time before commencement of drilling operations. The notice must include:
  - a. Sufficient disclosure of the plan of work and operations to enable the surface owner to evaluate the effect of drilling operations on the surface owner's use of the property;
  - b. A plat map showing the location of the proposed well; and
  - c. A form prepared by the director of the oil and gas division advising the surface owner of the surface owner's rights and options under this chapter, including the

1 right to request the ~~state department of health~~department of environmental  
2 quality to inspect and monitor the well site for the presence of hydrogen sulfide.

3 3. The notice required by this section must be given to the surface owner at the address  
4 shown by the records of the county treasurer's office at the time the notice is given  
5 and is deemed to have been received seven days after mailing by registered mail or  
6 immediately upon hand delivery.

7 4. If a mineral developer fails to give notice as provided in this section, the surface owner  
8 may seek appropriate relief in the court of proper jurisdiction and may receive punitive  
9 as well as actual damages.

10 **SECTION 36. AMENDMENT.** Section 38-11.2-02 of the North Dakota Century Code is  
11 amended and reenacted as follows:

12 **38-11.2-02. Inspection of well site.**

13 Upon request of another state agency, the surface owner, or an adjacent landowner, the  
14 ~~state department of health~~department of environmental quality shall conduct a site visit and  
15 evaluate site-specific environmental data as necessary to ensure compliance with applicable  
16 environmental protection laws and regulations relating to air, water, and land management  
17 under the jurisdiction of the department.

18 **SECTION 37. AMENDMENT.** Subsection 12 of section 38-14.1-03 of the North Dakota  
19 Century Code is amended and reenacted as follows:

20 12. To ~~promulgate regulations~~adopt rules consistent with state law, in consultation with the  
21 state geologist, ~~state department of health~~department of environmental quality, and  
22 the state engineer for the protection of the quality and quantity of waters affected by  
23 surface coal mining operations.

24 **SECTION 38. AMENDMENT.** Subsection 2 of section 38-14.1-21 of the North Dakota  
25 Century Code is amended and reenacted as follows:

26 2. The commission's approval or modification of the permit or permit revision application  
27 must include consideration of the advice and technical assistance of the state  
28 historical society, the ~~state department of health~~department of environmental quality,  
29 the ~~state~~ soil conservation committee, the ~~state~~ game and fish department, the state  
30 forester, the state geologist, and the state engineer, and may also include those state

1 agencies versed in soils, agronomy, ecology, geology, and hydrology, and other  
2 agencies and individuals experienced in reclaiming surface mined lands.

3 **SECTION 39. AMENDMENT.** Section 38-22-07 of the North Dakota Century Code is  
4 amended and reenacted as follows:

5 **38-22-07. Permit consultation.**

6 Before issuing a permit, the commission shall consult the ~~state department of~~  
7 ~~health~~department of environmental quality.

8 **SECTION 40. AMENDMENT.** Section 38-22-12 of the North Dakota Century Code is  
9 amended and reenacted as follows:

10 **38-22-12. Environmental protection - Reservoir integrity.**

- 11 1. The commission shall take action to ensure that a storage facility does not cause  
12 pollution or create a nuisance. For the purposes of this provision and in applying other  
13 laws, carbon dioxide stored, and which remains in storage under a commission permit,  
14 is not a pollutant nor does it constitute a nuisance.
- 15 2. The commission's authority in subsection 1 does not limit the jurisdiction held by the  
16 ~~state department of health~~department of environmental quality. Nothing else in this  
17 chapter limits the jurisdiction held by the ~~state department of health~~department of  
18 environmental quality.
- 19 3. The commission shall take action to ensure that substances that compromise the  
20 objectives of this chapter or the integrity of a storage reservoir do not enter a storage  
21 reservoir.
- 22 4. The commission shall take action to ensure that carbon dioxide does not escape from  
23 a storage facility.

24 **SECTION 41. AMENDMENT.** Section 40-47-01 of the North Dakota Century Code is  
25 amended and reenacted as follows:

26 **40-47-01. Cities may zone - Application of regulations.**

27 For the purpose of promoting health, safety, morals, or the general welfare of the  
28 community, the governing body of any city may, subject to the provisions of chapter 54-21.3,  
29 regulate and restrict the height, number of stories, and the size of buildings and other  
30 structures, the percentage of lot that may be occupied, the size of yards, courts, and other open  
31 spaces, the density of population, and the location and use of buildings, structures, and land for

1 trade, industry, residence, or other purposes. Such regulations may provide that a board of  
2 adjustment may determine and vary the application of the regulations in harmony with their  
3 general purpose and intent and in accordance with general or specific rules therein contained.  
4 The governing body of a city may establish institutional controls that address environmental  
5 concerns with the ~~state department of health~~department of environmental quality as provided in  
6 section ~~23-20-3-03.1~~23.1-04-04.

7 **SECTION 42. AMENDMENT.** Section 43-18-02 of the North Dakota Century Code is  
8 amended and reenacted as follows:

9 **43-18-02. State board of plumbing - Members - Appointment - Qualifications.**

10 The state board of plumbing shall consist of the chief sanitary engineer, or the ~~head of any~~  
11 ~~division of the state department of health who may be named by the chief sanitary engineer to~~  
12 ~~act in the chief sanitary engineer's stead~~director of the department of environmental quality, and  
13 four persons appointed by the governor. All of the appointed members must have been  
14 residents of this state for at least five years immediately preceding their appointment, and one  
15 of them must be a master plumber with at least five years of experience in North Dakota, one  
16 must be a journeyman plumber with at least five years of experience in North Dakota, one must  
17 be a registered professional engineer practicing mechanical engineering in North Dakota, and  
18 one must be a representative of the consuming public.

19 **SECTION 43. AMENDMENT.** Section 43-18-09 of the North Dakota Century Code is  
20 amended and reenacted as follows:

21 **43-18-09. Board to adopt plumbing code - Provisions have force of law.**

22 The board shall formulate, prepare, and circulate among all plumbers within this state a  
23 state plumbing code, which must contain the minimum basic standards for plumbing, drainage,  
24 and ventilation of plumbing in buildings of all classes. Such code must be approved by the ~~state~~  
25 ~~department of health~~department of environmental quality. The provisions of said code have the  
26 force and effect of law and any violation thereof constitutes a violation of this chapter.

27 **SECTION 44. AMENDMENT.** Section 43-35-03 of the North Dakota Century Code is  
28 amended and reenacted as follows:

1       **43-35-03. State board of water well contractors - Members' appointment -**

2       **Qualification.**

3       The state board of water well contractors consists of the state engineer and the ~~state health~~  
4 ~~officer~~ director of the department of environmental quality, or their duly authorized designees,  
5 two water well contractors appointed by the governor, one geothermal system driller appointed  
6 by the governor, one water well pump and pitless unit installer appointed by the governor, and  
7 one member appointed at large by the governor.

8       **SECTION 45. AMENDMENT.** Section 43-35-19 of the North Dakota Century Code is  
9 amended and reenacted as follows:

10       **43-35-19. Standards for well drilling - Reports required.**

11       All construction of water wells must comply with the rules adopted by the ~~state department~~  
12 ~~of health~~ department of environmental quality. Within thirty days after the completion of each  
13 well, each water well contractor shall furnish to the board on forms provided by the board  
14 ~~such any information as the state department of health shall require~~ required by the department  
15 of environmental quality, including a log of formations penetrated, well depth, and casing size  
16 and weight. A copy of each report also must ~~also~~ be furnished to the customer. All information  
17 submitted must remain the property of the board.

18       **SECTION 46. AMENDMENT.** Section 43-35-19.1 of the North Dakota Century Code is  
19 amended and reenacted as follows:

20       **43-35-19.1. Standards for installation of water well pumps and pitless units.**

21       All installation of water well pumps and pitless units must comply with the rules adopted by  
22 the ~~state department of health~~ department of environmental quality and the board.

23       **SECTION 47. AMENDMENT.** Section 43-35-19.2 of the North Dakota Century Code is  
24 amended and reenacted as follows:

25       **43-35-19.2. Standards for installation of monitoring wells - Reports required.**

26       All monitoring wells constructed must comply with the rules adopted by the ~~state~~  
27 ~~department of health~~ department of environmental quality and the board. Each monitoring well  
28 contractor shall furnish all reports required by the rules of the ~~state department of~~  
29 ~~health~~ department of environmental quality or the board.

30       **SECTION 48. AMENDMENT.** Section 43-35-20 of the North Dakota Century Code is  
31 amended and reenacted as follows:

1       **43-35-20. Revocation or suspension of certificate - Grounds for - How reinstated.**

2       The board may suspend or revoke any certificate issued under ~~the provisions of this~~  
3 chapter if the holder is found guilty by the board of any violation of the rules adopted by the  
4 ~~state department of health~~department of environmental quality or the board after a hearing duly  
5 held substantially in conformance with chapter 28-32. Six months after any certificate has been  
6 revoked, an application may be made for another certificate in the same manner as a new  
7 certificate is obtained.

8       **SECTION 49. AMENDMENT.** Section 43-35-23 of the North Dakota Century Code is  
9 amended and reenacted as follows:

10       **43-35-23. Continuing education - Preapproval requirements.**

11       Each certificate holder shall earn at least six hours of board-approved continuing education  
12 during every two-year reporting cycle to qualify for certificate renewal, except a new certificate  
13 holder is not required to earn continuing education until the second renewal year following initial  
14 certification. Continuing education coursework may be provided by the national ground water  
15 association, the North Dakota well drillers association, incorporated, a board-sponsored  
16 workshop, the ~~state department of health~~department of environmental quality, the state water  
17 commission, or by any board-approved course provider. A continuing education course must be  
18 preapproved by the board unless otherwise provided under this section. A continuing education  
19 course provider or a certificate holder shall request preapproval of continuing education  
20 coursework by submitting to the board a course outline, the instructor's name, the length of the  
21 training, and an explanation of how the training relates to the construction and service of water  
22 wells. A certificate holder may request approval of education that was not preapproved by  
23 submitting to the board verification of attendance, a course outline, and an explanation of why  
24 preapproval was not obtained. The board shall determine on a case-by-case basis whether to  
25 approve education that was not preapproved.

26       **SECTION 50. AMENDMENT.** Subsection 11 of section 43-48-03 of the North Dakota  
27 Century Code is amended and reenacted as follows:

28       11. Personnel of the division of laboratory services of the state department of health or  
29 department of environmental quality who are participating in the centers for disease  
30 control and prevention's chemical terrorism toxic metals determination program.

~~**SECTION 53. AMENDMENT.** Subsection 6 of section 43-62-03 of the North Dakota Century Code is amended and reenacted as follows:~~

~~6. A limited x-ray machine operator who meets the requirements of rules adopted by the state department of health department of environmental quality under section 23-20.1-04 ~~23-1-03-04~~.~~

**SECTION 51. AMENDMENT.** Section 43-62-01 of the North Dakota Century Code is amended and reenacted as follows:

**43-62-01. Definitions.**

1. "Board" means the North Dakota medical imaging and radiation therapy board ~~of examiners~~.
2. "Certification organization" means a national certification organization that specializes in the certification and registration of ~~certification of~~ medical imaging and radiation therapy technical personnel and which has programs accredited by the national commission for certifying agencies, American national standards institute or the international organization for standardization, or other accreditation organization recognized by the board.
3. "Licensed practitioner" means a licensed physician, advanced practice registered nurse, surgeon, chiropractor, dentist, or podiatrist.
4. "Licensee" means an individual licensed by the board to perform medical imaging or radiation therapy procedures and operate medical imaging or radiation therapy equipment, including a nuclear medicine technologist, radiation therapist, radiographer, radiologist assistant, x-ray operator, or sonographer.
5. "Medical imaging" means the performance of any diagnostic or interventional procedure or operation of medical imaging equipment intended for use in the diagnosis or visualization of disease or other medical conditions in human beings, including fluoroscopy, nuclear medicine, sonography, or x-rays.
6. "Medical physicist" means an individual who is certified by the American board of radiology, American board of medical physics, American board of science in nuclear medicine, or Canadian college of physics in medicine in radiological physics or one of the subspecialties of radiological physics.

7. "Radiation therapy" means the performance of any procedure or operation of radiation therapy equipment intended for use in the treatment of disease or other medical conditions in human beings.

8. "Radiation therapist" means a nonphysician licensed by the board to perform radiation therapy procedures and operate radiation therapy equipment.

**SECTION 52. AMENDMENT.** Section 43-62-03 of the North Dakota Century Code is amended and reenacted as follows:

**43-62-03. Exemptions.**

This chapter does not apply to the following:

1. A licensed practitioner performing medical imaging or radiation therapy.
2. A dental assistant or dental hygienist licensed under chapter 43-20.
3. A student enrolled in and attending a school or college of medicine, medical imaging, or radiation therapy who performs medical imaging or radiation therapy procedures on humans while under the supervision of a licensed practitioner or a radiographer, radiation therapist, nuclear medicine technologist, radiologist assistant, or sonographer holding a license in the medical imaging or radiation therapy modality which the student is enrolled or attending under this chapter.
4. An individual administering medical imaging or radiation procedures and who is employed by the United States government when performing duties associated with that employment.
5. A nurse licensed under chapter 43-12.1 who performs sonography on a focused imaging target to assess specific and limited information about a patient's immediate medical condition or to provide real-time visual guidance for another procedure.
6. ~~A limited x-ray machine operator who meets the requirements of rules adopted by the state department of health under section 23-20.1-04.~~
- ~~7.~~ Medical imaging performed as a part of a post-mortem examination or on other nonliving remains.
- ~~8.~~7. Medical imaging performed by emergency medical services personnel certified or licensed under section 23-27-04.3.

**SECTION 53. AMENDMENT.** Subsection 1 of section 43-62-15 of the North Dakota Century Code is amended and reenacted as follows:

1. The board shall establish licensure standards for the following medical imaging and radiation therapy modalities:
  - a. Nuclear medicine technologist.
  - b. Radiation therapist.
  - c. Radiographer.
  - d. Radiologist assistant.
  - e. Sonographer.
  - f. X-ray operator.

**SECTION 54. AMENDMENT.** Subsection 3 of section 44-04-18.4 of the North Dakota Century Code is amended and reenacted as follows:

3. This section does not limit or otherwise affect a record pertaining to any rule of the state department of health or department of environmental quality or to any record pertaining to the application for a permit or license necessary to do business or to expand business operations within this state, except as otherwise provided by law.

**SECTION 55. AMENDMENT.** Section 44-04-32 of the North Dakota Century Code is amended and reenacted as follows:

**44-04-32. Animal feeding operation record requests.**

The ~~state department of health~~ department of environmental quality shall keep a written record of each individual who requests information and the type of information requested regarding an animal feeding operation permit. Within seven business days of receiving the request, the department shall provide written notice to the owner and operator of the animal feeding operation describing the type of information that has been requested and the name and address of the requester. If an individual makes inquiries on more than three files in any one request, the department shall charge the individual a fee sufficient to cover the cost of mailing the notice to the owners and operators whose files are being examined and a fee for copying the records as allowed under section 44-04-18.

**SECTION 56.** Subdivision v of subsection 1 of section 54-06-04 the North Dakota Century Code is created and enacted as follows:

- v. Department of environmental quality.

**SECTION 57. AMENDMENT.** Subsection 1 of section 54-07-01.2 of the North Dakota Century Code is amended and reenacted as follows:

- 1        1. Notwithstanding sections 2-05-01, 4.1-05-02, 4.1-26-02, 6-01-03, 6-09-02.1,  
2        12-55.1-02, 12-59-01, 15-39.1-05.1, 15.1-01-01, 15.1-13-02, 20.1-02-23, 23-01-02,  
3        ~~23-25-02~~23.1-01-02, 36-01-01, 37-18.1-01, 50-06-05.6, 50-06.1-16, 54-34.3-10,  
4        54-54-02, 55-01-01, and 61-02-04, ~~and 61-28-03~~, all members of the following boards  
5        and commissions must, subject to the limitations of this section, be considered to have  
6        resigned from such boards and commissions effective January first of the first year of  
7        each four-year term of the governor:  
8        a. The aeronautics commission.  
9        b. The milk marketing board.  
10       c. The dairy promotion commission.  
11       d. The state banking board.  
12       e. The state credit union board.  
13       f. The advisory board of directors to the Bank of North Dakota.  
14       g. The pardon advisory board.  
15       h. The state parole board.  
16       i. The state board of public school education.  
17       j. The education standards and practices board.  
18       k. The board of trustees of the teachers' fund for retirement.  
19       l. The state game and fish advisory board.  
20       m. The health council.  
21       n. The ~~air pollution control~~environmental review advisory council.  
22       o. The board of animal health.  
23       p. The administrative committee on veterans' affairs.  
24       q. The committee on aging.  
25       r. The committee on employment of people with disabilities.  
26       s. The commission on the status of women.  
27       t. The North Dakota council on the arts.  
28       u. The state historical board.  
29       v. The state water commission.  
30       w. The state water pollution control board.

1       **SECTION 58. AMENDMENT.** Subsection 3 of section 54-12-08 of the North Dakota  
2 Century Code is amended and reenacted as follows:

- 3       3.   The attorney general may require payment for legal services rendered by any  
4           assistant or special assistant attorney general to any state official, board, department,  
5           agency, or commission and those entities shall make the required payment to the  
6           attorney general. Moneys received by the attorney general in payment for legal  
7           services rendered must be deposited into the attorney general's operating fund.  
8           General fund moneys may not be utilized for the payment of legal services provided by  
9           the attorneys employed by the attorney general, except for those payments required of  
10          the department of human services, state department of health, department of  
11          environmental quality, and the state hospital.

12       **SECTION 59. AMENDMENT.** Section 54-44.3-30 of the North Dakota Century Code is  
13 amended and reenacted as follows:

14       **54-44.3-30. Agencies subject to merit system.**

15       All personnel employed by the department of human services, the regional offices of that  
16 department, job service North Dakota, North Dakota human resource management services,  
17 the state department of health, department of environmental quality, and other agencies or  
18 political subdivisions as may by federal law or rule be required to be subject to a merit system in  
19 order to obtain federal grants-in-aid are covered by the merit system provided in this chapter.  
20 Merit system coverage must also be provided to personnel employed as purchasing agents or  
21 buyers in the purchasing division of the office of management and budget. Other agencies,  
22 departments, or divisions and positions must be placed under a merit system in the manner and  
23 to the extent required by law.

24       **SECTION 60. AMENDMENT.** Subsection 33 of section 57-43.2-01 of the North Dakota  
25 Century Code is amended and reenacted as follows:

- 26       33.   "Special fuel" means all combustible gases and liquids suitable for the generation of  
27           power for propulsion of motor vehicles and includes compressed natural gas,  
28           kerosene, liquefied petroleum gases, all gases and liquids which meet the  
29           specifications as determined by the ~~state department of health pursuant to the~~  
30           ~~provisions of section 19-10-10~~ department of environmental quality under chapter  
31           23.1-13, as well as all liquids determined by the ~~state department of health~~ department

1           ~~of environmental quality~~ to be heating oil pursuant to the provisions of section  
2           ~~19-10-10~~under chapter 23.1-13, except that it does not include either motor vehicle  
3           fuels as defined in section 57-43.1-01, aviation fuels as defined in section 57-43.3-01,  
4           or antifreeze as defined by section ~~49-16.1-02~~23.1-14-02.

5           **SECTION 61. AMENDMENT.** Section 58-03-11 of the North Dakota Century Code is  
6 amended and reenacted as follows:

7           **58-03-11. Establishment of zoning districts - Uniformity.**

8           For the purpose of promoting the health, safety, morals, or the general welfare, or to secure  
9 the orderly development of approaches to municipalities, the board of township supervisors may  
10 establish one or more zoning districts and within such districts may, subject to the provisions of  
11 chapter 54-21.3 and section 58-03-11.1, regulate and restrict the erection, construction,  
12 reconstruction, alteration, repair, or use of buildings and structures, the height, number of  
13 stories, and size of buildings and structures, the percentage of lot that may be occupied, the  
14 size of courts, yards, and other open spaces, the density of population, and the location and  
15 use of buildings, structures, and land for trade, industry, residence, or other purposes. All such  
16 regulations and restrictions must be uniform throughout each district, but the regulations and  
17 restrictions in one district may differ from those in other districts. The board of township  
18 supervisors may establish institutional controls that address environmental concerns with the  
19 ~~state department of health~~department of environmental quality as provided in section  
20 ~~23-20.3-03.1~~23.1-04-04.

21           **SECTION 62. AMENDMENT.** Section 58-03-11.1 of the North Dakota Century Code is  
22 amended and reenacted as follows:

23           **58-03-11.1. Farming and ranching regulations - Requirements - Limitations -**  
24 **Definitions.**

25           1. For purposes of this section:

- 26           a. "Concentrated feeding operation" means any livestock feeding, handling, or  
27           holding operation, or feed yard, where animals are concentrated in an area that is  
28           not normally used for pasture or for growing crops and in which animal wastes  
29           may accumulate. The term does not include normal wintering operations for  
30           cattle.

b. "Farming or ranching" means cultivating land for the production of agricultural crops or livestock, or raising, feeding, or producing livestock, poultry, milk, or fruit.

The term does not include:

(1) The production of timber or forest products; or

(2) The provision of grain harvesting or other farm services by a processor or distributor of farm products or supplies in accordance with the terms of a contract.

c. "Livestock" includes beef cattle, dairy cattle, sheep, swine, poultry, horses, bison, elk, fur animals raised for their pelts, and any other animals that are raised, fed, or produced as a part of farming or ranching activities.

d. "Location" means the setback distance between a structure, fence, or other boundary enclosing a concentrated feeding operation, including its animal waste collection system, and the nearest occupied residence, the nearest buildings used for nonfarm or nonranch purposes, or the nearest land zoned for residential, recreational, or commercial purposes. The term does not include the setback distance for the application of manure or for the application of other recycled agricultural material under a nutrient management plan approved by the ~~state department of health~~ department of environmental quality.

2. For purposes of this section, animal units are determined as follows:

a. One mature dairy cow, whether milking or dry, equals 1.33 animal units;

b. One dairy cow, heifer, or bull, other than an animal described in subdivision a equals 1.0 animal unit;

c. One weaned beef animal, whether a calf, heifer, steer, or bull, equals 0.75 animal unit;

d. One cow-calf pair equals 1.0 animal unit;

e. One swine weighing fifty-five pounds [24.948 kilograms] or more equals 0.4 animal unit;

f. One swine weighing less than fifty-five pounds [24.948 kilograms] equals 0.1 animal unit;

g. One horse equals 2.0 animal units;

h. One sheep or lamb equals 0.1 animal unit;

- 1           i. One turkey equals 0.0182 animal unit;
- 2           j. One chicken, other than a laying hen, equals 0.008 animal unit;
- 3           k. One laying hen equals 0.012 animal unit;
- 4           l. One duck equals 0.033 animal unit; and
- 5           m. Any livestock not listed in subdivisions a through l equals 1.0 animal unit per
- 6               each one thousand pounds [453.59 kilograms] whether single or combined
- 7               animal weight.
- 8       3. A board of township supervisors may not prohibit or prevent the use of land or
- 9           buildings for farming or ranching or any of the normal incidents of farming or ranching.
- 10       4. A regulation may not preclude the development of a concentrated feeding operation in
- 11           the township.
- 12       5. A board of township supervisors may not prohibit the reasonable diversification or
- 13           expansion of a farming or ranching operation.
- 14       6. A board of township supervisors may adopt regulations that establish different
- 15           standards for the location of concentrated feeding operations based on the size of the
- 16           operation and the species and type being fed.
- 17       7. If a regulation would impose a substantial economic burden on a concentrated feeding
- 18           operation in existence before the effective date of the regulation, the board of township
- 19           supervisors shall declare that the regulation is ineffective with respect to any
- 20           concentrated feeding operation in existence before the effective date of the regulation.
- 21       8. a. A board of township supervisors may establish high-density agricultural
- 22           production districts in which setback distances for concentrated feeding
- 23           operations and related agricultural operations are less than those in other
- 24           districts.
- 25       b. A board of township supervisors may establish, around areas zoned for
- 26           residential, recreational, or nonagricultural commercial uses, low-density
- 27           agricultural production districts in which setback distances for concentrated
- 28           feeding operations and related agricultural operations are greater than those in
- 29           other districts; provided, the low-density agricultural production districts may not
- 30           extend more than one-half mile [0.80 kilometer] from the edge of the area zoned
- 31           for residential, recreational, or nonagricultural commercial uses.

c. The setbacks provided for in this subsection may not vary by more than fifty percent from those established in subdivision a of subsection 7 of section ~~23-25-11~~23.1-06-15.

d. For purposes of this subsection, a "related agricultural operation" means a facility that produces a product or byproduct used by a concentrated feeding operation.

**SECTION 63. AMENDMENT.** Section 58-03-17 of the North Dakota Century Code is amended and reenacted as follows:

**58-03-17. Regulation of concentrated animal feeding operations - Central repository.**

1. Any zoning regulation that pertains to a concentrated animal feeding operation and which is promulgated by a township after July 31, 2007, is not effective until filed with the ~~state department of health~~department of environmental quality for inclusion in the central repository established under section ~~23-01-30~~23.1-01-10. Any zoning regulation that pertains to a concentrated animal feeding operation and which was promulgated by a county or a township before August 1, 2007, may not be enforced until the regulation is filed with the ~~state department of health~~department of environmental quality for inclusion in the central repository.

2. For purposes of this section:

a. "Concentrated animal feeding operation" means any livestock feeding, handling, or holding operation, or feed yard, where animals are concentrated in an area that is not normally used for pasture or for growing crops and in which animal wastes may accumulate, or in an area where the space per animal unit is less than six hundred square feet [55.74 square meters]. The term does not include normal wintering operations for cattle.

b. "Livestock" includes beef cattle, dairy cattle, sheep, swine, poultry, horses, and fur animals raised for their pelts.

**SECTION 64. AMENDMENT.** Subsection 13 of section 58-06-01 of the North Dakota Century Code is amended and reenacted as follows:

13. To request assistance from a county or district board of health or the ~~state department of health~~department of environmental quality.

**SECTION 65. AMENDMENT.** Section 61-04.1-04 of the North Dakota Century Code is amended and reenacted as follows:

1       **61-04.1-04. North Dakota atmospheric resource board created - Membership.**

2       There is hereby created a North Dakota atmospheric resource board which shall be a  
3       division of the state water commission. The board shall be composed of the director of the  
4       state aeronautics commission, a representative of the department of environmental quality  
5       section of the state department of health, the state engineer, and one additional board member  
6       from each of seven districts established by section 61-04.1-05. The governor shall initially  
7       appoint one board member for each of the seven districts from a list of three candidates given  
8       to the governor by weather modification authorities in each district and:

9       1.   When the term of office of any board member from any district is about to expire.

10      2.   When a vacancy has occurred, or is about to occur, in the term of office of a board  
11      member from any district for any reason other than expiration of term of office.

12      Beginning on July 1, 1983, the term of office for the board shall be arranged so that not less  
13      than three nor more than four terms shall expire on the first day of July of each odd-numbered  
14      year. Therefore, board members appointed on July 1, 1983, from districts II, IV, and VI shall  
15      serve for two-year terms, and board members appointed on July 1, 1983, from districts I, III, V,  
16      and VII shall serve for four-year terms. Thereafter, board members from each district shall serve  
17      for a four-year term of office except in the event the governor shall appoint a member for an  
18      unexpired term, in which case the member shall serve only for the unexpired portion of the  
19      term. In the event any district fails to furnish a list to the governor, or if there are no weather  
20      modification authorities under this chapter within a district, the ~~then~~ governor shall appoint a  
21      board member of the governor's choice residing within such district.

22      **SECTION 66. AMENDMENT.** Subsection 1 of section 61-28-02 of the North Dakota  
23      Century Code is amended and reenacted as follows:

24      1.   ~~"Board" means the state water pollution control board.~~ "Council" means the  
25      environmental review advisory council.

26      **SECTION 67. AMENDMENT.** Subsection 2 of section 61-28-02 of the North Dakota  
27      Century Code is amended and reenacted as follows:

28      2.   "Department" means the ~~state department of health~~ department of environmental  
29      quality.

30      ~~**SECTION 68. AMENDMENT.** Section 61-28-03 of the North Dakota Century Code is~~  
31      ~~amended and reenacted as follows:~~

~~61-28-03. State water pollution prevention agency -- Board~~Council.

~~1. The state water pollution control board consists of thirteen persons. The board must include the state health officer, state engineer, director of the game and fish department, state geologist, and nine other members appointed by the governor, three of whom must be representatives of production agriculture, two of whom must be representatives of manufacturing and processing, one of whom must be a representative of the solid fuels industry, one of whom must be a representative of the fluid and gas fuels industry, one of whom must be a representative of the environmental sciences, and one of whom must be a representative of county or municipal government.~~

~~2. Of the nine members appointed by the governor, each shall serve six-year terms. The governor may fill any vacancy in the appointed membership of the board, and may remove any appointed member for cause.~~

~~3. The board shall select its own chairman from among its members. The heads of departments on the board may, by official order filed with the executive secretary of the board, designate a representative of the person's department to perform the duties of the member making the designation. That person, if any, shall have the powers and be subject to the duties and responsibilities of the appointing office.~~

~~4. All members of the board shall serve without compensation for their duties, but must be reimbursed for necessary travel and other expenses incurred in the performance of their official duties. Reimbursement must be paid out of funds allocated to the department for water pollution control.~~

~~5. The department shall provide the board~~council ~~with copies of maps, plans, documents, studies, surveys, and all other necessary information in order that the board~~so the council ~~may be fully cognizant of the current status of water pollution and its control in the state and to enable the board to advise the department in development of programs for the prevention and control of pollution of waters in the state.~~

~~6. The board shall hold at least one regular meeting each year, and any additional meetings the chairman deems necessary, at a time and place to be determined by the~~

chairman. Upon written request of any three members, the chairman shall call a special meeting. Seven members constitute a quorum.

~~7.2. The boardcouncil shall consider and make recommendations regarding any rules and standards relating to water quality or pollution, ground water protection, and safe drinking of water that are adopted by the department. The department may not take final action on any rules or standards without consulting the boardcouncil. The boardcouncil shall consider any other matters related to the purposes of this chapter and may make recommendations on its own initiative to the department concerning the administration of this chapter.~~

~~SECTION 69. AMENDMENT. Section 61-28-05 of the North Dakota Century Code is amended and reenacted as follows:~~

~~61-28-05. Rules and standards.~~

~~The department may adopt rules and, jointly with the boardcouncil, shall hold public hearings regarding the adoption, amendment, or repeal of rules and standards of quality of the waters of the state as provided in this chapter.~~

**SECTION 68. AMENDMENT.** Subsection 2 of section 61-28.1-02 of the North Dakota Century Code is amended and reenacted as follows:

2. "Department" means the ~~state department of health~~department of environmental quality.

**SECTION 69. AMENDMENT.** Subsection 15 of section 61-28.1-03 of the North Dakota Century Code is amended and reenacted as follows:

15. Designate the ~~state department of health~~department of environmental quality as the state safe drinking water agency for all purposes of the federal Safe Drinking Water Act and is authorized to take all actions necessary and appropriate to secure for the state the benefit of such Act and any grants made thereunder.

**SECTION 70. AMENDMENT.** Subsection 2 of section 61-28.2-01 of the North Dakota Century Code is amended and reenacted as follows:

2. There is established the water pollution control revolving loan fund, which must be maintained and operated by the ~~state department of health~~department of environmental quality. Grants from the federal government or its agencies allotted to the state for the capitalization of the revolving loan fund, and state matching funds

1           when required, must be deposited directly in the revolving loan fund in compliance  
2           with the terms of the federal grant. Money in the revolving loan fund must be  
3           expended in a manner consistent with terms and conditions of the grants received by  
4           the state and may be used to offer loan guarantees; to provide payments to reduce  
5           interest on loans and loan guarantees; to make bond interest subsidies; to provide  
6           bond guarantees on behalf of municipalities, other local political subdivisions, and  
7           intermunicipal or interstate agencies; to provide assistance to a municipality, other  
8           local political subdivisions, or intermunicipal or interstate agencies with respect to the  
9           nonfederal share of the costs of a project; to finance the cost of facility planning and  
10          the preparation of plans, specifications, and estimates for construction of publicly  
11          owned treatment works or public water supply systems; to provide financial assistance  
12          for the construction and rehabilitation of a project on the state priority list; to secure  
13          principal and interest on bonds issued by a public trust having the state of North  
14          Dakota as its beneficiary, or the public finance authority if the proceeds of such bonds  
15          are deposited in the revolving loan fund and to the extent provided in the terms of the  
16          federal grant; to provide for loan guarantees for similar revolving funds established by  
17          municipalities, other local political subdivisions, or intermunicipal agencies; to  
18          purchase debt incurred by municipalities or other local political subdivisions for  
19          wastewater treatment projects or public water supply systems; to improve credit  
20          market access by guaranteeing or purchasing insurance or other credit enhancement  
21          devices for local obligations or obligations of a public trust having the state of North  
22          Dakota as its beneficiary or the public finance authority; to fund other programs which  
23          the federal government authorizes by the terms of its grants; to fund the administrative  
24          expenses of the department associated with the revolving loan fund; and to provide for  
25          any other expenditure consistent with the federal grant program and state law. Money  
26          not currently needed for the operation of the revolving loan fund or otherwise  
27          dedicated may be invested. All interest earned on investments must be credited to the  
28          revolving loan fund.

29        **SECTION 71. AMENDMENT.** Section 61-29-04 of the North Dakota Century Code is  
30        amended and reenacted as follows:

1       **61-29-04. Administration.**

2       This chapter must be administered by a Little Missouri River commission composed of the  
3       director of the parks and recreation department, the ~~state health officer~~director of the state  
4       ~~department of health~~department of environmental quality, the chief engineer of the state water  
5       commission, or their designated representatives, and one member from each of the following  
6       counties: McKenzie, Billings, Slope, Golden Valley, Dunn, and Bowman. The commission  
7       members representing the above-mentioned counties must be appointed by their respective  
8       boards of county commissioners and shall serve without compensation except that each  
9       appointing board of county commissioners may reimburse its county representative for actual  
10      and necessary mileage to and from meetings of the commission at the same rate as state  
11      officers. The county representatives appointed must be resident landowners who live adjacent  
12      to the Little Missouri River with the exception of the Golden Valley County representative. A  
13      county representative unable to attend a meeting of the commission may be represented by a  
14      person who has a written proxy from the representative authorizing that person to act and vote  
15      for the representative. The proxy must be a resident landowner of the county that the proxy is  
16      representing, but need not live adjacent to the Little Missouri River. The county members shall  
17      serve terms of office as follows: two members shall serve one-year terms, two members shall  
18      serve two-year terms, and two members shall serve three-year terms.

19      **SECTION 72. AMENDMENT.** Section 61-33-09 of the North Dakota Century Code is  
20      amended and reenacted as follows:

21      **61-33-09. Members of the board - Organization - Meetings.**

- 22      1.   The board consists of the manager of the Garrison Diversion Conservancy District, the  
23           state engineer, the commissioner of university and school lands, the director of the  
24           parks and recreation department, the director of the game and fish department, and  
25           the ~~state health officer~~director of the department of environmental quality, or their  
26           representatives.
- 27      2.   The state engineer is the board's secretary.
- 28      3.   The board shall meet at least once a year or at the call of the state engineer or two or  
29           more members of the board. The board shall meet at the office of the state engineer or  
30           at any other place decided upon by the board.
- 31      4.   The board may adopt rules to govern its activities.

1       **SECTION 73. AMENDMENT.** Section 61-35-24 of the North Dakota Century Code is  
2 amended and reenacted as follows:

3       **61-35-24. Not exempt from other requirements.**

4       This chapter does not exempt any district from the requirements of any other statute,  
5 ~~whether enacted before or after August 1, 1995,~~ under which the district is required to obtain the  
6 permission or approval of, or to notify, the state water commission, or the ~~state department of~~  
7 ~~health~~department of environmental quality, or any other agency of this state or of any of its  
8 political subdivisions before proceeding with construction, acquisition, operation, enlargement,  
9 extension, or alteration of any works or facilities that the district is authorized to undertake under  
10 this chapter.

11       **SECTION 74. REPEAL.** Chapters 19-10 and 19-16.1 ~~and~~, sections 23-01-01.2, 23-01-04.1,  
12 23-01-23, 23-01-30, and 23-01-36 ~~and~~, chapters 23-20, 23-20.1, 23-20.3, 23-20.5, 23-25,  
13 23-26, 23-29, 23-29.1, 23-31, 23-32, 23-33, 23-37, and 39-26, and sections 61-28-03 and  
14 61-28-05 of the North Dakota Century Code are repealed.

15       **SECTION 75. EFFECTIVE DATE.** Sections 2 through ~~75~~74 of this Act are effective upon  
16 the receipt by the legislative council of the certification by the chief of the environmental health  
17 section of the state department of health attesting that all necessary federal approvals have  
18 been obtained and all necessary federal and other agreements have been amended to ensure  
19 the state will continue to meet the primacy requirements it currently satisfies after the transfer of  
20 authority, powers, and duties from the state department of health to the department of  
21 environmental quality provided under this Act.

17.0860.02002  
Title.

Prepared by the Legislative Council staff for  
Senator Unruh

March 1, 2017

1A  
SB2327  
Subcommittee  
8AM  
Devlin

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2327

Page 13, line 24, after the underscored period insert "The director must possess administrative experience and technical qualifications in industry or environmental sciences, or other experience sufficient to fulfill the duties of the director."

Renumber accordingly

2  
SB2327  
Subcommittee  
8AM  
3-16-17

SB2327

Local Public Health Input

March 10, 2017

Rep. Devlin and Subcommittee members,

Thanks for seeking our input on this bill. As I stated this morning, we are neutral on this bill, albeit a little puzzled, since we see nothing to fix in the present arrangement. Our relationship with the Environmental Division is and has been a good one. If the change is made, we have three main concerns to address:

1. The qualifications for the Director must include a science based degree, preferably with certification, such as a Registered Professional Engineer, a Registered Environmental Health Practitioner, or others with which I am not familiar. This should help avoid purely political appointments.
2. This could perhaps be addressed in Administrative Code, but in the case of an emergency response, the DEQ needs to join the Incident Command Structure under the Dept. of Health, not mount a new and separate one. Most of the emergency response authority is vested in the Health Officer, and so we need to operate in that chain of command.
3. We wanted someone with an environmental sciences degree on the board, and this concern has been met in the present engrossment of the bill.

Finally, I don't really know how to address this, but if the environmental division is split off from State Health, it leaves Food and Lodging behind as kind of an orphan. There is no discipline more central to environmental health than food and lodging; in fact, they have the only nationally licensed Environmental Health Practitioners in the department.

Thank you for listening. We will see you on Thursday, March 16 at 8 a.m. to follow up on this.

Keith Johnson, RS  
Custer Health  
870.1455

**North Dakota House Energy and Natural Resources Committee  
Testimony on Senate Bill 2327**

North Dakota Farm Bureau has been please to work with other stakeholders to address some of our concerns regarding SB2327. In addition to the other groups involved, NDFB has also worked with Dave Glatt to assure agriculture is fairly represented, and that decisions which impact agriculture are based on sound science if this measure moves forward.

We are suggesting the proposed Department of Environmental Quality Advisory Council, in addition to representation of the various energy industries, also include three representatives of agriculture production: A Livestock Specialist, a Crops & Pesticide Representative, and a Fertilizer & Manure Specialist. We also believe Ag processing could and should be represented within the realm of other manufacturing interest. Having some of the advisory council serve in an ex-officio also capacity makes sense to us; these would include Game & Fish, the State Geologist and the State Engineer.

One of our priorities with this initiative going forward is to assure that the director/Department Head is well qualified and sensitive to ALL the industries affected by this new DEQ. WE believe these qualifications should be written into code so the director must have both the experience and the technical qualifications pertinent to Agriculture, Energy and any other affected parties. The current State Health Officer, State Engineer, Department of Corrections Director all have qualifiers written into code and we believe it would be prudent for this agency head to be well qualified to oversee ALL concerned parties.

From the Ag perspective the qualified director would have an Ag Engineering background, or maybe a Soil Scientist. An experienced engineer thinks of things technically and understands cost/benefit analysis; these types of traits in a director will allow Ag, and I would hope, other industries feel much more comfortable about the changes being proposed.

The current division does an excellent job of making sure these concerns are address. But moving forward and after generational changes take place, we want to be assured that this agency follows sound science protocols and does not become a politically motivated agency as we often experience at the federal level.

If you need more information on the stance of NDFB regarding SB 2327 please contact:

Peter F. Hanebutt  
Director of Public Policy  
North Dakota Farm Bureau  
[pete@ndfb.org](mailto:pete@ndfb.org)  
(701) 371-0027 cell

**Fargo**

1101 1st Ave. N. | PO Box 2064, Fargo, ND 58107-2064  
Phone: 701-298-2200 | 1-800-367-9668

**Bismarck**

4900 Ottawa St. | PO Box 2793, Bismarck, ND 58502-2793  
Phone: 701-224-0330 | 1-800-932-8869

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3-16-17  
SB 2327  
Subcommittee  
2 PM  
LOVAS

March 16<sup>th</sup>, 2017

North Dakota House Energy and Natural Resources Committee

RE: SB 2327 – Sub-Committee Hearing Testimony

My name is Sarah Lovas and I am a farmer and agronomist from Hillsboro, ND. It would greatly help North Dakota Agriculture to consider implementing a few of amendments to SB2327.

- 1) Agriculture needs better representation on the Advisory Council. The proposed DEQ would have the power to set rules, such as determining what is considered to be classified as "hazardous waste" (pg. 39, line 11 ver. 17.0860.02000). However, the DEQ may not take final action on any rule or standard without first consulting the council" (pg 14, line 25 ver.17.0860.02000). Therefore, it is important that the industries impacted by the DEQ be fairly represented. The agriculture community agrees that having 3 people representing livestock, crops/pesticides, and fertilizer/manures would fairly represent agriculture. These representatives should not be from a farm organization or commodity group, but rather someone who has a deep understanding the common practices of the specific area as well as an understanding of science.
- 2) The Director of the DEQ should have some specific qualifications to ensure that the director has an understanding of science. Therefore, the director should have a bachelor of science in an engineering discipline and a working knowledge of the agriculture and energy industries in North Dakota. The Director should ensure that rules adopted by the council are created with regard to quality scientific evidence.
- 3) Emphasis must be placed on science based decisions regarding the creation of rules and standards. Rules and standards created in emotion or a belief system will not serve North Dakota well. The need for new rules and standards, as well as the impact of implementing new rules and standards should be considered carefully and from a scientific standpoint. Therefore, representatives to the advisory council may be practitioners with scientific knowledge, but they may also be scientists who have a deep understanding of the common practices of their specialty area they represent. Further, the Director should ensure that rules adopted by the council are created with regard to quality scientific evidence.

I continue to wish the ND Legislature to slow down, defeat SB 2327, and study the concept of creating as well as the structure of this new proposed state agency. However, implementing these ideas would help the proposed ND DEQ function a little better for North Dakota Agriculture.

Sincerely,

Sarah Lovas

607 5<sup>th</sup> Ave SE

Hillsboro, ND 58045

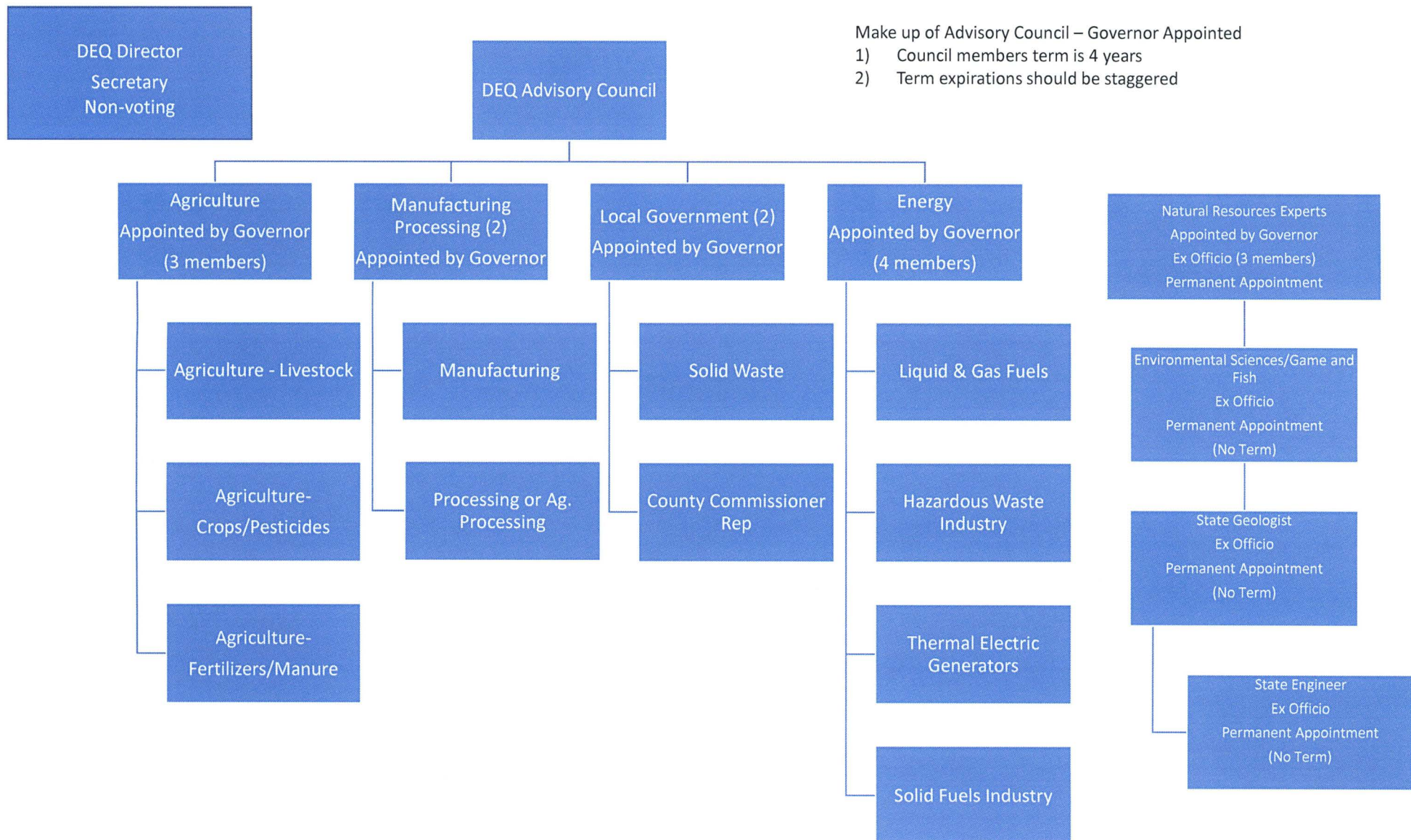
701-866-1704

**Recommended amendment for Section 17, Chapter 23.1-01-01, lines 21-26, page 13**

**23.1-01-01. Department of environmental quality established – Director appointment.** The director of the Department of Environmental Quality shall be appointed by the governor. The person appointed director shall be a qualified individual with an educational background that has at least a bachelor of science in an engineering discipline and a working knowledge of the agriculture and energy industries in North Dakota.

The governor shall set the salary of the director within the limits of legislative appropriations to the department, which shall reflect that person's training and experience. The director is entitled to receive all necessary traveling expenses incurred in the performance of official business. The director may not engage in any other occupation or business that may conflict with the duties of said director.

The director shall serve in an advisory role to the environmental quality council, to ensure that rules adopted by the council are created with regard to quality scientific evidence and are not inconsistent with current century code or any law or rule established by our governing body. The position of director of the department is not a classified position.



PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2327

Page 13, line 24, after the underscored period insert " The director must have a Bachelor of Science degree or higher from an accredited college in a natural or physical science or be a registered professional engineer. The director must also have seven years of environmental health or relevant engineering work experience. Three years of the work experience must include administrative and management responsibilities. Direct work experience in the state of North Dakota is preferred. The director may not engage in any other occupation or business that may conflict with the statutory duties of the director."

PROPOSED AMENDMENT TO ENGROSSED SENATE BILL NO. 2327:

Page 14.

Environmental quality or the director's designee shall serve as the executive secretary for the council.  
The members must be:

- a. A representative of county or municipal government;
- b. A representative of manufacturing or agricultural processing;
- c. A representative of solid fuels industry;
- d. A representative of the liquid and gas fuels industry;
- e. A representative of livestock agriculture;
- f. A representative of crop agriculture;
- g. A representative with an Agronomy or soil science degree;
- h. A representative of the ~~solid~~ waste management industry;
- ~~i. A representative of the hazardous waste industry;~~
- i. A representative of the Thermal electric generator industry;
- j. A representative of the environmental sciences;
- k. The state engineer;
- l. The state geologist; and
- m. The director of the North Dakota Game and Fish Department;

Note: We noted that fertilizer and manure management would also be an expected area of knowledge for the livestock and crop agriculture representatives. As a result we have suggested that one of the agricultural representatives on the Advisory Board be a in the business of Agronomy. It is our interpretation that this could be a person involved in soil testing, crop consulting, fertilizer, chemical or seed sales. We are open to comments or thoughts on this subject.

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Also I deleted the reference to hazardous waste as I believe it would be covered in a waste management industry representative along with recycling etc....

The Natural resource members could be voting members as well making the Environmental Quality Advisory Board a 13 member board. This number would not exceed the current Water Pollution Control Advisory Board member count.

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