

MINING AND GAS AND OIL PRODUCTION

CHAPTER 299

SENATE BILL NO. 2123

(Senator Patten)
(Representative Longmuir)

AN ACT to amend and reenact sections 38-08-04.4, 38-08-04.5, 38-08-04.8, and 38-08-04.9 of the North Dakota Century Code, relating to the authorization to enter contracts, abandoned oil and gas well plugging and site reclamation fund, and confiscation of equipment and recovery for costs of plugging and reclamation of sites with bonds held by the North Dakota industrial commission.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 38-08-04.4 of the North Dakota Century Code is amended and reenacted as follows:

38-08-04.4. Commission authorized to enter into contracts.

The commission may enter public and private contractual agreements for the plugging or replugging of oil and gas or injection wells, the removal or repair of related equipment, the reclamation of abandoned oil and gas or injection well sites, the reclamation of saltwater handling facility sites, the reclamation of treating plant sites, and the reclamation of oil and gas-related pipelines and associated facilities, including reclamation as a result of leaks or spills from a pipeline or associated facility, if any of the following apply:

1. The person or company drilling or operating the well or equipment cannot be found, has no assets with which to properly plug or replug the well or reclaim the well site, cannot be legally required to plug or replug the well or to reclaim the well site, pipeline, or associated pipeline facility, or damage is the result of an illegal dumping incident.
2. There is no bond covering the well to be plugged or the site to be reclaimed or there is a bond but the cost of plugging or replugging the well or reclaiming the site, pipeline, or associated pipeline facility exceeds the amount of the bond or damage is the result of an illegal dumping incident.
3. The well, equipment, pipeline, or associated pipeline facility is leaking or likely to leak oil, gas, or saltwater or is likely to cause a serious threat of pollution or injury to the public health or safety.

Sealed bids for any well plugging or reclamation work under this section must be solicited by placing a notice in the official county newspaper of the county in which the work is to be done and in such other newspapers of general circulation in the area as the commission may deem appropriate. Bids must be addressed to the commission

and must be opened publicly at the time and place designated in the notice. The contract must be let to the lowest responsible bidder, but the commission may reject any or all bids submitted. If a well or equipment is leaking or likely to leak oil, gas, or saltwater or is likely to cause a serious threat of pollution or injury to the public health or safety, the commission, without notice or the letting of bids, may enter into contracts necessary to mitigate the problem.

The contracts for the plugging or replugging of wells or the reclamation of well sites must be on terms and conditions as prescribed by the commission, but at a minimum the contracts shall require the plugging and reclamation to comply with all statutes and rules governing the plugging of wells and reclamation of well sites.

SECTION 2. AMENDMENT. Section 38-08-04.5 of the North Dakota Century Code is amended and reenacted as follows:

38-08-04.5. Abandoned oil and gas well plugging and site reclamation fund - Continuing appropriation - Budget section report.

There is hereby created an abandoned oil and gas well plugging and site reclamation fund.

1. Revenue to the fund must include:
 - a. Fees collected by the oil and gas division of the industrial commission for permits or other services.
 - b. Moneys received from the forfeiture of drilling and reclamation bonds.
 - c. Moneys received from any federal agency for the purpose of this section.
 - d. Moneys donated to the commission for the purposes of this section.
 - e. Moneys received from the state's oil and gas impact fund.
 - f. Moneys recovered under the provisions of section 38-08-04.8.
 - g. Moneys recovered from the sale of equipment and oil confiscated under section 38-08-04.9.
 - h. Moneys transferred from the cash bond fund under section 38-08-04.11.
 - i. Such other moneys as may be deposited in the fund for use in carrying out the purposes of plugging or replugging of wells or the restoration of well sites.
 - j. Civil penalties assessed under section 38-08-16.
2. Moneys in the fund may be used for the following purposes:
 - a. Contracting for the plugging of abandoned wells.
 - b. Contracting for the reclamation of abandoned drilling and production sites, saltwater disposal pits, drilling fluid pits, and access roads.
 - c. To pay mineral owners their royalty share in confiscated oil.

- d. Defraying costs incurred under section 38-08-04.4 in reclamation of saltwater handling facilities, treating plants, and oil and gas-related pipelines and associated facilities.
 - e. Reclamation and restoration of land and water resources impacted by oil and gas development, including related pipelines and facilities that were abandoned or were left in an inadequate reclamation status before August 1, 1983, and for which there is not any continuing reclamation responsibility under state law. Land and water degraded by any willful act of the current or any former surface owner are not eligible for reclamation or restoration. The commission may expend up to five million dollars per biennium from the fund in the following priority:
 - (1) For the restoration of eligible land and water that are degraded by the adverse effects of oil and gas development including related pipelines and facilities.
 - (2) For the development of publicly owned land adversely affected by oil and gas development including related pipelines and facilities.
 - (3) For administrative expenses and cost in developing an abandoned site reclamation plan and the program.
 - (4) Demonstration projects for the development of reclamation and water quality control program methods and techniques for oil and gas development, including related pipelines and facilities.
 - f. For transfer by the office of management and budget, upon request of the industrial commission, to the environmental quality restoration fund for use by the state department of health for the purposes provided under chapter 23-31, if to address environmental emergencies relating to oil and natural gas development, including the disposal of oilfield waste and oil or natural gas production and transportation by rail, road, or pipeline. If a transfer requested by the industrial commission has been made under this subdivision, the state department of health shall request the office of management and budget to transfer from subsequent deposits in the environmental quality restoration fund an amount sufficient to restore the amount transferred from the abandoned oil and gas well plugging and site reclamation fund.
3. This fund must be maintained as a special fund and all moneys transferred into the fund are appropriated and must be used and disbursed solely for the purposes in this section.
 4. The commission shall report to the budget section of the legislative management on the balance of the fund and expenditures from the fund each biennium.

(Contingent effective date - See note) Abandoned oil and gas well plugging and site reclamation fund - Continuing appropriation - Budget section report.

There is created an abandoned oil and gas well plugging and site reclamation fund.

1. Revenue to the fund must include:

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- a. Fees collected by the oil and gas division of the industrial commission for permits or other services.
 - b. Moneys received from the forfeiture of drilling and reclamation bonds.
 - c. Moneys received from any federal agency for the purpose of this section.
 - d. Moneys donated to the commission for the purposes of this section.
 - e. Moneys received from the state's oil and gas impact fund.
 - f. Moneys recovered under the provisions of section 38-08-04.8.
 - g. Moneys recovered from the sale of equipment and oil confiscated under section 38-08-04.9.
 - h. Moneys transferred from the cash bond fund under section 38-08-04.11.
 - i. Such other moneys as may be deposited in the fund for use in carrying out the purposes of plugging or replugging of wells or the restoration of well sites.
 - j. Civil penalties assessed under section 38-08-16.
2. Moneys in the fund may be used for the following purposes:
- a. Contracting for the plugging of abandoned wells.
 - b. Contracting for the reclamation of abandoned drilling and production sites, saltwater disposal pits, drilling fluid pits, and access roads.
 - c. To pay mineral owners their royalty share in confiscated oil.
 - d. Defraying costs incurred under section 38-08-04.4 in reclamation of saltwater handling facilities, treating plants, and oil and gas-related pipelines and associated facilities.
 - e. Reclamation and restoration of land and water resources impacted by oil and gas development, including related pipelines and facilities that were abandoned or were left in an inadequate reclamation status before August 1, 1983, and for which there is not any continuing reclamation responsibility under state law. Land and water degraded by any willful act of the current or any former surface owner are not eligible for reclamation or restoration. The commission may expend up to five million dollars per biennium from the fund in the following priority:
 - (1) For the restoration of eligible land and water that are degraded by the adverse effects of oil and gas development including related pipelines and facilities.
 - (2) For the development of publicly owned land adversely affected by oil and gas development including related pipelines and facilities.
 - (3) For administrative expenses and cost in developing an abandoned site reclamation plan and the program.

- (4) Demonstration projects for the development of reclamation and water quality control program methods and techniques for oil and gas development, including related pipelines and facilities.
- f. For transfer by the office of management and budget, upon request of the industrial commission, to the environmental quality restoration fund for use by the department of environmental quality for the purposes provided under chapter 23.1-10, if to address environmental emergencies relating to oil and natural gas development, including the disposal of oilfield waste and oil or natural gas production and transportation by rail, road, or pipeline. If a transfer requested by the industrial commission has been made under this subdivision, the department of environmental quality shall request the office of management and budget to transfer from subsequent deposits in the environmental quality restoration fund an amount sufficient to restore the amount transferred from the abandoned oil and gas well plugging and site reclamation fund.
3. This fund must be maintained as a special fund and all moneys transferred into the fund are appropriated and must be used and disbursed solely for the purposes in this section.
4. The commission shall report to the budget section of the legislative management on the balance of the fund and expenditures from the fund each biennium.

SECTION 3. AMENDMENT. Section 38-08-04.8 of the North Dakota Century Code is amended and reenacted as follows:

38-08-04.8. Recovery for costs of plugging and reclamation.

If the commission, its agents, employees, or contractors, plugs or replugs a well or reclaims a well site, pipeline facility, production facility, saltwater handling facility, or treating plant under the provisions of sections 38-08-04.4, 38-08-04.5, 38-08-04.7, 38-08-04.8, 38-08-04.9, and 38-08-04.10, the state has a cause of action for all reasonable expenses incurred in the plugging, replugging, or reclamation against the operator ~~of the well~~ at the time the well is required to be plugged and the well or facility is required to be abandoned or any or all persons who own a working interest in the well, pipeline facility, production facility, saltwater handling facility, or treating plant at the time the well is required to be plugged and the well, pipeline facility, production facility, saltwater handling facility, or treating plant abandoned as a result of the ownership of a lease or mineral interest in the property on which the well, pipeline facility, production facility, saltwater handling facility, or treating plant is located. The term "working interest owner" does not mean a royalty owner or an overriding royalty interest owner. The commission shall seek reimbursement for all reasonable expenses incurred in plugging any well or reclaiming any well site, pipeline facility, production facility, saltwater handling facility, or treating plant through an action instituted by the attorney general. The liability of any working interest owner under this section shall be limited to that proportion of the reasonable expenses incurred by the commission that the interest of any such working interest owner bears to the entire working interest in the well. Any money collected in a suit under this section must be deposited in the state abandoned oil and gas well plugging and site reclamation fund. Any suit brought by the commission for reimbursement under this section may be brought in the district court for Burleigh County, the county in which the plugged well or reclaimed well site, pipeline facility, production facility, saltwater handling facility, or treating plant is located, or the county in which any defendant resides.

SECTION 4. AMENDMENT. Section 38-08-04.9 of the North Dakota Century Code is amended and reenacted as follows:

38-08-04.9. Confiscation of equipment and salable oil to cover plugging and reclamation costs.

When the commission intends to exercise or has exercised its right to plug a well or reclaim a well site, pipeline facility, production facility, saltwater handling facility, or treating plant, the commission, as compensation for its costs, may confiscate any ~~production-related~~ equipment and salable oil at the well site, pipeline facility, production facility, saltwater handling facility, or treating plant. The equipment subject to confiscation is limited to that owned by the well's operator, former operator, or working interest owner. If the commission exercises its authority under this section and there is salable oil at the well site, that oil must be confiscated. The commission shall pay the mineral owners the royalty interest in the oil confiscated at the well site. In determining the mineral owners and their royalty interests, the commission may rely upon the most recent division order it is able to obtain. If one is unavailable or the commission finds the order unreliable, the commission may rely upon any other source of information the commission deems reasonable to determine and pay mineral owners. A confiscation must be by an order of the commission after notice and hearing. A confiscation order transfers title to the commission.

Approved March 6, 2019

Filed March 7, 2019

CHAPTER 300

SENATE BILL NO. 2344

(Senators Unruh, Cook, Schaible)
(Representatives Kempenich, Porter)

AN ACT to create and enact section 47-31-09 of the North Dakota Century Code, relating to injection or migration of substances into pore space; and to amend and reenact sections 38-08-25, 38-11.1-01, and 38-11.1-03 of the North Dakota Century Code, relating to pore space and oil and gas production.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 38-08-25 of the North Dakota Century Code is amended and reenacted as follows:

38-08-25. Hydraulic fracturing - Use of carbon dioxide - Designated as acceptable recovery processes.

1. Notwithstanding any other provision of law, the legislative assembly designates hydraulic fracturing, a mechanical method of increasing the permeability of rock to increase the amount of oil and gas produced from the rock, and the use of carbon dioxide for enhanced recovery of oil, gas, and other minerals acceptable recovery processes in this state.
2. It is in the public interest to promote the use of carbon dioxide to benefit the state, to help ensure the viability of the state's coal and power industries, and to benefit the state economy. Carbon dioxide is a potentially valuable commodity, and increasing its availability is important for commercial, industrial, or other uses, including enhanced recovery of oil, gas, and other minerals.
3. It is in the public interest to encourage and authorize cycling, recycling, pressure maintenance, secondary recovery operations, and enhanced recovery operations utilizing carbon dioxide for the greatest possible economic recovery of oil and gas.
4. It is in the public interest for a person conducting operations authorized by the commission under this chapter to use as much of a subsurface geologic formation as reasonably necessary to allow for unit operations for enhanced oil recovery, utilization of carbon dioxide for enhanced recovery of oil, gas, and other minerals, disposal operations, or any other operation authorized by this chapter.
5. Notwithstanding any other provision of law, a person conducting unit operations for enhanced oil recovery, utilization of carbon dioxide for enhanced recovery of oil, gas, and other minerals, disposal operations, or any other operation authorized by the commission under this chapter may utilize subsurface geologic formations in the state for such operations or any other permissible purpose under this chapter. Any other provision of law may not be construed to entitle the owner of a subsurface geologic formation to prohibit or demand payment for the use of the subsurface geologic formation for unit

operations for enhanced oil recovery, utilization of carbon dioxide for enhanced recovery of oil, gas, and other minerals, disposal operations, or any other operation conducted under this chapter. As used in this section, "subsurface geologic formation" means any cavity or void, whether natural or artificially created, in a subsurface sedimentary stratum.

6. The commission may adopt and enforce rules and orders to effectuate the purposes of this section.

SECTION 2. AMENDMENT. Section 38-11.1-01 of the North Dakota Century Code is amended and reenacted as follows:

38-11.1-01. Legislative findings.

The legislative assembly finds the following:

1. It is necessary to exercise the police power of incumbent on the state to protect the public welfare of North Dakota which is largely dependent on agriculture and to protect the economic well-being of individuals engaged in agricultural production, while at the same time preserving and facilitating exploration through the utilization of subsurface pore space in accordance with an approved unitization or similar agreement, an oil and gas lease, or as otherwise permitted by law.
2. Exploration for and development of oil and gas reserves in this state interferes with the use, agricultural or otherwise, of the surface of certain land.
3. Owners of the surface estate and other persons should be justly compensated for injury to their persons or property and interference with the use of their property occasioned by oil and gas development.
4. This chapter may not be construed to alter, amend, repeal, or modify the law concerning title to pore space under section 47-31-03.

SECTION 3. AMENDMENT. Section 38-11.1-03 of the North Dakota Century Code is amended and reenacted as follows:

38-11.1-03. Definitions.

In this chapter, unless the context or subject matter otherwise requires:

1. "Agricultural production" means the production of any growing grass or crop attached to the surface of the land, whether or not the grass or crop is to be sold commercially, and the production of any farm animals, including farmed elk, whether or not the animals are to be sold commercially.
2. "Drilling operations" means the drilling of an oil and gas well and the production and completion operations ensuing from the drilling which require entry upon the surface estate and which were commenced after June 30, 1979, and oil and gas geophysical and seismograph exploration activities commenced after June 30, 1983.
3. "Land" means the solid material of earth, regardless of ingredients, but excludes pore space.

4. "Mineral developer" means the person who acquires the mineral estate or lease for the purpose of extracting or using the minerals for nonagricultural purposes.
- 4.5. "Mineral estate" means an estate in or ownership of all or part of the minerals underlying a specified tract of land.
- 5.6. "Minerals" means oil and gas.
7. "Pore space" means a cavity or void, naturally or artificially created, in a subsurface sedimentary stratum.
- 6.8. "Surface estate" means an estate in or ownership of the surface of a particular tract of land.
- 7.9. "Surface owner" means any person who holds record title to the surface of the land as an ownerestate on which a drilling operation occurs or is conducted.

SECTION 4. Section 47-31-09 of the North Dakota Century Code is created and enacted as follows:

47-31-09. Injection of substances to facilitate production of oil, gas, or other minerals.

1. This chapter may not be construed to limit the rights or dominance of a mineral estate to drill or recomplete a well under chapter 38-08. Injection or migration of substances into pore space for disposal operations, for secondary or tertiary oil recovery operations, or otherwise to facilitate production of oil, gas, or other minerals is not unlawful and, by itself, does not constitute trespass, nuisance, or other tort.
2. This section and chapter 38-08 may not be construed to impair the obligations of any contract for use of the surface estate for disposal operations, provided the contract was entered before the effective date of the unit approved by the commission pursuant to sections 38-08-09 through 38-08-09.17, and provided the disposal well is located within the unit area of the approved unit.
3. This section and chapter 38-08 may not be construed to allow the operator of a disposal well where the contract has expired after the effective date of the unit approved by the commission pursuant to sections 38-08-09 through 38-08-09.17 to claim the surface owner should not be compensated as if the new contract for the disposal well on which the contract has expired had been entered after the effective date of the approved unit.
4. The owner of the surface estate upon which the surface location of a disposal well is located does not lose, and may not be deemed to have lost, a claim for trespass, nuisance, or other tort if the operator of the disposal well commences or continues operations of the disposal well in violation of subsections 2 or 3.

Approved April 18, 2019

Filed April 19, 2019

CHAPTER 301

SENATE BILL NO. 2037

(Legislative Management)
(Natural Resources Committee)

AN ACT to create and enact chapters 38-23 and 38-24 of the North Dakota Century Code, relating to the disposal and storage of high-level radioactive waste and subsurface storage and retrieval of nonhydrocarbons; to amend and reenact sections 12.1-06.1-01 and 38-19-09 of the North Dakota Century Code, relating to the definition of illegal transportation or disposal of radioactive waste material or hazardous waste and disposition of unusable products; to repeal chapter 23-20.2 of the North Dakota Century Code, relating to the disposal of nuclear waste material; to provide a penalty; and to provide a continuing appropriation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 12.1-06.1-01 of the North Dakota Century Code is amended and reenacted as follows:

12.1-06.1-01. Definitions.

1. For the purpose of section 12.1-06.1-02:
 - a. "Combination" means persons who collaborate in carrying on or furthering the activities or purposes of a criminal association even though those persons may not know each other's identity or membership in the combination may change from time to time or one or more members may stand in a wholesaler-retailer or other arm's-length relationship with others as to activities or dealings between or among themselves in an illicit operation.
 - b. "Criminal association" means any combination of persons or enterprises engaging, or having the purpose of engaging, on a continuing basis in conduct which violates any one or more provisions of any felony statute of this state or which is the willful and illegal transportation or disposal of radioactive waste material or hazardous waste.
2. For the purposes of sections 12.1-06.1-02 through 12.1-06.1-07, unless the context otherwise requires:
 - a. "Control" means the possession of a sufficient interest to permit substantial direction over the affairs of an enterprise.
 - b. "Enterprise" means any corporation, limited liability company, association, labor union, or other legal entity or any group of persons associated in fact although not a legal entity.
 - c. "Financial institution" means any bank, trust company, savings and loan association, credit union, or moneylender under the jurisdiction of the state department of financial institutions or its commissioner, or the state banking board, or the state credit union board.

- d. "Illegal transportation or disposal of radioactive waste material or hazardous waste" means the transportation or disposal into a nonhazardous waste landfill or the intentional and unlawful dumping into or on any land or water of radioactive waste material in violation of ~~section 23-20.2-09~~chapter 38-23 or the rules adopted pursuant to that section which were in effect on January 1, 1997~~chapter~~, or hazardous waste in willful violation of chapter 23-20.3 or the rules adopted pursuant to that chapter ~~which were in effect on January 1, 1997, except for the handling of conditionally exempt small quantities of hazardous waste as referenced in section 33-24-02-05 of the North Dakota Administrative Code.~~
- e. "Pattern of racketeering activity" requires at least two acts of racketeering activity, one of which occurred after July 8, 1987, and the last of which occurred within ten years, excluding any period of imprisonment, after the commission of a prior act of racketeering activity.
- f. "Racketeering" means any act including any criminal attempt, facilitation, solicitation, or conspiracy, committed for financial gain, which is chargeable or indictable under the laws of the state in which the act occurred and, if the act occurred in a state other than this state, would be chargeable or indictable under the laws of this state had the act occurred in this state and punishable by imprisonment for more than one year, regardless of whether such act is charged or indicted, involving:
- (1) Homicide.
 - (2) Robbery.
 - (3) Kidnapping.
 - (4) Forgery.
 - (5) Theft.
 - (6) Bribery.
 - (7) Gambling.
 - (8) Usury.
 - (9) Extortion.
 - (10) Unlawful delivery of controlled substances.
 - (11) Trafficking in explosives, weapons, or stolen property.
 - (12) Leading a criminal association.
 - (13) Obstructing or hindering criminal investigations or prosecutions.
 - (14) Asserting false claims including, but not limited to, false claims asserted through fraud or arson.
 - (15) Fraud.

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- (16) Sale of unregistered securities or real property securities and transactions involving such securities by unregistered dealers or salesmen.
 - (17) Obscenity.
 - (18) Child pornography.
 - (19) Prostitution.
 - (20) Human trafficking.
- g. "Records" means any book, paper, writing, record, computer program, or other material.
3. For the purposes of section 12.1-06.1-08:
- a. "Access" means to approach, instruct, communicate with, store data in, retrieve data from, or otherwise make use of any resources of a computer, computer system, or computer network.
 - b. "Computer" means an electronic device which performs work using programmed instruction and which has one or more of the capabilities of storage, logic, arithmetic, communication, or memory and includes all input, output, processing, storage, software, or communication facilities that are connected or related to such a device in a system or network.
 - c. "Computer network" means the interconnection of communication lines, including microwave, fiber optics, light beams, or other means of electronic or optic data communication, with a computer through remote terminals or a complex consisting of two or more interconnected computers.
 - d. "Computer program" means a series of instructions or statements, in a form acceptable to a computer, which permits the functioning of a computer system in a manner designed to provide appropriate products from such computer system.
 - e. "Computer software" means a set of computer programs, procedures, and associated documentation concerned with the operation of a computer system.
 - f. "Computer system" means a set of related, connected, or unconnected computer equipment, devices, and software.
 - g. "Financial instrument" means any credit card, debit card, or electronic fund transfer card, code, or other means of access to an account for the purpose of initiating electronic fund transfers, or any check, draft, money order, certificate of deposit, letter of credit, bill of exchange, marketable security, or any other written instrument which is transferable for value.
 - h. "Property" includes financial instruments, information, electronically produced or stored data, supporting documentation, computer software, and computer programs in either machine or human readable form, and any other tangible or intangible item of value.

- i. "Services" includes computer time, data processing, storage functions, and other uses of a computer, computer system, or computer network to perform useful work.

(Contingent effective date - See note) Definitions.

1. For the purpose of section 12.1-06.1-02:
 - a. "Combination" means persons who collaborate in carrying on or furthering the activities or purposes of a criminal association even though those persons may not know each other's identity or membership in the combination may change from time to time or one or more members may stand in a wholesaler-retailer or other arm's-length relationship with others as to activities or dealings between or among themselves in an illicit operation.
 - b. "Criminal association" means any combination of persons or enterprises engaging, or having the purpose of engaging, on a continuing basis in conduct which violates any one or more provisions of any felony statute of this state or which is the willful and illegal transportation or disposal of radioactive waste material or hazardous waste.
2. For the purposes of sections 12.1-06.1-02 through 12.1-06.1-07, unless the context otherwise requires:
 - a. "Control" means the possession of a sufficient interest to permit substantial direction over the affairs of an enterprise.
 - b. "Enterprise" means any corporation, limited liability company, association, labor union, or other legal entity or any group of persons associated in fact although not a legal entity.
 - c. "Financial institution" means any bank, trust company, savings and loan association, credit union, or moneylender under the jurisdiction of the state department of financial institutions or its commissioner, or the state banking board, or the state credit union board.
 - d. "Illegal transportation or disposal of radioactive waste material or hazardous waste" means the transportation or disposal into a nonhazardous waste landfill or the intentional and unlawful dumping into or on any land or water of radioactive waste material in violation of ~~section 23-20.2-09~~chapter 38-23 or ~~the rules adopted pursuant to that section which were in effect on January 1, 1997~~chapter, or hazardous waste in willful violation of chapter 23.1-04 or the rules adopted ~~which were in effect on January 1, 1997, except for the handling of conditionally exempt small quantities of hazardous waste as was referenced in section 33-24-02-05 of the North Dakota Administrative Code~~pursuant to that chapter.
 - e. "Pattern of racketeering activity" requires at least two acts of racketeering activity, one of which occurred after July 8, 1987, and the last of which occurred within ten years, excluding any period of imprisonment, after the commission of a prior act of racketeering activity.
 - f. "Racketeering" means any act including any criminal attempt, facilitation, solicitation, or conspiracy, committed for financial gain, which is chargeable or indictable under the laws of the state in which the act

occurred and, if the act occurred in a state other than this state, would be chargeable or indictable under the laws of this state had the act occurred in this state and punishable by imprisonment for more than one year, regardless of whether such act is charged or indicted, involving:

- (1) Homicide.
 - (2) Robbery.
 - (3) Kidnapping.
 - (4) Forgery.
 - (5) Theft.
 - (6) Bribery.
 - (7) Gambling.
 - (8) Usury.
 - (9) Extortion.
 - (10) Unlawful delivery of controlled substances.
 - (11) Trafficking in explosives, weapons, or stolen property.
 - (12) Leading a criminal association.
 - (13) Obstructing or hindering criminal investigations or prosecutions.
 - (14) Asserting false claims including, but not limited to, false claims asserted through fraud or arson.
 - (15) Fraud.
 - (16) Sale of unregistered securities or real property securities and transactions involving such securities by unregistered dealers or salesmen.
 - (17) Obscenity.
 - (18) Child pornography.
 - (19) Prostitution.
 - (20) Human trafficking.
- g. "Records" means any book, paper, writing, record, computer program, or other material.
3. For the purposes of section 12.1-06.1-08:
- a. "Access" means to approach, instruct, communicate with, store data in, retrieve data from, or otherwise make use of any resources of a computer, computer system, or computer network.

- b. "Computer" means an electronic device which performs work using programmed instruction and which has one or more of the capabilities of storage, logic, arithmetic, communication, or memory and includes all input, output, processing, storage, software, or communication facilities that are connected or related to such a device in a system or network.
- c. "Computer network" means the interconnection of communication lines, including microwave, fiber optics, light beams, or other means of electronic or optic data communication, with a computer through remote terminals or a complex consisting of two or more interconnected computers.
- d. "Computer program" means a series of instructions or statements, in a form acceptable to a computer, which permits the functioning of a computer system in a manner designed to provide appropriate products from such computer system.
- e. "Computer software" means a set of computer programs, procedures, and associated documentation concerned with the operation of a computer system.
- f. "Computer system" means a set of related, connected, or unconnected computer equipment, devices, and software.
- g. "Financial instrument" means any credit card, debit card, or electronic fund transfer card, code, or other means of access to an account for the purpose of initiating electronic fund transfers, or any check, draft, money order, certificate of deposit, letter of credit, bill of exchange, marketable security, or any other written instrument which is transferable for value.
- h. "Property" includes financial instruments, information, electronically produced or stored data, supporting documentation, computer software, and computer programs in either machine or human readable form, and any other tangible or intangible item of value.
- i. "Services" includes computer time, data processing, storage functions, and other uses of a computer, computer system, or computer network to perform useful work.

SECTION 2. AMENDMENT. Section 38-19-09 of the North Dakota Century Code is amended and reenacted as follows:

38-19-09. Disposition of unusable products.

Products for which there is no beneficial use and which the commission determines to be hazardous must be disposed of in accordance with the provisions of chapter ~~23-20-238-23~~ and other state laws and regulations regarding the management of hazardous waste.

SECTION 3. Chapter 38-23 of the North Dakota Century Code is created and enacted as follows:

38-23-01. General prohibition.

The placement, storage, exploration, testing, or disposal of high-level radioactive waste within the exterior boundaries of North Dakota is prohibited. If this provision is superseded by federal law, the remaining provisions of this chapter continue to apply.

This section does not limit the authority of the legislative assembly or the commission to issue a notice of disapproval under this chapter.

38-23-02. Definitions.

As used in this chapter:

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

38-23-03. Jurisdiction of the commission and duties.

1. The commission has jurisdiction and authority over any person or property, public or private, necessary to enforce this chapter. The commission may investigate and determine whether facts exist justifying action by the commission. The state geologist shall act as a supervisor charged with the duty of enforcing the regulations and orders of the commission applicable to this chapter.
2. The commission acting through the state geologist may:
 - a. Serve as the point of contact for the federal department of energy or any other federal agency on any matter related to the long-term or temporary storage or permanent disposal of high-level radioactive waste.
 - b. Issue a notice of disapproval regarding a proposed high-level radioactive waste facility in accordance with federal law when the legislative assembly is not in session. Before issuing a notice of disapproval, the commission shall consult with the high-level radioactive waste advisory council and the local government entities with jurisdiction over the area where the proposed high-level radioactive waste facility is to be located.
3. Only the legislative assembly may issue a notice of disapproval during a legislative session.

4. The commission, acting through the state geologist, may:
- a. Take any action necessary to assert the state's rights relating to the exploration of a suitable location for a high-level radioactive waste facility within the state, including providing comments to a federal agency or initiating litigation.
 - b. Enter agreements with the federal government regarding high-level radioactive waste regulation and facility siting and accept available funds for deposit into the high-level radioactive waste fund.
 - c. Adopt and enforce rules and orders to effectuate the purpose and intent of this chapter.
 - d. Require:
 - (1) Identification of ownership of all high-level radioactive waste facilities and equipment used for high-level radioactive waste storage or disposal.
 - (2) The delivery to the state geologist of basic exploration data collected, within thirty days of field collection of such data, free of charge. Data includes:
 - (a) Sample cuts, core chips, or whole cores;
 - (b) Sample logs, radioactivity logs, resistivity logs, or other types of electrical or mechanical logs;
 - (c) Elevation and location information on data collection points; and
 - (d) Other pertinent information required by the state geologist.
 - (3) The filing of monthly reports in the manner prescribed by the commission and any other reports deemed necessary by the commission.
 - (4) The conducting of all exploration, storage, and disposal operations in a manner to prevent pollution of freshwater supplies and to provide for the protection of the environment, public safety, and economic interests.
 - (5) The reclamation of all land disturbed by operations regulated by this chapter to a condition consistent with prior land use and productive capacity. A permanent marker is to be erected and maintained over the disposal site.
 - (6) The furnishing of a reasonable bond with good and sufficient surety, conditioned upon the full compliance with this chapter, and the rules and orders of the commission. The person required to furnish the bond may elect to deposit under such terms as the commission may prescribe a collateral bond, cash, or any alternative form of security approved by the commission, or combination thereof, by which an operator assures faithful performance of all requirements of this chapter and the rules and orders of the commission.

(7) The payment of fees for services performed by the commission, including costs associated with the investigation, review, and processing of the application; monitoring and inspection of the exploration site; monitoring and inspection of the facility; and environmental and monetary impact of the facility. The commission shall set the amount of the fee based on the anticipated actual cost of services rendered and impact to the state and local area. The commission shall set the annual operating fee for a facility permit to be dependent on the size and scope of the facility, but the fee may not be less than one million dollars. Unless otherwise provided by statute, fees collected by the commission must be deposited in the high-level radioactive waste fund, according to procedures established by the state treasurer.

e. Regulate:

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

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

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

38-23-04. Permit required.

1. A person may not commence any actions for testing, exploring, excavating, drilling, boring, or operating a high-level radioactive waste facility without obtaining a permit from the commission.
2. A notice of opportunity for a position paper from the commissioners of the county must be attached to the permit application. A county position paper must be made public at the time the permit application is submitted.
3. A permit may be issued only after notice and hearing and payment of a fee. Notice must be provided in accordance with Rule 3 of the North Dakota Rules of Civil Procedure.
4. An applicant for a permit shall provide notice to a surface owner and any resident of a permanently occupied dwelling located within two miles [3.22 kilometers] of the proposed location, the county commissioners and mayor of any municipality within thirty miles [48.28 kilometers], and publish a notice in the official county newspaper and any county newspaper within thirty miles [48.28 kilometers] of the proposed location.
5. The commission shall give written notice of an application for exploration or facility permit to the county in which exploration is sought or a facility is proposed at least sixty days before the hearing. The commission shall adopt rules establishing deadlines for the issuance of permits.
6. A permit application for a high-level radioactive waste facility must include:

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

38-23-05. Procedure.

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

38-23-06. Penalty - Injunction - Applicable provisions.

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

38-23-07. High-level radioactive waste fund - Continuing appropriation.

There is established a high-level radioactive waste fund into which funds received under an agreement entered under this chapter, permit fees, and civil penalties must be deposited. The commission shall administer the fund and may use the fund to fulfill any of the commission's powers and duties under this chapter. This fund must be maintained as a special fund and all moneys transferred into the fund are hereby appropriated and must be used and disbursed solely for the purposes of this chapter.

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

1. The high-level radioactive waste advisory council is established to advise the commission in carrying out its duties. The council consists of the state engineer, state health officer, director of the department of transportation, director of the game and fish department, the commerce commissioner, and director of the department of environmental quality, who serve as ex officio members. The state geologist shall serve as the executive secretary for the council. Additional members on the council are:
 - a. A representative of county government, appointed by the governor;
 - b. A representative of city government, appointed by the governor;
 - c. A representative of the agricultural community, appointed by the governor;
 - d. Two senators, appointed by the majority leader of the senate of the legislative assembly; and
 - e. Two representatives, appointed by the majority leader of the house of representatives of the legislative assembly.
2. Each appointed member of the council shall serve a four-year term. The governor may fill a vacancy in the membership of the council and remove an appointed member of the council for cause. The council members shall select a chairman from among the council members.
3. An appointed council member must be reimbursed by the commission for necessary travel and other expenses incurred in the performance of official duties.
4. The council shall hold at least one meeting per year and any other meetings deemed necessary by the chairman or a majority of the council.
5. The council shall:
 - a. Review site suitability and issue a report for a proposed high-level radioactive waste facility to the legislative assembly or commission.

- b. Review and make recommendations to the commission regarding rules and standards relating to high-level radioactive waste and the duties of the commission.
- c. Consider any other matter related to this chapter the council deems appropriate, and may make any recommendation to the commission concerning the administration of this chapter.
- d. Report its findings biennially to the commission and to the legislative management.

38-23-09. County zoning authority.

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

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

38-24-01. Definitions.

As used in this chapter:

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

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

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

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

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

38-24-03. Permit required.

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

1. A description of the activity to be permitted.
2. A detailed description of the nature of the nonhydrocarbons to be stored and retrieved.
3. A detailed description of the mechanical construction and operating procedures of the facility.
4. A justification for the need for the facility.
5. A detailed description of the subsurface geology and hydrology of the area to be affected by the construction and operation of the facility.
6. A detailed description of the monitoring system assuring the integrity of the facility and compliance with this chapter.
7. A detailed description of the reclamation and the restoration of the surface as nearly as possible to its original condition and productivity upon expiration of the permit or termination of any activity regulated by this chapter.

8. Any other information required by the commission.

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

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

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

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

38-24-06. Penalties.

1. A person that violates this chapter, or a rule, regulation, or order of the commission adopted under this chapter is subject to a civil penalty of not more than twelve thousand five hundred dollars for each violation and for each day the violation occurred.
2. It is a class C felony for a person, for the purpose of evading this chapter, or a rule, regulation, or order of the commission to:
 - a. Make or cause a false entry or statement in a report required by this chapter or by a rule, regulation, or order issued or adopted by the commission;
 - b. Make or cause a false entry in a record, account, or memorandum required by this chapter, or by any rule, regulation, or order of the commission;
 - c. Omit, or cause to be omitted, from a record, account, or memorandum, full, true, and correct entries as required by this chapter or by any rule, regulation, or order of the commission; or
 - d. Remove from this state or destroy, mutilate, alter, or falsify a record, account, or memorandum.
3. The civil penalties provided in subsection 1 are recoverable by civil action filed by the attorney general on behalf of the commission. The civil action must commence in the district court of the county in which:
 - a. The defendant resides;

- b. Any defendant resides, if there is more than one defendant; or
 - c. The violation occurred.
4. The payment of penalties does not relieve a person on whom the penalty is imposed from liability to any other person for damages arising out of the violation.

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

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

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

Approved April 23, 2019

Filed April 24, 2019