

CHAPTER 38-23 HIGH-LEVEL RADIOACTIVE WASTE

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 If this provision is superseded by federal law, the remaining provisions of this chapter continue to apply.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 director of the department of water resources, 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.