



# Public Service Commission

## State of North Dakota

---

### COMMISSIONERS

Julie Fedorchak  
Randy Christmann  
Sheri Haugen-Hoffart

600 East Boulevard, Dept. 408  
Bismarck, North Dakota 58505-0480  
Web: [www.psc.nd.gov](http://www.psc.nd.gov)  
E-mail: [ndpsc@nd.gov](mailto:ndpsc@nd.gov)  
Phone: 701-328-2400  
ND Toll Free: 1-877-245-6685  
Fax: 701-328-2410  
TDD: 800-366-6888 or 711

*sent via email and regular mail*

November 30, 2022

Mr. Jeff Fleischman  
Office of Surface Mining and Reclamation and Enforcement  
Casper Area Office  
PO Box 11018  
100 East B Street, Room 4100  
Casper, WY 82601  
[jfleischman@osmre.gov](mailto:jfleischman@osmre.gov)

Dear Mr. Fleischman:

The Public Service Commission is submitting State Program Amendment XLIII (43) on behalf of the State of North Dakota in order to modify our approved coal regulatory program. This program amendment is submitted under the Surface Mining Control and Reclamation Act of 1977 (Public Law 95-87) and 30 CFR Chapter VII.

State Program Amendment XLIII contains amendments to North Dakota Century Code 38-14.1 that were made by House Bill No. 1061 during the 2021 Legislative Session. Amendment XLIII also includes law changes to North Dakota Century Code Chapter 38-14.1 and rule changes to North Dakota Administrative Code Article 69-5.2 as a result of Senate Bill No. 2327 from North Dakota's 2017 Legislative Session and House Bill No. 1353 from North Dakota's 2021 Legislation Session.

House Bill No. 1061 was submitted at the request of the Public Service Commission during the 2021 Legislative Session and amended two sections of North Dakota's Surface Mining and Reclamation Law. The first amendment changed Subsection 1 of Section 38-14.1-19 to increase the time for scheduling an informal conference on a permit, significant permit revision, or permit renewal application from 30 days to 45 days. The second amendment changed Subsection 3 of Section 38-14.1-22 and changes the time that a mining company must apply for permit renewal from 120 days prior to permit expiration to 180 days prior to permit expiration. A side-by-side comparison of the state rules to the counterpart federal rules is included in this program amendment package. No rule changes to North Dakota Administrative Code Article 69-5.2 were required for House Bill No. 1061.

Senate Bill No. 2327 created the North Dakota Department of Environmental Quality and transferred the duties and responsibilities of the North Dakota Department of Health relating to environmental quality to the Department of Environmental Quality. House Bill No. 1353

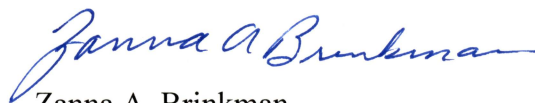
Mr. Jeffery Fleischman  
ND Program Amendment XLIII (43)  
November 30, 2022  
Page 2 of 2

established the North Dakota Department of Water Resources, and the powers and duties of the Department of Water Resources and the state engineer. These two bills basically shifted environmental regulation responsibilities of the Department of Health to the newly created Department of Environmental Quality, changed the name of the State Water Commission to the Department of Water Resources, and changed some of the duties of the state engineer to the Department of Water Resources. As a result of these two bills, references to these agencies in North Dakota's Surface Mining and Reclamation laws and rules must be updated to the Department of Environmental Quality and the Department of Water Resources. A side-by-side comparison of the state rules to the counterpart federal rules was not prepared due to the limited nature of the changes.

North Dakota State Program Amendment No. XLIII includes a narrative, changes to North Dakota Century Code Chapter 38-14.1 resulting from House Bill No. 1061, a side-by-side comparison of the state rules to the counterpart federal rules for House Bill No. 1061, changes to North Dakota Century Chapter Code 38-14.1 resulting from Senate Bill No. 2327 and House Bill No. 1353, proposed rule changes to North Dakota Administrative Code Article 69-5.2 resulting from Senate Bill No. 2327 and House Bill No. 1353, and a copy of the Attorney General's opinion on the legality of the rule changes.

Please contact me with any questions.

Sincerely,



Zanna A. Brinkman  
Director  
Reclamation Division

Enclosures

cc via email only: John Sieving (jsieving@osmre.gov)

**NORTH DAKOTA**  
**STATE**  
**PROGRAM**  
**AMENDMENT XLIII (43)**

**SUBMITTED BY:**  
**PUBLIC SERVICE COMMISSION**  
**STATE CAPITOL**  
**BISMARCK, NORTH DAKOTA**

**November 30, 2022**

## **Table of Contents**

### **North Dakota State Program Amendment XLIII (43)**

- A. Letter of Transmittal**
- B. Narrative**
- C. Reclamation Law Changes made by House Bill 1061**
- D. Federal and State rules side by side comparison for House Bill 1061**
- E. Reclamation Law Changes made by Senate Bill 2327; Department of Environmental Quality name changes applicable to Reclamation law are highlighted on pages 1, 88, and 89**
- F. Proposed Rule Changes for Senate Bill 2327**
- G. Reclamation Law Changes made by House Bill 1353, Department of Water Resources name changes applicable to Reclamation law are highlighted on pages 1, 6, and 7**
- H. Proposed Rule Changes for House Bill 1353**
- I. Copy of the Attorney General's Opinion**



# Public Service Commission

## State of North Dakota

---

### COMMISSIONERS

Julie Fedorchak  
Randy Christmann  
Sheri Haugen-Hoffart

600 East Boulevard, Dept. 408  
Bismarck, North Dakota 58505-0480  
Web: [www.psc.nd.gov](http://www.psc.nd.gov)  
E-mail: [ndpsc@nd.gov](mailto:ndpsc@nd.gov)  
Phone: 701-328-2400  
ND Toll Free: 1-877-245-6685  
Fax: 701-328-2410  
TDD: 800-366-6888 or 711

November 30, 2022

Mr. David Berry, Regional Director  
Office of Surface Mining - Western Region  
PO Box 25065  
One Denver Federal Center #41  
Lakewood, CO 80225-0065  
[dberry@osmre.gov](mailto:dberry@osmre.gov)

Dear Mr. Berry:

The Public Service Commission is submitting State Program Amendment XLIII (43) on behalf of the State of North Dakota in order to modify our approved coal regulatory program. This program amendment is submitted under the Surface Mining Control and Reclamation Act of 1977 (Public Law 95-87) and 30 CFR Chapter VII.

State Program Amendment XLIII contains amendments to North Dakota Century Code 38-14.1 that were made by House Bill No. 1061 during the 2021 Legislative Session. Amendment XLIII also includes law changes to North Dakota Century Code Chapter 38-14.1 and rule changes to North Dakota Administrative Code Article 69-5.2 as a result of Senate Bill No. 2327 from North Dakota's 2017 Legislative Session and House Bill No. 1353 from North Dakota's 2021 Legislative Session.

House Bill No. 1061 was submitted at the request of the Public Service Commission during the 2021 Legislative Session and amended two sections of North Dakota's Surface Mining and Reclamation Law. The first amendment changed Subsection 1 of Section 38-14.1-19 to increase the time for scheduling an informal conference on a permit, significant permit revision, or permit renewal application from 30 days to 45 days. The second amendment changed Subsection 3 of Section 38-14.1-22 and changes the time that a mining company must apply for permit renewal from 120 days prior to permit expiration to 180 days prior to permit expiration. A side-by-side comparison of the state rules to the counterpart federal rules is included in this program amendment package. No rule changes to North Dakota Administrative Code Article 69-5.2 were required for House Bill No. 1061.

Senate Bill No. 2327 created the North Dakota Department of Environmental Quality and transferred the duties and responsibilities of the North Dakota Department of Health relating to environmental quality to the Department of Environmental Quality. House Bill No. 1353 established the North Dakota Department of Water Resources, and the powers and duties of the Department of Water Resources and the state engineer. These two bills basically shifted environmental regulation responsibilities of the Department of Health to the newly created Department of Environmental Quality, changed the name of the State Water Commission to the Department of Water Resources, and changed some of the duties of the state engineer to the Department of Water Resources. As a result of these two bills, references to these agencies in

Mr. David Berry  
ND Program Amendment XLIII (43)  
November 30, 2022  
Page 2 of 2

North Dakota's Surface Mining and Reclamation laws and rules must be updated to the Department of Environmental Quality and the Department of Water Resources. A side-by-side comparison of the state rules to the counterpart federal rules was not prepared due to the limited nature of the changes.

North Dakota State Program Amendment No. XLIII includes a narrative, changes to North Dakota Century Code Chapter 38-14.1 resulting from House Bill No. 1061, a side-by-side comparison of the state rules to the counterpart federal rules for House Bill No. 1061, changes to North Dakota Century Chapter Code 38-14.1 resulting from Senate Bill No. 2327 and House Bill No. 1353, proposed rule changes to North Dakota Administrative Code Article 69-5.2 resulting from Senate Bill No. 2327 and House Bill No. 1353, and a copy of the Attorney General's opinion on the legality of the rule changes.

Please direct any questions you or your staff may have to the Commission's Reclamation Division.

Sincerely,

  
Randy Christmann  
Commissioner

  
Julie Fedorchak  
Chair

  
Sheri Haugen-Hoffart  
Commissioner

## **Narrative for North Dakota State Program Amendment XLIII (43)**

State Program Amendment XLIII contains amendments to North Dakota Century Code 38-14.1 that were made by House Bill No. 1061 during the 2021 Legislative Session. Amendment XLIII also includes law changes to North Dakota Century Code 38-14.1 and rule changes to North Dakota Administrative Code Article 69-5.2 as a result of Senate Bill No. 2327 from North Dakota's 2017 Legislative Session and House Bill No. 1353 from North Dakota's 2021 Legislation Session.

House Bill No. 1061 was submitted at the request of the Public Service Commission during the 2021 Legislative Session and amended two sections of North Dakota's Surface Mining and Reclamation Law. The first amendment changed Subsection 1 of Section 38-14.1-19 to increase the time for scheduling an informal conference on a permit, significant permit revision, or permit renewal application from 30 days to 45 days. Subsection 2 of Section 38-14.1-19 requires that notice of the informal conference be published at least two weeks prior to the scheduled conference in the official county newspaper and newspapers of general circulation in the area. If we receive a request for an informal conference on the last day of the public comment period, we have less than 10 days to schedule the informal conference and meet the official county newspaper publication schedule. Increasing this time to 45 days will allow more flexibility in scheduling the informal conference and still meet the required public notice requirements. The second amendment changed Subsection 3 of Section 38-14.1-22 and specifically changes the time that a mining company must submit an application for permit renewal from 120 days prior to permit expiration to 180 days prior to permit expiration. While 120 days may be adequate if there are no requests for an informal conference on the renewal application by an interested party, it is not adequate if there is a request for an informal conference. A side-by-side comparison of the state rules to the counterpart federal rules is included in this program amendment package. No rule changes to North Dakota Administrative Code Article 69-5.2 were required for House Bill No. 1061.

Senate Bill No. 2327 created the North Dakota Department of Environmental Quality and transferred the duties and responsibilities of the North Dakota Department of Health relating to environmental quality to the Department of Environmental Quality during the 2017 Legislative Session. House Bill No. 1353 established the North Dakota Department of Water Resources, and the powers and duties of the Department of Water Resources and the state engineer during the 2021 Legislative Session. These two bills basically changed the name of the Department of Health to the Department of Environmental Quality, changed the name of the State Water Commission to the Department of Water Resources, and changed some of the duties of the state engineer to the Department of Water Resources. As a result of these two bills, references to these agencies in North Dakota's Surface Mining and Reclamation laws and rules must be updated to the Department of Environmental Quality and the Department of Water Resources. The Public Service Commission proposed the rule changes in Case No. RC-22-28. We issued the notice of intent to amend administrative rules and the public hearing notice on January 18, 2022. The public hearing for the rule changes was held on March 9, 2022. No one opposed the proposed rule changes, and they were sent to North Dakota's Attorney General for a legal review.

On April 29, 2022, the Commission received the Attorney General's opinion finding that the rule changes proposed in Case No. RC-22-28 are legal. Senate Bill No. 2327 and House Bill 1353 are included in this amendment package and the proposed name changes in North Dakota Century Code 38-14.1 are indicated by strike-through and underlining and the changes applicable to reclamation are highlighted. The proposed name changes in North Dakota Administrative Code Article 69-5.2 are also included and changes are indicated by strike-through and underlining. A side-by-side comparison of the state rules to the counterpart federal rules was not prepared due to the limited nature of the changes.

North Dakota State Program Amendment No. XLIII includes changes to North Dakota Century Code 38-14.1 resulting from House Bill No. 1061, Senate Bill No. 2327, and House Bill No. 1353, and rule changes to North Dakota Administrative Code Article 69-5.2 resulting from Senate Bill No. 2327 and House Bill No. 1353.

**Sixty-seventh Legislative Assembly of North Dakota  
In Regular Session Commencing Tuesday, January 5, 2021**

HOUSE BILL NO. 1061  
(Energy and Natural Resources Committee)  
(At the request of the Public Service Commission)

AN ACT to amend and reenact subsection 1 of section 38-14.1-19 and subsection 3 of section 38-14.1-22 of the North Dakota Century Code, relating to extending time for scheduling an informal conference and application for a permit renewal.

**BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

**SECTION 1. AMENDMENT.** Subsection 1 of section 38-14.1-19 of the North Dakota Century Code is amended and reenacted as follows:

1. If written objections or comments are filed and an informal conference is requested as provided in section 38-14.1-17, 38-14.1-18, or 38-14.1-28, the commission shall schedule such informal conference within ~~thirty~~forty-five days of the receipt of such request but in no event prior to the expiration of the thirty-day period allowed for submission of comments, objections, and requests in subsection 2 of section 38-14.1-17 or subsections 3, 4, and 5 of section 38-14.1-18.

**SECTION 2. AMENDMENT.** Subsection 3 of section 38-14.1-22 of the North Dakota Century Code is amended and reenacted as follows:

3. Any permit renewal must be for a term not to exceed the period of the original permit established by this chapter. Application for permit renewal must be made at least one hundred ~~twenty~~eighty days prior to the expiration of the valid permit.

  
Speaker of the House

  
President of the Senate

  
Chief Clerk of the House

  
Secretary of the Senate

This certifies that the within bill originated in the House of Representatives of the Sixty-seventh Legislative Assembly of North Dakota and is known on the records of that body as House Bill No. 1061.

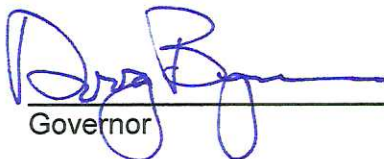
House Vote:      Yeas 90              Nays 0              Absent 4

Senate Vote:      Yeas 46              Nays 0              Absent 1

  
Chief Clerk of the House

Received by the Governor at 9:38 AM. on March 8, 2021.

Approved at 3:31 PM. on March 8, 2021.

  
Governor

Filed in this office this 9th day of March, 2021,  
at 8:24 o'clock A. M.

  
Secretary of State

North Dakota Century Code 38-14.1-19	CFR 773.6 Public participation in permit processing
<p><b>38-14.1-19. Informal conference procedures.</b></p> <ol style="list-style-type: none"> <li>1. If written objections or comments are filed and an informal conference is requested as provided in section 38-14.1-17, 38-14.1-18, or 38-14.1-28, the commission shall schedule such informal conference within <b>thirtyforty-five</b> days of the receipt of such request but in no event prior to the expiration of the thirty-day period allowed for submission of comments, objections, and requests in subsection 2 of section 38-14.1-17 or subsections 3, 4, and 5 of section 38-14.1-18.</li> <li>2. The informal conference must be held in the locality of the proposed mining if the request for such conference so specifies. Date, time, and location of such informal conference must be advertised by the commission in the official newspaper of each county wherein land included in the proposed permit area lies and in other daily newspapers of general circulation in the locality of the proposed surface coal mining operation at least two weeks prior to the scheduled conference date.</li> <li>3. Upon request of any party to the informal conference, the commission may arrange with the applicant access by the requesting party to the proposed mining area for the purpose of gathering information relative to such conference.</li> <li>4. An electronic or stenographic record must be made of the informal conference proceedings, unless waived by all parties. Such record must be maintained and must be accessible to the parties until final release of the permittee's performance bond pursuant to this chapter.</li> <li>5. In the event all parties requesting the informal conference stipulate agreement prior to the requested informal conference</li> </ol>	<p><b>(c) Informal conferences.</b></p> <ol style="list-style-type: none"> <li>(1) Any person having an interest which is or may be adversely affected by the decision on the application, or an officer or a head of a Federal, State, or local government agency, may request in writing that the regulatory authority hold an informal conference on the application for a permit, significant revision to a permit under <a href="#">§ 774.13</a>, or renewal of a permit under <a href="#">§ 774.15</a>. The request shall -             <ol style="list-style-type: none"> <li>(i) Briefly summarize the issues to be raised by the requestor at the conference;</li> <li>(ii) State whether the requestor desires to have the conference conducted in the locality of the proposed operation; and</li> <li>(iii) Be filed with the regulatory authority no later than 30 days after the last publication of the newspaper advertisement required under <a href="#">paragraph (a)</a> of this section.</li> </ol> </li> <li>(2) Except as provided in <a href="#">paragraph (c)(3)</a> of this section, <b>if an informal conference is requested in accordance with <a href="#">paragraph (c)(1)</a> of this section, the regulatory authority shall hold an informal conference within a reasonable time following the receipt of the request.</b> The informal conference shall be conducted as follows:             <ol style="list-style-type: none"> <li>(i) If requested under <a href="#">paragraph (c)(1)(ii)</a> of this section, it shall be held in the locality of the proposed surface coal mining and reclamation operation.</li> <li>(ii) The date, time, and location of the informal conference shall be sent to the applicant and other parties to the conference and advertised by the regulatory authority in a newspaper of general circulation in the locality of the proposed surface coal mining and</li> </ol> </li> </ol>

and withdraw their request, such informal conference need not be held.

6. The commission shall issue its written findings and ruling within thirty days of the informal conference. Along with these findings and ruling, notice must be served upon all persons who were parties to the informal conference, informing them of their right, within thirty days of such service, to request that a formal administrative hearing be held by the commission pursuant to section 38-14.1-30 in order to review the findings and ruling.

reclamation operation at least 2 weeks before the scheduled conference.

(iii) If requested in writing by a conference requestor at a reasonable time before the conference, the regulatory authority may arrange with the applicant to grant parties to the conference access to the proposed permit area and, to the extent that the applicant has the right to grant access to it, to the adjacent area prior to the established date of the conference for the purpose of gathering information relevant to the conference.

(iv) The requirements of section 5 of the Administrative Procedure Act, as amended ([5 U.S.C. 554](#)), shall not apply to the conduct of the informal conference. The conference shall be conducted by a representative of the regulatory authority, who may accept oral or written statements and any other relevant information from any party to the conference. An electronic or stenographic record shall be made of the conference, unless waived by all the parties. The record shall be maintained and shall be accessible to the parties of the conference until final release of the applicant's performance bond or other equivalent guarantee pursuant to subchapter J of this chapter.

(3) If all parties requesting the informal conference withdraw their request before the conference is held, the informal conference may be canceled.

(4) Informal conferences held in accordance with this section may be used by the regulatory authority as the public hearing required under [§ 761.14\(c\) of this chapter](#) on proposed relocation or closing of public roads.

North Dakota Century Code 38-14.1-22. Permit renewal	CFR 774.15 Permit renewals
<p>1. Any valid permit issued pursuant to this chapter shall carry with it the right of successive renewal upon expiration with respect to areas within the boundaries of the existing permit. The holders of the permit may apply for renewal and such renewal must be issued within a reasonable time as set forth in regulations promulgated by the commission subsequent to fulfillment of the public notice requirements of subsection 1 of section 38-14.1-18 unless it is established that and written findings are made by the commission that:</p> <ul style="list-style-type: none"> <li>a. The terms and conditions of the existing permit are not being satisfactorily met; and</li> <li>b. The present surface coal mining and reclamation operation is not in compliance with the provisions of this chapter; or</li> <li>c. The renewal requested substantially jeopardizes the operator's continuing responsibility on existing permit areas; and</li> <li>d. The permittee has not provided evidence that the performance bond in effect for said operation will continue in full force and effect for any renewal requested in such application as well as any additional bond the commission might require pursuant to section 38-14.1-16; or</li> <li>e. Any additional revised or updated information required by the commission has not been provided.</li> </ul> <p>2. On application for renewal, the burden is on the opponents of renewal.</p> <p>3. Any permit renewal must be for a term not to exceed the period of the original permit established by this chapter. Application for permit renewal must be made at least one hundred twenty-eighty days prior to the expiration of the valid permit.</p>	<p>(a) <b>General.</b> A valid permit, issued pursuant to an approved regulatory program, shall carry with it the right of successive renewal, within the approved boundaries of the existing permit, upon expiration of the term of the permit.</p> <p>(b) <b>Application requirements and procedures.</b></p> <ul style="list-style-type: none"> <li>(1) An application for renewal of a permit shall be filed with the regulatory authority at least 120 days before expiration of the existing permit term.</li> <li>(2) An application for renewal of a permit shall be in the form required by the regulatory authority and shall include at a minimum-             <ul style="list-style-type: none"> <li>(i) The name and address of the permittee, the term of the renewal requested, and the permit number or other identifier;</li> <li>(ii) Evidence that a liability insurance policy or adequate self-insurance under <a href="#">§ 800.60 of this chapter</a> will be provided by the applicant for the proposed period of renewal;</li> <li>(iii) Evidence that the performance bond in effect for the operation will continue in full force and effect for any renewal requested, as well as any additional bond required by the regulatory authorities pursuant to subchapter J of this chapter;</li> <li>(iv) A copy of the proposed newspaper notice and proof of publication of same, as required by <a href="#">§ 778.21 of this chapter</a>; and</li> <li>(v) Additional revised or updated information required by the regulatory authority.</li> </ul> </li> <li>(3) Applications for renewal shall be subject to the requirements of public notification and public participation contained in <a href="#">§§ 773.6 and 773.19(b) of this chapter</a>.</li> <li>(4) If an application for renewal includes any proposed revisions to the permit, such revisions shall be identified and subject to the requirements of <a href="#">§ 774.13</a>.</li> </ul>

**Sixty-fifth Legislative Assembly of North Dakota  
In Regular Session Commencing Tuesday, January 3, 2017**

SENATE BILL NO. 2327  
(Senators Unruh, Armstrong, Wardner)  
(Representatives Carlson, Kempenich, Porter)

AN ACT to create and enact a new subdivision to subsection 2 of section 12-60-24, title 23.1, and subdivision v of subsection 1 of section 54-06-04 of the North Dakota Century Code, relating to the creation of the department of environmental quality, the transfer of duties and responsibilities of the state department of health relating to environmental quality to the department of environmental quality, and biennial reports of the department of environmental quality; to amend and reenact section 4-35.2-01, subdivision b of subsection 5 of section 6-09.4-03, sections 11-33-01, 11-33-02.1, and 11-33-22, subdivision d of subsection 2 of section 12.1-06.1-01, sections 15-05-16, 20.1-13-05, 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, and 24-03-23, subsection 5 of section 28-32-50, sections 38-08-04.5, 38-11.1-03.1, 38-11.1-04.1, and 38-11.2-02, subsection 12 of section 38-14.1-03, subsection 2 of section 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, 43-35-19.1, 43-35-19.2, 43-35-20, and 43-35-23, subsection 11 of section 43-48-03, sections 43-62-01 and 43-62-03, subsection 1 of section 43-62-15, subsection 3 of section 44-04-18.4, section 44-04-32, subsection 1 of section 54-07-01.2, subsection 3 of section 54-12-08, section 54-44.3-30, subsection 33 of section 57-43.2-01, sections 58-03-11, 58-03-11.1, and 58-03-17, subsection 13 of section 58-06-01, section 61-04.1-04, subsections 1 and 2 of section 61-28-02, 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 61-29-04, 61-33-09, and 61-35-24 of the North Dakota Century Code, relating to the transfer of duties and responsibilities of the state department of health to the department of environmental quality and the regulation of x-ray operators; to repeal chapters 19-10 and 19-16.1, sections 23-01-01.2, 23-01-04.1, 23-01-23, 23-01-30, and 23-01-36, chapters 23-20, 23-20.1, 23-20.3, 23-20.5, 23-25, 23-26, 23-29, 23-29.1, 23-31, 23-32, 23-33, 23-37, and 39-26, and sections 61-28-03 and 61-28-05 of the North Dakota Century Code, relating to the transfer of duties and responsibilities of the state department of health to the department of environmental quality; to provide a penalty; to provide a continuing appropriation; to provide for transition; and to provide an effective date.

**BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

**SECTION 1. STATE DEPARTMENT OF HEALTH TRANSITION OF ENVIRONMENTAL QUALITY FUNCTIONS.** Notwithstanding any other provision of law, during the 2017-18 interim, the state department of health shall take all necessary and appropriate steps to transfer the authority, powers, and duties of the department related to environmental quality, as provided in this Act, to the department of environmental quality before the start of the sixty-sixth legislative assembly. Before July 1, 2019, the state department of health shall obtain the required approvals from, and amend the necessary agreements with, federal agencies and other public and private entities to ensure the state will continue to meet all primacy requirements. When the chief of the environmental health section of the state department of health has assurance from the necessary federal agencies that the state will meet all the primacy requirements after the transfer of authority, powers, and duties to the new department, the chief shall certify the same to the legislative management. Until the time of the certification, the chief of the environmental health section of the state department of health has the authority to operate, administer, manage, and restructure the environmental health section, reassign employees of the section, and control the funds appropriated for the section, to operate the section in the most efficient manner possible. To the extent required by the environmental health section, the state department of health shall continue to provide support and administrative services to the section. The chief of the environmental health section may adopt rules under this Act contingent and effective upon the establishment of the department of environmental quality.

Upon the transition of the authority, powers, and duties of the state department of health to the department of environmental quality under this Act, any special funds or accounts administered or under the control of the state department of health which relate to environmental quality functions transferred to the department of environmental quality must be transferred to the administration and control of the department of environmental quality.

The legislative council may replace appropriate references to the state department of health in any measure enacted by the sixty-fifth legislative assembly with references to the department of environmental quality.

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.

**SECTION 2. AMENDMENT.** Section 4-35.2-01 of the North Dakota Century Code is amended and reenacted as follows:

**4-35.2-01. Pesticide and pesticide container disposal program - Pesticide container management - Compensation.**

1. The definitions contained in section 4-35-05 apply to this section.
2. In consultation with an advisory board consisting of the ~~state health officer~~director of the department of environmental quality, director of the North Dakota state university extension service, two individuals representing agribusiness organizations, and two individuals representing farm organizations, all of whom must be selected by the agriculture commissioner, the commissioner shall continue to implement the project authorized by section 1 of chapter 77 of the 2001 Session Laws, which is known as project safe send. The purpose of the project is to:
  - a. Collect and either recycle or dispose of unusable pesticides and unusable pesticide containers. The commissioner shall provide for the establishment and operation of temporary collection sites for the pesticides and pesticide containers. The commissioner may limit the type and quantity of pesticides and pesticide containers acceptable for collection.
  - b. Promote proper pesticide container management. In consultation with the director of the North Dakota state university extension service, the commissioner shall evaluate and promote proper methods of pesticide container management, including information on the variety of pesticide containers available.
3. Any entity collecting pesticide containers or unusable pesticides shall manage and dispose of the containers and pesticides in compliance with applicable federal and state requirements. When called upon, any state agency shall assist the commissioner in implementing the project.
4. For services rendered in connection with the design and implementation of this project, the members selected by the commissioner are entitled to reimbursement for mileage and travel expenses in the same manner and for the same amounts provided for state employees and officials. Compensation and expense reimbursement must be paid from the environment and rangeland protection fund.

**SECTION 3. AMENDMENT.** Subdivision b of subsection 5 of section 6-09.4-03 of the North Dakota Century Code is amended and reenacted as follows:

b. The state department of ~~health~~environmental quality, or any other state agency or authority, or any member-owned association or publicly owned and nonprofit corporation:

- (1) Operating any public water system that is subject to chapter 61-28.1.
- (2) Operating any facility, system, or other related activity that is eligible for financial assistance under chapter 61-28.2.

**SECTION 4. AMENDMENT.** Section 11-33-01 of the North Dakota Century Code is amended and reenacted as follows:

**11-33-01. County power to regulate property.**

For the purpose of promoting health, safety, morals, public convenience, general prosperity, and public welfare, the board of county commissioners of any county may regulate and restrict within the county, subject to section 11-33-20 and chapter 54-21.3, the location and the use of buildings and structures and the use, condition of use, or occupancy of lands for residence, recreation, and other purposes. The board of county commissioners and a county zoning commission shall state the grounds upon which any request for a zoning amendment or variance is approved or disapproved, and written findings upon which the decision is based must be included within the records of the board or commission. The board of county commissioners shall establish zoning requirements for solid waste disposal and incineration facilities before July 1, 1994. The board of county commissioners may impose tipping or other 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 ~~23-20.3-03.1-04-04~~23-20.3-03.1-04-04.

**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~~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.
6. A board of county commissioners may adopt regulations that establish different standards for the location of concentrated feeding operations based on the size of the operation and the species and type being fed.
7. If a regulation would impose a substantial economic burden on a concentrated feeding operation in existence before the effective date of the regulation, the board of county commissioners shall declare that the regulation is ineffective with respect to any concentrated feeding operation in existence before the effective date of the regulation.
8.
  - a. A board of county commissioners may establish high-density agricultural production districts in which setback distances for concentrated feeding operations and related agricultural operations are less than those in other districts.
  - b. A board of county commissioners may establish, around areas zoned for residential, recreational, or nonagricultural commercial uses, low-density agricultural production districts in which setback distances for concentrated feeding operations and related agricultural operations are greater than those in other districts; provided, the low-density

agricultural production districts may not extend more than one and one-half miles [2.40 kilometers] from the edge of the area zoned 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 6. AMENDMENT.** Section 11-33-22 of the North Dakota Century Code is amended and reenacted as follows:

**11-33-22. 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 county after July 31, 2007,~~ is not effective until filed with the state department of ~~health~~environmental quality for inclusion in the central repository established under section ~~23-01-30~~23.1-01-10. ~~Any zoning regulation that pertains to concentrated animal feeding operations and which was promulgated by a county before August 1, 2007, may not be enforced until the regulation is filed with the state department of health 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 7.** A new subdivision to subsection 2 of section 12-60-24 of the North Dakota Century Code is created and enacted as follows:

The department of environmental quality for a final applicant for or an employee specified in occupation with the department; an individual being investigated by the department; or, when requested by the department, an applicant for registration, certification, or licensure by the department.

**SECTION 8. AMENDMENT.** Subdivision d of subsection 2 of section 12.1-06.1-01 of the North Dakota Century Code is amended and reenacted as follows:

- 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 or rules adopted pursuant to that section which were in effect on January 1, 1997, or hazardous waste in willful violation of chapter ~~23-20.3~~23.1-04 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 was referenced in section 33-24-02-05 of the North Dakota Administrative Code.

**SECTION 9. AMENDMENT.** Section 15-05-16 of the North Dakota Century Code is 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.** 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~~ 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.
  - b. Such additional equipment designed to promote the safety of navigation and of persons as the game and fish department may find appropriate and for which it has provided in its rules.
2. No person may operate or give permission for the operation of a vessel that is not equipped as required by this section.
3. Any person who violates this section is guilty of a class 2 noncriminal offense.

**SECTION 11. AMENDMENT.** Section 20.1-17-01 of the North Dakota Century Code is amended and reenacted as follows:

**20.1-17-01. Prevention and control of aquatic nuisance species.**

The director, to prevent and control aquatic nuisance species, shall:

1. Prepare a statewide management plan for aquatic nuisance species to be approved by the governor.
2. Organize an aquatic nuisance species committee, as provided for in the statewide management plan, composed of the director or the director's designee; representatives of the agriculture commissioner, state water commission, parks and recreation department, ~~state department of health~~ department of environmental quality, and tourism division; up to five private entities or individuals; and a representative of tribal entities. The director or the director's designee is the chairman of the aquatic nuisance species committee.
3. Develop and adopt the state's list of aquatic nuisance species after consulting with the aquatic nuisance species committee. The list must be updated annually.

4. Provide for a permitting system to import listed aquatic nuisance species into or move those species within the state.
5. Develop rules to prevent the movement of aquatic nuisance species into or within the state. In addition to requirements under chapter 28-32, the department shall conduct a cost-benefit analysis for any rule proposed for adoption under this chapter.
6. Conduct aquatic nuisance species education and prevention efforts.
7. Provide for the partnership of the federal government, state agencies, and private or public organizations to fund aquatic nuisance species prevention efforts.

**SECTION 12. AMENDMENT.** Section 23-01-02 of the North Dakota Century Code is 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.

**SECTION 14. AMENDMENT.** Section 23-20.2-02 of the North Dakota Century Code is amended and reenacted as follows:

**23-20.2-02. Definitions.**

As used in this chapter:

1. "Commission" means the industrial commission of North Dakota.

2. "Person" includes any natural person, corporation, limited liability company, association, partnership, receiver, trustee, executor, administrator, guardian, fiduciary, or other representative of any kind, and includes any department, agency, or instrumentality of the state or of any governmental subdivision thereof.
3. "Underground disposal facility" means any drilled, bored, or excavated device or installation to provide for the subsurface disposal of waste. The term does not include a solid waste management facility authorized under chapter ~~23-29~~23.1-08.
4. "Underground storage and retrieval facility" means any drilled, bored, or excavated device or installation to provide for the subsurface emplacement and recovery of materials.
5. "Waste" includes liquid wastes, gaseous wastes, and solid wastes as defined in section ~~23-29-03~~23.1-08-02 and all unusable industrial material including spent nuclear fuels and other unusable radioactive material not brought into this state for disposal.

**SECTION 15. AMENDMENT.** Section 23-20.2-03 of the North Dakota Century Code is amended and reenacted as follows:

**23-20.2-03. Jurisdiction of the industrial commission.**

The commission has jurisdiction and authority and is charged with the responsibility to enforce the provisions of this chapter. This chapter does not apply to any activity regulated under chapters ~~23-29~~23.1-08, 38-08, 38-12, 61-28, and 61-28.1. The commission acting through the office of the state geologist has the authority:

1. To require:
  - a. Identification of ownership of all facilities and equipment used for the underground storage and retrieval of material and waste disposal.
  - b. The making and filing of all logs and reports on facility location, drilling, boring, excavating, and construction and the filing, free of charge, of samples, core chips, and complete cores, when requested, in the office of the state geologist.
  - c. The drilling, boring, excavating, and construction of facilities in a manner to prevent 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 the provisions of this chapter, and the rules of the commission relating to the underground storage and retrieval of material and waste disposal.
  - e. Metering or other measuring of all material injected, emplaced, stored, disposed into, or retrieved from any facility regulated by this chapter.
  - f. That every person who operates a facility for the underground storage and retrieval of material or for waste disposal in this state shall keep and maintain complete and accurate records of the quantities and nature of material stored, retrieved, or disposed of, which records must be available to the commission or its agents at all times, and that every such person file with the commission such reports as it may prescribe.
  - g. That upon termination of the operation of any facility or activity regulated by this chapter, the operator of such facility shall restore the surface as nearly as possible to its original condition and productivity.
2. To regulate:
  - a. The drilling, boring, excavating, and construction of all underground storage, retrieval, and waste disposal facilities.

- b. Operations to assure the optimum performance of all facilities regulated by this chapter.
3. To limit and prescribe the nature, quantity, and source of materials to be stored in, whether as waste or otherwise, or retrieved from any facility regulated by this chapter.
4. To promulgate and to enforce rules, regulations, and orders to effectuate the purposes 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 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. 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 the state engineer, state geologist, and director of the game and fish department, who serve as ex officio members, and ten members appointed by the governor. 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 or agricultural processing;
  - c. A representative of the solid fuels industry;
  - d. A representative of the liquid and gas fuels industry;
  - e. A representative of crop agriculture;
  - f. A representative of the waste management industry;
  - g. A representative with an agronomy or soil sciences degree;
  - h. A representative of the thermal electric generators industry;
  - i. A representative of the environmental sciences; and
  - j. A representative of the livestock industry.
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 an appointed member of the council for cause. The council members shall select a chairman from among the council members.

3. Council members must be reimbursed by the department of environmental quality for necessary travel and other expenses incurred in the performance of official duties.
4. The council shall hold at least two meetings per year and any other meetings deemed necessary by the chairman or a majority of the council.
5. The council shall:
  - a. Review and make recommendations to the department of environmental quality regarding rules and standards relating to environmental quality and the duties of the department. The department may not take final action on any rule or standard without first consulting the council.
  - b. Consider any other matter related to the purposes of this title and chapters 61-28, 61-28.1, and 61-28.2 the council deems appropriate and make any recommendation on its own initiative to the department of environmental quality concerning the administration of this title and chapters 61-28, 61-28.1, and 61-28.2.

**23.1-01-03. Director - Powers and duties.**

The director of the department of environmental quality shall:

1. Enforce all rules adopted by the department;
2. Hire employees as necessary to carry out the duties of the department and director;
3. Organize the department in the most efficient and effective manner;
4. Maintain, in conjunction with the state department of health, a laboratory to carry out the necessary tests and examinations for purposes of this title, and establish a fee schedule for the tests and examinations;
5. Issue bulletins, news releases, or reports as necessary to inform the public of environmental hazards;
6. Establish rules necessary for maintaining sanitation, including rules for approving plans for water works and sewage systems;
7. Maintain a central environmental laboratory and, if necessary, branch laboratories for the standard function of diagnostic, sanitary, and chemical examinations; and
8. Any other action, including the collection and distribution of environmental quality data, necessary and appropriate for the administration of this title and chapters 61-28, 61-28.1, and 61-28.2.

**23.1-01-04. Rulemaking authority - Limitations.**

1. Except as provided in subsection 2, the department of environmental quality may not adopt any rule for the purpose of the state administering a program under the federal Clean Air Act [42 U.S.C. 7401 et seq.]; federal Clean Water Act [33 U.S.C. 1251 et seq.]; federal Safe Drinking Water Act [42 U.S.C. 300 et seq.]; federal Resource Conservation and Recovery Act [42 U.S.C. 6901 et seq.]; federal Comprehensive Environmental Response, Compensation, and Liability Act [42 U.S.C. 9601 et seq.]; federal Emergency Planning and Community Right to Know Act of 1986 [42 U.S.C. 11001 et seq.]; federal Toxic Substances Control Act [42 U.S.C. 2601 et seq.]; or federal Atomic Energy Act of 1954 [42 U.S.C. 2011 et seq.]; which is more stringent than corresponding federal regulations that address the same circumstances. In adopting the rules, the department may incorporate by reference corresponding federal regulations.

2. The department may adopt rules more stringent than corresponding federal regulations or adopt rules where there are no corresponding federal regulations, for the purposes described in subsection 1, only if the department makes a written finding after public comment and hearing and based upon evidence in the record, that corresponding federal regulations are not adequate to protect the public health and the environment of the state. Those findings must be supported by an opinion of the department referring to and evaluating the public health and environmental information and studies contained in the record which form the basis for the department's conclusions.
3. If the department, upon petition by any person affected by a rule of the department, identifies rules more stringent than federal regulations or rules where there are no corresponding federal regulations, the department shall review and revise those rules to comply with this section within nine months of the filing of the petition.
4. Any person issued a notice of violation, or a denial of a permit or other approval, based upon a rule of the department which is more stringent than a corresponding federal regulation or where there is no corresponding federal regulation, may assert a partial defense to that notice, or a partial challenge to that denial, on the basis and to the extent the department's rule violates this section by imposing requirements more stringent than corresponding federal regulations, unless the more stringent rule of the department has been adopted in compliance with this section.

**23.1-01-05. Department of environmental quality authorized to transfer future accumulated fees.**

The department of environmental quality may from time to time transfer unclaimed fees on deposit with the Bank of North Dakota or other authorized depository to the state general fund when the unclaimed status has existed for a period of at least three years.

**23.1-01-06. Department to employ waste management facility inspectors.**

The department of environmental quality shall employ and establish the qualifications, duties, and compensation of at least one full-time inspector for each commercial, nonpublicly owned waste management disposal or incineration facility that accepts more than twenty-five thousand tons [22679.5 kilograms] per year of hazardous waste, industrial waste, nuclear waste, or ash resulting from the incineration of municipal solid waste. This section does not apply to any energy conversion facility or coal mining operation that disposes of its solid waste onsite. The department may require inspectors for those facilities that accept less than twenty-five thousand tons [22679.5 kilograms] per year. The facility inspector shall conduct regular inspections of the operating procedure and conditions of the facility and report the findings to the department on a regular basis. If an inspector discovers a condition at a facility that is likely to cause imminent harm to the health and safety of the public or environment, the inspector shall notify the department. The department shall proceed as provided by sections 23.1-08-19 and 23.1-08-20.

The department shall assess the owner or operator of a waste management facility that accepts hazardous waste, industrial waste, nuclear waste, or ash resulting from the incineration of municipal solid waste an annual fee to pay the salaries, wages, and operating expenses associated with employing an inspector for the facility. The owner or operator of the facility shall submit the fee to the department by July first of each year. Any fees collected must be deposited in the department's operating fund in the state treasury and any expenditures from the fund are subject to appropriation by the legislative assembly. If a facility begins operation after July first of any year, the owner or operator of the facility shall pay to the department a prorated fee for the fiscal year before the facility may begin accepting waste. Moneys in the waste management facility account may be spent by the department within the limits of legislative appropriation.

**23.1-01-07. Permit or investigatory hearings - Exemption from chapters 28-32 and 54-57.**

A permit hearing conducted for purposes of receiving public comment or an investigatory hearing conducted under chapters 23.1-03, 23.1-04, 23.1-06, 23.1-08, 61-28, and 61-28.1 is not an adjudicative proceeding under chapter 28-32 and is not subject to the requirements of chapter 54-57.

**23.1-01-08. Commercial feed, insecticide, fungicide, rodenticide, fertilizer, and soil conditioner laws - Laboratory function.**

Notwithstanding any other provision of law, any laboratory test or analysis required under chapter 19-13.1, 19-18, or 19-20.1 must be performed by the department of environmental quality for the agriculture commissioner at no charge.

**23.1-01-09. Department of environmental quality - Indirect cost recoveries.**

Notwithstanding section 54-44.1-15, the department of environmental quality may deposit indirect cost recoveries in its operating account.

**23.1-01-10. Zoning regulation of concentrated animal feeding operations - Central repository.**

The department of environmental quality shall establish, operate, and maintain an electronically accessible central repository for all county and township zoning regulations that pertain to concentrated animal feeding operations. The county auditor of a county and a township clerk of a township having a zoning regulation that pertains to concentrated animal feeding operations shall file the regulation with the department of environmental quality for inclusion in the central repository.

**23.1-01-11. Appeal from permit proceedings.**

An appeal from the issuance, denial, modification, or revocation of a permit issued under 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 permit application, or by any person who is aggrieved by the permit application decision, provided that person participated in or provided comments during the hearing process for the permit application, modification, or revocation. An appeal must be taken within thirty days after the final permit application determination is mailed by first-class mail to the permit applicant and to any interested person who has requested a copy of the final permit determination during the permit hearing process. Except as provided in this section, an appeal of the final permit determination is governed by sections 28-32-40, 28-32-42, 28-32-43, 28-32-44, 28-32-46, and 28-32-49. The department may substitute final permit conditions and written responses to public comments for findings of fact and conclusions of law. Except for a violation of chapter 23.1-03, 23.1-04, 23.1-06, 23.1-08, or 61-28 which occurs after the permit is issued, or any permit condition, rule, order, limitation, or other applicable requirement implementing those chapters which occurs after the permit is issued, any challenge to the department's issuance, modification, or revocation of the permit or permit conditions must be made in the permit hearing process and may not be raised on any collateral or subsequent legal proceeding, and the applicant and any aggrieved person may raise on appeal only issues that were raised to the department in the permit hearing process.

**23.1-01-12. Rules.**

The department may adopt rules consistent with national or regional standards which relate to the promotion of plastic bottle recycling and the maintenance of safe plastic bottle recycling practices in the state.

**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.

**SECTION 17.** Chapter 23.1-02 of the North Dakota Century Code is created and enacted as follows:

**23.1-02-01. Definitions.**

For the purposes of this chapter:

1. "Department" means the department of environmental quality.
2. "Radiation" means gamma rays and x-rays, alpha and beta particles, high-speed electrons, neutrons, protons, and other nuclear particles; but not sound or radio waves, or visible, infrared, or ultraviolet light.
3. "Radiation machine" means any device that produces radiation when the associated control devices are operated.
4. "Radioactive material" means any material, solid, liquid, or gas, that emits radiation spontaneously.

**23.1-02-02. Registration agency.**

The department is designated as the agency to receive registration applications and to issue certificates of registration.

**23.1-02-03. Registration required.**

Each manufacturer, processor, and refiner of radioactive isotopes and each hospital, clinic, manufacturing establishment, research or educational institution, agricultural experiment station or center, processing mill, or other institution or place of business or process in which radiation is produced or radioactive materials are used, manufactured, processed, packaged, refined, produced, disposed, or concentrated shall register with the department. To register, each manager or officer in charge of any institution or establishment concerned with radioactive materials shall obtain a registration form from the department, complete it, and return it to the department.

**23.1-02-04. Certificate of registration.**

Upon satisfactory completion and submission of the registration form, the department shall issue the applicant a certificate of registration. A completed registration form must provide sufficient information to determine whether the health of the public or persons working in the applicant establishment may be adversely affected by using, manufacturing, processing, packing, refining, disposing, producing, or concentrating of radioactive isotopes and materials.

**23.1-02-05. Penalty.**

Any person required to register under section 23.1-02-03 that fails to register and obtain a certificate of registration is guilty of a class A misdemeanor.

**SECTION 18.** Chapter 23.1-03 of the North Dakota Century Code is created and enacted as follows:

**23.1-03-01. Definitions.**

For the purposes of this chapter:

1. "Byproduct material" means any radioactive material, except special nuclear material, yielded in or made radioactive by exposure to the radiation incident to the process of producing or utilizing special nuclear material; and the tailings or wastes produced by the extraction, or concentration of uranium or thorium from any ore processed primarily for its source material content.
2. "Commission" means United States nuclear regulatory commission or any successor.
3. "Department" means the department of environmental quality.

4. "General license" means a license effective under rules adopted by the department without the filing of an application to transfer, acquire, own, possess, or use quantities of, or devices or equipment utilizing byproduct, source, special nuclear materials, or other radioactive material occurring naturally or produced artificially.
5. "Ionizing radiation" means gamma rays and x-rays, alpha and beta particles, high-speed electrons, protons, neutrons, and other nuclear particles; but not sound or radio waves, or visible, infrared, or ultraviolet light.
6. "Person" has the same meaning as under section 1-01-49, except it does not mean the commission or federal government agencies licensed by the commission.
7. "Radioactive material" means any solid, liquid, or gas that emits ionizing radiation spontaneously.
8. "Registration" means submitting a satisfactory registration form and receiving a certificate of registration under chapter 23.1-02.
9. "Special nuclear material" means:
  - a. Plutonium, uranium-233, uranium enriched in the isotope-233 or in the isotope-235, and any other material the department declares by rule to be special nuclear material after the commission has determined the material to be such, but does not include source material; or
  - b. Any material, other than source material, that is artificially enriched by plutonium, uranium-233, uranium enriched in the isotope-233 or in the isotope-235, and any other material the department declares by rule to be special nuclear material after the commission has determined the material to be such.
10. "Specific license" means a license issued after application, to process, generate, dispose, use, manufacture, produce, transfer, receive, acquire, own, or possess quantities of, or devices or equipment utilizing byproduct, source, special nuclear materials, or other radioactive material occurring naturally or produced artificially.
11. "Source material" means uranium, thorium, or any other material the department declares by rule to be source material after the commission has determined the material to be such; or ores containing one or more of those materials, in such concentration as the department declares by rule to be source material after the commission has determined the material in such concentration to be source material.
12. "Surety" means cash deposits, surety bonds, certificates of deposit, deposits of government securities, letters of credit, and other surety mechanisms deemed acceptable by the department.

#### **23.1-03-02. State radiation control agency.**

The department of environmental quality shall administer the statewide licensing and regulatory radiation program under this chapter.

#### **23.1-03-03. Powers and duties of the department.**

For the protection of the public health and safety, the department shall:

1. Evaluate hazards associated with the use of sources of ionizing radiation by inspection and other means.
2. Conduct programs compatible with federal programs for the licensing and regulation of byproduct, source, special nuclear materials, and other radioactive materials.

3. Advise, consult, and cooperate with other public agencies and with affected groups and industries.
4. Administer the statewide licensing and regulatory radiation program.

**23.1-03-04. Licensing and registration of sources of ionizing radiation.**

1. The department shall adopt rules for the department to provide general or specific licensing of persons to process, generate, dispose, use, manufacture, produce, acquire, own, receive, possess, or transfer byproduct, source, special nuclear material, and other radioactive materials occurring naturally or produced artificially, or devices or equipment utilizing such materials. The rules must allow the department to amend, suspend, and revoke licenses.
2. The department may exempt certain sources of ionizing radiation or kinds of uses or users from the licensing or registration requirements under this section and in chapter 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.
2. Any funds for long-term site surveillance and control must be available to the state if title and custody of source material, byproduct material, or other radioactive material occurring naturally or produced artificially and its disposal site is transferred to the state under subsection 1 of section 23.1-03-05. The funds must be transferred to the United States if title and custody of the source material, byproduct material, or other radioactive material occurring naturally or produced artificially and its disposal site is transferred to the United States upon termination of any license for source material, byproduct material, or other radioactive material occurring naturally or produced artificially. These funds include sums collected for long-term surveillance and if necessary, maintenance. The funds do not include moneys held as surety where no default had occurred and the reclamation or other bonded activity has been performed.
3. If the department requires a surety for stabilization or funds for long-term surveillance or maintenance, the amounts must be sufficient to ensure compliance with the standards established by the commission and the department pertaining to financial arrangements to ensure adequate stabilization and long-term management of source material, byproduct material, or other radioactive material occurring naturally or produced artificially and its disposal site.

**23.1-03-07. Procedural requirements.**

In licensing and regulating the processing, generation, or disposal of source material, byproduct material, or other radioactive material occurring naturally or produced artificially, the department shall provide:

1. In the cases of licenses:
  - a. An opportunity, after public notice, for written comments and a public hearing, with a transcript.

- b. A written determination of the action to be taken which is based upon findings included in the determination and upon evidence presented during the public comment period, and which is subject to judicial review.
  - c. For each licensed activity that has a significant impact on the human environment, a written analysis prepared by the department which must be available to the public before commencement of hearings, of the impact of the licensed activity on the environment. The analysis must include:
    - (1) An assessment of the radiological and nonradiological impacts to the public health.
    - (2) An assessment of any impact on any waterway and ground water.
    - (3) Consideration of alternatives to the activities to be conducted.
    - (4) Consideration of the long-term impacts of the licensed activities.
  - d. A prohibition of any major construction related to the licensed activities before completing the action under this subsection.
  - e. An assurance that management of source material, byproduct material, or other radioactive material occurring naturally or produced artificially is carried out in conformance with applicable standards adopted by the department, the commission, and the United States environmental protection agency.
2. In the case of rulemaking:
- a. An opportunity for public participation through written comments or a public hearing.
  - b. An opportunity for judicial review.

**23.1-03-08. Additional authorities.**

The department may require persons exempt from licensing to conduct monitoring, perform remedial work, and to comply with any other measures the department deems necessary or desirable to protect health or minimize danger to life or property.

**23.1-03-09. Fees deposited in operating fund.**

The department, by rule, may prescribe and provide for the payment and collection of reasonable fees to issue licenses and registration certificates. The fees must be based on the anticipated cost of filing and processing the application, of taking action on the requested license or registration certificate, and of conducting an inspection program to determine compliance or noncompliance with the license or registration certificate.

Any moneys collected for permit or registration fees must be deposited in the department's operating fund in the state treasury and must be spent subject to appropriation by the legislative assembly.

**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.

**23.1-03-11. 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.

**23.1-03-12. 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 showing by the department that the person has engaged or is about to engage in the acts or practices, a permanent or temporary injunction, restraining order, or other order may be granted.

**23.1-03-13. Prohibited uses.**

It is unlawful for any person to use, manufacture, produce, transport, transfer, receive, acquire, own, or possess any source of ionizing radiation unless registered with or licensed by the department under this chapter.

**23.1-03-14. Impounding of materials.**

In the event of an emergency, the department may impound or order the impounding of sources of ionizing radiation in the possession of any person not equipped to observe or which fails to observe the provisions of this chapter or any rules issued under this chapter.

**23.1-03-15. Penalties.**

1. Any person violating this chapter or any permit condition, rule, order, limitation, or other applicable requirement implementing this chapter is subject to a civil penalty not to exceed twelve thousand five hundred dollars per day per violation, unless the penalty for the violation is otherwise specifically provided for and made exclusive in this chapter.
2. Any person willfully violating any provision of this chapter or any permit condition, rule, order, limitation, or other applicable requirement implementing this chapter is guilty of a class C felony, unless the penalty for the violation is otherwise specifically provided for and made exclusive in this chapter.
3. Any person willfully making any false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under this chapter or any permit condition, rule, order, limitation, or other applicable requirement implementing this chapter or falsifying, tampering with, or willfully rendering inaccurate any monitoring device or method required to be maintained under this chapter or any permit condition, rule, order, limitation, or other applicable requirement implementing this chapter is guilty of a class C felony, unless the penalty for the violation is otherwise specifically provided for and made exclusive in this chapter.

**SECTION 19.** Chapter 23.1-04 of the North Dakota Century Code is created and enacted as follows:

**23.1-04-01. Declaration of purpose.**

The department of environmental quality shall administer this chapter to:

1. Protect human health and the environment from the effects of the improper, inadequate, or unsafe past or present management of hazardous waste and underground storage tanks.
2. Establish a program to regulate hazardous waste from the time of generation through transportation, storage, treatment, and disposal.
3. Promote reduction of hazardous waste generation, reuse, recovery, and treatment as preferable alternatives to landfill disposal.
4. Assure the safe and adequate management of hazardous waste with a minimum of hazardous waste disposal sites within the state.
5. Establish a program to regulate underground storage tanks.
6. Promote reduction of surface and ground water contamination resulting from leaking underground storage tanks.

**23.1-04-02. Definitions.**

For purposes of this chapter, unless the context otherwise requires:

1. "Commercial facility" means all contiguous land, structures, appurtenances, and improvements on the land used for treatment and disposal of hazardous waste received from offsite generators.
2. "Department" means the department of environmental quality.
3. "Disposal" means the discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste or hazardous waste into or on any land or water so the solid waste or hazardous waste or any hazardous constituent of the waste may enter the environment or be emitted into the air or discharged into any waters, including ground water.
4. "Facility" means all contiguous land and structures, other appurtenances, and improvements on the land, used for treating, storing, or disposing of hazardous waste. A facility may consist of several contiguous treatment, storage, or disposal operational units.
5. "Generator" means any person, by site, through act or process produces hazardous waste or first causes a hazardous waste to become subject to regulation.
6. "Hazardous waste" means any waste or combination of wastes of a solid, liquid, contained, gaseous, or semisolid form that:
  - a. Because of its quantity, concentration, or physical, chemical, or other characteristic, in the judgment of the department may:
    - (1) Cause, or significantly contribute to, an increase in mortality or an increase in serious irreversible or incapacitating reversible illness; or
    - (2) Pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, disposed of, or otherwise managed; or
  - b. Is identified by the mechanisms established in this chapter, including those that exhibit extraction procedure toxicity, corrosivity, ignitability, or reactivity.

7. "Hazardous waste management" means the systematic control of the collection, source separation, storage, transportation, processing, treatment, recovery, and disposal of hazardous waste.
8. "Manifest" means the document used for identifying the quantity, composition, origin, routing, and destination of hazardous waste during transportation from the site of generation to the site of storage, treatment, or disposal.
9. "Owner" means, in the case of an underground storage tank:
  - 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.
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 [Pub. L. 90-481].
    - (2) The Hazardous Liquid Pipeline Safety Act of 1979 [Pub. L. 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 [Pub. L. 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 [Pub. L. 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 reclamation permit is issued or approved under the Surface Mining Control and Reclamation Act of 1977 [Pub. L. 95-87; 30 U.S.C. 1201 et seq.].

**23.1-04-03. Powers and duties of the department.**

The department shall administer and enforce this chapter. The department shall:

- 1. Administer the state hazardous waste management and underground storage tank programs under this chapter.
- 2. Survey hazardous waste generation and management practices in the state.
- 3. Adopt, modify, repeal, and enforce rules governing the management of hazardous waste and underground storage tanks.
- 4. Enter agreements with other local, state, or federal agencies regarding responsibilities for regulating hazardous wastes and underground storage tanks to promote consistency in enforcement and avoid duplication in regulation.

**23.1-04-04. Institutional controls, responsibility exemptions, and regulatory assurances for contaminated properties - Continuing appropriation.**

- 1. The department may establish institutional controls or give site-specific responsibility exemptions or regulatory assurances to owners, operators, or lenders, under this section for real property contaminated by regulated substances, other pollution, or contamination regulated by the department under this chapter or chapter 61-28. To qualify for a site-specific

responsibility exemption, the owner of the property, or the political subdivision establishing institutional controls under this section through its zoning authority, shall:

- a. Delineate the vertical and horizontal extent and concentration of the pollution or contamination in soil and ground water;
  - b. Identify potential persons or receptors that may be impacted by the pollution or contamination, evaluate the potential for movement or migration of the pollution or contamination and potential pathways of exposure, and identify potential health or environmental impacts to persons or receptors based on the proposed property use;
  - c. Identify the past and current uses of the property, the current uses of contiguous properties, and zoning restrictions or regulations that apply to the property and 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 identified area impacted by the pollution or the contamination. Before the institutional controls become effective, the controls must be the subject of a public hearing and be established in the same manner as zoning regulations are established by that political subdivision. The political subdivision is responsible for providing all notices under this subdivision, but any public hearing must be held jointly by the political subdivision and the department.

- b. The department also may establish institutional controls by agreement to an environmental covenant with the owner of the real property. Before agreeing to any environmental covenants under this subdivision, all contiguous landowners to the property to which the covenants will attach must be notified by certified mail or by service by publication as provided in the North Dakota Rules of Civil Procedure. An environmental covenant must state that it is an environmental covenant that runs with the land, have a legally sufficient description of the real property subject to the covenant, describe activity or use limitations and terms of access for any monitoring or remediation, identify every holder who is a grantee of the covenant, be signed by every holder and the owner of the property before a notary public, and describe the name and location of any administrative record for the environmental response or remediation identified for the property under subsection 1. All environmental covenants must be filed with the county recorder of the county in which the property is located.
4. After completion of the assessments and requirements of subsection 1, the department may issue a letter of no further remediation or a letter of no further action to a property owner when an environmental remediation is completed on the site or property, or when no institutional controls are necessary to protect public health or welfare or to come into compliance with an environmental standard that has been violated and later corrected on the site or property.
5. Notwithstanding any institutional controls established for any real property, the department has access for inspection and enforcement for environmental violations as provided by law.
6. If there is any additional discharge or release of a regulated substance, pollutant, or contaminant on the property subject to institutional controls or regulatory exemptions that intermingles with the delineated pollution or contamination identified under subsection 1, or if the owner or operator of the property manages the property in a manner that causes the contamination to migrate to a neighboring contiguous property or results in the exposure of contaminants to receptors on the property, then institutional controls or regulatory exemptions established under this section are voidable by the department after a public investigatory hearing by giving written notice to the political subdivision and the current owner of the property subject to the institutional controls, as well as any lender holding a lien on the property identified under subsections 8 and 9. Culpability of the owner or operator of the property for any new or additional discharge, release, or movement of pollution or contamination, as well as responsibility for any offsite discharge or release or culpability for exposure of onsite or offsite receptors to pollution or contamination, must be considered by the department in determining whether to void any institutional controls, and any final determination by the department to void an institutional control is subject to review under chapter 28-32. If the institutional control is an environmental covenant established under subdivision b of subsection 3, the written notice voiding the environmental covenant as well as a copy of the covenant being voided by the department must be filed with the county recorder of the appropriate county.
7. Institutional controls may also be terminated or amended at any time by written agreement between the department, the relevant political subdivision, the owner of the property, or other body or person subject to the institutional controls, as well as any identified lender, after giving notice as described in subsection 3. Letters of no further remediation, of no further action, or regulatory assurance may be amended by written agreement of the participating parties.
8. Before agreeing to any institutional controls or responsibility exemptions, the department may require insurance coverage or other financial assurance for any additional environmental monitoring or remediation that may become necessary on the property after the site-specific responsibility exemptions and institutional controls are established, and must require such insurance coverage or other financial assurance when the projected cost of an active monitoring or remediation program exceeds five hundred thousand dollars. The department may terminate the requirement for financial assurance if the person required to have financial assurance demonstrates to the department that the property no longer presents a significant

threat to public health or the environment. The department may enter a joint agreement with affected political subdivisions, state or federal agencies, property owners, lenders, the administrator of the petroleum tank release compensation fund, or any responsible or potentially responsible party concerning payment for or funding of any insurance coverage or other financial assurance for any additional environmental monitoring or remediation that may become necessary on contaminated or affected properties. The agreements do not waive the liability limitations that apply by law to the state, to state agencies, or to political subdivisions, except up to the amounts, and subject to the terms, conditions, and limitations of any insurance policy or any financial assurance fund created by the joint agreement of the parties under this subsection. Any financial assurance fund must comply with chapters 59-09, 59-10, 59-11, 59-12, 59-13, 59-14, 59-15, 59-16, 59-17, 59-18, and 59-19 and be managed for the benefit of the affected persons or community, but liability of the fund may not exceed the amount deposited with the fund.

9. Participation by a lender in an agreement under this section may not be construed as management of the property under chapter 32-40.1. Lenders that participate in an agreement under this section may not be held responsible for any environmental remediation on the site or property except as provided in subsection 3 of section 32-40.1-02. As part of an agreement under subsection 8, the department may issue a letter of regulatory assurance to a lender which states that the lender is not responsible for environmental remediation on the property or site, and which addresses other issues relating to responsibility, notice, violation of agreement under subsection 8 by the owner or operator, default, or other matters affecting potential environmental liability, investment, or redevelopment. A responsibility exemption of regulatory assurance given or granted to a lender under this section also applies to a lender's transferees or assigns, if the party has had no prior involvement with or responsibility for the site of the environmental release, and uses and manages the 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 23.1-12. 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.
14. "Natural attenuation" means the reduction in the mass or concentration in soils or ground water of a regulated substance, pollutant, contaminant, and the products into which a substance breaks down, due to naturally occurring physical, chemical, and biological processes, without human intervention. "Enhanced natural attenuation" means the enhancement of natural attenuation at a site by the addition of chemicals, biota, or other substances or processes. "Monitored natural attenuation" means the monitoring of natural attenuation as it occurs. The department may consider natural attenuation or enhanced or monitored natural attenuation as remediation alternatives for a site when pollution or contamination on a site or property does not pose a threat to human health or the environment, and reasonable safeguards are established under this section or other provisions of state or federal law.
15. "Regulatory assurance" means an assurance issued by the department concerning enforcement relating to existing contamination or pollution on a property or site based on compliance with conditions stated in a letter of regulatory assurance. A regulatory assurance is not voidable under subsection 6.
16. "Responsibility exemption" means a partial or complete exemption from responsibility for remediation or further action on a contaminated property or at a contaminated site based on compliance with the conditions identified in a letter of no further remediation or a letter of no further action. A responsibility exemption is voidable only against a person that violates an institutional control or a condition of a letter of no further action or no further remediation, or that is responsible for a new or additional release or migration of a regulated substance or pollutant on the property or site, or whose actions or negligence cause the violation, release, or migration.
17. "Responsible party" means a person that causes or contributes to an onsite or offsite release or discharge, or which is responsible for an illegal or unpermitted storage, of a pollutant or regulated substance in violation of this chapter or chapter 61-28, that results in the contamination or pollution of a property or site. "Potentially responsible party" means a person identified as a possible cause of, or contributor to, contamination or pollution on a site or property.
18. This section does not affect the authority of the department, the state, or its political subdivisions to exercise any powers or duties under state law with respect to any new or additional discharge or release or threatened discharge or release of a pollutant or regulated substance on a property or site regulated under this section, or the right of the department or any other person to seek legal or equitable relief against a person not subject to a liability protection provided under this section.

### **23.1-04-05. Hazardous waste regulations.**

Under chapter 28-32, the department shall adopt rules:

1. For determining whether any waste is hazardous.
2. Prescribing procedures for generators of hazardous waste.
3. For the issuance of permits for the storage, treatment, and disposal of hazardous waste in an environmentally sound manner, utilizing best scientific and engineering judgment.
4. Prescribing procedures under which the department shall issue, renew, modify, suspend, revoke, or deny permits required by this chapter. The rules must provide that no permit may be revoked until the department has provided the affected party with written notice of the

intent of the department to revoke the permit, the reasons for the revocation, and an opportunity for a hearing.

5. For the location, design, construction, operation, and maintenance of treatment, storage, and disposal facilities.
6. For the transportation, containerization, and labeling of hazardous wastes which must be consistent with those issued by the United States department of transportation and the public service commission and department of transportation.
7. Prescribing procedures and requirements for a manifest system.
8. Prescribing procedures and requirements for the following:
  - a. Recordkeeping.
  - b. Reporting.
  - c. Sampling.
  - d. Performing analysis.
  - e. Monitoring.
9. Requiring the owner or operator of any hazardous waste treatment, storage, or disposal facility to demonstrate evidence of financial responsibility in the form and amount determined by the department to be necessary to ensure that, upon abandonment, cessation, or interruption of the operation of the facility, all appropriate measures are taken to prevent damage to human health and the environment.
10. Any other rules necessary to carry out the purposes of this chapter.

**23.1-04-06. Underground storage tank regulations.**

Under chapter 28-32, the department shall adopt rules:

1. For maintaining a leak detection system, an inventory control system together with tank testing, or a comparable system or method designed to identify releases in a manner consistent with the protection of human health and the environment.
2. For maintaining records of any monitoring of a leak detection system, inventory control system, or tank testing system.
3. For reporting of any releases and corrective action taken in response to a release from an underground tank.
4. For taking corrective action in response to a release from an underground storage tank.
5. For the closure of tanks to prevent releases of regulated substances into the environment.
6. For maintaining evidence of financial responsibility for taking corrective action and compensating third parties for bodily injury and property damage caused by sudden and nonsudden accidental releases arising from operating an underground storage tank.
7. Establishing standards for installation of underground storage tanks.
8. Establishing standards for construction and performance of new underground storage tanks.
9. For notifying the department or designated local agency of the existence of any operational or nonoperational underground storage tank.

10. For a permit fee system to own, install, or operate an underground storage tank.

However, regulations adopted by the department may not be more stringent than applicable requirements of the federal Resource Conservation and Recovery Act [42 U.S.C. 6901 et seq.] and the federal Energy Policy Act of 2005 [Pub. L. 109-58; 42 U.S.C. 15801 et seq.] in effect on August 1, 2007.

**23.1-04-07. Municipal underground storage tank ordinances.**

A county, city, or township may not enact and enforce an underground storage tank ordinance if the ordinance is more stringent than this chapter and the rules authorized to be adopted under this chapter.

**23.1-04-08. Permits.**

1. A person may not construct, substantially alter, or operate any hazardous waste treatment, storage, or disposal facility, nor may any person treat, store, or dispose of any hazardous waste without obtaining a permit from the department for the facility or activity. A hazardous waste treatment, storage, or disposal facility may not be issued a permit unless the applicant demonstrates to the satisfaction of the department that a need for the facility exists and the facility can comply with all applicable requirements under this chapter.
2. Permits must contain the terms and conditions the department deems necessary.
3. Permits must be issued for a period of five years.
4. Any permit issued under this section may be revoked by the department according to the rules adopted under subsection 3 of section 23.1-04-05 at any time if the permittee fails to comply with the terms and conditions of the permit, or with applicable requirements under this chapter.
5. If a permit applicant proposes modifications of an existing facility or the department determines modifications are necessary to conform to the requirements established under this chapter, the permit must specify the time allowed to complete the modifications.
6. a. Before the issuing of a permit the department shall:
  - (1) Publish in the official county newspaper of the county in which the proposed facility will be located and in major local newspapers of general circulation and broadcast over local radio stations notice of the department's intention to issue the permit; and
  - (2) Transmit in writing notice of the department's intention to issue the permit to each unit of local government having jurisdiction over the area in which the facility is proposed to be located and to each state agency having any authority under state law regarding the construction or operation of the 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 proposed to be located within the territorial zoning authority of the city. The department, in conjunction with the governing body of the county or city in which the commercial facility is located or proposed to be located, shall hold a public hearing in the manner provided in section 23.1-04-08.

**23.1-04-11. Disclosure of information before issuance, renewal, transfer, or major modification of permit.**

Before an application for the issuance, renewal, transfer, or major modification of a permit under this chapter may be granted, the applicant shall submit to the department a disclosure statement executed under oath or affirmation. The department shall verify and may investigate the information in the statement and shall deny an application for the issuance, renewal, transfer, or major modification of a permit if the applicant has intentionally misrepresented or concealed any material fact in a statement required under this section, a judgment of criminal conviction for violation of any federal or state environmental laws has been entered against the applicant within five years before the date of submission of the application, or the applicant has knowingly and repeatedly violated any state or federal environmental protection laws. The disclosure statement must include:

1. The name and business address of the applicant.
2. A description of the applicant's experience in managing the type of waste that will be managed under the permit.
3. A description of every civil and administrative complaint against the applicant for the violation of any state or federal environmental protection law which has resulted in a fine or penalty of more than ten thousand dollars within five years before the date of the submission of the application.
4. A description of every pending criminal complaint alleging the violation of any state or federal environmental protection law.
5. A description of every judgment of criminal conviction entered against the applicant within five years before the date of submission of the application for the violation of any state or federal environmental protection law.

6. A description of every judgment of criminal conviction of a felony constituting a crime involving fraud or misrepresentation under the laws of any state or of the United States which has been entered against the applicant within five years before the date of submission of the application.

#### **23.1-04-12. Inspections - Right of entry.**

To develop or enforce any rule authorized by this chapter or enforce a requirement of this chapter, any duly authorized representative or employee of the department may, upon presentation of appropriate credentials, at any reasonable time:

1. Enter any place, facility, or site at which wastes or substances that the department has reason to believe may be hazardous or regulated are, may be, or may have been generated, stored, transported, treated, disposed of, or otherwise handled.
2. Inspect and obtain samples of any waste or substance that the department has reason to believe may be hazardous or regulated, including samples from any vehicles in which wastes are being transported as well as samples of any containers or labels.
3. Inspect and copy any records, reports, information, or test results relating to the purposes of this chapter.

#### **23.1-04-13. Monitoring, analysis, and testing - Civil penalty.**

1. If the department determines, upon receipt of any information, that:
  - a. The presence of any hazardous waste, hazardous constituent, or regulated substance at a facility or site at which hazardous waste or regulated substance is, or has been, stored, treated, or disposed of; or
  - 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.
2. In the case of any facility or site not in operation at the time a determination is made under subsection 1 with respect to the facility or site, if the department finds the owner or operator of the facility or site could not reasonably be expected to have actual knowledge of the presence of hazardous waste or regulated substance at the facility or site and of its potential for release, the department may issue an order requiring the most recent previous owner or operator of the facility or site which could reasonably be expected to have such actual knowledge to carry out the actions referred to in subsection 1.
3. A person that violates this section is subject to a civil penalty of five thousand dollars per day of violation.

#### **23.1-04-14. Imminent hazard.**

Upon receipt of information that the past or present handling, storage, transportation, treatment, or disposal of any waste or regulated substance may present an imminent and substantial endangerment to health or the environment, the department may take emergency action necessary to protect health or the environment.

#### **23.1-04-15. Enforcement penalties and citizen participation.**

1. If the department finds a person is in violation of a permit, rule, standard, or requirement of this chapter, the department may issue an order requiring the person to comply with the permit, rule, standard, or requirement, and the department may bring an action for a civil or criminal penalty, including an action for injunctive relief. An action under this chapter must be

brought in the district court for the county in which the violation occurred or in which the party in violation has the party's residence or principal office in the state.

2. A person that violates a provision of this chapter or any rule, standard, or permit condition adopted under this chapter is subject to a civil penalty not to exceed twenty-five thousand dollars per day of violation. Each day of noncompliance constitutes a separate violation for purposes of penalty assessments.
3. A person that knowingly violates a provision of this chapter or a rule, standard, or permit condition adopted under this chapter, or that knowingly makes a false statement or representation in documentation required by this chapter, is subject to a fine not to exceed twenty-five thousand dollars per day of violation, to imprisonment for a period not to exceed one year, or both.
4. A person that knowingly violates a provision of this chapter in a manner that manifests extreme indifference to human life and places an individual in imminent danger of death or serious bodily injury, is subject to a fine not to exceed fifty thousand dollars per day of violation, to imprisonment for a period not to exceed two years, or both.
5. a. A person having an interest that may be adversely affected by a violation of this chapter may commence a civil action to compel compliance with this chapter, or a rule, order, or permit issued under this chapter.  
b. Notice of the violation must be given to the department and to an alleged violator sixty days before commencement of a citizen suit brought under this subsection.  
c. A person with an interest that may be adversely affected by a violation of this chapter may intervene as a matter of right in a civil action brought by the department to require compliance with this chapter.
6. An administrative action brought under this chapter must be conducted in accordance with North Dakota Administrative Code article 33-22.

**23.1-04-16. Applicability.**

1. The hazardous waste provisions of this chapter do not apply to the following wastes to the degree to which they are exempted from regulation by sections 3001(b)(2) and 3001(b)(3)(A) of the Resource Conservation and Recovery Act, as amended by the Solid Waste Disposal Act Amendments of 1980 [Pub. L. 96-482; 42 U.S.C. 6901 et seq.]:
  - a. Drilling fluids, produced water, and other wastes associated with the exploration, development, or production of crude oil or natural gas or geothermal energy.
  - b. Fly ash waste, bottom ash waste, slag waste, and flue gas emission control waste generated primarily from the combustion or gasification of coal or other fossil fuels.
  - c. Solid waste from the extraction, beneficiation, and processing of ores and minerals, including phosphate rock and overburden from the mining of uranium ore.
  - d. Cement kiln dust waste.
2. If a waste disposal site for any of the wastes specified in subsection 1 is to be closed, the owner or operator shall file a plat of the disposal site with the recorder of each county in which the facility is located, together with a description of the wastes placed 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.
4. The presumption does not arise unless the person has maintained a compilation of the information reviewed in the course of the investigation.
5. This section does not diminish the liability of any previous owner or operator of the property which would otherwise be liable under this chapter, and nothing in this section affects the liability under this chapter of a person that, by any act or omission, caused or contributed to the release or threatened release of a hazardous waste or substance the subject of the action relating to the property.
6. As used in this section, environmental professional means an individual, or entity managed or controlled by an individual, who, through academic training, occupational experience, and reputation, such as engineers, environmental consultants, and attorneys, can objectively conduct one or more aspects of an environmental investigation.

**SECTION 20.** Chapter 23.1-05 of the North Dakota Century Code is created and enacted as follows:

**23.1-05-01. Southwestern low-level radioactive waste disposal compact.**

The southwestern low-level radioactive waste disposal compact is entered with all jurisdictions legally joining the compact, in the form substantially as follows:

**ARTICLE I - COMPACT POLICY AND FORMATION**

The party states hereby find and declare all of the following:

1. The United States Congress, by enacting the Low-Level Radioactive Waste Policy Act, Public Law 96-573, as amended by the Low-Level Radioactive Waste Policy Amendments Act of 1985 [42 U.S.C. 2021b - 2021j], has encouraged the use of interstate compacts to provide for the establishment and operation of facilities for regional management of low-level radioactive waste.
2. It is the purpose of this compact to provide the means for such a cooperative effort between or among party states to protect the citizens of the states and the states' environments.
3. It is the policy of party states to this compact to encourage the reduction of the volume of low-level radioactive waste requiring disposal within the compact region.
4. It is the policy of the party states that the protection of the health and safety of their citizens and the most ecological and economical management of low-level radioactive wastes can be accomplished through cooperation of the states by minimizing the amount of handling and transportation required to dispose of these wastes and by providing facilities that serve the compact region.
5. Each party state, if an agreement state pursuant to section 2021 of title 42 of the United States Code, or the nuclear regulatory commission if not an agreement state, is responsible for the primary regulation of radioactive materials within its jurisdiction.

#### **ARTICLE II - DEFINITIONS**

As used in this compact, unless the context clearly indicates otherwise, the following definitions apply:

1. "Commission" means the southwestern low-level radioactive waste commission established in Article III of this compact.
2. "Compact region" or "region" means the combined geographical area within the boundaries of the party states.
3. "Disposal" means the permanent isolation of low-level radioactive waste pursuant to requirements established by the nuclear regulatory commission and the environmental protection agency under applicable laws, or by a party state if the state hosts a disposal facility.
4. "Generate", when used in relation to low-level radioactive waste, means to produce low-level radioactive waste.
5. "Generator" means a person whose activity, excluding the management of low-level radioactive waste, results in the production of low-level radioactive waste.
6. "Host county" means a county, or other similar political subdivision of a party state, in which a regional disposal facility is located or being developed.
7. "Host state" means a party state in which a regional disposal facility is located or being developed. California is the host state under this compact for the first thirty years from the date the California regional disposal facility commences operations.
8. "Institutional control period" means that period of time in which the facility license is transferred to the disposal site owner in compliance with the appropriate regulations for long-term observation and maintenance following the postclosure period.
9. "Low-level radioactive waste" means regulated radioactive material that meets all of the following requirements:

- a. The waste is not high-level radioactive waste, spent nuclear fuel, or byproduct material as defined in section 11e(2) of the Atomic Energy Act of 1954 [42 U.S.C. 2014(e)(2)].
  - b. The waste is not uranium mining or mill tailings.
  - c. The waste is not any waste for which the federal government is responsible pursuant to subdivision (b) of section 3 of the Low-Level Radioactive Waste Policy Amendments Act of 1985 [42 U.S.C. 2021c(b)].
  - d. The waste is not an alpha-emitting transuranic nuclide with a half-life greater than five years and with a concentration greater than one hundred nanocuries per gram, or plutonium-241 with a concentration greater than three thousand five hundred nanocuries per gram, or curium-242 with a concentration greater than twenty thousand nanocuries per gram.
10. "Major generator state" means a party state that generates ten percent of the total amount of low-level radioactive waste produced within the compact region and disposed of at the regional disposal facility. If no party state other than California generates at least ten percent of the total amount, "major generator state" means the party state that is second to California in the amount of waste produced within the compact region and disposed of at the regional disposal facility.
  11. "Management" means collection, consolidation, storage, packaging, or treatment.
  12. "Operator" means a person who operates a regional disposal facility.
  13. "Party state" means any state that has become a party in accordance with Article VII of this compact.
  14. "Person" means an individual, corporation, partnership, or other legal entity, whether public or private.
  15. "Postclosure period" means that period of time after completion of closure of a disposal facility during which the licensee observes, monitors, and carries out necessary maintenance and repairs at the disposal facility to assure that the disposal facility will remain stable and will not need ongoing active maintenance. This period ends with the beginning of the institutional control period.
  16. "Regional disposal facility" means a nonfederal low-level radioactive waste disposal facility established and operated under this compact.
  17. "Site closure and stabilization" means the activities of the disposal facility operator taken at the end of the disposal facility's operating life to assure the continued protection of the public from any residual radioactive or other potential hazards present at the disposal facility.
  18. "Transporter" means a person who transports low-level radioactive waste.
  19. "Uranium mine and mill tailings" means waste resulting from mining and processing of ores containing uranium.

### **ARTICLE III - THE COMMISSION**

1. There is hereby established the southwestern low-level radioactive waste commission.
  - a. The commission consists of one voting member from each party state to be appointed by the governor, confirmed by the senate of that party state, and to serve at the pleasure of the governor of each party state, and one voting member from the host county. The appointing authority of each party state shall notify the commission in writing of the

identity of the member and of any alternates. An alternate may act in the member's absence.

- b. The host state shall also appoint that number of additional voting members of the commission which is necessary for the host state's members to compose at least fifty-one percent of the membership on the commission. The host state's additional members must be appointed by the host state governor and confirmed by the host state senate.

If there is more than one host state, only the state in which is located the regional disposal facility actively accepting low-level radioactive waste pursuant to this compact may appoint these additional members.

- c. If the host county has not been selected at the time the commission is appointed, the governor of the host state shall appoint an interim local government member, who must be an elected representative of a local government. After a host county is selected, the interim local government member shall resign and the governor shall appoint the host county member pursuant to subdivision d.
  - d. The governor shall appoint the host county member from a list of at least seven candidates compiled by the board of county commissioners of the host county.
  - e. In recommending and appointing the host county member pursuant to subdivision d, the board of county commissioners and the governor shall give first consideration to recommending and appointing the members of the board of county commissioners in whose district the regional disposal facility is located or being developed. If the board of county commissioners of the host county does not provide a list to the governor of at least seven candidates from which to choose, the governor shall appoint a resident of the host county as the host county member.
  - f. The host county member is subject to confirmation by the senate of the host state and serves at the pleasure of the governor of the host state.
2. The commission is a legal entity separate and distinct from the party states and is liable for its actions. Members of the commission are not personally liable for actions taken in their official capacity. The liabilities of the commission are not to be deemed liabilities of the party states.
  3. The commission shall conduct its business affairs pursuant to the laws of the host state and disputes arising out of commission action must be governed by the laws of the host state. The commission must be located in the capital city of the host state in which the regional disposal facility is located.
  4. The commission's records are subject to the host state's public records law, and the meetings of the commission must be open and public in accordance with the host state's open meeting law.
  5. The commission members are public officials of the appointing state and are subject to the conflict of interest laws, as well as any other law, of the appointing state. The commission members must be compensated according to the appointing state's law.
  6. Each commission member is entitled to one vote. A majority of the commission constitutes a quorum. Unless otherwise provided in this capacity, a majority of the total number of votes on the commission is necessary for the commission to take any action.
  7. The commission has all of the following duties and authority:

- a. The commission shall do, pursuant to the authority granted by this compact, whatever is reasonably necessary to ensure that low-level radioactive wastes are safely disposed of and managed within the region.
- b. The commission shall meet at least once a year and otherwise as business requires.
- c. The commission shall establish a compact surcharge to be imposed upon party state generators. The surcharge must be based upon the cubic feet of low-level radioactive waste and the radioactivity of the low-level radioactive waste and must be collected by the operator of the disposal facility.

The host state shall set, and the commission shall impose, the surcharge after congressional approval of the compact. The amount of the surcharge must be sufficient to establish and maintain a reasonable level of funds for all of the following purposes:

- (1) The activities of the commission and commission staff.
  - (2) At the discretion of the host state, a third-party liability fund to provide compensation for injury to persons or property during the operational, closure, stabilization, and postclosure and institutional control periods of the regional disposal facility. This paragraph does not limit the responsibility or liability of the operator, who shall comply with any federal or host state statutes or regulations regarding third-party liability claims.
  - (3) A local government reimbursement fund, for the purpose of reimbursing the local governmental entity or entities hosting the regional disposal facility for any costs or increased burdens on the local governmental entity for services, including, general fund expenses, the improvement and maintenance of roads and bridges, fire protection, law enforcement, monitoring by local health officials, and emergency preparation and response related to the hosting of the regional disposal facility.
- d. The surcharges imposed by the commission for purposes of paragraphs 2 and 3 of subdivision c and surcharges pursuant to subdivision c of subsection 5 of Article IV must be transmitted on a monthly basis to the host state for distribution to the proper accounts.
  - e. The commission shall establish a fiscal year that conforms to the fiscal years of the party states to the extent possible.
  - f. The commission shall keep an accurate account of all receipts and disbursements. An annual audit of the books of the commission must be conducted by an independent certified public accountant, and the audit report must be made a part of the annual report of the commission.
  - g. The commission shall prepare and include in the annual report a budget showing anticipated receipts and disbursements for the subsequent fiscal year.
  - h. The commission may accept any grants, equipment, supplies, materials, or services, conditional or otherwise, from the federal government or a state government. The nature, amount and condition, if any, of any donation, grant, or other resources accepted pursuant to this subdivision and the identity of the donor or grantor must be detailed in the annual report of the commission.

However, the host state is entitled to receive, for the uses specified in subparagraph E of paragraph 2 of subsection d of section 2021e of title 42 of the United States Code, any payments paid from the special escrow account for which the secretary of energy is trustee pursuant to subparagraph A of paragraph 2 of subsection d of section 2021e of title 42 of the United States Code.

- i. The commission shall submit communications to the governors and to the presiding officers of the legislative assemblies of the party states regarding the activities of the commission, including an annual report to be submitted on or before January fifteenth of each year. The commission shall include in the annual report a review of, and recommendations for, low-level radioactive waste disposal methods that are alternative technologies to the shallow land burial of low-level radioactive waste.
- j. The commission shall assemble and make available to the party states, and to the public, information concerning low-level radioactive waste management needs, technologies, and problems.
- k. The commission shall keep a current inventory of all generators within the region, based upon information provided by the party states.
- l. The commission shall keep a current inventory of all regional disposal facilities, including information on the size, capacity, location, specific low-level radioactive wastes capable of being managed, and the projected useful life of each regional disposal facility.
- m. The commission may establish advisory committees for the purpose of advising the commission on the disposal and management of low-level radioactive waste.
- n. The commission may enter into contracts to carry out its duties and authority, subject to projected resources. No contract made by the commission may bind a party state.
- o. The commission shall prepare contingency plans, with the cooperation and approval of the host state, for the disposal and management of low-level radioactive waste in the event that any regional disposal facility should be closed.
- p. The commission may sue and be sued and, when authorized by a majority vote of the members, may seek to intervene in an administrative or judicial proceeding related to this compact.
- q. The commission must be managed by an appropriate staff, including an executive director. Notwithstanding any other provision of law, the commission may hire or retain, or both, legal counsel.
- r. The commission may, subject to applicable federal and state laws, recommend to the appropriate host state authority suitable land and rail transportation routes for low-level radioactive waste carriers.
- s. The commission may enter into an agreement to import low-level radioactive waste into the region only if both of the following requirements are met:
  - (1) The commission approves the importation agreement by a two-thirds vote of the commission.
  - (2) The commission and the host state assess the affected regional disposal facilities' capability to handle imported low-level radioactive wastes and any relevant environmental or economic factors, as defined by the host state's appropriate regulatory authorities.
- t. The commission may, upon petition, allow an individual generator, a group of generators, or the host state of the compact, to export low-level radioactive wastes to a low-level radioactive waste disposal facility located outside the region. The commission may approve the petition only by a two-thirds vote of the commission. The permission to export low-level radioactive wastes is effective for that period of time and for the amount of low-level radioactive waste, and subject to any other term or condition, which may be determined by the commission.

- u. The commission may approve, only by a two-thirds vote of the commission, the exportation outside the region of material, which otherwise meets the criteria of low-level radioactive waste, if the sole purpose of the exportation is to process the material for recycling.
- v. The commission shall, not later than ten years before the closure of the initial or subsequent regional disposal facility, prepare a plan for the establishment of the next regional disposal facility.

#### **ARTICLE IV - RIGHTS, RESPONSIBILITIES, AND OBLIGATIONS OF PARTY STATES**

1. There must be regional disposal facilities sufficient to dispose of the low-level radioactive waste generated within the region.
2. Low-level radioactive waste generated within the region must be disposed of at regional disposal facilities and each party state must have access to any regional disposal facility without discrimination.
3. a. Upon the effective date of this compact, California must serve as the host state and must comply with the requirements of subsection 5 for at least thirty years from the date the regional disposal facility begins to accept low-level radioactive waste for disposal. The extension of the obligation and duration is at the option of California.

If California does not extend this obligation, the party state, other than California, which is the largest major generator state, must then serve as the host state for the second regional disposal facility.

The obligation of a host state which hosts the second regional disposal facility must also run for thirty years from the date the second regional disposal facility begins operations.
- b. The host state may close its regional disposal facility when necessary for public health or safety.
4. The party states of this compact cannot be members of another regional low-level radioactive waste compact entered into pursuant to the Low-Level Radioactive Waste Policy Act, as amended by the Low-Level Radioactive Waste Policy Amendments Act of 1985 [42 U.S.C. 2021b - 2021j].
5. A host state shall do all of the following:
  - a. Cause a regional disposal facility to be developed on a timely basis.
  - b. Ensure by law, consistent with any applicable federal laws, the protection and preservation of public health and safety in the siting, design, development, licensing, regulation, operation, closure, decommissioning, and long-term care of the regional disposal facilities within the state.
  - c. Ensure that charges for disposal of low-level radioactive waste at the regional disposal facility are reasonably sufficient to do all of the following:
    - (1) Ensure the safe disposal of low-level radioactive waste and long-term care of the regional disposal facility.
    - (2) Pay for the cost of inspection, enforcement, and surveillance activities at the regional disposal facility.
    - (3) Assure that charges are assessed without discrimination as to the party state of origin.

- d. Submit an annual report to the commission on the status of the regional disposal facility including projections of the facility's anticipated future capacity.
  - e. The host state and the operator shall notify the commission immediately upon the occurrence of any event which could cause a possible temporary or permanent closure of a regional disposal facility.
6. Each party state is subject to the following duties and authority:
- a. To the extent authorized by federal law, each party state shall develop and enforce procedures requiring low-level radioactive waste shipments originating within its borders and destined for a regional disposal facility to conform to packaging and transportation requirements and regulations. These procedures must include all of the following requirements:
    - (1) Periodic inspections of packaging and shipping practices.
    - (2) Periodic inspections of low-level radioactive waste containers while in the custody of transporters.
    - (3) Appropriate enforcement actions with respect to violations.
  - b. A party state may impose a surcharge on the low-level radioactive waste generators within the state to pay for activities required by subdivision a.
  - c. To the extent authorized by federal law, each party state shall, after receiving notification from a host state that a person in a party state has violated packaging, shipping, or transportation requirements or regulations, take appropriate actions to ensure that these violations do not continue. Appropriate actions include requiring that a bond be posted by the violator to pay the cost of repackaging at the regional disposal facility and prohibiting future shipments to the regional disposal facility.
  - d. Each party state shall maintain a registry of all generators within the state that may have low-level radioactive waste to be disposed of at a regional disposal facility, including the amount of low-level radioactive waste and the class of low-level radioactive waste generated by each generator.
  - e. Each party state shall encourage generators within its borders to minimize the volume of low-level radioactive waste requiring disposal.
  - f. Each party state may rely on the good-faith performance of the other party states to perform those acts that are required by this compact to provide regional disposal facilities, including the use of the regional disposal facilities in a manner consistent with this compact.
  - g. Each party state shall provide the commission with any data and information necessary for the implementation of the commission's responsibilities, including taking those actions necessary to obtain this data or information.
  - h. Each party state shall agree that only low-level radioactive waste generated within the jurisdiction of the party states may be disposed of in the regional disposal facility, except as provided in subdivision s of subsection 7 of Article III.
  - i. Each party state shall agree that if there is any injury to persons or property resulting from the operation of a regional disposal facility, the damages resulting 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 entry of any state, other than the states named in this subsection, as a member of this compact.
2. Upon compliance with the other provisions of this compact, an eligible state may become a party state by legislative enactment of this compact or by executive order of the governor of the state adopting this compact. A state becoming a party state by executive order ceases to be a party state upon adjournment of the first general session of its legislative assembly convened after the executive order is issued, unless before the adjournment the legislative assembly enacts this compact.
3. A party state, other than the host state, may withdraw from the compact by repealing the enactment of this compact, but this withdrawal does not become effective until two years after the effective date of the repealing legislation. If a party state which is a major generator of low-level radioactive waste voluntarily withdraws from the compact pursuant to this subsection, that state shall make arrangements for the disposal of the other party states' low-level radioactive waste for a time period equal the period of time it was a member of this compact.

If the host state withdraws from the compact, the withdrawal does not become effective until five years after the effective date of the repealing legislation.

4. A party state may be excluded from this compact by a two-thirds vote of the commission members, acting in a meeting, if the state to be excluded has failed to carry out any obligations required by this compact.

5. This compact takes effect upon the enactment by statute by the legislatures of California and at least one other eligible state and upon the consent of Congress and remains in effect until otherwise provided by federal law. This compact is subject to review by Congress and the withdrawal of the consent of Congress every five years after its effective date, pursuant to federal law.

#### **ARTICLE VIII - CONSTRUCTION AND SEVERABILITY**

1. This compact must be broadly construed to carry out the purposes of the compact, but the sovereign powers of a party state may not be infringed unnecessarily.
2. This compact does not affect any judicial proceeding pending on the effective date of this compact.
3. If any provision of this compact or the application thereof to any person or circumstances is held invalid, that invalidity does not affect other provisions or applications of the compact which can be given effect without the invalid provision or application, and to this end the provisions of this compact are severable.
4. Nothing in this compact diminishes or otherwise impairs the jurisdiction, authority, or discretion of either of the following:
  - a. The nuclear regulatory commission pursuant to the Atomic Energy Act of 1954, as amended [42 U.S.C. 2011 et seq.].
  - b. An agreement state under section 274 of the Atomic Energy Act of 1954, as amended [42 U.S.C. 2021].
5. Nothing in this compact confers any new authority on the states or commission to do any of the following:
  - a. Regulate the packaging or transportation of low-level radioactive waste in a manner inconsistent with the regulations of the nuclear regulatory commission or the United States department of transportation.
  - b. Regulate health, safety, or environmental hazards from source, byproduct, or special nuclear material.
  - c. Inspect the activities of licensees of the agreement states or of the nuclear regulatory commission.

**SECTION 21.** Chapter 23.1-06 of the North Dakota Century Code is created and enacted as follows:

#### **23.1-06-01. Definitions.**

For purposes of this chapter:

1. "Air contaminant" means any solid, liquid, gas, or odorous substance, or any combination of solid, liquid, gas, or odorous substance.
2. "Air pollution" means the presence in the outdoor atmosphere of one or more air contaminants in such quantities and duration as may be injurious to human health, welfare, or property, animal or plant life, or which unreasonably interferes with the enjoyment of life or property.
3. "Air quality standard" means an established concentration, exposure time, or frequency of occurrence of a contaminant or multiple contaminants in the ambient air which may not be exceeded.

4. "Ambient air" means the surrounding outside air.
5. "Asbestos abatement" means any demolition, renovation, salvage, repair, or construction activity which involves the repair, enclosure, encapsulation, removal, handling, or disposal of more than three square feet [0.28 square meter] or three linear feet [0.91 meter] of friable asbestos material. Asbestos abatement also means any inspections, preparation of management plans, and abatement project design for both friable and nonfriable asbestos material.
6. "Asbestos contractor" means any person that contracts to perform asbestos abatement for another.
7. "Asbestos worker" means any individual engaged in the abatement of more than three square feet [0.28 square meter] or three linear feet [0.91 meter] of friable asbestos material, except for individuals engaged in abatement at their private residence.
8. "Department" means the department of environmental quality.
9. "Emission" means a release of air contaminants into the ambient air.
10. "Emission standard" means a limitation on the release of any air contaminant into the ambient air.
11. "Friable asbestos material" means any material containing more than one percent asbestos that hand pressure or mechanical forces expected to act on the material can crumble, pulverize, or reduce to powder when dry.
12. "Indirect air contaminant source" means any facility, building, structure, or installation, or any combination that can reasonably be expected to cause or induce emissions of air contaminants.
13. "Lead-based paint" means paint or other surface coatings that contain lead equal to or in excess of one milligram per square centimeter or more than one-half percent by weight.

**23.1-06-02. Declaration of public policy and legislative intent.**

It is the public policy of this state and the legislative intent of this chapter to achieve and 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 commencing construction or modification of any such source, the owner or operator shall submit the information necessary to permit the department to make this determination.
  - g. Establish ambient air quality standards for the state which may vary according to appropriate areas.
  - h. Formulate and adopt emission control requirements for the prevention, abatement, and control of air pollution in this state including achievement of ambient air quality standards.
  - i. Hold hearings relating to the administration of this chapter, and compel the attendance of witnesses and the production of evidence.
  - j. Require the owner or operator of a regulated air contaminant source to establish and maintain records; make reports; install, use, and maintain monitoring equipment or methods; sample emissions in accordance with those methods at designated locations and intervals, and using designated procedures; and provide other information as may be required.
  - k. Provide by rules a procedure for handling applications for a variance for any person that owns or is in control of any plant, establishment, process, or equipment. The granting of a variance is not a right of the applicant but must be in the discretion of the department.
  - l. Provide by rules any procedures necessary and appropriate to develop, implement, and enforce any air pollution prevention and control program established by the federal Clean Air Act [42 U.S.C. 7401 et seq.], as amended, the authorities and responsibilities of which are delegatable to the state by the United States environmental protection agency. The rules may include enforceable ambient standards, emission limitations, and other control measures, means, techniques, or economic incentives, including fees, marketable permits, and auctions of emissions rights, as provided by the Act. The department shall develop and implement the federal programs if the department determines that doing so benefits the state.
  - m. Provide by rules a program for implementing lead-based paint remediation 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 lead-based contractors and workers may not exceed those charged to asbestos contractors and workers.
  - f. Establish indoor environmental nonoccupational air quality standards for asbestos.
  - g. Adopt and enforce rules as necessary for the implementation of this section.
2. For nonpublic employees performing asbestos abatement in facilities or on facility components owned or leased by their employer, only the provisions of rules adopted in accordance with the federal Asbestos Hazard Emergency Response Act of 1986 [Pub. L. 99-519; 100 Stat. 2970; 15 U.S.C. 2641 et seq.], as amended, or the federal Clean Air Act [Pub. L. 95-95; 91 Stat. 685; 42 U.S.C. 7401 et seq.], as amended, apply to this section. This does not include ownership that was acquired solely to effect a demolition or renovation.

**23.1-06-06. Sulfur dioxide ambient air quality standards more strict than federal standards prohibited.**

The department may not adopt ambient air quality rules or standards for sulfur dioxide that affect 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.], nor may the department adopt ambient air quality rules or standards for sulfur dioxide that affect these facilities and refineries when there are no corresponding federal rules or standards. Any ambient air quality standards that have been adopted by the department for sulfur dioxide that are more strict than federal rules or standards under the federal Clean Air Act, or for which there are no corresponding federal rules or standards, are void as to coal conversion facilities and petroleum refineries. However, the department may adopt rules for dealing with exposures of less than one hour to sulfur dioxide emissions on a source-by-source basis pursuant to any regulatory program for dealing with short-term exposures to sulfur dioxide that may be established under the federal Clean Air Act. Any intervention levels or standards set forth in the rules may not be more strict than federal levels or standards recommended or adopted under the federal program. In

adopting the rules, the department shall follow all other provisions of state law governing the department's adoption of ambient air quality rules when there are no mandatory 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. The quantification or numerical estimate must use comparable assumptions, including time periods, specify the ranges of predictions, and explain the margins of error involved in the quantification methods and estimates being used. The costs that must be considered include the social, environmental, and economic costs that are expected to result directly or indirectly from implementation or compliance with the proposed rule.
    - (2) A reasonable determination whether as a whole the benefits of the rule justify the costs of the rule and that the rule will achieve the rulemaking objectives in a more cost-effective manner than other reasonable alternatives, including the alternative of no government action. In evaluating and comparing the costs and benefits, the department may not rely on cost, benefit, or risk assessment information that is not accompanied by data, analysis, or supporting materials that would enable the department and other persons interested in the rulemaking to assess the accuracy, reliability, and uncertainty factors applicable to the information.
  - b. "Risk assessment" means both the process used by the department to identify and quantify the degree of toxicity, exposure, or other risk posed for the exposed individuals, populations, or resources, and the written document containing an explanation of how the assessment process has been applied to an individual substance, activity, or

condition. The risk assessment must include a discussion that characterizes the risks being assessed. The risk characterization must include the following elements:

- (1) A description of the exposure scenarios used, the natural resources or subpopulations being exposed, and the likelihood of these exposure scenarios expressed in terms of probability.
  - (2) A hazard identification that demonstrates whether exposure to the substance, activity, or condition identified is causally linked to an adverse effect.
  - (3) The major sources of uncertainties in the hazard identification, 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 and fugitive emissions, or emission standards for particulate matter and sulfur dioxide, but does apply to new rules governing those standards.

#### **23.1-06-08. Classification and reporting of air pollution sources.**

1. After consultation with the environmental review advisory council the department, by rule, may classify air contaminant sources according to levels and types of emissions and other criteria that relate to air pollution, and may require reporting for any class. Classifications made under this subsection may apply to the state as a whole or to any designated area of the state, and

must be made with special reference to effects on health, economic, and social factors and physical effects on property.

2. A person operating or responsible for the operation of air contaminant sources of any class for which reporting is required shall make reports containing information the department deems relevant to air pollution.

**23.1-06-09. Permits or registration.**

1. A person may not construct, install, modify, use, or operate an air contaminant source designated by regulation, capable of causing or contributing to air pollution, either directly or indirectly, without a permit from the department or in violation of any conditions imposed by the permit.
2. The department shall provide for the issuance, suspension, revocation, and renewal of permits that it requires under this section.
3. The department may require applications for permits to be accompanied by plans, specifications, and other information it deems necessary.
4. Possession of an approved permit or registration certificate does not relieve any person of the responsibility to comply with applicable emission limitations or with any other law or rule, and does not relieve any person from the requirement to possess a valid contractor's license issued under chapter 43-07.
5. The department by rule may provide for registration and registration renewal of certain air contaminant sources in lieu of a permit.
6. The department may exempt by rule certain air contaminant sources from the permit or registration requirements in this section when the department makes a finding the exemption will not be contrary to section 23.1-06-02.

**23.1-06-10. Fees - Deposit in operating fund.**

The department by rule may prescribe and provide for the payment and collection of reasonable fees for permits and registration certificates. The 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 an inspection program to determine compliance or noncompliance with the permit or registration certificate. Any moneys collected for permit or registration fees must be deposited in the department operating fund in the state treasury and must be spent subject to appropriation by the legislative assembly.

**23.1-06-11. Right of onsite inspection.**

1. Any duly authorized officer, employee, or agent of the department may enter and inspect any property, premise, or place on or at which an air contaminant source is located or is being constructed, installed, or established at any reasonable time for the purpose of ascertaining the state of compliance with this chapter and related rules. If requested, the owner or operator of the premises must receive a report setting forth all facts found which relate to compliance status.
2. The department may conduct tests and take samples of air contaminants, fuel, process material, and other materials that may affect emission of air contaminants from any source, and may have access to and copy any records required by department rules to be maintained, and may inspect monitoring equipment located on the premises. Upon request of the department, the person responsible for the source to be tested shall provide necessary holes in stacks or ducts and other safe and proper sampling, and testing facilities exclusive of instruments and sensing devices necessary for proper determination of the emission of air

contaminants. If an authorized representative of the department, during the course of an inspection, obtains a sample of air contaminant, fuel, process material, or other material, the representative shall issue a receipt for the sample obtained to the owner or operator of, or person responsible for, the source tested.

3. To ascertain the state of compliance with this chapter and any applicable rules, a duly authorized officer, employee, or agent of the department may enter and inspect, at any reasonable time, any property, premises, or place on or at which a lead-based paint remediation activity is ongoing. If requested, the department shall provide to the owner or operator of the premises a report that sets forth all facts found which relate to compliance status.

#### **23.1-06-12. Confidentiality of records.**

1. Any record, report, or information obtained under this chapter must be available to the public. However, upon a showing satisfactory to the department that disclosure to the public of a part of the record, report, or information, other than emission data, to which the department has access under this chapter, would divulge trade secrets, the department shall consider that part of the record, report, or information confidential.
2. This section may not prevent disclosure of any report, or record of information to federal, state, or local agencies when necessary for purposes of administration of any federal, state, or local air pollution control laws, or when relevant in any proceeding under this chapter.

#### **23.1-06-13. Administrative procedure and judicial review.**

Any proceeding under this chapter for the issuance or modification of rules and regulations, including emergency orders relating to control of air pollution, or determining compliance with rules and regulations of the department, must be conducted in accordance with chapter 28-32. Appeals from the proceeding may be taken under chapter 28-32. When 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 the emergency and requiring action be taken as necessary to meet the emergency. Notwithstanding any provision of this chapter, the order must be effective immediately, but on application to the department an interested person must be afforded a hearing before the environmental review advisory council within ten days. On the basis of the hearing, the emergency order must be continued, modified, or revoked within thirty days after the hearing. Except as provided for in this section, notice of any hearing held under this chapter must be issued at least thirty days before the date specified for the hearing.

#### **23.1-06-14. Enforcement - Penalties - Injunctions.**

1. A person that willfully violates this chapter, or any permit condition, rule, order, limitation, or other applicable requirement implementing this chapter, is subject to a fine of not more than ten thousand dollars per day per violation, or by imprisonment for not more than one year, or both. If the conviction is for a violation committed after a first conviction of the person under this subsection, punishment must be a fine of not more than twenty thousand dollars per day per violation, or by imprisonment for not more than two years, or both.
2. A person that violates this chapter, or any permit condition, rule, order, limitation, or other applicable requirement implementing this chapter, with criminal negligence, is subject to a fine of not more than ten thousand dollars per day per violation, or by imprisonment for not more than six months, or both.
3. A person that knowingly makes any false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under this chapter or any permit condition, rule, order, limitation, or other applicable requirement implementing this chapter, or that falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under this chapter or any permit

condition, rule, order, limitation, or other applicable requirement implementing this chapter, upon conviction, is subject to a fine of not more than ten thousand dollars per day per violation, or by imprisonment for not more than six months, or both.

4. A person that violates this chapter, or any permit condition, rule, order, limitation, or other applicable requirement implementing this chapter, is subject to a civil penalty not to exceed ten thousand dollars per day per violation.
5. Without prior revocation of any pertinent permits, the department, in accordance with the laws of this state governing injunction or other process, may maintain an action in the name of the state against any person to enjoin a threatened or continuing violation of any provision of this chapter or any permit condition, rule, order, limitation, or other applicable requirement implementing this chapter.

### **23.1-06-15. Regulation of odors - Rules.**

1. In areas located within a city or 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 measures seven odor concentration units or higher outside the property boundary where the discharge is occurring. If an agricultural operation as defined by section 42-04-01 has been in operation for more 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 the animal feeding operation was established, unless the animal feeding operation has obtained an odor easement from the pre-existing facility.

3. An odor measurement may be taken only with a properly maintained scentometer, by an odor panel, or by another instrument or method approved by the department of environmental quality, and only by inspectors certified by the department who have successfully completed a department-sponsored odor certification course and demonstrated the ability to distinguish various odor samples and concentrations. If a certified inspector measures a violation of this section, the department may send a certified letter of apparent noncompliance to the person causing the apparent violation and may negotiate with the owner or operator for the establishment of an odor management plan and best management practices to address the apparent violation. The department shall give the owner or operator at least fifteen days to implement the odor management plan. If the odor problem persists, the department may proceed with an enforcement action provided at least two certified inspectors at the same time each measure a violation and then confirm the violation by a second odor measurement taken by each certified inspector, at least fifteen minutes, but no more than two hours, after the first measurement.
4. A person is exempt from this section while spreading or applying animal manure or other recycled agricultural material to land in accordance with a nutrient management plan approved by the department of environmental quality. A person is exempt from this section while spreading or applying animal manure or other recycled agricultural material to land owned or leased by that person in accordance with rules adopted by the department. An owner or operator of a lagoon or waste storage pond permitted by the department is exempt from this section in the spring from the time when the cover of the permitted lagoon or pond begins to melt until fourteen days after all the ice cover on the lagoon or pond has completely melted. Notwithstanding these exemptions, all persons shall manage their property and systems to minimize the impact of odors on their neighbors.
5. This section does not apply to chemical compounds that can be individually measured by instruments, other than a scentometer, that have been designed and proven to measure the individual chemical or chemical compound, such as hydrogen sulfide, to a reasonable degree of scientific certainty, and for which the department of environmental quality has established a specific limitation by rule.
6. For purposes of this section, a public park is a park established by the federal government, the state, or a political subdivision of the state in the manner prescribed by law. For purposes of this section, a campground is a public or private area of land used exclusively for camping and open to the public for a fee on a regular or seasonal basis.
7. a. In a county that does not regulate the nature, scope, and location of an animal feeding operation under section 11-33-02, the department shall require that any new animal feeding operation permitted under chapter 61-28 be set back from any existing residence, church, school, business, public building, park, or campground.
  - (1) If there are fewer than three hundred animal units, there is no minimum setback requirement.
  - (2) If there are at least three hundred animal units but no more than one thousand animal units, the setback for any animal operation is one-half mile [.80 kilometer].
  - (3) If there are at least one thousand one animal units but no more than two thousand animal units, the setback for a hog operation is three-fourths mile [1.20 kilometers], and the setback for any other animal operation is one-half mile [.80 kilometer].
  - (4) If there are at least two thousand one animal units but no more than five thousand animal units, the setback for a hog operation is one mile [1.60 kilometers], and the setback for any other animal operation is three-fourths mile [1.20 kilometers].

- (5) If there are five thousand one or more animal units, the setback for a hog operation is one and one-half miles [2.40 kilometers], and the setback for any other animal operation is one mile [1.60 kilometers].
- b. The setbacks set forth in subdivision a do not apply if the owner or operator applying for the permit obtains an odor easement from the pre-existing use that is 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 wastewater disposal systems in the state and by requiring the examination of operators and the certification of their competency to supervise the operations of such facilities.

**23.1-07-02. Definitions.**

For the purpose of this chapter, unless the context otherwise requires:

1. "Certificate" means a certificate of competency issued by the department stating that the operator holding the certificate meets the requirements for the specified operator grade in the certification program.
2. "Department" means the department of environmental quality.
3. "Ground water under the direct influence of surface water" means water beneath the surface of the ground with significant occurrence of insects or other macro-organisms, algae, or large-diameter pathogens such as Giardia lamblia, or significant and relatively rapid shifts in water characteristics such as turbidity, temperature, conductivity, or pH which closely correlate to climatological or surface water conditions.
4. "Operator" means the person in direct responsible charge of the operation of a water treatment plant, a water distribution system, a wastewater treatment plant, or a wastewater collection system.
5. "Population equivalent" for a wastewater collection system or treatment plant means the calculated population that would normally contribute the same amount of biochemical oxygen demand per day computed on the basis of seventeen hundredths of one pound [77.11 grams] of five-day, sixty-eight-degree Fahrenheit [20-degree Celsius] biochemical oxygen demand per capita per day.
6. "Wastewater collection system" means that portion of the wastewater disposal system in which wastewater is conveyed to a wastewater treatment plant from the premises of a contributor.
7. "Wastewater disposal system" means the system of pipes, structures, and facilities through which wastewater from a public sewer system or industry is collected and treated for final disposal. The system must serve a population equivalent of twenty-five or more persons.
8. "Wastewater treatment plant" means that portion of the wastewater disposal system used for the treatment and disposal of wastewater and the solids removed from wastewater.
9. "Water distribution system" means that portion of the water supply system in which water is conveyed from the water treatment plant or other supply point to the premises of the consumer.
10. "Water supply system" means the system of pipes, structures, and facilities through which a public water supply is obtained, treated, and sold or distributed for human consumption or household use. The system must have at least fifteen service connections or regularly serve an average of twenty-five or more persons for at least sixty days a year.
11. "Water treatment plant" means that portion of the water supply system that in some way alters the physical, chemical, or bacteriological quality of the water.

**23.1-07-03. Classification of plants and systems.**

The department shall classify all water treatment plants, water distribution systems, wastewater treatment plants, and wastewater collection systems with due regard to the size, type, character of water and wastewater to be treated, and other physical conditions affecting such facilities, and according to the skill, knowledge, and experience that an operator in responsible charge must have to successfully supervise the operation of such facilities, so as to protect the public health and prevent pollution of the waters of the state.

**23.1-07-04. Certification.**

When the department is satisfied an applicant is qualified by examination or otherwise to supervise the operation of treatment plants and systems, the department shall issue a certificate attesting to the competency of the applicant as an operator. The certificate must indicate the classification of treatment plant or system the operator is qualified to supervise.

1. A certificate issued under this chapter is valid for only one year and expires on the first day of July of the year after which it was issued.
2. The department may revoke or suspend the certificate of an operator issued under this chapter if the operator has practiced fraud or deception in obtaining the certificate or in the performance of the operator's duty as an operator; if reasonable care, judgment, or the application of the operator's knowledge or ability was not used in the performance of the operator's duties; or if the operator is incompetent and unable to perform properly the operator's duties as an operator. A certificate may not be revoked or suspended except after a hearing before the director of the department, or the director's designated representative. If a certificate is suspended or revoked, a new application for certification may be considered by the department only after the conditions causing the suspension or revocation have been corrected, and evidence of this fact has been satisfactorily submitted to the department. A new certificate may then be granted by the department.
3. Certificates in appropriate classification issued to operators before the effective date of this chapter continue in effect.

**23.1-07-05. Fees.**

The department may charge a fee for certificates issued under this chapter, but the fees may not exceed fifty dollars for the initial certificate, or twenty-five dollars for the annual renewal certificate. All receipts from the fees must be deposited in the state treasury to be credited to a special fund to be known as the "operators' certification fund" to be used by the department to administer and enforce this chapter and financially assist the department in conducting operator training programs. Any surplus at the end of the fiscal year must be retained by the department for future expenditures.

**23.1-07-06. Duties of the department.**

The department shall:

1. Hold at least one examination each year at a designated time and place for the purpose of examining candidates for certification.
2. Promote the program of certification of water supply and wastewater disposal system operators.
3. Distribute notices and applications and to receive and evaluate applications.
4. Collect fees for initial certification and annual renewal.
5. Prepare, conduct, and grade examinations.
6. Maintain records of operator qualifications, certification examination results, and a register of certified operators.
7. Promote and schedule regular training schools and programs.
8. Adopt rules necessary to carry out this chapter.

**23.1-07-07. Unlawful operation.**

Except as provided in this section, it is unlawful for any person to operate a water treatment plant or water distribution system serving twenty-five or more individuals or a wastewater treatment plant or wastewater collection system serving a population equivalent of twenty-five or more individuals unless the competency of the operator to operate such a plant or system is certified by the department in a grade corresponding to the classification of that portion of the system to be supervised. Operators of wastewater collection systems and wastewater stabilization ponds or other nonmechanical wastewater treatment plants that serve a population equivalent of less than five hundred individuals are excluded from this chapter. Operators of water supply systems that serve other than year-round residents are excluded from this chapter if all of the following conditions are met:

1. The water supply is obtained solely from ground water sources not under the direct influence of surface water.
2. Treatment, if provided, consists strictly of disinfection, fluoridation, sequestration, corrosion control, or other processes that involve simple chemical addition and minor operational control.
3. The water supply system is not required by the federal Safe Drinking Water Act or its implementing regulations to be operated by qualified personnel.

**23.1-07-08. Violations - Penalty.**

Any person violating this chapter or the rules adopted under this chapter, after written notice of the violation by the department, is guilty of a class A misdemeanor.

**SECTION 23.** Chapter 23.1-08 of the North Dakota Century Code is created and enacted as follows:

**23.1-08-01. Finding of necessity.**

The legislative assembly finds that:

1. The people of North Dakota have a right to a clean environment, and the costs of maintaining a clean environment through the efficient environmentally acceptable management of solid wastes should be borne by those who use such services.
2. Serious economic, management, and technical problems exist in the management of solid wastes resulting from residential, commercial, industrial, agricultural, and other 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.
9. "Municipal waste" means solid waste that includes garbage; refuse; and trash generated by households, motels, hotels, recreation facilities, public and private facilities; and commercial, wholesale, private, and retail businesses. The term does not include special waste or industrial waste.
10. "Open burning" means the combustion of solid waste without control of combustion air to maintain adequate temperature for efficient combustion, containment of the combustion reaction in an enclosed device to provide sufficient residence time and mixing for complete combustion, and control of the emission of the combustion products.
11. "Political subdivision" means a city, county, township, or solid waste management authority.
12. "Resource recovery" means the use, reuse, or recycling of materials, substances, energy, or products contained within or derived from solid waste.
13. "Solid 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 industrial, commercial, mining, and agricultural operations, and from community activities. The term does not include:
  - a. Agricultural waste, including manures and crop residues, returned to the soil as fertilizer or soil conditioners; or
  - b. Solid or dissolved materials in domestic sewage, or solid or dissolved material in irrigation return flows or industrial discharges that are point sources subject to permits under section 402 of the Federal Water Pollution Control Act, as amended [Pub. L. 92-500; 86 Stat. 816; 33 U.S.C. 1251 et seq.], or source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954, as amended [68 Stat. 919; 42 U.S.C. 2011 et seq.].
14. "Solid waste management" means the purposeful systematic control of the storage, collection, transport, composting, resource recovery, land treatment, and disposal of solid waste.
15. "Special waste" means solid waste that is not a hazardous waste regulated under chapter 23.1-04 and includes waste generated from energy conversion facilities; waste from crude oil and natural gas exploration and production; waste from mineral and ore mining, beneficiation, and extraction; and waste generated by surface coal mining operations. The term does not include municipal waste or industrial waste.

16. "Storage" means the containment and holding of solid waste after generation for a temporary period, at the end of which the solid waste is processed for resource recovery, treated, disposed of, or stored elsewhere.
17. "Transport" means the offsite movement of solid waste.

**23.1-08-03. Powers and duties of the department.**

The department shall:

1. Administer and enforce the state solid waste management program under this chapter.
2. Provide technical assistance on request to political subdivisions of the state and cooperate with appropriate federal agencies in carrying out the duties under this chapter. On request, the department may provide technical assistance to other persons.
3. Encourage and recommend procedures for using self-financing solid waste management systems and intermunicipal agencies.
4. Promote the planning and application of resource recovery facilities and systems that preserve and enhance the quality of air, water, and all resources.
5. Serve as the official state representative for all purposes of the Federal Solid Waste Disposal Act [Pub. L. 89-272; 79 Stat. 997; 42 U.S.C. 6901 et seq.], as amended, and for other state or federal legislation to assist in the management of solid wastes.
6. Survey the solid waste management needs within the state and maintain and upgrade the North Dakota solid waste management plan.
7. Require any person within the state to submit for review and approval a solid waste management plan to show that solid wastes will be disposed of in accordance with the provisions of this chapter.
8. Adopt and enforce rules governing solid waste management to conserve the air, water, and land resources of the state; protect the public health; prevent environmental pollution and public nuisances; and enable the department to administer this chapter, the adopted solid waste management plan, and delegated federal programs.
9. Establish procedures for permits governing the design, construction, operation, and closure of solid waste management facilities and systems.
10. Prepare, issue, modify, revoke, and enforce orders, after investigation, inspection, notice, and hearing, prohibiting violation of this chapter or of any rules issued under this chapter, and requiring remedial measures for solid waste management as may be necessary or appropriate under this chapter.
11. Adopt rules to establish categories and classifications of solid waste and solid waste management facilities based on waste type and quantity, facility operation, or other facility characteristics and to limit, restrict, or prohibit the disposal of solid wastes based on environmental or public health rationale.
12. Adopt rules to establish standards and requirements for each category of solid waste management facility.
13. Adopt rules to establish financial assurance requirements to be met by any person proposing construction or operation of a solid waste management facility sufficient to provide for closure and postclosure activities. Financial assurance requirements may include: insurance, trust funds, surety bonds, letters of credit, personal bonds, certificates of deposit, and financial tests or corporate guarantees.

14. Conduct an environmental compliance background review of any applicant for any permit. In conducting the review, if the department finds an applicant for a permit has intentionally misrepresented or concealed any material fact from the department, or has obtained a permit by intentional misrepresentation or concealment of a material fact, has been convicted of a felony or pleaded guilty or nolo contendere to a felony within three years preceding the application for the permit, or has been adjudicated in contempt of an order of any court within three years preceding the application for the permit, the department may deny the application. The department shall consider the relevance of the offense to the business to which the permit is issued, the nature and seriousness of the offense, the circumstances under which the offense occurred, the date of the offense, and the ownership and management structure in place at the time of the offense.

**23.1-08-04. Coal combustion residues - Present use and disposal deemed acceptable.**

Notwithstanding any other provision of law, the legislative assembly deems the present use and disposal of coal combustion residues to be acceptable and that present regulation allows for the beneficial use of coal combustion residues in concrete, for other construction applications, and for other innovative uses and allows for safe disposal without coal combustion residues being regulated as a hazardous waste. If a federal law or regulation is adopted pertaining to the use and disposal of coal combustion residues, this section does not prohibit the state from seeking state primacy of the federal program.

**23.1-08-05. Commercial oilfield special waste recycling facilities - Action against well operators restricted.**

1. By June 1, 2015, the department shall select at least one commercial oilfield special waste recycling facility having a pending beneficial use application, for authorization of operation of the facility as a pilot project and to assist the department to develop standards for recycling of oilfield special waste. The pending beneficial use application of the pilot project facility must be supported by scientific findings from a third-party source focused on the anticipated environmental performance of the end products of the recycled oilfield special waste and the practical utility of those end products.
2. Any pilot project facility and any commercial oilfield special waste recycling facility permitted after June 30, 2017, shall obtain a solid waste permit from the department and a treating plant permit from the industrial commission for treatment of oilfield special waste.
3. Any selected pilot project facility may operate as an oilfield special waste recycling facility through June 30, 2017, and may implement beneficial use demonstration projects using processed materials under the guidance of the department. A selected pilot project facility operator shall cooperate with the department to monitor and analyze impacts to the environment.
4. By July 1, 2017, based upon the results of any pilot projects, the department shall make recommendations either to adopt rules under chapter 28-32 governing operations and permitting of commercial oilfield special waste recycling facilities, or to develop written guidelines on recycling and beneficial use of oilfield special waste 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 waste by the recycling facility, and after the oilfield special waste has been treated and converted to a beneficial use as a usable product or legitimate substitute for a usable product, the well operator is not liable in any civil or criminal action for any subsequent claim or charge regarding the material converted to a beneficial use.

**23.1-08-06. Local government ordinances.**

Any political subdivision of the state may enact and enforce a solid waste management ordinance that is equal to or more stringent than this chapter and the rules adopted under this chapter.

**23.1-08-07. Littering and open burning prohibited - Penalty.**

1. A person may not discard and abandon litter, furniture, or major appliances upon public property or upon private property not owned by that person, unless the property is designated for the disposal of litter, furniture, or major appliances and that person is authorized to use the property for that purpose.
2. A person may not engage in the open burning of solid waste, unless the burning is conducted in accordance with rules adopted by the department.
3. A person violating this section is guilty of an infraction for which a minimum fine of two hundred dollars must be imposed, except if the litter discarded and abandoned amounted to more than one cubic foot [0.0283 cubic meter] in volume or if the litter consisted of furniture or a major appliance, the offense is a class B misdemeanor and the person is subject to the civil penalty provided in section 23.1-08-23.

**23.1-08-08. Prohibition in landfill disposal - Lead-acid batteries accepted as trade-ins.**

1. Infectious waste must be properly treated before disposal by methods approved by the department. A person may not knowingly deposit in a landfill untreated infectious waste.

2. Except as provided in subsection 3, a person may not place in municipal waste or discard or dispose of in a landfill lead-acid batteries, used motor oil, or major appliances.
3. If resource recovery markets are not available for the items listed in subsection 2, the items must be disposed of in a manner approved by the department.
4. Lead-acid batteries must be accepted as trade-ins for new lead-acid batteries by any 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.
3. Notwithstanding subsection 2, if the new solid waste management facility will be owned or operated by a solid waste management authority, a special election to approve or disapprove of a facility may be called only if the boards of county commissioners from a majority of the counties in the solid waste management district call for a special election. However, a special election must be conducted in each county within the authority. 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.
4. Subsections 2 and 3 do not apply to a solid waste management facility operated as part of an energy conversion facility or part of a surface coal mining and reclamation operation, if the solid waste management facility disposes of only waste generated by the energy conversion facility or surface coal mining and reclamation operation.

**23.1-08-10. Fees - Deposit in operating fund.**

The department by rule may prescribe the payment and collection of reasonable fees to issue permits or registration certificates for registering, licensing, or permitting solid waste generators, transporters, and treatment, storage, recycling, or disposal facilities. The 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 expenditures from the fund are subject to appropriation by the legislative assembly. Applicants for special use solid waste management facilities shall submit a minimum fee as follows:

1. Twenty thousand dollars for any facility that receives on average one hundred tons [90718 kilograms] or more per day.
2. Ten thousand dollars for any facility which receives on average more than ten tons [9071.80 kilograms] but less than one hundred tons [90718 kilograms] per day.

#### **23.1-08-11. Solid waste management fund - Administration.**

The solid waste management fund is a special fund in the state treasury. The Bank of North Dakota shall administer the fund. The fund is a revolving fund, subject to appropriation by the 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.

#### **23.1-08-15. Municipal waste landfills and incinerators - Certification.**

A municipal waste landfill and a municipal waste incinerator must have at least one individual certified by the department onsite at all times during the operation of the landfill or incinerator. The department shall adopt training standards and certification requirements.

**23.1-08-16. Public educational materials - Municipal waste reduction and recycling.**

The department, after consulting with the superintendent of public instruction, shall develop and disseminate educational materials to encourage voluntary municipal waste reduction, source separation, reuse of materials, recycling efforts, and appropriate management of municipal waste.

**23.1-08-17. Disclosure of information before issuance, renewal, transfer, or major modification of permit.**

Before an application for the issuance, renewal, transfer, or major modification of a permit under this chapter may be granted, the applicant shall submit to the department a disclosure statement executed under oath or affirmation. The department shall verify and may investigate the information in the statement and shall deny an application for the issuance, renewal, transfer, or major modification of a permit if the applicant has intentionally misrepresented or concealed any material fact in a statement required under this section, a judgment of criminal conviction for violation of any federal or state environmental laws has been entered against the applicant within five years before the date of submission of the application, or the applicant has knowingly and repeatedly violated any state or federal environmental protection laws. The disclosure statement must include:

1. The name and business address of the applicant.
2. A description of the applicant's experience in managing the type of solid waste that will be managed under the permit.
3. A description of every civil and administrative complaint against the applicant for the violation of any state or federal environmental protection law which has resulted in a fine or penalty of more than ten thousand dollars within five years before the date of the submission of the application.
4. A description of every pending criminal complaint alleging the violation of any state or federal environmental protection law.
5. A description of every judgment of criminal conviction entered against the applicant within five years before the date of submission of the application for the violation of any state or federal environmental protection law.
6. A description of every judgment of criminal conviction of a felony constituting a crime involving fraud or misrepresentation which has been entered against the applicant within five years before the date of submission of the application.

**23.1-08-18. Inspections.**

The department may inspect all solid waste management activities and facilities, at all reasonable times, to ensure compliance with the laws of this state, the provisions of this chapter, and the rules authorized under this chapter.

**23.1-08-19. Administrative procedure and judicial review.**

A proceeding under this chapter to adopt or modify rules, including emergency orders relating to solid waste management and land protection, or determine compliance with rules of the department, must be conducted in accordance with the provisions of chapter 28-32, and appeals may be taken as provided under that chapter. When 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 the emergency and requiring action be taken as necessary to meet the emergency. Notwithstanding any provision of this chapter, the order is effective immediately, but on application to the department must be afforded a hearing before the environmental review advisory council within ten days. On the basis of the hearing, the emergency order must be continued, modified, or revoked within thirty days after the hearing.

**23.1-08-20. Injunction proceedings.**

The violation of any provision of this chapter, or any rule or order issued under the chapter is declared a nuisance inimical to the public health, welfare, and safety. Whenever in the judgment of the department a person has engaged in or is about to engage in any acts that constitute or will constitute a violation of this chapter, or any rule or order issued under the chapter, the department, in accordance with the laws governing injunctions and other process, may maintain an action in the name of the state enjoining the action or for an order directing compliance, and upon a showing by the department that the person has engaged or is about to engage in the acts or practices, a permanent or temporary injunction, restraining order, or other order may be granted.

**23.1-08-21. Plats.**

A person operating a solid waste management facility for disposal under a permit issued under this chapter shall, upon completion of the operation at each site, file a plat of the area with the recorder of each county in which the facility is located, together with a description of the wastes placed therein.

**23.1-08-22. Exemption.**

The provisions of this chapter, and the rules or orders authorized under the chapter, do not prevent an individual who resides on unplatted land in unincorporated areas of this state from disposing of that individual's normal household wastes on that individual's property, so long as doing so does not create a health hazard or nuisance.

**23.1-08-23. Penalties.**

1. Any person that violates this chapter or any permit condition, rule, order, limitation, or other applicable requirement implementing this chapter is subject to a civil penalty not to exceed twelve thousand five hundred dollars per day per violation, unless the penalty for the violation is otherwise specifically provided for and made exclusive in this chapter.
2. Any person that willfully violates any provision of this chapter or any permit condition, rule, order, limitation, or other applicable requirement implementing this chapter is guilty of a class C felony, unless the penalty for the violation is otherwise specifically provided for and made exclusive in this chapter.
3. Any person that willfully makes any false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under this chapter or any permit condition, rule, order, limitation, or other applicable requirement implementing this chapter or that falsifies, tampers with, or willfully renders inaccurate any monitoring device or method required to be maintained under this chapter or any permit condition, rule, order, limitation, or other applicable requirement implementing this chapter is guilty of a class C felony, unless the penalty for the violation is otherwise specifically provided for and made exclusive in this chapter.

**SECTION 24.** Chapter 23.1-09 of the North Dakota Century Code is created and enacted as follows:

**23.1-09-01. Definitions.**

As used in this chapter, unless the context otherwise requires:

1. "Actually incurred" means in the case of corrective action expenditures, the owner, the operator, an insurer of the owner or operator, or a contractor hired by the owner, operator, or insurer has made a payment, or a contractor has expended time and materials.
2. "Corrective action" means an action taken to minimize, contain, eliminate, remediate, mitigate, or clean up a release, including any remedial emergency measures. The term includes the repair of the closure of a municipal waste landfill on which the action occurs.

3. "Department" means the department of environmental quality.
4. "Fund" means the municipal waste landfill release compensation fund.
5. "Operator" means any person in control of, or having responsibility for, the daily operation of a municipal waste landfill under this chapter.
6. "Owner" means any person who holds title to, controls, or possesses an interest in the municipal waste landfill before or after the discontinuation of its use.
7. "Release" means any unintentional leaking, emitting, discharging, or escaping of leachate from a municipal waste landfill into the environment occurring after July 1, 1993, but does not include discharges or designed venting allowed under federal or state law or under adopted rules.

**23.1-09-02. Municipal waste landfill release fund created - Administration of fund.**

A municipal waste landfill release compensation fund is created and the department shall administer the fund according to this chapter. The department may employ any assistance and staff to administer the fund within the limits of legislative appropriation.

**23.1-09-03. Adoption of rules.**

The department shall adopt rules regarding its practices and procedures, the form and procedure for applications for compensation from the fund, procedures for investigation of claims, procedures for determining the amount and type of costs eligible for reimbursement from the fund, and procedures for persons to perform services for the fund.

**23.1-09-04. Release discovery.**

An owner or operator shall notify the department if the owner or operator has reason to believe that a release has occurred. The department may require corrective action as provided by subsection 10 of section 23.1-08-03.

**23.1-09-05. Owner or operator not identified.**

The department may initiate legal action to compel performance of a corrective action if an identified owner or operator fails or refuses to comply with section 23.1-09-04, or the department may engage the services of qualified contractors for performance of a corrective action if an owner or operator cannot be identified.

**23.1-09-06. Imminent hazard.**

Upon receipt of information that a release has occurred which may present an imminent or substantial endangerment of public health or environmental resources, the department may take such emergency action as it determines necessary to protect the public health or the environmental resources.

**23.1-09-07. Duty to take action.**

Nothing in this chapter limits any person's duty to take action related to a release. However, payment for corrective actions required as a result of a release is governed by this chapter. Nothing in this chapter limits remediation activities taken or directed by any state or federal agency under other environmental statutes.

**23.1-09-08. Providing of information.**

A person that the department has reason to believe is an owner or operator, or the owner of real property where corrective action is ordered to be taken, or a person that may have information

concerning wastes placed into a municipal waste landfill, or a person that may have information concerning a release, if requested by the department, must furnish to the department any information that person has or may reasonably obtain which is relevant to the release.

**23.1-09-09. Examination of records.**

An employee of the department may, upon presentation of official credentials:

1. Examine and copy books, papers, records, memoranda, or data that may be related to a release which belong to a person that has a duty to provide information to the 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.

**23.1-09-20. Recovery of expenses.**

Any reasonable and necessary expenses incurred by the fund as provided by sections 23.1-09-05, 23.1-09-06, 23.1-09-09, and 23.1-09-10 in taking corrective action, including costs of investigating a release, and in taking legal actions may be recovered in a civil action in district court brought by the department against the owner or operator. The certification of expenses by an approved agent of the fund is prima facie evidence that the expenses are reasonable and necessary. Any expenses that are recovered under this section must be deposited in the fund.

**23.1-09-21. Coordination of benefits.**

If an eligible owner or operator has financial assurance that provides coverage for corrective action, the department shall pay the share of the covered loss or damage for which the fund is responsible. The share that must be paid from the fund is equal to the proportion that the applicable limit of coverage under the fund bears to the limits of all financial assurance on the same basis.

**23.1-09-22. Fund ceiling.**

When the fund balance exceeds fifteen million dollars, the department shall suspend collection of the premium fee. When the fund balance becomes less than five million dollars through appropriations authorized by this chapter, the department shall resume collection of the fee.

**23.1-09-23. Fund appropriation.**

Money in the fund is appropriated to the department as a standing and continuing appropriation for the purposes of this chapter.

**SECTION 25.** Chapter 23.1-10 of the North Dakota Century Code is created and enacted as follows:

**23.1-10-01. Environmental emergency cost recovery.**

Except as provided in section 23.1-04-17, the department of environmental quality may recover from the parties responsible for an environmental emergency the reasonable and necessary state costs incurred in assessment, removal, corrective action, or monitoring as a result of an environmental emergency in violation of chapter 23.1-03, 23.1-04, 23.1-06, 23.1-08, 61-28, or 61-28.1. As used in this chapter, "environmental emergency" means a release into the environment of a substance requiring an immediate response to protect public health or welfare 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 4.1-33-03, the agriculture commissioner shall administer chapter 4.1-33 as it relates to pesticide usage.

**23.1-11-03. Education program.**

The department, the commissioner, the North Dakota state university extension service, and the North Dakota agricultural experiment station shall cooperate with other state and federal agencies on the development of a ground water protection education program.

**23.1-11-04. Chemical use data and confidentiality requirement.**

The department may require chemical use data from product registrants on products that have been or may likely be found in ground water to conduct its ground water protection program. This information must include chemical registration data and sales information. The department shall keep this information confidential.

**23.1-11-05. Ground water standards.**

The department shall establish standards for compounds in ground water as set forth by other states and the United States environmental protection agency unless new scientifically confirmed data provides justification for changing these standards.

**23.1-11-06. Ground water quality monitoring.**

The department shall conduct ground water quality monitoring activities in cooperation with the state engineer and other state agencies. Based on monitoring results, the department shall implement or require appropriate mitigation activities or remedial action to prevent future contamination of ground water. The commissioner may implement or require appropriate mitigation activities pursuant to chapter 4.1-33 to prevent future contamination of ground water as it relates to the use of pesticides.

**23.1-11-07. Notification requirement.**

A person with verifiable information on the presence of contamination of ground water within the state shall notify the department regarding the contamination.

**23.1-11-08. Access for ground water monitoring.**

The department may request landowners or operators allow access for monitoring of ground water and of soils at a depth where pesticides may threaten ground water. If the department is denied access by the landowner or operator, the department may apply to any court of competent jurisdiction for authorization to obtain access. The court, upon the application and compliance with chapter 29-29.1, may issue the authorization for the purposes requested. After consultation with the landowner or operator, the department shall conduct the 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 landlord has expended time and materials, and only that person is receiving reimbursement from the fund.
2. "Administrator" means the manager of the state fire and tornado fund.
3. "Board" means the petroleum release compensation board.
4. "Commissioner" means the insurance commissioner.
5. "Corrective action" means an action required by the department to minimize, contain, eliminate, remediate, mitigate, or clean up a release, including any remedial emergency measures. The term does not include the repair or replacement of equipment or preconstructed property.
6. "Dealer" means a person licensed by the tax commissioner to sell motor vehicle fuel or special fuels within the state.
7. "Department" means the department of environmental quality.
8. "Fund" means the petroleum release compensation fund.
9. "Location" means a physical address or site that has contiguous properties. Noncontiguous properties within a municipality or other governmental jurisdiction are considered separate locations.
10. "Operator" means a person in control of, or having responsibility for, the daily operation of a tank under this chapter.
11. "Owner" means a person who holds title to, controls, or possesses an interest in the tank before the discontinuation of its use.
12. "Petroleum" means any of the following:
  - a. Gasoline and petroleum products as defined in chapter 23.1-13.
  - b. Constituents of gasoline and fuel oil under subdivision a.
  - c. Oil sludge and oil refuse.
13. "Portable tank" means a storage tank along with its piping and wiring that is not stationary or affixed, including a tank that is on skids.
14. "Release" means any unintentional spilling, leaking, emitting, discharging, escaping, leaching, or disposing of petroleum from a tank into the environment whether occurring before or after the effective date of this chapter, but does not include discharges or designed venting allowed under federal or state law or under adopted rules.
15. "Tank" means any one or a combination of containers, vessels, and enclosures, whether aboveground or underground, including associated piping or appurtenances used to contain an accumulation of petroleum. The term does not include:
  - a. Tanks owned by the federal government.
  - b. Tanks used for the transportation of petroleum.

- c. A pipeline facility, including gathering lines:
    - (1) Regulated under the Natural Gas Pipeline Safety Act of 1968.
    - (2) Regulated under the Hazardous Liquid Pipeline Safety Act of 1979.
    - (3) Regulated under state laws comparable to the provisions of law in paragraph 1 or 2, if the facility is an interstate pipeline facility.
  - d. An underground farm or residential tank with a capacity of one thousand one hundred gallons [4163.94 liters] or less or an aboveground farm or residential tank of any capacity used for storing motor fuel for noncommercial purposes. However, the owner of an aboveground farm or residential tank may, upon application, register the tank and be eligible for reimbursement under this chapter.
  - e. A tank used for storing heating oil for consumptive use on the premises where stored.
  - f. A surface impoundment, pit, pond, or lagoon.
  - g. A flowthrough process tank.
  - h. A liquid trap or associated gathering lines directly related to oil or gas production or gathering operations.
  - i. A storage tank situated in an underground area such as a basement, cellar, mine working, drift, shaft, or tunnel, if the storage tank is situated upon or above the surface of the floor.
  - j. A tank used for the storage of propane.
  - k. A tank used to fuel rail locomotives or surface coal mining equipment.
  - l. An aboveground tank used to feed diesel fuel generators. Upon application, the owner or operator of an aboveground tank used to feed diesel fuel generators may register the tank and is eligible for reimbursement under this chapter.
  - 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 appealed to the board, and to discuss all claims against the fund. The administrator may employ any assistance and staff necessary to administer the fund within the limits of legislative appropriation. A claimant aggrieved by a decision of the administrator regarding a claim upon the fund may appeal the decision to the board. The board may sustain, modify, or reverse the decision of the administrator. The claimant or the administrator may appeal the board's decision to the commissioner. The decision of the commissioner may be appealed under chapter 28-32.

**23.1-12-05. Adoption of rules.**

The administrator shall adopt rules regarding the practices and procedures of the fund, the form and procedure for applications for compensation from the fund, procedures for investigation of claims, procedures for determining the amount and type of costs that are eligible for reimbursement from the fund, procedures for persons to perform services for the fund, procedures for appeals to the board by claimants aggrieved by an adverse decision of the administrator, and any other rules as may be appropriate to administer this chapter.

**23.1-12-06. Release discovery.**

If the department has reason to believe a release has occurred, it shall notify the administrator. The department shall direct the owner or operator to take reasonable and necessary corrective actions as provided under federal or state law or under adopted rules.

**23.1-12-07. Owner or operator not identified.**

The department may cause legal action to be brought to compel performance of a corrective action if an identified owner or operator fails or refuses to comply with an order of the department, or the department may engage the services of qualified contractors for performance of a corrective action if an owner or operator cannot be identified.

**23.1-12-08. Imminent hazard.**

Upon receipt of information that a petroleum release has occurred which may present an imminent or substantial endangerment of health or the environment, the department may take emergency action necessary to protect health or the environment.

**23.1-12-09. Duty to notify.**

This chapter does not limit a person's duty to notify the department and to take action related to a release. However, payment for corrective actions required as a result of a petroleum release is governed by this chapter.

**23.1-12-10. Providing of information.**

A person the administrator or the department has reason to believe is an owner or operator, the owner of real property where corrective action is ordered to be taken, or a person that may have

information concerning a release shall, if requested by the administrator or the department, or any member, employee, or agent of the administrator or the department, furnish to the administrator or the department any information that person has or may reasonably obtain which is relevant to the release.

**23.1-12-11. Examination of records.**

Any employee of the administrator or the department may, upon presentation of official credentials:

1. Examine and copy books, papers, records, memoranda, or data of any person that has a duty to provide information to the administrator or the department under section 23.1-12-10; and
2. Enter upon public or private property to take action authorized by this section, including obtaining information from a person that has a duty to provide the information under section 23.1-12-10, conducting surveys and investigations, and taking corrective action.

**23.1-12-12. Responsibility for cost.**

The owner or operator is liable for the cost of the corrective action required by the department, including the cost of investigating the releases. This chapter does not create any new cause of action for damages on behalf of third parties for release of petroleum products against the fund or licensed dealers.

**23.1-12-13. Liability avoided.**

An owner or operator may not avoid liability by means of a conveyance of any right, title, or interest in real property or by any indemnification, hold harmless agreement, or similar agreement. However, this chapter does 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 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 annual registration fee is reduced to five dollars. Annual registration fees must continue at five dollars until the fund balance does not exceed nine million dollars.
2. An owner or operator of an existing tank that is discovered at a location that currently and previously has had tanks registered with the fund shall pay an additional twenty-five dollar penalty fee in addition to the registration fee for each aboveground tank and each underground tank owned or operated by that person for each previous year that the tank was required to be registered for which a fee was not paid. The payment includes the fees and the penalty for the failure to register.
3. An owner or operator of an existing tank at a location that was not previously and continuously registered with the fund, whether the registration was required by law or not must provide the fund with a phase two environmental study conducted by a qualified firm according to American society for testing materials standards. A tank integrity test must also be performed. The environmental study and tank integrity test must be reviewed by the commissioner along with the application for registration with the fund. If the commissioner rejects the application, the applicant is denied eligibility to the fund. However, if the site is remediated and the leaking tank is replaced, the applicant may reapply for registration with the fund. A new installation that is using a used tank must provide tank integrity test results for the used tank. Use of a synthetic liner in an aboveground dike system negates the need for a tank integrity test. The owner or operator of a new tank at a new site or a new tank at an existing site that had a tank registered at the site previously need only pay the required fees for registration with the fund.
4. If accepted for registration with the fund, the owner or operator of the tank shall pay an additional twenty-five dollar penalty fee in addition to the registration fee for each aboveground tank and underground tank owned or operated by that person for each previous year that the tank was required to be registered for which a fee was not paid, regardless of ownership in each of those years. The payment includes the fees and the penalty for the failure to register.
5. The registration fees collected under this section must be paid to the fund administrator for deposit in the state treasury for the dedicated credit to the petroleum release compensation fund.
6. If a registration payment is not received within sixty days of July first by the commissioner, a late fee of twenty-five dollars per tank per month must be imposed on the tank owner or operator.

**23.1-12-18. Reimbursement for corrective action.**

1. The administrator shall reimburse an eligible owner or operator for ninety percent of the costs of corrective action, including the investigation, which are greater than five thousand dollars and less than one million dollars per occurrence and two million dollars in the aggregate. An

eligible tank owner or operator may not be liable for more than twenty thousand dollars out-of-pocket expenses for any one release. A reimbursement may not be made unless the administrator determines that:

- a. At the time the release was discovered the owner or operator and the tank were in compliance with state and federal rules and rules applicable to the tank, including rules relating to financial responsibility, rules relating to infrastructure compatibility, and all rules relating to health and safety which were in effect at the time of the release;
  - b. The department was given notice of the release as required by federal and state law;
  - c. The owner or operator has paid the first five thousand dollars of the cost of corrective action; and
  - d. The owner or operator, to the extent possible, fully cooperated with the department and the administrator in responding to the release.
2. The fund shall compensate third parties for corrective action taken for a petroleum release if the provisions of subdivisions a, b, c, and d of subsection 1 were met at the time the release was discovered. Compensation for third-party corrective action includes compensation for costs incurred in returning the real estate to that level deemed duly remediated by the department.
  3. The fund shall reimburse the tank owner, operator, or dealer for bodily injuries to a third party caused by a petroleum release if the provisions of subdivisions a, b, c, and d of subsection 1 were met at the time the release was discovered in an amount determined by:
    - a. Findings reduced to judgment in federal or state district court or such other court having jurisdiction over the matter in a proceeding in which the fund has been made a party;
    - b. Findings by an arbitration panel agreed upon in writing by the parties in a proceeding in which the fund has been made a party; or
    - c. A written settlement entered into by the parties in which the commissioner or the commissioner's agent has participated. The settlement must be reviewed and approved by the commissioner.
  4. In any civil action against the owner, operator, or dealer for damages resulting from a petroleum release, if the pre-leak condition of real estate is an issue, and if there is no reasonable means of determining the pre-leak condition of real estate, the condition is that which exists at the time the department determines the real estate has been duly remediated.
  5. The fund may not compensate for attorney's fees of owners, operators, or dealers, nor may the fund compensate for exemplary damages, criminal fines, or administrative penalties.
  6. A third party accepting monetary compensation directly from the fund for damages due to a release caused by a tank owner, operator, or dealer covered by the fund is deemed to have waived any cause of action against the fund or against the tank owner, operator, or dealer.
  7. The fund shall reimburse the department for all costs, attorney's fees, and other legal expenses relating to administrative and adjudicative proceedings under this chapter and any subsequent legal proceeding. Any moneys reimbursed must be deposited in the department's operating fund in the state treasury and must be spent subject to appropriation by the legislative assembly.

### **23.1-12-19. Application for reimbursement.**

An owner or operator that is a first-party claimant and that proposes to take corrective action or has undertaken corrective action in response to a release, the time of the release being unknown, may

apply to the administrator for partial or full reimbursement under section 23.1-12-18. An owner or operator who is a first-party claimant may be reimbursed only for costs incurred after July 1, 1989, even if the releases were discovered before July 1, 1989, up to the maximum of twenty-five thousand dollars per location.

**23.1-12-20. Administrator to determine costs.**

A reimbursement for corrective actions taken by an owner, operator, or dealer may not be made from the fund until the administrator has determined that the costs for which reimbursement is requested were actually incurred and were reasonable. All necessary loss adjustment expenses must be included as a component of the loss and must be paid out of the fund.

**23.1-12-21. 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 incurred as the result of a release.

**23.1-12-22. Reimbursement not subject to attachment.**

The amount of reimbursement to be paid for corrective action that was done by a third party is not subject to legal process or attachment if actually paid to a third party that performed the corrective action.

**23.1-12-23. Recovery of expenses.**

Any reasonable and necessary expenses incurred by the fund, which exceed the coverage limits provided by section 23.1-12-18, in taking a corrective action, including costs of investigating a release, and in taking legal actions, may be recovered in a civil action in district court brought by the administrator against an owner or operator. The certification of expenses by an approved agent of the fund is prima facie evidence that the expenses are reasonable and necessary. Any expenses that are recovered under this section must be deposited in the fund.

**23.1-12-24. Costs exceeding reimbursement.**

If the cost of any extraordinary authorized action under this chapter exceeds amounts awarded to the administrator or the department from the federal government, the administrator may pay the department the cost of the corrective actions, including the cost of investigating a release, if the board finds that the cause was a petroleum substance, that an adequate amount exists in the fund to pay for the corrective action, that the occurrence was extraordinary in scope and size, and that a danger to the health and safety of citizens exists.

**23.1-12-25. Coordination of benefits.**

If an owner or operator has an insurance policy that provides the same coverage as the fund, the administrator of the fund shall pay the share of the covered loss or damage for which the fund is responsible. The share that must be paid from the fund is equal to the proportion that the applicable limit of coverage under the fund bears to the limits of insurance of all insurance coverage on the same basis.

**23.1-12-26. Third-party damages - Participation in actions and review of settlements.**

1. An owner or operator sued for damages resulting from a release shall notify the administrator within fourteen days of being served with a summons and complaint. The owner or operator also shall advise the administrator if any insurer is defending the owner or operator and provide to the administrator the name of that insurer.
2. An owner or operator that, before litigation, enters negotiations with a third party that claims to have been damaged by a release, or that receives a demand for payment of damages to a

third party that claims to have been damaged by a release, shall notify the administrator within fourteen days of the demand or the negotiations.

3. The administrator and the board shall review the conduct of any litigation or negotiation. The administrator may not assume any legal costs incurred by the defendant or plaintiff, but may participate in discovery, trial proceedings, or settlement negotiations of either disputed liability or damages that bear on the determination of a plaintiff's damages.
4. The administrator and the board shall review any settlement negotiations to determine the dollar amount of bodily injury or property damage actually, necessarily, and reasonably incurred by third parties which, if paid by the defendant, would be considered eligible costs.

**23.1-12-27. Third-party damages - Documentation.**

1. An applicant's payments for third-party damages pursuant to a judgment entered in a court must include copies of the notice of entry of judgment and abstract of costs.
2. An applicant's payments for third-party damages made by agreement in settlement of litigation must include copies of the settlement agreement and supporting documents required by the administrator.
3. An applicant's payments for third-party damages made by agreement without reference to litigation must include copies of the settlement and supporting documents required by the administrator.
4. The administrator and the board may require a third party who claims bodily injury to be examined by a physician and require that the physician's report to be submitted to the administrator. The administrator may require a third party that claims property damage to permit a property appraiser or claims adjuster retained by the administrator to inspect the property and report to the administrator.
5. The fund shall pay a judgment against an owner, operator, or dealer awarded to a third party as a result of a third-party claim and property damage against an owner, operator, or dealer registered by the fund.
6. The fund shall pay for corrective action as awarded to a third party in any judgment against an owner, operator, or dealer.
7. Liability of the tank owner, operator, dealer, or fund to third parties for corrective action or personal injuries and property damage may not exceed, per person, one million dollars. Maximum liability of the fund, including all claims by third parties, may not exceed, for any release site, the maximum provided in section 23.1-12-18.
8. A third party may not bring an action against an owner, operator, or dealer more than three years after a corrective action plan has been approved by the department if the owner, operator, or dealer fully implements and complies with the corrective action plan.
9. In investigating a release site or reviewing the implementation of a corrective action plan approved by the department, the department shall determine whether the release threatens public health or the environment. The department shall require, based on science and technology appropriate for the site, any monitoring, remediation, or other appropriate corrective action that is reasonably necessary to protect public health or the environment. The department may require corrective action at a release site at any time after a release occurs.

**23.1-12-28. Matching federal funds.**

The administrator and the board may annually allow the department a ten percent matching grant for federal leaking underground storage tank funds to be paid out of the fund if the moneys are available and the administrator and the board determine the allowance appropriate.

**23.1-12-29. Fund appropriations.**

Money in the fund is continuously appropriated to the administrator for the purpose of making reimbursements under this chapter.

**23.1-12-30. Investment of fund.**

Investment of the fund is under the supervision of the state investment board in accordance with chapter 21-10. The commissioner may purchase a contract for reinsurance of any risk to be paid by the fund. The administrator may investigate the purchase of insurance that reimburses an owner or operator for property damage claims by third parties other than claims for costs of corrective action.

**SECTION 28.** Chapter 23.1-13 of the North Dakota Century Code is created and enacted as follows:

**23.1-13-01. Definitions.**

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

1. "Adulterated", when used to describe any petroleum or alternative fuel product, means a petroleum or alternative fuel product that fails to meet the specifications prescribed by this chapter.
2. "Alternative fuel" means a fuel for an engine or vehicle, or used as heating oil, other than a petroleum-based fuel. The term includes biodiesel and green diesel as defined in section 57-43.2-01.
3. "Department" means the department of environmental quality.
4. "Diesel fuel" means any petroleum product intended for use or offered for sale as a fuel for engines in which the fuel is injected into the combustion chamber and ignited by pressure without electric spark.
5. "Gasoline" means a refined petroleum naphtha which by its composition is suitable for use as a carburant in internal combustion engines.
6. "Heating oil" means any product intended for use or offered for sale as a furnace oil, range oil, or fuel oil for heating and cooking purposes to be used in burners other than wick burners regardless of whether the product is designated as furnace oil, range oil, fuel oil, gas oil, or is given any other name or designation.
7. "Kerosene" means a petroleum fraction which is free from water, additives, foreign or suspended matter, and is suitable for use as an illuminating oil.
8. "Lubricating oil" means any petroleum, or other product, used for the purpose of reducing friction, heat, or wear in automobiles, tractors, gasoline engines, diesel engines, and other machines.
9. "Misbranded", when used in connection with any petroleum or alternative fuel product, means a petroleum or alternative fuel product that is not labeled as required under the provisions of this chapter.
10. "Sell" and "sale" include the keeping, offering, or exposing for sale, transportation, or exchange of the restricted or prohibited article.
11. "Tractor fuel" means any product, other than gasoline or kerosene, intended for use or offered for sale as a fuel for tractors, regardless of whether the product is designated as distillate, gas oil, fuel oil, or is given any other name or designation.

**23.1-13-02. Department to enforce law - Regulation of petroleum products.**

This chapter must be enforced by the department. The department may adopt rules under chapter 28-32 for the interpretation of this chapter.

**23.1-13-03. Sale of adulterated and misbranded gasoline, kerosene, tractor fuel, heating oil, diesel fuel, or lubricating oil prohibited.**

A person may not sell or offer or expose for sale any kerosene, gasoline, or other petroleum product intended to be used as kerosene, gasoline, any tractor fuel, heating oil, diesel fuel, or lubricating oil that is adulterated or misbranded.

**23.1-13-04. Retail sale of alcohol-blended gasoline - Label requirements.**

A dealer may not sell at retail alcohol-blended gasoline unless the dispensing unit and any price advertising bear the name of the alcohol blended with the gasoline if the alcohol-blended gasoline consists of one percent or more by volume of any alcohol. The disclosure must be in letters at least the same size as those used for the label of the basic grade of gasoline and must be next to the gasoline grade label. A producer of alcohol-blended gasoline may provide a retailer with a label promoting the benefits of alcohol-blended gasoline, if the label at least meets the requirements of this section.

**23.1-13-05. Retail sale of gasoline containing methyl tertiary butyl ether - Restriction.**

A person may not sell, offer for sale, supply, or offer for supply gasoline that contains methyl tertiary butyl ether in quantities greater than five-tenths of one percent by volume. However, a person may ship gasoline containing methyl tertiary butyl ether within the state for disposition outside the state, including storage coincident to shipment.

**23.1-13-06. Retail sale of alternative fuels - Notice required.**

A dealer may not sell at retail alternative fuel unless the dispensing unit and price advertising contains the name and main components of the alternative fuel or alternative fuel blend. The disclosure must follow the same labeling specifications that apply for petroleum-based fuels. The department shall adopt rules under chapter 28-32 for labeling of petroleum products and alternative fuels. A producer of alternative fuels or alternative fuel blends may provide a retailer with a label promoting the benefits of the alternative fuel if the label meets the requirements of this section.

**23.1-13-07. Labeling gasoline containers - Gasoline pipeline.**

Every package, barrel, filling station pump, and every tank wagon, truck, or car containing gasoline for sale or consignment or held with intent to sell or consign the same within this state or to transport it into this state must be clearly and distinctly stamped, labeled, or tagged with the word "gasoline". Every oil station pipeline for gasoline must be painted red. The fittings upon such lines; however, may be painted other colors to designate grades. Pipelines for gasoline must be entirely separate from lines for kerosene or for any other high flash product. Every can, bucket, barrel, or other container of less than sixty gallons [227.12 liters] capacity used for storage or delivery of gasoline, benzene, or benzene products, unless the same is made of glass, must be painted bright red, and such containers may not be used for the storage or delivery of kerosene. In the case of glass containers, the contents must be designated by a red label securely pasted on or attached to the containers bearing the name of the product.

**23.1-13-08. Labeling kerosene - Containers - Pipeline.**

Every package, barrel, filling station pump, and every tank wagon, truck, or car containing kerosene for sale or consignment when held within this state or transported into this state must be clearly and distinctly stamped, labeled, or tagged with the word "kerosene". Every oil station pipeline for kerosene must be painted aluminum and must be entirely separate from lines for gasoline or other low flash products.

**23.1-13-09. Labeling tractor fuel.**

Every package, barrel, pump, and every truck, tank wagon, or car containing tractor fuel oil, other than gasoline or kerosene, for sale or consignment, when held within this state or when being transported into this state must be clearly and distinctly tagged, marked, and labeled with the legend "Tractor fuel oil, not for illuminating purposes nor wick burners". Every oil station pipeline for tractor fuel must be painted yellow and must be entirely separate from lines for kerosene or other high flash product.

**23.1-13-10. Labeling heating oil.**

Every package, barrel, pump, and every tank wagon, truck, or car containing heating oil for sale or consignment, when held within this state or when being transported into this state, must be clearly and distinctly tagged, marked, or labeled with the designation of grade established by the department. Every oil station pipeline for heating oil must be painted green.

**23.1-13-11. Labeling diesel fuel.**

Every package, barrel, pump, and every tank wagon, truck, or car containing diesel fuel for sale or consignment, when held within this state or transported into this state, must be clearly and distinctly tagged, marked, or labeled with the designation "diesel fuel" together with its cetane number and the grade established by the department. Every oil station pipeline for diesel fuel must be painted green.

**23.1-13-12. Specifications for petroleum products - Tests used.**

Specifications for gasoline, kerosene, tractor fuel, diesel oil, heating oil, lubricating oil, alternative fuels, and liquefied petroleum gases, including propane, propylene, normal butane or isobutane, and butylene, must be determined by the department and must be based upon nationally recognized standards. When so determined by the department and adopted and promulgated as regulations and orders of the department in accordance with chapter 28-32, such specifications must be the specifications for such petroleum products sold in this state and official tests of such petroleum products must be based upon test specifications so determined adopted and promulgated.

**23.1-13-13. How volume of heating oil determined.**

In case of a dispute, heating oil must be sold on the basis of the United States gallon containing two hundred thirty-one cubic inches [3785.41 milliliters] at sixty degrees Fahrenheit [15.56 degrees Celsius]. The volume of the delivered oil; however, may be calculated from its weight and gravity degrees API in accordance with the national standard petroleum oil tables prepared by the national bureau of standards.

**23.1-13-14. Department may prohibit sale of certain gasolines or motor fuels.**

The department may prohibit the sale of any "gasoline improver" or motor fuel dope, oil additive, and of any gasoline mixed or compounded with any other chemical, substance, or solution which may be detrimental to the public health, injurious to internal combustion engines, or concerning which unsubstantiated claims are made. However, it may not prohibit the sale of any material, substance, or solution that has been favorably reported on by the United States bureau of standards or by the surgeon general or bureau of public health of the United States.

**23.1-13-15. Sale of prohibited gasolines - Penalty.**

Any person violating any of the provisions of section 23.1-13-14 is guilty of a class B misdemeanor.

**23.1-13-16. Inspection fees.**

Every person licensed by the tax commissioner as a motor vehicle fuel or special fuels dealer shall pay to the tax commissioner an inspection fee of one-fortieth of one cent per gallon [3.79 liters] for every gallon [3.79 liters] of gasoline, kerosene, tractor fuel, heating oil, or diesel fuel sold or used during

a calendar month except those gallons sold out of state or those gallons sold as original package sales as defined in chapters 57-43.1 and 57-43.2. The fee must accompany the monthly report required in the following section and is due no later than the twenty-fifth day of each calendar month for the preceding month. The tax commissioner shall forward all money collected under this section to the state treasurer monthly, and the state treasurer shall place the money in the general fund of the state. The tax commissioner shall make available annually a report by licensed dealer listing the number of gallons [liters] of motor vehicle fuel and special fuels upon which the inspection fee has been paid. The provisions of chapters 57-43.1 and 57-43.2 pertaining to the administration of motor vehicle fuel and special fuels taxes not in conflict with the provisions of this chapter govern the administration of the inspection fee levied by this chapter.

**23.1-13-17. Report to tax commissioner of petroleum products - Contents.**

No later than the twenty-fifth day of each calendar month, every person licensed by the tax commissioner as a motor vehicle fuel, special fuels, or liquefied petroleum wholesale dealer 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 of its officers or employees to hold any car or other vehicle of transportation for inspection is a class B misdemeanor.

**23.1-13-20. Penalties.**

A person violating or failing to comply with any of the provisions of this chapter, or with any rule issued under this chapter, is, unless another penalty is specifically provided, guilty of a class B misdemeanor.

**SECTION 29.** Chapter 23.1-14 of the North Dakota Century Code is created and enacted as follows:

**23.1-14-01. Administration.**

The department of environmental quality shall administer this chapter.

**23.1-14-02. Definitions.**

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

1. "Antifreeze" means any substance or preparation sold, distributed, or intended for use as the cooling liquid, or to be added to the cooling liquid, in the cooling system of internal combustion engines to prevent freezing of the cooling liquid, to lower its freezing point, or to raise its boiling point.
2. "Department" means the department of environmental quality.
3. "Distribute" means to hold with intent to sell to the consumer, offer for sale, to sell, barter, or otherwise supply.
4. "Label" means any display of written, printed, or graphic matter on, or attached to, a package or the outside individual container or wrapper of the package.
5. "Package" means a sealed retail package, drum, or other container in which antifreeze is distributed to the consumer or a container holding no more than fifty-five gallons [208.20 liters] from which the antifreeze is directly installed in the cooling system by seller or reseller.

**23.1-14-03. Registration - Penalty.**

Before antifreeze may be distributed in this state, the manufacturer or person whose name appears on the label shall apply to the department on forms provided by the department for registration for each antifreeze the manufacturer or person whose name appears on the label desires to distribute. All registrations expire on June thirtieth of each year. The application for registration must be accompanied by an inspection fee of forty dollars for each product, and by a label or other printed matter describing the product. Upon approval by the department, a copy of the registration must be furnished to the applicant. The department shall remit inspection fees received by the department to the state treasurer for deposit in the state general fund. A penalty of fifty percent of the registration fee must be imposed if the certificate of registration is not applied for on or before July first of each year or within the same month such antifreeze is first manufactured or sold within this state.

**23.1-14-04. Adulteration.**

Antifreeze is adulterated:

1. If, in the form in which it is sold and directed to be used, it would be injurious to the cooling system of an internal combustion engine, or if, when used in the cooling system of such an engine, it would make the operation of the engine dangerous to the user; or
2. If its strength, quality, or purity falls below the standard of strength, quality, or purity under which it is sold or offered for sale.

**23.1-14-05. Misbranding.**

Antifreeze is misbranded:

1. If it does not bear a label which specifically identifies the product, states the name and place of business of the registrant, states the net quantity of contents in terms of liquid measure separately and accurately in a uniform location under the principal display panel, and contains a statement warning of any hazard of substantial injury to human beings which may result from the intended use or reasonably foreseeable misuse of the antifreeze;

2. If the product is to be diluted with another substance for use and its labeling does not contain a statement or chart showing appropriate amounts of each substance to be used to provide protection from freezing at various degrees of temperature;
3. If the labeling contains a corrosion protection claim and does not include a statement of the amount to be used to provide such protection;
4. If its labeling contains any claim that it has been approved or recommended by the department; or
5. If its labeling is false, deceptive, misleading, or is illegal under any law.

**23.1-14-06. Rules and regulations.**

The department may adopt reasonable rules and standards under chapter 28-32 as necessary to administer this chapter.

**23.1-14-07. Inspection, sampling, and analysis.**

The department may, at reasonable hours, enter, inspect, and examine all places and property where antifreeze is stored or distributed for the purpose of taking reasonable samples of antifreeze for analysis together with specimens of labeling. The department shall examine promptly all samples received in connection with the administration and enforcement of this chapter and report the results to the owner and the registrant of the antifreeze.

**23.1-14-08. Prohibited acts.**

It is unlawful to:

1. Distribute any antifreeze that has not been registered under this chapter or for which the label is different from that accepted for registration.
2. Distribute any antifreeze that is adulterated or misbranded.
3. Refuse to permit entry or inspection or refuse to permit the acquisition of a sample of any antifreeze under this chapter.
4. Dispose of any antifreeze under "withdrawal from distribution" order under this chapter, except as provided in this chapter.
5. Distribute any antifreeze unless it is in the registrant's or manufacturer's package, except a distributor may obtain written authorization from the department annually to distribute antifreeze in bulk using a container supplied by the customer, provided the distributor attaches to the container a label bearing all of the information required by this chapter.
6. Use the term "ethylene glycol" on the label of a product which contains other glycols unless it is qualified by the word "base", "type", or wording of similar import and unless the product contains a minimum ethylene glycol content of seventy-five percent by regulation weight and a minimum total glycol content of ninety-three percent by weight. The product also must have a corrected specific gravity to give reliable freezing point readings on a commercial ethylene glycol type hydrometer and a freezing point, when mixed with an equal volume of water, of thirty-two degrees Fahrenheit [35.56 degrees Celsius] below zero or lower.

**23.1-14-09. Enforcement.**

When the department finds any antifreeze being distributed in violation of this chapter or any rules adopted under this chapter, it may issue and enforce a written or printed "withdrawal from distribution" order, warning the distributor not to dispose of any of the lot of antifreeze in any manner until written permission is given by the department or a court of competent jurisdiction. Copies of the order must

also be sent by registered or certified mail to the registrant or to the person whose name and address appear on the label of the antifreeze. The department shall release for distribution the lot of antifreeze so withdrawn upon compliance with applicable rules, or for return to the registrant or the person whose name and address appears on the label for reprocessing or relabeling as may be required. If compliance is not obtained within thirty days, the department may begin proceedings for condemnation. Any lot of antifreeze not in compliance with the law is subject to seizure upon complaint of the department in the district court of the county in which it is located or in the district court of Burleigh County.

**23.1-14-10. Submission of formula.**

The department may require an applicant for registration to furnish a statement of the formula of the applicant's antifreeze, unless the applicant can furnish other satisfactory evidence that the antifreeze is not adulterated or misbranded. The statement need not include inhibitor or other ingredients that total less than five percent by weight of the antifreeze. All statements of formula and other trade secrets furnished under this section are privileged and confidential and may not be made public or open to the inspection of any persons other than the department. No statement is subject to subpoena. Nor may a statement be exhibited or disclosed before any administrative or judicial tribunal by virtue of any order or subpoena of such tribunal without the consent of the applicant furnishing the statement to the department.

**23.1-14-11. Penalty.**

Any person that violates or fails to comply with this chapter, for which another penalty has not been specifically provided, is guilty of a class B misdemeanor.

**23.1-14-12. Prosecutions - State's attorney.**

Each state's attorney to whom the department reports any violation of this chapter shall institute appropriate proceedings in court without delay. However, nothing in this chapter may be 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.
4. "Parts car" means a motor vehicle generally in nonoperable condition which is owned by the collector to furnish parts to restore, preserve, and maintain a special interest vehicle or antique vehicle.
5. "Special interest vehicle" means a motor vehicle that is at least twenty years old and has not been altered or modified from original manufacturer's specifications and, because of its historic interest, is being preserved by hobbyists.
6. "Unit of government" includes a state department or agency, a county, city, township, or other political subdivision.
7. "Vital component parts" means those parts of a motor vehicle that are essential to the mechanical functioning of the vehicle, including, but not limited to, the motor, drive train, and wheels.

### **23.1-15-02. Penalty for abandoning a motor vehicle.**

Any person that abandons a motor vehicle on any public or private property, without the consent of the person in control of the property, is guilty of a class A misdemeanor.

### **23.1-15-03. Custody of abandoned vehicle.**

Units of government may take into custody and impound an abandoned motor vehicle.

### **23.1-15-04. Conditions under which an abandoned vehicle may be sold immediately.**

When an abandoned motor vehicle is more than seven model years of age, is lacking vital component parts, and does not display a license plate currently valid in North Dakota or any other state or foreign country, it is immediately eligible for disposition and must be disposed of to a scrap iron processor licensed under section 23.1-15-09, and is not subject to the notification, reclamation, or title provisions of this chapter. Any license plate displayed on an abandoned vehicle must be removed and destroyed prior to the purchaser taking possession of the vehicle.

### **23.1-15-05. Notice to owner of abandoned vehicle.**

1. When an abandoned motor vehicle does not fall within the provisions of section 23.1-15-04, the unit of government taking it into custody shall give notice of the taking within ten days. The notice must set forth the date and place of the taking, the year, make, model, and serial number of the abandoned motor vehicle, and the place where the vehicle is being held, must inform the owner and any lienholders or secured parties of their right to reclaim the vehicle under section 23.1-15-06, and must state that failure of the owner or lienholders or secured parties to exercise their right to reclaim the vehicle is deemed a waiver by them of all right, title, and interest in the vehicle and a consent to the sale of the vehicle at a public auction pursuant to section 23.1-15-07.
2. The notice must be sent by mail to the registered owner, if any, of the abandoned motor vehicle and to all readily identifiable lienholders or secured parties of record. If it is impossible to determine with reasonable certainty the identity and address of the registered owner and all

lienholders, the notice must be published once in a newspaper of general circulation in the area where the motor vehicle was abandoned. Published notices may be grouped together for convenience and economy.

**23.1-15-06. Right of owner to reclaim abandoned vehicle.**

1. The owner, secured parties, or any lienholder of an abandoned motor vehicle has a right to reclaim such vehicle from the unit of government taking it into custody upon payment of all towing and storage charges resulting from taking the vehicle into custody within fifteen days after the date of the notice required by section 23.1-15-05.
2. Nothing in this chapter may be construed to impair any lien of a garagekeeper under the laws of this state or the right of a lienholder or secured parties to foreclose. For the purposes of this section, "garagekeeper" is an operator of a parking place or establishment, an operator of a motor vehicle storage facility, or an operator of an establishment for the servicing, repair, or maintenance of motor vehicles.

**23.1-15-07. Public sale - Disposition of proceeds.**

1. An abandoned motor vehicle not more than seven model years of age taken into custody and not reclaimed under section 23.1-15-06 must be sold to the highest bidder at public auction or sale, following reasonable published notice. The purchaser must be given a receipt in a form prescribed by the department which is sufficient title to dispose of the vehicle. The receipt also entitles the purchaser to register the vehicle and receive a certificate of title, free and clear of all liens and claims of ownership. The license plates displayed on an abandoned vehicle must be removed and destroyed prior to the purchaser taking possession of the vehicle.
2. From the proceeds of the sale of an abandoned motor vehicle, the unit of government 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 waste disposal. When the unit of government fails to contract within one hundred eighty days of the demand, the department, on behalf of the unit of government, may contract with any scrap iron processor duly licensed by the department for such disposal.

**23.1-15-10. Abandoned motor vehicle disposal fund.**

The abandoned motor vehicle disposal fund is established in the state treasury. All moneys derived from the investment of the fund are to be credited to the fund.

**23.1-15-11. Tax on initial motor vehicle certificates of title.**

A tax of one dollar and fifty cents is imposed on each initial North Dakota certificate of title issued to a passenger motor vehicle or a truck motor vehicle. The proceeds of the tax must be paid into the abandoned motor vehicle disposal fund. No registration plates or title certificate may be issued unless the tax is paid. Expenses of the fund arising under this chapter must be paid from the fund within the limits of legislative appropriation. If, on the first day of July in any year, the amount of uncommitted money in the abandoned motor vehicle disposal fund is two hundred fifty thousand dollars or more, the amount in excess of two hundred fifty thousand dollars must be transferred to the highway fund.

**23.1-15-12. Storage of vehicles by collector - Limitations.**

A collector may store unlicensed, operable or inoperable, vehicles and parts cars on the collector's property provided the vehicles and parts cars and the outdoor storage area are maintained so they do not constitute a health hazard and are screened from ordinary public view by means of a fence, trees, shrubbery, or other appropriate means.

**SECTION 31. AMENDMENT.** Section 24-03-23 of the North Dakota Century Code is amended and reenacted as follows:

**24-03-23. Encroachments on state highways.**

No part of the right of way for state highways may be encroached upon by erection thereon of any structure, or placing thereon any personal property, other than a temporary parking of a motor vehicle, without a written permit from the director. Any encroachment may be caused to be removed, obliterated, or corrected by order of the director and the total cost thereof must be paid by the person responsible for the encroachment. Property other than motor vehicles left upon highway right of way for a period exceeding seventy-two hours, the ownership of which cannot be determined after reasonable effort has been made to do so, must be deemed abandoned and may be removed from the right of way and stored at the nearest site available for thirty days and if it is not claimed by the owner during such period, and the cost of removal and storage paid, it may be disposed of in the manner prescribed by the director. Abandoned motor vehicles are subject to the provisions of ~~sections 39-26-01 through 39-26-14~~chapter 23.1-15. If such property is disposed of it must, except as otherwise provided by this section, be sold or disposed of in the manner provided in ~~sections 39-26-05 through 39-26-09~~chapter 23.1-15. The receipts therefrom 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.

**SECTION 32. AMENDMENT.** Subsection 5 of section 28-32-50 of the North Dakota Century Code is amended and reenacted as follows:

5. In any civil judicial proceeding involving adverse parties to an appeal or enforcement action involving an environmental permit issued under chapter ~~23-20.3, 23-25, 23-29~~23.1-04, 23.1-06, 23.1-08, or 61-28 in which two or more of the adverse parties are not an

administrative agency or an agent of an administrative agency, the court may award the prevailing nonagency party reasonable attorney's fees and costs if the court finds in favor of that party and determines that the nonprevailing nonagency party acted without substantial justification, or on the basis of claims or allegations that are factually unsupported. The court shall award reasonable attorney's fees and costs if the court determines that the nonprevailing nonagency party's claims or allegations are frivolous as provided in section 28-26-01. If the appeal or civil judicial proceeding covered by this subsection involves multiple claims or allegations, the court may apportion attorney's fees and costs in proportion to the time reasonably spent by a prevailing party relating to claims pursued by the nonprevailing party that were frivolous, factually unsupported, or without substantial justification.

**SECTION 33. 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 - 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 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 one million five hundred thousand 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~~department of environmental quality for the purposes provided under chapter ~~23-31~~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 ~~state department of health~~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 34. AMENDMENT.** Section 38-11.1-03.1 of the North Dakota Century Code is amended and reenacted as follows:

**38-11.1-03.1. Inspection of well site.**

Upon request of the surface owner or adjacent landowner, the ~~state department of health~~department of environmental quality shall inspect and monitor the well site on the surface owner's land for the presence of hydrogen sulfide. If the presence of hydrogen sulfide is indicated, the ~~state department of health~~department of environmental quality 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 right to request the ~~state department of health~~department of environmental quality to inspect and monitor the well site for the presence of hydrogen sulfide.
  3. The notice required by this section must be given to the surface owner at the address shown by the records of the county treasurer's office at the time the notice is given and is deemed to have been received seven days after mailing by registered mail or immediately upon hand delivery.
  4. If a mineral developer fails to give notice as provided in this section, the surface owner may seek appropriate relief in the court of proper jurisdiction and may receive punitive as well as actual damages.

**SECTION 36. AMENDMENT.** Section 38-11.2-02 of the North Dakota Century Code is amended and reenacted as follows:

**38-11.2-02. Inspection of well site.**

Upon request of another state agency, the surface owner, or an adjacent landowner, the ~~state department of health~~department of environmental quality shall conduct a site visit and evaluate site-specific environmental data as necessary to ensure compliance with applicable environmental protection laws and regulations relating to air, water, and land management under the jurisdiction of the department.

**SECTION 37. AMENDMENT.** Subsection 12 of section 38-14.1-03 of the North Dakota Century Code is amended and reenacted as follows:

12. To ~~promulgate regulations~~adopt rules consistent with state law, in consultation with the state geologist, ~~state department of health~~department of environmental quality, and the state engineer for the protection of the quality and quantity of waters affected by surface coal mining operations.

**SECTION 38. AMENDMENT.** Subsection 2 of section 38-14.1-21 of the North Dakota Century Code is amended and reenacted as follows:

2. The commission's approval or modification of the permit or permit revision application must include consideration of the advice and technical assistance of the state historical society, the ~~state department of health~~department of environmental quality, the state soil conservation committee, the ~~state game and fish department~~, the state forester, the state geologist, and the

state engineer, and may also include those state agencies versed in soils, agronomy, ecology, geology, and hydrology, and other agencies and individuals experienced in reclaiming surface mined lands.

**SECTION 39. AMENDMENT.** Section 38-22-07 of the North Dakota Century Code is amended and reenacted as follows:

**38-22-07. Permit consultation.**

Before issuing a permit, the commission shall consult the ~~state department of health~~department of environmental quality.

**SECTION 40. AMENDMENT.** Section 38-22-12 of the North Dakota Century Code is amended and reenacted as follows:

**38-22-12. Environmental protection - Reservoir integrity.**

1. The commission shall take action to ensure that a storage facility does not cause pollution or create a nuisance. For the purposes of this provision and in applying other laws, carbon dioxide stored, and which remains in storage under a commission permit, is not a pollutant nor does it constitute a nuisance.
2. The commission's authority in subsection 1 does not limit the jurisdiction held by the ~~state department of health~~department of environmental quality. Nothing else in this chapter limits the jurisdiction held by the ~~state department of health~~department of environmental quality.
3. The commission shall take action to ensure that substances that compromise the objectives of this chapter or the integrity of a storage reservoir do not enter a storage reservoir.
4. The commission shall take action to ensure that carbon dioxide does not escape from a storage facility.

**SECTION 41. AMENDMENT.** Section 40-47-01 of the North Dakota Century Code is amended and reenacted as follows:

**40-47-01. Cities may zone - Application of regulations.**

For the purpose of promoting health, safety, morals, or the general welfare of the community, the governing body of any city may, subject to the provisions of chapter 54-21.3, regulate and restrict the height, number of stories, and the size of buildings and other structures, the percentage of lot that may be occupied, the size of yards, courts, and other open spaces, the density of population, and the location and use of buildings, structures, and land for trade, industry, residence, or other purposes. Such regulations may provide that a board of adjustment may determine and vary the application of the regulations in harmony with their general purpose and intent and in accordance with general or specific rules therein contained. The governing body of a city may establish institutional controls that address environmental concerns with the ~~state department of health~~department of environmental quality as provided in section ~~23-20.3-03.4~~23.1-04-04.

**SECTION 42. AMENDMENT.** Section 43-18-02 of the North Dakota Century Code is amended and reenacted as follows:

**43-18-02. State board of plumbing - Members - Appointment - Qualifications.**

The state board of plumbing shall consist of the chief sanitary engineer, or the ~~head of any division of the state department of health who may be named by the chief sanitary engineer to act in the chief sanitary engineer's stead~~director of the department of environmental quality, and four persons appointed by the governor. All of the appointed members must have been residents of this state for at least five years immediately preceding their appointment, and one of them must be a master plumber with at least five years of experience in North Dakota, one must be a journeyman plumber with at least

five years of experience in North Dakota, one must be a registered professional engineer practicing mechanical engineering in North Dakota, and one must be a representative of the consuming public.

**SECTION 43. AMENDMENT.** Section 43-18-09 of the North Dakota Century Code is amended and reenacted as follows:

**43-18-09. Board to adopt plumbing code - Provisions have force of law.**

The board shall formulate, prepare, and circulate among all plumbers within this state a state plumbing code, which must contain the minimum basic standards for plumbing, drainage, and ventilation of plumbing in buildings of all classes. Such code must be approved by the ~~state department of health~~department of environmental quality. The provisions of said code have the force and effect of law and any violation thereof constitutes a violation of this chapter.

**SECTION 44. AMENDMENT.** Section 43-35-03 of the North Dakota Century Code is amended and reenacted as follows:

**43-35-03. State board of water well contractors - Members' appointment - Qualification.**

The state board of water well contractors consists of the state engineer and the ~~state health officer~~director of the department of environmental quality, or their duly authorized designees, two water well contractors appointed by the governor, one geothermal system driller appointed by the governor, one water well pump and pitless unit installer appointed by the governor, and one member appointed at large by the governor.

**SECTION 45. AMENDMENT.** Section 43-35-19 of the North Dakota Century Code is amended and reenacted as follows:

**43-35-19. Standards for well drilling - Reports required.**

All construction of water wells must comply with the rules adopted by the ~~state department of health~~department of environmental quality. Within thirty days after the completion of each well, each water well contractor shall furnish to the board on forms provided by the board ~~such~~any information ~~as the state department of health shall require~~required by the department of environmental quality, including a log of formations penetrated, well depth, and casing size and weight. A copy of each report ~~also~~ must ~~also~~ be furnished to the customer. All information submitted must remain the property of the board.

**SECTION 46. AMENDMENT.** Section 43-35-19.1 of the North Dakota Century Code is amended and reenacted as follows:

**43-35-19.1. Standards for installation of water well pumps and pitless units.**

All installation of water well pumps and pitless units must comply with the rules adopted by the ~~state department of health~~department of environmental quality and the board.

**SECTION 47. AMENDMENT.** Section 43-35-19.2 of the North Dakota Century Code is amended and reenacted as follows:

**43-35-19.2. Standards for installation of monitoring wells - Reports required.**

All monitoring wells constructed must comply with the rules adopted by the ~~state department of health~~department of environmental quality and the board. Each monitoring well contractor shall furnish all reports required by the rules of the ~~state department of health~~department of environmental quality or the board.

**SECTION 48. AMENDMENT.** Section 43-35-20 of the North Dakota Century Code is amended and reenacted as follows:

**43-35-20. Revocation or suspension of certificate - Grounds for - How reinstated.**

The board may suspend or revoke any certificate issued under the provisions of this chapter if the holder is found guilty by the board of any violation of the rules adopted by the ~~state department of health~~department of environmental quality or the board after a hearing ~~duly~~ held substantially in conformance with chapter 28-32. Six months after any certificate has been revoked, an application may be made for another certificate in the same manner as a new certificate is obtained.

**SECTION 49. AMENDMENT.** Section 43-35-23 of the North Dakota Century Code is amended and reenacted as follows:

**43-35-23. Continuing education - Preapproval requirements.**

Each certificate holder shall earn at least six hours of board-approved continuing education during every two-year reporting cycle to qualify for certificate renewal, except a new certificate holder is not required to earn continuing education until the second renewal year following initial certification. Continuing education coursework may be provided by the national ground water association, the North Dakota well drillers association, incorporated, a board-sponsored workshop, the ~~state department of health~~department of environmental quality, the state water commission, or by any board-approved course provider. A continuing education course must be preapproved by the board unless otherwise provided under this section. A continuing education course provider or a certificate holder shall request preapproval of continuing education coursework by submitting to the board a course outline, the instructor's name, the length of the training, and an explanation of how the training relates to the construction and service of water wells. A certificate holder may request approval of education that was not preapproved by submitting to the board verification of attendance, a course outline, and an explanation of why preapproval was not obtained. The board shall determine on a case-by-case basis whether to approve education that was not preapproved.

**SECTION 50. AMENDMENT.** Subsection 11 of section 43-48-03 of the North Dakota Century Code is amended and reenacted as follows:

11. Personnel of the division of laboratory services of the state department of health or department of environmental quality who are participating in the centers for disease control and prevention's chemical terrorism toxic metals determination program.

**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. Notwithstanding sections 2-05-01, 4.1-05-02, 4.1-26-02, 6-01-03, 6-09-02.1, 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, ~~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, 54-54-02, 55-01-01, and 61-02-04, ~~and 61-28-03~~, all members of the following boards and commissions must, subject to the limitations of this section, be considered to have resigned from such boards and commissions effective January first of the first year of each four-year term of the governor:
  - a. The aeronautics commission.
  - b. The milk marketing board.
  - c. The dairy promotion commission.
  - d. The state banking board.
  - e. The state credit union board.
  - f. The advisory board of directors to the Bank of North Dakota.
  - g. The pardon advisory board.
  - h. The state parole board.
  - i. The state board of public school education.

- j. The education standards and practices board.
- k. The board of trustees of the teachers' fund for retirement.
- l. The state game and fish advisory board.
- m. The health council.
- n. The ~~air pollution control~~environmental review advisory council.
- o. The board of animal health.
- p. The administrative committee on veterans' affairs.
- q. The committee on aging.
- r. The committee on employment of people with disabilities.
- s. The commission on the status of women.
- t. The North Dakota council on the arts.
- u. The state historical board.
- v. The state water commission.
- w. The state water pollution control board.

**SECTION 58. AMENDMENT.** Subsection 3 of section 54-12-08 of the North Dakota Century Code is amended and reenacted as follows:

- 3. The attorney general may require payment for legal services rendered by any assistant or special assistant attorney general to any state official, board, department, agency, or commission and those entities shall make the required payment to the attorney general. Moneys received by the attorney general in payment for legal services rendered must be deposited into the attorney general's operating fund. General fund moneys may not be utilized for the payment of legal services provided by the attorneys employed by the attorney general, except for those payments required of the department of human services, state department of health, department of environmental quality, and the state hospital.

**SECTION 59. AMENDMENT.** Section 54-44.3-30 of the North Dakota Century Code is amended and reenacted as follows:

**54-44.3-30. Agencies subject to merit system.**

All personnel employed by the department of human services, the regional offices of that department, job service North Dakota, North Dakota human resource management services, the state department of health, department of environmental quality, and other agencies or political subdivisions as may by federal law or rule be required to be subject to a merit system in order to obtain federal grants-in-aid are covered by the merit system provided in this chapter. Merit system coverage must also be provided to personnel employed as purchasing agents or buyers in the purchasing division of the office of management and budget. Other agencies, departments, or divisions and positions must be placed under a merit system in the manner and to the extent required by law.

**SECTION 60. AMENDMENT.** Subsection 33 of section 57-43.2-01 of the North Dakota Century Code is amended and reenacted as follows:

- 33. "Special fuel" means all combustible gases and liquids suitable for the generation of power for propulsion of motor vehicles and includes compressed natural gas, kerosene, liquefied petroleum gases, all gases and liquids which meet the specifications as determined by the

~~state department of health pursuant to the provisions of section 19-10-10~~department of environmental quality under chapter 23.1-13, as well as all liquids determined by the ~~state department of health~~department of environmental quality to be heating oil pursuant to the ~~provisions of section 19-10-10~~under chapter 23.1-13, except that it does not include either motor vehicle fuels as defined in section 57-43.1-01, aviation fuels as defined in section 57-43.3-01, or antifreeze as defined by section ~~19-16.1-02~~23.1-14-02.

**SECTION 61. AMENDMENT.** Section 58-03-11 of the North Dakota Century Code is amended and reenacted as follows:

**58-03-11. Establishment of zoning districts - Uniformity.**

For the purpose of promoting the health, safety, morals, or the general welfare, or to secure the orderly development of approaches to municipalities, the board of township supervisors may establish one or more zoning districts and within such districts may, subject to the provisions of chapter 54-21.3 and section 58-03-11.1, regulate and restrict the erection, construction, reconstruction, alteration, repair, or use of buildings and structures, the height, number of stories, and size of buildings and structures, the percentage of lot that may be occupied, the size of courts, yards, and other open spaces, the density of population, and the location and use of buildings, structures, and land for trade, industry, residence, or other purposes. All such regulations and restrictions must be uniform throughout each district, but the regulations and restrictions in one district may differ from those in other districts. The board of township supervisors may establish institutional controls that address environmental concerns with the ~~state department of health~~department of environmental quality as provided in section ~~23-20.3-03.123.1-04-04~~.

**SECTION 62. AMENDMENT.** Section 58-03-11.1 of the North Dakota Century Code is amended and reenacted as follows:

**58-03-11.1. 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 ~~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;
  - 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 township supervisors may not prohibit or prevent the use of land or buildings for farming or ranching or any of the normal incidents of farming or ranching.
4. A regulation may not preclude the development of a concentrated feeding operation in the township.
5. A board of township supervisors may not prohibit the reasonable diversification or expansion of a farming or ranching operation.
6. A board of township supervisors may adopt regulations that establish different standards for the location of concentrated feeding operations based on the size of the operation and the species and type being fed.
7. If a regulation would impose a substantial economic burden on a concentrated feeding operation in existence before the effective date of the regulation, the board of township supervisors shall declare that the regulation is ineffective with respect to any concentrated feeding operation in existence before the effective date of the regulation.
8.
  - a. A board of township supervisors may establish high-density agricultural production districts in which setback distances for concentrated feeding operations and related agricultural operations are less than those in other districts.
  - b. A board of township supervisors may establish, around areas zoned for residential, recreational, or nonagricultural commercial uses, low-density agricultural production districts in which setback distances for concentrated feeding operations and related agricultural operations are greater than those in other districts; provided, the low-density agricultural production districts may not extend more than one-half mile [0.80 kilometer] from the edge of the area zoned 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:

**61-04.1-04. North Dakota atmospheric resource board created - Membership.**

There is hereby created a North Dakota atmospheric resource board which shall be a division of the state water commission. The board ~~shall be~~is composed of the director of the state aeronautics commission, a representative of the department of environmental quality ~~of the state department of health~~, the state engineer, and one additional board member from each of seven districts established by section 61-04.1-05. The governor shall initially appoint one board member for each of the seven districts from a list of three candidates given to the governor by weather modification authorities in each district and:

1. When the term of office of any board member from any district is about to expire.
2. When a vacancy has occurred, or is about to occur, in the term of office of a board member from any district for any reason other than expiration of term of office.

Beginning on July 1, 1983, the term of office for the board shall be arranged so that not less than three nor more than four terms shall expire on the first day of July of each odd-numbered year. Therefore, board members appointed on July 1, 1983, from districts II, IV, and VI shall serve for two-year terms, and board members appointed on July 1, 1983, from districts I, III, V, and VII shall serve for four-year

terms. Thereafter, board members from each district shall serve for a four-year term of office except in the event the governor shall appoint a member for an unexpired term, in which case the member shall serve only for the unexpired portion of the term. In the event any district fails to furnish a list to the governor, or if there are no weather modification authorities under this chapter within a district, the then governor shall appoint a board member of the governor's choice residing within such district.

**SECTION 66. 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 67. 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 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 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.

**SECTION 71. AMENDMENT.** Section 61-29-04 of the North Dakota Century Code is amended and reenacted as follows:

**61-29-04. Administration.**

This chapter must be administered by a Little Missouri River commission composed of the director of the parks and recreation department, the ~~state health officer~~director of the state department of health~~department of environmental quality~~, the chief engineer of the state water commission, or their designated representatives, and one member from each of the following counties: McKenzie, Billings, Slope, Golden Valley, Dunn, and Bowman. The commission members representing the above-mentioned counties must be appointed by their respective boards of county commissioners and shall serve without compensation except that each appointing board of county commissioners may reimburse its county representative for actual and necessary mileage to and from meetings of the commission at the same rate as state officers. The county representatives appointed must be resident landowners who live adjacent to the Little Missouri River with the exception of the Golden Valley County representative. A county representative unable to attend a meeting of the commission may be represented by a person who has a written proxy from the representative authorizing that person to act and vote for the representative. The proxy must be a resident landowner of the county that the proxy is representing, but need not live adjacent to the Little Missouri River. The county members shall serve terms of office as follows: two members shall serve one-year terms, two members shall serve two-year terms, and two members shall serve three-year terms.

**SECTION 72. AMENDMENT.** Section 61-33-09 of the North Dakota Century Code is amended and reenacted as follows:

**61-33-09. Members of the board - Organization - Meetings.**

1. The board consists of the manager of the Garrison Diversion Conservancy District, the state engineer, the commissioner of university and school lands, the director of the parks and recreation department, the director of the game and fish department, and the ~~state health officer~~director of the department of environmental quality, or their representatives.
2. The state engineer is the board's secretary.
3. The board shall meet at least once a year or at the call of the state engineer or two or more members of the board. The board shall meet at the office of the state engineer or at any other place decided upon by the board.
4. The board may adopt rules to govern its activities.

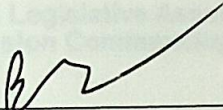
**SECTION 73. AMENDMENT.** Section 61-35-24 of the North Dakota Century Code is amended and reenacted as follows:

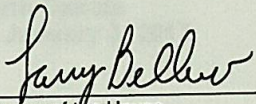
**61-35-24. Not exempt from other requirements.**

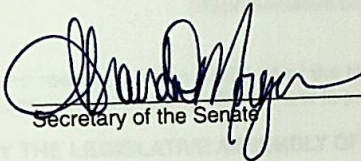
This chapter does not exempt any district from the requirements of any other statute, ~~whether enacted before or after August 1, 1995~~, under which the district is required to obtain the permission or approval of, or to notify, the state water commission, or the ~~state department of health~~department of environmental quality, or any other agency of this state or of any of its political subdivisions before proceeding with construction, acquisition, operation, enlargement, extension, or alteration of any works or facilities that the district is authorized to undertake under this chapter.

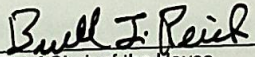
**SECTION 74. REPEAL.** Chapters 19-10 and 19-16.1 and sections 23-01-01.2, 23-01-04.1, 23-01-23, 23-01-30, and 23-01-36 and chapters 23-20, 23-20.1, 23-20.3, 23-20.5, 23-25, 23-26, 23-29, 23-29.1, 23-31, 23-32, 23-33, 23-37, and 39-26 and sections 61-28-03 and 61-28-05 of the North Dakota Century Code are repealed.

**SECTION 75. EFFECTIVE DATE.** Sections 2 through 74 of this Act are effective upon the receipt by the legislative council of the certification by the chief of the environmental health section of the state department of health attesting that all necessary federal approvals have been obtained and all necessary federal and other agreements have been amended to ensure the state will continue to meet the primacy requirements it currently satisfies after the transfer of authority, powers, and duties from the state department of health to the department of environmental quality provided under this Act.

  
\_\_\_\_\_  
President of the Senate

  
\_\_\_\_\_  
Speaker of the House

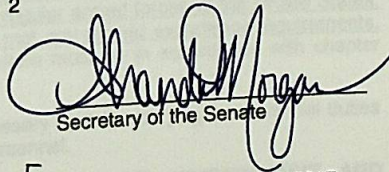
  
\_\_\_\_\_  
Secretary of the Senate

  
\_\_\_\_\_  
Chief Clerk of the House

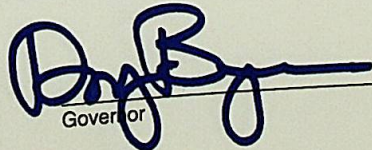
This certifies that the within bill originated in the Senate of the Sixty-fifth Legislative Assembly of North Dakota and is known on the records of that body as Senate Bill No. 2327.

Senate Vote:    Yeas 31            Nays 16            Absent 0

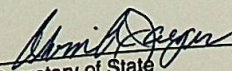
House Vote:    Yeas 69            Nays 23            Absent 2

  
\_\_\_\_\_  
Secretary of the Senate

Received by the Governor at 8:55 A.M. on April 5, 2017.  
Approved at 11:50A M. on April 7, 2017.

  
\_\_\_\_\_  
Governor

Filed in this office this 7 day of April, 2017,  
at 346 o'clock P M.

  
\_\_\_\_\_  
Secretary of State

## Proposed Rule changes related to SB-2327

### Public Service Commission

#### 69-05.2-09-02. Permit applications - Operation plans - Maps and plans.

Each application must contain an appropriate combination of 1:4,800 scale topographic maps, planimetric maps, and plans of the proposed permit and adjacent areas showing:

8. Each coal storage, cleaning and loading area, and each coal waste and noncoal waste storage area. For noncoal wastes that will be disposed of in the proposed permit area, the applicant must provide a description of any wastes listed under subdivision i of subsection 2 of section 33-20-02.1-01 and any other wastes requiring a permit from the ~~state department of health~~department of environmental quality. The location of any such disposal areas must be shown on a map of the permit area.

#### 69-05.2-09-05. Permit applications - Operation plans - Air pollution control.

The applicant shall specify the measures to comply with the air pollution control requirements of the ~~state department of health~~department of environmental quality and any other measures necessary to effectively control wind erosion and attendant air pollution.

#### 69-05.2-13-07. Performance standards - General requirements - Air resources protection.

The permittee shall comply with all applicable air pollution control laws and rules of the ~~state department of health~~department of environmental quality and stabilize and protect all surface areas

#### 69-05.2-16-02. Performance standards - Hydrologic balance - Compliance with ~~state department of health~~department of environmental quality standards.

Runoff water and pit water discharge must meet the water quality requirements of the North Dakota ~~state department of health~~department of environmental quality, as well as those of this article. The commission will not issue or revise a mining permit until the ~~state department of health~~department of environmental quality has had an opportunity to review the applicable information and plans. No rights under the mining permit shall be exercised until the necessary ~~state department of health~~department of environmental quality permits are obtained.

#### 69-05.2-16-04. Performance standards - Hydrologic balance - Water quality standards and effluent limitations.

1. The operator must comply with the following requirements:
  - c. The commission may allow the use of other sediment control measures for primary sediment control if:
    - (1) The disturbed drainage area within the total disturbed area is small, the disturbed areas have been regraded, respread with topsoil, and stabilized against erosion, or the ~~state department of health~~department of environmental quality has approved the use of best management practices as the effluent limitation; and
  - g. Discharges of water from areas disturbed by surface mining activities must comply with all applicable state laws and rules and with the ~~state department of health~~department of environmental quality

environmental quality effluent limitations authorized by North Dakota Century Code chapter 61-28.

**69-05.2-16-05. Performance standards - Hydrologic balance - Surface water monitoring.**

1. Surface water monitoring must be conducted in accordance with the monitoring program and based on the probable hydrologic consequences determination submitted under section 69-05.2-08-04. The commission will approve the nature of data that relate to the hydrologic reclamation plan in section 69-05.2-09-12, frequency of collection, and determine reporting requirements.

b. For point source discharges, monitoring must:

- (1) Be conducted according to ~~state department of health~~department of environmental quality standards.

**69-05.2-16-20. Performance standards - Hydrologic balance - Stream buffer zones.**

1. The operator may not disturb land within one hundred feet [30.48 meters] of an intermittent or perennial stream unless the commission, after consulting the state engineer and the ~~state department of health~~department of environmental quality, specifically authorizes surface mining activities closer to, or through, the stream, after finding that:

**69-05.2-19-02. Performance standards - Waste materials - Permanent disposal of coal wastes.**

1. All coal processing waste and waste materials from coal utilization processes and coal conversion facilities to be permanently disposed of within a permit area and that are required to be permitted under the solid waste management rules of the North Dakota ~~state department of health~~department of environmental quality must be disposed of according to those rules and this chapter.
  - a. The permittee or operator shall file application for and design the disposal site as required by the ~~state department of health~~department of environmental quality and concurrently submit a copy of the application to the commission.
  - b. The permittee or operator shall also submit to the commission a permit revision that will incorporate the disposal activities into the operations and reclamation plan. The commission will not approve the revision until the ~~state department of health~~department of environmental quality issues a solid waste permit.

**69-05.2-19-04. Performance standards - Waste materials - Disposal of noncoal wastes.**

1. All noncoal waste materials disposed of within a permit area and that are required to be permitted under solid waste management rules of the ~~state department of health~~department of environmental quality must be disposed of according to those rules and this chapter. Before disposal operations begin, the commission must be advised of plans to develop or modify a noncoal waste disposal site.
2. Noncoal wastes including concrete products, plastic material, abandoned mining machinery, wood materials, and other nonhazardous materials generated during mining and noncoal waste materials from activities outside the permit area, such as municipal wastes, must be placed and stored in a controlled manner in a designated approved portion of the permit area.

Placement and storage of all types of noncoal wastes, including any hazardous materials, must ensure that leachate and surface runoff do not degrade surface or ground water, fires are prevented, and that the area remains stable and suitable for reclamation and revegetation compatible with the natural surroundings. Any wastes containing asbestos may not be disposed of in the permit area unless specific approval is obtained from the ~~state department of health~~department of environmental quality. Solvents, grease, lubricants, paints, flammable liquids, and other combustible materials must be disposed off the permit area except for land treatments of small spills as approved by the ~~state department of health~~department of environmental quality.

**Sixty-seventh Legislative Assembly of North Dakota  
In Regular Session Commencing Tuesday, January 5, 2021**

HOUSE BILL NO. 1353  
(Representatives Schmidt, Delzer, Monson, J. Nelson, Pollert)  
(Senators Kreun, Schaible, Sorvaag, Bell, Wardner)

AN ACT to create and enact sections 61-03-01.1, 61-03-01.2, and 61-03-01.3 of the North Dakota Century Code, relating to the establishment of the department of water resources and powers and duties of the director of the department of water resources; to amend and reenact subsection 1 of section 4.1-01-18, sections 4.1-35-01 and 4.1-35-04, subsection 3 of section 4.1-35-05, section 11-33.2-12.1, subsection 1 of section 23.1-01-02, sections 23.1-08-13, 23.1-11-06, 23.1-11-10, 23.1-11-11, 24-03-06, 24-03-08, and 24-06-26.1, subsection 2 of section 37-17.1-11, subsection 12 of section 38-14.1-03, subdivision n of subsection 1 of section 38-14.1-14, subsection 2 of section 38-14.1-21, subsection 7 of section 38-14.1-24, subsection 1 of section 38-14.1-25, subsection 1 of section 38-23-08, subsection 11 of section 40-50.1-01, section 43-35-03, subsection 1 of section 54-57-03, sections 57-02-08.6 and 57-28-09, subsection 4 of section 61-01-01, sections 61-01-03, 61-01-05, 61-01-06, 61-01-25, 61-02-05, 61-02-14.2, 61-02-23.3, 61-02-26, 61-02-27, 61-02-30, 61-02-32, 61-02-33, 61-02-41, 61-02-68.10, 61-02.1-01, 61-03-03, 61-03-04, 61-03-06, 61-03-08, 61-03-10, 61-03-12, 61-03-13, 61-03-14, 61-03-15, 61-03-16, 61-03-17, 61-03-18, 61-03-19, 61-03-20, 61-03-21, 61-03-21.1, 61-03-21.2, 61-03-21.3, 61-03-21.4, 61-03-22, 61-03-23, 61-03-24, 61-03-25, and 61-04-01, subsections 1 and 15 of section 61-04-01.1, sections 61-04-02, 61-04-02.1, 61-04-02.2, 61-04-03, 61-04-03.1, 61-04-04, 61-04-04.1, 61-04-04.2, 61-04-04.3, 61-04-05, 61-04-05.1, 61-04-06, 61-04-06.1, 61-04-06.2, 61-04-06.3, 61-04-07.2, 61-04-07.3, 61-04-09, 61-04-11, 61-04-12, 61-04-14, 61-04-15, 61-04-15.2, 61-04-15.3, 61-04-15.4, and 61-04-23, subsection 1 of section 61-04-24, sections 61-04-25, 61-04-26, 61-04-27, 61-04-28, 61-04-29, 61-04-30, 61-04-31, and 61-04.1-04, subsection 3 of section 61-05-01, sections 61-05-07, 61-05-08, 61-05-09, 61-05-10, 61-05-11, 61-05-12, 61-05-13, 61-05-14, 61-05-15, 61-05-16, 61-05-17, 61-05-18, 61-05-19, 61-05-20, 61-06-01, 61-06-03, 61-06-04, 61-06-05, 61-06-19, 61-07-08, 61-07-19, 61-07-27, 61-09-02, 61-10-27, 61-10-30, 61-10-35, 61-10-37, 61-11-04, 61-11-08, 61-11-09, 61-11-15, 61-12-46, 61-14-01, 61-14-03, 61-14-06, 61-14-07, 61-14-13, 61-15-03, 61-15-09, and 61-16-06.1, subsection 1 of section 61-16.1-09.1, sections 61-16.1-23, 61-16.1-37, 61-16.1-38, 61-16.1-39, 61-16.1-53.1, 61-16.2-01, 61-16.2-02, 61-16.2-03, 61-16.2-04, and 61-16.2-05, subsection 1 of section 61-16.2-09, sections 61-16.2-11, 61-16.2-13, 61-16.2-14, 61-20-02, 61-20-03, 61-20-06, 61-20-07, 61-21-02.1, 61-21-22, 61-21-34, 61-24-07, 61-24.3-01, 61-24.5-01, 61-24.5-18, 61-24.6-01, 61-24.6-02, 61-24.6-03, 61-24.6-05, 61-24.8-01, 61-24.8-18, and 61-29-04, subsection 6 of section 61-31-02, and sections 61-32-03, 61-32-03.1, 61-32-08, 61-33-01, 61-33-01.1, 61-33-02, 61-33-03, 61-33-05, 61-33-05.1, 61-33-07, 61-33-08, 61-33-09, 61-33-10, 61-33.1-07, 61-34-01, 61-34-04, 61-35-01, 61-35-02, 61-35-02.1, 61-35-04, 61-35-05, 61-35-07, 61-35-08, 61-35-16, 61-35-18, 61-35-20, 61-35-21, 61-35-22, 61-35-23, 61-35-25, 61-35-63, 61-38-01, 61-38-02, 61-38-03, 61-38-04, 61-38-05, 61-38-06, 61-38-07, 61-38-08, 61-38-09, 61-38-10, 61-38-11, 61-39-01, and 61-40-07 of the North Dakota Century Code, relating to the powers and duties of the department of water resources and the state engineer and updates to statutory language; and to repeal sections 61-03-01, 61-03-02, and 61-03-05.1 of the North Dakota Century Code, relating to the powers and duties of the state engineer and the water use fund.

**BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

**SECTION 1. AMENDMENT.** Subsection 1 of section 4.1-01-18 of the North Dakota Century Code is amended and reenacted as follows:

1. The federal environmental law impact review committee consists of:
  - a. The commissioner, who shall serve as the chairman;

- b. The governor or the governor's designee;
- c. The majority leader of the house of representatives, or the leader's designee;
- d. The majority leader of the senate, or the leader's designee;
- e. One member of the legislative assembly from the minority party, selected by the chairman of the legislative management;
- f. One individual appointed by the North Dakota corn growers association;
- g. One individual appointed by the North Dakota grain growers association;
- h. One individual appointed by the North Dakota soybean growers association;
- i. One individual appointed by the North Dakota stockmen's association;
- j. One individual appointed by the North Dakota farm bureau;
- k. One individual appointed by the North Dakota farmers union;
- l. The chairman of the public service commission or the chairman's designee;
- m. ~~The state engineer~~director of the department of water resources or the ~~state engineer's~~director's designee;
- n. The director of the game and fish department, or the director's designee;
- o. The director of the department of transportation, or the director's designee;
- p. The director of the department of environmental quality, or the director's designee;
- q. One representative of an investor-owned utility company;
- r. One representative from the North Dakota association of rural electric cooperatives; and
- s. Two individuals from the energy community appointed by the commissioner.

**SECTION 2. AMENDMENT.** Section 4.1-35-01 of the North Dakota Century Code is amended and reenacted as follows:

**4.1-35-01. Definitions.**

As used in this chapter:

- 1. "Chemigation" means any process by which chemicals, including pesticides and fertilizers, are applied to land or crops through an irrigation system.
- 2. "Commissioner" means the agriculture commissioner and includes any employee or agent designated by the commissioner.
- 3. "Fertilizer" means any fertilizer as defined by section 4.1-40-01.
- 4. "Pesticide" means that term defined in section 4.1-33-01.
- 5. ~~"State engineer" means the state engineer appointed by the state water commission under section 61-03-01.~~

**SECTION 3. AMENDMENT.** Section 4.1-35-04 of the North Dakota Century Code is amended and reenacted as follows:

**4.1-35-04. Inspections - Assistance of ~~state engineer~~ department of water resources.**

The ~~state engineer~~ department of water resources shall cooperate with the commissioner in the inspection of any irrigation system using chemigation. The ~~state engineer~~ department shall inform the commissioner of any violation of this chapter which is discovered in the course of the ~~state engineer's~~ department's regular inspections of irrigation systems using chemigation.

**SECTION 4. AMENDMENT.** Subsection 3 of section 4.1-35-05 of the North Dakota Century Code is amended and reenacted as follows:

3. For the purpose of carrying out the provisions of this chapter, the commissioner and the ~~state engineer~~ department of water resources may enter upon any public or private premises at reasonable times in order to:
  - a. Have access for the purpose of inspecting any equipment subject to this chapter and the premises on which the equipment is stored or used.
  - b. Inspect or sample lands actually, or reported to be, exposed to pesticides or fertilizers through chemigation.
  - c. Inspect storage or disposal areas.
  - d. Inspect or investigate complaints of injury to humans or animals.
  - e. Sample pesticides and fertilizers and pesticide or fertilizer mixes being applied or to be applied.
  - f. Observe the use and application of a pesticide or fertilizer through chemigation.
  - g. Have access for the purpose of inspecting a premise or other place where equipment or devices used for chemigation are held for distribution, sale, or use.

**SECTION 5. AMENDMENT.** Section 11-33.2-12.1 of the North Dakota Century Code is amended and reenacted as follows:

**11-33.2-12.1. Contents of plat - Location and elevation of lakes, rivers, or streams - Notification of floodplain.**

Whenever land, subject to regulation under this chapter, abutting upon any lake, river, or stream is subdivided, the subdivider must show on the plat or other document containing the subdivision a contour line denoting the present shoreline, water elevation, and the date of the survey. If any part of a plat or other document lies within the one hundred year floodplain of a lake, river, or stream as designated by the ~~state engineer~~ department of water resources or a federal agency, the mean sea level elevation of that one hundred year flood must be denoted on the plat by numerals. Topographic contours at a two-foot [60.96-centimeter] contour interval referenced to mean sea level must be shown for the portion of the plat lying within the floodplain. All elevations must be referenced to a durable benchmark described on the plat with its location and elevation to the nearest hundredth of a foot [0.3048 centimeter], which must be given in mean sea level datum.

**SECTION 6. AMENDMENT.** Subsection 1 of section 23.1-01-02 of the North Dakota Century Code is amended and reenacted as follows:

1. The environmental review advisory council is established to advise the department of environmental quality in carrying out its duties. The council consists of the ~~state engineer~~ director of the department of water resources, state geologist, and director of the game and fish department, who serve as ex officio members, and ten members appointed by the governor. 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 or agricultural processing;
- c. A representative of the solid fuels industry;
- d. A representative of the liquid and gas fuels industry;
- e. A representative of crop agriculture;
- f. A representative of the waste management industry;
- g. A representative with an agronomy or soil sciences degree;
- h. A representative of the thermal electric generators industry;
- i. A representative of the environmental sciences; and
- j. A representative of the livestock industry.

**SECTION 7. AMENDMENT.** Section 23.1-08-13 of the North Dakota Century Code is amended and reenacted as follows:

**23.1-08-13. Preconstruction site review.**

The department, in cooperation with the ~~state engineer~~department of water resources 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~~department of water resources 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~~department of water resources and state geologist.

**SECTION 8. AMENDMENT.** Section 23.1-11-06 of the North Dakota Century Code is amended and reenacted as follows:

**23.1-11-06. Ground water quality monitoring.**

The department shall conduct ground water quality monitoring activities in cooperation with the ~~state engineer~~department of water resources and other state agencies. Based on monitoring results, the department of environmental quality shall implement or require appropriate mitigation activities or remedial action to prevent future contamination of ground water. The commissioner may implement or require appropriate mitigation activities pursuant to chapter 4.1-33 to prevent future contamination of ground water as it relates to the use of pesticides.

**SECTION 9. AMENDMENT.** Section 23.1-11-10 of the North Dakota Century Code is amended and reenacted as follows:

**23.1-11-10. Wellhead protection program.**

The department, in cooperation with the ~~state engineer~~department of water resources 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.

**SECTION 10. AMENDMENT.** Section 23.1-11-11 of the North Dakota Century Code is amended and reenacted as follows:

**23.1-11-11. Rules.**

The department, with the approval of the commissioner and the ~~state engineer~~director of the department of water resources, shall adopt rules necessary for implementation of this chapter.

**SECTION 11. AMENDMENT.** Section 24-03-06 of the North Dakota Century Code is amended and reenacted as follows:

**24-03-06. Method of construction of highway ditches.**

All highways constructed or reconstructed by the department, board of county commissioners, board of township supervisors, their contractors, subcontractors, or agents, or by any individual firm, corporation, or limited liability company must be so designed as to permit the waters running into the ditches to drain into coulees, rivers, and lakes according to the surface and terrain where the highway or highways are constructed in accordance with the stream crossing standards prepared by the department and the ~~state engineer~~department of water resources so as to avoid the waters flowing into and accumulating in the ditches to overflow adjacent and adjoining lands. In the construction of highways the natural flow and drainage of surface waters to the extent required to meet the stream crossing standards prepared by the department and the ~~state engineer~~department of water resources may not be obstructed, but the water must be permitted to follow the natural course according to the surface and terrain of the particular terrain. The department, county, township, their contractors, subcontractors, or agents, or any individual firm, corporation, or limited liability company is not liable for any damage caused to any structure or property by water detained by the highway at the crossing if the highway crossing has been constructed in accordance with the stream crossing standards prepared by the department and the ~~state engineer~~department of water resources.

**SECTION 12. AMENDMENT.** Section 24-03-08 of the North Dakota Century Code is amended and reenacted as follows:

**24-03-08. Determinations of surface water flow and appropriate highway construction.**

Whenever and wherever a highway under the supervision, control, and jurisdiction of the department or under the supervision, control, and jurisdiction of the board of county commissioners of any county or the board of township supervisors has been or will be constructed over a watercourse or draw into which flow surface waters from farmlands, the ~~state engineer~~department of water resources, upon petition of the majority of landowners of the area affected or at the request of the board of county commissioners, township supervisors, or a water resource board, shall determine as nearly as practicable the design discharge that the crossing is required to carry to meet the stream crossing standards prepared by the department and the ~~state engineer~~department of water resources. When the determination has been made by the ~~state engineer~~department of water resources, the department of transportation, the board of county commissioners, or the board of township supervisors, as the case may be, upon notification of the determination, shall install a culvert or bridge of sufficient capacity to permit the water to flow freely and unimpeded through the culvert or under the bridge. The department, county, and township are not liable for any damage to any structure or property caused by water detained by the highway at the crossing if the highway crossing has been constructed in accordance with the stream crossing standards prepared by the department and the ~~state engineer~~department of water resources.

**SECTION 13. AMENDMENT.** Section 24-06-26.1 of the North Dakota Century Code is amended and reenacted as follows:

**24-06-26.1. Township road and drainage construction standards.**

~~Whenever~~When the construction or reconstruction of a township road or bridge, the insertion of a culvert in a township road, or the construction or reconstruction of a ditch or drain in connection with a township road affects the flow of surface waters and increases the surface waterflow through ditches, drains, bridges, and culverts in other townships, the board of township supervisors or the township overseer of highways of the township undertaking the construction or reconstruction shall give notice to

the boards of township supervisors or township overseers of highways in all townships affected by the construction or reconstruction projects.

The boards of township supervisors of townships affected by any road or bridge construction that changes or increases the flow of surface waters shall cooperate in the construction projects expending on any portion of the projects the portions of the road and bridge tax as deemed conducive to the interests of the township. The board of township supervisors shall construct the ditches, drains, bridges, and culverts in accordance with stream crossing standards prepared by the department and the ~~state engineer~~department of water resources. A township, board of township supervisors, and township overseer of highways are not liable for any damage caused to any structure or property by water detained by the highway at the crossing if the highway crossing has been constructed in accordance with the stream crossing standards prepared by the department and the ~~state engineer~~department of water resources.

**SECTION 14. AMENDMENT.** Subsection 2 of section 37-17.1-11 of the North Dakota Century Code is amended and reenacted as follows:

2. The ~~North Dakota state engineer and the~~ water commission and department of water resources, in conjunction with the division of homeland security, shall keep land uses and construction of structures and other facilities under continuing study and identify areas ~~which that~~ are particularly susceptible to severe land shifting, subsidence, flood, or other catastrophic occurrence. The studies under this subsection must concentrate on means of reducing or avoiding the dangers caused by ~~this occurrence~~severe land shifting, subsidence, flood, or other catastrophic occurrence, or the consequences ~~thereof~~severe land shifting, subsidence, flood, or other catastrophic occurrence.

**SECTION 15. AMENDMENT.** Subsection 12 of section 38-14.1-03 of the North Dakota Century Code is amended and reenacted as follows:

12. To adopt rules consistent with state law, in consultation with the state geologist, department of environmental quality, and ~~the state engineer~~department of water resources for the protection of the quality and quantity of waters affected by surface coal mining operations.

**SECTION 16. AMENDMENT.** Subdivision n of subsection 1 of section 38-14.1-14 of the North Dakota Century Code is amended and reenacted as follows:

- n. The name of the watershed and location of the surface stream or tributary into which surface and pit drainage will be discharged, including the drainage permit application to the ~~state engineer~~department of water resources, if required, ~~pursuant to other applicable state law~~.

**SECTION 17. AMENDMENT.** Subsection 2 of section 38-14.1-21 of the North Dakota Century Code is amended and reenacted as follows:

2. The commission's approval or modification of the permit or permit revision application must include consideration of the advice and technical assistance of the state historical society, the department of environmental quality, the soil conservation committee, the game and fish department, the state forester, the state geologist, and the ~~state engineer~~department of water resources, and may ~~also~~ include those state agencies versed in soils, agronomy, ecology, geology, and hydrology, and other agencies and individuals experienced in reclaiming surface mined lands.

**SECTION 18. AMENDMENT.** Subsection 7 of section 38-14.1-24 of the North Dakota Century Code is amended and reenacted as follows:

7. Create, if authorized in the approved mining and reclamation plan and permit, as part of reclamation activities, permanent water impoundments in accordance with the requirements of

~~the state engineer pursuant to other applicable state law~~ department of water resources and all of the following standards:

- a. The size of the impoundment will be adequate for its intended purposes.
- b. The impoundment dam construction will be designed to achieve necessary stability with an adequate margin of safety compatible with the requirements of applicable state law.
- c. The quality of impounded water will be suitable on a permanent basis for its intended use, and discharges from the impoundment will not exceed the quality limitations imposed by the North Dakota pollutant discharge elimination system or degrade the water quality below water quality standards established pursuant to this chapter, whichever is more stringent.
- d. The level of water will be reasonably stable.
- e. Final grading will provide adequate safety and access for maintenance and proposed water users.
- f. ~~Such~~ The water impoundments will not result in the diminution of the quality or quantity of water utilized by adjacent or surrounding landowners for agricultural, industrial, recreational, or domestic uses.

**SECTION 19. AMENDMENT.** Subsection 1 of section 38-14.1-25 of the North Dakota Century Code is amended and reenacted as follows:

1. A permittee may not use any coal or commercial leonardite mine waste piles consisting of mine wastes, tailings, coal processing wastes, or other liquid or solid wastes either temporarily or permanently as dams or embankments unless approved by the commission, after consultation with the ~~state engineer~~ department of water resources.

**SECTION 20. AMENDMENT.** Subsection 1 of section 38-23-08 of the North Dakota Century Code is amended and reenacted as follows:

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~~ 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.

**SECTION 21. AMENDMENT.** Subsection 11 of section 40-50.1-01 of the North Dakota Century Code is amended and reenacted as follows:

11. Any plat which includes lands abutting upon any lake, river, or stream must show a contour line denoting the present shoreline, water elevation, and the date of survey. If any part of a plat lies within the one hundred year floodplain of a lake, river, or stream as designated by the

~~state engineer~~department of water resources or a federal agency, the mean sea level elevation of that one hundred year flood must be denoted on the plat by numerals. Topographic contours at a two-foot [60.96-centimeter] contour interval referenced to mean sea level must be shown for the portion of the plat lying within the floodplain. All elevations must be referenced to a durable benchmark described on the plat with its location and elevation to the nearest hundredth of a foot [0.3048 centimeter], which must be given in mean sea level datum.

**SECTION 22. AMENDMENT.** Section 43-35-03 of the North Dakota Century Code is amended and reenacted as follows:

**43-35-03. State board of water well contractors - Members' appointment - Qualification.**

The state board of water well contractors consists of the ~~state engineer~~director of the department of water resources and the director of the department of environmental quality, or their duly authorized designees, two water well contractors appointed by the governor, one geothermal system driller or one monitoring well contractor appointed by the governor, one water well pump and pitless unit installer appointed by the governor, and one member appointed at large by the governor.

**SECTION 23. AMENDMENT.** Subsection 1 of section 54-57-03 of the North Dakota Century Code is amended and reenacted as follows:

1. Notwithstanding the authority granted in chapter 28-32 allowing agency heads or other persons to preside in an administrative proceeding, all adjudicative proceedings of administrative agencies under chapter 28-32, except those of the public service commission, the industrial commission, the insurance commissioner, the ~~state engineer~~department of water resources, the department of transportation, job service North Dakota, and the labor commissioner, must be conducted by the office of administrative hearings in accordance with the adjudicative proceedings provisions of chapter 28-32 and any rules adopted pursuant to chapter 28-32. But, appeals hearings pursuant to section 61-03-22 and drainage appeals from water resource boards to the ~~state engineer~~department of water resources pursuant to chapter 61-32 must be conducted by the office of administrative hearings. Additionally, hearings of the department of corrections and rehabilitation for the parole board in accordance with chapter 12-59, regarding parole violations; job discipline and dismissal appeals to the board of higher education; Individuals With Disabilities Education Act and section 504 due process hearings of the superintendent of public instruction; and chapter 37-19.1 veterans' preferences hearings for any agency must be conducted by the office of administrative hearings in accordance with applicable laws.

**SECTION 24. AMENDMENT.** Section 57-02-08.6 of the North Dakota Century Code is amended and reenacted as follows:

**57-02-08.6. Authorization for receipt of funds.**

The state treasurer is ~~authorized to may~~ receive funds for the wetlands property tax exemption program by legislative appropriation and by gift, grant, devise, or bequest of any money or property from any private or public source. Funds appropriated from any source for this purpose are not subject to section 54-44.1-11, and all income and moneys derived from the investment of the funds must be credited to the fund for the wetlands property tax exemption program. The director of the game and fish department, the agriculture commissioner, and the ~~state engineer~~director of the department of water resources shall work with the governor, the United States fish and wildlife service, nonprofit conservation organizations, and any other public official or private organization or citizen to develop a source of funding to implement sections 57-02-08.4 and 57-02-08.5.

**SECTION 25. AMENDMENT.** Section 57-28-09 of the North Dakota Century Code is amended and reenacted as follows:

**57-28-09. Tax deed to be issued.**

After the date of foreclosure for property with an unsatisfied tax lien, the county auditor shall issue a tax deed to the county or, in cases in which the ~~state engineer~~department of water resources has made an assessment against the property under section 61-03-21.3, the county auditor shall issue a tax deed to the state or, if the property was sold by another political subdivision of this state within the ten years preceding the foreclosure, the county auditor shall issue a tax deed to that political subdivision. The tax deed passes the property in fee to the county, the state, or political subdivision, free from all encumbrances except installments of special assessments certified to the county auditor or which may become due after the service of the notice of foreclosure of tax lien, a homestead credit for special assessments lien provided for in section 57-02-08.3, and an easement or right of way recorded with an effective date that precedes the date of official notice to the record titleholder which states that property taxes are delinquent and constitute a property lien. While the county, the state, or political subdivision holds title under a tax deed, it is not liable for the payment of any installments of special assessments which become due unless the board of county commissioners, the state, or political subdivision has leased or contracted to sell the property. A deed issued under this section is prima facie evidence of the truth and regularity of all facts and proceedings before the execution of the deed.

**SECTION 26. AMENDMENT.** Subsection 4 of section 61-01-01 of the North Dakota Century Code is amended and reenacted as follows:

4. All waters, excluding privately owned waters, in areas determined by the ~~state engineer~~department of water resources to be noncontributing drainage areas. A noncontributing drainage area is any area that does not contribute natural flowing surface water to a natural stream or watercourse at an average frequency more often than once in three years over the latest thirty-year period.

**SECTION 27. AMENDMENT.** Section 61-01-03 of the North Dakota Century Code is amended and reenacted as follows:

**61-01-03. Claims to the use of water initiated prior to and after March 1, 1905.**

In all cases of claims to the use of water initiated prior to March 1, 1905, the right ~~shall relate~~relates back to the initiation of the claim, upon the diligent prosecution to completion of the necessary surveys and construction for the application of the water to a beneficial use. ~~All claims~~Any claim to the use of water initiated after March 1, 1905, ~~shall relate~~relates back to the date of receipt of an application ~~therefor for the claim~~ in the office ~~of the state engineer~~department of water resources or the department's predecessor, subject to compliance with the applicable ~~provisions of law~~statutes, and the rules, and regulations established thereunder.

**SECTION 28. AMENDMENT.** Section 61-01-05 of the North Dakota Century Code is amended and reenacted as follows:

**61-01-05. Reclaiming waters turned into natural or artificial watercourse.**

Water turned into any natural or artificial watercourse by any party entitled to the use of ~~such~~the water may be reclaimed below and diverted ~~therefrom~~from the watercourse by ~~such~~the party, subject to existing rights, due allowance for losses being made, as determined by the ~~state engineer~~department of water resources.

**SECTION 29. AMENDMENT.** Section 61-01-06 of the North Dakota Century Code is amended and reenacted as follows:

**61-01-06. Watercourse - Definition.**

A watercourse entitled to the protection of the law is constituted if there is a sufficient natural and accustomed flow of water to form and maintain a distinct and a defined channel. ~~It is not essential that~~The supply of water should ~~is not required to~~ be continuous or from a perennial living source. ~~It is~~

~~enough~~The criteria for constituting a watercourse are satisfied if the flow arises periodically from natural causes and reaches a plainly defined channel of a permanent character. If requested by a water resource board, the ~~state engineer~~department of water resources shall determine ~~if whether~~ a watercourse is constituted.

**SECTION 30. AMENDMENT.** Section 61-01-25 of the North Dakota Century Code is amended and reenacted as follows:

**61-01-25. Penalty.**

Any person violating any of the provisions of this chapter or any rule or regulation of the ~~state engineer~~department of water resources for which another penalty is not specifically provided is guilty of a class B misdemeanor.

**SECTION 31. AMENDMENT.** Section 61-02-05 of the North Dakota Century Code is amended and reenacted as follows:

**61-02-05. Chairman of commission.**

The governor ~~shall be~~is the chairman of the commission. The governor shall designate a vice chairman ~~who shall be a member from the members~~ of the commission. The ~~state engineer shall be~~director of the department of water resources is the secretary of the commission.

**SECTION 32. AMENDMENT.** Section 61-02-14.2 of the North Dakota Century Code is amended and reenacted as follows:

**61-02-14.2. Commission contracts may be executed by ~~state engineer~~director.**

The ~~state engineer~~director of the department of water resources, or the ~~state engineer's~~director's authorized designee, may execute contracts approved by the commission.

**SECTION 33. AMENDMENT.** Section 61-02-23.3 of the North Dakota Century Code is amended and reenacted as follows:

**61-02-23.3. Construction and operation of the Devils Lake outlet - Authorization - Agreement.**

The state water commission may do all things reasonably necessary to construct an outlet from Devils Lake, including executing an agreement with the federal government ~~wherein~~in which the state water commission agrees to hold the United States harmless and free from damages, except for damages due to the fault or negligence of the United States or its contractors. The ~~state engineer~~director of the department of water resources may employ full-time personnel and ~~may employ~~employ ~~such~~ other personnel as ~~are~~are necessary for the operation and maintenance of the Devils Lake outlet within the limits of legislative appropriations for that purpose. Notwithstanding section 61-02-64.1, funds disbursed from the contract fund and appropriated for the purposes of this section may be used for salaries, equipment, operations, and maintenance costs relating to the Devils Lake outlet.

**SECTION 34. AMENDMENT.** Section 61-02-26 of the North Dakota Century Code is amended and reenacted as follows:

**61-02-26. Duties of state agencies concerned with intrastate use or disposition of waters.**

Every state officer, department, board, and commission ~~heretofore or hereafter~~ authorized by any law of this state to take any action, perform any duties, or make any contract ~~which concerns~~concerning the use or disposition of waters, or water rights, within the state first shall submit to the ~~state engineer~~department of water resources any plans, purposes, and contemplated action with respect to the use or disposition of ~~such~~the waters, and except as provided in this chapter, ~~shall~~must receive the consent and approval of the ~~state engineer~~department of water resources before making any agreement, contract, purchase, sale, or lease to carry into execution any works or projects authorized under the provisions of this chapter.

**SECTION 35. AMENDMENT.** Section 61-02-27 of the North Dakota Century Code is amended and reenacted as follows:

**61-02-27. Proposals with respect to use or disposition of waters to be presented to state engineerdepartment of water resources.**

All persons, ~~including corporations, limited liability companies, voluntary organizations, and associations,~~ when concerned with any agreement, contract, sale, or purchase, or the construction of any works or project which involves the use and disposition of any water or water rights, shall present to the ~~state engineerdepartment of water resources~~ all proposals with respect to the use or disposition of any such waters before making any agreement, contract, purchase, sale, or lease ~~in respect thereofregarding the waters.~~

**SECTION 36. AMENDMENT.** Section 61-02-30 of the North Dakota Century Code is amended and reenacted as follows:

**61-02-30. Commission acquiring water rights and administering provisions of chapter - Declaration of intention.**

In acquiring the rights and administering the terms of this chapter, the commission may initiate a right to waters of this state by executing a declaration in writing of the intention to store, divert, or control the unappropriated waters of a particular body, stream, basin, or source, designating and describing in general terms the waters claimed, means of appropriation, and location of proposed use, and shall cause ~~said notice~~the declaration to be filed in the ~~office of the state engineerdepartment of water resources.~~ The ~~state engineerdepartment~~ shall issue a conditional water permit to the commission consistent with the terms of the declaration of intention, which ~~shall vest~~vests in ~~such~~the commission on the date of the filing of ~~such~~the declaration. The commission also shall file in the ~~office of the state engineerdepartment~~ copies of ~~the~~the commission's plans and specifications involved in completing any project for the appropriation of water which ~~the~~the commission intends to construct. Except as provided by this section, water rights ~~shall~~must be acquired by any person, association, firm, corporation, limited liability company, municipality, or state or federal agency, department, or political subdivision in the manner provided by chapter 61-04.

**SECTION 37. AMENDMENT.** Section 61-02-32 of the North Dakota Century Code is amended and reenacted as follows:

**61-02-32. Modification of plans by commission regarding project to appropriate waters - Filing declaration of intention.**

~~Thelf~~ the commission, ~~if it shall modify~~ modifies its plans in connection with any proposed project ~~concerning~~for which the commission ~~shall have~~ filed a declaration of intention to appropriate waters, ~~the~~the commission shall file in the ~~office of the state engineerdepartment of water resources~~ a declaration releasing all or part of the waters affected by ~~such~~the declaration.

**SECTION 38. AMENDMENT.** Section 61-02-33 of the North Dakota Century Code is amended and reenacted as follows:

**61-02-33. Commission to file declaration of completion of appropriation with state engineerdepartment of water resources.**

Upon completing the construction of works and application to beneficial use of the waters described in the declaration provided in section 61-02-30, the commission shall file in the ~~office of the state engineerdepartment of water resources~~ a declaration of completion of the appropriation, reciting the matters contained in the original declaration of intention to appropriate and the conditional water permit for ~~such~~the works obtained from the ~~state engineerdepartment.~~

**SECTION 39. AMENDMENT.** Section 61-02-41 of the North Dakota Century Code is amended and reenacted as follows:

**61-02-41. Surveys for the diversion of waters.**

For the purpose of regulating the diversion of the natural flow of waters, employees of the state engineer department of water resources may enter upon the means and place of use of all appropriators for the purpose of making surveys of respective rights and seasonal needs.

**SECTION 40. AMENDMENT.** Section 61-02-68.10 of the North Dakota Century Code is amended and reenacted as follows:

**61-02-68.10. Execution and attestation of interim financing notes - Sale.**

The interim financing notes ~~shall~~must be executed by the chairman or the vice chairman of the commission and ~~shall be~~ attested by the signature of the ~~state engineer~~director of the department of water resources. The signature of the chairman or vice chairman, and the ~~state engineer~~director, and any other signatures on appurtenant coupons, may be facsimiles. The notes ~~shall~~must be sold at private or public sale in ~~such~~the manner, and at ~~such~~the rate of interest, and ~~at such~~ price as the commission ~~shall determine~~determines by resolution.

**SECTION 41. AMENDMENT.** Section 61-02.1-01 of the North Dakota Century Code is amended and reenacted as follows:

**61-02.1-01. Legislative findings and intent - Authority to issue bonds.**

1. The legislative assembly finds that some cities suffered serious economic and social injuries due to the major flood disaster in 1997 and other recent floods and are at significant risk for future flooding; that construction of flood control or reduction projects is necessary for the protection of health, property, and enterprises and for the promotion of prosperity and the general welfare of the people of the state; and that construction of any such projects involves and requires the exercise of the sovereign powers of the state and concerns a public purpose. ~~Therefore, it is declared~~It is necessary and in the public interest that the state by and through the state water commission assist in financing the costs of constructing flood control or reduction projects through the issuance of bonds.
2. The legislative assembly finds ~~that~~ continued construction of the southwest pipeline project is necessary for the protection of health, property, and enterprises and for the promotion of prosperity and the general welfare of the people of the state ~~and that continued construction of the southwest pipeline project, involves and requires the exercise of the sovereign powers of the state, and concerns a public purpose.~~ The legislative assembly also finds ~~that~~ current funding for the southwest pipeline project has become uncertain, and ~~therefore, it is declared~~ necessary and in the public interest ~~that~~ the state by and through the state water commission assist in financing the costs of continued construction of the southwest pipeline project through the issuance of bonds.
3. The legislative assembly finds ~~that~~ the Devils Lake basin is suffering and facing a worsening flood disaster; ~~that~~ construction of an outlet from Devils Lake is necessary for the protection of health, property, and enterprises and for the promotion of prosperity and the general welfare of the people of the state; and ~~that~~ construction of the outlet involves and requires the exercise of the sovereign powers of the state and concerns a public purpose. ~~Therefore, it is declared~~It is necessary and in the public interest that an outlet from Devils Lake be constructed with financing from the state water commission to provide flood relief to the Devils Lake basin.
4. The legislative assembly finds ~~that~~ there is a critical need to develop a comprehensive statewide water development program to serve the long-term water resource needs of the state and its people and to protect the state's current usage of, and the state's claim to, its proper share of Missouri River water.
5. In furtherance of the public purpose set forth in subsection 1, the state water commission may issue bonds under chapter 61-02, and the proceeds are appropriated for flood control projects

authorized and funded in part by the federal government and designed to provide permanent flood control or reduction to cities that suffered severe damages as a result of the 1997 flood or other recent floods and to repay the line of credit extended to the state water commission under S.L. 1999, ch. 535, § 4. The commission may issue bonds for a flood control or reduction project only:

a. When:

- (1) A flood control or reduction project involves a city that suffered catastrophic flood damage requiring evacuation of the major share of its populace;
- (2) A flood control or reduction project includes interstate features and requires acquisition of private property to build permanent flood protection systems to comply with federal flood protection standards;
- (3) The governing body of a city provides a written certification to the state water commission that the city has committed itself to contribute one-half or more of the North Dakota project sponsor's share of the nonfederal share of the cost to construct the project;
- (4) The United States army corps of engineers issues its approval of the flood control or reduction project;
- (5) A project cooperation agreement, which contains provisions acceptable to the ~~state engineer~~department of water resources and is approved by the governor, is entered by the state of Minnesota or one of its political subdivisions in which the flood control or reduction project is to be constructed;
- (6) A project cooperation agreement, which contains provisions acceptable to the ~~state engineer~~department of water resources and is approved by the governor, is entered by the state or one of its political subdivisions in which the flood control or reduction project is to be constructed;
- (7) The governing body of the city has approved a financing plan for all amounts of the nonfederal share of a flood control or reduction project in excess of the amounts to be paid by the state; and
- (8) ~~That the~~The flood control or reduction project is designed to be cost-effective, and ~~that~~ any impact on residential neighborhoods is minimized in an amount reasonably practicable as determined by the ~~state engineer~~department of water resources and approved by the governor;

b. When a flood control or reduction project in a city with a population as of the 1990 federal decennial census of at least eight thousand and not more than ten thousand has received significant federal funding through federal grants and funds from the United States army corps of engineers and the federal emergency management agency; or

c. When a flood control or reduction project in a city with a population as of the 1990 federal decennial census of at least four thousand five hundred and not more than six thousand has at least seventy percent of the land within the boundaries of the city located within the one hundred year floodplain as designated on a flood insurance rate map and the United States army corps of engineers issues its approval of the flood control or reduction project.

6. In furtherance of the public purpose set forth in subsection 2, the state water commission may issue bonds under chapter 61-02, and the proceeds are appropriated for construction of the southwest pipeline project and to repay the line of credit extended to the state water commission under S.L. 1999, ch. 535, § 4. The commission may ~~only~~ issue bonds under this

chapter for continued construction of the southwest pipeline project only when it is determined ~~that~~ the Perkins County water system will not make payment to the state water commission in the amount of four million five hundred thousand dollars or on January 1, 2000, whichever occurs earlier. If the Perkins County water system makes payment to the state water commission after January 1, 2000, the payment must be used to pay principal and interest on bonds issued for continued construction of the southwest pipeline project as provided in subsection 2 of section 61-02.1-04. If the Perkins County water system does not make payment to the state water commission, no benefits may accrue to the Perkins County water system.

7. In furtherance of the public purposes set forth in subsections 3 and 4, the state water commission may issue bonds under chapter 61-02 to finance the cost of one or more of the projects identified in this section.
8. This chapter does not affect the state water commission's authority to otherwise issue bonds pursuant to chapter 61-02 or section 61-24.3-01.
9. Notwithstanding this section, the state water commission may not issue bonds authorized under subsection 5 for a project unless federal funds have been appropriated for that project.

**SECTION 42.** Section 61-03-01.1 of the North Dakota Century Code is created and enacted as follows:

**61-03-01.1. Department of water resources established - Appointment and salary of director.**

The department of water resources is established and is the primary state water agency. The governor shall appoint a director of the department subject to approval by a majority of the members of the state water commission. The director may not engage in any other occupation or business that may conflict with the statutory duties of the director. The position of director of the department is not a classified position, and the state water commission shall set the salary of the director within the limits of legislative appropriations.

**SECTION 43.** Section 61-03-01.2 of the North Dakota Century Code is created and enacted as follows:

**61-03-01.2. Definitions.**

For purposes of this chapter, unless the context otherwise requires:

1. "Department" means the department of water resources.
2. "Director" means the director of the department.

**SECTION 44.** Section 61-03-01.3 of the North Dakota Century Code is created and enacted as follows:

**61-03-01.3. Director - State engineer- Powers and duties.**

1. The director shall:
  - a. Enforce all rules adopted by the department;
  - b. Hire a state engineer who is a qualified professional engineer, has appropriate hydrology experience, and will report to the director;
  - c. Hire other employees as necessary to carry out the duties of the department and director;
  - d. Organize the department in an efficient manner; and

- e. Take any other action necessary and appropriate for administration of the department.
- 2. The state engineer is responsible for and shall manage the department's oversight of dam safety, water appropriations, and construction and drainage permits, and associated technical duties related to public safety and property protection.

**SECTION 45. AMENDMENT.** Section 61-03-03 of the North Dakota Century Code is amended and reenacted as follows:

**61-03-03. ~~Auditing~~Approval of claims.**

All claims for services rendered, expenses incurred, or materials or supplies furnished under the direction of the ~~state engineer~~director and which are payable from the funds appropriated for the ~~prosecution of the work under the state engineer's~~director's direction and supervision shall ~~must~~ be approved by the ~~state engineer~~director before payment.

**SECTION 46. AMENDMENT.** Section 61-03-04 of the North Dakota Century Code is amended and reenacted as follows:

**61-03-04. Biennial report.**

The ~~state engineer~~director may submit a biennial report to the governor and the secretary of state in accordance with section 54-06-04.

**SECTION 47. AMENDMENT.** Section 61-03-06 of the North Dakota Century Code is amended and reenacted as follows:

**61-03-06. Records of state engineer ~~Open to public Contents Certified copies as evidence~~the department.**

The records of the ~~office of the state engineer~~department are public records, ~~shall remain on file in the state engineer's office, and shall be open to the inspection of the public at all times during business hours. Such~~The records shall ~~must~~ show in full all permits, certificates of completion of construction, and licenses issued, together with all ~~action~~actions taken on permits and licenses, and all ~~action~~actions or decisions of the ~~state engineer~~department affecting any rights or claims to appropriate water. Certified copies of any records or papers on file in the office of the state engineer shall be evidence equally with the originals thereof, and when introduced as evidence shall be held as of the same validity as the originals.

**SECTION 48. AMENDMENT.** Section 61-03-08 of the North Dakota Century Code is amended and reenacted as follows:

**61-03-08. Duty of state engineer to cooperate with boards of county commissioners when requested.**

~~Whenever requested so to do~~When asked by the ~~a~~a board of county commissioners of any county of this state, the ~~state engineer~~department shall cooperate with ~~such~~the board in the engineering work required to lay out, establish, and construct any drain to be used by any county ~~or counties~~ or portions of the same for the purpose of ~~diverting a county to divert~~ floodwaters, lakes, or watercourses, and in general shall aid and assist the counties of this state in making preliminary surveys and establishing systems of drainage.

**SECTION 49. AMENDMENT.** Section 61-03-10 of the North Dakota Century Code is amended and reenacted as follows:

**61-03-10. Custodian of government plats.**

The ~~state engineer shall be~~department is the custodian of all plats, field notes, and similar records that have been or hereafter may be turned over provided to the state by the federal government entity.

Suitable rooms shall be provided in the capitol building containing vaults for fireproof protection and the safekeeping of such the records, and free access to any such field notes, maps, records, and other papers for the purpose of taking extracts therefrom or making copies thereof without charge of any kind, shall be allowed to all officers or employees of the United States during office hours must be provided to the department.

**SECTION 50. AMENDMENT.** Section 61-03-12 of the North Dakota Century Code is amended and reenacted as follows:

**61-03-12. Attorney general and state's attorney advisers of state engineer to provide legal counsel.**

The attorney general, and the state's attorney of the county in which legal questions arise, shall be the legal advisers of the state engineer, and shall perform any and all legal duties necessary in connection with the state engineer's work, provide legal counsel for the department without compensation other than their salaries as fixed by law, except when otherwise provided.

**SECTION 51. AMENDMENT.** Section 61-03-13 of the North Dakota Century Code is amended and reenacted as follows:

**61-03-13. Rules and regulations made by state engineer - Modification Rulemaking authority.**

The state engineer shall make all general department may adopt rules necessary to carry into effect out the duties devolving upon the state engineer's office, and may change the same from time to time of the department. All such The department shall amend rules relating to applications for permits to appropriate water, for the inspection of works, for the issuance of licenses, and for the determination of rights to the use of water shall be modified by the state engineer, if required to do so by a vote of the state water commission.

**SECTION 52. AMENDMENT.** Section 61-03-14 of the North Dakota Century Code is amended and reenacted as follows:

**61-03-14. Modification State water commission votes on modifications of rules and regulations of engineer voted upon only upon appeal from engineer.**

The modification of the rules and regulations of the state engineer provided for in section 61-03-13 shall be voted upon by the The state water commission may vote on a modification of a department rule which is required under section 61-03-13 only on an appeal from a decision of the state engineer director.

**SECTION 53. AMENDMENT.** Section 61-03-15 of the North Dakota Century Code is amended and reenacted as follows:

**61-03-15. Hydrographic surveys and investigations made by state engineer the department - Cooperating with federal agencies.**

The state engineer department shall make hydrographic surveys and investigations of each stream system and source of water supply in the state, beginning with those most used for irrigation, and shall obtain and record all available data for the determination, development, and adjudication appropriation of the water supply of the state. The state engineer department may cooperate with the agencies of the federal government engaged in similar surveys and investigations and in, or the construction of works for the development and use of the water supply of the state, expending for such purposes any money available for the work of the state engineer's office. The state engineer may accept and use, in connection with the operation of the state engineer's department, the results of the work of the agencies of the government and may expend funds appropriated to the department for that purpose.

**SECTION 54. AMENDMENT.** Section 61-03-16 of the North Dakota Century Code is amended and reenacted as follows:

**61-03-16. Suit for adjudication of water rights.**

~~Upon the completion of a hydrographic survey of any stream system, the state engineer department shall deliver a copy thereof, together with copies of the survey and all data necessary for the determination of all rights to the use of the waters of such the system; to the attorney general of the state, who, within sixty days thereafter, shall enter suit on behalf of the state for the determination of all rights to the use of such the water; and shall prosecute the same to proceed with the litigation until a final adjudication of the rights. If private parties initiated the suit for the adjudication of such rights shall have been begun by private parties, the attorney general shall not be required to bring suit, except that the attorney general shall intervene in any the suit for the adjudication of rights to the use of water, on behalf of the state, if notified by the state engineer that, in the state engineer's opinion, the public interest requires such action if the department notifies the attorney general intervening is necessary to protect the interests of the state.~~

**SECTION 55. AMENDMENT.** Section 61-03-17 of the North Dakota Century Code is amended and reenacted as follows:

**61-03-17. Parties to and costs of suit for adjudication of water rights.**

~~In any suit for the determination of a right to the use of the waters of any stream system, all who persons that claim the right to use such the waters shall must be made parties. When any suit has been filed, the court, by its order duly entered, shall direct the state engineer to make or furnish, and the department shall provide the court a complete hydrographic survey of such the stream system as is provided in this chapter, in order to obtain all data necessary to the determination of the rights involved. The cost of such the suit, including the litigation and survey costs on behalf of incurred by the state, and of such surveys, shall must be charged against to each of the private parties thereto to the suit in proportion to the amount of the water right allotted.~~

**SECTION 56. AMENDMENT.** Section 61-03-18 of the North Dakota Century Code is amended and reenacted as follows:

**61-03-18. Hydrographic survey fund - Use - Payments.**

~~The hydrographic survey fund, a permanent fund, shall may be used only for the payment of the expenses of the surveys ordered by the court as provided in required under section 61-03-17. All claims for services rendered, expenses incurred, or materials or supplies furnished under the direction of the state engineer in the prosecution of such department for the surveys shall must be approved by the state engineer department. The amounts paid by the private parties to such suits, on account of such under section 61-03-17 for the surveys, shall must be paid to the state treasurer, who shall credit the same to such payments to the hydrographic survey fund, which shall continue to be available for advancing the expenses of such surveys, as ordered by the court from time to time.~~

**SECTION 57. AMENDMENT.** Section 61-03-19 of the North Dakota Century Code is amended and reenacted as follows:

**61-03-19. Decree adjudicating water rights - Filing - Contents.**

~~Upon the adjudication of the rights to the use of the waters of a stream system, a certified copy of the decree shall must be prepared by the clerk of the court, at the cost of the parties, and shall must be filed in the office of the state engineer department. Such decree, in every case, shall The decree must declare as to the water right adjudged to each party, the priority, amount, purpose, and place of use, and, as to water used for irrigation, the specific tracts of land to which it shall be the right is appurtenant, together with such any other conditions as may be necessary to define the right and its the priority of the right.~~

**SECTION 58. AMENDMENT.** Section 61-03-20 of the North Dakota Century Code is amended and reenacted as follows:

**61-03-20. State engineer to cooperate Cooperation with United States geological survey in making topographic maps.**

The ~~state engineer~~department may confer with the director of the United States geological survey and may accept the ~~cooperation of the United States with this state in the execution of~~ execute topographic surveys and maps of this state. The ~~state engineer~~department may arrange with the director or other authorized representative of the United States geological survey concerning the details of such ~~work~~the surveys or maps, the method of its execution, and the order in which ~~these~~the surveys and maps of different parts of the state shall ~~be~~are undertaken. In any such work, the director of the United States geological survey shall agree to ~~expend on the part of the United States upon said work a~~ sum equal to that appropriated by the state from time to time for this purpose. In arranging these details the state engineer, in addition to such other provisions as the state engineer may deem wise, shall require that the maps resulting from this survey show the outlines of all counties, towns, and extensive wooded areas, as existing on the ground at the time of the execution of the survey, the location of all railways, roads, streams, canals, lakes, and rivers, and contain contour lines showing the elevation and depression for at least every twenty feet [6.10 meters] in vertical interval of the surface of the country. The resulting map must recognize wholly the cooperation of the state of North Dakota and, as each manuscript sheet of the map is completed, the United States geological survey should furnish the state engineer with photographic copies of the same. As the engraving on each sheet is completed, the director shall furnish the state engineer with transfers from the copperplates of the same.

**SECTION 59. AMENDMENT.** Section 61-03-21 of the North Dakota Century Code is amended and reenacted as follows:

**61-03-21. State engineer may require Plans of operation for reservoirs - Adequate structure.**

Every operator of a water storage reservoir in North Dakota having a capacity of more than one thousand acre-feet [1233481.84 cubic meters] annually shall ~~annually~~file with the department, between the first and fifteenth day of February, ~~file with the state engineer~~ an operating plan for ~~such~~the reservoir for the calendar year in which the ~~same~~plan is filed. The operator of any ~~such~~the reservoir shall be required to cooperate with the ~~state engineer to the end that~~department to make all water releases shall be compatible with the best interest of the greatest number of downstream water users and affected landowners. In the event that the ~~state engineer~~department declares an emergency to exist in connection with the operation of any ~~such~~the reservoir, the operator thereof shall promptly shall submit to the ~~state engineer~~department a separate interim operating plan therefor in addition to the annual reservoir operating plan herein required for the reservoir. ~~Such~~The interim operating plan shall then must be coordinated and integrated with the suggestions and plans of the ~~state engineer~~department to best serve the affected ~~interests~~persons during ~~such~~the emergency. The ~~state engineer~~department may also require ~~such~~reservoir operators to maintain adequate structures and to operate them in a manner that ~~will~~to prevent waste, promote the beneficial use of water, and not endanger the general health and welfare of persons affected ~~thereby~~by the reservoirs. In the event ~~such~~if an operator fails to maintain and operate adequate structures in the manner provided in this section, the ~~state engineer~~department shall set a place and time for hearing and shall serve notice upon ~~such~~the operator to show cause at ~~such time and place~~ why the operator's water permit should not be ~~declared terminated and canceled~~. A copy of any order ~~terminating or canceling~~ ~~such~~the water right shall must be filed in the office of the recorder in the county or counties where the land to which the right is appurtenant is located. An appeal may be taken from the decision of the ~~state engineer~~department in accordance with the provisions of chapter 28-32.

**SECTION 60. AMENDMENT.** Section 61-03-21.1 of the North Dakota Century Code is amended and reenacted as follows:

**61-03-21.1. Inspection by state engineerdepartment.**

~~Whenever the state engineer~~When the department is authorized or mandated by law to inspect or investigate an alleged violation of a statute under this title, the ~~state engineer~~ shall have the authority

~~the department may enter upon land for the purposes of conducting such an inspection or investigation. Except in emergency situations as determined by the state engineer department, the state engineer department shall request written permission from the landowner to enter the property. If the landowner refuses to give written permission, or fails to respond within five days of the request, the state engineer department may request the district court of the district containing the property for an order authorizing the state engineer department to enter the property to inspect or investigate the alleged violation.~~

**SECTION 61. AMENDMENT.** Section 61-03-21.2 of the North Dakota Century Code is amended and reenacted as follows:

**61-03-21.2. Removal or modification of unsafe or unauthorized works.**

If the ~~state engineer pursuant to the state engineer's authority under this title~~ department determines that works are unsafe or unauthorized, the ~~state engineer department~~ shall notify the landowners by registered mail at the landowner's last-known post-office address of record. A copy of the notice ~~must~~ also ~~must~~ be sent to any tenant, if the ~~state engineer department~~ has actual knowledge of the fact that a tenant exists. The notice must specify the nature and extent of the noncompliance, ~~and~~ the modifications necessary for compliance, and must state that if the works are not modified or removed within the period stated in the notice, but not less than thirty days, the ~~state engineer department~~ shall cause the removal or modification of the works and assess the cost ~~thereof~~ the removal or modification, or ~~such a portion of the cost as the state engineer shall determine~~ department determines, against the property of the landowner responsible. The notice ~~also~~ must also state that the affected landowner may, ~~demand in writing a hearing on the matter within fifteen days of the date the notice is mailed, demand, in writing, a hearing upon the matter.~~ The request for a hearing must state with particularity the issues, facts, and points of law to be presented at the hearing. If the ~~state engineer department~~ determines the issues, facts, and law to be presented are well-founded and are not frivolous, and the request for a hearing was not made merely to interpose delay, the ~~state engineer department~~ shall set a hearing date without undue delay. In ~~the event of an emergency, the state engineer department immediately~~ may immediately apply to the appropriate district court for an injunction prohibiting the landowner or tenant from constructing or maintaining the works, or ordering the landowner to remove or modify the works. Any assessments levied under ~~the provisions of this section~~ must be collected in the same manner as other assessments authorized by this title. If, in the opinion of the ~~state engineer director~~, more than one landowner or tenant has been responsible, the costs may be assessed on a pro rata basis in proportion to the responsibility of the landowners. Any person aggrieved by ~~action a decision~~ of the ~~state engineer department~~ under ~~the provisions of this section~~ may appeal the decision of the ~~state engineer~~ to the district court of the county in which the land is located in accordance with ~~the procedures provided under chapter 28-32.~~ A hearing ~~as provided for in~~ under this section is a prerequisite to an appeal, unless the hearing was denied by the ~~state engineer department~~.

For purposes of this section, the term "works" includes dams, dikes, wells, or other devices for water conservation, flood control, regulation, storage, diversion, or carriage of water.

**SECTION 62. AMENDMENT.** Section 61-03-21.3 of the North Dakota Century Code is amended and reenacted as follows:

**61-03-21.3. Removal, modification, or destruction of dangers in, on the bed of, or adjacent to navigable waters.**

1. If the ~~state engineer department~~ finds that buildings, structures, boat docks, debris, or other manmade objects, except a fence or corral, situated in, on the bed of, or adjacent to waters that have been determined to be navigable by a court are, or are likely to be, a menace to life or property or public health or safety, the ~~state engineer department~~ may issue an order to the person responsible for the object. If the ~~state engineer department~~ issues an order, the order must specify the nature and extent of the conditions, the action necessary to alleviate, avert, or minimize the danger, and a date by which that action must be taken. If the ~~state~~

~~engineerdepartment~~ determines that an object covered by flood insurance is likely to be a menace to life or property or public health or safety, the date specified in the order for action to be taken may not precede the date on which the person is eligible to receive flood insurance proceeds. If a building, structure, boat dock, debris, or other manmade object, except a fence or corral, is partially or completely submerged due to the expansion of navigable waters, the person responsible is the person who owns or had control of the property on which the object is located or the person who owned or had control of the property immediately before it became submerged by water.

2. If the action is not taken by the date specified, but not less than twenty days from the date of service of the notice, the ~~state engineerdepartment~~ may cause the action to be taken. The ~~state engineerdepartment~~ may require the action to be taken in less than twenty days if an emergency exists.
3.
  - a. The ~~state engineerdepartment~~ may bring an action to enforce an order of the ~~state engineerdepartment~~, or if the ~~state engineerdepartment~~ causes the action to be taken, the ~~state engineerdepartment~~ may:
    - a. (1) Assess the costs of taking ~~such~~the action, or ~~such~~a portion of the costs as the ~~state engineerdepartment~~ determines, against any property of the person responsible; or
    - b. (2) Bring a civil action against the person responsible to recover the costs incurred in taking the action.
  - b. If the ~~state engineerdepartment~~ chooses to recover costs by assessing the cost against property of the person responsible and the property is insufficient to cover the costs incurred, the ~~state engineerdepartment~~ may bring a civil action to recover any costs not recovered through the assessment process. Any assessments levied under this section must be collected in the same manner as other real estate taxes are collected and paid. Any costs recovered must be deposited in the fund from which the expenses were paid.
4. A person who receives an order, within ten days of the date of service of the order, may demand, in writing, a hearing on the matter. The demand for a hearing must state with particularity the issues, facts, and points of law to be presented at the hearing. If the ~~state engineerdepartment~~ determines the issues, facts, and law to be presented are well-founded and not frivolous, and the request for a hearing was not made merely to interpose delay, the ~~state engineerdepartment~~ shall set a hearing date without undue delay.
5. In ~~the event of~~ an emergency, the ~~state engineerdepartment~~ ~~immediately~~ may ~~immediately~~ apply to the district court of the county in which the property is located for an injunction ordering the person responsible to modify, remove, abate, or otherwise eliminate the dangerous condition.
6. Any person aggrieved by the action of the ~~state engineerdepartment~~ may appeal the decision to the district court of the county in which the land is located in accordance with chapter 28-32. A hearing ~~as provided for in~~under this section is a prerequisite to an appeal unless the hearing was denied by the ~~state engineerdepartment~~.
7. If the ~~state engineerdepartment~~ has issued an order under this section with regard to a building, structure, boat dock, debris, or other manmade object that the ~~state engineerdepartment~~ has determined is likely to be a menace to life or property or public health or safety, and it later becomes known that the object would not have become a menace, a person who has taken action required by the ~~state engineer's~~ order is entitled to compensation in an amount equal to the value of any property destroyed and reasonable costs incurred as a result of complying with the ~~state engineer's~~ notice from the department.
8. Any person claiming compensation for the destruction of property or costs incurred under subsection 7 must file a claim with the ~~state engineerdepartment~~ in the form and manner

required by the ~~state engineer department~~. Unless the amount of compensation is agreed to between the claimant and the ~~state engineer department~~, the amount of compensation must be calculated in the same manner as compensation due for taking of property pursuant to the condemnation laws of this state. In determining compensation, the proceeds of any flood or other insurance or any other kind of compensatory payments must be subtracted from the amount paid.

**SECTION 63. AMENDMENT.** Section 61-03-21.4 of the North Dakota Century Code is amended and reenacted as follows:

**61-03-21.4. Economic analysis process required for certain projects.**

The ~~state engineer department of water resources~~ shall develop an economic analysis process for water conveyance projects and flood-related projects expected to cost more than one million dollars, and a life cycle analysis process for municipal water supply projects. When the state water commission is considering whether to fund a water conveyance project, flood-related project, or water supply project, the ~~state engineer department of water resources~~ shall review the economic analysis or life cycle analysis, and inform the state water commission of the findings from the analysis and review.

**SECTION 64. AMENDMENT.** Section 61-03-22 of the North Dakota Century Code is amended and reenacted as follows:

**61-03-22. Hearing - Appeals from decision of ~~state engineer department~~.**

Any person aggrieved by an action or decision of the ~~state engineer department~~ under this title has the right to a hearing. The ~~state engineer department~~ must receive ~~the~~ request for a hearing within thirty days after the aggrieved person knew or reasonably should have reasonably known of the action or decision. Once a hearing has been held or if the hearing request is denied, the person aggrieved has the right to petition for reconsideration or appeal under chapter 28-32.

**SECTION 65. AMENDMENT.** Section 61-03-23 of the North Dakota Century Code is amended and reenacted as follows:

**61-03-23. Penalties - Civil.**

1. In addition to criminal sanctions that may be imposed pursuant to law, a person who violates any provision of this title or any rules adopted under this title may be assessed a civil penalty not to exceed twenty-five thousand dollars for each day the violation occurred and continues to occur and may be required by the ~~state engineer department~~ to forfeit any right to the use of water. The civil penalty for violation of an irrigation appropriation permit may not exceed five thousand dollars for each day the violation occurred and continues to occur. The civil penalty or forfeiture of a right to use water may be adjudicated by the courts or by the ~~state engineer department~~ through an administrative hearing under chapter 28-32.
2. If a civil penalty levied by the ~~state engineer department~~ after an administrative hearing is not paid within thirty days after a final determination ~~that~~ the civil penalty is owed, the civil penalty may be assessed against the property of the landowner responsible for the violation leading to the assessment of the penalty. The assessment must be collected as other assessments made under this title are collected. Notwithstanding ~~the provisions of~~ section 57-20-22, all interest and penalties due on the assessment must be paid to the state. Any civil penalty assessed under this section must be in addition to any costs incurred by the ~~state engineer department~~ for enforcement of the order.

**SECTION 66. AMENDMENT.** Section 61-03-24 of the North Dakota Century Code is amended and reenacted as follows:

**61-03-24. Pending administrative actions and permits.**

If an applicant for any permit processed by the ~~state engineer~~department has an unresolved administrative order or complaint under this title, the permit ~~will~~may not be processed until the order is complied with or complaint is resolved. At the ~~state engineer's~~ discretion of the department, the permit may be processed if issuing the permit would resolve the administrative order or complaint. If an applicant is not an individual, this section applies if the applicant is at least twenty-five percent owned by an individual with an unresolved administrative order or complaint under this title.

**SECTION 67. AMENDMENT.** Section 61-03-25 of the North Dakota Century Code is amended and reenacted as follows:

**61-03-25. Emergency action plan - High-hazard or medium-hazard dam.**

The owner of a high-hazard or medium-hazard dam shall develop, periodically test, and update an emergency action plan to be implemented if there is an emergency involving the dam. The emergency action plan and any subsequent updates must be submitted to the ~~state engineer~~department for approval.

**SECTION 68. AMENDMENT.** Section 61-04-01 of the North Dakota Century Code is amended and reenacted as follows:

**61-04-01. Petitions, reports, surveys, and other documents filed with the commission.**

Any petitions, applications, surveys, reports, orders, or other documents provided for in this chapter must be filed with the commission in Bismarck, where they must be kept on file under the control of the ~~state engineer~~director of the department of water resources.

**SECTION 69. AMENDMENT.** Subsection 1 of section 61-04-01.1 of the North Dakota Century Code is amended and reenacted as follows:

1. "Adjudicative proceeding" means an appeal under chapter 28-32 of a recommended decision prepared by the ~~state engineer~~director of the department of water resources for a water permit application.

**SECTION 70. AMENDMENT.** Subsection 15 of section 61-04-01.1 of the North Dakota Century Code is amended and reenacted as follows:

15. "Perfected water permit" means a water permit where the water appropriated under a conditional water permit has been applied to a beneficial use and the ~~state engineer~~department of water resources has inspected the works to verify all conditions have been met.

**SECTION 71. AMENDMENT.** Section 61-04-02 of the North Dakota Century Code is amended and reenacted as follows:

**61-04-02. Permit for beneficial use of water required.**

Any person, before commencing any construction for the purpose of appropriating waters of the state or before taking waters of the state from any constructed works, shall first secure a water permit from the ~~state engineer~~department of water resources unless ~~such~~the construction or taking from ~~such~~the constructed works is for domestic or livestock purposes or for fish, wildlife, and other recreational uses or unless otherwise provided by law. However, immediately upon completing any constructed works for domestic or livestock purposes or for fish, wildlife, and other recreational uses, the water user shall notify the ~~state engineer~~department of water resources of the location and acre-feet [1233.48 cubic meters] capacity of ~~such~~the constructed works, dams, or dugouts. Regardless of proposed use, ~~however~~, all water users, except those reusing fossil byproduct water, shall secure a water permit prior to constructing an impoundment capable of retaining more than twelve and one-half acre-feet [15418.52 cubic meters] of water or the construction of a well from which more than twelve

and one-half acre-feet [15418.52 cubic meters] of water per year will be appropriated. If a permit is not required of a landowner or the landowner's lessee to appropriate less than twelve and one-half acre-feet [15418.52 cubic meters] of water from any source for domestic or livestock purposes or for fish, wildlife, and other recreational uses, those appropriators may apply for water permits in order to clearly establish a priority date, and the ~~state engineer~~department of water resources may waive any fee or hearing for ~~such~~the applications. An applicant for a water permit to irrigate need not be the owner of the land to be irrigated.

**SECTION 72. AMENDMENT.** Section 61-04-02.1 of the North Dakota Century Code is amended and reenacted as follows:

**61-04-02.1. Emergency or temporary authorization.**

The ~~state engineer~~department of water resources may authorize emergency or temporary use of water for periods not to exceed twelve months if the ~~state engineer~~department determines ~~such~~the use will not be to the detriment of existing rights. The ~~state engineer~~department shall establish by rule a separate procedure for the processing of applications for emergency or temporary use. ~~No prescriptive or~~Prescriptive and other rights to the use of water ~~shall~~may not be acquired by use of water as authorized ~~herein~~in this section.

**SECTION 73. AMENDMENT.** Section 61-04-02.2 of the North Dakota Century Code is amended and reenacted as follows:

**61-04-02.2. Property interest required to hold a water permit.**

A permitholder ~~shall~~must have a legal interest in each point of diversion identified on the permit. If the permitholder does not have a legal interest in each point of diversion, the ~~state engineer~~department of water resources shall assign the permit, or portion of the permit, as provided in this chapter to the title owner.

A permitholder ~~shall~~must have a legal interest in each irrigated tract of land identified on the permit. If the permitholder does not have a legal interest in each irrigated tract of land, the permitholder may transfer the approved acres to other land, as provided in this chapter.

**SECTION 74. AMENDMENT.** Section 61-04-03 of the North Dakota Century Code is amended and reenacted as follows:

**61-04-03. Water permit application - Contents - Information to accompany.**

A permit application to make beneficial use of any waters of the state must be in the form required by the rules established by the ~~state engineer~~department of water resources. The rules ~~shall~~must prescribe the form and contents of, and the procedure for filing, the application. The application, along with all other information filed with it, must be retained with the commission after approval or disapproval of the application. The ~~state engineer~~department of water resources may require additional information not provided for in the general rules if the ~~state engineer~~department deems it ~~to be~~the information necessary.

**SECTION 75. AMENDMENT.** Section 61-04-03.1 of the North Dakota Century Code is amended and reenacted as follows:

**61-04-03.1. Limitation on amount of water.**

~~An individual~~An applicant may not apply for a permit or permits for irrigation which, if approved, would enable ~~the individual~~a person, at any one time, to hold a conditional water permit or permits for more than seven hundred twenty acre-feet [888106.75 cubic meters] of water ~~which~~that has not been applied to beneficial use. Applications submitted in violation of this section may not be assigned a priority date and must be returned to the applicant by the ~~state engineer~~department of water resources. This section may not apply to water permit applications from the Missouri River or to applications

submitted by irrigation districts organized pursuant to this title. For the purposes of this section, ~~an individual means any person, including the person's "person", when applied to an individual, means the individual and the individual's spouse and dependents within the meaning of the Internal Revenue Code [26 U.S.C. 152].~~

**SECTION 76. AMENDMENT.** Section 61-04-04 of the North Dakota Century Code is amended and reenacted as follows:

**61-04-04. Filing and correction of application.**

The date of receipt of the application provided for in section 61-04-03 in the commission ~~shall~~must be noted on the application. If the application is defective as to form, incomplete, or otherwise unsatisfactory, it must be returned with a statement of the corrections, amendments, or changes required, within thirty days after its receipt, and sixty days must be allowed for refiling. If the application is corrected as required and is refiled within the time allowed, ~~the application,~~ upon being accepted, must take priority as of the date of its original filing. Any corrected application filed after the time allowed must be treated in all respects as an original application received on the date of its refiling. The application may be amended by the applicant at any time prior to the commencement of administrative action by the ~~state engineer~~department of water resources as provided in sections 61-04-05 through 61-04-06.3.

**SECTION 77. AMENDMENT.** Section 61-04-04.1 of the North Dakota Century Code is amended and reenacted as follows:

**61-04-04.1. Application fees.**

The following fees must accompany a conditional water permit application and must be paid by the ~~state engineer~~department of water resources into the resources trust fund of the state treasury:

- |   |         |
|---|---------|
| 1. For municipal or public use  | \$500   |
| 2. For irrigation use   | \$500   |
| 3. For industrial use of one acre-foot [1233.48 cubic meters] or less   | \$250   |
| 4. For industrial use in excess of one acre-foot [1233.48 cubic meters] | \$1,000 |
| 5. For recreation, livestock, or fish and wildlife                      | \$100   |
| 6. Water permit amendment   | \$100   |

**SECTION 78. AMENDMENT.** Section 61-04-04.2 of the North Dakota Century Code is amended and reenacted as follows:

**61-04-04.2. Refund of water permit application fees.**

The ~~state engineer~~department of water resources may refund a water permit application fee, upon the request of the applicant, if the application is withdrawn by the applicant, and:

1. The ~~state engineer~~department has not published notice of the application; or
2. The ~~state engineer~~department determines other good and sufficient cause exists to refund the application fee.

**SECTION 79. AMENDMENT.** Section 61-04-04.3 of the North Dakota Century Code is amended and reenacted as follows:

**61-04-04.3. Rejection of applications.**

If the ~~state engineer~~department of water resources determines a conditional water permit application does not meet this chapter's requirements or the rules in North Dakota Administrative Code article 89-03, the ~~state engineer~~department shall reject the application and decline to order the publication of notice of application.

**SECTION 80. AMENDMENT.** Section 61-04-05 of the North Dakota Century Code is amended and reenacted as follows:

**61-04-05. Notice of application - Contents - Proof - Failure to file satisfactory proof.**

When an application is filed which complies with this chapter and the rules adopted under this chapter, the ~~state engineer~~department of water resources shall instruct the applicant to:

1. Give notice of the application by certified mail in the form prescribed by rule, to all record title owners of real estate within a radius of one mile [1.61 kilometers] from the location of the proposed water appropriation site, except:
  - a. If the one-mile [1.61-kilometer] radius extends within the geographical boundary of a city, the notice must be given to the governing body of the city and no further notice need be given to the record title owners of real estate within the geographical boundary of the city.
  - b. If the one-mile [1.61-kilometer] radius includes land within the geographical boundary of a rural subdivision where the lots are of ten acres [4.04 hectares] or less, the notice must be given to the governing body of the township or other governing authority for the rural subdivision and no further notice need be given to the record title owners of real estate within the geographical boundary of the rural subdivision.
  - c. If the one-mile [1.61-kilometer] radius includes a single tract of rural land which is owned by more than ten individuals, the notice must be given to the governing body of the township or other governing authority for that tract of land and no further notice need be given to the record title owners of that tract.
2. Give notice of the application by certified mail in the form prescribed by rule to all persons holding water permits for the appropriation of water from appropriation sites located within a radius of one mile [1.61 kilometers] from the location of the proposed water appropriation site. The ~~state engineer~~department of water resources shall provide a list of all persons who must be notified under this subsection to the applicant.
3. Give notice of the application by certified mail in the form prescribed by rule to all municipal or public use permitholders within a twelve-mile [19.32-kilometer] radius of the proposed water appropriation site. The ~~state engineer~~department of water resources shall provide a list of all municipal or public use permitholders that must be notified under this subsection to the applicant.
4. Provide the ~~state engineer~~department of water resources with an affidavit of notice by certified mail within sixty days from the date of the ~~engineer's~~department's instructions to provide notice. If the applicant fails to file satisfactory proof of notice by certified mail within sixty days and in compliance with the applicable rules, the ~~state engineer~~department shall treat the application as an original application filed on the date of receipt of the affidavit of notice by certified mail in proper form. If a properly completed affidavit of notice is not submitted within one hundred twenty days, the ~~state engineer~~department shall consider the application withdrawn. Upon receipt of a proper affidavit of notice by certified mail, the ~~state engineer~~department shall publish notice of the application, in a form prescribed by rule, in the official newspaper of the county in which the proposed appropriation site is located, once a week for two consecutive weeks.

5. The notice must give all essential facts as to the proposed appropriation, including the places of appropriation and of use, amount of water, the use, the name and address of the applicant, and the date by which written comments and requests for an informational hearing regarding the proposed appropriation must be filed with the state engineer department of water resources. The notice also must ~~also~~ state that anyone who files written comments with the state engineer department will be mailed the state engineer's department's recommended decision on the application. Persons filing written comments will become a party of record to the application. The comment deadline is five p.m. on the first business day thirty days after the first published notice in the official county newspaper as specified in subsection 4.
6. The applicant shall pay all costs of the publication of notice.

**SECTION 81. AMENDMENT.** Section 61-04-05.1 of the North Dakota Century Code is amended and reenacted as follows:

**61-04-05.1. Comments - Hearing.**

1. Comments regarding a proposed appropriation must be in writing and filed by the date specified by the state engineer department of water resources under subsection 5 of section 61-04-05. The comments must state the name and mailing address of the person filing the comments. Comment letters submitted electronically must state the name and mailing address of the person filing the comments, and must be signed by the submitter to be considered valid and part of the official record.
2. A person filing written comments also may ~~also~~ request an informational hearing on the application by the date specified by the state engineer department of water resources under subsection 5 of section 61-04-05. If a request for an informational hearing is made and if the state engineer department determines an informational hearing is necessary to obtain additional information to evaluate the application or to receive public input, the state engineer department shall designate a time and place for the informational hearing and serve a notice of hearing upon the applicant and any person who filed written comments. Service must be made in the manner allowed for service under the North Dakota Rules of Civil Procedure at least twenty days before the hearing.
3. If two or more municipal or public use permitholders request the informational hearing to be held locally, the state engineer department of water resources shall hold the hearing in the county seat of the county in which the proposed water appropriation site is located.
4. The state engineer department of water resources shall consider all written comments received and testimony presented at an informational hearing, if held, and shall make a recommended decision in writing. The recommended decision must be mailed to the applicant and any party of record and may constitute:
  - a. Approval of all or a portion of the application, with the remainder held in abeyance or denied;
  - b. Denial of the application; or
  - c. Deferral of the application.
5. Within thirty days of service of the recommended decision, the applicant and any party of record who would be aggrieved by the decision may file additional written comments with the state engineer department of water resources or request an adjudicative proceeding on the application, or both. A request for an adjudicative proceeding must be made in writing and must state with particularity how the person would be aggrieved by the decision and the issues and facts to be presented at the proceeding. If a request for an adjudicative proceeding is not made, the state engineer department shall consider the additional comments, if any are submitted, and issue a final decision. If a request for an adjudicative proceeding is made, and

if the ~~state engineer department~~ determines an adjudicative proceeding is necessary, the ~~state engineer department~~ shall designate a time and place for the adjudicative proceeding and serve the notice of adjudicative proceeding upon the applicant and any person who filed written comments. Service must be made in the manner allowed for service under the North Dakota Rules of Civil Procedure at least twenty days before the hearing.

**SECTION 82. AMENDMENT.** Section 61-04-06 of the North Dakota Century Code is amended and reenacted as follows:

**61-04-06. Criteria for issuance of permit.**

1. The ~~state engineer department of water resources~~ shall issue a permit if the ~~state engineer department~~ finds all of the following:
  - a. The rights of a prior appropriator will not be unduly affected.
  - b. The proposed means of diversion or construction are adequate.
  - c. The proposed use of water is beneficial.
  - d. The proposed appropriation is in the public interest. In determining the public interest, the ~~state engineer department~~ shall consider all of the following:
    - (1) The benefit to the applicant resulting from the proposed appropriation.
    - (2) The effect of the economic activity resulting from the proposed appropriation.
    - (3) The effect on fish and game resources and public recreational opportunities.
    - (4) The effect of loss of alternate uses of water that might be made within a reasonable time if not precluded or hindered by the proposed appropriation.
    - (5) Harm to other persons resulting from the proposed appropriation.
    - (6) The intent and ability of the applicant to complete the appropriation.
2. Subsection 1 of section 28-32-38 does not apply to water permit application proceedings unless a request for an adjudicative proceeding is made. If an application is approved, the ~~state engineer department of water resources~~ shall issue a conditional water permit allowing the applicant to appropriate water. However, the commission, by resolution, may reserve unto itself final approval authority over any specific water permit in excess of five thousand acre-feet [6167409.19 cubic meters].

**SECTION 83. AMENDMENT.** Section 61-04-06.1 of the North Dakota Century Code is amended and reenacted as follows:

**61-04-06.1. Preference in granting permits.**

When there are competing applications for water from the same source, and the source is insufficient to supply all applicants, the ~~state engineer department of water resources~~ shall adhere to the following order of priority:

1. Domestic use.
2. Municipal or public use.
3. Livestock use.
4. Irrigation use.

5. Industrial use.
6. Fish, wildlife, and other recreational uses.

**SECTION 84. AMENDMENT.** Section 61-04-06.2 of the North Dakota Century Code is amended and reenacted as follows:

**61-04-06.2. Terms of permit.**

The ~~state engineer~~department of water resources may issue a conditional water permit for less than the amount of water requested. Except for water permits for incorporated municipalities or rural water systems, the ~~state engineer~~department may not issue a permit for more water than can be beneficially used for the purposes stated in the application. Water permits for incorporated municipalities or rural water systems may contain water in excess of present needs based upon what may reasonably be necessary for the future water requirements of the municipality or the rural water system. The ~~state engineer~~department may require modification of the plans and specifications for the appropriation. The ~~state engineer~~department may issue a permit subject to fees for water use and conditions the ~~state engineer~~department considers necessary to protect the rights of others and the public interest. The fees must be used by the department for planning, research, and administration required to regulate the allocation and appropriation of the waters of the state. Conditions must be related to matters within the ~~state engineer's~~department's jurisdiction. All conditions attached to any permit issued before July 1, 1975, are binding upon the permit holder.

**SECTION 85. AMENDMENT.** Section 61-04-06.3 of the North Dakota Century Code is amended and reenacted as follows:

**61-04-06.3. Priority.**

Priority in time gives the superior water right. Priority of a water right acquired under this chapter dates from the filing of an application with the ~~state engineer~~department of water resources, except for water applied to domestic or livestock purposes, or fish, wildlife, and other recreational uses in which case the priority date must relate back to the date when the quantity of water in question was first appropriated, unless otherwise provided by law.

Priority of appropriation does not include the right to prevent changes in the condition of water occurrence, such as the increase or decrease of streamflow, or the lowering of a water table, artesian pressure, or water level, by later appropriators, if the prior appropriator can acquire reasonably the prior appropriator's water under the changed conditions.

**SECTION 86. AMENDMENT.** Section 61-04-07.2 of the North Dakota Century Code is amended and reenacted as follows:

**61-04-07.2. Conditional water permit application denial.**

If the ~~state engineer~~department of water resources determines an application or any portion of an application does not meet the criteria prescribed in section 61-04-06 for any reason other than sufficient information or data is lacking to allow for sound decisionmaking of the impacts of the proposed diversion on the prior appropriators, the resource, or the public interest, the application or portion must be denied.

**SECTION 87. AMENDMENT.** Section 61-04-07.3 of the North Dakota Century Code is amended and reenacted as follows:

**61-04-07.3. Conditional water permit application deferral.**

If the ~~state engineer~~department of water resources determines an application or any portion of an application does not meet the criteria prescribed in section 61-04-06 because sufficient information or data is lacking to allow for sound decisionmaking of the impacts of the proposed diversion on the prior appropriators, the resource, or the public interest, the conditional water permit application must be

placed in a deferred status. The applicant must be notified by mail the application has been placed in deferred status.

**SECTION 88. AMENDMENT.** Section 61-04-09 of the North Dakota Century Code is amended and reenacted as follows:

**61-04-09. Application to beneficial use - Inspection - Perfected water permit.**

After the permit's beneficial use date, or upon notice from the permitholder that water has been applied to a beneficial use, the ~~state engineer~~department of water resources shall notify the conditional water permitholder and inspect the works. The inspection must determine the safety, efficiency, and actual capacity of the works. If the works are not constructed properly and safely ~~constructed~~, the ~~state engineer~~department may require the necessary changes to be made within a reasonable time. Failure to make the changes within the time prescribed by the ~~state engineer~~department ~~shall cause~~will result in postponement of the permit's priority date to the date the changes are made to the satisfaction of the ~~state engineer~~department. Any intervening application submitted before the date the changes are made will have the benefit of the postponement of priority. When the works are constructed properly and safely ~~constructed~~ and inspected, the ~~state engineer~~department shall issue the perfected water permit, setting forth the actual capacity of the works and the limitations or conditions upon the water permit as stated in the conditional water permit authorized by section 61-04-06.2. All conditions attached to any permit issued before July 1, 1975, are binding upon the permitholder.

**SECTION 89. AMENDMENT.** Section 61-04-11 of the North Dakota Century Code is amended and reenacted as follows:

**61-04-11. Inspection of works.**

If the ~~state engineer~~department of water resources, in the course of the ~~state engineer's~~department's duties, finds any works used for the storage, diversion, or carriage of water are unsafe and a menace to life or property, the ~~state engineer~~department shall notify the owner or the owner's agent, specifying the changes necessary and allowing a reasonable time for putting the works in safe condition. Upon the request of any party, accompanied by the estimated cost of inspection, the ~~state engineer~~department shall inspect any alleged unsafe works. If ~~they shall be~~the works are found unsafe by the ~~state engineer~~department, the money deposited by the party must be refunded, and the fees for inspection must be paid by the owner of ~~such~~the works. If ~~the fees are not paid by~~the owner of the works does not pay the fees within thirty days after the decision of the ~~state engineer~~department, ~~they~~the fees must be a lien against any property of the owner, and ~~must be recovered by a suit instituted by~~shall initiate a suit to recover the fees from the owner at the request of the ~~state engineer~~department. The ~~state engineer~~, when in the ~~state engineer's~~department's opinion it is ~~necessary~~department may inspect any works under construction for the storage, diversion, or carriage of water and may require any changes necessary to secure ~~their~~the safety of the works. The fees for the inspection must be a lien on any property of the owner and must be subject to collection as provided in this chapter but neither the United States nor the state of North Dakota nor any government agency may be required to pay such fees.

**SECTION 90. AMENDMENT.** Section 61-04-12 of the North Dakota Century Code is amended and reenacted as follows:

**61-04-12. Use of unsafe works - Penalty.**

Any person using works for the storage, diversion, or carriage of water, ~~at any time~~ after an inspection ~~thereof~~of the works by the ~~state engineer~~department of water resources and receipt of notice from the ~~state engineer~~department that the ~~same~~works are unsafe for the purpose for which ~~they~~the works are used, and ~~until~~before the receipt of notice from the ~~state engineer~~department that in the ~~state engineer's~~department's opinion ~~they~~the department deems the works to have been made safe, shall be guilty of a class A misdemeanor.

**SECTION 91. AMENDMENT.** Section 61-04-14 of the North Dakota Century Code is amended and reenacted as follows:

**61-04-14. Extending time for application to beneficial use.**

The ~~state engineer~~department of water resources may extend the time for the application of water to the beneficial use cited in the conditional water permit for good cause shown. When the time has expired, the ~~state engineer~~department may renew and extend the ~~same time~~ upon application; ~~provided, however,~~ However, a conditional water permit, or any portion of the application must be considered forfeited if no request for renewal is received by the ~~state engineer~~department within sixty days after the date the permitholder is informed the period for applying water to the beneficial use cited in the conditional water permit has expired. If a request to extend the time for application to beneficial use for any conditional water permit, or portion of the permit, is denied, the conditional water permit, or portion of the permit, must be considered forfeited. Sections 61-04-23 through 61-04-25 do not apply to this section.

**SECTION 92. AMENDMENT.** Section 61-04-15 of the North Dakota Century Code is amended and reenacted as follows:

**61-04-15. Assignment of conditional or perfected water permit.**

Any conditional or perfected water permit may be assigned only upon approval by the ~~state engineer~~department of water resources. Upon reasonable proof the assignment can be made without detriment to existing rights, the ~~state engineer~~department shall assign the water permit without losing priority of any right previously established. The transfer of title to land in any manner ~~whatsoever~~ must carry with it all rights to the use of water for irrigation of the land, except any conditional or perfected water permit for irrigation purposes must be assigned in accordance with this section.

**SECTION 93. AMENDMENT.** Section 61-04-15.2 of the North Dakota Century Code is amended and reenacted as follows:

**61-04-15.2. Add a point of diversion.**

A permitholder may add a point of diversion to a conditional or perfected permit without affecting the priority date, if approved by the ~~state engineer~~department of water resources. Applications to add a point of diversion must be processed and evaluated in the same manner as a conditional water permit application. The ~~state engineer~~department may approve the additional point of diversion if the proposed addition will not adversely affect the rights of other appropriators.

**SECTION 94. AMENDMENT.** Section 61-04-15.3 of the North Dakota Century Code is amended and reenacted as follows:

**61-04-15.3. Transfer of approved irrigated acreage.**

A permitholder may transfer acres approved for irrigation on a conditional or perfected water permit to any tract of land owned or leased by the permitholder without affecting the priority date, if approved by the ~~state engineer~~department of water resources. The ~~state engineer~~department shall cause the water permit involved to be simultaneously severed and transferred from ~~such~~the land.

**SECTION 95. AMENDMENT.** Section 61-04-15.4 of the North Dakota Century Code is amended and reenacted as follows:

**61-04-15.4. Change in purpose of use.**

A permitholder may change the purpose of use of a conditional or perfected water permit without affecting the priority date, if approved by the ~~state engineer~~department of water resources. Applications for a change in the purpose of use must be processed and evaluated in the same manner as a conditional water permit application. A change in the purpose of use may be authorized only for a superior use as determined by the order of priority in section 61-04-06.1. The ~~state engineer~~department

may approve the proposed change if the proposed change will not adversely affect the rights of other appropriators.

**SECTION 96. AMENDMENT.** Section 61-04-23 of the North Dakota Century Code is amended and reenacted as follows:

**61-04-23. Cancellation of water rights - Inspection of works.**

Any appropriation of water must be for a beneficial use, and when the appropriator fails to apply it to the beneficial use cited in the permit or ceases to use it for the beneficial use cited in the permit for three successive years, unless the failure or cessation of use has been due to the unavailability of water, a justifiable inability to complete the works, or other good and sufficient cause, the ~~state engineer~~department of water resources may cancel the water permit or right. For purposes of this chapter, an incorporated municipality or rural water system has good and sufficient cause excusing the failure to use a water permit, if the water permit reasonably may be necessary for the future water requirements of the municipality or the rural water system. The ~~state engineer~~department of water resources, as often as necessary, shall examine the condition of all works constructed or partially constructed within the state and compile information concerning the condition of every water permit or right and all ditches and other works constructed or partially constructed under the permit or right.

**SECTION 97. AMENDMENT.** Subsection 1 of section 61-04-24 of the North Dakota Century Code is amended and reenacted as follows:

1. If it appears any water appropriation or portion of an appropriation has not been used for a beneficial use, or having been so used at one time has ceased to be used for that purpose for more than three successive years, unless the failure or cessation of use is due to the unavailability of water, a justifiable inability to complete the works, or other good and sufficient cause, the ~~state engineer~~department of water resources shall set a place and time for a hearing. For purposes of this chapter, an incorporated municipality or a rural water system has good and sufficient cause excusing the failure to use a water permit, if the water permit reasonably may be necessary for the future water requirements of the municipality or the rural water system. Any permitholder using water from a common source of supply, any applicant for a permit to use water from a common source of supply, or any interested party may request the ~~state engineer~~department of water resources to conduct a hearing to cancel any unused water rights to the common source of supply. Any decision of the ~~state engineer~~department in denying a request for a hearing may be appealed in accordance with chapter 28-32. Prior to the hearings, the ~~state engineer~~department shall serve notice upon the permitholder and upon the owners of land benefited by the appropriation or works, except where the lands benefited are within the geographical boundaries of a city, in which case notice must be given to the governing body of the city, to show cause by a time and at a place why the water appropriation or a portion of the appropriation should not be canceled.

**SECTION 98. AMENDMENT.** Section 61-04-25 of the North Dakota Century Code is amended and reenacted as follows:

**61-04-25. Cancellation of water rights - Hearing - Appeal.**

At the hearing the recommended decision of the ~~state engineer~~department of water resources is prima facie evidence for cancellation of the water permit or portion of the permit. If no one appears at the hearing, the water permit or portion must be canceled. If interested parties appear and contest the cancellation, the ~~state engineer~~department shall hear the evidence and, if it appears ~~that~~ the water has not been put to a beneficial use, or, having been ~~se-used~~put to a beneficial use at one time, has ceased to be used for the purpose for more than three successive years, unless the failure or cessation of use is due to the unavailability of water, a justifiable inability to complete the works, or other good and sufficient cause, the permit, or a portion of the permit, must be canceled. For purposes of this chapter, an incorporated municipality or a rural water system has good and sufficient cause excusing the failure to use a water permit, if the water permit reasonably may be necessary for the future water

requirements of the municipality or the rural water system. An appeal may be taken from the decision of the ~~state engineer~~department in accordance with chapter 28-32.

**SECTION 99. AMENDMENT.** Section 61-04-26 of the North Dakota Century Code is amended and reenacted as follows:

**61-04-26. Recorder to record water permit or order affecting water right.**

A water permit may be recorded as any other instrument affecting the title to real property without acknowledgment or further proof. The order canceling a water right, or portion of a water right must be filed by the ~~state engineer~~department of water resources with the county recorder where the affected land is located, and ~~it shall be~~ recorded as any other instrument affecting the title to real property without acknowledgment or further proof. Any document filed under this section must be listed in the index of the property affected as provided in section 11-18-07.

**SECTION 100. AMENDMENT.** Section 61-04-27 of the North Dakota Century Code is amended and reenacted as follows:

**61-04-27. Information filed with ~~state engineer~~department of water resources - Installation of measuring devices.**

By March thirty-first of each year, permit holders shall file with the ~~state engineer~~department of water resources, on forms supplied by the ~~state engineer~~department, water use and other information as the ~~state engineer~~department requires. The ~~state engineer~~department also may require permit holders to install measuring devices conforming to the ~~state engineer's~~department's specifications, at all points specified by the ~~state engineer~~department.

**SECTION 101. AMENDMENT.** Section 61-04-28 of the North Dakota Century Code is amended and reenacted as follows:

**61-04-28. Correction of application or water right by ~~state engineer~~department of water resources.**

Upon proof satisfactory to the ~~state engineer~~department of water resources that a water permit application or water permit contains a nonmaterial error, the ~~state engineer~~department, by written notice to the holder of the affected water permit or application, may correct the error without publication of notice.

**SECTION 102. AMENDMENT.** Section 61-04-29 of the North Dakota Century Code is amended and reenacted as follows:

**61-04-29. Enforcement.**

The ~~state engineer~~department of water resources has full power and authority to institute, maintain, and prosecute to determination in an administrative proceeding or any of the courts of this state, or in any of the federal courts, any and all actions, suits, and special proceedings that may be necessary to enjoin unauthorized use of water, enforce an order of the ~~state engineer~~department or the commission, or otherwise administer the provisions of this chapter. Notwithstanding any other provision of law, the ~~state engineer~~department of water resources may issue administrative orders requiring the immediate cessation of water use when the ~~state engineer~~department has a reasonable belief the use is unauthorized or continued use will damage the rights of prior appropriators.

**SECTION 103. AMENDMENT.** Section 61-04-30 of the North Dakota Century Code is amended and reenacted as follows:

**61-04-30. Penalty.**

A person who constructs works for an appropriation, or diverts, impounds, withdraws, or uses a significant amount of water from any source without a permit specifically authorizing such action, except

as otherwise provided in section 61-04-02; who violates an order of the ~~state engineer~~department of water resources; who fails or refuses to install meters, gauges, or other measuring devices or to control works; who violates an order establishing corrective controls for an area or for a source of water; who violates the terms of the permit; or who knowingly makes a false or misleading statement in a declaration of existing rights is guilty of a class A misdemeanor. As used in this section, "significant amount of water" means any amount of water in excess of that allowed in a valid water permit, or any amount of water in excess of the needs for domestic and livestock purposes where no permit has been issued. The ~~state engineer~~department of water resources shall inform the tax commissioner of violations of industrial use permits.

**SECTION 104. AMENDMENT.** Section 61-04-31 of the North Dakota Century Code is amended and reenacted as follows:

**61-04-31. Reservation of waters - Public hearing - Notice.**

1. Whenever it appears necessary to the ~~state engineer~~department of water resources, or when directed by the commission, the ~~state engineer~~department may ~~by regulation~~ reserve and set aside waters by regulation for beneficial use in the future.
  - a. Before the adoption of a regulation under this section, the ~~state engineer~~department shall conduct a public hearing in each county where waters relating to the regulation are located. At least seven days before the date set for the public hearing, a notice must be published in the official county newspapers within each of the counties.
  - b. Regulations adopted hereunder are subject to chapter 28-32.
2. When sufficient information or data is lacking to allow for sound decisionmaking on a water permit application, the ~~state engineer~~department of water resources may withdraw various waters of the state from additional appropriations until sufficient data or information is available. Water permit applications pending from these sources will be placed in a deferred status.

**SECTION 105. AMENDMENT.** Section 61-04.1-04 of the North Dakota Century Code is amended and reenacted as follows:

**61-04.1-04. North Dakota atmospheric resource board created - Membership.**

~~There is created a~~

1. The North Dakota atmospheric resource board ~~which shall be~~ is a division of the state water commission. The board is composed of the director of the state aeronautics commission, a representative of the department of environmental quality, the ~~state engineer~~director of the department of water resources, and one additional board member from each of seven districts established by section 61-04.1-05. The governor shall ~~initially~~ appoint one board member for each of the seven districts from a list of three candidates given to the governor by weather modification authorities in each district ~~and~~:
  - 1- a. When the term of office of any board member from any district is about to expire.
  - 2- b. When a vacancy has occurred, or is about to occur, in the term of office of a board member from any district for any reason other than expiration of term of office.
2. Beginning on July 1, 1983, the term of office for the board ~~shall~~must be arranged so ~~that not less no fewer~~ than three nor more than four terms shall expire on the first day of July of each odd-numbered year. ~~Therefore, board members appointed on July 1, 1983, from districts II, IV, and VI shall serve for two year terms, and board members appointed on July 1, 1983, from districts I, III, V, and VII shall serve for four year terms. Thereafter, board~~Board members from each district shall serve for a four-year term of office except in the event the governor shall

~~appoint~~appoints a member for an unexpired term, in which case the member shall serve only for the unexpired portion of the term. ~~In the event~~If any district fails to furnish a list to the governor, or if there are no weather modification authorities under this chapter within a district, the governor shall appoint a board member of the governor's choice residing within ~~such~~the district.

**SECTION 106. AMENDMENT.** Subsection 3 of section 61-05-01 of the North Dakota Century Code is amended and reenacted as follows:

3. "Irrigable acres" or "irrigable lands" means those lands which can or will be served by the district's works, as determined by the ~~state engineer~~department of water resources before the district is organized, or as determined from time to time by the district's board of directors. Whenever land or acreage is described as being susceptible of irrigation or subject to assessment, it means the same as irrigable acres.

**SECTION 107. AMENDMENT.** Section 61-05-07 of the North Dakota Century Code is amended and reenacted as follows:

**61-05-07. Petition for a proposed irrigation district - Where filed - Signed by whom - Contents.**

A petition for a proposed irrigation district ~~shall~~must be filed with the ~~state engineer~~department of water resources and ~~shall be~~ signed by landowners of the proposed district who together ~~shall~~ own a majority of the whole number of acres [hectares] subject to assessment for construction or other costs within the district requesting the territory described in ~~such~~the petition be organized under the provisions of this chapter. ~~Such~~The territory ~~shall~~must be described and ~~shall be~~ included in ~~such~~the district, if established, by legal governmental subdivisions of forty acres [16.19 hectares] or more unless held in fractional lots or plotted units of lesser size, or unless portions ~~thereof~~of the territory are more readily susceptible to irrigation from works other than those of the proposed district. The proposed district may include lands ~~which~~that are not contiguous to any other lands in the proposed district. ~~Such~~The petition ~~shall set forth~~must include the name and address of each petitioner and a description of the petitioner's land, and ~~the petition shall have attached thereto~~ a map or maps showing the boundaries of the proposed district must be attached to the petition.

**SECTION 108. AMENDMENT.** Section 61-05-08 of the North Dakota Century Code is amended and reenacted as follows:

**61-05-08. Petition accompanied by map - Contents - Scale.**

The petition provided for in section 61-05-07 ~~shall~~must be accompanied by a map or maps of the proposed district. The map ~~shall~~must show the location of the proposed conveyance systems and other works ~~by means of which it is intended to be used to~~ irrigate the lands of the proposed district. If the water supply is from a natural stream, the flow of ~~such~~the stream ~~shall~~must be stated in cubic feet [meters] per second. If the water supply for the district is to be gathered by a storage reservoir ~~or~~ reservoirs, the map ~~shall~~must show the location ~~thereof~~of the storage reservoir and ~~shall state their~~the reservoir's capacity in acre-feet. If the water supply is from a ground water source, the map must show the general location of wells and proposed pumping rates. Unless otherwise permitted by the ~~state engineer~~department of water resources, ~~such~~the map ~~shall~~must be drawn to a scale of not less than two inches [5.08 centimeters] to the mile [1.61 kilometers]. Preliminary designs of all proposed conveyance systems and other works ~~shall~~must be prepared in sufficient detail to show the contemplated method of construction, along with a feasibility report on the proposed plan of irrigation. The feasibility report must include an analysis of the soil and water compatibility of the irrigable lands of the proposed district. A registered professional engineer shall prepare the map, preliminary designs, and feasibility report required by this section.

**SECTION 109. AMENDMENT.** Section 61-05-09 of the North Dakota Century Code is amended and reenacted as follows:

**61-05-09. Petition accompanied by bond - Approval of bond - Certified copy of petition filed.**

Unless otherwise permitted by the ~~state engineer~~department of water resources, the petition ~~shall~~must be accompanied by a good and sufficient bond to be approved by the ~~state engineer, which shall~~department of water resources. The bond must be in double the amount of the probable cost of organizing ~~such~~the district, including the cost of the first election for the organization of the district ~~and shall~~. The bond also must be conditioned that the sureties will pay all costs in case ~~said~~the organization ~~shall not be~~is not approved by the electors. Within ten days after the filing of ~~such~~the petition, and the approval of ~~such~~the bond, the ~~state engineer~~department of water resources shall file a copy of ~~such~~the petition with the county auditor of each county ~~wherein~~in which the proposed irrigation district is situated.

**SECTION 110. AMENDMENT.** Section 61-05-10 of the North Dakota Century Code is amended and reenacted as follows:

**61-05-10. Hearing on petition - Notice - Report prepared by state engineer on feasibility - Copy of report filed - Submitted to electors.**

The ~~state engineer~~department of water resources shall examine the petition, maps, papers, and data pertaining to the proposed irrigation district and shall fix a time and place for hearing ~~such~~the petition. A notice stating ~~that such~~the petition will be heard, and stating the time and place of hearing, ~~shall~~must be filed with the county auditor of each county ~~wherein~~such in which the proposed district is located. The notice ~~shall~~must be published once each week for two consecutive weeks in the ~~newspaper or~~ newspapers of general circulation where the district is located and in the official newspaper of each county in which the district is located. The date set for the hearing on the petition may not be less than twenty days after the first publication of the notice. ~~Prior to such~~Before the hearing the ~~state engineer~~department shall review the maps, preliminary designs, and feasibility study and shall prepare, or shall cause to be prepared, a summary report showing the probable cost of the proposed irrigation works and the practicability and feasibility of the plan of irrigation suggested or proposed by petitioners for the irrigation of the lands within ~~such~~the district. A copy of ~~such~~the report ~~shall~~must be filed with the county auditor of each county ~~wherein~~in which the proposed irrigation district is situated, and ~~such~~the report ~~shall~~must be open to public inspection. The ~~state engineer~~department of water resources also shall submit ~~such~~the report to the electors of the proposed district at the meeting set for hearing the petition for the organization ~~thereof~~of the proposed district.

**SECTION 111. AMENDMENT.** Section 61-05-11 of the North Dakota Century Code is amended and reenacted as follows:

**61-05-11. Amendment of plan of irrigation - Adjournment of hearing by state engineer**~~department of water resources~~.

At the hearing provided in section 61-05-10, the ~~state engineer~~department of water resources may amend the plan of irrigation proposed in the petition provided in section 61-05-07. The ~~state engineer~~department may adjourn ~~such~~the hearing from time to time and may make ~~such~~ changes in the proposed boundaries of the district as the ~~state engineer shall deem~~department deems advantageous and advisable, but the boundaries of the district proposed in the petition for its organization ~~shall~~may not be enlarged or extended until the electors who own a majority of the acres [hectares] of land subject to assessments for construction or other costs to be included in the extension ~~having in writing consented thereto~~to the enlargement or extension in writing.

**SECTION 112. AMENDMENT.** Section 61-05-12 of the North Dakota Century Code is amended and reenacted as follows:

**61-05-12. State engineer**~~Department of water resources~~ may make order denying petition - Filing.

If the ~~state engineer shall determine that~~department of water resources determines the plan of irrigation proposed is not practicable or ~~that such plan is~~not economically sound, the state

~~engineer~~department shall make an order denying the petition for the organization of an irrigation district and shall state the reasons for the action. A copy of ~~such~~the order shall must be filed with the county auditor of each county in which the proposed irrigation district is situated.

**SECTION 113. AMENDMENT.** Section 61-05-13 of the North Dakota Century Code is amended and reenacted as follows:

**~~61-05-13. State engineer to make order~~Order establishing irrigation district - Calling election - Dividing district - Contents of order.**

1. If the ~~state engineer finds and~~department of water resources determines that the establishment of the proposed irrigation district is advisable, and that the plan proposed for irrigating the lands ~~therein~~in the proposed district is practicable and economically sound, the ~~state engineer~~department shall make an order establishing the irrigation district, subject to the approval of the electors of the district at an election called by the ~~state engineer~~department for that purpose.
2. If the district embraces more than twenty thousand irrigable acres [8093.72 irrigable hectares] of land, the ~~state engineer~~department by the order shall divide the district into five or seven divisions or precincts as the ~~state engineer~~department determines necessary for the convenience of the electors of the district. The divisions or precincts must be numbered and as nearly equal in size as ~~may be deemed practicable, the divisions must be numbered, and one.~~ One director must be elected from, and by the electors of, each division. If an elector owns land in more than one division, the elector ~~must~~shall cast all the elector's votes for director and ~~be~~is eligible for election as a director in the division in which the majority of the elector's land subject to assessment lies.
3. The department's order must set forth:
  1. a. The time and place of holding the election.
  2. b. The boundaries of the district.
  3. c. That a petition sufficient in form and substance was filed with the ~~state engineer~~department of water resources.
  4. d. That due and reasonable notice of time and place of hearing on petition was given to the qualified electors of the proposed irrigation district.
4. A copy of the order must be filed with the county auditor of each county in which the irrigation district is situated. The order is prima facie evidence of the matter and facts therein stated.

**SECTION 114. AMENDMENT.** Section 61-05-14 of the North Dakota Century Code is amended and reenacted as follows:

**~~61-05-14. Notice of election by state engineer - Contents - Publication.~~**

Upon making an order establishing an irrigation district, the ~~state engineer~~department of water resources shall give notice of an election to be held in ~~such~~the district ~~for the purpose of determining whether or not to determine whether~~ the electors of the district approve the establishment and organization ~~thereof as an of~~ the irrigation district. The notice shall must state that an elector desiring to be a candidate for the office of district director shall file the elector's name with the ~~state engineer~~department of water resources not less than twenty days before ~~such~~the election. The notice shall must carry a reference to the map or maps previously filed with the county auditor describing the boundaries of the lands included in the district as established by the ~~state engineer~~department and shall designate a name for ~~such~~the district. The notice shall must be filed with the county auditor of each county in which the proposed district is situated and shall be published once each week for two consecutive weeks in the ~~newspaper or~~ newspapers of general circulation where the district is located

and in the official newspaper of each county in which the district is located. The date set for the election ~~shall~~must be not less than twenty-five, nor more than thirty-five, days after the first publication of the notice.

**SECTION 115. AMENDMENT.** Section 61-05-15 of the North Dakota Century Code is amended and reenacted as follows:

**61-05-15. Form of notice of election.**

The notice of election provided for in section 61-05-14 must be substantially in the following form:

NOTICE OF ELECTION

Notice is given that on \_\_\_\_\_, \_\_\_\_\_, an election will be held for the purpose of submitting to the electors within the territory established and described by the order of the ~~state engineer~~department of water resources as \_\_\_\_\_ irrigation district, the question ~~as to~~ whether the order of the ~~state engineer~~department of water resources establishing the irrigation district is approved. Notice is given that the lands of the district are ~~fully~~ described fully in the order of the ~~state engineer~~department of water resources establishing the district and filed in the ~~state engineer's~~department's office in Bismarck, North Dakota, and in the office of the county auditor of \_\_\_\_\_ County, North Dakota. The ballot must be in the following form:

FOR IRRIGATION DISTRICT

Yes

No

Notice is further given that a board consisting of \_\_\_\_\_ directors will be elected, one from each district division, ~~who will~~to serve as provided by law after the establishment of the district is approved. Polls will be open from one p.m. to seven p.m. Notice is further given that any elector desiring to be a candidate for the office of district director and to have the elector's name appear on the ballot ~~must~~shall file the elector's request in writing with the ~~state engineer~~department of water resources not less than twenty days before the election.

Dated \_\_\_\_\_, \_\_\_\_\_.

Signed \_\_\_\_\_

State EngineerDirector of the Department of Water Resources

**SECTION 116. AMENDMENT.** Section 61-05-16 of the North Dakota Century Code is amended and reenacted as follows:

**61-05-16. ~~State engineer~~Department of water resources to appoint clerk and two judges of election - Filling vacancies on board.**

Prior to the holding of an election upon the question of establishing and organizing an irrigation district, the ~~state engineer~~department of water resources shall appoint from the electors of the district one clerk and two judges ~~who shall~~to constitute a board of election for ~~such~~the district. If the district is divided into divisions or precincts, ~~such~~the board of election ~~shall~~must be appointed from the electors of each ~~such~~ division and shall serve as a board of election ~~therein~~for the district. If the members appointed do not attend at the opening of the polls on the day of election, the electors present at that hour may choose the members of the election board or fill the place of an absent member ~~thereof~~of the election board.

**SECTION 117. AMENDMENT.** Section 61-05-17 of the North Dakota Century Code is amended and reenacted as follows:

**61-05-17. Conduct of election - Votes canvassed by board and state engineer department of water resources - Retaining ballots.**

An election upon the question of organizing an irrigation district ~~shall~~must be conducted in accordance with the general election laws of the state. After the polls are closed, the election board shall proceed to canvass the votes cast ~~thereat~~, and the clerk of the election board shall certify to the state engineer department of water resources the result of ~~such~~the election. The clerk of the board then shall wrap securely the ballots cast at ~~such~~the election and shall express or mail the ~~same~~secured ballots by registered or certified mail to the state engineer department, which also shall canvass the ballots and verify the result. The state engineer department shall file and retain in the state engineer's department's office the ballots cast at ~~such~~the election.

**SECTION 118. AMENDMENT.** Section 61-05-18 of the North Dakota Century Code is amended and reenacted as follows:

**61-05-18. Election governing organization of district - Filing record of election - Certificates of election to directors.**

~~If, upon a canvass of the votes cast and after such~~After the canvass of votes has been verified by the state engineer department of water resources, if a majority of all votes cast are in favor of the organization of an irrigation district, the state engineer department, by an order, shall declare ~~such~~the territory duly organized as an irrigation district under the name and style designated and shall declare the persons receiving the highest number of votes duly elected as directors. The state engineer department shall cause a certified copy of ~~such~~the order, ~~duly certified~~, to be filed immediately for record in the office of the recorder of each county in which any portion of the irrigation district is situated and also shall file a copy of ~~such~~the order with the county auditor of each ~~such~~county, and ~~from and after the date of such filing, the organization of such district shall be complete~~county in which any portion of the district is situated. The organization of the district is complete upon the filings required in this section. The state engineer department of water resources immediately shall make out and mail, by registered or certified mail, to each person elected to the office of director a certificate of election signed by the state engineer. ~~The directors thereupon shall enter upon the duties of their office~~director of the department, and the directors shall take office upon receipt of the certification.

**SECTION 119. AMENDMENT.** Section 61-05-19 of the North Dakota Century Code is amended and reenacted as follows:

**61-05-19. State engineer Department of water resources to file order with secretary of state - Secretary of state to make certificate - Evidence.**

The state engineer department of water resources shall file in the office of the secretary of state a certified copy, ~~duly certified by the state engineer~~, of the state engineer's department's order declaring any territory to be duly organized as an irrigation district, and the secretary of state shall make and issue to the state engineer department a certificate under the seal of the state, of the due organization of ~~such~~the district and The secretary of state also shall file in the secretary's office a copy of such the secretary's certificate and the said order of the state engineer department. ~~Such~~The certificate of the secretary of state, or a copy ~~thereof~~of the certificate, authenticated by the secretary of state, ~~shall be~~is prima facie evidence of the organization and existence of ~~such~~the irrigation district.

**SECTION 120. AMENDMENT.** Section 61-05-20 of the North Dakota Century Code is amended and reenacted as follows:

**61-05-20. Appeal to district court from orders and decisions of the state engineer department of water resources - Time - Undertaking.**

An appeal may be taken to the district court from any order or decision of the state engineer department of water resources by any person who is aggrieved ~~thereby~~by the order or decision, at any time within thirty days after the order or decision ~~appealed from~~ has been filed with the county auditor of the county in which the appeal is taken. ~~Such appeal shall~~The appeal must be taken

by serving notice of appeal on the ~~state engineer~~director of the department of water resources and by filing the notice of appeal, proof of service ~~thereof~~of the notice, and the undertaking required in this section with the clerk of the district court of the county in which the appeal is taken. To effect an appeal an undertaking must be executed by the appellant and sufficient surety conditioned that the appellant will prosecute ~~such~~the appeal without delay and will pay all costs adjudged against the appellant in the district court. ~~Such~~The undertaking ~~shall~~must be made in favor of the ~~state engineer~~department of water resources as obligee and may be enforced by the ~~state engineer~~department. The appeal ~~shall~~must be taken to the district court of the county in which the land claimed to be affected adversely by the order or decision appealed from is situated ~~and if such~~. If the land is situated in more than one county, ~~such~~the appeal may be taken to the district court of any county in which any part of ~~such~~the land is situated. Any appeal ~~thus taken shall~~taken under this section must be docketed in the district court as any civil cause commenced in the district court is docketed ~~and thereupon the~~. The district court has and shall ~~have and~~ exercise original jurisdiction in ~~such cause, the appeal~~ and shall hear and ~~determine the same~~rule on the case, without a jury, in ~~like the same~~ manner as a civil cause originally commenced in that court. The court may require and fix the time for the service and filing of formal pleadings ~~and fix the time therefor~~. Appeals to the supreme court may be taken by the ~~state engineer~~department of water resources or any other party to the cause from any judgment entered in the district court ~~in any such cause~~, and from any order of ~~said~~the court if an appeal would lie from ~~such an~~the order if the ~~same~~order were entered by the court in any other civil action.

**SECTION 121. AMENDMENT.** Section 61-06-01 of the North Dakota Century Code is amended and reenacted as follows:

**61-06-01. Board of directors of irrigation district - Terms - Vacancies.**

If an irrigation district contains less than twenty thousand irrigable acres [8093.72 irrigable hectares] of land and is not divided into precincts or divisions, the board of directors consists of five directors who must be residents of the state and electors of the district and must be elected at large. Two directors elected at the election for the organization of the district serve until the first Tuesday in April following the first regular district election, and three serve until the first Tuesday in April following the second regular election.

If an irrigation district contains twenty thousand irrigable acres [8093.72 irrigable hectares] or more, it must be divided into five or seven divisions or precincts, as the case may be, and one director must be elected from and by the electors of each division or precinct.

If an irrigation district contains twenty thousand irrigable acres [8093.72 irrigable hectares] or more and is divided into five divisions or precincts, the board of directors of the irrigation district consists of five directors. Two directors elected at the election for the organization of the district serve until the first Tuesday in April following the first regular district election, and three directors serve until the first Tuesday in April following the second regular district election.

If an irrigation district contains twenty thousand irrigable acres [8093.72 irrigable hectares] or more and is divided into seven divisions or precincts, the board of directors of the irrigation district consists of seven directors. Three directors elected at the election for the organization of the district serve until the first Tuesday in April following the first regular district election, and four directors serve until the first Tuesday in April following the second regular district election.

The terms of office of the directors elected at the first election for the organization of the district must be determined by lot at their first meeting. Directors elected at subsequent elections serve for four years and until their successors are duly elected and qualified. In case the office of any director becomes vacant, the remaining members of the board shall fill the vacancy by appointment. A director appointed to fill a vacancy serves the unexpired term of the director whose office that director has been appointed to fill. If vacancies occur in the offices of a majority of the directors of an irrigation district, the remaining members and the ~~state engineer~~director of the department of water resources shall fill the vacancies; and if the offices of all the directors become vacant, the ~~state engineer~~director of the department of water resources shall appoint the members of the board ~~and they who shall~~ serve until

the next regular election of the district. ~~Their~~The successors ~~in office must then~~of the appointed directors must be elected to serve the unexpired term of the directors whose offices became vacant. The unexpired term of office that each director ~~thus~~ elected in this manner fills must be determined by lot.

**SECTION 122. AMENDMENT.** Section 61-06-03 of the North Dakota Century Code is amended and reenacted as follows:

**61-06-03. Oath and bond of boards of directors - Filing.**

After receiving a certificate of election each director shall take the oath prescribed for civil officers, and shall be bonded in the sum of one thousand dollars. ~~Such~~The oath of office and bond ~~shall~~must be filed in the office of the ~~state engineer~~department of water resources.

**SECTION 123. AMENDMENT.** Section 61-06-04 of the North Dakota Century Code is amended and reenacted as follows:

**61-06-04. Meeting of directors - Organization - Officers - Quorum - Term of officers.**

The directors elected at the first election in an irrigation district shall meet at the time and place designated by the ~~state engineer~~department of water resources and shall organize by selecting one of their members as chairman of the board. A temporary secretary ~~shall~~must be designated until a permanent secretary of the board has been appointed. After the organization of the board, a majority of the directors ~~shall constitute~~constitutes a quorum for the transaction of ~~such~~ business ~~as may come before~~of the board. The board shall appoint and fix the compensation of a secretary, a treasurer, and an assessor of the district and ~~such~~ other officers or employees as the board ~~shall deem~~deems necessary for the efficient conduct of the district's business ~~and shall fix their compensation~~. Officers and employees appointed by the board shall hold office ~~during~~at the pleasure of the board. The office of secretary, assessor, and treasurer may be held by the same person. Each succeeding board of directors shall choose or appoint ~~its~~ officers as ~~herein~~ provided in this section.

**SECTION 124. AMENDMENT.** Section 61-06-05 of the North Dakota Century Code is amended and reenacted as follows:

**61-06-05. Official bonds of assessor, district treasurer, and other employees - Approval and filing of bonds.**

The assessor ~~shall~~must be bonded in the amount of five hundred dollars, and the district treasurer ~~shall~~must be bonded in an amount not less than double the amount of money that may come into the treasurer's hands, the amount to be determined by the board of directors, but ~~such bond shall not be less than one thousand dollars~~. Other employees and ~~appointive~~appointed officers ~~shall~~must be bonded in ~~such~~ amounts ~~as prescribed by the board may prescribe~~. The official bonds of the assessor, treasurer, and other officers and employees ~~shall~~must be approved by the board. ~~Such bonds shall be and~~ filed in the office of the ~~state engineer~~department of water resources.

**SECTION 125. AMENDMENT.** Section 61-06-19 of the North Dakota Century Code is amended and reenacted as follows:

**61-06-19. Secretary of board of directors to declare result of election - Contents.**

1. The secretary of the board of directors, as soon as the result of the election is declared, shall ~~enter upon the records of the board a statement of such result which shall show~~record the election results including:
  1. a. The whole number of votes cast in the district.
  2. b. The names of the persons ~~voted for~~who received votes.
  3. c. Each question voted upon.

4.
  - d. The number of votes cast for each person and the
  - e. The number of votes cast for and against each question voted upon at the election.
2. ~~A copy of such the statement shall of election results must be recorded in a permanent record of the board to be kept for that purpose. Such~~ The statement shall must be signed by the secretary of the board and authenticated by the seal of the district. A copy of such the signed and authenticated statement thus signed and authenticated shall must be filed with the county auditor of each county wherein which the irrigation district is situated, and a like copy shall another copy must be mailed to the state engineer department of water resources.

**SECTION 126. AMENDMENT.** Section 61-07-08 of the North Dakota Century Code is amended and reenacted as follows:

**61-07-08. Surveys, examinations, and plans made to determine cost of construction in district - State engineer Department of water resources to prepare report.**

~~For the purpose of ascertaining~~ To ascertain the cost of any irrigation construction work in a district, the board shall cause such surveys, examinations, and plans to be made as may demonstrate the practicability of the plan and furnish the proper basis for an estimate of the cost of carrying out the plan. All surveys, examinations, maps, plans, and estimates must be made under the direction of a registered professional engineer, who may be ~~the state engineer~~ an employee of the department of water resources, and must be certified by the registered professional engineer. The board shall submit a copy to the ~~state engineer~~ the department of water resources, which shall prepare a summary report and file the report with the board. The report must contain such matters as in the judgment of the state engineer are desirable the matter required by the department. Upon receiving the report, the board of directors shall determine the amount of money required to be raised.

**SECTION 127. AMENDMENT.** Section 61-07-19 of the North Dakota Century Code is amended and reenacted as follows:

**61-07-19. Petition for specific orders or changes in canals or other conveyance systems - Methods.**

Upon the filing of a petition in the office of the board of any irrigation district, signed by electors who own a majority of the total number of acres [hectares] subject to assessment for construction or other costs; ~~and requesting that rules be adopted by the board~~ adopt rules permitting and providing for any of the following specific orders or changes in the method of operating its canal, pipeline, or other conveyance system, ~~such the board immediately shall provide for the adoption and enforcement of the same~~ rules:

1. That a measuring device of a type approved by the ~~state engineer~~ department of water resources be placed in or near the headgate of any main diverting gate of the main canal, or in any pipeline; or other main conveyance system ~~in order that so the district will keep a continuous record shall be kept by such district~~ of the amount of water received into the canal or pipeline for the use of the lands in ~~such the~~ the district.
2. That a measuring device of a type approved by the ~~state engineer~~ department of water resources be placed in the headgates or valves of all main laterals and distributing laterals within the district from and by which water is diverted to tracts or units of twenty acres [8.09 hectares]; or more; for the purpose of determining at all times the amount of water going to or being received upon ~~any and all such the~~ the tracts of land, and that ~~it be made the duty of the district to~~ shall keep a separate and correct record of the amount of water delivered through each of ~~such the~~ the headgates and valves at all times; and ~~to file the same~~ the record in the office of the board for public inspection.

**SECTION 128. AMENDMENT.** Section 61-07-27 of the North Dakota Century Code is amended and reenacted as follows:

**61-07-27. Conclusion of hearing - Findings - Decree - Costs of hearing - Filing copies of findings.**

Upon the conclusion of the hearing provided for in section 61-07-24, the court shall determine the legality and validity of the proceedings had for the issuance of bonds or improvement warrants, the making of any contract, or the levying of any assessments, as the case may be, and shall determine the validity and legality of any other matter properly before the court. The court shall prepare its findings of fact and conclusions of law, and shall any necessary order that the decree of the court be entered in conformity therewith. The court may apportion the costs of the proceeding, ~~in the discretion of the court, may be allowed and apportioned between to the parties thereto.~~ The secretary of the board of directors of the district shall file with the state engineer department of water resources a certified copy of the court's findings of fact, conclusions of law, and order, and decree.

**SECTION 129. AMENDMENT.** Section 61-09-02 of the North Dakota Century Code is amended and reenacted as follows:

**61-09-02. District assessor to make list or prepare map to show apportionment of assessments - Filing.**

The assessor shall make, or cause to be made, a list showing the apportionment or distribution of assessments, ~~and containing with~~ a description of each unit or tract of land assessed in the district, and the name of the record owner ~~thereof, or of each unit or tract.~~ Alternatively, the assessor may prepare a map on a convenient scale showing each unit or tract of land with the amount per acre [.40 hectare] apportioned ~~theretoto~~ the unit or tract. Such ~~Where practicable, the units of land shall, wherever practicable, must~~ consist of governmental subdivisions of forty acres [16.19 hectares] or more. If all lands on ~~such~~ the statement or map are assessed at the same amount or rate per acre [.40 hectare], a general statement to that effect ~~shall be~~ sufficient. A copy of ~~such~~ the list or map ~~shall~~ must be filed in the office of the county auditor of each county in which the district is situated, ~~one copy shall be filed in the office of the state engineer, and one copy shall remain~~ and another copy must be filed in the department of water resources. One copy must remain in the office of the board for public inspection.

**SECTION 130. AMENDMENT.** Section 61-10-27 of the North Dakota Century Code is amended and reenacted as follows:

**61-10-27. Board may include lands in district.**

If the board of directors deems ~~it not for the best interest of the district that~~ a change in its district boundaries be made so as to include any of the lands mentioned in the petition, or any part thereof, it is not in the best interests of the district, the board shall reject the petition. If it deems it for the board deems the change is in the best interest of the district, the board shall grant the petition in whole or in part and by resolution direct the chairman and the secretary of the board to issue ~~its~~ an order, including all or any part of the lands mentioned in the petition in the district, unless electors who together own at least ten percent of the whole number of acres [hectares] in the district subject to assessment for irrigation costs object in writing at or before the time of hearing to the inclusion of ~~such~~ the lands. When lands are included in a district, the order of the board of directors allowing inclusion ~~shall~~ must be filed with the state engineer department of water resources and with the county auditor of each county in which ~~such~~ the lands are situated ~~and shall.~~ The order also must be filed and recorded in the office of the recorder of each such county.

**SECTION 131. AMENDMENT.** Section 61-10-30 of the North Dakota Century Code is amended and reenacted as follows:

**61-10-30. Result of election - Duty of the board and secretary.**

If a majority of the votes cast at the election ~~shall be~~ are against the inclusion of the land described in the resolution of the board of directors, the board shall deny the petition and ~~shall~~ may not proceed ~~no~~ further in the matter. ~~If, however,~~ a majority of the votes cast at the election ~~shall be~~ are in favor of including ~~such~~ the lands in the district, the board shall issue its order setting forth the filing of the

petition, the action of the board ~~thereon the petition~~, and the result of the election, and shall order ~~such~~ the lands added to the district. The order ~~shall~~ must describe the lands to be included in the district. A certified copy of the order of the board ~~shall~~ must be filed with the ~~state engineer department of water resources~~ and the county auditor of each county in which the included lands lie. A certified copy of ~~such~~ the order ~~shall~~ also must be filed and recorded in the office of the recorder in each such county.

**SECTION 132. AMENDMENT.** Section 61-10-35 of the North Dakota Century Code is amended and reenacted as follows:

**61-10-35. Outstanding bonds or improvement warrants or contractual obligations - Order excluding lands - Assent.**

If the holders of outstanding bonds or improvement warrants, or of contracts obligating the district, consent in writing to exclusion of lands mentioned in the petition, the board of directors may by resolution direct the chairman and the secretary of the board to execute ~~its~~ the board's order excluding ~~such~~ the lands from the district. The assent in writing of holders of district bonds or improvement warrants, or of anyone interested in a contract obligating the district, ~~shall~~ must be filed with the secretary of the district and ~~shall be~~ copied in the minutes of the board, and ~~such~~ the minutes or a certified copy ~~thereof shall be of the minutes~~ are admissible in evidence with the same effect as the written assent. If ~~such~~ assent is not given, the board shall deny and dismiss the petition. When lands are excluded from the district, a certified copy of the order of the board ~~shall~~ must be filed in the ~~offices of the state engineer department of water resources~~ and the county auditor of each county in which the excluded lands are situated and filed and recorded in the office of the recorder of each ~~such county of those counties~~.

**SECTION 133. AMENDMENT.** Section 61-10-37 of the North Dakota Century Code is amended and reenacted as follows:

**61-10-37. Result of election - Order excluding lands.**

If at an election for exclusion of lands from an irrigation district, a majority of the votes cast ~~shall be~~ against exclusion, the board shall dismiss the petition and ~~may not proceed no further~~ in the matter, ~~but if~~. If a majority of ~~such~~ the votes ~~shall be~~ in favor of excluding ~~such~~ the lands from the district, the board shall issue its order setting forth the filing of the petition, the action of the board ~~thereon the petition~~, and the result of the election, and shall order ~~such~~ the lands excluded from the district. A certified copy of ~~such~~ the order ~~shall~~ must be filed in the ~~offices of the state engineer department of water resources~~ and the county auditor of each county in which the excluded lands lie and ~~shall~~ must be filed and recorded in the office of the recorder of each such county.

**SECTION 134. AMENDMENT.** Section 61-11-04 of the North Dakota Century Code is amended and reenacted as follows:

**61-11-04. Conduct of election - Canvassing and reporting result of election.**

An election on the question of dissolution in all respects ~~shall~~ must be conducted, and the votes ~~therefrom~~ canvassed, in the same manner as provided for a regular election of the district. A certified copy of the statement of the election result by the district's board of directors and all ballots, lists, tally sheets, and other documents pertaining to the election ~~shall~~ must be forwarded to the ~~state engineer department of water resources~~ by registered or certified mail or express.

**SECTION 135. AMENDMENT.** Section 61-11-08 of the North Dakota Century Code is amended and reenacted as follows:

**61-11-08. Sale of district property authorized - Appraisers appointed - Oath - Compensation.**

If a majority of the votes cast at an election for dissolution of a district favor dissolution and sale, the irrigation works, franchises, and other property of the district may be sold at not less than a valuation ~~to~~ be determined by a board of three appraisers. One member of ~~such~~ the board of appraisers ~~shall~~ must

be appointed by the board of directors of the district, one ~~shall~~must be appointed by the ~~state engineer~~director of the department of water resources, and the two appointed appraisers ~~thus selected~~ shall choose the third appraiser. The board of appraisers ~~shall~~must be sworn by an officer who is authorized to administer oaths and who has an official seal. ~~Such~~The board shall appraise the irrigation works, franchises, and all other property of the district at ~~its~~their cash value, and ~~to determine such value,~~ with the consent of the board of directors of the district, may employ engineers, accountants, and ~~such~~other expert assistance as ~~may be necessary.~~ The board of directors shall fix the compensation of ~~such~~the appraisers, engineers, accountants, and others ~~shall be fixed by the board of directors.~~

**SECTION 136. AMENDMENT.** Section 61-11-09 of the North Dakota Century Code is amended and reenacted as follows:

**61-11-09. Appraisal of property by appraisers - Report to board - Advertising property for sale - Opening of bids.**

The board of appraisers shall appraise all of the property of the district and ~~shall~~ make a report of ~~its appraisal~~the appraisal to the board of directors. A copy of ~~such~~the report ~~shall~~must be filed by the secretary of the district with the ~~state engineer~~department of water resources. The board of directors shall advertise for sale all of the property of the district and ~~shall~~ publish a notice once each week for two consecutive weeks specifying that sealed bids will be received, opened, and considered by the board at the time and place specified in ~~such~~the notice, and ~~setting forth a description of~~describing the property. At the time and place designated in ~~such~~the notice, or as soon ~~thereafter~~after the time as the board can meet, ~~the board~~the board shall open and consider all bids received for the purchase of the property, and ~~the board~~the board may reject ~~any and all~~ bids which do not, in the judgment of the board, offer a fair and just consideration.

**SECTION 137. AMENDMENT.** Section 61-11-15 of the North Dakota Century Code is amended and reenacted as follows:

**61-11-15. Report of dissolution when - Where filed - Contents - Recording of in office of recorder.**

After all the property of an irrigation district ~~shall have been~~is disposed of upon dissolution and all the obligations ~~thereof shall have been~~of the district are paid, the directors of ~~such~~the district shall file in the office of the county auditor of each county in which ~~such~~the district is situated, and in the ~~office of the state engineer~~department of water resources, a report signed by the chairman of the board and attested by the secretary, and bearing the seal of the district, stating ~~that~~ the district has disposed of its property and franchises, ~~that~~ all of the obligations of the district have been paid fully ~~paid~~, and ~~that~~ the district has been disorganized and dissolved. ~~Such~~The report ~~shall~~must be recorded in the miscellaneous records of the recorder in each of the counties in which the district is located, and from and after ~~such~~the filing and recording, ~~such~~the irrigation district ~~shall be~~is deemed ~~to be~~ dissolved.

**SECTION 138. AMENDMENT.** Section 61-12-46 of the North Dakota Century Code is amended and reenacted as follows:

**61-12-46. ~~State engineer~~Department of water resources to assist county board of flood irrigation.**

The ~~state engineer~~department of water resources, upon the request of the board of flood irrigation of any county in this state, shall assist ~~said~~the board in determining whether ~~or not~~ the construction of any proposed dams, gates, and necessary ditches and canals for the purpose of controlling, regulating, and forcing the overflow of water in non-navigable rivers or streams within this state would be conducive to the public health, convenience, or welfare.

**SECTION 139. AMENDMENT.** Section 61-14-01 of the North Dakota Century Code is amended and reenacted as follows:

**61-14-01. Units of measurement.**

The standard of measurement for the flow and volume of water shall be established by rule by the ~~state engineer~~department of water resources.

**SECTION 140. AMENDMENT.** Section 61-14-03 of the North Dakota Century Code is amended and reenacted as follows:

**61-14-03. Amount of water for irrigation.**

~~In the issuance of~~When issuing a permit to appropriate water for irrigation or in the adjudication of ~~adjudicating~~ the rights to the use of water for such purpose, ~~the amount of water allowed by the state engineer shall not be in excess of~~use water for irrigation, the department of water resources may not allow more than two acre-feet [2466.96 cubic meters] of water per acre [.40 hectare] per year, or the equivalent thereof, to be delivered on the land, except that during periods of sufficient water supply the state engineer~~department may allow up to three acre-feet per acre [3700.45 cubic meters per .40 hectare] per irrigation season to be delivered on the land for a specified period of time, in accordance with the method of irrigation being used, the type of soil to which the water is to be applied, and other criteria established by the state engineer, may increase the amount of water allowed to three acre-feet per acre [3700.45 cubic meters per .40 hectare], per irrigation season, for a specified period of time which in no event shall be of greater duration than the period of sufficient water supply. Notwithstanding any other provision of this section, the state engineer may not allow more of an amount of water than can be beneficially used~~department. The department may not allow more water to be delivered on the land than can be used beneficially.

**SECTION 141. AMENDMENT.** Section 61-14-06 of the North Dakota Century Code is amended and reenacted as follows:

**61-14-06. Measuring devices - Unlawful to take water without using.**

Every ditch owner shall construct and maintain a substantial headgate at the point where the water is diverted and shall construct a measuring device, of a design approved by the ~~state engineer~~department of water resources, at the most practicable point ~~or points~~ for measuring and apportioning the water as determined by the ~~state engineer~~department. The ~~state engineer~~department may order the construction of ~~such~~the measuring device by the ditch owner, and if construction is not completed within twenty days ~~thereafter~~after receipt of the order, the person in charge of the irrigation works, upon instructions from the ~~state engineer~~department, shall refuse to deliver water to ~~such~~the ditch owner. ~~The taking of water by such ditch owner may not take water from the irrigation works until the construction of such measuring device and the approval thereof by the state engineer shall be unlawful~~is constructed and the department approves the device. Such Measuring devices shall be ~~so~~must be arranged ~~that~~so they can be locked in place, and when locked by the person in charge of the irrigation works or that person's authorized agent, for the measurement or apportionment of water, ~~it shall be unlawful to~~other persons may not interfere with, disturb, or change the same, ~~and the devices. The use of water through such a measuring device after having been~~that was interfered with, disturbed, or changed ~~shall be~~constitutes prima facie evidence of the guilt of the person benefited by ~~such~~the interference, disturbance, or change violated this section.

**SECTION 142. AMENDMENT.** Section 61-14-07 of the North Dakota Century Code is amended and reenacted as follows:

**61-14-07. Unlawful interference with rights to use of water - Penalty.**

Any person interfering with or injuring or destroying any headgate, weir, benchmark, well, or other appliance or works for the appropriation, diversion, storage, apportionment, or measurement of water, or for any hydrographic or hydrologic surveys, or ~~who shall interfere~~interfering with any person engaged in the discharge of duties connected ~~therewith~~with a headgate, weir, benchmark, well, or other appliance or works for those purposes, shall be ~~is~~ guilty of a class A misdemeanor, and ~~also shall be~~ liable for the injury or damage resulting from ~~such~~the unlawful act. The ~~state engineer~~department of

water resources and the person in charge of an irrigation work, and their authorized assistants and agents, may enter upon private property for the performance of their respective duties, but ~~shall do no unnecessary injury thereto~~ may not damage the property unnecessarily.

**SECTION 143. AMENDMENT.** Section 61-14-13 of the North Dakota Century Code is amended and reenacted as follows:

**61-14-13. Seepage water.**

~~In the case of seepage water from any constructed works, any party desiring to use the same shall make application to the state engineer, as in the case of unappropriated water, and such party shall~~ A person wishing to use seepage water from a constructed works shall apply to the department of water resources for the use in the same manner as applying for a permit to use unappropriated water and shall pay to the owner of such the works a reasonable charge for the storage or carriage of such the water in such the works, if the appearance of such the seepage water can be traced beyond reasonable doubt to the storage or carriage of water in such the works. The state engineer shall department of water resources may not issue a permit to appropriate such the seepage waters until an any agreement for the payment of such charges shall have been entered into by the said parties reasonable charges required by this section is executed.

**SECTION 144. AMENDMENT.** Section 61-15-03 of the North Dakota Century Code is amended and reenacted as follows:

**61-15-03. Water and wildlife conservation projects - Supervision.**

The authority, control, and supervision of all water and wildlife conservation projects and wildlife reservations ~~shall be~~ is vested in the ~~state engineer~~ department of water resources. The ~~state engineer~~ department may accept cooperation, aid, and assistance from the United States of America, its instrumentalities or agencies, in the construction, maintenance, and operation of any structure for the purposes set forth in this chapter, and may do any act necessary to make ~~such~~ aid, assistance, and cooperation from the federal government available, ~~and shall have the right to.~~ The department may grant such easements to the United States of America, its instrumentalities or agencies, as may be required.

**SECTION 145. AMENDMENT.** Section 61-15-09 of the North Dakota Century Code is amended and reenacted as follows:

**61-15-09. Conservation of lakes and streams of Turtle Mountain region.**

~~The state engineer of this state~~ department of water resources shall take ~~such any necessary~~ any necessary action ~~as may be necessary~~ to conserve the water levels and rehabilitate the streams and brooks in the Turtle Mountain region of North Dakota lying in Bottineau and Rolette Counties, ~~and shall do any act necessary to bring about such rehabilitation of streams, lakes, and brooks.~~

**SECTION 146. AMENDMENT.** Section 61-16-06.1 of the North Dakota Century Code is amended and reenacted as follows:

**61-16-06.1. Consolidation of water resource districts.**

1. Any two or more water resource districts may be consolidated into a single district, or existing districts may be adjusted to reflect watershed boundaries, as determined by the ~~state engineer~~ department of water resources, by filing with the state water commission a petition signed by:
  - a. A a majority of the members of the board of each of the districts; or
  - b. Fifty fifty percent or more of the landowners within each of the districts.

When the petition is filed by the district boards, it must be accompanied by a certified copy of the resolution of the governing boards authorizing the signing of the petition. The petition must contain a detailed plan for the disposition of the property, assets, and liabilities of each of the districts. This plan must be as equitable as practicable to every landowner within the districts and must fully protect creditors and the holders of improvement warrants of the petitioning districts. The plan may provide for a continuance of assessments upon properties in the petitioning districts to retire outstanding obligations, or for the assumption of outstanding obligations and the spreading of assessments for the payment ~~thereof~~ of the outstanding obligations over properties in the newly created district. ~~No petition may be approved by the~~ The state water commission may not approve the petition unless ~~it~~ the petition fully meets the requirements of this section.

2. The state water commission shall fix a time and place for a public hearing on a petition filed under this section at a site convenient and accessible for a majority of the affected individuals. At least fifteen days prior to the date of hearing, the commission shall publish notice of the hearing in at least one newspaper of general circulation in each of the districts being consolidated or adjusted. Additional notice of the hearing may be given in a manner prescribed by the state water commission.
3. Prior to the hearing, the ~~state engineer~~ department of water resources shall make, or cause to be made, an investigation of the need for consolidation of the petitioning districts and shall submit a report of the findings to the state water commission. This report must be presented at the petition hearing. If the state water commission finds it is not feasible, desirable, or practical to consolidate the petitioning districts, ~~it~~ the commission shall deny the petition and state the reasons for denial. If, ~~however,~~ the state water commission finds ~~that~~ problems of flood control, watershed development or improvement, drainage, water supply, or other reasons make consolidation or boundary adjustment and establishment of the proposed water resource district desirable, ~~it~~ the commission shall grant the petition and create the district. Upon creation of the new water resource district, the state water commission shall dissolve the included districts or make necessary boundary adjustments to existing districts.

**SECTION 147. AMENDMENT.** Subsection 1 of section 61-16.1-09.1 of the North Dakota Century Code is amended and reenacted as follows:

1. A water resource board may undertake the snagging, clearing, and maintaining of natural watercourses and the debrisment of bridges and low-water crossings. The board may finance the project in whole or in part with funds raised through the collection of a special assessment levied against the land and premises benefited by the project. The benefits of a project must be determined in the manner provided in section 61-16.1-17. Revenue from an assessment under this section may not be used for construction of a drain or reconstruction or maintenance of an existing assessment drain. Any question as to whether the board is maintaining a natural watercourse or is constructing a drain or reconstructing or maintaining an existing assessment drain must be ~~determined~~ resolved by the ~~state engineer~~ department of water resources. All provisions of this chapter apply to assessments levied under this section except:
  - a. An assessment may not exceed fifty cents per acre [.40 hectare] annually on agricultural lands and may not exceed fifty cents annually for each five hundred dollars of taxable valuation of nonagricultural property; and
  - b. If the assessment is for a project costing less than one hundred thousand dollars, no action is required for the establishment of the assessment district or the assessments except the board must approve the project and assessment by a vote of two-thirds of the members and the board of county commissioners of the county in which the project is located must approve and levy the assessments to be made by a vote of two-thirds of its members.

- (1) If a board that undertakes a project finds that the project will benefit lands outside water resource district boundaries, the board shall provide notice to the water resource board where the benefited lands are located together with the report prepared under section 61-16.1-17.
  - (2) The board of each water resource district containing lands benefited by a project must approve the project and assessment by a vote of two-thirds of its members. The board of county commissioners in each county that contains lands benefited by a project must approve and levy the assessment to be made by a vote of two-thirds of its members.
  - (3) If a project and assessment is not approved by all affected water resource boards and county commission boards, the board of each water resource district and the board of county commissioners of each county shall meet to ensure that all common water management problems are resolved pursuant to section 61-16.1-10. In addition, the water resource board that undertakes the project may proceed with the project if the board finances the cost of the project and does not assess land outside the boundaries of the district.
- c. All revenue from an assessment under this section must be exhausted before a subsequent assessment covering any portion of lands subject to a prior assessment may be levied.

**SECTION 148. AMENDMENT.** Section 61-16.1-23 of the North Dakota Century Code is amended and reenacted as follows:

**61-16.1-23. Appeal to ~~state engineer~~department of water resources.**

After the hearing provided for in section 61-16.1-22, affected landowners and any political subdivision subject to assessment, having not less than twenty percent of the possible votes, as determined by section 61-16.1-20, who believe that the assessment ~~had not been~~was not made fairly or equitably made, or that the project is not properly located or designed properly, may appeal to the ~~state engineer~~department of water resources by petition, within ten days after the hearing on assessments, to make a review of the assessments and to examine the location and design of the proposed project. Upon receipt of such the petition the ~~state engineer~~department shall examine the lands assessed and the location and design of the proposed project, and if it appears that the assessments ~~have not been~~were not made equitably, the ~~state engineer~~department may proceed to correct the same assessments, and the ~~state engineer's~~department's correction and adjustment of said the assessment is final. Should it appear that, in the judgment of the state engineer, if the department believes the project has been improperly was located or designed improperly, the ~~state engineer~~department may order a relocation and redesign. Such relocation and redesign that must be followed in the construction of the proposed project. Upon filing a bond for two hundred fifty dollars with the board for the payment of the costs of the ~~state engineer~~department in the matter, any landowner or political subdivision who or which claims that claiming the landowner or political subdivision will receive no benefit at all from the construction of a new project may appeal that issue to the ~~state engineer~~department within ten days after the hearing on assessments, the question of whether there is any benefit. The ~~state engineer~~may not determine the specific amount of benefit upon Upon an appeal by an individual landowner or political subdivision, but shall only the department may determine if whether there is any benefit to the landowner or political subdivision, and the but not the specific amount of benefit. The determination of the ~~state engineer~~upon such question department regarding whether there is a benefit is final.

**SECTION 149. AMENDMENT.** Section 61-16.1-37 of the North Dakota Century Code is amended and reenacted as follows:

**61-16.1-37. Commission, ~~state engineer~~department of water resources, and water resource board shall encourage both structural and nonstructural alternatives.**

The commission, ~~state engineer~~department of water resources, and the appropriate water resource board shall encourage both structural and nonstructural solutions to water management problems within the district by federal and state agencies, private individuals, ~~public and private corporations, and limited liability companies and other persons~~, and shall lend their aid, ~~counsel, and assistance to any such~~facilitate appropriate solutions. All structural alternatives, including dams, dikes, drains, and other works, whether constructed by public authorities or private persons, ~~unless specifically exempted therefrom, shall be~~ subject to all the provisions of this chapter unless specifically exempted.

**SECTION 150. AMENDMENT.** Section 61-16.1-38 of the North Dakota Century Code is amended and reenacted as follows:

**61-16.1-38. Permit to construct or modify dam, dike, or other device required - Penalty - Emergency.**

No dikes, dams, or other devices for water conservation, flood control regulation, watershed improvement, or storage of water which are capable of retaining, obstructing, or diverting more than fifty acre-feet [61674.08 cubic meters] of water or twenty-five acre-feet [30837.04 cubic meters] of water for a medium-hazard or high-hazard dam, may be constructed within any district except in accordance with the provisions of this chapter. An application for the construction of any dike, dam, or other device, along with complete plans and specifications, must be presented first to the ~~state engineer~~department of water resources. Except for low-hazard dams less than ten feet [3.05 meters] in height or agricultural dikes less than two feet [0.61 meters] in height, the plans and specifications must be completed by a professional engineer registered in this state. After receipt, the ~~state engineer~~department shall consider the application in such detail as the ~~state engineer~~department deems necessary and proper. The ~~state engineer~~department shall refuse to allow the construction of any unsafe or improper dike, dam, or other device which would interfere with the orderly control of the water resources of the district, or may order ~~such~~ changes, conditions, or modifications as in the judgment of the ~~state engineer~~department may be necessary for safety or the protection of property. Within forty-five days after receipt of the application, except in unique or complex situations, the ~~state engineer~~department shall complete the ~~state engineer's~~ initial review of the application and forward the application, along with any changes, conditions, or modifications, to the water resource board of the district within which the contemplated project is located. The board ~~thereupon~~ shall consider, the application within forty-five days, ~~the application~~, and suggest any changes, conditions, or modifications to the ~~state engineer~~department. If the board approves the application meets with the board's approval, the board shall forward the approved application to the ~~state engineer~~department. If the board fails to respond within forty-five days, ~~it shall be determined the board has~~will be deemed to have no changes, conditions, or modifications to make. The ~~state engineer~~department shall make the final decision on the application and forward that decision to the applicant and the local water resource board. The ~~state engineer~~department may issue temporary permits for dikes, dams, or other devices in cases of an emergency. Any person constructing a dam, dike, or other device, ~~which is~~ capable of retaining, obstructing, or diverting more than fifty acre-feet [61674.08 cubic meters] of water or twenty-five acre-feet [30837.04 cubic meters] of water for a medium-hazard or high-hazard dam, without first securing a permit to do so, as required by this section, is liable for all damages proximately caused by the dam, dike, or other device, and is guilty of a class B misdemeanor.

**SECTION 151. AMENDMENT.** Section 61-16.1-39 of the North Dakota Century Code is amended and reenacted as follows:

**61-16.1-39. Dams or other devices constructed within a district shall come under control of a water resource board.**

All dams, dikes, and other water conservation and flood control works or devices constructed within any district, ~~unless specifically exempted therefrom, shall, without affecting the commission's or the state engineer's authority relative to such works, automatically come, are~~ under the jurisdiction of the

water resource board for the district within which the dam, dike, works, or device exists or is to be constructed. The district's jurisdiction over the dam, dike, works, or device does not affect the commission's or department's authority relative to the dam, dike, works, or device. No changes or modification of any existing dams, dikes, or other works or devices ~~shall~~may be made without complying fully with the provisions of this chapter.

**SECTION 152. AMENDMENT.** Section 61-16.1-53.1 of the North Dakota Century Code is amended and reenacted as follows:

**61-16.1-53.1. Appeal of board decisions - ~~State engineer~~Department of water resources review - Closing of noncomplying dams, dikes, or other devices for water conservation, flood control, regulation, and watershed improvement.**

1. The board shall make the decision required by section 61-16.1-53 within a reasonable time, not exceeding one hundred twenty days, after receiving the complaint. The board shall notify all parties of its decision by certified mail. Any aggrieved party may appeal the board's decision to the ~~state engineer~~department of water resources. The appeal to the ~~state engineer~~department must be made within thirty days from the date notice of the board's decision has been received. The appeal must be made by submitting a written notice to the ~~state engineer,~~department which must state specifically ~~set forth~~ the reason why the board's decision is erroneous. The appealing party shall also ~~shall~~ submit copies of the written appeal notice to the board and to all nonappealing parties. Upon receipt of this notice the board, if it has ordered removal of a dam, dike, or other device, is relieved of its obligation to procure the removal of the dam, dike, or other device. The ~~state engineer~~department shall handle the appeal by conducting an independent investigation and making an independent determination of the matter. The ~~state engineer~~department may enter property affected by the complaint to investigate the complaint.
2. If the board fails to investigate and make a determination concerning the complaint within a reasonable time, not exceeding one hundred twenty days, the person filing the complaint may file the complaint with the ~~state engineer~~department of water resources within one hundred fifty days of the submittal date of the original complaint. ~~The state engineer shall,~~without~~Without~~ reference to chapter 28-32, the department shall cause the investigation and determination to be made, either by action against the board or by conducting the investigation and making the determination.
3. If the ~~state engineer~~department of water resources determines that a dam, dike, or other device has been constructed or established by a landowner or tenant contrary to title 61 or any rules adopted by the board, the ~~state engineer~~department shall take one of these three actions:
  - a. Notify the landowner by certified mail at the landowner's post-office address of record;
  - b. Return the matter to the jurisdiction of the board along with the investigation report; or
  - c. Forward the dam, dike, or other device complaint and investigation report to the state's attorney.
4. If the ~~state engineer~~department of water resources decides to notify the landowner, the notice must specify the nature and extent of the noncompliance and state that if the dam, dike, or other device is not removed within a reasonable time as determined by the ~~state engineer~~department, but not less than thirty days, the ~~state engineer~~department shall procure the removal of the dam, dike, or other device and assess the cost of removal against the responsible landowner's property. The notice from the ~~state engineer~~department also must state that, within fifteen days of the date the notice is mailed, the affected landowner may demand, in writing, a hearing on the matter. Upon receipt of the demand, the ~~state engineer~~department shall set a hearing date within fifteen days from the date the demand is received. If, in the opinion of the ~~state engineer~~department, more than one landowner or

tenant has been responsible, the costs may be assessed on a pro rata basis in proportion to the responsibility of the landowners. Upon assessment of costs, the ~~state engineer department~~ shall certify the assessment to the county auditor of the county where the noncomplying dam, dike, or other device is located. The county auditor shall extend the assessment against the property assessed. Each assessment must be collected and paid as other property taxes are collected and paid. Assessments collected must be deposited with the state treasurer and credited to the contract fund established by section 61-02-64.1. Any person aggrieved by action of the ~~state engineer department~~ under this section may appeal the decision of the ~~state engineer department~~ to the district court under chapter 28-32. A hearing by the ~~state engineer department~~ as provided for in this section is a prerequisite to an appeal.

5. If the ~~state engineer department of water resources~~, after completing the investigation required under this section, decides to return the matter to the board, a complete copy of the investigation report must be forwarded to the board and it must include the nature and extent of the noncompliance. Upon having the matter returned to its jurisdiction, the board shall carry out the ~~state engineer's department's~~ decision under the terms of this section.
6. If the ~~state engineer department of water resources~~, after completing the investigation required under this section, decides to forward the dam, dike, or other device complaint to the state's attorney, a complete copy of the investigation report must also be forwarded, ~~which~~ and must include the nature and extent of the noncompliance. The state's attorney shall prosecute the complaint under the statutory responsibilities prescribed in chapter 11-16.
7. In addition to the penalty imposed by the court on conviction under this statute, the court shall order the dam, dike, or other device removed within a reasonable time period as the court determines, but not less than thirty days. If the dam, dike, or other device is not removed within the time prescribed by the court, the court shall procure the removal of the dam, dike, or other device, and assess the cost against the property of the landowner responsible, in the same manner as other assessments under chapter 61-16.1 are levied. If, in the opinion of the court, more than one landowner or tenant has been responsible, the costs may be assessed on a pro rata basis in proportion to the responsibility of the landowners.

**SECTION 153. AMENDMENT.** Section 61-16.2-01 of the North Dakota Century Code is amended and reenacted as follows:

**61-16.2-01. Legislative intent and purpose.**

The legislative assembly finds and declares that a large portion of the state's land resources is subject to recurrent flooding by overflow of streams and other watercourses causing loss of life and property, disruption of commerce and governmental services, unsanitary conditions, and interruption of transportation and communications, all of which are detrimental to the health, safety, welfare, and property of the occupants of flooded lands and the people of this state. The legislative assembly further finds that public interest necessitates that the floodplains of this state be developed in a manner which will alleviate loss of life and threat to health, and reduce private and public economic loss caused by flooding.

It is ~~therefore~~ the policy of this state and the purpose of this chapter to guide development of the floodplains of this state in accordance with the enumerated legislative findings, to reduce flood damages through sound floodplain management, stressing nonstructural measures such as floodplain zoning and floodproofing, acquisition and relocation, and flood warning practices; and to ensure as far as practicable that the channels and those portions of the floodplains of watercourses which are the floodways are not inhabited and are kept free and clear of interference or obstructions which may cause any undue restriction of the capacity of the floodways.

It is also the policy of this state and purpose of this chapter to provide state coordination and assistance to communities in floodplain management activities, to encourage communities to adopt, administer, and enforce sound floodplain management ordinances, and to provide the ~~state engineer~~

~~with department of water resources the~~ authority necessary to carry out and enforce a floodplain management program for the state and to coordinate federal, state, and local floodplain management activities in this state.

**SECTION 154. AMENDMENT.** Section 61-16.2-02 of the North Dakota Century Code is amended and reenacted as follows:

**61-16.2-02. Definitions.**

1. In this chapter, unless the context or subject matter otherwise provides:
  1. a. "Commission" means state water commission.
  2. b. "Community" means any political subdivision that has the authority to zone.
  3. c. "Conveyance" or "hydraulic conveyance" means a geometric characteristic of a river or watercourse at a given point that determines the flow-carrying capacity at that point.
  4. d. "Department" means the department of water resources.
  - e. "District" means a water resource district, as defined in chapter 61-16.1.
  5. f. "Flood fringe" means that portion of a floodplain outside of the floodway.
  6. g. "Floodway" or "regulatory floodway" means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot [30.48 centimeters].
  7. h. "Person" means any person, firm, partnership, association, corporation, limited liability company, agency, or any other private or governmental organization, which includes any agency of the United States, a state agency, or any political subdivision of the state.
8. ~~"State engineer" means the state engineer appointed pursuant to section 61-03-01, who is also the chief executive officer of the commission, or, for the purpose of this chapter, the state engineer's designee.~~
2. For the purposes of this chapter, the ~~state engineer~~department shall, ~~in addition to the definitions listed above,~~ follow the definitions in this section and the definitions under the national flood insurance program [42 U.S.C. 4001 et seq.] and implementing regulations, ~~which are hereby incorporated into and made a part of this chapter by reference.~~

**SECTION 155. AMENDMENT.** Section 61-16.2-03 of the North Dakota Century Code is amended and reenacted as follows:

**61-16.2-03. Duties of ~~state engineer~~the department.**

The ~~state engineer~~department shall:

1. Collect and distribute information relating to flooding and floodplain management.
2. Coordinate local, state, and federal floodplain management activities to the greatest extent possible, and encourage appropriate federal agencies to make their flood control planning data available to communities and districts for planning purposes, in order to allow adequate local participation in the planning process and in the selection of desirable alternatives.
3. Assist communities and districts in their floodplain management activities within the limits of available appropriations and personnel in cooperation with the division of homeland security.

4. Do all other things, within lawful authority, which are necessary or desirable to manage the floodplains for uses compatible with the preservation of the capacity of the floodplain to carry and discharge the base flood. In cooperation with communities and districts, the ~~state engineer~~department shall conduct, whenever possible, periodic inspections to determine the effectiveness of local floodplain management programs, including an evaluation of the enforcement of and compliance with local floodplain management ordinances.

**SECTION 156. AMENDMENT.** Section 61-16.2-04 of the North Dakota Century Code is amended and reenacted as follows:

**61-16.2-04. Delineation of floodplains and floodways.**

The ~~state engineer~~department shall assist communities in preparing and obtaining data and other necessary information for the delineation of floodplains and floodways. When the ~~state engineer~~department determines that sufficient technical information is available for the delineation of floodplains and floodways on a watercourse or lake, the ~~state engineer shall then~~department shall consult with the appropriate district and each affected community. The ~~state engineer~~department, the affected community, and the appropriate district shall consider flooding experiences, plans to avoid potential hazards, estimates of economic impacts of flooding on the community, both historical and prospective, and ~~such~~ other data as the district and community may consider appropriate. Upon obtaining and developing the necessary information for delineation of the floodplain and floodway, the ~~state engineer~~department and the affected community shall notify the appropriate federal agency and request that ~~such material~~the information be used to delineate the floodplain and floodway under the national flood insurance program [42 U.S.C. 4001 et seq.]. The regulatory floodway must be able to carry the waters of the base flood without cumulatively increasing the water surface elevation of the base flood more than one foot [30.48 centimeters] at any point.

**SECTION 157. AMENDMENT.** Section 61-16.2-05 of the North Dakota Century Code is amended and reenacted as follows:

**61-16.2-05. Floodplain management ordinances.**

1. Each community shall submit the floodplain management ordinances adopted under the national flood insurance program [42 U.S.C. 4001 et seq.] to the ~~state engineer~~department for review.
2. If the ~~state engineer~~department determines that there is a failure by a community to comply with the intent, purposes, and provisions of this chapter and the minimum ordinances adopted under the national flood insurance program [42 U.S.C. 4001 et seq.], the ~~state engineer~~department shall notify the appropriate federal agency and the community of those findings. The ~~state engineer shall also~~department also shall notify the community of the state and federal penalties for such noncompliance and shall work with the community until such time as the ~~state engineer~~department determines that the community will comply or is complying.

**SECTION 158. AMENDMENT.** Subsection 1 of section 61-16.2-09 of the North Dakota Century Code is amended and reenacted as follows:

1. It is unlawful for any person to establish any use ~~which is not in accordance with~~that does not comply with this chapter within any floodplain without prior written approval of the affected community. Every use placed in the floodplain in violation of this chapter or a floodplain management ordinance adopted under or in compliance with the provisions of this chapter, or adopted under the national flood insurance program [42 U.S.C. 4001 et seq.], is a public nuisance, and the construction or installation ~~thereof~~of the use may be enjoined by an action brought by the ~~state engineer~~department or the appropriate community. The ~~state engineer~~department or community may obtain a court order directing the removal or elimination of ~~such~~the public nuisance, or authorizing the ~~state engineer~~department or community to remove the public nuisance, or cause the public nuisance to be removed, at the

expense of the owner. A person who violates any of the provisions of this chapter is guilty of a class B misdemeanor.

**SECTION 159. AMENDMENT.** Section 61-16.2-11 of the North Dakota Century Code is amended and reenacted as follows:

**61-16.2-11. Authority to enter and investigate lands or waters.**

The ~~state engineer department~~ or any community must notify all landowners prior to making any entry upon any lands and waters in the state for the purpose of making an investigation, survey, removal, or repair contemplated by this chapter. An investigation of a nonconforming use or existing construction or structure ~~shall~~ **must** be made by the ~~state engineer department~~ either on the ~~state engineer's department's~~ own initiative, on the written request of an owner of land abutting the watercourse involved, or on the written request of a community.

**SECTION 160. AMENDMENT.** Section 61-16.2-13 of the North Dakota Century Code is amended and reenacted as follows:

**61-16.2-13. Flood insurance.**

Communities that have residential and nonresidential structures in areas subject to excessive flooding, as determined by the ~~state engineer department~~, shall participate in the national flood insurance program [Pub. L. 90-448] and Acts amendatory thereof or supplementary thereto, ~~so that the people of North Dakota may have the opportunity to indemnify themselves from future flood losses through the purchase of this insurance administered by the federal emergency management agency.~~ A community is not required to participate in the program if all of the land under the jurisdiction of the community is enrolled as a result of another community's participation in the program.

**SECTION 161. AMENDMENT.** Section 61-16.2-14 of the North Dakota Century Code is amended and reenacted as follows:

**61-16.2-14. ~~State engineer Department~~ review of development in regulatory floodways - Exceptions.**

Before issuing a permit or authorization to allow a use in a regulatory floodway, the community responsible for permitting or authorizing ~~such~~ **the** use shall notify the ~~state engineer department~~ of the proposed use. The ~~state engineer department~~ shall determine whether a functioning hydraulic model is needed to measure the effect of the proposed use. Upon the request of the ~~state engineer department~~, the community shall submit to the ~~state engineer department~~ for review all technical documentation, including a functioning hydraulic model and other technical information needed for the ~~state engineer's department's~~ review to analyze the proposed use and to identify its proposed impact. The ~~state engineer department~~ shall complete the ~~state engineer's~~ review within thirty days after receiving the technical documentation. Upon completion of the ~~state engineer's~~ review, the ~~state engineer department~~ shall notify the community whether the proposed use is in compliance with state and federal law. A community may apply to the ~~state engineer department~~ for an exemption on a case-by-case basis from this section. The ~~state engineer department~~ may grant the exemption if the ~~state engineer department~~ determines that the community, by using its own technical review, can determine ~~if~~ **whether** the proposed use is in compliance with state and federal law.

**SECTION 162. AMENDMENT.** Section 61-20-02 of the North Dakota Century Code is amended and reenacted as follows:

**61-20-02. Drilling artesian or flowing well - Requirements.**

Every person, stock company, association, corporation, or limited liability company that shall drill an artesian or flowing well shall comply with the rules of the ~~state engineer department of water resources~~ regarding such activity.

**SECTION 163. AMENDMENT.** Section 61-20-03 of the North Dakota Century Code is amended and reenacted as follows:

**61-20-03. Wild wells.**

The provisions of this chapter shall apply to a wild well, or a well out of control, except that if it is determined by the ~~state engineer that such~~ department of water resources the well cannot be repaired for use, no valve ~~shall~~ may be attached, but every effort ~~shall~~ must be made by the owner to seal, plug, or cut off the ~~same~~ well. Old wells ~~which~~ that might be damaged by so doing need not be shut off, but such wells ~~shall~~ must be put in repair at the earliest possible date and ~~shall~~ must be regulated ~~thereafter~~ after the repair.

**SECTION 164. AMENDMENT.** Section 61-20-06 of the North Dakota Century Code is amended and reenacted as follows:

**61-20-06. Duties of ~~state engineer~~ the department of water resources.**

The ~~state engineer~~ department of water resources shall advise the citizens of the state as to the practicability of measures affecting the underground waters of this state. ~~The state engineer shall by:~~

1. ~~Counsel and consult with the owner and assist~~ Counseling, consulting, and assisting the owner to work out the most desirable control and use of the owner's well.
2. ~~Select~~ Selecting at least three representative flowing wells in each county having that number, and as many more as ~~it~~ the department may deem advisable.
3. ~~Cause~~ Causing the record of ~~their~~ the wells' flows and pressures to be taken, from time to time, to learn as much as possible of the decline, fluctuations, and permanence of the artesian supply.
4. ~~Plan and conduct such~~ Planning and conducting other investigations as ~~it~~ the department may find advisable to ascertain the best method of prolonging the utility of the same.
5. ~~Keep~~ Keeping a record of the location, size, depth, flow, size of flow, character of water, construction, and history of all artesian wells of the state, and ~~keep it~~ keeping the record on file for public reference.
6. ~~Secure~~ Securing the enforcement of all laws pertaining to artesian and phreatic waters of the state.
7. ~~Publish from time to time, as it may deem advantageous,~~ Publishing bulletins containing information concerning the artesian wells and phreatic waters of the state as often as the department deems advantageous.

~~The state engineer may make such~~

8. Making any additional, reasonable rules and regulations governing ~~such~~ artesian wells as it shall determine as the department determines are necessary.

**SECTION 165. AMENDMENT.** Section 61-20-07 of the North Dakota Century Code is amended and reenacted as follows:

**61-20-07. Enforcement of chapter ~~by state engineer~~ - Appeal.**

The provisions of this chapter must be enforced by the ~~state engineer~~ department of water resources. The ~~state engineer~~ department may issue administrative orders requiring compliance with this chapter. An appeal from ~~the engineer's~~ a ruling of the department may be taken under the provisions of chapter 28-32.

**SECTION 166. AMENDMENT.** Section 61-21-02.1 of the North Dakota Century Code is amended and reenacted as follows:

**61-21-02.1. Assessment drain culverts.**

As part of the design and construction of a proposed assessment drain or the maintenance or reconstruction of an existing assessment drain, the board, upon approval of the appropriate road authority, may locate, relocate, size, and install culverts through roads which are not on the routes of assessment drains but which are within the assessment area and which are necessary for surface water to reach the assessment drain. The design and installation of culverts under this section must be consistent with chapters 24-03 and 24-06 and the streamcrossing and construction site protection standards prepared by the department of transportation and the ~~state engineer~~department of water resources.

**SECTION 167. AMENDMENT.** Section 61-21-22 of the North Dakota Century Code is amended and reenacted as follows:

**61-21-22. Hearing on assessment - Appeal to state engineer - Correction of assessments - Relocating drain - Fees of state engineer.**

At the hearing provided for in section 61-21-21, the board shall proceed to hear all complaints relative to the percentage assessments and shall correct or confirm the same. Should landowners subject to assessment or whose property is subject to condemnation for the construction of the proposed drain having a majority of the possible votes, as determined by section 61-21-16, believe that the assessment had not been fairly or equitably made, or that the drain is not properly located or designed, they may appeal to the ~~state engineer~~department of water resources by petition within ten days after the hearing on assessments, to ~~make a review of such~~the percentage assessments and to examine the location and design of the proposed drain. Upon the receipt of ~~such~~the petition, the ~~state engineer~~department shall ~~proceed to~~ examine the lands assessed and the location and design of the proposed drain, and should it ~~appear to the state engineer that such~~the department determine the assessments have not been made equitably, the ~~state engineer~~department may ~~proceed to~~ correct the ~~same assessments~~, and the ~~state engineer's~~department's correction and adjustment of said assessments shall ~~bear~~be final. Should it ~~appear that, in the judgment of the state engineer, the~~department determine the drain has been improperly located or designed, the ~~state engineer~~department may order a relocation and redesign. ~~Such~~The relocation and redesign shall ~~must~~ be followed in the construction of the proposed drain. For the ~~state engineer's~~department's services in ~~making such review of~~reviewing the assessments and ~~examination of~~examining the location and design, the ~~state engineer shall be allowed~~department is entitled to ten dollars per day and actual and necessary expenses during the time the ~~state engineer~~department is engaged upon ~~such~~the work. All moneys received by the ~~state engineer shall~~department must be paid into the state treasury and credited to the general fund. After the hearing provided in this section, the board shall make a finding that the benefits to all tracts of land will exceed the costs that will be assessed against the lands. Any landowner who ~~may claim that~~claims the landowner will receive no benefit ~~at all~~ from the construction of a new drain may appeal the question of whether there is any benefit to the ~~state engineer~~department upon the filing of a bond in the sum of two hundred fifty dollars with the board for the payment of the costs of the ~~state engineer~~department in the matter. The ~~state engineer shall~~department may not determine the specific amount of benefits upon an appeal by an individual landowner, but shall ~~only~~only determine ~~if only whether~~ there is any benefit to the landowner, and the determination of the ~~state engineer upon such question shall be~~department is final.

**SECTION 168. AMENDMENT.** Section 61-21-34 of the North Dakota Century Code is amended and reenacted as follows:

**61-21-34. Procedure to construct or extend a drain through or into two or more counties.**

In order to construct or extend a drain through or into two or more counties in this state, a petition shall ~~must~~ be presented to the several boards for the establishment of ~~such~~the drain in their several

counties as provided in this chapter. The boards of ~~such several~~ the counties shall hold a joint meeting and shall determine the necessity or expediency of the establishment of ~~such the~~ the drain. The several boards of all counties through or into which ~~such the~~ the proposed drain may run shall agree upon the proportion of damages and benefits to accrue to the lands affected in each county, and for this purpose ~~they the boards~~ the boards shall consider the entire course of ~~said the~~ the drain through all ~~said the~~ the counties as one drain. Should the boards fail to agree upon the benefits to accrue to the lands in each county, ~~they the boards~~ the boards shall submit the points in controversy to the ~~state engineer of the state water commission~~ department of water resources, and the ~~state engineer's decision thereon shall be~~ department's decision is final. ~~They~~ The boards may apportion the cost of establishing and constructing ~~such the~~ the entire drain ratably and equitably upon the lands in each ~~such~~ the county in proportion to the benefits to accrue to ~~such the~~ the county's lands. When ~~they the boards~~ the boards have so apportioned the ~~same, they costs, the boards~~ costs, the boards shall make written reports of ~~such the~~ the apportionment to the auditors of the several counties affected, ~~which. The~~ reports shall ~~must~~ must show the portion of cost of ~~such the~~ the entire drain to be paid by taxes upon the lands in each of ~~such the~~ the counties and ~~such reports shall~~ must be signed by the boards of all counties affected. Upon the filing of ~~such the~~ the reports, the several boards shall meet and assess against the lands in each of ~~such the~~ the counties, ratably and equitably as provided by this chapter, an amount sufficient to pay the proportion of the cost of ~~such the~~ the drain in each of ~~such counties so fixed by all said boards~~ county. The provisions of this chapter relating to drains within a single county shall govern the establishment, construction, maintenance, repair, and cleanout of ~~such the~~ the drains.

**SECTION 169. AMENDMENT.** Section 61-24-07 of the North Dakota Century Code is amended and reenacted as follows:

**61-24-07. Attorney general shall act as legal adviser - ~~Chief engineer of state water commission~~ Department of water resources to assist board - Employment of counsel and engineers.**

The attorney general shall, ~~as far as the attorney general's duties permit,~~ act as the legal adviser of the board ~~to the extent the duties of the attorney general permit.~~ The chief engineer of the state water commission ~~department of water resources shall furnish such engineering services and assistance as to~~ the extent the duties of the ~~chief engineer's office~~ department permit. When the district has funds available, the board of directors may employ other counsel to advise and represent ~~it the board in its~~ the board's proceedings and affairs, and may employ other engineers and engineering services in connection with ~~its the board's~~ the board's work and the affairs of the district.

**SECTION 170. AMENDMENT.** Section 61-24.3-01 of the North Dakota Century Code is amended and reenacted as follows:

**61-24.3-01. Legislative findings and intent.**

The legislative assembly finds that adequate water supplies for municipal, domestic, livestock, rural, irrigation, industrial, and other uses are essential for the social stability and economic security of the people of the state of North Dakota. It is further found that the development and utilization of the water resources of this state are necessary for the protection of health, property, and enterprise, and for the promotion of prosperity and general welfare of the people of the state of North Dakota, and that such development and utilization of water resources in this state involves, ~~necessitates,~~ and requires the exercise of the sovereign powers of the state and concern a public purpose. ~~Therefore, it is hereby declared~~ It is necessary that the southwest pipeline project, as authorized and approved pursuant to this chapter, be established and constructed, to provide for the supplementation of the water resources of a portion of the area of North Dakota south and west of the Missouri River with water supplies from the Missouri River for multiple purposes, including domestic, rural, and municipal uses. In furtherance of this public purpose, the state water commission may provide for the issuance of bonds not to exceed twenty-five million dollars in accordance with chapter 61-02 to finance the cost of the project. The provisions of this chapter may not be construed to, ~~in any manner,~~ abrogate or limit the rights, powers, duties, or functions of the state water commission or the ~~state engineer~~ department of water resources, but are supplementary ~~thereto~~ to the rights, powers, duties, or functions. Nor may this chapter be

construed as limiting or in any way affecting the laws of this state relating to the organization or operation of irrigation districts, water resource districts, or other political subdivisions.

**SECTION 171. AMENDMENT.** Section 61-24.5-01 of the North Dakota Century Code is amended and reenacted as follows:

**61-24.5-01. Findings and declaration of policy.**

~~It is hereby found and declared by the legislative assembly that many~~

1. ~~Many~~ areas and localities in southwestern North Dakota do not enjoy adequate quantities of high-quality drinking water. ~~It is also found and declared that other~~Other areas and localities in southwestern North Dakota do not have sufficient quantities of water to ensure a dependable, long-term supply. ~~It is further found and declared that supplementation~~Supplementation of the water resources of southwestern North Dakota, with water supplies from Lake Sakakawea and the Missouri River, utilizing a pipeline transmission and delivery system, is a feasible approach to provide southwestern North Dakota with a safe, good quality, dependable source, and adequate quantity of water.

~~It is further declared that opportunity~~

2. Opportunity for greater economic security, protection of health, property, enterprise, preservation of the benefits from the land and water resources of this state, and the promotion of the prosperity and general welfare of all of the people of North Dakota depends on the effective development and utilization of the land and water resources of this state, and ~~necessitate and~~ require the exercise of the sovereign powers of the state and concern a public purpose. ~~Therefore, in order to~~To accomplish this public purpose, ~~it is hereby declared necessary that a project to supply and distribute water to southwestern North Dakota, as authorized by chapter 61-24.3, and acts amendatory thereof and supplementary thereto, must be established and constructed, to:~~
  4. a. Provide for the supply and distribution of water to the people of southwestern North Dakota through a pipeline transmission and delivery system for purposes including domestic, rural water, municipal, livestock, light industrial, mining, and other uses, with primary emphasis on domestic, rural water, and municipal uses.
  2. b. Provide for the future economic welfare and property of the people of this state, and particularly the people of southwestern North Dakota, by making available waters from Lake Sakakawea and the Missouri River for beneficial and public uses.
3. ~~It is also declared necessary to study and further develop water resources to provide adequate water supplies for energy, industrial, agriculture, and other opportunities in southwest North Dakota. The provisions hereof~~This section may not be construed to ~~abrogate or~~ limit the rights, powers, duties, and functions of the state water commission or the ~~state engineer~~department of water resources, but must be considered supplementary ~~thereto~~to those rights, powers, duties, and functions.

**SECTION 172. AMENDMENT.** Section 61-24.5-18 of the North Dakota Century Code is amended and reenacted as follows:

**61-24.5-18. Easement granted for ditches, canals, tramways, and transmission lines on any public lands.**

In connection with the construction and development of the southwest pipeline project, there is granted over all the lands belonging to the state, including lands owned or acquired for highway right-of-way purposes, a right of way for pipelines, connections, valves, and all other appurtenant facilities constructed as part of the southwest pipeline project, provided, however, ~~that~~ the director of the department of transportation and the ~~state engineer~~director of the department of water resources must

approve the plans of the authority ~~with respect to~~ regarding the use of ~~any and all right of way of roads~~ and all right of way of roads ~~prior to such~~ before the grant becoming effective.

**SECTION 173. AMENDMENT.** Section 61-24.6-01 of the North Dakota Century Code is amended and reenacted as follows:

**61-24.6-01. Findings and declaration of policy.**

~~It is hereby found and declared by the legislative assembly that many~~ Many areas and localities in northwestern North Dakota do not enjoy safe drinking water, and ~~that the water in these areas and localities contains iron, sulfates, alkali, salt, nitrates, fluoride, and other hazardous and discoloring substances. It is also found and declared that other~~ Other areas and localities in northwestern North Dakota do not have sufficient quantities of water to ensure a dependable, long-term supply. ~~It is further found and declared that supplementation~~ Supplementation of the water resources of northwestern North Dakota with water supplies from the Missouri River, utilizing a pipeline transmission and delivery system, may be the only alternative to provide northwestern North Dakota with a safe, good quality, dependable source, and adequate quantity of water.

~~It is further declared that effective~~ Effective development and utilization of the land and water resources of this state; the opportunity for greater economic security; the protection of health, property, enterprise, and the preservation of the benefits from the land and water resources of this state; and the promotion of the prosperity and general welfare of all of the people of North Dakota involve, ~~necessitate,~~ and require the exercise of the sovereign powers of the state and concern a public purpose. ~~Therefore, in order to~~ To accomplish this public purpose, ~~it is hereby declared necessary that a project be pursued that would~~ to supply and distribute water to the people of northwestern North Dakota through a pipeline transmission and delivery system for purposes, including domestic, rural water districts, municipal, livestock, light industrial, mining, and other uses, with primary emphasis on domestic, rural water district, and municipal uses must be pursued. In furtherance of this public purpose, the state water commission may provide for the issuance of bonds in accordance with chapter 61-02 to finance the costs of the project.

~~The provisions of this~~ This chapter may not be construed to ~~abrogate or~~ limit the rights, powers, duties, and functions of the state water commission or the ~~state engineer~~ department of water resources, but must be considered supplementary to those rights, powers, duties, and functions.

**SECTION 174. AMENDMENT.** Section 61-24.6-02 of the North Dakota Century Code is amended and reenacted as follows:

**61-24.6-02. Northwest area water supply advisory committee - Created.**

The northwest area water supply advisory committee consists of the following representatives, appointed by the ~~state engineer~~ director of the department of water resources:

1. One person from the city of Minot recommended by the Minot city council.
2. One person from the city of Williston recommended by the Williston city council.
3. One person from the Bottineau, Burke, Divide, McHenry, McLean, Mountrail, Pierce, Renville, Ward, or Williams County water resource districts recommended jointly by the governing boards of the Bottineau, Burke, Divide, McHenry, McLean, Mountrail, Pierce, Renville, Ward, or Williams County water resource districts.
4. One representative of the state water commission recommended by the commission.
5. One representative of the Three Affiliated Tribes, representing that area of the Fort Berthold Indian Reservation north of the Missouri River and Lake Sakakawea recommended by the tribal council.

6. One representative of rural water distribution systems located in northwestern North Dakota. This representative must be a resident of Bottineau, Burke, Divide, McHenry, McLean, Mountrail, Pierce, Renville, Ward, or Williams County.
7. One representative of a municipality other than the city of Minot, located in Bottineau, Burke, Divide, McHenry, McLean, Mountrail, Pierce, Renville, Ward, or Williams County.
8. One representative of the Garrison Diversion Conservancy District recommended by the board of directors of the conservancy district.
9. One at-large representative.

**SECTION 175. AMENDMENT.** Section 61-24.6-03 of the North Dakota Century Code is amended and reenacted as follows:

**61-24.6-03. Advisory committee - Officers - Meetings - Compensation.**

The northwest area water supply advisory committee shall elect a chairman and vice chairman. The advisory committee shall meet at the times and places necessary to carry out the purposes of this chapter. The advisory committee members may be reimbursed for their mileage and expenses in the amount provided for by sections 44-08-04 and 54-06-09. The advisory committee members serve at the pleasure of the ~~state engineer~~director of the department of water resources. Vacancies must be filled in the same manner as original appointments are made.

**SECTION 176. AMENDMENT.** Section 61-24.6-05 of the North Dakota Century Code is amended and reenacted as follows:

**61-24.6-05. ~~State engineer~~Department of water resources - Employment of staff.**

The ~~state engineer~~director of the department of water resources may employ full-time and other personnel and may employ such other personnel as areas necessary for the administration of to administer this chapter and as available funds permit. Notwithstanding section 61-02-64.1, funds disbursed from the contract fund or appropriated for purposes of administering this chapter may be used for salaries and expenses of persons employed pursuant to this chapter.

**SECTION 177. AMENDMENT.** Section 61-24.8-01 of the North Dakota Century Code is amended and reenacted as follows:

**61-24.8-01. Definitions.**

As used in this chapter:

1. "Auditor" means the county auditor.
2. "Board" means the board of directors of the Garrison Diversion Conservancy District.
3. "Bond" means any revenue bond, refunding bond, improvement bond, or other evidence of indebtedness, including indebtedness owed to banks, or other public or private lending sources, of the district issued under this chapter.
4. "Direct benefit" means water is delivered to a tract of land.
5. "Director" means a member of the board of directors.
6. "District" means the Garrison Diversion Conservancy District.
7. "Federal agency" includes the United States, the president of the United States, or any agency, instrumentality, or corporation of the United States which has been or may be designated or created by or pursuant to any act or acts or joint resolutions of the Congress of

the United States or which may be owned or controlled, directly or indirectly, by the United States.

8. "Holder of bonds" or "bondholder", or any similar term, means any person who is the registered owner of any outstanding revenue bond, improvement bond, or refunding bond.
9. "Law" means any statute of this state.
10. "Project" means any work, undertaking, enterprise, or any combination of two or more projects, which the district is authorized to construct. The term includes all irrigation improvements, betterments, extensions, and replacements of work, undertaking, or enterprises, and all appurtenances, facilities, easements, lands, rights in land, water rights, contract rights, approaches, dams, reservoirs, generating stations, trunk connections, other water mains, filtration works, pumping stations, equipment, franchises, and structures in connection with or incidental to any irrigation work, undertaking, or enterprise the district is authorized to construct.
11. "Refinancing" means funding, refunding, paying, or discharging by means of refunding bonds or the proceeds from the sale of refunding bonds, all or any part of any notes, bonds, or other obligations issued to finance or to aid in financing the acquisition, construction, or improvement of a project.
12. "Refunding bonds" means notes, bonds, certificates, or other obligations of the district issued under this chapter, the proceeds of which are to be used to pay the principal of or interest on any outstanding bonds or other obligations.
13. "Revenues" means all fees, tolls, rates, rentals, and charges levied and collected by the district in connection with, and all other income and receipts of whatever kind or character derived by the district from, the operation of any project.
14. ~~"State engineer" has the same meaning as provided in chapter 61-03.~~
15. "Warrant" means an order drawn by the proper official of the district on its treasury, the warrant to be so drawn that when signed by the district treasurer in an appropriate place it becomes a check on the depository of the district, and a warrant upon the treasury may not be delivered or mailed to the payee or the payee's agent or representative until the warrant has been signed by the district treasurer and entered on the district's books as a check drawn on a bank depository.

**SECTION 178. AMENDMENT.** Section 61-24.8-18 of the North Dakota Century Code is amended and reenacted as follows:

**61-24.8-18. Appeal to ~~state engineer~~department of water resources.**

Within ten days after the hearing under section 61-24.8-17, affected landowners subject to assessment, who believe that the assessment has not been fairly or equitably made, or that the project is not properly located or designed, may petition the ~~state engineer~~department of water resources to review the assessments and examine the location and design of the proposed project. Upon receipt of a petition, the ~~state engineer~~department shall examine the lands assessed and the location and design of the proposed project. If it appears to the ~~state engineer~~thatdepartment the assessments have not been made equitably, the ~~state engineer~~department may proceed to correct the assessments. The ~~state engineer's~~department's correction and adjustment of assessments is final. If it appears to the ~~state engineer~~thatdepartment the project has been improperly located or designed, the ~~state engineer~~department may order a relocation and redesign, which must be followed in the construction of the proposed project. Any landowner claiming to receive no direct benefit from the project may appeal to the ~~state engineer~~department the question of whether there is any direct benefit. The appeal must be filed with the ~~state engineer~~department within ten days after the hearing on assessments in section 61-24.8-17. The ~~state engineer~~department may not determine the specific amount of benefit upon an

appeal by an individual landowner and may determine only if there is any direct benefit to the landowner. The determination of the ~~state engineer~~department upon the appeal is final.

**SECTION 179. AMENDMENT.** Section 61-29-04 of the North Dakota Century Code is amended and reenacted as follows:

**61-29-04. Administration.**

This chapter must be administered by a Little Missouri River commission composed of the director of the parks and recreation department, the director of the department of environmental quality, the ~~chief engineer of the state water commission~~director of the department of water resources, or their designated representatives, and one member from each of the following counties: McKenzie, Billings, Slope, Golden Valley, Dunn, and Bowman. The commission members representing the above-mentioned counties must be appointed by their respective boards of county commissioners and shall serve without compensation except that each appointing board of county commissioners may reimburse its county representative for actual and necessary mileage to and from meetings of the commission at the same rate as state officers. The county representatives appointed must be resident landowners who live adjacent to the Little Missouri River with the exception of the Golden Valley County representative. A county representative unable to attend a meeting of the commission may be represented by a person who has a written proxy from the representative authorizing that person to act and vote for the representative. The proxy must be a resident landowner of the county that the proxy is representing, but need not live adjacent to the Little Missouri River. The county members shall serve terms of office as follows: two members shall serve one-year terms, two members shall serve two-year terms, and two members shall serve three-year terms.

**SECTION 180. AMENDMENT.** Subsection 6 of section 61-31-02 of the North Dakota Century Code is amended and reenacted as follows:

6. "State assessment team" means representatives from the department of agriculture, the game and fish department, the ~~state engineer's staff~~department of water resources, the United States department of agriculture's soil conservation service, and the United States fish and wildlife service.

**SECTION 181. AMENDMENT.** Section 61-32-03 of the North Dakota Century Code is amended and reenacted as follows:

**61-32-03. Permit to drain waters required - Penalty.**

Any person, before draining a pond, slough, lake, or sheetwater, or any series thereof, which has a watershed area comprising eighty acres [32.37 hectares] or more, shall first secure a permit to do so. The permit application must be submitted to the ~~state engineer~~department of water resources. The ~~state engineer~~department shall refer the application to the water resource district or districts within which is found a majority of the watershed or drainage area of the pond, slough, lake, or sheetwater for consideration and approval, but the ~~state engineer~~department may require that applications proposing drainage of statewide or interdistrict significance be returned to the ~~state engineer~~department for final approval. A permit may not be granted until an investigation discloses ~~that~~ the quantity of water which will be drained from the pond, slough, lake, or sheetwater, or any series ~~thereof~~ those water bodies, will not flood or adversely affect downstream lands. If the investigation shows ~~that~~ the proposed drainage will flood or adversely affect lands of downstream landowners, the water resource board may not issue a permit until flowage easements are obtained. The flowage easements must be filed for record in the office of the recorder of the county or counties in which the lands are situated. An owner of land proposing to drain shall undertake and agree to pay the expenses incurred in making the required investigation. This section does not apply to the construction or maintenance of any existing or prospective drain constructed under the supervision of a state or federal agency, as determined by the ~~state engineer~~department of water resources.

Any person draining, or causing to be drained, a pond, slough, lake, or sheetwater, or any series ~~thereof~~ those water bodies, which has a watershed area comprising eighty acres [32.37 hectares] or

more, without first securing a permit to do so, as provided by this section, is liable for all damage sustained by any person caused by the draining, and is guilty of an infraction. As used in this section, sheetwater means shallow water that floods land not normally subject to standing water. The ~~state engineer~~department of water resources may adopt rules for temporary permits for emergency drainage.

**SECTION 182. AMENDMENT.** Section 61-32-03.1 of the North Dakota Century Code is amended and reenacted as follows:

**61-32-03.1. Permit to drain subsurface waters required - Permit form - Penalty.**

1. a. Installation of a subsurface water management system comprising eighty acres [32.37 hectares] of land area or more requires a permit. The watershed area drained by a subsurface water management system may not be used to determine whether the system requires a permit under this section.
- b. Subsurface water management systems that use surface intakes must be permitted exclusively under this section if the system will have a drainage coefficient of three-eighths of an inch [0.95 centimeters] or less. Subsurface water management systems that use surface intakes must be permitted exclusively under section 61-32-03 if the system will have a drainage coefficient exceeding three-eighths of an inch [0.95 centimeters].
- c. Installation of a subsurface water management system comprising less than eighty acres [32.37 hectares] of land area does not require a permit.
2. a. The ~~state engineer~~department of water resources shall develop an application form for a permit required under this section. A person seeking to construct a subsurface water management system that requires a permit under this section must submit a completed application to the water resource district board within which is found a majority of the land area for consideration and approval. The water resource district board may charge permit applicants a fee up to one hundred fifty dollars. Water resource districts shall forward copies of all approved permits to the ~~state engineer~~department of water resources.
- b. Upon submission of a completed application for a permit, the water resource district board immediately shall give notice and a copy of the submission via certified mail to each owner of land within one mile [1.61 kilometers] downstream of the proposed subsurface water management system outlet unless the distance to the nearest waterway depicted as a perennial or intermittent stream or river on a United States geological survey topography map, assessment drain, natural watercourse, slough, or lake is less than one mile [1.61 kilometers], in which case notice and a copy of the submission must be given immediately to each owner of land between the outlet and the nearest assessment drain, natural watercourse, slough, or lake. The notice requirement in this section must be waived if the applicant presents signed, notarized letters of approval from all downstream landowners entitled to notice in this subsection.
3. a. If the water resource board receives notarized letters of approval from all downstream landowners entitled to notice, the board shall approve the completed permit application as soon as practicable but no later than thirty days after receipt of the last letter. Otherwise, the water resource board shall review the completed application at its next meeting that is at least thirty days after receipt of the application. The board shall consider any written, technical evidence provided by the applicant or a landowner notified under subsection 2 addressing whether the land of a notified landowner will be flooded or unreasonably harmed by the proposed subsurface water management system. For purposes of this section "technical evidence" means written information regarding the proposed subsurface water management system, prepared after consideration of the design and physical aspects of the proposed system, and any adverse hydraulic effects, including erosion, flood duration, crop loss, and downstream water control device

operation impacts, which may occur to land owned by a landowner provided under subsection 2. Technical evidence must be submitted to the permit applicant, notified landowners, and the board within thirty days of the receipt of the completed permit application by the board. A notified landowner may not object to the proposed system unless the landowner presents technical evidence under this subsection.

- b. If the board finds, based on technical evidence, the proposed subsurface water management system will flood or unreasonably harm lands of a landowner notified under subsection 2, the board may require the applicant to obtain a notarized letter of approval before issuing a permit for the system. The board may not require a letter of approval for any land downstream of a system that outlets into an assessment drain, natural watercourse, or pond, slough, or lake if notified landowners did not provide technical evidence to the district.
  - c. A water resource district may attach reasonable conditions to an approved permit for a subsurface water management system that outlets directly into a legal assessment drain or public highway right of way. For purposes of this subsection, "reasonable conditions" means conditions that address the outlet location, proper erosion control, reseeding of disturbed areas, installation of riprap or other ditch stabilization, and conditions that require all work to be done in a neat and professional manner. Any condition to locate the project a minimum distance from rural water supply lines may not extend beyond an existing easement for lines, or no greater than twenty feet [6.1 meters] from either side of the water line if the rural water line was installed under a blanket easement.
  - d. A water resource district may require a subsurface water management system granted a permit under this section to incorporate a control structure at the outlet into the design of the system and may require the control structure be closed during critical flood periods.
  - e. A water resource district board may not deny a completed permit application under this section unless the board determines, based on technical evidence submitted by a landowner notified under subsection 2, the proposed water management system will flood or unreasonably harm land of a notified landowner, and a notarized letter of approval required by the board has not been obtained by the applicant. For purposes of this section, "unreasonable harm" is limited to hydraulic impacts, including erosion or other adverse impacts that degrade the physical integrity of a roadway or real property within one mile [1.61 kilometers] downstream of the system's outlet. The board shall include a written explanation of the reasons for a denial of a completed application and notify, by certified mail, the applicant and all landowners notified under subsection 2 of the approval or denial.
  - f. The board may not deny a permit more than sixty days after receipt of the completed application for the permit. If the board fails to deny the permit application within sixty days of receipt, the permit application is deemed approved.
4. A denial of a completed permit application by a water resource district board may be appealed, under section 28-34-01, to the district court of the county in which the permit application was filed. The court may approve a completed permit application denied by a water resource district board or the ~~state engineer~~department of water resources if the application meets the requirements of this section.
  5. A water resource district board may not be held liable to any person for issuing a permit under this section.
  6. A person that installs a subsurface water management system requiring a permit under this section without first securing the permit is liable for all damages sustained by a person caused by the subsurface water management system.

7. A person that installs a subsurface water management system requiring a permit under this section without first securing the permit is guilty of an infraction.

**SECTION 183. AMENDMENT.** Section 61-32-08 of the North Dakota Century Code is amended and reenacted as follows:

**61-32-08. Appeal of board decisions - ~~State engineer~~Department of water resources review - Closing of noncomplying drains.**

1. The board shall make the decision required by section 61-32-07 within a reasonable time, but not to exceed one hundred twenty days, after receiving the complaint. The board shall notify all parties of its decision by certified mail. Any aggrieved party may appeal the board's decision to the ~~state engineer~~department of water resources. The appeal to the ~~state engineer~~department must be made within thirty days from the date notice of the board's decision has been received. The appeal must be made by submitting a written notice to the ~~state engineer~~department, ~~which and the notice must specifically set forth~~specify the reason why the board's decision is erroneous. The appealing party also shall ~~also~~ submit copies of the written appeal notice to the board and to all nonappealing parties. Upon receipt of this notice the board, if it has ordered closure of a drain, lateral drain, or ditch, is relieved of its obligation to procure the closing or filling of the drain, lateral drain, or ditch. The ~~state engineer~~department shall handle the appeal by conducting an independent investigation and making an independent determination of the matter. The ~~state engineer~~department may enter property affected by the complaint to investigate the complaint.
2. If the board fails to investigate and make a determination concerning the complaint within a reasonable time, but not to exceed one hundred twenty days, the person filing the complaint may file the complaint with the ~~state engineer~~department of water resources within one hundred fifty days of the submittal date of the original complaint. The ~~state engineer~~department, without reference to chapter 28-32, shall cause the investigation and determination to be made, either by action against the board or by conducting the investigation and making the determination.
3. If the ~~state engineer~~department of water resources determines ~~that~~ a drain, lateral drain, or ditch has been opened or established by a landowner or tenant contrary to title 61 or any rules adopted by the board, the ~~state engineer~~department shall take one of three actions:
  - a. Notify the landowner by certified mail at the landowner's post-office address of record;
  - b. Return the matter to the jurisdiction of the board along with the investigation report; or
  - c. Forward the drainage complaint and investigation report to the state's attorney.
4. If the ~~state engineer~~department of water resources decides to notify the landowner, the notice must specify the nature and extent of the noncompliance and state ~~that~~ if the drain, lateral drain, or ditch is not closed or filled within a reasonable time as determined by the ~~state engineer~~department, but not less than thirty days, the ~~state engineer~~department shall procure the closing or filling of the drain, lateral drain, or ditch and assess the cost, against the responsible landowner's property. The notice from the ~~state engineer~~department must state ~~that~~ the affected landowner may demand in writing, within fifteen days of the date the notice is mailed, ~~demand in writing~~ a hearing on the matter. Upon receipt of the demand, the ~~state engineer~~department shall set a hearing date within fifteen days from the date the demand is received. If, in the opinion of the ~~state engineer~~department, more than one landowner or tenant has been responsible, the costs may be assessed on a pro rata basis in proportion to the responsibility of the landowners. Upon assessment of costs, the ~~state engineer~~department shall certify the assessment to the county auditor of the county where the noncomplying drain, lateral drain, or ditch is located. The county auditor shall extend the assessment against the property assessed. Each assessment must be collected and paid as other property taxes are collected and paid. Assessments collected must be deposited with the state treasurer and

credited to the contract fund established by section 61-02-64.1. Any person aggrieved by action of the ~~state engineer department~~ under the provisions of this section may appeal the decision of the ~~state engineer department~~ to the district court under chapter 28-32. A hearing by the ~~state engineer as provided for in department under~~ this section is a prerequisite to an appeal.

5. If the ~~state engineer department of water resources~~, after completing the investigation required under this section, decides to return the matter to the board, a complete copy of the investigation report must be forwarded to the board and it must include the nature and extent of the noncompliance. Upon having the matter returned to its jurisdiction, the board shall carry out the ~~state engineer's department's~~ decision under the terms of this section.
6. If the ~~state engineer department of water resources~~, after completing the investigation required under this section, decides to forward the drainage complaint to the state's attorney, a complete copy of the investigation report must ~~also~~ be forwarded, ~~which~~ and must include the nature and extent of the noncompliance. The state's attorney shall prosecute the complaint under the statutory responsibilities prescribed in chapter 11-16.
7. In addition to the penalty imposed by the court on conviction under this statute, the court shall order the drain, lateral drain, or ditch closed or filled within a reasonable time period as the court determines, but not less than thirty days. If the drain, lateral drain, or ditch is not closed or filled within the time prescribed by the court, the court shall procure the closing or filling of the drain, lateral drain, or ditch, and assess the cost against the property of the landowner responsible, in the same manner as other assessments under chapter 61-16.1 are levied. If, in the opinion of the court, more than one landowner or tenant has been responsible, the costs may be assessed on a pro rata basis in proportion to the responsibility of the landowners.

**SECTION 184. AMENDMENT.** Section 61-33-01 of the North Dakota Century Code is amended and reenacted as follows:

**61-33-01. Definitions.**

As used in this chapter, unless the context otherwise requires:

1. "Board" means the sovereign lands advisory board.
2. "Board of university and school lands" means that entity created by section 15-01-01.
3. "Navigable waters" means waters that were in fact navigable at the time of statehood, and that are used, were used, or were susceptible of being used in their ordinary condition as highways for commerce over which trade and travel were or may have been conducted in the customary modes of trade on water.
4. "Ordinary high water mark" means that line below which the presence and action of the water upon the land is continuous enough so as to prevent the growth of terrestrial vegetation, destroy its value for agricultural purposes by preventing the growth of what may be termed an ordinary agricultural crop, including hay, or restrict its growth to predominantly aquatic species.
5. "Sovereign lands" means those areas, including beds and islands, lying within the ordinary high water mark of navigable lakes and streams. Lands established to be riparian accretion or reliction lands pursuant to section 47-06-05 are considered to be above the ordinary high water mark and are not sovereign lands.
6. ~~"State engineer" means the person appointed by the state water commission pursuant to section 61-03-01.~~

**SECTION 185. AMENDMENT.** Section 61-33-01.1 of the North Dakota Century Code is amended and reenacted as follows:

**61-33-01.1. Ordinary high water mark determination - Factors to be considered.**

The ~~state engineer~~department of water resources shall maintain ordinary high water mark delineation guidelines consistent with this section.

1. When determining the ordinary high water mark for delineating the boundary of sovereign lands, vegetation and soils analysis must be considered the primary physical indicators. When considering vegetation, the ordinary high water mark is the line below which the presence and action of the water is frequent enough to prevent the growth of terrestrial vegetation or restrict vegetation growth to predominately aquatic species. Generally, land, including hay land, where the high and continuous presence of water has destroyed the value of the land for agricultural purposes must be deemed within the ordinary high water mark.
2. When feasible, direct hydrological and hydraulic measurements from stream gauge data, elevation data, historic records of water flow, high resolution light detection and ranging systems, prior elevation and survey maps, and statistical hydrological evidence must be considered when determining the ordinary high water mark. The ~~state engineer~~department of water resources shall establish appropriate guidelines, technical standards, and other criteria, including use of light detection and ranging systems or other future technological advancements, as necessary, for conducting hydrologic and hydraulic modeling required by this section.
3. Secondary physical indicators, including litter, debris, or staining, may be considered to supplement the analysis of the ordinary high water mark investigation but may not supersede primary physical indicators unless primary physical indicators are deemed inadequate or inconclusive. Physical indicators directly affected by influent non-navigable tributaries, adjoining water bodies, or wetlands may not be used to delineate the sovereign land boundary of a navigable body of water.

**SECTION 186. AMENDMENT.** Section 61-33-02 of the North Dakota Century Code is amended and reenacted as follows:

**61-33-02. Administration of sovereign lands.**

All sovereign lands of the state must be administered by the ~~state engineer~~department of water resources and the board of university and school lands subject to the provisions of this chapter. Lands managed pursuant to this chapter are not subject to leasing provisions found elsewhere in this code.

**SECTION 187. AMENDMENT.** Section 61-33-03 of the North Dakota Century Code is amended and reenacted as follows:

**61-33-03. Transfer of possessory interests in real property.**

All possessory interests now owned or that may be acquired except oil, gas, and related hydrocarbons, in the sovereign lands of the state owned or controlled by the state or any of its officers, departments, or the Bank of North Dakota, together with any future increments, are transferred to the state of North Dakota, acting by and through the ~~state engineer~~director of the department of water resources. All such possessory interests in oil, gas, and related hydrocarbons in the sovereign lands of the state are transferred to the state of North Dakota, acting by and through the board of university and school lands. These transfers are self-executing. No evidence other than the provisions of this chapter is required to establish the fact of transfer of title to the state of North Dakota, acting by and through the ~~state engineer~~director of the department of water resources and board of university and school lands. Proper and sufficient delivery of all title documents is conclusively presumed.

**SECTION 188. AMENDMENT.** Section 61-33-05 of the North Dakota Century Code is amended and reenacted as follows:

**61-33-05. Duties and powers of the ~~state engineer~~department of water resources.**

The ~~state engineer~~department of water resources shall manage, operate, and supervise all properties transferred to it by this chapter; may enter into any agreements regarding ~~such~~the property; may enforce all rights of the owner in its own name; may issue and enforce administrative orders and recover the cost of the enforcement from the party against which enforcement is sought; and may make and execute all instruments of release or conveyance as may be required pursuant to agreements made with respect to ~~such~~the assets, whether ~~such~~the agreements were made heretofore, or are made hereafterbefore or after this section was enacted. The ~~state engineer~~department of water resources may enter agreements with the game and fish department or other law enforcement entities to enforce this chapter and rules adopted under this chapter.

**SECTION 189. AMENDMENT.** Section 61-33-05.1 of the North Dakota Century Code is amended and reenacted as follows:

**61-33-05.1. Navigability determinations.**

1. Before making a determination that a body of water or portion of a body of water is navigable, the ~~state engineer~~department of water resources shall:
  - a. Develop and deliver to the state water commission a preliminary finding regarding the navigability of the body of water or portion of a body of water and the legal rationale for the preliminary finding; and
  - b. Consult with the state water commission in an open meeting and demonstrate the public need and purpose for the determination to be made.
2. After completing the requirements of subsection 1, the ~~state engineer~~department of water resources may proceed with making a final determination of navigability by:
  - a. Providing reasonable public notice of the preliminary finding, legal rationale for the preliminary finding, and opportunity for the public to provide comments for no less than sixty days. The notice must:
    - (1) Include the address and electronic mail address to which public comments may be sent and the deadline by which public comments must be received;
    - (2) Clearly identify the specific body of water or portion of a body of water for which the finding of navigability is sought;
    - (3) State the ~~state engineer~~department will hold a public hearing regarding the preliminary finding before a final determination of navigability is made, and provide the date, time, and location of the public hearing;
    - (4) Be provided to the governing body of each soil conservation district, water resource district, and county adjacent to the body of water or portion of a body of water for which the preliminary finding was made;
    - (5) Be published in the official county newspaper for each county adjacent to the body of water or portion of a body of water for which the preliminary finding was made; and
    - (6) Briefly state the purpose of the hearing and describe the impact or effect a determination of navigability will have on the property rights of persons who own property adjacent to the body of water or portion of a body of water for which the determination of navigability may be made; and
  - b. Holding a public hearing regarding the preliminary finding.

3. After completing the requirements of subsection 2 and making a determination of navigability, the ~~state engineer~~department of water resources shall prepare a report regarding the determination, including summaries of the information provided to the state water commission, the public hearings held, and the public comments received. The ~~state engineer~~department shall provide the report to the state water commission, send the report by certified mail to any person that appeared at the public hearing required under subsection 2 or provided written comments by the deadline, make the report available to the public, including on the website for the office of the secretary of state, and provide public notice of the report's availability. The report is final on the date it is provided to the state water commission.
4. A determination of navigability may be appealed directly to a court of competent jurisdiction in accordance with sections 28-32-42 through 28-32-46 and sections 28-32-50 and 28-32-51.

**SECTION 190. AMENDMENT.** Section 61-33-07 of the North Dakota Century Code is amended and reenacted as follows:

**61-33-07. Deposit of income.**

All income derived from the lease and management of the lands acquired by the ~~state engineer~~department of water resources and board of university and school lands pursuant to this chapter and not belonging to other trust funds must be deposited in the strategic investment and improvements fund.

**SECTION 191. AMENDMENT.** Section 61-33-08 of the North Dakota Century Code is amended and reenacted as follows:

**61-33-08. Advisory board - Responsibilities.**

There is created a sovereign lands advisory board. The board's responsibility is to advise the ~~state engineer~~department of water resources and the board of university and school lands on general policies as well as specific projects, programs, and uses regarding sovereign lands. The board, being solely advisory, has no authority to require the ~~state engineer~~department of water resources or the board of university and school lands to implement or otherwise accept the board's recommendations.

**SECTION 192. AMENDMENT.** Section 61-33-09 of the North Dakota Century Code is amended and reenacted as follows:

**61-33-09. Members of the board - Organization - Meetings.**

1. The board consists of the manager of the Garrison Diversion Conservancy District, the ~~state engineer~~director of the department of water resources, the commissioner of university and school lands, the director of the parks and recreation department, the director of the game and fish department, and the director of the department of environmental quality, or their representatives.
2. The ~~state engineer~~director of the department of water resources is the board's secretary.
3. The board shall meet at least once a year or at the call of the ~~state engineer~~director of the department of water resources or two or more members of the board. The board shall meet at the office of the ~~state engineer~~director of the department of water resources or at any other place decided upon by the board.
4. The board may adopt rules to govern its activities.

**SECTION 193. AMENDMENT.** Section 61-33-10 of the North Dakota Century Code is amended and reenacted as follows:

**61-33-10. Penalty.**

A person who violates this chapter or any rule implementing this chapter is guilty of a class B misdemeanor unless a lesser penalty is indicated. A civil penalty may be imposed by a court in a civil proceeding or by the ~~state engineer~~department of water resources through an adjudicative proceeding pursuant to chapter 28-32. The assessment of a civil penalty does not preclude the imposition of other sanctions authorized by law, this chapter, or rules adopted under this chapter. The ~~state engineer~~department of water resources may bring a civil action to recover damages resulting from violations and may also recover any costs incurred.

**SECTION 194. AMENDMENT.** Section 61-33.1-07 of the North Dakota Century Code is amended and reenacted as follows:

**61-33.1-07. ~~State engineer~~Department of water resources regulatory jurisdiction. (Retroactive application - See note)**

This chapter does not affect the authority of the ~~state engineer~~department of water resources to regulate the historical Missouri riverbed channel, minerals other than oil and gas, or the waters of the state, provided the regulation does not affect ownership of oil and gas minerals in and under the riverbed or lands above the ordinary high water mark of the historical Missouri riverbed channel subject to inundation by Pick-Sloan Missouri basin project dams.

**SECTION 195. AMENDMENT.** Section 61-34-01 of the North Dakota Century Code is amended and reenacted as follows:

**61-34-01. Definitions.**

In this chapter, unless the context otherwise requires:

1. "Commission" means the state water commission.
2. "Program" means the drought disaster livestock water assistance program.
3. ~~"State engineer" means the state engineer appointed under section 61-03-01.~~

**SECTION 196. AMENDMENT.** Section 61-34-04 of the North Dakota Century Code is amended and reenacted as follows:

**61-34-04. Eligibility - Application for assistance.**

Applicants with livestock water supply problems caused by drought may apply for assistance from the program. An applicant must first apply for water cost-share assistance from the United States department of agriculture farm service agency. If cost-share assistance is denied by the agency, the applicant may forward the application to the commission for consideration. An application forwarded to the commission must include a document from the United States department of agriculture farm service agency stating the reason for denial of cost-share assistance. The ~~state engineer~~department of water resources shall review all applications received by the commission. Notwithstanding any other provision of law, a water supply project commenced after application for funding is made but without prior approval of the ~~state engineer~~department is eligible for funding consideration from the program. The ~~state engineer~~department shall provide funds for approved applications in accordance with rules and criteria for eligibility and only to the extent that funding is available. A drought disaster livestock water assistance program project located on Indian land is eligible for the program.

**SECTION 197. AMENDMENT.** Section 61-35-01 of the North Dakota Century Code is amended and reenacted as follows:

**61-35-01. Definitions.**

As used in this chapter:

1. "Auditor" means the county auditor.
2. "Benefit unit" means the fee each member pays, for each service that is planned to be connected to the water system, for the privilege of using the district's facilities.
3. "Board" means the board of directors of a district.
4. "Bond" means any revenue bond, refunding bond, or improvement bond, or other evidence of indebtedness of a district issued under this chapter.
5. "Director" means a member of the board of directors.
6. "District" means a water district organized under this chapter.
7. "Federal agency" includes the United States, the president of the United States, or any agency, instrumentality, or corporation of the United States which has been or may be designated or created by or pursuant to any act or acts or joint resolutions of the Congress of the United States or which may be owned or controlled, directly or indirectly, by the United States.
8. "Holder of bonds" or "bondholder", or any similar term, means any person who is the registered owner of any outstanding revenue bond, improvement bond, or refunding bonds.
9. "Law" means any statute of this state.
10. "Member" means an owner of real property that is located within a district, the tenant of the real property, or another person acting for the owner with the owner's written consent.
11. "Participating member" means a member who has subscribed to and paid the established fee for at least one benefit unit in a district, in the manner provided by this chapter.
12. "Project" means any work, undertaking, enterprise, or any combination of two or more projects which a district is authorized to construct and from which the district has derived or may derive revenues. "Project" includes all improvements, betterments, extensions, and replacements of work, undertaking, or enterprises, and all appurtenances, facilities, easements, lands, rights in land, water rights, contract rights, approaches, dams, reservoirs, generating stations, sewage disposal plants, intercepting sewers, trunk connections, other sewer and water mains, filtration works, pumping stations, equipment, franchises, and structures in connection with or incidental to any work, undertaking, or enterprise a district is authorized to construct.
13. "Refinancing" means funding, refunding, paying, or discharging, by means of refunding bonds or the proceeds from the sale of refunding bonds, all or any part of any notes, bonds, or other obligations issued to finance or to aid in financing the acquisition, construction, or improvement of a project and payable solely from all or any part of the revenue or interest on the revenue of the project in arrears or about to become due whether or not such interest is represented by interest certificates.
14. "Refunding bonds" means notes, bonds, certificates, or other obligations of a district issued under this chapter, the proceeds of which are to be used to pay the principal of or interest on any outstanding bonds or other obligations.
15. "Revenues" means all fees, tolls, rates, rentals, and charges levied and collected by a district in connection with, and all other income and receipts of whatever kind or character derived by a district from, the operation of any project.
16. ~~"State engineer" has the same meaning as provided in chapter 61-03.~~
17. "Warrant" means an order drawn by the proper official of a district on its treasury, the warrant of order to be so drawn that when signed by the district treasurer in an appropriate place it

becomes a check on the depository of such district, and a warrant upon the treasury may not be delivered or mailed to the payee or the payee's agent or representative until the warrant has been signed by the district treasurer and entered on the district's books as a check drawn on a bank depository.

**SECTION 198. AMENDMENT.** Section 61-35-02 of the North Dakota Century Code is amended and reenacted as follows:

**61-35-02. Petition.**

A petition may at any time be filed with the ~~state engineer~~department of water resources requesting the ~~state engineer~~department to organize a district encompassing an area in one county or in two or more adjacent counties for the purpose of providing an adequate supply of water for the residents of the area. An area to be included in a district may not include property then included in any other district or included in the service area of a nonprofit corporation or cooperative association established under title 10 to operate a rural water system, except as otherwise permitted under section 61-35-25.

**SECTION 199. AMENDMENT.** Section 61-35-02.1 of the North Dakota Century Code is amended and reenacted as follows:

**61-35-02.1. Conversion of water resource district water supply system to water district.**

A water resource district that has developed a water supply system under chapter 61-16.1 may convert that system to a water district as provided in this section. The water resource district board operating a water supply system may petition the ~~state engineer~~department of water resources to organize a district in the manner provided by section 61-35-02. The signatures of the water resource district's board of directors on the petition and a resolution adopted by the water supply system's users approving the petition suffice in lieu of signatures of owners of fifty percent of the real property in the proposed district, if the petition presenter provides evidence satisfactory to the ~~state engineer~~department that a sufficient number of members of the proposed district will subscribe or have subscribed to benefit units to make its operation feasible. The procedure for hearing and determination of disposition of the petition is as provided by this chapter. In any district organized upon the petition of a water resource board of directors, the following procedures apply:

1. After final approval of the petition by the ~~state engineer~~department of water resources, the secretary of the water resource board shall file a notice with the secretary of state.
2. Upon filing of the notice, the assets and liabilities of the water supply system become the assets and liabilities of the newly organized district without any further meetings, voting, notice to creditors, or other actions by the members of the board.
3. The officers and board of directors of the water resource district are the officers and board of the district.
4. The applicable laws of the state governing the water resource district board control the initial size and the initial terms of office of officers and the board, in lieu of sections 61-35-08 through 61-35-11.
5. The district shall bring its operation and structure into compliance with the requirements of section 61-35-08 regarding the number and qualification of directors, section 61-35-09 regarding new bylaws, section 61-35-10 regarding dividing its directors into classes, and section 61-35-11 regarding board meetings at the first annual meeting of the participating members and board. The new district has all the rights and all the property of the original water supply system and is responsible for all its obligations. Title to any property is vested in the new district with no reversion or impairment of ownership rights caused by the conversion to a district. A water supply agreement entered by a water resource district is binding for its term on a successor district organized by the water resource district, unless otherwise agreed

in writing by all parties to the agreement. The right of any creditor may not be impaired by this section without the creditor's consent.

**SECTION 200. AMENDMENT.** Section 61-35-04 of the North Dakota Century Code is amended and reenacted as follows:

**61-35-04. Hearing after filing.**

When a petition for the organization of a district is filed with the ~~state engineer~~department of water resources, the ~~state engineer~~department shall fix a time for a hearing on the petition not less than fifteen nor more than forty-five days after the filing of the petition. The ~~state engineer~~department shall prepare a notice as required by section 61-35-05. At least seven days before the date fixed for the hearing on the petition, the notice must be published in the official county newspapers in the counties included within the district. The applicant shall pay all costs of the publication notice.

**SECTION 201. AMENDMENT.** Section 61-35-05 of the North Dakota Century Code is amended and reenacted as follows:

**61-35-05. Contents of notice.**

The notice prepared by the ~~state engineer~~department of water resources must set forth:

1. The location of the area designated by the petitioners to be included in the proposed district, as described or shown by the original petition.
2. The time and place fixed by the ~~state engineer~~department of water resources for the hearing on the petition.
3. That all owners or tenants of real property or other interested persons within the boundaries described may appear and be heard.
4. That the proposed district, if organized, has no power or authority to levy any taxes.

**SECTION 202. AMENDMENT.** Section 61-35-07 of the North Dakota Century Code is amended and reenacted as follows:

**61-35-07. Findings - Order.**

After the hearing, the ~~state engineer~~department of water resources may strike off any part of the territory that testimony shows will not be benefited by the creation of the district. If the ~~state engineer~~department does not find that the district is reasonably necessary, the ~~state engineer~~department shall dismiss the petition. If the ~~state engineer~~department finds that the required notice of the hearing has been given and that the proposed district is reasonably necessary for the public health, convenience, and comfort of the residents, the ~~state engineer~~department shall make an order establishing the district as a political subdivision, designating its boundary, and identifying it by name or number. The order ~~shall~~must be published in the same newspaper or newspapers that published the notice of hearing. The applicant shall pay all costs of the publication of the order. The ~~state engineer~~department shall prepare and preserve a complete record of the hearing on the petition and the ~~state engineer's~~department's findings and action.

**SECTION 203. AMENDMENT.** Section 61-35-08 of the North Dakota Century Code is amended and reenacted as follows:

**61-35-08. Meeting of members - Election of board.**

As a part of the order organizing the district, the ~~state engineer~~department of water resources shall fix the time and place at which the members shall meet to select from their number a board of directors. Selection of the initial board may not be later than thirty days after the order is issued. The number of directors on the board, not to exceed nine, must be determined by a majority vote of those members

present. Any member elected a director who fails to become a participating member, within thirty days after entry in the minutes of the board of a declaration of availability of benefit units for subscription, forfeits the office of director.

**SECTION 204. AMENDMENT.** Section 61-35-16 of the North Dakota Century Code is amended and reenacted as follows:

**61-35-16. Plans and specifications.**

As soon as reasonably possible after organizing a district, the board shall file with the ~~state engineer~~department of water resources copies of the plans and specifications for, and estimates of the cost of, any improvements authorized by this chapter which the board proposes to construct or acquire. The board shall determine a reasonable fee that each member shall pay for the privilege of utilizing the district's facilities, which shall be known as a benefit unit. By publication in the official county newspaper of each county in which all or part of the district is located, the board shall ~~generally~~ describe generally the planned improvements, the area to be served, and the fee members will be required to pay for each service connected to the water system.

**SECTION 205. AMENDMENT.** Section 61-35-18 of the North Dakota Century Code is amended and reenacted as follows:

**61-35-18. Inclusion of property in district - Inclusion of municipality - Merger.**

1. Owners of real property outside any district which can ~~economically~~ be served economically by the facilities of the district may petition to be attached to the district. The petition must be filed with the ~~state engineer~~department of water resources, and the ~~state engineer~~department shall proceed in substantially the same manner as is provided by this chapter for filing of and proceeding on a petition for organization of a district.
2. All or part of an incorporated city may be included in the boundaries of any existing district or a district being newly organized, provided the governing body of the city by resolution or ordinance gives its consent.
3. Boards of two or more districts by concurrent action and by approval of the ~~state engineer~~department of water resources may merge their districts into one. In case of merger, the members of the boards of the merged districts may serve until the next annual meeting at which time the district shall comply with the requirements of section 61-35-08 regarding the number and eligibility of directors, adopt new bylaws, and set the terms of the new board according to section 61-35-10. The resulting district shall take over all the assets and legal liabilities of the districts joining in the merger. Obligations of any district secured by the revenue of the systems operated by the district must continue to be required, or a sinking fund must be established for that purpose created from revenue from the system operated over the same area by the resulting district in accordance with the laws under which the obligations were issued, until all obligations of the old district have been retired.
4. If there is a conflict between two or more districts concerning which district will serve an area, the ~~state engineer~~department of water resources, after a public hearing, shall determine which district can provide services more adequately and economically ~~provide service~~ within the area.

**SECTION 206. AMENDMENT.** Section 61-35-20 of the North Dakota Century Code is amended and reenacted as follows:

**61-35-20. Exclusion of real property from district.**

If it becomes apparent that any real property included within a district but contiguous to a border cannot economically or adequately be served by the facilities of the district, the owners of the real

property or the board may file with the ~~state engineer~~department of water resources a petition ~~to the state engineer~~ requesting that the real property be excluded from the district. The petition must:

1. Describe by full and partial section and by township and range, or by lot number and subdivision, ~~as the case may be~~, the real property ~~that it is proposed~~the petitioner proposes to exclude from the district.
2. State that the real property cannot be served economically or adequately ~~be served~~ by the facilities of the district, and that it is not feasible for the district to enlarge or extend its facilities to serve economically and adequately ~~serve~~ the real property.
3. Be signed by the owners of all the real property ~~that it is desired to exclude~~proposed to be excluded from the district or by all of the board.

**SECTION 207. AMENDMENT.** Section 61-35-21 of the North Dakota Century Code is amended and reenacted as follows:

**61-35-21. Inactive district dissolved.**

A petition may be filed with the ~~state engineer~~department of water resources requesting the ~~state engineer~~department to dissolve an inactive district. The petition must:

1. List all real and personal property of any kind exclusive of records, maps, plans, and files and state that all of its debts and obligations have been fully paid fully.
2. State that the district is not functioning and probably will ~~probably~~ continue to be inoperative.
3. Be signed by three-fourths of the members of the district.

**SECTION 208. AMENDMENT.** Section 61-35-22 of the North Dakota Century Code is amended and reenacted as follows:

**61-35-22. Hearing.**

1. Upon the filing with the ~~state engineer~~department of water resources of a petition under section 61-35-20 or 61-35-21, the ~~state engineer~~department shall fix a time for consideration of the petition. The ~~state engineer~~department may hold a hearing on the petition. After consideration of the petition, and after the hearing if one is held, the ~~state engineer~~department shall ascertain whether:
  1. a. The petition meets all of the requirements prescribed by section 61-35-20 or 61-35-21.
  2. b. It appears from all information available to the ~~state engineer~~department that each allegation included in the petition is factual.
2. If the ~~state engineer's~~department's finding on each of the foregoing points is positive, the ~~state engineer~~department shall declare the real property described in the petition detached from the district or declare the district dissolved, ~~as the case may be~~. The ~~state engineer~~department shall notify the secretary of the district of the ~~state engineer's~~department's action, and the secretary shall amend the records of the district to show that the real property described in the petition has been detached from the district. Within thirty days, the secretary shall deliver to the ~~state engineer~~department all records, maps, plans, and files of the dissolved district.

**SECTION 209. AMENDMENT.** Section 61-35-23 of the North Dakota Century Code is amended and reenacted as follows:

**61-35-23. Disposition of assets.**

If a district is dissolved, the ~~state engineer department~~ of water resources shall provide for the disposition of any property owned by the district and for the apportionment of the proceeds and any other moneys belonging to the district to an adjoining district. If there is no adjoining district, the ~~state engineer department~~ shall apportion and dispose of the property and proceeds to the general fund of each county in the district in proportion to the county's area in the district. Any pledge or lien given with respect to any outstanding bonds of the district remains and any property so encumbered must be handled in conformity with the bond resolution or trust indenture. Money, property, or the proceeds from property may not be distributed to any private interests.

**SECTION 210. AMENDMENT.** Section 61-35-25 of the North Dakota Century Code is amended and reenacted as follows:

**61-35-25. Alternate operation by nonprofit corporation or cooperative.**

A nonprofit corporation or cooperative association established under title 10 for the specific purpose of operating a rural water system may petition the ~~state engineer department~~ of water resources to organize a district, in the manner provided by section 61-35-02. The signatures of the corporation's or cooperative's officers on the petition and a resolution adopted by the members in the manner provided in section 10-15-37 for amendments to articles or in the manner provided in chapter 10-33 for dissolution, ~~as the case may be~~, approving the petition suffice in lieu of signatures of owners of fifty percent of the real property in the proposed district, if the petition presenter provides evidence satisfactory to the ~~state engineer department~~ that a sufficient number of members of the proposed district will subscribe or have subscribed to benefit units to make its operation feasible. The procedure for hearing and determination of disposition of the petition is as provided by this chapter. In any district organized upon the petition of a nonprofit corporation or cooperative association, the following procedures apply:

1. After final approval of the petition by the ~~state engineer department~~, the secretary of the corporation or cooperative shall file a notice with the secretary of state or attorney general, if applicable, in accordance with title 10.
2. Upon filing of the notice, the nonprofit corporation or cooperative ceases to exist as a title 10 entity and all assets and liabilities of the nonprofit corporation or cooperative become the assets and liabilities of the newly organized district without any further meetings, voting, notice to creditors, or other actions by the members of the board.
3. The officers and board of directors of the corporation or cooperative are the officers and board of the district.
4. The applicable laws of the state and the articles of incorporation and bylaws of the corporation or cooperative control the initial size and initial term of office of officers and the board, in lieu of sections 61-35-08 through 61-35-11.
5. The district shall bring its operation and structure into compliance with the requirements of section 61-35-08 regarding the number and qualification of directors, section 61-35-09 regarding new bylaws, section 61-35-10 regarding dividing its directors into classes, and section 61-35-11 regarding board meetings at the first annual meeting of the participating members and board. The new district has all the rights and all the property of the original corporation or cooperative and is responsible for all its obligations. Title to any property is vested in the new district with no reversion or impairment of ownership rights caused by the conversion to a district. A water supply agreement entered by a nonprofit corporation or cooperative association is binding for its term on a successor district organized by the nonprofit corporation or cooperative association, unless otherwise agreed in writing by all parties to the agreement. The right of any creditor may not be impaired by this section without the creditor's consent.

**SECTION 211. AMENDMENT.** Section 61-35-63 of the North Dakota Century Code is amended and reenacted as follows:

**61-35-63. Appeal to ~~state engineer~~department of water resources.**

Within ten days after the hearing under section 61-35-62, affected landowners and any political subdivision subject to assessment, having not less than twenty-five percent of the possible votes as determined under section 61-35-60, who believe that the assessment has not been fairly or equitably made, or that the project is not properly located or designed, may appeal to the ~~state engineer~~department of water resources by petition, to review the assessments and examine the location and design of the proposed project. Upon receipt of a petition, the ~~state engineer~~department shall examine the lands assessed and the location and design of the proposed project, and if it appears that the assessments have not been made equitably, the ~~state engineer~~department may ~~proceed to~~ correct the assessments, and the ~~state engineer's~~department's correction and adjustment of assessments is final. If it appears to the ~~state engineer~~department the project has been ~~improperly~~ located or designed improperly, the ~~state engineer~~department may order a relocation and redesign, which must be followed in the construction of the proposed project. Upon filing a bond for two hundred fifty dollars with the board for the payment of the costs of the ~~state engineer~~department in the matter, any landowner or political subdivision claiming to receive no benefit from the project may appeal to the ~~state engineer~~department the question of whether there is any benefit. The appeal must be filed with the ~~state engineer~~department within ten days after the hearing on assessments in section 61-35-62. The ~~state engineer~~department may not determine the specific amount of benefit upon an appeal by an individual landowner or political subdivision ~~and~~but may determine only if there is any benefit to the landowner or political subdivision. The determination of the ~~state engineer~~department upon the appeal is final.

**SECTION 212. AMENDMENT.** Section 61-38-01 of the North Dakota Century Code is amended and reenacted as follows:

**61-38-01. Definitions. (Contingent effective date - See note)**

The ~~state engineer~~department of water resources shall adopt definitions ~~that are~~ consistent with federal law for, among other words: "dredged material", "fill material", "general permit", "person", "waters of the state", and "wetlands".

**SECTION 213. AMENDMENT.** Section 61-38-02 of the North Dakota Century Code is amended and reenacted as follows:

**61-38-02. Powers. (Contingent effective date - See note)**

The ~~state engineer~~department of water resources has the following powers:

1. To exercise general supervision of the administration and enforcement of this chapter and all rules and orders adopted pursuant to this chapter.
2. To advise, consult, and cooperate with other agencies of the state, the federal government, and other states and interstate agencies, and with affected groups, political subdivisions, and industries in furtherance of the purposes of this chapter.
3. To accept and administer loans and grants from the federal government and from other sources, public or private, for carrying out any of its functions, ~~which~~. The loans and grants may not be expended for other than the purposes other than those for which the loans and grants were provided.
4. To enter upon or through a permittee's premises where dredged or fill material is discharged, after written notice to the permittee. ~~Such power may be exercised by authorized agents, representatives, and employees of the state engineer.~~

5. To exercise all incidental powers necessary to carry out the purposes of this chapter.
6. To make rules governing the application, issuance, denial, modification, or revocation of permits for the discharge of dredged or fill material into waters of the state and for the administration of this chapter.
7. To hold any hearings necessary for the administration of this chapter.
8. To initiate actions in court for the enforcement of this chapter, including actions to enjoin any threatened or continuing violation of any requirement.
9. To issue administrative orders to restrain any person from engaging in any unauthorized activity.
10. To take all action necessary or appropriate to secure to the state the benefits of section 404 of the Clean Water Act [33 U.S.C. 1344].

**SECTION 214. AMENDMENT.** Section 61-38-03 of the North Dakota Century Code is amended and reenacted as follows:

**61-38-03. Permits - Certification from state department of health required. (Contingent effective date - See note)**

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

**SECTION 215. AMENDMENT.** Section 61-38-04 of the North Dakota Century Code is amended and reenacted as follows:

**61-38-04. Specification of disposal sites. (Contingent effective date - See note)**

The ~~state engineer~~department of water resources shall specify a disposal site for each permit issued. Each disposal site must be specified for each permit through application of rules adopted by the ~~state engineer~~department. The rules must be consistent with federal law. The ~~state engineer~~department may prohibit the specification of any defined area as a disposal site, withdraw any defined area from specification as a disposal site, or deny or restrict the use of any defined area for specification as a disposal site ~~whenever the state engineer~~when the department determines, after notice and opportunity for public hearing, ~~that~~ the discharge of dredged or fill materials will have an unacceptable adverse effect on municipal water supplies, shellfish beds and fishery areas, wildlife, or recreational areas.

**SECTION 216. AMENDMENT.** Section 61-38-05 of the North Dakota Century Code is amended and reenacted as follows:

**61-38-05. Discharge of dredged or fill material - Permit required - Exceptions. (Contingent effective date - See note)**

1. Except as otherwise provided by this chapter, no person may discharge dredged or fill material into waters of the state unless that person has a permit from the ~~state engineer~~department of water resources. No person may discharge dredged or fill material in violation of a permit. A permit is not required for:
  - a. The discharge of dredged or fill material when an activity is authorized by a general permit issued pursuant to section 61-38-06;
  - b. Normal farming, silviculture, and ranching activities such as plowing, seeding, cultivating, minor drainage, harvesting for the production of food, fiber, and forest products, or upland soil and water conservation practices;

- c. Maintenance, including emergency reconstruction of recently damaged parts, of currently serviceable structures such as dikes, dams, levies, groins, riprap, breakwaters, causeways, bridge abutments or approaches, and transportation structures, which does not change the character, scope, or size of the original fill design;
  - d. Construction or maintenance of farm or stock ponds or irrigation ditches or the maintenance of drainage ditches;
  - e. Construction of temporary sedimentation basins on a construction site ~~which~~that does not include placement of fill material into waters of the state;
  - f. Construction or maintenance of farm roads or forest roads, or temporary roads for moving mining equipment, where ~~such~~the roads are constructed and maintained, in accordance with best management practices, to assure ~~that~~ flow and circulation patterns and chemical and biological characteristics of the waters of the state are not impaired, ~~that~~ the reach of the waters of the state is not reduced, and ~~that~~ any adverse effect on the aquatic environment will be otherwise minimized; or
  - g. The placement of fill material associated with activities ~~which~~ the state regulates by requiring best management practices under chapter 61-28.
2. Any discharge of dredged or fill material into waters of the state incidental to any of the activities identified in subdivisions a through g of subsection 1 must have a permit if it is part of an activity ~~whose purpose is to convert~~with the purpose of converting an area of waters of the state into a use to which it was not previously subject, where the flow or circulation of waters of the state may be impaired or the reach of such waters reduced, or if the discharge contains a toxic pollutant. Where the proposed discharge will result in significant discernible alterations to flow or circulation, the presumption is ~~that~~ flow or circulation may be impaired by ~~such~~the alteration.

**SECTION 217. AMENDMENT.** Section 61-38-06 of the North Dakota Century Code is amended and reenacted as follows:

**61-38-06. General permits. (Contingent effective date - See note)**

1. In carrying out the functions relating to the discharge of dredged or fill material, the ~~state engineer may~~department of water resources, after notice and opportunity for public hearing, may issue general permits on a state or regional basis for any category of activities involving discharges of dredged or fill material if the ~~state engineer~~department determines ~~that~~ the activities in the category are similar in nature, will cause only minimal adverse environmental effects when performed separately, and will have only minimal accumulative adverse effects on the environment. Any general permit issued under this section must set forth the requirements and standards ~~which apply~~applicable to any activity authorized by the general permit. General permits must be issued pursuant to rules adopted by the ~~state engineer~~department which are consistent with federal law.
2. A general permit may be revoked or modified by the ~~state engineer if~~department of water resources, after opportunity for public hearing, ~~the state engineer if the department~~ determines ~~that~~ the activities authorized by the general permit have an adverse impact on the environment or ~~such activities are~~ authorized more appropriately ~~authorized~~ by individual permits.
3. The ~~state engineer~~department of water resources may require an individual permit for any proposed activity under a general permit where the nature or location of the activity makes an individual permit more appropriate.

**SECTION 218. AMENDMENT.** Section 61-38-07 of the North Dakota Century Code is amended and reenacted as follows:

**61-38-07. Emergency permits. (Contingent effective date - See note)**

The ~~state engineer department~~ of water resources may issue a temporary emergency permit for the discharge of dredged or fill material if unacceptable harm to life or severe loss of physical property is likely to occur before a permit could be issued or modified under procedures normally required.

**SECTION 219. AMENDMENT.** Section 61-38-08 of the North Dakota Century Code is amended and reenacted as follows:

**61-38-08. Permit application - Notice - Hearing. (Contingent effective date - See note)**

Any person desiring to discharge dredged or fill material for which a permit is required shall file an application with the ~~state engineer department~~ of water resources. The application must be on a form prescribed by the ~~state engineer department~~ and must include information required by the ~~state engineer department~~. The ~~state engineer department~~ may issue a permit after notice and opportunity for public hearing. Within fifteen days of receipt of all the information required to complete an application for a permit, the ~~state engineer department~~ shall publish the notice.

**SECTION 220. AMENDMENT.** Section 61-38-09 of the North Dakota Century Code is amended and reenacted as follows:

**61-38-09. Proceedings. (Contingent effective date - See note)**

1. Any proceeding to determine compliance with or violation of the provisions of this chapter or any rule, order, or condition in a permit issued pursuant to this chapter by the ~~state engineer department~~ of water resources must be conducted in accordance with chapter 28-32.
2. Any person claiming to be aggrieved or adversely affected by actions taken or by any rule or order issued pursuant to this chapter may request a hearing by the ~~state engineer department~~ of water resources if no hearing on the matter resulting in the action has been held. If a hearing has been held, the person claiming to be aggrieved or adversely affected may petition for reconsideration and may appeal in accordance with chapter 28-32.

**SECTION 221. AMENDMENT.** Section 61-38-10 of the North Dakota Century Code is amended and reenacted as follows:

**61-38-10. Penalties. (Contingent effective date - See note)**

The ~~state engineer department~~ of water resources may assess or sue to recover civil penalties and seek criminal remedies as provided in this section.

1. The ~~state engineer department~~ may assess or recover civil penalties for discharges of dredged or fill material without a required permit or in violation of any permit condition of up to five thousand dollars per day of such violation.
2. The ~~state engineer department~~ may seek criminal fines against any person who willfully or with criminal negligence discharges dredged or fill material without a required permit or violates any permit condition issued under this chapter of up to ten thousand dollars per day of ~~such~~ the violation.
3. The ~~state engineer department~~ of water resources may seek criminal fines against any person who knowingly makes a false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under this chapter or any rules adopted pursuant to this chapter, or falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under the permit of up to five thousand dollars for each instance of violation.

**SECTION 222. AMENDMENT.** Section 61-38-11 of the North Dakota Century Code is amended and reenacted as follows:

**61-38-11. Restoration. (Contingent effective date - See note)**

In lieu of or in addition to the penalties authorized under section 61-38-10, the ~~state engineer~~department of water resources may require restoration of areas in which dredged or fill material has been ~~illegally discharged~~ illegally. If the ~~state engineer~~department determines that any person has discharged dredged or fill material without a permit or in violation of any permit condition, the ~~state engineer~~department shall notify the person by registered or certified mail. The notice must specify the nature and extent of noncompliance and state that the area in which the dredged or fill material is located must be restored to the satisfaction of the ~~state engineer~~department within thirty days of receipt of the notice. If the area is not restored as required, the ~~state engineer~~department shall cause the restoration of the area and assess the cost of the restoration against the person ~~or persons~~ responsible for the illegal discharge.

**SECTION 223. AMENDMENT.** Section 61-39-01 of the North Dakota Century Code is amended and reenacted as follows:

**61-39-01. Findings and declaration of policy.**

The legislative assembly declares that many areas and localities in eastern and central North Dakota do not enjoy adequate quantities of high-quality drinking water; that other areas and localities in eastern and central North Dakota do not have sufficient quantities of water to ensure a dependable, long-term supply; that greater economic security and the protection of health and property benefits the land and water resources of this state; and that the promotion of the prosperity and general welfare of all of the people of this state depend on the effective development and utilization of the land and water resources of this state and ~~neecessitates and~~ requires the exercise of the sovereign powers of this state and concern a public purpose. To accomplish this public purpose, ~~it is declared necessary that~~ a water authority is needed to store and distribute water to eastern and central North Dakota ~~be established~~ to provide for the supply and distribution of water to the people of eastern and central North Dakota for purposes, including domestic, rural water, municipal, livestock, industrial, and other uses, with primary emphasis on domestic, rural water, and municipal uses; and provide for the future economic welfare and prosperity of the people of this state, and particularly the people of eastern and central North Dakota, by the bulk purchase of water from the Garrison Diversion Conservancy District delivered by the Red River valley water supply project for beneficial and public uses. The Garrison Diversion Conservancy District may acquire, construct, and improve, ~~and own~~ the Red River valley water supply project and may enter water supply contracts with member cities and water districts for the sale of water for consumption within or outside the district or the state, including with Canada. Alternatively, the Lake Agassiz water authority may enter one or more contracts to provide for the authority to acquire bulk water from the Garrison Diversion Conservancy District and may enter water supply contracts with member cities and water districts for the resale of this water for consumption within or outside the state.

The legislative assembly acknowledges that North Dakota and Minnesota communities jointly use the Red River as a water resource. It is in the best interest of eastern North Dakota also to study and possibly provide for the water needs of those Minnesota communities through a Red River valley water supply project, particularly if that project maintains the use of the Red River for North Dakota communities.

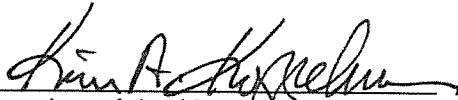
In furtherance of this public purpose, the state water commission may provide for the issuance of bonds in accordance with chapter 61-02 to finance the costs of any project to deliver water to eastern and central North Dakota or utilize other financing as addressed in this chapter. This chapter does not abrogate or limit the rights, powers, duties, and functions of the state water commission or ~~state engineer~~department of water resources, but is supplementary to those rights, powers, duties, and functions.

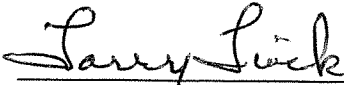
**SECTION 224. AMENDMENT.** Section 61-40-07 of the North Dakota Century Code is amended and reenacted as follows:

**61-40-07. Easement granted for pipelines and appurtenant facilities on any public lands.**

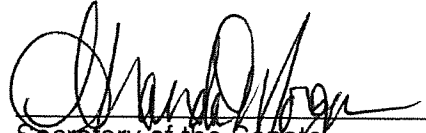
In connection with the construction and development of the project, there is granted over all the lands belonging to the state, including lands owned or acquired for highway right-of-way purposes, a right of way for pipelines, connections, valves, and all other appurtenant facilities constructed as part of the project. However, ~~the director of the department of transportation and the state engineer must approve the plans of the authority with respect to the use of right of way of roads~~ must be approved by the director of the department of transportation and the director of the department of water resources before the grant becomes effective.

**SECTION 225. REPEAL.** Sections 61-03-01, 61-03-02, and 61-03-05.1 of the North Dakota Century Code are repealed.

  
Speaker of the House

  
President of the Senate

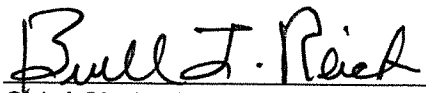
  
Chief Clerk of the House

  
Secretary of the Senate

This certifies that the within bill originated in the House of Representatives of the Sixty-seventh Legislative Assembly of North Dakota and is known on the records of that body as House Bill No. 1353.

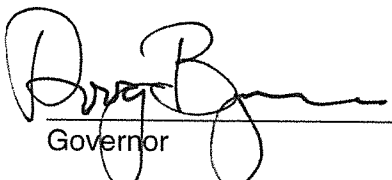
House Vote:      Yeas 89                  Nays 5                  Absent 0

Senate Vote:      Yeas 36                  Nays 11                  Absent 0

  
Chief Clerk of the House

Received by the Governor at 3:15 PM. on April 16, 2021.

Approved at 8:14 PM. on April 19, 2021.

  
Governor

Filed in this office this 20th day of April, 2021,

at 9:44 o'clock A. M.

  
Secretary of State

## Proposed Rule Changes related to HB-1353

### **69-05.2-05-06. Permit applications - Coordination with requirements under other laws.**

The commission will, to avoid duplication, coordinate permit review and issuance with:

1. Any other applicable state permit process including permits required by the:
  - a. Air Pollution Control Act (North Dakota Century Code chapter 23-25).
  - b. Solid Waste Management and Land Protection Act (North Dakota Century Code chapter 23-29).
  - c. Control, prevention, and abatement of pollution of surface waters (North Dakota Century Code chapter 61-28).
  - d. ~~State engineer, state water commission,~~ Department of Water Resources and water resource districts (North Dakota Century Code chapters 61-01, 61-02, 61-03, 61-04, 61-15, 61-16.1, 61-16.2, 61-31, and 61-32).
2. The appropriate state and federal agencies who administer other applicable natural resource and environmental protection acts.

**History:** Effective August 1, 1980; amended effective May 1, 1990; May 1, 1992; \_\_\_\_\_.

**General Authority:** NDCC 38-14.1-03

**Law Implemented:** NDCC 38-14.1-03, 38-14.1-42

**CHAPTER 69-05.2-16**  
**PERFORMANCE STANDARDS - HYDROLOGIC BALANCE - GENERAL REQUIREMENTS**

Section	
69-05.2-16-01	Performance Standards - Hydrologic Balance - General Requirements
69-05.2-16-02	Performance Standards - Hydrologic Balance - Compliance With <del>State</del> Department of <del>Health Standards</del> <u>Environmental Quality Standards</u>
69-05.2-16-03	Performance Standards - Hydrologic Balance - Compliance With the Requirements of the <del>State Engineer</del> <u>Department of Water Resources</u> and Water Resource District
69-05.2-16-04	Performance Standards - Hydrologic Balance - Water Quality Standards and Effluent Limitations
69-05.2-16-05	Performance Standards - Hydrologic Balance - Surface Water Monitoring
69-05.2-16-06	Performance Standards - Hydrologic Balance - Diversion of Overland Flow
69-05.2-16-07	Performance Standards - Hydrologic Balance - Stream Channel Diversions
69-05.2-16-08	Performance Standards - Hydrologic Balance - Sediment Control Measures
69-05.2-16-09	Performance Standards - Hydrologic Balance - Sedimentation Ponds Performance
69-05.2-16-10	Standards - Hydrologic Balance - Discharge Structures Performance Standards -
69-05.2-16-11	Hydrologic Balance - Toxic Mine Drainage
69-05.2-16-12	Performance Standards - Hydrologic Balance - Permanent and Temporary Impoundments
69-05.2-16-13	Performance Standards - Hydrologic Balance - Ground Water Protection Performance
69-05.2-16-14	Standards - Hydrologic Balance - Ground Water Monitoring
69-05.2-16-15	Performance Standards - Hydrologic Balance - Protection of Ground Water Recharge Capacity
69-05.2-16-16	Performance Standards - Hydrologic Balance - Transfer of Wells
69-05.2-16-17	Performance Standards - Hydrologic Balance - Water Rights and Replacement
69-05.2-16-18	Performance Standards - Hydrologic Balance - Discharge of Waters Into an Underground Mine
69-05.2-16-19	Performance Standards - Hydrologic Balance - Postmining Rehabilitation of Sedimentation Ponds, Diversions, Impoundments, and Treatment Facilities
69-05.2-16-20	Performance Standards - Hydrologic Balance - Stream Buffer Zones

**69-05.2-16-03. Performance standards - Hydrologic balance - Compliance with the requirements of the ~~state engineer~~ Department of Water Resources and water resource district.**

Any water impoundment, diversion, structure, or drainage ditch built as part of an approved mining and reclamation plan must be constructed to meet the requirements of the North Dakota ~~state engineer~~ Department of Water Resources and the appropriate water resource district, as well as those of this article. The commission will not issue or revise a mining permit until the ~~state engineer~~ Department of Water Resources and the water resource district have had an opportunity to review the applicable information and plans. No rights under the mining permit shall be exercised until the necessary ~~state engineer~~ Department of Water Resources and water resource district permits are obtained.

**History:** Effective August 1, 1980; amended effective May 1, 1990; May 1, 1992; \_\_\_\_\_.

**General Authority:** NDCC 38-14.1-03, 38-14.1-42

**Law Implemented:** NDCC 38-14.1-24, 38-14.1-42

**69-05.2-16-20. Performance standards - Hydrologic balance - Stream buffer zones.**

1. The operator may not disturb land within one hundred feet [30.48 meters) of an intermittent or perennial stream unless the commission, after consulting the ~~state engineer~~ Department of Water Resources and the department of environmental quality, specifically authorizes surface mining activities closer to, or through, the stream, after finding that:
  - a. Surface mining activities will not cause or contribute to the violation of applicable state or federal water quality standards, and will not adversely affect the water quantity and quality or other environmental resources of the stream; and
  - b. If there will be a temporary or permanent stream channel diversion, it will comply with section 69-05.2-16-07.
2. Areas not to be disturbed must be designated buffer zones and marked according to section 69-05.2-13-04.

**History:** Effective August 1, 1980; amended effective May 1, 1990; May 1, 1992;\_\_\_\_\_.

**General Authority:** NDCC 38-14.1-03

**Law Implemented:** NDCC 38-14.1-24

**69-05.2-20-01. Performance standards - Dams and embankments constructed of or impounding coal processing waste - General requirements.**

Dams and embankments constructed of or impounding coal processing waste as a temporary disposal method must comply with this chapter and permanent disposal of the waste must comply with section 69-05.2-19-02. Waste may not be used to construct the dams and embankments unless it has been demonstrated to the commission that the stability of the structure conforms to the requirements of subsection 1 of section 69-05.2-20-03. It must also be demonstrated that the use of waste material will not have a detrimental effect on downstream water quality or the environment due to toxic seepage through the dam or embankment. All demonstrations must be approved by the commission. Prior to commission approval, the state engineer Department of Water Resources will have an opportunity to review the plans and design of the structures.

**History:** Effective August 1, 1980; amended effective May 1, 1990; \_\_\_\_\_.

**General Authority:** NDCC 38-14.1-03

**Law Implemented:** NDCC 38-14.1-24, 38-14.1-25



STATE OF NORTH DAKOTA  
OFFICE OF ATTORNEY GENERAL  
www.attorneygeneral.nd.gov  
(701) 328-2210

Drew H. Wrigley  
ATTORNEY GENERAL

OPINION

April 29, 2022

Mr. John Schuh  
Public Service Commission  
600 E. Boulevard Ave Dept 408  
Bismarck, ND 58505

Dear Mr. Schuh,

The Office of Attorney General has examined the proposed amendments to N.D.A.C. §§ 69-09-03-02, 69-05.2-05-06, 69-05.2-16-03, 06-05.2-16-20, 69-05.2-20-01, and ch. 69-05.2-16, concerning pipeline safety and surface coal mining and reclamation operations, along with the notice of the proposed rules, the publication of that notice, and the filing of that notice with the Legislative Council. This office has also determined that 1) a written record of the agency's consideration of any comments to the proposed rules was made, 2) a regulatory analysis was issued, 3) a takings assessment was prepared, 4) a small entity regulatory analysis and an economic impact statement were prepared, and 5) the proposed rules are within the agency's statutory authority.

These administrative rules are in compliance with N.D.C.C. ch. 28-32 and are hereby approved as to their legality. Upon final adoption, these rules may be filed with the Legislative Council.

Sincerely,

A handwritten signature in blue ink, appearing to read "Drew H. Wrigley".

Drew H. Wrigley  
Attorney General

amj  
copy Jill Grossman, Legislative Council

- 23 RC-22-28 Filed 04/29/2022 Pages: 1  
Opinion - Rules are in Compliance and Approved as to Legality  
North Dakota Attorney General  
The Honorable Drew Wrigley
- 20 GS-21-442 Filed 04/29/2022 Pages: 1  
Opinion - Rules are in Compliance and Approved as to Legality  
North Dakota Attorney General  
The Honorable Drew Wrigley