

CHAPTER 23-20.1 IONIZING RADIATION DEVELOPMENT

23-20.1-01. Definitions.

For the purposes of this chapter, the following words and phrases are defined:

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 thereto.
3. "Department" means state department of health.
4. "General license" means a license effective pursuant to regulations promulgated 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" means any individual, corporation, limited liability company, partnership, firm, association, trust, estate, public or private institution, group, agency, political subdivision of this state, any other state or political subdivision or agency thereof, and any legal successor, representative, agent, or agency of the foregoing, other than the commission, and other than federal government agencies licensed by the commission.
7. "Radioactive material" means any solid, liquid, or gas that emits ionizing radiation spontaneously.
8. "Registration" means the notification of the department of possession of a source of radiation and the furnishing of information with respect thereto, in accordance with sections 23-20-02 through 23-20-06.
9. "Special nuclear material" means:
 - a. Plutonium, uranium-233, uranium enriched in the isotope-233 or in the isotope-235, and any other material which 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 artificially enriched by any of the foregoing but does not include source material.
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 which 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 the foregoing 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.

23-20.1-02. State radiation control agency.

The state department of health is hereby designated to administer the statewide licensing and regulatory radiation program, consistent with the provisions of this chapter.

23-20.1-03. Powers and duties of the department.

For the protection of the public health and safety, the department is empowered to:

1. Evaluate hazards associated with the use of sources of ionizing radiation by inspection and other means.
2. Conduct programs with due regard for compatibility 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.

23-20.1-04. Licensing and registration of sources of ionizing radiation.

1. The department shall provide by rule or regulation for 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. Such rule or regulation must provide for amendment, suspension, or revocation of licenses.
2. The department may exempt certain sources of ionizing radiation or kinds of uses or users from the licensing or registration requirements set forth in this section and in sections 23-20-02 through 23-20-06 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.

23-20.1-04.1. Custody of disposal sites.

1. Any radioactive materials license issued or renewed for any activity which results in the processing, generation, or disposal of source material, byproduct material, or other radioactive material occurring naturally or produced artificially must contain any terms and conditions the department determines to be necessary to assure that, prior to termination of such 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 the provisions of subsection 2, be transferred to either the United States if provided by federal law or North Dakota if North Dakota exercises the option to acquire land used for the disposal of such source material, byproduct material, or other radioactive material occurring naturally or produced artificially.
2.
 - a. The department shall require by rule, regulation, or order that prior to the termination of any license, title to the land, including any interests therein (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 North Dakota) which is 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 either the United States if provided by federal law or North Dakota unless the commission and the department determine prior to the termination that transfer of title to the land and the material is not necessary to protect the public health, safety, or welfare or to minimize danger to life or property.
 - b. If transfer to North Dakota 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 as will protect the public health, safety, and the environment.

- c. The department is authorized to undertake any monitoring, maintenance, and emergency measures necessary to protect the public health and safety for those materials and property for which it has assumed custody pursuant to this chapter.
- d. The transfer of title to land or source material, byproduct material, or other radioactive material occurring naturally or produced artificially, to North Dakota 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 North Dakota in accordance with this section must be transferred without cost to either the United States or North Dakota other than administrative and legal costs incurred by either the United States or North Dakota in carrying out the transfer.

23-20.1-04.2. Surety requirements.

1. The department shall establish by rule standards and instructions as it deems necessary or desirable to ensure:
 - a. That an adequate surety as determined by the department will be provided by the licensee to permit 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. That if the department determines that any long-term maintenance and monitoring is necessary, the licensee, before termination of any license for source material, byproduct material, or other radioactive material occurring naturally or produced artificially will make available such funds as may be necessary to assure maintenance and monitoring.
2. Any funds for long-term site surveillance and control must be available to North Dakota 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 North Dakota pursuant to subsection 1 of section 23-20.1-04.1. 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, i.e., continued site observation, monitoring, and possibly in some cases, if necessary, maintenance. The funds do not, however, 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, i.e., continued site observation, monitoring, and possibly in some cases, if necessary, maintenance, the amounts must be sufficient to ensure compliance with those 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.

23-20.1-04.3. Procedural requirements.

In the licensing and regulation of 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. An opportunity for cross-examination.

- c. 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.
 - d. For each licensed activity which 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.
 - e. A prohibition of any major construction with respect to the activities to be conducted prior to completing the action stipulated in subdivisions a, b, c, and d.
 - f. 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 promulgated 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.

23-20.1-04.4. Additional authorities.

The department is authorized, in carrying out its authority under subdivision f of subsection 1 of section 23-20.1-04.3, to 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.

23-20.1-04.5. Fees deposit in operating fund.

The department, by rule or regulation, may prescribe and provide for the payment and collection of reasonable fees for the issuance of licenses and registration certificates. The license and registration certificate 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 state department of health operating fund in the state treasury and must be spent subject to appropriation by the legislative assembly.

23-20.1-04.6. X-ray operators - Rules.

The health council shall adopt rules, to become effective August 1, 2006, to require that x-ray operators obtain continuing education every two years and to establish minimum standards for x-ray operator provision of limited pediatric examinations.

23-20.1-05. Federal-state agreements.

- 1. The governor, on behalf of this state, is authorized to enter into agreements with the federal government providing for discontinuance of certain of the responsibilities of the federal government with respect to sources of ionizing radiation and the assumption thereof 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 pursuant to a license issued under this chapter, which 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.

23-20.1-06. Administrative procedures and judicial review.

Any proceeding under this chapter for:

1. The issuance or modification of rules including emergency orders relating to control of sources of ionizing radiation;
2. Granting, suspending, revoking, or amending any license; or
3. Determining compliance with rules of the department;

must be conducted in accordance with the provisions of 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 that such action be taken as is necessary to meet this emergency. Notwithstanding any provision of this chapter, such order is effective immediately. Any person to whom such order is directed shall comply therewith immediately, but on application to the department must be afforded a hearing before the state health council within ten days. On the basis of such hearing, the emergency order must be continued, modified, or revoked within thirty days after such hearing.

23-20.1-07. Injunction proceedings.

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

23-20.1-08. 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 in accordance with the provisions of this chapter.

23-20.1-09. Impounding of materials.

The department has the authority in the event of an emergency to impound or order the impounding of sources of ionizing radiation in the possession of any person who is not equipped to observe or fails to observe the provisions of this chapter or any rules issued thereunder.

23-20.1-09.1. Confidentiality of records.

Any record, report, or information obtained under this chapter must be available to the public unless confidentiality is requested in writing to the department, a notice of opportunity for public hearing pursuant to chapter 28-32 is issued by the department in regard to the request, and a satisfactory showing made to the department that confidentiality be granted. Information will only be deemed confidential by the department if it:

1. Is required in order to protect trade secrets; or
2. Is required in order to protect medical and individual radiation exposure files, the disclosure of which would constitute a clear invasion of personal privacy.

In the event of a satisfactory showing, the department shall consider the record, report, or information, or portion thereof, confidential in the administration of this chapter. Nothing in this section may be construed to 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 laws, or when relevant in any proceeding under this chapter. Air emissions data, discharges to the land, discharges to surface and ground waters, and the location and identification of any waste materials may not be construed as confidential information.

23-20.1-10. Penalties.

Any person who violates any provision of this chapter or any license condition or limitation implemented by this chapter is subject to a civil penalty of not more than ten thousand dollars per day of violation.

In addition to any other penalty or remedy pursuant to this chapter, any person who knowingly violates any of the provisions of this chapter, or rules or orders of the department in effect pursuant thereto, is guilty of a class A misdemeanor.

23-20.1-11. Effective date.

The provisions of this chapter relating to the control of byproduct, source, and special nuclear materials become effective on the effective date of the agreement between the federal government and this state as provided in section 23-20.1-05. The provisions of this chapter relating to other sources of ionizing radiation take effect on July 1, 1965.