CHAPTER 23-20.3
HAZARDOUS WASTE MANAGEMENT

23-20.3-01. Declaration of purpose.

It is hereby declared to be the purpose of 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.

23-20.3-02. Definitions.

When used in this chapter:

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. Ownership of the offsite hazardous waste is different than the ownership of the processing facility and the wastes are processed for a fee or other consideration.
2. "Department" means the state department of health charged with the administration and enforcement of this chapter.
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 that such solid waste or hazardous waste or any hazardous constituent thereof 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, whose act or process produces hazardous waste or whose act 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 which:
   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. Such wastes include, but are not limited to, those which exhibit extraction procedure (EP) 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 its 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 on or after November 8, 1984, any person who owns or operates an underground storage tank used for the storage, use, or dispensing of regulated substances.
    b. In use before November 8, 1984, but no longer in use after that date, any person who owned or operated such a tank immediately before the discontinuation of its use.
10. "Person" means any individual, trust, firm, joint-stock company, corporation (including a government corporation), limited liability company, partnership, association, or other legal entity, state, municipality, commission, political subdivision of a state, interstate body, or federal department, agency, or instrumentality.
11. "Regulated substance" means:
    a. Any substance defined in section 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, but not including any substance regulated as a hazardous waste under subtitle C of the Resource Conservation and Recovery Act, as amended.
    b. Petroleum, including crude oil or any fraction thereof which 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).
12. "Release" means any spilling, leaking, emitting, discharging, escaping, leaching, or disposing from an underground storage tank into ground water, surface water, or subsurface soils.
13. "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.
14. "Transportation" means the offsite movement of hazardous wastes to any intermediate site or to any site of storage, treatment, or disposal.
15. "Treatment" means any method, technique, or process, including neutralization, designed to change the physical, chemical, or biological character or composition of any hazardous waste so as to neutralize such waste, or so as to recover energy or material resources from the waste, or so as to render such wastes nonhazardous or less hazardous; safer to transport, store, or dispose of; or amenable for recovery, amenable for storage, or reduced in volume.
16. "Treatment, storage, or disposal facility" means a location at which hazardous waste is subjected to treatment, storage, or disposal and may include a facility where hazardous waste has been generated.
17. "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 regulations 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.
        (2) The Hazardous Liquid Pipeline Safety Act of 1979.
        (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 upon or above the surface of the floor.

18. "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, as amended, or source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954, 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.

23-20.3-03. Powers and duties of the department.

The department has the responsibility for the administration and enforcement of this chapter. It has the power and its duties are to:

1. Administer the state hazardous waste management and underground storage tank programs pursuant to provisions of this chapter.
2. Survey hazardous waste generation and management practices in the state.
3. Prepare, adopt, promulgate, modify, repeal, and enforce rules and regulations governing the management of hazardous waste and underground storage tanks.
4. Enter into agreements or letters of understanding with other local, state, or federal agencies regarding responsibilities for regulating hazardous wastes and underground storage tanks in order to promote consistency in enforcement and to avoid duplication in regulation.

23-20.3-03.1. 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, as provided by this section for real property contaminated by regulated substances or 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, must:
   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 that are 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 use and management of buildings or fixtures, that 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 may apply 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. 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, they 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. In addition or in the alternative, 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.
3. In addition or in the alternative to institutional controls, 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.
4. Notwithstanding any institutional controls established for any real property, the department has access for inspection and enforcement for environmental violations as provided by law.

5. 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 7 and 8. 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 2, 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.
6. 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 2. Letters of no further remediation, of no further action, or regulatory assurance may be amended by written agreement of the participating parties.
7. 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. Such 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.
8. 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 who 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 7, 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 7 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 tranferees or assigns, provided 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.

9. 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 7 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 7, 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.
10. The administrator of the petroleum tank release compensation fund under chapter 23-37 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 23-37. If the department determines that 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.
11. 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.
12. "Environmental covenant" means a covenant running with the land as established under this section.
13. "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 in its discretion 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.
14. "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 5.
15. "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.

16. "Responsible party" means a person who causes or contributes to an onsite or offsite release or discharge, or who 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 who is identified as a possible cause of, or contributor to, contamination or pollution on a site or property.
17. This section does not affect the authority of the department, the state, or its political subdivisions to exercise any powers or duties under this chapter or other provisions of 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 any person that is not subject to a liability protection provided under this section.

23-20.3-04. Hazardous waste regulations.

Pursuant to the requirements of chapter 28-32, the department shall, after notice and opportunity for public hearing and comment, promulgate and may revise as appropriate:

1. Regulations for determining whether any waste is hazardous.
2. Regulations which prescribe procedures for generators of hazardous waste.
3. Regulations 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. Regulations providing procedures under which the department shall issue, renew, modify, suspend, revoke, or deny such permits as may be required by this chapter. The regulations 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 and the reasons for such revocation and with an opportunity for a hearing.
5. Regulations for the location, design, construction, operation, and maintenance of treatment, storage, and disposal facilities.
6. Regulations 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 North Dakota public service commission and the North Dakota department of transportation.
7. Regulations providing procedures and requirements for a manifest system.
8. Regulations which prescribe procedures and requirements for the following:
   a. Recordkeeping.
   b. Reporting.
   c. Sampling.
   d. Performing analysis.
   e. Monitoring.
9. Regulations requiring that the owner or operator of any hazardous waste treatment, storage, or disposal facility demonstrate evidence of financial responsibility in such form and amount as the department may determine to be necessary to ensure that, upon abandonment, cessation, or interruption of the operation of the facility, all appropriate measures are taken to prevent present and future damage to human health and the environment.
10. Any other regulations necessary to carry out the purposes of this chapter.

23-20.3-04.1. Underground storage tank regulations.

Pursuant to the requirements of chapter 28-32, the department shall, after notice and opportunity for public hearing and comment, adopt:

1. Regulations 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. Regulations for maintaining records of any monitoring of a leak detection system, inventory control system, or tank testing system.
3. Regulations for reporting of any releases and corrective action taken in response to a release from an underground tank.
4. Regulations for taking corrective action in response to a release from an underground storage tank.
5. Regulations for the closure of tanks to prevent future releases of regulated substances into the environment.
6. Regulations 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. Regulations establishing standards for installation of new underground storage tanks.
8. Regulations establishing standards for construction and performance of new underground storage tanks.
9. Regulations for notifying the department or designated local agency of the existence of any operational or nonoperational underground storage tank.
10. Regulations 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 and the federal Energy Policy Act of 2005 in effect on August 1, 2007.

23-20.3-04.2. 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 pursuant to this chapter.

23-20.3-05. Permits.

1. No person may 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 first obtaining a permit from the department for such facility or activity. No hazardous waste treatment, storage, or disposal facility may be issued a permit unless the applicant demonstrates to the satisfaction of the department that a need for the facility exists and that the facility can comply with all applicable requirements under this chapter.
2. Any facility required to have a permit under this section which facility is in existence on July 1, 1981, or was in existence on the effective date of any statutory or regulatory change in the hazardous waste management that requires it to have a permit, and has made an application for a permit under this section must be treated as having been issued such permit until such time as final administrative disposition of such application is made.
3. The department, by regulation, shall require that any person who owns or operates a facility which is treated as having been issued a permit under subsection 2 meet all applicable requirements of section 23-20.3-04.
4. Permits must contain such terms and conditions as the department deems necessary.
5. Permits must be issued for a period of five years.
6. Any permit issued under this section may be revoked by the department according to the regulations promulgated under subsection 3 of section 23-20.3-04 at any time when the permittee fails to comply with the terms and conditions of the permit, or with applicable requirements under this chapter.

7. In the event that a permit applicant proposes modifications of an existing facility, or in the event that the department determines that modifications are necessary to conform to the requirements established under this chapter, the permit must specify the time allowed to complete the modifications.
8. Before the issuing of a permit the department shall:
   a. Cause to be published 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 such permit; and
   b. Transmit in writing notice of the department's intention to issue such 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 with respect to the construction or operation of the facility.

   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 subdivisions a and b. The notice must contain the date, time, place, and subject matter of the hearing.
9. Any facility required to have a permit under this chapter is exempt from the permit requirements of chapter 23-29.

23-20.3-05.1. Fees - Deposit in operating fund.

The department by rule may prescribe and 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.

23-20.3-05.2. Commercial facility permits and ordinances.

Counties and cities may issue permits for commercial facilities pursuant to section 23-20.3-05 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.

In addition to the requirements for obtaining a permit under this chapter, no person may 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, if the commercial facility is located or proposed to be located, within the territorial zoning authority of a city, the city. The department, in conjunction with the governing body of the county or city where the commercial facility is located or proposed to be located, shall hold a public hearing in the manner provided in subsection 8 of section 23-20.3-05.

23-20.3-05.3. 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.

23-20.3-06. Inspections - Right of entry.

For the purposes of developing or enforcing any rule authorized by this chapter, or enforcing any 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 where wastes or substances which 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 which 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.

23-20.3-07. 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 that the owner or operator of such facility or site could not reasonably be expected to have actual knowledge of the presence of hazardous waste or regulated substance at such facility or site and of its potential for release, the department may issue an order requiring the most recent previous owner or operator of such facility or site who could reasonably be expected to have such actual knowledge to carry out the actions referred to in subsection 1.

3. Anyone who violates this section is subject to a civil penalty of five thousand dollars per day of violation.

23-20.3-08. 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 such emergency action as it determines necessary to protect health or the environment.

23-20.3-09. Enforcement penalties and citizen participation.

1. Whenever the department finds that any person is in violation of any permit, rule, regulation, standard, or requirement of this chapter, the department may issue an order requiring such person to comply with such permit, rule, regulation, standard, or requirement, and the department may bring an action for a civil or criminal penalty, including an action for injunctive relief. Any action under this chapter must be brought in the North Dakota 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. Any person who violates any provision of this chapter or any regulation, standard, or permit condition adopted pursuant to 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. Any person who knowingly violates any provision of this chapter or any regulation, standard, or permit condition adopted pursuant to this chapter, or who knowingly makes any false statement or representation in any 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. Any person who knowingly violates any provision of this chapter in such a manner so as to manifest extreme indifference to human life and whose conduct thereby places another person 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. Any person having an interest which is or may be adversely affected by a violation of this chapter may commence a civil action on that person's own behalf to compel compliance with this chapter, or any regulation, order, or permit issued pursuant to this chapter.
   b. Notice of the violation must be given to the department and to any alleged violator sixty days before commencement of a citizen suit brought under this subsection.
   c. Any person with an interest which is or may be adversely affected by a violation of this chapter may intervene as a matter of right in any civil action brought by the department to require compliance with the provisions of this chapter.
6. Any administrative action brought under this chapter must be conducted in accordance with North Dakota Administrative Code article 33-22.

23-20.3-10. Applicability.

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]:

1. Drilling fluids, produced water, and other wastes associated with the exploration, development, or production of crude oil or natural gas or geothermal energy.
2. 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.
3. Solid waste from the extraction, beneficiation, and processing of ores and minerals, including phosphate rock and overburden from the mining of uranium ore.
4. Cement kiln dust waste.

Except, that when a waste disposal site for any of the above wastes 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 therein.

23-20.3-11. Limited liability for subsequent owners of property.

1. Notwithstanding any other provision of law and except as expressly provided by federal law, a person who 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 that 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 that 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 who has acquired real property may establish a rebuttable presumption that that person has made all appropriate inquiry if that person establishes that, immediately before or at the time of acquisition, that 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 who would otherwise be liable under this chapter and nothing in this section affects the liability under this chapter of a person who, by any act or omission, caused or contributed to the release or threatened release of a hazardous waste or substance that is 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.