

CHAPTER 23-29

SOLID WASTE MANAGEMENT AND LAND PROTECTION

23-29-01. Finding of necessity.

The legislative assembly of the state 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.

23-29-02. Declaration of purpose.

It is hereby declared to be the purposes of this chapter to:

1. Plan for and regulate the storage, collection, transportation, resource recovery, and disposal of solid wastes in order to protect the public health, safety, and welfare and to enhance the environment for the people of the state.
2. Establish and maintain a cooperative state program of planning and technical assistance for solid waste management.
3. Provide the authority to and require persons to plan and provide efficient, environmentally acceptable solid waste management.
4. Provide the authority for the review of plans and facilities for solid waste management.
5. Provide the authority to issue permits for the operation of solid waste management activities.
6. Promote the application of resource recovery systems which preserve and enhance the quality of air, water, and land resources.
7. Promote and assist in the development of markets for recovered and recycled materials.
8. Encourage by 1995 at least a ten percent reduction in volume of municipal waste deposited in landfills, by 1997 at least a twenty-five percent reduction, and by 2000 at least a forty percent reduction.

23-29-03. Definitions.

1. "Collection" means the aggregation of solid waste from the places at which the waste was generated.
2. "Department" means the state department of health.
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 23-20.3, 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.
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 other similar appliance.
9. "Municipal waste" means solid waste that includes garbage, refuse, and trash generated by households, motels, hotels, and recreation facilities; by public and private facilities; and by commercial, wholesale, and 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. "Person" means any individual, corporation, limited liability company, partnership, firm, association, trust, estate, public or private institution, group, federal agency, political subdivision of this state or any other state or political subdivision thereof, and any legal successor, representative agent, or agency of the foregoing.
12. "Political subdivision" means a city, county, township, or solid waste management authority.
13. "Resource recovery" means the use, reuse, or recycling of materials, substances, energy, or products contained within or derived from municipal waste.
14. "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.].
15. "Solid waste management" means the purposeful systematic control of the storage, collection, transport, composting, resource recovery, land treatment, and disposal of solid waste.
16. "Special waste" means solid waste that is not a hazardous waste regulated under chapter 23-20.3 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.
17. "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.
18. "Transport" means the offsite movement of solid waste.

23-29-04. Powers and duties of the department.

The department shall have the responsibility for the administration and enforcement of this chapter. It shall have the power and its duties shall be to:

1. Administer the state solid waste management program pursuant to provisions of 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, and may, on request, provide technical assistance to other persons.
3. Encourage and recommend procedures for the utilization of self-financing solid waste management systems and intermunicipal agencies in accomplishing the desired objective of this chapter.
4. Promote the planning and application of resource recovery facilities and systems which 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. 3251 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 or combinations thereof 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, in order 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 the 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 any of the provisions of this chapter or of any rules and regulations issued pursuant thereto, and requiring the taking of such remedial measures for solid waste management as may be necessary or appropriate to implement or effectuate the provisions and purposes of 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 must include any or all of the following: 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 requested after July 7, 1991. In conducting the review, if the department finds that 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 involving the laws of any state or the federal government within three years preceding the application for the permit, or has been adjudicated in contempt of an order of any court enforcing the laws of this state or any other state or the federal government 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.

23-29-04.1. 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.

23-29-05. Local government ordinances.

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

23-29-05.1. 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 one 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.

23-29-05.2. 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, after January 1, 1992, 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.

23-29-06. District solid waste management - Penalty.

Repealed by S.L. 1995, ch. 258, § 4.

23-29-06.1. Powers of a solid waste management district.

Repealed by S.L. 1995, ch. 258, § 4.

23-29-06.2. District authority limitation.

Repealed by S.L. 1995, ch. 258, § 3.

23-29-06.3. Solid waste management districts - Authorities or programs.

Repealed by S.L. 1995, ch. 258, § 3.

23-29-06.4. Statewide coordinating committee.

Repealed by S.L. 1995, ch. 258, § 3.

23-29-07. Permits.

1. The department may issue permits for solid waste management facilities and solid waste transporters. It is unlawful for any person to 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 any permit application completed after July 1, 1994, 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 for which the permit application was completed after July 1, 1994, 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.

23-29-07.1. 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 solid 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 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.

23-29-07.2. 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.

23-29-07.3. Surcharge - Penalty.

Repealed by S.L. 1995, ch. 258, § 3.

23-29-07.4. Report of surcharge collection.

Repealed by S.L. 1995, ch. 258, § 3.

23-29-07.5. 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.

23-29-07.6. 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.

23-29-07.7. Review of existing municipal waste landfills.

Repealed by S.L. 2005, ch. 54, § 7.

23-29-07.8. 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.

23-29-07.9. 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.

23-29-07.10. 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.

23-29-07.11. 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 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 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.

23-29-08. Inspections.

The department is hereby authorized to 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 and regulations authorized herein.

23-29-09. Notice.

Any notice, order, or other official correspondence of the department under this chapter must be sent by certified mail to the address of such person to be notified or must be by personal service.

23-29-10. Administrative procedure and judicial review.

Any proceeding under this chapter for the issuance or modification of rules and regulations, including emergency orders relating to solid waste management and land protection, and determining compliance with rules and regulations of the department, must be conducted in accordance with the provisions of chapter 28-32, and appeals may be taken as therein

provided. 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 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, 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.

23-29-11. Injunction proceedings.

The violation of any provision of this chapter, or any rule, regulation, or order issued thereunder, is declared a nuisance inimical to the public health, welfare, and safety. 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 this chapter, or any rule, regulation, or order issued thereunder, the department, in accordance with the laws governing injunctions and other process, may maintain an action in the name of the state enjoining such action 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.

23-29-12. Penalties.

Unless another penalty is specifically prescribed, a person violating this chapter, or any rule, order, or condition in a permit issued under this chapter, is subject to a civil penalty not to exceed one thousand dollars per day of such violation.

23-29-13. Plats.

All persons operating solid waste management facilities for disposal under a permit issued pursuant to 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.

23-29-14. Exemption.

The provisions of this chapter, and the rules, regulations, or orders authorized herein, do not prevent any natural person who resides on unplatted land in unincorporated areas of this state from disposing of that person's normal household wastes on that person's property, so long as no health hazard or nuisance is created thereby.

23-29-15. Short title.

Repealed by S.L. 1991, ch. 277, § 21.

23-29-16. Environmental Protection Act.

1. No private hazardous waste facilities. No hazardous waste disposal facility may be constructed, owned, or operated in the state of North Dakota except by an appropriate governmental entity.
2. Insurance required. No private person or business entity may own, operate, or both own and operate an industrial waste landfill disposal facility or a municipal waste landfill disposal facility in this state without a valid policy of liability insurance in effect in order to respond in damages for liability arising out of the ownership, maintenance, or use of that facility. The policy of insurance must provide coverage for all damage caused to the environment; corrective or remedial action, or both corrective and remedial action, in connection therewith; and any other damage caused to public or private property resulting from the ownership, maintenance, or use of the facility. The policy limits of the insurance policy shall not be less than the total amount computed by multiplying fifty dollars per ton times the number of tons of solid waste accepted at the facility from and after January 1, 1995. The insurance policy required by this

- section shall be maintained for one hundred years after the closure of the facility. A copy of the policy must be filed with the state department of health.
3. Officer and director liability. Each officer and director of any company which owns, operates, or both owns and operates a solid waste landfill disposal facility in North Dakota or controls such a company as defined in subsection 1 of section 23-29-07 shall be personally jointly and severally strictly liable for all damages caused by the solid waste to the environment, including any remedial or corrective action required therewith, and for any other damage resulting to public or private interests. Each such person shall have the right to seek contribution from any person or entity likewise liable for such damage.
 4. Vote required. Upon receiving an application to renew the permit for a privately owned industrial waste landfill disposal facility or a privately owned municipal waste disposal facility or upon receiving a request for a permit modification seeking to increase the acreage of any such facility, the state department of health shall notify the board of county commissioners of the county in which the facility is located of the department's intention to renew or modify the permit for the facility. The board of county commissioners shall then place the issue on the ballot at the next regularly scheduled election after receiving notice from the department to allow the qualified electors of the county to vote to approve or disapprove the renewal or modification based on public interest and impact on the environment. If a majority of the qualified electors voting in the election vote to disapprove the permit renewal or modification, the department may not renew or modify the permit. The facility may continue to operate under its existing permit until the election has been held.
 5. Exceptions. The requirements imposed by this section do not apply to inert waste, waste resulting from the processing of agricultural products, oil field exploration and production waste, or solid waste disposed of onsite at energy conversion facilities and coal mining operations.
 6. Statute of limitations. There shall be no statute of limitations applicable to the provisions of this section. An action for damages by the state, other appropriate governmental entity, or private party may be commenced at any time.
 7. Severability. If any portion of this section is found to be invalid, the remaining portions shall remain in full force and effect.