

CHAPTER 38-24

UNDERGROUND STORAGE AND RETRIEVAL OF NONHYDROCARBONS

38-24-01. Definitions.

As used in this chapter:

1. "Commission" means the industrial commission.
2. "Nonhydrocarbons" include compressed air, nitrogen, and other gases and liquids not otherwise regulated by title 38.
3. "Underground storage and retrieval facility" means a drilled, bored, or excavated device or installation providing for the subsurface emplacement and recovery of nonhydrocarbons.

38-24-02. Jurisdiction of the commission and duties.

The commission has jurisdiction and authority over any person or property, public or private, necessary to enforce this chapter. The commission acting through the office of the state geologist may:

1. Require:
 - a. Identification of ownership of all facilities and equipment used for the underground storage and retrieval of nonhydrocarbons.
 - b. The making and filing of all logs and reports on facility location, drilling, boring, excavating, and construction and the filing of samples, core chips, and complete cores, when requested, free of charge, in the office of the state geologist.
 - c. The drilling, boring, excavating, and construction of facilities in a manner preventing contamination and pollution of surface and ground water sources and the environment.
 - d. The furnishing of a reasonable bond with good and sufficient surety, conditioned upon the full compliance with this chapter, and the rules and orders of the commission.
 - e. Metering or other measuring of all nonhydrocarbons injected, emplaced, stored, or retrieved from a facility regulated by this chapter.
 - f. A person operating a facility for the underground storage and retrieval of nonhydrocarbons in this state to keep and maintain complete and accurate records of the quantities and nature of material stored and retrieved, which records must be available to the commission or its agents at all times, and may require every such person to file prescribed reports with the commission.
 - g. Upon termination of the operation of a facility or activity regulated by this chapter, the operator of the facility to restore the surface as nearly as possible to its original condition and productivity.
2. Regulate:
 - a. The testing, exploration, drilling, boring, excavating, and construction of underground storage and retrieval.
 - b. Operations to assure the optimum performance of a facility regulated by this chapter.
3. Prescribe the nature, quantity, and source of nonhydrocarbons to be stored in or retrieved from a facility regulated by this chapter.
4. Adopt and enforce rules and orders to effectuate the purposes of this chapter.

38-24-03. Permit required.

A person may not commence operations for the testing, exploration, excavating, drilling, boring, or construction of an underground storage and retrieval facility or the conversion of an existing facility for use in an activity regulated by this chapter, without obtaining a permit from the commission. A permit may be issued only after notice and hearing, and payment of a fee in an amount to be prescribed by the commission. A permit application must include:

1. A description of the activity to be permitted.
2. A detailed description of the nature of the nonhydrocarbons to be stored and retrieved.

3. A detailed description of the mechanical construction and operating procedures of the facility.
4. A justification for the need for the facility.
5. A detailed description of the subsurface geology and hydrology of the area to be affected by the construction and operation of the facility.
6. A detailed description of the monitoring system assuring the integrity of the facility and compliance with this chapter.
7. A detailed description of the reclamation and the restoration of the surface as nearly as possible to its original condition and productivity upon expiration of the permit or termination of any activity regulated by this chapter.
8. Any other information required by the commission.

38-24-04. Denial of permit - Review.

1. Following a hearing, the commission may deny an application if the commission determines the facility or activity poses a threat to ground or surface waters or the environment. A person denied a permit may appeal the denial in accordance with chapter 28-32.
2. All fees collected pursuant to this chapter, must be deposited in the general fund in the state treasury.
3. A permit required by this chapter is in addition to all other permits required by law.

38-24-05. Action to restrain violation or threatened violation.

The commission may bring action against a person violating or threatening to violate a provision of this chapter, or a rule, regulation, or order of the commission. The action must commence in the district court of the county where the violation occurred or is threatened. Without the filing of a bond or other undertaking by the commission, the court may issue an injunction, including a temporary restraining order, a preliminary injunction, or a temporary, preliminary, or final order restraining the person from continuing the violation or from carrying out the threat of violation.

38-24-06. Penalties.

1. A person that violates this chapter, or a rule, regulation, or order of the commission adopted under this chapter is subject to a civil penalty of not more than twelve thousand five hundred dollars for each violation and for each day the violation occurred.
2. It is a class C felony for a person, for the purpose of evading this chapter, or a rule, regulation, or order of the commission to:
 - a. Make or cause a false entry or statement in a report required by this chapter or by a rule, regulation, or order issued or adopted by the commission;
 - b. Make or cause a false entry in a record, account, or memorandum required by this chapter, or by any rule, regulation, or order of the commission;
 - c. Omit, or cause to be omitted, from a record, account, or memorandum, full, true, and correct entries as required by this chapter or by any rule, regulation, or order of the commission; or
 - d. Remove from this state or destroy, mutilate, alter, or falsify a record, account, or memorandum.
3. The civil penalties provided in subsection 1 are recoverable by civil action filed by the attorney general on behalf of the commission. The civil action must commence in the district court of the county in which:
 - a. The defendant resides;
 - b. Any defendant resides, if there is more than one defendant; or
 - c. The violation occurred.
4. The payment of penalties does not relieve a person on whom the penalty is imposed from liability to any other person for damages arising out of the violation.

38-24-07. Administrative procedure and judicial review.

A proceeding under this chapter for the issuance or modification of rules, including emergency orders relating to underground storage and retrieval and determining compliance with rules of the commission, must be conducted in accordance with chapter 28-32. If the commission determines an emergency requiring immediate action exists, the commission may issue an emergency order without notice or hearing, which is effective upon adoption. An emergency order may not remain in force for more than fifteen days. A person aggrieved by action of the commission, or by its rules or orders, may appeal to the district court of the county in which the person resides, or in Burleigh County, in accordance with chapter 28-32.