Sixty-fourth Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 6, 2015

HOUSE BILL NO. 1113
(Government and Veterans Affairs Committee)
(At the request of the State Department of Health)

AN ACT to create and enact subsection 3 to section 23-20.1-04.1 of the North Dakota Century Code, relating to custody of land used for disposal of radioactive material; to amend and reenact sections 23-01-36, 23-20.1-04.3, 23-20.1-04.4, 23-20.1-06, and 23-20.1-10 of the North Dakota Century Code, relating to the licensing and regulation of radioactive material; to repeal section 23-20.1-09.1 of the North Dakota Century Code, relating to the confidentiality of radioactive material records; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 23-01-36 of the North Dakota Century Code is amended and reenacted as follows:

23-01-36. Appeal from permit proceedings.

An appeal from the issuance, denial, modification, or revocation of a permit issued under chapter 23-20.1, 23-20.3, 23-25, 23-29, or 61-28 may be made by the person who filed the permit application, or by any person who is aggrieved by the permit application decision, provided that person participated in or provided comments during the hearing process for the permit application, modification, or revocation. An appeal must be taken within thirty days after the final permit application determination is mailed by first-class mail to the permit applicant and to any interested person who has requested a copy of the final permit determination during the permit hearing process. Except as provided in this section, an appeal of the final permit determination is governed by sections 28-32-40, 28-32-42, 28-32-43, 28-32-44, 28-32-46, and 28-32-49. The department may substitute final permit conditions and written responses to public comments for findings of fact and conclusions of law. Except for a violation of chapter 23-20.1, 23-20.3, 23-25, 23-29, or 61-28 which occurs after the permit is issued, or any permit condition, rule, order, limitation, or other applicable requirement implementing those chapters which occurs after the permit is issued, any challenge to the department's issuance, modification, or revocation of the permit or permit conditions must be made in the permit hearing process and may not be raised in any collateral or subsequent legal proceeding, and the applicant and any aggrieved person may raise on appeal only issues that were raised to the department in the permit hearing process.

SECTION 2. Subsection 3 to section 23-20.1-04.1 of the North Dakota Century Code is created and enacted as follows:

3. Land used for the disposal of technologically enhanced naturally occurring radioactive material is not subject to the provisions of subsection 2.

SECTION 3. AMENDMENT. Section 23-20.1-04.3 of the North Dakota Century Code is amended and reenacted as follows:

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.~~c. 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.~~d. 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.~~e. An assurance that management of source material, byproduct material, or other radioactive material occurring naturally or produced artificially is carried out in conformance with applicable standards 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.

SECTION 4. AMENDMENT. Section 23-20.1-04.4 of the North Dakota Century Code is amended and reenacted as follows:

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.

SECTION 5. AMENDMENT. Section 23-20.1-06 of the North Dakota Century Code is amended and reenacted as follows:

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~~department within ten days. On the basis of such hearing, the emergency order must be continued, modified, or revoked within thirty days after such hearing.

SECTION 6. AMENDMENT. Section 23-20.1-10 of the North Dakota Century Code is amended and reenacted as follows:

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.~~

1. Any person who violates this chapter or any permit condition, rule, order, limitation, or other applicable requirement implementing this chapter is subject to a civil penalty not to exceed twelve thousand five hundred dollars per day per violation, unless the penalty for the violation is otherwise specifically provided for and made exclusive in this chapter.

2. Any person who willfully violates any provision of this chapter or any permit condition, rule, order, limitation, or other applicable requirement implementing this chapter is guilty of a class C felony, unless the penalty for the violation is otherwise specifically provided for and made exclusive in this chapter.

3. Any person who willfully makes any false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under this chapter or any permit condition, rule, order, limitation, or other applicable requirement implementing this chapter or who falsifies, tampers with, or willfully renders inaccurate any monitoring device or method required to be maintained under this chapter or any permit condition, rule, order, limitation, or other applicable requirement implementing this chapter is guilty of a class C felony, unless the penalty for the violation is otherwise specifically provided for and made exclusive in this chapter.

SECTION 7. REPEAL. Section 23-20.1-09.1 of the North Dakota Century Code is repealed.

Speaker of the House

President of the Senate

Chief Clerk of the House

Secretary of the Senate

This certifies that the within bill originated in the House of Representatives of the Sixty-fourth Legislative Assembly of North Dakota and is known on the records of that body as House Bill No. 1113.

House Vote:	Yeas 83	Nays 8	Absent 3
Senate Vote:	Yeas 45	Nays 0	Absent 2

Chief Clerk of the House

Received by the Governor at 9:52A. M. on April 21, 2015.

Approved at 10:05A M. on April 22, 2015.

Governor

Filed in this office this 22nd day of April, 2015,

at 2:42 o'clock P. M.

Secretary of State