

## **CHAPTER 61-28**

### **CONTROL, PREVENTION, AND ABATEMENT OF POLLUTION OF SURFACE WATERS**

#### **61-28-01. Statement of policy.**

It is hereby declared to be the policy of the state of North Dakota to act in the public interest to protect, maintain, and improve the quality of the waters in the state for continued use as public and private water supplies, propagation of wildlife, fish and aquatic life, and for domestic, agricultural, industrial, recreational, and other legitimate beneficial uses, to require necessary and reasonable treatment of sewage, industrial, or other wastes and to cooperate with other agencies in the state, agencies of other states, and the federal government in carrying out these objectives.

#### **61-28-02. Definitions.**

As used in this chapter, unless the context otherwise requires:

1. "Board" means the state water pollution control board.
2. "Department" means the state department of health.
3. "Discharge" means the addition of any waste to state waters from any point source.
4. "Disposal system" means a system for disposing of wastes, either by surface or underground methods, and includes sewerage systems, treatment works, disposal wells, and other systems.
5. "Person" includes any corporation, limited liability company, individual, partnership, association, or other public or private entity, including any state or federal agency or entity responsible for managing a state or federal facility, and includes any officer or governing or managing body of any such entity.
6. "Point source" means any discernible, confined, and discrete conveyance, including any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which wastes are or may be discharged.
7. "Pollution" means the manmade or man-induced alteration of the physical, chemical, biological, or radiological integrity of any waters of the state.
8. "Sewerage system" means pipelines or conduits, pumping stations, and force mains, and all other structures, devices, appurtenances, and facilities used for collecting or conducting wastes to an ultimate point for treatment or disposal.
9. "Treatment works" means any plant or other works used for the purpose of treating, stabilizing, or holding wastes.
10. "Wastes" means all substances which cause or tend to cause pollution of any waters of the state, including dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radiological materials, heat, wrecked or discarded equipment, rock, sand, and cellar dirt and industrial, municipal, and agricultural pollution discharged into any waters of the state.
11. "Waters of the state" means all waters within the jurisdiction of this state, including all streams, lakes, ponds, impounding reservoirs, marshes, watercourses, waterways, and all other bodies or accumulations of water on or under the surface of the earth, natural or artificial, public or private, situated wholly or partly within or bordering upon the state, except those private waters that do not combine or effect a junction with natural surface or underground waters just defined.

#### **61-28-03. State water pollution prevention agency - Board.**

1. The state water pollution control board consists of thirteen persons. The board must include the state health officer, state engineer, director of the game and fish department, state geologist, and nine other members appointed by the governor, three of whom must be representatives of production agriculture, two of whom must be representatives of manufacturing and processing, one of whom must be a representative of the solid fuels industry, one of whom must be a representative of the fluid and gas fuels industry, one of whom must be a representative of the

- environmental sciences, and one of whom must be a representative of county or municipal government.
2. Of the nine members appointed by the governor, each shall serve six-year terms. The governor may fill any vacancy in the appointed membership of the board, and may remove any appointed member for cause.
  3. The board shall select its own chairman from among its members. The heads of departments on the board may, by official order filed with the executive secretary of the board, designate a representative of the person's department to perform the duties of the member making the designation. That person, if any, shall have the powers and be subject to the duties and responsibilities of the appointing office.
  4. All members of the board shall serve without compensation for their duties, but must be reimbursed for necessary travel and other expenses incurred in the performance of their official duties. Reimbursement must be paid out of funds allocated to the department for water pollution control.
  5. The department shall provide the board with copies of maps, plans, documents, studies, surveys, and all other necessary information in order that the board may be fully cognizant of the current status of water pollution and its control in the state and to enable the board to advise the department in development of programs for the prevention and control of pollution of waters in the state.
  6. The board shall hold at least one regular meeting each year, and any additional meetings the chairman deems necessary, at a time and place to be determined by the chairman. Upon written request of any three members, the chairman shall call a special meeting. Seven members constitute a quorum.
  7. The board shall consider and make recommendations regarding any rules and standards relating to water quality or pollution, ground water protection, and safe drinking of water that are adopted by the department. The department may not take final action on any rules or standards without consulting the board. The board shall consider any other matters related to the purposes of this chapter and may make recommendations on its own initiative to the department concerning the administration of this chapter.

**61-28-04. Powers and duties.**

The department shall have and may exercise the following powers and duties:

1. To exercise general supervision of the administration and enforcement of this chapter and all rules and regulations and orders promulgated thereunder.
2. To develop comprehensive programs for the prevention, control, and abatement of new or existing pollution of the waters of the state.
3. To advise, consult, and cooperate with other agencies of the state, the federal government, other states and interstate agencies, and with affected groups, political subdivisions, and industries in furtherance of the purposes of this chapter.
4. To accept and administer loans and grants from the federal government and from other sources, public or private, for carrying out any of its functions, which loans and grants shall not be expended for other than the purposes for which provided.
5. To encourage, participate in, or conduct studies, investigations, research, and demonstrations relating to water pollution and causes, prevention, control, and abatement thereof as it may deem advisable and necessary for the discharge of its duties under this chapter.
6. To collect and disseminate information relating to water pollution and the prevention, control, and abatement thereof.
7. To issue, modify, or revoke orders:
  - a. Prohibiting or abating discharges of wastes into the waters of the state.
  - b. Requiring the construction of new disposal systems or any parts thereof or the modification, extension, or alteration of existing disposal systems or any parts thereof, or the adoption of other remedial measures to prevent, control, or abate pollution.

8. To hold such hearings, to issue notices of hearings and subpoenas requiring the attendance of such witnesses and the production of such evidence, to administer such oaths, and to take such testimony as the department deems necessary, and any of these powers may be exercised on behalf of the department by any members thereof or a hearing officer designated by it.
9. To require the prior submission of plans, specifications, and other data relative to, and to inspect the construction of, disposal systems or any part thereof in connection with the issuance of approvals as are required by this chapter.
10. To require proper maintenance and operation of disposal systems:
  - a. Have the power to require the owner or operator of any point source to:
    - (1) Establish and maintain records.
    - (2) Prepare and submit a report.
    - (3) Install, use, and maintain monitoring equipment or methods, including, where appropriate, biological monitoring methods.
    - (4) Sample effluents.
    - (5) Provide such other information as the department may reasonably require.
  - b. Have the right of entry, upon or through any premises in which an effluent source is located, or in which any records required to be maintained pursuant to subdivision a are located. Such power may be exercised by authorized agents, representatives, and employees of the department.
  - c. Have the power to have access to and copy any records, inspect any monitoring equipment or method required under subdivision a, or to sample any effluents being discharged into the waters of the state.
11. To exercise all incidental powers necessary to carry out the purposes of this chapter.
12. The department is hereby designated as the state water pollution control agency for all purposes of the Federal Water Pollution Control Act, as amended [33 U.S.C. 1251 et seq.], and is hereby authorized to take all action necessary or appropriate to secure to this state the benefits of that act and similar federal acts.
13. In the administration of standards of water quality, the department shall allow a reasonable time for persons discharging wastes into the waters of the state to comply with such standards.
14. To establish and modify, jointly with the state water commission, the classification of all waters in accordance with their present and future most beneficial uses.
15. The department, with the cooperation of the state water commission, shall formulate and issue standards of water quality and classification of water according to its most beneficial uses. Such standards of quality shall be such as to protect the public health and welfare and the present and prospective future use of such waters for public water supplies, propagation of fish and aquatic life and wildlife, recreational purposes, and agricultural, industrial, and other legitimate uses.
16. To adopt effluent and new source performance standards, which include as a minimum all categories for which the federal government has set standards pursuant to the Federal Water Pollution Control Act, as amended. Such state standards shall be at least as stringent as the standards adopted by the federal government.
17. To review from time to time, at intervals of not more than three years, established classification of waters, water quality standards, and effluent standards.
18. To make rules governing the application for permits to discharge sewage, industrial wastes, or other wastes into state waters, including rules requiring the filing of plans and specifications relating to the construction, modification, or operation of disposal systems.
19. To make rules governing the issuance, denial, modification, or revocation of permits.
20. To hold any hearings necessary for the proper administration of this chapter.
21. To make rules for the administration of this chapter.
22. To initiate actions in court for the enforcement of this chapter.
23. To establish minimum requirements for the treatment of wastes.
24. The department, with the cooperation of other departments, may maintain an action for damages in the name of the state for violations of the provisions of this chapter.

25. To apply and enforce against industrial users of publicly owned treatment works, toxic effluent standards and pretreatment standards for the introduction into such treatment works of wastes which interfere with, pass through, or otherwise are incompatible with such treatment works. The department may promulgate such rules and regulations as are necessary to implement this section.
26. To impose as conditions in permits for the discharge of wastes from publicly owned treatment works requirements for information to be provided by the permittee concerning new introductions of wastes or substantial changes in the volume or character of wastes being introduced into such treatment works.

**61-28-05. Rules and standards.**

The department may adopt rules and, jointly with the board, shall hold public hearings regarding the adoption, amendment, or repeal of rules and standards of quality of the waters of the state as provided in this chapter.

**61-28-06. Prohibitions.**

1. It shall be unlawful for any person:
  - a. To cause pollution of any waters of the state or to place or cause to be placed any wastes in a location where they are likely to cause pollution of any waters of the state; and
  - b. To discharge any wastes into any waters of the state or to otherwise cause pollution, which reduces the quality of such waters below the water quality standards established therefor by the department.
2. It is unlawful for any person to carry on any of the following activities unless the person holds a valid permit for the disposal of all wastes which are, or may be, discharged thereby into the waters of the state:
  - a. The construction, installation, modification, or operation of any disposal system or part thereof or any extension or addition thereto without plans and specifications previously approved by the department.
  - b. Cause a material increase in volume or strength of any wastes in excess of the permissive discharges specified under existing approved plans.
  - c. The construction, installation, or operation of any industrial, commercial, or other establishment or any extension or modification or addition thereof, the operation of which would cause an increase in the discharge of wastes into the waters of the state or would otherwise alter the physical, chemical, or biological properties of any waters of the state in any manner not already lawfully authorized.
  - d. The construction or use of any new outlet for the discharge of any wastes into the waters of the state.
3. Notwithstanding any other provisions of this chapter, and except as in compliance with the provisions of this chapter, and any rules and regulations promulgated hereunder, the discharge of any wastes, or the violation of any water quality standards, by any person shall be unlawful. The department may seek injunctive relief for a threatened or continuing violation of a water quality standard, including any violations of the narrative standards, if the department determines that the violation will substantially interfere with or cause or threaten to cause long-term or irreparable harm to waters of this state that the department determines has statewide or regional significance or has a substantial impact to a local community. The authority to seek injunctive relief for a violation of the water quality standards, including violations of the narrative standards, is limited to the department, after obtaining written approval of the governor, and may not be enforced by any other person.

**61-28-06.1. Fees - Deposit in operating fund.**

The department by rule may prescribe and provide for the payment and collection of reasonable fees for the issuance and renewals of permits, licenses, and approvals to discharge sewage, industrial wastes, or other wastes into state waters. The permit fees must be based on

the anticipated cost of filing and processing the application, reviewing plans and specifications relating to the construction, modification, or operation of disposal systems, and taking action on the requested permit and conducting a monitoring and inspection program to determine compliance or noncompliance with the permit. Any moneys collected for permit 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.

#### **61-28-07. Proceedings.**

Any proceeding under this chapter for issuance or modification of rules, including emergency orders relating to control of water pollution or for determining compliance with or violation of this chapter, or adoption of any rule or order under this chapter by the department, must be conducted in accordance with chapter 28-32. Any person claiming to be aggrieved or adversely affected by actions taken, or by any rule or order issued under this chapter may request a hearing by the department. There is a right of appeal to the district court from any adverse ruling by the department. Where an emergency exists requiring immediate action to protect the quality of water for legitimate uses and the public health and welfare, the department, without further notice or hearing, may issue an order reciting the existence of the emergency and requiring that such immediate action be taken as is necessary to meet this emergency. Notwithstanding this chapter, the order is effective immediately. Any person to whom the order is directed shall comply immediately, but on application to the department must be afforded a hearing before the department within ten days. On the basis of that hearing, the emergency order must be continued, modified, or revoked within thirty days after the hearing. In the alternative, upon receipt of evidence that a pollution source or combination of sources is presenting an imminent and substantial endangerment to the health of persons or to the welfare of persons where the endangerment to welfare is to the livelihood of those persons, or upon receipt of evidence that pollution causes or threatens to cause a continuing violation of water quality standards in a manner that substantially interferes with or causes long-term or irreparable harm to waters of this state that the department determines has statewide or regional significance or has a substantial impact to a local community, the department may bring suit on behalf of the state in the district court for the county in which the violation is taking place to immediately restrain any person causing or contributing to the alleged pollution to stop the discharge of pollutants causing or contributing to the pollution, or to otherwise enjoin any pollution causing a substantial water quality violation as described in this section, or to take such other action as may be necessary.

#### **61-28-08. Penalties - Injunctions.**

1. Any person who willfully violates this chapter, or any permit condition, rule, order, limitation, or other applicable requirement implementing this chapter, is subject to a fine of not more than ten thousand dollars per day per violation, or by imprisonment for not more than one year, or both. If the conviction is for a violation committed after a first conviction of such person under this subsection, punishment shall be by a fine of not more than twenty thousand dollars per day per violation, or by imprisonment for not more than two years, or both.
2. Any person who violates this chapter or any permit condition, rule, order, limitation, or other applicable requirement implementing this chapter, with criminal negligence as defined by section 12.1-02-02, is subject to a fine of not more than ten thousand dollars per day per violation, or by imprisonment for not more than six months, or both.
3. Any person who knowingly 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 knowingly 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, upon conviction, is subject to a fine of not more than five thousand dollars per day per violation or by imprisonment for not more than six months, or both.

4. 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 five thousand dollars per day per violation.
5. Without prior revocation of any pertinent permits, the department may, in accordance with the laws of this state governing injunctions or other process, maintain an action in the name of the state against any person to enjoin any threatened or continuing violation of any provision of this chapter or any permit condition, rule, order, limitation, or other applicable requirement implementing this chapter. In addition to any other penalties provided in this section, or other provisions of this code, any person who violates an order for injunctive relief is subject to sanctions, not to exceed twenty-five thousand dollars per day per violation. In determining the amount of the sanction, the court shall consider the seriousness of the violation or violations, any good-faith efforts to comply with the court's order, any history of such violations, the economic impact of the sanction on the violator, the environmental and economic impacts to the resource caused by the violation or violations, the comparative environmental and economic impacts on any other resources affected, if any, and such other matters as justice may require. As an additional sanction for violating an order, the court may hold the violator in contempt and, upon the state's motion, may allow a sanction up to the value of any damages that occur to the state as a result of the violation. The authority to seek sanctions under this subsection is limited to the department or to the attorney general bringing an action on behalf of the state and may not be enforced by any other person.

**61-28-09. Water transfers used to control flooding exempt.**

1. An action may not be brought under either chapter 32-40 or 61-28 against an owner or operator of a water transfer used to control flooding for violation of the state's water pollution control laws if the water transfer:
  - a. Does not require a national pollutant discharge elimination system permit; and
  - b. Complies with the conditions in the state's water quality standards established to protect aquatic life.
2. For purposes of this section, "water transfer" means an activity that conveys or connects waters of the state without subjecting the transferred water to intervening industrial, municipal, or commercial use.
3. The exemption in subsection 1 does not apply to pollutants introduced by the water transfer activity itself to the water being transferred.
4. The owner or operator of a water transfer falling within this exemption must notify the department before beginning operations.