

Sixty-ninth
Legislative Assembly
of North Dakota

**FIRST ENGROSSMENT
with Senate Amendments**

ENGROSSED HOUSE BILL NO. 1058

Introduced by

Energy and Natural Resources Committee

(At the request of the Department of Environmental Quality)

1 A BILL for an Act to create and enact a new chapter to title 23.1 of the North Dakota Century
2 Code, relating to the regulation of aboveground storage tanks; to amend and reenact section
3 23.1-12-02 and subsection 7 of section 23.1-12-17 of the North Dakota Century Code, relating
4 to the department of environmental quality and tank registration fees; and to provide a penalty.

5 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

6 **SECTION 1.** A new chapter to title 23.1 of the North Dakota Century Code is created and
7 enacted as follows:

8 **Definitions.**

9 For purposes of this chapter:

- 10 1. "Aboveground storage tank" means any one or a combination of aboveground
11 containers, vessels, or enclosures, including associated piping or appurtenances used
12 to store an accumulation of refined petroleum products that is not an underground
13 storage tank as defined in chapter 23.1-04. The term does not include a:
14 a. Farm or residential tank used for storing motor fuel for noncommercial purposes.
15 b. Tank used for storing heating oil for consumptive use on the premises where
16 stored.
17 c. Septic tank.
18 d. Pipeline facility, including gathering lines and breakout tanks, regulated under:
19 (1) The Natural Gas Pipeline Safety Act of 1968 [Pub. L. 90-481].
20 (2) The Hazardous Liquid Pipeline Safety Act of 1979 [Pub. L. 96-129,
21 49 U.S.C. 60101 et seq.].

1 (3) An interstate pipeline facility regulated under state laws comparable to the
2 provisions of law in paragraph 1 or 2.

3 (4) Title 49, Code of Federal Regulations, part 195.

4 e. Surface impoundment, pit, pond, lagoon, storm water collection system, or
5 wastewater collection system.

6 f. Flow-through process tank or vapor recovery unit tank.

7 g. Liquid trap or associated gathering lines directly related to oil or gas production
8 and gathering operations.

9 h. Tank owned by the federal government.

10 i. Tank used for the transportation of petroleum.

11 j. Tank with a capacity under one thousand three hundred twenty gallons
12 [4996.73 liters] used to store lubricating oil.

13 k. Tank used to store ethanol or biodiesel for wholesale purposes with a capacity
14 greater than twenty thousand gallons [75708.24 liters].

15 l. Tank that is located at or is part of a terminal, midstream facility, petrochemical
16 plant, syngas plant, fertilizer plant, petroleum or renewable fuels refinery, electric
17 energy conversion facility, electric transmission related facility, and associated
18 transloading facility.

19 m. Tank, liquid trap, gathering line, or other facility associated with exploration,
20 development, or production of oil, gas, or geothermal resources controlled under
21 title 38.

22 n. Asphalt tank.

23 o. Storage tank situated in an underground area, including a basement, cellar, mine,
24 mine drift, mine shaft, or mine tunnel, if the storage tank is situated upon or
25 above the surface of the floor.

26 p. Propane storage tank.

27 q. Tank used to fuel or service rail locomotives, rail equipment, or coal mining
28 equipment.

29 r. Portable tank.

- 1 s. Tank under subdivision d or l of subsection 13 of section 23.1-12-02, unless the
2 owner or operator registers the tank and is eligible for reimbursement under the
3 petroleum release compensation fund.
- 4 2. "Department" means the department of environmental quality.
- 5 3. "Disposal" means the discharge, deposit, injection, dumping, spilling, leaking, or
6 placing of any solid waste or hazardous waste into or on any land or water so the solid
7 waste or hazardous waste or any hazardous constituent of the waste may enter the
8 environment or be emitted into the air or discharged into any waters, including ground
9 water.
- 10 4. "Electric energy conversion facility" means a plant, addition, or combination of a plant
11 and addition, designed for or capable of wind energy generation, or any means of
12 energy generation, and the plant associated facilities.
- 13 5. "Electric transmission related facility" means an electric transmission line and
14 associated facilities designed for transmission of generated electricity, or a facility
15 used for utility-scale storage of electricity and connected or adjacent to an electric
16 transmission facility or facility controlled by or serving a utility with electric energy
17 transmission, and distribution equipment and materials.
- 18 6. "Facility" means all contiguous land and structures, other appurtenances, and
19 improvements on the land used for storing a regulated substance. A facility may
20 consist of several contiguous storage or operational units.
- 21 7. "Midstream facility" means a facility that receives petroleum products by pipeline or by
22 truck. The term does not include a retailer or end user.
- 23 8. "Operator" means a person in control of, or having responsibility for, the daily
24 operation of an aboveground storage tank.
- 25 9. "Owner" means a person who holds title to, controls, or possesses an interest in the
26 aboveground storage tank.
- 27 10. "Petroleum" means:
- 28 a. Gasoline or petroleum products as defined in chapter 23.1-13;
29 b. Constituents of gasoline or fuel oil under subdivision a; and
30 c. Oil sludge and oil refuse.

- 1 11. "Portable tank" means a storage tank and storage tank piping or wiring that is not
2 stationary or affixed, including a tank on skids.
- 3 12. "Refined petroleum products" means gasoline, kerosene, heating oils, diesel fuels,
4 and other compounds as defined by the department.
- 5 13. "Release" means any spilling, leaking, emitting, discharging, escaping, leaching, or
6 disposing from an aboveground storage tank into the environment, including ground
7 water, surface water, or subsurface soils.
- 8 14. "Terminal" means a refined petroleum product storage and distribution facility that is
9 supplied directly by pipeline and from which the refined petroleum product may be
10 removed from the rack.
- 11 15. "Utility" means a person engaged in and controlling electric generation, transmission
12 of electric energy, or the transmission of water from or to any electric energy
13 conversion facility.

14 **Powers and duties of the department.**

15 The department shall:

- 16 1. Administer and enforce this chapter.
- 17 2. Administer aboveground storage tank programs under this chapter.
- 18 3. Adopt, modify, repeal, and enforce rules governing the aboveground storage tanks.
- 19 4. Enter agreements with other local, state, or federal agencies regarding responsibilities
20 for regulating aboveground storage tanks to promote consistency in enforcement and
21 avoid duplication in regulation.

22 **Aboveground storage tank regulations.**

23 The department shall adopt rules:

- 24 1. For maintaining a leak detection method or combination of methods designed to
25 identify releases in a manner consistent with the protection of human health and the
26 environment.
- 27 2. For maintaining records of any monitoring of a leak detection system, inventory control
28 system, or tank testing system.
- 29 3. For reporting of any releases and corrective action taken in response to a release from
30 an aboveground storage tank.

- 1 4. For taking corrective action in response to a release from an aboveground storage
2 tank.
- 3 5. For the closure of an aboveground storage tank to prevent a release of regulated
4 substances into the environment.
- 5 6. For designation of an aboveground tank as ineligible for delivery.
- 6 7. For maintaining evidence of financial responsibility for taking corrective action and
7 compensating third parties for bodily injury and property damage caused by sudden
8 and nonsudden accidental releases arising from operating an aboveground storage
9 tank.
- 10 8. Establishing standards for construction and performance of new aboveground storage
11 tanks.
- 12 9. For notifying the department or designated local agency of the existence of any
13 operational or nonoperational aboveground storage tank.
- 14 10. For a permit fee system to own, install, or operate an aboveground storage tank.

15 **Fees - Deposit in operating fund.**

16 The department by rule may provide for the payment and collection of reasonable fees for
17 the issuance of permits for registering, licensing, or permitting aboveground storage tanks. The
18 permit fees must be based on the anticipated cost of filing and processing the application,
19 taking action on the requested permit, and conducting a monitoring and inspection program to
20 determine compliance or noncompliance with the permit. Any moneys collected for permit
21 licensing fees must be deposited in the department operating fund in the state treasury and any
22 expenditure from the fund is subject to appropriation by the legislative assembly.

23 **Inspections - Right of entry.**

24 To develop or enforce any rule authorized by this chapter or enforce a requirement of this
25 chapter, any duly authorized representative or employee of the department may, upon
26 presentation of appropriate credentials, at any reasonable time:

- 27 1. Enter any place, facility, or site at which an aboveground storage tank is located.
- 28 2. Inspect and obtain samples of any substance the department has reason to believe
29 may be regulated by this chapter.
- 30 3. Inspect and copy any records, reports, information, or test results relating to the
31 purposes of this chapter.

1 **Imminent hazard.**

2 Upon receipt of information that a release from an aboveground storage tank may present
3 an imminent and substantial endangerment to health or the environment, the department may
4 take emergency action as necessary to protect health or the environment.

5 **Enforcement penalties.**

6 1. If the department finds a person is in violation of a permit, rule, standard, or
7 requirement of this chapter, the department may issue an order requiring the person to
8 comply with the permit, rule, standard, or requirement, and the department may bring
9 an action for a civil penalty, including an action for injunctive relief. An action under this
10 chapter must be brought in the district court for the county in which the violation
11 occurred or in which the party in violation has the party's residence or principal office.

12 2. A person that violates a provision of this chapter or any rule, standard, or permit
13 condition adopted under this chapter is subject to a civil penalty not to exceed twelve
14 thousand five hundred dollars per day of violation. Each day of noncompliance
15 constitutes a separate violation for purposes of penalty assessments.

16 3. A person that knowingly makes a false statement or representation in documentation
17 required by this chapter is subject to a civil penalty not to exceed twelve thousand five
18 hundred dollars per violation.

19 4. An administrative action brought under this chapter must be conducted in accordance
20 with chapter 28-32.

21 **SECTION 2. AMENDMENT.** Section 23.1-12-02 of the North Dakota Century Code is
22 amended and reenacted as follows:

23 **23.1-12-02. Definitions.**

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

- 25 1. "Actually incurred" means, in the case of corrective action expenditures, the owner,
26 operator, landowner, an insurer, or a contractor hired by the owner, operator, or the
27 landlord has expended time and materials, and only that person is receiving
28 reimbursement from the fund.
- 29 2. "Board" means the petroleum release compensation board.
- 30 3. "Corrective action" means an action required by the department to minimize, contain,
31 eliminate, remediate, mitigate, or clean up a release, including any remedial

1 emergency measures. The term does not include the repair or replacement of
2 equipment or preconstructed property.

3 4. "Dealer" means a person licensed by the tax commissioner to sell motor vehicle fuel or
4 special fuels within the state.

5 5. "Department" means the department of environmental quality.

6 6. "Electric energy conversion facility" means a plant, addition, or combination of a plant
7 and addition, designed for or capable of wind energy generation, or any means of
8 energy generation, and the plant associated facilities.

9 7. "Electric transmission related facility" means an electric transmission line and
10 associated facilities designed for transmission of generated electricity, or a facility
11 used for utility-scale storage of electricity and connected or adjacent to an electric
12 transmission facility or facility controlled by or serving a utility with electric energy
13 transmission, and distribution equipment and materials.

14 8. "Fund" means the petroleum release compensation fund.

15 7.9. "Location" means a physical address or site that has contiguous properties.
16 Noncontiguous properties within a municipality or other governmental jurisdiction are
17 considered separate locations.

18 10. "Midstream facility" means a facility that receives petroleum products by pipeline or by
19 truck. The term does not include a retailer or end user.

20 8.11. "Operator" means a person in control of, or having responsibility for, the daily
21 operation of a tank under this chapter.

22 9.12. "Owner" means a person who holds title to, controls, or possesses an interest in the
23 tank before the discontinuation of its use.

24 40.13. "Petroleum" means any of the following:

- 25 a. Gasoline and petroleum products as defined in chapter 23.1-13.
26 b. Constituents of gasoline and fuel oil under subdivision a.
27 c. Oil sludge and oil refuse.

28 44.14. "Portable tank" means a storage tank along with its piping and wiring that is not
29 stationary or affixed, including a tank that is on skids.

30 42.15. "Release" means any unintentional spilling, leaking, emitting, discharging, escaping,
31 leaching, or disposing of petroleum from a tank into the environment whether

1 occurring before or after the effective date of this chapter, but does not include
2 discharges or designed venting allowed under federal or state law or under adopted
3 rules.

4 ~~43.16.~~ "Tank" means any one or a combination of containers, vessels, and enclosures,
5 whether aboveground or underground, including associated piping or appurtenances
6 used to contain an accumulation of petroleum, ethanol, or biodiesel. The term does
7 not include:

8 a. Tanks owned by the federal government.

9 b. Tanks used for the transportation of petroleum.

10 c. A pipeline facility, including gathering lines and breakout tanks:

11 (1) Regulated under the Natural Gas Pipeline Safety Act of 1968.

12 (2) Regulated under the Hazardous Liquid Pipeline Safety Act of 1979.

13 (3) Regulated under state laws comparable to the provisions of law in
14 paragraph 1 or 2, if the facility is an interstate pipeline facility.

15 (4) Regulated under title 49, Code of Federal Regulations, part 195.

16 d. An underground farm or residential tank with a capacity of one thousand one
17 hundred gallons [4163.94 liters] or less or an aboveground farm or residential
18 tank of any capacity used for storing motor fuel for noncommercial purposes.
19 However, the owner of an aboveground farm or residential tank may, upon
20 application, register the tank and be eligible for reimbursement under this
21 chapter.

22 e. A tank used for storing heating oil for consumptive use on the premises where
23 stored.

24 f. A surface impoundment, pit, pond, ~~or lagoon,~~ storm water collection system, or
25 wastewater collection system.

26 g. A flowthrough process tank or vapor recovery unit tank.

27 h. A tank, liquid trap, or associated gathering lines directly related to oil or gas, or
28 other facility associated with the exploration, development, or production or
29 gathering operation of oil, gas, or geothermal resources under title 38.

- 1 i. A storage tank situated in an underground area such as a basement, cellar, mine
2 working, drift, shaft, or tunnel, if the storage tank is situated upon or above the
3 surface of the floor.
- 4 j. A tank used for the storage of propane.
- 5 k. A tank used to fuel or service rail locomotives, rail equipment, or surface coal
6 mining equipment.
- 7 l. An aboveground tank used to feed diesel fuel generators. Upon application, the
8 owner or operator of an aboveground tank used to feed diesel fuel generators
9 may register the tank and is eligible for reimbursement under this chapter.
- 10 m. A portable tank.
- 11 n. A tank with a capacity under one thousand three hundred twenty gallons
12 [4996.728 liters] used to store lubricating oil.
- 13 o. A tank used to store ethanol or biodiesel for wholesale purposes with a capacity
14 of greater than twenty thousand gallons [75708.24 liters].
- 15 p. A tank that is located at or is part of a terminal, midstream facility, petrochemical
16 plant, syngas plant, fertilizer plant, petroleum or renewable fuels refinery, electric
17 energy conversion facility, or electric transmission related facility, including
18 associated transloading facility.
- 19 q. An asphalt tank.
- 20 r. A septic tank.
- 21 ~~14-17.~~ "Tank integrity test" means a test to determine that a tank is sound and not leaking.
22 For an underground tank, the term means a certified third-party test that meets
23 environmental protection agency leak detection requirements. For an aboveground
24 tank, the term means a test conducted according to steel tank institute SP 001 or
25 American petroleum institute 653.
- 26 18. "Terminal" means a refined petroleum product storage and distribution facility that is
27 supplied directly by pipeline and from which the refined petroleum product may be
28 removed from the rack.
- 29 ~~15-19.~~ "Third party" means a person who is damaged by the act of a registered owner,
30 operator, or dealer requiring corrective action, or a person who suffers bodily injury or
31 property damage caused by a petroleum release.

1 20. "Utility" means a person engaged in and controlling electric generation, the
2 transmission of electric energy, or the transmission of water from or to any electric
3 energy conversion facility.

4 **SECTION 3. AMENDMENT.** Subsection 7 of section 23.1-12-17 of the North Dakota
5 Century Code is amended and reenacted as follows:

6 7. If a registration payment is not received within sixty days of ~~July first~~the date required
7 under rules adopted by the department, a late fee of twenty-five dollars per tank per
8 month must be imposed on the tank owner or operator.