

**Sixty-second Legislative Assembly of North Dakota  
In Regular Session Commencing Tuesday, January 4, 2011**

HOUSE BILL NO. 1321  
(Representatives Belter, D. Johnson)  
(Senators Flakoll, Wanzek)

AN ACT to create and enact chapter 19-20.3 of the North Dakota Century Code, relating to anhydrous ammonia risk management program requirements; to amend and reenact sections 19-20.1-06, 19-20.2-03, 19-20.2-07, 19-20.2-07.1, 19-20.2-08.4, 19-20.2-09, and 19-20.2-11 of the North Dakota Century Code, relating to anhydrous ammonia facility inspections; to repeal section 19-20.2-08.1 of the North Dakota Century Code, relating to the anhydrous ammonia storage facility inspection fund; to provide an effective date; and to declare an emergency.

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

**SECTION 1. AMENDMENT.** Section 19-20.1-06 of the North Dakota Century Code is amended and reenacted as follows:

**19-20.1-06. Inspection fees and tonnage reports.**

There must be paid to the commissioner for all fertilizers, soil amendments, or plant amendments distributed in this state an inspection fee at the rate of twenty cents per ton [907.18 kilograms]. The inspection fee may not be less than ten dollars. Sales to manufacturers or exchanges between them are exempt from the inspection fee. Fees collected under this section must be ~~used for the payment of the costs of inspection, sampling, and analysis, and other expenses necessary for the administration of this chapter~~ forwarded to the state treasurer for deposit in the environment and rangeland protection fund.

Individual packages of fertilizers, soil amendments, or plant amendments sold exclusively in packages of twenty-five pounds [11.34 kilograms] or less are exempt from the provisions of this section. If a person sells fertilizer, soil amendments, or plant amendments in packages of twenty-five pounds [11.34 kilograms] or less and in packages over twenty-five pounds [11.34 kilograms], that portion sold in packages over twenty-five pounds [11.34 kilograms] is subject to the same inspection fee of twenty cents per ton [907.18 kilograms], including the minimum ten dollar fee, as provided in this chapter.

Every licensed person who distributes a fertilizer, soil amendment, or plant amendment to a nonlicensed person in this state shall file with the commissioner, on forms furnished by the commissioner, an annual statement for the calendar year, setting forth the number of net tons [kilograms] of each fertilizer, soil amendment, or plant amendment so distributed in this state during the period. A licensed end user shall report all sales and purchases and pay the appropriate tonnage tax. The statement is due on or before January thirty-first of the following year. The person filing the statement shall pay the inspection fee at the rate stated in this section. If the tonnage statement is not filed and the payment of inspection fee is not made by January thirty-first, a collection fee amounting to ten percent, minimum ten dollars, of the amount must be assessed against the licensee, and the amount of fees due constitute a debt and become the basis of a judgment against the licensee.

**SECTION 2. AMENDMENT.** Section 19-20.2-03 of the North Dakota Century Code is amended and reenacted as follows:

**19-20.2-03. License required - Anhydrous ammonia facilities constructed after June 30, 1985.**

No anhydrous ammonia storage facility may be operated without a license issued by the agriculture commissioner and the board of county commissioners of the county in which the facility is constructed. An application for a license to site and operate an anhydrous ammonia storage facility must be made to the agriculture commissioner and to the board of county commissioners. The commissioner or the board may deny a license for failure to remit the proper fee to the agriculture commissioner, for failure

to comply with the siting requirements of this chapter and rules adopted pursuant to this chapter if constructed after June 30, 1985, or for failure to comply with local siting requirements. The agriculture commissioner also may deny a license if the ~~chief boiler inspector does not certify that the facility meets~~does not meet the initial inspection standards required by this chapter and by any rules adopted pursuant to this chapter. In order to obtain a license, an individual shall submit two sets of drawings or photographs and signed affidavits stating and showing the facility has been measured and meets the siting requirements along with the application for license. The drawings or photographs must show the proposed location of the tank, the locations, and the surroundings in all directions. One set of drawings or photographs is for the agriculture commissioner and the other is for the board of county commissioners.

**SECTION 3. AMENDMENT.** Section 19-20.2-07 of the North Dakota Century Code is amended and reenacted as follows:

**19-20.2-07. Inspection.**

1. ~~The chief boiler inspector and the insurance commissioner shall cooperate with the agriculture commissioner to~~shall develop and implement an initial and periodic inspection program for anhydrous ammonia storage facilities. ~~The chief boiler inspector shall inform the agriculture commissioner of any violation of this chapter that may arise in the course of an inspection of an anhydrous ammonia storage facility.~~
2. The ~~insurance~~agriculture commissioner shall inspect each anhydrous ammonia storage facility at least once every five years and may inspect any farm transportation wagon or vehicle designed to apply anhydrous ammonia which is in the vicinity of an anhydrous ammonia storage facility.
3. The ~~insurance~~agriculture commissioner may inspect any anhydrous ammonia storage facility where the commissioner has reason to believe violations of the safety standards under this chapter exist.
4. The agriculture commissioner may revoke or suspend the license of any anhydrous ammonia storage facility violating this chapter or the rules adopted under this chapter. The commissioner may order the discontinuance of use of any farm transportation wagon or implement of husbandry which is found unsafe or hazardous.

**SECTION 4. AMENDMENT.** Section 19-20.2-07.1 of the North Dakota Century Code is amended and reenacted as follows:

**19-20.2-07.1. Reinstalled and secondhand anhydrous ammonia storage containers - Requirement.**

1. Before anhydrous ammonia may be stored in a reinstalled or secondhand container, including a nurse tank, the person intending to store the anhydrous ammonia shall furnish the ~~chief boiler inspector~~agriculture commissioner with:
  - a. Evidence that the container is registered with the national board of boiler and pressure vessel inspectors; or
  - b. The manufacturer's data report for the container.
2. Subsection 1 is not applicable to the owner of an anhydrous ammonia storage container installed in this state before November 1, 1987, unless the storage container is reinstalled at another location.

**SECTION 5. AMENDMENT.** Section 19-20.2-08.4 of the North Dakota Century Code is amended and reenacted as follows:

**19-20.2-08.4. Hydrostatic test procedures.**

Any hydrostatic test conducted under section 19-20.2-05 must comply with the requirements of the national board inspection code (ANSI-NB 23) and be conducted in a manner approved by the ~~chief boiler inspector~~ agriculture commissioner.

**SECTION 6. AMENDMENT.** Section 19-20.2-09 of the North Dakota Century Code is amended and reenacted as follows:

**19-20.2-09. Enforcement.**

1. The agriculture commissioner shall enforce the requirements of this chapter and any rules issued under it.
2. The commissioner may bring an action to enjoin the violation or threatened violation of this chapter, or any rule issued pursuant to this chapter, in the district court of the county in which the violation occurs or is about to occur.
3. The agriculture commissioner may issue a cease and desist order to any person allegedly violating this chapter. If any person violates the cease and desist order, the commissioner shall file the appropriate criminal complaint.
4. For the purpose of carrying out this chapter, the agriculture commissioner ~~and the insurance commissioner~~ may enter upon any public or private premises at reasonable times to:
  - a. Inspect any equipment subject to this chapter and the premises on which the equipment is stored or used.
  - b. Inspect or investigate complaints.
  - c. Inspect any premises or other place where anhydrous ammonia or devices are held for distribution, sale, or use.
5. If a civil penalty pursuant to section 19-20.2-10 is imposed by the agriculture commissioner through an administrative hearing and the civil penalty is not paid, the commissioner may collect the civil penalty by a civil action in any appropriate court. Additionally, the commissioner may suspend or revoke a license issued pursuant to this chapter for failure to pay a civil penalty within thirty days after a final determination is made.

**SECTION 7. AMENDMENT.** Section 19-20.2-11 of the North Dakota Century Code is amended and reenacted as follows:

**19-20.2-11. Rules relating to security measures for nurse tanks.**

The ~~insurance~~ agriculture commissioner shall adopt rules identifying a critical methamphetamine use zone in the state and establishing appropriate security measures to be implemented by the owners and users of anhydrous ammonia nurse tanks located within the zone as a pilot project. The ~~insurance~~ agriculture commissioner may establish the duration of the pilot project, and may require the locking of anhydrous ammonia nurse tanks or other security measures as are deemed necessary to curb the illegal theft of anhydrous ammonia within the zone. The ~~insurance~~ agriculture commissioner shall enforce any rules adopted pursuant to this section.

**SECTION 8.** Chapter 19-20.3 of the North Dakota Century Code is created and enacted as follows:

**19-20.3-01. Risk management program - Anhydrous ammonia.**

In order to determine compliance with the risk management program requirements set forth in section 112 of the Clean Air Act of 1990 [42 U.S.C. 7401 et seq.], as amended through June 30, 2011, the agriculture commissioner may:

1. Request information from any person that:
  - a. Sells, stores, or handles anhydrous ammonia for agricultural purposes; and
  - b. Is required to comply with the risk management program requirements;
2. Conduct inspections of any person that:
  - a. Sells, stores, or handles anhydrous ammonia for agricultural purposes; and
  - b. Is required to comply with the risk management program requirements; and
3. Obtain and review risk management plans required under 40 Code of Federal Regulations, part 68, as amended through June 30, 2011, and other records applicable to any person that:
  - a. Sells, stores, or handles anhydrous ammonia for agricultural purposes; and
  - b. Is required to comply with the risk management program requirements.

**19-20.3-02. Risk management program - Enforcement authority.**

If the agriculture commissioner determines that there is noncompliance on the part of any person that sells, stores, or handles anhydrous ammonia for agricultural purposes and that is required to comply with the risk management program requirements referenced in section 19-20.3-01, the agriculture commissioner may:

1. Bring an action to enjoin a violation or a threatened violation;
2. Issue a cease and desist order; and
3. Impose a civil penalty through an administrative hearing in an amount not exceeding ten thousand dollars per day for each violation.

**SECTION 9. REPEAL.** Section 19-20.2-08.1 of the North Dakota Century Code is repealed.

**SECTION 10. CONTINGENT EFFECTIVE DATE.** Section 8 of this Act becomes effective on the date that the governor certifies to the legislative council that the agriculture commissioner has been delegated by the administrator of the environmental protection agency to implement and enforce the risk management program as it pertains to the sale, storage, and handling of anhydrous ammonia for agricultural purposes, in accordance with section 112 of the Clean Air Act of 1990 [42 U.S.C. 7401 et seq.], as amended through June 30, 2011.

**SECTION 11. EFFECTIVE DATE.** Sections 1 and 9 of this Act become effective on July 1, 2011. Sections 2 through 7 of this Act become effective on January 1, 2012.

**SECTION 12. EMERGENCY.** This Act is declared to be an emergency measure.

\_\_\_\_\_  
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-second Legislative Assembly of North Dakota and is known on the records of that body as House Bill No. 1321 and that two-thirds of the members-elect of the House of Representatives voted in favor of said law.

Vote:        Yeas 78                      Nays 10                      Absent 6

\_\_\_\_\_  
Speaker of the House

\_\_\_\_\_  
Chief Clerk of the House

This certifies that two-thirds of the members-elect of the Senate voted in favor of said law.

Vote:        Yeas 45                      Nays 0                      Absent 2

\_\_\_\_\_  
President of the Senate

\_\_\_\_\_  
Secretary of the Senate

Received by the Governor at \_\_\_\_\_ M. on \_\_\_\_\_, 2011.

Approved at \_\_\_\_\_ M. on \_\_\_\_\_, 2011.

\_\_\_\_\_  
Governor

Filed in this office this \_\_\_\_\_ day of \_\_\_\_\_, 2011,

at \_\_\_\_\_ o'clock \_\_\_\_\_ M.

\_\_\_\_\_  
Secretary of State