

**Fifty-eighth Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 7, 2003**

SENATE BILL NO. 2419
(Senators Stenehjem, Christmann, Heitkamp)
(Representatives Berg, Boucher, Drovdal)
(Approved by the Delayed Bills Committee)

AN ACT to amend and reenact subsection 5 of section 61-28-02, subsections 1 and 3 of section 61-28-06, section 61-28-07, and subsection 5 of section 61-28-08 of the North Dakota Century Code, relating to penalties for violating injunctive orders preventing Clean Water Act violations, to clarify the state's authority to seek injunctive relief against governmental entities that violate water quality standards of the state, and authority of the state to protect water quality from degradation; to provide a penalty; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 5 of section 61-28-02 of the North Dakota Century Code is amended and reenacted as follows:

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.

SECTION 2. AMENDMENT. Subsections 1 and 3 of section 61-28-06 of the North Dakota Century Code are amended and reenacted as follows:

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 ~~reduce~~ reduces the quality of such waters below the water quality standards established therefor by the department.
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.

SECTION 3. AMENDMENT. Section 61-28-07 of the North Dakota Century Code is amended and reenacted as follows:

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.

SECTION 4. AMENDMENT. Subsection 5 of section 61-28-08 of the North Dakota Century Code is amended and reenacted as follows:

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.

SECTION 5. EMERGENCY. This Act is declared to be an emergency measure.

President of the Senate

Speaker of the House

Secretary of the Senate

Chief Clerk of the House

This certifies that the within bill originated in the Senate of the Fifty-eighth Legislative Assembly of North Dakota and is known on the records of that body as Senate Bill No. 2419 and 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

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

Vote: Yeas 92 Nays 0 Absent 2

Speaker of the House

Chief Clerk of the House

Received by the Governor at _____ M. on _____, 2003.

Approved at _____ M. on _____, 2003.

Governor

Filed in this office this _____ day of _____, 2003,
at ____ o'clock _____ M.

Secretary of State