

Sixtieth  
Legislative Assembly  
of North Dakota

## ENGROSSED HOUSE BILL NO. 1109

Introduced by

Representative Wald

1 A BILL for an Act to amend and reenact sections 23-37-02 and 23-37-17 of the North Dakota  
2 Century Code, relating to petroleum tank release compensation fund definitions and registration  
3 fees.

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

5 **SECTION 1. AMENDMENT.** Section 23-37-02 of the North Dakota Century Code is  
6 amended and reenacted as follows:

7 **23-37-02. (Effective through July 31, 2011) Definitions.** As used in this chapter,  
8 unless the context otherwise requires:

- 9 1. "Actually incurred" means, in the case of corrective action expenditures, that the  
10 owner, the operator, the landowner, an insurer, or a contractor hired by the owner,  
11 operator, or the landlord has expended time and materials and that only that  
12 person is receiving reimbursement from the fund.
- 13 2. "Administrator" means the manager of the state fire and tornado fund.
- 14 3. "Board" means the petroleum release compensation board.
- 15 4. "Commissioner" means the insurance commissioner.
- 16 5. "Corrective action" means an action required by the department to minimize,  
17 contain, eliminate, remediate, mitigate, or clean up a release, including any  
18 remedial emergency measures. The term does not include the repair or  
19 replacement of equipment or preconstructed property.
- 20 6. "Dealer" means any person licensed by the tax commissioner to sell motor vehicle  
21 fuel or special fuels within the state.
- 22 7. "Department" means the state department of health.
- 23 8. "Fund" means the petroleum release compensation fund.

9. "Location" means a physical address or site that has contiguous properties.

Noncontiguous properties within a municipality or other governmental jurisdiction  
are considered separate locations.

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

~~40.~~ 11. "Owner" means any person who holds title to, controls, or possesses an interest in  
the tank before the discontinuation of its use.

~~41.~~ 12. "Person" means an individual, trust, firm, joint stock company, federal agency,  
corporation, state, municipality, commission, political subdivision of a state, or any  
interstate body. The term also includes a consortium, a joint venture, a  
commercial entity, and the United States government.

~~42.~~ 13. "Petroleum" means any of the following:

- a. Gasoline and petroleum products as defined in chapter 19-10.
- b. Constituents of gasoline and fuel oil under subdivision a.
- c. Oil sludge and oil refuse.

~~43.~~ 14. "Portable tank" means a storage tank along with its piping and wiring that is not  
stationary or affixed, including a tank that is on skids.

15. "Release" means any unintentional spilling, leaking, emitting, discharging,  
escaping, leaching, or disposing of petroleum from a tank into the environment  
whether occurring before or after the effective date of this chapter, but does not  
include discharges or designed venting allowed under federal or state law or under  
adopted rules.

~~44.~~ 16. "Tank" means any one or a combination of containers, vessels, and enclosures,  
whether aboveground or underground, including associated piping or  
appurtenances used to contain an accumulation of petroleum. The term does not  
include:

- a. Tanks owned by the federal government.
- b. Tanks used for the transportation of petroleum.
- c. A pipeline facility, including gathering lines, regulated under:
  - (1) The Natural Gas Pipeline Safety Act of 1968.
  - (2) The Hazardous Liquid Pipeline Safety Act of 1979.

- 1                   (3)    An interstate pipeline facility regulated under state laws comparable to  
2                               the provisions of law in paragraph 1 or 2.
- 3                   d.    An underground farm or residential tank with a capacity of one thousand one  
4                               hundred gallons [4163.94 liters] or less or an aboveground farm or residential  
5                               tank of any capacity used for storing motor fuel for noncommercial purposes.  
6                               However, the owner of an aboveground farm or residential tank may, upon  
7                               application, register the tank and be eligible for reimbursement under this  
8                               chapter.
- 9                   e.    A tank used for storing heating oil for consumptive use on the premises where  
10                              stored.
- 11                   f.    A surface impoundment, pit, pond, or lagoon.
- 12                   g.    A flowthrough process tank.
- 13                   h.    A liquid trap or associated gathering lines directly related to oil or gas  
14                              production or gathering operations.
- 15                   i.    A storage tank situated in an underground area such as a basement, cellar,  
16                              mine working, drift, shaft, or tunnel if the storage tank is situated upon or  
17                              above the surface of the floor.
- 18                   j.    A tank used for the storage of propane.
- 19                   k.    A tank used to fuel rail locomotives or surface coal mining equipment.
- 20                   l.    An aboveground tank used to feed diesel fuel generators. Upon application,  
21                              the owner or operator of an aboveground tank used to feed diesel fuel  
22                              generators may register the tank and is eligible for reimbursement under this  
23                              chapter.
- 24                   m.    A portable tank.
- 25                   n.    A tank with a capacity under one thousand three hundred hundred twenty  
26                              gallons [4996.728 liters] used to store lubricating oil.
- 27                   17.    "Tank integrity test" means a test to determine that a tank is sound and not  
28                              leaking. For an underground tank, the term means a certified third-party test that  
29                              meets environmental protection agency leak detection requirements. For an  
30                              aboveground tank, the term means a test conducted according to steel tank  
31                              institute SP 001 or American petroleum institute 653.

1     ~~45.~~ 18.   "Third party" means a person who is damaged by the act of a registered owner,  
2                   operator, or dealer requiring corrective action or a person who suffers bodily injury  
3                   or property damage caused by a petroleum release.

4             **SECTION 2. AMENDMENT.** Section 23-37-17 of the North Dakota Century Code is  
5 amended and reenacted as follows:

6             **23-37-17. (Effective through July 31, 2011) Registration fee.**

7             1.    An owner or operator of a tank shall pay an annual registration fee of fifty dollars  
8                   for each aboveground or underground tank owned or operated by that person. If  
9                   on the first day of July in any year the amount of money in the petroleum release  
10                  compensation fund is less than six million dollars, the annual registration fee of fifty  
11                  dollars is increased to one hundred dollars. If on the first day of July in any year  
12                  the amount of money in the petroleum release compensation fund is five million  
13                  five hundred thousand dollars or more and the annual registration fee has been  
14                  increased to one hundred dollars, the fee must be reduced to fifty dollars. Annual  
15                  registration fees must be reduced to five dollars if on the first day of July in any  
16                  year the amount of money in the fund exceeds nine million dollars. Annual  
17                  registration fees must continue at the fee of five dollars until the money in the fund  
18                  does not exceed nine million dollars. ~~An owner or operator of a tank that was~~  
19                  ~~required to be registered by law on or before July 1, 2001, shall pay seventy-five~~  
20                  ~~dollars for each aboveground tank and one hundred twenty-five dollars for each~~  
21                  ~~underground tank owned or operated by that person for any previous years that~~  
22                  ~~the tank was required to be registered for which a fee was not paid.~~

23            2.    An owner or operator of an existing tank that is discovered at a location that  
24                  currently and previously has had tanks registered with the fund on or before July 1,  
25                  2007, shall pay seventy-five dollars for each aboveground tank and one hundred  
26                  twenty-five dollars for each underground tank owned or operated by that person for  
27                  each previous year that the tank was required to be registered for which a fee was  
28                  not paid. The payment includes the fees and the penalty for the failure to register.

29            3.    An owner or operator of an existing tank at a location that was not previously and  
30                  continuously registered with the fund, whether the registration was required by law  
31                  or not, on or before July 1, 2007, must provide the fund with a phase two

1           environmental study conducted by a qualified firm according to American society  
2           for testing materials standards. A tank integrity test must also be performed. The  
3           environmental study and tank integrity test must be reviewed by the commissioner  
4           along with the application for registration with the fund. If the commissioner rejects  
5           the application, the applicant is denied eligibility to the fund. However, if the site is  
6           remediated and the leaking tank is replaced, the applicant may reapply for  
7           registration with the fund. A new installation that is using a used tank must provide  
8           tank integrity test results for the used tank. Use of a synthetic liner in an  
9           aboveground dike system negates the need for a tank integrity test. The owner or  
10          operator of a new tank at a new site or a new tank at an existing site that had a  
11          tank registered at the site previously need only pay the required fees for  
12          registration with the fund.

13          4. If accepted for registration with the fund, the owner or operator of the tank shall  
14          pay seventy-five dollars for each aboveground tank and one hundred twenty-five  
15          dollars for an underground tank for each underground tank for each previous year  
16          that the tank was required to be registered for which a fee was not paid, regardless  
17          of ownership in each of those years.

18          5. The registration fees collected under this section must be paid to the fund  
19          administrator for deposit in the state treasury for the dedicated credit to the  
20          petroleum release compensation fund.