

Sixty-fourth
Legislative Assembly
of North Dakota

HOUSE BILL NO. 1390

Introduced by

Representative Keiser

1 A BILL ~~for an Act to create and enact a new section to chapter 23-20.3 and chapter 23-48 of the~~
2 ~~North Dakota Century Code, relating to licensing of commercial drill cuttings recyclers and~~
3 ~~commercial recyclers of water from an oil and gas drilling operation~~ for an Act to create and
4 enact section 23-29-04.2 of the North Dakota Century Code, relating to licensing of commercial
5 oilfield special waste recyclers of oilfield special waste from oil and gas drilling and production
6 operations.

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

8 ~~— **SECTION 1. AMENDMENT.** Section 23-29-03 of the North Dakota Century Code is~~
9 ~~amended and reenacted as follows:~~

10 ~~— **23-29-03. Definitions.**~~

11 ~~— 1. "Collection" means the aggregation of solid waste from the places at which the waste~~
12 ~~was generated.~~

13 ~~— 2. "Department" means the state department of health.~~

14 ~~— 3. "Disposal" means the discharge, deposit, injection, dumping, spilling, leaking, or~~
15 ~~placing of any solid waste into or on any land or water including ground water.~~

16 ~~— 4. "Industrial waste" means solid waste, which is not a hazardous waste regulated under~~
17 ~~chapter 23-20.3, generated from the combustion or gasification of municipal waste and~~
18 ~~from industrial and manufacturing processes. The term does not include municipal~~
19 ~~waste or special waste.~~

20 ~~— 5. "Infectious waste" means solid waste that may contain pathogens with sufficient~~
21 ~~virulence and in sufficient quantity that exposure of a susceptible human or animal to~~
22 ~~the solid waste could cause the human or animal to contract an infectious disease.~~

23 ~~— 6. "Landfill" means a publicly or privately owned area of land where solid wastes are~~
24 ~~permanently disposed.~~

~~7. "Litter" means discarded and abandoned solid waste materials.~~

~~8. "Major appliance" means an air conditioner, clothes dryer, clothes washer, dishwasher, freezer, microwave oven, oven, refrigerator, stove, furnace, water heater, humidifier, dehumidifier, garbage disposal, trash compactor, or other similar appliance.~~

~~9. "Municipal waste" means solid waste that includes garbage, refuse, and trash generated by households, motels, hotels, and recreation facilities; by public and private facilities; and by commercial, wholesale, and private and retail businesses. The term does not include special waste or industrial waste.~~

~~10. "Open burning" means the combustion of solid waste without control of combustion air to maintain adequate temperature for efficient combustion, containment of the combustion reaction in an enclosed device to provide sufficient residence time and mixing for complete combustion, and control of the emission of the combustion products.~~

~~11. "Person" means any individual, corporation, limited liability company, partnership, firm, association, trust, estate, public or private institution, group, federal agency, political subdivision of this state or any other state or political subdivision thereof, and any legal successor, representative agent, or agency of the foregoing.~~

~~12. "Political subdivision" means a city, county, township, or solid waste management authority.~~

~~13. "Resource recovery" means the use, reuse, or recycling of materials, substances, energy, or products contained within or derived from municipal waste.~~

~~14. "Solid waste" means any garbage, refuse, sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility and other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from industrial, commercial, mining, and agricultural operations, and from community activities. The term does not include:~~

~~a. Agricultural waste, including manures and crop residues, returned to the soil as fertilizer or soil conditioners; or~~

~~b. Solid or dissolved materials in domestic sewage, or solid or dissolved material in irrigation return flows or industrial discharges that are point sources subject to permits under section 402 of the Federal Water Pollution Control Act, as~~

amended [Pub. L. 92-500; 86 Stat. 816; 33 U.S.C. 1251 et seq.], or source,
special nuclear, or byproduct material as defined by the Atomic Energy Act of
1954, as amended [68 Stat. 919; 42 U.S.C. 2011 et seq.].

~~15. "Solid waste management" means the purposeful systematic control of the storage,
collection, transport, composting, resource recovery, land treatment, and disposal of
solid waste.~~

~~16. "Special waste" means solid waste that is not a hazardous waste regulated under
chapter 23-20.3 and includes waste generated from energy conversion facilities; waste
from crude oil and natural gas exploration and production; waste from mineral and ore
mining, beneficiation, and extraction; and waste generated by surface coal mining
operations. The term does not include municipal waste or industrial waste.~~

~~17. "Storage" means the containment and holding of solid waste after generation for a
temporary period, at the end of which the solid waste is processed for resource
recovery, treated, disposed of, or stored elsewhere.~~

~~18. "Transport" means the offsite movement of solid waste.~~ **SECTION 1.** A new section
to chapter 23-20.3 of the North Dakota Century Code is created and enacted as
follows:

**Causes of action against well operators restricted for recycling drill cuttings or water
from a drilling operation.**

~~Upon delivery of drill cuttings or water from an oil and gas well drilling operation to a
commercial recycler or recycling facility for drill cuttings or water from a drilling operation, which
is licensed under chapter 23-48 and is not affiliated with the well operator, acceptance of the
drill cuttings or water from a drilling operation by the recycler or recycling facility, the well
operator is not liable in any civil or criminal action for any subsequent disposal or reuse of the
drill cuttings or water from a drilling operation or any material contained in the drill cuttings or
water from a drilling operation. This section does not create any new cause of action for
damages on behalf of third parties for any subsequent disposal or reuse of the drill cuttings or
water from a drilling operation or any material contained in the drill cuttings or water from a
drilling operation.~~

SECTION 2. Chapter 23-48 of the North Dakota Century Code is created and enacted as
follows:

~~**23-48-01. Licensing of commercial drill cuttings or water recyclers -- Fees.**~~

~~The state department of health shall license commercial drill cuttings recycling facilities or commercial water from an oil and gas well drilling operation recycling facilities and may charge a license fee established by rule commensurate with the cost to the department of licensing and facility inspections.~~

~~**23-48-02. Rules.**~~

~~The state department of health shall adopt rules under chapter 28-32 governing operations of commercial drill cuttings recycling facilities or commercial water from an oil and gas well drilling operation recycling facilities. The rules must be adopted to assure compliance with federal and state laws and rules for protection of the state's water and air and public health in the handling and subsequent use of drill cuttings or water from an oil and gas well drilling operation.~~

~~**23-48-03. Examination of records and property.**~~

~~Upon presentation of official credentials, an employee authorized by the state department of health may:~~

~~1. Examine the premises and facilities and copy books, papers, records, memoranda, or data of a commercial drill cuttings recycling facility or commercial water from an oil and gas well drilling operation recycling facility.~~

~~2. Enter upon public or private property for the purpose of taking action authorized by this chapter and rules adopted under this chapter, including obtaining information from any person, conducting surveys and investigations, and taking corrective action.~~

~~**23-48-04. Responsibility for cost of inspection and corrective action.**~~

~~The owner or operator of a commercial drill cuttings recycling facility or commercial water from an oil and gas well drilling operation recycling facility is liable for the cost of any inspection and corrective action required by the state department of health.~~

~~**23-48-05. Commercial drill cuttings or water from an oil and gas well drilling operation recycler bond.**~~

~~As a condition of licensure, the state department of health may require that a drill cuttings recycling facility or commercial water from an oil and gas well drilling operation recycling facility must post a bond payable to the state in a sufficient amount for remediation of any release or disposal of materials or water in violation of the rules adopted by the department.~~

SECTION 1. Section 23-29-04.2 of the North Dakota Century Code is created and enacted as follows:

23-29-04.2. Commercial oilfield special waste recyclers - Action against well operators restricted.

The state department of health shall license commercial oilfield special waste recyclers and may charge a license fee established by rule commensurate with the cost to the department of licensing and inspections. As a condition of obtaining and maintaining a license, a commercial oilfield special waste recycler and each recycling facility licensed under this chapter must extract and convert to a beneficial use at least sixty-five percent by weight shall adopt rules under chapter 28-32 governing operations of commercial oilfield special waste recyclers. The rules must be adopted to assure compliance with federal and state laws and rules for protection of the state's water and air and public health in the handling and subsequent use of oilfield special waste.

1. Upon presentation of official credentials, an employee authorized by the state department of health may:

a. Examine the premises and facilities and copy books, papers, records, memoranda, or data of a commercial oilfield special waste recycler.

b. Enter upon public or private property for the purpose of taking action authorized by this chapter and rules adopted under this chapter, including obtaining information from any person, conducting surveys and investigations, and taking corrective action.

c. The commercial oilfield special waste recycler is liable for the cost of any inspection and corrective action required by the state department of health.

2. As a condition of licensure, the state department of health may require that a commercial oilfield special waste recycler must post a bond payable to the state in a sufficient amount for remediation of any release or disposal of oilfield special waste in violation of the rules of the department, on the premises or property of the facility or at a place where treated or untreated materials from the facility are taken for use or disposal.

3. As used in this section:

1 a. "Commercial oilfield special waste recycler" means a commercial recycling facility
2 licensed under this chapter for extraction of reusable solids and fluids from any or
3 all types of oilfield special waste.

4 b. "Drilling operation" means oil and gas drilling and production operations and any
5 associated activities that generate oilfield special waste.

6 c. "Oilfield special waste" means waste associated with oil and gas drilling
7 operations, exploration, development, or production and specifically includes drill
8 cuttings, saltwater, and other solids and fluids from drilling operations.

9 4. Upon delivery of oilfield special waste to a commercial oilfield special waste recycler,
10 which is licensed under this section and is not affiliated with the well operator;
11 acceptance of the oilfield special waste by the recycler; and after the oilfield special
12 waste has been treated and converted to a beneficial use as a usable product or
13 legitimate substitute for a usable product, the well operator is not liable in any civil or
14 criminal action for any subsequent claim or charge regarding the material converted to
15 a beneficial use.

16 **SECTION 2. APPROPRIATION.** There is appropriated out of any moneys in the general
17 fund in the state treasury, not otherwise appropriated, the sum of \$150,000, or so much of the
18 sum as may be necessary, to the state department of health for the purpose of increased
19 staffing needs to assist in completion of the department's duties to develop and adopt rules,
20 conduct inspections, and perform other duties under section 23-29-04.2, for the biennium
21 beginning July 1, 2015, and ending June 30, 2017. The state department of health is authorized
22 one full-time equivalent position for this purpose.