

**SENATE BILL NO. 2419
with House Amendments**Fifty-eighth
Legislative Assembly
of North Dakota**SENATE BILL NO. 2419**

Introduced by

Senators Stenehjem, Christmann, Heitkamp

Representatives Berg, Boucher, Drovdal

(Approved by the Delayed Bills Committee)

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

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

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

10 5. "Person" includes any corporation, limited liability company, individual, partnership,
11 association, or other public or private entity, including any state or federal agency
12 or entity responsible for managing a state or federal facility, and includes any
13 officer or governing or managing body of any such entity.

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

- 16 1. It shall be unlawful for any person:
- 17 a. To cause pollution of any waters of the state, or to place or cause to be
18 placed any wastes in a location where they are likely to cause pollution of any
19 waters of the state; and
- 20 b. To discharge any wastes into any waters of the state, or to otherwise cause
21 pollution, which ~~reduce~~ reduces the quality of such waters below the water
22 quality standards established therefor by the department.
- 23 3. Notwithstanding any other provisions of this chapter, and except as in compliance
24 with the provisions of this chapter, and any rules and regulations promulgated

1 hereunder, the discharge of any wastes, or the violation of any water quality
2 standards, by any person shall be unlawful. The department may seek injunctive
3 relief for a threatened or continuing violation of a water quality standard, including
4 any violations of the narrative standards, if the department determines that the
5 violation will substantially interfere with or cause or threaten to cause long-term or
6 irreparable harm to waters of this state that the department determines has
7 statewide or regional significance or has a substantial impact to a local community.
8 The authority to seek injunctive relief for a violation of the water quality standards,
9 including violations of the narrative standards, is limited to the department, after
10 obtaining written approval of the governor, and may not be enforced by any other
11 person.

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

14 **61-28-07. Proceedings.** Any proceeding under this chapter for issuance or
15 modification of rules, including emergency orders relating to control of water pollution or for
16 determining compliance with or violation of this chapter, or adoption of any rule or order under
17 this chapter by the department, must be conducted in accordance with chapter 28-32. Any
18 person claiming to be aggrieved or adversely affected by actions taken, or by any rule or order
19 issued under this chapter may request a hearing by the department. There is a right of appeal
20 to the district court from any adverse ruling by the department. Where an emergency exists
21 requiring immediate action to protect the quality of water for legitimate uses and the public
22 health and welfare, the department, without further notice or hearing, may issue an order
23 reciting the existence of the emergency and requiring that such immediate action be taken as is
24 necessary to meet this emergency. Notwithstanding this chapter, the order is effective
25 immediately. Any person to whom the order is directed shall comply immediately, but on
26 application to the department must be afforded a hearing before the department within ten
27 days. On the basis of that hearing, the emergency order must be continued, modified, or
28 revoked within thirty days after the hearing. In the alternative, upon receipt of evidence that a
29 pollution source or combination of sources is presenting an imminent and substantial
30 endangerment to the health of persons or to the welfare of persons where the endangerment to
31 welfare is to the livelihood of those persons, or upon receipt of evidence that pollution causes

1 or threatens to cause a continuing violation of water quality standards in a manner that
2 substantially interferes with or causes long-term or irreparable harm to waters of this state that
3 the department determines has statewide or regional significance or has a substantial impact to
4 a local community, the department may bring suit on behalf of the state in the district court for
5 the county in which the violation is taking place to immediately restrain any person causing or
6 contributing to the alleged pollution to stop the discharge of pollutants causing or contributing to
7 the pollution, or to otherwise enjoin any pollution causing a substantial water quality violation as
8 described in this section, or to take such other action as may be necessary.

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

11 5. Without prior revocation of any pertinent permits, the department may, in
12 accordance with the laws of this state governing injunctions or other process,
13 maintain an action in the name of the state against any person to enjoin any
14 threatened or continuing violation of any provision of this chapter or any permit
15 condition, rule, order, limitation, or other applicable requirement implementing this
16 chapter. In addition to any other penalties provided in this section, or other
17 provisions of this code, any person who violates an order for injunctive relief is
18 subject to sanctions, not to exceed twenty-five thousand dollars per day per
19 violation. In determining the amount of the sanction, the court shall consider the
20 seriousness of the violation or violations, any good-faith efforts to comply with the
21 court's order, any history of such violations, the economic impact of the sanction
22 on the violator, the environmental and economic impacts to the resource caused
23 by the violation or violations, the comparative environmental and economic
24 impacts on any other resources affected, if any, and such other matters as justice
25 may require. As an additional sanction for violating an order, the court may hold
26 the violator in contempt and, upon the state's motion, may allow a sanction up to
27 the value of any damages that occur to the state as a result of the violation. The
28 authority to seek sanctions under this subsection is limited to the department or to
29 the attorney general bringing an action on behalf of the state and may not be
30 enforced by any other person.

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