

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.

- 1           9.    "Location" means a physical address or site that has contiguous properties.  
2                   Noncontiguous properties within a municipality or other governmental jurisdiction  
3                   are considered separate locations.
- 4           10. "Operator" means any person in control of, or having responsibility for, the daily  
5                   operation of a tank under this chapter.
- 6    ~~40.~~ 11. "Owner" means any person who holds title to, controls, or possesses an interest in  
7                   the tank before the discontinuation of its use.
- 8    ~~41.~~ 12. "Person" means an individual, trust, firm, joint stock company, federal agency,  
9                   corporation, state, municipality, commission, political subdivision of a state, or any  
10                  interstate body. The term also includes a consortium, a joint venture, a  
11                  commercial entity, and the United States government.
- 12   ~~42.~~ 13. "Petroleum" means any of the following:  
13                  a.    Gasoline and petroleum products as defined in chapter 19-10.  
14                  b.    Constituents of gasoline and fuel oil under subdivision a.  
15                  c.    Oil sludge and oil refuse.
- 16   ~~43.~~ 14. "Portable tank" means a storage tank along with its piping and wiring that is not  
17                  stationary or affixed, including a tank that is on skids.
- 18           15. "Release" means any unintentional spilling, leaking, emitting, discharging,  
19                  escaping, leaching, or disposing of petroleum from a tank into the environment  
20                  whether occurring before or after the effective date of this chapter, but does not  
21                  include discharges or designed venting allowed under federal or state law or under  
22                  adopted rules.
- 23   ~~44.~~ 16. "Tank" means any one or a combination of containers, vessels, and enclosures,  
24                  whether aboveground or underground, including associated piping or  
25                  appurtenances used to contain an accumulation of petroleum. The term does not  
26                  include:  
27                  a.    Tanks owned by the federal government.  
28                  b.    Tanks used for the transportation of petroleum.  
29                  c.    A pipeline facility, including gathering lines, regulated under:  
30                          (1)   The Natural Gas Pipeline Safety Act of 1968.  
31                          (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           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.