

TESTIMONY OF

David Glatt, Director of the North Dakota Department of Environmental Quality

Good morning, Chairman Patten and members of the Senate Energy and Natural Resource Committee. My name is David Glatt, Director of the North Dakota Department of Environmental Quality (NDDEQ). The DEQ is responsible for the implementation of many of the environmental protection programs in the state. I am here today to provide testimony in support of SB 2101 which requests a legislative management study be conducted on NDCC 23.1-13 Petroleum Products and NDCC 23.1-14 Antifreeze.

The origin of NDCC 23.1-13 Petroleum Products started back before 1900 AD and has been amended several times up to the present. The current law directs the DEQ to enforce the chapter and authorizes rule development. The law authorizes the regulation of the sale of various petroleum products which includes labeling requirements of containers and pipelines, and development of product quality specifications. In addition, it authorizes the DEQ to prohibit the sale of certain gasolines, motor fuels and additives and allows the DEQ to designate ports of entry and hold train cars for inspection. It also authorizes the tax commissioner to require reporting, collect tax and require surety bonds. Products covered under NDCC 23.1-13 include gasoline, kerosene, tractor fuel, heating oil, diesel fuel and alternative fuels.

Over the years the DEQ has collected and analyzed petroleum products to determine compliance with product specifications. The products tested by the DEQ typically have included gasoline, gasoline blends and diesel fuel. Current test parameters include octane, percent ethanol and cetane. In addition, the DEQ has inspected pump dispensing labels to determine compliance with appropriate regulations. Most of the chapters of NDCC 23.1-13 have not been addressed by the DEQ for many years. (30 plus years).

When evaluating the need to modify, keep or delete all or portions of NDCC 23.1-13 the DEQ was unsure how to proceed. Are chapters of the law currently being enforced by other federal or state agencies indicating a duplication of regulation? Are specific chapters desired for consumer protection or other needs and can some or all the chapter be repealed because they are considered obsolete? We have also received comment that the periodic testing of petroleum products should continue. We ask that SB 2101 be considered for a legislative management study to determine:

- What portions of the NDCC 23.1-13 should be kept, modified, or repealed?
- If chapters are kept who should enforce the law?
- Should the testing of petroleum products continue, and, if so, what products and parameters should be tested?
- Evaluate any other elements of the chapter deemed appropriate.

In addition, NDCC 23.1-14 Antifreeze Regulation is being requested to be evaluated for its relevance and need to continue. The law currently directs the DEQ to administer the chapter which addresses product registration, labeling requirements, inspection, sampling, and analysis and prohibited acts.

The DEQ currently accepts registration fees and evaluates the label to ensure compliance with the law. Recent registration fee collections are approximately \$15,000 per year.

The DEQ respectfully requests that NDCC 23.1-14 be evaluated for relevance in today's market. Questions that should be explored are:

- Do products need to be registered? If so, what chapters of the law should be required to ensure product quality and consumer safety?
- Should the DEQ continue to review product registrations, and should any testing be conducted to ensure product quality?
- Evaluate any other elements of the chapter as deemed appropriate.

This concludes my testimony, and I will stand for questions.

CHAPTER 23.1-13 PETROLEUM PRODUCTS

23.1-13-01. Definitions.

In this chapter, unless the context or subject matter otherwise requires:

1. "Adulterated", when used to describe any petroleum or alternative fuel product, means a petroleum or alternative fuel product that fails to meet the specifications prescribed by this chapter.
2. "Alternative fuel" means a fuel for an engine or vehicle, or used as heating oil, other than a petroleum-based fuel. The term includes biodiesel and green diesel as defined in section 57-43.2-01.
3. "Department" means the department of environmental quality.
4. "Diesel fuel" means any petroleum product intended for use or offered for sale as a fuel for engines in which the fuel is injected into the combustion chamber and ignited by pressure without electric spark.
5. "Gasoline" means a refined petroleum naphtha which by its composition is suitable for use as a carburant in internal combustion engines.
6. "Heating oil" means any product intended for use or offered for sale as a furnace oil, range oil, or fuel oil for heating and cooking purposes to be used in burners other than wick burners regardless of whether the product is designated as furnace oil, range oil, fuel oil, gas oil, or is given any other name or designation.
7. "Kerosene" means a petroleum fraction which is free from water, additives, foreign or suspended matter, and is suitable for use as an illuminating oil.
8. "Lubricating oil" means any petroleum, or other product, used for the purpose of reducing friction, heat, or wear in automobiles, tractors, gasoline engines, diesel engines, and other machines.
9. "Misbranded", when used in connection with any petroleum or alternative fuel product, means a petroleum or alternative fuel product that is not labeled as required under the provisions of this chapter.
10. "Sell" and "sale" include the keeping, offering, or exposing for sale, transportation, or exchange of the restricted or prohibited article.
11. "Tractor fuel" means any product, other than gasoline or kerosene, intended for use or offered for sale as a fuel for tractors, regardless of whether the product is designated as distillate, gas oil, fuel oil, or is given any other name or designation.

23.1-13-02. Department to enforce law - Regulation of petroleum products.

This chapter must be enforced by the department. The department may adopt rules under chapter 28-32 for the interpretation of this chapter.

23.1-13-03. Sale of adulterated and misbranded gasoline, kerosene, tractor fuel, heating oil, diesel fuel, or lubricating oil prohibited.

A person may not sell or offer or expose for sale any kerosene, gasoline, or other petroleum product intended to be used as kerosene, gasoline, any tractor fuel, heating oil, diesel fuel, or lubricating oil that is adulterated or misbranded.

23.1-13-04. Retail sale of alcohol-blended gasoline - Label requirements.

A dealer may not sell at retail alcohol-blended gasoline unless the dispensing unit and any price advertising bear the name of the alcohol blended with the gasoline if the alcohol-blended gasoline consists of one percent or more by volume of any alcohol. The disclosure must be in letters at least the same size as those used for the label of the basic grade of gasoline and must be next to the gasoline grade label. A producer of alcohol-blended gasoline may provide a retailer with a label promoting the benefits of alcohol-blended gasoline, if the label at least meets the requirements of this section.

23.1-13-05. Retail sale of gasoline containing methyl tertiary butyl ether - Restriction.

A person may not sell, offer for sale, supply, or offer for supply gasoline that contains methyl tertiary butyl ether in quantities greater than five-tenths of one percent by volume. However, a person may ship gasoline containing methyl tertiary butyl ether within the state for disposition outside the state, including storage coincident to shipment.

23.1-13-06. Retail sale of alternative fuels - Notice required.

A dealer may not sell at retail alternative fuel unless the dispensing unit and price advertising contains the name and main components of the alternative fuel or alternative fuel blend. The disclosure must follow the same labeling specifications that apply for petroleum-based fuels. The department shall adopt rules under chapter 28-32 for labeling of petroleum products and alternative fuels. A producer of alternative fuels or alternative fuel blends may provide a retailer with a label promoting the benefits of the alternative fuel if the label meets the requirements of this section.

Labeling

MTBE

pipeline

label

- colors

stampin.

23.1-13-07. Labeling gasoline containers - Gasoline pipeline.

Every package, barrel, filling station pump, and every tank wagon, truck, or car containing gasoline for sale or consignment or held with intent to sell or consign the same within this state or to transport it into this state must be clearly and distinctly stamped, labeled, or tagged with the word "gasoline". Every oil station pipeline for gasoline must be painted red. The fittings upon such lines; however, may be painted other colors to designate grades. Pipelines for gasoline must be entirely separate from lines for kerosene or for any other high flash product. Every can, bucket, barrel, or other container of less than sixty gallons [227.12 liters] capacity used for storage or delivery of gasoline, benzene, or benzene products, unless the same is made of glass, must be painted bright red, and such containers may not be used for the storage or delivery of kerosene. In the case of glass containers, the contents must be designated by a red label securely pasted on or attached to the containers bearing the name of the product.

23.1-13-08. Labeling kerosene - Containers - Pipeline.

Every package, barrel, filling station pump, and every tank wagon, truck, or car containing kerosene for sale or consignment when held within this state or transported into this state must be clearly and distinctly stamped, labeled, or tagged with the word "kerosene". Every oil station pipeline for kerosene must be painted aluminum and must be entirely separate from lines for gasoline or other low flash products.

23.1-13-09. Labeling tractor fuel.

Every package, barrel, pump, and every truck, tank wagon, or car containing tractor fuel oil, other than gasoline or kerosene, for sale or consignment, when held within this state or when being transported into this state must be clearly and distinctly tagged, marked, and labeled with the legend "Tractor fuel oil, not for illuminating purposes nor wick burners". Every oil station pipeline for tractor fuel must be painted yellow and must be entirely separate from lines for kerosene or other high flash product.

23.1-13-10. Labeling heating oil.

Every package, barrel, pump, and every tank wagon, truck, or car containing heating oil for sale or consignment, when held within this state or when being transported into this state, must be clearly and distinctly tagged, marked, or labeled with the designation of grade established by the department. Every oil station pipeline for heating oil must be painted green.

23.1-13-11. Labeling diesel fuel.

Every package, barrel, pump, and every tank wagon, truck, or car containing diesel fuel for sale or consignment, when held within this state or transported into this state, must be clearly and distinctly tagged, marked, or labeled with the designation "diesel fuel" together with its cetane number and the grade established by the department. Every oil station pipeline for diesel fuel must be painted green.

TESTING

23.1-13-12. Specifications for petroleum products - Tests used.

Specifications for gasoline, kerosene, tractor fuel, diesel oil, heating oil, lubricating oil, alternative fuels, and liquefied petroleum gases, including propane, propylene, normal butane or isobutane, and butylene, must be determined by the department and must be based upon nationally recognized standards. When so determined by the department and adopted and promulgated as regulations and orders of the department in accordance with chapter 28-32, such specifications must be the specifications for such petroleum products sold in this state and official tests of such petroleum products must be based upon test specifications so determined adopted and promulgated.

23.1-13-13. How volume of heating oil determined.

In case of a dispute, heating oil must be sold on the basis of the United States gallon containing two hundred thirty-one cubic inches [3785.41 milliliters] at sixty degrees Fahrenheit [15.56 degrees Celsius]. The volume of the delivered oil; however, may be calculated from its weight and gravity degrees API in accordance with the national standard petroleum oil tables prepared by the national bureau of standards.

23.1-13-14. Department may prohibit sale of certain gasolines or motor fuels.

The department may prohibit the sale of any "gasoline improver" or motor fuel dope, oil additive, and of any gasoline mixed or compounded with any other chemical, substance, or solution which may be detrimental to the public health, injurious to internal combustion engines, or concerning which unsubstantiated claims are made. However, it may not prohibit the sale of any material, substance, or solution that has been favorably reported on by the United States bureau of standards or by the surgeon general or bureau of public health of the United States.

23.1-13-15. Sale of prohibited gasolines - Penalty.

Any person violating any of the provisions of section 23.1-13-14 is guilty of a class B misdemeanor.

23.1-13-16. Inspection fees.

Every person licensed by the tax commissioner as a motor vehicle fuel or special fuels dealer shall pay to the tax commissioner an inspection fee of one-fortieth of one cent per gallon [3.79 liters] for every gallon [3.79 liters] of gasoline, kerosene, tractor fuel, heating oil, or diesel fuel sold or used during a calendar month except those gallons sold out of state or those gallons sold as original package sales as defined in chapters 57-43.1 and 57-43.2. The fee must accompany the monthly report required in the following section and is due no later than the twenty-fifth day of each calendar month for the preceding month. The tax commissioner shall forward all money collected under this section to the state treasurer monthly, and the state treasurer shall place the money in the general fund of the state. The tax commissioner shall make available annually a report by licensed dealer listing the number of gallons [liters] of motor vehicle fuel and special fuels upon which the inspection fee has been paid. The provisions of chapters 57-43.1 and 57-43.2 pertaining to the administration of motor vehicle fuel and special fuels taxes not in conflict with the provisions of this chapter govern the administration of the inspection fee levied by this chapter.

23.1-13-17. Report to tax commissioner of petroleum products - Contents.

Report

No later than the twenty-fifth day of each calendar month, every person licensed by the tax commissioner as a motor vehicle fuel, special fuels, or liquefied petroleum wholesale dealer shall send to the tax commissioner a correct report of all purchases and sales of gasoline, kerosene, tractor fuel, heating oil, or diesel fuel during the preceding month. The report must include the same information as required in chapters 57-43.1 and 57-43.2 for motor vehicle fuel and special fuels tax collection purposes. Failure to send the report and inspection fee required by the preceding section to the tax commissioner constitutes a violation of the provisions of this chapter.

23.1-13-18. Bond may be required of dealer in petroleum products.

The tax commissioner may require any person licensed by the tax commissioner as a motor vehicle fuel, special fuels, or liquefied petroleum wholesale dealer to furnish a surety bond payable to the state in the sum of five hundred dollars, or twice the amount of inspection fees due for any calendar month, whichever amount is the greater, guaranteeing to the state true reports of purchases and sales of gasoline, kerosene, tractor fuel, heating oil, and diesel fuel and the payment of all inspection fees provided for in this chapter. The tax commissioner shall determine the sufficiency of the bond. A single bond may cover dealing in one or all of the petroleum products mentioned in this chapter. When any inspection fee is not paid within twenty days after it has become delinquent, the person bonding the delinquent may be called upon to make good upon the bond for such delinquent fees.

23.1-13-19. Department may designate ports of entry and hold cars for inspection - Penalty.

The department may designate ports of entry of all transportation companies carrying petroleum products into this state for sale or consignment and may hold or delay any car or other vehicle of transportation entering this state carrying such products for sale or consignment until samples thereof have been obtained for inspection and analysis and until any other required information regarding the products contained in the shipment has been secured. The department may not hold or delay any shipment or consignment of petroleum products at the port of entry if the transportation company carrying such products will permit proper inspection and sampling of shipments or consignments at convenient designated points without the state, and will permit the inspection of transportation records and provide adequate information regarding the records of cars or other vehicles carrying such products at division points or at other places within or without the state where such cars or other vehicles, in normal practice, are stopped and held for switching and rearrangement or where ample opportunity is provided for proper inspection and sampling. The failure on the part of a transportation company or any of its officers or employees to hold any car or other vehicle of transportation for inspection is a class B misdemeanor.

23.1-13-20. Penalties.

A person violating or failing to comply with any of the provisions of this chapter, or with any rule issued under this chapter, is, unless another penalty is specifically provided, guilty of a class B misdemeanor.

CHAPTER 23.1-14 ANTIFREEZE REGULATION

23.1-14-01. Administration.

The department of environmental quality shall administer this chapter.

23.1-14-02. Definitions.

In this chapter, unless the context or subject matter otherwise requires:

1. "Antifreeze" means any substance or preparation sold, distributed, or intended for use as the cooling liquid, or to be added to the cooling liquid, in the cooling system of internal combustion engines to prevent freezing of the cooling liquid, to lower its freezing point, or to raise its boiling point.
2. "Department" means the department of environmental quality.
3. "Distribute" means to hold with intent to sell to the consumer, offer for sale, to sell, barter, or otherwise supply.
4. "Label" means any display of written, printed, or graphic matter on, or attached to, a package or the outside individual container or wrapper of the package.
5. "Package" means a sealed retail package, drum, or other container in which antifreeze is distributed to the consumer or a container holding no more than fifty-five gallons [208.20 liters] from which the antifreeze is directly installed in the cooling system by seller or reseller.

23.1-14-03. Registration - Penalty.

Before antifreeze may be distributed in this state, the manufacturer or person whose name appears on the label shall apply to the department on forms provided by the department for registration for each antifreeze the manufacturer or person whose name appears on the label desires to distribute. All registrations expire on June thirtieth of each year. The application for registration must be accompanied by an inspection fee of forty dollars for each product, and by a label or other printed matter describing the product. Upon approval by the department, a copy of the registration must be furnished to the applicant. The department shall remit inspection fees received by the department to the state treasurer for deposit in the state general fund. A penalty of fifty percent of the registration fee must be imposed if the certificate of registration is not applied for on or before July first of each year or within the same month such antifreeze is first manufactured or sold within this state.

23.1-14-04. Adulteration.

Antifreeze is adulterated:

1. If, in the form in which it is sold and directed to be used, it would be injurious to the cooling system of an internal combustion engine, or if, when used in the cooling system of such an engine, it would make the operation of the engine dangerous to the user; or
2. If its strength, quality, or purity falls below the standard of strength, quality, or purity under which it is sold or offered for sale.

23.1-14-05. Misbranding.

Antifreeze is misbranded:

1. If it does not bear a label which specifically identifies the product, states the name and place of business of the registrant, states the net quantity of contents in terms of liquid measure separately and accurately in a uniform location under the principal display panel, and contains a statement warning of any hazard of substantial injury to human beings which may result from the intended use or reasonably foreseeable misuse of the antifreeze;
2. If the product is to be diluted with another substance for use and its labeling does not contain a statement or chart showing appropriate amounts of each substance to be used to provide protection from freezing at various degrees of temperature;

3. If the labeling contains a corrosion protection claim and does not include a statement of the amount to be used to provide such protection;
4. If its labeling contains any claim that it has been approved or recommended by the department; or
5. If its labeling is false, deceptive, misleading, or is illegal under any law.

23.1-14-06. Rules and regulations.

The department may adopt reasonable rules and standards under chapter 28-32 as necessary to administer this chapter.

23.1-14-07. Inspection, sampling, and analysis.

The department may, at reasonable hours, enter, inspect, and examine all places and property where antifreeze is stored or distributed for the purpose of taking reasonable samples of antifreeze for analysis together with specimens of labeling. The department shall examine promptly all samples received in connection with the administration and enforcement of this chapter and report the results to the owner and the registrant of the antifreeze.

23.1-14-08. Prohibited acts.

It is unlawful to:

1. Distribute any antifreeze that has not been registered under this chapter or for which the label is different from that accepted for registration.
2. Distribute any antifreeze that is adulterated or misbranded.
3. Refuse to permit entry or inspection or refuse to permit the acquisition of a sample of any antifreeze under this chapter.
4. Dispose of any antifreeze under "withdrawal from distribution" order under this chapter, except as provided in this chapter.
5. Distribute any antifreeze unless it is in the registrant's or manufacturer's package, except a distributor may obtain written authorization from the department annually to distribute antifreeze in bulk using a container supplied by the customer, provided the distributor attaches to the container a label bearing all of the information required by this chapter.
6. Use the term "ethylene glycol" on the label of a product which contains other glycols unless it is qualified by the word "base", "type", or wording of similar import and unless the product contains a minimum ethylene glycol content of seventy-five percent by regulation weight and a minimum total glycol content of ninety-three percent by weight. The product also must have a corrected specific gravity to give reliable freezing point readings on a commercial ethylene glycol type hydrometer and a freezing point, when mixed with an equal volume of water, of thirty-two degrees Fahrenheit [35.56 degrees Celsius] below zero or lower.

23.1-14-09. Enforcement.

When the department finds any antifreeze being distributed in violation of this chapter or any rules adopted under this chapter, it may issue and enforce a written or printed "withdrawal from distribution" order, warning the distributor not to dispose of any of the lot of antifreeze in any manner until written permission is given by the department or a court of competent jurisdiction. Copies of the order must also be sent by registered or certified mail to the registrant or to the person whose name and address appear on the label of the antifreeze. The department shall release for distribution the lot of antifreeze so withdrawn upon compliance with applicable rules, or for return to the registrant or the person whose name and address appears on the label for reprocessing or relabeling as may be required. If compliance is not obtained within thirty days, the department may begin proceedings for condemnation. Any lot of antifreeze not in compliance with the law is subject to seizure upon complaint of the department in the district court of the county in which it is located or in the district court of Burleigh County.

23.1-14-10. Submission of formula.

The department may require an applicant for registration to furnish a statement of the formula of the applicant's antifreeze, unless the applicant can furnish other satisfactory evidence that the antifreeze is not adulterated or misbranded. The statement need not include inhibitor or other ingredients that total less than five percent by weight of the antifreeze. All statements of formula and other trade secrets furnished under this section are privileged and confidential and may not be made public or open to the inspection of any persons other than the department. No statement is subject to subpoena. Nor may a statement be exhibited or disclosed before any administrative or judicial tribunal by virtue of any order or subpoena of such tribunal without the consent of the applicant furnishing the statement to the department.

23.1-14-11. Penalty.

Any person that violates or fails to comply with this chapter, for which another penalty has not been specifically provided, is guilty of a class B misdemeanor.

23.1-14-12. Prosecutions - State's attorney.

Each state's attorney to whom the department reports any violation of this chapter shall institute appropriate proceedings in court without delay. However, nothing in this chapter may be construed as requiring the department to report minor violations for the institution of proceedings under this chapter whenever it believes the public interest will be served adequately by suitable written notice or warning.

23.1-14-13. Injunction proceedings.

In addition to other remedies, the department may apply to the district court of Burleigh County for a temporary or permanent injunction restraining any person from violating a provision of this chapter regardless of whether there exists an adequate remedy at law, and appropriate costs must be taxed by the court for all expenses to the department for the injunctive proceedings.

23.1-14-14. Reports by department.

Except as otherwise provided, the department may publish reports of any analyses, inspections, or research done under this chapter for the information of the public.