

HOUSE BILL NO. 1058

Introduced by

Energy and Natural Resources Committee

(At the request of the Department of Environmental Quality)

1 A BILL for an Act to create and enact a new chapter to title 23.1 of the North Dakota Century
2 Code, relating to the regulation of aboveground storage tanks; and to provide a penalty.

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

4 **SECTION 1.** A new chapter to title 23.1 of the North Dakota Century Code is created and
5 enacted as follows:

6 **Definitions.**

7 For purposes of this chapter:

- 8 1. "Aboveground storage tank" means any one or a combination of aboveground
9 containers, vessels, or enclosures, including associated piping or appurtenances used
10 to store an accumulation of refined petroleum products that is not an underground
11 storage tank as defined in chapter 23.1-04. The term does not include a:
- 12 a. Farm or residential tank used for storing motor fuel for noncommercial purposes.
 - 13 b. Tank used for storing heating oil for consumptive use on the premises where
14 stored.
 - 15 c. Septic tank.
 - 16 d. A pipeline facility, including gathering lines, regulated under:
 - 17 (1) The Natural Gas Pipeline Safety Act of 1968 [Pub. L. 90-481].
 - 18 (2) The Hazardous Liquid Pipeline Safety Act of 1979 [Pub. L. 96-129,
19 49 U.S.C. 60101 et seq.].
 - 20 (3) An interstate pipeline facility regulated under state laws comparable to the
21 provisions of law in paragraph 1 or 2.
 - 22 e. Surface impoundment, pit, pond, or lagoon.
 - 23 f. Storm water or wastewater collection system.
 - 24 g. Flow-through process tank.

- 1 h. Liquid trap or associated gathering lines directly related to oil or gas production
2 and gathering operations.
- 3 2. "Department" means the department of environmental quality.
- 4 3. "Disposal" means the discharge, deposit, injection, dumping, spilling, leaking, or
5 placing of any solid waste or hazardous waste into or on any land or water so the solid
6 waste or hazardous waste or any hazardous constituent of the waste may enter the
7 environment or be emitted into the air or discharged into any waters, including ground
8 water.
- 9 4. "Facility" means all contiguous land and structures, other appurtenances, and
10 improvements on the land used for storing a regulated substance. A facility may
11 consist of several contiguous storage or operational units.
- 12 5. "Operator" means a person in control of, or having responsibility for, the daily
13 operation of an aboveground storage tank.
- 14 6. "Owner" means a person who holds title to, controls, or possesses an interest in the
15 aboveground storage tank.
- 16 7. "Refined petroleum products" means gasoline, kerosene, heating oils, diesel fuels,
17 and other compounds as defined by the department.
- 18 8. "Release" means any spilling, leaking, emitting, discharging, escaping, leaching, or
19 disposing from an aboveground storage tank into the environment, including ground
20 water, surface water, or subsurface soils.

21 **Powers and duties of the department.**

22 The department shall:

- 23 1. Administer and enforce this chapter.
- 24 2. Administer aboveground storage tank programs under this chapter.
- 25 3. Adopt, modify, repeal, and enforce rules governing the aboveground storage tanks.
- 26 4. Enter agreements with other local, state, or federal agencies regarding responsibilities
27 for regulating aboveground storage tanks to promote consistency in enforcement and
28 avoid duplication in regulation.

29 **Aboveground storage tank regulations.**

30 The department shall adopt rules:

- 1 1. For maintaining a leak detection method or combination of methods designed to
- 2 identify releases in a manner consistent with the protection of human health and the
- 3 environment.
- 4 2. For maintaining records of any monitoring of a leak detection system, inventory control
- 5 system, or tank testing system.
- 6 3. For reporting of any releases and corrective action taken in response to a release from
- 7 an aboveground storage tank.
- 8 4. For taking corrective action in response to a release from an aboveground storage
- 9 tank.
- 10 5. For the closure of an aboveground storage tank to prevent a release of regulated
- 11 substances into the environment.
- 12 6. For designation of an aboveground tank as ineligible for delivery.
- 13 7. For maintaining evidence of financial responsibility for taking corrective action and
- 14 compensating third parties for bodily injury and property damage caused by sudden
- 15 and nonsudden accidental releases arising from operating an aboveground storage
- 16 tank.
- 17 8. Establishing standards for construction and performance of new aboveground storage
- 18 tanks.
- 19 9. For notifying the department or designated local agency of the existence of any
- 20 operational or nonoperational aboveground storage tank.
- 21 10. For a permit fee system to own, install, or operate an aboveground storage tank.

22 **Fees - Deposit in operating fund.**

23 The department by rule may provide for the payment and collection of reasonable fees for

24 the issuance of permits for registering, licensing, or permitting aboveground storage tanks. The

25 permit fees must be based on the anticipated cost of filing and processing the application,

26 taking action on the requested permit, and conducting a monitoring and inspection program to

27 determine compliance or noncompliance with the permit. Any moneys collected for permit

28 licensing fees must be deposited in the department operating fund in the state treasury and any

29 expenditure from the fund is subject to appropriation by the legislative assembly.

1 **Inspections - Right of entry.**

2 To develop or enforce any rule authorized by this chapter or enforce a requirement of this
3 chapter, any duly authorized representative or employee of the department may, upon
4 presentation of appropriate credentials, at any reasonable time:

- 5 1. Enter any place, facility, or site at which an aboveground storage tank is located.
- 6 2. Inspect and obtain samples of any substance the department has reason to believe
7 may be regulated by this chapter.
- 8 3. Inspect and copy any records, reports, information, or test results relating to the
9 purposes of this chapter.

10 **Imminent hazard.**

11 Upon receipt of information that a release from an aboveground storage tank may present
12 an imminent and substantial endangerment to health or the environment, the department may
13 take emergency action as necessary to protect health or the environment.

14 **Enforcement penalties.**

- 15 1. If the department finds a person is in violation of a permit, rule, standard, or
16 requirement of this chapter, the department may issue an order requiring the person to
17 comply with the permit, rule, standard, or requirement, and the department may bring
18 an action for a civil penalty, including an action for injunctive relief. An action under this
19 chapter must be brought in the district court for the county in which the violation
20 occurred or in which the party in violation has the party's residence or principal office.
- 21 2. A person that violates a provision of this chapter or any rule, standard, or permit
22 condition adopted under this chapter is subject to a civil penalty not to exceed twelve
23 thousand five hundred dollars per day of violation. Each day of noncompliance
24 constitutes a separate violation for purposes of penalty assessments.
- 25 3. A person that knowingly makes a false statement or representation in documentation
26 required by this chapter is subject to a civil penalty not to exceed twelve thousand five
27 hundred dollars per violation.
- 28 4. An administrative action brought under this chapter must be conducted in accordance
29 with chapter 28-32.