

ENVIRONMENTAL QUALITY

CHAPTER 250

HOUSE BILL NO. 1058

(Energy and Natural Resources Committee)

(At the request of the Department of Environmental Quality)

AN ACT to create and enact a new chapter to title 23.1 of the North Dakota Century Code, relating to the regulation of aboveground storage tanks; to amend and reenact section 23.1-12-02 and subsection 7 of section 23.1-12-17 of the North Dakota Century Code, relating to the department of environmental quality and tank registration fees; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

Definitions.

For purposes of this chapter:

1. "Aboveground storage tank" means any one or a combination of aboveground containers, vessels, or enclosures, including associated piping or appurtenances used to store an accumulation of refined petroleum products that is not an underground storage tank as defined in chapter 23.1-04. The term does not include a:
 - a. Farm or residential tank used for storing motor fuel for noncommercial purposes.
 - b. Tank used for storing heating oil for consumptive use on the premises where stored.
 - c. Septic tank.
 - d. Pipeline facility, including gathering lines and breakout tanks, regulated under:
 - (1) The Natural Gas Pipeline Safety Act of 1968 [Pub. L. 90-481].
 - (2) The Hazardous Liquid Pipeline Safety Act of 1979 [Pub. L. 96-129, 49 U.S.C. 60101 et seq.].
 - (3) An interstate pipeline facility regulated under state laws comparable to the provisions of law in paragraph 1 or 2.
 - (4) Title 49, Code of Federal Regulations, part 195.

- e. Surface impoundment, pit, pond, lagoon, storm water collection system, or wastewater collection system.
 - f. Flow-through process tank or vapor recovery unit tank.
 - g. Liquid trap or associated gathering lines directly related to oil or gas production and gathering operations.
 - h. Tank owned by the federal government.
 - i. Tank used for the transportation of petroleum.
 - j. Tank with a capacity under one thousand three hundred twenty gallons [4996.73 liters] used to store lubricating oil.
 - k. Tank used to store ethanol or biodiesel for wholesale purposes with a capacity greater than twenty thousand gallons [75708.24 liters].
 - l. Tank that is located at or is part of a terminal, midstream facility, petrochemical plant, syngas plant, fertilizer plant, petroleum or renewable fuels refinery, electric energy conversion facility, electric transmission related facility, and associated transloading facility.
 - m. Tank, liquid trap, gathering line, or other facility associated with exploration, development, or production of oil, gas, or geothermal resources controlled under title 38.
 - n. Asphalt tank.
 - o. Storage tank situated in an underground area, including a basement, cellar, mine, mine drift, mine shaft, or mine tunnel, if the storage tank is situated upon or above the surface of the floor.
 - p. Propane storage tank.
 - q. Tank used to fuel or service rail locomotives, rail equipment, or coal mining equipment.
 - r. Portable tank.
 - s. Tank under subdivision d or l of subsection 13 of section 23.1-12-02, unless the owner or operator registers the tank and is eligible for reimbursement under the petroleum release compensation fund.
2. "Department" means the department of environmental quality.
3. "Disposal" means the discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste or hazardous waste into or on any land or water so the solid waste or hazardous waste or any hazardous constituent of the waste may enter the environment or be emitted into the air or discharged into any waters, including ground water.
4. "Electric energy conversion facility" means a plant, addition, or combination of a plant and addition, designed for or capable of wind energy generation, or any means of energy generation, and the plant associated facilities.

5. "Electric transmission related facility" means an electric transmission line and associated facilities designed for transmission of generated electricity, or a facility used for utility-scale storage of electricity and connected or adjacent to an electric transmission facility or facility controlled by or serving a utility with electric energy transmission, and distribution equipment and materials.
6. "Facility" means all contiguous land and structures, other appurtenances, and improvements on the land used for storing a regulated substance. A facility may consist of several contiguous storage or operational units.
7. "Midstream facility" means a facility that receives petroleum products by pipeline or by truck. The term does not include a retailer or end user.
8. "Operator" means a person in control of, or having responsibility for, the daily operation of an aboveground storage tank.
9. "Owner" means a person who holds title to, controls, or possesses an interest in the aboveground storage tank.
10. "Petroleum" means:
 - a. Gasoline or petroleum products as defined in chapter 23.1-13;
 - b. Constituents of gasoline or fuel oil under subdivision a; and
 - c. Oil sludge and oil refuse.
11. "Portable tank" means a storage tank and storage tank piping or wiring that is not stationary or affixed, including a tank on skids.
12. "Refined petroleum products" means gasoline, kerosene, heating oils, diesel fuels, and other compounds as defined by the department.
13. "Release" means any spilling, leaking, emitting, discharging, escaping, leaching, or disposing from an aboveground storage tank into the environment, including ground water, surface water, or subsurface soils.
14. "Terminal" means a refined petroleum product storage and distribution facility that is supplied directly by pipeline and from which the refined petroleum product may be removed from the rack.
15. "Utility" means a person engaged in and controlling electric generation, transmission of electric energy, or the transmission of water from or to any electric energy conversion facility.

Powers and duties of the department.

The department shall:

1. Administer and enforce this chapter.
2. Administer aboveground storage tank programs under this chapter.
3. Adopt, modify, repeal, and enforce rules governing the aboveground storage tanks.

4. Enter agreements with other local, state, or federal agencies regarding responsibilities for regulating aboveground storage tanks to promote consistency in enforcement and avoid duplication in regulation.

Aboveground storage tank regulations.

The department shall adopt rules:

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

Fees - Deposit in operating fund.

The department by rule may provide for the payment and collection of reasonable fees for the issuance of permits for registering, licensing, or permitting aboveground storage tanks. The permit fees must be based on the anticipated cost of filing and processing the application, taking action on the requested permit, and conducting a monitoring and inspection program to determine compliance or noncompliance with the permit. Any moneys collected for permit licensing fees must be deposited in the department operating fund in the state treasury and any expenditure from the fund is subject to appropriation by the legislative assembly.

Inspections - Right of entry.

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

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

Imminent hazard.

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

Enforcement penalties.

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

SECTION 2. AMENDMENT. Section 23.1-12-02 of the North Dakota Century Code is amended and reenacted as follows:

23.1-12-02. Definitions.

As used in this chapter, unless the context otherwise requires:

1. "Actually incurred" means, in the case of corrective action expenditures, the owner, operator, landowner, an insurer, or a contractor hired by the owner, operator, or the landlord has expended time and materials, and only that person is receiving reimbursement from the fund.
2. "Board" means the petroleum release compensation board.
3. "Corrective action" means an action required by the department to minimize, contain, eliminate, remediate, mitigate, or clean up a release, including any remedial emergency measures. The term does not include the repair or replacement of equipment or preconstructed property.

4. "Dealer" means a person licensed by the tax commissioner to sell motor vehicle fuel or special fuels within the state.
5. "Department" means the department of environmental quality.
6. "Electric energy conversion facility" means a plant, addition, or combination of a plant and addition, designed for or capable of wind energy generation, or any means of energy generation, and the plant associated facilities.
7. "Electric transmission related facility" means an electric transmission line and associated facilities designed for transmission of generated electricity, or a facility used for utility-scale storage of electricity and connected or adjacent to an electric transmission facility or facility controlled by or serving a utility with electric energy transmission, and distribution equipment and materials.
8. "Fund" means the petroleum release compensation fund.
- ~~7-9.~~ "Location" means a physical address or site that has contiguous properties. Noncontiguous properties within a municipality or other governmental jurisdiction are considered separate locations.
- ~~10.~~ "Midstream facility" means a facility that receives petroleum products by pipeline or by truck. The term does not include a retailer or end user.
- ~~8-11.~~ "Operator" means a person in control of, or having responsibility for, the daily operation of a tank under this chapter.
- ~~9-12.~~ "Owner" means a person who holds title to, controls, or possesses an interest in the tank before the discontinuation of its use.
- ~~10-13.~~ "Petroleum" means any of the following:
 - a. Gasoline and petroleum products as defined in chapter 23.1-13.
 - b. Constituents of gasoline and fuel oil under subdivision a.
 - c. Oil sludge and oil refuse.
- ~~11-14.~~ "Portable tank" means a storage tank along with its piping and wiring that is not stationary or affixed, including a tank that is on skids.
- ~~12-15.~~ "Release" means any unintentional spilling, leaking, emitting, discharging, escaping, leaching, or disposing of petroleum from a tank into the environment whether occurring before or after the effective date of this chapter, but does not include discharges or designed venting allowed under federal or state law or under adopted rules.
- ~~13-16.~~ "Tank" means any one or a combination of containers, vessels, and enclosures, whether aboveground or underground, including associated piping or appurtenances used to contain an accumulation of petroleum, ethanol, or biodiesel. The term does not include:
 - a. Tanks owned by the federal government.
 - b. Tanks used for the transportation of petroleum.
 - c. A pipeline facility, including gathering lines and breakout tanks:

- (1) Regulated under the Natural Gas Pipeline Safety Act of 1968.
 - (2) Regulated under the Hazardous Liquid Pipeline Safety Act of 1979.
 - (3) Regulated under state laws comparable to the provisions of law in paragraph 1 or 2, if the facility is an interstate pipeline facility.
 - (4) Regulated under title 49, Code of Federal Regulations, part 195.
- d. An underground farm or residential tank with a capacity of one thousand one hundred gallons [4163.94 liters] or less or an aboveground farm or residential tank of any capacity used for storing motor fuel for noncommercial purposes. However, the owner of an aboveground farm or residential tank may, upon application, register the tank and be eligible for reimbursement under this chapter.
 - e. A tank used for storing heating oil for consumptive use on the premises where stored.
 - f. A surface impoundment, pit, pond, ~~or lagoon,~~ storm water collection system, or wastewater collection system.
 - g. A flowthrough process tank or vapor recovery unit tank.
 - h. A tank, liquid trap, or associated gathering lines directly related to oil or gas, or other facility associated with the exploration, development, or production or gathering operations of oil, gas, or geothermal resources under title 38.
 - i. A storage tank situated in an underground area such as a basement, cellar, mine working, drift, shaft, or tunnel, if the storage tank is situated upon or above the surface of the floor.
 - j. A tank used for the storage of propane.
 - k. A tank used to fuel or service rail locomotives, rail equipment, or surface coal mining equipment.
 - l. An aboveground tank used to feed diesel fuel generators. Upon application, the owner or operator of an aboveground tank used to feed diesel fuel generators may register the tank and is eligible for reimbursement under this chapter.
 - m. A portable tank.
 - n. A tank with a capacity under one thousand three hundred twenty gallons [4996.728 liters] used to store lubricating oil.
 - o. A tank used to store ethanol or biodiesel for wholesale purposes with a capacity of greater than twenty thousand gallons [75708.24 liters].
 - p. A tank that is located at or is part of a terminal, midstream facility, petrochemical plant, syngas plant, fertilizer plant, petroleum or renewable fuels refinery, electric energy conversion facility, or electric transmission related facility, including associated transloading facility.
 - q. An asphalt tank.

r. A septic tank.

- ~~44-17.~~ "Tank integrity test" means a test to determine that a tank is sound and not leaking. For an underground tank, the term means a certified third-party test that meets environmental protection agency leak detection requirements. For an aboveground tank, the term means a test conducted according to steel tank institute SP 001 or American petroleum institute 653.
18. "Terminal" means a refined petroleum product storage and distribution facility that is supplied directly by pipeline and from which the refined petroleum product may be removed from the rack.
- ~~45-19.~~ "Third party" means a person who is damaged by the act of a registered owner, operator, or dealer requiring corrective action, or a person who suffers bodily injury or property damage caused by a petroleum release.
20. "Utility" means a person engaged in and controlling electric generation, the transmission of electric energy, or the transmission of water from or to any electric energy conversion facility.

SECTION 3. AMENDMENT. Subsection 7 of section 23.1-12-17 of the North Dakota Century Code is amended and reenacted as follows:

7. If a registration payment is not received within sixty days of ~~July first~~ the date required under rules adopted by the department, a late fee of twenty-five dollars per tank per month must be imposed on the tank owner or operator.

Approved April 15, 2025

Filed April 17, 2025

CHAPTER 251

SENATE BILL NO. 2110

(Workforce Development Committee)
(At the request of the Department of Environmental Quality)

AN ACT to create and enact a new section to chapter 23.1-07 of the North Dakota Century Code, relating to the certification and regulation of water distribution and wastewater system operators; to amend and reenact subsection 1 of section 23.1-07-04 and sections 23.1-07-05, 23.1-07-06, and 23.1-07-08 of the North Dakota Century Code, relating to the certification and penalization of water distribution and wastewater system operators; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 23.1-07-04 of the North Dakota Century Code is amended and reenacted as follows:

1. A certificate issued under this chapter is valid for only one year and expires on the first day of ~~July~~January of the year after which it was issued.

SECTION 2. AMENDMENT. Section 23.1-07-05 of the North Dakota Century Code is amended and reenacted as follows:

23.1-07-05. Fees.

~~The department may charge a fee for certificates issued under this chapter, but the fees may not exceed fifty dollars for the initial certificate, or twenty-five dollars for the annual renewal certificate.~~ by rule may prescribe and provide for the payment and collection of reasonable fees for certificates issued under this chapter. The fees must be based on the anticipated cost of filing and processing applications for operator certification, preparing and administering examinations, and the annual renewal of certificates. All receipts from the fees must be deposited in the state treasury to be credited to a special fund to be known as the "operators' certification fund" to be used by the department to administer and enforce this chapter and financially assist the department in conducting operator training programs. Any surplus at the end of the fiscal year must be retained by the department for future expenditures.

⁹⁷ **SECTION 3. AMENDMENT.** Section 23.1-07-06 of the North Dakota Century Code is amended and reenacted as follows:

23.1-07-06. Duties of the department.

The department shall:

1. Hold at least one examination each year, administered by the department or a third-party examination service, at a designated time and place for the purpose of examining candidates for certification.

⁹⁷ Section 23.1-07-06 was also amended by section 2 of House Bill No. 1577, chapter 252.

2. Promote the program of certification of water supply and wastewater disposal system operators.
3. Distribute notices and applications and to receive and evaluate applications.
4. Collect fees for initial certification and annual renewal.
5. Prepare, conduct, and grade examinations. The department may use a third-party examination service to prepare, conduct, and grade examinations.
6. Maintain records of operator qualifications, certification examination results, and a register of certified operators.
7. Promote and schedule regular training schools and programs.
8. Adopt rules necessary to carry out this chapter.

SECTION 4. AMENDMENT. Section 23.1-07-08 of the North Dakota Century Code is amended and reenacted as follows:

23.1-07-08. Violations - Penalty.

~~Any~~

1. A person that violates this chapter, a rule implementing this chapter, or an order issued by the department under this chapter is subject to a civil penalty not to exceed five thousand dollars per day of violation.
2. ~~A person violating that~~ A person that willfully violates this chapter or the rules adopted under this chapter, after written notice of the violation by the department, is guilty of a class A misdemeanor.
3. A person that willfully makes a false statement, representation, or certification in an application, record, report, plan, or other document filed or required to be maintained under this chapter or any rule, order, limitation, or other applicable requirement implementing this chapter or that falsifies, tampers with, or willfully renders inaccurate any monitoring device or sample is guilty of a class A misdemeanor, unless the penalty for the violation is otherwise specifically provided for and made exclusive in this chapter.

SECTION 5. A new section to chapter 23.1-07 of the North Dakota Century Code is created and enacted as follows:

Administrative procedure and judicial review.

1. A proceeding under this chapter to adopt or modify rules relating to the certification and regulation of water distribution and wastewater system operators, or for determining compliance with rules of the department, must be conducted in accordance with the provisions of chapter 28-32.
2. An appeal of a decision issued under subsection 1, must be conducted in accordance with the provisions of chapter 28-32.

Approved March 17, 2025

Filed March 18, 2025

CHAPTER 252

HOUSE BILL NO. 1577

(Representatives Mitskog, Kempenich, Kiefert, Martinson, Nelson, Stemen)
(Senators Kessel, Weber)

AN ACT to create and enact a new section to chapter 23.1-07 and a new subsection to section 23.1-07-06 of the North Dakota Century Code, relating to a wastewater infrastructure grant program and the duties of the department of environmental quality; to authorize a Bank of North Dakota line of credit; to provide an appropriation; to provide for a legislative management study; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 23.1-07 of the North Dakota Century Code is created and enacted as follows:

Wastewater infrastructure grant program.

1. The department shall award wastewater infrastructure grants to eligible entities identified in subsection 2 to upgrade, replace, or construct infrastructure for a wastewater collection system, wastewater disposal system, or wastewater treatment plant.
2. Cities, counties, townships, water resource districts, recreation service districts, and water districts operating wastewater systems in the state may receive a grant under this section for an eligible project, subject to the availability of funds.
3. In awarding wastewater infrastructure grants to eligible entities, the department shall prioritize eligible entities that:
 - a. Have experienced a reduction in previously approved federal funds or federal assistance related to wastewater infrastructure projects; and
 - b. Are prepared to begin the wastewater infrastructure project upon receipt of the grants.
4. An eligible wastewater system must be in compliance with current wastewater regulations unless the project will return the system to compliance. Eligible projects may not include operations and maintenance costs.
5. The department may not award a grant in excess of sixty percent of the total cost of a project and shall ensure no community receives a grant for more than one project per biennium.

⁹⁸ **SECTION 2.** A new subsection to section 23.1-07-06 of the North Dakota Century Code is created and enacted as follows:

Administer the wastewater infrastructure grant program.

⁹⁸ Section 23.1-07-06 was also amended by section 3 of Senate Bill No. 2110, chapter 251.

SECTION 3. LEGISLATIVE MANAGEMENT STUDY - WASTEWATER PROJECT FUND. During the 2025-26 interim, the legislative management shall study the feasibility and desirability of establishing a wastewater project fund to provide grants for upgrading, constructing, or replacing wastewater infrastructure. The study must include input from cities, counties, townships, and water resource districts. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the seventieth legislative assembly.

SECTION 4. APPROPRIATION - DEPARTMENT OF ENVIRONMENTAL QUALITY - WASTEWATER INFRASTRUCTURE GRANTS - BANK OF NORTH DAKOTA LINE OF CREDIT - ONE-TIME FUNDING.

1. The department of environmental quality may borrow up to \$9,700,000 through a line of credit from the Bank of North Dakota, which is appropriated to the department of environmental quality for the purpose of providing wastewater infrastructure grants during the biennium beginning July 1, 2025, and ending June 30, 2027. The interest rate associated with the line of credit may not exceed the prevailing interest rate charged to North Dakota governmental entities. The department of environmental quality shall request a deficiency appropriation from the seventieth legislative assembly to repay the line of credit.
2. Of the total appropriated in this section, the department of environmental quality shall provide grants of \$7,800,000 and \$1,900,000 to entities with eligible wastewater infrastructure projects under section 1 of this Act. If an entity awarded funding under this section receives federal funding for the same wastewater infrastructure project, the entity shall remit the federal funding to the department of environmental quality for the repayment of the line of credit.
3. The appropriation in this section is considered a one-time funding item.

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

Approved May 1, 2025

Filed May 2, 2025