

TESTIMONY OF

Karl Rockeman, Deputy Director of the Department of Environmental Quality

Good morning, Chairman Porter and members of the House Energy and Natural Resources Committee. My name is Karl Rockeman, and I am Deputy Director of the North Dakota Department of Environmental Quality (DEQ). The DEQ is responsible for the implementation and enforcement of many of the federal and state environmental protection programs in North Dakota. I am here to testify in support of House Bill 1058.

HB 1058 seeks to give the DEQ authority to develop administrative rules for aboveground storage tanks of refined petroleum fuels that are registered with the Petroleum Tank Release Compensation Fund (Fund). The purpose is to prevent, detect and minimize releases to mitigate the risk to the Fund. This is for tanks that are currently required to register with the fund and is not intended to go beyond those types of facilities.

The DEQ has been regulating underground gasoline and diesel fuel storage tanks for many years to great success. Also, the Fund, which the DEQ assumed responsibility for in 2019, has provide cost effective environmental coverage to owners of both above and underground storage tanks. As provided by NDCC 23.1-04, the DEQ developed administrative rules to require owners/operators of underground tanks to conduct recordkeeping, install and maintain leak detection equipment, report releases to the environment, and take corrective action in response to a release. This has significantly increased the integrity of underground tanks in the state and minimized fuel loss to the environment. HB 1058 would allow the DEQ to apply similar standards to aboveground storage tanks, creating consistent requirements for both types of tanks and reducing the risk to the fund.

There are approximately twice as many aboveground tanks in service in North Dakota as underground tanks, but little is known about the types or conditions of these tanks. Underground storage tank rules require regular monitoring for leaks, corrosion and proper operation. The same level of oversight is not required at aboveground tank sites. Because of this, contamination from these tanks may not be discovered until long after the tank is gone, and nearby homes and businesses are impacted. At that point, the costs for cleanup of soil and groundwater, remediation of buildings, and ensuring minimal risk to the public from petroleum fumes becomes significant, sometimes over a million dollars. This causes increased cost to the tank owner and the Fund.

The solvency of the tank fund is an important factor in allowing small operators to stay in business. Affordable private environmental cleanup insurance outside of the fund has not been

available, and the fund is often the only option for many of the retail fuel businesses in the state. The bill redirects responsibility for ensuring good operating practices to the individual owners and operators of the tanks, rather than relying on the fees paid into the fund from the generally compliant operating community.

We have recently seen several sites in North Dakota where leaking aboveground tanks have led to extensive contamination and expensive clean-up. The Fund is in place to address some of the financial need, however there is a risk that multiple clean-ups in succession may result in fund insolvency. HB 1058 would reduce pressure on the fund by identifying leaking tanks early, allowing for quicker and less expensive clean-ups.

HB 1058 is a focused bill, and does not expand the universe of tanks outside those currently required to be registered with the fund. The DEQ has taken into consideration the concerns of the regulated community and other stakeholders and proposes to explicitly exempt those facilities which fall outside the intended scope of the law. These exemptions can be found in Section 1. exempt tanks used specifically for agriculture and other types of facilities. We did receive feedback after the bill was filed that these exemptions should be made explicit in the bill, so we have prepared an amendment to address those concerns. This amendment does not change current practice of the Fund and also meets our intention to regulate only those types of facilities currently registered with the Fund.

HB 1058 does not impose any immediate restrictions on the owners or operators of aboveground storage tanks. It authorizes the DEQ to propose future administrative rules. These rules, of course will be vetted through the public notice process, including review by the administrative rules committee. Because of this, the only fiscal impacts identified are expenditures due to program operating costs and would not start to accrue until after rule implementation. The expenditures as identified for the 25-27 biennium include \$15,000 to offset travel costs for inspections. A full-time equivalent position was provided in 2019, so no additional staffing is needed, only additional travel costs for conducting inspections.

Mr. Chairman and committee members, this concludes my testimony. I ask for your support for House Bill 1058. I would be happy to answer any questions.

**PROPOSED AMENMENTS TO
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; to amend and reenact
3 subsection 13 of section 23.1-12-02 of the North Dakota Century Code, relating to the definition
4 of tank; and to provide a penalty.

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

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

8 **Definitions.**

9 For purposes of this chapter:

- 10 1. "Aboveground storage tank" means any one or a combination of aboveground
11 containers, vessels, or enclosures, including associated piping or appurtenances used
12 to store an accumulation of refined petroleum products that is not an underground
13 storage tank as defined in chapter 23.1-04. The term does not include a:
- 14 a. Tank owned by the federal government.
 - 15 b. Tank used for the transportation of petroleum.
 - 16 c. Septic tank.
 - 17 d. Farm or residential tank used for storing motor fuel for noncommercial purposes.
 - 18 e. Tank used for storing heating oil for consumptive use on the premises where
19 stored.
 - 20 f. A pipeline facility, including gathering lines and breakout tanks, regulated
21 under:
 - 22 (1) The Natural Gas Pipeline Safety Act of 1968 [Pub. L. 90-481].
 - 23 (2) The Hazardous Liquid Pipeline Safety Act of 1979 [Pub. L. 96-129,
24 49 U.S.C. 60101 et seq.].

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- 1 (3) An interstate pipeline facility regulated under state laws comparable to the
2 provisions of law in paragraph 1 or 2.
- 3 g. Surface impoundment, pit, pond, ~~or lagoon,~~ storm water collection system or
4 wastewater collection system.
- 5 h. ~~Storm water or wastewater collection system.~~ Flow-through process tank or vapor
6 recovery unit tank.
- 7 i. Liquid trap or associated gathering lines directly related to oil or gas production
8 and gathering operations.
- 9 j. Tank with a capacity under one thousand three hundred twenty gallons
10 [4996.728 liters] used to store lubricating oil.
- 11 k. Tank used to store ethanol or biodiesel for wholesale purposes with a capacity
12 greater than twenty thousand gallons [75708.24 liters].
- 13 l. Tank, liquid trap, gathering line, or other facility associated with the exploration,
14 development, or production of oil, gas, or geothermal resources controlled under
15 title 38.
- 16 m. Tank that is located at or is part of a petrochemical plant, a syngas plant, a
17 fertilizer plant, a petroleum or renewable fuels refinery, an electric energy
18 conversion facility, an electric transmission related facility, including associated
19 transloading facility.
- 20 n. Asphalt tank.
- 21 o. Storage tank situated in an underground area such as a basement, cellar, mine
22 working, drift, shaft, or tunnel, if the storage tank is situated upon or above the
23 surface of the floor.
- 24 p. Tank used for the storage of propane.
- 25 q. Tank used to fuel rail locomotives or surface coal mining equipment.
- 26 r. Portable tank.
- 27 s. Tank listed in subdivisions (d) and (l) of subsection 13 of section 23.1-12-02,
28 unless the owner or operator registers the tank and becomes eligible for
29 reimbursement from the petroleum release compensation fund.
- 30 2. "Department" means the department of environmental quality.
- 31 3. "Disposal" means the discharge, deposit, injection, dumping, spilling, leaking, or
32 placing of any solid waste or hazardous waste into or on any land or water so the solid

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- 1 waste or hazardous waste or any hazardous constituent of the waste may enter the
2 environment or be emitted into the air or discharged into any waters, including ground
3 water.
- 4 4. "Electric Energy Conversion Facility" means a plant, addition, or combination of a plant
5 and addition, designed for or capable of generation of wind energy, generation of any
6 means other than wind and its associated facilities.
- 7 5. "Electric Transmission Related Facility" means an electric transmission line and associated
8 facilities designed for the transmission of generated electricity or a facility used for utility-
9 scale storage of electricity and connected or adjacent to an electric transmission facility or
10 facility controlled by or serving a utility with electric energy transmission and distribution
11 equipment and materials.
- 12 6. "Facility" means all contiguous land and structures, other appurtenances, and
13 improvements on the land used for storing a ~~regulated substance~~ refined petroleum. A
14 facility may consist of several contiguous storage or operational units.
- 15 7. "Operator" means a person in control of, or having responsibility for, the daily
16 operation of an aboveground storage tank.
- 17 8. "Owner" means a person who holds title to, controls, or possesses an interest in the
18 aboveground storage tank.
- 19 9. "Petroleum" means any of the following:
- 20 a. Gasoline and petroleum products as defined in chapter 23.1-13.
21 b. Constituents of gasoline and fuel oil under subdivision a.
22 c. Oil sludge and oil refuse.
- 23 10. "Portable tank" means a storage tank along with its piping and wiring that is not
24 stationary or affixed, including a tank that is on skids.
- 25 11. "Refined petroleum products" means gasoline, kerosene, heating oils, diesel fuels,
26 and other compounds as defined by the department.
- 27 12. "Release" means any spilling, leaking, emitting, discharging, escaping, leaching, or
28 disposing from an aboveground storage tank into the environment, including ground
29 water, surface water, or subsurface soils.
- 30 13. "Utility" means a person engaged in and controlling electric generation, the transmission
31 of electric energy, or the transmission of water from or to any electric energy conversion
32 facility

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

2 The department shall:

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

9 **Aboveground storage tank regulations.**

10 The department shall adopt rules:

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

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

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

9 **Inspections - Right of entry.**

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

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

18 **Imminent hazard.**

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

22 **Enforcement penalties.**

- 23 1. If the department finds a person is in violation of a permit, rule, standard, or
24 requirement of this chapter, the department may issue an order requiring the person to
25 comply with the permit, rule, standard, or requirement, and the department may bring
26 an action for a civil penalty, including an action for injunctive relief. An action under this
27 chapter must be brought in the district court for the county in which the violation
28 occurred or in which the party in violation has the party's residence or principal office.
- 29 2. A person that violates a provision of this chapter or any rule, standard, or permit
30 condition adopted under this chapter is subject to a civil penalty not to exceed twelve
31 thousand five hundred dollars per day of violation. Each day of noncompliance
32 constitutes a separate violation for purposes of penalty assessments.

1 3. A person that knowingly makes a false statement or representation in documentation
2 required by this chapter is subject to a civil penalty not to exceed twelve thousand five
3 hundred dollars per violation.

4 4. An administrative action brought under this chapter must be conducted in accordance
5 with chapter 28-32.

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

8 **23.1-12-02. Definitions.**

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

10 1. "Actually incurred" means, in the case of corrective action expenditures, the owner, op-
11 erator, landowner, an insurer, or a contractor hired by the owner, operator, or the land-
12 lord has expended time and materials, and only that person is receiving reimburse-
13 ment from the fund.

14 2. "Board" means the petroleum release compensation board.

15 3. "Corrective action" means an action required by the department to minimize, contain,
16 eliminate, remediate, mitigate, or clean up a release, including any remedial emer-
17 gency measures. The term does not include the repair or replacement of equipment or
18 preconstructed property.

19 4. "Dealer" means a person licensed by the tax commissioner to sell motor vehicle fuel or
20 special fuels within the state.

21 5. "Department" means the department of environmental quality.

22 6. "Electric Energy Conversion Facility" means a plant, addition, or combination of a plant
23 and addition, designed for or capable of generation of wind energy, generation of any
24 means other than wind and its associated facilities.

25 7. Electric Transmission Related Facility" means an electric transmission line and associated
26 facilities designed for the transmission of generated electricity or a facility used for utility-
27 scale storage of electricity and connected or adjacent to an electric transmission facility or
28 facility controlled by or serving a utility with electric energy transmission and distribution
29 equipment and materials.

30 8. "Fund" means the petroleum release compensation fund.

31 9. "Location" means a physical address or site that has contiguous properties. Noncon-

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- 1 tiguous properties within a municipality or other governmental jurisdiction are consid-
2 ered separate locations.
- 3 10. "Operator" means a person in control of, or having responsibility for, the daily opera-
4 tion of a tank under this chapter.
- 5 11. "Owner" means a person who holds title to, controls, or possesses an interest in the
6 tank before the discontinuation of its use.
- 7 12. "Petroleum" means any of the following:
- 8 a. Gasoline and petroleum products as defined in chapter 23.1-13.
9 b. Constituents of gasoline and fuel oil under subdivision a.
10 c. Oil sludge and oil refuse.
- 11 13. "Portable tank" means a storage tank along with its piping and wiring that is not sta-
12 tionary or affixed, including a tank that is on skids.
- 13 14. "Release" means any unintentional spilling, leaking, emitting, discharging, escaping,
14 leaching, or disposing of petroleum from a tank into the environment whether occurring
15 before or after the effective date of this chapter, but does not include discharges or de-
16 signed venting allowed under federal or state law or under adopted rules.
- 17 15. "Tank" means any one or a combination of containers, vessels, and enclosures,
18 whether aboveground or underground, including associated piping or appurtenances
19 used to contain an accumulation of petroleum, ethanol, or biodiesel. The term does not
20 include:
- 21 a. Tanks owned by the federal government.
22 b. Tanks used for the transportation of petroleum.
23 c. ~~A pipeline~~Pipeline facility, including gathering lines and breakout tanks:
24 (1) Regulated under the Natural Gas Pipeline Safety Act of 1968.
25 (2) Regulated under the Hazardous Liquid Pipeline Safety Act of 1979.
26 (3) Regulated under state laws comparable to the provisions of law in para-
27 graph 1 or 2, if the facility is an interstate pipeline facility.
28 (4) Regulated under Title 49, Code of Federal Regulations, part 195.
29 d. An underground farm or residential tank with a capacity of one thousand one
30 hundred gallons [4163.94 liters] or less or an aboveground farm or residential
31 tank of any capacity used for storing motor fuel for noncommercial purposes.
32 However, the owner of an aboveground farm or residential tank may, upon

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- 1 application, register the tank and be eligible for reimbursement under this
2 chapter.
- 3 e. A tank used for storing heating oil for consumptive use on the premises where
4 stored.
- 5 f. A surface impoundment, pit, pond, ~~or lagoon,~~ storm water collection system or
6 wastewater collection system.
- 7 g. A flowthrough process tank or vapor recovery unit tank.
- 8 ~~A liquid trap or associated gathering lines directly related to oil or gas production~~
9 ~~or gathering operations~~ Tank, liquid trap, gathering line, or other facility
10 associated with the exploration, development, or production of oil, gas, or
11 geothermal resources controlled under title 38.
- 12 i. A storage tank situated in an underground area such as a basement, cellar,
13 mine working, drift, shaft, or tunnel, if the storage tank is situated upon or above
14 the surface of the floor.
- 15 j. A tank used for the storage of propane.
- 16 k. A tank used to fuel rail locomotives or surface coal mining equipment.
- 17 l. An aboveground tank used to feed diesel fuel generators. Upon application, the
18 owner or operator of an aboveground tank used to feed diesel fuel generators
19 may register the tank and is eligible for reimbursement under this chapter.
- 20 m. A portable tank.
- 21 n. A tank with a capacity under one thousand three hundred twenty gallons
22 [4996.728 liters] used to store lubricating oil.
- 23 o. A tank used to store ethanol or biodiesel for wholesale purposes with a capacity
24 of greater than twenty thousand gallons [75708.24 liters].
- 25 p. Tank that is located at or is part of a petrochemical plant, a syngas plant, a
26 fertilizer plant, a petroleum or renewable fuels refinery, an electric energy
27 conversion facility, an electric transmission related facility, including associated
28 transloading facility.
- 29 q. Asphalt tank.
- 30 r. Septic tank.

31 16. Tank integrity test" means a test to determine that a tank is sound and not leaking. For
32 an underground tank, the term means a certified third-party test that meets

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1 environmental protection agency leak detection requirements. For an aboveground
2 tank, the term means a test conducted according to steel tank institute SP 001 or
3 American petroleum institute 653.

4 17. "Third party" means a person who is damaged by the act of a registered owner,
5 operator, or dealer requiring corrective action, or a person who suffers bodily injury or
6 property damage caused by a petroleum release.

7 18. "Utility" means a person engaged in and controlling electric generation, the transmission
8 of electric energy, or the transmission of water from or to any electric energy conversion
9 facility.