

**1999 HOUSE NATURAL RESOURCES**

**HB 1404**

1999 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. 1404

House Natural Resources Committee

Conference Committee

Hearing Date 2/04/99

Tape Number	Side A	Side B	Meter #
1	x	x	15.9-54.0 0.0-8.3
3	x		4.5-47.0
Committee Clerk Signature <i>Robin L. Small</i>			

Minutes:

REP. WALD introduces the bill. SEE HANDOUT.

REP. GROSZ asks about the fiscal note, less revenue, this would have to be rereferred right away. WALD replies that is his understanding also. WALD goes on telling the committee about the research that has been done.

DAVID FROELICH, ND PETROLEUM MARKETERS and FROELICH OIL CO., FROELICH is in support of this bill. He talks about the reduction fees and frivolous lawsuits. FROELICH urges a do pass on this bill. REP. DROVDAL asks about the difference in the cost of the tanks above ground to the tanks below ground, and being provided with the loss figures. FROELICH replies that BOB OLSON will supply that information. REP. NELSON asks about under ground

tanks and is that complete across the state, and are there wavers of length out there. FROELICH replies yes that is correct

LOWELL RIDGEWAY, ND PETROLEUM COUNCIL, is also in support of this bill.

RIDGEWAY supports the reduction fee . He comments about the language in the bill on repeal

3. No questions were asked of him.

BOB OLSON, ND INSURANCE DEPARTMENT, is in support of this bill. Please SEE HANDOUT. REP. PORTER asks at what time the EPA super fund kicks in. OLSON replies that the super fund , or tank fund, is only there to show that the tank owner can clean up any spills of any kind. REP. NELSON asks what has the largest claim been to date of your knowledge. OLSON replies \$186,000.00 on sight. REP. NELSON asks about the tanks that have to be dug up, 165 open claims on file, is it safe to say that 35% are expected of a claim or a contamination. OLSON replies yes it is in a way. REP. DROVDAL asks about the same fee for the bulk producers having under ground tanks and above ground tanks. OLSON replies that he has talked to DROVDAL'S constituent and knows the concerns. REP. NELSON asks about the 125 sites of hte old tanks, and they were cleaned up, would you feel comfortable with the fee reduction. OSLOON replies that he feels strongly both ways, he thinks he would.

NEIL KNOTTERUD, ND HEALTH DEPARTMENT, is in support of this bill. KNOTTERUD talks about the language and wording in page 2. REP. PORTER asks about the super EPA fund

and when it kicks in. KNOTTERUD replies that separate programs have made provisions within that fund.

OPPOSITION.....

AL WOLF, NDTLA, SEE HANDOUTS. WOLF is against the section 4 of the bill. REP.

NELSON asks third parties and liability duplications. WOLF replies you're right about the access fund. REP. NELSON speaks of swimming with the sharks. Then WOLF comments back. The hearing is then closed until later in the day.

REP. CLARK asks about clarification and the establishments of the third party judgments.

LYLE WITHUM, ND STATE HEALTH DEPARTMENT, talks about the definitions of the different sections in the bill that were asked to be addresses by the committee. Then WITHUM turns the podium over to DAVE GLATT, ASST. DIR. OF WATER QUALITY. GLATT addresses the geological issue of the subsurface. WITHUM and GROSZ discuss the health hazard issue. WITHUM talks about removing section 4 out of the bill in order to get this bill out by tomorrow.

The committee then has discussion about the health issues with GLATT and WITHUM.

Being no further testimony in favor or opposition, REP. GROSZ closes the hearing on HB 1404.

1999 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. 1404

House Natural Resources Committee

Conference Committee

Hearing Date 2/05/99

Tape Number	Side A	Side B	Meter #
1	x		28.0-31.8
1		x	0.7-3.7
Committee Clerk Signature <i>Robin L. Small</i>			

Minutes:

REP. GROSZ that this bill needs to be moved today in order to meet the appropriations deadline.

REP. NOTTESTAD asks if everyone has to pay in that extra money or would it be that the last ones that held off and it got to the 5,500,000.00 wouldn't have to pay it in?

REP. GROSZ replies everyone would have to pay in.

REP. HANSON asks does that half a cent on a gallon still on?

REP. GROSZ replies no it is not, it never was on.

REP. DROVDAL states that he is still raising objections to the piece schedule of the majority of the tanks that are had already above ground, and the price difference between above ground tanks and below ground tanks. He thinks if we kick this bill out the way it is right now, that it is a worse bill than what we currently already have.

Page 2  
House Natural Resources Committee  
Bill/Resolution Number 1401-2.lwp  
Hearing Date 2/05/99

REP. GROSZ states that he understands the concerns REP. DROVDAL is having. The concerns being not addressed by the committee. REP. GROSZ says that this is a trust me bill.

REP. CLARK then moves for a DO PASS & TO REREFER TO APPROPRIATIONS. REP.

DEKREY seconds it. The roll call was taken with 9 YES, 4 NO, 2 ABSENT. REP. GROSZ is the carrier of the bill on the floor.

**FISCAL NOTE**

(Return original and 10 copies)

Bill/Resolution No.: \_\_\_\_\_ Amendment to: Eng. HB 1404

Requested by Legislative Council \_\_\_\_\_ Date of Request: 3-16-99

1. Please estimate the fiscal impact (in dollar amounts) of the above measure for state general or special funds, counties, cities, and school districts.

**Narrative:**

See attached narrative.

2. **State** fiscal effect in dollar amounts:

	1997-99 Biennium		1999-2001 Biennium		2001-03 Biennium	
	General Fund	Special Funds	General Fund	Special Funds	General Fund	Special Funds
Revenues:	0	0		( 640,000 )		( 640,000 )
Expenditures:	0	0		( 200,490 )		( 200,490 )

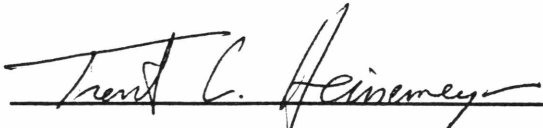
3. What, if any, is the effect of this measure on the appropriation for your agency or department:

- a. For rest of 1997-99 biennium: 0
- b. For the 1999-2001 biennium: Reduction of \$200,490
- c. For the 2001-03 biennium: Reduction of \$200,490

4. **County, City, and School District** fiscal effect in dollar amounts:

1997-99 Biennium			1999-2001 Biennium			2001-03 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts
0	0	0	0	0	0	0	0	0

If additional space is needed, attach a supplemental sheet.

Signed 

Typed Name Trent C. Heinemeyer

Department Insurance Department

Phone Number 328-2440

Date Prepared: 3/18/99

Under House Bill No. 1404, annual registration fees for tanks subject to the Petroleum Release Compensation Fund would be reduced from \$125 per underground storage tank and \$75 per above ground storage tanks to a fee of \$50 for each tank regardless of whether it is above ground or underground. The amended bill contains a triggering mechanism which would increase the fees from \$50 per tank to \$100. This contingency is completely unpredictable, however, and, therefore, no projection of the impact on state revenues is made.

The amended bill eliminates an appropriation section which would have provided an appropriation of \$200,000 for the biennium ending July 31, 2001, and \$90,000 per biennium thereafter from the Fund for the administration of the Fund. The 1997-99 appropriation from the Fund for the administration of the Fund was \$200,490 which was based on the Appropriations bill for the Department in 1997. The elimination of the appropriation in House Bill No. 1404 would, therefore, reduce expenditures by \$200,490. However, please be advised that the general appropriation bill for the Department, Senate Bill No. 2010, contains an appropriation from the Petroleum Tank Release Compensation Fund for its administration which currently stands at \$68,820 for the next biennium. The appropriations bill has passed the Senate and is in the House Appropriations Committee for consideration.



**FISCAL NOTE**

(Return original and 10 copies)

Bill/Resolution No.: \_\_\_\_\_ Amendment to: HB 1404

Requested by Legislative Council \_\_\_\_\_ Date of Request: 2-16-99

1. Please estimate the fiscal impact (in dollar amounts) of the above measure for state general or special funds, counties, cities, and school districts.

**Narrative:**

See attached narrative.

2. State fiscal effect in dollar amounts:

	1997-99 Biennium		1999-2001 Biennium		2001-03 Biennium	
	General Fund	Special Funds	General Fund	Special Funds	General Fund	Special Funds
Revenues:	0	0		( 640,000 )		( 640,000 )
Expenditures:	0	0		( 200,490 )		( 200,490 )

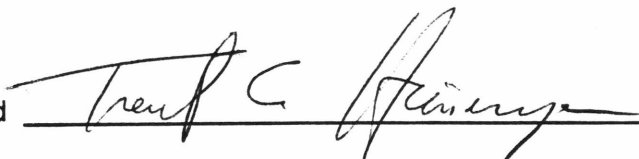
3. What, if any, is the effect of this measure on the appropriation for your agency or department:

- a. For rest of 1997-99 biennium: 0
- b. For the 1999-2001 biennium: Reduction of \$200,490
- c. For the 2001-03 biennium: Reduction of \$200,490

4. County, City, and School District fiscal effect in dollar amounts:

1997-99 Biennium			1999-2001 Biennium			2001-03 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts
0	0	0	0	0	0	0	0	0

If additional space is needed, attach a supplemental sheet.

Signed 

Typed Name Trent C. Heinemeyer

Department Insurance Department

Phone Number 328-2440

Date Prepared: 2/17/99

Under House Bill No. 1404, annual registration fees for tanks subject to the Petroleum Release Compensation Fund would be reduced from \$125 per underground storage tank and \$75 per above ground storage tanks to a fee of \$50 for each tank regardless of whether it is above ground or underground. The amended bill contains a triggering mechanism which would increase the fees from \$50 per tank to \$100. This contingency is completely unpredictable, however, and, therefore, no projection of the impact on state revenues is made.

The amended bill eliminates an appropriation section which would have provided an appropriation of \$200,000 for the biennium ending July 31, 2001, and \$90,000 per biennium thereafter from the Fund for the administration of the Fund. The 1997-99 appropriation from the Fund for the administration of the Fund was \$200,490 which was based on the Appropriations bill for the Department in 1997. The elimination of the appropriation in House Bill No. 1404 would, therefore, reduce expenditures by \$200,490. However, please be advised that the general appropriation bill for the Department, Senate Bill No. 2010, contains an appropriation from the Petroleum Tank Release Compensation Fund for its administration which currently stands at \$68,820 for the next biennium. The appropriations bill has passed the Senate and is in the House Appropriations Committee for consideration.

## FISCAL NOTE

(Return original and 10 copies)

Bill/Resolution No.: HB 1404 Amendment to: \_\_\_\_\_

Requested by Legislative Council Date of Request: 1-20-99

1. Please estimate the fiscal impact (in dollar amounts) of the above measure for state general or special funds, counties, cities, and school districts.

**Narrative:**

Under House Bill No. 1404, annual registration fees for tanks subject to the Petroleum Release Compensation Fund would be reduced from \$125 per underground storage tank and \$75 per above ground storage tank to a fee of \$50 for each tank regardless of whether it is above ground or underground. House Bill No. 1404 would also reduce the appropriation to the Insurance Department for administration of the Fund.

2. State fiscal effect in dollar amounts:

	1997-99 Biennium		1999-2001 Biennium		2001-03 Biennium	
	General Fund	Special Funds	General Fund	Special Funds	General Fund	Special Funds
Revenues:	0	0		( 640,000 )		( 640,000 )
Expenditures:	0	0		( 490 )		( 110,000 )

3. What, if any, is the effect of this measure on the appropriation for your agency or department:

- a. For rest of 1997-99 biennium: 0
- b. For the 1999-2001 biennium: Reduction of \$490
- c. For the 2001-03 biennium: Reduction of \$110,000

4. County, City, and School District fiscal effect in dollar amounts:

1997-99 Biennium			1999-2001 Biennium			2001-03 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts
0	0	0	0	0	0	0	0	0

If additional space is needed, attach a supplemental sheet.

Signed 

Typed Name Trent C. Heinemeyer

Date Prepared: 1/27/99

Department Insurance Department

Phone Number 328-2440

HB. 1404

Date: 2.5.99  
Roll Call Vote #: 1

1999 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO.

House House Natural Resources Committee

Subcommittee on \_\_\_\_\_

or

Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken Do Pass ~~Withdrawn~~ rereferred to approp.

Motion Made By Clark ~~[scribble]~~ Seconded By DeKrey

Representatives	Yes	No	Representatives	Yes	No
Chairman Mick Grosz	✓				
Vice-Chairman Dale Henegar	✓				
Representative David Drovdal		✓			
Representative Pat Galvin	✓				
Representative Duane DeKrey	✓				
Rep. Darrell D. Nottestad	✓				
Representative Jon O. Nelson	✓				
Representative Byron Clark	✓				
Representative Todd Porter	✓				
Representative Jon Martinson	✓				
Reperesentative Lyle Hanson		✓			
Representative Scot Kelsh		✓			
Representative Deb Lundgren					
Representative Sally M. Sandvig		✓			
Representative Dorvan Solberg					

Total (Yes) 9 No 4

Absent 2

Floor Assignment Grosz

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE (410)  
February 5, 1999 11:34 a.m.

Module No: HR-24-2042  
Carrier: Grosz  
Insert LC: . Title: .

**REPORT OF STANDING COMMITTEE**

**HB 1404: Natural Resources Committee (Rep. Grosz, Chairman)** recommends **DO PASS** and **BE REREFERRED** to the **Appropriations Committee** (9 YEAS, 4 NAYS, 2 ABSENT AND NOT VOTING). HB 1404 was rereferred to the **Appropriations Committee**.

**1999 HOUSE APPROPRIATIONS**

**HB 1404**

1999 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. 1404

House Appropriations Committee

Conference Committee

Hearing Date 2/10/99

Tape Number	Side A	Side B	Meter #
1	x		0.8-36.8
2	x		12.4-22.0
Committee Clerk Signature <i>Kevin Kaul</i>			

Minutes:

(0.8) Chairman Dalrymple opened the hearing on HB 1404 in the Roughrider Room.

(0.8) Rep. Grosz testified in support of HB 1404, giving a brief explanation of the bill and commenting on the fiscal note. He also introduced proposed amendments.

(8.8) Bob Olson, administrator of the fund appeared in support. ( see attached testimony)

(18.9) Rep. Delzer asked Mr. Olson how many sights a year had been cleaned.

(19.2) Mr. Olson answered that he did not have a number for how many sights had been changed over and that 624 sights had been cleaned since 1994.

(20.8) Rep. Delzer asked where the fund was at right now.

(20.9) Mr. Olson answered that the fund was at \$7.5 million.

(21.0) Rep. Delzer commented that he felt that the fund was plenty of money to cover what was needed and engaged Mr. Olson in further discussion about registration fees.

(30.7) Rep. Wald appeared in support of the bill and the amendment.

(33.8) Ron Ness the President of the Petroleum Marketers appeared in support of the bill but was neutral to the amendments.

(tape 2 16.5) Rep. Delzer moved the amendment .0301 be adopted and wished section 32 to be repealed, the motion was seconded by Rep. Poolman. (19.5) Rep. Delzer also moved a sunset clause to be added to the amendment.

(16.9) Rep. Aarsvold opposed the amendments.

The amendment was adopted.

HB 1404 was passed as a DO PASS.



Date: 2/10/99  
Roll Call Vote #: 1

1999 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 1404

House Appropriations Committee

Subcommittee on \_\_\_\_\_

or

Conference Committee

Legislative Council Amendment Number 10101

Action Taken Dr. Pass

Motion Made By Delzer Seconded By Poolman

Representatives	Yes	No	Representatives	Yes	No
Chairman Dalrymple			Nichols		
Vice-Chairman Byerly			Poolman		
Aarsvold			Svedjan		
Bernstein			Timm		
Boehm			Tollefson		
Carlson			Wentz		
Carlisle					
Delzer					
Gulleson					
Hoffner					
Huether					
Kerzman					
Lloyd					
Monson					

Total (Yes) \_\_\_\_\_ No \_\_\_\_\_

Absent \_\_\_\_\_

Floor Assignment \_\_\_\_\_

If the vote is on an amendment, briefly indicate intent:

Date: 2/10/99  
 Roll Call Vote #: 1

**1999 HOUSE STANDING COMMITTEE ROLL CALL VOTES**  
**BILL/RESOLUTION NO. 1404**

House Appropriations Committee

Subcommittee on \_\_\_\_\_

or

Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken Do Pass As Amended

Motion Made By Delzer Seconded By Carlson

Representatives	Yes	No	Representatives	Yes	No
Chairman Dalrymple	X		Nichols	X	
Vice-Chairman Byerly	X		Poolman	X	
Aarsvold	X		Svedjan	X	
Bernstein	X		Timm	X	
Boehm	X		Tollefson	X	
Carlson	X		Wentz	X	
Carlisle	X				
Delzer	X				
Gulleson					
Hoffner	X				
Huether	X				
Kerzman	X				
Lloyd	X				
Monson	X				

Total (Yes) 19 No 0

Absent 1

Floor Assignment Delzer

If the vote is on an amendment, briefly indicate intent:

**REPORT OF STANDING COMMITTEE**

**HB 1404: Appropriations Committee (Rep. Dalrymple, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (19 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). HB 1404 was placed on the Sixth order on the calendar.

Page 1, line 5, remove "32,"

Page 1, line 7, remove "to provide an appropriation; to provide a"

Page 1, line 8, remove "continuing appropriation;"

Page 1, line 21, after the period insert "If on the first day of July in any year the amount of money in the petroleum release compensation fund is less than five million dollars, the annual registration fee of fifty dollars is increased to one hundred dollars. If on the first day of July in any year the amount of money in the petroleum release compensation fund is five million five hundred thousand dollars or more and the annual registration fee has been increased to one hundred dollars, the fee must be reduced to fifty dollars."

Page 2, line 6, after "operator" insert "who is a first-party claimant"

Page 2, line 8, overstrike the second "of" and insert immediately thereafter "or"

Page 2, line 9, after "operator" insert "who is a first-party claimant"

Page 2, remove lines 24 through 31

Page 3, remove lines 1 and 2

Page 3, line 6, replace "July 31, 2009" with "June 30, 2001"

Renumber accordingly

**STATEMENT OF PURPOSE OF AMENDMENT:**

DEPARTMENT 401 - INSURANCE DEPARTMENT

HOUSE - This amendment establishes a trigger that increases the petroleum release compensation fund's annual registration fees from \$50 to \$100 if the fund's balance is less than \$5 million on July 1 of any year, and returns the fee to \$50 when the fund balance is \$5.5 million or more on July 1 of any year.

The amendment removes the appropriation and continuing appropriation for administrative costs of the program. The administrative costs will be appropriated specifically in the Insurance Department's appropriation bill.

**1999 SENATE NATURAL RESOURCES**

**HB 1404**

1999 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB1404

Senate Natural Resources Committee

Conference Committee

Hearing Date March 4, 1999

Tape Number	Side A	Side B	Meter #
1		x	605-3970
03/11/99 1		x	2485-3300
03/11/99 1	x		0-219
03/12/99 1	x		500-900
Committee Clerk Signature <i>Lyla A. Ziegen</i>			

Minutes:

SENATOR TRAYNOR opened the hearing on HB1404: RELATING TO PETROLEUM SPILL REPORTS; AND TO DECLARE AN EMERGENCY.

REP. GROSZ explained HB1404 deals with the petroleum relief fund cleanup law passed in 1989 and expires on June 30, 1999, and urged a DO PASS.

REP. WALD explained the fund was set up 10 years because bulk dealers and service stations that had above-ground or underground tanks, couldn't buy commercial insurance in the marketplace, and if they could, it was prohibitively expensive. The State Insurance Dept. administers the fund. This law needs to be on the books.

RON NESS, ND Petroleum Marketers testified in support of HB1404. Tank owners need some type of protection to third-party lawsuits.

BOB OLSON, ND Insurance Dept. testified in support of HB1404, EXCEPT the reduction in annual registration fee which fees would not cover costs which could cause solvency of the fund reserves. The EPA is concerned about the small amount of fees we collect.

SENATOR REDLIN asked what is the average clean up cost.

BOB OLSON replied approximately \$15,000.

SENATOR FISCHER asked these tanks only commercial tanks.

BOB OLSON replied these are any tank that stores a regulated petroleum product.

SENATOR FISCHER asked how many are tanks on farms.

BOB OLSON replied if you are a farmer and you have an above-ground tank storing product, you have the choice of joining the fund. If the underground tanks on farms are 1100 gallons or over, they buy law have to join the fund to be in compliance with the federal EPA statutes.

SENATOR REDLIN asked is the soil checked for contamination.

BOB OLSON replied most contamination is discovered when tanks are being upgraded or getting rid of the tanks. Soil borings are done over 2 and 3 years in case of movement of contamination from a particular tank area.

FRANCIS SCHWINDT, ND Dept. of Health testified and urged a DO PASS of HB1404 only with the proposed amendments to Section 4. (See attached testimony)

LOWELL RIDGEWAY, ND Petroleum Council testified in support of HB1404. Anyone who has underground tanks pays into this fund so it is not only for commercial tanks.

ALBERT A. WOLF, Attorney, testified on behalf of the ND Trial Lawyers Ass'n. (See attached testimony)

SENATOR TRAYNOR closed the hearing on HB1404.

**COMMITTEE ACTION: March 11, 1999, Tape 1, Side B, Meter# 2485-3300.** A discussion was held on the proposed amendments submitted by ND Dept. of Health and ND Trial Lawyers Ass'n. SENATOR HEITKAMP moved the ND Health Dept. amendments, seconded by SENATOR FISCHER. SENATOR CHRISTMANN was absent during the previous discussion of HB1404 and asked what the response from the petroleum dealers to the ND Health Dept. amendments. SENATOR HEITKAMP removed his motion as well as SENATOR FISCHER, and the discussion was deferred to a later date.

**COMMITTEE ACTION: March 11, 1999, Tape 1, Side B, Meter# 0-219.** SENATOR CHRISTMANN has not had an opportunity to visit with the petroleum dealers who introduced the bill, and Mr. Ness. Action was deferred to March 12, 1999.

**COMMITTEE ACTION: March 12, 1999, Tape 1, Side A, Meter# 500-900.** SENATOR HEITKAMP moved to adopt the ND Health Dept. amendments, seconded by SENATOR FISCHER. Roll call vote indicated 6 YEAS, 0 NAYS, 0 Absent and not voting. SENATOR CHRISTMANN moved a DO PASS AS AMENDED AND REFERRED TO APPROPRIATIONS, seconded by SENATOR FISCHER. Roll call vote indicated 6 YEAS, 0 NAYS, 0 Absent and not voting. SENATOR CHRISTMANN volunteered to carry the bill.

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1404  
(FIRST ENGROSSMENT)

Page 2, line 15, replace "April 28" with "July 1"

Page 2, line 16, replace "April 28" with "July 1"

Page 2, replace lines 18 through 28 with:

**SECTION 4.** Five new subsections to section 27 of Chapter 299 of the 1991 Session Laws are created and enacted as follows:

5. The fund shall pay a judgment against an owner, operator, or dealer awarded to a third party as a result of a third-party claim against an owner, operator, or dealer covered by the fund, excluding claims for punitive damages or damages for criminal acts.

6. The fund shall pay for corrective action as awarded to a third party in any judgment against an owner, operator, or dealer.

7. Liability of the fund to third parties shall not exceed, per person, the maximum liability allowed per person under subsection 2 of section 32-12.2-02. Maximum liability of the fund, including all claims by third parties, may not exceed, for any release site, the maximum provided in section 18 of Chapter 299 of the 1991 Session Laws.

8. No third party may bring an action against any owner, operator, or dealer more than three years after a corrective action plan has been approved by the department, provided the owner, operator, or dealer fully implements and complies with the corrective action plan.

9. In investigating a release site or reviewing the implementation of any corrective action plan approved by the department, the department shall determine whether the release currently threatens public health or the environment. The department shall require, based on science and technology appropriate for the site, any monitoring, remediation, or other appropriate corrective action that is reasonably necessary to protect public health or the environment. The department may require corrective action at a release site at any time after a release occurs.

Page 3, line 2, replace "June 30, 2001" with "July 31, 2009"

Renumber accordingly



March 12, 1999

JCS  
3/12/99

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1404

SENATE AMENDMENTS TO ENGR. HB 1404 NAT. RES. 3/12/99  
Page 1, line 3, replace "a" with "five" and replace "subsection" with "subsections"

SENATE AMENDMENTS TO ENGR. HB 1404 NAT. RES. 3/12/99

Page 2, line 15, replace "April 28" with "July 1"

Page 2, line 16, replace "April 28" with "July 1"

Page 2, line 18, replace "A" with "Five" and replace "subsection" with "subsections"

Page 2, line 19, replace "is" with "are"

Page 2, replace lines 20 through 28 with:

"The fund shall pay a judgment against an owner, operator, or dealer awarded to a third party as a result of a third-party claim against an owner, operator, or dealer covered by the fund, excluding claims for punitive damages or damages for criminal acts.

The fund shall pay for corrective action as awarded to a third party in any judgment against an owner, operator, or dealer.

Liability of the fund to third parties may not exceed, per person, the maximum liability allowed per person under subsection 2 of section 32-12.2-02. Maximum liability of the fund, including all claims by third parties, may not exceed, for any release site, the maximum provided in section 18 of chapter 299 of the 1991 Session Laws.

A third party may not bring an action against any owner, operator, or dealer more than three years after a corrective action plan has been approved by the department if the owner, operator, or dealer fully implements and complies with the corrective action plan.

In investigating a release site or reviewing the implementation of any corrective action plan approved by the department, the department shall determine whether the release currently threatens public health or the environment. The department shall require, based on science and technology appropriate for the site, any monitoring, remediation, or other appropriate corrective action that is reasonably necessary to protect public health or the environment. The department may require corrective action at a release site at any time after a release occurs."

senate amendments to engr. hb 1404 NAT. RES. 3/12/99

Page 3, line 2, replace "June 30, 2001" with "July 31, 2009"

Renumber accordingly

Roll Call Vote #: /

Date: 3-12-99

1999 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. HB1404

Senate Natural Resources Committee

Subcommittee on \_\_\_\_\_  
or  
 Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken MOTION TO ADOPT AMENDMENTS

Motion Made By Heitkamp Seconded By Fischer

Senators	Yes	No	Senators	Yes	No
Senator John T. Traynor, Chr	✓				
Senator Tom Fischer, Vice Chr	✓				
Senator Randel Christmann	✓				
Senator Layton Freborg	✓				
Senator Joel C. Heitkamp	✓				
Senator Rolland W. Redlin	✓				

Total (Yes) 6 No 0

Absent 0

Floor Assignment \_\_\_\_\_

If the vote is on an amendment, briefly indicate intent:

Date: 3-12-99

Roll Call Vote #: 2

1999 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. HB1404

Senate Natural Resources

Committee

- Subcommittee on \_\_\_\_\_
- or
- Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken

~~DO PASS AS AMENDED AND~~  
~~REFERRED TO APPROPRIATIONS~~

Motion Made By

Christmann

Seconded

By

Fischer

Senators	Yes	No	Senators	Yes	No
Senator John T. Traynor, Chr	✓				
Senator Tom Fischer, Vice Chr	✓				
Senator Randel Christmann	✓				
Senator Layton Freborg	✓				
Senator Joel C. Heitkamp	✓				
Senator Rolland W. Redlin	✓				

Total (Yes) 6

No 0

Absent 0

Floor Assignment Christmann

If the vote is on an amendment, briefly indicate intent:

**REPORT OF STANDING COMMITTEE**

**HB 1404, as engrossed: Natural Resources Committee (Sen. Traynor, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** and **BE REREFERRED** to the **Appropriations Committee** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1404 was placed on the Sixth order on the calendar.

Page 1, line 3, replace "a" with "five" and replace "subsection" with "subsections"

Page 2, line 15, replace "April 28" with "July 1"

Page 2, line 16, replace "April 28" with "July 1"

Page 2, line 18, replace "A" with "Five" and replace "subsection" with "subsections"

Page 2, line 19, replace "is" with "are"

Page 2, replace lines 20 through 28 with:

"The fund shall pay a judgment against an owner, operator, or dealer awarded to a third party as a result of a third-party claim against an owner, operator, or dealer covered by the fund, excluding claims for punitive damages or damages for criminal acts.

The fund shall pay for corrective action as awarded to a third party in any judgment against an owner, operator, or dealer.

Liability of the fund to third parties may not exceed, per person, the maximum liability allowed per person under subsection 2 of section 32-12.2-02. Maximum liability of the fund, including all claims by third parties, may not exceed, for any release site, the maximum provided in section 18 of chapter 299 of the 1991 Session Laws.

A third party may not bring an action against any owner, operator, or dealer more than three years after a corrective action plan has been approved by the department if the owner, operator, or dealer fully implements and complies with the corrective action plan.

In investigating a release site or reviewing the implementation of any corrective action plan approved by the department, the department shall determine whether the release currently threatens public health or the environment. The department shall require, based on science and technology appropriate for the site, any monitoring, remediation, or other appropriate corrective action that is reasonably necessary to protect public health or the environment. The department may require corrective action at a release site at any time after a release occurs."

Page 3, line 2, replace "June 30, 2001" with "July 31, 2009"

Renumber accordingly

**1999 SENATE APPROPRIATIONS**

**HB 1404**

1999 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. ENGROSSED HB 1404

Senate Appropriations Committee

Conference Committee

Hearing Date 3/24/99; 3/29/99

Tape Number	Side A	Side B	Meter #
1	80-4900		
3/29/99 1	2130-2296		
Committee Clerk Signature <i>Gloria Anderson</i>			

Minutes:

**SENATOR NETHING:** Opened the hearing on Engrossed HB 1404; a BILL for an Act to create and enact a new subdivision to subsection 13 of section 2 of chapter 299 of the 1991 Session Laws as amended by section 1 of chapter 286 of the 1993 Session Laws and a new subsection to section 27 of chapter 299 of the 1991 Session Laws, relating to the definition of tank and third-party judgments under the petroleum release compensation fund; to amend and reenact sections 17, 19, 32, and 33 of chapter 299 of the 1991 Session Laws, relating to the petroleum release compensation fund; to repeal section 29 of chapter 299 of the 1991 Session Laws, relating to petroleum spill reports; to provide an appropriation; to provide a continuing appropriation; and to declare an emergency.

**MICK GROSZ:** Representative, District 8, to testify, as cosponsor, in support of HB 1404. This bill was introduced to extend the petroleum release compensation fund. It was enacted 10 years ago and is coming up for renewal this session. This basically extends that program for 10 years. Section 1 exempts the above ground tanks that are used to feed diesel fuel generators. These are normally tanks of 250 gallons or less that are above ground and easily detected. They are on stilts. Section 2 is where we reduce the fees to \$50 per tank above or underground. The new tanks going in are double lined and have less potential for leaks. The fund today is over \$7M. We felt \$5M would be a good level to maintain it at. If it falls below \$5M, the rates are doubled up to \$100 at the next renewal, and when it gets over \$5.5M it would come off at the next renewal. Section 3 would pay up to \$25,000 to first party claimants only to the owners of the tanks who had cost incurred after July, 1989. Section 4 is a liability end. After certain things are met, there can't be third party litigation. Section 33 is the expiration date, extending this term another 10 years. Section 6 repeals section 29 of chapter 299 of the '91 session laws. Section 7 is the emergency clause. I would ask for favorable action on this bill. (tape 1, A, 80-440)

**SENATOR NETHING:** Sections 4 and 5, the expiration date, are you talking in terms of the amendment that was put on over in the Natural Resource Committee?

**REPRESENTATIVE GROSZ:** The Section 4 amendment was actually put on in the Senate, but that is the date I'm referring to.

**SENATOR KRAUTER:** In reference to Section 33, that is for 10 years and now it has been amended until the next biennium?

**REPRESENTATIVE GROSZ:** The House Appropriations Committee, the bill as it came out of the House Natural Resource Committee had July 31, 2009. The House Appropriations Committee inadvertently changed it to a biennium and then the Senate Natural Resource Committee reamended it to July 31, 2009.

**SENATOR NETHING:** Sections 4 and 5, you need to go to the amendment sheet.

**SENATOR ST. AUBYN:** Aren't all above ground tanks exempt?

**REPRESENTATIVE GROSZ:** No. Agricultural tanks are and they have the option of going in or not.

**FRANCIS SCHWINDT:** Section Chief, Environmental Health Section, North Department of Health, to testify that the Department does support HB 1404 with the Senate amendments. (Testimony attached #1) (tape 1, A, 728-820)

**SENATOR NAADEN:** What has been the payout on this fund this past biennium?

**FRANCIS SCHWINDT:** No, I do not. I think Bob Olson from the Insurance Department could answer that question.

**BOB OLSON:** North Dakota Insurance Department, testified in support of HB 1404. (Testimony attached #2). I can answer Senator St. Aubyn's concern. He is probably thinking that the above ground tanks are exempt, and that is true. They are exempt from the Federal EPA regulations as far as that goes; but they are not exempt when it comes to the petroleum tank fund that was set up by the State. They have to register with that. For farm tanks, above ground tanks any size, it is up to the farmer whether they want to register with the fund or not. Underground tanks on farms, if they are over 1100 gallons, they have to register with the fund. (tape 1, A, 860-1635)

**SENATOR ANDRIST:** We've eliminated many tanks, but have we looked at eliminating these tanks before they leak?

**BOB OLSON:** EPA requires, that from 1988 through December 22, 1998, every underground storage tank owner to upgrade their system. Every underground storage tank is upgraded. That means they're usually double walled, and improved underground piping. They feel they have eliminated the problem. The one concern is once they close down the system and don't use it anymore and they can't after December 22, 1998, then they have twelve months to remove that underground storage tank. That means we have another 12 months for another 370 tanks to come

out of the ground. They're not using them, but they're still there, and they have to come out. So, there are going to be some more contamination claims coming in. Also, there are no guarantees that just because a tank has been upgraded it won't leak. That has happened, and is another reason for our concern. (tape 1, A, 1860)

**RON NESS:** Petroleum Marketers, testified in support of HB 1404. The tank owners believe that \$7.5M is adequate funds. The House Appropriations put in the trigger up to a \$100 which we supported in case the fund should get into trouble.

**SENATOR NETHING:** Named the subcommittee: Senator Naaden, Chair; Senator Andrist and Senator Robinson and closed the hearing on engrossed HB 1404. (tape 1, A, 1990)

=====  
3/29/99

tape 1, A, 2130-2296

**SENATOR NETHING:** Reopened the hearing on engrossed HB 1404.

**SENATOR NAADEN:** Moved do pass engrossed HB 1404.

**SENATOR ANDRIST:** Seconded the motion.

**ROLL CALL: 14 YEAS; 0 NAYS; 0 ABSENT & NOT VOTING**

**MOTION CARRIED TO DO PASS ENGROSSED HB 1404.**

Carrier: Senator Christmann

**SENATOR NETHING:** Closed the hearing.



Date: 3/29/99  
Roll Call Vote #: \_\_\_\_\_

1999 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. HB 1404

Senate APPROPRIATIONS Committee

Subcommittee on \_\_\_\_\_  
or  
 Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken DO PASS

Motion Made By Senator NAADEN Seconded By Senator ANDRIST

Senators	Yes	No	Senators	Yes	No
Senator Nething, Chairman	✓				
Senator Naaden, Vice Chairman	✓				
Senator Solberg	✓				
Senator Lindaas	✓				
Senator Tallackson	✓				
Senator Tomac	✓				
Senator Robinson	✓				
Senator Krauter	✓				
Senator St. Aubyn	✓				
Senator Grindberg	✓				
Senator Holmberg	✓				
Senator Kringstad	✓				
Senator Bowman	✓				
Senator Andrist	✓				

Total (Yes) 14 No 0

Absent 0

Floor Assignment Senator CHRISTMANN

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE (410)  
March 29, 1999 4:15 p.m.

Module No: SR-56-5844  
Carrier: Christmann  
Insert LC: . Title: .

**REPORT OF STANDING COMMITTEE**

HB 1404, as engrossed and amended: Appropriations Committee (Sen. Nething, Chairman) recommends **DO PASS** (14 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1404, as amended, was placed on the Fourteenth order on the calendar.

**1999 TESTIMONY**

**HB 1404**

TESTIMONY BY ALBERT A. WOLF  
ON BEHALF OF  
NORTH DAKOTA TRIAL LAWYERS ASSN.  
BEFORE  
SENATE JUDICIARY COMMITTEE  
February 4, 1999

HB 1404

Mr. Chairman and Members of the House Committee of Natural Resources.

My name is Albert Wolf and I am a practicing attorney in the city of Bismarck and appearing on this bill on behalf of the North Dakota Trial Lawyers Association. We appear here on behalf of our members, but more importantly on behalf of citizens of North Dakota who may seek representation in connection with claims arising from the <sup>release of</sup> recent petroleum products from tanks or pumping systems that may be causing damage to their properties adjoining the location of such tanks or in the ~~approximate~~ <sup>approximate</sup> area, ~~or~~ <sup>as</sup> such release of products may affect or have affected water aquifers serving the water supply needs in the area. This may of course be farmers or ranchers in the area as to water supply or use of their lands or rural water systems dependant on clean water in the aquifers or streams.

We are concerned only with Section 4 of the bill which sets a very dangerous precedent in trying to immunize certain segments of our population or economy from people who may have sustained a loss resulting from leakage from tanks or other petroleum systems. There is serious constitutional questions raised by this provision that would bar the right of a party from bringing an action against the owner/operator or dealer for release of petroleum products into the environment or the ground and ground water in the area even prior to the effective date of this act or prior to the time that the department has inspected the tank release site as to the remediation of the release can pose a measurable health hazard.

There is also a serious question about delegation of legislative authority to an administrative agency without review of that authority by the court. ~~While~~ <sup>While</sup> government by administrative agencies is a reality in every level of government out of necessity there are always specific review and appellate procedures provided in such situations in particularly an ultimate appeal to the courts for arbitrary actions or oversights on the part of the administrative agency.

There is no standard established here by which the health department would make the determination as stated in Section 4 "when a release no longer imposes a measurable public health hazard to human health or the environment for the foreseeable future and all reasonable and necessary corrective action has been taken to remediate the adverse environmental affect of the release." That factual and legal determination made by the Health Department must be subject to review in order protect the rights of people that are affected by such a ruling. There also must be notice given to the parties affected by such a ruling of a proceeding whereby such determination is made by the Health Department where interested parties may appear and be represented and present evidence or challenge evidence relied upon by the Health Department or the owner or operator or dealer and a right to appeal from such determination.

I realize that one could say that these right<sup>s</sup> are all implied in the process because the Health Department is an administrative agency, but the notice requirements and the definition of interested parties who may appear and participate in the proceedings and the time tables for appearance and appeal are not specified in this provision and therefore due process as it is known under the law has not been provided for in limiting or depriving their right of action in the courts for damages resulting to a claimant under Section 9 of the North Dakota Constitution.

SECTION 26. Third-party damages - Participation in actions and review of settlements.

1. An owner or operator who is sued for damages resulting from a release shall notify the administrator within forty-eight hours of being served with a summons and complaint. The owner or operator shall also advise the administrator if any insurer is defending the owner or operator and provide to the administrator the name of that insurer.
2. An owner or operator who, before litigation, enters into negotiations with a third party who claims to have been damaged by a release, or who receives a demand for payment of damages to a third party who claims to have been damaged by a release, shall notify the administrator within forty-eight hours of the demand or the negotiations.
3. The administrator and the board shall review the conduct of any litigation or negotiation. The administrator may not assume any legal costs incurred by the defendant or plaintiff, but may participate in discovery, trial proceedings, or settlement negotiations that bear on the determination of a plaintiff's damages.
4. The administrator and the board shall review any settlement negotiations to determine the dollar amount of bodily injury or property damage actually, necessarily, and reasonably incurred by third parties which, if paid by the defendant, would be considered eligible costs.

SECTION 27. Third-party damages - Documentation.

1. An applicant's payments for third-party damages pursuant to a judgment entered in a court must include copies of the notice of entry of judgment, abstract of costs, and a declaration of the fees paid by the defendant to each attorney who appeared in the proceeding.
2. An applicant's payments for third-party damages made by agreement in settlement of litigation must include copies of the settlement agreement and such supporting documents as may be required by the administrator.
3. An applicant's payments for third-party damages made by agreement without reference to litigation must include copies of the settlement and such supporting documents as may be required by the administrator.
4. The administrator and the board may require a third party who claims bodily injury to be examined by a physician and require that the physician's report be submitted to the administrator. The administrator may require a third party who claims property damage to permit a property appraiser or claims adjuster retained by the administrator to inspect the property and report to the administrator.

SECTION 4. A new subsection to section 27 of chapter 299 of the 1991 Session Laws is created and enacted as follows:

The fund shall pay a judgment against an owner, operator, or dealer awarded to a third party as a result of a third-party claim against an owner, operator, or dealer covered by the fund. The department shall determine that a tank release site has been duly remediated when a release no longer imposes a measurable public health hazard to human health or the environment for the foreseeable future and all reasonable and necessary corrective action has been taken to remediate the adverse environmental effect of the release. If the department has made this determination, a third party may not bring a claim for relief against an owner, operator, or dealer.

**HOUSE BILL NO. 1404  
TESTIMONY BEFORE THE NATURAL  
RESOURCES COMMITTEE  
FEBRUARY 4, 1999**

**BOB OLSON, ADMINISTRATOR  
PETROLEUM TANK RELEASE COMPENSATION FUND  
NORTH DAKOTA INSURANCE DEPARTMENT**

My name is Bob Olson and I am the administrator of the Petroleum Tank Fund, which was established by the 1989 Legislature (1991 ND Session Laws, Chapter 299). The Petroleum Tank Fund is under the management of the Commissioner of Insurance.

In response to the federal requirement (U.S. Environmental Protection Agency (EPA)) imposed upon tank owners, and the lack of affordable insurance coverage for such risks, (\$1 million for costs of cleanup and third party liability caused by petroleum contamination) North Dakota, along with many other states, established their own Fund to provide this coverage. In 1991, EPA approved the North Dakota Fund as an "acceptable financial assurance mechanism" for North Dakota tank owners.

Over the last 9 ½ years this Fund has worked well to help many tank owners in North Dakota clean up the environment. There have been a total of 624 claims submitted to the Fund. The Fund has reimbursed tank owners just under \$3 million for expenses they incurred to clean up petroleum contamination from the soil and water.

The Fund has total reserves of \$7.5 million of which approximately \$3 million is anticipated to be used to cover the costs involved with the 165 open claims on file.

The Fund reimburses an owner 90% of reasonable and necessary cleanup costs between \$5,000 and \$155,000 and then reimburses 100% of costs between \$155,000 and \$1 million.

This represents a total exposure to the Fund of \$980,000 per occurrence.

We are in favor of the bill except for one concern we have which I would like to address at this time. This concern has to do with the registration fee, which is page 1 of the bill, lines 19 through 24, specifically lines 20 and 21, addressing the reduction in annual registration fees.

The tank owners now pay an annual registration fee of \$75 for each aboveground tank (AST) and \$125 for each underground tank (UST), which has been bringing into the Fund approximately \$640,000 annually. This bill would reduce the fees to \$50 for each tank no matter if it were aboveground or underground. This reduction would reduce the annual registration fee by approximately 50% which would be around \$320,000.

The concern we have is that there are still a number of unknowns in North Dakota regarding tanks and petroleum contamination, which could increase the liability of the Fund as follows:

- a) One of the unknowns is that the UST sites that have been closed as of December 22, 1998 have one year to remove their tanks from the ground. It appears there are at least 125 sites (approximately 370 tanks) that still need to remove their UST's. We have no way of knowing if there is contamination at these sites, but looking back it would appear that somewhere between 35% to 50% of these sites will have some



contamination, keeping in mind that at each site there is a possibility that \$980,000 could be paid out from the Fund.

- b) Our actuary did a review of the Fund and recommends that the registration fee be somewhere between \$85 and \$100 per tank for the next 2 years. It also showed that we need \$5 to \$6 million for the existing claims, keeping in mind there will be more claims in the next year and a half.
- c) The Fund provides third party liability, which includes off premises cleanup and bodily injury caused by petroleum contamination. This is a large unknown by itself. Any one of the 624 claims we have already opened, along with the 125 sites that still need to remove their tanks, could have a liability claim brought against them. This is an “ongoing” exposure for that tank owner.
- d) Another part of this bill, which also comes into play regarding our concern of fee reduction, would be on page 2, section 19, and lines 9, 10,11 and 12. What this does is allow some sites that have had cleanup ongoing prior to April of 1989, however, this legislation was effective in July of 1989, to turn into the Fund their cleanup expenses incurred after this date, up to a maximum of \$25,000 per location. There appears to be at least 20 sites this change will bring into the Fund for reimbursement.

I would like to see this new wording only apply to first party, on premise coverage.

This means only the tank owner’s property would be cleaned up. It would not provide coverage for third party damages.

- e) The State Health Department has recently informed me that they are likely going to be requiring more work be done if the contaminated site requires a phase II site assessment. This will still be site specific, as it has been in the past. Historically they have usually required 3 – 4 soil borings and monitoring wells, if necessary. They may be requiring substantially more borings and monitoring wells so they can initially capture more information. This will very likely increase the costs of cleanup – the average cost for 3 borings and 3 wells is approximately \$4,500. This cost could increase from \$6,000 to \$10,000, depending on the amount of contamination. The cost of cleanup will increase while the fees are being reduced!

We do not want to reduce fees and then discover we're faced with the need to increase them to stay solvent.

The EPA has always been concerned about the small amount of money we collect on an annual basis. We provide them with statistical reports on a quarterly basis. We do not want to jeopardize their approval of this Fund as a financial mechanism. It appears that if a tank owner had to go out and purchase this coverage from a commercial carrier, it would cost them more in annual premium than they are paying at the current rate of \$75 & \$125, along with possibly a larger deductible.

In closing, we believe that reducing the fees at a time when there are a number of unknown potential exposures to the Fund would unnecessarily jeopardize the solvency of the Fund.

I would be happy to take any questions you may have.

01/25/1999		
	<b>AST'S</b>	
Claim #	Name of Tank Owner	Amount Paid
NB-019	Eott Energy Corporation	21,407.80
NB-026	Melroe Company	3,696.25
NB-027	Ferrellgas - Dickinson	13,088.37
NB-033	Thompson Brothers	4,247.14
NB-034	Vining Oil	1,922.92
NB-053	Chet's Super Service	4,769.08
NB-066	Northern Improvement	15,548.63
NB-070	Johnson Oil	3,223.12
NB-099	Farmers Union - Epping	22,371.75
NB-110	Farmers Union - Rolette	14,887.76
NB-111	Korsmo oil & Supply	5,983.50
NB-115	Ferrellgas - Watford City	12,363.30
NB-140	Farmers Union - Glenburn	1,793.16
NB-144	Farmers Union - Drayton	2,496.30
NB-146	Kist Livestock	6,088.34
NB-169	City of Dickinson	1,822.05
NB-183	Tuttle Farmers Elevator	95,831.13
NB-331	Dale's Cash Suply	28,451.18
NB-340	Gwinner Oil	12,671.55
NB-341	Leonard Oil	6,782.78
NB-363	B & N Oil	52,995.12
NB-394	Lawson Oil	15,214.01
NB-395	Vining Oil	4,710.74
		352,365.98
OB-063	Keith's Oil	6,388.06
OB-068	Tower Fuel Stop	15,188.56
OB-083	Gordy's Inc	24,460.20
OB-088	Baseview Petroleum	5,404.99
OB-116	Permans, Inc	27,014.26
		78,456.07

01/25/1999		
	<b>UST'S</b>	
<b>Claim #</b>	<b>Name of Tank Owner</b>	<b>Amount Paid</b>
NB-001	United Parcel Service	3,094.87
NB-007	Cenex - Bismarck	18,365.99
NB-011	Vision Energy	8,070.84
NB-012	Farmers Union - Westhope	23,835.86
NB-014	North Dakota State University	21,331.19
NB-015	Walhalla Co-op	19,034.74
NB-018	Superpumper #26 - Jamestown	21,103.43
NB-020	Blue Rock Company	578.30
NB-024	Detienne Associates	66,095.93
NB-025	Hagens Conoco	13,540.89
NB-029	Highway 83, Inc	10,076.40
NB-031	Simonson Station - Minot	2,812.10
NB-039	Jims Oil & Service	6,690.04
NB-057	Lileks Oil	44,852.38
NB-059	United Parcel Service	5,343.30
NB-060	City of Bismarck	18,684.88
NB-061	United Parcel Service	2,161.35
NB-065	Farmers Union - New Salem	1,105.12
NB-068	Fargo Paint & Glass	15,918.02
NB-069	Homan Feed & Seed	5,163.30
NB-071	Hawks Pit Stop	7,403.78
NB-072	Royal Diede	27,339.78
NB-073	L & T Investments	3,057.20
NB-074	Fargo Municipal Airport	28,230.19
NB-080	Cass Clay Creamery	39,337.11
NB-084	Amoco - Fargo	77,870.09
NB-085	Amoco - Mandan	18,330.66
NB-089	Goose River Bank	2,794.60
NB-091	Stop N Go #439 - Valley City	4,840.21
NB-095	Nygaard Oil	4,531.95
NB-101	Amoco - Jamestown	72.23
NB-103	Hiway Service	9,786.62
NB-104	J & L Development	2,401.95
NB-105	Timothy Nordby	4,287.29
NB-108	Marcia & John Goodrich	7,864.65
NB-112	M & H #22 - Dickinson	8,851.50
NB-114	CFJ Property - Flying J	9,065.34
NB-116	Farmers Union - Hazen	27,651.56
NB-117	Minot Farmers Elevator	3,609.60
NB-118	Eslingers Conoco	375.08
NB-119	Amoco - Belfield	18,414.14
NB-120	Farmers Union - Carrington	8,547.91
NB-121	Farmers Union - Pettibone	7,018.02
NB-122	Lewis Truck Line	173.92

01/25/1999		
	<b>UST'S</b>	
Claim #	Name of Tank Owner	Amount Paid
NB-123	Ehlen Partnership LTD	12,755.61
NB-125	DOT	7,340.40
NB-126	Doyles Yellow Checker Cab	4,338.08
NB-127	Dons Service Center	18,555.77
NB-128	Mini Mart #673 - Minot	11,491.14
NB-129	Simonson - Grand Forks	2,391.52
NB-130	Brians I-29	9,147.60
NB-131	North Dakota State Hospital	1,500.07
NB-132	ARC Thrift Shop	4,291.99
NB-135	Doug Sukut	21,153.97
NB-136	Crosby Self Serve	6,503.29
NB-138	Lafarge Dakota	9,096.54
NB-139	Cenex - Ashley	342.63
NB-141	City of West Fargo	6,652.80
NB-142	Deitrich Bus Service	9,445.05
NB-143	Star City Motor	1,880.55
NB-153	Superpumper #21 - Minot	6,859.69
NB-154	Degelman Industries	1,566.00
NB-155	Schwarz Oil & Implement	2,323.35
NB-156	Farmers Union - Kulm	11,182.61
NB-159	Barnes County Highway Dept	1,965.45
NB-170	Balsam Inc	11,634.71
NB-181	Borders Cities Service Center	18,329.85
NB-182	Lilleberg Oil	2,778.21
NB-192	M & H #15, Jamestown	5,854.69
NB-194	Star Oil	12,206.70
NB-200	Simonson - Grand Forks	1,910.25
NB-210	Columbus Public School	3,213.61
NB-211	Ernest Charchenko	3,568.85
NB-215	Dans Oil & Service	4,950.00
NB-220	Cenex - Mandan	5,128.29
NB-234	Royal Diede	23,789.02
NB-238	Sinclair Oil Corporation	4,033.80
NB-245	Independent Oil	55,413.17
NB-248	Farmers Union - Drake	9,032.72
NB-254	Medora Convenience	3,863.06
NB-257	HIH Investment	41,180.95
NB-258	Helberg & Ackre	1,890.00
NB-263	Stan Puklich Chevrolet	4,966.81
NB-268	Harleys Arrowhead	186,742.39
NB-271	Superpumper #1 - Hillsboro	2,091.71
NB-273	Amoco #8756 - Dickinson	2,758.93
NB-280	M & H #13 - Mandan	16,636.97
NB-281	Newman Outdoor Advertising	39,720.60

01/25/1999		
	<b>UST'S</b>	
Claim #	Name of Tank Owner	Amount Paid
NB-283	Halls Standard	2,636.42
NB-284	Laffens Food & Gas	10,974.34
NB-288	Gjervold Motor Company	25,655.25
NB-290	Dinsdale Service	2,271.38
NB-293	DOT - Fargo	21,426.53
NB-294	Pan-O-Gold Baking	13,781.51
NB-309	GTR Partnership	5,864.58
NB-311	Ernie Brookins	27,363.15
NB-315	Dons Broadway Service	24,828.75
NB-316	Stop N Go #427 - Fargo	18,928.35
NB-318	Conokwik Stop North	5,827.06
NB-319	Farmers Union - Minot	2,636.78
NB-333	Amoco #8705 - Bismarck	5,933.25
NB-334	Independent Oil	5,084.55
NB-335	Behms Truck Stop	19,210.50
NB-360	Concrete Sectional Culvert Co	1,796.13
NB-362	Mini Mart #671 - Minot	12,808.80
NB-366	Hiway Standard	10,451.62
NB-367	Farmers Union - Fairmount	7,265.21
NB-369	Farmers Union - Harvey	16,803.72
NB-370	Simonson - Williston	7,721.06
NB-371	Mini Mart #619 - Fargo	1,559.94
NB-372	Johnson Bros NW Beverages	2,371.86
NB-376	Farmers Union - Kenmare	312.93
NB-377	Farmers Union - Carpio	3,574.27
NB-379	Farmers Union - Glen Ullin	3,956.40
NB-386	Super Valu - Fargo	19,124.55
NB-392	Circle R Inc	6,610.80
NB-396	Kum & Go #810 - New Town	1,498.77
NB-398	OK Tire - Williston	42,102.26
NB-402	Guthries Stop & Shop	12,036.00
NB-404	Farmers Union - General Store - Dickinson	5,267.03
NB-406	Simonson - Dickinson	28,901.84
NB-410	Farmers Union - Lidgerwood	6,409.98
NB-413	Schlagel Oil Co	12,908.41
NB-432	Blumhardt Chevrolet & Pontiac	7,954.20
NB-437	Farmers Union - Beach	508.50
		1,646,560.39
OB-005	West Plains Electric Coop	83,250.00
OB-011	Eckman Auto Service	2,709.13
OB-017	Johns I-94 Standard	16,458.80

01/25/1999		
	<b>UST'S</b>	
<b>Claim #</b>	<b>Name of Tank Owner</b>	<b>Amount Paid</b>
OB-019	MDU - Williston	610.45
OB-021	Farmers Union - Lisbon	10,642.46
OB-029	Mohler Oil	20,818.67
OB-036	Amoco #9519 - Williston	13,153.95
OB-062	Landers Interstate	2,751.81
OB-067	Stop N Go #422 - Fargo	48,146.09
OB-069	Froelich Oil	6,731.55
OB-080	Williston Fuel	4,112.55
OB-097	Stop N Go #411 - Wahpeton	702.68
OB-107	Dons FM Oil	2,397.78
OB-108	A & M Service	2,064.09
OB-109	Peter Bosch	5,464.26
OB-110	Farmers Union - Watford City	50,050.73
OB-111	Jims Ready Mix	6,405.89
OB-113	Mayport Gas	45,885.70
OB-114	Valdak Corporation	27,392.99
OB-119	Valdak Corporation	14,536.80
OB-120	H J Discount Gas	35,365.69
OB-127	Food N Fuel #1501 - Fargo	27,865.72
OB-131	Pepsi Cola Bottling	3,228.09
OB-134	Mohler Oil	8,633.50
OB-140	Froelich Oil - Mandan	7,228.47
OB-147	Thorstad Service	1,227.62
OB-148	M & H #9 - Grand Forks	33,643.15
OB-149	Dans Oil & Service	3,684.83
OB-152	Farmers Union - Fargo	13,183.94
OB-153	Ryder Truck Rental	31,245.97
OB-157	US West Communication	5,392.17
OB-160	Arnies Amoco	37,253.18
OB-165	Berg Grain & Produce	9,016.43
OB-167	Parkway Ford Sales	4,697.55
OB-168	Nature Conservancy	2,400.89
		588,353.58

P. 2, line 22, remove: "If the department has made this"  
and insert:

"If a claim is made for payment from the fund ~~after~~ thereafter, a presumption shall ~~then~~ exist from the certification that the adverse environmental effect of the release has been remediated as of the date of certification, until rebutted by credible evidence that there remains a measurable public health hazard to human health or the environment that ~~constitutes~~ <sup>was</sup> the ~~cause~~ ~~of~~ ~~the~~ ~~condition~~ ~~upon~~ ~~which~~ the claim was based."

P. 2 ~~do~~ strike lines 23 and 24.



**House Bill No. 1404  
Before the Natural Resources Committee  
North Dakota Senate**

**Testimony of Francis "Fritz" Schwindt  
Section Chief, Environmental Health Section  
North Dakota Department of Health  
March 4, 1999**

The Department has several concerns about section 4 of engrossed HB 1404. These concerns include:

- There may be no limits to third party claims against the fund.
- The Department will need to require removal of contaminated soils to make certain that they will pose no threat to public health or the environment in the future.
- Third party lawsuits will become more common, because third parties will be forced to sue to protect their interests in the future, even though at the present time a release has little or no effect on their property.
- All these will greatly increase costs to the fund.

The Department supports the proposed amendments to section 4. These changes provide assurances that third party judgments will be paid by the fund, without forcing the Department to require removal of contaminated soils when those soils pose no threat to the environment and will be cleaned by natural bio-remediation if left in place. Before discussing these proposed amendments, I will give you a short summary of the Petroleum Release Remediation Act and the monitoring and remediation currently required under this Act.

The Petroleum Release Remediation Act was originally passed in 1989. It was modified and changed to its current form (1991 N.D. Sess. Laws Ch. 299 and 300 and 1993 N.D. Sess. Laws Ch. 286) by the 1991 and 1993 sessions. Because the Act

sunsets on June 30, 1999, it has never been formally codified. For that reason, I have attached a copy of 1991 N.D. Sess. Laws Ch. 299 to my testimony.

The Act was originally passed to meet federal EPA requirements that owners of underground petroleum tanks have environmental liability insurance of at least one million dollars to clean up releases from underground petroleum tanks. Because this insurance was either prohibitively expensive or unavailable, states passed laws that established self-insurance funds for tank owners. North Dakota's Petroleum Release Remediation Act is one such Fund.

The Fund is administered by the North Dakota Insurance Commissioner's office. Section 3 of the Act establishes an advisory board consisting of three members, who are appointed by the governor, two of whom are active in petroleum marketing. The administrator of the Fund is required to meet with the advisory board to discuss all claims against the petroleum fund.

Under section 6, if the Health Department has reason to believe that a petroleum release has occurred, it has the responsibility to notify the administrator of the fund. It is the Health Department's responsibility to determine the "reasonable and necessary corrective actions" that are required of the owner or operator under federal and state law.

Sections 18, 19, and 20 of the Act require the administrator to reimburse an eligible owner for "corrective action" to the extent that the costs were "actually incurred" and were "reasonable." The term "corrective action" is defined in section 2, subsection 4, of the Act, and includes actions taken to "minimize, contain, eliminate, mitigate, or clean up a release" as well as damages to third parties for "bodily injury or property damage which is determined by the board to be eligible for reimbursement." The statute does not dictate what remediation is "reasonable or necessary," leaving that determination to

the discretion of the responsible agencies. However, that discretion is governed by federal and state rules (40 CFR Part 280 through Part 282 and N.D. Admin. Code chapters 33-24-08 and 45-10-02).

The Department has provided oversight in several hundred assessments to determine the extent and severity of contamination from a release and their potential impact on human health or the environment. When a release occurs, the department requires the responsible party to assess the potential damage from the release by identifying the extent of the contamination, local geology, hydrology and potential impacts on receptors. Based on this information, the Department requires that the responsible party take specific actions to minimize the risk or impacts. These actions may include simply removing the contaminated soil or installing more sophisticated remediation technology. In cases where the contamination is shown to be stable and the product is being broken down in the soil through natural bio-remediation, the Department may simply require the responsible party to monitor the contamination over a period of years.

It is important to note that current technology limits the extent an assessment can identify conditions below the land surface. As a result, determinations made from these assessments are not absolute. We believe the Department must remain flexible and be able to modify their initial determinations as new information is collected over several years. Because of the many variables in the environment and the limits of existing technology, the Department cannot provide responsible parties with the assurance that a site is 100 percent clean and will have no chance of adversely impacting the environment in the foreseeable future. The best we can do is require no further action at a location based upon the information collected at a point in time. The requirement for future action can never be ruled out as experience has shown us that site conditions can change.

Some of our more specific concerns with section 4 of HB 1404, as currently engrossed, are as follows:

- Section 4 would require the Department to determine that a tank release site has been “duly remediated” when a release no longer imposes “a measurable public health hazard” to human health or the environment for the “foreseeable future”.
- Laboratories can currently detect and measure contaminants in soil, air and water in infinitesimally small concentrations. Although the concentrations may be small there are those in the scientific community who would argue that any contamination, no matter how small the concentration, poses a risk to the environment or human health. The net result is the Department will not be able to consider any site as “duly remediated” as long as measurable contamination is identified at the site. Experience has shown us that measurable contamination can be identified at practically every petroleum storage facility in the state, even though in most cases those small releases pose no current threat to human health or the environment.
- Even if the Department could provide an owner with a determination that a site has been “duly remediated” based upon today’s health and environmental standards, standards can and do change. What is considered to be of minimal or no risk today may be considered to be of concern tomorrow even though conditions at the site have not changed. Thus, the Department may be required to reopen a case based upon new federal requirements.

- Any new release no matter how small, will have to be evaluated to determine if it poses a “measurable risk” to the environment or human health. The cost for this more stringent determination would be the responsibility of the owner, and thus the Fund.
- The phrase “reasonable and necessary” is vague and open to interpretation. What a third party thinks is “reasonable and necessary” may not be what is “reasonable and necessary” to protect public health and the environment.
- Even the most expensive and effective corrective actions typically leave some measurable concentrations of contaminants in the environment. As a result, the Department can require expensive remediation to reduce the risk, but is not able to entirely eliminate all risk.
- If a new release, no matter how small, is reported, this may result in the third party regaining their right to seek compensation for damages. This may cause owners and operators to cover up or not report releases to the state as currently required by law.

The proposed amendments to section 4 of HB 1404 address these concerns.

Subsections 5 and 6 of the proposed amendments take away the ability of the advisory board to second guess payment of a judgment to third parties awarded by a court, provided the damages fall within the purview of the Act as defined in section 2, subsection 4, of Chapter 299 of the 1991 Session Laws. This was of special concern to petroleum marketers.

Subsection 7 makes clear that the per person liability limits imposed by N.D.C.C. § 32-12.2-02 apply, and that the maximum liability of the Fund, including liability to third parties, cannot exceed, for any release site, the maximum allowed by section 18 of Chapter 299 of the 1991 Session Laws.

Subsection 8 prohibits a third party from bringing an action against an owner, operator, or dealer more than three years after a corrective action plan has been approved by the Department, provided the owner, operator, or dealer fully complies with the corrective action plan. This change does not alter any statutes of limitation that currently apply under negligence or tort law. It does give an owner, operator, or dealer added protection from legal action when they fully implement and comply with a corrective action plan for three years, and continue compliance with the plan after that three year period. But it also protects adjoining landowners if the owner, operator, or dealer fails to comply with the corrective action plan.

Subsection 9 clarifies the standard that the Department is to apply to protect public health and the environment. It requires the Department to determine whether a release “currently threatens public health and the environment” and to determine what corrective action is “reasonably necessary to protect public health or the environment.” It does not require clean up and removal in each case where a measurable amount of petroleum product is released to the soil, but only when the release poses a threat to health or the environment. Further, it continues to allow the Department to require more aggressive clean up of a site when conditions change and a release site becomes a health or environmental threat. The fund remains responsible for \$980,000 of the first million dollars of this cost.

The Department urges a “do pass” of 1404, but only with the proposed amendments to section 4.

## CHAPTER 340

HOUSE BILL NO. 1243  
(Marks, Kolbo, P. DeMers, J. DeMers, Myrdal)

## SERVICE DOGS IN HEALTH CARE FACILITIES

AN ACT to amend and reenact section 25-13-02 of the North Dakota Century Code, relating to the use of service dogs in public places, including facilities of health care providers; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 25-13-02 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

25-13-02. Blind or handicapped person accompanied by guide or service dog to be admitted to public places. Every totally or partially blind person has the right to be accompanied by a guide dog and every handicapped person has the right to be accompanied by a service dog, especially trained for those purposes, in places of public accommodations, common carriers, facilities of a health care provider, and all places in which the public is generally invited, without being required to pay an extra charge for the guide or service dog; provided, that such persons are liable for any damage done to the premises or facilities by the dogs.

SECTION 2. EMERGENCY. This Act is declared to be an emergency measure.

Approved March 14, 1989  
Filed March 15, 1989

The legislative history on this bill is available in the Legislative Council library.

## INSURANCE

## CHAPTER 341

HOUSE BILL NO. 1297  
(Representatives Whalen, Wald, Skjerven)  
(Senators Todd, Krauter)

## PETROLEUM RELEASE COMPENSATION

AN ACT to provide for cleanup of petroleum spills through the establishment of a petroleum release compensation fund; to provide a penalty; to provide a continuing appropriation; to provide an appropriation; and to provide an expiration date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Declaration of purpose. It is hereby declared to be the purpose of this Act to establish:

1. A petroleum tank release compensation fund; and
2. A petroleum tank release compensation advisory board authorized to review claims against the fund.

SECTION 2. Definitions. As used in this Act, unless the context otherwise requires:

1. "Administrator" means the manager of the state fire and tornado fund.
2. "Board" means the petroleum release compensation advisory board.
3. "Corrective action" means an action taken 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 damaged equipment.
4. "Dealer" means any person licensed by the tax commissioner to sell motor vehicle fuel or special fuels within the state.
5. "Department" means the state department of health and consolidated laboratories.
6. "Fund" means the petroleum release compensation fund.
7. "Operator" means any person in control of, or having responsibility for, the daily operation of a tank under this Act.
8. "Owner" means any person who holds title to controls or possesses an interest in the tank before the discontinuation of its use.
9. "Person" means an individual, trust, firm, joint stock company, federal agency, corporation, state, municipality, commission,

political subdivision of a state, or any interstate body. "Person" also includes a consortium, a joint venture, a commercial entity, and the United States government.

10. "Petroleum" means any of the following:
- a. Gasoline and petroleum products as defined in chapter 19-10.
  - b. Constituents of gasoline and fuel oil under subdivision a.
  - c. Oil sludge and oil refuse.
11. "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 Act, but does not include discharges or designed venting allowed under federal or state law or under adopted rules.
12. "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. Exemptions from this definition include:
- a. Tanks owned by the federal government;
  - b. Tanks used for the transportation of petroleum; and
  - c. A pipeline facility, including gathering lines, regulated under:
    - (1) The Natural Gas Pipeline Safety Act of 1968.
    - (2) The Hazardous Liquid Pipeline Safety Act of 1979.
    - (3) An interstate pipeline facility regulated under state laws comparable to the provisions of law in paragraph 1 or 2 of this subdivision.
  - d. A farm or residential tank with a capacity of one thousand one hundred gallons [4163.94 liters] or less used for storing motor fuel for noncommercial purposes.
  - e. A tank used for storing heating oil for consumptive use on the premises where stored.
  - f. A surface impoundment, pit, pond, or lagoon.
  - g. A flowthrough process tank.
  - h. A liquid trap or associated gathering lines directly related to oil or gas production or gathering operations.
  - 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.

13. "Tariff" means a fee imposed on all petroleum products subject to the taxes imposed under chapters 57-43.1 and 57-43.2, except liquefied petroleum.

SECTION 3. Petroleum release compensation advisory board. The petroleum release compensation advisory board consists of three members, two of whom are active in petroleum marketing, appointed by the governor. Members must be appointed to terms of three years with the terms arranged so that the term of one member expires June thirtieth of each year. A member shall hold office until a successor is duly appointed and qualified. Each member of the board shall receive sixty-two dollars and fifty cents per diem for each day actually spent in the performance of official duties, plus mileage and expenses as are allowed to other state officers.

SECTION 4. Administration of fund - Staff. The administrator shall administer the fund according to this Act. The administrator shall convene the board as is necessary to keep the board apprised of the fund's general operations and to discuss all claims against the fund. The administrator may employ any assistance and staff necessary to administer the fund within the limits of legislative appropriation.

SECTION 5. Adoption of rules. The administrator shall adopt rules regarding its practices and procedures, the form and procedure for applications for compensation from the fund, procedures for investigation of claims, procedures for determining the amount and type of costs that are eligible for reimbursement from the fund, and procedures for persons to perform services for the fund.

SECTION 6. Release discovery. If the department has reason to believe a release has occurred, it shall notify the administrator and the board. The department shall direct the owner or operator to take reasonable and necessary corrective actions as provided under federal or state law or under adopted rules.

SECTION 7. Owner or operator not identified. The department may cause legal action to be brought to compel performance of a corrective action if an identified owner or operator fails or refuses to comply with an order of the department, or the department may engage the services of qualified contractors for performance of a corrective action if an owner or operator cannot be identified.

SECTION 8. Imminent hazard. Upon receipt of information that a petroleum release has occurred which may present an imminent or substantial endangerment of health or the environment, the department may take such emergency action as it determines necessary to protect health or the environment.

SECTION 9. Duty to notify. Nothing in this Act limits any person's duty to notify the department and to take action related to a release. However, payment for corrective actions required as a result of a petroleum release is governed by this Act.

SECTION 10. Providing of information. Any person whom the administrator or the department has reason to believe is an owner or operator, or the owner of real property where corrective action is ordered to



be taken, or any person who may have information concerning a release, shall, if requested by the administrator or the department, or any member, employee, or agent of the administrator or the department, furnish to the administrator or the department any information that person has or may reasonably obtain that is relevant to the release.

SECTION 11. Examination of records. Any employee of the administrator or the department may, upon presentation of official credentials:

1. Examine and copy books, papers, records, memoranda, or data of any person who has a duty to provide information to the administrator or the department under section 10 of this Act; and
2. Enter upon public or private property for the purpose of taking action authorized by this section, including obtaining information from any person who has a duty to provide the information under section 10 of this Act, conducting surveys and investigations, and taking corrective action.

SECTION 12. Responsibility for cost. The owner or operator is liable for the cost of the corrective action required by the department, including the cost of investigating the releases, and for legal actions of the administrator or the department. This Act does not create any new cause of action for damages on behalf of third parties for release of petroleum products against the fund or licensed dealers.

SECTION 13. Liability avoided. No owner or operator may avoid liability by means of a conveyance of any right, title, or interest in real property or by any indemnification, hold harmless agreement, or similar agreement. However, the provisions of this Act do not:

1. Prohibit a person who may be liable from entering into an agreement by which the person is insured or is a member of a risk retention group, and is thereby indemnified for part or all of the liability;
2. Prohibit the enforcement of an insurance, hold harmless, or indemnification agreement; or
3. Bar a cause of action brought by a person who may be liable or by an insurer or guarantor, whether by right of subrogation or otherwise.

SECTION 14. Other remedies. Nothing in this Act limits the powers of the administrator or department, or precludes the pursuit of any other administrative, civil, injunctive, or criminal remedies by the administrator or department or any other person. Administrative remedies need not be exhausted in order to proceed under this Act. The remedies provided by this Act are in addition to those provided under existing statutory or common law.

SECTION 15. Revenue to the fund. Revenue from the following sources must be deposited in the state treasury and credited to the fund:

1. Any tariffs imposed by sections 16 and 17 of this Act;
2. Any registration fees collected under section 21 of this Act;

3. Any money recovered by the fund under section 27 of this Act, and any money paid under an agreement, stipulation, or settlement;
4. Any interest attributable to investment of money in the fund; and
5. Any money received by the administrator in the form of gifts, grants, reimbursements, or appropriations from any source intended to be used for the purposes of the fund.

SECTION 16. Tariff authorized. The administrator shall notify the state tax commissioner to collect the tariff authorized by section 17 of this Act and the tax commissioner shall collect the tariff beginning July 1, 1989, until the fund reaches three million dollars, at which time the tariff shall temporarily cease being collected. If the unexpended balance of the fund falls below one million dollars, the administrator shall reinstate the tariff established in section 17 of this Act. The tariff must be collected until the fund is equal to or exceeds three million dollars during any full tariff collection period. Reasonable forecasts of future expenses and income may be used in imposing and ceasing to collect the fund tariff.

SECTION 17. Tariff levied. A dealer shall pay to the tax commissioner a tariff of ~~nine-fortieths of a cent~~ per gallon [3.79 liters] for every gallon [3.79 liters] of gasoline, kerosene, tractor fuel, heating oil except liquefied petroleum, or diesel fuel subject to taxation under chapters 57-43.1 and 57-43.2. The dealer shall collect the tariff from the purchaser or user and, notwithstanding any other provision of law, the tariff may not be refunded. The tariff must accompany the monthly report required by section 18 of this Act. The tax commissioner shall forward all money collected under this section to the state treasurer monthly, and the treasurer shall place the money in the petroleum release compensation fund for the sole purpose of reimbursement of corrective costs authorized under this Act. The provisions of chapters 57-43.1 and 57-43.2 pertaining to the administration of motor vehicle fuel and special fuels not in conflict with this Act govern the administration of the tariff levied by this section. To aid and monitor the collection of the tariff, the administrator and the tax commissioner may exchange information provided by the dealer.

SECTION 18. Report of petroleum products. No later than the twenty-fifth day of each calendar month, a 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 by chapters 57-43.1 and 57-43.2 for motor vehicle fuel and special fuels tax collection purposes.

SECTION 19. Bond required of dealer. The tax commissioner may require a dealer to furnish a surety bond payable to the state in the sum of five hundred dollars, or twice the amount of tariffs due from the dealer for any calendar month during the preceding year, whichever amount is greater, guaranteeing true reports of purchases and sales of gasoline, kerosene, tractor fuel, heating oil, and diesel fuel and payment of all tariffs imposed under section 17 of this Act. The tax commissioner shall determine the sufficiency of the bond. A bond may cover delinquent tariffs for one or all of the petroleum products subject to a tariff under section 17 of this Act. When a tariff is not paid within twenty days after it is due, the bond is forfeited to the extent of the delinquent tariff.

SECTION 20. Penalty. A dealer violating this Act is guilty of a class B misdemeanor, unless another penalty is specifically provided.

SECTION 21. Registration fee. An owner or operator of a tank shall pay an annual registration fee of ten dollars for each aboveground tank and twenty-five dollars for each underground tank owned or operated by that person. The registration fees collected under this section must be paid to the administrator for deposit in the state treasury for credit to the petroleum release compensation fund.

SECTION 22. Reimbursement for corrective action. The administrator shall reimburse an eligible owner or operator for ninety percent of the costs of corrective action, including the investigation, which are greater than seven thousand five hundred dollars and less than one hundred thousand dollars. A reimbursement may not be made unless the administrator determines that:

1. At the time of release, the owner or operator and the tank were in compliance with state and federal rules and rules applicable to the tank, including rules relating to financial responsibility which were in effect at the time of the release;
2. The department was given notice of the release as required by federal and state law;
3. The owner or operator has paid the first seven thousand five hundred dollars of the cost of corrective action; and
4. The owner or operator, to the extent possible, fully cooperated with the department and the administrator in responding to the release.

SECTION 23. Application for reimbursement. Any owner or operator who proposes to take corrective action or has undertaken corrective action in response to a release, the time of such release being unknown, may apply to the administrator for partial or full reimbursement under section 22 of this Act. An owner or operator may be reimbursed only for releases discovered and reported after the effective date of this Act.

SECTION 24. Administrator to determine costs. A reimbursement may not be made from the fund until the administrator has determined that the costs for which reimbursement is requested were actually incurred and were reasonable.

SECTION 25. Liability of responsible person. The right to apply for reimbursement and the receipt of reimbursement does not limit the liability of an owner or operator for damages or costs incurred as the result of a release.

SECTION 26. Reimbursement not subject to attachment. The amount of reimbursement to be paid for corrective action that was done by a third party is not subject to legal process or attachment if actually paid to a third party who performed the corrective action.

SECTION 27. Recovery of expenses. Any reasonable and necessary expenses incurred by the fund, which exceed the amount allowed by section 22 of this Act, in taking a corrective action, including costs of investigating

a release, and in taking legal actions may be recovered in a civil action in district court brought by the administrator against an owner or operator. The certification of expenses by an approved agent of the fund is prima facie evidence that the expenses are reasonable and necessary. Any expenses that are recovered under this section must be deposited in the fund.

SECTION 28. Costs exceeding reimbursement. If the cost of any extraordinary authorized action under this Act exceeds amounts awarded to the administrator or the department from the federal government, the administrator may pay the department the cost of the corrective actions, including the cost of investigating a release, if the board finds that the cause was a petroleum substance, that an adequate amount exists in the fund to pay for the corrective action, that the occurrence was extraordinary in scope and size, and that a danger to the health and safety of citizens exists.

SECTION 29. Administrator may borrow startup funds. If necessary, the administrator may borrow up to twenty thousand dollars from other funds of the state for startup, cost of administration, and organizational expenses, which amount must be repaid with interest at the rate of ten percent per annum after the effective date of this Act as money becomes available from collection of the tariff or registration fees.

SECTION 30. Report to legislative assembly and governor. The administrator and the board shall prepare by December 1, 1990, a report to the legislative assembly and the governor explaining the status of the government's and business' ability to respond to and clean up all past and future petroleum spills.

SECTION 31. Fund appropriations. Money in the fund is continuously appropriated to the administrator for the purpose of making reimbursements under this Act.

SECTION 32. APPROPRIATION. There is hereby appropriated out of any moneys in the petroleum release compensation fund in the state treasury generated from the registration fees collected under section 21 of this Act, not otherwise appropriated, the sum of \$54,000, or so much thereof as may be necessary, to the administrator for the purpose of administering the fund for the biennium beginning July 1, 1989, and ending June 30, 1991.

SECTION 33. EXPIRATION DATE. This Act is effective through June 30, 1991, and after that date is ineffective.

Approved April 28, 1989  
Filed April 28, 1989

# INSURANCE

## CHAPTER 299

HOUSE BILL NO. 1439  
(Whalen, Aarsvoid, Wald, Skjervén)

### PETROLEUM RELEASE REMEDIATION

AN ACT to provide for cleanup of petroleum spills through the establishment of a petroleum release compensation fund; to repeal sections 1 through 31 and section 33 of chapter 341 of the 1989 Session Laws of North Dakota; to provide a penalty; to provide a continuing appropriation; to provide an appropriation; to provide an expiration date; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Declaration of purpose. The purpose of this Act is to establish:

1. A petroleum tank release compensation fund; and
2. A petroleum tank release compensation advisory board authorized to review claims against the fund.

SECTION 2. Definitions. As used in this Act, unless the context otherwise requires:

1. "Actually incurred" means in the case of corrective action expenditures, that the owner, the operator, an insurer of the owner or operator, or a contractor hired by the owner, operator, or insurer has made a payment or that a contractor has expended time and materials and that only that person is receiving reimbursement from the fund.
2. "Administrator" means the manager of the state fire and tornado fund.
3. "Board" means the petroleum release compensation advisory board.
4. "Corrective action" means an action taken to minimize, contain, eliminate, remediate, mitigate, or clean up a release, including any remedial emergency measures. The term also includes compensation paid to third parties for bodily injury or property damage which is determined by the board to be eligible for reimbursement. The term does not include the repair or replacement of equipment or preconstructed property.
5. "Dealer" means any person licensed by the tax commissioner to sell motor vehicle fuel or special fuels within the state.
6. "Department" means the state department of health and consolidated laboratories.

7. "Fund" means the petroleum release compensation fund.
8. "Operator" means any person in control of, or having responsibility for, the daily operation of a tank under this Act.
9. "Owner" means any person who holds title to, controls, or possesses an interest in the tank before the discontinuation of its use.
10. "Person" means an individual, trust, firm, joint stock company, federal agency, corporation, state, municipality, commission, political subdivision of a state, or any interstate body. The term also includes a consortium, a joint venture, a commercial entity, and the United States government.
11. "Petroleum" means any of the following:
  - a. Gasoline and petroleum products as defined in chapter 19-10.
  - b. Constituents of gasoline and fuel oil under subdivision a.
  - c. Oil sludge and oil refuse.
12. "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 Act, but does not include discharges or designed venting allowed under federal or state law or under adopted rules.
13. "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. The term does not include:
  - a. Tanks owned by the federal government;
  - b. Tanks used for the transportation of petroleum; and
  - c. A pipeline facility, including gathering lines, regulated under:
    - (1) The Natural Gas Pipeline Safety Act of 1968.
    - (2) The Hazardous Liquid Pipeline Safety Act of 1979.
    - (3) An interstate pipeline facility regulated under state laws comparable to the provisions of law in paragraph 1 or 2 of this subdivision.
  - d. A farm or residential tank with a capacity of one thousand one hundred gallons [4163.94 liters] or less used for storing motor fuel for noncommercial purposes.
  - e. A tank used for storing heating oil for consumptive use on the premises where stored.
  - f. A surface impoundment, pit, pond, or lagoon.

- g. A flowthrough process tank.
- h. A liquid trap or associated gathering lines directly related to oil or gas production or gathering operations.
- 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 rail locomotives or surface coal mining equipment.

SECTION 3. Petroleum release compensation advisory board. The petroleum release compensation advisory board consists of three members, two of whom are active in petroleum marketing, appointed by the governor. Members must be appointed to terms of three years with the terms arranged so that the term of one member expires June thirtieth of each year. A member shall hold office until a successor is duly appointed and qualified. Each member of the board shall receive sixty-two dollars and fifty cents per diem for each day actually spent in the performance of official duties, plus mileage and expenses as are allowed to other state officers.

SECTION 4. Administration of fund - Staff. The administrator shall administer the fund according to this Act. The administrator shall convene the board as is necessary to keep the board apprised of the fund's general operations and to discuss all claims against the fund. The administrator may employ any assistance and staff necessary to administer the fund within the limits of legislative appropriation.

SECTION 5. Adoption of rules. The administrator shall adopt rules regarding its practices and procedures, the form and procedure for applications for compensation from the fund, procedures for investigation of claims, procedures for determining the amount and type of costs that are eligible for reimbursement from the fund, and procedures for persons to perform services for the fund.

SECTION 6. Release discovery. If the department has reason to believe a release has occurred, it shall notify the administrator. The department shall direct the owner or operator to take reasonable and necessary corrective actions as provided under federal or state law or under adopted rules.

SECTION 7. Owner or operator not identified. The department may cause legal action to be brought to compel performance of a corrective action if an identified owner or operator fails or refuses to comply with an order of the department, or the department may engage the services of qualified contractors for performance of a corrective action if an owner or operator cannot be identified.

SECTION 8. Imminent hazard. Upon receipt of information that a petroleum release has occurred which may present an imminent or substantial endangerment of health or the environment, the department may take such emergency action as it determines necessary to protect health or the environment.

SECTION 9. Duty to notify. Nothing in this Act limits any person's duty to notify the department and to take action related to a release. However, payment for corrective actions required as a result of a petroleum release is governed by this Act.

SECTION 10. Providing of information. Any person whom the administrator or the department has reason to believe is an owner or operator, or the owner of real property where corrective action is ordered to be taken, or any person who may have information concerning a release, shall, if requested by the administrator or the department, or any member, employee, or agent of the administrator or the department, furnish to the administrator or the department any information that person has or may reasonably obtain that is relevant to the release.

SECTION 11. Examination of records. Any employee of the administrator or the department may, upon presentation of official credentials:

1. Examine and copy books, papers, records, memoranda, or data of any person who has a duty to provide information to the administrator or the department under section 10 of this Act; and
2. Enter upon public or private property for the purpose of taking action authorized by this section, including obtaining information from any person who has a duty to provide the information under section 10 of this Act, conducting surveys and investigations, and taking corrective action.

SECTION 12. Responsibility for cost. The owner or operator is liable for the cost of the corrective action required by the department, including the cost of investigating the releases, and for legal actions of the administrator or the department. This Act does not create any new cause of action for damages on behalf of third parties for release of petroleum products against the fund or licensed dealers.

SECTION 13. Liability avoided. No owner or operator may avoid liability by means of a conveyance of any right, title, or interest in real property or by any indemnification, hold harmless agreement, or similar agreement. However, the provisions of this Act do not:

1. Prohibit a person who may be liable from entering into an agreement by which the person is insured or is a member of a risk retention group, and is thereby indemnified for part or all of the liability;
2. Prohibit the enforcement of an insurance, hold harmless, or indemnification agreement; or
3. Bar a cause of action brought by a person who may be liable or by an insurer or guarantor, whether by right of subrogation or otherwise.

SECTION 14. Other remedies. Nothing in this Act limits the powers of the administrator or department, or precludes the pursuit of any other administrative, civil, injunctive, or criminal remedies by the administrator or department or any other person. Administrative remedies need not be exhausted in order to proceed under this Act. The remedies provided by this Act are in addition to those provided under existing statutory or common law.

SECTION 15. Revenue to the fund. Revenue from the following sources must be deposited in the state treasury and credited to the fund:

1. Any registration fees collected under section 17 of this Act;
2. Any money recovered by the fund under section 23 of this Act, and any money paid under an agreement, stipulation, or settlement;
3. Any interest attributable to investment of money in the fund; and
4. Any money received by the administrator in the form of gifts, grants, reimbursements, or appropriations from any source intended to be used for the purposes of the fund.

SECTION 16. Penalty. A tank owner violating section 17 of this Act is guilty of a class B misdemeanor, unless another penalty is specifically provided.

SECTION 17. Registration fee. An owner or operator of a tank shall pay an annual registration fee of seventy-five dollars for each aboveground tank and one hundred twenty-five dollars for each underground tank owned or operated by that person. The registration fees collected under this section must be paid to the administrator for deposit in the state treasury for credit to the petroleum release compensation fund.

SECTION 18. Reimbursement for corrective action. The administrator shall reimburse an eligible owner or operator for ninety percent of the costs of corrective action, including the investigation, which are greater than five thousand dollars and less than one million dollars per occurrence and two million dollars in the aggregate. An eligible tank owner or operator may not be liable for more than twenty thousand dollars out-of-pocket expenses for any one release. A reimbursement may not be made unless the administrator determines that:

1. At the time the release was discovered the owner or operator and the tank were in compliance with state and federal rules and rules applicable to the tank, including rules relating to financial responsibility which were in effect at the time of the release;
2. The department was given notice of the release as required by federal and state law;
3. The owner or operator has paid the first five thousand dollars of the cost of corrective action; and
4. The owner or operator, to the extent possible, fully cooperated with the department and the administrator in responding to the release.

SECTION 19. Application for reimbursement. Any owner or operator who proposes to take corrective action or has undertaken corrective action in response to a release, the time of such release being unknown, may apply to the administrator for partial or full reimbursement under section 18 of this Act. An owner or operator may be reimbursed only for releases discovered and reported after the effective date of this Act.

SECTION 20. Administrator to determine costs. A reimbursement may not be made from the fund until the administrator has determined that the costs for which reimbursement is requested were actually incurred and were reasonable.

SECTION 21. Liability of responsible person. The right to apply for reimbursement and the receipt of reimbursement does not limit the liability of an owner or operator for damages or costs incurred as the result of a release.

SECTION 22. Reimbursement not subject to attachment. The amount of reimbursement to be paid for corrective action that was done by a third party is not subject to legal process or attachment if actually paid to a third party who performed the corrective action.

SECTION 23. Recovery of expenses. Any reasonable and necessary expenses incurred by the fund, which exceed the amount allowed by section 18 of this Act, in taking a corrective action, including costs of investigating a release, and in taking legal actions may be recovered in a civil action in district court brought by the administrator against an owner or operator. The certification of expenses by an approved agent of the fund is prima facie evidence that the expenses are reasonable and necessary. Any expenses that are recovered under this section must be deposited in the fund.

SECTION 24. Costs exceeding reimbursement. If the cost of any extraordinary authorized action under this Act exceeds amounts awarded to the administrator or the department from the federal government, the administrator may pay the department the cost of the corrective actions, including the cost of investigating a release, if the board finds that the cause was a petroleum substance, that an adequate amount exists in the fund to pay for the corrective action, that the occurrence was extraordinary in scope and size, and that a danger to the health and safety of citizens exists.

SECTION 25. Coordination of benefits. If an owner or operator has an insurance policy that provides the same coverage as the fund, the administrator of the fund shall pay the share of the covered loss or damage for which the fund is responsible. The share that must be paid from the fund is equal to the proportion that the applicable limit of coverage under the fund bears to the limits of insurance of all insurance coverage on the same basis.

SECTION 26. Third-party damages - Participation in actions and review of settlements.

1. An owner or operator who is sued for damages resulting from a release shall notify the administrator within forty-eight hours of being served with a summons and complaint. The owner or operator shall also advise the administrator if any insurer is defending the owner or operator and provide to the administrator the name of that insurer.
2. An owner or operator who, before litigation, enters into negotiations with a third party who claims to have been damaged by a release, or who receives a demand for payment of damages to a third party who claims to have been damaged by a release, shall



notify the administrator within forty-eight hours of the demand or the negotiations.

3. The administrator and the board shall review the conduct of any litigation or negotiation. The administrator may not assume any legal costs incurred by the defendant or plaintiff, but may participate in discovery, trial proceedings, or settlement negotiations that bear on the determination of a plaintiff's damages.
4. The administrator and the board shall review any settlement negotiations to determine the dollar amount of bodily injury or property damage actually, necessarily, and reasonably incurred by third parties which, if paid by the defendant, would be considered eligible costs.

SECTION 27. Third-party damages - Documentation.

1. An applicant's payments for third-party damages pursuant to a judgment entered in a court must include copies of the notice of entry of judgment, abstract of costs, and a declaration of the fees paid by the defendant to each attorney who appeared in the proceeding.
2. An applicant's payments for third-party damages made by agreement in settlement of litigation must include copies of the settlement agreement and such supporting documents as may be required by the administrator.
3. An applicant's payments for third-party damages made by agreement without reference to litigation must include copies of the settlement and such supporting documents as may be required by the administrator.
4. The administrator and the board may require a third party who claims bodily injury to be examined by a physician and require that the physician's report be submitted to the administrator. The administrator may require a third party who claims property damage to permit a property appraiser or claims adjuster retained by the administrator to inspect the property and report to the administrator.

SECTION 28. Matching federal funds. The administrator and the board may annually allow the department a ten percent matching grant for federal leaking underground storage tank funds to be paid out of the fund if the moneys are available and the administrator and the board determine the allowance appropriate.

SECTION 29. Report to legislative assembly and governor. The administrator and the board shall prepare by December 1, 1992, a report to the legislative assembly and the governor explaining the status of the government's and business' ability to respond to and clean up all past and future petroleum spills.

SECTION 30. Fund appropriations. Money in the fund is continuously appropriated to the administrator for the purpose of making reimbursements under this Act.

SECTION 31. REPEAL. Sections 1 through 31 and section 33 of chapter 341 of the 1989 Session Laws of North Dakota are repealed.

SECTION 32. APPROPRIATION. There is hereby appropriated out of any moneys in the petroleum release compensation fund in the state treasury generated from the registration fees collected under section 17, not otherwise appropriated, the sum of \$130,000, or so much thereof as may be necessary, to the administrator for the purpose of administering the fund for the period beginning with the effective date of this Act and ending June 30, 1993.

SECTION 33. EXPIRATION DATE. This Act is effective through June 30, 1999, and after that date is ineffective.

SECTION 34. EMERGENCY. This Act is declared to be an emergency measure.

Approved April 16, 1991  
Filed April 18, 1991

## INSURANCE

## CHAPTER 285

HOUSE BILL NO. 1169  
(Industry, Business and Labor Committee)  
(At the request of the Commissioner of Insurance)

## FUNDS UNDER INSURANCE COMMISSIONER

AN ACT to create and enact a new section to chapter 299 of the 1991 Session Laws of North Dakota, relating to the petroleum tank release compensation fund; and to amend and reenact subsection 4 of section 26.1-21-01, subsection 5 of section 26.1-22-01, sections 26.1-22-06, and 26.1-22-21 of the North Dakota Century Code and section 20 of chapter 299 of the 1991 Session Laws of North Dakota, relating to the state bonding fund, petroleum tank release compensation fund, and fire and tornado fund.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 299 of the 1991 Session Laws of North Dakota is created and enacted as follows:

Investment of fund. Investment of the fund is under the supervision of the state investment board in accordance with chapter 21-10.

SECTION 2. AMENDMENT. Subsection 4 of section 26.1-21-01 of the North Dakota Century Code is amended and reenacted as follows:

4. "Political subdivision" means ~~a county, city, township, school district or park district, or any other unit of local government~~ all counties, townships, park districts, school districts, cities, and any other units of local government which are created either by statute or by the Constitution of North Dakota for local government or other public purposes.

SECTION 3. AMENDMENT. Subsection 5 of section 26.1-22-01 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

5. "Political subdivision" ~~includes a county, city, township, school district, or park district of this state~~ means all counties, townships, park districts, school districts, cities, and any other units of local government which are created either by statute or by the Constitution of North Dakota for local government or other public purposes.

SECTION 4. AMENDMENT. Section 26.1-22-06 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

26.1-22-06. Commissioner to adopt guidelines on insurable values. The commissioner shall adopt guidelines to be used by state agencies, departments, offices, officers, boards, commissions, international peace gardens, and winter shows for the purpose of determining insurable values of state-owned property and property belonging to an international peace garden or a winter show for insurance coverage as authorized by law. The commissioner shall adopt guidelines in

determining insurable values to assist state agencies and institutions and political subdivisions in determining whether to select indirect loss coverage. Notwithstanding any other provision of this chapter, the expenses for necessary loss prevention inspections and rating inspections for the purpose of determining the proper premium rate to be applied to the property insured by the fund must be paid out of the fund.

SECTION 5. AMENDMENT. Section 26.1-22-21 of the North Dakota Century Code is amended and reenacted as follows:

26.1-22-21. Insurance required - Excess loss reinsurance. The commissioner shall procure and shall keep in force, an excess loss reinsurance contract naming the fund as the reinsured. The reinsurance contract must meet the following minimum specifications:

1. Reimburse the fund for all losses in excess of one million dollars incurred by the fund under policies issued by the fund and arising out of each occurrence of a peril included in the fund policies.
2. The limit of liability of such reinsurance contract must be no less than one hundred million dollars for each loss occurrence ~~and one hundred million dollars as respects all loss occurrences during each twelve month period.~~
3. A sixty-day cancellation notice.
4. The quoted rate must be the guaranteed rate for the two-year bid period.

The cost of the excess loss reinsurance must be paid out of the premium income of the fund. This excess loss reinsurance must be procured by the commissioner and the fund only through bids as hereinafter provided and must be written only by a company or companies authorized to do business within this state. The contract must be negotiated with and countersigned by a licensed North Dakota resident insurance agent. On or before the third Monday in June of each odd-numbered year the commissioner shall publish in the official newspaper of Burleigh County a notice that on the last Monday in June of that year the commissioner will accept bids at the commissioner's office in the state capitol. A copy of the notice must be posted at the office of the fund. A copy of the notice must be mailed to each insurance company licensed to write fire insurance in this state. On the last Monday in June of each odd-numbered year, the commissioner, with the approval of the industrial commission, shall contract for the excess loss reinsurance with the company or group of companies submitting the lowest and best bid for the two-year period commencing on the ensuing first day of August. The commissioner, with the approval of the industrial commission, may disregard this section after the commissioner and the commission have studied the available bids for the reinsurance required by this section.

SECTION 6. AMENDMENT. Section 20 of chapter 299 of the 1991 Session Laws of North Dakota is amended and reenacted as follows:

SECTION 20. Administrator to determine costs. A reimbursement may not be made from the fund until the administrator has determined that the costs for which reimbursement is requested were actually incurred and were reasonable. All necessary loss adjustment expenses must be included as a component of the loss and must be paid out of the fund.

Approved April 7, 1993  
Filed April 8, 1993

**ARTICLE 45-10**  
**PETROLEUM TANK RELEASE COMPENSATION FUND**

Chapter	
45-10-01	General Provisions [Superseded]
45-10-02	General Provisions

**CHAPTER 45-10-01**  
**GENERAL PROVISIONS**

[Superseded by Chapter 45-10-02]

**CHAPTER 45-10-02**  
**GENERAL PROVISIONS**

Section	
45-10-02-01	Definitions
45-10-02-02	Tank Registration
45-10-02-03	Registration Fee
45-10-02-04	Notification of Release Procedures
45-10-02-05	Procedures for Investigation of Claims
45-10-02-06	Payment
45-10-02-07	Third-Party Claims
45-10-02-08	Advisory Board
45-10-02-09	Report to Legislative Assembly and Governor

**45-10-02-01. Definitions.** For the purposes of this chapter, the following definitions apply in addition to the definitions set forth in section 2 of chapter 299 of the 1991 Session Laws:

1. "Antifreeze" is not a petroleum product.
2. "Farm tank" means a tank located on a tract of land devoted to the production of crops or for raising animals and associated residences and improvements. A farm tank must be located on the farm property.
3. "Portable tank" means any storage tank, along with its piping and wiring, that is not stationary or affixed including, but not limited to, tanks which are on skids.
4. "Residential tank" means a tank located on property used primarily for dwelling purposes.

5. "Surface impoundment" means a natural topographic depression, manmade excavation, or diked area formed primarily of earthen materials.
6. Storage tanks used for collecting crude oil are considered flowthrough process tanks and are excluded from coverage.

**History:** Effective November 25, 1991; amended effective June 1, 1994.

**General Authority:** NDCC 28-32-02; S.L. 1991, ch. 299, § 5

**Law Implemented:** S.L. 1991, ch. 299

**45-10-02-02. Tank registration.** On an annual basis (fiscal year July first through June thirtieth), the administrator will mail to all prior fund registrants and any other known petroleum tank owners and operators in North Dakota a registration letter and billing notice. The letter will explain the function of the fund and the requirement that the tank owner or operator must have all tanks owned or operated registered and all fees paid prior to a petroleum release in order to be eligible for reimbursement. In the event of a petroleum release, no payment will be made to an owner or operator of a registered tank unless the owner or operator has complied with all other state and federal regulations regarding petroleum tanks.

**History:** Effective November 25, 1991; amended effective June 1, 1994.

**General Authority:** NDCC 28-32-02; S.L. 1991, ch. 299, § 5

**Law Implemented:** S.L. 1991, ch. 299, § 17

**45-10-02-03. Registration fee.**

1. An annual registration fee of seventy-five dollars for each aboveground tank and one hundred twenty-five dollars for each underground tank is due and payable on July 1, 1991, and on July first of each successive year thereafter. Registration fees must be paid from April 1991, or from the date a new tank was installed if it was after April 1991, to be in compliance with this section. The period of registration must run from July first to June thirtieth to coincide with the fiscal year of North Dakota.
2. No reregistration or fee modification will be made during any registration year when an owner or operator removes a tank or replaces an underground tank with an aboveground tank within a registration year. The renewal billing will reflect the tank status change. However, a prorated registration fee is required for the installation of an additional tank within any registration year.
3. In the event the legislative assembly may make any alterations

or modifications of the registration fee, the administrator shall prorate the annual registration fee accordingly.

**History:** Effective November 25, 1991; amended effective June 1, 1994.  
**General Authority:** NDCC 28-32-02; S.L. 1991, ch. 299, § 5  
**Law Implemented:** S.L. 1991, ch. 299, § 17

**45-10-02-04. Notification of release procedures.** Once the administrator has received from the department written notification of a release, the administrator shall undertake or cause to be undertaken the following procedures as applicable:

1. Enter the release information into the claim register.
2. Verify that the tank owner or operator has registered the tank involved in the release, and all other tanks owned or operated. Verification must be made by comparing the registration list and the original registration form on file with the administrator.
3. If not registered, send a letter of denial to inform the owner or operator of the requirements with a carbon copy to the department and close the claim.
4. If the tank is registered, call the owner to explain how the fund works and send the tank owner or operator an application for reimbursement. Upon receipt of the completed application, the administrator shall investigate the release through the use of one of the following:
  - a. A fund employee;
  - b. Employ an independent adjuster; or
  - c. Coordinate with an insurance company.
5. Review and summarize all final claims reports with the advisory board.
6. Reimburse the owner or operator or make payment to the owner's or operator's assigned representative.

**History:** Effective November 25, 1991; amended effective June 1, 1994.  
**General Authority:** NDCC 28-32-02; S.L. 1991, ch. 299, § 5  
**Law Implemented:** S.L. 1991, ch. 299, §§ 10, 19

**45-10-02-05. Procedures for investigation of claims.**

1. **Appointment of claims representative.** If the administrator appoints a claims representative to investigate the release, the claims representative's functions are as follows:

- a. Ensure the fairness of cleanup costs, making sure they are necessary, reasonable, and not excessive.
  - b. Obtain the adjuster's first report within twenty days of the adjuster's receipt of the claim.
  - c. The adjuster's subsequent progress reports must be submitted to the fund at least every thirty days.
  - d. Submit all required documents to the fund.
  - e. Function as a liaison between the owner or operator and all other parties involved in the cleanup operation.
2. **Qualifications of the claims representative.** The claims representative must have a general knowledge of insurance policy coverages and exclusions and must also have at least three years of experience as an investigator of claims or equivalent experience to be evaluated by the administrator.
3. **Investigation procedure.** In each release investigation, the claims representative shall perform each of the following duties as applicable:
- a. Examine the location of the release.
  - b. Interview persons to elicit information regarding the release.
  - c. Examine all records and documentation concerning the release, including documentation of the corrective action taken and all expenses incurred.
  - d. Prepare a written report concerning the validity of the claim, including an estimate of the eligible cleanup costs.
  - e. Complete any and all other tasks or duties specified by the administrator.

**History:** Effective November 25, 1991.

**General Authority:** NDCC 28-32-02; S.L. 1991, ch. 299, § 5

**Law Implemented:** S.L. 1991, ch. 299, §§ 18, 20, 23

**45-10-02-06. Payment.**

1. No payment may be made from the fund unless the subject tank has been properly registered and the registration fee paid prior to the discovery of the release.

2. No payment will be made from the fund unless a completed application form has been received by the administrator. The application must contain at least the following information:
  - a. Name and address of the owner or operator.
  - b. Street or highway description of the petroleum release location.
  - c. The legal description of the release location.
  - d. The substance released.
  - e. The date the release was discovered.
  - f. Name, address, and telephone number of the contact person.
  - g. A narrative description of the release.
3. Payment must be made for eligible costs as determined by the administrator. The fund must make payment to an eligible owner or operator whose tanks were properly registered prior to discovery of the release for ninety percent of the eligible costs between five thousand dollars and one hundred fifty-five thousand dollars for corrective action including the investigation, and one hundred percent of the costs of corrective action between one hundred fifty-five thousand dollars and one million dollars per occurrence and two million dollars in the annual aggregate.
4. Eligible costs for a corrective action include, but are not limited to, the following:
  - a. Labor.
  - b. Testing.
  - c. Use of machinery.
  - d. Materials and supplies.
  - e. Professional services.
  - f. Costs incurred by order of federal, state, or local government.
  - g. Any other costs the administrator and the advisory board deem to be reasonable and necessary to remedy cleanup of the release and satisfy liability to any third party.
  - h. Consultant fees if authorized by the North Dakota department of health and consolidated laboratories or



other federal or state agency approving the cleanup procedures.

5. The following will not be considered eligible costs under this regulation:
  - a. The cost of replacement, repair, and maintenance of affected tanks and associated piping.
  - b. Pumping out of any product, including water, from any tanks which need to be removed.
  - c. The cost of upgrading existing affected tanks and associated piping.
  - d. The loss of income, profits, or petroleum product.
  - e. Decreased property value.
  - f. Bodily injuries or property damages except for injuries or damages suffered by third parties.
  - g. Attorney's fees.
  - h. Costs associated with preparing, filing, and prosecuting an application for reimbursement or assistance under this regulation.
  - i. The costs of making improvements to the facility beyond those that are required for corrective action.
  - j. Any cleanup costs resulting from negligence or misconduct on the part of the owner or operator.
  - k. Costs in excess of those considered reasonable by the fund.
  - l. Fines or penalties imposed by order of federal, state, or local government.
  - m. Finance charges, interest charges, or late payment charges.
6. In order to determine what expenses are "reasonable", the owner or operator has to bid the work out. When the lowest or best bid is accepted, that will be deemed by the fund to be the reasonable cost for that project. The bid needs to be broken out into unit costs for each piece of equipment or laborer. This can be done by the owner or operator requesting bids according to the fund's worksheets. Any additional work over and above the original bid will be reimbursed according to unit costs on the original bid.

7. In making the determination of the amount and type of costs eligible for payment from the fund, the administrator shall review the written report of the claims representative, if one is contracted, and all other correspondence and expense documentation (including itemized bills), and shall also review the final report from the department.
8. At the discretion of the administrator and after review by the advisory board, the fund may provide partial payments prior to the final determination of the amount of the loss, if it is determined the cleanup is proceeding according to the proposed work plan for the site assessment as required by the department. The payment may be made to the owner or operator or the owner's or operator's assigned representative if the appropriate assignment form, as approved by the fund, is completed and submitted to the fund administrator with appropriate invoices, receipts, and canceled checks verifying the work has been completed by the assignee.
9. All claims for payment are subject to the availability of funds in the petroleum tank release compensation fund.
10. Subrogation. Prior to payment for any loss, the owner or operator shall subrogate to the fund all rights, claims, and interest which the owner or operator has or may have against any party, person, persons, property, corporation, or other entity liable for the subject loss, and shall authorize the fund to sue, compromise, or settle in the name of the owner or operator or otherwise, all such claims. The subrogation agreement required by this section must be prescribed and produced by the administrator.
11. No payment will be made until the owner or operator has submitted complete excavation or consultant worksheets along with legible copies of invoices, providing a description of:
  - a. Any work performed.
  - b. Who performed the work.
  - c. Where the work was performed.
  - d. The dates the work was performed.
  - e. The unit cost.
  - f. The total amount.
12. The owner or operator must submit, prior to any payment, evidence that the amounts shown on the invoices for which the payment is requested were either paid in full by the owner or operator or, if the owner or operator has assigned the right to receive payment from the fund, that a contractor hired by

the owner or operator has expended time and materials for which payment must be made. The evidence must be accompanied by either:

- a. Business receipts indicating payments received;
  - b. Canceled checks;
  - c. The certification of a certified public accountant that the expenses for which reimbursement is requested have been paid in full; or
  - d. Unpaid invoices from a contractor for time and materials expended broken out by unit costs.
13. Prior to payment, the fund must be satisfied that the corrective action taken has met all state, federal, and local laws or regulations concerning such a cleanup and that the corrective action has adequately addressed the release in terms of public health, welfare, and the environment.

**History:** Effective November 25, 1991; amended effective June 1, 1994.

**General Authority:** NDCC 28-32-02; S.L. 1991, ch. 299, § 5

**Law Implemented:** S.L. 1991, ch. 299, §§ 18, 20, 23, 24

**45-10-02-07. Third-party damages.** No reimbursement may be made for damage to employees as defined by the North Dakota Workers' Compensation Act or agents of the owner or operator.

**History:** Effective November 25, 1991.

**General Authority:** NDCC 28-32-02; S.L. 1991, ch. 299, § 5

**Law Implemented:** S.L. 1991, ch. 299, §§ 26, 27

**45-10-02-08. Advisory board.** The administrator shall keep the board apprised of the fund's general operations. Prior to making any payment, the administrator shall review all claims against the fund with the advisory board either through written correspondence, telephone conference calls, or board meetings.

**History:** Effective November 25, 1991.

**General Authority:** NDCC 28-32-02; S.L. 1991, ch. 299, § 5

**Law Implemented:** S.L. 1991, ch. 299, § 3

**45-10-02-09. Report to legislative assembly and governor.** This report, as required by section 29 of chapter 299 of the 1991 North Dakota Session Laws, must include, but is not limited to, the following information:

1. Total number of releases.

2. Total number of releases denied because of nonregistered tanks.
3. Total number of releases denied because of expenses not exceeding five thousand dollars.
4. Total number of releases investigated by the fund.
5. Total amount paid out for releases and the average payout per release.
6. Brief summary of the fund's operating expenses.
7. Recommended changes, if any, to 1991 House Bill No. 1439.
8. Recommendation to continue or terminate the program.

**History:** Effective November 25, 1991.

**General Authority:** NDCC 28-32-02; S.L. 1991, ch. 299, § 5

**Law Implemented:** S.L. 1991, ch. 299, § 29

*Senator Traynor  
the amendments submitted by  
the ~~the~~ proposals was good  
but some of our problems  
Part 2 of this bill  
Par. 1 & 2  
should be considered  
by the committee  
or the process.*

TESTIMONY BY ALBERT A. WOLF  
ON BEHALF OF  
NORTH DAKOTA TRIAL LAWYERS ASSN.  
BEFORE  
SENATE NATURAL RESOURCES COMMITTEE  
March 4, 1999  
Engrossed HB 1404

Chairman Traynor and Members of the Senate Natural Resources Committee.

My name is Albert Wolf and I am a practicing attorney in the city of Bismarck and appearing on this bill on behalf of the North Dakota Trial Lawyers Association. We appear here on behalf of our members, but more importantly on behalf of citizens of North Dakota who may seek representation in connection with claims arising from the recent petroleum products from tanks or pumping systems that may be causing damage to their properties adjoining the location of such tanks or in the proximate area, or as such release of products may affect or have affected water aquifers serving the water supply in the area. This may of course be farmers or ranchers in the area as to water supply or use of their lands or rural water systems dependant on clean water in the aquifers or streams.

We are concerned only with Section 4 of the bill which sets a very dangerous precedent in trying to immunize certain segments of our population or economy from people who may have sustained a loss resulting from leakage from tanks or other petroleum systems. There is serious constitutional questions raised by this provision that would bar the right of a party from bringing an action against the owner/operator or dealer for release of petroleum products into the environment or the ground and ground water in the area. This may have occurred prior to the effective date of this act or prior to the time that the department has inspected the tank release site as to whether the remediation of the release still poses a measurable health hazard.

There is also a serious question about delegation of legislative authority to an administrative agency without review of that authority by the court. While government by administrative agencies is a reality in every level of government out of necessity, there are always specific review and appellate procedures provided in such situations, particularly an ultimate appeal to the courts from arbitrary actions or oversights on the part of the administrative agency.

There is no standard established here by which the health department would make the determination as stated in Section 4 "when a release no longer imposes a measurable public health hazard to human health or the environment for the foreseeable future and all reasonable and necessary corrective action has been taken to remediate the adverse environmental affect of the release." That factual and legal determination made by the Health Department must be subject to review in order protect the rights of people that are affected by such a ruling. There also must be notice given to the parties affected by such a ruling of a proceeding whereby such determination is made by the Health Department where interested parties may appear and be represented and present evidence or challenge evidence relied upon by the Health Department or the owner or operator or dealer and a right to appeal from such determination.

One could say that these rights are all implied in the process because the Health Department is an administrative agency, but (1) the notice requirements, (2) the definition of interested parties who may appear and participate in the proceedings, (3) the time tables for appearance, and (4) appeal rights are not specified in this provision. Therefore, due process as it is known under the law has not been provided for in limiting or depriving the right of action in the courts for damages resulting to a claimant under Section 9 of the North Dakota Constitution.

I am submitting prepared amendments that would create some significant limitations upon claims against the fund after the effective date of this act, would not foreclosure such action, against the owner, operator, or deals, and thereby create serious constitutional questions. There are statutes of limitation that run from the date the claimant knew or should have known of the injuries or conditions upon which the claim is based.

Sections 28-26-01 and 28-26-31, NDCC, provide for costs and attorneys fees to be awarded to a defendant which would include this fund, against a party who files frivolous pleadings or pleadings not made in good faith, or made without reasonable cause.

*Senator Traynor  
the amendments  
proposed by the  
proponents may  
deal with our  
concerns.  
I would suggest  
that my testimony  
Page 2  
Pa 1 & 2  
on due  
process*

*Alway*

ND Trial Lawyers Assn. - 3/4/99

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL 1404

Page 2, line 26, remove "If the department has made this"

Page 2, remove lines 27 and 28, and replace with:

"If a claim is made for payment from the fund thereafter, a presumption shall exist from the department's determination that the adverse environmental effect of the release has been remediated until rebutted by credible evidence that there remains a measurable public health hazard to human health or the environment that was the proximate cause of the condition upon which the claim was based, or that the claim arose out of the conditions that existed before the remediation."

Renumber accordingly.

HB 1404  
3/24/99  
Francis Schwindt

#1

**House Bill No. 1404  
Before the Appropriations Committee  
North Dakota Senate**

**Testimony of Francis "Fritz" Schwindt  
Section Chief, Environmental Health Section  
North Dakota Department of Health  
March 24, 1999**

The Department supports HB 1404 in its current form with the Senate amendments. These changes provide assurances that third party judgments will be paid by the fund, without forcing the Department to require removal of contaminated soils.

Sections 18, 19, and 20 of the Act require the administrator to reimburse an eligible owner for "corrective action" to the extent that the costs were "actually incurred" and were "reasonable." The term "corrective action" is defined to include actions taken to "minimize, contain, eliminate, mitigate, or clean up a release" as well as damages to third parties for "bodily injury or property damage which is determined by the board to be eligible for reimbursement." The statute does not dictate what remediation is "reasonable or necessary," leaving that determination to the discretion of the responsible agencies. However, that discretion is governed by federal and state rules.

The Department has provided oversight in several hundred assessments to determine the extent and severity of contamination from a release and their potential impact on human health or the environment. When a release occurs, the department requires the responsible party to assess the potential damage from the release by identifying the extent of the contamination, local geology, hydrology and potential impacts on receptors. Based on this information, the Department requires that the responsible party take specific actions to minimize the risk or impacts. These actions may include simply removing the contaminated soil or installing more sophisticated remediation technology. In cases where the contamination is shown to be stable and the product is being broken down in the soil through natural bio-remediation, the Department may simply require the responsible party to monitor the contamination over a period of years.

It is important to note that current technology limits the extent an assessment can identify conditions below the land surface. As a result, determinations made from these assessments are not absolute. We believe the Department must remain flexible and be able to modify their initial determinations as new information is collected over several years. Because of the many variables in the environment and the limits of existing technology, the Department cannot



provide responsible parties with the assurance that a site is 100 percent clean and will have no chance of adversely impacting the environment in the foreseeable future. The best we can do is require no further action at a location based upon the information collected at a point in time. The requirement for future action can never be ruled out as experience has shown us that site conditions can change.

The amendments added to section 4 of HB 1404 address the concerns the Department had with the original bill. The first two paragraphs take away the ability of the advisory board to second guess payment of a judgment to third parties awarded by a court, provided the damages fall within the purview of the Act as defined in section 2, subsection 4, of Chapter 299 of the 1991 Session Laws. This was of special concern to petroleum marketers.

The next paragraph makes clear that the per person liability limits imposed by N.D.C.C. § 32-12.2-02 apply, and that the maximum liability of the Fund, including liability to third parties, cannot exceed, for any release site, the maximum allowed by section 18 of Chapter 299 of the 1991 Session Laws.

The fourth paragraph prohibits a third party from bringing an action against an owner, operator, or dealer more than three years after a corrective action plan has been approved by the Department, provided the owner, operator, or dealer fully complies with the corrective action plan. This change does not alter any statutes of limitation that currently apply under negligence or tort law. It does give an owner, operator, or dealer added protection from legal action when they fully implement and comply with a corrective action plan for three years, and continue compliance with the plan after that three-year period. But it also protects adjoining landowners if the owner, operator, or dealer fails to comply with the corrective action plan.

The last paragraph clarifies the standard that the Department is to apply to protect public health and the environment. It requires the Department to determine whether a release “currently threatens public health and the environment” and to determine what corrective action is “reasonably necessary to protect public health or the environment.” It does not require clean up and removal in each case where a measurable amount of petroleum product is released to the soil, but only when the release poses a threat to health or the environment. Further, it continues to allow the Department to require more aggressive clean up of a site when conditions change and a release site becomes a health or environmental threat. The fund remains responsible for \$980,000 of the first million dollars of this cost.

The Department urges a “do pass” of 1404, including the amendments that were added by the Senate.

HB 1404  
3/24/99  
Bob Olson

#2

**TESTIMONY**

**HOUSE BILL NO. 1404**

**SENATE APPROPRIATIONS COMMITTEE**

**MARCH 24, 1999**

**BOB OLSON, ADMINISTRATOR  
PETROLEUM TANK RELEASE COMPENSATION FUND  
NORTH DAKOTA INSURANCE DEPARTMENT**

My name is Bob Olson and I am the administrator of the Petroleum Tank Fund, which was established by the 1989 Legislature (1991 ND Session Laws, Chapter 299). The Petroleum Tank Fund is under the management of the Commissioner of Insurance.

In response to the federal requirement (U.S. Environmental Protection Agency (EPA)) imposed upon tank owners, and the lack of affordable insurance coverage for such risks, (\$1 million for costs of cleanup and third party liability caused by petroleum contamination) North Dakota, along with many other states, established their own Fund to provide this coverage. In 1991, EPA approved the North Dakota Fund as an "acceptable financial assurance mechanism" for North Dakota tank owners.

Over the last 9 ½ years this Fund has worked well to help many tank owners in North Dakota clean up the environment. There have been a total of 624 claims submitted to the Fund. The Fund has reimbursed tank owners just under \$3 million for expenses they incurred to clean up petroleum contamination from the soil and water.

The Fund has total reserves of \$7.5 million of which approximately \$3 million is anticipated to be used to cover the costs involved with the 165 open claims on file.

The Fund reimburses an owner 90% of reasonable and necessary cleanup costs between \$5,000 and \$155,000 and then reimburses 100% of costs between \$155,000 and \$1 million. This represents a total exposure to the Fund of \$980,000 per occurrence.

We are in favor of the bill as presented, except for one concern we have which I would like to address at this time. This concern has to do with the registration fee, which is page 1 of the bill, lines 19 through 24, specifically lines 20 and 21, addressing the reduction in annual registration fees.

The tank owners now pay an annual registration fee of \$75 for each aboveground tank (AST) and \$125 for each underground tank (UST), which had been bringing into the Fund approximately \$640,000 annually. This year's collections are down to approximately \$618,000 because of upgrading to new larger tanks. This bill would reduce the fees to \$50 for each tank no matter if it were aboveground or underground. This reduction would reduce the annual registration fee by approximately 50% which would be between \$300,000 - \$320,000.

The concern we have is that there are still a number of unknowns in North Dakota regarding tanks and petroleum contamination, which could increase the liability of the Fund as follows:

- a) One of the unknowns is that the UST sites that have been closed as of December 22, 1998 have one year to remove their tanks from the ground. It appears there are at least 125 sites (approximately 370 tanks) that still need to remove their UST's. We have no

way of knowing if there is contamination at these sites, but looking back it would appear that somewhere between 35% to 50% of these sites will have some contamination, keeping in mind that at each site there is a possibility that \$980,000 could be paid out from the Fund.

- b) Our actuary did a review of the Fund and his recommendations are that the registration fee be somewhere between \$85 and \$100 per tank for the next 2 years. It also showed that actuarially we need \$5 to \$6 million in reserves for the existing claims, keeping in mind there will be more claims in the next year and a half.
- c) The Fund provides third party liability, which includes off premises cleanup and bodily injury caused by petroleum contamination. This is a large unknown by itself. Any one of the 624 claims we have already opened, along with the 125 sites that still need to remove their tanks, could have a liability claim brought against them. This is an “ongoing” exposure for that tank owner. We need to make sure there is money there when and if they need it.
- d) Another part of this bill, which also comes into play regarding our concern of fee reduction, would be on page 2, section 19, and lines 10 through 17. What this does is allows the tankowner of some sites that have had cleanup ongoing prior to April of 1989 to turn into the Fund their cleanup expenses incurred after this date, up to a maximum of \$25,000 per location. However, the original legislation was effective on July 1<sup>st</sup>, as the proposed amendment indicates. There appears to be at least 20 sites this change will bring into the Fund for reimbursement. This will be an additional drain on the Fund’s reserves.

- e) The State Health Department has recently informed me they may require more work be done if the contaminated site requires a phase II site assessment (soil borings and monitoring wells). This will still be site specific, as it has been in the past. Historically they have usually required 3 – 4 soil borings and monitoring wells, if necessary. They may be requiring substantially more borings and monitoring wells so they can initially capture more information. This will very likely increase the costs of cleanup – the average cost for 3 borings and 3 wells is approximately \$4,500. This cost could increase to \$6,000 to \$10,000, depending on the amount of contamination. The cost of cleanup will increase while the fees are being reduced!

The EPA has always been concerned about the small amount of money we collect on an annual basis. We provide them with statistical reports on a quarterly basis. We do not want to jeopardize their approval of this Fund as a financial mechanism. It appears that if a tank owner had to go out and purchase this coverage from a commercial carrier, it would cost them more in annual premium than they are paying at the current rate of \$75 & \$125, along with possibly a larger deductible.

The one thing we do not want to do is reduce fees and then discover we're faced with the need to increase them to stay solvent. We need to make sure the tankowner gets reimbursed his reasonable and necessary cleanup and/or third party liability costs.

In closing, we believe that reducing the fees at a time when there are a number of unknown potential exposures to the Fund would unnecessarily jeopardize the solvency of the Fund.

I would be happy to take any questions you may have.

01/25/1999		
<b>Underground Storage Tanks (UST)</b>		
OB = Old Bill - 7/1/89 through 4/18/91		
NB = New Bill - After 4/18/91		
Claim #	Name of Tank Owner	Amount Paid
NB-001	United Parcel Service	3,094.87
NB-007	Cenex - Bismarck	18,365.99
NB-011	Vision Energy	8,070.84
NB-012	Farmers Union - Westhope	23,835.86
NB-014	North Dakota State University	21,331.19
NB-015	Walhalla Co-op	19,034.74
NB-018	Superpumper #26 - Jamestown	21,103.43
NB-020	Blue Rock Company	578.30
NB-024	Detienne Associates	66,095.93
NB-025	Hagens Conoco	13,540.89
NB-029	Highway 83, Inc	10,076.40
NB-031	Simonson Station - Minot	2,812.10
NB-039	Jims Oil & Service	6,690.04
NB-057	Lileks Oil	44,852.38
NB-059	United Parcel Service	5,343.30
NB-060	City of Bismarck	18,684.88
NB-061	United Parcel Service	2,161.35
NB-065	Farmers Union - New Salem	1,105.12
NB-068	Fargo Paint & Glass	15,918.02
NB-069	Homan Feed & Seed	5,163.30
NB-071	Hawks Pit Stop	7,403.78
NB-072	Royal Diede	27,339.78
NB-073	L & T Investments	3,057.20
NB-074	Fargo Municipal Airport	28,230.19
NB-080	Cass Clay Creamery	39,337.11
NB-084	Amoco - Fargo	77,870.09
NB-085	Amoco - Mandan	18,330.66
NB-089	Goose River Bank	2,794.60
NB-091	Stop N Go #439 - Valley City	4,840.21
NB-095	Nygaard Oil	4,531.95
NB-101	Amoco - Jamestown	72.23
NB-103	Hiway Service	9,786.62
NB-104	J & L Development	2,401.95
NB-105	Timothy Nordby	4,287.29
NB-108	Marcia & John Goodrich	7,864.65
NB-112	M & H #22 - Dickinson	8,851.50
NB-114	CFJ Property - Flying J	9,065.34
NB-116	Farmers Union - Hazen	27,651.56
NB-117	Minot Farmers Elevator	3,609.60
NB-118	Eslingers Conoco	375.08

01/25/1999		
<b>Underground Storage Tanks (UST)</b>		
OB = Old Bill - 7/1/89 through 4/18/91		
NB = New Bill - After 4/18/91		
<b>Claim #</b>	<b>Name of Tank Owner</b>	<b>Amount Paid</b>
NB-119	Amoco - Belfield	18,414.14
NB-120	Farmers Union - Carrington	8,547.91
NB-121	Farmers Union - Pettibone	7,018.02
NB-122	Lewis Truck Line	173.92
NB-123	Ehlen Partnership LTD	12,755.61
NB-125	DOT	7,340.40
NB-126	Doyles Yellow Checker Cab	4,338.08
NB-127	Dons Service Center	18,555.77
NB-128	Mini Mart #673 - Minot	11,491.14
NB-129	Simonson - Grand Forks	2,391.52
NB-130	Brians I-29	9,147.60
NB-131	North Dakota State Hospital	1,500.07
NB-132	ARC Thrift Shop	4,291.99
NB-135	Doug Sukut	21,153.97
NB-136	Crosby Self Serve	6,503.29
NB-138	Lafarge Dakota	9,096.54
NB-139	Cenex - Ashley	342.63
NB-141	City of West Fargo	6,652.80
NB-142	Deitrich Bus Service	9,445.05
NB-143	Star City Motor	1,880.55
NB-153	Superpumper #21 - Minot	6,859.69
NB-154	Degelman Industries	1,566.00
NB-155	Schwarz Oil & Implement	2,323.35
NB-156	Farmers Union - Kulm	11,182.61
NB-159	Barnes County Highway Dept	1,965.45
NB-170	Balsam Inc	11,634.71
NB-181	Borders Cities Service Center	18,329.85
NB-182	Lilleberg Oil	2,778.21
NB-192	M & H #15, Jamestown	5,854.69
NB-194	Star Oil	12,206.70
NB-200	Simonson - Grand Forks	1,910.25
NB-210	Columbus Public School	3,213.61
NB-211	Ernest Charchenko	3,568.85
NB-215	Dans Oil & Service	4,950.00
NB-220	Cenex - Mandan	5,128.29
NB-234	Royal Diede	23,789.02
NB-238	Sinclair Oil Corporation	4,033.80
NB-245	Independent Oil	55,413.17
NB-248	Farmers Union - Drake	9,032.72
NB-254	Medora Convenience	3,863.06



01/25/1999		
<b>Underground Storage Tanks (UST)</b>		
OB = Old Bill - 7/1/89 through 4/18/91		
NB = New Bill - After 4/18/91		
<b>Claim #</b>	<b>Name of Tank Owner</b>	<b>Amount Paid</b>
NB-257	HHH Investment	41,180.95
NB-258	Helberg & Ackre	1,890.00
NB-263	Stan Puklich Chevrolet	4,966.81
NB-268	Harleys Arrowhead	186,742.39
NB-271	Superpumper #1 - Hillsboro	2,091.71
NB-273	Amoco #8756 - Dickinson	2,758.93
NB-280	M & H #13 - Mandan	16,636.97
NB-281	Newman Outdoor Advertising	39,720.60
NB-283	Halls Standard	2,636.42
NB-284	Laffens Food & Gas	10,974.34
NB-288	Gjervold Motor Company	25,655.25
NB-290	Dinsdale Service	2,271.38
NB-293	DOT - Fargo	21,426.53
NB-294	Pan-O-Gold Baking	13,781.51
NB-309	GTR Partnership	5,864.58
NB-311	Ernie Brookins	27,363.15
NB-315	Dons Broadway Service	24,828.75
NB-316	Stop N Go #427 - Fargo	18,928.35
NB-318	Conokwik Stop North	5,827.06
NB-319	Farmers Union - Minot	2,636.78
NB-333	Amoco #8705 - Bismarck	5,933.25
NB-334	Independent Oil	5,084.55
NB-335	Behms Truck Stop	19,210.50
NB-360	Concrete Sectional Culvert Co	1,796.13
NB-362	Mini Mart #671 - Minot	12,808.80
NB-366	Hiway Standard	10,451.62
NB-367	Farmers Union - Fairmount	7,265.21
NB-369	Farmers Union - Harvey	16,803.72
NB-370	Simonson - Williston	7,721.06
NB-371	Mini Mart #619 - Fargo	1,559.94
NB-372	Johnson Bros NW Beverages	2,371.86
NB-376	Farmers Union - Kenmare	312.93
NB-377	Farmers Union - Carpio	3,574.27
NB-379	Farmers Union - Glen Ullin	3,956.40
NB-386	Super Valu - Fargo	19,124.55
NB-392	Circle R Inc	6,610.80
NB-396	Kum & Go #810 - New Town	1,498.77
NB-398	OK Tire - Williston	42,102.26
NB-402	Guthries Stop & Shop	12,036.00
NB-404	Farmers Union - General Store - Dickinson	5,267.03

01/25/1999		
<b>Underground Storage Tanks (UST)</b>		
OB = Old Bill - 7/1/89 through 4/18/91		
NB = New Bill - After 4/18/91		
<b>Claim #</b>	<b>Name of Tank Owner</b>	<b>Amount Paid</b>
NB-406	Simonson - Dickinson	28,901.84
NB-410	Farmers Union - Lidgerwood	6,409.98
NB-413	Schlagel Oil Co	12,908.41
NB-432	Blumhardt Chevrolet & Pontiac	7,954.20
NB-437	Farmers Union - Beach	508.50
		1,646,560.39
OB-005	West Plains Electric Coop	83,250.00
OB-011	Eckman Auto Service	2,709.13
OB-017	Johns I-94 Standard	16,458.80
OB-019	MDU - Williston	610.45
OB-021	Farmers Union - Lisbon	10,642.46
OB-029	Mohler Oil	20,818.67
OB-036	Amoco #9519 - Williston	13,153.95
OB-062	Landers Interstate	2,751.81
OB-067	Stop N Go #422 - Fargo	48,146.09
OB-069	Froelich Oil	6,731.55
OB-080	Williston Fuel	4,112.55
OB-097	Stop N Go #411 - Wahpeton	702.68
OB-107	Dons FM Oil	2,397.78
OB-108	A & M Service	2,064.09
OB-109	Peter Bosch	5,464.26
OB-110	Farmers Union - Watford City	50,050.73
OB-111	Jims Ready Mix	6,405.89
OB-113	Mayport Gas	45,885.70
OB-114	Valdak Corporation	27,392.99
OB-119	Valdak Corporation	14,536.80
OB-120	H J Discount Gas	35,365.69
OB-127	Food N Fuel #1501 - Fargo	27,865.72
OB-131	Pepsi Cola Bottling	3,228.09
OB-134	Mohler Oil	8,633.50
OB-140	Froelich Oil - Mandan	7,228.47
OB-147	Thorstad Service	1,227.62
OB-148	M & H #9 - Grand Forks	33,643.15
OB-149	Dans Oil & Service	3,684.83
OB-152	Farmers Union - Fargo	13,183.94
OB-153	Ryder Truck Rental	31,245.97
OB-157	US West Communication	5,392.17

01/25/1999		
<b>Underground Storage Tanks (UST)</b>		
OB = Old Bill - 7/1/89 through 4/18/91		
NB = New Bill - After 4/18/91		
<b>Claim #</b>	<b>Name of Tank Owner</b>	<b>Amount Paid</b>
OB-160	Arnies Amoco	37,253.18
OB-165	Berg Grain & Produce	9,016.43
OB-167	Parkway Ford Sales	4,697.55
OB-168	Nature Conservancy	2,400.89
		588,353.58
	160 Sites	2,234,913.97
	Average Per Site	13,968.21

01/25/1999		
<b>ABOVE GROUND STORAGE TANKS (AST)</b>		
OB = Old Bill - 7/1/89 through 4/18/91		
NB = New Bill - After 4/18/91		
<b>Claim #</b>	<b>Name of Tank Owner</b>	<b>Amount Paid</b>
NB-019	Eott Energy Corporation	21,407.80
NB-026	Melroe Company	3,696.25
NB-027	Ferrellgas - Dickinson	13,088.37
NB-033	Thompson Brothers	4,247.14
NB-034	Vining Oil	1,922.92
NB-053	Chet's Super Service	4,769.08
NB-066	Northern Improvement	15,548.63
NB-070	Johnson Oil	3,223.12
NB-099	Farmers Union - Epping	22,371.75
NB-110	Farmers Union - Rolette	14,887.76
NB-111	Korsmo oil & Supply	5,983.50
NB-115	Ferrellgas - Watford City	12,363.30
NB-140	Farmers Union - Glenburn	1,793.16
NB-144	Farmers Union - Drayton	2,496.30
NB-146	Kist Livestock	6,088.34
NB-169	City of Dickinson	1,822.05
NB-183	Tuttle Farmers Elevator	95,831.13
NB-331	Dale's Cash Suply	28,451.18
NB-340	Gwinner Oil	12,671.55
NB-341	Leonard Oil	6,782.78
NB-363	B & N Oil	52,995.12
NB-394	Lawson Oil	15,214.01
NB-395	Vining Oil	4,710.74
		<b>352,365.98</b>
OB-063	Keith's Oil	6,388.06
OB-068	Tower Fuel Stop	15,188.56
OB-083	Gordy's Inc	24,460.20
OB-088	Baseview Petroleum	5,404.99
OB-116	Permans, Inc	27,014.26
		<b>78,456.07</b>
	28 Sites	<b>430,822.05</b>
	Average Per Site	<b>15,386.50</b>

# PETROLEUM TANK RELEASE COMPENSATION FUND

NORTH DAKOTA INSURANCE DEPARTMENT  
925 BASIN AVENUE, BISMARCK, ND 58504

January 1999

## CLAIMS:

Number of Open Claims: 165  
Amount Reserved for These Claims: \$982,600.00

Number of Old Bill Claims: 168  
Number of New Bill Claims: 456  
Total number of Claims: 624

Amount paid on claims this month: 0

Total Amount Paid on Old Bill Claims: 811,259.36  
Total Amount Paid on New Bill Claims: 2,005,093.18  
Total Amount Paid on All Claims: \$2,816,352.54

## REGISTRATIONS:

Number of Records: 1900  
Number of UST's: 2395  
Number of AST's: 3984

Fees Received this Month: \$ 3,086.25  
Fees Received this Fiscal Year: \$ 618,486.70

Number of Sites Owing Registration Fees: 43  
Amount Owing for Unpaid Registration Fees: \$ 20,938.00

## PETROLEUM TANK RELEASE COMP FUND

	UST	AST
FARM	19	87
COMMERCIAL	248	626
STATE GOV.	61	45
LOCAL GOV.	101	261
PETROMARKETER 1897		2876
OTHER	<u>34</u>	<u>25</u>
TOTAL:	2360	3920