

**February 18, 2021**

**Senate Political Subdivisions Committee  
HB 1059**

Mr. Chairman and members of the Senate Political Subdivisions Committee, my name is Carey Burke and I am with the Associated General Contractors of North Dakota (AGC of ND). The AGC of ND has been in existence since 1951 and is the largest construction trade association in North Dakota representing 400 members who perform all types of commercial construction (highway/bridge, vertical commercial, water/utility) and related construction industries. Prior to working at the AGC, for 22 years I was the 3<sup>rd</sup> generation in a family-owned excavating company in north central North Dakota, so I come to you today not only on behalf of the commercial excavating industry, but as an excavator myself.

The AGC of ND supports two of the three requirements in the bill before you today. The originally submitted bill required the excavator to call 911 immediately when there is damage to a facility that releases any flammable, toxic, or corrosive gas. In house committee, requirement number two was added requiring the excavator to also notify the pipeline operator immediately when there is damage to a facility as I just mentioned. We support those requirements. Most commercial excavators are already calling 911 immediately if they damage an underground facility, followed immediately by a call to the facility owner. However, we oppose the third requirement, which would have the excavator notify the State Unified Spill Reporting System within 24 hours, for two main reasons:

1) Per NDIC 43-02-03-30, such reporting to the Unified Spill Reporting System is already required by the “persons controlling or operating” the damaged facility (language attached). Requiring the excavator to report the damage is redundant, creating unnecessary work not only for the excavator, but for the state as well.

2) Per the NDIC code, the spill reporting system requires information that we, the excavators, are not in the best position to provide and, based on my experience trying to file a report, not able to provide within the required 24 hours with the current system.

For these reasons, we encourage you to remove the third requirement and issue a DO PASS on HB 1059.

Thank you for the opportunity to testify today and I would address any questions of the committee.

NDIC-DMR 43-02-03-30. NOTIFICATION OF FIRES, LEAKS, SPILLS, OR BLOWOUTS.

**All persons controlling or operating any well, pipeline and associated above ground equipment, receiving tank, storage tank, treating plant, or any other receptacle or production facility associated with oil, gas, or water production, injection, processing, or well servicing, shall verbally notify the director immediately and follow up utilizing the online initial notification report within twenty-four hours after discovery of any fire, leak, spill, blowout, or release of fluid. The initial report must include the name of the reporting party, including telephone number and address, date and time of the incident, location of the incident, type and cause of the incident, estimated volume of release, containment status, waterways involved, immediate potential threat, and action taken.**

If any such incident occurs or travels offsite of a facility, the persons, as named above, responsible for proper notification shall within a reasonable time also notify the surface owners upon whose land the incident occurred or traveled. Notification requirements prescribed by this section do not apply to any leak or spill involving only freshwater or to any leak, spill, or release of crude oil, produced water, or natural gas liquid that is less than one barrel total volume and remains onsite of a site where any well thereon was spud before September 2, 2000, or on a facility that was constructed before September 2, 2000, and do not apply to any leak or spill or release of crude oil, produced water, or natural gas liquid that is less than ten barrels total volume cumulative over a fifteen-day time period, and remains onsite of a site where all wells thereon were spud after September 1, 2000, or on a facility that was constructed after September 1, 2000. The initial notification must be followed by a written report within ten days after cleanup of the incident, unless deemed unnecessary by the director. Such report must include the following information: the operator and description of the facility, the legal description of the location of the incident, date of occurrence, date of cleanup, amount and type of each fluid involved, amount of each fluid recovered, steps taken to remedy the situation, root cause of the incident unless deemed unnecessary by the director, and action taken to prevent reoccurrence, and if applicable, any additional information pursuant to subdivision e of subsection 1 of North Dakota Century Code section 37-17.1-07.1. The signature, title, and telephone number of the company representative must be included on such report. The persons, as named above, responsible for proper notification shall within a reasonable time also provide a copy of the written report to the surface owners upon whose land the incident occurred or traveled. The commission, however, may impose more stringent spill reporting requirements if warranted by proximity to sensitive areas, past spill performance, or careless operating practices as determined by the director.

History: Amended effective April 30, 1981; January 1, 1983; May 1, 1992; July 1, 1996; January 1, 2008; April 1, 2010; April 1, 2014; October 1, 2016; April 1, 2018; April 1, 2020.

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Please click here to access the Training materials. Before starting a submission, please watch or read the materials thoroughly to understand both the requirements and the online reporting process.

The State of North Dakota Emergency Response Commission is responsible for the collection and maintenance of North Dakota's EPCRA notifications and reporting of sections 302, 311 and 312 (Tier II). The purpose of this online reporting portal is to provide State and local officials with specific information on hazardous chemicals present at your facility for use in emergency preparedness planning and emergency response.

From January 1, 2021, North Dakota facilities must submit their EPCRA sections 302, 311 and 312 reports using this online reporting system. Updates can also be submitted at any time during the year.

Submission of the Tier II report form by facilities that meet the reporting requirements established under Section 312 of SARA Title III is required. Specifically, facilities are required to report their possession of Extremely Hazardous Substances (EHS) stored at 500 pounds or the Threshold Planning Quantity (TPQ), whichever is less. In addition, facilities must report any hazardous chemical for which a Safety Data Sheet (SDS) is required under the OSHA Hazard Communication Standard, and which is stored in the amount of 10,000 pounds or more. For more information on the list of EHS and their TPQ, or to obtain more information on the reporting requirements, please review the information available on the North Dakota Emergency Response Commission website at <https://www.des.nd.gov/response-section/haz-chem-preparedness-and-response>.

If you have any questions or need assistance, please contact SARA Program Manager at [nddeshazchem@messages.nd.gov](mailto:nddeshazchem@messages.nd.gov) or 701-328-8100.

**IMPORTANT: You must submit a 2020 ANNUAL REPORT to complete your submission for this year! (Submitting a 2021 UPDATE does NOT meet this requirement).**

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**Facility Status Summary**

	Active	Inactive
Facility	0	0

**Billing Summary**  
Total Amount Due : 0.00

**Incident Status**

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Description	Link
Facility Training Video	<a href="#">Click here for the video</a>
Do you need to fill out an Emergency Release Notification? If the answer is YES. Then Click below.	Do you need to fill out an Emergency Release Notification? If the answer is YES. Then Click below.
To view instructions on how to fill out an EPA Trade Substitution Form, Click Below.	To view instructions on how to fill out an EPA Trade Substitution Form, Click Below.
To fill out an EPA Trade Substitution #%%Form, Click Below.	<a href="http://www.epa.gov/oswer/oe1/docs/chem/ts-form.doc">http://www.epa.gov/oswer/oe1/docs/chem/ts-form.doc</a>


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