

ENVIRONMENTAL QUALITY

CHAPTER 253

HOUSE BILL NO. 1108

(Representative Hoverson)
(Senator Magrum)

AN ACT to create and enact a new section to chapter 23.1-01 of the North Dakota Century Code, relating to international climate control regulations.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 23.1-01 of the North Dakota Century Code is created and enacted as follows:

International climate control regulations.

A climate control-related regulation of an international organization, either directly through the organization or indirectly through law or regulation, is not enforceable on this state.

Approved March 22, 2023

Filed March 23, 2023

CHAPTER 254

HOUSE BILL NO. 1089

(Energy and Natural Resources Committee)
(At the request of the Department of Environmental Quality)

AN ACT to create and enact a new subsection to section 23.1-08-03 of the North Dakota Century Code, relating to improving efficiencies in the department of environmental quality; to amend and reenact subsection 1 of section 23.1-08-09 and section 61-28.1-12 of the North Dakota Century Code, relating to improving efficiencies in the department of environmental quality; to repeal section 23.1-08-05 of the North Dakota Century Code, relating to improving efficiencies in the department of environmental quality; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subsection to section 23.1-08-03 of the North Dakota Century Code is created and enacted as follows:

Adopt rules to establish standards and requirements for solid waste pilot projects.

SECTION 2. AMENDMENT. Subsection 1 of section 23.1-08-09 of the North Dakota Century Code is amended and reenacted as follows:

1. The department may issue permits for solid waste management facilities and solid waste transporters. A person may not own, operate, or use a facility for solid waste disposal or transport solid wastes without a valid permit. Upon receipt of a permit application, the department shall give public notice, in the official newspaper of the county in which the facility is to be located, that the department is considering an application for a solid waste management facility. The notice must state the name of the applicant, the location of the facility, and a description of the facility. The department shall require as a condition of a permit for a solid waste management facility, not owned or operated by the state or a political subdivision, that any entity that controls the permitholder agrees to accept responsibility for any remedial measures, closure and postclosure care, or penalties incurred by the permitholder. For purposes of this section, "control" means ownership or control, directly, indirectly, or through the actions of one or more persons of the power to vote twenty-five percent or more of any class of voting shares of a permitholder, or the direct or indirect power to control in any manner the election of a majority of the directors of a permitholder, or to direct the management or policies of a permitholder, whether by individuals, corporations, partnerships, trusts, or other entities or organizations of any type. All permits are ~~nontransferable~~transferable, are for a term of not more than ten years from the date of issuance, and are conditioned upon the observance of the laws of the state and the rules adopted under this chapter.

SECTION 3. AMENDMENT. Section 61-28.1-12 of the North Dakota Century Code is amended and reenacted as follows:

61-28.1-12. Department - Powers and duties - Administration.

The department has the following powers and duties and shall administer the drinking water treatment revolving loan fund as follows:

1. To apply for and accept grants of money from the United States environmental protection agency or other federal agencies which must be deposited in the drinking water treatment revolving loan fund to be used for purposes authorized under the Safe Drinking Water Act, including the following:
 - a. To provide loans or loan guarantees, or other financial assistance, to community water systems and nonprofit noncommunity water systems eligible for assistance from the revolving loan fund.
 - b. As a source of revenue and security for the payment of principal and interest on bonds issued by the state through the public finance authority if the bond proceeds are deposited in the revolving loan fund.
 - c. To buy or refinance debt obligations issued after July 1, 1993, to finance a project eligible for assistance from the revolving loan fund.
 - d. To guarantee or purchase insurance for debt obligations issued to finance a project eligible for assistance from the revolving loan fund.
 - e. To provide other financial and technical assistance and to make any other expenditure authorized under the Safe Drinking Water Act.
 - f. To earn interest before the disbursement of financial or technical assistance.
 - g. To pay administrative expenses associated with the revolving loan fund as authorized under the Safe Drinking Water Act.
2. To administer the drinking water treatment revolving loan fund as established. The department may enter into contracts and other agreements in connection with the operation of the drinking water treatment revolving loan fund to the extent necessary or convenient for the implementation of the drinking water treatment revolving loan fund. The department may combine the financial administration of the drinking water treatment revolving loan fund and the financial administration of the water pollution control revolving loan fund established under chapter 61-28.2. The department may cross-collateralize the drinking water treatment revolving loan fund and the water pollution control revolving loan fund as authorized by the administrator of the federal environmental protection agency under the Safe Drinking Water Act.
3. To administer and disburse funds ~~with the approval of the state water commission~~ and in accordance with section 1452(a) of the federal Safe Drinking Water Act [42 U.S.C. 300j], as amended.
4. To establish assistance priorities and to expend grant funds pursuant to the priority list for the drinking water treatment revolving loan fund, ~~after consulting with and obtaining the approval of the state water commission.~~
5. To adopt rules necessary for administering the drinking water treatment revolving loan fund.

The governor, or the governor's designee, may transfer grant funds from the drinking water treatment revolving loan fund to the water pollution control revolving loan fund

established by chapter 61-28.2 and from the water pollution control revolving loan fund to the drinking water treatment revolving loan fund, as authorized by the Safe Drinking Water Act.

SECTION 4. REPEAL. Section 23.1-08-05 of the North Dakota Century Code is repealed.

SECTION 5. CONTINGENT EFFECTIVE DATE. Section 2 of this Act becomes effective upon the receipt by the legislative council of the certification from the department of environmental quality that solid waste management facility and transporter permit transfer rules have been adopted.

Approved March 20, 2023

Filed March 21, 2023

CHAPTER 255

HOUSE BILL NO. 1090

(Energy and Natural Resources Committee)
(At the request of the Department of Environmental Quality)

AN ACT to amend and reenact section 23.1-08-04 and subsection 2 of section 23.1-08-08 of the North Dakota Century Code, relating to coal combustion residuals and disposal of wind turbine blades; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 23.1-08-04 of the North Dakota Century Code is amended and reenacted as follows:

23.1-08-04. Coal combustion residuals - Present use and disposal deemed acceptable.

Notwithstanding any other provision of law, the legislative assembly deems the present use and disposal of coal combustion residuals to be acceptable and that present regulation allows for the beneficial use of coal combustion residuals in concrete, for other construction applications, and for other innovative uses and allows for safe disposal without coal combustion residuals being regulated as a hazardous waste. For purposes of regulating coal combustion residuals, the term "ground water" means water below the land surface in a zone of saturation. If a federal law or regulation is adopted pertaining to the use and disposal of coal combustion residuals, this section does not prohibit the state from seeking state primacy of the federal program.

SECTION 2. AMENDMENT. Subsection 2 of section 23.1-08-08 of the North Dakota Century Code is amended and reenacted as follows:

2. Except as provided in subsection 3, a person may not place in municipal waste or discard or dispose of in a landfill lead-acid batteries, used motor oil, wind turbine blades, or major appliances.

SECTION 3. EMERGENCY. Section 1 of this Act is declared to be an emergency measure.

Approved February 23, 2023

Filed February 23, 2023

CHAPTER 256

SENATE BILL NO. 2074

(Energy and Natural Resources Committee)
(At the request of the Department of Environmental Quality)

AN ACT to amend and reenact section 23.1-11-08 of the North Dakota Century Code, relating to ground water monitoring.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 23.1-11-08 of the North Dakota Century Code is amended and reenacted as follows:

23.1-11-08. Access for ground water monitoring.

The department may request landowners or operators allow access for monitoring of ground water and of soils at a depth where pesticides may threaten ground water. If the department is denied access by the landowner or operator, the department may apply to any court of competent jurisdiction for authorization to obtain access. The court, upon the application and compliance with chapter 29-29.1, may issue the authorization for the purposes requested. After consultation with the landowner or operator, the department shall conduct the monitoring in a manner that causes the least possible economic impact or hindrance to the landowner's or operator's operations. The names and addresses of landowners and operators who participate in a pesticide ground water monitoring program ~~may not be linked, in any public disclosure, to the findings of the program unless it is determined by rule that a compelling public interest justifies the disclosure. Without that determination, disclosure of the information is a violation of section 12.1-13-01~~ are exempt under section 44-04-18 and section 6 of article XI of the Constitution of North Dakota. This section does not apply to ground water monitoring from wells that were installed or required to be installed by a state agency.

Approved March 14, 2023

Filed March 15, 2023

CHAPTER 257

SENATE BILL NO. 2075

(Energy and Natural Resources Committee)
(At the request of the Department of Environmental Quality)

AN ACT to amend and reenact subsection 13 of section 23.1-12-02 and subdivision a of subsection 1 of section 23.1-12-18 of the North Dakota Century Code, relating to the definition of tank and corrective action reimbursement for petroleum releases.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 13 of section 23.1-12-02 of the North Dakota Century Code is amended and reenacted as follows:

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, ethanol, or biodiesel. The term does not include:
 - a. Tanks owned by the federal government.
 - b. Tanks used for the transportation of petroleum.
 - c. A pipeline facility, including gathering lines:
 - (1) Regulated under the Natural Gas Pipeline Safety Act of 1968.
 - (2) Regulated under the Hazardous Liquid Pipeline Safety Act of 1979.
 - (3) Regulated under state laws comparable to the provisions of law in paragraph 1 or 2, if the facility is an interstate pipeline facility.
 - d. An underground farm or residential tank with a capacity of one thousand one hundred gallons [4163.94 liters] or less or an aboveground farm or residential tank of any capacity used for storing motor fuel for noncommercial purposes. However, the owner of an aboveground farm or residential tank may, upon application, register the tank and be eligible for reimbursement under this chapter.
 - e. A tank used for storing heating oil for consumptive use on the premises where stored.
 - f. A surface impoundment, pit, pond, or lagoon.
 - 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.
- l. An aboveground tank used to feed diesel fuel generators. Upon application, the owner or operator of an aboveground tank used to feed diesel fuel generators may register the tank and is eligible for reimbursement under this chapter.
- m. A portable tank.
- n. A tank with a capacity under one thousand three hundred twenty gallons [4996.728 liters] used to store lubricating oil.
- o. A tank used to store ethanol or biodiesel for wholesale purposes with a capacity of greater than twenty thousand gallons [75708.24 liters].

SECTION 2. AMENDMENT. Subdivision a of subsection 1 of section 23.1-12-18 of the North Dakota Century Code is amended and reenacted as follows:

- a. ~~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, rules relating to infrastructure compatibility, and all rules relating to health and safety which were in effect at the time of the release, the tank was in substantial compliance with all applicable rules of the United States environmental protection agency, the state fire marshal, and the department. The department shall determine substantial compliance by considering:~~
 - (1) The purposes of this chapter;
 - (2) The adverse effect that any violation of the rules may have had on the tank, thereby causing or contributing to the release; and
 - (3) The extent of the remedial action required;

Approved March 14, 2023

Filed March 15, 2023

CHAPTER 258

SENATE BILL NO. 2118

(Energy and Natural Resources Committee)
(At the request of the Department of Environmental Quality)

AN ACT to amend and reenact sections 23.1-15-01, 23.1-15-03, 23.1-15-04, and 23.1-15-05, subsection 1 of section 23.1-15-07, and sections 23.1-15-08 and 23.1-15-09 of the North Dakota Century Code, relating to abandoned motor vehicles; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 23.1-15-01 of the North Dakota Century Code is amended and reenacted as follows:

23.1-15-01. Definitions.

For purposes of this chapter, unless the context otherwise requires:

1. "Abandoned motor vehicle" means a motor vehicle, as defined in section 39-01-01, that has remained for a period of more than forty-eight hours on public property illegally or lacking vital component parts that are essential to the mechanical functioning of the vehicle, including the motor, drive train, or wheels, or is located on private property without consent of the person in control of the property or in an inoperable condition such that it has no substantial potential further use consistent with its usual functions, unless it is kept in an enclosed garage or storage building. It also means a motor vehicle voluntarily surrendered by its owner to a person duly licensed under section 23.1-15-09 permitted scrap iron processor. An antique automobile, as defined in section 39-04-10.4, and other motor vehicles to include parts car and special interest vehicles, may not be considered an abandoned motor vehicle within the meaning of this chapter.
2. "Collector" means the owner of one or more special interest vehicles that collects, purchases, acquires, trades, or disposes of special interest vehicles or parts of special interest vehicles for the person's own use in order to restore, preserve, and maintain a special interest vehicle or antique vehicle.
3. "Commercial towing service" means a registered business in North Dakota that tows motor vehicles.
4. "Department" means the department of environmental quality.
5. "Emergency towing" means the towing of a vehicle due to a motor vehicle accident, mechanical breakdown on public roadway, or other emergency-related incident necessitating vehicle removal for public safety with or without the owner's consent.
6. "Parts car" means a motor vehicle generally in nonoperable condition which is owned by the collector to furnish parts to restore, preserve, and maintain a special interest vehicle or antique vehicle.

7. "Permitted scrap iron processor" means a scrap iron processor holding a valid permit issued by the department under chapter 23.1-08.
8. "Scrap tire" means a tire that is no longer suitable for its original intended purpose because of wear, damage, or defect.
9. "Secured party" means an insurer covering the abandoned motor vehicle under an insurance policy.
10. "Special interest vehicle" means a motor vehicle that is at least twenty years old and has not been altered or modified from original manufacturer's specifications and, because of its historic interest, is being preserved by hobbyists.
- 8-11. "Submerged vehicle" means a motor vehicle or a recreational vehicle as defined in section 39-01-01 or a trailer that is submerged in a body of water.
12. "Unit of government" includes a state department or agency, a county, city, township, or other political subdivision.
9. ~~"Vital component parts" means those parts of a motor vehicle that are essential to the mechanical functioning of the vehicle, including, but not limited to, the motor, drive train, and wheels.~~

SECTION 2. AMENDMENT. Section 23.1-15-03 of the North Dakota Century Code is amended and reenacted as follows:

23.1-15-03. Custody of abandoned motor vehicle.

Units of government may take into custody and impound or request and authorize a commercial towing service to take into custody an abandoned motor vehicle. If requested by an owner, lessee, tenant, or occupant of private property, a commercial towing service may remove and take into custody an abandoned motor vehicle located on the private property.

SECTION 3. AMENDMENT. Section 23.1-15-04 of the North Dakota Century Code is amended and reenacted as follows:

23.1-15-04. Conditions under which an abandoned motor vehicle ~~may be sold immediately~~ is eligible for immediate disposal.

~~When an~~An abandoned motor vehicle for which the value as determined by the party with custody is no more than seven model years of age, is lacking vital component parts, and does not display a license plate currently valid in North Dakota or any other state or foreign country, itone thousand dollars and for which the owner, lienholders, or secured parties cannot be identified with reasonable certainty after a search of the department of transportation records is immediately eligible for disposition and must be disposed of toby a permitted scrap iron processor licensed under section 23.1-15-09, and is not subject to the notification, reclamation, or title provisions of this chapter. Any license plate displayed on an abandoned motor vehicle must be removed and destroyed prior to the purchaser taking possession of the vehicle. An abandoned motor vehicle qualifying for immediate disposal is not eligible for reimbursement of storage costs under section 23.1-15-09.

SECTION 4. AMENDMENT. Section 23.1-15-05 of the North Dakota Century Code is amended and reenacted as follows:

23.1-15-05. Notice to owner and law enforcement of abandoned vehicle.

1. When an abandoned motor vehicle does not fall within the provisions of section 23.1-15-04, the unit of government or commercial towing service taking it into custody shall give notice of the taking within ten days or within ten days after communications from the owner, lienholder, or identifiable secured parties of the abandoned motor vehicle have ceased. The notice must set forth the date and place of the taking, the year, make, model, and serial number of the abandoned motor vehicle, and the place where the vehicle is being held, must inform the owner and any lienholders or identifiable secured parties of their right to reclaim the vehicle under section 23.1-15-06, must state that failure of the owner, lienholders, or identifiable secured parties to exercise their right to reclaim the vehicle within thirty days is deemed a waiver by the owner, lienholders, or secured parties of all right, title, and interest in the vehicle and a consent to the disposal of the vehicle pursuant to section 23.1-15-07, and must state the end date of the thirty-day period during which the owner may reclaim the abandoned motor vehicle.
2. The notice must be sent by certified mail, return receipt requested, to the registered owner, if any, of the abandoned motor vehicle and to all readily identifiable lienholders or secured parties of record. If it is impossible to determine with reasonable certainty the identity and address of the registered owner and all lienholders, the notice must be published once in a newspaper of general circulation in the area where the motor vehicle was abandoned or placed on the official website for the unit of government that initiated the impound process from public property. When posted on a website, the notice must be placed in a designated area on the official website for a minimum of thirty days and must include the information in subsection 1. Published notices may be grouped together for convenience and economy. Failure of the owner, lienholders, or secured parties to exercise the right to reclaim the abandoned motor vehicle by the end of the public notice period is deemed a waiver by the owner, lienholders, or secured parties of all right, title, and interests in the vehicle and a consent to the disposal of the vehicle pursuant to section 23.1-15-07.
3. Subject to section 23.1-15-04, a commercial towing service that takes an abandoned motor vehicle into custody shall provide notice to the law enforcement agency having jurisdiction in the location from which the motor vehicle was towed within twelve hours after completing the tow.
4. Notice under subsection 3 must include:
 - a. The license plate number and state of registration;
 - b. The location from which the abandoned motor vehicle was towed;
 - c. The location to which the abandoned motor vehicle was towed;
 - d. The name, address, and telephone number of the commercial towing service that towed and is storing the abandoned motor vehicle; and
 - e. A description of the abandoned motor vehicle, including make, model, year, and color.
5. A commercial towing service that violates subsection 3 may not collect a storage fee under section 23.1-15-06 and shall return the motor vehicle to the

registered owner at no cost to the owner, lienholder, or identifiable secured party.

SECTION 5. AMENDMENT. Subsection 1 of section 23.1-15-07 of the North Dakota Century Code is amended and reenacted as follows:

1. ~~An~~For any abandoned motor vehicle ~~not valued at~~ more than seven ~~model~~ years of age ~~one thousand dollars~~ taken into custody by a unit of government and not reclaimed under section 23.1-15-06 ~~must be sold to the highest bidder at public auction or sale, following reasonable published notice. The purchaser must be given a receipt in a form prescribed by the department of transportation which is sufficient title to dispose of the vehicle. The receipt also entitles the purchaser to register the vehicle and receive a certificate of title, free and clear of all liens and claims of ownership. The, the license plates displayed on an~~ the abandoned motor vehicle must be removed and destroyed prior to the purchaser taking possession of the vehicle ~~and thereafter the unit of government may:~~
 - a. ~~Sell the abandoned motor vehicle to the highest bidder at public auction or sale, following reasonable published notice. The purchaser must be given a receipt in a form prescribed by the department of transportation which entitles the purchaser to register the vehicle and receive a certificate of title, free and clear of all liens and claims of ownership; or~~
 - b. ~~Obtain a release from the department of transportation which is sufficient title to dispose of the vehicle by a permitted scrap iron processor.~~

SECTION 6. AMENDMENT. Section 23.1-15-08 of the North Dakota Century Code is amended and reenacted as follows:

23.1-15-08. Disposal of abandoned motor vehicles not sold.

When no bid has been received for an abandoned motor vehicle, the unit of government or a commercial towing service that is a ~~licensed~~permitted scrap iron processor may dispose of ~~the abandoned motor vehicle~~ pursuant to ~~contract under~~ section 23.1-15-09.

SECTION 7. AMENDMENT. Section 23.1-15-09 of the North Dakota Century Code is amended and reenacted as follows:

23.1-15-09. ~~Contracts for disposal~~Disposal services - Issuance of licenses~~permits~~ by department of environmental quality - Reimbursement of units of government and commercial towing services for costs.

1. The department may issue a permit to any qualified scrap iron processor desiring to provide its services under this section if the scrap iron processor meets the requirements of this chapter and chapter 23.1-08.
2. A unit of government may ~~contract with~~use the services of any qualified ~~licensed~~permitted scrap iron processor for collection, storage, incineration, volume reduction, transportation, or other services necessary to prepare abandoned motor vehicles, scrap tires, and other scrap metal for recycling or other methods of disposal. ~~The contract~~A unit of government may authorize the ~~contracting a~~permitted scrap iron processor to pay to the owner of any abandoned motor vehicle an incentive payment for the abandoned motor vehicle if it is voluntarily surrendered and delivered to the permitted scrap iron

processor. A unit of government may authorize a permitted scrap iron processor to provide an incentive payment for scrap tires delivered to the permitted scrap iron processor. For purposes of this section, an owner of an abandoned motor vehicle includes only the person that has owned and operated the vehicle for the person's personal or business use.

- ~~2. The department may issue a license to any qualified scrap iron processor desiring to participate in a contract under this section which meets the requirements for solid waste disposers established by the department.~~
- ~~3. Before~~If ~~a unit of government enters a contract with~~uses the services of a permitted ~~scrap iron processor duly licensed by the department, the department may review the contract to determine whether it conforms to the department's plan for solid waste disposal. A contract that does conform may be approved by the department. When a contract has been approved, the department may reimburse the unit of government for the costs incurred under the contract, including incentive payments authorized and made under the contract, subject to the limitations of legislative appropriations.~~
- ~~4. Before a commercial towing service that is a scrap iron processor duly licensed by the department enters a contract with the department, the department may review the contract to determine whether it conforms to the department's plan for solid waste disposal. A contract that does conform may be approved by the department. When a contract has been approved, the~~The ~~department may reimburse the~~ commercial towing service for the costs incurred under the contract that is a permitted scrap iron processor in an amount determined by the department for towing and, up to thirty days of storage charges resulting from taking an abandoned motor vehicle into custody, subject to the limitations of legislative appropriations, and disposal of an abandoned motor vehicle if the owner, lienholders, or secured parties of the abandoned motor vehicle cannot be identified with reasonable certainty after a search of the department of transportation records and publication as provided in subsection 2 of section 23.1-15-05.
- ~~5. The department may remove any submerged vehicle:~~
 - ~~a. Immediately, if the owner, lienholders, or secured parties cannot be identified. The department may use a commercial towing service that is a permitted scrap iron processor to extract, tow, and dispose of a submerged vehicle.~~
 - ~~b. Upon the owner's stated refusal to remove the submerged vehicle or after thirty days from the submerged vehicle entering the water or being discovered in the water if the owner, lienholders, or secured parties are identified after a search of the department of transportation records. The department may use a commercial towing service that is a permitted scrap iron processor for extracting, towing, and disposal of a submerged vehicle. The department may seek reimbursement from the owner for any costs related to extracting, towing, and disposal of the submerged vehicle.~~
- ~~6. The department may demand that a unit of government or a commercial towing service that is a licensed~~permitted ~~scrap iron processor contract for the disposal~~dispose ~~of abandoned motor vehicles, scrap tires, and other scrap metal under the department's plan for solid waste disposal. When~~If ~~the unit of government or the commercial towing service fails to contract~~dispose ~~of the~~

abandoned motor vehicles, scrap tires, or scrap metal within one hundred eighty days of the demand, the department, on behalf of the unit of government, may ~~contract with~~ use the services of any permitted scrap iron processor duly licensed by the department for such disposal.

7. A reimbursement request must be made on a form available from the department and is subject to the limitations of legislative appropriations and the department's discretion.

SECTION 8. EMERGENCY. This Act is declared to be an emergency measure.

Approved April 12, 2023

Filed April 13, 2023