

2025 HOUSE ENERGY AND NATURAL RESOURCES

HB 1058

2025 HOUSE STANDING COMMITTEE MINUTES

Energy and Natural Resources Committee

Coteau AB Room, State Capitol

HB 1058

1/23/2025

Relating to the regulation of aboveground storage tanks; and to provide a penalty.
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11:00 a.m. Chairman Porter opened the hearing.

Members Present: Chairman Porter, Vice Chairman Anderson, Vice Chairwoman Novak, Representatives: Dockter, Hagert, Headland, Heinert, Johnson, Marschall, Olson, Ruby, Conmy, Foss

Discussion Topics:

- Petroleum Release Compensation Fund
- State Tank Fund
- Underground storage

11:01 a.m. Karl Rockman, Deputy Director, DEQ testified in favor and submitted testimony #30840.

11:08 a.m. Mike Rud, President, ND PMA, testified in favor and submitted testimony #31034.

11:11 a.m. Brady Pelton, Vice President, ND Petroleum Council, testified in favor.

11:13 a.m. Jonathan Fortner, Member, Lignite Energy Council, testified in favor.

11:14 a.m. Kate Klossner, Government Affairs Manager, Marathon Petroleum Corporation, testified in favor and submitted testimony #31037.

11:18 a.m. Danna Welsh, Director of Government Operations, ONEOK, testified in favor.

11:19 a.m. Travis Zabloutney, President, Magic City Oil, testified in favor.

Additional written testimony:

Tiffanie Fettig, Operations Director, Magic City Oil, submitted testimony in opposition #30971.

Representative Todd Porter submitted testimony in favor #35924.

11:24 a.m. Chairman Porter adjourned the meeting.

Janae Pinks, Committee Clerk for Leah Kuball, Committee Clerk



Testimony in Support of
House Bill No. 1058
House Energy and
Natural Resources Committee
January 23, 2025

TESTIMONY OF

Karl Rockeman, Deputy Director of the Department of Environmental Quality

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

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

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

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

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

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

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

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

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

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

PROPOSED AMENMENTS TO
House BILL NO. 1058

Introduced by

Energy and Natural Resources Committee

(At the request of the Department of Environmental Quality)

A BILL for an Act to create and enact a new chapter to title 23.1 of the North Dakota Century Code, relating to the regulation of aboveground storage tanks; to amend and reenact subsection 13 of section 23.1-12-02 of the North Dakota Century Code, relating to the definition of tank; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

Definitions.

For purposes of this chapter:

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

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(3) An interstate pipeline facility regulated under state laws comparable to the provisions of law in paragraph 1 or 2.

g. Surface impoundment, pit, pond, ~~or lagoon~~, storm water collection system or wastewater collection system.

h. ~~Storm water or wastewater collection system.~~ Flow-through process tank or vapor recovery unit tank.

i. Liquid trap or associated gathering lines directly related to oil or gas production and gathering operations.

j. Tank with a capacity under one thousand three hundred twenty gallons [4996.728 liters] used to store lubricating oil.

k. Tank used to store ethanol or biodiesel for wholesale purposes with a capacity greater than twenty thousand gallons [75708.24 liters].

l. Tank, liquid trap, gathering line, or other facility associated with the exploration, development, or production of oil, gas, or geothermal resources controlled under title 38.

m. Tank that is located at or is part of a petrochemical plant, a syngas plant, a fertilizer plant, a petroleum or renewable fuels refinery, an electric energy conversion facility, an electric transmission related facility, including associated transloading facility.

n. Asphalt tank.

o. 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.

p. Tank used for the storage of propane.

q. Tank used to fuel rail locomotives or surface coal mining equipment.

r. Portable tank.

s. Tank listed in subdivisions (d) and (l) of subsection 13 of section 23.1-12-02, unless the owner or operator registers the tank and becomes eligible for reimbursement from the petroleum release compensation fund.

2. "Department" means the department of environmental quality.

3. "Disposal" means the discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste or hazardous waste into or on any land or water so the solid

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waste or hazardous waste or any hazardous constituent of the waste may enter the environment or be emitted into the air or discharged into any waters, including ground water.

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

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

6. "Facility" means all contiguous land and structures, other appurtenances, and improvements on the land used for storing a ~~regulated substance~~ refined petroleum. A facility may consist of several contiguous storage or operational units.

7. "Operator" means a person in control of, or having responsibility for, the daily operation of an aboveground storage tank.

8. "Owner" means a person who holds title to, controls, or possesses an interest in the aboveground storage tank.

9. "Petroleum" means any of the following:

a. Gasoline and petroleum products as defined in chapter 23.1-13.

b. Constituents of gasoline and fuel oil under subdivision a.

c. Oil sludge and oil refuse.

10. "Portable tank" means a storage tank along with its piping and wiring that is not stationary or affixed, including a tank that is on skids.

11. "Refined petroleum products" means gasoline, kerosene, heating oils, diesel fuels, and other compounds as defined by the department.

12. "Release" means any spilling, leaking, emitting, discharging, escaping, leaching, or disposing from an aboveground storage tank into the environment, including ground water, surface water, or subsurface soils.

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

Powers and duties of the department.

The department shall:

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

Aboveground storage tank regulations.

The department shall adopt rules:

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

Fees - Deposit in operating fund.

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

Inspections - Right of entry.

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

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

Imminent hazard.

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

Enforcement penalties.

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

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

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

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

23.1-12-02. Definitions.

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

1. "Actually incurred" means, in the case of corrective action expenditures, the owner, operator, landowner, an insurer, or a contractor hired by the owner, operator, or the landowner has expended time and materials, and only that person is receiving reimbursement from the fund.
2. "Board" means the petroleum release compensation board.
3. "Corrective action" means an action required by the department to minimize, contain, eliminate, remediate, mitigate, or clean up a release, including any remedial emergency measures. The term does not include the repair or replacement of equipment or preconstructed property.
4. "Dealer" means a person licensed by the tax commissioner to sell motor vehicle fuel or special fuels within the state.
5. "Department" means the department of environmental quality.
6. "Electric Energy Conversion Facility" means a plant, addition, or combination of a plant and addition, designed for or capable of generation of wind energy, generation of any means other than wind and its associated facilities.
7. "Electric Transmission Related Facility" means an electric transmission line and associated facilities designed for the transmission of generated electricity or a facility used for utility-scale storage of electricity and connected or adjacent to an electric transmission facility or facility controlled by or serving a utility with electric energy transmission and distribution equipment and materials.
8. "Fund" means the petroleum release compensation fund.
9. "Location" means a physical address or site that has contiguous properties. Noncon-

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tiguous properties within a municipality or other governmental jurisdiction are considered separate locations.

10. "Operator" means a person in control of, or having responsibility for, the daily operation of a tank under this chapter.

11. "Owner" means a person who holds title to, controls, or possesses an interest in the tank before the discontinuation of its use.

12. "Petroleum" means any of the following:

- a. Gasoline and petroleum products as defined in chapter 23.1-13.
- b. Constituents of gasoline and fuel oil under subdivision a.
- c. Oil sludge and oil refuse.

13. "Portable tank" means a storage tank along with its piping and wiring that is not stationary or affixed, including a tank that is on skids.

14. "Release" means any unintentional spilling, leaking, emitting, discharging, escaping, leaching, or disposing of petroleum from a tank into the environment whether occurring before or after the effective date of this chapter, but does not include discharges or designed venting allowed under federal or state law or under adopted rules.

15. "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~~Pipeline facility, including gathering lines and breakout tanks:
 - (1) Regulated under the Natural Gas Pipeline Safety Act of 1968.
 - (2) Regulated under the Hazardous Liquid Pipeline Safety Act of 1979.
 - (3) Regulated under state laws comparable to the provisions of law in paragraph 1 or 2, if the facility is an interstate pipeline facility.
 - (4) Regulated under Title 49, Code of Federal Regulations, part 195.
- d. An underground farm or residential tank with a capacity of one thousand one hundred gallons [4163.94 liters] or less or an aboveground farm or residential tank of any capacity used for storing motor fuel for noncommercial purposes. However, the owner of an aboveground farm or residential tank may, upon

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1 application, register the tank and be eligible for reimbursement under this
2 chapter.

3 e. A tank used for storing heating oil for consumptive use on the premises where
4 stored.

5 f. A surface impoundment, pit, pond, ~~or lagoon~~, storm water collection system or
6 wastewater collection system.

7 g. A flowthrough process tank or vapor recovery unit tank.

8 h. ~~A liquid trap or associated gathering lines directly related to oil or gas production~~
9 ~~or gathering operations~~ Tank, liquid trap, gathering line, or other facility
10 associated with the exploration, development, or production of oil, gas, or
11 geothermal resources controlled under title 38.

12 i. A storage tank situated in an underground area such as a basement, cellar,
13 mine working, drift, shaft, or tunnel, if the storage tank is situated upon or above
14 the surface of the floor.

15 j. A tank used for the storage of propane.

16 k. A tank used to fuel rail locomotives or surface coal mining equipment.

17 l. An aboveground tank used to feed diesel fuel generators. Upon application, the
18 owner or operator of an aboveground tank used to feed diesel fuel generators
19 may register the tank and is eligible for reimbursement under this chapter.

20 m. A portable tank.

21 n. A tank with a capacity under one thousand three hundred twenty gallons
22 [4996.728 liters] used to store lubricating oil.

23 o. A tank used to store ethanol or biodiesel for wholesale purposes with a capacity
24 of greater than twenty thousand gallons [75708.24 liters].

25 p. Tank that is located at or is part of a petrochemical plant, a syngas plant, a
26 fertilizer plant, a petroleum or renewable fuels refinery, an electric energy
27 conversion facility, an electric transmission related facility, including associated
28 transloading facility.

29 q. Asphalt tank.

30 r. Septic tank.

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

Legislative Assembly

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

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

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

Good morning, Chairperson Porter and Energy and Natural Resources committee members.

My name is Tiffanie Fettig. I am the Operations Manager for a bulk fuel dealer in central North Dakota.

I am writing today not in full opposition to HB 1058, but rather I have some concerns that I believe could be resolved with a few wording changes.

In SECTION 1, Definitions, 1. a. - I propose that the wording be changed to

- a. A tank used for storing motor fuel oil for **nonretail** purposes.

It is my understanding that this bill was brought forth partially to require gas stations and retail outlets that currently operate with above ground tanks under the authority of the DEQ with the same AST regulations as underground tanks.

My concern is the unintended consequences that may result due to the current language in the bill.

A lot of small businesses in ND have motor fuel tanks for on-road product, one for off-road product and possibly one for gasoline. These businesses may use the tanks to fuel their fleets, their forklifts, payloaders, service tanks, etc.

The language change above simply excludes commercial businesses that have fuel on hand for their own usage. While these customers may already be required and would continue to be required to register their tanks due to their aggregate capacity, their risk for their tanks causing an event claimable under the tank program is very small if it exists at all.

I do believe the bill, if modified, would provide for a more uniform standard for regulation of underground and above ground retail storage tanks. The bill in it's current form however, has the potential to add undo hardship on businesses that keep small amounts of fuel on hand due to the "Aboveground storage tank regulations" starting on line 30. Allowing the DEQ to adopt one size fits all rules that affect a 2,000 gallon fuel tank versus a 15,000 gallon fuel tank is not appropriate.

In addition, the "Inspections - Right of entry" and "Enforcement penalties" appear to be a slippery slope and adding unnecessary government and regulation, restricting businesses

with portable tanks and small amounts of motor fuel from doing what makes sense for efficiency in their business.

I urge you to review the language in the bill and make the simple change above to ensure businesses that have fuel on hand for nonretail scenarios are not burdened by legislation and another program they will be regulated by but may never be positively helped by as the tank program was intended.

Thank you for your time and consideration.



ND Petroleum Marketers Association

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Testimony—HB 1058

House Energy and Natural Resources Committee

January 23, 2025

Chairman Porter and House Energy and Natural Resources Committee
Members:

For the record, my name is Mike Rud. I am the President of the North Dakota Petroleum Marketers Association. Our Membership represents over 600 retail store fronts from across the state. These retailers do an outstanding job of providing the essential service of fueling the general public. Our Association urges a **“DO PASS” recommendation on HB 1058.**

The DEQ staff have done a great job of explaining why we are before you today. NDPMA fully support these efforts. In fact, NDPMA was the driving force behind this ask. Our Association appreciates how open the DEQ has been to industry input while formulating these rules.

I’m sure many of you are wondering why any business would seek further government regulation? It’s vital to all NDPMA members the State Tank Fund remain solvent. Recently, we have seen some large releases from ASTs feeding retail sites take a heavy toll on the fund. NDPMA feels a need to address this issue for the sake of all the fund’s stakeholders.

For regular bulk plants that aren't feeding retail, the new rules do not really add much of a burden. As previously stated, the solvency of the tank fund is the most important factor in smaller operators being able to stay in business. It's doubtful any private insurance company would insure AST's feeding retail without leak detection on the lines. They will not be able to buy affordable private cleanup insurance.

One way or another, industry will eventually need leak detection on fuel lines from AST's feeding a retail gas outlet. NDPMA would like to see that become a reality before the fund becomes insolvent.

Again, NDPMA Urges a **"DO PASS" recommendation on HB 1058.**



Marathon Petroleum Company LP

500 Old Red Trail NE
Mandan, ND 58554
(701) 667- 2400

January 23, 2025

Dear Chair Porter and members of the House Energy and Natural Resources Committee,

For the record, my name is Kate Klossner and I am the Government Affairs Manager of Marathon Petroleum Corporation and MPLX. Marathon Petroleum Corporation (MPC) is a leading, integrated, downstream energy company, operating the nation's largest refining system, with 2.9 million barrels per day of refining capacity and 13 refineries in 12 states. MPC also owns the general partner and majority limited partner interest in MPLX LP, a midstream company that owns and operates gathering, processing, and fractionation assets, as well as crude oil and light product transportation and logistics infrastructure. MPC and MPLX have assets across the state of North Dakota which include a crude oil refinery in Mandan, a renewable fuel refinery in Dickinson, two rail terminals, natural gas gathering and transporting. MPC is also part of a joint venture which owns and operates the Green Bison Soy Processing plant in Spiritwood, North Dakota.

Thank you for this opportunity to comment on House Bill 1058. MPC supports the work of the Department of Environmental Quality (DEQ) and appreciates their continued collaboration. We have met with DEQ several times to provide feedback on the legislation and highlighted the fact that, though unintended, the language in HB 1058 would have included tanks, vessels, and containers at the Mandan and Dickinson refineries, as well as those at our logistics facilities. Many larger facilities in the state, such as refineries, already meet or exceed requirements and regulations through established integrity programs that include leak detection, reporting of releases, corrective action, tank closure, and financial responsibility.

For reference, our facilities adhere to a robust list of federal standards and inspections which include but are not limited to:



Marathon Petroleum Company LP

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- Pipeline and Hazardous Materials Safety Administration (PHMSA) requirements under Title 49 CFR Part 195 which includes
 - safety standards and reporting requirements for oil and carbon dioxide pipelines
 - detailed requirements on a broad spectrum of areas related to the safety and environmental protection of hazardous liquid pipelines, including minimum requirements for operator qualifications of individuals performing tasks required by the regulations.
 - The Spill Prevention, Control, and Countermeasure (SPCC) requirements from Title 40 set forth regulations for the prevention of, preparedness for, and the response to oil discharges at specific non-transportation-related facilities.
- Environmental Protection Agency (EPA) requirements under Title 40 of the Clean Water Act.

Additionally, MPC's unique assets require specific exemptions, such as those reference in "b," "tank used in transportation of a petroleum product;" "n," "asphalt tank;" and, "h," "vapor recovery unit tank." These particular assets are not located directly at a refinery or pipeline facility, but would otherwise meet the definition of "tank" used to store refined petroleum products. Each of these present a low risk of significant release but nevertheless undergo similar leak detection, reporting, and corrective action as other assets at our facilities.

We appreciate the opportunity to support the changes that DEQ has proposed to HB 1058 and are happy to stand for any questions.

Sixty-ninth
Legislative Assembly
of North Dakota

PROPOSED AMENMENTS TO House BILL NO. 1058

Introduced by

Energy and Natural Resources Committee

(At the request of the Department of Environmental Quality)

1 A BILL for an Act to create and enact a new chapter to title 23.1 of the North Dakota Century
2 Code, relating to the regulation of aboveground storage tanks; to amend and reenact section
3 23.1-12-02 of the North Dakota Century Code, relating to defined terms; and to provide a
4 penalty.

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

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

8 **Definitions.**

9 For purposes of this chapter:

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

1 (3) An interstate pipeline facility regulated under state laws comparable to the
2 provisions of law in paragraph 1 or 2.

3 (4) Regulated under Title 49, Code of Federal Regulations, part 195.

4 g. Surface impoundment, pit, pond, ~~or lagoon,~~ storm water collection system or
5 wastewater collection system.

6 h. ~~Storm water or wastewater collection system.~~ Flow-through process tank or vapor
7 recovery unit tank.

8 i. Liquid trap or associated gathering lines directly related to oil or gas production
9 and gathering operations.

10 j. Tank with a capacity under one thousand three hundred twenty gallons
11 [4996.728 liters] used to store lubricating oil.

12 k. Tank used to store ethanol or biodiesel for wholesale purposes with a capacity
13 greater than twenty thousand gallons [75708.24 liters].

14 l. Tank, liquid trap, gathering line, or other facility associated with the exploration,
15 development, or production of oil, gas, or geothermal resources controlled under
16 title 38.

17 m. Tank that is located at or is part of a terminal, midstream facility, petrochemical
18 plant, a syngas plant, a fertilizer plant, a petroleum or renewable fuels refinery,
19 an electric energy conversion facility, an electric transmission related facility,
20 including associated transloading facility.

21 n. Asphalt tank.

22 o. Storage tank situated in an underground area such as a basement, cellar, mine
23 working, drift, shaft, or tunnel, if the storage tank is situated upon or above the
24 surface of the floor.

25 p. Tank used for the storage of propane.

26 q. Tank used to fuel or service rail locomotives, rail equipment, or coal mining
27 equipment.

28 r. Portable tank.

29 s. Tank listed in subdivisions (d) and (l) of subsection 13 of section 23.1-12-02,
30 unless the owner or operator registers the tank and becomes eligible for
31 reimbursement from the petroleum release compensation fund.

32 2. "Department" means the department of environmental quality.

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

1 14. "Terminal" means a refined petroleum product storage and distribution facility that is
2 supplied directly by pipeline and from which the refined petroleum product may be
3 removed from the rack.

4 15. "Utility" means a person engaged in and controlling electric generation, the transmission
5 of electric energy, or the transmission of water from or to any electric energy conversion
6 facility

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

8 The department shall:

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

15 **Aboveground storage tank regulations.**

16 The department shall adopt rules:

- 17 1. For maintaining a leak detection method or combination of methods designed to
18 identify releases in a manner consistent with the protection of human health and the
19 environment.
- 20 2. For maintaining records of any monitoring of a leak detection system, inventory control
21 system, or tank testing system.
- 22 3. For reporting of any releases and corrective action taken in response to a release from
23 an aboveground storage tank.
- 24 4. For taking corrective action in response to a release from an aboveground storage
25 tank.
- 26 5. For the closure of an aboveground storage tank to prevent a release of regulated
27 substances into the environment.
- 28 6. For designation of an aboveground tank as ineligible for delivery.
- 29 7. For maintaining evidence of financial responsibility for taking corrective action and
30 compensating third parties for bodily injury and property damage caused by sudden
31 and nonsudden accidental releases arising from operating an aboveground storage
32 tank.

1 8. Establishing standards for construction and performance of new aboveground storage
2 tanks.

3 9. For notifying the department or designated local agency of the existence of any
4 operational or nonoperational aboveground storage tank.

5 10. For a permit fee system to own, install, or operate an aboveground storage tank.

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

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

14 **Inspections - Right of entry.**

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

18 1. Enter any place, facility, or site at which an aboveground storage tank is located.

19 2. Inspect and obtain samples of any substance the department has reason to believe
20 may be regulated by this chapter.

21 3. Inspect and copy any records, reports, information, or test results relating to the
22 purposes of this chapter.

23 **Imminent hazard.**

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

27 **Enforcement penalties.**

28 1. If the department finds a person is in violation of a permit, rule, standard, or
29 requirement of this chapter, the department may issue an order requiring the person to
30 comply with the permit, rule, standard, or requirement, and the department may bring
31 an action for a civil penalty, including an action for injunctive relief. An action under this
32 chapter must be brought in the district court for the county in which the violation
33 occurred or in which the party in violation has the party's residence or principal office.

2. A person that violates a provision of this chapter or any rule, standard, or permit condition adopted under this chapter is subject to a civil penalty not to exceed twelve thousand five hundred dollars per day of violation. Each day of noncompliance constitutes a separate violation for purposes of penalty assessments.
3. A person that knowingly makes a false statement or representation in documentation required by this chapter is subject to a civil penalty not to exceed twelve thousand five hundred dollars per violation.
4. An administrative action brought under this chapter must be conducted in accordance with chapter 28-32.

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

23.1-12-02. Definitions.

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

1. "Actually incurred" means, in the case of corrective action expenditures, the owner, operator, landowner, an insurer, or a contractor hired by the owner, operator, or the land-lord has expended time and materials, and only that person is receiving reimburse-ment from the fund.
2. "Board" means the petroleum release compensation board.
3. "Corrective action" means an action required by the department to minimize, contain, eliminate, remediate, mitigate, or clean up a release, including any remedial emer-gency measures. The term does not include the repair or replacement of equipment or preconstructed property.
4. "Dealer" means a person licensed by the tax commissioner to sell motor vehicle fuel or special fuels within the state.
5. "Department" means the department of environmental quality.
6. "Electric Energy Conversion Facility" means a plant, addition, or combination of a plant and addition, designed for or capable of generation of wind energy, generation of any means other than wind and its associated facilities.
7. "Electric Transmission Related Facility" means an electric transmission line and associated facilities designed for the transmission of generated electricity or a facility used for utility-scale storage of electricity and connected or adjacent to an electric transmission facility or facility controlled by or serving a utility with electric energy transmission and distribution equipment and materials.

- 1 8. "Fund" means the petroleum release compensation fund.
- 2 9. "Location" means a physical address or site that has contiguous properties. Noncon-
- 3 iguous properties within a municipality or other governmental jurisdiction are consid-
- 4 ered separate locations.
- 5 10. "Midstream facility" means a facility, that is not a retailer or end user, that receives
- 6 petroleum products by pipeline or truck.
- 7 ~~8.11.~~ "Operator" means a person in control of, or having responsibility for, the daily
- 8 operation of a tank under this chapter.
- 9 ~~9.12.~~ "Owner" means a person who holds title to, controls, or possesses an interest in the
- 10 tank before the discontinuation of its use.
- 11 ~~10.13.~~ "Petroleum" means any of the following:
- 12 a. Gasoline and petroleum products as defined in chapter 23.1-13.
- 13 b. Constituents of gasoline and fuel oil under subdivision a.
- 14 c. Oil sludge and oil refuse.
- 15 ~~11.14.~~ "Portable tank" means a storage tank along with its piping and wiring that is not sta-
- 16 tionary or affixed, including a tank that is on skids.
- 17 ~~12.15.~~ "Release" means any unintentional spilling, leaking, emitting, discharging, escaping,
- 18 leaching, or disposing of petroleum from a tank into the environment whether occurring
- 19 before or after the effective date of this chapter, but does not include discharges or de-
- 20 signed venting allowed under federal or state law or under adopted rules.
- 21 ~~13.16.~~ "Tank" means any one or a combination of containers, vessels, and enclosures,
- 22 whether aboveground or underground, including associated piping or appurtenances
- 23 used to contain an accumulation of petroleum, ethanol, or biodiesel. The term does not
- 24 include:
- 25 a. Tanks owned by the federal government.
- 26 b. Tanks used for the transportation of petroleum.
- 27 c. ~~A pipeline~~ Pipeline facility, including gathering lines and breakout tanks:
- 28 (1) Regulated under the Natural Gas Pipeline Safety Act of 1968.
- 29 (2) Regulated under the Hazardous Liquid Pipeline Safety Act of 1979.
- 30 (3) Regulated under state laws comparable to the provisions of law in para-
- 31 graph 1 or 2, if the facility is an interstate pipeline facility.
- 32 (4) Regulated under Title 49, Code of Federal Regulations, part 195.
- 33 d. An underground farm or residential tank with a capacity of one thousand one

hundred gallons [4163.94 liters] or less or an aboveground farm or residential tank of any capacity used for storing motor fuel for noncommercial purposes. However, the owner of an aboveground farm or residential tank may, upon application, register the tank and be eligible for reimbursement under this chapter.

- e. A tank used for storing heating oil for consumptive use on the premises where stored.
- f. A surface impoundment, pit, pond, ~~or lagoon~~, storm water collection system or wastewater collection system.
- g. A flowthrough process tank or vapor recovery unit tank.
- h. ~~A liquid trap or associated gathering lines directly related to oil or gas production or gathering operations~~ Tank, liquid trap, gathering line, or other facility associated with the exploration, development, or production of oil, gas, or geothermal resources controlled under title 38.
- i. A storage tank situated in an underground area such as a basement, cellar, mine working, drift, shaft, or tunnel, if the storage tank is situated upon or above the surface of the floor.
- j. A tank used for the storage of propane.
- k. A tank used to fuel or service rail locomotives, rail equipment, or surface coal mining equipment.
- l. An aboveground tank used to feed diesel fuel generators. Upon application, the owner or operator of an aboveground tank used to feed diesel fuel generators may register the tank and is eligible for reimbursement under this chapter.
- m. A portable tank.
- n. A tank with a capacity under one thousand three hundred twenty gallons [4996.728 liters] used to store lubricating oil.
- o. A tank used to store ethanol or biodiesel for wholesale purposes with a capacity of greater than twenty thousand gallons [75708.24 liters].
- p. A tank that is located at or is part of a terminal, midstream facility, petrochemical plant, a syngas plant, a fertilizer plant, a petroleum or renewable fuels refinery, an electric energy conversion facility, an electric transmission related facility, including associated transloading facility.
- q. An asphalt tank.

1 r. A septic tank.

2 ~~14.~~17. "Tank integrity test" means a test to determine that a tank is sound and not leaking.
3 For an underground tank, the term means a certified third-party test that meets
4 environmental protection agency leak detection requirements. For an aboveground
5 tank, the term means a test conducted according to steel tank institute SP 001 or
6 American petroleum institute 653.

7 18. "Terminal" means a refined petroleum product storage and distribution facility that is
8 supplied directly by pipeline and from which the refined petroleum product may be
9 removed from the rack.

10 ~~15.~~19. "Third party" means a person who is damaged by the act of a registered owner,
11 operator, or dealer requiring corrective action, or a person who suffers bodily injury or
12 property damage caused by a petroleum release.

13 20. "Utility" means a person engaged in and controlling electric generation, the transmission
14 of electric energy, or the transmission of water from or to any electric energy conversion
15 facility.

PROPOSED AMENMENTS TO
House BILL NO. 1058

Introduced by

Energy and Natural Resources Committee

(At the request of the Department of Environmental Quality)

1 A BILL for an Act to create and enact a new chapter to title 23.1 of the North Dakota Century
2 Code, relating to the regulation of aboveground storage tanks; to amend and reenact section
3 23.1-12-02 of the North Dakota Century Code, relating to defined terms; and to provide a
4 penalty.

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

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

8 **Definitions.**

9 For purposes of this chapter:

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

1 (3) An interstate pipeline facility regulated under state laws comparable to the
2 provisions of law in paragraph 1 or 2.

3 (4) Regulated under Title 49, Code of Federal Regulations, part 195.

4 g. Surface impoundment, pit, pond, ~~or lagoon,~~ storm water collection system or
5 wastewater collection system.

6 h. ~~Storm water or wastewater collection system.~~ Flow-through process tank or vapor
7 recovery unit tank.

8 i. Liquid trap or associated gathering lines directly related to oil or gas production
9 and gathering operations.

10 j. Tank with a capacity under one thousand three hundred twenty gallons
11 [4996.728 liters] used to store lubricating oil.

12 k. Tank used to store ethanol or biodiesel for wholesale purposes with a capacity
13 greater than twenty thousand gallons [75708.24 liters].

14 l. Tank, liquid trap, gathering line, or other facility associated with the exploration,
15 development, or production of oil, gas, or geothermal resources controlled under
16 title 38.

17 m. Tank that is located at or is part of a terminal, midstream facility, petrochemical
18 plant, a syngas plant, a fertilizer plant, a petroleum or renewable fuels refinery,
19 an electric energy conversion facility, an electric transmission related facility,
20 including associated transloading facility.

21 n. Asphalt tank.

22 o. Storage tank situated in an underground area such as a basement, cellar, mine
23 working, drift, shaft, or tunnel, if the storage tank is situated upon or above the
24 surface of the floor.

25 p. Tank used for the storage of propane.

26 q. Tank used to fuel or service rail locomotives, rail equipment, or coal mining
27 equipment.

28 r. Portable tank.

29 s. Tank listed in subdivisions (d) and (l) of subsection 13 of section 23.1-12-02,
30 unless the owner or operator registers the tank and becomes eligible for
31 reimbursement from the petroleum release compensation fund.

32 2. "Department" means the department of environmental quality.

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

1 14. "Terminal" means a refined petroleum product storage and distribution facility that is
2 supplied directly by pipeline and from which the refined petroleum product may be
3 removed from the rack.

4 15. "Utility" means a person engaged in and controlling electric generation, the transmission
5 of electric energy, or the transmission of water from or to any electric energy conversion
6 facility

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

8 The department shall:

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

15 **Aboveground storage tank regulations.**

16 The department shall adopt rules:

- 17 1. For maintaining a leak detection method or combination of methods designed to
18 identify releases in a manner consistent with the protection of human health and the
19 environment.
- 20 2. For maintaining records of any monitoring of a leak detection system, inventory control
21 system, or tank testing system.
- 22 3. For reporting of any releases and corrective action taken in response to a release from
23 an aboveground storage tank.
- 24 4. For taking corrective action in response to a release from an aboveground storage
25 tank.
- 26 5. For the closure of an aboveground storage tank to prevent a release of regulated
27 substances into the environment.
- 28 6. For designation of an aboveground tank as ineligible for delivery.
- 29 7. For maintaining evidence of financial responsibility for taking corrective action and
30 compensating third parties for bodily injury and property damage caused by sudden
31 and nonsudden accidental releases arising from operating an aboveground storage
32 tank.

1 8. Establishing standards for construction and performance of new aboveground storage
2 tanks.

3 9. For notifying the department or designated local agency of the existence of any
4 operational or nonoperational aboveground storage tank.

5 10. For a permit fee system to own, install, or operate an aboveground storage tank.

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

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

14 **Inspections - Right of entry.**

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

18 1. Enter any place, facility, or site at which an aboveground storage tank is located.

19 2. Inspect and obtain samples of any substance the department has reason to believe
20 may be regulated by this chapter.

21 3. Inspect and copy any records, reports, information, or test results relating to the
22 purposes of this chapter.

23 **Imminent hazard.**

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

27 **Enforcement penalties.**

28 1. If the department finds a person is in violation of a permit, rule, standard, or
29 requirement of this chapter, the department may issue an order requiring the person to
30 comply with the permit, rule, standard, or requirement, and the department may bring
31 an action for a civil penalty, including an action for injunctive relief. An action under this
32 chapter must be brought in the district court for the county in which the violation
33 occurred or in which the party in violation has the party's residence or principal office.

2. A person that violates a provision of this chapter or any rule, standard, or permit condition adopted under this chapter is subject to a civil penalty not to exceed twelve thousand five hundred dollars per day of violation. Each day of noncompliance constitutes a separate violation for purposes of penalty assessments.
3. A person that knowingly makes a false statement or representation in documentation required by this chapter is subject to a civil penalty not to exceed twelve thousand five hundred dollars per violation.
4. An administrative action brought under this chapter must be conducted in accordance with chapter 28-32.

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

23.1-12-02. Definitions.

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

1. "Actually incurred" means, in the case of corrective action expenditures, the owner, operator, landowner, an insurer, or a contractor hired by the owner, operator, or the landowner has expended time and materials, and only that person is receiving reimbursement from the fund.
2. "Board" means the petroleum release compensation board.
3. "Corrective action" means an action required by the department to minimize, contain, eliminate, remediate, mitigate, or clean up a release, including any remedial emergency measures. The term does not include the repair or replacement of equipment or preconstructed property.
4. "Dealer" means a person licensed by the tax commissioner to sell motor vehicle fuel or special fuels within the state.
5. "Department" means the department of environmental quality.
6. "Electric Energy Conversion Facility" means a plant, addition, or combination of a plant and addition, designed for or capable of generation of wind energy, generation of any means other than wind and its associated facilities.
7. "Electric Transmission Related Facility" means an electric transmission line and associated facilities designed for the transmission of generated electricity or a facility used for utility-scale storage of electricity and connected or adjacent to an electric transmission facility or facility controlled by or serving a utility with electric energy transmission and distribution equipment and materials.

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

hundred gallons [4163.94 liters] or less or an aboveground farm or residential tank of any capacity used for storing motor fuel for noncommercial purposes. However, the owner of an aboveground farm or residential tank may, upon application, register the tank and be eligible for reimbursement under this chapter.

- e. A tank used for storing heating oil for consumptive use on the premises where stored.
- f. A surface impoundment, pit, pond, ~~or lagoon~~, storm water collection system or wastewater collection system.
- g. A flowthrough process tank or vapor recovery unit tank.
- h. ~~A liquid trap or associated gathering lines directly related to oil or gas production or gathering operations~~ Tank, liquid trap, gathering line, or other facility associated with the exploration, development, or production of oil, gas, or geothermal resources controlled under title 38.
- i. A storage tank situated in an underground area such as a basement, cellar, mine working, drift, shaft, or tunnel, if the storage tank is situated upon or above the surface of the floor.
- j. A tank used for the storage of propane.
- k. A tank used to fuel or service rail locomotives, rail equipment, or surface coal mining equipment.
- l. An aboveground tank used to feed diesel fuel generators. Upon application, the owner or operator of an aboveground tank used to feed diesel fuel generators may register the tank and is eligible for reimbursement under this chapter.
- m. A portable tank.
- n. A tank with a capacity under one thousand three hundred twenty gallons [4996.728 liters] used to store lubricating oil.
- o. A tank used to store ethanol or biodiesel for wholesale purposes with a capacity of greater than twenty thousand gallons [75708.24 liters].
- p. A tank that is located at or is part of a terminal, midstream facility, petrochemical plant, a syngas plant, a fertilizer plant, a petroleum or renewable fuels refinery, an electric energy conversion facility, an electric transmission related facility, including associated transloading facility.
- q. An asphalt tank.

1 r. A septic tank.

2 ~~14.~~17. "Tank integrity test" means a test to determine that a tank is sound and not leaking.
3 For an underground tank, the term means a certified third-party test that meets
4 environmental protection agency leak detection requirements. For an aboveground
5 tank, the term means a test conducted according to steel tank institute SP 001 or
6 American petroleum institute 653.

7 18. "Terminal" means a refined petroleum product storage and distribution facility that is
8 supplied directly by pipeline and from which the refined petroleum product may be
9 removed from the rack.

10 ~~15.~~19. "Third party" means a person who is damaged by the act of a registered owner,
11 operator, or dealer requiring corrective action, or a person who suffers bodily injury or
12 property damage caused by a petroleum release.

13 20. "Utility" means a person engaged in and controlling electric generation, the transmission
14 of electric energy, or the transmission of water from or to any electric energy conversion
15 facility.

2025 HOUSE STANDING COMMITTEE MINUTES

Energy and Natural Resources Committee

Coteau AB Room, State Capitol

HB 1058

2/6/2025

Relating to the regulation of aboveground storage tanks; and to provide a penalty.
--

11:10 a.m. Chairman Porter called the hearing to order.

Members Present: Chairman Porter, Vice Chairman Anderson, Vice Chair Novak,
Representatives: Dockter, Hagert, Headland, Heinert, Johnson, Marschall, Olson, Ruby,
Conmy, Foss

Discussion Topics:

- Committee action

11:16 a.m. Vice Chair Anderson moved to adopt Amendment #35924 (submitted for the January 23, 2025, 9:00 a.m. meeting)

11:16 a.m. Representative Foss seconded the motion.

Voice vote: Motion carried

11:16 a.m. Vice Chair Anderson moved a Do Pass as Amended.

11:16 a.m. Vice Chair Novak seconded the motion.

Representatives	Vote
Representative Todd Porter	Y
Representative Dick Anderson	Y
Representative Anna Novak	Y
Representative Liz Conmy	Y
Representative Jason Dockter	Y
Representative Austin Foss	Y
Representative Jared c. Hagert	Y
Representative Craig Headland	Y
Representative Pat D. Heinert	AB
Representative Jorin Johnson	Y
Representative Andrew Marschall	Y
Representative Jeremy L. Olson	Y
Representative Matthew Ruby	Y

Motion carried: 12-0-1

Representative Foss will carry the bill.

11:18 a.m. Chairman Porter closed the

hearing. *Leah Kuball, Committee Clerk*

RS 2/6/25
1.F10

Sixty-ninth
Legislative Assembly
of North Dakota

PROPOSED AMENDMENTS TO

HOUSE BILL NO. 1058

Introduced by

Energy and Natural Resources Committee

(At the request of the Department of Environmental Quality)

1 A BILL for an Act to create and enact a new chapter to title 23.1 of the North Dakota Century
2 Code, relating to the regulation of aboveground storage tanks; to amend and reenact section
3 23.1-12-02 of the North Dakota Century Code, relating to the department of environmental
4 quality; and to provide a penalty.

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

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

8 **Definitions.**

9 For purposes of this chapter:

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

- 1 (2) The Hazardous Liquid Pipeline Safety Act of 1979 [Pub. L. 96-129,
2 49 U.S.C. 60101 et seq.].
- 3 (3) An interstate pipeline facility regulated under state laws comparable to the
4 provisions of law in paragraph 1 or 2.
- 5 (4) Title 49, Code of Federal Regulations, part 195.
- 6 e. Surface impoundment, pit, pond, ~~or~~ lagoon, storm water collection system, or
7 wastewater collection system.
- 8 f. ~~Storm water or wastewater collection system.~~
- 9 ~~g.~~ Flow-through process tank or vapor recovery unit tank.
- 10 ~~h-g.~~ Liquid trap or associated gathering lines directly related to oil or gas production
11 and gathering operations.
- 12 h. Tank owned by the federal government.
- 13 i. Tank used for the transportation of petroleum.
- 14 j. Tank with a capacity under one thousand three hundred twenty gallons
15 [4996.73 liters] used to store lubricating oil.
- 16 k. Tank used to store ethanol or biodiesel for wholesale purposes with a capacity
17 greater than twenty thousand gallons [75708.24 liters].
- 18 l. Tank that is located at or is part of a terminal, midstream facility, petrochemical
19 plant, syngas plant, fertilizer plant, petroleum or renewable fuels refinery, electric
20 energy conversion facility, electric transmission related facility, and associated
21 transloading facility.
- 22 m. Tank, liquid trap, gathering line, or other facility associated with exploration,
23 development, or production of oil, gas, or geothermal resources controlled under
24 title 38.
- 25 n. Asphalt tank.
- 26 o. Storage tank situated in an underground area, including a basement, cellar, mine,
27 mine drift, mine shaft, or mine tunnel, if the storage tank is situated upon or
28 above the surface of the floor.
- 29 p. Propane storage tank.
- 30 q. Tank used to fuel or service rail locomotives, rail equipment, or coal mining
31 equipment.

1 r. Portable tank.

2 s. Tank under subdivision d or l of subsection 13 of section 23.1-12-02, unless the
3 owner or operator registers the tank and is eligible for reimbursement under the
4 petroleum release compensation fund.

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

6 3. "Disposal" means the discharge, deposit, injection, dumping, spilling, leaking, or
7 placing of any solid waste or hazardous waste into or on any land or water so the solid
8 waste or hazardous waste or any hazardous constituent of the waste may enter the
9 environment or be emitted into the air or discharged into any waters, including ground
10 water.

11 4. "Electric energy conversion facility" means a plant, addition, or combination of a plant
12 and addition, designed for or capable of wind energy generation, or any means of
13 energy generation, and the plant associated facilities.

14 5. "Electric transmission related facility" means an electric transmission line and
15 associated facilities designed for transmission of generated electricity, or a facility
16 used for utility-scale storage of electricity and connected or adjacent to an electric
17 transmission facility or facility controlled by or serving a utility with electric energy
18 transmission, and distribution equipment and materials.

19 6. "Facility" means all contiguous land and structures, other appurtenances, and
20 improvements on the land used for storing a regulated substance. A facility may
21 consist of several contiguous storage or operational units.

22 7. "Midstream facility" means a facility that receives petroleum products by pipeline or by
23 truck. The term does not include a retailer or end user.

24 ~~5-8.~~ "Operator" means a person in control of, or having responsibility for, the daily
25 operation of an aboveground storage tank.

26 ~~6-9.~~ "Owner" means a person who holds title to, controls, or possesses an interest in the
27 aboveground storage tank.

28 10. "Petroleum" means:

29 a. Gasoline or petroleum products as defined in chapter 23.1-13;

30 b. Constituents of gasoline or fuel oil under subdivision a; and

31 c. Oil sludge and oil refuse.

11. "Portable tank" means a storage tank and storage tank piping or wiring that is not stationary or affixed, including a tank on skids.

~~7.12.~~ "Refined petroleum products" means gasoline, kerosene, heating oils, diesel fuels, and other compounds as defined by the department.

~~8.13.~~ "Release" means any spilling, leaking, emitting, discharging, escaping, leaching, or disposing from an aboveground storage tank into the environment, including ground water, surface water, or subsurface soils.

14. "Terminal" means a refined petroleum product storage and distribution facility that is supplied directly by pipeline and from which the refined petroleum product may be removed from the rack.

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

Powers and duties of the department.

The department shall:

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

Aboveground storage tank regulations.

The department shall adopt rules:

1. For maintaining a leak detection method or combination of methods designed to identify releases in a manner consistent with the protection of human health and the environment.
2. For maintaining records of any monitoring of a leak detection system, inventory control system, or tank testing system.
3. For reporting of any releases and corrective action taken in response to a release from an aboveground storage tank.

- 1 4. For taking corrective action in response to a release from an aboveground storage
- 2 tank.
- 3 5. For the closure of an aboveground storage tank to prevent a release of regulated
- 4 substances into the environment.
- 5 6. For designation of an aboveground tank as ineligible for delivery.
- 6 7. For maintaining evidence of financial responsibility for taking corrective action and
- 7 compensating third parties for bodily injury and property damage caused by sudden
- 8 and nonsudden accidental releases arising from operating an aboveground storage
- 9 tank.
- 10 8. Establishing standards for construction and performance of new aboveground storage
- 11 tanks.
- 12 9. For notifying the department or designated local agency of the existence of any
- 13 operational or nonoperational aboveground storage tank.
- 14 10. For a permit fee system to own, install, or operate an aboveground storage tank.

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

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

23 **Inspections - Right of entry.**

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

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

Imminent hazard.

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

Enforcement penalties.

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

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

23.1-12-02. Definitions.

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

1. "Actually incurred" means, in the case of corrective action expenditures, the owner, operator, landowner, an insurer, or a contractor hired by the owner, operator, or the landlord has expended time and materials, and only that person is receiving reimbursement from the fund.
2. "Board" means the petroleum release compensation board.
3. "Corrective action" means an action required by the department to minimize, contain, eliminate, remediate, mitigate, or clean up a release, including any remedial

- 1 emergency measures. The term does not include the repair or replacement of
2 equipment or preconstructed property.
- 3 4. "Dealer" means a person licensed by the tax commissioner to sell motor vehicle fuel or
4 special fuels within the state.
- 5 5. "Department" means the department of environmental quality.
- 6 6. "Electric energy conversion facility" means a plant, addition, or combination of a plant
7 and addition, designed for or capable of wind energy generation, or any means of
8 energy generation, and the plant associated facilities.
- 9 7. "Electric transmission related facility" means an electric transmission line and
10 associated facilities designed for transmission of generated electricity, or a facility
11 used for utility-scale storage of electricity and connected or adjacent to an electric
12 transmission facility or facility controlled by or serving a utility with electric energy
13 transmission, and distribution equipment and materials.
- 14 8. "Fund" means the petroleum release compensation fund.
- 15 ~~7.9.~~ "Location" means a physical address or site that has contiguous properties.
16 Noncontiguous properties within a municipality or other governmental jurisdiction are
17 considered separate locations.
- 18 10. "Midstream facility" means a facility that receives petroleum products by pipeline or by
19 truck. The term does not include a retailer or end user.
- 20 ~~8.11.~~ "Operator" means a person in control of, or having responsibility for, the daily
21 operation of a tank under this chapter.
- 22 ~~9.12.~~ "Owner" means a person who holds title to, controls, or possesses an interest in the
23 tank before the discontinuation of its use.
- 24 ~~10.13.~~ "Petroleum" means any of the following:
25 a. Gasoline and petroleum products as defined in chapter 23.1-13.
26 b. Constituents of gasoline and fuel oil under subdivision a.
27 c. Oil sludge and oil refuse.
- 28 ~~11.14.~~ "Portable tank" means a storage tank along with its piping and wiring that is not
29 stationary or affixed, including a tank that is on skids.
- 30 ~~12.15.~~ "Release" means any unintentional spilling, leaking, emitting, discharging, escaping,
31 leaching, or disposing of petroleum from a tank into the environment whether

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8 of 10

1 occurring before or after the effective date of this chapter, but does not include
2 discharges or designed venting allowed under federal or state law or under adopted
3 rules.

4 ~~43.16.~~ "Tank" means any one or a combination of containers, vessels, and enclosures,
5 whether aboveground or underground, including associated piping or appurtenances
6 used to contain an accumulation of petroleum, ethanol, or biodiesel. The term does
7 not include:

- 8 a. Tanks owned by the federal government.
- 9 b. Tanks used for the transportation of petroleum.
- 10 c. A pipeline facility, including gathering lines and breakout tanks:
 - 11 (1) Regulated under the Natural Gas Pipeline Safety Act of 1968.
 - 12 (2) Regulated under the Hazardous Liquid Pipeline Safety Act of 1979.
 - 13 (3) Regulated under state laws comparable to the provisions of law in
14 paragraph 1 or 2, if the facility is an interstate pipeline facility.
 - 15 (4) Regulated under title 49, Code of Federal Regulations, part 195.
- 16 d. An underground farm or residential tank with a capacity of one thousand one
17 hundred gallons [4163.94 liters] or less or an aboveground farm or residential
18 tank of any capacity used for storing motor fuel for noncommercial purposes.
19 However, the owner of an aboveground farm or residential tank may, upon
20 application, register the tank and be eligible for reimbursement under this
21 chapter.
- 22 e. A tank used for storing heating oil for consumptive use on the premises where
23 stored.
- 24 f. A surface impoundment, pit, pond, ~~or~~ lagoon, storm water collection system, or
25 wastewater collection system.
- 26 g. A flowthrough process tank or vapor recovery unit tank.
- 27 h. A Tank, liquid trap, or associated gathering lines directly related to oil or gas, or
28 other facility associated with the exploration, development, or production or
29 gathering operations of oil, gas, or geothermal resources under title 38.

RS
9.1.10

- 1 i. A storage tank situated in an underground area such as a basement, cellar, mine
2 working, drift, shaft, or tunnel, if the storage tank is situated upon or above the
3 surface of the floor.
- 4 j. A tank used for the storage of propane.
- 5 k. A tank used to fuel or service rail locomotives, rail equipment, or surface coal
6 mining equipment.
- 7 l. An aboveground tank used to feed diesel fuel generators. Upon application, the
8 owner or operator of an aboveground tank used to feed diesel fuel generators
9 may register the tank and is eligible for reimbursement under this chapter.
- 10 m. A portable tank.
- 11 n. A tank with a capacity under one thousand three hundred twenty gallons
12 [4996.728 liters] used to store lubricating oil.
- 13 o. A tank used to store ethanol or biodiesel for wholesale purposes with a capacity
14 of greater than twenty thousand gallons [75708.24 liters].
- 15 p. A tank that is located at or is part of a terminal, midstream facility, petrochemical
16 plant, syngas plant, fertilizer plant, petroleum or renewable fuels refinery, electric
17 energy conversion facility, or electric transmission related facility, including
18 associated transloading facility.
- 19 q. An asphalt tank.
- 20 r. A septic tank.
- 21 ~~14-17.~~ "Tank integrity test" means a test to determine that a tank is sound and not leaking.
22 For an underground tank, the term means a certified third-party test that meets
23 environmental protection agency leak detection requirements. For an aboveground
24 tank, the term means a test conducted according to steel tank institute SP 001 or
25 American petroleum institute 653.
- 26 18. "Terminal" means a refined petroleum product storage and distribution facility that is
27 supplied directly by pipeline and from which the refined petroleum product may be
28 removed from the rack.
- 29 ~~15-19.~~ "Third party" means a person who is damaged by the act of a registered owner,
30 operator, or dealer requiring corrective action, or a person who suffers bodily injury or
31 property damage caused by a petroleum release.

1 20. "Utility" means a person engaged in and controlling electric generation, the
2 transmission of electric energy, or the transmission of water from or to any electric
3 energy conversion facility.

**REPORT OF STANDING COMMITTEE
HB 1058**

Energy and Natural Resources Committee (Rep. Porter, Chairman) recommends **AMENDMENTS** ([25.8051.01001](#)) and when so amended, recommends **DO PASS** (12 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). HB 1058 was placed on the Sixth order on the calendar.

2025 SENATE ENERGY AND NATURAL RESOURCES

HB 1058

2025 SENATE STANDING COMMITTEE MINUTES

Energy and Natural Resources Committee Peace Garden Room, State Capitol

HB 1058
3/6/2025

Relating to the regulation of aboveground storage tanks and the department of environmental quality; and to provide a penalty.

9:30 a.m. Chairman Patten opened the hearing.

Members present: Chairman Patten, Vice Chairman Kessel, Senators: Beard, Boehm, Enget, Gerhardt, and Van Oosting.

Discussion Topics:

- Term Exemptions
- Regulations Impact on Department of Environmental Quality
- New Requirements
- Catalyst for New Regulations
- Common Tanks and Outliers
- System Upgrades Costs
- Monitoring Systems Process
- Storing Motor Fuel for Non-retail Purposes
- Smaller Retail Size Examples
- Marketers Fee Based on Tank Factors

9:30 a.m. Karl H. Rockeman, Deputy Director of ND Dept of Environmental Quality, testified in favor and submitted testimony #39056.

9:50 a.m. Mike Rud, ND Petroleum Marketers Association President, testified in favor and submitted testimony #39205.

10:01 a.m. Chairman Patten closed the hearing.

Elizabeth Reiten for Kendra McCann, Committee Clerk



Testimony in Support of
House Bill No. 1058
Senate Energy and
Natural Resources Committee
March 6, 2025

TESTIMONY OF

Karl Rockeman, Deputy Director of the Department of Environmental Quality

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

HB 1058 seeks to give the DEQ authority to develop administrative rules for aboveground storage tanks of refined petroleum fuels that are registered with the Petroleum Tank Release Compensation Fund (Fund). The purpose is to prevent, detect and minimize releases to mitigate the risk to the Fund. This bill does not require additional tanks to be registered with the Fund, but regulates those tanks that currently require registration.

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

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

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

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

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

HB 1058 is a focused bill and does not expand the universe of tanks outside those currently required to be registered with the fund. The DEQ has considered the concerns of the regulated community and other stakeholders, and this bill explicitly exempts those facilities that fall outside the intended scope of the law. These exemptions are listed in Section 1.

HB 1058 does not impose any immediate restrictions on the owners or operators of aboveground storage tanks. It authorizes the DEQ to propose future administrative rules. These rules, of course, will be vetted through the public notice process, including review by the Environmental Review Advisory Council, Petroleum Release Compensation Board, and the Administrative Rules Committee. Because of this, the only fiscal impacts identified are expenditures due to program operating costs and those would not start to accrue until after rule implementation. The identified expenditures for the 25-27 biennium include \$15,000 to offset travel costs for inspections.

Since this bill has been filed, the DEQ has identified one change that would assist us in efficiently implementing this program. This amendment (attached) would allow DEQ to set the due date for tank registration fees in administrative code but otherwise keeps the timeline the same.

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

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

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

Testimony—HB 1058

House Energy and Natural Resources Committee

March 6, 2025

Chairman Patten and Senate Energy and Natural Resources Committee Members:

For the record, my name is Mike Rud. I am the President of the North Dakota Petroleum Marketers Association. Our Membership represents over 600 retail store fronts from across the state. These retailers do an outstanding job of providing the essential service of fueling the general public. Our Association urges a **“DO PASS” recommendation on HB 1058.**

The DEQ staff have done a great job of explaining why we are before you today. NDPMA fully support these efforts. In fact, NDPMA was the driving force behind this ask. Our Association appreciates how open the DEQ has been to industry input while formulating these rules.

I’m sure many of you are wondering why any business would seek further government regulation? It’s vital to all NDPMA members the State Tank Fund remain solvent. Recently, we have seen some large releases from ASTs feeding retail sites take a heavy toll on the fund. NDPMA feels a need to address this issue for the sake of all the fund’s stakeholders.

For regular bulk plants that aren't feeding retail, the new rules do not really add much of a burden. As previously stated, the solvency of the tank fund is the most important factor in smaller operators being able to stay in business. It's doubtful any private insurance company would insure AST's feeding retail without leak detection on the lines. They will not be able to buy affordable private cleanup insurance.

One way or another, industry will eventually need leak detection on fuel lines from AST's feeding a retail gas outlet. NDPMA would like to see that become a reality before the fund becomes insolvent.

Again, NDPMA Urges a **"DO PASS" recommendation on HB 1058.**

2025 SENATE STANDING COMMITTEE MINUTES

Energy and Natural Resources Committee

Peace Garden Room, State Capitol

HB 1058

3/13/2025

Relating to the regulation of aboveground storage tanks and the department of environmental quality; and to provide a penalty.

10:39 a.m. Chairman Patten opened the hearing.

Members present:

Chairman Patten, Vice Chairman Kessel, Senators: Beard, Boehm, Enget, Gerhardt, and Van Oosting.

Discussion Topics:

- Registration payment timeline

10:40 a.m. Chairman Patten opened committee discussion and updated committee on possible date issue with bill and possible amendment.

10:42 a.m. Chairman Patten closed the hearing.

10:42 a.m. Committee discussion on upcoming schedule.

10:43 a.m. Chairman Patten closed the hearing.

Kendra McCann, Committee Clerk

2025 SENATE STANDING COMMITTEE MINUTES

Energy and Natural Resources Committee Peace Garden Room, State Capitol

HB 1058
3/20/2025

Relating to the regulation of above ground storage tanks and the department of environmental quality; and to provide a penalty.

9:12 a.m. Chairman Patten opened the hearing.

Members present:

Chairman Patten, Vice Chairman Kessel, Senators: Beard, Boehm, Enget, Gerhardt, and Van Oosting.

Discussion Topics:

- Committee Action
- Registration payment timeline flexibility

9:12 a.m. Senator Beard introduced proposed amendment LC# 25.8051.02001 and submitted testimony #43264.

9:17 a.m. Senator Beard moved amendment LC# 25.8051.02001.

9:17 a.m. Senator Boehm seconded.

Senators	Vote
Senator Dale Patten	Y
Senator Greg Kessel	A
Senator Todd Beard	Y
Senator Keith Boehm	Y
Senator Mark Enget	Y
Senator Justin Gerhardt	A
Senator Desiree Van Oosting	Y

Motion Passed 5-0-2.

9:18 a.m. Senator Beard moved a Do Pass as Amended.

9:18 a.m. Senator Enget seconded the motion.

Senators	Vote
Senator Dale Patten	Y
Senator Greg Kessel	A
Senator Todd Beard	Y
Senator Keith Boehm	Y
Senator Mark Enget	Y
Senator Justin Gerhardt	A
Senator Desiree Van Oosting	Y

Senate Energy and Natural Resources Committee
HB 1058
3/20/2025
Page 2

Motion Passed 5-0-2.

9:18 a.m. Senator Boehm will carry the bill.

9:18 a.m. Chairman Patten closed the hearing.

Kendra McCann, Committee Clerk

March 13, 2025

Sixty-ninth
Legislative Assembly
of North Dakota

**PROPOSED AMENDMENTS TO
FIRST ENGROSSMENT**

VC 3/20/25
1 of 10

ENGROSSED HOUSE BILL NO. 1058

Introduced by

Energy and Natural Resources Committee

(At the request of the Department of Environmental Quality)

1 A BILL for an Act to create and enact a new chapter to title 23.1 of the North Dakota Century
2 Code, relating to the regulation of aboveground storage tanks; to amend and reenact section
3 23.1-12-02 and subsection 7 of section 23.1-12-17 of the North Dakota Century Code, relating
4 to the department of environmental quality and tank registration fees; and to provide a penalty.

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

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

8 **Definitions.**

9 For purposes of this chapter:

- 10 1. "Aboveground storage tank" means any one or a combination of aboveground
11 containers, vessels, or enclosures, including associated piping or appurtenances used
12 to store an accumulation of refined petroleum products that is not an underground
13 storage tank as defined in chapter 23.1-04. The term does not include a:
14 a. Farm or residential tank used for storing motor fuel for noncommercial purposes.
15 b. Tank used for storing heating oil for consumptive use on the premises where
16 stored.
17 c. Septic tank.
18 d. Pipeline facility, including gathering lines and breakout tanks, regulated under:
19 (1) The Natural Gas Pipeline Safety Act of 1968 [Pub. L. 90-481].

- 1 (2) The Hazardous Liquid Pipeline Safety Act of 1979 [Pub. L. 96-129,
- 2 49 U.S.C. 60101 et seq.].
- 3 (3) An interstate pipeline facility regulated under state laws comparable to the
- 4 provisions of law in paragraph 1 or 2.
- 5 (4) Title 49, Code of Federal Regulations, part 195.
- 6 e. Surface impoundment, pit, pond, lagoon, storm water collection system, or
- 7 wastewater collection system.
- 8 f. Flow-through process tank or vapor recovery unit tank.
- 9 g. Liquid trap or associated gathering lines directly related to oil or gas production
- 10 and gathering operations.
- 11 h. Tank owned by the federal government.
- 12 i. Tank used for the transportation of petroleum.
- 13 j. Tank with a capacity under one thousand three hundred twenty gallons
- 14 [4996.73 liters] used to store lubricating oil.
- 15 k. Tank used to store ethanol or biodiesel for wholesale purposes with a capacity
- 16 greater than twenty thousand gallons [75708.24 liters].
- 17 l. Tank that is located at or is part of a terminal, midstream facility, petrochemical
- 18 plant, syngas plant, fertilizer plant, petroleum or renewable fuels refinery, electric
- 19 energy conversion facility, electric transmission related facility, and associated
- 20 transloading facility.
- 21 m. Tank, liquid trap, gathering line, or other facility associated with exploration,
- 22 development, or production of oil, gas, or geothermal resources controlled under
- 23 title 38.
- 24 n. Asphalt tank.
- 25 o. Storage tank situated in an underground area, including a basement, cellar, mine,
- 26 mine drift, mine shaft, or mine tunnel, if the storage tank is situated upon or
- 27 above the surface of the floor.
- 28 p. Propane storage tank.
- 29 q. Tank used to fuel or service rail locomotives, rail equipment, or coal mining
- 30 equipment.
- 31 r. Portable tank.

- 1 s. Tank under subdivision d or l of subsection 13 of section 23.1-12-02, unless the
2 owner or operator registers the tank and is eligible for reimbursement under the
3 petroleum release compensation fund.
- 4 2. "Department" means the department of environmental quality.
- 5 3. "Disposal" means the discharge, deposit, injection, dumping, spilling, leaking, or
6 placing of any solid waste or hazardous waste into or on any land or water so the solid
7 waste or hazardous waste or any hazardous constituent of the waste may enter the
8 environment or be emitted into the air or discharged into any waters, including ground
9 water.
- 10 4. "Electric energy conversion facility" means a plant, addition, or combination of a plant
11 and addition, designed for or capable of wind energy generation, or any means of
12 energy generation, and the plant associated facilities.
- 13 5. "Electric transmission related facility" means an electric transmission line and
14 associated facilities designed for transmission of generated electricity, or a facility
15 used for utility-scale storage of electricity and connected or adjacent to an electric
16 transmission facility or facility controlled by or serving a utility with electric energy
17 transmission, and distribution equipment and materials.
- 18 6. "Facility" means all contiguous land and structures, other appurtenances, and
19 improvements on the land used for storing a regulated substance. A facility may
20 consist of several contiguous storage or operational units.
- 21 7. "Midstream facility" means a facility that receives petroleum products by pipeline or by
22 truck. The term does not include a retailer or end user.
- 23 8. "Operator" means a person in control of, or having responsibility for, the daily
24 operation of an aboveground storage tank.
- 25 9. "Owner" means a person who holds title to, controls, or possesses an interest in the
26 aboveground storage tank.
- 27 10. "Petroleum" means:
 - 28 a. Gasoline or petroleum products as defined in chapter 23.1-13;
 - 29 b. Constituents of gasoline or fuel oil under subdivision a; and
 - 30 c. Oil sludge and oil refuse.

11. "Portable tank" means a storage tank and storage tank piping or wiring that is not stationary or affixed, including a tank on skids.

12. "Refined petroleum products" means gasoline, kerosene, heating oils, diesel fuels, and other compounds as defined by the department.

13. "Release" means any spilling, leaking, emitting, discharging, escaping, leaching, or disposing from an aboveground storage tank into the environment, including ground water, surface water, or subsurface soils.

14. "Terminal" means a refined petroleum product storage and distribution facility that is supplied directly by pipeline and from which the refined petroleum product may be removed from the rack.

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

Powers and duties of the department.

The department shall:

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

Aboveground storage tank regulations.

The department shall adopt rules:

1. For maintaining a leak detection method or combination of methods designed to identify releases in a manner consistent with the protection of human health and the environment.
2. For maintaining records of any monitoring of a leak detection system, inventory control system, or tank testing system.
3. For reporting of any releases and corrective action taken in response to a release from an aboveground storage tank.

- 1 4. For taking corrective action in response to a release from an aboveground storage
2 tank.
- 3 5. For the closure of an aboveground storage tank to prevent a release of regulated
4 substances into the environment.
- 5 6. For designation of an aboveground tank as ineligible for delivery.
- 6 7. For maintaining evidence of financial responsibility for taking corrective action and
7 compensating third parties for bodily injury and property damage caused by sudden
8 and nonsudden accidental releases arising from operating an aboveground storage
9 tank.
- 10 8. Establishing standards for construction and performance of new aboveground storage
11 tanks.
- 12 9. For notifying the department or designated local agency of the existence of any
13 operational or nonoperational aboveground storage tank.
- 14 10. For a permit fee system to own, install, or operate an aboveground storage tank.

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

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

23 **Inspections - Right of entry.**

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

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

Imminent hazard.

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

Enforcement penalties.

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

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

23.1-12-02. Definitions.

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

1. "Actually incurred" means, in the case of corrective action expenditures, the owner, operator, landowner, an insurer, or a contractor hired by the owner, operator, or the landlord has expended time and materials, and only that person is receiving reimbursement from the fund.
2. "Board" means the petroleum release compensation board.
3. "Corrective action" means an action required by the department to minimize, contain, eliminate, remediate, mitigate, or clean up a release, including any remedial

- 1 emergency measures. The term does not include the repair or replacement of
2 equipment or preconstructed property.
- 3 4. "Dealer" means a person licensed by the tax commissioner to sell motor vehicle fuel or
4 special fuels within the state.
- 5 5. "Department" means the department of environmental quality.
- 6 6. "Electric energy conversion facility" means a plant, addition, or combination of a plant
7 and addition, designed for or capable of wind energy generation, or any means of
8 energy generation, and the plant associated facilities.
- 9 7. "Electric transmission related facility" means an electric transmission line and
10 associated facilities designed for transmission of generated electricity, or a facility
11 used for utility-scale storage of electricity and connected or adjacent to an electric
12 transmission facility or facility controlled by or serving a utility with electric energy
13 transmission, and distribution equipment and materials.
- 14 8. "Fund" means the petroleum release compensation fund.
- 15 ~~7-9.~~ "Location" means a physical address or site that has contiguous properties.
16 Noncontiguous properties within a municipality or other governmental jurisdiction are
17 considered separate locations.
- 18 10. "Midstream facility" means a facility that receives petroleum products by pipeline or by
19 truck. The term does not include a retailer or end user.
- 20 ~~8-11.~~ "Operator" means a person in control of, or having responsibility for, the daily
21 operation of a tank under this chapter.
- 22 ~~9-12.~~ "Owner" means a person who holds title to, controls, or possesses an interest in the
23 tank before the discontinuation of its use.
- 24 ~~10-13.~~ "Petroleum" means any of the following:
25 a. Gasoline and petroleum products as defined in chapter 23.1-13.
26 b. Constituents of gasoline and fuel oil under subdivision a.
27 c. Oil sludge and oil refuse.
- 28 ~~11-14.~~ "Portable tank" means a storage tank along with its piping and wiring that is not
29 stationary or affixed, including a tank that is on skids.
- 30 ~~12-15.~~ "Release" means any unintentional spilling, leaking, emitting, discharging, escaping,
31 leaching, or disposing of petroleum from a tank into the environment whether

occurring before or after the effective date of this chapter, but does not include discharges or designed venting allowed under federal or state law or under adopted rules.

~~13-16.~~ "Tank" means any one or a combination of containers, vessels, and enclosures, whether aboveground or underground, including associated piping or appurtenances used to contain an accumulation of petroleum, ethanol, or biodiesel. The term does not include:

- a. Tanks owned by the federal government.
- b. Tanks used for the transportation of petroleum.
- c. A pipeline facility, including gathering lines and breakout tanks:
 - (1) Regulated under the Natural Gas Pipeline Safety Act of 1968.
 - (2) Regulated under the Hazardous Liquid Pipeline Safety Act of 1979.
 - (3) Regulated under state laws comparable to the provisions of law in paragraph 1 or 2, if the facility is an interstate pipeline facility.
 - (4) Regulated under title 49, Code of Federal Regulations, part 195.
- d. An underground farm or residential tank with a capacity of one thousand one hundred gallons [4163.94 liters] or less or an aboveground farm or residential tank of any capacity used for storing motor fuel for noncommercial purposes. However, the owner of an aboveground farm or residential tank may, upon application, register the tank and be eligible for reimbursement under this chapter.
- e. A tank used for storing heating oil for consumptive use on the premises where stored.
- f. A surface impoundment, pit, pond, ~~or lagoon,~~ storm water collection system, or wastewater collection system.
- g. A flowthrough process tank or vapor recovery unit tank.
- h. ~~A tank tank, liquid trap, or associated gathering lines directly related to oil or gas, or other facility associated with the exploration, development, or production or gathering operations of oil, gas, or geothermal resources under title 38.~~

- 1 i. A storage tank situated in an underground area such as a basement, cellar, mine
2 working, drift, shaft, or tunnel, if the storage tank is situated upon or above the
3 surface of the floor.
- 4 j. A tank used for the storage of propane.
- 5 k. A tank used to fuel or service rail locomotives, rail equipment, or surface coal
6 mining equipment.
- 7 l. An aboveground tank used to feed diesel fuel generators. Upon application, the
8 owner or operator of an aboveground tank used to feed diesel fuel generators
9 may register the tank and is eligible for reimbursement under this chapter.
- 10 m. A portable tank.
- 11 n. A tank with a capacity under one thousand three hundred twenty gallons
12 [4996.728 liters] used to store lubricating oil.
- 13 o. A tank used to store ethanol or biodiesel for wholesale purposes with a capacity
14 of greater than twenty thousand gallons [75708.24 liters].
- 15 p. A tank that is located at or is part of a terminal, midstream facility, petrochemical
16 plant, syngas plant, fertilizer plant, petroleum or renewable fuels refinery, electric
17 energy conversion facility, or electric transmission related facility, including
18 associated transloading facility.
- 19 q. An asphalt tank.
- 20 r. A septic tank.

21 ~~14.17.~~ "Tank integrity test" means a test to determine that a tank is sound and not leaking.
22 For an underground tank, the term means a certified third-party test that meets
23 environmental protection agency leak detection requirements. For an aboveground
24 tank, the term means a test conducted according to steel tank institute SP 001 or
25 American petroleum institute 653.

26 18. "Terminal" means a refined petroleum product storage and distribution facility that is
27 supplied directly by pipeline and from which the refined petroleum product may be
28 removed from the rack.

29 ~~15.19.~~ "Third party" means a person who is damaged by the act of a registered owner,
30 operator, or dealer requiring corrective action, or a person who suffers bodily injury or
31 property damage caused by a petroleum release.

- 1 20. "Utility" means a person engaged in and controlling electric generation, the
2 transmission of electric energy, or the transmission of water from or to any electric
3 energy conversion facility.

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

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

**REPORT OF STANDING COMMITTEE
ENGROSSED HB 1058**

Energy and Natural Resources Committee (Sen. Patten, Chairman) recommends **AMENDMENTS** ([25.8051.02001](#)) and when so amended, recommends **DO PASS** (5 YEAS, 0 NAYS, 2 ABSENT OR EXCUSED AND NOT VOTING). HB 1058 was placed on the Sixth order on the calendar. This bill does not affect workforce development.

25.8051.02001
Title.

Prepared by the Legislative Council
staff for Senator Beard
March 13, 2025

Sixty-ninth
Legislative Assembly
of North Dakota

PROPOSED AMENDMENTS TO FIRST ENGROSSMENT

ENGROSSED HOUSE BILL NO. 1058

Introduced by

Energy and Natural Resources Committee

(At the request of the Department of Environmental Quality)

1 A BILL for an Act to create and enact a new chapter to title 23.1 of the North Dakota Century
2 Code, relating to the regulation of aboveground storage tanks; to amend and reenact section
3 23.1-12-02 and subsection 7 of section 23.1-12-17 of the North Dakota Century Code, relating
4 to the department of environmental quality and tank registration fees; and to provide a penalty.

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

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

8 **Definitions.**

9 For purposes of this chapter:

- 10 1. "Aboveground storage tank" means any one or a combination of aboveground
11 containers, vessels, or enclosures, including associated piping or appurtenances used
12 to store an accumulation of refined petroleum products that is not an underground
13 storage tank as defined in chapter 23.1-04. The term does not include a:
 - 14 a. Farm or residential tank used for storing motor fuel for noncommercial purposes.
 - 15 b. Tank used for storing heating oil for consumptive use on the premises where
16 stored.
 - 17 c. Septic tank.
 - 18 d. Pipeline facility, including gathering lines and breakout tanks, regulated under:
19 (1) The Natural Gas Pipeline Safety Act of 1968 [Pub. L. 90-481].

(2) The Hazardous Liquid Pipeline Safety Act of 1979 [Pub. L. 96-129,
49 U.S.C. 60101 et seq.].

(3) An interstate pipeline facility regulated under state laws comparable to the
provisions of law in paragraph 1 or 2.

(4) Title 49, Code of Federal Regulations, part 195.

e. Surface impoundment, pit, pond, lagoon, storm water collection system, or
wastewater collection system.

f. Flow-through process tank or vapor recovery unit tank.

g. Liquid trap or associated gathering lines directly related to oil or gas production
and gathering operations.

h. Tank owned by the federal government.

i. Tank used for the transportation of petroleum.

j. Tank with a capacity under one thousand three hundred twenty gallons
[4996.73 liters] used to store lubricating oil.

k. Tank used to store ethanol or biodiesel for wholesale purposes with a capacity
greater than twenty thousand gallons [75708.24 liters].

l. Tank that is located at or is part of a terminal, midstream facility, petrochemical
plant, syngas plant, fertilizer plant, petroleum or renewable fuels refinery, electric
energy conversion facility, electric transmission related facility, and associated
transloading facility.

m. Tank, liquid trap, gathering line, or other facility associated with exploration,
development, or production of oil, gas, or geothermal resources controlled under
title 38.

n. Asphalt tank.

o. Storage tank situated in an underground area, including a basement, cellar, mine,
mine drift, mine shaft, or mine tunnel, if the storage tank is situated upon or
above the surface of the floor.

p. Propane storage tank.

q. Tank used to fuel or service rail locomotives, rail equipment, or coal mining
equipment.

r. Portable tank.

- 1 s. Tank under subdivision d or l of subsection 13 of section 23.1-12-02, unless the
2 owner or operator registers the tank and is eligible for reimbursement under the
3 petroleum release compensation fund.
- 4 2. "Department" means the department of environmental quality.
- 5 3. "Disposal" means the discharge, deposit, injection, dumping, spilling, leaking, or
6 placing of any solid waste or hazardous waste into or on any land or water so the solid
7 waste or hazardous waste or any hazardous constituent of the waste may enter the
8 environment or be emitted into the air or discharged into any waters, including ground
9 water.
- 10 4. "Electric energy conversion facility" means a plant, addition, or combination of a plant
11 and addition, designed for or capable of wind energy generation, or any means of
12 energy generation, and the plant associated facilities.
- 13 5. "Electric transmission related facility" means an electric transmission line and
14 associated facilities designed for transmission of generated electricity, or a facility
15 used for utility-scale storage of electricity and connected or adjacent to an electric
16 transmission facility or facility controlled by or serving a utility with electric energy
17 transmission, and distribution equipment and materials.
- 18 6. "Facility" means all contiguous land and structures, other appurtenances, and
19 improvements on the land used for storing a regulated substance. A facility may
20 consist of several contiguous storage or operational units.
- 21 7. "Midstream facility" means a facility that receives petroleum products by pipeline or by
22 truck. The term does not include a retailer or end user.
- 23 8. "Operator" means a person in control of, or having responsibility for, the daily
24 operation of an aboveground storage tank.
- 25 9. "Owner" means a person who holds title to, controls, or possesses an interest in the
26 aboveground storage tank.
- 27 10. "Petroleum" means:
- 28 a. Gasoline or petroleum products as defined in chapter 23.1-13;
29 b. Constituents of gasoline or fuel oil under subdivision a; and
30 c. Oil sludge and oil refuse.

- 1 11. "Portable tank" means a storage tank and storage tank piping or wiring that is not
2 stationary or affixed, including a tank on skids.
- 3 12. "Refined petroleum products" means gasoline, kerosene, heating oils, diesel fuels,
4 and other compounds as defined by the department.
- 5 13. "Release" means any spilling, leaking, emitting, discharging, escaping, leaching, or
6 disposing from an aboveground storage tank into the environment, including ground
7 water, surface water, or subsurface soils.
- 8 14. "Terminal" means a refined petroleum product storage and distribution facility that is
9 supplied directly by pipeline and from which the refined petroleum product may be
10 removed from the rack.
- 11 15. "Utility" means a person engaged in and controlling electric generation, transmission
12 of electric energy, or the transmission of water from or to any electric energy
13 conversion facility.

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

15 The department shall:

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

22 **Aboveground storage tank regulations.**

23 The department shall adopt rules:

- 24 1. For maintaining a leak detection method or combination of methods designed to
25 identify releases in a manner consistent with the protection of human health and the
26 environment.
- 27 2. For maintaining records of any monitoring of a leak detection system, inventory control
28 system, or tank testing system.
- 29 3. For reporting of any releases and corrective action taken in response to a release from
30 an aboveground storage tank.

- 1 4. For taking corrective action in response to a release from an aboveground storage
2 tank.
- 3 5. For the closure of an aboveground storage tank to prevent a release of regulated
4 substances into the environment.
- 5 6. For designation of an aboveground tank as ineligible for delivery.
- 6 7. For maintaining evidence of financial responsibility for taking corrective action and
7 compensating third parties for bodily injury and property damage caused by sudden
8 and nonsudden accidental releases arising from operating an aboveground storage
9 tank.
- 10 8. Establishing standards for construction and performance of new aboveground storage
11 tanks.
- 12 9. For notifying the department or designated local agency of the existence of any
13 operational or nonoperational aboveground storage tank.
- 14 10. For a permit fee system to own, install, or operate an aboveground storage tank.

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

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

23 **Inspections - Right of entry.**

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

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

1 **Imminent hazard.**

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

5 **Enforcement penalties.**

6 1. If the department finds a person is in violation of a permit, rule, standard, or
7 requirement of this chapter, the department may issue an order requiring the person to
8 comply with the permit, rule, standard, or requirement, and the department may bring
9 an action for a civil penalty, including an action for injunctive relief. An action under this
10 chapter must be brought in the district court for the county in which the violation
11 occurred or in which the party in violation has the party's residence or principal office.

12 2. A person that violates a provision of this chapter or any rule, standard, or permit
13 condition adopted under this chapter is subject to a civil penalty not to exceed twelve
14 thousand five hundred dollars per day of violation. Each day of noncompliance
15 constitutes a separate violation for purposes of penalty assessments.

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

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

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

23 **23.1-12-02. Definitions.**

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

- 25 1. "Actually incurred" means, in the case of corrective action expenditures, the owner,
26 operator, landowner, an insurer, or a contractor hired by the owner, operator, or the
27 landlord has expended time and materials, and only that person is receiving
28 reimbursement from the fund.
- 29 2. "Board" means the petroleum release compensation board.
- 30 3. "Corrective action" means an action required by the department to minimize, contain,
31 eliminate, remediate, mitigate, or clean up a release, including any remedial

1 emergency measures. The term does not include the repair or replacement of
2 equipment or preconstructed property.

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

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

6 6. "Electric energy conversion facility" means a plant, addition, or combination of a plant
7 and addition, designed for or capable of wind energy generation, or any means of
8 energy generation, and the plant associated facilities.

9 7. "Electric transmission related facility" means an electric transmission line and
10 associated facilities designed for transmission of generated electricity, or a facility
11 used for utility-scale storage of electricity and connected or adjacent to an electric
12 transmission facility or facility controlled by or serving a utility with electric energy
13 transmission, and distribution equipment and materials.

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

15 7.9. "Location" means a physical address or site that has contiguous properties.
16 Noncontiguous properties within a municipality or other governmental jurisdiction are
17 considered separate locations.

18 10. "Midstream facility" means a facility that receives petroleum products by pipeline or by
19 truck. The term does not include a retailer or end user.

20 8.11. "Operator" means a person in control of, or having responsibility for, the daily
21 operation of a tank under this chapter.

22 9.12. "Owner" means a person who holds title to, controls, or possesses an interest in the
23 tank before the discontinuation of its use.

24 40.13. "Petroleum" means any of the following:

- 25 a. Gasoline and petroleum products as defined in chapter 23.1-13.
26 b. Constituents of gasoline and fuel oil under subdivision a.
27 c. Oil sludge and oil refuse.

28 44.14. "Portable tank" means a storage tank along with its piping and wiring that is not
29 stationary or affixed, including a tank that is on skids.

30 42.15. "Release" means any unintentional spilling, leaking, emitting, discharging, escaping,
31 leaching, or disposing of petroleum from a tank into the environment whether

1 occurring before or after the effective date of this chapter, but does not include
2 discharges or designed venting allowed under federal or state law or under adopted
3 rules.

4 ~~43.16.~~ "Tank" means any one or a combination of containers, vessels, and enclosures,
5 whether aboveground or underground, including associated piping or appurtenances
6 used to contain an accumulation of petroleum, ethanol, or biodiesel. The term does
7 not include:

8 a. Tanks owned by the federal government.

9 b. Tanks used for the transportation of petroleum.

10 c. A pipeline facility, including gathering lines and breakout tanks:

11 (1) Regulated under the Natural Gas Pipeline Safety Act of 1968.

12 (2) Regulated under the Hazardous Liquid Pipeline Safety Act of 1979.

13 (3) Regulated under state laws comparable to the provisions of law in
14 paragraph 1 or 2, if the facility is an interstate pipeline facility.

15 (4) Regulated under title 49, Code of Federal Regulations, part 195.

16 d. An underground farm or residential tank with a capacity of one thousand one
17 hundred gallons [4163.94 liters] or less or an aboveground farm or residential
18 tank of any capacity used for storing motor fuel for noncommercial purposes.

19 However, the owner of an aboveground farm or residential tank may, upon
20 application, register the tank and be eligible for reimbursement under this
21 chapter.

22 e. A tank used for storing heating oil for consumptive use on the premises where
23 stored.

24 f. A surface impoundment, pit, pond, ~~or lagoon,~~ storm water collection system, or
25 wastewater collection system.

26 g. A flowthrough process tank or vapor recovery unit tank.

27 h. ~~A Tank tank, liquid trap, or associated gathering lines directly related to oil or gas,~~
28 or other facility associated with the exploration, development, or production or
29 gathering operationsof oil, gas, or geothermal resources under title 38.

- 1 i. A storage tank situated in an underground area such as a basement, cellar, mine
2 working, drift, shaft, or tunnel, if the storage tank is situated upon or above the
3 surface of the floor.
- 4 j. A tank used for the storage of propane.
- 5 k. A tank used to fuel or service rail locomotives, rail equipment, or surface coal
6 mining equipment.
- 7 l. An aboveground tank used to feed diesel fuel generators. Upon application, the
8 owner or operator of an aboveground tank used to feed diesel fuel generators
9 may register the tank and is eligible for reimbursement under this chapter.
- 10 m. A portable tank.
- 11 n. A tank with a capacity under one thousand three hundred twenty gallons
12 [4996.728 liters] used to store lubricating oil.
- 13 o. A tank used to store ethanol or biodiesel for wholesale purposes with a capacity
14 of greater than twenty thousand gallons [75708.24 liters].
- 15 p. A tank that is located at or is part of a terminal, midstream facility, petrochemical
16 plant, syngas plant, fertilizer plant, petroleum or renewable fuels refinery, electric
17 energy conversion facility, or electric transmission related facility, including
18 associated transloading facility.
- 19 q. An asphalt tank.
- 20 r. A septic tank.
- 21 ~~14-17.~~ "Tank integrity test" means a test to determine that a tank is sound and not leaking.
22 For an underground tank, the term means a certified third-party test that meets
23 environmental protection agency leak detection requirements. For an aboveground
24 tank, the term means a test conducted according to steel tank institute SP 001 or
25 American petroleum institute 653.
- 26 18. "Terminal" means a refined petroleum product storage and distribution facility that is
27 supplied directly by pipeline and from which the refined petroleum product may be
28 removed from the rack.
- 29 ~~15-19.~~ "Third party" means a person who is damaged by the act of a registered owner,
30 operator, or dealer requiring corrective action, or a person who suffers bodily injury or
31 property damage caused by a petroleum release.

- 1 20. "Utility" means a person engaged in and controlling electric generation, the
2 transmission of electric energy, or the transmission of water from or to any electric
3 energy conversion facility.

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

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