

Testimony
House Bill 1401
House Energy and Natural Resources Committee
January 28, 2021; 9:00 a.m.
North Dakota Department of Environmental Quality

Good morning Chairman Porter and members of the Energy and Natural Resources Committee. My name is Chuck Hyatt, and I am the Director of the Division of Waste Management of the North Dakota Department of Environmental Quality (DEQ).

I am here today to provide testimony in opposition to House Bill 1401, which amends the Ground Water Protection Degradation Prevention program, North Dakota Century Code Chapter 23.1-11. This program was developed to protect ground water resources, encourage the wise use of agricultural chemicals, and provide public education regarding the preservation of ground water resources. HB 1401 proposes to expand the program by establishing a monitoring program for legacy waste pits and other special waste.

Historic oil and gas exploration left pits on oil well sites used to dispose of oilfield waste including, drilling fluids, cuttings and produced water. As I understand it, these “legacy” waste pits continue to be regulated under the North Dakota Industrial Commission Department of Minerals Resources’ authority.

Special waste is a broad term that includes waste generated through oil and gas exploration and production, waste from mineral, ore, and coal mining operations, and waste generated from energy conversion facilities or power plants, including coal combustion residuals.

House Bill 1401 seeks to establish a new program for the DEQ and others to implement. The DEQ has the following questions and concerns about this proposed program:

First, this bill will modify an existing ground water protection program targeted at agricultural chemicals and includes references specific to agricultural chemical monitoring, such as the role of the NDSU Extension and the Department of Agriculture. Additionally, the bill’s language imposes requirements on the Agriculture Commissioner. It also neglects to acknowledge

the Department of Mineral Resources' current efforts to address these legacy issues.

Second, North Dakota has a robust permitting program for special waste disposal facilities. The DEQ's coal combustion residuals special waste program has been in effect since the 1980s. The DEQ is currently seeking primacy to enforce federal coal combustion residuals rules at the state level. Oil and gas special waste landfills have comprehensive design, operations, and groundwater monitoring requirements spelled out in current administrative code. The DEQ has also implemented a groundwater monitoring program, known as our western ambient program, to evaluate shallow aquifers for potential contamination from oil activity. This program samples over 125 wells on a year and a half rotation.

Third, the bill is unclear as to the amount of additional monitoring that would be required. Because of the potential extent of this bill's requirements, we believe it will result in a significant fiscal impact to the DEQ. Understanding how much additional monitoring and the universe of special waste to be evaluated will allow for better quantification of this impact.

Fourth, the term "legacy waste pits" is left undefined. Although it may be understood in the general sense outlined earlier, to clarify legislative intent, a clear definition of what types of features constitute a "legacy waste pit" would be useful and allow for the development of appropriate mitigation activities.

Finally, this bill includes requirements for "other special waste" which is extensively broad and likely duplicative of existing legislation. As mentioned, the DEQ currently has the authority and extensive administrative code language for a permit program that requires groundwater monitoring at permitted special waste landfill facilities.

In conclusion, we ask for clarification in roles and responsibilities and that necessary resources be funded should this bill pass.

This concludes my testimony, and I am happy to answer any questions you may have regarding HB 1401.