

Introduced by

Energy and Natural Resources Committee

(At the request of the Department of Environmental Quality)

1 A BILL for an Act to amend and reenact subdivision a of subsection 1 of section 23.1-12-18 of  
2 the North Dakota Century Code, relating to corrective action reimbursement for petroleum  
3 releases.

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

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

- 7 a. ~~At the time the release was discovered the owner or operator and the tank were~~  
8 ~~in compliance with state and federal rules and rules applicable to the tank,~~  
9 ~~including rules relating to financial responsibility, rules relating to infrastructure~~  
10 ~~compatibility, and all rules relating to health and safety which were in effect at the~~  
11 ~~time of the release, the tank was in substantial compliance with all applicable~~  
12 ~~rules of the United States environmental protection agency, the state fire marshal,~~  
13 ~~and the department. The department shall determine substantial compliance by~~  
14 ~~considering:~~
- 15 (1) The purposes of this chapter;  
16 (2) The adverse effect that any violation of the rules may have had on the tank,  
17 thereby causing or contributing to the release; and  
18 (3) The extent of the remedial action required;

PROPOSED AMENDMENTS TO SENATE BILL NO. 2075

Page 1, line 1, after “reenact” insert “subsection 13 of section 23.1-12-02 and”

Page 1, after line 4, insert:

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

13. “Tank” means any one or a combination of containers, vessels, and enclosures, whether aboveground or underground, including associated piping or appurtenances used to contain an accumulation of petroleum, ethanol, or biodiesel. The term does not include:
  - a. Tanks owned by the federal government.
  - b. Tanks used for the transportation of petroleum.
  - c. A pipeline facility, including gathering lines:
    - (1) Regulated under the Natural Gas Pipeline Safety Act of 1968.
    - (2) Regulated under the Hazardous Liquid Pipeline Safety Act of 1979.
    - (3) Regulated under state laws comparable to the provisions of law in paragraph 1 or 2, if the facility is an interstate pipeline facility.
  - d. An underground farm or residential tank with a capacity of one thousand one hundred gallons [4163.94 liters] or less or an aboveground farm or residential tank of any capacity used for storing motor fuel for noncommercial purposes. However, the owner of an aboveground farm or residential tank may, upon application, register the tank and be eligible for reimbursement under this chapter.
  - e. A tank used for storing heating oil for consumptive use on the premises where stored.
  - f. A surface impoundment, pit, pond, or lagoon.
  - g. A flowthrough process tank.
  - h. A liquid trap or associated gathering lines directly related to oil or gas production or gathering operations.

- i. A storage tank situated in an underground area such as a basement, cellar, mine working, drift, shaft, or tunnel, if the storage tank is situated upon or above the surface of the floor.
- j. A tank used for the storage of propane.
- k. A tank used to fuel rail locomotives or surface coal mining equipment.
- l. An aboveground tank used to feed diesel fuel generators. Upon application, the owner or operator of an aboveground tank used to feed diesel fuel generators may register the tank and is eligible for reimbursement under this chapter.
- m. A portable tank.
- n. A tank with a capacity under one thousand three hundred twenty gallons [4996.728 liters] used to store lubricating oil.
- o. A tank used to store ethanol or biodiesel for wholesale purposes with a capacity of greater than twenty thousand gallons [75708 liters].”

Page 1, line 5, replace the first “1” with “2”

Renumber accordingly

TESTIMONY OF

**Duane Sandvick, Program Manager of the Petroleum Tank Release Compensation Fund**

Good afternoon, Chairman Patten and members of the Senate Energy and Natural Resources Committee. My name is Duane Sandvick. I am the Program Manager of the Petroleum Tank Release Compensation Fund. The Fund is a program administered by the Department of Environmental Quality. I am here to testify in support of Senate Bill 2075.

The Department of Environmental Quality supports amending subsection 1 of section 23.1-12-18 of the North Dakota Century Code, relating to corrective action reimbursement for petroleum releases. The current language gives the Petroleum Tank Release Compensation Fund little flexibility when considering claim reimbursement for petroleum releases at registered sites. The reimbursement claim filed by the site's owner, under the current state statute, must be denied if the site is not compliant with state and federal rules. The Petroleum Tank Release Compensation Fund would be obligated to deny a reimbursement claim even in the event the compliance issue was not related to the petroleum release.

The proposed amendment to subdivision a of subsection 1 of section 23.1-12-18 provides language stating the tank was in substantial compliance with all applicable rules of the United States Environmental Protection Agency, the state fire marshal, and the department. Substantial compliance is determined by the department using three criteria considering: (1) the purposes of chapter 23.1-12, (2) the adverse effect that the violation of the rules may have had on the tank, thereby causing or contributing to the release, and (3) the extent of the remedial action required. The proposed amended subsection 1 would allow the Petroleum Tank Release Compensation Fund more latitude when accepting or denying the reimbursement claim filed by the site's owner.

The Department of Environmental Quality supports a proposal to add an amendment to subsection 13 of section 23.1-12-02 of the North Dakota Century Code. Subsection 13 is amended and reenacted as follows:

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

o. A tank used to store ethanol or biodiesel for wholesale purposes with a capacity of greater than twenty thousand gallons [75708 liters]."

The addition of ethanol or biodiesel to subsection 13 provides the Petroleum Tank Release Compensation Fund with the ability to register tanks containing these fuel products. The addition of subsection 13(o) of section 23.1-12-02 exempts tanks used in wholesale from eligibility to register with the Petroleum Tank Release Compensation Fund if the contents of ethanol or biodiesel amount to over 20000 gallons [75708 liters] in capacity.

Mr. Chairman and committee members, this concludes my testimony. I ask for your support for Senate Bill 2075. I would be happy to answer any questions.