

CHAPTER 32-40 ENVIRONMENTAL LAW ENFORCEMENT

32-40-01. Short title.

This chapter may be cited and shall be known as the North Dakota Environmental Law Enforcement Act of 1975.

32-40-02. Legislative intent and purpose.

The legislative assembly of North Dakota enacts this Environmental Law Enforcement Act in recognition of the vital role played by environmental laws in maintaining the health, safety, and general welfare of the state's citizens; the need to maintain a sound system of law, order, and justice; and the need to provide relief to those aggrieved by a failure of others to abide by or enforce the state's environmental laws.

32-40-03. Definitions.

As used in this chapter, unless a different meaning clearly appears from the context:

1. "Aggrieved" means the suffering of an injury in fact as a result of the alleged violation of a statute, rule, or regulation, and the injury is of the type the statute, rule, or regulation in question was intended to regulate or protect against. It is not necessary for the injury to be economic in nature. The injury is sufficient if it has harmed the party's use and enjoyment of the protected natural resources in a manner different from the harm to the general public.
2. "Environmental statute, rule, or regulation" means any statute, rule, or regulation of the state for the protection of the air, water, and other natural resources, including land, minerals, and wildlife, from pollution, impairment, or destruction.
3. "Person" means any natural person, corporation, limited liability company, association, partnership, receiver, trustee, executor, administrator, guardian, or fiduciary.
4. "State agency" means any state agency, board, commission, council, officer, office, department, or division.

32-40-04. Cumulative remedies.

The remedies provided by this chapter shall be cumulative and shall not replace statutory or common-law remedies.

32-40-05. Enforcement powers of attorney general.

The attorney general shall have the authority to enforce, in the same manner as state's attorneys, any state environmental statute, rule, or regulation.

32-40-06. Who may sue - Defendants - Exception to recovery of damages.

Any state agency, with the approval of the attorney general; any person; or any county, city, township, or other political subdivision, aggrieved by the violation of any environmental statute, rule, or regulation of this state may bring an action in the appropriate district court, either to enforce such statute, rule, or regulation, or to recover any damages that have occurred as a result of the violation, or for both such enforcement and damages. Such action may be brought against any person, state agency, or county, city, township, or other political subdivision allegedly engaged in such violation. However, no damages may be recovered against any state agency, county, city, township, or other political subdivision, except as otherwise provided by law.

32-40-07. Notice to be provided.

Any person, any state agency, or any county, city, township, or other political subdivision, before commencing any action pursuant to section 32-40-06, shall give thirty days' notice by certified mail of intent to file suit and of the alleged violation to the person alleged to have violated the statute, rule, or regulation; to the state agency or to the political subdivision responsible for the supervision or enforcement of the statute, rule, or regulation alleged to have

been violated; to the state's attorney of the county in which the alleged violation occurred; and to the attorney general. This section shall not apply to emergency proceedings, brought under any environmental statute, rule, or regulation, necessary to protect the health, safety, or welfare of any person.

32-40-08. Bond.

The court may order the complainant to post a cash bond in an amount not to exceed five hundred dollars to pay any cost or judgment that might be rendered adverse to a complainant in any action brought under this chapter.

32-40-09. Intervention in action.

Any state agency that receives a notice pursuant to section 32-40-07 shall be entitled to intervene as a matter of right in the action unless such action is commenced solely to recover damages for alleged violations.

32-40-10. Costs.

If the court finds an action brought under this chapter to have been frivolous, it shall award costs to the defendants. Otherwise, the court may apportion costs among the parties as the interests of justice require.

32-40-11. Relief granted.

In any action brought under this chapter, the court may:

1. Grant the relief specified in the environmental statute alleged to have been violated or pursuant to which the rule or regulation alleged to have been violated was promulgated.
2. Grant temporary or permanent equitable relief.
3. Award damages.
4. Enter any order it deems necessary to enforce compliance with any environmental statute, rule, or regulation of this state.