

2019 HOUSE APPROPRIATIONS

HB 1024

2019 HOUSE STANDING COMMITTEE MINUTES

Appropriations Committee - Human Resources Division
Sakakawea Room, State Capitol

HB1024
1/10/2019
30672

- Subcommittee
 Conference Committee

Committee Clerk: Caitlin Fleck

Explanation or reason for introduction of bill/resolution:

Overview

Minutes:

A,B,C,D

Introduced bill name and number.

David Glatt, Environmental Health Section Chief of the North Dakota Department of Health (NDDoH): (See attachment A)

- Explained Attachment B as an overview of the different divisions and information directory.
- Presented Attachment C, but not explained

(7.57) Chairman Jon O. Nelson: The Environmental Protection Agency (EPA), is that the only agency that may have some ramifications on completing that time schedule?

Mr. Glatt: Yes, that is correct.

Chairman Jon O. Nelson: So they haven't gone through the public comment portion?

Mr. Glatt: 90% of programs have, there's less than a handful that haven't and those are the ones we are waiting on now.

Chairman Jon O. Nelson: Are the controversial in nature?

Mr. Glatt: No they are just taking a while to get there.

(10.01) Mr. Glatt: (continued attachment A)

(14.07) Chairman Jon O. Nelson: Were you involved in the discussion in the interim involving the high level of radiation in the century code?

Mr. Glatt: We were very much involved with that as to what type of input the state would have on the levels of radiation a state would have.

(15.25) Mr. Glatt: (continued attachment A)

(19.21) Chairman Jon O. Nelson: We heard this morning that there is a need for some updates in the department of health lab, do you share this lab with them?

Mr. Glatt: Yes, we share that same building.

Chairman Jon O. Nelson: Is there a deficiency in the present situation down there?

Mr. Glatt: Yes, there is a concern about the air qualities and facilities there. I think that there needs to be a thought about addressing those issues and the upgrades that need to be done.

Chairman Jon O. Nelson: We would like to come and visit that facility.

(22.34) Mr. Glatt: (continued attachment A)

(25.30) Chairman Jon O. Nelson: It increased between 2012 and 2015, is that occurring with an increase in the oil field in the western part of the state?

Mr. Glatt: Yes, that is accurate.

Chairman Jon O. Nelson: It's leveling off, but there is a slight incline yet.

Mr. Glatt: Yes, they are leveling off, but we seem to find new ones every day.

(26.54) Mr. Glatt: (Continued attachment A)

(30.35) Chairman Jon O. Nelson: Are there any approved sites in ND for disposal?

Mr. Glatt: Yes, here are about 13 special waste sites.

Chairman Jon O. Nelson: Is the waste able to be disposed of in those landfills as well?

Mr. Glatt: Landfills can collect up to a certain level if they get their permits complied. If they aren't amended, then they cannot.

Chairman Jon O. Nelson: Are all of them are being hauled out of state?

Mr. Glatt: Yes, we are tracking where it is being transferred.

Chairman Jon O. Nelson: What kind of timeline is for an updated permit?

Mr. Glatt: Right now it's up to the applicant, and as soon as they give us a completed application, we will move forward with that.

Chairman Jon O. Nelson: Do you think something will happen within this biennium or calendar year?

Mr. Glatt: I have heard that it is an issue within the industry and we are moving forward with that. We are hopeful that it will be by the end of the year.

(34.38) Representative Lisa Meier: How costly is it to take the waste over to Montana?

Mr. Glatt: I'm unsure of that cost.

(35.15) Mr. Glatt: (Continued attachment A)

- Concluded testimony, no further questions.

(43.20) Brenda Weisz, Chief Financial Officer for the Department of Health and the Department of Environmental Quality: (See attachment D)

(50.52) Chairman Jon O. Nelson: Is that now in EPA?

Mr. Glatt: That is a program that we did not pursue.

Chairman Jon O. Nelson: Ok when we do, it's a general fund responsibility, and in this budget it's half of what it would be for the next biennium?

Mr. Glatt: That is correct, I can provide more insight on the program later on.

Chairman Jon O. Nelson: OK, at some point you need to tell us why that is worthwhile for ND.

Mr. Glatt: This program mainly deals with the oil field, inspections and reporting, and to do this, we would need approximately 40 more FTEs. However, we do not believe that we need that many. 10 FTEs would be too little, but many states are going in the 20 FTEs range. The industry would like us to take that over so that they don't have to deal with EPA. EPA takes too long to respond to the companies when they have an issue. EPA also is not close to where the issues are taking place, and that is why they want the state to take that over.

(54.31) Chairman Jon O. Nelson: Ok then 10 full-time employees (FTEs) is the bare minimum?

Mr. Glatt: Yes.

Chairman Jon O. Nelson: Let the committee know if the top 5 oil producing states control this program.

Mr. Glatt: Yes, we did look at that, and I can't quite remember the numbers but I can get those.

(56.35) Ms. Weisz: (continued attachment D)

(1.01.51) Chairman Jon O. Nelson: So the air monitoring equipment is different than the air quality equipment we talked about this morning?

Ms. Weisz: No it wouldn't be the same.

(1.02.30) Ms. Weisz: (Continued attachment D)

(1.04.36) Representative Randy A. Schobinger: Do we have to show harm to receive the folks wagon money?

Ms. Weisz: We do not have to show harm; all states can be recipients of that.

Chairman Jon O. Nelson: Has there been any funds given yet?

Mr. Glatt: They did allocate funds based on the number of VW automobiles in each state. It's a trust agreement and we have to follow the rules they have given.

Chairman Jon O. Nelson: You have some proposals in that area?

Mr. Glatt: We haven't accepted actual proposals yet, but we have set the stage as to what we are looking for.

Representative Randy A. Schobinger: Where are the losses made from under the petroleum fund?

Mr. Glatt: There is an annual fee payed from each member of the fund that goes into another fund that can pay out for cleanup.

Chairman Jon O. Nelson: Can we get a sheet to see the status on that fund?

Representative Randy A. Schobinger: Does that cover both on premise and off premise liability?

Jeff Uuben, Deputy Insurance Commissioner: Currently the balance is at 5.5 million and the tank fee is 100 dollars, and this fund is in need of a complete rework, and the expertise to do so doesn't lie within the insurance department and it would best be done by the department of environmental quality.

Chairman Jon O. Nelson: Are you going to begin that process of developing a new program?

Mr. Uuben: We are going to see how the legislation works, and then going to see what happens.

Chairman Jon O. Nelson: Do you need legislative approval to do so?

Mr. Uuben: Yes, we do.

Chairman Jon O. Nelson: Is that going to happen?

Mr. Uuben: I believe so yes.

**(1.11.19) Mr. Glatt going over governor's proposed budget more.
-Continued on Attachment D page 9**

Chairman Jon O. Nelson: Would the 2 FTEs transfer over from the insurance department?

Mr. Glatt: No they would be new.

Chairman Jon O. Nelson: Would they be located in the western part of the state?

Mr. Glatt: They are currently located in our office here. Previously we looked at locating them in Williston, but due to cost of living they didn't want to move.

(1.17.05) Chairman Jon O. Nelson: Do you feel that EPA would approve this program with 10 FTE?

Mr. Glatt: I don't know for certain on that.

Chairman Jon O. Nelson: How would you prioritize these new programs you've been asked to implement?

Mr. Glatt: They are all important.

(1.23.04) Mr. Glatt: (Continued attachment D)

1.2415 Chairman Jon O. Nelson: We should look at the turnover rate in the departments

Representative Richard G. Holman: Is there still a 2stage like back in the day? Do you want more leeway?

Mr. Glatt: We want more leeway than that.
-Concluded testimony, no further questions.

(1.26.07) Ron Ness, President of the North Dakota Petroleum Council: (Personal Testimony- In favor of the bill.)

(1.33.15) Mike Rud, ND Petroleum Marketers Association: (Personal Testimony-In favor of the bill.)

(1.34.20) Julie Eleckson, ND Stockman's Association: (Personal Testimony-In favor of the bill.)

NO FURTHER TESTIMONY, MEETING CONCLUDED

2019 HOUSE STANDING COMMITTEE MINUTES

Appropriations Committee - Human Resources Division Sakakawea Room, State Capitol

HB1024
1/28/2019
31555

- Subcommittee
 Conference Committee

Committee Clerk: Caitlin Fleck

Explanation or reason for introduction of bill/resolution:

Detailing the budget. Some Public Testimony.

Minutes:

A,B,C,D,E

Opened hearing and took roll.

Brenda Weisz, Chief Financial Officer for the Department of Environment Quality: (see attachment A)

Chairman Jon O. Nelson: What areas?

Ms. Weisz: Predominantly all areas. Dave is expecting some retirements in that areas too.

Chairman Jon O. Nelson: I think that one thing that is the key to attract employees would be the salary for the younger employees, and then benefits for the older employees.

Ms. Weisz: We have also seen that work life flexibility is very important for the younger employees as well.

Dave Glatt, Section Chief: Salary is a major thing for the newer employees, but it is important to keep the experienced employees, salary is important as well.

Chairman Jon O. Nelson: So when you go looking for new employees, do you get applicants?

Mr. Glatt: We were trying to hire a new engineer, and we had 0 applications. Getting engineers is really tough.

Chairman Jon O. Nelson: So there are more engineering jobs, than graduates?

Mr. Glatt: Seems like that.

Chairman Jon O. Nelson: So for the work life balance, is that an area that you can accommodate?

Mr. Glatt: I think that we can be flexible with their work schedule. We allow for if a person works an extra hour every day, every other week they can have a 3-day weekend.

Representative Richard G. Holman: Are you finding that our schools in the state are preparing individuals for the engineering types of jobs?

Mr. Glatt: They are doing quite well. Going to a university tells us that you can stick something out for 4 years. We do train our employees on the specifics of our company too.

Ms. Weisz: (see attachment B)

(13.34) Chairman Jon O. Nelson: The operator training specific program, in your budget at the health department, the gray was not added, you made it sound like this is, why?

Ms. Weisz: I shaded that gray because the request of 180,000 did get funded in the executive budget. My note on there is that it was partially funded at 125,000. These were all funded at some level.

Vice Chairman Gary Kreidt: The Volks wagon 4600, that shows up on the non-grant state, is that where its included in?

Ms. Weisz: That is where it is included, and we will talk about that on the grant schedule.

Ms. Weisz: (see attachment C)

(16.13) Vice Chairman Gary Kreidt: With that optional request for 6 fulltime employee (FTE), the optional OAR, you're including that in the spend down here, so do you usually put an optional request in to the spend down?

Ms. Weisz: Yes, we do. This is the executive recommendation I am presenting, so if the governor wouldn't have included that, it wouldn't be in the numbers. So what I have in front of you, and what Sheila put in the green sheets, is exactly what the governor has proposed. So it does include those optionals.

Vice Chairman Gary Kreidt: So without the optional request you are asking for 1.5 employees? Because you have a total of 8?

Ms. Weisz: We asked for the 4.5 and the 2 for a total of 6.5.

Vice Chairman Gary Kreidt: But you have a total of 8, just explain it to me.

Ms. Weisz: The count was 152 at our base budget, we reduced 3, and 1 for the IT unification. We added 2 for the petroleum, and 10 for the quad O and quad OA.

Vice Chairman Gary Kreidt: Through the optional request?

Ms. Weisz: Yes.

Chairman Jon O. Nelson: So the +8 does include the quad O and quad OA?

Ms. Weisz: Yes. And in the green sheets, it is broken down accordingly.

Representative Richard G. Holman: About the 10, they come on board in 2020, the cost there is half, but that will be an ongoing cost. So that 10, that affects the budget as 5, will eventually become 10. Since it is hard to hire engineers, is the word going out that there will be 10 positions open in that area?

Ms. Weisz: That will be an ongoing cost as the biennium go on. As far as the word going out, I know that people know that this is included in the budget, but we don't want to put the cart before the horse until the work is done in the budget.

Chairman Jon O. Nelson: Going into the next biennium, that will be closer to 2 million dollars next time?

Ms. Weisz: That is correct.

(21.06) Ms. Weisz: (continued attachment C)

(22.32) Chairman Jon O. Nelson: Is that a onetime cost?

Ms. Weisz: To bring the platform up, it is a onetime cost. I'm not sure how many years that license is good for then, generally it's a multi-year license. Then we would continue to pay for the license. I would have to check if it is a multi-year license.

Chairman Jon O. Nelson: The maintenance cost would be interesting to know. The 85,000 was for the platform?

Ms. Weisz: Correct, that is to bring everyone up to the same level of Microsoft 365. And I will find out for you how many years that license is for.

(23.33) Ms. Weisz: (continued attachment C)

(24.59) Chairman Jon O. Nelson: So they will be housed out the gold seal building?

Ms. Weisz: Yes, the gold seal building is not able to accommodate for 10 new FTE.

(25.28) Ms. Weisz: (continued attachment C)

(26.37) Chairman Jon O. Nelson: We took an FTE and moved it down to data processing but that 275,000 increase includes the FTE?

Ms. Weisz: The FTE moves to the information technology department (ITD), so we remove the money from the salaries line and move it to the operating line because we will be paying ITD for the service that FTE does.

Chairman Jon O. Nelson: Then ITD would have an additional FTE in there?

Ms. Weisz: Yes, then we will work with them on the contractual relationship so that we can have the same funding from our federal government.

(27.51) Ms. Weisz: (continued attachment C)

(30.48) Vice Chairman Gary Kreidt: On the insurance, could you explain that again?

Ms. Weisz: Right now as we operate together with department of environmental quality (DEQ) and department of health (DOH), all the insurance costs for property and our equipment is paid for in fiscal and operations and our administrative area. With the split of the 2 agencies we will no longer in the DOH pay for the equipment and property insurance. So then DEQ will have to start paying that separately, and will be billed separately from the insurance company, and we are establishing that in this budget.

(31.55) Ms. Weisz: (continued attachment C)

Chairman Jon O. Nelson: That is the one that in the second year of the next biennium will be paid off?

Ms. Weisz: Yes.

(32.48) Ms. Weisz: (continued attachment C)

Chairman Jon O. Nelson: Where is that separate building located?

Ms. Weisz: It is right across the parking lot.

Chairman Jon O. Nelson: We had that issue with special assessments with the DOH, does the DEQ have title of that land?

Ms. Weisz: The DEQ is free of that special assessment. The address that was for that assessment was the microbiology lab.

(34.15) Ms. Weisz: (continued attachment C)

Chairman Jon O. Nelson: Is that going to be a part of the sift fund then too?

Ms. Weisz: Yes.

Chairman Jon O. Nelson: It looks like everything in this category is in special funds, so that must all be from sift funds?

Ms. Weisz: Yes.

(35.29) Ms. Weisz: (continued attachment C)

(35.55) Chairman Jon O. Nelson: Who are the recipients of the grants?

Mr. Glatt: We are in the process of making a plan to give out those grants. Taking proposals on what that money should be spent for. Right now, we are primarily looking at projects for reduced emissions.

Chairman Jon O. Nelson: Are those grants dedicated to transportation type efficiencies?

Mr. Glatt: I would have to go back and look, they are very specific of where the funds can go.

Chairman Jon O. Nelson: Are you getting some ideas then?

Mr. Glatt: Natural gas vehicles, low emission diesel engines, those types of things.

Representative Randy A. Schobinger: Do we emissions test anywhere in ND?

Mr. Glatt: No we don't.

(39.40) Ms. Weisz: (continued attachment C)

(40.30) Chairman Jon O. Nelson: Are we going to continue to fund that through sift funds, or will it go to general funds eventually? We have to find a way to do this because it is a golden opportunity I believe.

Ms. Weisz: The 1 million in the sift funds is a onetime expense. The salaries, the quad O, and quad OA for 1.2 million in operating expenses are being funded by the general fund.

Chairman Jon O. Nelson: But the 8 FTE in the salary line, those quad O and quad OA are in there?

Ms. Weisz: Yes, that is 10 quad O and quad OA FTE, 2 petroleum tank FTE, so you have 12 new FTE, but then subtract the 3 administrative staff and 1 more for IT unification.

Chairman Jon O. Nelson: So I'm going to the special line in salaries, there's 752,000, are you saying that some of those reductions are funded by special funds?

Ms. Weisz: Yes, part of those are funded with special funds, the 250,000 of that. Then also the petroleum tank release FTE, those are funded 336,000 from special fund. Then the other part that makes up that increase, 432,000 of the executive compensation package is coming from special funds.

Chairman Jon O. Nelson: So that 3 administrative staff, were they funded by special funds?

Ms. Weisz: Yes, they were.

Chairman Jon O. Nelson: What were they funded with?

Ms. Weisz: There is a special fund schedule that we can go through.

(44.43) Ms. Weisz: (continued attachment C)

(48.30) Chairman Jon O. Nelson: Is that number fairly consistent with past biennium?

Ms. Weisz: Yes, it is.

(49.09) Chairman Jon O. Nelson: Who are the recipients for the environmental protection agency (EPA) performance partnership grants?

Mr. Glatt: We refer to that as our block grant. It is primary salaries, traveling those types of things, to implement EPA programs at the state level.

Chairman Jon O. Nelson: That increase which is significant, is that related to more responsibility with quad O or quad OA, is that related to that?

Mr. Glatt: No, that is more related to the breakout of the DEQ.

Chairman Jon O. Nelson: So some of that is a paper transfer?

Mr. Glatt: Correct.

(50.48) Ms. Weisz: (continued attachment C)

Chairman Jon O. Nelson: The air contamination fees, why did they go up?

Mr. Glatt: The air contingent fees are the major minor sources. They are adjusted periodically with the cost of living increases. The other fees are related to minor sources, such as oil wells. We also permit other minor sources such as boiler wells.

Chairman Jon O. Nelson: The next biennium, the remaining 3 million in the Volks Wagon fund, will that be in the budget next time?

Mr. Glatt: That is correct.

Representative Richard G. Holman: Does it make a difference in air quality if there is flaring or not?

Mr. Glatt: Yes, it does make a difference. We would like to see all the gas collected, it is a waste of resources if they don't flare it. We are now looking at 99% efficient flairs, and we are permitting those and they have to operate them at that level.

Chairman Jon O. Nelson: Some of these smaller towns do have the negative effects of the oil boom experience, maybe that was where I was leading with that Volks Wagon settlement, maybe there could be some things that we brought to the smaller towns.

Mr. Glatt: We would have to look at the grant rules. At the end of the day, it is for limiting emissions.

Representative Randy A. Schobinger: Concerning the Volks Wagon settlement, if the state didn't want that money, what would happen to it?

Mr. Glatt: It would go back to the big pot and would be distributed to other states. There is significant interest in this program. They are looking at areas of interest for different types of transportation.

Chairman Jon O. Nelson: Ultimately, there are consequences to everything that is done.

Mr. Glatt: You have to be honest, and you can't fool the public.

Representative Randy A. Schobinger: It's interesting to me that in a state that doesn't test for this kind of thing, and has oil trucks running up and down the road, that is the kind of money I would prefer leaving on the table. We don't have to take every dollar that could come to the state.

Mr. Glatt: At the end of the day, it also sends a message to the industry that we have to be up front and honest with what we're doing. I do think that there is some benefit from taking the money.

Representative Randy A. Schobinger: The Chattanooga Volks Wagon plant just announced that they are investing 800 million in that plant for electric vehicles.

(1.02.30) Ms. Weisz: (Continued attachment C)

Chairman Jon O. Nelson: That last item, is that the petroleum compensation package?

Ms. Weisz: That is the governor's compensation package, what he currently has built into this budget.

Chairman Jon O. Nelson: But those positions, what are they?

Ms. Weisz: The third one up is the petroleum tank release fund, the 552,399 is the operating costs and the salary line, and those are all funded with specials funds.

Representative Richard G. Holman: When you charge fees, you also establish licensing and fees.

Ms. Weisz: That is correct.

Representative Lisa Meier: Can we get a little bit more detailed schedule of what is coming out of the sift fund?

(1.05.30) Ms. Weisz: 20,000 for computer equipment for those 10 FTE, 20,000 for office equipment, 500,000 for the cameras, 500,000 for the data base related to the quad O program. All are related to the quad O program, all being a onetime cost.

(1.06.43) Vice Chairman Gary Kreidt: Under the special funds, you have the petroleum tank release compensation fund for a total of 21,702 then when you go on the Oar it shows 757,000 what am I missing?

Ms. Weisz: Part of the budget, that I mentioned, is that we had funding already built in the fund for the petroleum tank release fund that we had been already able to use for match for our lust program. In order to make the budget agree, the request is at 702,899. We already receive a small amount for match.

(1.08.13) Ms. Weisz: (continued attachment C)

Chairman Jon O. Nelson: We have no legal expenditures in federal court?

Ms. Weisz: We have some, but we aren't spending at that 500,000-dollar level of our onetime.

Chairman Jon O. Nelson: Maybe you can give us a little briefing in that area?

Mr. Glatt: As it relates to the legal issues?

Chairman Jon O. Nelson: In my world that is the offset to state primacy, is that we take over the administration of these programs and should be able to stay out of federal court in some regard, is that fair to say?

Mr. Glatt: What we have seen with a previous administration, they were a lot more active in making new rules and regulations. We felt that the federal government was overstepping their bounds and decided to challenge EPA on that. With the current administration, we've seen them stand down in many areas. Because of that we just aren't involved in the federal government that much right now. We are seeing a lot more challenges at the state level.

Chairman Jon O. Nelson: Give me an example of a state case right now that you're in?

Mr. Glatt: We heard from a Dickinson court for a Meridian Refinery. We gave a clean air act permit to a potential refinery located 3 miles from the Roosevelt State National Park. We went through all the hearings, answered all the questions, and gave them a permit and we were sued by national environmental agencies for that.

Chairman Jon O. Nelson: Is there anything taking place with confined animal operations now?

Mr. Glatt: We did provide a permit on Rolling Green in Cass County, went through the process. Got challenged in district court, went all the way to the state supreme court, and prevailed on that as well.

(1.15.02) Ms. Weisz: (continued attachment C)

(1.23.43) Chairman Jon O. Nelson: The water development trust fund grants, what is the purpose of those?

Mr. Glatt: It is water commission funding provided to us to do analytical work for them.

Chairman Jon O. Nelson: So like water quality, nitrate levels, would that be for them?

Mr. Glatt: They go out and take samples of the water and we do the testing for them.

Chairman Jon O. Nelson: How does that differ from the 319 nonpoint source grants?

Mr. Glatt: The 319 nonpoint source is a voluntary program, where we provide off source funding. It's a 60/40, where the federal government provides 60% and we pay 40% match. We utilize that for establishment or reestablishment, animal feeding programs to bring them up to code so they don't become a water pollution issues, we also provide money for education to schools, wet programs, it's pretty broad based.

Chairman Jon O. Nelson: That money is granted to producers to protect the areas?

Mr. Glatt: It can go to water resource boards, it can go to locals, it can go to individual producers if their upgrading their animal feeding operations; it can go to a wide variety of things.

Vice Chairman Gary Kreidt: Under the rangeland protection fund, we've got 250,000 under the special funds, and then 50,000 in the grant line item, explain that to me?

Ms. Weisz: 50,000 goes out in grants, the rest is used to salaries and a small amount of operating.

Chairman Jon O. Nelson: And that has been consistent?

Ms. Weisz: Yes.

Vice Chairman Gary Kreidt: So 50,000 is what is actually being granted out?

Ms. Weisz: Of that 250,000 yes.

(1.27.50) Ms. Weisz: (continued attachment C)

(1.28.52) Vice Chairman Gary Kreidt: Is this replacing existing equipment?

Ms. Weisz: The majority is replacing old equipment.

(1.31.00) Ms. Weisz: (continued attachment C)

(1.31.34) Vice Chairman Gary Kreidt: This quad O and quad OA, can we get a definition of that?

Mr. Glatt: I can do that for you. **(see attachment D)**

(1.33.15) Ms. Weisz: (continued attachment C)

(1.36.3) Chairman Jon O. Nelson: The temporary staff, are these college students that come back and work in these areas?

Mr. Glatt: You are right. They are college students that help in the lab or with our water quality monitoring.

(1.38.02) Jeff Uuben, Deputy Insurance Commissioner: (see attachment E)

(1.40.45) Chairman Jon O. Nelson: So you have 4 FTE boiler inspectors?

Mr. Uuben: Yes, we do. 2 in Bismarck and 2 in Fargo.

Chairman Jon O. Nelson: So we would be using the existing personnel with the only change being the administrative positions that oversee them?

Mr. Uuben: That is correct.

(1.41.45) Mr. Uuben: (continued attachment D)

(1.43.24) Chairman Jon O. Nelson: So the salary line, the 4 FTE, and the operating lines, that isn't the correct number of FTE?

Mr. Uuben: I was working off the original bill draft, so I'm not sure.

Chairman Jon O. Nelson: You did say that that is a dollar offset from your department for the boiler program, is that a sum of 0?

Mr. Uuben: Correct.

Representative Richard G. Holman: It looks like the only think that you are changing is the name of the department that is in charge, after the first page?

Mr. Uuben: Correct.

Chairman Jon O. Nelson: You're good with creating this mega agency that includes boiler inspections now?

Mr. Glatt: Yes, we are fine with it. It needs a place to go, and it isn't a good fit for the insurance commissioner's office.

(1.48.03) Representative Randy A. Schobinger: Would it be wiser for us to leave that open? That's a really low cost for an insurance policy, maybe we should allow the department to set that cost?

Mr. Glatt: The way I understand is that we are taking over the program and we will do a lot of the infield work. I do think that fund is cheap for the operator, and we will have to take a look at a couple of things. Whether or not the fund is efficient in size, regulations for above ground storage tanks. I do anticipate that fee changing.

Representative Richard G. Holman: How has your job changed since the separation from the department of health?

Mr. Glatt: It really hasn't changed a lot because we had been doing such divergent work while we were still with the department of health.

(1.52.12) Dale Niezwaag, Basin Electric Power Cooperative, EmPower Commission: We are in support of their additional FTE in the budget. I'd like to highlight that the FTE would be helpful in the clean power plant program that we are mandating. This new proposed H rule puts the responsibility back on the state level where we can work with them and develop programs with the plants that are feasible. That will put additional responsibility on the department and we think that they FTE would be reasonable for that increase. The second rule is the regional haze rule, which says by 2064 there should be 0 manmade visibility impacts on class one areas.

Chairman Jon O. Nelson: What plant did you retrofit that converter on?

Mr. Niezwaag: The Laramie River Station in Wyoming.

Chairman Jon O. Nelson: So none in ND?

Mr. Niezwaag: No.

Chairman Jon O. Nelson: What was that first rule you talked about?

Mr. Niezwaag: The Clean Power Plant was the original rule that came out of the Obama Administration. A replacement rule is the ACE rule, affordable clean energy rule. It is a proposed rule that came out last fall, and we are waiting for the final rule to come out.

(1.57.20) Mike Ruud, ND Petroleum Members Association: In support of the budget. Happy that we will be able to transfer the tank fund over to DEQ. We know that there will need to be some work done, but we know that if we work with the director at the DEQ we can hopefully get that done and the fund can be sustained for a long time.

Chairman Jon O. Nelson: Is there any opposition to that shift that you are aware of?

Mr. Ruud: No.

Representative Richard G. Holman: Dave mentioned the above ground storage regulations, aren't there at least some minor regulations?

Mr. Ruud: One of our big concerns is that when we first got into this business, we didn't anticipate what was going to happen with the boom in the convenience store industry. The marketer plumbed from the above ground tanks right over to the retail cite. We don't have any leak monitoring technology on those above ground tanks and that would be one of the main concerns that we would address.

NO FURTHER TESTIMONY OR QUESTIONS.
MEETING CONLCUDED.

2019 HOUSE STANDING COMMITTEE MINUTES

Appropriations Committee - Human Resources Division Sakakawea Room, State Capitol

HB1024
2/5/2019
32212

- Subcommittee
 Conference Committee

Committee Clerk: Caitlin Fleck

Explanation or reason for introduction of bill/resolution:

Hearing amendments.

Minutes:

A

Opened hearing.

Attachment A handed out.

Chairman Jon O. Nelson: We won't move the retirement contribution across. The next is the cost to continue, we will add that. We will add the removal of 3 fulltime employees (FTE). We will move the 2 FTE for the petroleum tank. Remove the information technology department (ITD) unification language, are there more?

Sheila Sandness, Legislative Council: That is the No written testimony effect of taking out the FTE but adding in the cost of the ITD.

Chairman Jon O. Nelson: Next is the 10 FTE positions for the operating expenses, and we will add that. Next we will add the water treatment systems operators. Add the Microsoft 365. Add the bond and capital payments. Add the funds for the extraordinary repairs. Next, add the funding for the equipment and information technology. Add the increase of funding for the Volk's Wagon trust settlement.

Representative Randy A. Schobinger: Will we vote on each of these separately?

Chairman Jon O. Nelson: I'll pull this one out just for you.

Representative Randy A. Schobinger: Thank you!

Chairman Jon O. Nelson: Add the one-time funding for the strategic planning. Let's move on to the sections. Section 3 and 4 will not be added. Section 5 will move across. Section 6 and 7 will move across as well. Section 8 will be moved across.

Representative Randy A. Schobinger: Between now and then, I might visit with Dave Glatt about further amending to give them a little bit more flexibility in their fees.

Chairman Jon O. Nelson: Have that discussion and then we will talk about that.

Representative Randy A. Schobinger: By that time, it can be done by voice because it will be pretty clear.

Chairman Jon O. Nelson: Talk to Sheila about the language and we will talk about it on Friday.

No further amendments. Meeting closed.

2019 HOUSE STANDING COMMITTEE MINUTES

Appropriations Committee - Human Resources Division Sakakawea Room, State Capitol

HB1024
2/8/2019
32444

- Subcommittee
 Conference Committee

Committee Clerk: Caitlin Fleck

Explanation or reason for introduction of bill/resolution:

Taking action on the amendments.

Minutes:

A,B

Opened hearing.

Sheila Sandness, Legislative Council: (see attachment A)

Chairman Jon O. Nelson: The removal of the 3 fulltime employees (FTE) was done to meet the reduction in the executive recommendation?

Ms. Sandness: Yes.

Chairman Jon O. Nelson: Where were they taken from?

Brenda Weisz, Chief Financial Officer for the Department of Environmental Quality: Administration.

Ms. Sandness: (continued attachment A)

Chairman Jon O. Nelson: That bond ends when?

Ms. Weisz: December 2022.

Ms. Sandness: (continued attachment A)

Chairman Jon O. Nelson: It looks like with these changes we've added 350,000 dollars?

Ms. Sandness: Yes. They are not done with the additional amendments upstairs; so can we wait on that?

Chairman Jon O. Nelson: Let's go on and do all other sections, and then we will wait to vote this out once we get those additional amendments.

Ms. Sandness: (See attachment B)

Chairman Jon O. Nelson: Is that approval in place already?

Dave Glatt, Director of the Department of Environmental Quality: This would be for Quad O and Quad OA. Once we get approval we will spend the next years creating rules.

Chairman Jon O. Nelson: That is why it is only for the second year of the biennium?

Mr. Glatt: Yes.

Chairman Jon O. Nelson: Are there other states that are doing this as well?

Mr. Glatt: Yes, we looked to those to determine how many FTE we needed.

Representative Richard G. Holman: This is where you add the 10?

Mr. Glatt: Yes. They are for the air quality study in the oil patch.

Ms. Sandness: (continued attachment B)

Representative Randy A. Schobinger: The amendment that I am looking to bring will amend section 15 if it is written this way.

Chairman Jon O. Nelson: What are you doing with this?

Representative Randy A. Schobinger: All it is intended to do is give the department some flexibility in setting those rates more appropriately. To make sure that the fee they are charging for the insurance policy is enough to cover the potential losses they may incur. Both Dave and Mike know, we just need to verify that it reads the way we want it to before we amend it.

Chairman Jon O. Nelson: Is there anything for the record that you want to bring forward?

Mr. Glatt: We have talked separately but with the same issue. This takes the fees out of law, and into the rules that will be developed. However, we need to get approval from the board to do this.

Chairman Jon O. Nelson: This is an appropriate piece to add?

Mr. Glatt: Yes.

Representative Richard G. Holman: So this amendment will allow you to adjust the fees because we are moving it into rules? Then you will have the authority to make that adjustment?

Mr. Glatt: Yes. We have that in some of our other rules and costs already. This will allow us to raise those fees if we see fit.

Mike Ruud, President of the ND Petroleum Council: We want to have a little more flexibility with that, and we are very comfortable with how this is playing out and how it will affect us.

Chairman Jon O. Nelson: Ok, we will hold action on this bill until we do have that amendment in hand. I think we are down to the statement of purpose; do you want that to be walked through?

Representative Richard G. Holman: Yes.

Ms. Sandness: (continued attachment B)

Chairman Jon O. Nelson: Those offsets in the insurance department, are they dollar for dollar?

Ms. Sandness: I don't work on that budget, but I know Alex will be down here for the HB1015 hearing and you can talk to him then. **(continued attachment B)**

Chairman Jon O. Nelson: Is that the 500,000 for the cameras?

Ms. Weisz: And the 500,000 for the data base, and also the 20,000 for onetime office equipment and computers. That would be the 40,000 in the operating line.

Chairman Jon O. Nelson: Are you comfortable with this?

Representative Richard G. Holman: Yes.

Chairman Jon O. Nelson: Ok, then we will hold onto this until we get that further amendment.

Meeting closed.

2019 HOUSE STANDING COMMITTEE MINUTES

Appropriations Committee - Human Resources Division Sakakawea Room, State Capitol

HB1024
2/8/2019
32477

- Subcommittee
 Conference Committee

Committee Clerk: Caitlin Fleck

Explanation or reason for introduction of bill/resolution:

Taking action on amendments.

Minutes:

A,B,C

Opened hearing.

Amendments A and B were handed out.

Representative Randy A. Schobinger: I think the proper way to do this is to adopt the amendments that we had from before. And then we can act on this new amendment.

Chairman Jon O. Nelson: Representative Randy A. Schobinger was saying to vote on both sets of amendments separately first.

Sheila Sandness, LC: You can vote on the amendments separately and then we will combine them upstairs once they are amended.

Representative Richard G. Holman: (see attachment A) Motion to adopt amendment 19.0212.01001.

Vice Chairman Gary Kreidt: Seconded.

Roll Call Vote: 6 Yes, 0 No, 0 Absent.

Motion passes.

Representative Randy A. Schobinger: (see attachment B) The reason this is before you is because there is an insurance problem. This would allow them to set the premium to keep the account solvent. This takes the language from a set fee, and open it up to be able to set that fee to cover potential losses. I motion to adopt amendment 19.0212.01002.

Vice Chairman Gary Kreidt: Seconded.

Voice Vote: motion carries.

Representative Richard G. Holman: Motion for a do pass as amended.

Representative Randy A. Schobinger: Seconded.

Roll Call Vote: 6 Yes, 0 No, 0 Absent.

Motion carries.

Floor assignment: **Representative Richard G. Holman**

Chairman Jon O. Nelson: We are down to one remaining bill then. Double check your bills and make sure that the base payroll change is done.

Representative Randy A. Schobinger: So when we do the veteran's affairs over in full, do we just make that motion?

Chairman Jon O. Nelson: Let's do that here instead.

Sheila Sandness, Legislative Council: In HB1025 it looks like the base payroll is already done. It is all in the amendment.

Chairman Jon O. Nelson: Those are the only 2 budgets that we haven't addressed in full committee. We will wait for the new language regarding the legislative management study on DOCR. I think that covers everything.

Representative Randy A. Schobinger: Concerning the administrative hearings, what was gin got happen with HB1064, it looks like they hog housed that bill.

Chairman Jon O. Nelson: They have, and I questioned on the status of the bill and they agreed to send a shot across to be a little bit less deliberate on the hearings for the WSI claims.

Meeting closed.

Attachment C was handed out on 2/11/2019.

2019 HOUSE STANDING COMMITTEE MINUTES

Appropriations Committee
Roughrider Room, State Capitol

HB 1024
2/13/2019
32705

- Subcommittee
 Conference Committee

Committee Clerk: Risa Bergquist

Explanation or reason for introduction of bill/resolution:

A BILL for an Act to provide an appropriation for defraying the expenses of the department of environmental quality.

Minutes:

Chairman Delzer: Called the meeting to order for HB 1024

Representative Holman: (reviews amendment 19.0212.01003) As of July 1st this is going to be a new agency in the state of North Dakota call the department of environmental quality. Before this and currently it is part of the health department. I would just mention that there are other things being taken from other departments to expand this department. Section 4-28 are sections that are being taken from other parts of code and moving from other agencies into this new agency. Basically is tank inspection and oil inspections are being moved into this department. This department takes care of air water fuel and that type of stuff. The PSA starts on page 17, we did the payroll changes, salary and benefit changes consistent as what we've been doing. Removal of 3 FTE administrative positions, adding 2 positons in the petroleum tank release program. Transferring the boiler program over is requiring 4 position in item 6. Section 7, this is another change and it's called quad O and quad Oa, it's air quality that is being taken over and basically this is be general fund but it is important that we do this. It kicks in the second year of the biennium and it does require the addition of 10 FTEs.

3:35 Chairman Delzer: Is that general fund?

Representative Kreidt: Yes. Continuing with water training on number 8 reduced, Microsoft office which is in all the other budgets as well. Bond payments that's just a small amount for the micro lab. Extra ordinary repairs and equipment, these where from other funds.

5:00 Chairman Delzer: What are they going to use that money from Volks wagon for?

Representative J. Nelson: There isn't a list but it's going to be used for air quality programs.

Chairman Delzer: So do we have any kind of a reporting requirement?

Representative J. Nelson: I don't think there is a requirement for that but I would think that would be really easy to do.

Representative Holman: Continues

6:30 Chairman Delzer: If it's a million 40 there and a million 248 up above and they are not going to do it for a year is it going to cost us 5 million next biennia?

Representative J. Nelson: The salary would be doubled in the next biennium.

Representative Holman: Continues.

8:30 With that I will make a motion to adopt the amendment .01003

Representative Meier: Second

Chairman Delzer: Sheila did we have anything move over?

Sheila Sandness, LC: No, that is the same as the last biennium.

Chairman Delzer: Further questions? **Voice vote, all in favor, Motion carries**

Representative Holman: I'll make a motion to move a Do Pass as Amended

Representative J. Nelson: Second

Chairman Delzer: Any further discussion on the motion for a Do Pass as Amended? Seeing none we will take the roll

A Roll Call vote was taken. Yea: 20 Nay: 0 Absent: 1

Motion Carries, Representative Holman will carry the bill.

Chairman Delzer: With that is there's nothing else we will close this meeting.

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1024

Page 1, line 2, after "quality" insert "; to create and enact chapter 23.1-16 of the North Dakota Century Code, relating to boiler inspections; to amend and reenact sections 23.1-12-02, 23.1-12-04, 23.1-12-05, 23.1-12-06, 23.1-12-10, 23.1-12-11, 23.1-12-14, 23.1-12-15, 23.1-12-17, 23.1-12-18, 23.1-12-19, 23.1-12-20, 23.1-12-23, 23.1-12-24, 23.1-12-25, 23.1-12-26, 23.1-12-27, 23.1-12-28, 23.1-12-29, and 23.1-12-30 of the North Dakota Century Code, relating to the duties of the department of environmental quality; to repeal chapter 26.1-22.1 of the North Dakota Century Code, relating to boiler inspections; and to provide for a contingent effective date"

Page 1, replace lines 10 through 19 with:

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Salaries and wages	\$27,040,544	\$3,156,409	\$30,196,953
Operating expenses	8,005,878	1,996,302	10,002,180
Capital assets	1,258,249	1,005,180	2,263,429
Grants	<u>13,407,000</u>	<u>2,454,529</u>	<u>15,861,529</u>
Total all funds	\$49,711,671	\$8,612,420	\$58,324,091
Less estimated income	<u>38,987,520</u>	<u>7,428,412</u>	<u>46,415,932</u>
Total general fund	\$10,724,151	\$1,184,008	\$11,908,159
Full-time equivalent positions	152.50	13.00	165.50"

Page 1, line 20, after "BUDGET" insert "- **REPORT TO SIXTY-SEVENTH LEGISLATIVE ASSEMBLY**"

Page 1, line 22, after "biennium" insert "and the 2019-21 biennium one-time funding items included in the appropriation in section 1 of this Act"

Page 2, replace lines 1 through 3 with:

" <u>One-Time Funding Description</u>	<u>2017-19</u>	<u>2019-21</u>
Environmental protection agency lawsuit	\$500,000	\$0
Air pollution program equipment	<u>0</u>	<u>1,040,000</u>
Total estimated income	\$500,000	\$1,040,000

The 2019-21 biennium one-time funding amounts are not a part of the entity's base budget for the 2021-23 biennium. The department of environmental quality shall report to the appropriations committees of the sixty-seventh legislative assembly on the use of this one-time funding for the biennium beginning July 1, 2019, and ending June 30, 2021."

Page 2, after line 9, insert:

"SECTION 4. STATE FIRE AND TORNADO FUND. The estimated income line item included in section 1 of this Act includes \$879,312, or so much of the sum as may be necessary, to be made available to the department of environmental quality from the state fire and tornado fund for the boiler inspection program, for the biennium beginning July 1, 2019, and ending June 30, 2021.

SECTION 5. STRATEGIC INVESTMENT AND IMPROVEMENTS FUND - CONTINGENT ONE-TIME FUNDING - FEDERAL PROGRAM SUPREMACY. The estimated income line item included in section 1 of this Act includes \$1,040,000, or so much of the sum as may be necessary, to be made available to the department of environmental quality from the strategic investment and improvements fund for one-time funding of air pollution program equipment related to the establishment of federal program supremacy, for the biennium beginning July 1, 2019, and ending June 30, 2021. The funding may be spent only upon certification by the director of the department of environmental quality to the director of the office of management and budget that the federal environmental protection agency has approved the department of environmental quality assuming the duties of federal air pollution programs.

SECTION 6. CONTINGENT APPROPRIATION - FEDERAL PROGRAM SUPREMACY. The amount of \$1,248,945 from the general fund and ten full-time equivalent positions included in section 1 of this Act are effective July 1, 2020, and may be spent only upon certification by the director of the department of environmental quality to the director of the office of management of budget that the federal environmental protection agency has approved the state assuming primacy over the quad O and quad Oa federal air pollution programs.

SECTION 7. AMENDMENT. Section 23.1-12-02 of the North Dakota Century Code is amended and reenacted as follows:

23.1-12-02. Definitions. (Contingent effective date - See note)

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. "~~Administrator~~" means ~~the manager of the state fire and tornado fund.~~
3. "Board" means the petroleum release compensation board.
4. "~~Commissioner~~" means ~~the insurance commissioner.~~
- 5.3. "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.
- 6.4. "Dealer" means a person licensed by the tax commissioner to sell motor vehicle fuel or special fuels within the state.
- 7.5. "Department" means the department of environmental quality.
- 8.6. "Fund" means the petroleum release compensation fund.
- 9.7. "Location" means a physical address or site that has contiguous properties. Noncontiguous properties within a municipality or other governmental jurisdiction are considered separate locations.

- ~~10.8.~~ "Operator" means a person in control of, or having responsibility for, the daily operation of a tank under this chapter.
- ~~11.9.~~ "Owner" means a person who holds title to, controls, or possesses an interest in the tank before the discontinuation of its use.
- ~~12.10.~~ "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.
- ~~13.11.~~ "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.
- ~~14.12.~~ "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.
- ~~15.13.~~ "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. 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.
- ~~16-14.~~ "Tank integrity test" means a test to determine that a tank is sound and not leaking. For an underground tank, the term means a certified third-party test that meets environmental protection agency leak detection requirements. For an aboveground tank, the term means a test conducted according to steel tank institute SP 001 or American petroleum institute 653.
- ~~17-15.~~ "Third party" means a person who is damaged by the act of a registered owner, operator, or dealer requiring corrective action, or a person who suffers bodily injury or property damage caused by a petroleum release.

SECTION 8. AMENDMENT. Section 23.1-12-04 of the North Dakota Century Code is amended and reenacted as follows:

23.1-12-04. Administration of fund - Staff. (Contingent effective date - See note)

The ~~administrator~~department shall administer the fund according to this chapter. The ~~administrator~~department shall convene the board as may be necessary to keep the board apprised of the fund's general operations. However, the board shall meet at least once each half of each calendar year to review and to advise the ~~administrator~~department regarding the administration of the fund, the fund's general operations, and to hear and decide denials of claims by the ~~administrator~~department which may be appealed to the board, and to discuss all claims against the fund. The ~~administrator~~department may employ any assistance and staff necessary to administer the fund within the limits of legislative appropriation. A claimant aggrieved by a decision of the ~~administrator~~department regarding a claim upon the fund may appeal the decision to the board. The board may sustain, modify, or reverse the decision of the ~~administrator~~department. The claimant or the ~~administrator~~department may appeal the board's decision to the commissioner. ~~The decision of the commissioner may be appealed~~ under chapter 28-32.

SECTION 9. AMENDMENT. Section 23.1-12-05 of the North Dakota Century Code is amended and reenacted as follows:

23.1-12-05. Adoption of rules. (Contingent effective date - See note)

The ~~administrator~~department shall adopt rules regarding the practices and procedures of the fund, the form and procedure for applications for compensation from the fund, procedures for investigation of claims, procedures for determining the amount and type of costs that are eligible for reimbursement from the fund, procedures for persons to perform services for the fund, procedures for appeals to the board by claimants aggrieved by an adverse decision of the ~~administrator~~department, and any other rules as may be appropriate to administer this chapter.

SECTION 10. AMENDMENT. Section 23.1-12-06 of the North Dakota Century Code is amended and reenacted as follows:

23.1-12-06. Release discovery. (Contingent effective date - See note)

If the department has reason to believe a release has occurred, it shall ~~notify the administrator.~~ The department shall direct the owner or operator to take reasonable and necessary corrective actions as provided under federal or state law or under adopted rules.

SECTION 11. AMENDMENT. Section 23.1-12-10 of the North Dakota Century Code is amended and reenacted as follows:

23.1-12-10. Providing of information. (Contingent effective date - See note)

A person the ~~administrator~~or the department has reason to believe is an owner or operator, the owner of real property where corrective action is ordered to be taken, or a person that may have information concerning a release shall, if requested by the ~~administrator~~or the department, or any member, employee, or agent of the ~~administrator~~or the department, furnish to the ~~administrator~~or the department any information that person has or may reasonably obtain which is relevant to the release.

SECTION 12. AMENDMENT. Section 23.1-12-11 of the North Dakota Century Code is amended and reenacted as follows:

23.1-12-11. Examination of records. (Contingent effective date - See note)

Any employee of the ~~administrator~~or the department may, upon presentation of official credentials:

1. Examine and copy books, papers, records, memoranda, or data of any person that has a duty to provide information to the ~~administrator~~or the department under section 23.1-12-10; and
2. Enter upon public or private property to take action authorized by this section, including obtaining information from a person that has a duty to provide the information under section 23.1-12-10, conducting surveys and investigations, and taking corrective action.

SECTION 13. AMENDMENT. Section 23.1-12-14 of the North Dakota Century Code is amended and reenacted as follows:

23.1-12-14. Other remedies. (Contingent effective date - See note)

This chapter does not limit the powers of the ~~administrator~~ or department, or preclude the pursuit of any other administrative, civil, injunctive, or criminal remedies by the ~~administrator~~ or department or any other person. Administrative remedies need not be exhausted to proceed under this chapter. The remedies provided by this chapter are in addition to those provided under existing statutory or common law.

SECTION 14. AMENDMENT. Section 23.1-12-15 of the North Dakota Century Code is amended and reenacted as follows:

23.1-12-15. Revenue to the fund. (Contingent effective date - See note)

Revenue from the following sources must be deposited in the state treasury and credited to the fund:

1. Any ~~registration~~ fees collected under section 23.1-12-17;
2. Any money recovered by the fund under section 23.1-12-23, and any money paid under an agreement, stipulation, or settlement;
3. Any interest attributable to investment of money in the fund; and
4. Any money received by the ~~administrator~~department in the form of gifts, grants, reimbursements, or appropriations from any source intended to be used for the purposes of the fund.

SECTION 15. AMENDMENT. Section 23.1-12-17 of the North Dakota Century Code is amended and reenacted as follows:

23.1-12-17. Registration fee. (Contingent effective date - See note)

1. An owner or operator of a tank shall pay an annual registration fee of fifty dollars for each aboveground or underground tank owned or operated by that person. If after the fiscal year has been closed and all expenses relating to the fiscal year have been accounted for, the fund balance is less than six million dollars, the annual registration fee of fifty dollars is increased to one hundred dollars. If after the fiscal year has been closed and all expenses relating to the fiscal year have been accounted for, the fund balance is five million five hundred thousand dollars or more and the annual registration fee has been increased to one hundred dollars, the fee must be reduced to fifty dollars. If after the fiscal year has been closed and all expenses relating to the fiscal year have been accounted for, the fund balance exceeds nine million dollars, the annual registration fee is reduced to five dollars. Annual registration fees must continue at five dollars until the fund balance does not exceed nine million dollars.
2. An owner or operator of an existing tank that is discovered at a location that currently and previously has had tanks registered with the fund shall pay an additional twenty-five dollar penalty fee in addition to the registration fee for each aboveground tank and each underground tank owned or operated by that person for each previous year that the tank was required to be registered for which a fee was not paid. The payment includes the fees and the penalty for the failure to register.

3. An owner or operator of an existing tank at a location that was not previously and continuously registered with the fund, whether the registration was required by law or not must provide the fund with a phase two environmental study conducted by a qualified firm according to American society for testing materials standards. A tank integrity test must also be performed. The environmental study and tank integrity test must be reviewed by the commissionerdepartment along with the application for registration with the fund. If the commissionerdepartment rejects the application, the applicant is denied eligibility to the fund. However, if the site is remediated and the leaking tank is replaced, the applicant may reapply for registration with the fund. A new installation that is using a used tank must provide tank integrity test results for the used tank. Use of a synthetic liner in an aboveground dike system negates the need for a tank integrity test. The owner or operator of a new tank at a new site or a new tank at an existing site that had a tank registered at the site previously need only pay the required fees for registration with the fund.
4. If accepted for registration with the fund, the owner or operator of the tank shall pay an additional twenty-five dollar penalty fee in addition to the registration fee for each aboveground tank and underground tank owned or operated by that person for each previous year that the tank was required to be registered for which a fee was not paid, regardless of ownership in each of those years. The payment includes the fees and the penalty for the failure to register.
5. The registration fees collected under this section must be paid to the fund administratordepartment for deposit in the state treasury for the dedicated credit to the petroleum release compensation fund.
6. If a registration payment is not received within sixty days of July first by the commissionerdepartment, a late fee of twenty-five dollars per tank per month must be imposed on the tank owner or operator.

SECTION 16. AMENDMENT. Section 23.1-12-18 of the North Dakota Century Code is amended and reenacted as follows:

23.1-12-18. Reimbursement for corrective action. (Contingent effective date - See note)

1. The administratordepartment shall reimburse an eligible owner or operator for ninety percent of the costs of corrective action, including the investigation, which are greater than five thousand dollars and less than one million dollars per occurrence and two million dollars in the aggregate. An eligible tank owner or operator may not be liable for more than twenty thousand dollars out-of-pocket expenses for any one release. A reimbursement may not be made unless the administratordepartment determines that:
 - a. At the time the release was discovered the owner or operator and the tank were in compliance with state and federal rules and rules applicable to the tank, including rules relating to financial responsibility, rules relating to infrastructure compatibility, and all rules relating to health and safety which were in effect at the time of the release;

- b. The department was given notice of the release as required by federal and state law;
 - c. The owner or operator has paid the first five thousand dollars of the cost of corrective action; and
 - d. The owner or operator, to the extent possible, fully cooperated with the department and the administrator in responding to the release.
2. The fund shall compensate third parties for corrective action taken for a petroleum release if the provisions of subdivisions a, b, c, and d of subsection 1 were met at the time the release was discovered. Compensation for third-party corrective action includes compensation for costs incurred in returning the real estate to that level deemed duly remediated by the department.
3. The fund shall reimburse the tank owner, operator, or dealer for bodily injuries to a third party caused by a petroleum release if the provisions of subdivisions a, b, c, and d of subsection 1 were met at the time the release was discovered in an amount determined by:
 - a. Findings reduced to judgment in federal or state district court or such other court having jurisdiction over the matter in a proceeding in which the fund has been made a party;
 - b. Findings by an arbitration panel agreed upon in writing by the parties in a proceeding in which the fund has been made a party; or
 - c. A written settlement entered into by the parties in which the ~~commissioner~~director of the department or the ~~commissioner's department's~~ agent has participated. The settlement must be reviewed and approved by the ~~commissioner~~director of the department.
4. In any civil action against the owner, operator, or dealer for damages resulting from a petroleum release, if the pre-leak condition of real estate is an issue, and if there is no reasonable means of determining the pre-leak condition of real estate, the condition is that which exists at the time the department determines the real estate has been duly remediated.
5. The fund may not compensate for attorney's fees of owners, operators, or dealers, nor may the fund compensate for exemplary damages, criminal fines, or administrative penalties.
6. A third party accepting monetary compensation directly from the fund for damages due to a release caused by a tank owner, operator, or dealer covered by the fund is deemed to have waived any cause of action against the fund or against the tank owner, operator, or dealer.
7. The fund shall reimburse the department for all costs, attorney's fees, and other legal expenses relating to administrative and adjudicative proceedings under this chapter and any subsequent legal proceeding. Any moneys reimbursed must be deposited in the department's operating fund in the state treasury and must be spent subject to appropriation by the legislative assembly.

SECTION 17. AMENDMENT. Section 23.1-12-19 of the North Dakota Century Code is amended and reenacted as follows:

23.1-12-19. Application for reimbursement. (Contingent effective date - See note)

An owner or operator that is a first-party claimant and that proposes to take corrective action or has undertaken corrective action in response to a release, the time of the release being unknown, may apply to the ~~administrator~~department for partial or full reimbursement under section 23.1-12-18. An owner or operator who is a first-party claimant may be reimbursed only for costs incurred after July 1, 1989, even if the releases were discovered before July 1, 1989, up to the maximum of twenty-five thousand dollars per location.

SECTION 18. AMENDMENT. Section 23.1-12-20 of the North Dakota Century Code is amended and reenacted as follows:

23.1-12-20. ~~Administrator~~Department to determine costs. (Contingent effective date - See note)

A reimbursement for corrective actions taken by an owner, operator, or dealer may not be made from the fund until the ~~administrator~~department has determined that the costs for which reimbursement is requested were actually incurred and were reasonable. All necessary loss adjustment expenses must be included as a component of the loss and must be paid out of the fund.

SECTION 19. AMENDMENT. Section 23.1-12-23 of the North Dakota Century Code is amended and reenacted as follows:

23.1-12-23. Recovery of expenses. (Contingent effective date - See note)

Any reasonable and necessary expenses incurred by the fund, which exceed the coverage limits provided by section 23.1-12-18, in taking a corrective action, including costs of investigating a release, and in taking legal actions, may be recovered in a civil action in district court brought by the ~~administrator~~department against an owner or operator. The certification of expenses by an approved agent of the fund is prima facie evidence that the expenses are reasonable and necessary. Any expenses that are recovered under this section must be deposited in the fund.

SECTION 20. AMENDMENT. Section 23.1-12-24 of the North Dakota Century Code is amended and reenacted as follows:

23.1-12-24. Costs exceeding reimbursement. (Contingent effective date - See note)

If the cost of any extraordinary authorized action under this chapter exceeds amounts awarded to the ~~administrator~~ or the department from the federal government, ~~the administrator may pay the department~~ the cost of themay pay the department's corrective actions costs, including the cost of investigating a release, if the board finds that the cause was a petroleum substance, that an adequate amount exists in the fund to pay for the corrective action, that the occurrence was extraordinary in scope and size, and that a danger to the health and safety of citizens exists.

SECTION 21. AMENDMENT. Section 23.1-12-25 of the North Dakota Century Code is amended and reenacted as follows:

23.1-12-25. Coordination of benefits. (Contingent effective date - See note)

If an owner or operator has an insurance policy that provides the same coverage as the fund, the ~~administrator of the fund~~department shall pay the share of the covered loss or damage for which the fund is responsible. The share that must be paid from the fund is equal to the proportion that the applicable limit of coverage under the fund bears to the limits of insurance of all insurance coverage on the same basis.

SECTION 22. AMENDMENT. Section 23.1-12-26 of the North Dakota Century Code is amended and reenacted as follows:

23.1-12-26. Third-party damages - Participation in actions and review of settlements. (Contingent effective date - See note)

1. An owner or operator sued for damages resulting from a release shall notify the ~~administrator~~department within fourteen days of being served with a summons and complaint. The owner or operator also shall advise the ~~administrator~~department if any insurer is defending the owner or operator and provide to the ~~administrator~~department the name of that insurer.
2. An owner or operator that, before litigation, enters negotiations with a third party that claims to have been damaged by a release, or that receives a demand for payment of damages to a third party that claims to have been damaged by a release, shall notify the ~~administrator~~department within fourteen days of the demand or the negotiations.
3. The ~~administrator~~department and the board shall review the conduct of any litigation or negotiation. The ~~administrator~~department may not assume any legal costs incurred by the defendant or plaintiff, but may participate in discovery, trial proceedings, or settlement negotiations of either disputed liability or damages that bear on the determination of a plaintiff's damages.
4. The ~~administrator~~department and the board shall review any settlement negotiations to determine the dollar amount of bodily injury or property damage actually, necessarily, and reasonably incurred by third parties which, if paid by the defendant, would be considered eligible costs.

SECTION 23. AMENDMENT. Section 23.1-12-27 of the North Dakota Century Code is amended and reenacted as follows:

23.1-12-27. Third-party damages - Documentation. (Contingent effective date - See note)

1. An applicant's payments for third-party damages pursuant to a judgment entered in a court must include copies of the notice of entry of judgment and abstract of costs.
2. An applicant's payments for third-party damages made by agreement in settlement of litigation must include copies of the settlement agreement and supporting documents required by the ~~administrator~~department.
3. An applicant's payments for third-party damages made by agreement without reference to litigation must include copies of the settlement and supporting documents required by the ~~administrator~~department.

4. The ~~administrator~~department and the board may require a third party who claims bodily injury to be examined by a physician and require that the physician's report to be submitted to the ~~administrator~~department. The ~~administrator~~department may require a third party that claims property damage to permit a property appraiser or claims adjuster retained by the ~~administrator~~department to inspect the property and report to the ~~administrator~~department.
5. The fund shall pay a judgment against an owner, operator, or dealer awarded to a third party as a result of a third-party claim and property damage against an owner, operator, or dealer registered by the fund.
6. The fund shall pay for corrective action as awarded to a third party in any judgment against an owner, operator, or dealer.
7. Liability of the tank owner, operator, dealer, or fund to third parties for corrective action or personal injuries and property damage may not exceed, per person, one million dollars. Maximum liability of the fund, including all claims by third parties, may not exceed, for any release site, the maximum provided in section 23.1-12-18.
8. A third party may not bring an action against an owner, operator, or dealer more than three years after a corrective action plan has been approved by the department if the owner, operator, or dealer fully implements and complies with the corrective action plan.
9. In investigating a release site or reviewing the implementation of a corrective action plan approved by the department, the department shall determine whether the release threatens public health or the environment. The department shall require, based on science and technology appropriate for the site, any monitoring, remediation, or other appropriate corrective action that is reasonably necessary to protect public health or the environment. The department may require corrective action at a release site at any time after a release occurs.

SECTION 24. AMENDMENT. Section 23.1-12-28 of the North Dakota Century Code is amended and reenacted as follows:

23.1-12-28. Matching federal funds. (Contingent effective date - See note)

The ~~administrator~~department and the board may annually allow the department a ten percent matching grant for federal leaking underground storage tank funds to be paid out of the fund if the moneys are available and the ~~administrator~~department and the board determine the allowance appropriate.

SECTION 25. AMENDMENT. Section 23.1-12-29 of the North Dakota Century Code is amended and reenacted as follows:

23.1-12-29. Fund appropriations. (Contingent effective date - See note)

Money in the fund is continuously appropriated to the ~~administrator~~department for the purpose of making reimbursements under this chapter.

SECTION 26. AMENDMENT. Section 23.1-12-30 of the North Dakota Century Code is amended and reenacted as follows:

23.1-12-30. Investment of fund. (Contingent effective date - See note)

Investment of the fund is under the supervision of the state investment board in accordance with chapter 21-10. The ~~commissioner~~department may purchase a contract for reinsurance of any risk to be paid by the fund. The ~~administrator~~department may investigate the purchase of insurance that reimburses an owner or operator for property damage claims by third parties other than claims for costs of corrective action.

SECTION 27. Chapter 23.1-16 of the North Dakota Century Code is created and enacted as follows:

23.1-16-01. Definitions.

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

1. "Boiler" means a closed vessel in which water is heated, steam is generated, steam is superheated, or any combination thereof, under pressure or vacuum for use externally to the boiler by the direct application of heat from the combustion of fuels, or from electricity or nuclear energy. The term includes fired units for vaporizing liquids other than water when these units are separate from processing systems and are complete within themselves.
2. "Department" means the department of environmental quality.

23.1-16-02. Chief boiler inspector, deputy inspectors - Appointment - Jurisdiction.

The department shall employ a chief boiler inspector and deputy inspectors. The chief boiler inspector has jurisdiction over all boilers in this state except as otherwise provided.

23.1-16-03. Qualifications of chief boiler inspector - Deputy inspectors.

1. An individual is not eligible to the office of chief boiler inspector unless that individual:
 - a. Has had at the time of the appointment at least five years' experience in the construction, inspection, operation, maintenance, or repair of high-pressure boilers and pressure vessels as a mechanical engineer, boilermaker, steam operating engineer, or boiler inspector. An applicant possessing a mechanical engineering degree from an accredited school may substitute that degree for two years of the five years' experience, at the discretion of the department.
 - b. Holds a commission issued by the national board of boiler and pressure vessel inspectors or obtains the commission within one year after the date of appointment by the department.
 - c. Is not directly or indirectly interested in the manufacture or sale of boilers or steam machinery or articles used in the construction or maintenance of engines or boilers.
2. The department shall establish qualifications for a deputy inspector which are not inconsistent with the requirements of the position.

23.1-16-04. Powers and duties of chief boiler inspector.

1. The chief boiler inspector shall:
 - a. Keep a complete record of the type, dimensions, maximum allowable working pressure, age, condition, location, and date of the last-recorded internal and external inspection of boilers to which this chapter applies.
 - b. Cooperate and assist in loss prevention programs sponsored by the department.
2. The chief boiler inspector may delegate powers and duties to any deputy inspector or special inspector.

23.1-16-05. General requirement.

Every boiler in this state must be constructed, installed, and maintained according to rules adopted to implement this chapter.

23.1-16-06. Exempt boilers - Inspection of exempt boilers.

This chapter does not apply to:

1. Any boiler subject to federal inspection or under federal control.
2. Any boiler located on a farm and used solely for agricultural purposes.
3. Any heating boiler located in a private residence or in an apartment house of less than six family units.
4. Any hot water supply boiler not exceeding the following limitations:
 - a. Input of two hundred thousand British thermal units per hour.
 - b. Pressure of one hundred sixty pounds per square inch [1103.16 kilopascals] gauge.
 - c. Temperature of two hundred fifty degrees Fahrenheit [121.11 degrees Celsius].
5. Any portable steam cleaner commonly used in a garage.
6. Any boiler of a miniature model locomotive, boat, tractor, or stationary engine design constructed as a hobby, not for commercial use, having an inside diameter not exceeding ten inches [25.4 centimeters] and a grate area not exceeding one and one-half square feet [1393.54 square centimeters] and which is properly equipped with a safety valve, water level indicator, and pressure gauge.
7. Any electric boiler used as an integral part of an espresso coffee machine, provided that the boiler does not exceed one and one-half cubic feet [.0566 cubic meter] in water capacity, does not exceed fifty pounds per square inch [344.74 kilopascals] pressure, and is constructed, approved, or certified to the American society of mechanical engineers code or to other national or international standards.

23.1-16-07. Inspection of boilers.

1. The chief boiler inspector shall inspect each boiler used or proposed to be used within this state. The inspection must be thorough as to the construction, installation, condition, and operation as provided by the rules adopted to implement this chapter. An exempt boiler may be inspected by the chief boiler inspector when the owner, the owner's agent, or the user of the boiler makes written request for inspection to the department.
2. Each boiler of one hundred thousand pounds [45359.24 kilograms] per hour or more capacity, used or proposed to be used within this state, which has internal continuous water treatment under the direct supervision of a graduate engineer or chemist, or one having equivalent experience in the treatment of boiler water when the water treatment is for the purpose of controlling and limiting serious corrosion and other deteriorating factors, and with respect to which boiler the chief boiler inspector has determined the owner or user has complied with the prescribed recordkeeping requirements, must be inspected at least once every thirty-six months internally while not under pressure, and at least once every twelve months externally while under pressure. If a hydrostatic test is necessary to determine the safety of a boiler, the test must be conducted by the owner or user of the equipment under the supervision of the chief boiler inspector. The owner or user of a boiler of one hundred thousand pounds [45359.24 kilograms] per hour or more capacity desiring to qualify for thirty-six-month internal inspection intervals shall keep available for examination by the chief boiler inspector accurate records showing the date and actual time the boiler is out of service and the reason or reasons therefor, and the results of the chemical and physical analysis of the boiler water, whether from laboratory analysis of samples taken at regular intervals of not more than forty-eight hours or from continuous online analysers, which will adequately show the condition of the water and any other elements or characteristics of the water capable of producing corrosion or other deterioration of the boiler or its parts. If an inspection discloses deficiencies in equipment or in operating procedures, inspections may be required once every twelve months.

23.1-16-08. Special inspector.

1. Upon written request of an employer, the department may appoint as a special inspector an inspector in the employ of:
 - a. An insurance company authorized to insure boilers in this state against loss from explosion;
 - b. A company qualified by the national board of boiler and pressure vessel inspectors as an accredited owner/user inspection organization; or
 - c. A company qualified by the national board of boiler and pressure vessel inspectors as an accredited authorized inspection agency.
2. An individual may not be appointed as a special inspector unless that individual has passed the examination prescribed by the national board of boiler and pressure vessel inspectors.

3. An inspection performed by a special inspector must be performed in accordance with this chapter and a complete report of the inspection must be filed with the department in the time, manner, and form as prescribed by the department.
4. If a complete report is not filed by the special inspector's employer with the department within ninety days from the certificate due date, the chief boiler inspector may make the required inspection, unless an extension of time is granted by the chief boiler inspector. The special inspector's employer must pay the inspection fees as required by section 23.1-16-09 for a special inspection.
5. The chief boiler inspector may inspect any boiler to which a special inspection applies.
6. The department may, for cause, suspend or revoke the appointment of any special inspector.

23.1-16-09. Inspection and certificate fees.

1. Upon completion of inspection, the owner or user of a boiler shall pay to the department fees or a combination of inspection and certificate fees. The department shall determine the inspection fees. Certificate fees are determined by section 23.1-16-10. The department shall determine and annually may adjust a fee scale for the internal inspections of power boilers, internal inspections of low-pressure heating boilers, external inspections of all boilers, and inspection of boilers used exclusively for exhibition purposes.
2. Not more than two hundred dollars may be charged or collected for any one inspection of a boiler, except for special inspections made upon request. All other inspections made by the chief boiler inspector, including shop inspections and reviews and special inspections when requested by the owner or user of a boiler, must be charged at a rate not to exceed five hundred dollars per day or three hundred dollars per half day of four hours or less, plus payment for mileage, meals, and hotel expenses as allowed by sections 44-08-04 and 54-06-09, except that the mileage rate for a state-owned vehicle will be the actual amount incurred by the department.
3. The annual fee for the issuance of a reciprocal commission card for a special inspector is forty dollars and the annual fee for the issuance of a welder-qualified card is twenty dollars.
4. The fee for taking an examination for a hobby boiler operating license is twenty-five dollars and the fee for a hobby boiler operating license is twenty-five dollars.
5. A hobby boiler operating license issued under this section is valid for six years.

23.1-16-10. Certificate of inspection - Certificate to be posted.

The department shall issue a certificate of inspection for each boiler inspected upon receipt of an inspection report certifying that the boiler is in a safe condition to be operated. The department shall charge a fee of twenty dollars per year for each year

that a certificate is valid, or part of a year thereof, for each certificate of inspection issued as the result of inspections authorized under sections 23.1-16-07 and 23.1-16-08. The fees are the liability of the owner or user and must be paid in accordance with rules adopted by the department. A certificate may not be issued for any boiler not in a safe condition to be operated or for a boiler for which the inspection and certificate fees have not been paid in full. A certificate is not valid for a period of more than thirty-six months for power boilers described in subsection 2 of section 23.1-16-07, and no more than twelve months for other power boilers, twelve months for steam traction engines, and thirty-six months for low-pressure boilers except that a two-month grace period may be extended for any certificate. Upon written request from a special inspector, the chief boiler inspector may issue a short-term certificate. Each certificate of inspection must be posted conspicuously under glass in the boiler room or adjacent to the boiler inspected.

23.1-16-11. Certificate of inspection required - Penalty.

A person may not operate a boiler in this state without a valid certificate of inspection. A violation of this section is a class A misdemeanor on the part of the owner, user, or operator of the boiler.

23.1-16-12. Manufacturer's data report.

The boiler manufacturer shall provide the department with a manufacturer's data report. When signed by an authorized inspector, this data sheet together with the stamp on the boiler is the record denoting the boiler has been constructed in accordance with the rules adopted to implement this chapter.

23.1-16-13. Disposition of funds.

All funds collected and received under this chapter must be paid to the state treasurer and deposited in the state fire and tornado fund to be used to defray the costs of boiler inspections.

23.1-16-14. Rules - Penalty for violation - Hearing.

1. The department shall adopt rules for the safe and proper installation, use, operation, and inspection of boilers and pressure vessels subject to this chapter.
2. The department shall adopt rules for the licensing of operators of hobby boilers used during parades, exhibitions, and threshing shows where the public is invited.
3. A fee must be charged for an operating license, for a license renewal, and for an examination conducted to determine minimum competence. Individuals operating hobby boilers within this state as of July 1, 2007, are considered acceptable for a license without additional training or examination. An individual who is not a resident of this state and who holds a boiler operator license or credential in another state or Canadian province is exempt from licensure as a hobby boiler operator in this state.
4. The department may not issue a certificate of inspection to any owner or user of a boiler who fails or refuses to comply with the rules. The department shall revoke any certificate presently in force upon evidence

that the owner or user of the boiler is failing or refusing to comply with the rules.

5. Any owner or user of a boiler may request a hearing before the department within fifteen days from service of an order refusing or revoking a certificate of inspection. It is the burden of the owner or user to show cause why the certificate of inspection should not be refused or revoked. If no hearing is requested within the required period, the order of the department becomes final and is not subject to further proceedings.

SECTION 28. REPEAL. Chapter 26.1-22.1 of the North Dakota Century Code is repealed.

SECTION 29. EFFECTIVE DATE. Sections 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, and 28 of this Act become effective on July 1, 2019, if the legislative council has received certification from the chief of the environmental health section of the state department of health that all authority, powers, and duties from the environmental health section of the state department of health have been transferred to the department of environmental quality. If the certification is not received by July 1, 2019, sections 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, and 28 of this Act become effective on the date certification is received."

Renumber accordingly

STATEMENT OF PURPOSE OF AMENDMENT:

House Bill No. 1024 - Department of Environmental Quality - House Action

	Base Budget	House Changes	House Version
Salaries and wages	\$27,040,544	\$3,156,409	\$30,196,953
Operating expenses	8,005,878	1,996,302	10,002,180
Capital assets	1,258,249	1,005,180	2,263,429
Grants	13,407,000	2,454,529	15,861,529
Total all funds	\$49,711,671	\$8,612,420	\$58,324,091
Less estimated income	38,987,520	7,428,412	46,415,932
General fund	\$10,724,151	\$1,184,008	\$11,908,159
FTE	152.50	13.00	165.50

Department 303 - Department of Environmental Quality - Detail of House Changes

	Adjusts Funding for Base Payroll Changes ¹	Adds Funding for Salary and Benefit Increases ²	Cost to Continue Adjustments ³	Removes 3 FTE Positions ⁴	Adds Funding to Transfer the Petroleum Tank Release Program ⁵	Adds Funding to Transfer the Boiler Inspection Program ⁶
Salaries and wages	\$146,390	\$1,396,063		(\$365,530)	\$336,481	\$753,365
Operating expenses			\$1,239,823		238,588	89,000
Capital assets						
Grants			(445,000)			
Total all funds	\$146,390	\$1,396,063	\$794,823	(\$365,530)	\$575,069	\$842,365
Less estimated income	322,006	939,547	957,799	(271,407)	575,069	842,365
General fund	(\$175,616)	\$456,516	(\$162,976)	(\$94,123)	\$0	\$0
FTE	0.00	0.00	0.00	(3.00)	2.00	4.00

	Adds Contingent Funding and FTE Positions for the Supremacy of Federal Programs ⁷	Decreases Funding for Water Treatment System Training ⁸	Adds Funding for Microsoft Office 365 Licensing ⁹	Adjusts Funding for Bond and Capital Payments ¹⁰	Reduces Funding for Extraordinary Repairs ¹¹	Increases Funding for Equipment ¹²
Salaries and wages	\$889,640					
Operating expenses	359,305	(\$55,000)	\$84,586			
Capital assets				\$3,405	(\$273,350)	\$275,125
Grants						
Total all funds	\$1,248,945	(\$55,000)	\$84,586	\$3,405	(\$273,350)	\$275,125
Less estimated income	0	0	64,538	1,541	(217,700)	275,125
General fund	\$1,248,945	(\$55,000)	\$20,048	\$1,864	(\$55,650)	\$0
FTE	10.00	0.00	0.00	0.00	0.00	0.00

	Adds Funding for Grants from the Volkswagen Trust Settlement ¹³	Adds One- Time Contingent Funding to Establish Federal Program Supremacy ¹⁴	Total House Changes
Salaries and wages			\$3,156,409
Operating expenses		\$40,000	1,996,302
Capital assets		1,000,000	1,005,180
Grants	\$2,899,529		2,454,529
Total all funds	\$2,899,529	\$1,040,000	\$8,612,420
Less estimated income	2,899,529	1,040,000	7,428,412
General fund	\$0	\$0	\$1,184,008
FTE	0.00	0.00	13.00

¹ Funding is adjusted for base payroll changes.

² The following funding is added for 2019-21 biennium salary adjustments of 2 percent per year and increases in health insurance premiums from \$1,241 to \$1,427 per month:

	General Fund	Other Funds	Total
Salary increase	\$231,686	\$472,755	\$704,441
Health insurance increase	224,830	466,792	691,622
Total	\$456,516	\$939,547	\$1,396,063

³ Funding is adjusted for cost to continue changes to the base budget.

⁴ Three FTE positions and related funding for salaries and wages are removed.

⁵ Two FTE positions and related funding from the petroleum tank release compensation fund for salaries and wages and operating expenses are transferred from the Insurance Department to the Department of Environmental Quality for the petroleum tank release program.

⁶ Four FTE positions are added to transfer the boiler inspection program from the Insurance Department to the Department of Environmental Quality, including funding from the state fire and tornado fund for base salaries and wages of \$753,365 and operating expenses of \$89,000.

⁷ Contingent funding and 10 FTE positions are added in the 2nd year of the biennium for the supremacy of federal programs, including funding for salaries and wages of \$889,640 and operating expenses of \$359,305. The appropriation and FTE positions are contingent on federal Environmental Protection Agency approval of the Department of Environmental Quality assuming the duties of federal air pollution programs.

⁸ Funding for operating expenses related to training water treatment system operators is reduced to provide a total of \$125,000 from the general fund.

⁹ Funding is added for Microsoft Office 365 license expenses.

¹⁰ Funding for bond and capital payments is increased to provide a total of \$216,429, of which \$93,691 is from the general fund.

¹¹ Funding for extraordinary repairs is reduced to provide a total of \$27,000, of which \$6,866 is from the general fund.

¹² Funding for equipment and information technology equipment over \$5,000 is increased to provide a total ongoing appropriation of \$1,020,000 from other funds.

¹³ Funding for grants is increased to accept and disburse funding from the Volkswagen trust settlement to provide a total of \$5,399,529.

¹⁴ One-time funding is added from the strategic investment and improvements fund for capital assets of \$1 million and operating expenses of \$40,000 related to the establishment of federal program supremacy. The funding is contingent on Environmental Protection Agency approval of the Department of Environmental Quality assuming the duties of federal air pollution programs.

This amendment also adds sections to:

- Identify funding from the state fire and tornado fund for the boiler inspection program;
- Identify contingent one-time funding of \$1,040,000 from the strategic investment and improvements fund for air pollution program equipment related to the establishment of federal program supremacy. The funding provided is available the 2nd year of the biennium and is contingent on Environmental Protection Agency approval of the Department of Environmental Quality assuming the duties of federal air pollution programs;
- Identify contingent funding of \$1,248,945 from the general fund and 10 FTE positions related to the establishment of federal program supremacy effective July 1, 2020;
- Amend various sections of Chapter 23.1-12 to transfer the petroleum tank release program from the Insurance Commissioner to the Department of Environmental Quality;
- Create Chapter 23.1-16 to transfer the boiler inspection program from the Insurance Commissioner to the Department of Environmental Quality;
- Repeal Chapter 26.1-22.1 related to the boiler inspection program; and
- Provide effective dates for the program transfers.

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1024

Page 1, line 2, after "quality" insert "; to amend and reenact subsection 1 of section 23.1-12-17 of the North Dakota Century Code, relating to the petroleum tank release compensation fund; to provide an effective date; and to provide an expiration date"

Page 2, after line 9, insert:

"SECTION 4. AMENDMENT. Subsection 1 of section 23.1-12-17 of the North Dakota Century Code is amended and reenacted as follows:

1. ~~An owner or operator of a tank shall pay an annual registration fee of fifty dollars for each aboveground or underground tank owned or operated by that person. If after the fiscal year has been closed and all expenses relating to the fiscal year have been accounted for, the fund balance is less than six million dollars, the annual registration fee of fifty dollars is increased to one hundred dollars. If after the fiscal year has been closed and all expenses relating to the fiscal year have been accounted for, the fund balance is five million five hundred thousand dollars or more and the annual registration fee has been increased to one hundred dollars, the fee must be reduced to fifty dollars. If after the fiscal year has been closed and all expenses relating to the fiscal year have been accounted for, the fund balance exceeds nine million dollars, the annual registration fee is reduced to five dollars. Annual registration fees must continue at five dollars until the fund balance does not exceed nine million dollars.~~ Upon the recommendation and approval of the petroleum tank release compensation fund board, the department shall classify tanks with respect to degree of hazard, determine the risks of each classification, and fix the registration fee for each classification at a rate sufficient to provide for:
 - a. The payment of the expenses of administration of the fund;
 - b. The reimbursement for corrective action provided under this chapter;
and
 - c. The maintenance by the fund of adequate reserves and surplus so the fund may be kept solvent at all times.
2. The department shall establish the schedule of registration fees by rules adopted in accordance with chapter 28-32.

SECTION 5. EFFECTIVE DATE - EXPIRATION DATE. Section 4 of this Act becomes effective on August 1, 2019, if the legislative council has received certification from the chief of the environmental health section of the state department of health that all authority, powers, and duties from the environmental health section of the state department of health have been transferred to the department of environmental quality. If the certification is not received by August 1, 2019, section 4 of this Act becomes effective on the date certification is received."

Renumber accordingly

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1024

Page 1, line 2, after "quality" insert "; to create and enact chapter 23.1-16 of the North Dakota Century Code, relating to boiler inspections; to amend and reenact sections 23.1-12-02, 23.1-12-04, 23.1-12-05, 23.1-12-06, 23.1-12-10, 23.1-12-11, 23.1-12-14, 23.1-12-15, 23.1-12-17, 23.1-12-18, 23.1-12-19, 23.1-12-20, 23.1-12-23, 23.1-12-24, 23.1-12-25, 23.1-12-26, 23.1-12-27, 23.1-12-28, 23.1-12-29, and 23.1-12-30 of the North Dakota Century Code, relating to the duties of the department of environmental quality; to repeal chapter 26.1-22.1 of the North Dakota Century Code, relating to boiler inspections; to provide for a report; and to provide for a contingent effective date"

Page 1, replace lines 10 through 19 with:

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Salaries and wages	\$27,040,544	\$3,156,409	\$30,196,953
Operating expenses	8,005,878	1,996,302	10,002,180
Capital assets	1,258,249	1,005,180	2,263,429
Grants	<u>13,407,000</u>	<u>2,454,529</u>	<u>15,861,529</u>
Total all funds	\$49,711,671	\$8,612,420	\$58,324,091
Less estimated income	<u>38,987,520</u>	<u>7,428,412</u>	<u>46,415,932</u>
Total general fund	\$10,724,151	\$1,184,008	\$11,908,159
Full-time equivalent positions	152.50	13.00	165.50"

Page 1, line 20, after "BUDGET" insert "- REPORT TO SIXTY-SEVENTH LEGISLATIVE ASSEMBLY"

Page 1, line 22, after "biennium" insert "and the 2019-21 biennium one-time funding items included in the appropriation in section 1 of this Act"

Page 2, replace lines 1 through 3 with:

<u>One-Time Funding Description</u>	<u>2017-19</u>	<u>2019-21</u>
Environmental protection agency lawsuit	\$500,000	\$0
Air pollution program equipment	<u>0</u>	<u>1,040,000</u>
Total estimated income	\$500,000	\$1,040,000

The 2019-21 biennium one-time funding amounts are not a part of the entity's base budget for the 2021-23 biennium. The department of environmental quality shall report to the appropriations committees of the sixty-seventh legislative assembly on the use of this one-time funding for the biennium beginning July 1, 2019, and ending June 30, 2021."

Page 2, after line 9, insert:

"SECTION 4. STATE FIRE AND TORNADO FUND. The estimated income line item included in section 1 of this Act includes \$879,312, or so much of the sum as may be necessary, to be made available to the department of environmental quality from the state fire and tornado fund for the boiler inspection program, for the biennium beginning July 1, 2019, and ending June 30, 2021.

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SECTION 5. STRATEGIC INVESTMENT AND IMPROVEMENTS FUND - CONTINGENT ONE-TIME FUNDING - FEDERAL PROGRAM SUPREMACY. The estimated income line item included in section 1 of this Act includes \$1,040,000, or so much of the sum as may be necessary, to be made available to the department of environmental quality from the strategic investment and improvements fund for one-time funding of air pollution program equipment related to the establishment of federal program supremacy, for the biennium beginning July 1, 2019, and ending June 30, 2021. The funding may be spent only upon certification by the director of the department of environmental quality to the director of the office of management and budget that the federal environmental protection agency has approved the department of environmental quality assuming the duties of federal air pollution programs.

SECTION 6. CONTINGENT APPROPRIATION - FEDERAL PROGRAM SUPREMACY. The amount of \$1,248,945 from the general fund and ten full-time equivalent positions included in section 1 of this Act are effective July 1, 2020, and may be spent only upon certification by the director of the department of environmental quality to the director of the office of management of budget that the federal environmental protection agency has approved the state assuming primacy over the quad O and quad Oa federal air pollution programs.

SECTION 7. AMENDMENT. Section 23.1-12-02 of the North Dakota Century Code is amended and reenacted as follows:

23.1-12-02. Definitions. (Contingent effective date - See note)

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. "Administrator" means the manager of the state fire and tornado fund.
3. "Board" means the petroleum release compensation board.
4. "Commissioner" means the insurance commissioner.
- 5-3. "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.
- 6-4. "Dealer" means a person licensed by the tax commissioner to sell motor vehicle fuel or special fuels within the state.
- 7-5. "Department" means the department of environmental quality.
- 8-6. "Fund" means the petroleum release compensation fund.
- 9-7. "Location" means a physical address or site that has contiguous properties. Noncontiguous properties within a municipality or other governmental jurisdiction are considered separate locations.

- ~~10.8.~~ "Operator" means a person in control of, or having responsibility for, the daily operation of a tank under this chapter.
- ~~11.9.~~ "Owner" means a person who holds title to, controls, or possesses an interest in the tank before the discontinuation of its use.
- ~~12.10.~~ "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.
- ~~13.11.~~ "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.
- ~~14.12.~~ "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.
- ~~15.13.~~ "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. 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.

16-14. "Tank integrity test" means a test to determine that a tank is sound and not leaking. For an underground tank, the term means a certified third-party test that meets environmental protection agency leak detection requirements. For an aboveground tank, the term means a test conducted according to steel tank institute SP 001 or American petroleum institute 653.

17-15. "Third party" means a person who is damaged by the act of a registered owner, operator, or dealer requiring corrective action, or a person who suffers bodily injury or property damage caused by a petroleum release.

SECTION 8. AMENDMENT. Section 23.1-12-04 of the North Dakota Century Code is amended and reenacted as follows:

23.1-12-04. Administration of fund - Staff. (Contingent effective date - See note)

The ~~administrator~~department shall administer the fund according to this chapter. The ~~administrator~~department shall convene the board as may be necessary to keep the board apprised of the fund's general operations. However, the board shall meet at least once each half of each calendar year to review and to advise the ~~administrator~~department regarding the administration of the fund, the fund's general operations, and to hear and decide denials of claims by the ~~administrator~~department which may be appealed to the board, and to discuss all claims against the fund. The ~~administrator~~department may employ any assistance and staff necessary to administer the fund within the limits of legislative appropriation. A claimant aggrieved by a decision of the ~~administrator~~department regarding a claim upon the fund may appeal the decision to the board. The board may sustain, modify, or reverse the decision of the ~~administrator~~department. The claimant or the ~~administrator~~department may appeal the board's decision to the ~~commissioner~~. ~~The decision of the commissioner may be appealed under chapter 28-32.~~

SECTION 9. AMENDMENT. Section 23.1-12-05 of the North Dakota Century Code is amended and reenacted as follows:

23.1-12-05. Adoption of rules. (Contingent effective date - See note)

The ~~administrator~~department shall adopt rules regarding the practices and procedures of the fund, the form and procedure for applications for compensation from the fund, procedures for investigation of claims, procedures for determining the amount and type of costs that are eligible for reimbursement from the fund, procedures for persons to perform services for the fund, procedures for appeals to the board by claimants aggrieved by an adverse decision of the ~~administrator~~department, and any other rules as may be appropriate to administer this chapter.

SECTION 10. AMENDMENT. Section 23.1-12-06 of the North Dakota Century Code is amended and reenacted as follows:

23.1-12-06. Release discovery. (Contingent effective date - See note)

If the department has reason to believe a release has occurred, it shall ~~notify the administrator.~~ The department shall direct the owner or operator to take reasonable and necessary corrective actions as provided under federal or state law or under adopted rules.

SECTION 11. AMENDMENT. Section 23.1-12-10 of the North Dakota Century Code is amended and reenacted as follows:

23.1-12-10. Providing of information. (Contingent effective date - See note)

A person ~~the administrator or~~ the department has reason to believe is an owner or operator, the owner of real property where corrective action is ordered to be taken, or a person that may have information concerning a release shall, if requested by ~~the administrator or~~ the department, or any member, employee, or agent of ~~the administrator or~~ the department, furnish to the ~~administrator or~~ the department any information that person has or may reasonably obtain which is relevant to the release.

SECTION 12. AMENDMENT. Section 23.1-12-11 of the North Dakota Century Code is amended and reenacted as follows:

23.1-12-11. Examination of records. (Contingent effective date - See note)

Any employee of the ~~administrator or~~ the department may, upon presentation of official credentials:

1. Examine and copy books, papers, records, memoranda, or data of any person that has a duty to provide information to the ~~administrator or~~ the department under section 23.1-12-10; and
2. Enter upon public or private property to take action authorized by this section, including obtaining information from a person that has a duty to provide the information under section 23.1-12-10, conducting surveys and investigations, and taking corrective action.

SECTION 13. AMENDMENT. Section 23.1-12-14 of the North Dakota Century Code is amended and reenacted as follows:

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23.1-12-14. Other remedies. (Contingent effective date - See note)

This chapter does not limit the powers of the administrator or department, or preclude the pursuit of any other administrative, civil, injunctive, or criminal remedies by the administrator or department or any other person. Administrative remedies need not be exhausted to proceed under this chapter. The remedies provided by this chapter are in addition to those provided under existing statutory or common law.

SECTION 14. AMENDMENT. Section 23.1-12-15 of the North Dakota Century Code is amended and reenacted as follows:

23.1-12-15. Revenue to the fund. (Contingent effective date - See note)

Revenue from the following sources must be deposited in the state treasury and credited to the fund:

1. Any registration fees collected under section 23.1-12-17;
2. Any money recovered by the fund under section 23.1-12-23, and any money paid under an agreement, stipulation, or settlement;
3. Any interest attributable to investment of money in the fund; and
4. Any money received by the administrator or department in the form of gifts, grants, reimbursements, or appropriations from any source intended to be used for the purposes of the fund.

SECTION 15. AMENDMENT. Section 23.1-12-17 of the North Dakota Century Code is amended and reenacted as follows:

23.1-12-17. Registration fee. (Contingent effective date - See note)

1. ~~An owner or operator of a tank shall pay an annual registration fee of fifty dollars for each aboveground or underground tank owned or operated by that person. If after the fiscal year has been closed and all expenses relating to the fiscal year have been accounted for, the fund balance is less than six million dollars, the annual registration fee of fifty dollars is increased to one hundred dollars. If after the fiscal year has been closed and all expenses relating to the fiscal year have been accounted for, the fund balance is five million five hundred thousand dollars or more and the annual registration fee has been increased to one hundred dollars, the fee must be reduced to fifty dollars. If after the fiscal year has been closed and all expenses relating to the fiscal year have been accounted for, the fund balance exceeds nine million dollars, the annual registration fee is reduced to five dollars. Annual registration fees must continue at five dollars until the fund balance does not exceed nine million dollars. Upon the recommendation and approval of the petroleum tank release compensation fund board, the department shall classify tanks with respect to degree of hazard, determine the risks of each classification, and fix the registration fee for each classification at a rate sufficient to provide for:~~
 - a. The payment of the expenses of administration of the fund;
 - b. The reimbursement for corrective action provided under this chapter;
and

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c. The maintenance by the fund of adequate reserves and surplus so the fund may be kept solvent at all times.

2. The department shall establish the schedule of registration fees by rules adopted in accordance with chapter 28-32.

2.3. An owner or operator of an existing tank that is discovered at a location that currently and previously has had tanks registered with the fund shall pay an additional twenty-five dollar penalty fee in addition to the registration fee for each aboveground tank and each underground tank owned or operated by that person for each previous year that the tank was required to be registered for which a fee was not paid. The payment includes the fees and the penalty for the failure to register.

3.4. An owner or operator of an existing tank at a location that was not previously and continuously registered with the fund, whether the registration was required by law or not must provide the fund with a phase two environmental study conducted by a qualified firm according to American society for testing materials standards. A tank integrity test must also be performed. The environmental study and tank integrity test must be reviewed by the ~~commissioner~~department along with the application for registration with the fund. If the ~~commissioner~~department rejects the application, the applicant is denied eligibility to the fund. However, if the site is remediated and the leaking tank is replaced, the applicant may reapply for registration with the fund. A new installation that is using a used tank must provide tank integrity test results for the used tank. Use of a synthetic liner in an aboveground dike system negates the need for a tank integrity test. The owner or operator of a new tank at a new site or a new tank at an existing site that had a tank registered at the site previously need only pay the required fees for registration with the fund.

4.5. If accepted for registration with the fund, the owner or operator of the tank shall pay an additional twenty-five dollar penalty fee in addition to the registration fee for each aboveground tank and underground tank owned or operated by that person for each previous year that the tank was required to be registered for which a fee was not paid, regardless of ownership in each of those years. The payment includes the fees and the penalty for the failure to register.

5.6. The registration fees collected under this section must be paid to the ~~fund administrator~~department for deposit in the state treasury for the dedicated credit to the petroleum release compensation fund.

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

SECTION 16. AMENDMENT. Section 23.1-12-18 of the North Dakota Century Code is amended and reenacted as follows:

23.1-12-18. Reimbursement for corrective action. (Contingent effective date - See note)

1. The ~~administrator~~department shall reimburse an eligible owner or operator for ninety percent of the costs of corrective action, including the

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investigation, which are greater than five thousand dollars and less than one million dollars per occurrence and two million dollars in the aggregate. An eligible tank owner or operator may not be liable for more than twenty thousand dollars out-of-pocket expenses for any one release. A reimbursement may not be made unless the ~~administrator~~department determines that:

- a. At the time the release was discovered the owner or operator and the tank were in compliance with state and federal rules and rules applicable to the tank, including rules relating to financial responsibility, rules relating to infrastructure compatibility, and all rules relating to health and safety which were in effect at the time of the release;
 - b. The department was given notice of the release as required by federal and state law;
 - c. The owner or operator has paid the first five thousand dollars of the cost of corrective action; and
 - d. The owner or operator, to the extent possible, fully cooperated with the department ~~and the administrator~~ in responding to the release.
2. The fund shall compensate third parties for corrective action taken for a petroleum release if the provisions of subdivisions a, b, c, and d of subsection 1 were met at the time the release was discovered. Compensation for third-party corrective action includes compensation for costs incurred in returning the real estate to that level deemed duly remediated by the department.
3. The fund shall reimburse the tank owner, operator, or dealer for bodily injuries to a third party caused by a petroleum release if the provisions of subdivisions a, b, c, and d of subsection 1 were met at the time the release was discovered in an amount determined by:
- a. Findings reduced to judgment in federal or state district court or such other court having jurisdiction over the matter in a proceeding in which the fund has been made a party;
 - b. Findings by an arbitration panel agreed upon in writing by the parties in a proceeding in which the fund has been made a party; or
 - c. A written settlement entered into by the parties in which the ~~commissioner~~director of the department or the ~~commissioner's department's~~ agent has participated. The settlement must be reviewed and approved by the ~~commissioner~~director of the department.
4. In any civil action against the owner, operator, or dealer for damages resulting from a petroleum release, if the pre-leak condition of real estate is an issue, and if there is no reasonable means of determining the pre-leak condition of real estate, the condition is that which exists at the time the department determines the real estate has been duly remediated.

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5. The fund may not compensate for attorney's fees of owners, operators, or dealers, nor may the fund compensate for exemplary damages, criminal fines, or administrative penalties.
6. A third party accepting monetary compensation directly from the fund for damages due to a release caused by a tank owner, operator, or dealer covered by the fund is deemed to have waived any cause of action against the fund or against the tank owner, operator, or dealer.
7. The fund shall reimburse the department for all costs, attorney's fees, and other legal expenses relating to administrative and adjudicative proceedings under this chapter and any subsequent legal proceeding. Any moneys reimbursed must be deposited in the department's operating fund in the state treasury and must be spent subject to appropriation by the legislative assembly.

SECTION 17. AMENDMENT. Section 23.1-12-19 of the North Dakota Century Code is amended and reenacted as follows:

23.1-12-19. Application for reimbursement. (Contingent effective date - See note)

An owner or operator that is a first-party claimant and that proposes to take corrective action or has undertaken corrective action in response to a release, the time of the release being unknown, may apply to the ~~administrator~~department for partial or full reimbursement under section 23.1-12-18. An owner or operator who is a first-party claimant may be reimbursed only for costs incurred after July 1, 1989, even if the releases were discovered before July 1, 1989, up to the maximum of twenty-five thousand dollars per location.

SECTION 18. AMENDMENT. Section 23.1-12-20 of the North Dakota Century Code is amended and reenacted as follows:

23.1-12-20. ~~Administrator~~Department to determine costs. (Contingent effective date - See note)

A reimbursement for corrective actions taken by an owner, operator, or dealer may not be made from the fund until the ~~administrator~~department has determined that the costs for which reimbursement is requested were actually incurred and were reasonable. All necessary loss adjustment expenses must be included as a component of the loss and must be paid out of the fund.

SECTION 19. AMENDMENT. Section 23.1-12-23 of the North Dakota Century Code is amended and reenacted as follows:

23.1-12-23. Recovery of expenses. (Contingent effective date - See note)

Any reasonable and necessary expenses incurred by the fund, which exceed the coverage limits provided by section 23.1-12-18, in taking a corrective action, including costs of investigating a release, and in taking legal actions, may be recovered in a civil action in district court brought by the ~~administrator~~department against an owner or operator. The certification of expenses by an approved agent of the fund is prima facie evidence that the expenses are reasonable and necessary. Any expenses that are recovered under this section must be deposited in the fund.

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SECTION 20. AMENDMENT. Section 23.1-12-24 of the North Dakota Century Code is amended and reenacted as follows:

23.1-12-24. Costs exceeding reimbursement. (Contingent effective date - See note)

If the cost of any extraordinary authorized action under this chapter exceeds amounts awarded to the ~~administrator or the department~~ from the federal government, ~~the administrator may pay the department~~ the cost of themay pay the department's corrective actions costs, including the cost of investigating a release, if the board finds that the cause was a petroleum substance, that an adequate amount exists in the fund to pay for the corrective action, that the occurrence was extraordinary in scope and size, and that a danger to the health and safety of citizens exists.

SECTION 21. AMENDMENT. Section 23.1-12-25 of the North Dakota Century Code is amended and reenacted as follows:

23.1-12-25. Coordination of benefits. (Contingent effective date - See note)

If an owner or operator has an insurance policy that provides the same coverage as the fund, the ~~administrator of the fund~~department shall pay the share of the covered loss or damage for which the fund is responsible. The share that must be paid from the fund is equal to the proportion that the applicable limit of coverage under the fund bears to the limits of insurance of all insurance coverage on the same basis.

SECTION 22. AMENDMENT. Section 23.1-12-26 of the North Dakota Century Code is amended and reenacted as follows:

23.1-12-26. Third-party damages - Participation in actions and review of settlements. (Contingent effective date - See note)

1. An owner or operator sued for damages resulting from a release shall notify the ~~administrator~~department within fourteen days of being served with a summons and complaint. The owner or operator also shall advise the ~~administrator~~department if any insurer is defending the owner or operator and provide to the ~~administrator~~department the name of that insurer.
2. An owner or operator that, before litigation, enters negotiations with a third party that claims to have been damaged by a release, or that receives a demand for payment of damages to a third party that claims to have been damaged by a release, shall notify the ~~administrator~~department within fourteen days of the demand or the negotiations.
3. The ~~administrator~~department and the board shall review the conduct of any litigation or negotiation. The ~~administrator~~department may not assume any legal costs incurred by the defendant or plaintiff, but may participate in discovery, trial proceedings, or settlement negotiations of either disputed liability or damages that bear on the determination of a plaintiff's damages.
4. The ~~administrator~~department and the board shall review any settlement negotiations to determine the dollar amount of bodily injury or property damage actually, necessarily, and reasonably incurred by third parties which, if paid by the defendant, would be considered eligible costs.

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SECTION 23. AMENDMENT. Section 23.1-12-27 of the North Dakota Century Code is amended and reenacted as follows:

23.1-12-27. Third-party damages - Documentation. (Contingent effective date - See note)

1. An applicant's payments for third-party damages pursuant to a judgment entered in a court must include copies of the notice of entry of judgment and abstract of costs.
2. An applicant's payments for third-party damages made by agreement in settlement of litigation must include copies of the settlement agreement and supporting documents required by the ~~administrator~~department.
3. An applicant's payments for third-party damages made by agreement without reference to litigation must include copies of the settlement and supporting documents required by the ~~administrator~~department.
4. The ~~administrator~~department and the board may require a third party who claims bodily injury to be examined by a physician and require that the physician's report to be submitted to the ~~administrator~~department. The ~~administrator~~department may require a third party that claims property damage to permit a property appraiser or claims adjuster retained by the ~~administrator~~department to inspect the property and report to the ~~administrator~~department.
5. The fund shall pay a judgment against an owner, operator, or dealer awarded to a third party as a result of a third-party claim and property damage against an owner, operator, or dealer registered by the fund.
6. The fund shall pay for corrective action as awarded to a third party in any judgment against an owner, operator, or dealer.
7. Liability of the tank owner, operator, dealer, or fund to third parties for corrective action or personal injuries and property damage may not exceed, per person, one million dollars. Maximum liability of the fund, including all claims by third parties, may not exceed, for any release site, the maximum provided in section 23.1-12-18.
8. A third party may not bring an action against an owner, operator, or dealer more than three years after a corrective action plan has been approved by the department if the owner, operator, or dealer fully implements and complies with the corrective action plan.
9. In investigating a release site or reviewing the implementation of a corrective action plan approved by the department, the department shall determine whether the release threatens public health or the environment. The department shall require, based on science and technology appropriate for the site, any monitoring, remediation, or other appropriate corrective action that is reasonably necessary to protect public health or the environment. The department may require corrective action at a release site at any time after a release occurs.

SECTION 24. AMENDMENT. Section 23.1-12-28 of the North Dakota Century Code is amended and reenacted as follows:

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23.1-12-28. Matching federal funds. (Contingent effective date - See note)

The ~~administrator~~department and the board may annually allow the department a ten percent matching grant for federal leaking underground storage tank funds to be paid out of the fund if the moneys are available and the ~~administrator~~department and the board determine the allowance appropriate.

SECTION 25. AMENDMENT. Section 23.1-12-29 of the North Dakota Century Code is amended and reenacted as follows:

23.1-12-29. Fund appropriations. (Contingent effective date - See note)

Money in the fund is continuously appropriated to the ~~administrator~~department for the purpose of making reimbursements under this chapter.

SECTION 26. AMENDMENT. Section 23.1-12-30 of the North Dakota Century Code is amended and reenacted as follows:

23.1-12-30. Investment of fund. (Contingent effective date - See note)

Investment of the fund is under the supervision of the state investment board in accordance with chapter 21-10. The ~~commissioner~~department may purchase a contract for reinsurance of any risk to be paid by the fund. The ~~administrator~~department may investigate the purchase of insurance that reimburses an owner or operator for property damage claims by third parties other than claims for costs of corrective action.

SECTION 27. Chapter 23.1-16 of the North Dakota Century Code is created and enacted as follows:

23.1-16-01. Definitions.

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

1. "Boiler" means a closed vessel in which water is heated, steam is generated, steam is superheated, or any combination thereof, under pressure or vacuum for use externally to the boiler by the direct application of heat from the combustion of fuels, or from electricity or nuclear energy. The term includes fired units for vaporizing liquids other than water when these units are separate from processing systems and are complete within themselves.
2. "Department" means the department of environmental quality.

23.1-16-02. Chief boiler inspector, deputy inspectors - Appointment - Jurisdiction.

The department shall employ a chief boiler inspector and deputy inspectors. The chief boiler inspector has jurisdiction over all boilers in this state except as otherwise provided.

23.1-16-03. Qualifications of chief boiler inspector - Deputy inspectors.

1. An individual is not eligible to the office of chief boiler inspector unless that individual:

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- a. Has had at the time of the appointment at least five years' experience in the construction, inspection, operation, maintenance, or repair of high-pressure boilers and pressure vessels as a mechanical engineer, boilermaker, steam operating engineer, or boiler inspector. An applicant possessing a mechanical engineering degree from an accredited school may substitute that degree for two years of the five years' experience, at the discretion of the department.
 - b. Holds a commission issued by the national board of boiler and pressure vessel inspectors or obtains the commission within one year after the date of appointment by the department.
 - c. Is not directly or indirectly interested in the manufacture or sale of boilers or steam machinery or articles used in the construction or maintenance of engines or boilers.
2. The department shall establish qualifications for a deputy inspector which are not inconsistent with the requirements of the position.

23.1-16-04. Powers and duties of chief boiler inspector.

1. The chief boiler inspector shall:
 - a. Keep a complete record of the type, dimensions, maximum allowable working pressure, age, condition, location, and date of the last-recorded internal and external inspection of boilers to which this chapter applies.
 - b. Cooperate and assist in loss prevention programs sponsored by the department.
2. The chief boiler inspector may delegate powers and duties to any deputy inspector or special inspector.

23.1-16-05. General requirement.

Every boiler in this state must be constructed, installed, and maintained according to rules adopted to implement this chapter.

23.1-16-06. Exempt boilers - Inspection of exempt boilers.

This chapter does not apply to:

1. Any boiler subject to federal inspection or under federal control.
2. Any boiler located on a farm and used solely for agricultural purposes.
3. Any heating boiler located in a private residence or in an apartment house of less than six family units.
4. Any hot water supply boiler not exceeding the following limitations:
 - a. Input of two hundred thousand British thermal units per hour.
 - b. Pressure of one hundred sixty pounds per square inch [1103.16 kilopascals] gauge.

- c. Temperature of two hundred fifty degrees Fahrenheit [121.11 degrees Celsius].
- 5. Any portable steam cleaner commonly used in a garage.
- 6. Any boiler of a miniature model locomotive, boat, tractor, or stationary engine design constructed as a hobby, not for commercial use, having an inside diameter not exceeding ten inches [25.4 centimeters] and a grate area not exceeding one and one-half square feet [1393.54 square centimeters] and which is properly equipped with a safety valve, water level indicator, and pressure gauge.
- 7. Any electric boiler used as an integral part of an espresso coffee machine, provided that the boiler does not exceed one and one-half cubic feet [.0566 cubic meter] in water capacity, does not exceed fifty pounds per square inch [344.74 kilopascals] pressure, and is constructed, approved, or certified to the American society of mechanical engineers code or to other national or international standards.

23.1-16-07. Inspection of boilers.

- 1. The chief boiler inspector shall inspect each boiler used or proposed to be used within this state. The inspection must be thorough as to the construction, installation, condition, and operation as provided by the rules adopted to implement this chapter. An exempt boiler may be inspected by the chief boiler inspector when the owner, the owner's agent, or the user of the boiler makes written request for inspection to the department.
- 2. Each boiler of one hundred thousand pounds [45359.24 kilograms] per hour or more capacity, used or proposed to be used within this state, which has internal continuous water treatment under the direct supervision of a graduate engineer or chemist, or one having equivalent experience in the treatment of boiler water when the water treatment is for the purpose of controlling and limiting serious corrosion and other deteriorating factors, and with respect to which boiler the chief boiler inspector has determined the owner or user has complied with the prescribed recordkeeping requirements, must be inspected at least once every thirty-six months internally while not under pressure, and at least once every twelve months externally while under pressure. If a hydrostatic test is necessary to determine the safety of a boiler, the test must be conducted by the owner or user of the equipment under the supervision of the chief boiler inspector. The owner or user of a boiler of one hundred thousand pounds [45359.24 kilograms] per hour or more capacity desiring to qualify for thirty-six-month internal inspection intervals shall keep available for examination by the chief boiler inspector accurate records showing the date and actual time the boiler is out of service and the reason for being out of service, and the results of the chemical and physical analysis of the boiler water, whether from laboratory analysis of samples taken at regular intervals of not more than forty-eight hours or from continuous online analysers, which will adequately show the condition of the water and any other elements or characteristics of the water capable of producing corrosion or other deterioration of the boiler or its parts. If an inspection discloses deficiencies in equipment or in operating procedures, inspections may be required once every twelve months.

23.1-16-08. Special inspector.

1. Upon written request of an employer, the department may appoint as a special inspector an inspector in the employ of:
 - a. An insurance company authorized to insure boilers in this state against loss from explosion;
 - b. A company qualified by the national board of boiler and pressure vessel inspectors as an accredited owner/user inspection organization; or
 - c. A company qualified by the national board of boiler and pressure vessel inspectors as an accredited authorized inspection agency.
2. An individual may not be appointed as a special inspector unless that individual has passed the examination prescribed by the national board of boiler and pressure vessel inspectors.
3. An inspection performed by a special inspector must be performed in accordance with this chapter and a complete report of the inspection must be filed with the department in the time, manner, and form as prescribed by the department.
4. If a complete report is not filed by the special inspector's employer with the department within ninety days from the certificate due date, the chief boiler inspector may make the required inspection, unless an extension of time is granted by the chief boiler inspector. The special inspector's employer must pay the inspection fees as required by section 23.1-16-09 for a special inspection.
5. The chief boiler inspector may inspect any boiler to which a special inspection applies.
6. The department may suspend or revoke the appointment of any special inspector for cause.

23.1-16-09. Inspection and certificate fees.

1. Upon completion of inspection, the owner or user of a boiler shall pay to the department fees or a combination of inspection and certificate fees. The department shall determine the inspection fees. Certificate fees are determined by section 23.1-16-10. The department shall determine and annually may adjust a fee scale for the internal inspections of power boilers, internal inspections of low-pressure heating boilers, external inspections of all boilers, and inspection of boilers used exclusively for exhibition purposes.
2. Not more than two hundred dollars may be charged or collected for any one inspection of a boiler, except for special inspections made upon request. All other inspections made by the chief boiler inspector, including shop inspections and reviews and special inspections when requested by the owner or user of a boiler, must be charged at a rate not to exceed five hundred dollars per day or three hundred dollars per half day of four hours or less, plus payment for mileage, meals, and hotel expenses as allowed

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by sections 44-08-04 and 54-06-09, except that the mileage rate for a state-owned vehicle will be the actual amount incurred by the department.

3. The annual fee for the issuance of a reciprocal commission card for a special inspector is forty dollars and the annual fee for the issuance of a welder-qualified card is twenty dollars.
4. The fee for taking an examination for a hobby boiler operating license is twenty-five dollars and the fee for a hobby boiler operating license is twenty-five dollars.
5. A hobby boiler operating license issued under this section is valid for six years.

23.1-16-10. Certificate of inspection - Certificate to be posted.

The department shall issue a certificate of inspection for each boiler inspected upon receipt of an inspection report certifying that the boiler is in a safe condition to be operated. The department shall charge a fee of twenty dollars per year for each year that a certificate is valid, or part of a year thereof, for each certificate of inspection issued as the result of inspections authorized under sections 23.1-16-07 and 23.1-16-08. The fees are the liability of the owner or user and must be paid in accordance with rules adopted by the department. A certificate may not be issued for any boiler not in a safe condition to be operated or for a boiler for which the inspection and certificate fees have not been paid in full. A certificate is not valid for a period of more than thirty-six months for power boilers described in subsection 2 of section 23.1-16-07, and no more than twelve months for other power boilers, twelve months for steam traction engines, and thirty-six months for low-pressure boilers except that a two-month grace period may be extended for any certificate. Upon written request from a special inspector, the chief boiler inspector may issue a short-term certificate. Each certificate of inspection must be posted conspicuously under glass in the boiler room or adjacent to the boiler inspected.

23.1-16-11. Certificate of inspection required - Penalty.

A person may not operate a boiler in this state without a valid certificate of inspection. A violation of this section is a class A misdemeanor on the part of the owner, user, or operator of the boiler.

23.1-16-12. Manufacturer's data report.

The boiler manufacturer shall provide the department with a manufacturer's data report. When signed by an authorized inspector, this data sheet together with the stamp on the boiler is the record denoting the boiler has been constructed in accordance with the rules adopted to implement this chapter.

23.1-16-13. Disposition of funds.

All funds collected and received under this chapter must be paid to the state treasurer and deposited in the state fire and tornado fund to be used to defray the costs of boiler inspections.

23.1-16-14. Rules - Penalty for violation - Hearing.

1. The department shall adopt rules for the safe and proper installation, use, operation, and inspection of boilers and pressure vessels subject to this chapter.
2. The department shall adopt rules for the licensing of operators of hobby boilers used during parades, exhibitions, and threshing shows where the public is invited.
3. A fee must be charged for an operating license, for a license renewal, and for an examination conducted to determine minimum competence. Individuals operating hobby boilers within this state as of July 1, 2007, are considered acceptable for a license without additional training or examination. An individual who is not a resident of this state and who holds a boiler operator license or credential in another state or Canadian province is exempt from licensure as a hobby boiler operator in this state.
4. The department may not issue a certificate of inspection to any owner or user of a boiler who fails or refuses to comply with the rules. The department shall revoke any certificate presently in force upon evidence that the owner or user of the boiler is failing or refusing to comply with the rules.
5. Any owner or user of a boiler may request a hearing before the department within fifteen days from service of an order refusing or revoking a certificate of inspection. It is the burden of the owner or user to show cause why the certificate of inspection should not be refused or revoked. If no hearing is requested within the required period, the order of the department becomes final and is not subject to further proceedings.

SECTION 28. REPEAL. Chapter 26.1-22.1 of the North Dakota Century Code is repealed.

SECTION 29. EFFECTIVE DATE. Sections 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, and 28 of this Act become effective on July 1, 2019, if the legislative council has received certification from the chief of the environmental health section of the state department of health that all authority, powers, and duties from the environmental health section of the state department of health have been transferred to the department of environmental quality. If the certification is not received by July 1, 2019, sections 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, and 28 of this Act become effective on the date certification is received."

Renumber accordingly

STATEMENT OF PURPOSE OF AMENDMENT:

House Bill No. 1024 - Department of Environmental Quality - House Action

	Base Budget	House Changes	House Version
Salaries and wages	\$27,040,544	\$3,156,409	\$30,196,953
Operating expenses	8,005,878	1,996,302	10,002,180
Capital assets	1,258,249	1,005,180	2,263,429
Grants	13,407,000	2,454,529	15,861,529

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Total all funds	\$49,711,671	\$8,612,420	\$58,324,091
Less estimated income	38,987,520	7,428,412	46,415,932
General fund	\$10,724,151	\$1,184,008	\$11,908,159
FTE	152.50	13.00	165.50

Department 303 - Department of Environmental Quality - Detail of House Changes

	Adjusts Funding for Base Payroll Changes ¹	Adds Funding for Salary and Benefit Increases ²	Cost to Continue Adjustments ³	Removes 3 FTE Positions ⁴	Adds Funding to Transfer the Petroleum Tank Release Program ⁵	Adds Funding to Transfer the Boiler Inspection Program ⁶
Salaries and wages	\$146,390	\$1,396,063		(\$365,530)	\$336,481	\$753,365
Operating expenses			\$1,239,823		238,588	89,000
Capital assets						
Grants			(445,000)			
Total all funds	\$146,390	\$1,396,063	\$794,823	(\$365,530)	\$575,069	\$842,365
Less estimated income	322,006	939,547	957,799	(271,407)	575,069	842,365
General fund	(\$175,616)	\$456,516	(\$162,976)	(\$94,123)	\$0	\$0
FTE	0.00	0.00	0.00	(3.00)	2.00	4.00

	Adds Contingent Funding and FTE Positions for the Supremacy of Federal Programs ⁷	Decreases Funding for Water Treatment System Training ⁸	Adds Funding for Microsoft Office 365 Licensing ⁹	Adjusts Funding for Bond and Capital Payments ¹⁰	Reduces Funding for Extraordinary Repairs ¹¹	Increases Funding for Equipment ¹²
Salaries and wages	\$889,640		\$84,586			
Operating expenses	359,305	(\$55,000)	\$84,586			
Capital assets				\$3,405	(\$273,350)	\$275,125
Grants						
Total all funds	\$1,248,945	(\$55,000)	\$84,586	\$3,405	(\$273,350)	\$275,125
Less estimated income	0	0	64,538	1,541	(217,700)	275,125
General fund	\$1,248,945	(\$55,000)	\$20,048	\$1,864	(\$55,650)	\$0
FTE	10.00	0.00	0.00	0.00	0.00	0.00

	Adds Funding for Grants from the Volkswagen Trust Settlement ¹³	Adds One-Time Contingent Funding to Establish Federal Program Supremacy ¹⁴	Total House Changes
Salaries and wages			\$3,156,409
Operating expenses		\$40,000	1,996,302
Capital assets		1,000,000	1,005,180
Grants	\$2,899,529		2,454,529
Total all funds	\$2,899,529	\$1,040,000	\$8,612,420
Less estimated income	2,899,529	1,040,000	7,428,412
General fund	\$0	\$0	\$1,184,008
FTE	0.00	0.00	13.00

¹ Funding is adjusted for base payroll changes.

² The following funding is added for 2019-21 biennium salary adjustments of 2 percent per year and increases in health insurance premiums from \$1,241 to \$1,427 per month:

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	<u>General Fund</u>	<u>Other Funds</u>	<u>Total</u>
Salary increase	\$231,686	\$472,755	\$704,441
Health insurance increase	<u>224,830</u>	<u>466,792</u>	<u>691,622</u>
Total	\$456,516	\$939,547	\$1,396,063

³ Funding is adjusted for cost to continue changes to the base budget.

⁴ Three FTE positions and related funding for salaries and wages are removed.

⁵ Two FTE positions and related funding from the petroleum tank release compensation fund for salaries and wages and operating expenses are transferred from the Insurance Department to the Department of Environmental Quality for the petroleum tank release program.

⁶ Four FTE positions are added to transfer the boiler inspection program from the Insurance Department to the Department of Environmental Quality, including funding from the state fire and tornado fund for base salaries and wages of \$753,365 and operating expenses of \$89,000.

⁷ Contingent funding and 10 FTE positions are added in the 2nd year of the biennium for the supremacy of federal programs, including funding for salaries and wages of \$889,640 and operating expenses of \$359,305. The appropriation and FTE positions are contingent on federal Environmental Protection Agency approval of the Department of Environmental Quality assuming the duties of federal air pollution programs.

⁸ Funding for operating expenses related to training water treatment system operators is reduced to provide a total of \$125,000 from the general fund.

⁹ Funding is added for Microsoft Office 365 license expenses.

¹⁰ Funding for bond and capital payments is increased to provide a total of \$216,429, of which \$93,691 is from the general fund.

¹¹ Funding for extraordinary repairs is reduced to provide a total of \$27,000, of which \$6,866 is from the general fund.

¹² Funding for equipment and information technology equipment over \$5,000 is increased to provide a total ongoing appropriation of \$1,020,000 from other funds.

¹³ Funding for grants is increased to accept and disburse funding from the Volkswagen trust settlement to provide a total of \$5,399,529.

¹⁴ One-time funding is added from the strategic investment and improvements fund for capital assets of \$1 million and operating expenses of \$40,000 related to the establishment of federal program supremacy. The funding is contingent on Environmental Protection Agency approval of the Department of Environmental Quality assuming the duties of federal air pollution programs.

This amendment also adds sections to:

- Identify funding from the state fire and tornado fund for the boiler inspection program;
- Identify contingent one-time funding of \$1,040,000 from the strategic investment and improvements fund for air pollution program equipment related to the establishment of federal program supremacy. The funding provided is available the 2nd year of the biennium and is contingent on Environmental Protection Agency approval of the Department of Environmental Quality assuming the duties of federal air pollution programs;
- Identify contingent funding of \$1,248,945 from the general fund and 10 FTE positions related to the establishment of federal program supremacy effective July 1, 2020;
- Amend various sections of Chapter 23.1-12 to transfer the petroleum tank release program from the Insurance Commissioner to the Department of Environmental Quality and to provide the Department of Environmental Quality set registration fees by rule;
- Create Chapter 23.1-16 to transfer the boiler inspection program from the Insurance Commissioner to the Department of Environmental Quality;
- Repeal Chapter 26.1-22.1 related to the boiler inspection program; and
- Provide effective dates for the program transfers.

Date: 2/8/2019
Roll Call Vote #: 1

2019 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1024

House Appropriations - Human Resources Division Committee

Subcommittee

Amendment LC# or Description: 19.0212.01001

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
Other Actions: Reconsider _____

Motion Made By Rep. Holman Seconded By Rep. Kreidt

Representatives	Yes	No	Representatives	Yes	No
Chairman Jon O. Nelson	X		Rep. Richard G. Holman	X	
Vice Chairman Gary Kreidt	X				
Representative Bert Anderson	X				
Representative Lisa Meier	X				
Rep. Randy A. Schobinger	X				

Total (Yes) 6 No 0

Absent 0

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

Motion Carries.

Date: 2/8/2019
Roll Call Vote #: 3

2019 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1004

House Appropriations - Human Resources Division Committee

Subcommittee

Amendment LC# or Description: _____

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
Other Actions: Reconsider _____

Motion Made By Rep. Holman Seconded By Rep. Schobinger

Representatives	Yes	No	Representatives	Yes	No
Chairman Jon O. Nelson	X		Rep. Richard G. Holman	X	
Vice Chairman Gary Kreidt	X				
Representative Bert Anderson	X				
Representative Lisa Meier	X				
Rep. Randy A. Schobinger	X				

Total (Yes) 6 No 0

Absent 0

Floor Assignment Rep. Holman

If the vote is on an amendment, briefly indicate intent:
Motion Carries.

Date: 2/14/2019
 Roll Call Vote #: 1

**2019 HOUSE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. 1024**

House Appropriations Committee

Subcommittee

Amendment LC# or Description: 19.0212.01003

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
 Other Actions: Reconsider _____

Motion Made By Representative Holman Seconded By Representative Meier

Representatives	Yes	No	Representatives	Yes	No
Chairman Delzer					
Representative Kempenich					
Representative Anderson			Representative Schobinger		
Representative Beadle			Representative Vigesaa		
Representative Bellew					
Representative Brandenburg					
Representative Howe			Representative Boe		
Representative Kreidt			Representative Holman		
Representative Martinson			Representative Mock		
Representative Meier					
Representative Monson					
Representative Nathe					
Representative J. Nelson					
Representative Sanford					
Representative Schatz					
Representative Schmidt					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

Voice Vote/Motion Carries

Date: 2/14/2019
 Roll Call Vote #: 2

**2019 HOUSE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. HB 1024**

House Appropriations Committee

Subcommittee

Amendment LC# or Description: _____

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
 Other Actions: Reconsider _____

Motion Made By Representative Holman Seconded By Representative J. Nelson

Representatives	Yes	No	Representatives	Yes	No
Chairman Delzer	X				
Representative Kempenich	X				
Representative Anderson	X		Representative Schobinger	X	
Representative Beadle	X		Representative Vigesaa	X	
Representative Bellew	X				
Representative Brandenburg	A X				
Representative Howe	X		Representative Boe	X	
Representative Kreidt	X		Representative Holman	X	
Representative Martinson	X		Representative Mock	X	
Representative Meier	X				
Representative Monson	X				
Representative Nathe	X				
Representative J. Nelson	X				
Representative Sanford	X				
Representative Schatz	X				
Representative Schmidt	X				

Total (Yes) 20 No 0

Absent 1

Floor Assignment Representative Holman

Motion Carries

REPORT OF STANDING COMMITTEE

HB 1024: Appropriations Committee (Rep. Delzer, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (20 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). HB 1024 was placed on the Sixth order on the calendar.

Page 1, line 2, after "quality" insert "; to create and enact chapter 23.1-16 of the North Dakota Century Code, relating to boiler inspections; to amend and reenact sections 23.1-12-02, 23.1-12-04, 23.1-12-05, 23.1-12-06, 23.1-12-10, 23.1-12-11, 23.1-12-14, 23.1-12-15, 23.1-12-17, 23.1-12-18, 23.1-12-19, 23.1-12-20, 23.1-12-23, 23.1-12-24, 23.1-12-25, 23.1-12-26, 23.1-12-27, 23.1-12-28, 23.1-12-29, and 23.1-12-30 of the North Dakota Century Code, relating to the duties of the department of environmental quality; to repeal chapter 26.1-22.1 of the North Dakota Century Code, relating to boiler inspections; to provide for a report; and to provide for a contingent effective date"

Page 1, replace lines 10 through 19 with:

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Salaries and wages	\$27,040,544	\$3,156,409	\$30,196,953
Operating expenses	8,005,878	1,996,302	10,002,180
Capital assets	1,258,249	1,005,180	2,263,429
Grants	<u>13,407,000</u>	<u>2,454,529</u>	<u>15,861,529</u>
Total all funds	\$49,711,671	\$8,612,420	\$58,324,091
Less estimated income	<u>38,987,520</u>	<u>7,428,412</u>	<u>46,415,932</u>
Total general fund	\$10,724,151	\$1,184,008	\$11,908,159
Full-time equivalent positions	152.50	13.00	165.50"

Page 1, line 20, after "BUDGET" insert "- **REPORT TO SIXTY-SEVENTH LEGISLATIVE ASSEMBLY**"

Page 1, line 22, after "biennium" insert "and the 2019-21 biennium one-time funding items included in the appropriation in section 1 of this Act"

Page 2, replace lines 1 through 3 with:

<u>One-Time Funding Description</u>	<u>2017-19</u>	<u>2019-21</u>
Environmental protection agency lawsuit	\$500,000	\$0
Air pollution program equipment	<u>0</u>	<u>1,040,000</u>
Total estimated income	\$500,000	\$1,040,000

The 2019-21 biennium one-time funding amounts are not a part of the entity's base budget for the 2021-23 biennium. The department of environmental quality shall report to the appropriations committees of the sixty-seventh legislative assembly on the use of this one-time funding for the biennium beginning July 1, 2019, and ending June 30, 2021."

Page 2, after line 9, insert:

"SECTION 4. STATE FIRE AND TORNADO FUND. The estimated income line item included in section 1 of this Act includes \$879,312, or so much of the sum as may be necessary, to be made available to the department of environmental quality from the state fire and tornado fund for the boiler inspection program, for the biennium beginning July 1, 2019, and ending June 30, 2021.

SECTION 5. STRATEGIC INVESTMENT AND IMPROVEMENTS FUND - CONTINGENT ONE-TIME FUNDING - FEDERAL PROGRAM SUPREMACY. The estimated income line item included in section 1 of this Act includes \$1,040,000, or so much of the sum as may be necessary, to be made available to the department of environmental quality from the strategic investment and improvements fund for

one-time funding of air pollution program equipment related to the establishment of federal program supremacy, for the biennium beginning July 1, 2019, and ending June 30, 2021. The funding may be spent only upon certification by the director of the department of environmental quality to the director of the office of management and budget that the federal environmental protection agency has approved the department of environmental quality assuming the duties of federal air pollution programs.

SECTION 6. CONTINGENT APPROPRIATION - FEDERAL PROGRAM SUPREMACY. The amount of \$1,248,945 from the general fund and ten full-time equivalent positions included in section 1 of this Act are effective July 1, 2020, and may be spent only upon certification by the director of the department of environmental quality to the director of the office of management and budget that the federal environmental protection agency has approved the state assuming primacy over the quad O and quad Oa federal air pollution programs.

SECTION 7. AMENDMENT. Section 23.1-12-02 of the North Dakota Century Code is amended and reenacted as follows:

23.1-12-02. Definitions. (Contingent effective date - See note)

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. "~~Administrator~~" means ~~the manager of the state fire and tornado fund.~~
3. "Board" means the petroleum release compensation board.
4. "~~Commissioner~~" means ~~the insurance commissioner.~~
- 5-3. "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.
- 6-4. "Dealer" means a person licensed by the tax commissioner to sell motor vehicle fuel or special fuels within the state.
- 7-5. "Department" means the department of environmental quality.
- 8-6. "Fund" means the petroleum release compensation fund.
- 9-7. "Location" means a physical address or site that has contiguous properties. Noncontiguous properties within a municipality or other governmental jurisdiction are considered separate locations.
- 10-8. "Operator" means a person in control of, or having responsibility for, the daily operation of a tank under this chapter.
- 11-9. "Owner" means a person who holds title to, controls, or possesses an interest in the tank before the discontinuation of its use.
- 12-10. "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.
- ~~43.11.~~ "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.
- ~~44.12.~~ "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.
- ~~45.13.~~ "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. 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.
- ~~46-14.~~ "Tank integrity test" means a test to determine that a tank is sound and not leaking. For an underground tank, the term means a certified third-party test that meets environmental protection agency leak detection requirements. For an aboveground tank, the term means a test conducted according to steel tank institute SP 001 or American petroleum institute 653.
- ~~47-15.~~ "Third party" means a person who is damaged by the act of a registered owner, operator, or dealer requiring corrective action, or a person who suffers bodily injury or property damage caused by a petroleum release.

SECTION 8. AMENDMENT. Section 23.1-12-04 of the North Dakota Century Code is amended and reenacted as follows:

23.1-12-04. Administration of fund - Staff. (Contingent effective date - See note)

The ~~administrator~~department shall administer the fund according to this chapter. The ~~administrator~~department shall convene the board as may be necessary to keep the board apprised of the fund's general operations. However, the board shall meet at least once each half of each calendar year to review and to advise the ~~administrator~~department regarding the administration of the fund, the fund's general operations, and to hear and decide denials of claims by the ~~administrator~~department which may be appealed to the board, and to discuss all claims against the fund. The ~~administrator~~department may employ any assistance and staff necessary to administer the fund within the limits of legislative appropriation. A claimant aggrieved by a decision of the ~~administrator~~department regarding a claim upon the fund may appeal the decision to the board. The board may sustain, modify, or reverse the decision of the ~~administrator~~department. The claimant or the ~~administrator~~department may appeal the board's decision to the commissioner. ~~The decision of the commissioner may be appealed under chapter 28-32.~~

SECTION 9. AMENDMENT. Section 23.1-12-05 of the North Dakota Century Code is amended and reenacted as follows:

23.1-12-05. Adoption of rules. (Contingent effective date - See note)

The ~~administrator~~department shall adopt rules regarding the practices and procedures of the fund, the form and procedure for applications for compensation from the fund, procedures for investigation of claims, procedures for determining the amount and type of costs that are eligible for reimbursement from the fund, procedures for persons to perform services for the fund, procedures for appeals to the board by claimants aggrieved by an adverse decision of the ~~administrator~~department, and any other rules as may be appropriate to administer this chapter.

SECTION 10. AMENDMENT. Section 23.1-12-06 of the North Dakota Century Code is amended and reenacted as follows:

23.1-12-06. Release discovery. (Contingent effective date - See note)

If the department has reason to believe a release has occurred, it shall ~~notify the administrator.~~ The department shall direct the owner or operator to take reasonable and necessary corrective actions as provided under federal or state law or under adopted rules.

SECTION 11. AMENDMENT. Section 23.1-12-10 of the North Dakota Century Code is amended and reenacted as follows:

23.1-12-10. Providing of information. (Contingent effective date - See note)

A person ~~the administrator or~~ the department has reason to believe is an owner or operator, the owner of real property where corrective action is ordered to be taken, or a person that may have information concerning a release shall, if requested by ~~the administrator or~~ the department, or any member, employee, or agent of ~~the administrator or~~ the department, furnish to the ~~administrator or~~ the department any information that person has or may reasonably obtain which is relevant to the release.

SECTION 12. AMENDMENT. Section 23.1-12-11 of the North Dakota Century Code is amended and reenacted as follows:

23.1-12-11. Examination of records. (Contingent effective date - See note)

Any employee of the ~~administrator or~~ the department may, upon presentation of official credentials:

1. Examine and copy books, papers, records, memoranda, or data of any person that has a duty to provide information to the ~~administrator or~~ the department under section 23.1-12-10; and
2. Enter upon public or private property to take action authorized by this section, including obtaining information from a person that has a duty to provide the information under section 23.1-12-10, conducting surveys and investigations, and taking corrective action.

SECTION 13. AMENDMENT. Section 23.1-12-14 of the North Dakota Century Code is amended and reenacted as follows:

23.1-12-14. Other remedies. (Contingent effective date - See note)

This chapter does not limit the powers of the ~~administrator or~~ department, or preclude the pursuit of any other administrative, civil, injunctive, or criminal remedies by the ~~administrator or~~ department or any other person. Administrative remedies need not be exhausted to proceed under this chapter. The remedies provided by this chapter are in addition to those provided under existing statutory or common law.

SECTION 14. AMENDMENT. Section 23.1-12-15 of the North Dakota Century Code is amended and reenacted as follows:

23.1-12-15. Revenue to the fund. (Contingent effective date - See note)

Revenue from the following sources must be deposited in the state treasury and credited to the fund:

1. Any ~~registration~~ fees collected under section 23.1-12-17;
2. Any money recovered by the fund under section 23.1-12-23, and any money paid under an agreement, stipulation, or settlement;
3. Any interest attributable to investment of money in the fund; and
4. Any money received by the ~~administrator~~department in the form of gifts, grants, reimbursements, or appropriations from any source intended to be used for the purposes of the fund.

SECTION 15. AMENDMENT. Section 23.1-12-17 of the North Dakota Century Code is amended and reenacted as follows:

23.1-12-17. Registration fee. (Contingent effective date - See note)

1. ~~An owner or operator of a tank shall pay an annual registration fee of fifty dollars for each aboveground or underground tank owned or operated by that person. If after the fiscal year has been closed and all expenses relating to the fiscal year have been accounted for, the fund balance is less than six million dollars, the annual registration fee of fifty dollars is increased to one hundred dollars. If after the fiscal year has been closed and all expenses relating to the fiscal year have been accounted for, the fund balance is five million five hundred thousand dollars or more and the annual registration fee has been increased to one hundred dollars, the fee must be reduced to fifty dollars. If after the fiscal year has been closed and all expenses relating to the fiscal year have been accounted for, the fund balance exceeds nine million dollars, the annual registration fee is reduced to five dollars. Annual registration fees must continue at five dollars until the fund balance does not exceed nine million dollars. Upon the recommendation and approval of the petroleum tank release compensation fund board, the department shall classify tanks with respect to degree of hazard, determine the risks of each classification, and fix the registration fee for each classification at a rate sufficient to provide for:~~
 - a. The payment of the expenses of administration of the fund;
 - b. The reimbursement for corrective action provided under this chapter; and
 - c. The maintenance by the fund of adequate reserves and surplus so the fund may be kept solvent at all times.
2. The department shall establish the schedule of registration fees by rules adopted in accordance with chapter 28-32.
- ~~2-3.~~ 3. An owner or operator of an existing tank that is discovered at a location that currently and previously has had tanks registered with the fund shall pay an additional twenty-five dollar penalty fee in addition to the registration fee for each aboveground tank and each underground tank owned or operated by that person for each previous year that the tank was required to be registered for which a fee was not paid. The payment includes the fees and the penalty for the failure to register.
- ~~3-4.~~ 4. An owner or operator of an existing tank at a location that was not previously and continuously registered with the fund, whether the registration was required by law or not must provide the fund with a phase two environmental study conducted by a qualified firm according to American society for testing materials standards. A tank integrity test must also be performed. The environmental study and tank integrity test must be reviewed by the ~~commissioner~~department along with the application for registration with the fund. If the ~~commissioner~~department rejects the application, the applicant is denied eligibility to the fund. However, if the site is remediated and the leaking tank is replaced, the applicant may reapply for registration with the fund. A new installation that is using a used tank must provide tank integrity test results for the used tank. Use of a synthetic liner in an aboveground dike system negates the need for a tank integrity test. The owner or operator of a new tank at a new site or a new tank at an existing site that had a tank registered at the site previously need only pay the required fees for registration with the fund.

- 4.5. If accepted for registration with the fund, the owner or operator of the tank shall pay an additional twenty-five dollar penalty fee in addition to the registration fee for each aboveground tank and underground tank owned or operated by that person for each previous year that the tank was required to be registered for which a fee was not paid, regardless of ownership in each of those years. The payment includes the fees and the penalty for the failure to register.
- 5.6. The registration fees collected under this section must be paid to the ~~fund administrator~~ department for deposit in the state treasury for the dedicated credit to the petroleum release compensation fund.
- 6.7. If a registration payment is not received within sixty days of July first by the ~~commissioner~~ department, a late fee of twenty-five dollars per tank per month must be imposed on the tank owner or operator.

SECTION 16. AMENDMENT. Section 23.1-12-18 of the North Dakota Century Code is amended and reenacted as follows:

23.1-12-18. Reimbursement for corrective action. (Contingent effective date - See note)

1. The ~~administrator~~ department shall reimburse an eligible owner or operator for ninety percent of the costs of corrective action, including the investigation, which are greater than five thousand dollars and less than one million dollars per occurrence and two million dollars in the aggregate. An eligible tank owner or operator may not be liable for more than twenty thousand dollars out-of-pocket expenses for any one release. A reimbursement may not be made unless the ~~administrator~~ department determines that:
 - a. At the time the release was discovered the owner or operator and the tank were in compliance with state and federal rules and rules applicable to the tank, including rules relating to financial responsibility, rules relating to infrastructure compatibility, and all rules relating to health and safety which were in effect at the time of the release;
 - b. The department was given notice of the release as required by federal and state law;
 - c. The owner or operator has paid the first five thousand dollars of the cost of corrective action; and
 - d. The owner or operator, to the extent possible, fully cooperated with the department ~~and the administrator~~ in responding to the release.
2. The fund shall compensate third parties for corrective action taken for a petroleum release if the provisions of subdivisions a, b, c, and d of subsection 1 were met at the time the release was discovered. Compensation for third-party corrective action includes compensation for costs incurred in returning the real estate to that level deemed duly remediated by the department.
3. The fund shall reimburse the tank owner, operator, or dealer for bodily injuries to a third party caused by a petroleum release if the provisions of subdivisions a, b, c, and d of subsection 1 were met at the time the release was discovered in an amount determined by:

- a. Findings reduced to judgment in federal or state district court or such other court having jurisdiction over the matter in a proceeding in which the fund has been made a party;
 - b. Findings by an arbitration panel agreed upon in writing by the parties in a proceeding in which the fund has been made a party; or
 - c. A written settlement entered into by the parties in which the ~~commissioner~~director of the department or the ~~commissioner's~~department's agent has participated. The settlement must be reviewed and approved by the ~~commissioner~~director of the department.
4. In any civil action against the owner, operator, or dealer for damages resulting from a petroleum release, if the pre-leak condition of real estate is an issue, and if there is no reasonable means of determining the pre-leak condition of real estate, the condition is that which exists at the time the department determines the real estate has been duly remediated.
 5. The fund may not compensate for attorney's fees of owners, operators, or dealers, nor may the fund compensate for exemplary damages, criminal fines, or administrative penalties.
 6. A third party accepting monetary compensation directly from the fund for damages due to a release caused by a tank owner, operator, or dealer covered by the fund is deemed to have waived any cause of action against the fund or against the tank owner, operator, or dealer.
 7. The fund shall reimburse the department for all costs, attorney's fees, and other legal expenses relating to administrative and adjudicative proceedings under this chapter and any subsequent legal proceeding. Any moneys reimbursed must be deposited in the department's operating fund in the state treasury and must be spent subject to appropriation by the legislative assembly.

SECTION 17. AMENDMENT. Section 23.1-12-19 of the North Dakota Century Code is amended and reenacted as follows:

23.1-12-19. Application for reimbursement. (Contingent effective date - See note)

An owner or operator that is a first-party claimant and that proposes to take corrective action or has undertaken corrective action in response to a release, the time of the release being unknown, may apply to the ~~administrator~~department for partial or full reimbursement under section 23.1-12-18. An owner or operator who is a first-party claimant may be reimbursed only for costs incurred after July 1, 1989, even if the releases were discovered before July 1, 1989, up to the maximum of twenty-five thousand dollars per location.

SECTION 18. AMENDMENT. Section 23.1-12-20 of the North Dakota Century Code is amended and reenacted as follows:

23.1-12-20. ~~Administrator~~Department to determine costs. (Contingent effective date - See note)

A reimbursement for corrective actions taken by an owner, operator, or dealer may not be made from the fund until the ~~administrator~~department has determined that the costs for which reimbursement is requested were actually incurred and were reasonable. All necessary loss adjustment expenses must be included as a component of the loss and must be paid out of the fund.

SECTION 19. AMENDMENT. Section 23.1-12-23 of the North Dakota Century Code is amended and reenacted as follows:

23.1-12-23. Recovery of expenses. (Contingent effective date - See note)

Any reasonable and necessary expenses incurred by the fund, which exceed the coverage limits provided by section 23.1-12-18, in taking a corrective action, including costs of investigating a release, and in taking legal actions, may be recovered in a civil action in district court brought by the ~~administrator~~department against an owner or operator. The certification of expenses by an approved agent of the fund is prima facie evidence that the expenses are reasonable and necessary. Any expenses that are recovered under this section must be deposited in the fund.

SECTION 20. AMENDMENT. Section 23.1-12-24 of the North Dakota Century Code is amended and reenacted as follows:

23.1-12-24. Costs exceeding reimbursement. (Contingent effective date - See note)

If the cost of any extraordinary authorized action under this chapter exceeds amounts awarded to the ~~administrator or the~~ department from the federal government, ~~the administrator may pay the department the cost of the~~may pay the department's corrective actions costs, including the cost of investigating a release, if the board finds that the cause was a petroleum substance, that an adequate amount exists in the fund to pay for the corrective action, that the occurrence was extraordinary in scope and size, and that a danger to the health and safety of citizens exists.

SECTION 21. AMENDMENT. Section 23.1-12-25 of the North Dakota Century Code is amended and reenacted as follows:

23.1-12-25. Coordination of benefits. (Contingent effective date - See note)

If an owner or operator has an insurance policy that provides the same coverage as the fund, the ~~administrator of the fund~~department shall pay the share of the covered loss or damage for which the fund is responsible. The share that must be paid from the fund is equal to the proportion that the applicable limit of coverage under the fund bears to the limits of insurance of all insurance coverage on the same basis.

SECTION 22. AMENDMENT. Section 23.1-12-26 of the North Dakota Century Code is amended and reenacted as follows:

23.1-12-26. Third-party damages - Participation in actions and review of settlements. (Contingent effective date - See note)

1. An owner or operator sued for damages resulting from a release shall notify the ~~administrator~~department within fourteen days of being served with a summons and complaint. The owner or operator also shall advise the ~~administrator~~department if any insurer is defending the owner or operator and provide to the ~~administrator~~department the name of that insurer.
2. An owner or operator that, before litigation, enters negotiations with a third party that claims to have been damaged by a release, or that receives a demand for payment of damages to a third party that claims to have been damaged by a release, shall notify the ~~administrator~~department within fourteen days of the demand or the negotiations.

3. The ~~administrator~~department and the board shall review the conduct of any litigation or negotiation. The ~~administrator~~department may not assume any legal costs incurred by the defendant or plaintiff, but may participate in discovery, trial proceedings, or settlement negotiations of either disputed liability or damages that bear on the determination of a plaintiff's damages.
4. The ~~administrator~~department and the board shall review any settlement negotiations to determine the dollar amount of bodily injury or property damage actually, necessarily, and reasonably incurred by third parties which, if paid by the defendant, would be considered eligible costs.

SECTION 23. AMENDMENT. Section 23.1-12-27 of the North Dakota Century Code is amended and reenacted as follows:

23.1-12-27. Third-party damages - Documentation. (Contingent effective date - See note)

1. An applicant's payments for third-party damages pursuant to a judgment entered in a court must include copies of the notice of entry of judgment and abstract of costs.
2. An applicant's payments for third-party damages made by agreement in settlement of litigation must include copies of the settlement agreement and supporting documents required by the ~~administrator~~department.
3. An applicant's payments for third-party damages made by agreement without reference to litigation must include copies of the settlement and supporting documents required by the ~~administrator~~department.
4. The ~~administrator~~department and the board may require a third party who claims bodily injury to be examined by a physician and require that the physician's report to be submitted to the ~~administrator~~department. The ~~administrator~~department may require a third party that claims property damage to permit a property appraiser or claims adjuster retained by the ~~administrator~~department to inspect the property and report to the ~~administrator~~department.
5. The fund shall pay a judgment against an owner, operator, or dealer awarded to a third party as a result of a third-party claim and property damage against an owner, operator, or dealer registered by the fund.
6. The fund shall pay for corrective action as awarded to a third party in any judgment against an owner, operator, or dealer.
7. Liability of the tank owner, operator, dealer, or fund to third parties for corrective action or personal injuries and property damage may not exceed, per person, one million dollars. Maximum liability of the fund, including all claims by third parties, may not exceed, for any release site, the maximum provided in section 23.1-12-18.
8. A third party may not bring an action against an owner, operator, or dealer more than three years after a corrective action plan has been approved by the department if the owner, operator, or dealer fully implements and complies with the corrective action plan.
9. In investigating a release site or reviewing the implementation of a corrective action plan approved by the department, the department shall determine whether the release threatens public health or the environment. The department shall require, based on science and technology appropriate for the site, any monitoring, remediation, or other

appropriate corrective action that is reasonably necessary to protect public health or the environment. The department may require corrective action at a release site at any time after a release occurs.

SECTION 24. AMENDMENT. Section 23.1-12-28 of the North Dakota Century Code is amended and reenacted as follows:

23.1-12-28. Matching federal funds. (Contingent effective date - See note)

The ~~administrator~~department and the board may annually allow the department a ten percent matching grant for federal leaking underground storage tank funds to be paid out of the fund if the moneys are available and the ~~administrator~~department and the board determine the allowance appropriate.

SECTION 25. AMENDMENT. Section 23.1-12-29 of the North Dakota Century Code is amended and reenacted as follows:

23.1-12-29. Fund appropriations. (Contingent effective date - See note)

Money in the fund is continuously appropriated to the ~~administrator~~department for the purpose of making reimbursements under this chapter.

SECTION 26. AMENDMENT. Section 23.1-12-30 of the North Dakota Century Code is amended and reenacted as follows:

23.1-12-30. Investment of fund. (Contingent effective date - See note)

Investment of the fund is under the supervision of the state investment board in accordance with chapter 21-10. The ~~commissioner~~department may purchase a contract for reinsurance of any risk to be paid by the fund. The ~~administrator~~department may investigate the purchase of insurance that reimburses an owner or operator for property damage claims by third parties other than claims for costs of corrective action.

SECTION 27. Chapter 23.1-16 of the North Dakota Century Code is created and enacted as follows:

23.1-16-01. Definitions.

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

1. "Boiler" means a closed vessel in which water is heated, steam is generated, steam is superheated, or any combination thereof, under pressure or vacuum for use externally to the boiler by the direct application of heat from the combustion of fuels, or from electricity or nuclear energy. The term includes fired units for vaporizing liquids other than water when these units are separate from processing systems and are complete within themselves.
2. "Department" means the department of environmental quality.

23.1-16-02. Chief boiler inspector, deputy inspectors - Appointment - Jurisdiction.

The department shall employ a chief boiler inspector and deputy inspectors. The chief boiler inspector has jurisdiction over all boilers in this state except as otherwise provided.

23.1-16-03. Qualifications of chief boiler inspector - Deputy inspectors.

1. An individual is not eligible to the office of chief boiler inspector unless that individual:
 - a. Has had at the time of the appointment at least five years' experience in the construction, inspection, operation, maintenance, or repair of high-pressure boilers and pressure vessels as a mechanical engineer, boilermaker, steam operating engineer, or boiler inspector. An applicant possessing a mechanical engineering degree from an accredited school may substitute that degree for two years of the five years' experience, at the discretion of the department.
 - b. Holds a commission issued by the national board of boiler and pressure vessel inspectors or obtains the commission within one year after the date of appointment by the department.
 - c. Is not directly or indirectly interested in the manufacture or sale of boilers or steam machinery or articles used in the construction or maintenance of engines or boilers.
2. The department shall establish qualifications for a deputy inspector which are not inconsistent with the requirements of the position.

23.1-16-04. Powers and duties of chief boiler inspector.

1. The chief boiler inspector shall:
 - a. Keep a complete record of the type, dimensions, maximum allowable working pressure, age, condition, location, and date of the last-recorded internal and external inspection of boilers to which this chapter applies.
 - b. Cooperate and assist in loss prevention programs sponsored by the department.
2. The chief boiler inspector may delegate powers and duties to any deputy inspector or special inspector.

23.1-16-05. General requirement.

Every boiler in this state must be constructed, installed, and maintained according to rules adopted to implement this chapter.

23.1-16-06. Exempt boilers - Inspection of exempt boilers.

This chapter does not apply to:

1. Any boiler subject to federal inspection or under federal control.
2. Any boiler located on a farm and used solely for agricultural purposes.
3. Any heating boiler located in a private residence or in an apartment house of less than six family units.
4. Any hot water supply boiler not exceeding the following limitations:
 - a. Input of two hundred thousand British thermal units per hour.

- b. Pressure of one hundred sixty pounds per square inch [1103.16 kilopascals] gauge.
- c. Temperature of two hundred fifty degrees Fahrenheit [121.11 degrees Celsius].
- 5. Any portable steam cleaner commonly used in a garage.
- 6. Any boiler of a miniature model locomotive, boat, tractor, or stationary engine design constructed as a hobby, not for commercial use, having an inside diameter not exceeding ten inches [25.4 centimeters] and a grate area not exceeding one and one-half square feet [1393.54 square centimeters] and which is properly equipped with a safety valve, water level indicator, and pressure gauge.
- 7. Any electric boiler used as an integral part of an espresso coffee machine, provided that the boiler does not exceed one and one-half cubic feet [.0566 cubic meter] in water capacity, does not exceed fifty pounds per square inch [344.74 kilopascals] pressure, and is constructed, approved, or certified to the American society of mechanical engineers code or to other national or international standards.

23.1-16-07. Inspection of boilers.

- 1. The chief boiler inspector shall inspect each boiler used or proposed to be used within this state. The inspection must be thorough as to the construction, installation, condition, and operation as provided by the rules adopted to implement this chapter. An exempt boiler may be inspected by the chief boiler inspector when the owner, the owner's agent, or the user of the boiler makes written request for inspection to the department.
- 2. Each boiler of one hundred thousand pounds [45359.24 kilograms] per hour or more capacity, used or proposed to be used within this state, which has internal continuous water treatment under the direct supervision of a graduate engineer or chemist, or one having equivalent experience in the treatment of boiler water when the water treatment is for the purpose of controlling and limiting serious corrosion and other deteriorating factors, and with respect to which boiler the chief boiler inspector has determined the owner or user has complied with the prescribed recordkeeping requirements, must be inspected at least once every thirty-six months internally while not under pressure, and at least once every twelve months externally while under pressure. If a hydrostatic test is necessary to determine the safety of a boiler, the test must be conducted by the owner or user of the equipment under the supervision of the chief boiler inspector. The owner or user of a boiler of one hundred thousand pounds [45359.24 kilograms] per hour or more capacity desiring to qualify for thirty-six-month internal inspection intervals shall keep available for examination by the chief boiler inspector accurate records showing the date and actual time the boiler is out of service and the reason for being out of service, and the results of the chemical and physical analysis of the boiler water, whether from laboratory analysis of samples taken at regular intervals of not more than forty-eight hours or from continuous online analysers, which will adequately show the condition of the water and any other elements or characteristics of the water capable of producing corrosion or other deterioration of the boiler or its parts. If an inspection discloses deficiencies in equipment or in operating procedures, inspections may be required once every twelve months.

23.1-16-08. Special inspector.

1. Upon written request of an employer, the department may appoint as a special inspector an inspector in the employ of:
 - a. An insurance company authorized to insure boilers in this state against loss from explosion;
 - b. A company qualified by the national board of boiler and pressure vessel inspectors as an accredited owner/user inspection organization; or
 - c. A company qualified by the national board of boiler and pressure vessel inspectors as an accredited authorized inspection agency.
2. An individual may not be appointed as a special inspector unless that individual has passed the examination prescribed by the national board of boiler and pressure vessel inspectors.
3. An inspection performed by a special inspector must be performed in accordance with this chapter and a complete report of the inspection must be filed with the department in the time, manner, and form as prescribed by the department.
4. If a complete report is not filed by the special inspector's employer with the department within ninety days from the certificate due date, the chief boiler inspector may make the required inspection, unless an extension of time is granted by the chief boiler inspector. The special inspector's employer must pay the inspection fees as required by section 23.1-16-09 for a special inspection.
5. The chief boiler inspector may inspect any boiler to which a special inspection applies.
6. The department may suspend or revoke the appointment of any special inspector for cause.

23.1-16-09. Inspection and certificate fees.

1. Upon completion of inspection, the owner or user of a boiler shall pay to the department fees or a combination of inspection and certificate fees. The department shall determine the inspection fees. Certificate fees are determined by section 23.1-16-10. The department shall determine and annually may adjust a fee scale for the internal inspections of power boilers, internal inspections of low-pressure heating boilers, external inspections of all boilers, and inspection of boilers used exclusively for exhibition purposes.
2. Not more than two hundred dollars may be charged or collected for any one inspection of a boiler, except for special inspections made upon request. All other inspections made by the chief boiler inspector, including shop inspections and reviews and special inspections when requested by the owner or user of a boiler, must be charged at a rate not to exceed five hundred dollars per day or three hundred dollars per half day of four hours or less, plus payment for mileage, meals, and hotel expenses as allowed by sections 44-08-04 and 54-06-09, except that the mileage rate for a state-owned vehicle will be the actual amount incurred by the department.

3. The annual fee for the issuance of a reciprocal commission card for a special inspector is forty dollars and the annual fee for the issuance of a welder-qualified card is twenty dollars.
4. The fee for taking an examination for a hobby boiler operating license is twenty-five dollars and the fee for a hobby boiler operating license is twenty-five dollars.
5. A hobby boiler operating license issued under this section is valid for six years.

23.1-16-10. Certificate of inspection - Certificate to be posted.

The department shall issue a certificate of inspection for each boiler inspected upon receipt of an inspection report certifying that the boiler is in a safe condition to be operated. The department shall charge a fee of twenty dollars per year for each year that a certificate is valid, or part of a year thereof, for each certificate of inspection issued as the result of inspections authorized under sections 23.1-16-07 and 23.1-16-08. The fees are the liability of the owner or user and must be paid in accordance with rules adopted by the department. A certificate may not be issued for any boiler not in a safe condition to be operated or for a boiler for which the inspection and certificate fees have not been paid in full. A certificate is not valid for a period of more than thirty-six months for power boilers described in subsection 2 of section 23.1-16-07, and no more than twelve months for other power boilers, twelve months for steam traction engines, and thirty-six months for low-pressure boilers except that a two-month grace period may be extended for any certificate. Upon written request from a special inspector, the chief boiler inspector may issue a short-term certificate. Each certificate of inspection must be posted conspicuously under glass in the boiler room or adjacent to the boiler inspected.

23.1-16-11. Certificate of inspection required - Penalty.

A person may not operate a boiler in this state without a valid certificate of inspection. A violation of this section is a class A misdemeanor on the part of the owner, user, or operator of the boiler.

23.1-16-12. Manufacturer's data report.

The boiler manufacturer shall provide the department with a manufacturer's data report. When signed by an authorized inspector, this data sheet together with the stamp on the boiler is the record denoting the boiler has been constructed in accordance with the rules adopted to implement this chapter.

23.1-16-13. Disposition of funds.

All funds collected and received under this chapter must be paid to the state treasurer and deposited in the state fire and tornado fund to be used to defray the costs of boiler inspections.

23.1-16-14. Rules - Penalty for violation - Hearing.

1. The department shall adopt rules for the safe and proper installation, use, operation, and inspection of boilers and pressure vessels subject to this chapter.
2. The department shall adopt rules for the licensing of operators of hobby boilers used during parades, exhibitions, and threshing shows where the public is invited.
3. A fee must be charged for an operating license, for a license renewal, and for an examination conducted to determine minimum competence.

Individuals operating hobby boilers within this state as of July 1, 2007, are considered acceptable for a license without additional training or examination. An individual who is not a resident of this state and who holds a boiler operator license or credential in another state or Canadian province is exempt from licensure as a hobby boiler operator in this state.

4. The department may not issue a certificate of inspection to any owner or user of a boiler who fails or refuses to comply with the rules. The department shall revoke any certificate presently in force upon evidence that the owner or user of the boiler is failing or refusing to comply with the rules.
5. Any owner or user of a boiler may request a hearing before the department within fifteen days from service of an order refusing or revoking a certificate of inspection. It is the burden of the owner or user to show cause why the certificate of inspection should not be refused or revoked. If no hearing is requested within the required period, the order of the department becomes final and is not subject to further proceedings.

SECTION 28. REPEAL. Chapter 26.1-22.1 of the North Dakota Century Code is repealed.

SECTION 29. EFFECTIVE DATE. Sections 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, and 28 of this Act become effective on July 1, 2019, if the legislative council has received certification from the chief of the environmental health section of the state department of health that all authority, powers, and duties from the environmental health section of the state department of health have been transferred to the department of environmental quality. If the certification is not received by July 1, 2019, sections 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, and 28 of this Act become effective on the date certification is received."

ReNUMBER accordingly

STATEMENT OF PURPOSE OF AMENDMENT:

House Bill No. 1024 - Department of Environmental Quality - House Action

	Base Budget	House Changes	House Version
Salaries and wages	\$27,040,544	\$3,156,409	\$30,196,953
Operating expenses	8,005,878	1,996,302	10,002,180
Capital assets	1,258,249	1,005,180	2,263,429
Grants	13,407,000	2,454,529	15,861,529
Total all funds	\$49,711,671	\$8,612,420	\$58,324,091
Less estimated income	38,987,520	7,428,412	46,415,932
General fund	\$10,724,151	\$1,184,008	\$11,908,159
FTE	152.50	13.00	165.50

Department 303 - Department of Environmental Quality - Detail of House Changes

	Adjusts Funding for Base Payroll Changes ¹	Adds Funding for Salary and Benefit Increases ²	Cost to Continue Adjustments ³	Removes 3 FTE Positions ⁴	Adds Funding to Transfer the Petroleum Tank Release Program ⁵	Adds Funding to Transfer the Boiler Inspection Program ⁶
Salaries and wages	\$146,390	\$1,396,063		(\$365,530)	\$336,481	\$753,365
Operating expenses			\$1,239,823		238,588	89,000
Capital assets						
Grants			(445,000)			
Total all funds	\$146,390	\$1,396,063	\$794,823	(\$365,530)	\$575,069	\$842,365
Less estimated income	322,006	939,547	957,799	(271,407)	575,069	842,365
General fund	(\$175,616)	\$456,516	(\$162,976)	(\$94,123)	\$0	\$0
FTE	0.00	0.00	0.00	(3.00)	2.00	4.00

	Adds Contingent Funding and FTE Positions for the Supremacy of Federal Programs ²	Decreases Funding for Water Treatment System Training ⁶	Adds Funding for Microsoft Office 365 Licensing ²	Adjusts Funding for Bond and Capital Payments ⁶	Reduces Funding for Extraordinary Repairs ¹¹	Increases Funding for Equipment ¹²
Salaries and wages	\$889,640					
Operating expenses	359,305	(\$55,000)	\$84,586			
Capital assets				\$3,405	(\$273,350)	\$275,125
Grants						
Total all funds	\$1,248,945	(\$55,000)	\$84,586	\$3,405	(\$273,350)	\$275,125
Less estimated income	0	0	64,538	1,541	(217,700)	275,125
General fund	\$1,248,945	(\$55,000)	\$20,048	\$1,864	(\$55,650)	\$0
FTE	10.00	0.00	0.00	0.00	0.00	0.00

	Adds Funding for Grants from the Volkswagen Trust Settlement ¹³	Adds One-Time Contingent Funding to Establish Federal Program Supremacy ¹⁴	Total House Changes
Salaries and wages			\$3,156,409
Operating expenses		\$40,000	1,996,302
Capital assets		1,000,000	1,005,180
Grants	\$2,899,529		2,454,529
Total all funds	\$2,899,529	\$1,040,000	\$8,612,420
Less estimated income	2,899,529	1,040,000	7,428,412
General fund	\$0	\$0	\$1,184,008
FTE	0.00	0.00	13.00

¹ Funding is adjusted for base payroll changes.

² The following funding is added for 2019-21 biennium salary adjustments of 2 percent per year and increases in health insurance premiums from \$1,241 to \$1,427 per month:

	General Fund	Other Funds	Total
Salary increase	\$231,686	\$472,755	\$704,441
Health insurance increase	224,830	466,792	691,622
Total	\$456,516	\$939,547	\$1,396,063

³ Funding is adjusted for cost to continue changes to the base budget.

⁴ Three FTE positions and related funding for salaries and wages are removed.

⁵ Two FTE positions and related funding from the petroleum tank release compensation fund for salaries and wages and operating expenses are transferred from the Insurance Department to the Department of Environmental Quality for the petroleum tank release

program.

⁶ Four FTE positions are added to transfer the boiler inspection program from the Insurance Department to the Department of Environmental Quality, including funding from the state fire and tornado fund for base salaries and wages of \$753,365 and operating expenses of \$89,000.

⁷ Contingent funding and 10 FTE positions are added in the 2nd year of the biennium for the supremacy of federal programs, including funding for salaries and wages of \$889,640 and operating expenses of \$359,305. The appropriation and FTE positions are contingent on federal Environmental Protection Agency approval of the Department of Environmental Quality assuming the duties of federal air pollution programs.

⁸ Funding for operating expenses related to training water treatment system operators is reduced to provide a total of \$125,000 from the general fund.

⁹ Funding is added for Microsoft Office 365 license expenses.

¹⁰ Funding for bond and capital payments is increased to provide a total of \$216,429, of which \$93,691 is from the general fund.

¹¹ Funding for extraordinary repairs is reduced to provide a total of \$27,000, of which \$6,866 is from the general fund.

¹² Funding for equipment and information technology equipment over \$5,000 is increased to provide a total ongoing appropriation of \$1,020,000 from other funds.

¹³ Funding for grants is increased to accept and disburse funding from the Volkswagen trust settlement to provide a total of \$5,399,529.

¹⁴ One-time funding is added from the strategic investment and improvements fund for capital assets of \$1 million and operating expenses of \$40,000 related to the establishment of federal program supremacy. The funding is contingent on Environmental Protection Agency approval of the Department of Environmental Quality assuming the duties of federal air pollution programs.

This amendment also adds sections to:

- Identify funding from the state fire and tornado fund for the boiler inspection program;
- Identify contingent one-time funding of \$1,040,000 from the strategic investment and improvements fund for air pollution program equipment related to the establishment of federal program supremacy. The funding provided is available the 2nd year of the biennium and is contingent on Environmental Protection Agency approval of the Department of Environmental Quality assuming the duties of federal air pollution programs;
- Identify contingent funding of \$1,248,945 from the general fund and 10 FTE positions related to the establishment of federal program supremacy effective July 1, 2020;
- Amend various sections of Chapter 23.1-12 to transfer the petroleum tank release program from the Insurance Commissioner to the Department of Environmental Quality and to provide the Department of Environmental Quality set registration fees by rule;
- Create Chapter 23.1-16 to transfer the boiler inspection program from the Insurance Commissioner to the Department of Environmental Quality;
- Repeal Chapter 26.1-22.1 related to the boiler inspection program; and
- Provide effective dates for the program transfers.

2019 SENATE APPROPRIATIONS

HB 1024

2019 SENATE STANDING COMMITTEE MINUTES

Appropriations Committee Harvest Room, State Capitol

HB 1024
3/7/2019
Job # 33396

- Subcommittee
 Conference Committee

Committee Clerk: Rose Laning / Carie Winings

Explanation or reason for introduction of bill/resolution:

A BILL for an Act to provide an appropriation for defraying the expenses of the department of environmental quality.

Minutes:

Testimony # 1 – 6.

Legislative Council: Sheila Sandness
OMB: Renae Bloms

Vice-chair Wanzek: Called the committee to order on HB 1024.

Dave Glatt, Environmental Health Section Chief, North Dakota Department of Health:
NDDEQ Testimony & Information Directory – Attached # 1.
Oilfield Impacts and the North Dakota Dept. of Environmental Quality (NDDEQ) –
Attached # 2.

(9:20) **Senator Oehlke:** When I look at North Dakota and communities around on my phone app for weather and things like that, it always says that we have good air quality, but when I look at Castle Rock, CO it says they have poor air quality for sensitive groups. What makes the air quality there exceptionally unhealthy compared to us? Why is that?

Dave Glatt: I would like to think we have great air quality. Some of it is due to topography and wind. I would like to think that part of it is due to work we do with limitations on various industries. Population has something to do with it. When you are dealing with the Rockies, there are a lot of cars, industry, and then being on the front range it holds the air quality in that area. I suspect inversion happens more frequently, and with the amount of emissions etc. it will contain it in that area. (Returns to testimony – Attachment #1, Page 6-10)

(18:44) Senator Bekkedahl: Early on in the processes of the Bakken development, I our Williston landfill, which the city operates, started to come across these filter socks and started to do some of the radiological testing for it. Early on I asked our operators what they do when they do when they find it is in a load, and they said they just would turn them away. I asked them where they would go then, and they said they had no idea. I am assuming now that we have gone through that process and you have done all the hearing you have done on it, then

now is there some tracking mechanism? So, when they are turned away, we know where those loads go? So they are not just dumping them in a coulee somewhere?

Dave Glatt: You are correct. When a load gets rejected, there is a requirement to notify the Department of Environmental Quality. We follow up with that to find out where the load went afterward. I will say that it is not a fail-safe process. But it is better than just ignoring it. We have seen less of those as an issue just because now there are disposal receptacles for the filter socks at the injection well sites. (Returns to testimony, Attachment #1, Page 11)

(26:46) Senator Hogue: Where do the Department of Mineral Resources and your department share authority? Where they overlap, and where they are separate in terms of flaring operations, salt water and oil spills, and permitting?

Dave Glatt: We both work in the oil patch and because of limited resources on both ends, we do share expertise and lean on each other periodically. But, our rules are separate. As it relates to spills that occur, where we have divided it, at a facility site that has berms on it, if a spill occurs and all the salt water oil is contained within that berm, that is oil and gas mineral resources responsibility. Once it gets past that berm and it is out into the environment, on crop land, creeks, etc., that is our responsibility. We have divided it up that way. As it relates to flaring, they are responsible for the operation of the facilities. We are responsible for the actual air emissions; flares, control devices, and making sure their capture systems are working appropriately so that the gas is captured and either put into a pipeline or it goes to a well operating controlled device such as a flare incinerator. As it relates to waste, they deal with some oil field waste because they have authority for the class 2 injection wells. If that waste is diverted in some way, then we get involved with the cleanup and permitting and that kind of responsibility. It's divided but we rely on each other's expertise.

(28:45) Senator Robinson: Last session there was a bill that was approved by the assembly on spills and reporting of spills up to 10, 42 gallon barrels. Talk to us about the implementation of that. What issues have surfaced? I'm not an expert in oil field at all, but 420 gallons seems like a lot of oil. If I had oil wells on my land that I didn't own, I would be concerned about that much oil being spilt. Talk to us about that.

Dave Glatt: It is a little confusing. There was that bill that set the threshold at 10 barrels. That is for spills that occur within that containment area in a facility that has berms. If it's less than 10 barrels, then it doesn't have to be reported. However, if any material gets beyond that berm, we have no reporting threshold. They need to report anything that gets beyond that berm. We will get reports of a few gallons or a light mist for things that get beyond the berms, and we go out and verify.

(30:25) Brenda Weisz, CFO, North Dakota Department of Health, and North Dakota Department of Environmental Quality: Budget Overview – Attached # 3.

(44:22) Senator Robinson: Last session we had the discussion about creating this new division within Health Department, and the concern was if we were growing government. If you were to combine these two budgets, how would we compare to the situation if we hadn't divided these two divisions up? Have we experienced growth, or is everything pretty much

the same other than the compensation packages and with the exception of the Boiler inspection?

Brenda Weisz: Things have stayed fairly static, and we have not experienced growth other than the addition of the programs.

(45:37) Senator Mathern: We tried to give you more staff last session and you said you didn't want more because you can't find them. How are you feeling about that now? Do you have plenty of staff and are you able to find them?

Dave Glatt: It's still a very competitive market out there. We are having success in finding some very good candidates. I will be honest with you, as it relates to the Quad 0 program, when you say hire 10 people within a 1-year time period – that is going to be a challenge. We want quality people to fill the seats, and that will take some time. That is a continuing challenge, especially when the oil patch is starting to gain momentum again. It becomes competition for the same people. We will fill them, but it will take some time.

(46:55) Dave Glatt: I would like to talk about the Quad O and the Quad OA. You can get lost in the numbers there. It is basically 4 zeros and 4 zeros and an A. It is primarily an air quality program designed to address emissions in the oil patch. We have not in the past adopted that program because it is heavily bureaucratic. It generates, from our estimation, about 1000 reports a year. I am of the mindset that if we require reports to be submitted to us, we better look at them. That is a lot of reports to be doing. That is why the software of close to \$500,000 is needed just to track all of that stuff. What is coming in, and who is doing what. What type of inspection are being done etc. Industry very much wants us to take over this program, but even with the bureaucratic end of it, the one ask I have that is different is that the way it is set up we would go out and get this program adopted, approved by EPA, transferred to the state, and then we would hire the 10 people to implement the program. With the Governor's approval, I would ask if we could forward or front 1-2 of those positions at the first part of the biennium. Those would be the people to go through all the process of getting the program transferred from EPA to us. Once we get the primacy, then we would hire the remaining staff and develop the program.

Senator Hogue: The proceeds from the Volkswagen settlement have to be used for reduction of nitrogen-oxide in North Dakota; what is your proposal for that and can that be used in the oil patch?

Dave Glatt: They are very specific on categories and how that money can be spent. Some things that they would like us to take a look at are electric charging stations for vehicles. Maybe lower diesel emissions from buses. Looking at changing to natural gas for some of our buses that are working in our cities. We set up the general framework and we are asking for the public to provide proposals on what they think would work. We have several private individuals that are interested in using this as seed money to develop programs within the state.

Vice-Chairman Wanzek: On the question of overlap or collaboration of resources with the Department of Mineral Resources, what about the Department of Agriculture? Is there overlap or collaboration?

Dave Glatt: One reason I love ND is because it's small. Because of our small size, it is almost by necessity that we need to lean on each other. In the case of the Ag department, we work cooperatively together, but our programs are separate. If they have spills and cleanup, we will work with them on what the appropriate cleanup would be. We provide money to them and some other organizations to help out in the animal feeding operations. Sometimes if you are the regulator, people are kind of intimidated by that. We have to cooperate and lean on each other, and that develops strong bonds of cooperation.

(52:14) Ron Ness, President, North Dakota Petroleum Council: No written testimony. We stand in strong support of the DEQ budget. I think the questions that are on the table are fantastic. They are in charge of making sure we have the cleanest air and water in the country. It is a big task, and I think if you look at this budget compared to the budget you had last week. In comparison to the Department of Mineral Resources, and one of the reasons we were urging the split of the groups is because their staff is not maintained with the growth and it affects everyone. It affects the cities, communities, and land owners. They are stretched thin. You will notice there is strong support from the House. He needs a person to coordinate this EPA work, and going forward I urge you to think about the fact that you're adding 1500 oil wells a year and the EPS is going to be shedding these state run programs. We, as all of the energy industry, are extremely happy and they are going to do a much better job than the EPA does. It is extremely important and it is going to come quick. I would encourage this committee to look at adding a managerial position right away to get this going because it is happening now. He will need all of these employees to cover it, and even the House agreed. We are not growing government. We are localizing government. He'll find good people and they will provide adequate compensation to help all agencies.

(55:04) Jeff Ubben, Deputy Insurance Commissioner, North Dakota Tax Department: See Attachment #4 for proposed amendment. You heard from the DEQ about how the boiler inspection program is going to be moved from the insurance department to the DEQ if these bill drafts go through. A little bit about the funding source for the boiler inspection program. Currently the funding source for the boiler inspection program is the state Fire and Tornado Fund. The state fire and tornado fund is operated and managed by the North Dakota Insurance Department. The way that it works is when these boiler inspections are occurring; the folks pay fees for their boiler inspections, and those fees are deposited in the state fire and tornado fund to be used to defray the costs of the boiler inspection program. If this legislation goes through, the insurance department won't be running, operating, or managing the boiler inspection program anymore. We are kind of questioning if it makes sense for the insurance department to be in control of the funding source for a program that we won't be operating anymore. This amendment would have the fees deposited into the general fund and they would be the funding source for that program going forward.

Senator Oehlke: I thought the fire and tornado fund would provide the funding for that operation. You are also giving auspices to the North Dakota Insurance Reserve Fund to kind of manage the Fire and Tornado Fund, but you are going to be paying the claims out.

Jeff Ubben: We are going to allow the Insurance Reserve Fund to do the claims processing work. We are just going to be signing off on the bills for that program at the end of the day

because that is a constitutional fund. We don't have a choice. We can't just hand that all over.

Senator Oehlke: Wouldn't it be the same thing with the boiler inspectors that you will no longer employ? Why shouldn't they be paid out of the Fire and Tornado Fund? That is where they have been paid out of.

Jeff Ubben: That is a policy decision. We control and manage that fund. To us, I don't know if it makes sense that the funding source would be housed in the insurance department even though the operations would be done operations would be done by the DEQ. The only reason we could not do that with the Insurance Reserve Fund is because the Insurance Reserve Fund is not a government agency like the DEQ is. There we had a constitutional fund that couldn't be turned over to a non-government agency. Here we are turning over a fund to a fellow government agency. That issue doesn't exist with the boiler program like it does for the Insurance Reserve Fund.

(58:35) Senator Poolman: The fees collected pay for the program correct? So, you are collecting fees that would have gone into one fund, and you are putting them into another.

Jeff Ubben: That is correct. We are just changing where the fees are coming from. The expenses for the boiler inspections would go into a fund. It is just a matter of which fund they are going to go into.

Vice-Chairman Wanzek: The sub-committee can address that during their meetings.

(1:00:00) Jonathan Russo, Energy Business Development Manager, ND Dept. of Commerce: See Attachment #5 for testimony in support of HB 1024.

Vice Chairman Wanzek: Closed the hearing on HB 1024.

Additional testimony in support of HB 1024 submitted:

Julie Ellingson, North Dakota Cattlemen's Association – Attached # 6.

2019 SENATE STANDING COMMITTEE MINUTES

Appropriations Committee Harvest Room, State Capitol

HB 1024
3/27/2019
Job # 34268

- Subcommittee
 Conference Committee

Committee Clerk: Rose Laning and Alicia Larsgaard

Explanation or reason for introduction of bill/resolution:

A BILL for an Act to provide an appropriation for defraying the expenses of the department of environmental quality.

Minutes:

Testimony # 1.

Legislative Council: Sheila Sandness
OMB: Stephanie Gullickson

Senator Bekkedahl: Called the sub-committee to order on HB 1024.
Senator Hogue and **Senator Mathern** were also present.

Senator Bekkedahl: For the information of the audience and the department here, the salary increases are not resolved yet between chambers. That will wait until leadership tell us the numbers we will use for your budget. Health insurance remains fully funded to the employees by both chambers. That is agreed upon.

The retirement contribution increased. The Senate acted on that but it has not been acted upon in the House yet.

The hearing today – I want to open up to some amendments proposed about a boiler inspection program and the tanks program.

Members, do you have any specific concerns you would like to address?

Senator Hogue: Could Mr. Glatt give some info on programs still in transition from the federal government to the newly created department? In his testimony, he said there is still 10% of the programs that federal government hasn't given the state primacy. He thought those would maybe be decided by April. I am wondering if there is an update and if you could talk a little more about what programs we are talking about.

Dave Glatt, Environmental Health Section Chief, North Dakota Department of Health: April 30 is the date that EPA has given us when the transition of all the programs will occur. The ones that held us up were the UIC programs. They will have that taken care of in this whole package. We are waiting for that date for transition of all programs we have primacy for.

Senator Hogue: What does primacy mean? In a lot of areas, the states and the federal government share jurisdiction. Primacy sounds like we're the default regulator. When could the federal government step in into an area where your department has primacy?

Dave Glatt: The federal gov. develops programs throughout nation. They don't have enough people and resources to implement those at the local level. They have given the state the opportunity, if we can show that we have staff, organizational structure, enforcement capability, and the financial ability to implement the programs at the local level. Then we would petition EPA to take over the state drinking water act. We would have the regulatory authority implemented from Bismarck. Primacy is showing the federal government that we have the ability, expertise, and enforcement laws to implement at the local level, if EPA agrees, then they give us primacy. We'll implement the program. We do it at the state level and we make sure everything is complied with. EPA is always looking over our shoulder. If they think we're not following law, they can over file and take action. We've been in cases where we don't agree with EPA. We feel we have taken a different path but we will get to the same ending point. Just because they don't agree, doesn't mean they can over file. We tell them to back off and we tell them we have it covered. They are not totally out of the picture. We have to be responsible and do the right thing.

Senator Mathern: For example, the recent spill and the oil on top of Little Yellowstone – a breach of the oil pad, I suppose we have regulations about that. I am not sure what happened there. Would that be something where the feds would say that your regulations and processes didn't work? Would they come in and get involved? How is that handled?

Dave Glatt: That was an old oil spill that was on a pad that was not cleaned up. Due to the flood, we will get oil into the water which causes a sheen. Our regulations say you will not discharge anything into the water that will cause a sheen. That is what happened. We require the company to contain it, test the water, and clean it up. Once that is done, we will look at appropriating an enforcement action. EPA will keep an eye on that. We've shown EPA that our response actions are quick. They have not over filed on any of those. There are 2 cases in which we are working in conjunction with them. One is the Summit Black Hill Creek spill. That is one of the largest that we have had. The second is the Belle Fourche pipeline ash coulee. EPA is working with us to do enforcement acts against those two companies. They are large companies and we need help on those. We are looking at years of litigation. We need that help so we asked EPA. For the most part, they defer to us to handle those issues.

Senator Mathern: If the original requirements were not met and the original cleanup was not done, it appears there would be oversight over the state required. Why wasn't that the original situation to be addressed?

Dave Glatt: We are looking at a couple different agencies at the state level. Spills that occur within the dike, are the responsibility of oil and gas. They do a good job of addressing that. During last session, the reportable quantity was changed from any quantity having to be reported to anything greater than 10 barrels that were maintained on the pad. Anything less than that, did not have to be reported. This was a 2-barrel spill, so it was not reported to the agency. Where we get involved is that we require any quantity to be reported. If it's a cup spilled, we are notified. As soon as it flooded, it got off the pad. Now they are paying big money to clean it up. We can have the best regulations in the world and we are still going to

see violations. When we see a violation, we want to address it so the environment is protected.

Senator Bekkedahl: This is something that historically happens every year. The companies are prepared. They will typically go in and shut in the wells and make sure it is clean when they know it's going to happen. This was a limited incident that happened and now the companies learned a great lesson. It was not something we don't usually see. We usually don't see machines because they are so prepared for this.

Dave Glatt: We have learned, over time with the oil companies. It is an ounce of prevention type of deal. It is a lot cheaper to clean it up beforehand then to wait until it gets outside the containment area because then you are looking at big money and they have to pay it.

Senator Hogue: Different area – The House and Senate have different ideas about IT unification within the agencies. When you testified on the main bill, we understood that you are splitting off from the Department of Health. The split will be final in July. You will still get administrative support from the department. Your new department would be good candidate for IT unification.

Dave Glatt: In part. We've had a long conversation with IT. They interviewed some of our staff to look at our job function and what kind of data bases that we maintain. We are a big data organization. We collect a lot of environmental data. We have data bases that are specific only to the environment health section or DEQ. Some are mandated by EPA that they will work a certain way. They are very proprietary and very specific. You have to know the safe water drinking act to do the safe drinking water act data base. Without having that expertise, they would have a difficult time doing IT. They backed away from oversight. We continue to maintain those. There are bigger issues, such as cybersecurity, that we do not have the expertise of and we will be looking to ITD.

Long story short, when they looked at what they needed for unification, we settled on one individual that would be imbedded within our department. That would be part of the unification.

Senator Bekkedahl: The other issue he alluded to was if you are going to be sharing with the Department of Health, some payroll or human resources functions as well. That is something that made sense to us as well.

Dave Glatt: Yes. We are sharing accounting and HR services. That made sense because they were providing those services when we were all one happy family. We are still going to be happy, but we won't be in the same family. They still know our people and they know our processes. It made sense to share accounting services and HR.

Senator Bekkedahl: Please go over some amendments and any concerns you have going forward.

Dave Glatt: We're happy with the budget. It allows us to continue to protect the environment and public health. We will move forward in that way. There were a few things added to our budget; Quad O and Quad Oa. That is an air quality program that is specific for the oil patch.

We were given 10 full time employees that would start the second year of the biennium with the intent that the first year of the biennium would be us developing the program. That means getting primacy from EPA, doing rural development, and a lot of heavy lifting. We are concerned that without additional help in that area, in first year, we'd be stressed in getting that program developed. We would like to look at one or two of those 10 FTEs that have been approved from the House side that could be moved to the beginning of the biennium to help the development of that program.

As it relates to the boiler inspectors, there was an amendment provided by the industrial commission. One with the Industrial Commission – Fire and Tornado Fund would be paying for salaries and those types of things, even though this program would be in another agency. They are looking for a way to separate that and get funding for those 4 boiler inspectors into the DEQ. Our concern there is that the fees alone do not pay for the total cost of that program. Just with the collection of the fees, I do not know the exact amount. I am hearing it's around \$200,000 that they are short. We're concerned that if we are just looking at fee collection, how would we make the program continue?

The last thing has to do with the petroleum tank fund. The Insurance Commissioner collects fees. They start the fee collection process at the end of the biennium, and the fees are collected in the next biennium. Right now, the way the law is written, we wouldn't have a fee structure or a way to collect those fees in the next biennium. Without making things complicated, we would like to look at the Insurance Commissioner starting a process but we have the ability to collect those fees and put them into the tank fund. It is my understanding that it is around \$650,000 of fees that would be collected.

Senator Bekkedahl: The program expenses and employees would come into your department?

Dave Glatt: Yeah. Right now they only have ½ an FTE or less that deals with the program. We will be asking for 2 FTEs and an administrator as well as one scientist or engineer to be able to implement the program. Those were a new cost.

Senator Bekkedahl: Essentially, there is only ½ FTE?

Dave Glatt: It might be a little less than that but it is something like that. That individual administers several funds.

Senator Bekkedahl: The fees collected by the Insurance Commissioner – is it a timing issue or the insurance commissioner not wanting to release that funding into your department?

Dave Glatt: I think it is a timing issue. In the existing law for the petroleum tank fund, they identify the fund, a cap, and those fees. That would depend on how much money is in the fund. The law was changed to go forward so that those fees would be established in rules and all the language before, would not apply. We would not have any rules or fees identified and we would not have a collection mechanism

Senator Bekkedahl: There would be a break in the collection of those fees from the effective industry.

Dave Glatt: Yes. We are asking if there is a way to finish that collection process. Once that is done, we would start with a new process based on the rules that would be developed by the department.

Senator Bekkedahl: Do you have a recommendation of how do that? Can you bring one?

Dave Glatt: I did have a recommendation but it got shut down. I will go back to the drawing board. I want to make it as simple as possible. I will bring something back to the committee.

Senator Bekkedahl: We would prefer you to bring something back now that we understand that is the issue.

Going back to your other issue on the boiler inspection, we received an amendment from the Insurance Commissioner to clarify the dollars collected by the inspection program and the dollars that are needed to operate would come from the General Fund. Can you go into that area in more detail? I think overall, the committee did not like replacing the state Fire and Tornado Fund with the General Fund.

Dave Glatt: The fees collected, didn't cover all the costs of the boiler inspector. There were additional fees in the Fire and Tornado fund that would help offset that. Just to transfer the program over to the DEQ and have us rely solely on the fees, we feel that would short us. I understand transferring the fees into a new special fund that would be handled by DEQ. That might be a good thing. The current fee structure wouldn't cover the cost. How do we make up the difference? I think one question was the General Funds? That would be until the fees can be adjusted. Those are things that have to be discussed.

Senator Bekkedahl: Your recommendation would be to transition it with some budget by the General Fund until your rules get set to established those fees or maybe even the General Fund to budget this cost, correct?

Dave Glatt: My personal opinion is that if it could be handled by special funds, we would prefer that. We would need a period of time to get to that point. You pay for the services and whoever is benefiting from those, should pay. That should cover the cost of the program.

Senator Bekkedahl: I am hearing that the fee structures would stay in place as is and they would be receipted into your department. To cover all the cost, we will need a general fund buttress until next biennium to get you to where it should be for special fund consideration.

Dave Glatt: Yes. That would be the bridge so we can develop new fee structure that would cover the cost of the program.

Senator Bekkedahl: Can you identify the numbers we would need for the General Fund appropriation? Is it in the budget that we can pick out with the help of the council?

Dave Glatt: I do not think it is the budget. In conversations, that is why I need to verify those numbers. What is the shortfall? It is somewhere in the \$200,000 range. We will have to figure out if that was just a per year, or a biennium.

Senator Bekkedahl: Sheila, is that something you can help us with?

Sheila Sandness: The state Fire and Tornado, according to the special funds analysis, collects about \$500,000 in fees. The appropriation for the boiler inspectors is roughly \$890,000 - \$900,000. The difference would be about \$400,000.

Senator Bekkedahl: When we get to that point, will you be able to place that into this amendment process for us so we can consider it as a subcommittee? Will long sheets help us do that? I haven't seen any.

Sheila Sandness: I have them here. We would be able to look at the language. Right now those fees are going into the Fire and Tornado Fund. There would have to be some change made to have it go somewhere else if that is the committees wish, or just to continue them going there. An appropriation portion could come out of here and out of the General Fund, or all of it could come out of here and the Fire and Tornado could support it until some change is made. It is up to the committee.

Handed out long sheet – **Attached # 1.**

(24:26) Senator Bekkedahl: Committee, let's take these sheets and bring them to the next meeting. I am going to ask Sheila to let us discuss that next time. I think we are done with you, Mr. Glatt. I Want to save time for anyone from the audience if there were any issues to bring up for us?

Trapper Simmers, Stanley High School: I just had a question about this whole hearing process. Is there somebody who is recording everything that is said? A lot of this is very interesting and I just want to make sure everything that is said is in stone.

Senator Bekkedahl: Explained the process of sub-committees and recording.

Senator Bekkedahl adjourned the hearing.

2019 SENATE STANDING COMMITTEE MINUTES

Appropriations Committee Harvest Room, State Capitol

HB 1024
4/1/2019
Job # 34414

- Subcommittee
 Conference Committee

Committee Clerk: Rose Laning/ Amy Crane / Florence Mayer

Explanation or reason for introduction of bill/resolution:

A BILL for an Act to provide an appropriation for defraying the expenses of the department of environmental quality.

Minutes:

Amendment 19.0212.02001

Legislative Council: Sheila Sandness
OMB: Larry Martin

Senator Bekkedahl: Called the sub-committee to order on HB 1024. Senator Hogue and Senator Mathern were also present.

Senator Bekkedahl: Handed out amendment #19.0212.02001, (Attachment #1.)

Sheila Sandness: Went over the amendment.

Senator Mathern: Do you have the change that would be made to the bill for the new salary package?

Sheila Sandness: No that was just adopted so I haven't calculated the amount, it will go up. The \$120 minimum would affect anybody with a monthly salary of under \$6,000. The boiler inspectors and the primacy environmental scientist is under \$6,000 so they actually have a few FTE that would be getting a bump because of that \$120. So it will go up but I haven't calculated that amount.

Senator Mathern: On the higher end, we're we have the cap. How will that affect your hiring or keeping people?

Dave Glatt, Environmental Health Section Chief, North Dakota Department of Health: I'm not totally clear what's being proposed as far as salary increase, but my understanding, there is a maximum and anything above that they will not be getting salary increases.

Senator Bekkedahl: They'll be getting them but they'll be limited to \$200/month increase.

Dave Glatt: I do not think it will hurt us from hiring anybody but the optics of it you are going to have to explain it, because those are our long-term, highly technical very valuable employees. And their worth is still there but they'll only be getting \$200. And they're going to be calculating if it's a 2% and they'll be getting less than 2%, that's going to be an issue for them but we can work through it.

Senator Bekkedahl: The 1st year is the 200 maximum. The 2nd year they get the full 2 1/2% there's no maximum.

Sheila Sandness: Levi (Kinnischtzke) calculated. He said when adjusting for FTE changes, the House is \$120 minimum and \$200 maximum. The minimum employees earning less than \$6,000 would receive the \$120 minimum and employees earning between \$6,000 and \$9,999/month would receive the 2% increase, and any employees earning over \$10,000 or more would be the ones affected by the \$200 maximum.

Dave Glatt: I appreciate the explanation, but we don't have many employees over \$10,000. Myself and maybe one other person.

Senator Hogue: On the tank fee fund, is that the way we currently assess the owners of tanks. The \$50 regardless of whether its above ground or below, regardless of size. Where did this language come from in this amendment?

Jon Godfread, Insurance Commissioner: I believe that's how we currently do it and I believe that's part of why we're looking at turning it over to the DEQ and with the work of the petroleum marketers as well. I know there is a provision where if the fund is negative, an additional \$100 fee goes back down to \$50 fee, until that fund is back positive. Everyone involved does not think it's adequate for continuing.

Dave Glatt: Just wanted to get thru this fee period. We are going to have to reevaluate the fees and adjust them accordingly to make sure we have adequate balance in that fund. Especially, if we are going to be taking on above ground storage tanks, I do fully expect because when we first took on below ground storage tanks we had many issues, a lot of leaking tanks and there was a lot of money to be put into the fund. And as we take on above ground storage tanks, we are going to see the same issues and need time to do that.

Senator Bekkedahl: So the intent is that the funding would stay in place until they get thru the rule making process, you set up the new fee schedule and that will involve public input. And once that's done we'll transition to that new fee structure and probably bring a general fund appropriation request the next biennium. Is that what you're looking for?

Dave Glatt: Not for this one. The fund would be transferring over.

Jon Godfread: The Petroleum Tank Release Fund is a separate fund that solely serves its purpose. The funding will continue from the Petroleum Tank Release Fund. Maybe confusing with another issue. That fund is its own separate grouping that pays for this process with the work of the petrol marketers and the DEQ and reworking this fund, that still exists.

Senator Bekkedahl: Who controls that fund? In your department it will have to move to DEQ? Is that language we have in place?

Sheila Sandness: That's what this does. It leaves everything in place until DEQ adopts those rules.

Senator Bekkedahl: Do you want to make a motion to bring a new amendment for salary considerations?

Senator Mathern: I'd be comfortable to just agree to add the salary changes.

Sheila Sandness: We can do that, so the committee's wishes are these amendments are ready to go except the salary changes?

Senator Bekkedahl: Correct. Before we finalize these amendments, I did ask the insurance commissioner to be here to talk about his issues on the boiler inspection program.

Jon Godfread: The purpose of bringing that amendment was to change the funding source of the boiler inspector program. The amendments we initially brought, included the \$800,000 into the salary line an additional \$160,000 into the operating. The boiler inspection program has been funded through the Fire and Tornado fund. This is an insurance fund that is used by state entities for basic property insurance, they pay premiums into that fund, and then losses are paid out of that fund. I do not believe it is intended to fund in this nature. When we brought this transfer forward, it was out intention to also change that funding source so we have the fire and tornado fund actually fund the fire and tornado fund issues. That amendment clarifies that. It would allow the funding for the boiler inspector program to move into the general fund as well. There is an \$800,000 plus cost to run that program. They also generate a revenue of \$600,000. I am well aware that there is a \$200,000 shortfall. For the longest time our fire and tornado fund has been subsidizing that. That is fine. But as we bring this forward, it made sense to us to have that discussion. I know there has been discussion in making sure that the Department of Environmental Quality (DEQ) was not shorted. That is why we brought the amendment forward, to full fund the salaries and the operations of what it has cost us to run that program. I think there could be an argument made that DEQ is primarily a general fund agency. Is there any conflict? We collect those fees into the fire and tornado fund now. Are they going to be paid out of there too? We are trying to clear that up. There may be an argument there to say that as the general fund agency, it should be coming out of the general fund to pay for their operations and salaries. That is not our intention, to collect the fees and then not have them use those dollars to operate the program. It seems the cleanest to me. In terms of if, we are going to move the program, let us move the program. We have talked to the Governor about this; we have talked to Dave about this. I was approved in the House without this change. When we initially brought this forward, it was assumed in our mind that it would be out of the general fund. I think it was changed somewhere as the amendments were drafted, to remain in the fire and tornado fund. This is an attempt to clarify that. I do not believe the question is if DEQ is shorted. I think the question comes down to, is the fire and tornado fund shorted or is the general fund shorted. In our belief, it should be the general fund at this point. This is a general government program.

(16:27) Senator Bekkedahl: You said it was changed in the House, but it was not changed in the House as we received it. Is that correct? You are asking us to make the changes?

Jon Godfread: When we proposed these amendments that is what we intended. I think it got missed to be honest. We assumed it was coming out of the general fund with the move. It is valid for discussion.

Senator Bekkedahl: If you look on the green sheets on page 2, other sections in HB 1024, second paragraph down, highlighted bold "State Fire and Tornado Fund Section 4 identifies \$879,312 of estimated income from the state fire and tornado fund for the boiler inspection program. The amendment proposed by the insurance commissioner would take state fire and tornado fund and change it to general fund". I thought the House intention was, that the fund would still fund this biennium in transition. You are already collecting the fees. Then it would go in the next budget cycle to them collecting the fees and it will be a regular agency expense through the general fund. If that is not the intent, you need to clear that up for me. You have already collected fees for the first year of the next biennium or not?

Jon Godfread: I would have to go back and check. We are having the same discussion in the subcommittee on the House side. We have mirroring language in both bills. There has been no concerns issued by the House on making that change in the funding source. I would have to check with the House subcommittee to see if we are clear on that. I think this state fire and tornado fund; the general fund was missed on both sides. As the bill came out and went through cross over, we had a discussion with Legislative Management. We said we thought it was coming out of the general fund. They said well no, you need a funding source identified. We did not know we had to identify a funding source. We assume it would be general fund because that is where most of the dollars for DEQ come from. We are attempting to clarify that now. We are open for discussion. I do not think we are looking at holding up the issue.

(19:20) Senator Mathern: What I am hearing is we need a further amendment than what we have before us. That would make the transfer and maybe stop the fees going to your department, and to redirect those.

Jon Godfread: I think we would be open to that. The amendment we drafted and brought forward at the initial hearing was that one line change. If there is more, that goes into it that will be left to someone with more legislative fiscal experience than I have. We are open to that. Our intention is to at least have the discussion that this boiler inspection program, in our opinion, it does not fit into an insurance fund. It is not an insurance fund requirement. I understand the fire and tornado fund is doing very well. We also have every state entity and local subdivision paid premiums into that. If we could look at a premium reduction, there have been credits before that may be a better use of those dollars. Rather than funding programs through a fund that is not designed for that. I understand we are making changes to correct that. It is a worthy discussion in our opinion.

Senator Mathern: We also have specific user fees. It looks to me like we need a further amendment.

Senator Bekkedahl: My concern was that the state fire and tornado fund continue to collect the fees and we are going to make a general fund appropriation for the expense. I get that the state fire and tornado fund has been doing this all those years. I am trying to figure out how to transition this and be fair to both sides. So that you are not getting the fees and they get the expense.

Jon Godfread: We have that exact same concern. I want to avoid that as well. It is not fair to DEQ by any stretch of the imagination.

Dave Glatt: I want to clarify, 20% of our budget is general fund. The rest is special funds and federal funds. 80% is from other sources. We are not heavily general funded. Initially on House side, it was getting money from Fire and Tornado. One question I have of Jon, do they get any insurance coverage? There is no benefit of them paying the fee?

Jon Godfread: No, there is not insurance per se. It is a requirement that they have to have their boilers inspected for their insurance companies. We spend a lot of time doing a lot of inspections on the large public buildings like schools; but we also do private inspections for private companies in the state. They have the requirement for their liability insurance to have the boiler inspection signed off on in a certain amount of time. It is not an insurance they get from the boiler inspection program; it is a process they need to continue to ensure they are meeting their risk mitigation, things like that.

Senator Hogue: I know we are in transition here, but I am interested in the long-term issues. Why is there a differential between the fees generated from inspections and the cost?

Jon Godfread: That is a great question. As we looked at building this budget, we started in April/May of 2018; And coming on board in 2017. We brought this forward to the Governor's strategic review plan. There seemed to be a lot of interest in it at that point. I agree. Right now, it is a \$125 fee to get your boiler inspected. I cannot get my boiler inspectors out the door for \$125. There is room there to make up this differential. Rather than us potentially making changes on our admin code that we will hopefully be giving to DEQ, we would let that determination and process play out. I think that fee structure needs to be addressed. It has not been addressed for a number of years. It is woefully inadequate at this point. The other piece is, when we brought it to the strategic review plan, the thought was what if we privatized this program. We are fully staffed for the boiler inspector program for the first time in 8-10 years. The last boiler inspector we hired came from the private market to the state. There are not very many private boiler inspectors interested in doing this. Travelers is generally the company that does a lot of the inspections. They do not have anyone in North Dakota anymore to do this. If you want your boiler inspected, we are really the only place that can do it. It serves the necessary public good and public safety. If a boiler goes bad, it goes bad in a big way. There is a need. I think the fees need to be addressed.

(25:33) Senator Bekkedahl: Mr. Glatt, are you going to look at these fee structures?

Dave Glatt: We fully intend to do that. I see this playing out to get us through this biennium and then coming to next legislative session with a fee structure. We will see whether or not that is appropriate. Looking at the \$125, we are short several hundred thousand. It is not

beyond the realm of possibility to think you could be going to \$175-\$250. Whether or not that is palatable by people paying fee, we will find out.

Senator Mathern: I would suggest that we transfer all the fees, transfer the duties, transfer the money from the Fire and Tornado fund to meet the difference and have department come up with a new fee schedule that we look at next session.

Senator Bekkedahl: I was trying to make it even simpler, but I think we are headed in same direction. They are just setting up a new department here; they will need time to do that. My suggestion was what if we identified the state fire and tornado fund ending after the current biennium. Then they will have their fee schedules in place, they will have all their requests in as an agency. It will be transitioned to the general fund at that point. I do not see how we are going to get the billing into you people, the transfers that need to happen between the 2 agencies. If you think, you can do it that is fine. I think if we get the agreement with the insurance commissioner, just sunset any of this funding, we can get it to work through this biennium.

Dave Glatt: It is going to take us over a year to assess and develop a new fee structure and get the public input. Maybe two years, to get this fee structure redone. How we are funded through those 2 years, honestly I do not care where it comes from as long as we have the money to pay the staff in the field to get the work done.

(28:14) Senator Hogue: I assume the Fire and Tornado fund is like other property insurers. They have inspectors that go out and inspect roofs and other operating components in the buildings. If that is true, are your boiler inspectors only doing boilers or is there cross over with both of those different inspectors?

Jon Godfread: I think you are hitting on a key component of why we are making the move. We have, as of today, one staff member in the fire and tornado fund. At its height, we had three. They are not able to go out and provide that type of service that you are talking about. What we have done in the past is use an appraisal software, relied on our director to go out once in a while to hit the hot spots and make recommendations. At the end of the day, we are not providing the level of service we should be providing to the members of the fund. The reason we are moving that to North Dakota Insurance Reserve Run (NDIRF) is because they can go out and do that, they already are. They do not cross lines at all. The most our boiler inspectors cross with NDIRF is occasionally taking a picture of a building just so we have a picture on file. They do not do any of the internal inspections. They are solely inspecting boilers, which is a fairly complex process.

Larry Martin, OMB: So we are planning to leave it as the fire and tornado fund?

Senator Bekkedahl: I will leave it up to the committee, but that is my preference.

Larry Martin, OMB: So OMB would just to a transfer of fire and tornado funds from the insurance department to DEQ?

Senator Bekkedahl: Part of my assumption is, you already have a billing system in place to intake that. I just want to give them time to get all the things they have to do. I can see this

falling apart mid-stream if we do not give the transition period. Commissioner, are you okay with that if that is how we sunset it?

(30:58) Jon Godfread: Yes. I think if the sunset is in there it will be good. We just updated software for our boiler inspectors. They are self-contained. They do the billing and invoicing on their own. They are looking for where do we send it. We are fine with that and we can do this biennium, as long as the sunset is in there. After 2021, we will move everything to general funds.

Senator Bekkedahl: Can you let the House know that was our preference? I requested to talk to Representative Beadle, but he has not gotten back to me yet.

Jon Godfread: I am assuming we will meet in conference on some of these bills. I will share that with them.

Senator Mathern: I am not really sure why. We have two department heads here. One says they want to do it, the other says they can do it. Why don't we do it? I do not hear them saying they cannot do this.

Senator Bekkedahl: My concern is by the time you go through the public hearing process, try to set new rates, where do they pay, etc.

Senator Mathern: I'm saying keep same rates, send the money to the Department of Health, fund their additional needs beyond the rates from the fire and tornado fund, and then the new rates don't come in until next biennium.

Senator Bekkedahl: It was my impression that the employees would move to DEQ?

Dave Glatt: We would be taking the whole program. The inspector would be DEQ employees doing DEQ inspections for the DEQ as of July 1st. They would be paid out of the same fund, as they have in the past, for the next biennium. By the end of the next biennium, it would be on the DEQ to come up with the new rate structure to either be self-sufficient or identify a fee structure that will be special funds and additional cash.

Larry Martin: OMB has handled transfers in past. We would just transfer the fire and tornado funds to DEQ and create a fire and tornado fund within DEQ for operating. That way they are not tapping into the insurance department funds.

Jon Godfread: July 1st, the 800 and some odd thousand dollars, moves out of fire and tornado fund into the DEQ? Then we are done with it?

Larry Martin: I believe so. We would just verify those numbers. The billing runs through a program, so we would get that transferred over.

Jon Godfread: And the revenue would go back into the fire and tornado fund too? If we transfer over \$800,000 and they collect \$600,000; I am shorted \$800,000 out of my fund.

Larry Martin: These are details we can work out as we do it. We could transfer as needed. They will need some operating cash up front.

Senator Bekkedahl: My intent was, you already have billing statements and they are used to sending them to you. I would keep sending the payments to you.

Larry Martin: They would do all the administration?

Senator Bekkedahl: And then the funds just come over there to pay the department expenses. Can you do that?

Larry Martin: I think we would really need to spell that out. They would be doing the administration and the other would be doing the program.

Senator Bekkedahl: I do not want them to have to try and set up all their fees, registrations, and a whole new billing place to send this to if they are already doing it.

Jon Godfread: Our concern is making sure we avoid the \$800,000 transfer and the \$600,000 going in to the same fund. Then we are sitting here with nothing. If we have to do a \$250,000 transfer out of the fire and tornado fund to get us through, we could do that. We have the ability to do that. I do not think the potential downfall of the \$14,000 could be a lot more.

Dave Glatt: Are those annual fees or a fee for every 2 years?

Jon Godfread: They are charged as they do them. It is ongoing. You have to reach out and say you want a boiler inspection, which usually deals with their private insurance. So I am up for 2-year cycle then I am reviewed. The YMCA in Bismarck needed an inspection so they called one earlier to make sure everything is fine. It is a fee for service essentially. It is not an annual bill. It comes as they process them.

Senator Bekkedahl: Larry you have some things to work out here. Is it possible to set up this whole thing? My intent is that the fees all still go to the insurance department. You can transfer them as they come in to the other people. We know what the deficiencies are going to be. Maybe that is the first appropriation to start the fund for them. Then as fees come in, can you pull them out monthly and put them in the other fund? I do not want to make it difficult.

Larry Martin: I will talk with Jeff to make sure that is something they can do on the fiscal side of things.

(37:12) Jon Godfread: We are fine with that. The concern would be, eventually that hand-off should happen. 2 years down the road, our accountant should not be continuing to do that. As long as there is an end date and a handoff, we are happy with that.

Senator Bekkedahl: Shelia do you have any questions? I know we are making this difficult for you.

Sheila Sandness: Just to point out, in the bill as it stands right now, the language that referred to the insurance department's boiler inspection programs is completely repealed. It

is all rewritten in the bill. It is all new language and we can amend it how we want to. Currently everything in that new language refers to DEQ. Nothing refers to the insurance department collecting the fees. We would need to go into that and make some changes to provide for that. It also provides for those fees to be deposited into the fire and tornado fund at this point. It also appropriates the funds directly out of the fire and tornado fund. The question is, I think to have one agency billing and the other working the program. If DEQ is not prepared to do the billing, we would need to make some adjustments to the language in the bill. If we are going to have the insurance department do the billing, right now we have the DEQ billing and collecting.

Jon Godfread: That was our intention with the simple amendment, to clarify that piece. It is my belief that the boiler inspectors with the new software and such, it is just a matter of where the dollars go.

Senator Bekkedahl: So it is simple to generate a new invoice with a new address and agency?

Jon Godfread: That is what we understand. As it stands right now, we have one FTE. He does not do much with the processing of boilers. That is done with the new software upgrade the legislature approved last biennium. They do it all on their computer from home. The only time I see them is at an annual meeting. It is a self-sufficient program.

Senator Bekkedahl: I think we would all be okay if we understand that the intent is not to give the expenses to one department and the revenue to the other.

Senator Mathern: I suspect it would be a lot easier for the customer if the inspector and billing come from the same agency. We put a lot of money in software, let us cash in on it. Let us use it.

Senator Bekkedahl: Can we leave the details to the four of you somehow. We will have to have an amendment drafted to take care of this. Can you also list the salary changes in that? If you have to include these other amendments in there so we have one draft to look at. We will have to meet one more time.

Sheila Sandness: We can do that. We will work the departments and OMB to make sure this is updated correctly. Then we will also incorporate the new salary package.

Senator Bekkedahl: Can you work with Alex on the House side to make sure the amendments do not clash?

Sheila Sandness: I did talk to Alex and it might be better to put them in one bill. If they are in this bill the other, side might need to discuss this.

Jon Godfread: The only reason we had them in two bills is that is what we were instructed to do. I think we are on the same page and whatever the result we would be happy to bring together both sides

Senator Sorvaag: Thank you everyone. Closed the hearing on HB 1024.

2019 SENATE STANDING COMMITTEE MINUTES

Appropriations Committee
Harvest Room, State Capitol

HB 1024
4/5/2019
Job # 34554

- Subcommittee
 Conference Committee

Committee Clerk: Alice Delzer

Explanation or reason for introduction of bill/resolution:

A BILL for an Act to provide an appropriation for defraying the expenses of the department of environmental quality.

Minutes:

Amendment 19.0212.02002

Legislative Council: Adam Mathiak
OMB: Renae Bloms

Chairman Holmberg opened discussion on HB 1024.

Senator Bekkedahl: Submitted amendment 19.0212.02002 and explained it.

Senator Bekkedahl: Moved amendment 19.0212.02002.

Senator Dever: Seconded the motion.

Voice vote carried.

Senator Bekkedahl: Moved a Do Pass as Amended on HB 1024.

Senator Mathern: Seconded the motion.

A Roll Call Vote Was Taken: 14 yeas, 0 nays, 0 absent.

Motion carried.

Senator Bekkedahl will carry the bill.

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1024

Page 1, line 2, after "enact" insert "a new section to chapter 23.1-12 and"

Page 1, line 3, after "inspections" insert "and the petroleum tank release compensation fund"

Page 1, line 8, remove "and"

Page 1, line 9, remove "for"

Page 1, line 9, after "date" insert "; and to provide a contingent expiration date"

Page 1, remove lines 19 through 24

Page 2, replace line 1 with:

"Salaries and wages	\$27,040,544	\$3,546,814	\$30,587,358
Operating expenses	8,005,878	1,996,302	10,002,180
Capital assets	1,258,249	1,005,180	2,263,429
Grants	<u>13,407,000</u>	<u>2,454,529</u>	<u>15,861,529</u>
Total all funds	\$49,711,671	\$9,002,825	\$58,714,496
Less estimated income	<u>38,987,520</u>	<u>6,661,022</u>	<u>45,648,542</u>
Total general fund	\$10,724,151	\$2,341,803	\$13,065,954"

Page 2, replace lines 21 through 25 with:

"SECTION 4. ESTIMATED INCOME - PETROLEUM RELEASE COMPENSATION FUND. The estimated income line item included in section 1 of this Act includes \$594,434, or so much of the sum as may be necessary, to be made available to the department of environmental quality from the petroleum release compensation fund for expenses related to the petroleum tank release program, for the biennium beginning July 1, 2019, and ending June 30, 2021."

Page 3, line 5, replace "APPROPRIATION" with "FUNDING"

Page 3, line 6, replace "\$1,248,945" with "\$1,056,767"

Page 3, line 6, replace "ten" with "eight"

Page 10, after line 6, insert:

"SECTION 16. A new section to chapter 23.1-12 of the North Dakota Century Code is created and enacted as follows:

Registration fees before adoption of rules.

Until the department adopts rules establishing a schedule of registration fees under section 23.1-12-17, registration fees must comply with this section. An owner or operator of a tank shall pay an annual registration fee of fifty dollars for each aboveground or underground tank owned or operated by the person. If, after the fiscal year has been closed and all expenses relating to the fiscal year have been accounted for, the fund balance is less than six million dollars, the annual registration fee of fifty dollars is increased to one hundred dollars. If, after the fiscal year has been closed and all expenses relating to the fiscal year have been accounted for, the fund balance is

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five million five hundred thousand dollars or more and the annual registration fee has been increased to one hundred dollars, the fee must be reduced to fifty dollars. If, after the fiscal year has been closed and all expenses relating to the fiscal year have been accounted for, the fund balance exceeds nine million dollars, the annual registration fee is reduced to five dollars. Annual registration fees must continue at five dollars until the fund balance does not exceed nine million dollars.

Page 21, line 15, replace "state fire and tornado fund" with "general fund"

Page 22, after line 6, insert:

"SECTION 30. BOILER INSPECTION PROGRAM EVALUATION - PLAN - REPORT TO LEGISLATIVE MANAGEMENT. The department of environmental quality shall evaluate the boiler inspection program during the 2019-20 interim, develop a plan for program fees to meet program expenses, and report to the legislative management regarding the plan before June 30, 2020."

Page 22, line 8, remove "and"

Page 22, line 8, after "28" insert ", and 29"

Page 22, line 13, remove "and"

Page 22, line 13, after "28" insert ", and 29"

Page 22, after line 14, insert:

"SECTION 32. CONTINGENT EXPIRATION DATE. Section 16 of this Act is effective until the date the legislative council receives certification from the department of environmental quality that rules establishing a schedule of registration fees under section 23.1-12-17 have been adopted, and after that date is ineffective."

Renumber accordingly

STATEMENT OF PURPOSE OF AMENDMENT:

House Bill No. 1024 - Department of Environmental Quality - Senate Action

	Base Budget	House Version	Senate Changes	Senate Version
Salaries and wages	\$27,040,544	\$30,196,953	\$390,405	\$30,587,358
Operating expenses	8,005,878	10,002,180		10,002,180
Capital assets	1,258,249	2,263,429		2,263,429
Grants	13,407,000	15,861,529		15,861,529
Total all funds	\$49,711,671	\$58,324,091	\$390,405	\$58,714,496
Less estimated income	38,987,520	46,415,932	(767,390)	45,648,542
General fund	\$10,724,151	\$11,908,159	\$1,157,795	\$13,065,954
FTE	152.50	165.50	0.00	165.50

Department 303 - Department of Environmental Quality - Detail of Senate Changes

	Adds Funding for Salary Increases ¹	Adds Funding for Health Insurance Increases ²	Adds 2 FTE Positions for the Supremacy of Federal Programs ³	Removes 2 FTE Positions for the Supremacy of Federal Programs ⁴	Adjusts the Funding Source of the Boiler Inspection Program ⁵	Total Senate Changes
Salaries and wages	\$184,841	\$13,386	\$384,356	(\$192,178)		\$390,405
Operating expenses						
Capital assets						
Grants						
Total all funds	\$184,841	\$13,386	\$384,356	(\$192,178)	\$0	\$390,405
Less estimated income	111,289	3,570	0	0	(882,249)	(767,390)
General fund	\$73,552	\$9,816	\$384,356	(\$192,178)	\$882,249	\$1,157,795
FTE	0.00	0.00	2.00	(2.00)	0.00	0.00

¹ Funding is added to provide for employee salary increases of 2 percent on July 1, 2019, with a minimum monthly increase of \$120 and a maximum monthly increase of \$200, and an increase of 2.5 percent on July 1, 2020. The House provided funding for a salary increase of 2 percent on July 1, 2019, and a 2 percent increase on July 1, 2020.

² Funding is added for health insurance increases related to an information technology unification FTE position not removed and the 2 FTE positions related to the supremacy of federal programs.

³ Two of the contingent FTE positions provided by the House and related funding for salaries and wages are added in the 1st year of the biennium for the supremacy of federal programs. The House provided contingent funding and 10 FTE positions in the 2nd year of the biennium for the supremacy of federal programs.

⁴ Two of the contingent 10 FTE positions provided by the House in the 2nd year of the biennium for the supremacy of federal programs and related funding for salaries and wages are removed because they are added in the 1st year of the biennium by the Senate, to provide 8 FTE positions in the 2nd year of the biennium.

⁵ Funding provided for the boiler inspection program, including funding for salaries and wages of \$793,249 and operating expenses of \$89,000, is provided from the general fund instead of the state fire and tornado fund.

This amendment also:

- Removes a section identifying funding from the state fire and tornado fund for the boiler inspection program because funding for the program is provided from the general fund;
- Adds a section to identify funding from the petroleum release compensation fund for expenses related to the petroleum release program;
- Adjusts the contingent appropriation from the general fund for federal program supremacy to reduce total funding and FTE added in the 2nd year of the biennium;
- Adds a section to provide for petroleum tank fees to be assessed until the Department of Environmental Quality adopts rules regarding fees;
- Amends the section created to transfer the boiler inspection program to the Department of Environmental Quality to require fees collected under the section are deposited in the general fund, which will result in an estimated increase in general fund revenues of \$600,000;
- Adds a section to require that the Department of Environmental Quality review the boiler inspection program during the 2019-20 interim, develop a plan for program fees to meet program expenses, and report to the Legislative Management regarding the plan before June 30, 2020; and
- Adds a section to provide for a contingent expiration date for the section which provides for petroleum tank fees to be assessed until the Department of Environmental Quality adopts rules regarding fees.

Date: 4-5-19

Roll Call Vote #: 1

2019 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1024

Senate Appropriations Committee

Subcommittee

Amendment LC# or Description: 19.0212.02002

- Recommendation: Adopt Amendment
- Do Pass Do Not Pass Without Committee Recommendation
- As Amended Rerefer to Appropriations
- Place on Consent Calendar
- Other Actions: Reconsider _____

Motion Made By Bekkedahl Seconded By Dever

Senators	Yes	No	Senators	Yes	No
Senator Holmberg			Senator Mathern		
Senator Krebsbach			Senator Grabinger		
Senator Wanzek			Senator Robinson		
Senator Erbele					
Senator Poolman					
Senator Bekkedahl					
Senator G. Lee					
Senator Dever					
Senator Sorvaag					
Senator Oehlke					
Senator Hogue					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

Voice Vote Carried

Date: 4-5-19

Roll Call Vote #: 2

2019 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1024

Senate Appropriations Committee

Subcommittee

Amendment LC# or Description: _____

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
Other Actions: Reconsider _____

Motion Made By Bekkedahl Seconded By Mather

Senators	Yes	No	Senators	Yes	No
Senator Holmberg	✓		Senator Mather	✓	
Senator Krebsbach	✓		Senator Grabinger	✓	
Senator Wanzek	✓		Senator Robinson	✓	
Senator Erbele	✓				
Senator Poolman	✓				
Senator Bekkedahl	✓				
Senator G. Lee	✓				
Senator Dever	✓				
Senator Sorvaag	✓				
Senator Oehlke	✓				
Senator Hogue	✓				

Total (Yes) 14 No 0

Absent 0

Floor Assignment Bekkedahl

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HB 1024, as engrossed: Appropriations Committee (Sen. Holmberg, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (14 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1024 was placed on the Sixth order on the calendar.

Page 1, line 2, after "enact" insert "a new section to chapter 23.1-12 and"

Page 1, line 3, after "inspections" insert "and the petroleum tank release compensation fund"

Page 1, line 8, remove "and"

Page 1, line 9, remove "for"

Page 1, line 9, after "date" insert "; and to provide a contingent expiration date"

Page 1, remove lines 19 through 24

Page 2, replace line 1 with:

"Salaries and wages	\$27,040,544	\$3,546,814	\$30,587,358
Operating expenses	8,005,878	1,996,302	10,002,180
Capital assets	1,258,249	1,005,180	2,263,429
Grants	13,407,000	2,454,529	15,861,529
Total all funds	\$49,711,671	\$9,002,825	\$58,714,496
Less estimated income	38,987,520	6,661,022	45,648,542
Total general fund	\$10,724,151	\$2,341,803	\$13,065,954"

Page 2, replace lines 21 through 25 with:

"SECTION 4. ESTIMATED INCOME - PETROLEUM RELEASE COMPENSATION FUND. The estimated income line item included in section 1 of this Act includes \$594,434, or so much of the sum as may be necessary, to be made available to the department of environmental quality from the petroleum release compensation fund for expenses related to the petroleum tank release program, for the biennium beginning July 1, 2019, and ending June 30, 2021."

Page 3, line 5, replace "**APPROPRIATION**" with "**FUNDING**"

Page 3, line 6, replace "\$1,248,945" with "\$1,056,767"

Page 3, line 6, replace "ten" with "eight"

Page 10, after line 6, insert:

"SECTION 16. A new section to chapter 23.1-12 of the North Dakota Century Code is created and enacted as follows:

Registration fees before adoption of rules.

Until the department adopts rules establishing a schedule of registration fees under section 23.1-12-17, registration fees must comply with this section. An owner or operator of a tank shall pay an annual registration fee of fifty dollars for each aboveground or underground tank owned or operated by the person. If, after the fiscal year has been closed and all expenses relating to the fiscal year have been accounted for, the fund balance is less than six million dollars, the annual registration fee of fifty dollars is increased to one hundred dollars. If, after the fiscal year has been closed and all expenses relating to the fiscal year have been accounted for, the fund balance is five million five hundred thousand dollars or more and the annual registration fee has been increased to one hundred dollars, the fee must be reduced to fifty dollars. If, after the fiscal year has been closed and all expenses relating to

the fiscal year have been accounted for, the fund balance exceeds nine million dollars, the annual registration fee is reduced to five dollars. Annual registration fees must continue at five dollars until the fund balance does not exceed nine million dollars."

Page 21, line 15, replace "state fire and tornado fund" with "general fund"

Page 22, after line 6, insert:

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2019 CONFERENCE COMMITTEE

HB 1024

2019 HOUSE STANDING COMMITTEE MINUTES

Appropriations Committee - Human Resources Division Sakakawea Room, State Capitol

HB1024
4/17/2019
34811

- Subcommittee
 Conference Committee

Committee Clerk: Caitlin Fleck

Explanation or reason for introduction of bill/resolution:
Conference committee.

Minutes:

A,B

Opened hearing. Took roll. **Attachments A and B** were handed out before meeting.

Chairman Schobinger: I think for this first meeting we will have the Senate walk through what changes they made.

Senator Bekkedahl: You'll notice that we had changes for the salary increases. The House had acted before those changes were made. We added funding for an FTE (fulltime employee) position that was not removed and then 2 FTE positions for the federal security. Those 2 FTE were within the 10 FTE positions that the House sent over. We thought that it would make more sense to put those 2 FTE positions in the first part of the biennium to create the rules and set the standards instead of putting all 10 FTE in the first part of the biennium. Then we also adjusted the funding source for the boiler inspection program. That was in the insurance department and then to the environmental quality department. When that came over that was supposed to be in special fund. So we took it from there and put it into the general fund. After some counseling, it was stated that if we were to take funding from the state fire and tornado fund, it would trigger an audit report. We agreed to let all of the fees that are generated by the boiler inspection program be put into the general fund. There is a 250,000 deficient between the fees that are received and the expenditures for the boiler inspection program. So the department is to set up a fee schedule that will properly run that program so there is not a deficit. So those are the amendments that the Senate put on here.

Sheila Sandness, Legislative Council (LC): That is all of the changes.

Chairman Schobinger: There was a section that had to do with the tank fund. I was looking through it on my computer.

Ms. Sandness: Are you looking at the petroleum tank one or the boilers? Section 16 was added by the Senate that will allow them to continue charging the same fees until the rules are adopted. Section 15 are the amendments that came over from the house. Are you looking for the Century Code language?

Chairman Schobinger: I thought I read something where they would pay for employees to manage that in the DEQ, and I don't know why I'm not seeing that now.

Senator Bekkedahl: I'm looking at the .02002 version on page 2 the state fire and tornado fund transfer of 879,000 that has been scratched in the Senate amendments and then put into the general fund. And then in section 4, there is 594,434 available to the department for the compensation fund for the boiler. The DEQ will eventually take over all of those fees and put that into their budget.

Ms. Sandness: I believe the language still allows it to be deposited in the petroleum tank fund. That is the current appropriation, so you can revisit it next session if you would want to fund them from somewhere else.

Chairman Schobinger: So the part that we are moving from the insurance area on that, those fees that we are charging in there are for the insurance department inspection?

Ms. Sandness: I'm not as familiar with the petroleum tank release program. The language in here is just for who is running it and then there is a section that will set and change those fees. Until that is established, section 16 kicks in. They needed some authority to continue charging those fees until the administrative rules are adopted by the department.

Senator Bekkedahl: There is language at the end of the bill that says section 16 becomes ineffective once the rules are adopted?

Ms. Sandness: That is correct.

Chairman Schobinger; I'm wondering where the number came from?

Ms. Sandness; That is the dollar amount that was determined by OMB when they brought forth the executive budget on this. Those are the salaries of the individuals that dot hose duties. We adjusted it for the salary compensation packages, and that might be why the numbers are different.

Chairman Schobinger: That would include 2 employees that weren't in the insurance department. Is there anyone currently in the health department that are doing inspections?

Ms. Sandness: I don't know, but they are nodding their heads no.

Chairman Schobinger: I thought that those funds were just to fund the insurance policy?

Ms. Sadness: I can get that to you.

Senator Mathern: The people were also doing insurance inspections in the department. The goal of these amendments is to return to consumers that are asking questions of the inspections. This is for that the consumer of the agencies can get all their questions answered in one place.

Chairman Schobinger: When I write an independent policy on these, the question of why do I need one and not the other type of policy? When I write those, the insurance will need those inspections.

Dave Glatt, Department of Environmental Quality (DEQ): The insurance department maintained the fund and the fund was used to defray costs of remediation. We do inspections to insure that those comply with federal and state law. They want to expand those inspections to above storage tanks. The 2 FTE would be developing rules and regulations for the above ground tank inspections.

Meeting closed.

2019 HOUSE STANDING COMMITTEE MINUTES

Appropriations Committee - Human Resources Division Sakakawea Room, State Capitol

HB1024
4/19/2019
34861

- Subcommittee
 Conference Committee

Committee Clerk: Caitlin Fleck

Explanation or reason for introduction of bill/resolution:

Conference committee.

Minutes:

Opened hearing. Took roll. ‘

Chairman Schobinger: I think that we have to drill down on the boiler inspection program and then on the tank inspection and tank release fund. Why did we decide to move that from other funds?

Senator Bekkedahl: In discussions in LC, it was the assumption of the Senate that we would accept that change and move if from the state fire and tornado fund. However, moving those funds to another fund, will cause an audit review. That can cause the federal government to get involved and then we would have to return those funds.

Chairman Schobinger: How long as that been payed from the fire and tornado fund, and has that been an issue before?

Sheila Sandness, Legislative Council (LC): I don't know how far back it goes, but it has been a few years. There were various thoughts of how this could be funded and moved around. The department needed some startup money, so we thought that we could move that startup money out of the fire and tornado fund. Moving that money out of that fund to something that it wasn't intended fro would raise a red flag, and then we may get an audit and then have to pay that money back. That thought was that it was better off to put it into their operating account and then get them some startup money or to have it be in general fund and then wait until it is neutral. The department didn't have an idea of when those fees would come in and how soon they could pay those bills with the fees.

Chairman Schobinger; I don't remember that being an issue when we were hearing testimony.

Ms. Sandness; I don't think it was an issue in the first half.

Chairman Schobinger; Do you think that we can keep it how it was, or is there a problem with leaving it the same until they come to the next session?

Ms. Sandness; You could sure do, but if there is an audit there could be the potential to pay it back if the funding goes against the state in the audit.

Senator Bekkedahl: I think the red flag that is raised is that there is an insurance agent and then the fire and tornado fund is in the insurance. It is the movement from the insurance department and the trust fund and moving it to another fund and department that doesn't do anything with insurance. I would like to see it stay with the correct department.

Chairman Schobinger: I think the fire and tornado fund is moving into NDIRF (North Dakota Insurance Reserve Fund) and out of the insurance section.

Ms. Sandness; I think it is but I'm not sure.

Senator Hogue: I recalled that there are some federal dollars going into that fund and that is the reason the feds are interested in reviewing that fund. I would be interested in seeing how much they are putting into that fund, then that would show us how bit and serious the audit would be.

Ms. Sadness: That might be a question for OMB actually.

Stephanie Gullickson, Office of Management and Budget (OMB): I don't have that answer, but I can look.

Senator Bekkedahl: That number was never quantified to us in the Senate side either.

Senator Mathern: I believe the possibility of an audit raises anxiety beyond these dollars in this account but there. Properly used, pay it back if they don't like it, is probably a narrow way of looking at an audit flag. When an auditor comes in, they will look at more than that.

Chairman Schobinger: I get that. I guess what I'm wanting to do is give the department as much flexibility, and to say when they come back to us then they can tell us what they need to do because this is all new to the department. I don't know how serious that audit would be. I guess the reason I asked that question was to figure out what the ramifications of the leaving it as it is would be.

Senator Bekkedahl: I would suggest we allow OMB to bring back as much information as they can and give that, and then request LC to come down and give information.

Representative Holman: Have you looked at what has been proposed as far as moving that money and is there any complexity in moving that?

Brenda Weisz, Chief Financial Officer for DEQ: I think the complexity came up when they talked about transferring the funds out of fire and tornado. Another option would be to direct spend out of that fund, I don't know if we can do that.

Chairman Schobinger: Can you find that out for us? And if the bill passes to move it into ENDRF, can we still do that?

Ms. Weisz: I don't think that the insurance department is fully comfortable with direct spend out of that fire and tornado fund.

Chairman Schobinger; I think they can under spend that.

Ms. Weisz; I think we would be self-funding.

Ms. Sandness; I can ask Allen Knutson about that and about the movement to NDIRF. Brenda is right, the problem came up when the thought of transferring that money came up instead of just spending it out of there. Either way, I'm not sure where a federal audit would come out of that.

Chairman Schobinger; I wouldn't be opposed to it going to general funds at some point. But with these 2 major changes happening, I think it would be wise to slow it down.

Senator Bekkedahl: The intent here is to get the receipts and then having it not costing anyone. Can you work it mechanically to directly spend it out of that fund?

Ms. Gullickson: Yes, if you write it as they can direct spend, then it is acceptable. The question of if they have seed money or not. But we have spoken about that and they can direct spend if you write it that way.

Senator Mathern: Another issue is that one agency will be paying and another agency would be supervising the staff.

Ms. Weis: We would still be supervising the employees. And with being able to direct spend from the account, we will direct spend and supervise. If the fees would go into the general fund, they wouldn't offset our costs. If they go into our operating fund, then we can offset the fees.

Senator Hogue: There's not a lot of oversight that is being provided to these folks.

Chairman Schobinger; Ok, then we just need a few of those answers for our next meeting. I think we are somewhat of the same issue on the petroleum release compensation fund. That has been in the insurance department but I don't think an employee has been designated for it. So it came to us that they need 2 FTE (fulltime employee) for that. We funded those from the general fund but the Senate has funded them from the tank release fund. The issue there is that that fund has multiple purposes and one is to pay claims out of that fund. That fund is extremely low and there aren't a lot of claims that could be payed out of there without bankrupting it.

Senator Bekkedahl: I understand the concerns that industry doesn't want a significant change in the fee structure, but that is going to have to happen at some point. Two things to point out, 1 is that I'm looking at the long sheet and the House send it over with other funds and the Senate vision has just extended that. We didn't change any of that on purpose.

Another issue is that there is 120,000 from the fund that went to the insurance department to pay for administration, and if that did happen what happened to the rest of the funding from there? And was the tank release program fully funded out of this tank release fund historically?

Ms. Sandness: I'm not familiarly with what funds where funded from there previously. It was never general fund; it was always petroleum release fund. I think that it might be confusing that it was always funded through special funds, but it was caught by us that we didn't include in our drafting. That section was just for clarification. That new section is not new money, we just identified where that money is coming from. The executive budget recommendation included it coming from the tank release fund, and that is where the House came from too.

Chairman Schobinger: We are not increasing FTE we are just transferring?

Ms. Gullickson: Yes, it does go from 120,000 to 575,000 and that program would be handled differently in DEQ than it is in the insurance department.

Chairman Schobinger: Is 2 FTE the minimum or could you get by with 1?

Dave Glatt, Section Director for the Department of Environmental Quality (DEQ): What we were approached by the insurance commissioner and tank fund, there were concerns about the 6 million in there and also the concern of people participating in the fund but not holding to regulations. There are no current regulations for the above ground tanks. We are taking it over, but we have to create new rules, go out and make sure that individuals are complying with the regulations, and then also change the fee schedule.

Chairman Schobinger: If we were able to go back to the fire and tornado fund on the other project and move some of those general fund over to this to help fund the FTE on this, and then use the tank fund until they get it up and running, is that something you might consider?

Senator Bekkedahl: I think the Senate would give you direction to work out what you think is admit able to the House side. I don't have any discription as to what fund they are coming out of.

Meeting closed.

2019 HOUSE STANDING COMMITTEE MINUTES

Appropriations Committee - Human Resources Division Sakakawea Room, State Capitol

HB1024
4/22/2019
34901

- Subcommittee
 Conference Committee

Committee Clerk: Caitlin Fleck

Explanation or reason for introduction of bill/resolution:

Conference committee.

Minutes:

A,B

Opened hearing. Took roll.

Chairman Schobinger: (see attachments A and B)

Brady Larson, Legislative Council (LC): (see attachment A)

Chairman Schobinger: Any questions or concerns?

Senator Mathern: Did you share this with the insurance department and the department of environmental quality (DEQ)?

Chairman Schobinger: I did, I visited with the insurance department and they seemed fine with this amendment. I believe department of environmental quality is ok too.

Senator Bekkedahl: I did visit with the commissioner and he did seem like he was ok with it, and the insurance department was admittable with the changes that were made.

Chairman Schobinger: We will give them a few minutes to look over it so that we don't have to bring it back down.

Senator Bekkedahl: On the Senate side too, the 2 FTE that come in the first year for the tank inspection program is in there. We also had to language for the balancing of the tank inspection program.

Jeff Uuben, Insurance Commission: Did you say there was a spot in there that said the switch over will be in the fire and tornado fund and over to the operating line in the DEQ?

Mr. Larson: Yes, in section 30 on page 2.

Mr. Uuben: Is there a funding source change?

Mr. Larson: I believe the last footnote is a funding source change to go to the general fund I believe. I might actually have to get back to you on this one. The funding for the boiler inspection program would come from the fire and tornado fund instead of the general fund.

Senator Bekkedahl: The funding would come out of the fire and tornado fund for the first year. The fees collected in the first year of the biennium would go back into the fire and tornado fund, and then they would go to the department in the second year of the biennium. So the state fire and tornado fund would be reimbursed in testified in the first year, and not the second year.

Mr. Uuben: I would just be questioning where the language would be then?

Chairman Schobinger: When we move into next biennium, it would be the intent that those fees collected there would pay for the boiler inspection program and not from the fire and tornado fund, do we need to write that in?

Mr. Larson: I would assume that that would happen since you are doing the funds.

Chairman Schobinger: Is that ok with the insurance commission?

Mr. Uuben: We would be reimbursed for 1 year?

Senator Bekkedahl: There will be a direct draw for both years of the biennium. The first year, the fees go back into the state fire and tornado fund.

Jon Godfread, Insurance Commissioner: We can agree with that. My concern would be that it doesn't change who is paying the expenses. So the insurance would be unhooked for the expenses but then DEQ would be having the revenue. We all want the same thing; I just want to make sure.

Brenda Weisz, Chief Financial Officer for DEQ: If you look at section 30, it would be covered. Brady does that help?

Mr. Larson: Yes.

Chairman Schobinger; I think that it is good.

Senators Bekkedahl: I move that the Senate recede from the Senate amendments and further amend.

Representative Holman: Second.

Roll Call Vote: 6 Yes, 0 No, 0 Absent. Motion carries.

Floor assignment: **Representative Schobinger and Senator Bekkedahl**

Meeting closed.

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PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1024

That the Senate recede from its amendments as printed on pages 1667-1669 of the House Journal and pages 1354-1357 of the Senate Journal and that Engrossed House Bill No. 1024 be amended as follows:

Page 1, line 2, after "enact" insert "a new section to chapter 23.1-12 and"

Page 1, line 3, after "inspections" insert "and the petroleum tank release compensation fund"

Page 1, line 6, remove "and"

Page 1, line 6, after "23.1-12-30" insert ", and 23.1-16-13"

Page 1, line 8, remove "and"

Page 1, line 9, replace "for a contingent" with "an"

Page 1, line 9, after "date" insert "; and to provide a contingent expiration date"

Page 1, remove lines 19 through 24

Page 2, replace line 1 with:

"Salaries and wages	\$27,040,544	\$3,546,814	\$30,587,358
Operating expenses	8,005,878	1,996,302	10,002,180
Capital assets	1,258,249	1,005,180	2,263,429
Grants	<u>13,407,000</u>	<u>2,454,529</u>	<u>15,861,529</u>
Total all funds	\$49,711,671	\$9,002,825	\$58,714,496
Less estimated income	<u>38,987,520</u>	<u>7,246,054</u>	<u>46,233,574</u>
Total general fund	\$10,724,151	\$1,756,771	\$12,480,922"

Page 2, line 22, replace "\$879,312" with "\$882,249"

Page 2, after line 25, insert:

"SECTION 5. ESTIMATED INCOME - PETROLEUM RELEASE COMPENSATION FUND. The estimated income line item included in section 1 of this Act includes \$297,217, or so much of the sum as may be necessary, to be made available to the department of environmental quality from the petroleum release compensation fund for expenses related to the petroleum tank release program, for the biennium beginning July 1, 2019, and ending June 30, 2021."

Page 2, line 26, remove "**CONTINGENT**"

Page 3, line 1, remove "The funding may be spent only upon certification by the"

Page 3, remove lines 2 through 4

Page 3, line 5, replace "**CONTINGENT APPROPRIATION**" with "**FUNDING**"

Page 3, line 6, replace "\$1,248,945" with "\$1,056,767"

Page 3, line 6, replace "ten" with "eight"

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Page 3, line 6, after "positions" insert ", related to the state assuming primacy over the quad O and quad Oa federal air pollution programs,"

Page 3, line 7, remove ", and may be spent only upon certification by"

Page 3, remove lines 8 and 9

Page 3, line 10, remove "assuming primacy over the quad O and quad Oa federal air pollution programs"

Page 10, after line 6, insert:

"SECTION 17. A new section to chapter 23.1-12 of the North Dakota Century Code is created and enacted as follows:

Registration fees before adoption of rules.

Until the department adopts rules establishing a schedule of registration fees under section 23.1-12-17, registration fees must comply with this section. An owner or operator of a tank shall pay an annual registration fee of fifty dollars for each aboveground or underground tank owned or operated by the person. If, after the fiscal year has been closed and all expenses relating to the fiscal year have been accounted for, the fund balance is less than six million dollars, the annual registration fee of fifty dollars is increased to one hundred dollars. If, after the fiscal year has been closed and all expenses relating to the fiscal year have been accounted for, the fund balance is five million five hundred thousand dollars or more and the annual registration fee has been increased to one hundred dollars, the fee must be reduced to fifty dollars. If, after the fiscal year has been closed and all expenses relating to the fiscal year have been accounted for, the fund balance exceeds nine million dollars, the annual registration fee is reduced to five dollars. Annual registration fees must continue at five dollars until the fund balance does not exceed nine million dollars."

Page 22, after line 5, insert:

"SECTION 30. AMENDMENT. Section 23.1-16-13 of the North Dakota Century Code is amended and reenacted as follows:

23.1-16-13. Disposition of funds.

All funds collected and received under this chapter must be paid to the state treasurer and deposited in the state fire and tornado department of environmental quality operating fund to be used to defray the costs of boiler inspections."

Page 22, after line 6, insert:

"SECTION 32. BOILER INSPECTION PROGRAM EVALUATION - PLAN - REPORT TO LEGISLATIVE MANAGEMENT. The department of environmental quality shall evaluate the boiler inspection program during the 2019-20 interim, develop a plan for program fees to meet program expenses, and report to the legislative management regarding the plan before June 30, 2020."

Page 22, line 7, remove "Sections 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19,"

Page 22, replace lines line 8 through 14 with "Section 30 of this Act becomes effective on July 1, 2020.

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SECTION 34. CONTINGENT EXPIRATION DATE. Section 17 of this Act is effective until the date the legislative council receives certification from the department of environmental quality that rules establishing a schedule of registration fees under section 23.1-12-17 have been adopted, and after that date is ineffective."

Renumber accordingly

STATEMENT OF PURPOSE OF AMENDMENT:

House Bill No. 1024 - Department of Environmental Quality - Conference Committee Action

	Base Budget	House Version	Conference Committee Changes	Conference Committee Version	Senate Version	Comparison to Senate
Salaries and wages	\$27,040,544	\$30,196,953	\$390,405	\$30,587,358	\$30,587,358	
Operating expenses	8,005,878	10,002,180		10,002,180	10,002,180	
Capital assets	1,258,249	2,263,429		2,263,429	2,263,429	
Grants	13,407,000	15,861,529		15,861,529	15,861,529	
Total all funds	\$49,711,671	\$58,324,091	\$390,405	\$58,714,496	\$58,714,496	\$0
Less estimated income	38,987,520	46,415,932	(182,358)	46,233,574	45,648,542	585,032
General fund	\$10,724,151	\$11,908,159	\$572,763	\$12,480,922	\$13,065,954	(\$585,032)
FTE	152.50	165.50	0.00	165.50	165.50	0.00

Department 303 - Department of Environmental Quality - Detail of Conference Committee Changes

	Adds Funding for Salary Increases ¹	Adds Funding for Health Insurance Increases ²	Adds 2 FTE Positions for the Supremacy of Federal Programs ³	Removes 2 FTE Positions for the Supremacy of Federal Programs ⁴	Adjusts the Funding Source of the Petroleum Tank Release Program ⁵	Total Conference Committee Changes
Salaries and wages	\$184,841	\$13,386	\$384,356	(\$192,178)		\$390,405
Operating expenses						
Capital assets						
Grants						
Total all funds	\$184,841	\$13,386	\$384,356	(\$192,178)	\$0	\$390,405
Less estimated income	111,289	3,570	0	0	(297,217)	(182,358)
General fund	\$73,552	\$9,816	\$384,356	(\$192,178)	\$297,217	\$572,763
FTE	0.00	0.00	2.00	(2.00)	0.00	0.00

¹ Funding is added to provide for employee salary increases of 2 percent on July 1, 2019, with a minimum monthly increase of \$120 and a maximum monthly increase of \$200, and an increase of 2.5 percent on July 1, 2020, the same as the Senate version. The House provided funding for a salary increase of 2 percent on July 1, 2019, and a 2 percent increase on July 1, 2020.

² Funding is added for health insurance increases related to an information technology unification FTE position not removed and the 2 FTE positions related to the supremacy of federal programs, the same as the Senate version.

³ Two of the FTE positions provided by the House in the 2nd year of the biennium and related funding for salaries and wages are added in the 1st year of the biennium for the supremacy of federal programs, the same as the Senate version. The House provided contingent funding and 10 FTE positions in the 2nd year of the biennium for the supremacy of federal programs.

⁴ Two of the contingent 10 FTE positions provided by the House in the 2nd year of the biennium for the supremacy of federal programs and related funding for salaries and wages are removed because they are added in the 1st year of the biennium, the same as the Senate version, to provide 8 FTE positions in the 2nd year of the biennium.

⁵ Funding for 50 percent of the total provided for defraying the expenses of the petroleum tank release program is provided from the general fund, instead of the petroleum release compensation fund. The House and the Senate provided \$594,434, including funding for salaries and wages of \$355,846 and operating expenses of \$238,588, from the petroleum release compensation fund for the program.

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This amendment also:

- Amends a section identifying funding from the state fire and tornado fund for the boiler inspection program. The Senate provided the funding for the program from the general fund;
- Adds a section to identify funding from the petroleum release compensation fund for 50 percent of the funding related to the petroleum release program. Both the House and Senate had provided 100 percent of the funding for the program from the petroleum release compensation fund;
- Adjusts the section relating to the appropriation from the general fund for federal program supremacy to reduce total funding and FTE added in the 2nd year of the biennium;
- Adds a section to provide for petroleum tank fees to be assessed until the Department of Environmental Quality adopts rules regarding fees, the same as the Senate version;
- Amends the section related to the disposition of funds in the boiler inspection program, created to transfer the boiler inspection program to the Department of Environmental Quality, to require fees collected under the section are deposited in the Department of Environmental Quality operating fund beginning July 1, 2020. The House had continued to deposit the fees in the state fire and tornado fund and the senate had provided the fees be deposited in the general fund;
- Adds a section to require that the Department of Environmental Quality review the boiler inspection program during the 2019-20 interim, develop a plan for program fees to meet program expenses, and report to the Legislative Management regarding the plan before June 30, 2020, the same as the Senate version;
- Removes the contingent effective date related to Department of Environmental Quality programs because the department has received federal certification of the transfer of authority, powers, and duties to the Department of Environmental Quality; and
- Adds a section to provide for a contingent expiration date for the section which provides for petroleum tank fees to be assessed until the Department of Environmental Quality adopts rules regarding fees, the same as the Senate version.

House Bill No. 1024 - Other Changes - Conference Committee Action

The Conference Committee provided \$882,249 for the boiler inspection program, including funding for salaries and wages of \$793,249 and operating expenses of \$89,000, from the state fire and tornado fund, the same as the House version, instead of the general fund which was included in the Senate version. The Conference Committee also amended North Dakota Century Code Section 23.1-16-13, related to the disposition of boiler inspection funds, to provide, effective July 1, 2020, fees related to the boiler inspection program are deposited in the Department of Environmental Quality operating fund. The Senate provided for fees to be deposited in the general fund effective July 1, 2019, which would have increased general fund revenues by \$600,000.

**2019 HOUSE CONFERENCE COMMITTEE
 ROLL CALL VOTES**

BILL/RESOLUTION NO. 1024 as (re) engrossed

House Appropriations Human Services Committee

- Action Taken HOUSE accede to Senate Amendments
 HOUSE accede to Senate Amendments and further amend
 SENATE recede from Senate amendments
 SENATE recede from Senate amendments and amend as follows
 Unable to agree, recommends that the committee be discharged and a new committee be appointed

Motion Made by: Sen. Bekkedahl Seconded by: Rep. Holman

Representatives	4/17	4/19	4/22	Yes	No	Senators	4/17	4/19	4/22	Yes	No
Chairman Schobinger	X	X	X	X		Senator Bekkedahl	X	X	X	X	
Representative Anderson	X	X	X	X		Senator Hogue	X	X	X	X	
Representative Holman	X	X	X	X		Senator Mathern	X	X	X	X	
Total Rep. Vote				3	0	Total Senate Vote				3	0

Vote Count Yes: 6 No: 0 Absent: 0

Motion Carries

House Carrier Rep. Schobinger Senate Carrier Sen. Bekkedahl

LC Number 19.0212 . 02003 of amendment

LC Number 19.0212 . 04000 of engrossment

Emergency clause added or deleted

Statement of purpose of amendment

REPORT OF CONFERENCE COMMITTEE

HB 1024, as engrossed: Your conference committee (Sens. Bekkedahl, Hogue, Mathern and Reps. Schobinger, B. Anderson, Holman) recommends that the **SENATE RECEDE** from the Senate amendments as printed on HJ pages 1667-1669, adopt amendments as follows, and place HB 1024 on the Seventh order:

That the Senate recede from its amendments as printed on pages 1667-1669 of the House Journal and pages 1354-1357 of the Senate Journal and that Engrossed House Bill No. 1024 be amended as follows:

Page 1, line 2, after "enact" insert "a new section to chapter 23.1-12 and"

Page 1, line 3, after "inspections" insert "and the petroleum tank release compensation fund"

Page 1, line 6, remove "and"

Page 1, line 6, after "23.1-12-30" insert ", and 23.1-16-13"

Page 1, line 8, remove "and"

Page 1, line 9, replace "for a contingent" with "an"

Page 1, line 9, after "date" insert "; and to provide a contingent expiration date"

Page 1, remove lines 19 through 24

Page 2, replace line 1 with:

"Salaries and wages	\$27,040,544	\$3,546,814	\$30,587,358
Operating expenses	8,005,878	1,996,302	10,002,180
Capital assets	1,258,249	1,005,180	2,263,429
Grants	<u>13,407,000</u>	<u>2,454,529</u>	<u>15,861,529</u>
Total all funds	\$49,711,671	\$9,002,825	\$58,714,496
Less estimated income	<u>38,987,520</u>	<u>7,246,054</u>	<u>46,233,574</u>
Total general fund	\$10,724,151	\$1,756,771	\$12,480,922"

Page 2, line 22, replace "\$879,312" with "\$882,249"

Page 2, after line 25, insert:

"SECTION 5. ESTIMATED INCOME - PETROLEUM RELEASE COMPENSATION FUND. The estimated income line item included in section 1 of this Act includes \$297,217, or so much of the sum as may be necessary, to be made available to the department of environmental quality from the petroleum release compensation fund for expenses related to the petroleum tank release program, for the biennium beginning July 1, 2019, and ending June 30, 2021."

Page 2, line 26, remove "**CONTINGENT**"

Page 3, line 1, remove "The funding may be spent only upon certification by the"

Page 3, remove lines 2 through 4

Page 3, line 5, replace "**CONTINGENT APPROPRIATION**" with "**FUNDING**"

Page 3, line 6, replace "\$1,248,945" with "\$1,056,767"

Page 3, line 6, replace "ten" with "eight"

Insert LC: 19.0212.02003
House Carrier: Schobinger
Senate Carrier: Bekkedahl

Page 3, line 6, after "positions" insert ", related to the state assuming primacy over the quad O and quad Oa federal air pollution programs,"

Page 3, line 7, remove ", and may be spent only upon certification by"

Page 3, remove lines 8 and 9

Page 3, line 10, remove "assuming primacy over the quad O and quad Oa federal air pollution programs"

Page 10, after line 6, insert:

"SECTION 17. A new section to chapter 23.1-12 of the North Dakota Century Code is created and enacted as follows:

Registration fees before adoption of rules.

Until the department adopts rules establishing a schedule of registration fees under section 23.1-12-17, registration fees must comply with this section. An owner or operator of a tank shall pay an annual registration fee of fifty dollars for each aboveground or underground tank owned or operated by the person. If, after the fiscal year has been closed and all expenses relating to the fiscal year have been accounted for, the fund balance is less than six million dollars, the annual registration fee of fifty dollars is increased to one hundred dollars. If, after the fiscal year has been closed and all expenses relating to the fiscal year have been accounted for, the fund balance is five million five hundred thousand dollars or more and the annual registration fee has been increased to one hundred dollars, the fee must be reduced to fifty dollars. If, after the fiscal year has been closed and all expenses relating to the fiscal year have been accounted for, the fund balance exceeds nine million dollars, the annual registration fee is reduced to five dollars. Annual registration fees must continue at five dollars until the fund balance does not exceed nine million dollars."

Page 22, after line 5, insert:

"SECTION 30. AMENDMENT. Section 23.1-16-13 of the North Dakota Century Code is amended and reenacted as follows:

23.1-16-13. Disposition of funds.

All funds collected and received under this chapter must be paid to the state treasurer and deposited in the ~~state fire and tornado~~ department of environmental quality operating fund to be used to defray the costs of boiler inspections."

Page 22, after line 6, insert:

"SECTION 32. BOILER INSPECTION PROGRAM EVALUATION - PLAN - REPORT TO LEGISLATIVE MANAGEMENT. The department of environmental quality shall evaluate the boiler inspection program during the 2019-20 interim, develop a plan for program fees to meet program expenses, and report to the legislative management regarding the plan before June 30, 2020."

Page 22, line 7, remove "Sections 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19,"

Page 22, replace lines line 8 through 14 with "Section 30 of this Act becomes effective on July 1, 2020.

SECTION 34. CONTINGENT EXPIRATION DATE. Section 17 of this Act is effective until the date the legislative council receives certification from the

Insert LC: 19.0212.02003
 House Carrier: Schobinger
 Senate Carrier: Bekkedahl

department of environmental quality that rules establishing a schedule of registration fees under section 23.1-12-17 have been adopted, and after that date is ineffective."

Renumber accordingly

STATEMENT OF PURPOSE OF AMENDMENT:

House Bill No. 1024 - Department of Environmental Quality - Conference Committee Action

	Base Budget	House Version	Conference Committee Changes	Conference Committee Version	Senate Version	Comparison to Senate
Salaries and wages	\$27,040,544	\$30,196,953	\$390,405	\$30,587,358	\$30,587,358	
Operating expenses	8,005,878	10,002,180		10,002,180	10,002,180	
Capital assets	1,258,249	2,263,429		2,263,429	2,263,429	
Grants	13,407,000	15,861,529		15,861,529	15,861,529	
Total all funds	\$49,711,671	\$58,324,091	\$390,405	\$58,714,496	\$58,714,496	\$0
Less estimated income	38,987,520	46,415,932	(182,358)	46,233,574	45,648,542	585,032
General fund	\$10,724,151	\$11,908,159	\$572,763	\$12,480,922	\$13,065,954	(\$585,032)
FTE	152.50	165.50	0.00	165.50	165.50	0.00

Department 303 - Department of Environmental Quality - Detail of Conference Committee Changes

	Adds Funding for Salary Increases ¹	Adds Funding for Health Insurance Increases ²	Adds 2 FTE Positions for the Supremacy of Federal Programs ³	Removes 2 FTE Positions for the Supremacy of Federal Programs ⁴	Adjusts the Funding Source of the Petroleum Tank Release Program ⁵	Total Conference Committee Changes
Salaries and wages	\$184,841	\$13,386	\$384,356	(\$192,178)		\$390,405
Operating expenses						
Capital assets						
Grants						
Total all funds	\$184,841	\$13,386	\$384,356	(\$192,178)	\$0	\$390,405
Less estimated income	111,289	3,570	0	0	(297,217)	(182,358)
General fund	\$73,552	\$9,816	\$384,356	(\$192,178)	\$297,217	\$572,763
FTE	0.00	0.00	2.00	(2.00)	0.00	0.00

¹ Funding is added to provide for employee salary increases of 2 percent on July 1, 2019, with a minimum monthly increase of \$120 and a maximum monthly increase of \$200, and an increase of 2.5 percent on July 1, 2020, the same as the Senate version. The House provided funding for a salary increase of 2 percent on July 1, 2019, and a 2 percent increase on July 1, 2020.

² Funding is added for health insurance increases related to an information technology unification FTE position not removed and the 2 FTE positions related to the supremacy of federal programs, the same as the Senate version.

³ Two of the FTE positions provided by the House in the 2nd year of the biennium and related funding for salaries and wages are added in the 1st year of the biennium for the supremacy of federal programs, the same as the Senate version. The House provided contingent funding and 10 FTE positions in the 2nd year of the biennium for the supremacy of federal programs.

⁴ Two of the contingent 10 FTE positions provided by the House in the 2nd year of the biennium for the supremacy of federal programs and related funding for salaries and wages are removed because they are added in the 1st year of the biennium, the same as the Senate version, to provide 8 FTE positions in the 2nd year of the biennium.

Insert LC: 19.0212.02003
House Carrier: Schobinger
Senate Carrier: Bekkedahl

⁵ Funding for 50 percent of the total provided for defraying the expenses of the petroleum tank release program is provided from the general fund, instead of the petroleum release compensation fund. The House and the Senate provided \$594,434, including funding for salaries and wages of \$355,846 and operating expenses of \$238,588, from the petroleum release compensation fund for the program.

This amendment also:

- Amends a section identifying funding from the state fire and tornado fund for the boiler inspection program. The Senate provided the funding for the program from the general fund;
- Adds a section to identify funding from the petroleum release compensation fund for 50 percent of the funding related to the petroleum release program. Both the House and Senate had provided 100 percent of the funding for the program from the petroleum release compensation fund;
- Adjusts the section relating to the appropriation from the general fund for federal program supremacy to reduce total funding and FTE added in the 2nd year of the biennium;
- Adds a section to provide for petroleum tank fees to be assessed until the Department of Environmental Quality adopts rules regarding fees, the same as the Senate version;
- Amends the section related to the disposition of funds in the boiler inspection program, created to transfer the boiler inspection program to the Department of Environmental Quality, to require fees collected under the section are deposited in the Department of Environmental Quality operating fund beginning July 1, 2020. The House had continued to deposit the fees in the state fire and tornado fund and the senate had provided the fees be deposited in the general fund;
- Adds a section to require that the Department of Environmental Quality review the boiler inspection program during the 2019-20 interim, develop a plan for program fees to meet program expenses, and report to the Legislative Management regarding the plan before June 30, 2020, the same as the Senate version;
- Removes the contingent effective date related to Department of Environmental Quality programs because the department has received federal certification of the transfer of authority, powers, and duties to the Department of Environmental Quality; and
- Adds a section to provide for a contingent expiration date for the section which provides for petroleum tank fees to be assessed until the Department of Environmental Quality adopts rules regarding fees, the same as the Senate version.

House Bill No. 1024 - Other Changes - Conference Committee Action

The Conference Committee provided \$882,249 for the boiler inspection program, including funding for salaries and wages of \$793,249 and operating expenses of \$89,000, from the state fire and tornado fund, the same as the House version, instead of the general fund which was included in the Senate version. The Conference Committee also amended North Dakota Century Code Section 23.1-16-13, related to the disposition of boiler inspection funds, to provide, effective July 1, 2020, fees related to the boiler inspection program are deposited in the Department of Environmental Quality operating fund. The Senate provided for fees to be deposited in the general fund effective July 1, 2019, which would have increased general fund revenues by \$600,000.

Engrossed HB 1024 was placed on the Seventh order of business on the calendar.

2019 TESTIMONY

HB 1024

**Department 303 - Department of Environmental Quality
House Bill No. 1024**

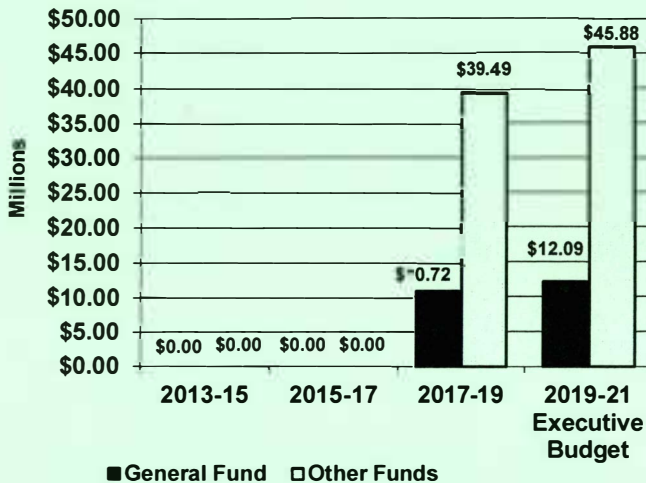
Executive Budget Comparison to Prior Biennium Appropriations

	FTE Positions	General Fund	Other Funds	Total
2019-21 Executive Budget	160.50	\$12,092,093	\$45,881,103	\$57,973,196
2017-19 Legislative Appropriations	152.50	10,724,151	39,487,520	50,211,671
Increase (Decrease)	8.00	\$1,367,942	\$6,393,583	\$7,761,525

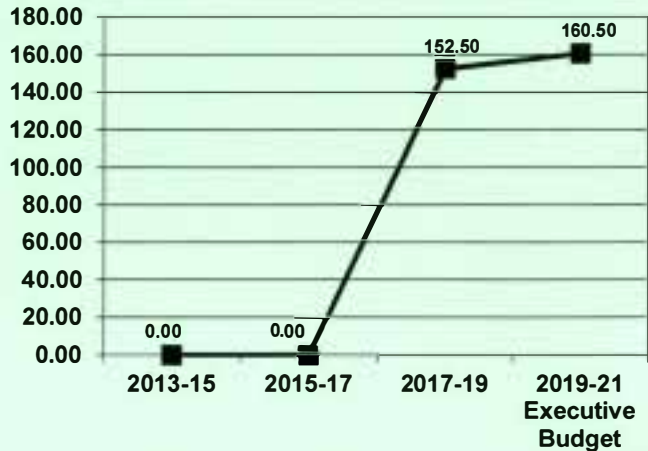
Ongoing and One-Time General Fund Appropriations

	Ongoing General Fund Appropriation	One-Time General Fund Appropriation	Total General Fund Appropriation
2019-21 Executive Budget	\$12,092,093	\$0	\$12,092,093
2017-19 Legislative Appropriations	10,724,151	0	10,724,151
Increase (Decrease)	\$1,367,942	\$0	\$1,367,942

Agency Funding¹



FTE Positions¹



¹In 2017 Senate Bill No. 2327, the Legislative Assembly transferred the Environmental Health Section of the State Department of Health to the new Department of Environmental Quality. Funding and FTE positions prior to the 2017-19 biennium are not available.

Executive Budget Comparison to Base Level

	General Fund	Other Funds	Total
2019-21 Executive Budget	\$12,092,093	\$45,881,103	\$57,973,196
2019-21 Base Level	10,724,151	38,987,520	49,711,671
Increase (Decrease)	\$1,367,942	\$6,893,583	\$8,261,525

Attached as an appendix is a detailed comparison of the executive budget to the agency's base level appropriations.

Executive Budget Highlights

	General Fund	Other Funds	Total
1. Adds funding for state employee salary and benefit increases, of which \$1,157,728 is for salary increases, \$570,640 is for health insurance increases, and \$143,783 is for retirement contribution increases	\$637,372	\$1,234,779	\$1,872,151
2. Adjusts base payroll	(\$175,616)	\$322,006	\$146,390
3. Cost-to-continue program adjustments, including increases in operating expenses of \$1,239,823 and decreases in grants of \$445,000	(\$162,976)	\$957,799	\$794,823
4. Removes 3 FTE positions	(\$94,123)	(\$271,407)	(\$365,530)

5. Adds 2 FTE positions related to the transfer of the petroleum tank release program from the Insurance Department to the Department of Environmental Quality, including funding for salaries and wages of \$336,481 and operating expenses of \$238,588	\$0	\$575,069	\$575,069
6. Transfers 1 FTE computer and network specialist III position to the Information Technology Department for the information technology unification initiative and reduces salaries and wages \$207,423 and increases operating expenses \$222,805	\$3,078	\$12,304	\$15,382
7. Adds 10 FTE positions in the 2 nd year of the biennium for the supremacy of federal programs, including funding for salaries and wages of \$889,640 and operating expenses of \$359,305. The appropriation is contingent on federal Environmental Protection Agency approval of the Department of Environmental Quality assuming the duties of federal air pollution programs.	\$1,248,945	\$0	\$1,248,945
8. Reduces funding for operating expenses related to training water treatment system operators to provide a total of \$125,000 from the general fund	(\$55,000)	\$0	(\$55,000)
9. Adds funding for Microsoft Office 365 licensing expenses	\$20,048	\$64,538	\$84,586
10. Adjusts funding for bond and capital payments to provide a total of \$216,429, of which \$93,691 is from the general fund	\$1,864	\$1,541	\$3,405
11. Adjusts funding for extraordinary repairs to provide a total of \$27,000, of which \$6,866 is from the general fund	(\$55,650)	(\$217,700)	(\$273,350)
12. Adjusts funding for equipment and information technology equipment over \$5,000 to provide a total ongoing appropriation of \$1,020,000 of other funds	\$0	\$275,125	\$275,125
13. Increases funding for grants to accept and disburse funding from the Volkswagen trust settlement to provide a total of \$5,399,529	\$0	\$2,899,529	\$2,899,529
14. Adds one-time funding from the strategic investment and improvements fund for capital assets of \$1 million and operating expenses of \$40,000 related to the establishment of federal program supremacy, contingent on Environmental Protection Agency approval of the Department of Environmental Quality assuming the duties of federal air pollution programs	\$0	\$1,040,000	\$1,040,000

Other Sections Recommended to be Added in the Executive Budget (As Detailed in the Attached Appendix)

Appropriation - Additional income - Section 3 would appropriate any additional income from federal or other funds, which may become available to the Department of Environmental Quality during the 2019-21 biennium.

Transfers - Section 4 would allow the Department of Environmental Quality to transfer between appropriation line items up to 10 percent of the department's total appropriation during the 2019-21 biennium and would require the department to notify the Office of Management and Budget and the Legislative Council of any transfers.

Environment and rangeland protection fund - Section 5 would authorize the department to spend \$250,000 from the environment and rangeland protection fund for the ground water testing programs. Of this amount, \$50,000 is for a grant to the North Dakota Stockmen's Association for the environmental services program.

Strategic investment and improvements fund - Section 6 would designate \$1,040,000 from the strategic investment and improvements fund for the Department of Environmental Quality for air pollution program equipment for the 2019-21 biennium.

Contingent appropriation - Strategic investment and improvements fund - Section 7 would provide a contingent appropriation of \$2,288,945, of which \$1,248,945 is from the general fund and \$1,040,000 is a one-time appropriation from the strategic investment and improvements fund. The appropriation is contingent upon receiving approval from the Environmental Protection Agency for the state to assume primacy over the Quad O and Quad Oa federal air pollution programs. Section 7 would also provide contingent authority for 10 FTE positions effective July 1, 2020.

Petroleum release remediation program transfer - Section 8 would provide the statutory amendments necessary to transfer the administration of the petroleum tank release compensation fund tank integrity testing from the Insurance Commissioner to the Department of Environmental Quality.

Continuing Appropriations

Environmental quality restoration fund - North Dakota Century Code Sections 23-31-01 and 23-31-02 - Allows the Department of Environmental Quality to provide immediate and timely response to catastrophic events that threaten the public and environmental health and when the responsible party is late in responding or cannot be located.

Deficiency Appropriation

There are no deficiency appropriations for this agency.

Significant Audit Findings

There are no significant audit findings for this agency.

Major Related Legislation

Senate Bill No. 2107 - Relates to a certification program for environmental laboratories.

Senate Bill No. 2108 - Relates to combustion residuals.

Senate Bill No. 2109 - Relates to the duties and responsibilities of the Department of Environmental Quality.

Department of Environmental Quality - Budget No. 303
House Bill No. 1024
Base Level Funding Changes

	<u>Executive Budget Recommendation</u>			
	<u>FTE Position</u>	<u>General Fund</u>	<u>Other Funds</u>	<u>Total</u>
2019-21 Biennium Base Level	152.50	\$10,724,151	\$38,987,520	\$49,711,671
2019-21 Ongoing Funding Changes				
Base payroll changes		(\$175,616)	\$322,006	\$146,390
Salary increase		394,147	763,581	1,157,728
Health insurance increase		194,274	376,366	570,640
Retirement contribution increase		48,951	94,832	143,783
Cost to continue adjustments		(162,976)	957,799	794,823
Removes funding for 3 FTE positions	(3.00)	(94,123)	(271,407)	(365,530)
Adds 2 FTE positions related to the transfer of the petroleum tank release program from the Insurance Department to the Department of Environmental Quality	2.00		575,069	575,069
Transfers 1 FTE computer and network specialist III position to the Information Technology Department for the information technology unification initiative	(1.00)	3,078	12,304	15,382
Adds funding for 10 FTE positions, including related operating expenses, in the 2nd year of the biennium for the supremacy of federal programs. The appropriation is contingent on Environmental Protection Agency approval of the Department of Environmental Quality assuming the duties of federal air pollution programs	10.00	1,248,945		1,248,945
Reduces funding for training water treatment system operators to provide a total of \$125,000 from the general fund		(55,000)		(55,000)
Adds funding for Microsoft Office 365 licensing expenses		20,048	64,538	84,586
Adjusts funding for bond and capital payments to provide a total of \$216,429, of which \$93,691 is from the general fund		1,864	1,541	3,405
Adjusts funding for extraordinary repairs to provide a total of \$27,000, of which \$6,866 is from the general fund		(55,650)	(217,700)	(273,350)
Adjusts funding for equipment and information technology equipment over \$5,000 to provide a total ongoing appropriation of \$1,020,000 of other funds			275,125	275,125
Increases funding for grants to accept and disburse funding from the Volkswagen trust settlement			2,899,529	2,899,529
Total ongoing funding changes	<u>8.00</u>	<u>\$1,367,942</u>	<u>\$5,853,583</u>	<u>\$7,221,525</u>

One-time funding items

Adds one-time funding from the strategic investment and improvements fund for capital assets and operating expenses related to the establishment of federal program supremacy, contingent on Environmental Protection Agency approval of the Department of Environmental Quality assuming the duties of federal air pollution programs

\$1,040,000 \$1,040,000

Total one-time funding changes	0.00	\$0	\$1,040,000	\$1,040,000
Total Changes to Base Level Funding	8.00	\$1,367,942	\$6,893,583	\$8,261,525
2019-21 Total Funding	160.50	\$12,092,093	\$45,881,103	\$57,973,196

Other Sections for Department of Environmental Quality - Budget No. 303

Executive Budget Recommendation

Appropriation - Additional income	Section 3 would appropriate any additional income from federal or other funds, which may become available to the Department of Environmental Quality during the 2019-21 biennium.
Transfers	Section 4 would allow the Department of Environmental Quality to transfer between appropriation line items up to 10 percent of the department's total appropriation during the 2019-21 biennium and would require the department to notify the Office of Management and Budget and the Legislative Council of any transfers.
Environment and rangeland protection fund	Section 5 would authorize the department to spend \$250,000 from the environment and rangeland protection fund for the ground water testing programs. Of this amount, \$50,000 is for a grant to the North Dakota Stockmen's Association for the environmental services program.
Strategic investment and improvements fund	Section 6 would designate \$1,040,000 from the strategic investment and improvements fund for the Department of Environmental Quality for air pollution program equipment for the 2019-21 biennium.
Contingent appropriation - Strategic investment and improvements fund	Section 7 would provide a contingent appropriation of \$2,288,945, of which \$1,248,945 is from the general fund and \$1,040,000 is a one-time appropriation from the strategic investment and improvements fund. The appropriation is contingent upon receiving approval from the federal Environmental Protection Agency for the state to assume primacy over the Quad O and Quad Oa federal air pollution programs. Section 7 would also provide contingent authority for 10 FTE positions effective July 1, 2020.
Petroleum release remediation program transfer	Section 8 would provide the statutory amendments necessary to transfer the administration of the petroleum tank release compensation fund tank integrity testing from the Insurance Commissioner to the Department of Environmental Quality.

Department 303 - Department of Environmental Quality

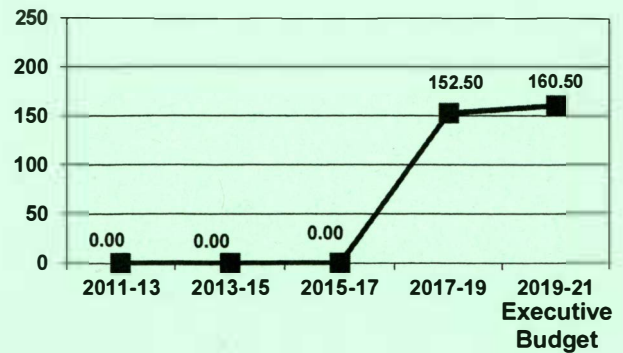
Historical Appropriations Information

Ongoing General Fund Appropriations Since 2011-13

Agency Funding (in Millions)¹



FTE Positions¹



Ongoing General Fund Appropriations ¹					
	2011-13	2013-15	2015-17	2017-19	2019-21 Executive Budget
Ongoing general fund appropriations	N/A	N/A	N/A	\$10,724,151	\$12,092,093
Increase (decrease) from previous biennium	N/A	N/A	N/A	N/A	\$1,367,942
Percentage increase (decrease) from previous biennium	N/A	N/A	N/A	N/A	12.8%
Cumulative percentage increase (decrease) from 2011-13 biennium	N/A	N/A	N/A	N/A	N/A

¹In Senate Bill No. 2327 (2017), the Legislative Assembly transferred the Environmental Health Section of the State Department of Health to the new Department of Environmental Quality. Funding and FTE positions prior to the 2017-19 biennium are not available.

Major Increases (Decreases) in Ongoing General Fund Appropriations

2013-15 Biennium

- Added funding for FTE positions (\$1,137,068) in air quality (1 FTE position), municipal facilities (3 FTE positions), waste management (1 FTE position), and water quality (3 FTE positions) to meet increased demands in oil-impacted areas, including operating expenses (\$602,963) and equipment over \$5,000 (\$272,000). \$1,409,382

2015-17 Biennium

- Added funding for costs related to the Environmental Protection Agency lawsuit. \$500,000
- Added funding, including \$500,010 from special funds, for 10 FTE positions in the Environmental Health Section, including air quality (3 FTE positions), municipal facilities (2 FTE positions), waste management (2 FTE positions), and water quality (3 FTE positions) to meet increased demands in oil-impacted areas, including salaries and wages (\$1,388,986) and operating expenses (\$315,518). \$1,204,494

2017-19 Biennium

- Removed 1 FTE electronics technician II position from the Air Quality Division of the Environmental Health Section and related funding for salaries and wages. (\$111,233)
- Adjusted the funding source for litigation fees related to the Environmental Protection Agency lawsuit to provide funding from the strategic investment and improvements fund instead of the general fund. (\$500,000)

2019-21 Biennium (Executive Budget Recommendation)

- Removes 3 FTE positions. (\$94,123)
- Transfers 1 FTE computer and network specialist III position to the Information Technology Department for the information technology unification initiative and reduces salaries and wages \$207,423 and increases operating expenses \$222,805. \$3,078

- | | |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------|
| 3. Adds 10 FTE positions in the 2 nd year of the biennium for the supremacy of federal programs, including funding for salaries and wages of \$889,640 and operating expenses of \$359,305. The appropriation is contingent on Environmental Protection Agency approval of the Department of Environmental Quality assuming the duties of federal air pollution programs. | \$1,248,945 |
| 4. Reduces funding for operating expenses related to training water treatment system operators to provide a total of \$125,000 from the general fund. | (\$55,000) |
| 5. Adds funding for Microsoft Office 365 licensing expenses. | \$20,048 |

**GOVERNOR'S RECOMMENDATION FOR THE
DEPARTMENT OF ENVIRONMENTAL QUALITY
AS SUBMITTED BY THE
OFFICE OF MANAGEMENT AND BUDGET**

SECTION 1. APPROPRIATION. The funds provided in this section, or so much of the funds as may be necessary, are appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds and other income, to the state department of environmental quality for the purpose of defraying the expenses of the state department of environmental quality, for the biennium beginning July 1, 2019, and ending June 30, 2021, as follows:

	Adjustments or		
	Base Level	Enhancements	Appropriation
Salaries and wages	\$27,040,544	\$2,671,709	\$29,712,253
Operating expenses	8,005,878	2,130,107	10,135,985
Capital assets	1,258,249	1,005,180	2,263,429
Grants	<u>13,407,000</u>	<u>2,454,529</u>	<u>15,861,529</u>
Total all funds	\$49,711,671	\$8,261,525	\$57,973,196
Less estimated income	<u>38,987,520</u>	<u>6,893,583</u>	<u>45,881,103</u>
Total general fund	\$10,724,151	\$1,367,942	\$12,092,093
Full-time equivalent positions	152.50	8.00	160.50

SECTION 2. ONE-TIME FUNDING - EFFECT ON BASE BUDGET - REPORT TO SIXTY-SEVENTH LEGISLATIVE ASSEMBLY. The following amounts reflect the one-time funding items approved by the sixty-fifth legislative assembly for the 2017-19 biennium and 2019-21 one-time funding items included in the appropriation in section 1 of this Act:

<u>One-Time Funding Description</u>	<u>2017-19</u>	<u>2019-21</u>
EPA lawsuit	\$500,000	
Air pollution program equipment		<u>\$1,040,000</u>
Total all funds	\$500,000	\$1,040,000
Less estimated income	<u>500,000</u>	<u>1,040,000</u>
Total general fund	\$0	\$0

The 2019-21 one-time funding amounts are not a part of the entity's base budget for the 2021-23 biennium. The state department of environmental quality shall report to the appropriations committees of the sixty-seventh legislative assembly on the use of this one-time funding for the biennium beginning July 1, 2019, and ending June 30, 2021.

SECTION 3. APPROPRIATION - In addition to the amounts appropriated to the state department of environmental quality in section 1 of this Act, there is appropriated any additional income from federal or other funds which may become available to the agency for the biennium beginning July 1, 2019, and ending June 30, 2021.

SECTION 4. FUNDING TRANSFERS – EXCEPTION – AUTHORIZATION. Notwithstanding section 54-16-04, the department of environmental quality may transfer between line items within section 1 of this Act up to ten percent of the total appropriation contained in section 1 during the biennium beginning July 1, 2019, and ending June 30, 2021. The department shall notify the office of management and budget and the legislative council of any transfer made pursuant to this section.

SECTION 5. ENVIRONMENT AND RANGELAND PROTECTION FUND. The estimated income line item included in section 1 of this Act includes \$250,000, or so much of the sum as may be necessary, to be made available to the state department of environmental quality from the environment and rangeland protection fund, for the biennium beginning July 1, 2019, and ending June 30, 2021. This amount includes \$50,000 for a grant to the North Dakota stockmen's association environmental services program.

SECTION 6. STRATEGIC INVESTMENT AND IMPROVEMENT FUND. The estimated income line item included in section 1 of this Act includes \$1,040,000, or so much of the sum as may be necessary, to be made available to the state department of environmental quality from the strategic investment and improvement fund for air pollution program equipment, for the biennium beginning July 1, 2019, and ending June 30, 2021.

SECTION 7. CONTINGENT APPROPRIATION. Section 1 of this Act includes a contingent appropriation of \$2,288,945, of which \$1,248,945 is from the general fund and \$1,040,000 is a one-time appropriation from the strategic investment and improvement fund; and contingent authority for ten FTE positions effective July 1, 2020 upon the federal environmental protection agency approving the state assuming primacy over the Quad O and Quad Oa federal air pollution programs.

SECTION 8 AMENDMENT. Section 23-37 of the North Dakota Century Code is amended and reenacted as follows:

CHAPTER 23.1-37 – PETROLEUM RELEASE REMEDIATION

23.1-37-01. Declaration of purpose. The purpose of this chapter is to establish:

1. A petroleum tank release compensation fund; and
2. A petroleum tank release compensation advisory board authorized to review claims against the fund.

23.1-37-02. Definitions.

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

1. "Actually incurred" means, in the case of corrective action expenditures, that the owner, the operator, the landowner, an insurer, or a contractor hired by the owner, operator, or the landlord has expended time and materials and that only that person is receiving reimbursement from the fund.
- ~~2.~~ "Administrator" means the manager of the state fire and tornado fund.
- ~~3~~2. "Board" means the petroleum release compensation board.
- ~~4.~~ "Commissioner" means the insurance commissioner.
- ~~5~~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.
- ~~6~~4. "Dealer" means any person licensed by the tax commissioner to sell motor vehicle fuel or special fuels within the state.
- ~~7~~5. "Department" means the ~~state department of health~~department of environmental quality.
- ~~8~~6. "Fund" means the petroleum release compensation fund.
- ~~9~~7. "Location" means a physical address or site that has contiguous properties. Noncontiguous properties within a municipality or other governmental jurisdiction are considered separate locations.
- ~~10~~8. "Operator" means any person in control of, or having responsibility for, the daily operation of a tank under this chapter.
- ~~11~~9. "Owner" means any person who holds title to, controls, or possesses an interest in the tank before the discontinuation of its use.
- ~~12~~10. "Person" means an individual, trust, firm, joint stock company, federal agency, corporation, state, municipality, commission, political subdivision of a state, or any interstate body. The term also includes a consortium, a joint venture, a commercial entity, and the United States government.
- ~~13~~11. "Petroleum" means any of the following:
 - a. Gasoline and petroleum products as defined in chapter 19-10.
 - b. Constituents of gasoline and fuel oil under subdivision a.
 - c. Oil sludge and oil refuse.
- ~~14~~12. "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.
- ~~15~~13. "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.
- ~~16~~14. "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. 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, regulated under:
 - (1) The Natural Gas Pipeline Safety Act of 1968.
 - (2) The Hazardous Liquid Pipeline Safety Act of 1979.
 - (3) An interstate pipeline facility regulated under state laws comparable to the provisions of law in paragraph 1 or 2.
 - 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.
4715. "Tank integrity test" means a test to determine that a tank is sound and not leaking. For an underground tank, the term means a certified third-party test that meets environmental protection agency leak detection requirements. For an aboveground tank, the term means a test conducted according to steel tank institute SP 001 or American petroleum institute 653.
4816. "Third party" means a person who is damaged by the act of a registered owner, operator, or dealer requiring corrective action or a person who suffers bodily injury or property damage caused by a petroleum release.

23.1-37-03. Petroleum release compensation board.

The petroleum release compensation advisory board consists of five members appointed by the governor, three of whom are active in petroleum marketing, one of whom is active in the petroleum, crude oil, or refining industry, and one of whom is active in the insurance industry. A member active in petroleum marketing must be appointed from a list of three recommended by the North Dakota retail petroleum marketers association. A member active in the petroleum, crude oil, or refining industry must be appointed from a list of three recommended by the North Dakota petroleum council. A member active in the insurance industry must be appointed from a list of three recommended by the North Dakota professional insurance agents association. Members must be appointed to terms of three years with the terms arranged so that the term of at least one member, but no more than two members, expires June thirtieth of each year. A member shall hold office until a successor is duly appointed and qualified. Each member of the board is entitled to receive sixty-two dollars and fifty cents per diem for each day actually spent in the performance of official duties, plus mileage and expenses as are allowed to other state officers.

23.1-37-04. Administration of fund - Staff.

The ~~administrator~~ department shall administer the fund according to this chapter. The ~~administrator~~ department shall convene the board as may be necessary to keep the board apprised of the fund's general operations. However, the board shall meet at least once each half of each calendar year to review and to advise the ~~administrator~~ department regarding the administration of the fund, the fund's general operations, and to hear and decide denials of claims by the ~~administrator~~ department which may be appealed to the board, and to discuss all claims against the fund. The ~~administrator~~ department may employ any assistance and staff necessary to administer the fund within the limits of legislative appropriation. A claimant aggrieved by a decision of the ~~administrator~~ department regarding a claim upon the fund may appeal the decision to the board. The board may sustain, modify, or reverse the decision of the ~~administrator~~ department. The claimant or the ~~administrator~~ department may appeal the board's decision ~~to the commissioner. The decision of the commissioner may be appealed under chapter 28-32.~~

23.1-37-05. Adoption of rules.

The ~~administrator~~ department shall adopt rules regarding the practices and procedures of the fund, the form and procedure for applications for compensation from the fund, procedures for investigation of claims, procedures for determining the amount and type of costs that are eligible for reimbursement from the fund, procedures for persons to perform services for the fund,

procedures for appeals to the board by claimants aggrieved by an adverse decision of the ~~administrator~~ department, and any other rules as may be appropriate to administer this chapter.

23.1-37-06. Release discovery. If the department has reason to believe a release has occurred, it shall ~~notify the administrator~~. The department shall direct the owner or operator to take reasonable and necessary corrective actions as provided under federal or state law or under adopted rules.

23.1-37-07. Owner or operator not identified.

The department may cause legal action to be brought to compel performance of a corrective action if an identified owner or operator fails or refuses to comply with an order of the department, or the department may engage the services of qualified contractors for performance of a corrective action if an owner or operator cannot be identified.

23.1-37-08. Imminent hazard.

Upon receipt of information that a petroleum release has occurred which may present an imminent or substantial endangerment of health or the environment, the department may take such emergency action as it determines necessary to protect health or the environment.

23.1-37-09. Duty to notify.

This chapter does not limit any person's duty to notify the department and to take action related to a release. However, payment for corrective actions required as a result of a petroleum release is governed by this chapter.

23.1-37-10. Providing of information. Any person whom the ~~administrator~~ or the department has reason to believe is an owner or operator, the owner of real property where corrective action is ordered to be taken, or any person who may have information concerning a release shall, if requested by the ~~administrator~~ or the department, or any member, employee, or agent of the ~~administrator~~ or the department, furnish to the ~~administrator~~ or the department any information that person has or may reasonably obtain that is relevant to the release.

23.1-37-11. Examination of records.

Any employee of the ~~administrator~~ or the department may, upon presentation of official credentials:

1. Examine and copy books, papers, records, memoranda, or data of any person who has a duty to provide information to the ~~administrator~~ or the department under section 23.1-37-10; and
2. Enter upon public or private property for the purpose of taking action authorized by this section, including obtaining information from any person who has a duty to provide the information under section 23.1-37-10, conducting surveys and investigations, and taking corrective action.

23.1-37-12. Responsibility for cost.

The owner or operator is liable for the cost of the corrective action required by the department, including the cost of investigating the releases. This chapter does not create any new cause of action for damages on behalf of third parties for release of petroleum products against the fund or licensed dealers.

23.1-37-13. Liability avoided.

No owner or operator may avoid liability by means of a conveyance of any right, title, or interest in real property or by any indemnification, hold harmless agreement, or similar agreement. However, this chapter does not:

1. Prohibit a person who may be liable from entering into an agreement by which the person is insured or is a member of a risk retention group, and is thereby indemnified for part or all of the liability;
2. Prohibit the enforcement of an insurance, hold harmless, or indemnification agreement; or
3. Bar a claim for relief brought by a person who may be liable or by an insurer or guarantor, whether by right of subrogation or otherwise.

23.1-37-14. Other remedies.

This chapter does not limit the powers of the ~~administrator~~ or department, or preclude the pursuit of any other administrative, civil, injunctive, or criminal remedies by the ~~administrator~~ or department or any other person. Administrative remedies need not be exhausted in order to proceed under this chapter. The remedies provided by this chapter are in addition to those provided under existing statutory or common law.

23.1-37-15. Revenue to the fund.

Revenue from the following sources must be deposited in the state treasury and credited to the fund:

1. Any registration fees collected under section 23.1-37-17;
2. Any money recovered by the fund under section 23.1-37-23, and any money paid under an agreement, stipulation, or settlement;
3. Any interest attributable to investment of money in the fund; and
4. Any money received by the ~~administrator~~ department in the form of gifts, grants, reimbursements, or appropriations from any source intended to be used for the purposes of the fund.

23.1-37-16. Penalty.

A tank owner violating section 23.1-37-17 is guilty of a class B misdemeanor unless another penalty is specifically provided.

23.1-37-17. Registration fee.

1. An owner or operator of a tank shall pay an annual registration fee of fifty dollars for each aboveground or underground tank owned or operated by that person. If after the fiscal year has been closed and all expenses relating to the fiscal year have been accounted for, the fund balance is less than six million dollars, the annual registration fee of fifty dollars is increased to one hundred dollars. If after the fiscal year has been closed and all expenses relating to the fiscal year have been accounted for, the fund balance is five million five hundred thousand dollars or more and the annual registration fee has been increased to one hundred dollars, the fee must be reduced to fifty dollars. If after the fiscal year has been closed and all expenses relating to the fiscal year have been accounted for, the fund balance exceeds nine million dollars, the annual registration fee is reduced to five dollars. Annual registration fees must continue at five dollars until the fund balance does not exceed nine million dollars.
2. An owner or operator of an existing tank that is discovered at a location that currently and previously has had tanks registered with the fund shall pay an additional twenty-five dollar penalty fee in addition to the registration fee for each aboveground tank and each underground tank owned or operated by that person for each previous year that the tank was required to be registered for which a fee was not paid. The payment includes the fees and the penalty for the failure to register.
3. An owner or operator of an existing tank at a location that was not previously and continuously registered with the fund, whether the registration was required by law or not must provide the fund with a phase two environmental study conducted by a qualified firm according to American society for testing materials standards. A tank integrity test must also be performed. The environmental study and tank integrity test must be reviewed by the ~~commissioner~~ department along with the application for registration with the fund. If the ~~commissioner~~ department rejects the application, the applicant is denied eligibility to the fund. However, if the site is remediated and the leaking tank is replaced, the applicant may reapply for registration with the fund. A new installation that is using a used tank must provide tank integrity test results for the used tank. Use of a synthetic liner in an aboveground dike system negates the need for a tank integrity test. The owner or operator of a new tank at a new site or a new tank at an existing site that had a tank registered at the site previously need only pay the required fees for registration with the fund.
4. If accepted for registration with the fund, the owner or operator of the tank shall pay an additional twenty-five dollar penalty fee in addition to the registration fee for each aboveground tank and underground tank owned or operated by that person for each previous year that the tank was required to be registered for which a fee was not paid, regardless of ownership in each of those years. The payment includes the fees and the penalty for the failure to register.
5. The registration fees collected under this section must be paid to the ~~fund~~ Administrator department for deposit in the state treasury for the dedicated credit to the petroleum release compensation fund.
6. If a registration payment is not received within sixty days of July first by the ~~Commissioner~~

department, a late fee of twenty-five dollars per tank per month must be imposed on the tank owner or operator.

23.1-37-18. Reimbursement for corrective action.

1. The ~~administrator~~ department shall reimburse an eligible owner or operator for ninety percent of the costs of corrective action, including the investigation, which are greater than five thousand dollars and less than one million dollars per occurrence and two million dollars in the aggregate. An eligible tank owner or operator may not be liable for more than twenty thousand dollars out-of-pocket expenses for any one release. A reimbursement may not be made unless the ~~administrator~~ department determines that:
 - a. At the time the release was discovered the owner or operator and the tank were in compliance with state and federal rules and rules applicable to the tank, including rules relating to financial responsibility, rules relating to infrastructure compatibility, and all rules relating to health and safety which were in effect at the time of the release;
 - b. The department was given notice of the release as required by federal and state law;
 - c. The owner or operator has paid the first five thousand dollars of the cost of corrective action; and
 - d. The owner or operator, to the extent possible, fully cooperated with the department ~~and the administrator~~ in responding to the release.
2. The fund shall compensate third parties for corrective action taken for a petroleum release if the provisions of subdivisions a, b, c, and d of subsection 1 were met at the time the release was discovered. Compensation for third-party corrective action includes compensation for costs incurred in returning the real estate to that level deemed duly remediated by the department.
3. The fund shall reimburse the tank owner, operator, or dealer for bodily injuries to a third party caused by a petroleum release if the provisions of subdivisions a, b, c, and d of subsection 1 were met at the time the release was discovered in an amount determined by:
 - a. Findings reduced to judgment in federal or state district court within the state of North Dakota or such other court having jurisdiction over the matter in a proceeding in which the fund has been made a party;
 - b. Findings by an arbitration panel agreed upon in writing by the parties in a proceeding in which the fund has been made a party; or
 - c. A written settlement entered into by the parties in which the ~~commissioner~~ director of the department or the ~~commissioner's~~ department's agent has participated. The settlement must be reviewed and approved by the ~~commissioner~~ director of the department.
4. In any civil action against the owner, operator, or dealer for damages resulting from a petroleum release, if the pre-leak condition of real estate is an issue and if there is no reasonable means of determining the pre-leak condition of real estate, the condition is that which exists at the time the department determines the real estate has been duly remediated.
5. The fund may not compensate for attorney's fees of owners, operators, or dealers, nor may the fund compensate for exemplary damages, criminal fines, or administrative penalties.
6. A third party accepting monetary compensation directly from the fund for damages due to a release caused by a tank owner, operator, or dealer covered by the fund is deemed to have waived any cause of action against the fund or against the tank owner, operator, or dealer.
7. The fund shall reimburse the department for all costs, attorney's fees, and other legal expenses relating to administrative and adjudicative proceedings under this chapter and any subsequent legal proceeding. Any monies reimbursed must be deposited in the department's operating fund in the state treasury and must be spent subject to appropriation by the legislative assembly.

23.1-37-19. Application for reimbursement.

Any owner or operator who is a first-party claimant who proposes to take corrective action or has undertaken corrective action in response to a release, the time of such release being unknown, may apply to the administratordepartment for partial or full reimbursement under section 23.1-37-18. An owner or operator who is a first-party claimant may be reimbursed only for costs incurred after July 1, 1989, even if the releases were discovered before July 1, 1989, up to the maximum of twenty-five thousand dollars per location.

23.1-37-20. Administrator Department to determine costs.

A reimbursement for corrective actions taken by an owner, operator, or dealer may not be made from the fund until the administratordepartment has determined that the costs for which reimbursement is requested were actually incurred and were reasonable. All necessary loss adjustment expenses must be included as a component of the loss and must be paid out of the fund.

23.1-37-21. Liability of responsible person. The right to apply for reimbursement and the receipt of reimbursement does not limit the liability of an owner or operator for damages or costs incurred as the result of a release.

23.1-37-22. Reimbursement not subject to attachment.

The amount of reimbursement to be paid for corrective action that was done by a third party is not subject to legal process or attachment if actually paid to a third party who performed the corrective action.

23.1-37-23.1. Recovery of expenses.

Any reasonable and necessary expenses incurred by the fund, which exceed the coverage limits provided by section 23.1-37-18, in taking a corrective action, including costs of investigating a release, and in taking legal actions may be recovered in a civil action in district court brought by the administratordepartment against an owner or operator. The certification of expenses by an approved agent of the fund is prima facie evidence that the expenses are reasonable and necessary. Any expenses that are recovered under this section must be deposited in the fund.

23.1-37-24. Costs exceeding reimbursement.

If the cost of any extraordinary authorized action under this chapter exceeds amounts awarded to the ~~administrator of the~~ department from the federal government, the administratordepartment may pay the department's ~~the cost of the~~ corrective actions costs, including the cost of investigating a release, if the board finds that the cause was a petroleum substance, that an adequate amount exists in the fund to pay for the corrective action, that the occurrence was extraordinary in scope and size, and that a danger to the health and safety of citizens exists.

23.1-37-25. Coordination of benefits.

If an owner or operator has an insurance policy that provides the same coverage as the fund, the ~~administrator of the fund~~ department shall pay the share of the covered loss or damage for which the fund is responsible. The share that must be paid from the fund is equal to the proportion that the applicable limit of coverage under the fund bears to the limits of insurance of all insurance coverage on the same basis.

23.1-37-26. Third-party damages - Participation in actions and review of settlements.

1. An owner or operator who is sued for damages resulting from a release shall notify the administratordepartment within fourteen days of being served with a summons and complaint. The owner or operator shall also advise the administratordepartment if any insurer is defending the owner or operator and provide to the administratordepartment the name of that insurer.
2. An owner or operator who, before litigation, enters into negotiations with a third party who claims to have been damaged by a release, or who receives a demand for payment of damages to a third party who claims to have been damaged by a release, shall notify the administratordepartment within fourteen days of the demand or the negotiations.
3. The administratordepartment and the board shall review the conduct of any litigation or negotiation. The administratordepartment may not assume any legal costs incurred by the defendant or plaintiff, but may participate in discovery, trial proceedings, or settlement negotiations of either disputed liability or damages that bear on the determination of a plaintiff's damages.
4. The administratordepartment and the board shall review any settlement negotiations to

determine the dollar amount of bodily injury or property damage actually, necessarily, and reasonably incurred by third parties which, if paid by the defendant, would be considered eligible costs.

23.1-37-27. Third-party damages - Documentation.

1. An applicant's payments for third-party damages pursuant to a judgment entered in a court must include copies of the notice of entry of judgment and abstract of costs.
2. An applicant's payments for third-party damages made by agreement in settlement of litigation must include copies of the settlement agreement and such supporting documents as may be required by the administratordepartment.
3. An applicant's payments for third-party damages made by agreement without reference to litigation must include copies of the settlement and such supporting documents as may be required by the administratordepartment.
4. The administratordepartment and the board may require a third party who claims bodily injury to be examined by a physician and require that the physician's report be submitted to the administratordepartment. The administratordepartment may require a third party who claims property damage to permit a property appraiser or claims adjuster retained by the administratordepartment to inspect the property and report to the administratordepartment.
5. The fund shall pay a judgment against an owner, operator, or dealer awarded to a third party as a result of a third-party claim and property damage against an owner, operator, or dealer registered by the fund.
6. The fund shall pay for corrective action as awarded to a third party in any judgment against an owner, operator, or dealer.
7. Liability of the tank owner, operator, dealer, or fund to third parties for corrective action or personal injuries and property damage may not exceed, per person, one million dollars. Maximum liability of the fund, including all claims by third parties, may not exceed, for any release site, the maximum provided in section 23.1-37-18.
8. A third party may not bring an action against any owner, operator, or dealer more than three years after a corrective action plan has been approved by the department if the owner, operator, or dealer fully implements and complies with the corrective action plan.
9. In investigating a release site or reviewing the implementation of any corrective action plan approved by the department, the department shall determine whether the release currently threatens public health or the environment. The department shall require, based on science and technology appropriate for the site, any monitoring, remediation, or other appropriate corrective action that is reasonably necessary to protect public health or the environment. The department may require corrective action at a release site at any time after a release occurs.

23.1-37-28. Matching federal funds.

The administratordepartment and the board may annually allow the department a ten percent matching grant for federal leaking underground storage tank funds to be paid out of the fund if the moneys are available and the administratordepartment and the board determine the allowance appropriate.

23.1-37-29. Fund appropriations.

Money in the fund is continuously appropriated to the administratordepartment for the purpose of making reimbursements under this chapter.

23.1-37-30. Investment of fund.

Investment of the fund is under the supervision of the state investment board in accordance with chapter 21-10. The ~~commissioner~~department may purchase a contract for reinsurance of any risk to be paid by the fund. The administratordepartment may investigate the purchase of insurance that reimburses an owner or operator for property damage claims by third parties other than claims for costs of corrective action.

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Testimony
House Bill 1024
House Appropriations Committee - Human Resources Division
January 10, 2019, 2:00 p.m.
North Dakota Department of Environmental Quality

Good afternoon Chairman Nelson and members of the committee. My name is David Glatt, Environmental Health Section Chief for the North Dakota Department of Health (NDDoH). I am here today to testify in support of the North Dakota Department of Environmental Quality (NDDEQ) appropriation. Due to the anticipated transition to the NDDEQ before the next biennium, we will be discussing a separate budget for the new agency.

My testimony will highlight the following:

- Establishment of the NDDEQ and transition status
- NDDEQ program overview
- Oil development and production impacts

Brenda Weisz, Chief Financial Officer for the NDDoH, will present the NDDEQ budget and associated information.

North Dakota Department of Environmental Quality (NDDEQ)

During the last legislative session, SB 2327 was approved establishing a new separate environmental protection agency for the state of North Dakota. In general, SB 2327 removes the Environmental Health Section and its current programs from the NDDoH and establishes a Department of Environmental Quality. The move to a stand-alone environmental agency was pursued for the following reasons:

- Environmental programs have grown in both size and technical complexity since the formation of the NDDoH. At present, environmental staff comprise about 40 percent (152 FTEs) of the NDDoH, with a biennial budget of approximately \$50 million dollars.
- Federal and state environmental protection regulations have become a major consideration in the evaluation and operation of almost all industrial, municipal and agricultural activities.
- Due to the wide range of medical, public health/wellness and environmental activities in the NDDoH, it was difficult to set priorities to address all issues. The result was a disparate and complicated management process that unintentionally left behind or deemphasized some very important programs.

- Nationally only five states have combined health and environmental protection programs into one agency.
- Over the years, operation and management of the environmental programs have grown apart from the other NDDoH programs due to different federal requirements and required educational/technical expertise. The result has been an environmental program operating for all practical purposes as a separate agency.

For the reasons stated, SB2327 authorized the establishment of the NDDEQ to serve as the primary environmental protection agency in North Dakota. The legislation will result in a new cabinet level agency and has directed the following:

- The new department will be established no later than July 1, 2019.
- The current Water Pollution Control and the Air Quality Advisory boards will be combined into a single NDDEQ advisory board comprised of three ex officio and 10 members appointed by the governor.
- The transition to a new agency will not result in the need to increase overall budget expenditures.
- The director of the NDDEQ will be appointed by and work at the pleasure of the governor as a member of the cabinet.
- The NDDEQ director will be required to have educational degrees in either the sciences or engineering and relevant work experience, preferably in North Dakota.
- The transition also will maintain regulatory primacy of all current U.S. Environmental Protection Agency (USEPA) programs delegated to the state.

Following the directives of SB2327, the status of the transition is as follows:

- Approximately 90 percent of the USEPA primacy programs delegated to the state have been approved for transfer to the NDDEQ. The remaining programs are in the federal transfer process and are anticipated to be completed no later than March 15, 2019. It is important to note that the current federal government shutdown could impact the final NDDEQ transfer date.
- Operational efficiencies are being pursued which will result in the sharing of some administrative services to include accounting and human resources with the NDDoH.
- A stand-alone budget has been proposed in anticipation of the establishment of the NDDEQ.

NDDEQ Program Overview

To provide clarity and avoid confusion, I will refer to all environmental activities in my remaining testimony as if they are now part of an established NDDEQ, rather than a section in the NDDoH.

The NDDEQ is responsible for safeguarding North Dakota's air, land and water resources. In cooperation with the general public, industry and government at all levels, the NDDEQ implements protective programs and standards to help maintain and improve environmental quality. To guide us, we follow a vision which acknowledges the role of sustainability and the desire for a high-quality environment for current and future generations. We accomplish our environmental stewardship through the administration of five divisions which employ 152 FTEs comprised of engineers, scientists of various disciplines, chemists, technicians and administrative support. All employees strive for transparency in their decisions and accessibility to the public while following applicable science and the law.

Figure 1 provides an organizational overview of the NDDEQ and identifies key program areas in each of the divisions of Air Quality, Water Quality, Municipal Facilities, Waste Management and Chemistry.

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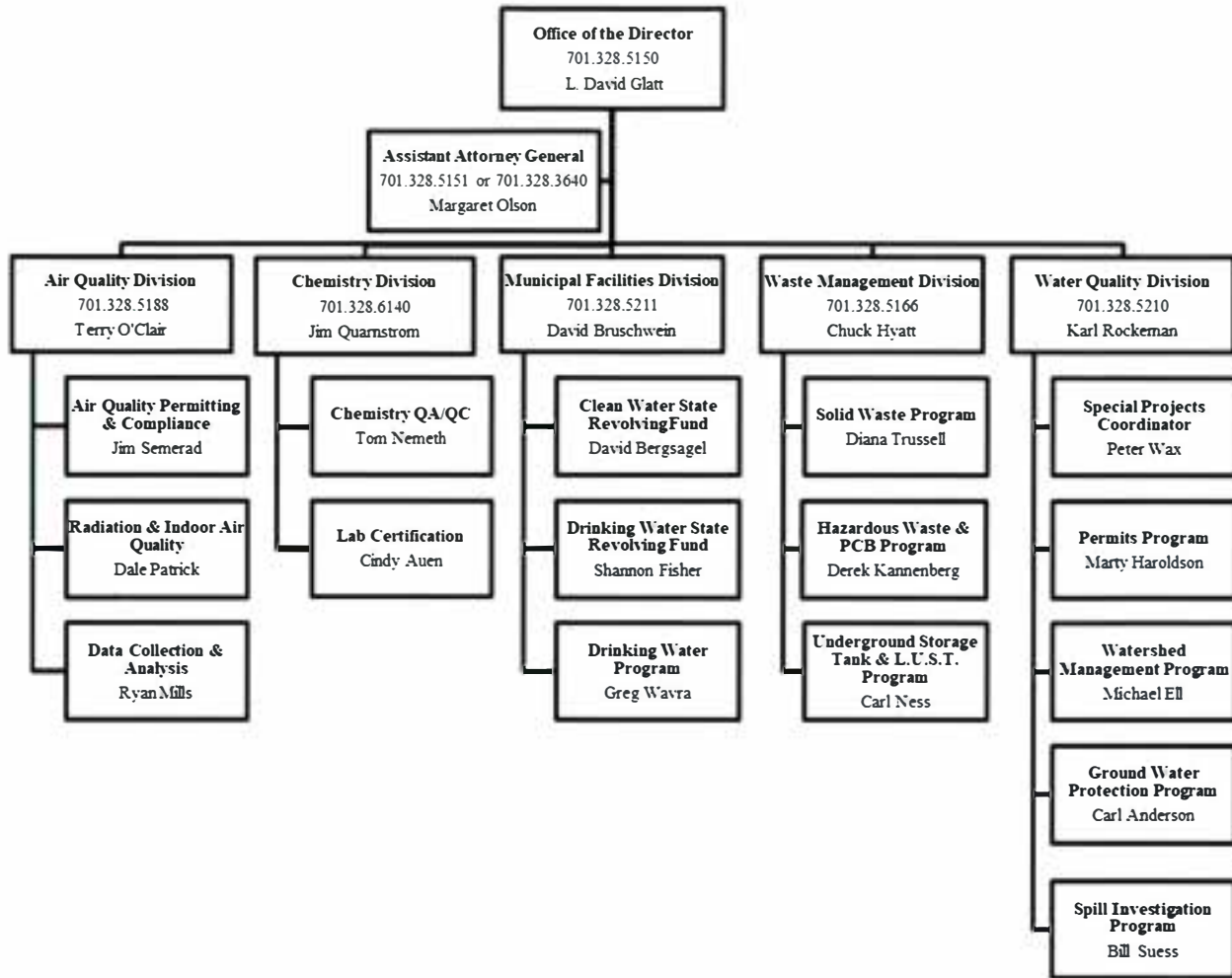


Figure 1. North Dakota Department of Environmental Quality Organizational Chart

Division of Air Quality (35.5 FTEs)

The Division of Air Quality implements the federal Clean Air Act (CAA) working in cooperation with the USEPA. The division also works as an agreement state with the Nuclear Regulatory Commission to oversee the handling, storage, disposal and use of radioactive materials.

Air Permitting and Compliance Program

The Air Quality Permitting and Compliance Program develops and oversees air quality control permits, conducts air quality impact analyses through application of approved computer models, develops state air quality implementation plans and inspects a wide range of air emission sources to ensure compliance. This program requires a high level of expertise to evaluate the application of environmental regulations, design and operation of control devices, and the implementation of best management practices throughout the state.

Radiation and Indoor Air Quality Program

Through an agreement with the Nuclear Regulatory Commission and implementation of state-only rules such as Technologically Enhanced Naturally Occurring Radioactive Materials (TENORM), the Radiation Control Program is directed to ensure the safe use, handling, storage, shipment and disposal of radioactive materials. Radioactive materials are evident in many areas of our lives including the use of x-ray machines, nuclear isotopes used in medical treatments and research, and meters of various types. This program requires staff to obtain extensive training to ensure protection of the general public, as well as themselves, from undue exposure to radioactive sources.

In addition, the Indoor Air Program implements our radon gas, asbestos and lead programs designed to identify risks, prevent exposure and provide best management practices for these parameters in indoor air environments. This is accomplished through public education, training and licensing of qualified abatement contractors, and field inspections.

Data Collection and Analysis Program

The Data Collection and Analysis Program maintains a 24-hour/7-days-per-week ambient air quality monitoring network in North Dakota. Information from these monitors continues to indicate that North Dakota is one of a handful of states that complies with all national ambient air quality standards. Additional duties include compliance inspections of industry-maintained monitors and analysis of data generated by the air quality monitors.

Division of Air Quality - Oilfield Impacts

I have included along with my testimony an updated report titled *Oilfield Impacts and the North Dakota Department of Environmental Quality*. The report outlines the ongoing impacts oilfield development continues to have on every program within the NDDEQ. I will highlight some of the division-specific impacts we experience daily. For a more complete accounting of the impacts, I direct you to the report.

Workload impacts for the Division of Air Quality continue to increase with each oil well completed, resulting in new compliance points, inspections, citizen complaints and processing facilities. Each well drilled results in the addition of multiple points that must be regulated, inspected and monitored to control air emissions or radioactive sources. Figure 5 of the report indicates more than an 800 percent increase in oil well registrations since the start of the Bakken development (page 8 of report).

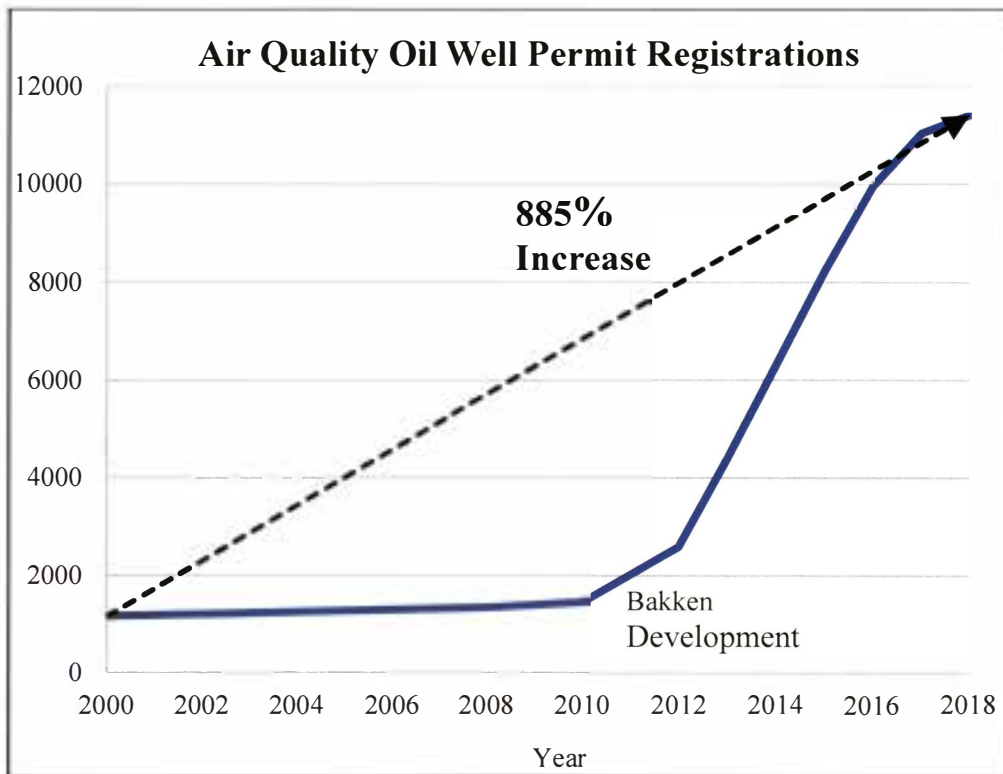


Figure 5. Air Quality Oil Well Permit Registrations

Division of Chemistry (16 FTEs)

The Division of Chemistry provides organic and inorganic laboratory analysis services to all NDDEQ programs, some municipal facilities and private individuals, pursuant to federal requirements or individual concerns. In addition, the division provides emergency analytical services in cases of accidental contaminant releases to the environment. Because quality and verifiable data is a requirement for the proper evaluation of environmental and public health, the division also conducts laboratory certification services for all outside environmental laboratories that submit compliance or assessment data to the NDDEQ.

Division of Chemistry - Oilfield Impacts

The Division of Chemistry continues to provide necessary oilfield analytical support for regulatory and emergency response activities. Impact assessments of land and water from oil and produced water spills continue to be a challenge due to the analytical complexity of the samples brought to our laboratory. Figure 7 of the report identifies the number of oilfield response and special project samples analyzed by the laboratory (page 10 of report).

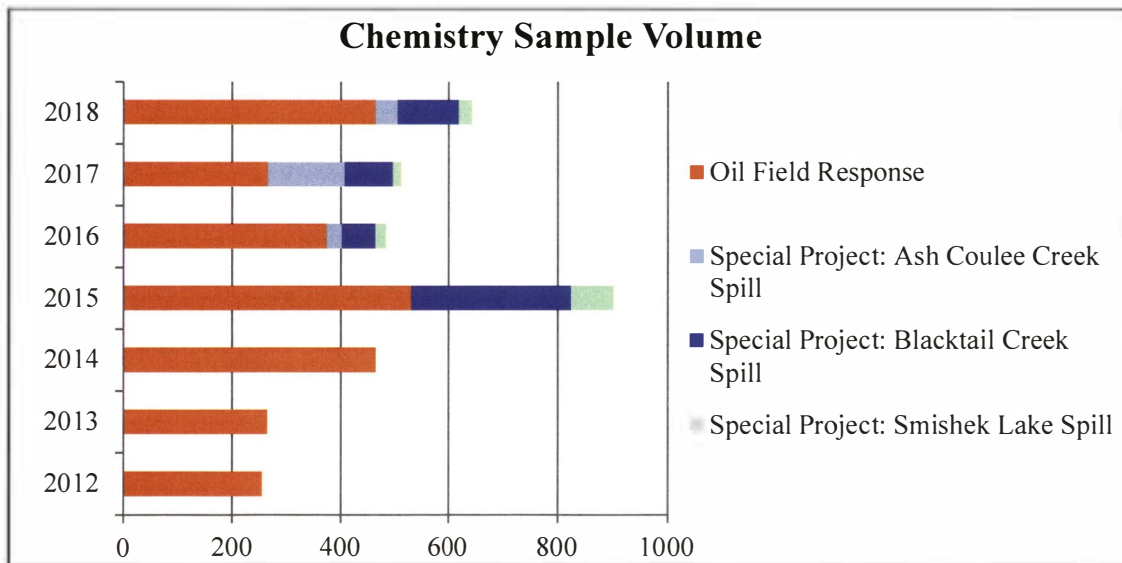


Figure 7. Chemistry Sample Volume

Division of Municipal Facilities (31 FTEs)

State Revolving Loan Fund Programs

The Division of Municipal Facilities is responsible for the administration of two low-interest state revolving loan funds to help maintain municipal water and wastewater treatment infrastructure. By maintaining treatment, collection and distribution infrastructure, municipalities are better able to comply with the federal and state regulatory requirements and protect public health and the environment.

Working in cooperation with the Bank of North Dakota Public Finance Authority, the Clean Water State Revolving Fund (CWSRF) has loaned \$813.4 million for wastewater treatment and collection facilities since the program's inception in 1990. The Drinking Water State Revolving Fund (DWSRF) has loaned \$602.8 million for municipal drinking water treatment and distribution infrastructure since program inception in 1999. SRF program staff review and approve engineering plans and specifications, conduct on-site construction inspections and evaluate funding needs through an intended use plan.

Drinking Water Program

The Drinking Water Program implements the federal Safe Drinking Water Act (SDWA) at the state level. The SDWA requires oversight of treatment facilities, operator training and certification, inspections, drinking water monitoring, and compliance assistance and enforcement. Recent national headlines highlighting lead in the drinking water of Flint, Michigan, and cyanobacteria toxins in the drinking water of Toledo, Ohio, emphasize the need and obligation to implement a robust, multi-program regulatory structure to protect public health and the environment.

Division of Municipal Facilities - Oilfield Impacts

Although the number of new water and wastewater treatment systems being constructed has tapered off in recent years, challenges remain. Failing or unsafe facilities built or expanded without local or state approval require considerable evaluation and trouble shooting from staff. The result has been the enforcement of boil orders, increased drinking water violations and subpar construction, creating unnecessary public health concerns. Figure 13 of the report identifies the number of projects not meeting public health requirements (page 14 of report).

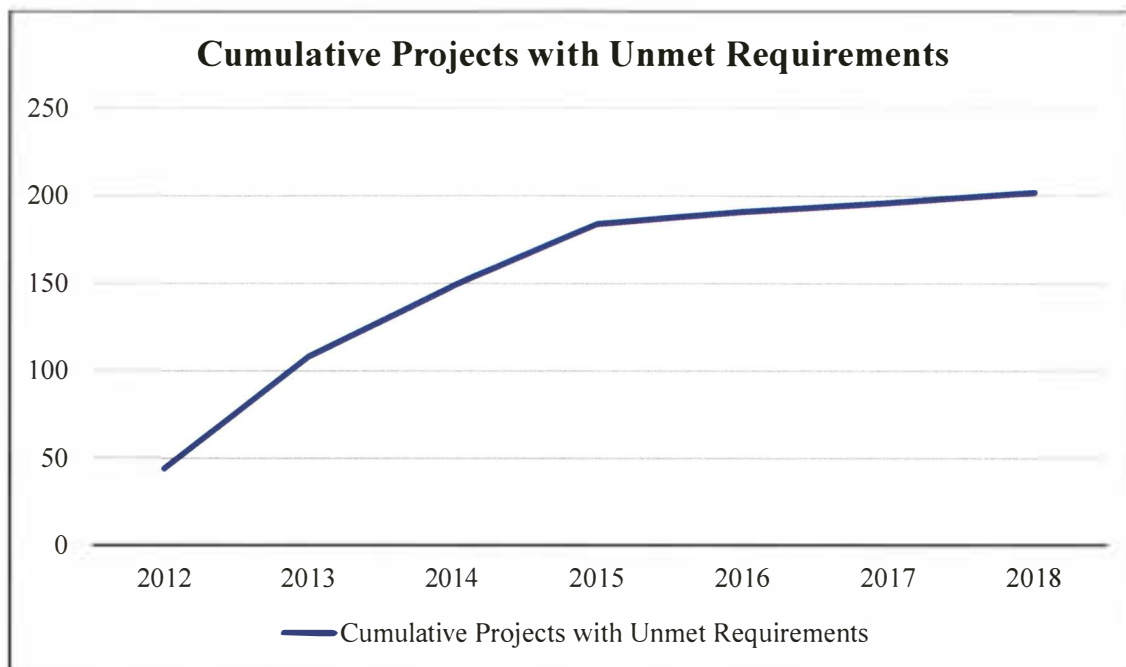


Figure 13. Cumulative Projects with Unmet Requirements

Division of Waste Management (25.5 FTEs)

The Division of Waste Management implements regulatory and nonregulatory programs to ensure the proper handling, transportation and disposal of nonhazardous and hazardous waste. In addition, it regulates the operation, construction and monitoring of underground fuel storage tanks.

Solid Waste Program

The Solid Waste Program permits the storage, transportation, handling and disposal of nonhazardous waste materials. Special waste, industrial, municipal and inert landfills are regulated through an extensive permitting process. Each landfill must comply with clearly defined design, operational, monitoring and closure requirements. These facilities are inspected routinely to assess compliance with applicable rules.

Hazardous Waste and Polychlorinated Biphenyl (PCB) Program

The Hazardous Waste Program regulates the handling, storage, transportation and disposal of hazardous waste generated within the state. Following the federal Resource Conservation and Recovery Act (RCRA), the program conducts routine inspections, provides oversight for remedial actions, permits facilities and initiates enforcement actions as needed. Regulated entities include industry, utilities, universities and federal facilities.

PCB oversight has been focused on the proper handling and cleanup of spilled materials containing PCBs. PCBs were once widely used as dielectric and coolant fluids in electrical apparatuses and created environmental problems due to their persistence and impacts on organisms in the ecosystem. Older electrical transformers have historically been the source of PCB-containing oil.

Underground Storage Tank (UST) and Leaking Underground Storage Tank (LUST) Programs

The UST Program regulates the underground storage of hydrocarbon products in tanks with volumes of more than 1000 gallons. The program specifies construction, reporting, monitoring, operator training and routine leak testing requirements. The NDDEQ also conducts on-site monitoring and witnesses tank removals. In cases of leaking underground storage tanks, the NDDEQ provides oversight of cleanup activities.

The LUST Program provides federal funding to hire remediation consultants to address environmental contamination at sites where the responsible party/owner is financially unable, recalcitrant or absent. This federal program requires a 10 percent match which is provided by the North Dakota Petroleum Tank Fund.

Division of Waste Management - Oilfield Impacts

Oil development and extraction activities continue to have a significant impact on the Solid Waste Program. Waste generated from drilling, normal operations (e.g., filter socks, tank bottoms) and spill cleanup remains at significantly higher levels than pre-Bakken development. Special waste or oilfield waste generated from 2001 to the present is represented in Figure 17 (page 17 of report).

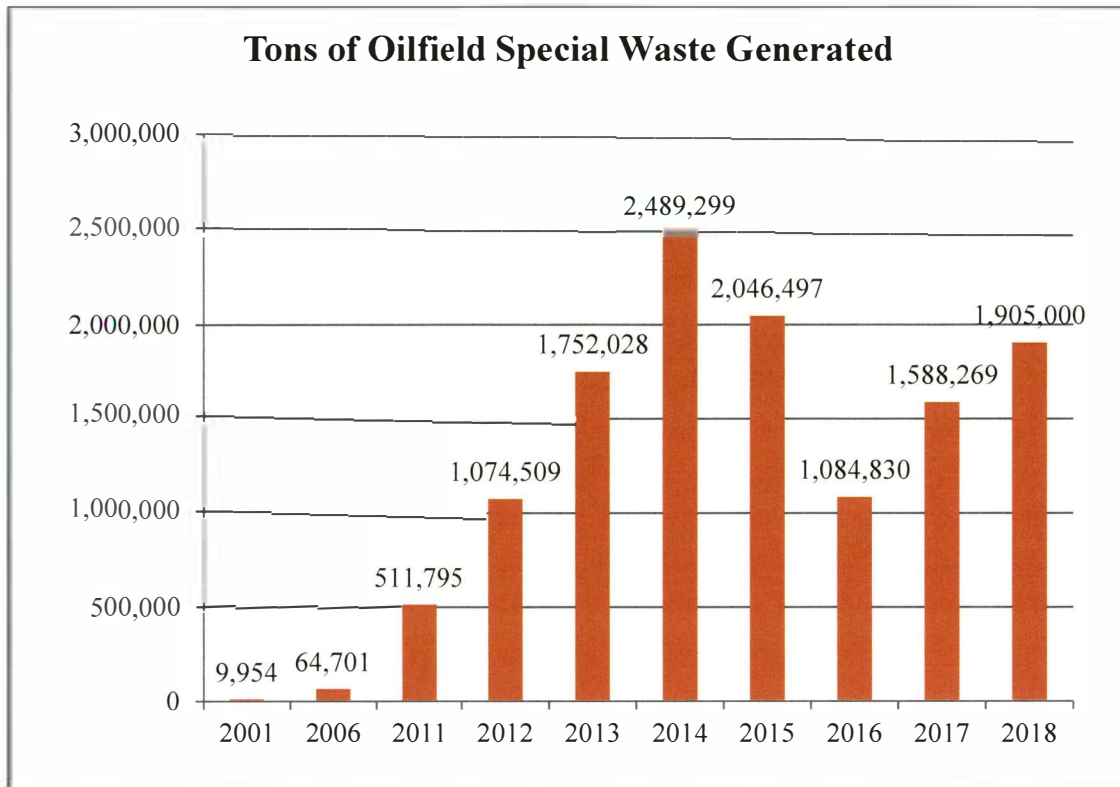


Figure 17. Tons of Oilfield Special Waste Generated

Economic development not directly associated with oil and gas continues to increase regulated infrastructure in many areas. One example is the UST Program where new facilities (e.g., gas station/convenience stores selling gas) continue to be built, increasing the number of underground storage tank installations. Figure 18 identifies the increasing number of regulated tanks since 2007 (page 17 of report).

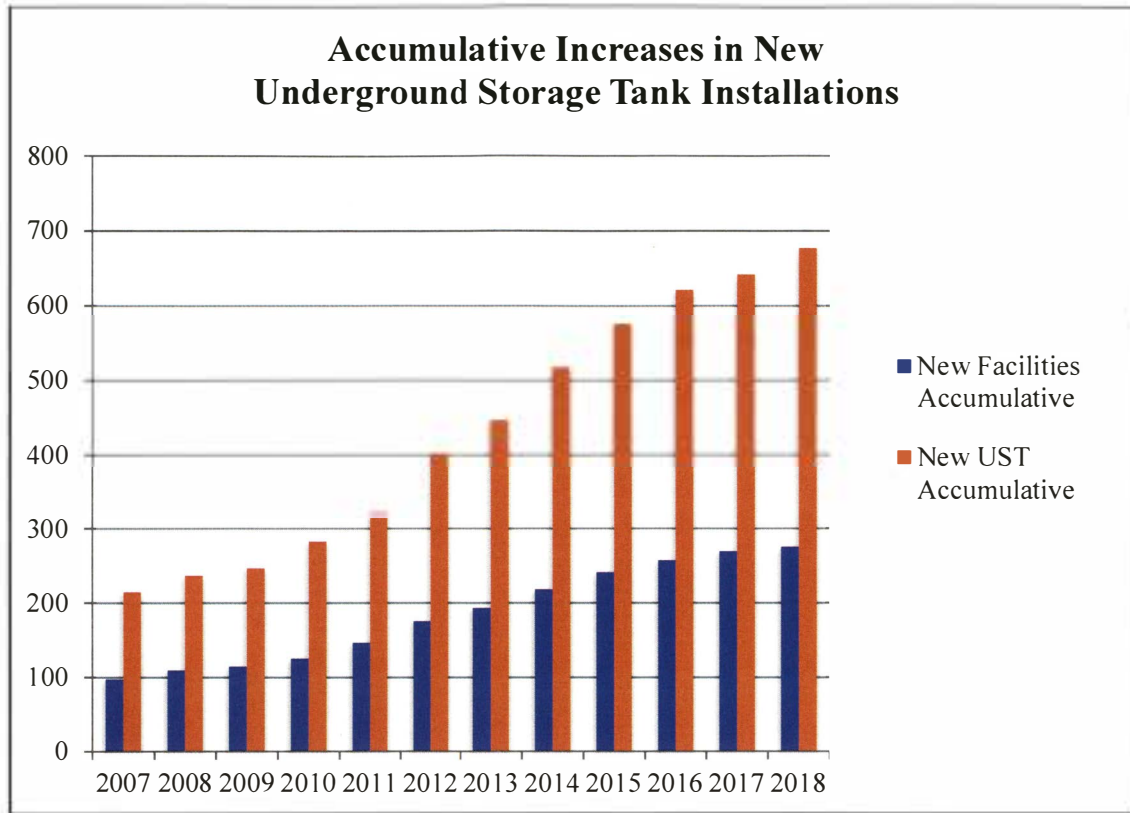


Figure 18. Accumulative Increases in New Underground Storage Tank Installations

Division of Water Quality (37 FTEs)

The Division of Water Quality implements programs to maintain and improve the quality of surface water and groundwater resources for beneficial use. Beneficial use is defined as water for consumption, recreational, industrial, aquatic habitat and agricultural uses.

Permit Programs

The NDDEQ implements several permit programs designed to protect surface water quality through primacy agreements with EPA and through several state-specific rules. The major programs are:

- North Dakota Pollutant Discharge Elimination System (NDPDES)
Establishes discharge and treatment standards for municipal and industrial waste discharges.
- Stormwater Permit Program
Requires the implementation of best management practices to reduce sediment/contaminant runoff from construction sites and paved surfaces.

- **Confined Animal Feedlot Operations**
Identifies the design, operation and nutrient management requirements for large, medium and small animal feeding operations. Large and medium facilities must receive permits to operate from the NDDEQ.

Watershed Management Program

The NDDEQ implements monitoring and assessment programs to determine the quality and beneficial use impairments of surface waters. Water quality and aquatic life samples are analyzed to ascertain the extent of manmade impacts on surface water. Impacts are addressed in TMDL (Total Maximum Daily Load) plans which identify the impairment; pinpoint the problem; and initiate land use, industrial or agricultural changes that will improve water quality over time.

To assist in selected activities which reduce water quality impacts, our Nonpoint Source Pollution Program can provide cost-share dollars (60 percent federal/40 percent local) to modify operation or design practices. Water quality reports identify areas of concern and trends. One recent report is the draft Nutrient Reduction Plan identifying priority watersheds where efforts to reduce nutrient inputs may result in decreasing algal blooms and their impacts on beneficial use of surface water.

Groundwater Protection Program

To protect subsurface water, the NDDEQ implements the Underground Injection Control (UIC) Program, Source Water Protection Program, as well as the Groundwater Assessment and Remediation programs.

UIC permits regulating the subsurface disposal of industrial waste, completion of ambient groundwater quality assessments in the oilfield, agricultural sampling programs, and active contaminant remedial action oversight help the NDDEQ in its efforts to maintain or improve water quality.

Special Projects Coordinator

The NDDEQ Special Project Coordinator maintains water quality standards, reviews projects for water quality certifications, responds to dredge and fill requests, and works in a team environment to address special large projects such as the Red River Water Supply or Fargo Diversion.

Spills Investigation Program

The NDDEQ coordinates a multi-division effort to respond to, assess and oversee cleanup of accidents and spills. The 24/7 spill team responds to

releases into the environment that have the potential to impact soils, surface and groundwater quality. Although spills can occur from municipal, industrial or agricultural activities across the state, most recent spill response efforts have taken place in oil development counties.

Division of Water Quality - Oilfield Impacts

As stated earlier, a vast majority of spill response activity has occurred in oil development-impacted areas. Although the number of spills has declined in recent years, which can be attributed to better facility design, containment structures and changes in reporting requirements, spill reports remain at more than twice the pre-Bakken development years. Figure 21 indicates annual spill reports since 2005 (page 20 of report).

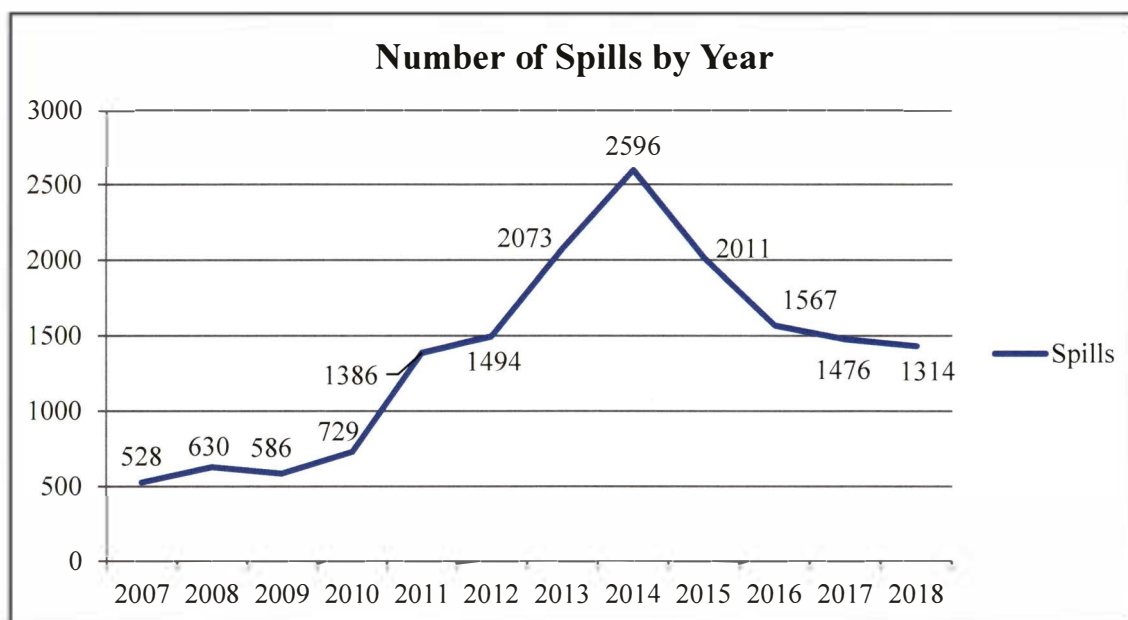


Figure 21. Number of Spills by Year

(In 2017, the reporting threshold was raised from 1 to 10 barrels for oil and brine releases that remain on oil production sites built after 2000.)

Legal Compliance/Enforcement

The NDDEQ strives to reach high compliance rates in all programs and activities. This is pursued through public outreach, educational training opportunities and compliance assistance at all levels within the agency. However, there are instances when the agency is forced to utilize a handful of enforcement actions which can include pursuing court action, penalty collection or development of consent

agreements. Figure 27 illustrates the dollar amount of penalties collected as part of a completed enforcement action (page 26 of report).

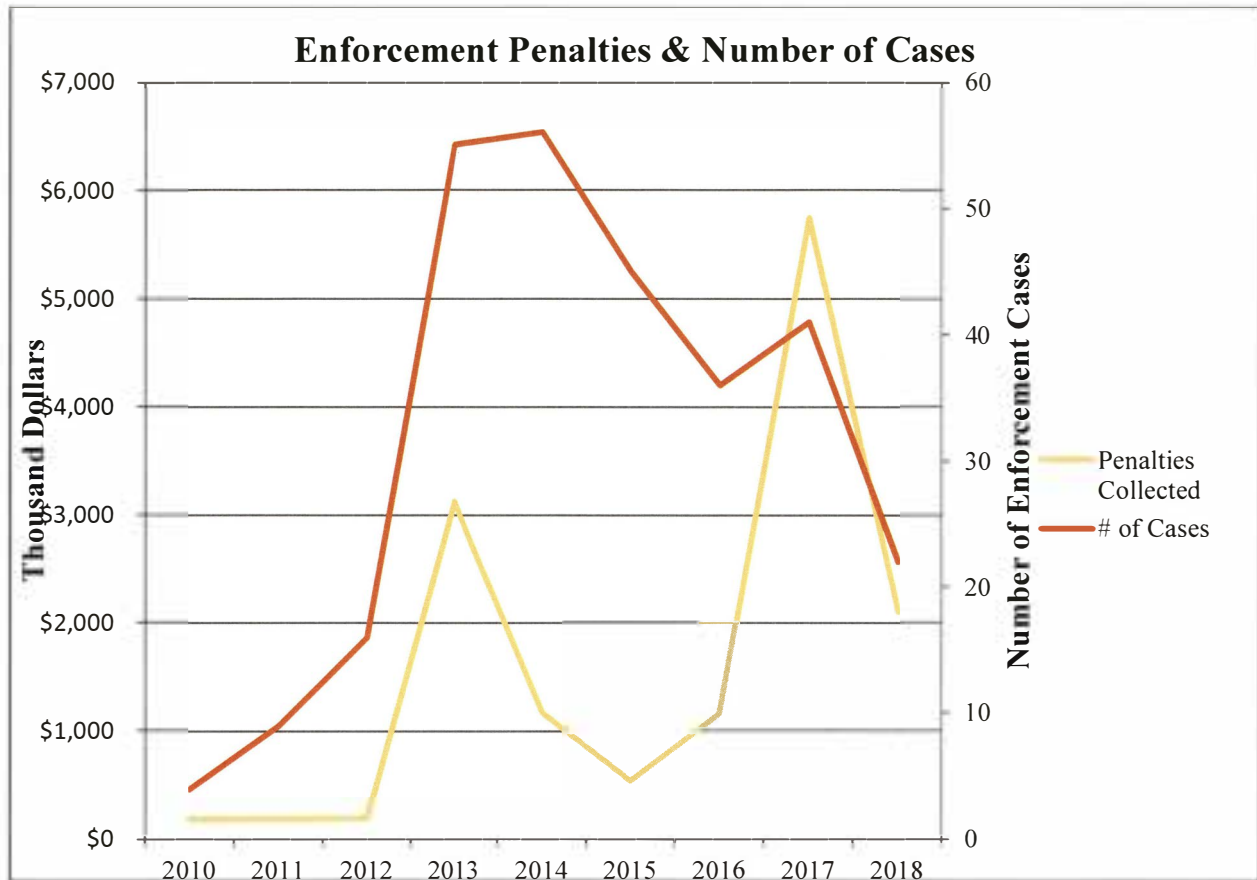


Figure 27. Enforcement Penalties and Number of Cases

It is important to note that the legal counsel assigned to the NDDEQ has also been active in defending challenges to NDDEQ permit decisions in state court, cooperating with federal agencies in pursuing alleged environmental violations in North Dakota, state rule development, and working with outside legal counsel as we challenge federal regulations which have the potential to impact state decision authority.

This concludes the first part of our testimony. I will follow up later with additional insight on the proposed optional packages. I will now introduce Brenda Weisz, Chief Financial Officer, to continue the NDDEQ testimony on appropriations.



North Dakota Department of Health Environmental Health Section

Gold Seal Center, 918 East Divide Avenue, Bismarck, ND 58501-1947

Fax Number (701) 328-5200

Website: www.ndhealth.gov/ehs



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Information Directory

Environmental Health Section Chief's Office (701) 328-5150

Chief: L. David Glatt

Performance Partnership Agreement & Grants Coordination - Teri Lunde

Information Technology Coordination - Gold Seal Center Campus - Allen Johnson

Data Management - Gary Haberstroh

Public Information, Staff Training & Quality Assurance - Melissa Miller

Geographic Information System Coordination - Ann Fritz

Legal - Margaret Olson (701) 328-5151

Division of Air Quality (701) 328-5188

Director: Terry O'Clair

Air Quality Permitting & Compliance - Jim Semerad

- > Air Quality Permits
- > Air Quality Inspections
- > Emission/Stack Testing
- > Emission Inventory
- > Open Burning (other than landfills)
- > Visible Emission/Odor Certification
- > Oil and Gas Wells
- > Air Quality Questions and Complaints
- > Dispersion Modeling - Permitting

Data Collection & Analysis - Ryan Mills

- > Ambient Air Quality Data
- > Ambient Network Operations
- > Dispersion Modeling - Planning
- > State Implementation Planning

Radiation & Indoor Air Quality - Dale Patrick

- > Radioactive Materials
- > Radon
- > X-Ray Machines
- > Asbestos
- > Indoor Air Quality
- > Mammography Quality Assurance
- > Lead Paint

Laboratory Services - Division of Chemistry (701) 328-6140

2635 East Main, P.O. Box 5520, Bismarck, ND 58506-5520, Fax: (701) 328-6280

Director: Jim Quarnstrom

North Dakota Environmental Laboratory Certification Program (NDELCP) - Cindy Auen

ND Environmental Laboratory Certification

Laboratory Quality Assurance/Quality Control - Tom Nemeth

Analysis of Environmental Samples

Information Technology Coordination - Lab Campus - Kevin Kosse, John Gabriel

Division of Municipal Facilities (701) 328-5211

(701) 328-6628 (Environmental Training Center)

Director: David Bruschwein

Clean Water State Revolving Loan Fund Program - Dave Bergsagel

- > Clean Water Revolving Loan Fund
- > Plan Review (wastewater systems)

Drinking Water State Revolving Loan Fund Program - Shannon Fisher

- > Drinking Water Revolving Loan Fund
- > Plan Review (water systems)

Drinking Water Program - Greg Wavra

- > Safe Drinking Water Act
- > Community Fluoridation Program
- > Training and Certification of Water & Wastewater Facility Operators
- > Inspections of Water & Wastewater Facilities
- > North Dakota Water & Pollution Control Conference
- > Publication of the *Official Bulletin*

Division of Waste Management (701) 328-5166

Director: Chuck Hyatt

Solid Waste Program - Diana Trussell

Solid Waste Management:
Municipal, Industrial, Special & Inert Waste
> Permits, Inspections
> Operator Training & Certification
> Open Burning (at solid waste facilities)
> Transfer Stations
Coal Combustion & Offsite Oilfield Waste
Land Treatment
Scrap Tires & Tire Recycling
Waste Reduction, Recycling & Composting
Energy Recovery
Biomass (waste wood, etc.)
Nutrient Management (Ag Processing)
Emergency Waste & Debris Management
Abandoned & Dangerous Buildings
Abandoned Motor Vehicle Projects, Auto
Salvage & Scrap Metal
Pollution Prevention (P2)
Solid Waste Planning

**Hazardous Waste Program & Toxic
Substance Control Act – Derek Kannenberg**

Hazardous Waste
> Permits
> Inspections
> Corrective Action
Superfund
> CERCLIS Sites
> Emergency Response
Emergency Spill Response
> Site Assessment
> Site Remediation
Brownfields
Laboratory/Agricultural/Household Chemical
Wastes
Polychlorinated Biphenyls (PCBs)
Used Oil
Infectious Waste
Waste Transporter Permits

Underground Storage Tank Program - Carl Ness

Underground Storage Tanks (USTs)
> Petroleum
> Hazardous Substances
Above-ground Storage Tanks (ASTs)
> Spills, Assessments
> Certification of Biofuels Blender Pump Installation
Leaking Underground Storage Tank (L.U.S.T.)
Trust Fund
> Assessment, Remediation
Antifreeze Registration
Petroleum Products Testing
Spill Response

Division of Water Quality (701) 328-5210

Director: Karl Rockeman

Watershed Management - Michael Ell

> Water Quality Standards
> Nonpoint Source Pollution Management
> Rivers and Stream Monitoring and Assessment
> Clean Lakes Assessments
> Fish Consumption Advisory
> Watershed Management
> Water Quality Modeling

Water Quality Special Projects - Peter Wax

> 404 Dredge & Fill
> 401 Water Quality Certification
> Environmental Impact Statements
(EIS) Review
> Water Quality Standards

Spill Investigation Program - Bill Sues

> Spill Response

Wastewater Facility/Permits - Marty Haroldson

> North Dakota Pollutant Discharge Elimination
System (NDPDES) Permits
> Wastewater Releases
> Stormwater Regulations
> Feedlot Inspections/Approval/Runoff
> Septic Pumps
> Small Business Assistance
> Pretreatment

**Groundwater Protection Program - Carl
Anderson**

> Underground Injection Control (UIC) Program
> Source Water Protection
> Groundwater Remediation and Assessment

OTHER Environmental Information**Environmental Health Section**

Fargo Office, 1120 28th Ave. N., Suite B, Fargo, ND 58102, (701) 499-5207, Fax (701) 235-7394

Towner Office, 314 Main St. S. #2, Towner, ND 58788, (701) 537-2043, Fax (701) 537-2044

Environmental Hot Line 1-800-755-1625

Environmental Training Center 2639 E. Main Ave., Bismarck, ND 58501, (701) 328-6628, Fax (701) 328-6206

Approvals of Anhydrous Ammonia Facilities - State Ag Dept. (701) 328-2231

Emergency Response Spills - State Radio 1-800-472-2121 (in-state) or (701) 328-9921 (out-of-state)

Environmental Microbiology - Christie Massen (701) 328-6272

Oil Field Related Spills - Oil & Gas Division (701) 328-8020

Petroleum Tank Release Compensation Fund (PTRCF) - Jeff Bitz - ND Insurance Dept. (701) 328-9600

SARA Title III - Department of Emergency Services Fraire Barracks, P.O. Box 5511, Bismarck, ND 58506-5511, (701) 328-8100

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Oilfield Impacts and the North Dakota Department of Environmental Quality

December 2018

North Dakota Department of
Environmental Quality
918 East Divide Avenue
Bismarck, North Dakota

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Oilfield Impacts and the North Dakota Department of Environmental Quality

I. Background

The North Dakota Department of Environmental Quality (NDDEQ) is responsible for safeguarding North Dakota's air, land and water resources. The NDDEQ, which has 152 employees, works closely with local, state and federal entities to address public and environmental health concerns and implement protection policies and programs. The NDDEQ consists of the Office of the Director and five divisions: Air Quality, Chemistry, Municipal Facilities, Waste Management and Water Quality.

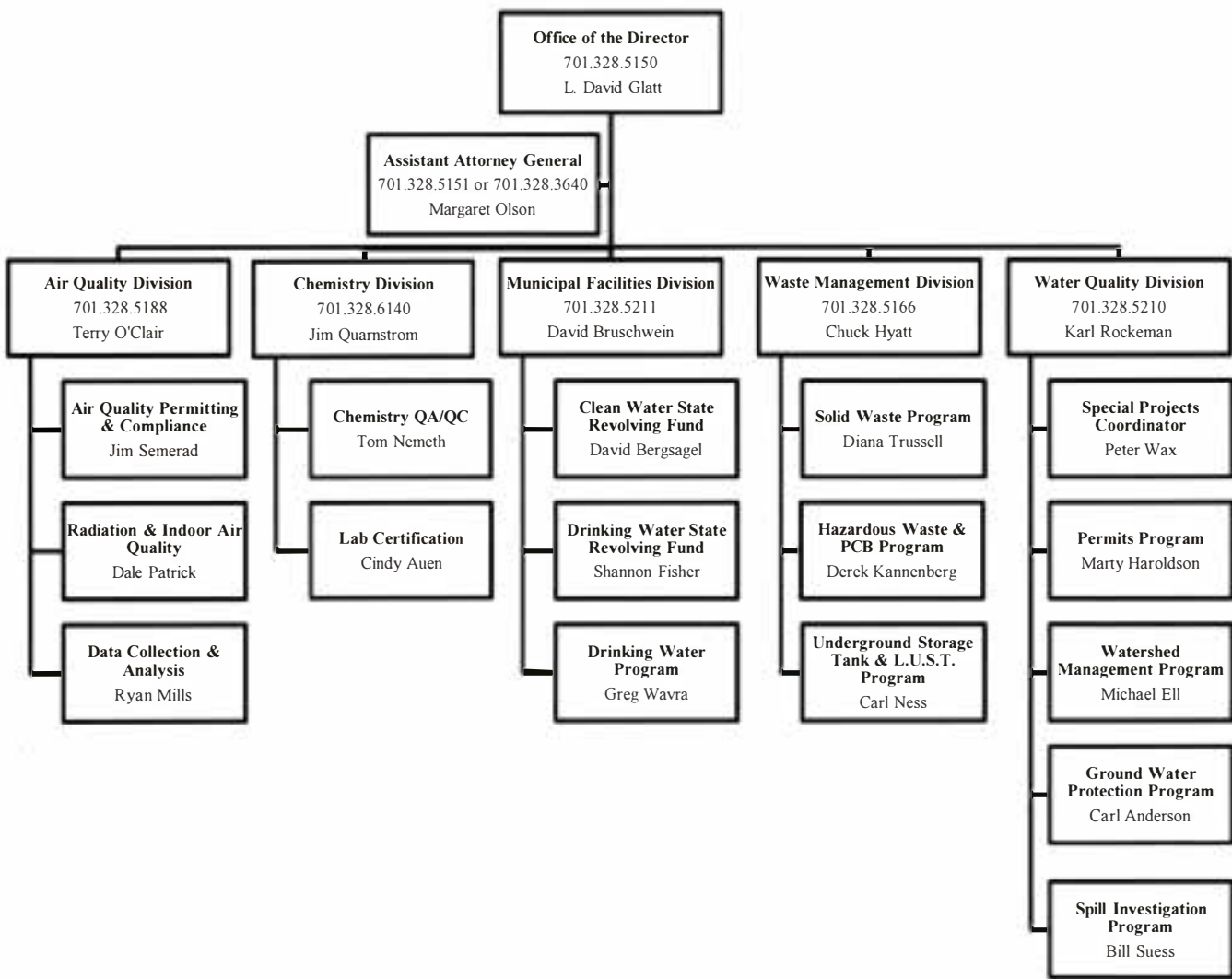


Figure 1. North Dakota Department of Environmental Quality Organizational Chart

A. Division of Air Quality

The Division of Air Quality consists of two major programs with 35 full-time positions and one half-time position. There are 23.5 environmental scientist positions, one environmental sciences administrator, and five environmental engineers which all require the minimum of a four-year degree. In addition, there are three electronic technicians and one data processing coordinator who have two-year technical degrees, and two administrative support staff.

Air Pollution Control Program

This program promotes clean air activities, conducts compliance activities and initiates enforcement actions to correct air pollution problems. Program staff responsibilities include implementing the Clean Air Act (CAA), evaluating permit applications, conducting computer modeling of potential impacts to air quality, issuing permits that restrict emission levels to ensure standards are met, operating an ambient air quality monitoring network, and responding to complaints and air quality concerns throughout the state.

Radiation Control and Indoor Air Quality Program

This program performs two major functions: (1) regulating the development and use of ionizing and non-ionizing radiation sources to protect North Dakotans and the environment, and (2) evaluating and mitigating asbestos, radon, lead and other indoor air quality concerns, as well as implementing a public awareness and education program concerning these health risks.

Field activities supporting the above programs include inspecting facilities to ensure compliance, enforcing laws, investigating air pollution complaints and operating a statewide ambient air quality monitoring network.

B. Division of Chemistry

The Division of Chemistry has 16 full-time employees. Thirteen are professional chemist positions requiring the minimum of a four-year degree. One position is a laboratory technician, one is a medical laboratory technician (pending reclassification to a laboratory technician), and one is an administrative assistant position.

The chemistry laboratory provides analytical data to environmental protection, public health, agricultural and petroleum regulatory programs in the state. The division maintains a laboratory certification program for laboratories submitting compliance samples to the NDDEQ. The department's environmental protection programs use laboratory data to monitor and/or regulate solid and hazardous waste; municipal wastewater; agricultural runoff; surface, ground and drinking water quality; petroleum products; and other media of environmental or public health concern.

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C. Division of Municipal Facilities

The Division of Municipal Facilities administers three programs. There are 31 full-time employees. Fifteen are environmental scientists, and 13 are environmental engineers requiring the minimum of a four-year degree. There is one grants/contract officer position, which also requires a four-year degree, and two administrative support personnel.

Public Water Supply Supervision (PWSS)

This program works with the public water systems (PWS) in North Dakota (currently 531) to ensure drinking water meets all standards established by the Safe Drinking Water Act (SDWA). This is accomplished by monitoring drinking water quality and providing technical assistance. Currently, 99.9 percent of community water systems are meeting all applicable health-based standards under the SDWA – one of the highest compliance rates in the region and country. The U.S. Environmental Protection Agency (EPA) goal for 2017 was 85 percent nationwide.

Training and certification are provided for operators of water treatment and distribution facilities and wastewater collection and treatment plants. There are about 1,099 certified operators in the state. A total of 89 percent of public water systems are meeting operator certification requirements for water treatment (no EPA goal). There are 81 percent of community water systems meeting operator certification requirements for water distribution (no EPA goal).

Staff administer the fluoridation program and provide technical assistance to private systems. A total of 65 communities add fluoride to their drinking water. Of the population served by these communities, 97 percent (about 676,187) receive optimally fluoridated drinking water (no EPA goal).

Drinking Water State Revolving Loan Fund (DWSRF)

This program provides low-interest loans to help public water systems finance the infrastructure needed to comply with the SDWA. Since program inception (1997) through December 31, 2017, loans totaling about \$552 million have been approved. Staff members also review drinking water projects to ensure compliance with state design criteria before construction and provide technical assistance.

Clean Water State Revolving Loan Fund (CWSRF)

This program provides low-interest loans to fund conventional wastewater and nonpoint source pollution control needs. Since program inception (1990) through December 31, 2017, loans totaling about \$650 million have been approved. Staff members also review wastewater projects to ensure compliance with state design criteria before construction and provide technical assistance.

Field activities supporting the above programs include: (1) inspecting about 552 public water and wastewater systems to ensure compliance with all public health standards, (2) inspecting State Revolving Loan Fund construction projects to ensure they meet state and federal requirements, and (3) investigating complaints.

D. Division of Waste Management

The Division of Waste Management works to safeguard public health through four programs. There are 25 full-time positions and one half-time position, consisting of 16 environmental scientists, five

environmental engineers, one environmental sciences administrator, the division director (all of which require the minimum of a four-year degree), and three administrative support staff.

Hazardous Waste Program

This program regulates 760 facilities that generate, store, treat, dispose or transport hazardous waste. The program also coordinates assessments and cleanups at Brownfield sites (properties underdeveloped due to actual/perceived contamination) and performs inspections and compliance assistance for businesses and utilities that have equipment containing polychlorinated biphenyls (PCBs).

Solid Waste Program

This program regulates the collection, transportation, storage and disposal of nonhazardous solid waste. Resource recovery, waste reduction and recycling are promoted. The program helps individuals, businesses and communities provide efficient, environmentally acceptable waste management systems. The program regulates 379 solid waste facilities including infectious waste/medical waste facilities, industrial waste landfills, land treatment facilities, municipal solid waste landfills, special waste facilities, transfer stations and inert waste landfills/compost facilities. In addition, 838 permitted waste transport companies are regulated.

Underground Storage Tank Program

This program regulates petroleum and hazardous substance storage tanks, establishes technical standards for the installation and operation of underground tanks, maintains a tank notification program, establishes financial responsibility requirements for tank owners and provides for state inspection and enforcement. The program works with retailers and manufacturers to ensure specifications and standards for petroleum and antifreeze are met. There are 830 facilities currently regulated under this program. In addition, the UST Program supervises the cleanup of any leaking underground storage tank facility and other petroleum product releases.

Abandoned Motor Vehicle Program

The Abandoned Motor Vehicle Program focuses on assisting political subdivisions in the cleanup of abandoned motor vehicles and scrap metal.

Field activities supporting the above programs includes compliance assistance, sampling, training, site inspections and complaint investigations.

E. Division of Water Quality

The Division of Water Quality protects water quality through five programs. There are 37 full-time positions, consisting of 28 environmental scientists, four environmental sciences administrators, four environmental engineers (all of which require the minimum of a four-year degree) and one administrative assistant.

North Dakota Pollutant Discharge Elimination System (NDPDES) Permit Program

This program issues the federally required National Pollutant Discharge Elimination System (NPDES) permits for discharge of pollutants to surface waters. This may include pollutants carried by stormwater, in addition to direct discharge of wastewater. Many industries and municipalities require these permits. This program also issues permits to septic tank pumpers regulating the collection and proper disposal of

domestic wastewater. The permits may be individual permits issued to one facility or general permits where multiple facilities are covered under one permit.

Watershed Management Program

This program monitors the health of North Dakota watersheds through sampling and analysis of water quality and aquatic life in lakes, rivers, streams and reservoirs. For those water bodies that are not usable for their designated use, plans are developed to achieve improvements in water quality. These plans are implemented in conjunction with the local conservation districts and landowners. This program also provides cost share assistance, information and education to help meet water quality goals.

Ground Water Protection Program

This program includes the (1) Wellhead and Source Water Protection Programs to define the susceptibility of public water systems to contaminant sources, (2) Underground Injection Control (UIC) Program which helps prevent contamination of drinking water by injection wells, and (3) Ambient Ground Water Monitoring Program which assesses the quality of ground water resources with regard to agricultural and oilfield-related chemical contamination. In addition, trained personnel provide immediate response to spills and continued investigation/enforcement if necessary to fully address environmental impacts. Program staff also fulfill open records requests typically received as part of property transactions or as Freedom of Information Act requests from the general public.

Spill Investigation Program

This program receives and reviews all the spill reports for the state and responds with the assistance of other NDDEQ divisions and other agencies. The response may include the collection of additional information, assignment to other agencies, field inspection and on-scene coordination. Staff with this program collect environmental samples of soil and water, and work with the responsible party to ensure spills are remediated and waters of the state, both ground and surface water, are protected. To provide a timely response to a critical incident, this program maintains two staff in the field five days a week and one staff person on call weekends and holidays. One staff person maintains phone coverage 24 hours a day, seven days a week in case of an incident. Staff members also work with various industries to prepare incident response actions and to educate them on proper remediation and spill assessment.

Field activities supporting the above programs include inspecting wastewater treatment facilities and septic tank pumpers, and compliance audits/sampling to ensure permit requirements are met; inspecting construction and industrial site stormwater controls; meetings with local/state entities to assess nonpoint source project goals; ambient monitoring of lakes and rivers; evaluating domestic water sources for potential contaminant sources; annual collection/analysis of samples from vulnerable aquifers; overseeing remediation of spills with potential to reach water sources; and responding to complaints.

F. Office of the Director

Division activities are coordinated by the Office of the Director, which has 7.25 full-time employees (FTEs) and an attorney assigned by the Office of Attorney General. Employees oversee quality assurance procedures; help coordinate public information efforts; and assist with staff training and data management activities, emergency response efforts, enforcement of environmental regulations and funding requests. The Office of the Director works with the department's divisions, various government agencies, industry and the public to set environmental protection policy and ensure the proper implementation of environmental protection programs.

II. Impacts of Oilfield Activity

A. Division of Air Quality

Increasing oil well counts and improved unconventional oil and gas extraction techniques have elevated the amount and complexity of work related to permitting, inspections, enforcements and citizen complaint mitigation efforts.

The sheer number of existing oil wells, paired with new wells, continue to impact the division's workload. The number of oil wells registered with the division has more than tripled since 2010. In addition to an increase in well count, there has been an increase in oil- and gas-related projects (i.e., crude oil storage tank facilities, oil terminals and refineries), along with an expansion of infrastructure to improve natural gas capture to meet the North Dakota Industrial Commission's (NDIC) gas capture rule. Each facility developed in conjunction with the NDIC's rule requires, at a minimum, an air quality regulatory review and often a permit to construct and permit to operate.

Most facilities that require permits under the federal CAA require compliance inspections by program staff on a regular basis. Figures 2 through 6 show trends illustrating the change in workload. Depending on the complexity of a project and the level of public interest, an individual project or facility such as a gas plant or refinery may require substantially more staff resources. The amount of effort involved in permitting these types of projects is not directly reflected in the figures themselves.

The increase in the number of regulated air pollution sources, as well as more complex regulations, has resulted in the continued need to recruit and retain significant staff expertise and resources. Adding to the division's workload are the number of department enforcement actions which correlate with the heightened activity and development in the state.

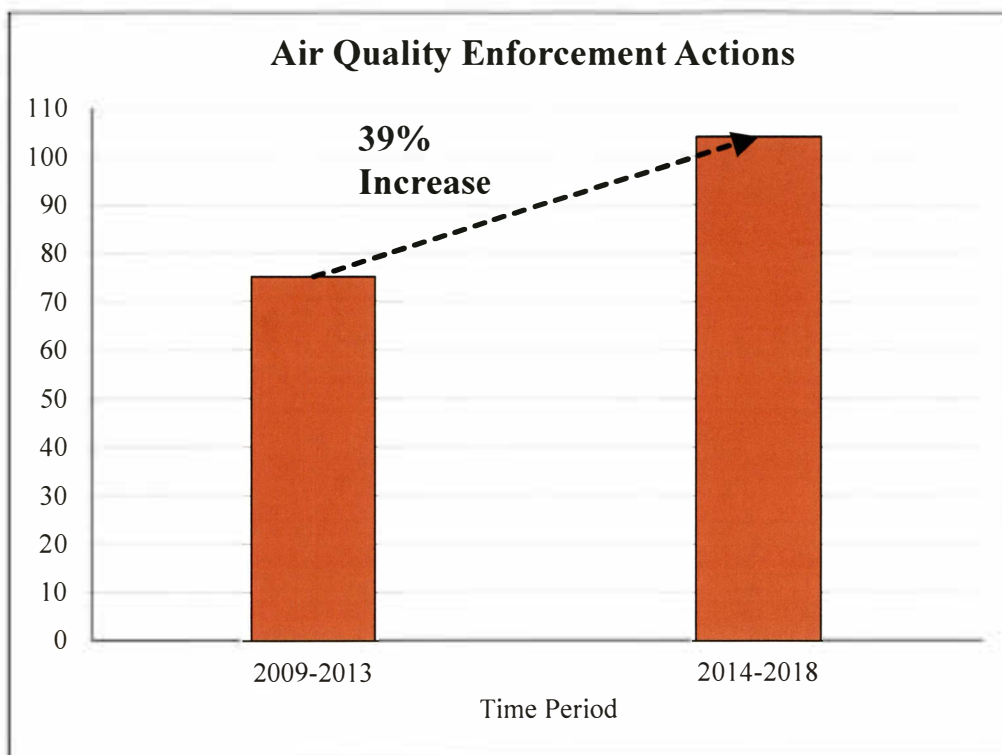


Figure 2. Air Quality Enforcement Actions

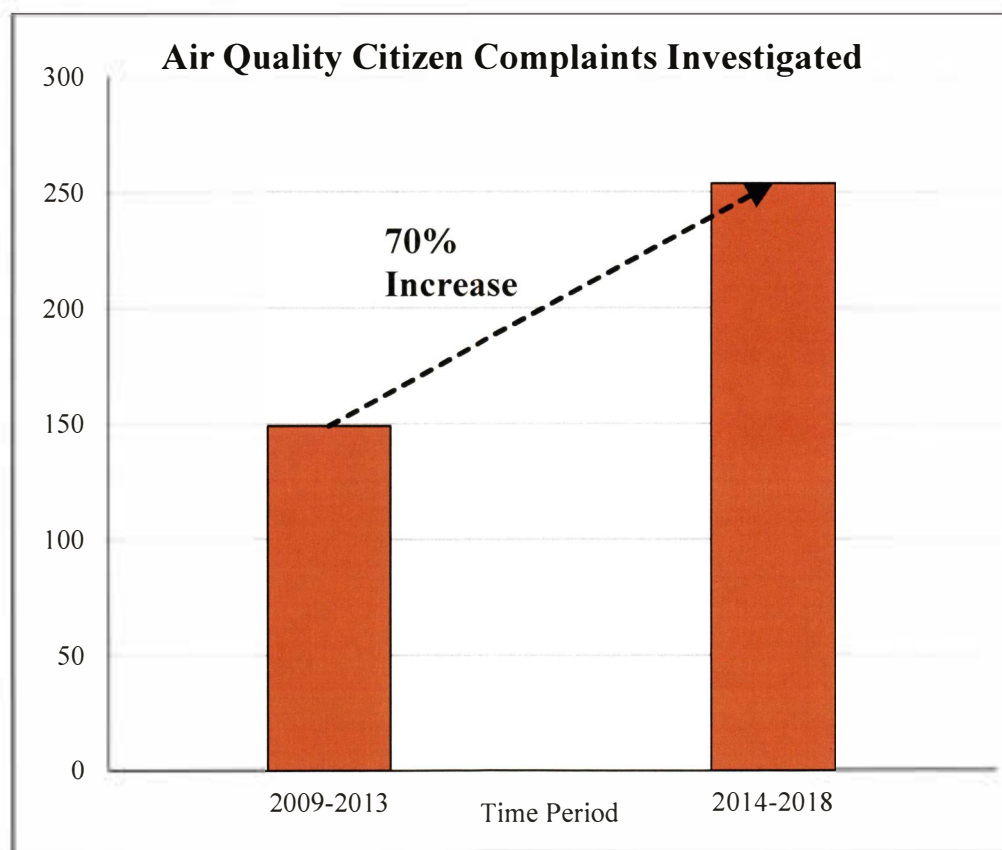


Figure 3. Air Quality Citizen Complaints Investigated

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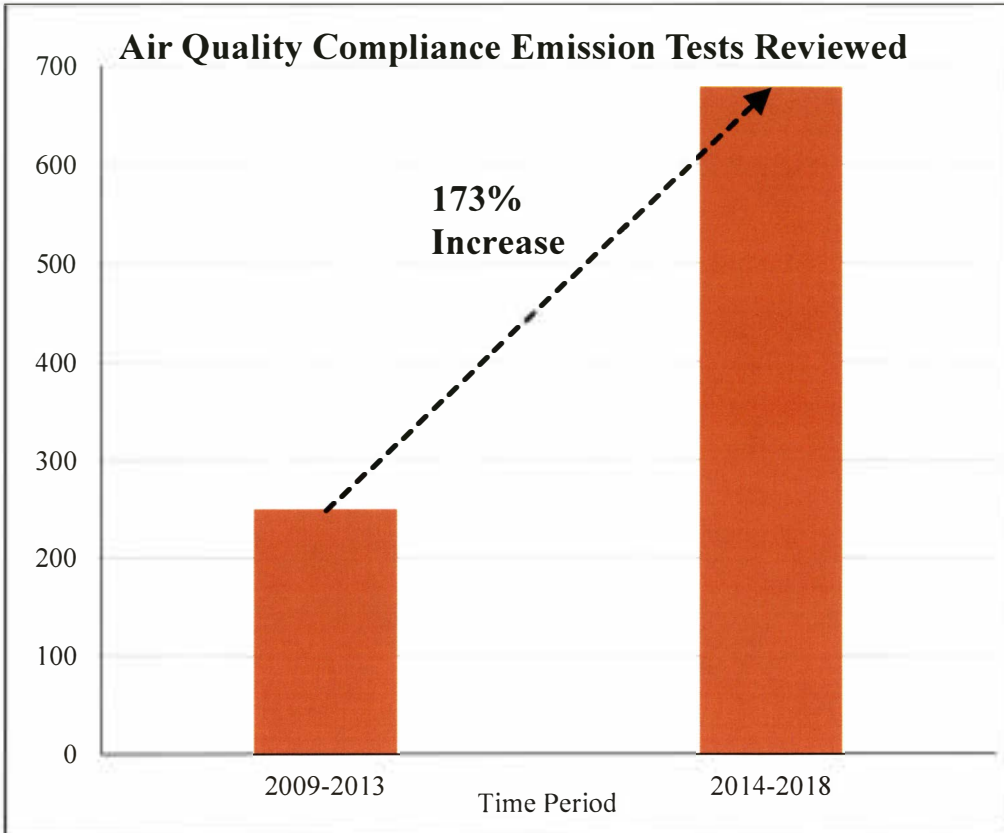


Figure 4. Air Quality Compliance Emission Tests Reviewed

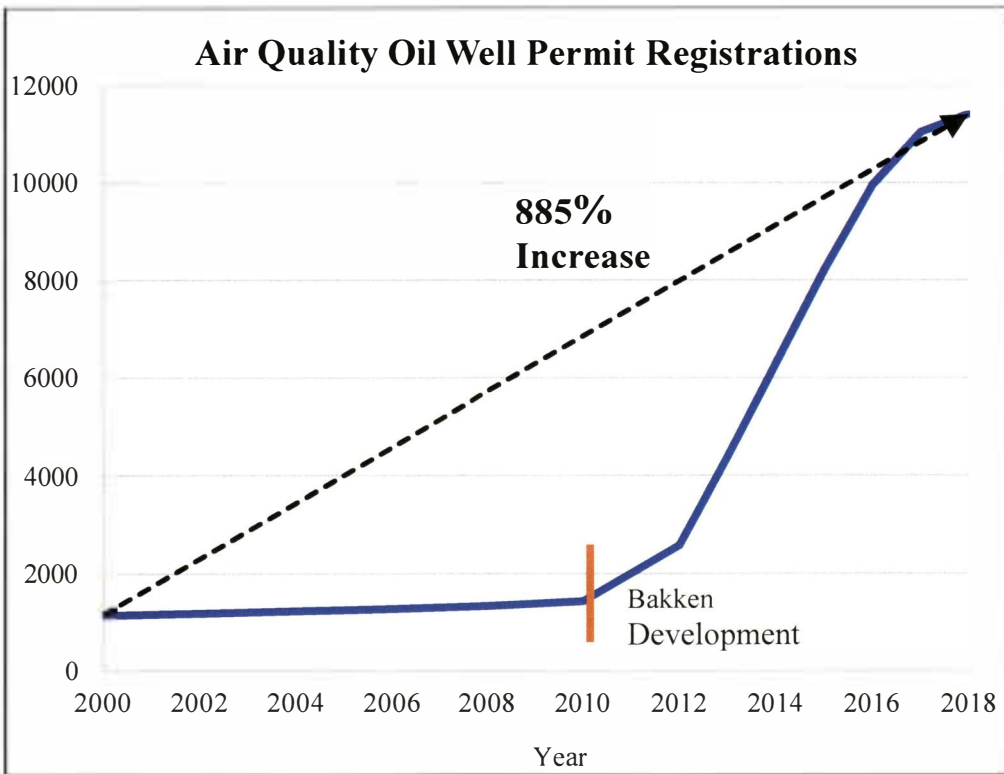


Figure 5. Air Quality Oil Well Permit Registrations

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Many companies in the oilfield use instrumentation technologies containing radioactive material, and there has been a large increase in the number of companies actively using such materials. Periodically, operators have been identified as improperly using radioactive materials, potentially placing members of the public and the environment at risk. In response, the NDDEQ has investigated an increasing number of allegations regarding improper handling of radioactive materials.

Activities related to the licensing of radioactive materials have significantly increased since 2016 (Figure 6). A few of these include inspections, license renewal notifications, issuing license amendments and holding public hearings.

The NDDEQ published TENORM (Technologically Enhanced, Naturally Occurring Radioactive Materials) rules, which became effective January 1, 2016. To increase knowledge about the rules, the NDDEQ is conducting more public and industry informational workshops. Additional workload also has resulted from the licensing of all TENORM radioactive waste transporters, the growing number of facilities that treat TENORM, and the increased frequency in inspections of these facilities.

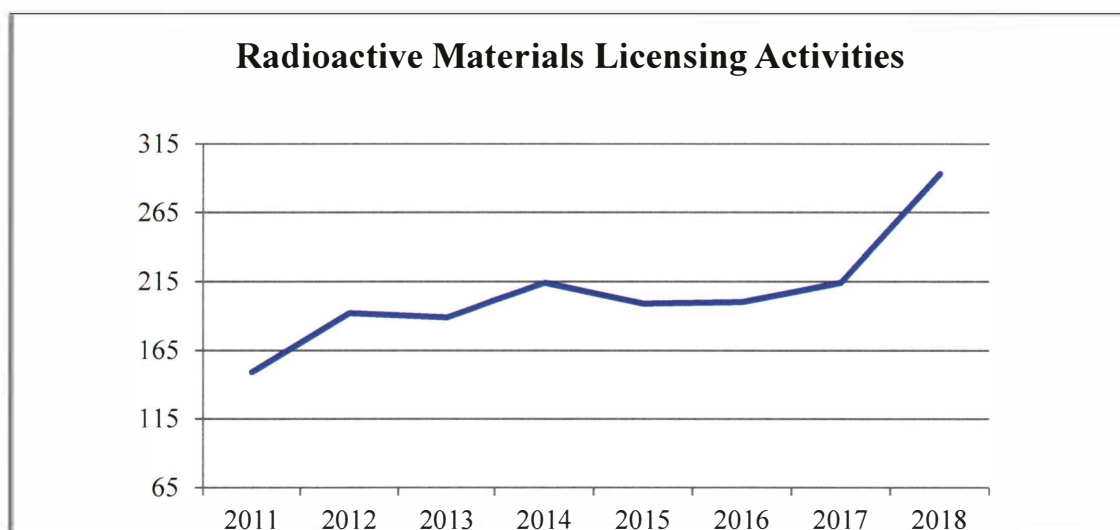


Figure 6. Radioactive Materials Licensing Activities

Additional direct and indirect impacts on the division include:

- Expansion of the Tesoro Mandan Refinery, plus permitting work for proposed diesel refineries and including the Meridian Davis Refinery and subsequent appeal.
- Increased compliance activities (inspections, testing/report reviews, etc.) relating to the new Tesoro Dickinson Refinery (formally Dakota Prairie Refinery).
- Increased permitting and compliance activities relating to gas plants, compressor stations and oil storage terminals, including increases in pre-construction modeling as gas plants and compressor stations become bigger to accommodate state flaring regulations.
- Extensive effort with the enforcement initiative to reduce and mitigate fugitive emissions from upstream oil and gas production activities.
- Conducted survey of Bakken shale play with EPA utilizing Geospatial Mapping of Air Pollution (GMAP) to gather real-time analytical data of air contaminants.

- Increased telephone and email inquiries pertaining to air pollution control requirements.
- Increased oil- and gas-related complaints and inquiries from public.
- Heightened public awareness of air quality permitting, including increased public participation during the review and issuance of construction permits.
- Operating of a new monitoring site to measure air quality.
- Increased permitting activity, along with increased particulate control inspections of more rock, sand and gravel plants (three times higher than in the past), due to greater demand for these materials in the oilfield.
- Road dust has become a significant source of air pollution leading to additional public inquiries and complaints.
- New EPA regulations directed at energy development.
- Expansion of the Tioga Gas Plant.

B. Division of Chemistry

The analyses of water, soil and other matrices to determine impacts of oilfield events remain steady. Since tracking of these investigations began in 2012, about 470 samples per year have been analyzed for the determination of oilfield parameters. A sample can have one parameter or more than 100.

Figure 7 represents the number of oilfield-related samples received since tracking began in 2012. It includes data tracking samples for three long-term projects that have spanned multiple years. These include the Blacktail Creek spill (first samples received in January 2015), the Smishek Lake spill (May 2015), and the Ash Coulee Creek spill (December 2016).

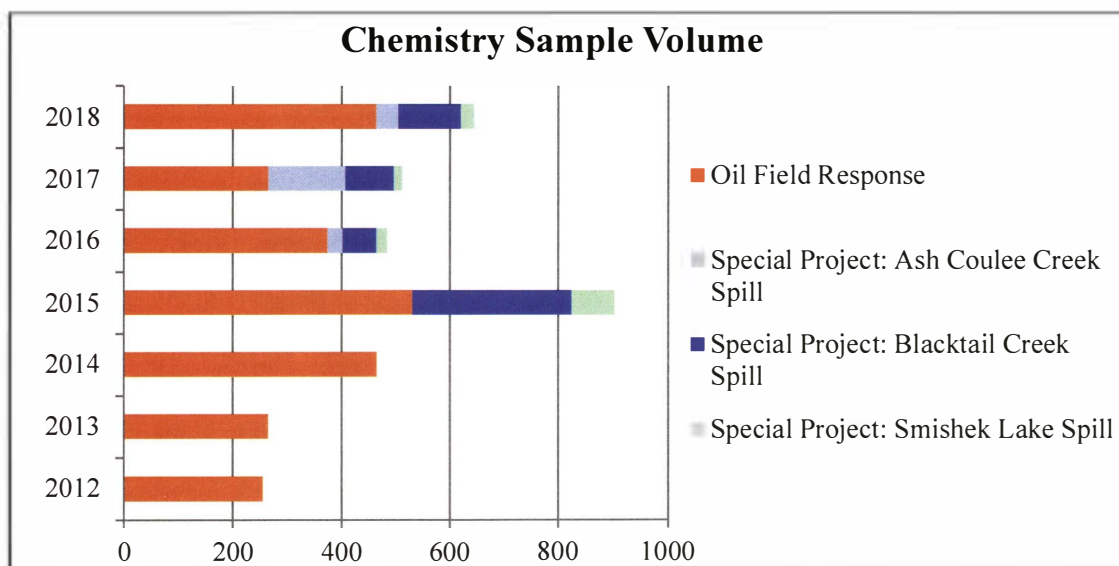


Figure 7. Chemistry Sample Volume

C. Division of Municipal Facilities

The number of new facilities and compliance challenges may have peaked in 2014 (Figures 8 and 9), but the division continues to find non-approved facilities every year. These are drinking water and wastewater facilities in oil-impacted areas that were never approved for operation. These facilities are challenging to work with, and a considerable amount of time is required to bring these systems into compliance. These are in addition to known facilities that did not meet all construction requirements.

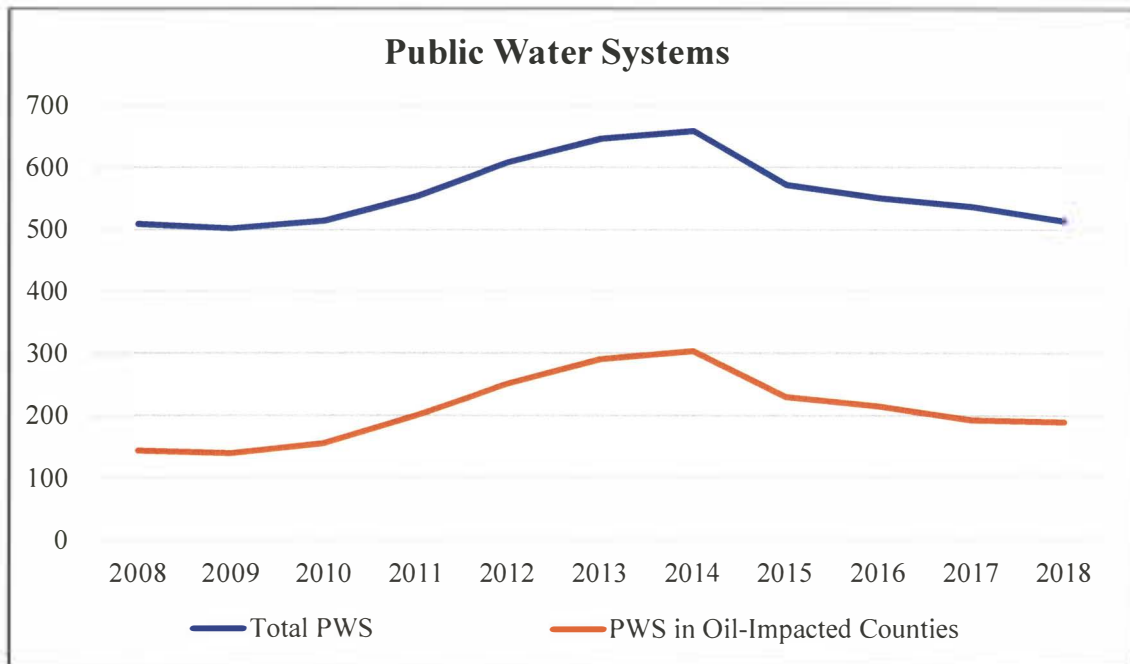


Figure 8. Public Water Systems

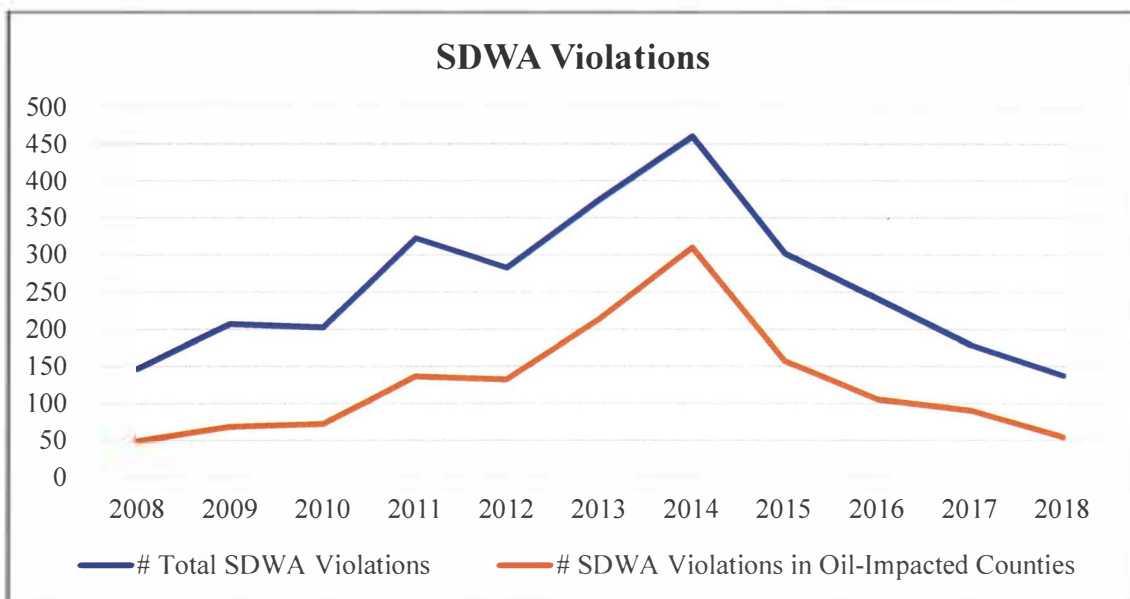


Figure 9. SDWA Violations

Under state law (North Dakota Century Code 33.1-19), all persons operating water and wastewater systems, with some exceptions, must be certified by the NDDEQ. Figure 10 generally shows decreased numbers of water distribution operators being certified since 2011. This is despite an increased number of operator certification exams being taken as shown in Figure 11. Two principal factors have been responsible for the decrease in certification: (1) operator turnover (certified operators leaving for higher paying jobs in the oilfield); and (2) new systems that do not have a certified operator. Through training and site inspections, the division continues to stress the importance of having a certified operator. In oil-impacted counties, the primary need has been for water distribution operators because most new systems obtain drinking water from other regulated sources (no treatment required) and either haul wastewater to another permitted system or provide on-site wastewater disposal. Compliance with operator certification requirements for water treatment and wastewater collection/treatment also may decrease if more systems choose to develop/treat their own drinking water sources or treat/discharge wastewater.

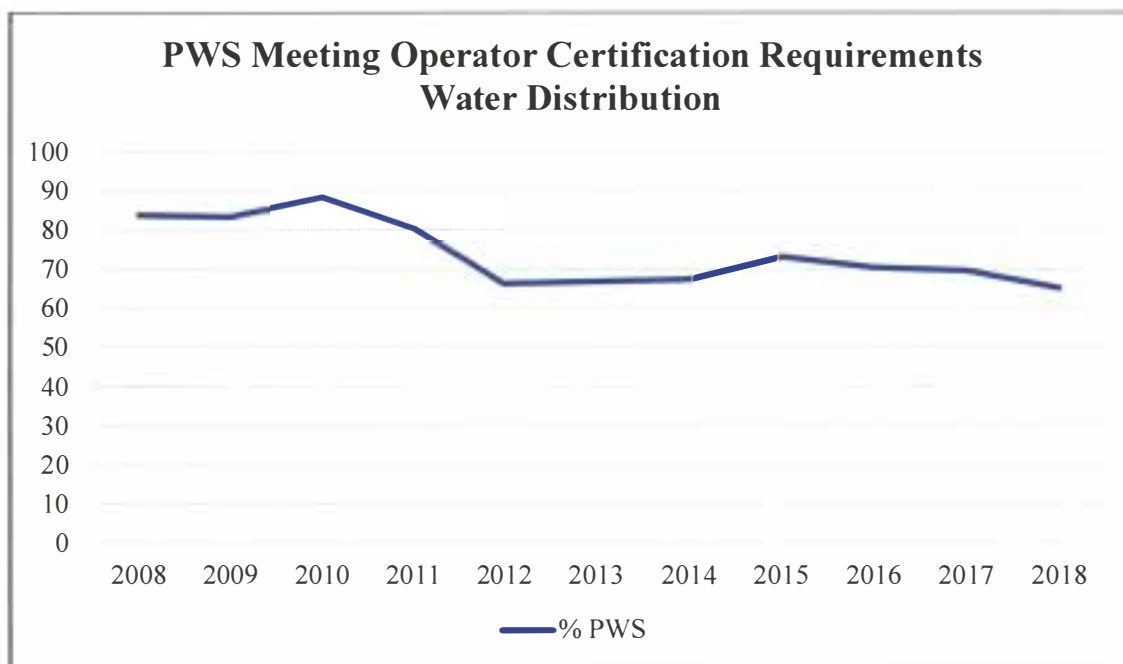


Figure 10. PWS Meeting Operator Certification Requirements - Water Distribution

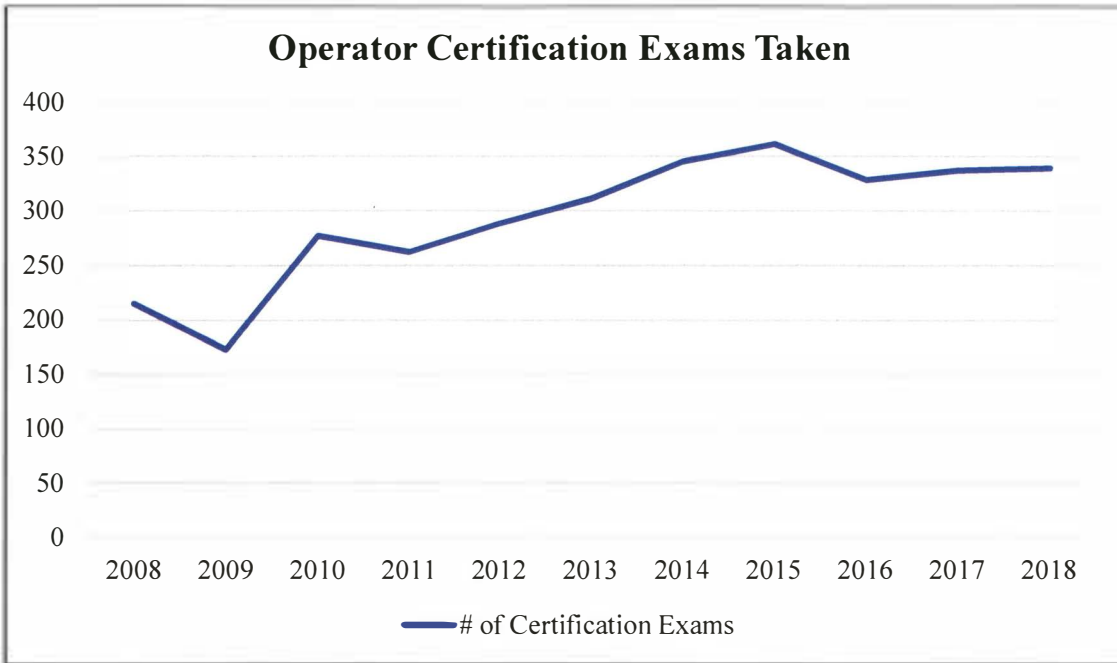


Figure 11. Operator Certification Exams Taken

Figure 12 shows plans and specifications submittals/approvals peaked in 2013, largely due to projects in the oilfield.

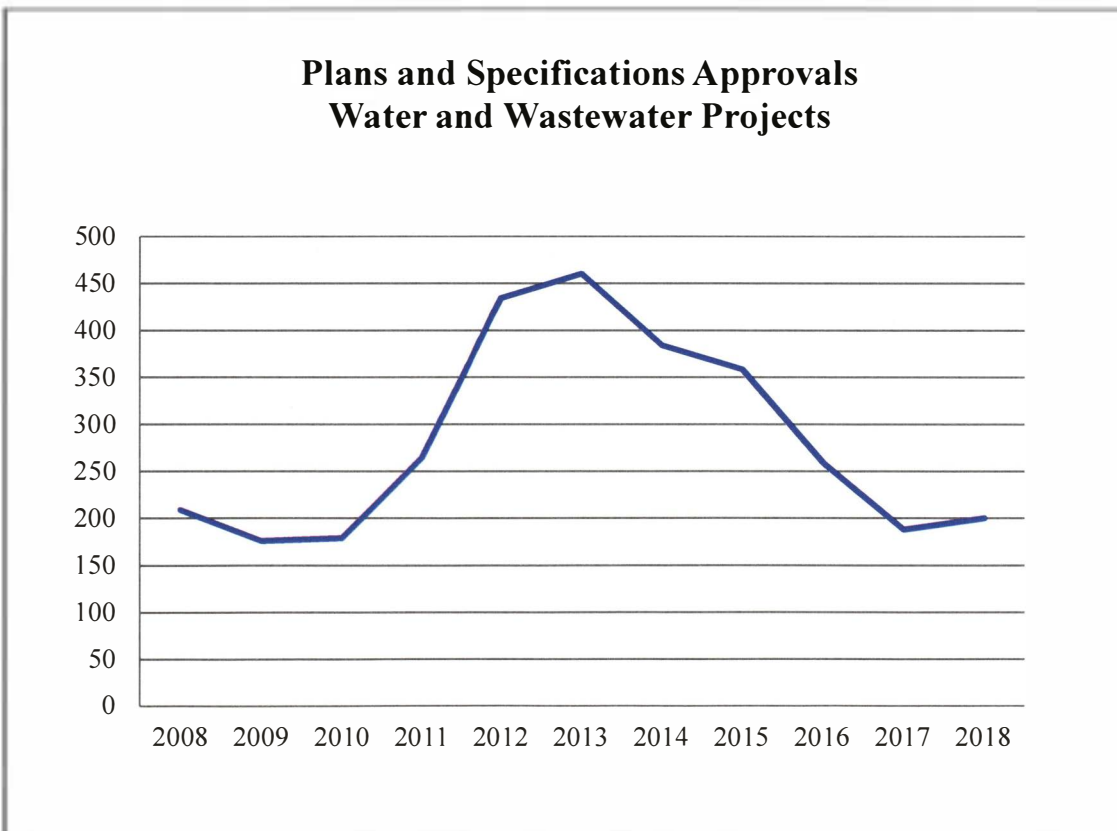


Figure 12. Plans and Specifications Approvals - Water and Wastewater Projects

Figure 13 shows the number of projects that were built without approval or facilities built that did not meet construction requirements. Many were submitted by out-of-state engineering firms unfamiliar with North Dakota requirements, resulting in extended review time. Others have mechanical wastewater treatment plants and/or large on-site disposal systems which required additional time for review and approval, because they had not historically been used by small facilities. Finally, a number of facilities involved as-built situations for which more time was required to resolve design and construction issues.

Considerable time also is spent evaluating and addressing noncompliant or failing wastewater systems, many of which were built and expanded without local or state approval and which have undergone numerous ownership or management changes.

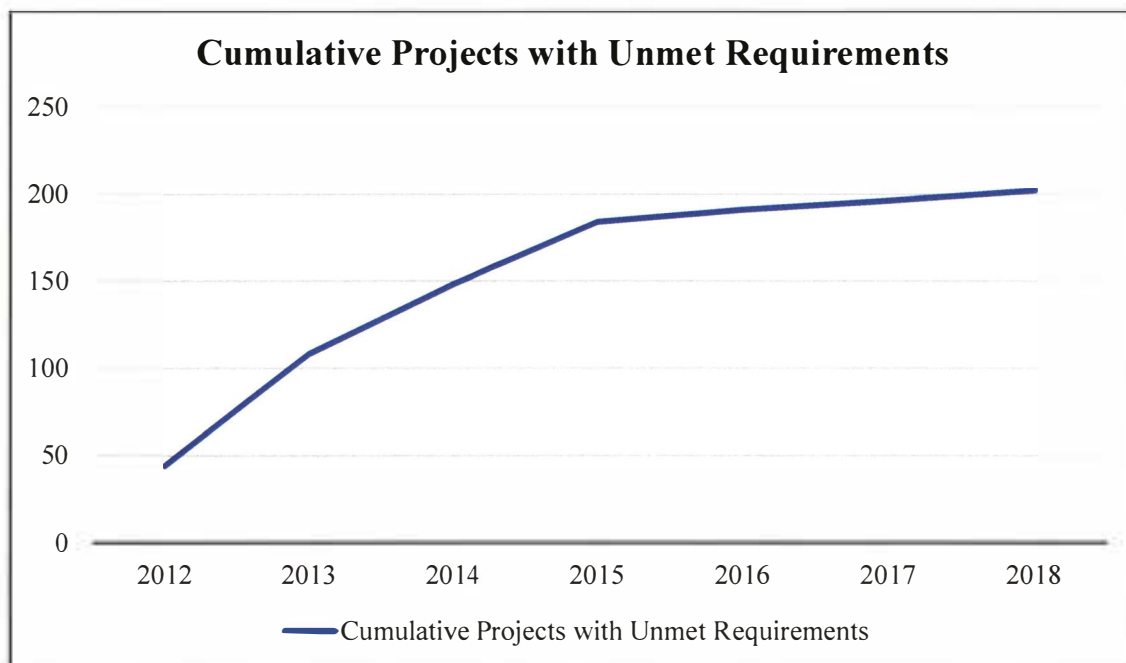


Figure 13. Cumulative Projects with Unmet Requirements

Figure 14 shows the number of projects started each year for the CWSRF and DWSRF programs since 2010. Since 2015, 25 to 30 percent of projects have been in oil-impacted counties. As of November 2018, 43 new loans had already been awarded, and an additional two loans were expected to be awarded yet in 2018. This will result in a high number of SRF projects to implement, increasing workload on top of keeping pace with more technical reviews for non-SRF and oilfield projects.

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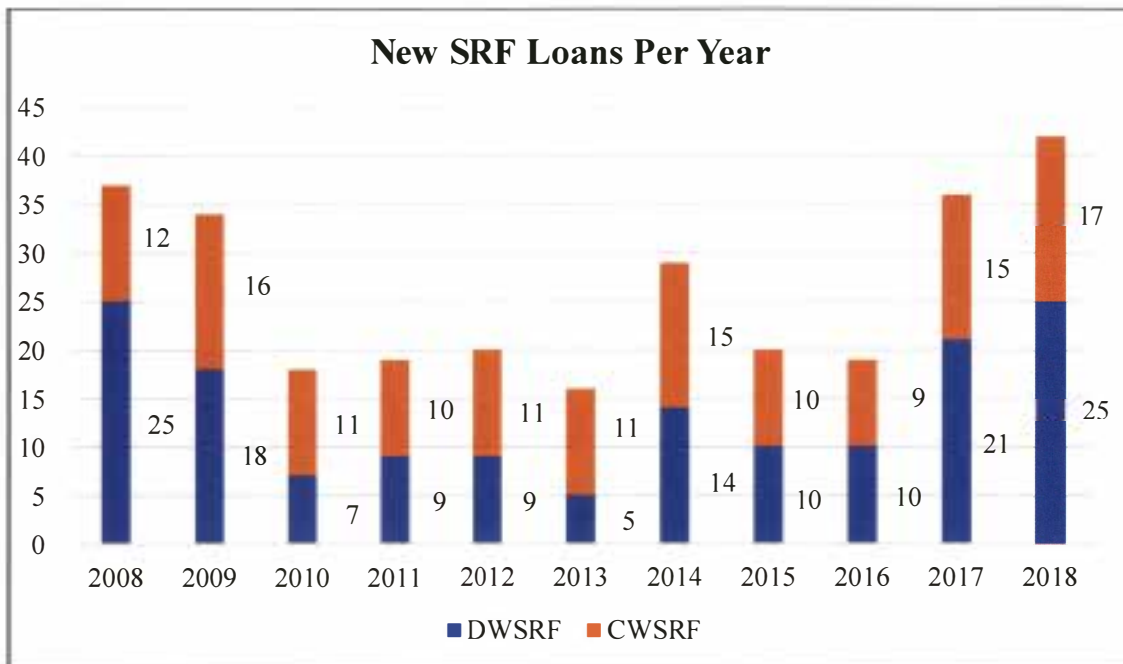


Figure 14. New SRF Loans Per Year

Additional workload impacts to those shown in the above tables include: educating systems on SDWA requirements, implementing/enforcing the requirements, and compliance/technical assistance in addressing SDWA violations; responding to complaints; answering calls and emails about proposals for the reactivation of housing facilities; addressing vendor/engineer inquiries; and attending presentations on alternative wastewater treatment systems and project proposals.

D. Division of Waste Management

Oilfield activity has significantly increased the workload, from facilities directly operated by oilfield-related businesses and from peripheral businesses supporting the increasing general population. There are more oilfield service companies and other support businesses, such as tank manufacturers, generating large quantities of hazardous waste. Even with the slowdown in oil well drilling activity, the service and support companies remain active. There has been no decrease in the number of large quantity generators of hazardous waste or the overall quantity of hazardous waste generated. New gas stations and truck stops are being built or expanded. Both municipal landfills and oilfield special waste landfills are dealing with new types and greatly increased volumes of waste. Figures 15 through 20 show the increase in hazardous waste large quantity generators (LQGs), municipal solid waste (MSW) and special waste landfills, tons of oilfield special waste, number of solid waste inspections, new or expanded underground storage tank (UST) facilities and new waste transporter permits. The division also has three staff members working part-time on the Division of Water Quality spill response team, which requires considerable field work and office follow-up. Figure 22 on page 21 of this report shows spill response numbers.

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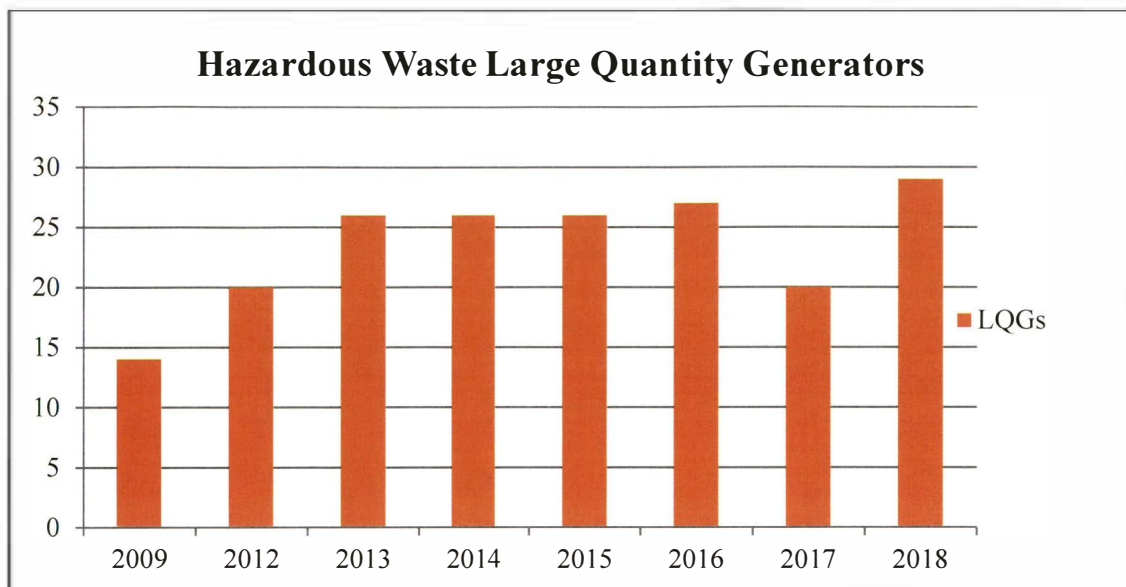


Figure 15. Hazardous Waste Large Quantity Generators

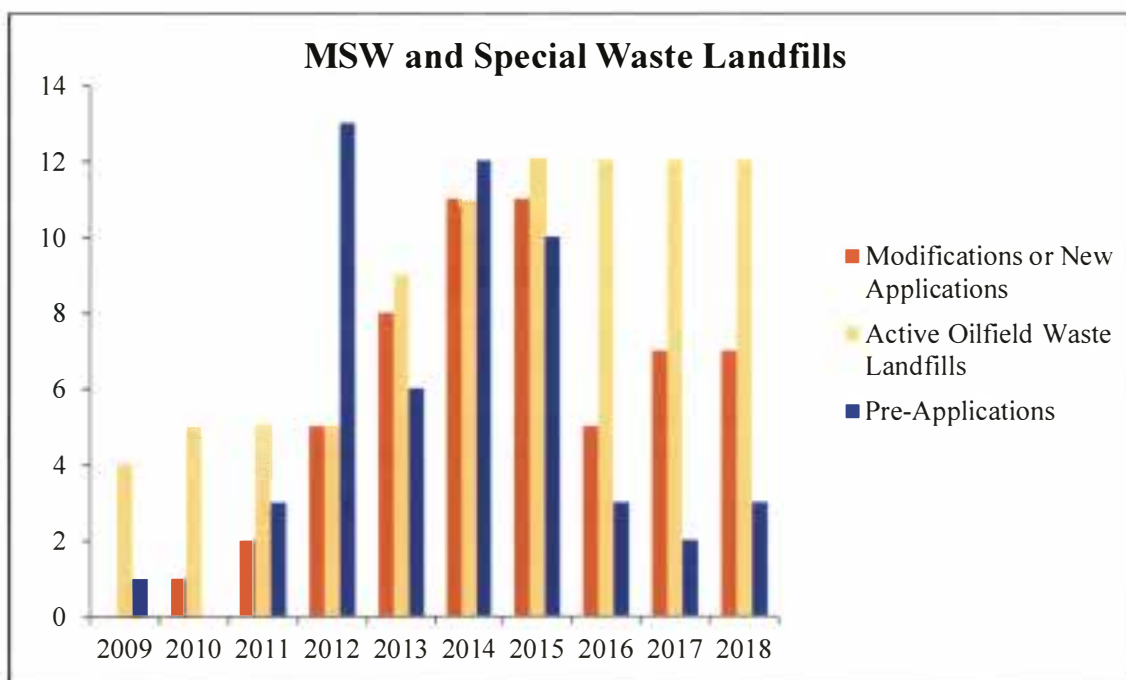


Figure 16. MSW and Special Waste Landfills



Figure 17. Tons of Oilfield Special Waste Generated

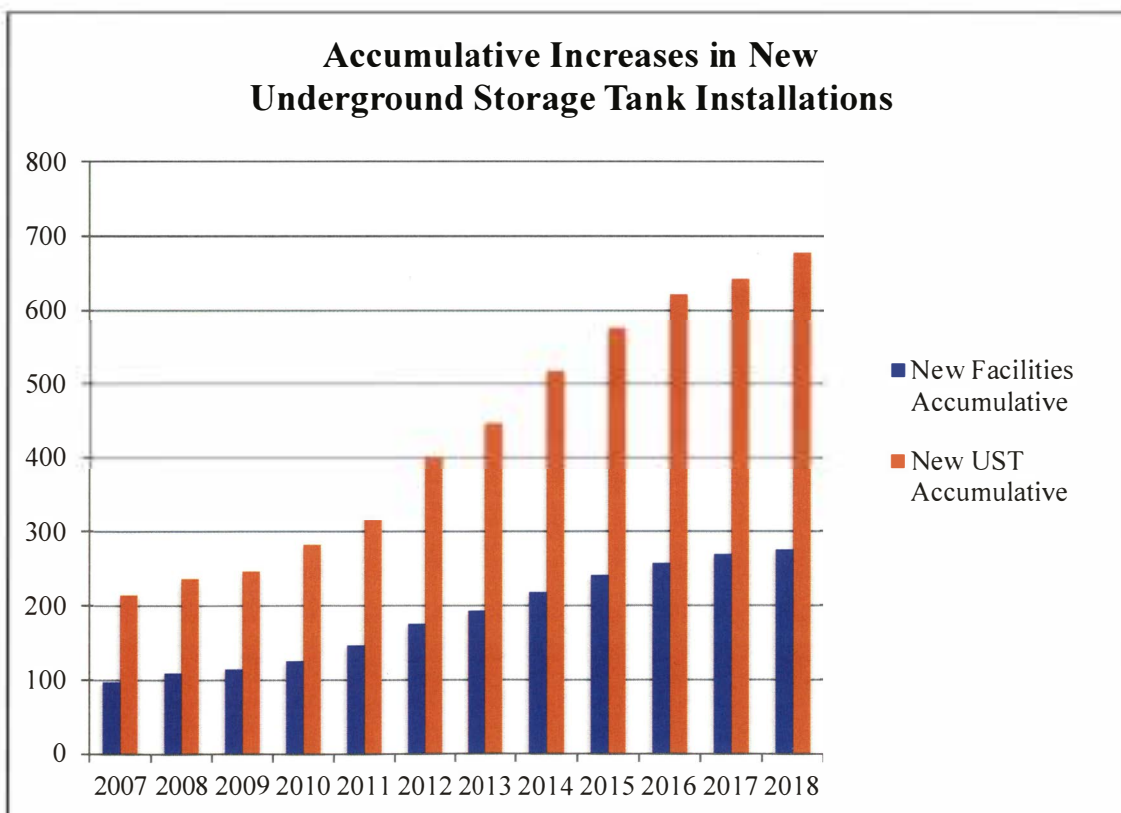


Figure 18. Accumulative Increases in New Underground Storage Tank Installations

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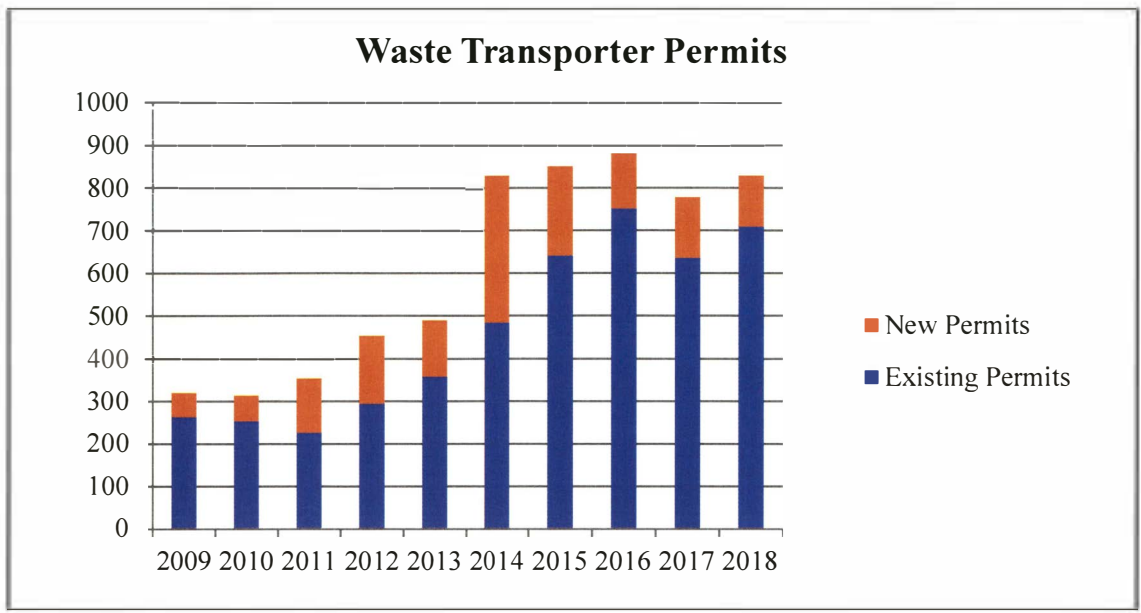


Figure 19. Waste Transporter Permits

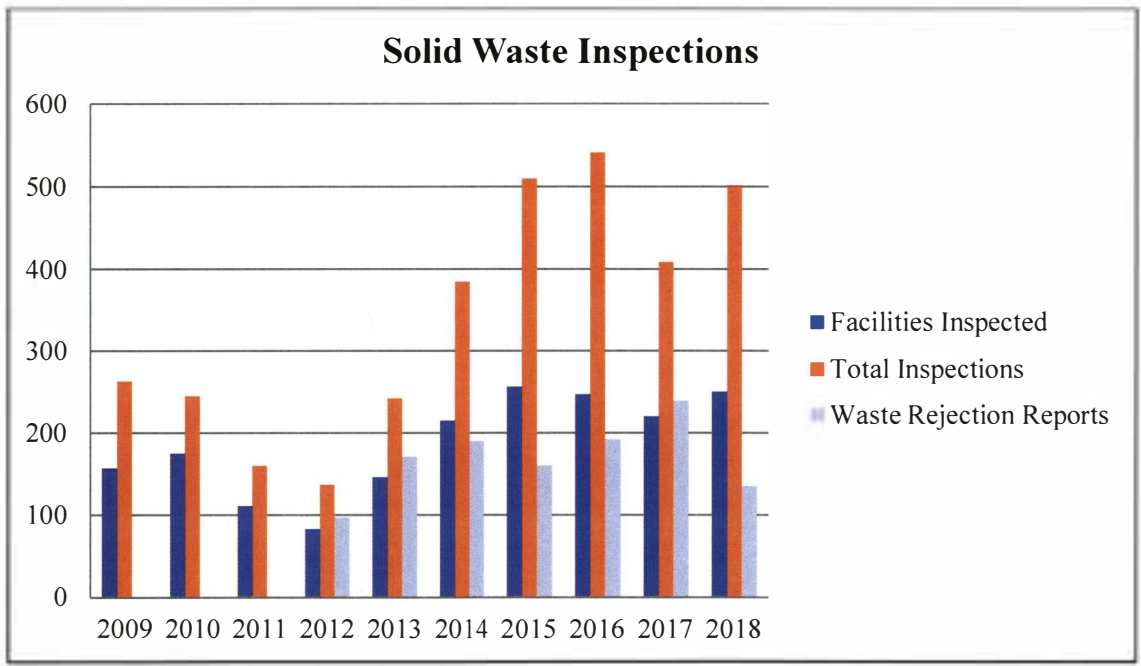


Figure 20. Solid Waste Inspections

Pre-applications and applications for new or expanding landfills continue to be higher than the historical average. During the oil boom, the department saw a significant increase in new permit applications and permit modifications. Although detailed and highly technical, these applications tended to address short-term requirements as they arose. This has now transitioned into applications for modifications and permit renewals focused on long-term strategic planning, including increasing capacity and changing waste streams for today and into the future. Many of the applications received are those that were put on hold by applicants during the boom to see how the industry would develop before committing resources

toward design. Applications, which can be more than a thousand pages in length, are subjected to a thorough review (requiring expertise in soils, hydrogeology, plant science and engineering). The high numbers of reviews continue to put pressure on the Solid Waste Program as workload and staffing are prioritized.

At the same time, there is an increased need for inspections at the existing facilities and site visits to the new facility locations, which also takes significant staff time. This has resulted in a backlog for inspections and permits for other regulated solid waste facilities around the state. All of the programs in the Division of Waste Management have been affected by oilfield activities, but the Solid Waste Program has been affected the most.

In 2016, permits for 12 oilfield and industrial waste landfills were modified by the Solid Waste Program to include additional waste screening and waste sampling provisions. The Solid Waste Program conducted 540 inspections of 247 facilities and followed up on 192 reports of prohibited waste rejected by solid waste disposal facilities. Three pre-application reviews were completed for expansions of municipal solid waste landfills in 2016.

In 2017, two pre-application reviews were completed for expansions of one oilfield/industrial waste landfill and one municipal solid waste landfill. The Solid Waste Program conducted 406 inspections of 220 facilities and followed up on 239 reports of prohibited waste rejected by solid waste disposal facilities.

By the end of June 2018, the Solid Waste Program had conducted 200 inspections of 104 facilities and followed up on 93 reports of waste rejected by solid waste disposal facilities due to prohibited waste (including potential radioactive materials).

In 2016 and 2017, the division issued a contract with the Upper Missouri District Health Unit and McKenzie County for up to \$100,000 from the Abandoned Auto Program Fund to address the problem of campers, trailers and mobile homes abandoned due to the decline in oilfield activity.

An entirely new issue arose during the Bakken oil boom regarding the generation and proper management of Technologically Enhanced Naturally Occurring Radioactive Material (TENORM). TENORM is low-level radioactive waste that is generated primarily in oilfield exploration and production activities. It includes materials such as filter socks, tank bottom sludge and pipe scale. Responding to illegal dumping and improper management incidents has taken considerable staff time, as TENORM is a major concern of the public. The division is overseeing rejected waste loads at landfills and the cleanup of illegal dump sites, although the number of incidents has decreased since implementation of requirements for TENORM waste containers on all well sites. The division worked with Argonne National Laboratory to study the risks to oilfield workers and the general public. New administrative rules regarding the proper handling, recordkeeping, reporting and disposal of TENORM were approved and are being implemented. Three landfill applications for managing TENORM have been received for review.

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E. Division of Water Quality

Spill Investigation Program

This program is primarily responsible for responding to spills with the potential to impact waters of the state and following up on appropriate remediation. The program handles two different types of spills: oilfield and non-oilfield related. Of the spills that have been reported since January 1, 2017, there are currently less than 20 oilfield-related spills and less than 20 non-oilfield related spills awaiting initial inspection. Between January 1, 2017 and June 30, 2018, the program reviewed 2,170 total spills and has responded to 935, assigning the rest to other agencies. Of the 935, there are 391 that need additional on-site follow-up. It is estimated that between July 1, 2018 and December 31, 2018, there will be approximately 737 spills reported. Spills with the greatest potential to adversely impact the environment are evaluated as soon as possible. As the number of oil and gas facilities increase, the potential for the number of spills is expected to increase as well. Figures 21 and 22 illustrate the change in number of spills reported and the response by staff for each calendar year.

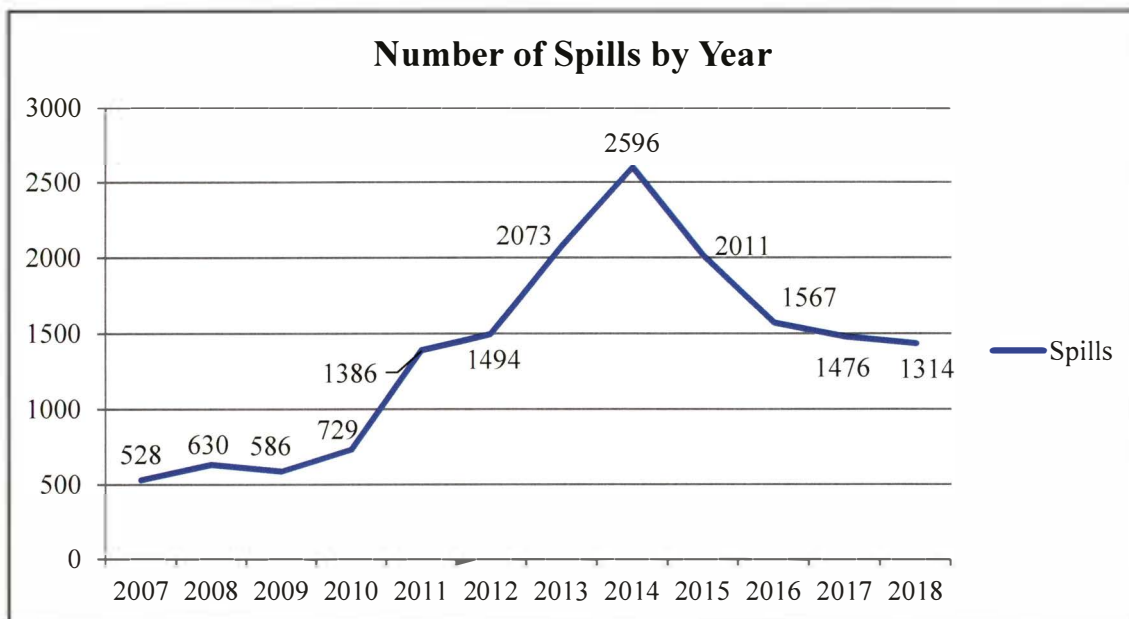


Figure 21. Number of Spills by Year

(In 2017, the reporting threshold was raised from 1 to 10 barrels for oil and brine releases that remain on oil production sites built after 2000.)

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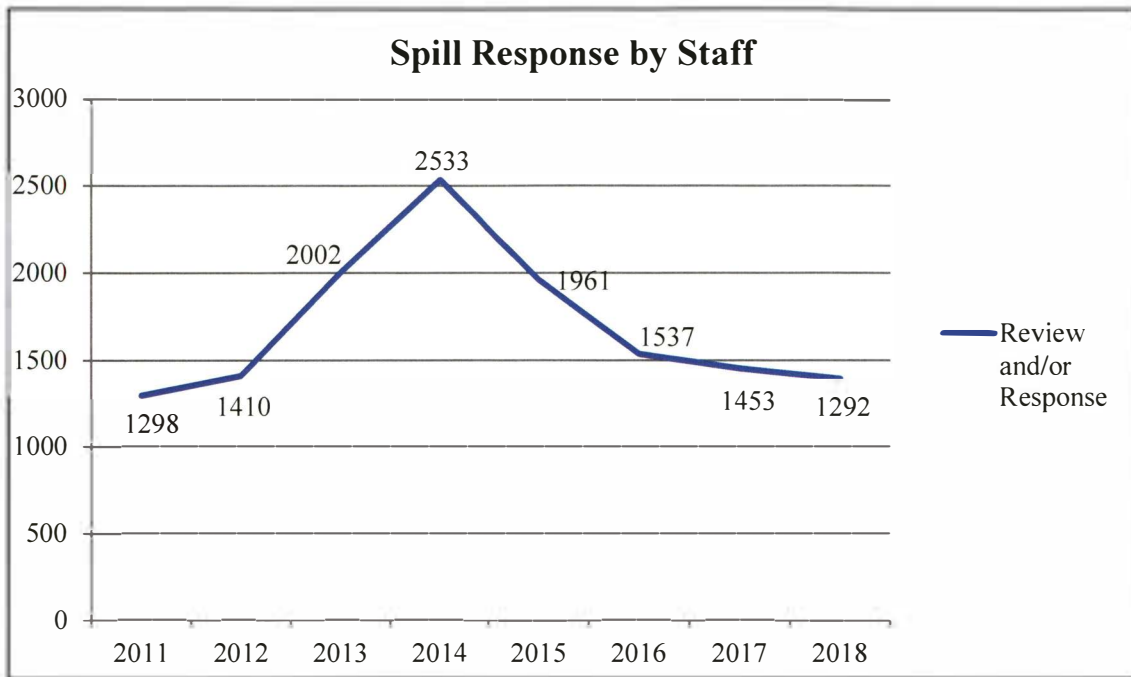


Figure 22. Spill Response by Staff
(Response may include several actions such as review to determine if follow-up is necessary, phone conversations and inspections.)

NDPDES Permits Program

There is an ongoing demand for the issuance of all permits. Most remarkable is the continued high demand for septic pumps (Figure 23). This permitted group maintains roughly a 218 percent increase in permits from pre-oil boom numbers.

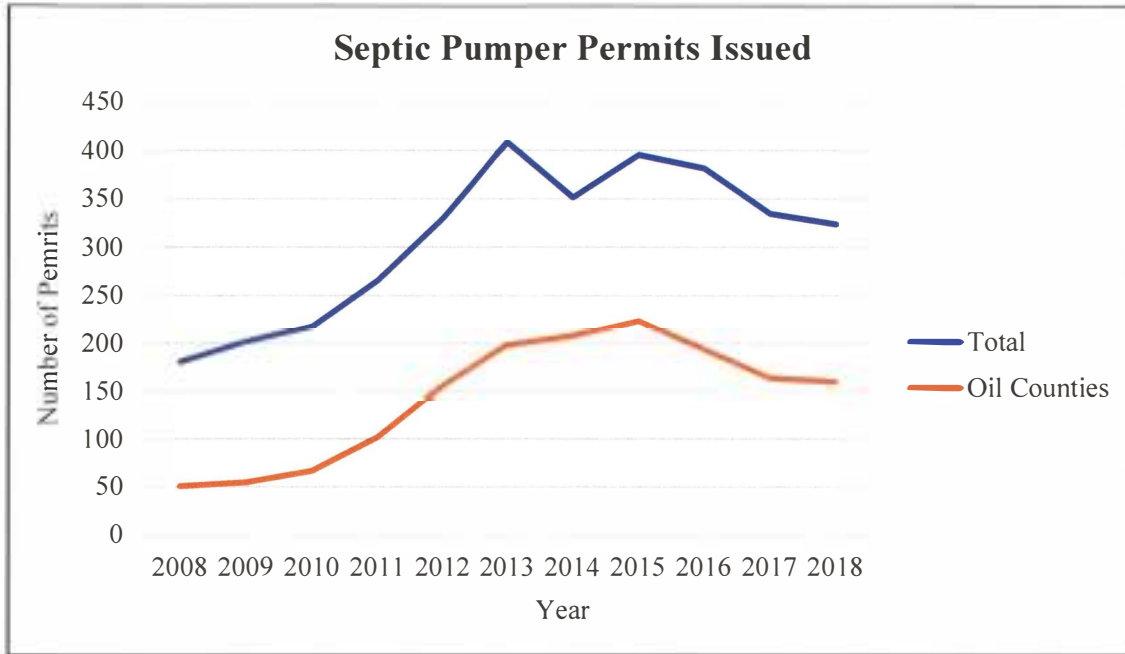


Figure 23. Septic Pumper Permits Issued

Except for septic pumps, all of the following permits issued are federally required:

- Construction stormwater
- Dewatering and hydrostatic testing (including pipelines and tanks)
- Industrial stormwater
- Wastewater general permits (typically small domestic wastewater treatment facilities)
- Wastewater individual permits (typically major municipalities and industries)

It should be noted that some of these permit types now cover permanent facilities which require more oversight to maintain permit compliance.

The overall increase in permits has resulted in additional inspections and response to complaints in all areas. This is especially true for septic pumps, stormwater controls, and crew camp and hauled wastewater treatment facilities. The numbers of new permits have stabilized as demonstrated for stormwater construction permits in Figure 24. However, issues like abandoned facilities (e.g., RV campgrounds with lagoon systems) that may need cleanup must still be addressed.

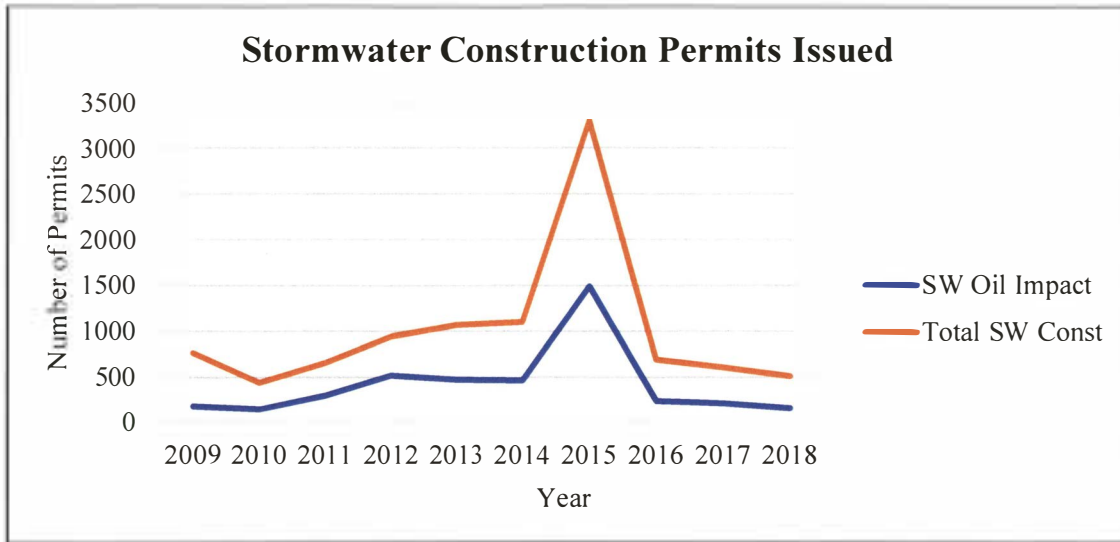


Figure 24. Stormwater Construction Permits Issued

As the oil and natural gas industry continues to grow, there is increased interest in petrochemical manufacturing and the mining of produced water. Because of their complexity, facilities engaged in these activities will require highly trained staff to issue permits in a timely manner.

Retaining well-qualified staff is essential to the success of this program.

Ground Water Protection Program

The oil boom has significantly increased the water appropriation applications received by the State Water Commission for review (Figure 25), primarily related to industrial uses of ground water. Approximately 50 water appropriation permit reviews were completed in 2017, and it is estimated that 62 reviews will be completed in 2018.

Figure 25 also shows significant impact on the UIC Program. The number of potential UIC sites (crew camps, oil service companies, vehicle repair businesses, etc.) continues to increase. In 2015, it was estimated that about 325 businesses in western North Dakota had Class V wells and therefore required inspection. Available staff was able to inspect approximately 35 facilities in 2015. In 2016, it was estimated about 350 facilities warranted inspection, and it is estimated approximately 250 facilities will warrant inspections by the end of 2018. The program has responded to many requests for information about Class I injection wells and is in the process of permitting one Class I well. Two new Class I wells are projected for permitting in 2018. Several proposed oilfield waste disposal sites are also considering Class I wells, and some facilities are evaluating injection of treated wastewater as a disposal option.

The number of public water systems in the oilfield has significantly increased, and each system requires the completion of a Wellhead Protection Area report. This report includes the delineation of the protection area, completion of a contaminant source inventory and a susceptibility analysis (Figure 26). In 2016, 17 non-community water system reports were updated and reports for two new water systems were completed. Eight non-community water system and 29 community water system reports were completed in 2017. It is estimated that 10 non-community and 30 community water system reports will be updated, and one report for a new water system will be completed in 2018.

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A significant number of calls have come from the public related to sampling of private wells (e.g., how to sample, where to send samples, what to analyze, perceived impacts to wells, etc.). Workload related to facility siting reviews (e.g., municipal and special waste landfills, pipelines, concentrated animal feeding operations, wind farms, power transmission lines, well pads, construction sites) has increased significantly (Figure 26). Forty-six facility siting reviews were completed in 2016, 267 reviews were completed in 2017, and it is estimated that 250 reviews will be completed in 2018.

The Western Ground Water Monitoring Program was implemented in 2013 to evaluate ground water conditions in selected aquifers within the oil-producing areas of northwestern North Dakota. Approximately 135 observation wells in 20 aquifers are sampled as part of the Western Program. The initial round of sampling was completed between fall of 2013 and 2015. Sampling is currently being conducted on a 1.5-year rotation; approximately 45 wells are sampled each spring and each fall. Based on the results obtained as the sampling program progresses, wells may be added or deleted from the sampling program. The Western Program is conducted separately from the Agricultural Ground Water Monitoring Program that was implemented in 1992.

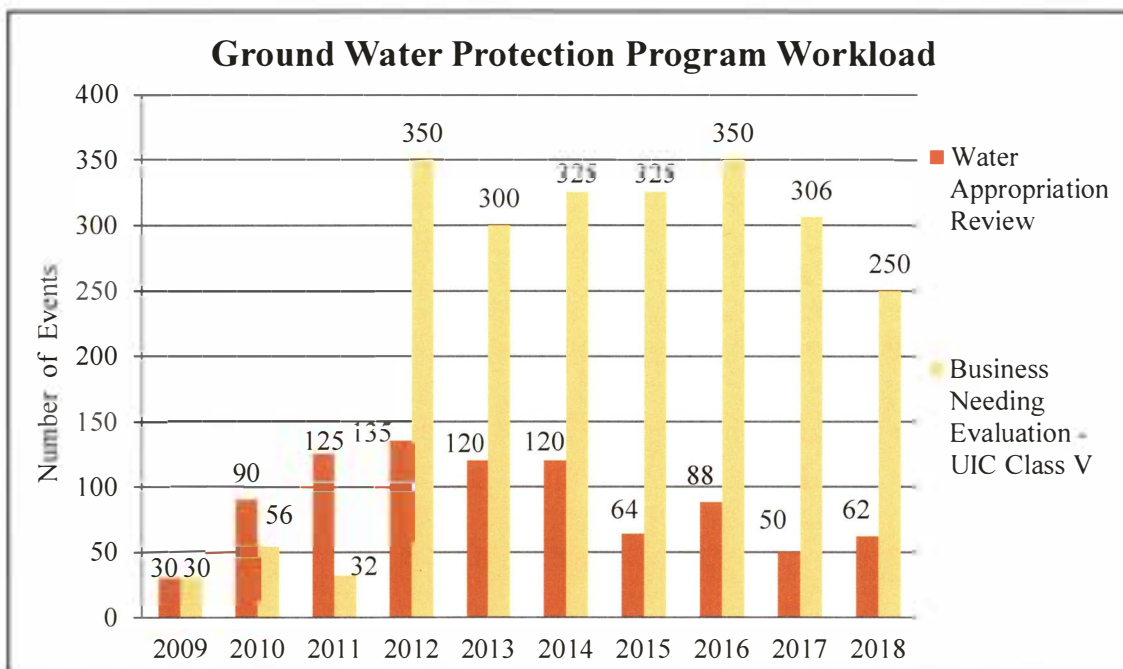


Figure 25. Ground Water Protection Program Workload (2009-Present)

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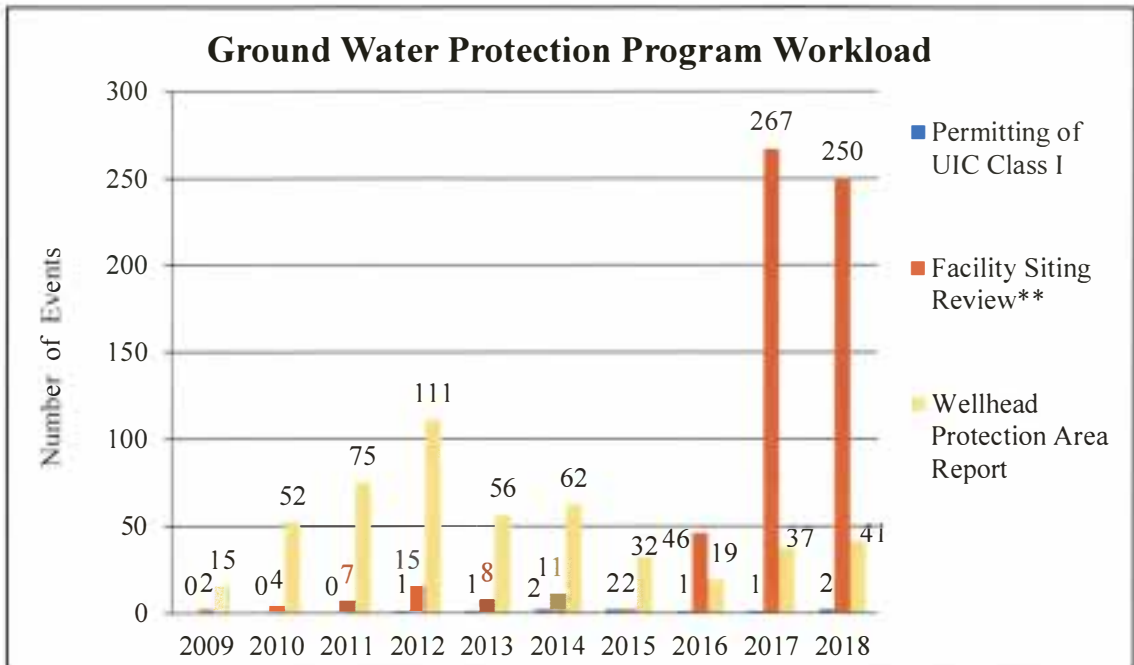


Figure 26. Ground Water Protection Program Workload (2009-Present)
(**Reflects change in types of sites reviewed.)

Figure 27 shows formal enforcement actions relating to violations of environmental statutes from 2010 to date. Enforcement actions require considerable staff time relating to case investigation, technical evaluation, monitoring and compliance reviews.

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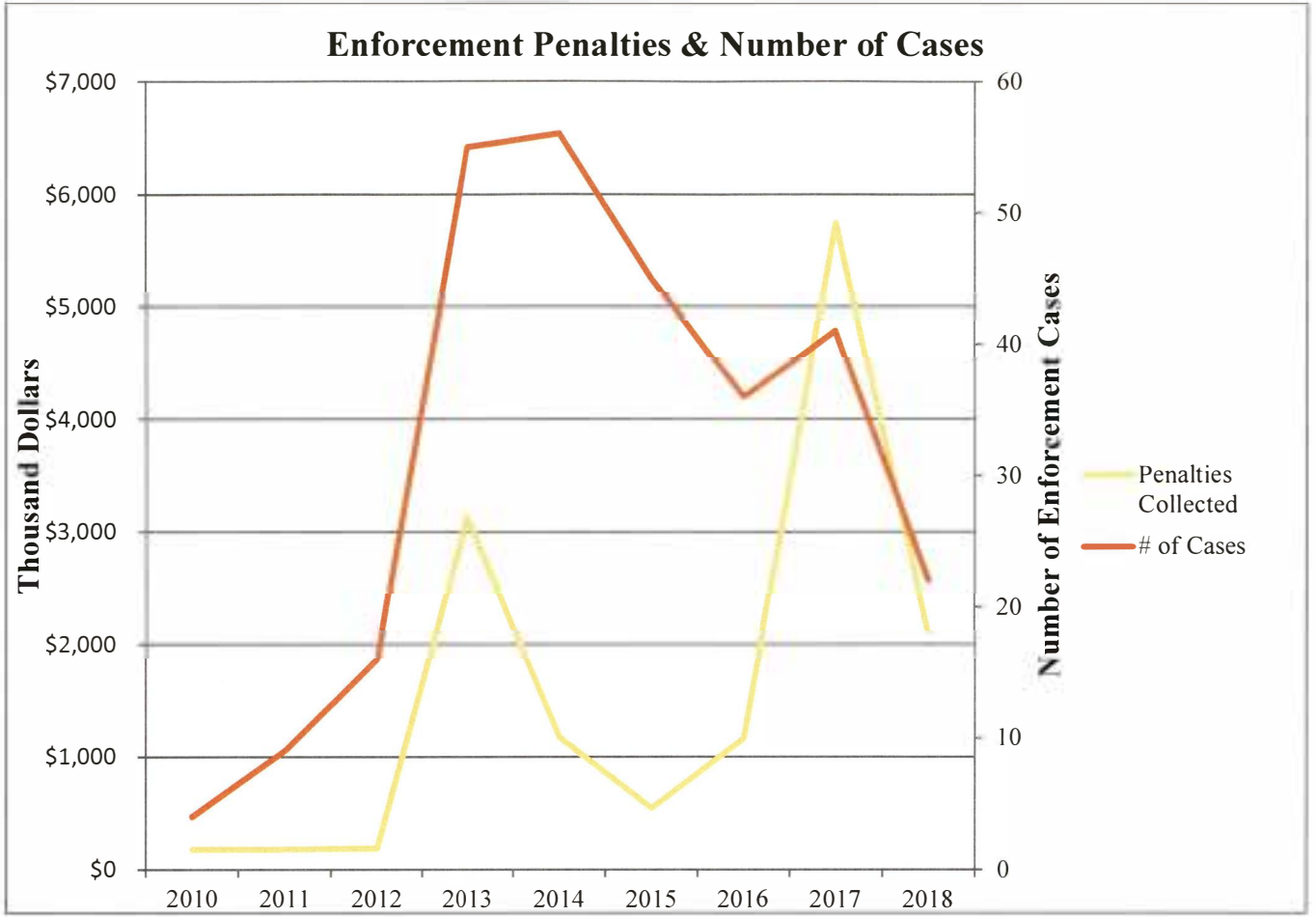


Figure 27. Enforcement Penalties and Number of Cases

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III. Current Needs

North Dakota is known nationwide as a large oil- and gas-producing state, and this has resulted in increased open records requests from across the country. Many of these requests are broad in scope and take additional staff time to compile. In 2017, there were 279 requests, and in 2018 it is estimated there will be more than 250. These requests take considerable time to fulfill, and nearly all the divisions have the common need for additional resources to address the many requests.

A. Division of Air Quality

Given the increase in both workload and complexity of the rules and regulations implemented and enforced by the division, additional resources will be required to hire and retain qualified staff. Training staff to be competent and have the required knowledge base to regulate effectively takes two to three years. Resources also will be needed for equipment to enhance air quality monitoring (e.g., FLIR infrared camera, flame ionization detector, analyzers for ambient air quality, robust database, etc.).

B. Division of Chemistry

The division is requesting new equipment to replace or upgrade existing instrumentation. This will allow the division to keep up with emerging methods and technologies that can improve efficiency and effectiveness.

C. Division of Municipal Facilities

The division continues to experience increases in workload due to oilfield development activities. The increased workload is compounded by implementation of new and revised SDWA and State Revolving Loan Fund (SRLF) Program requirements; heightened community interest in using the SRLF programs for financial assistance to address infrastructure needs; and stagnant or reduced federal funding which impacts the division's ability to maintain state delegation for its programs. These challenges are not short-term but long-term.

D. Division of Waste Management

Oilfield development and established oilfield activities continue to impact the work focus of the division. Solid waste management facilities are expanding their operations in response to increased population and industrial activity. Some landfills are looking to accept additional waste streams, including industrial and TENORM wastes. At the same time, there is a push to develop programs due to new federal regulations or requests from the regulated community for clarity and consistency. Existing facilities will continue to require oversight to ensure long-term compliance. Staffing pressures are likely to continue to increase. Future needs will capitalize on efficiencies through applying IT solutions to current data collection management methods. Expansion of database capability is needed to accommodate Freedom of Information Act requests. The ability to manage permit applications and landfill waste rejection reports through electronic reporting systems will need to be developed.

E. Division of Water Quality

The Division of Water Quality continues to address both current and past spills to ensure appropriate cleanup. Continued oversight of ongoing remediation projects will require the retention of existing trained staff and the training of replacements due to turnover. Enforcement actions and field/permitting activities will be prioritized.

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Testimony
House Bill 1024
House Appropriations Committee – Human Resources Division
Thursday, January 10, 2019
North Dakota Department of Environmental Quality

Budget Overview

Good afternoon Chairman Nelson and members of the committee. I am Brenda Weisz, Chief Financial Officer for the Department of Health and serve in the same capacity for the Department of Environmental Quality. The total budget recommended by the Governor for the Department of Environmental Quality for the 2019 - 2021 biennium and reflected in House Bill 1024 is \$57,973,196. I have included Attachment A for ease in following my testimony in support of the Governor's recommended budget. I will first address the base budget for 2017 - 2019, walk you through the budget changes to arrive at the Governor's Recommendation and close with a final summary.

2017 - 2019 Base Budget

The department pursues its goals and objectives by working closely with federal, state, and local governments along with private industry and agriculture to safeguard the quality of North Dakota's air, land and water resources. The base budget is comprised of the Chief's Office and five divisions: Air Quality, the Chemistry Laboratory, Municipal Facilities, Water Quality and Waste Management along with 152.50 FTE.

The base level budget reflected in HB 1024 is the first time a separate budget has been prepared for the Department of Environmental Quality (DEQ). Previously this budget was reflected as the Environmental Health Section within the Department of Health. During the 2017 Legislative Session, SB 2327 established the Department of Environmental Quality (DEQ). While DEQ will be a separate state agency, the Department of Health will continue to provide shared services comprised of the following: accounting, budgeting, contracting, federal grant review, payroll and human resources / personnel management.

2019 – 2021 Budget Changes as Recommended by the Governor

In April 2018 the Governor released budget guidelines requesting the Department of Environmental Quality to submit a 90 percent general fund budget, a 90 percent special fund budget, and 5 percent reduction in FTE. Below is an overview of the net effect of those reductions along with other changes made to the 2017 – 2019 base budget to arrive at the Governor's recommended budget for the 2019 – 2021 biennium.

FTE

- Reduces 3 FTE for funding associated with positions equivalent to a 1.0 Administrative Assistant, a 1.0 Office Assistant, and a 1.0 Legal Assistant as we look for efficiencies throughout our administrative functions - \$365,500 Total funds.
- Reinstates 4.5 FTE including 3.5 Environmental Scientists and 1.0 Environmental Engineer which were initially submitted as part of the budget plan to reach the goals identified in the budget guidelines. These FTE are responsible for the following:
 - reviewing and approving permit applications and licenses pertaining to facilities in the oil field;
 - conducting landfill inspections and assisting with oil field waste issues;
 - conducting inspections of new/modified water and wastewater system infrastructure;
 - providing technical assistance pertaining to oil field issues; and
 - providing follow-up assistance to oil spills.

With oil activity on the uptake and the need to continuously monitor oil impact activity along with the responsibility for spill response, these positions vital in getting the work done are included in the Governor's Recommendation.

- Reinstates \$125,000 of the Operator Certificate Training Program. The program provides reimbursement to small drinking water system operators in North Dakota. These systems serve less than 3,300 people and the financial assistance has been a key factor in maintaining the high compliance rate (above 95 percent) of public water systems state-wide with health-based standards under the Safe Drinking Water Act. To meet budget guidelines a

budget reduction of \$180,000 was initially submitted as part of the budget plan to reach the goals identified in the budget guidelines.

- Includes funding to extend grants from the Volkswagen Trust Settlement Fund. On October 2, 2017, an environmental mitigation trust was finalized as part of the nationwide Volkswagen Settlement. With the Settlement, funding is available to all states to mitigate negative air quality impacts caused by Volkswagen's use of emissions testing defeat devices in vehicles sold and operated in the U.S. The devices violated the Clean Air Act and increased emissions of nitrogen oxide (NOx). North Dakota's share will be approximately \$8.125 million to reimburse eligible and awarded projects over the course of up to ten years. To receive funding, a state must outline the mitigation actions planned to reduce NOx emissions. The Governor's Office has appointed the North Dakota Department of Environmental Quality (DEQ) to develop and implement a mitigation plan. The plan must be based on the list of eligible actions to reduce NOx emissions as identified in the settlement agreement and provide the greatest air quality benefit. A copy of the mitigation plan, as well as other Volkswagen Settlement information, can be found at <https://deq.nd.gov/AQ/planning/VW.aspx>. Total amount reflected in the Governor's Recommendation includes \$5.4 million special funds.
- Includes the transfer in the administration of Petroleum Tank Release Fund to the DEQ from the Insurance Department. The Governor's Recommendation includes the addition of 2 FTE and related operating expenses to administer this fund and provide oversight and enforcement of the current requirements outlined in statute along with \$575,000 in special funds. Attachment A, Section 8 contains the language change necessary to effect this change.
- Adds funding and 10 FTE for the DEQ to assume primacy over the Quad O and Quad Oa federal air pollution programs (methane emissions). This appropriation is contingent upon approval from the federal Environmental Protection Agency as outlined in Attachment A, Section 7. The program includes the following costs: salaries and wages - \$890,000 from the general fund for 10 FTE effective July 1, 2020, operating expenses - \$399,000 all but \$40,000 from the general fund; and \$1,000,000 special funds under the

capital line item for air pollution equipment and a database tracking system for the program. This amount along with one-time computer purchases and other office equipment included in the operating expenses for the 10 FTE are funded from the strategic investment and improvement fund as outlined in Attachment A, Section 6.

- Incorporates IT Unification by moving salary funding to the operating line and shifting 1.0 FTE to ITD. The goal of this change is to better meet current and future technology and security needs in a unified approach – just over \$200,000 moved from salaries to operating.
- Incorporates the executive compensation package of a 4 percent and a 2 percent salary increase for years one and two, respectively, in addition to covering the increased cost in health insurance and a one percent increase in the state's share toward the retirement contribution - \$1.87 million total funds; \$637,000 general fund; \$800,000 federal funds; and \$432,000 special funds.
- Adds funding for Microsoft 365 functionality for all staff - \$85,000.

For your reference, Attachment B identifies the specific reductions to arrive at the budget guidelines of a 90 percent general fund and a 90 percent special funds budget request along with the 5 percent reduction in FTE.

The Governor's Recommendation also includes flexibility in the 2019 - 2021 biennium as included in Attachment A, sections 3 and 4. First, section 3 provides for the ability to accept additional federal or other fund revenue should such funding become available. There are times during the biennium when the total grant amount we have estimated and built in the budget for a specific grant is awarded at an amount different than anticipated. This flexibility would allow for the department to immediately accept the grant funds. This option will become increasingly important with the separation of the Department of Environmental Quality and the Department of Health. When both agencies were combined as one agency, we had a larger base in which to manage federal and other authority. Secondly, section 4 provides for the ability to transfer between line items up to ten percent of the total appropriation. This flexibility is beneficial when contracting and issuing grant awards. When building the budget, an estimate is used to determine whether the funds will be extended as a purchase of service contract, which is funded in the operating line item, or whether the funds will be extended under a grant award, which is funded in the grants line item. Should circumstances change from the time the budget was built to the time the funds are extended, the

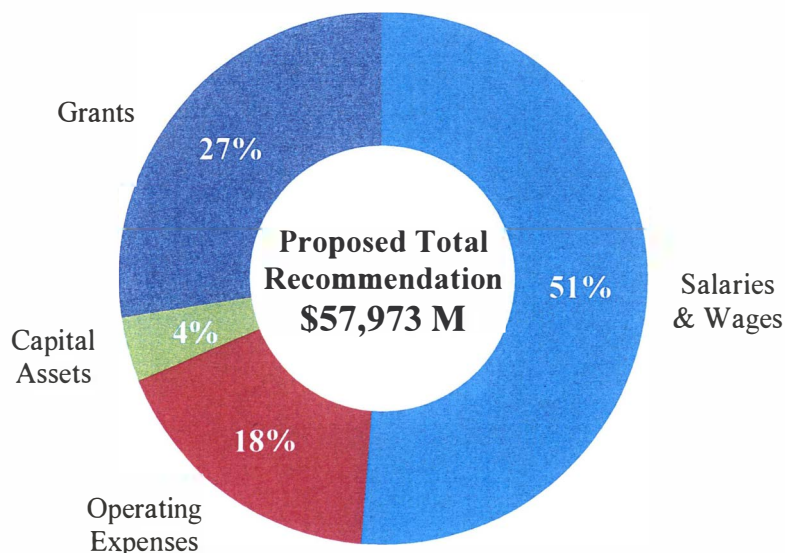
inability to move between line items causes inefficiencies. In the past, this flexibility has been extended to other state agencies or areas of government such as the Legislative Assembly, the Judicial Branch, and the Department of Human Services. To date I do believe the flexibility has been appreciated and used appropriately.

2019 – 2021 Summary of the Governor’s Recommendation

The budget before you for the Department of Environmental Quality addresses environmental needs. It provides funding to preserve and improve the quality of North Dakota’s environment to benefit public and environmental health and allow for sustained use and enjoyment of the state’s natural resources. One means to accomplish this is by extending funds through grants and contracts. The Governor’s Recommendation include \$18.6 million or 32 percent, which is planned to be passed through to the soil conversation districts, political subdivisions, state agencies, universities and other various entities to address environmental health needs and issues.

Overall the Governor’s Recommendation includes a total of \$57,973,196 and is comprised of the following elements.

2019-21 EXECUTIVE RECOMMENDATION BY LINE ITEM



Salaries and Wages

Salaries and wages make up \$29,712,253 or 51 percent of our budget. The increase to the salaries line item is attributed to the executive compensation package along with new programs added.

Operating Expenses

The operating budget recommendation of \$10,135,985 makes up 18 percent of our budget. Operating Expenses has been increased primarily as a result of the new programs added and additional professional and IT contractual services funded with federal grants.

Capital Assets

Capital assets of \$2,263,429 make up only 4 percent of our total budget. The equipment costs in excess of \$5,000, a portion of the bond payment in lieu of rent at the state laboratory along with the new air monitoring equipment and the database needed for the Quad O and Quad Oa programs are included here.

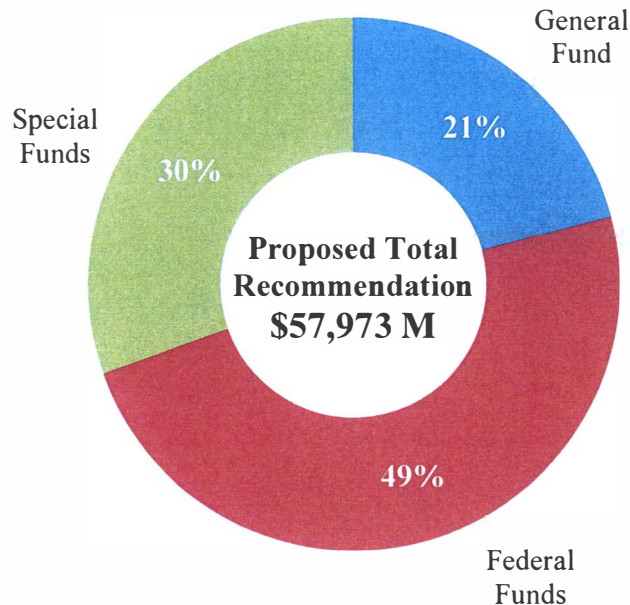
Grants

Grants, which are provided to many local entities across the state, are at \$15,861,529 and make up 27 percent of our budget. The increase in Grants is primarily a result of the additional funds available to be awarded from the Volkswagen Trust Settlement.

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Finally, the breakdown by funding source of the Governor's Recommendation for

2019-21 EXECUTIVE RECOMMENDATION BY FUNDING SOURCE



Federal Funding Changes

As noted in the above chart just under half of the Department of Environmental Quality is funded with federal funds at 49 percent of the budget supported by the federal government. Our budget request includes a minimal increase in federal funding of \$1.6 million with half of that amount associated with the executive compensation package. The remaining increase is associated with anticipated carryover / and a slight increase available for direct services in the EPA Performance Partnership Grant often referred to as the EPA block grant.

The status of our federal funding is often uncertain. With that uncertainty, we prepared our budget by assuming that federal grant amounts will essentially hold even, except as noted above. We recognize that as we proceed through the next biennium we will have to adjust our budget, operations and possibly staffing if federal funding changes from the amounts included in our budget request.

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Financial Audit Findings

Finally, during our most recently completed financial audit for the period covering July 1, 2015 through June 30, 2017, which was completed as part of the Department of Health, there were no financial audit findings reflected in the audit report.

Conclusion

Chairman Nelson and members of the Committee, this concludes my testimony on House Bill 1024. In the upcoming weeks, we look forward to working with you on the detail of the Governor's recommended appropriation for the Department of Environmental Quality. I will now turn it back to Dave Glatt, who has some additional comments regarding the Governor's Recommendation.

Sixty-sixth
Legislative Assembly
of North Dakota

HOUSE BILL NO. 1024
(Governor's Recommendation)

HB 1024
1/10/2019
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Introduced by

Appropriations Committee

(At the request of the Governor)

A bill for an act to provide an appropriation for defraying the expenses of the state department of environmental quality, to amend and reenact section 23-37 of the North Dakota Century Code and provide a transfer.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much of the funds as may be necessary, are appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds and other income, to the state department of environmental quality for the purpose of defraying the expenses of the state department of environmental quality, for the biennium beginning July 1, 2019, and ending June 30, 2021, as follows:
Adjustments or

	<u>Base Level</u>	<u>Enhancements</u>	<u>Appropriation</u>
Salaries and wages	\$27,040,544	\$2,671,709	\$29,712,253
Operating expenses	8,005,878	2,130,107	10,135,985
Capital assets	1,258,249	1,005,180	2,263,429
Grants	<u>13,407,000</u>	<u>2,454,529</u>	<u>15,861,529</u>
Total all funds	\$49,711,671	\$8,261,525	\$57,973,196
Less estimated income	<u>38,987,520</u>	<u>6,893,583</u>	<u>45,881,103</u>
Total general fund	\$10,724,151	\$1,367,942	\$12,092,093
Full-time equivalent positions	152.50	8.00	160.50

SECTION 2. ONE-TIME FUNDING - EFFECT ON BASE BUDGET - REPORT TO SIXTY-SEVENTH LEGISLATIVE ASSEMBLY. The following amounts reflect the one-time funding items approved by the sixty-fifth legislative assembly for the 2017-19 biennium and 2019-21 one-time funding items included in the appropriation in section 1 of this Act:

<u>One-Time Funding Description</u>	<u>2017-19</u>	<u>2019-21</u>
EPA lawsuit	\$500,000	
Air pollution program equipment		<u>\$1,040,000</u>
Total all funds	\$500,000	\$1,040,000
Less estimated income	<u>500,000</u>	<u>1,040,000</u>
Total general fund	\$0	\$0

The 2019-21 one-time funding amounts are not a part of the entity's base budget for the 2021-23 biennium. The state department of environmental quality shall report to the appropriations committees of the sixty-seventh legislative assembly on the use of this one-time funding for the biennium beginning July 1, 2019, and ending June 30, 2021.

SECTION 3. APPROPRIATION - In addition to the amounts appropriated to the state department of environmental quality in section 1 of this Act, there is appropriated any additional income from federal or other funds which may become available to the agency for the biennium beginning July 1, 2019, and ending June 30, 2021.

SECTION 4. FUNDING TRANSFERS – EXCEPTION – AUTHORIZATION. Notwithstanding section 54-16-04, the department of environmental quality may transfer between line items within section 1 of this Act

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up to ten percent of the total appropriation contained in section 1 during the biennium beginning July 1, 2019, and ending June 30, 2021. The department shall notify the office of management and budget and the legislative council of any transfer made pursuant to this section.

SECTION 5. ENVIRONMENT AND RANGELAND PROTECTION FUND. The estimated income line item included in section 1 of this Act includes \$250,000, or so much of the sum as may be necessary, to be made available to the state department of environmental quality from the environment and rangeland protection fund, for the biennium beginning July 1, 2019, and ending June 30, 2021. This amount includes \$50,000 for a grant to the North Dakota stockmen's association environmental services program.

SECTION 6. STRATEGIC INVESTMENT AND IMPROVEMENT FUND. The estimated income line item included in section 1 of this Act includes \$1,040,000, or so much of the sum as may be necessary, to be made available to the state department of environmental quality from the strategic investment and improvement fund for air pollution program equipment, for the biennium beginning July 1, 2019, and ending June 30, 2021.

SECTION 7. CONTINGENT APPROPRIATION. Section 1 of this Act includes a contingent appropriation of \$2,288,945, of which \$1,248,945 is from the general fund and \$1,040,000 is a one-time appropriation from the strategic investment and improvement fund; and contingent authority for ten FTE positions effective July 1, 2020 upon the federal environmental protection agency approving the state assuming primacy over the Quad O and Quad Oa federal air pollution programs.

SECTION 8 AMENDMENT. Section 23-37 of the North Dakota Century Code is amended and reenacted as follows:

CHAPTER 23.1-37 – PETROLEUM RELEASE REMEDIATION

23.1-37-01. Declaration of purpose. The purpose of this chapter is to establish:

1. A petroleum tank release compensation fund; and
2. A petroleum tank release compensation advisory board authorized to review claims against the fund.

23.1-37-02. Definitions.

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

1. "Actually incurred" means, in the case of corrective action expenditures, that the owner, the operator, the landowner, an insurer, or a contractor hired by the owner, operator, or the landlord has expended time and materials and that only that person is receiving reimbursement from the fund.
2. ~~"Administrator" means the manager of the state fire and tornado fund.~~
3. ~~"Board" means the petroleum release compensation board.~~
4. ~~"Commissioner" means the insurance commissioner.~~
5. "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.
6. "Dealer" means any person licensed by the tax commissioner to sell motor vehicle fuel or special fuels within the state.
7. "Department" means the ~~state department of health~~ state department of environmental quality.
8. "Fund" means the petroleum release compensation fund.
9. "Location" means a physical address or site that has contiguous properties. Noncontiguous properties within a municipality or other governmental jurisdiction are considered separate locations.
10. "Operator" means any person in control of, or having responsibility for, the daily operation of a tank under this chapter.
11. "Owner" means any person who holds title to, controls, or possesses an interest in the tank before the discontinuation of its use.
12. "Person" means an individual, trust, firm, joint stock company, federal agency, corporation, state, municipality, commission, political subdivision of a state, or any interstate body. The term also includes a consortium, a joint venture, a commercial entity, and the United States government.
13. "Petroleum" means any of the following:
 - a. Gasoline and petroleum products as defined in chapter 19-10.
 - b. Constituents of gasoline and fuel oil under subdivision a.
 - c. Oil sludge and oil refuse.

- 4412. "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.
- 4513. "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.
- 4614. "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. 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, regulated under:
 - (1) The Natural Gas Pipeline Safety Act of 1968.
 - (2) The Hazardous Liquid Pipeline Safety Act of 1979.
 - (3) An interstate pipeline facility regulated under state laws comparable to the provisions of law in paragraph 1 or 2.
 - 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.
- 4715. "Tank integrity test" means a test to determine that a tank is sound and not leaking. For an underground tank, the term means a certified third-party test that meets environmental protection agency leak detection requirements. For an aboveground tank, the term means a test conducted according to steel tank institute SP 001 or American petroleum institute 653.
- 4816. "Third party" means a person who is damaged by the act of a registered owner, operator, or dealer requiring corrective action or a person who suffers bodily injury or property damage caused by a petroleum release.

23.1-37-03. Petroleum release compensation board.

The petroleum release compensation advisory board consists of five members appointed by the governor, three of whom are active in petroleum marketing, one of whom is active in the petroleum, crude oil, or refining industry, and one of whom is active in the insurance industry. A member active in petroleum marketing must be appointed from a list of three recommended by the North Dakota retail petroleum marketers association. A member active in the petroleum, crude oil, or refining industry must be appointed from a list of three recommended by the North Dakota petroleum council. A member active in the insurance industry must be appointed from a list of three recommended by the North Dakota professional insurance agents association. Members must be appointed to terms of three years with the terms arranged so that the term of at least one member, but no more than two members, expires June thirtieth of each year. A member shall hold office until a successor is duly appointed and qualified. Each member of the board is entitled to receive sixty-two dollars and fifty cents per diem for each day actually spent in the performance of official duties, plus mileage and expenses as are allowed to other state officers.

23.1-37-04. Administration of fund - Staff. The ~~administrator~~ department shall administer the fund according to this chapter. The ~~administrator~~ department shall convene the board as may be necessary to keep the board

apprised of the fund's general operations. However, the board shall meet at least once each half of each calendar year to review and to advise the ~~administrator~~ department regarding the administration of the fund, the fund's general operations, and to hear and decide denials of claims by the ~~administrator~~ department which may be appealed to the board, and to discuss all claims against the fund. The ~~administrator~~ department may employ any assistance and staff necessary to administer the fund within the limits of legislative appropriation. A claimant aggrieved by a decision of the ~~administrator~~ department regarding a claim upon the fund may appeal the decision to the board. The board may sustain, modify, or reverse the decision of the ~~administrator~~ department. The claimant or the ~~administrator~~ department may appeal the board's decision to the ~~commissioner~~. The decision of the ~~commissioner~~ may be appealed under chapter 28-32.

23.1-37-05. Adoption of rules. The ~~administrator~~ department shall adopt rules regarding the practices and procedures of the fund, the form and procedure for applications for compensation from the fund, procedures for investigation of claims, procedures for determining the amount and type of costs that are eligible for reimbursement from the fund, procedures for persons to perform services for the fund, procedures for appeals to the board by claimants aggrieved by an adverse decision of the ~~administrator~~ department, and any other rules as may be appropriate to administer this chapter.

23.1-37-06. Release discovery. If the department has reason to believe a release has occurred, it shall ~~notify the administrator~~. The department shall direct the owner or operator to take reasonable and necessary corrective actions as provided under federal or state law or under adopted rules.

23.1-37-07. Owner or operator not identified. The department may cause legal action to be brought to compel performance of a corrective action if an identified owner or operator fails or refuses to comply with an order of the department, or the department may engage the services of qualified contractors for performance of a corrective action if an owner or operator cannot be identified.

23.1-37-08. Imminent hazard. Upon receipt of information that a petroleum release has occurred which may present an imminent or substantial endangerment of health or the environment, the department may take such emergency action as it determines necessary to protect health or the environment.

23.1-37-09. Duty to notify. This chapter does not limit any person's duty to notify the department and to take action related to a release. However, payment for corrective actions required as a result of a petroleum release is governed by this chapter.

23.1-37-10. Providing of information. Any person whom the ~~administrator~~ or the department has reason to believe is an owner or operator, the owner of real property where corrective action is ordered to be taken, or any person who may have information concerning a release shall, if requested by the ~~administrator~~ or the department, or any member, employee, or agent of the ~~administrator~~ or the department, furnish to the ~~administrator~~ or the department any information that person has or may reasonably obtain that is relevant to the release.

23.1-37-11. Examination of records. Any employee of the ~~administrator~~ or the department may, upon presentation of official credentials:

1. Examine and copy books, papers, records, memoranda, or data of any person who has a duty to provide information to the ~~administrator~~ or the department under section 23.1-37-10; and
2. Enter upon public or private property for the purpose of taking action authorized by this section, including obtaining information from any person who has a duty to provide the information under section 23.1-37-10, conducting surveys and investigations, and taking corrective action.

23.1-37-12. Responsibility for cost. The owner or operator is liable for the cost of the corrective action required by the department, including the cost of investigating the releases. This chapter does not create any new cause of action for damages on behalf of third parties for release of petroleum products against the fund or licensed dealers.

23.1-37-13. Liability avoided. No owner or operator may avoid liability by means of a conveyance of any right, title, or interest in real property or by any indemnification, hold harmless agreement, or similar agreement. However, this chapter does not:

1. Prohibit a person who may be liable from entering into an agreement by which the person is insured or is a member of a risk retention group, and is thereby indemnified for part or all of the liability;
2. Prohibit the enforcement of an insurance, hold harmless, or indemnification agreement; or
3. Bar a claim for relief brought by a person who may be liable or by an insurer or guarantor, whether by

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right of subrogation or otherwise.

23.1-37-14. Other remedies. This chapter does not limit the powers of the ~~administrator~~ or department, or preclude the pursuit of any other administrative, civil, injunctive, or criminal remedies by the ~~administrator~~ or department or any other person. Administrative remedies need not be exhausted in order to proceed under this chapter. The remedies provided by this chapter are in addition to those provided under existing statutory or common law.

23.1-37-15. Revenue to the fund. Revenue from the following sources must be deposited in the state treasury and credited to the fund:

1. Any registration fees collected under section 23.1-37-17;
2. Any money recovered by the fund under section 23.1-37-23, and any money paid under an agreement, stipulation, or settlement;
3. Any interest attributable to investment of money in the fund; and
4. Any money received by the ~~administrator~~ department in the form of gifts, grants, reimbursements, or appropriations from any source intended to be used for the purposes of the fund.

23.1-37-16. Penalty. A tank owner violating section 23.1-37-17 is guilty of a class B misdemeanor unless another penalty is specifically provided.

23.1-37-17. Registration fee.

1. An owner or operator of a tank shall pay an annual registration fee of fifty dollars for each aboveground or underground tank owned or operated by that person. If after the fiscal year has been closed and all expenses relating to the fiscal year have been accounted for, the fund balance is less than six million dollars, the annual registration fee of fifty dollars is increased to one hundred dollars. If after the fiscal year has been closed and all expenses relating to the fiscal year have been accounted for, the fund balance is five million five hundred thousand dollars or more and the annual registration fee has been increased to one hundred dollars, the fee must be reduced to fifty dollars. If after the fiscal year has been closed and all expenses relating to the fiscal year have been accounted for, the fund balance exceeds nine million dollars, the annual registration fee is reduced to five dollars. Annual registration fees must continue at five dollars until the fund balance does not exceed nine million dollars.
2. An owner or operator of an existing tank that is discovered at a location that currently and previously has had tanks registered with the fund shall pay an additional twenty-five dollar penalty fee in addition to the registration fee for each aboveground tank and each underground tank owned or operated by that person for each previous year that the tank was required to be registered for which a fee was not paid. The payment includes the fees and the penalty for the failure to register.
3. An owner or operator of an existing tank at a location that was not previously and continuously registered with the fund, whether the registration was required by law or not must provide the fund with a phase two environmental study conducted by a qualified firm according to American society for testing materials standards. A tank integrity test must also be performed. The environmental study and tank integrity test must be reviewed by the ~~commissioner~~ department along with the application for registration with the fund. If the ~~commissioner~~ department rejects the application, the applicant is denied eligibility to the fund. However, if the site is remediated and the leaking tank is replaced, the applicant may reapply for registration with the fund. A new installation that is using a used tank must provide tank integrity test results for the used tank. Use of a synthetic liner in an aboveground dike system negates the need for a tank integrity test. The owner or operator of a new tank at a new site or a new tank at an existing site that had a tank registered at the site previously need only pay the required fees for registration with the fund.
4. If accepted for registration with the fund, the owner or operator of the tank shall pay an additional twenty-five dollar penalty fee in addition to the registration fee for each aboveground tank and underground tank owned or operated by that person for each previous year that the tank was required to be registered for which a fee was not paid, regardless of ownership in each of those years. The payment includes the fees and the penalty for the failure to register.
5. The registration fees collected under this section must be paid to the ~~fund~~ Administrator department for deposit in the state treasury for the dedicated credit to the petroleum release compensation fund.
6. If a registration payment is not received within sixty days of July first by the ~~Commissioner~~ department, a late fee of twenty-five dollars per tank per month must be imposed on the tank owner or operator.

23.1-37-18. Reimbursement for corrective action.

1. The ~~administrator~~ department shall reimburse an eligible owner or operator for ninety percent of the costs of corrective action, including the investigation, which are greater than five thousand dollars and

less than one million dollars per occurrence and two million dollars in the aggregate. An eligible tank owner or operator may not be liable for more than twenty thousand dollars out-of-pocket expenses for any one release. A reimbursement may not be made unless the administratordepartment determines that:

- a. At the time the release was discovered the owner or operator and the tank were in compliance with state and federal rules and rules applicable to the tank, including rules relating to financial responsibility, rules relating to infrastructure compatibility, and all rules relating to health and safety which were in effect at the time of the release;
 - b. The department was given notice of the release as required by federal and state law;
 - c. The owner or operator has paid the first five thousand dollars of the cost of corrective action; and
 - d. The owner or operator, to the extent possible, fully cooperated with the department and the administrator in responding to the release.
2. The fund shall compensate third parties for corrective action taken for a petroleum release if the provisions of subdivisions a, b, c, and d of subsection 1 were met at the time the release was discovered. Compensation for third-party corrective action includes compensation for costs incurred in returning the real estate to that level deemed duly remediated by the department.
 3. The fund shall reimburse the tank owner, operator, or dealer for bodily injuries to a third party caused by a petroleum release if the provisions of subdivisions a, b, c, and d of subsection 1 were met at the time the release was discovered in an amount determined by:
 - a. Findings reduced to judgment in federal or state district court within the state of North Dakota or such other court having jurisdiction over the matter in a proceeding in which the fund has been made a party;
 - b. Findings by an arbitration panel agreed upon in writing by the parties in a proceeding in which the fund has been made a party; or
 - c. A written settlement entered into by the parties in which the commissionerdirector of the department or the commissioner's department's agent has participated. The settlement must be reviewed and approved by the commissionerdirector of the department.
 4. In any civil action against the owner, operator, or dealer for damages resulting from a petroleum release, if the pre-leak condition of real estate is an issue and if there is no reasonable means of determining the pre-leak condition of real estate, the condition is that which exists at the time the department determines the real estate has been duly remediated.
 5. The fund may not compensate for attorney's fees of owners, operators, or dealers, nor may the fund compensate for exemplary damages, criminal fines, or administrative penalties.
 6. A third party accepting monetary compensation directly from the fund for damages due to a release caused by a tank owner, operator, or dealer covered by the fund is deemed to have waived any cause of action against the fund or against the tank owner, operator, or dealer.
 7. The fund shall reimburse the department for all costs, attorney's fees, and other legal expenses relating to administrative and adjudicative proceedings under this chapter and any subsequent legal proceeding. Any monies reimbursed must be deposited in the department's operating fund in the state treasury and must be spent subject to appropriation by the legislative assembly.

23.1-37-19. Application for reimbursement. Any owner or operator who is a first-party claimant who proposes to take corrective action or has undertaken corrective action in response to a release, the time of such release being unknown, may apply to the administratordepartment for partial or full reimbursement under section 23.1-37-18. An owner or operator who is a first-party claimant may be reimbursed only for costs incurred after July 1, 1989, even if the releases were discovered before July 1, 1989, up to the maximum of twenty-five thousand dollars per location.

23.1-37-20. Administrator Department to determine costs. A reimbursement for corrective actions taken by an owner, operator, or dealer may not be made from the fund until the administratordepartment has determined that the costs for which reimbursement is requested were actually incurred and were reasonable. All necessary loss adjustment expenses must be included as a component of the loss and must be paid out of the fund.

23.1-37-21. Liability of responsible person. The right to apply for reimbursement and the receipt of reimbursement does not limit the liability of an owner or operator for damages or costs incurred as the result of a release.

23.1-37-22. Reimbursement not subject to attachment. The amount of reimbursement to be paid for corrective action that was done by a third party is not subject to legal process or attachment if actually paid to a third party who performed the corrective action.

23.1-37-23.1. Recovery of expenses. Any reasonable and necessary expenses incurred by the fund, which exceed the coverage limits provided by section 23.1-37-18, in taking a corrective action, including costs of investigating a release, and in taking legal actions may be recovered in a civil action in district court brought by the ~~administrator~~department against an owner or operator. The certification of expenses by an approved agent of the fund is prima facie evidence that the expenses are reasonable and necessary. Any expenses that are recovered under this section must be deposited in the fund.

23.1-37-24. Costs exceeding reimbursement. If the cost of any extraordinary authorized action under this chapter exceeds amounts awarded to the ~~administrator~~ or the department from the federal government, the ~~administrator~~department may pay the department's ~~the cost of the~~ corrective actions costs, including the cost of investigating a release, if the board finds that the cause was a petroleum substance, that an adequate amount exists in the fund to pay for the corrective action, that the occurrence was extraordinary in scope and size, and that a danger to the health and safety of citizens exists.

23.1-37-25. Coordination of benefits. If an owner or operator has an insurance policy that provides the same coverage as the fund, the ~~administrator of the fund~~department shall pay the share of the covered loss or damage for which the fund is responsible. The share that must be paid from the fund is equal to the proportion that the applicable limit of coverage under the fund bears to the limits of insurance of all insurance coverage on the same basis.

23.1-37-26. Third-party damages - Participation in actions and review of settlements.

1. An owner or operator who is sued for damages resulting from a release shall notify the ~~administrator~~department within fourteen days of being served with a summons and complaint. The owner or operator shall also advise the ~~administrator~~department if any insurer is defending the owner or operator and provide to the ~~administrator~~department the name of that insurer.
2. An owner or operator who, before litigation, enters into negotiations with a third party who claims to have been damaged by a release, or who receives a demand for payment of damages to a third party who claims to have been damaged by a release, shall notify the ~~administrator~~department within fourteen days of the demand or the negotiations.
3. The ~~administrator~~department and the board shall review the conduct of any litigation or negotiation. The ~~administrator~~department may not assume any legal costs incurred by the defendant or plaintiff, but may participate in discovery, trial proceedings, or settlement negotiations of either disputed liability or damages that bear on the determination of a plaintiff's damages.
4. The ~~administrator~~department and the board shall review any settlement negotiations to determine the dollar amount of bodily injury or property damage actually, necessarily, and reasonably incurred by third parties which, if paid by the defendant, would be considered eligible costs.

23.1-37-27. Third-party damages - Documentation.

1. An applicant's payments for third-party damages pursuant to a judgment entered in a court must include copies of the notice of entry of judgment and abstract of costs.
2. An applicant's payments for third-party damages made by agreement in settlement of litigation must include copies of the settlement agreement and such supporting documents as may be required by the ~~administrator~~department.
3. An applicant's payments for third-party damages made by agreement without reference to litigation must include copies of the settlement and such supporting documents as may be required by the ~~administrator~~department.
4. The ~~administrator~~department and the board may require a third party who claims bodily injury to be examined by a physician and require that the physician's report be submitted to the ~~administrator~~department. The ~~administrator~~department may require a third party who claims property damage to permit a property appraiser or claims adjuster retained by the ~~administrator~~department to inspect the property and report to the ~~administrator~~department.
5. The fund shall pay a judgment against an owner, operator, or dealer awarded to a third party as a result of a third-party claim and property damage against an owner, operator, or dealer registered by the fund.
6. The fund shall pay for corrective action as awarded to a third party in any judgment against an owner, operator, or dealer.
7. Liability of the tank owner, operator, dealer, or fund to third parties for corrective action or personal injuries and property damage may not exceed, per person, one million dollars. Maximum liability of the fund, including all claims by third parties, may not exceed, for any release site, the maximum provided in section 23.1-37-18.
8. A third party may not bring an action against any owner, operator, or dealer more than three years after a corrective action plan has been approved by the department if the owner, operator, or dealer fully

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implements and complies with the corrective action plan.

9. In investigating a release site or reviewing the implementation of any corrective action plan approved by the department, the department shall determine whether the release currently threatens public health or the environment. The department shall require, based on science and technology appropriate for the site, any monitoring, remediation, or other appropriate corrective action that is reasonably necessary to protect public health or the environment. The department may require corrective action at a release site at any time after a release occurs.

23.1-37-28. Matching federal funds. The ~~administrator~~department and the board may annually allow the department a ten percent matching grant for federal leaking underground storage tank funds to be paid out of the fund if the moneys are available and the ~~administrator~~department and the board determine the allowance appropriate.

23.1-37-29. Fund appropriations. Money in the fund is continuously appropriated to the ~~administrator~~department for the purpose of making reimbursements under this chapter.

23.1-37-30. Investment of fund. Investment of the fund is under the supervision of the state investment board in accordance with chapter 21-10. The ~~commissioner~~department may purchase a contract for reinsurance of any risk to be paid by the fund. The ~~administrator~~department may investigate the purchase of insurance that reimburses an owner or operator for property damage claims by third parties other than claims for costs of corrective action.

**Testimony
House Bill 1024
House Appropriations Committee – Human Resources Division
Thursday, January 10, 2019
North Dakota Department of Health**

FTE / General Fund / Special Fund Reductions to Meet Budget Guidelines

FTE

Reductions were made as follows:

- Reduced a 1.0 Environmental Scientist II and a 1.0 Environmental Scientist III in the Water Quality Division. These positions provided support in the area of oil impact monitoring (\$312,909)
- Reduced a 1.0 Environmental Engineer II and a .50 Environmental Scientist III in the Municipal Facilities Division. These positions provided support in the area of oil impact monitoring (\$272,626)
- Reduced funding equivalent to a 1.0 Administrative Assistant, a 1.0 Office Assistant, and reduced a 1.0 Environmental Scientist II in the Waste Management Division. The Environmental Scientist position supports the solid waste program associated with oil impact monitoring. (\$379,484)
- Reduced funding equivalent to a 1.0 Legal Assistant in the Environmental Chief's Office. (\$134,184)
- Total Reduction 7.50 FTE
- Total Funds - \$1,099,203
- General Fund - \$827,796
- Special Fund - 271,407

General Fund

In addition to the General Fund reduction related to FTE the following additional reduction was made to the General Fund:

Reduction of \$180,000 in the Operator Certificate Program which provides training for those becoming certified in water treatment systems.

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Special Funds

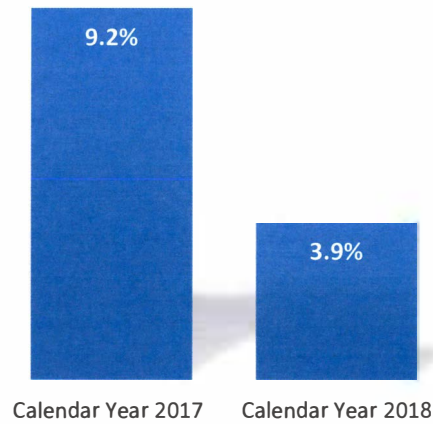
In addition to the Special Fund reduction related to FTE the following additional reduction(s) was made to Special Funds:

Reduction of \$941,100 in grants in the Air Quality Division for the Volkswagen Trust Settlement program. This is a new initiative and is an environmental mitigation trust finalized as part of the nationwide Volkswagen Settlement. Funds are available to all states to mitigate negative air quality impacts caused by Volkswagen's use of emissions testing defeat devices in vehicles sold and operated in the US. The devices violated the Clean Air Act and increased emissions of nitrogen oxide. Reduction was made as a function of the budget guidelines.

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North Dakota Department of Environmental Quality
HB 1024
House Appropriations Committee - Human Resources Division
2019 – 2021 Biennium

Turnover Rate



**ND Department of Environmental Quality
HB 1024
House Appropriations Committee - Human Resources Division
Optional Adjustment Request (OAR) Summary**

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	Governor's Strategic Initiative	FTE	General Fund	Federal Funds	Special Funds	TOTAL BUDGET ADJUSTMENT REQUEST BY CLASS			
						Salaries	Operating & Cap Assets	Grants	Total
3% Contingency Savings Package – Reduction in Force – Oil Field and Spill Response		(2.00)	(302,337)			(302,337)			(302,337)
Oil Field/Spill Response Restoration	Main Street Initiative	4.50	733,673			733,673			733,673
Operator Certificate Training Program Restoration	Main Street Initiative	0.00	180,000				180,000		180,000
Volkswagen Settlement Funds - Special Fund Restoration	Main Street Initiative	0.00			4,655,000			4,655,000	4,655,000
Petroleum Tank Compensation Fund	Reinventing Government	2.00			575,069	336,481	238,588		575,069
Total		6.50	\$ 913,673	\$ -	\$ 5,230,069	\$ 1,070,154	\$ 418,588	\$ 4,655,000	\$ 6,143,742

Funded in the Governor's Executive Budget

Partially funded in the Governor's Executive Budget - \$125,000

**North Dakota Department of Environmental Quality
2019-21 Executive Budget**

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SALARIES AND WAGES

FTE EMPLOYEES (Number)

	2015-17 Actual Expenditures	Expend To Date Nov 2018	2017-19 Base Budget	2019-21 Executive Budget	Executive + (-) Difference	Percent % Increase + Decrease -
FTE EMPLOYEES (Number)	155.00	152.25	152.50	160.50	8.00	5%
511 Salaries	18,035,395	12,443,390	18,320,581	20,077,049	1,756,468	10%
513/514 Temporary, Overtime	228,330	222,336	401,280	477,210	75,930	19%
516 Benefits	7,634,426	5,527,278	8,318,683	9,157,994	839,311	10%
TOTAL	25,898,151	18,193,004	27,040,544	29,712,253	2,671,709	10%
General Fund	8,248,787	4,689,272	8,030,996	9,246,786	1,215,790	15%
Federal Funds	11,397,829	8,153,119	12,295,033	12,998,159	703,126	6%
Special Funds	6,251,535	5,350,613	6,714,515	7,467,308	752,793	11%
OPERATING EXPENSES						
521 Travel	942,786	667,441	979,394	1,001,709	22,315	2%
531 IT - Software/Supp.	184,367	59,754	160,648	236,252	75,604	47%
532 Professional Supplies & Materials	107,025	97,307	145,036	148,281	3,245	2%
533 Food & Clothing	9,762	5,492	13,103	12,488	(615)	-5%
534 Buildings/Vehicle Maintenance Supplies	79,694	47,133	88,327	88,327	0	0%
535 Miscellaneous Supplies	33,530	19,092	39,185	39,695	510	1%
536 Office Supplies	42,420	22,815	43,615	46,025	2,410	6%
541 Postage	117,997	85,059	128,906	130,406	1,500	1%
542 Printing	27,030	15,282	46,319	48,319	2,000	4%
551 IT Equip Under \$5000	89,313	35,447	113,790	162,875	49,085	43%
552 Other Equip Under \$5000	32,238	15,762	32,550	48,200	15,650	48%
553 Office Equip Under \$5000	8,711	6,836	19,850	36,350	16,500	83%
561 Utilities	277,106	223,139	304,009	309,645	5,636	2%
571 Insurance	294	147	593	9,088	8,495	1433%
581 Lease/Rentals - Equipment	40,608	31,322	52,884	52,884	0	0%
582 Lease \Rentals-- Buildings./Land	1,057,186	795,552	1,141,626	1,225,631	84,005	7%
591 Repairs	525,452	506,301	658,946	662,494	3,548	1%
601 IT-Data Processing	364,130	259,594	391,643	667,036	275,393	70%
602 IT-Telephone	151,407	103,108	171,281	172,625	1,344	1%
603 IT - Contractual Services	264,620	67,592	476,866	799,783	322,917	68%
611 Professional Development	199,862	139,382	231,855	238,961	7,106	3%
621 Operating Fees & Services	229,302	216,646	391,572	281,022	(110,550)	-28%
623 Professional Services	2,230,714	923,772	1,785,946	2,770,650	984,704	55%
625 Medical, Dental, and Optical	571,603	365,753	587,934	587,934	0	0%
Quad O & Quad Oa Operating	0	0	0	359,305	359,305	100%
TOTAL	7,587,157	4,709,728	8,005,878	10,135,985	2,130,107	27%
General Fund	2,924,256	1,517,995	2,523,412	2,729,350	205,938	8%
Federal Funds	2,733,382	1,535,828	3,583,307	5,009,360	1,426,053	40%
Special Funds	1,929,519	1,655,905	1,899,159	2,397,275	498,116	26%
CAPITAL ASSETS						
683 Other Capital Payments	246,566	106,668	213,024	216,429	3,405	2%
684 Extraordinary Repairs	45,024	20,559	300,350	27,000	(273,350)	-91%
691 Equipment >\$5000	929,472	92,959	727,375	1,415,000	687,625	95%
693 IT Equip >\$5000	0	0	17,500	605,000	587,500	3357%
TOTAL	1,221,062	220,186	1,258,249	2,263,429	1,005,180	80%
General Fund	452,260	102,944	154,343	100,557	(53,786)	-35%
Federal Funds	388,739	35,905	380,831	290,372	(90,459)	-24%
Special Funds	380,063	81,336	723,075	1,872,500	1,149,425	159%
GRANTS						
712 Grants - Non State	6,444,010	3,750,268	12,366,000	14,845,529	2,479,529	20%
722 Grants - In State	766,199	706,303	1,041,000	1,016,000	(25,000)	-2%
TOTAL	7,210,209	4,456,571	13,407,000	15,861,529	2,454,529	18%
General Fund	18,774	14,287	15,400	15,400	0	0%
Federal Funds	6,921,110	4,248,596	10,391,600	9,946,600	(445,000)	-4%
Special Funds	270,325	193,689	3,000,000	5,899,529	2,899,529	97%
TOTAL	41,916,579	27,579,489	49,711,671	57,973,196	8,261,525	17%
General Fund	11,644,077	6,324,498	10,724,151	12,092,093	1,367,942	13%
Federal Funds	21,441,060	13,973,448	26,650,771	28,244,491	1,593,720	6%
Special Funds	8,831,442	7,281,543	12,336,749	17,636,612	5,299,863	43%

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North Dakota Department of Environmental Quality
2019-21 Executive Budget
Summary of Federal & Special Funds

Federal Funds	2017-19 Base Budget	Inc / (Dec)	2019-21 Executive Budget
Environmental Protection Agency (EPA) Performance Partnership Grant	7,666,650	617,819	8,284,469
EPA Performance Partnership Grant-Multipurpose Funding	360,000	(10,000)	350,000
Food and Drug Administration Radiation & Mammography Program	144,380	5,620	150,000
EPA PM2.5 Monitoring	236,107	13,893	250,000
State Clean Diesel Grant	390,000	260,000	650,000
Nonpoint Source Implementation Grant	10,755,547	(319,147)	10,436,400
Water Quality Management Grant	238,703	1,297	240,000
Wetland Program Development Grant	500,000	(500,000)	-
Supplemental Water Quality Monitoring Grant	755,981	24,019	780,000
Drinking Water State Revolving Fund	2,171,487	431,513	2,603,000
Clean Water State Revolving Fund	1,058,567	62,433	1,121,000
EPA Lead in Schools Grant	-	50,000	50,000
Targeted Brownfield Grant	242,987	57,013	300,000
Leaking Underground Storage Tank (LUST)	1,287,631	(115,631)	1,172,000
(LUST) Trust Prevention	655,641	(55,641)	600,000
ND Environmental Exchange State Grant	187,090	212,910	400,000
Unallocated Microsoft 365		42,969	42,969
Unallocated IT Unification		12,304	12,304
Unallocated Executive Compensation Package		802,349	802,349
Total Federal Funds	\$ 26,650,771	\$ 1,593,720	\$ 28,244,491

Special Funds	2017-19 Base Budget	Inc / (Dec)	2019-21 Executive Budget
Air Contaminant Fees	2,312,042	547,958	2,860,000
Oil and Gas Registration Fees	400,000	160,000	560,000
Radiation Control Licensing Fees	3,584,088	(661,088)	2,923,000
Asbestos & Lead Base Fees	105,000	13,500	118,500
Volkswagen Settlement	2,500,000	2,899,529	5,399,529
Strategic Investment and Improvement Fund	-	1,040,000	1,040,000
Chemistry Laboratory Analysis Fees	1,332,044	231,001	1,563,045
Environment & Rangeland Protection Fund	250,000	-	250,000
North Dakota Water Commission	200,000	-	200,000
Sanitary Pumper Fees	42,949	(1,764)	41,185
Operator Certificate Fund	29,844	(3,344)	26,500
Solid Waste Permitting Fees	278,165	(3,165)	275,000
Large Volume Landfill Fees	902,117	70,838	972,955
Abandoned Motor Vehicle Fund	250,000	-	250,000
Petroleum Tank Release Compensation Fund	150,500	552,399	702,899
Unallocated Microsoft 365		21,569	21,569
Unallocated Executive Compensation Package		432,430	432,430
Total Special Funds	\$ 12,336,749	\$ 5,299,863	\$ 17,636,612

**North Dakota Department of Environmental Quality
2019-21 Executive Budget**

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Professional Services

Description	2017-19 Base Budget	Increase / (Decrease)	2019-21 Executive Budget	2019-21 General Fund	2019-21 Federal Funds	2019-21 Special Funds
Legal	499,707	63,693	563,400	103,280	214,120	246,000
Shared Services Contract-ND DOH	-	637,000	637,000	170,244	304,710	162,046
Risk Management	-	16,000	16,000	4,276	7,654	4,070
Air Quality Consultation	10,000	-	10,000			10,000
Air Quality Monitoring Site Operators	15,000	(5,000)	10,000		10,000	
Air Quality Radon Public Education	20,000	(10,000)	10,000	2,000	8,000	
Air Quality Multipurpose Performance Partnership Grant	200,000	-	200,000		200,000	
Chemistry Laboratory Proficiency Testing	16,500	1,650	18,150			18,150
Chemistry Laboratory Certification	-	16,000	16,000			16,000
Water Quality Micro Analysis	235,639	(44,639)	191,000		191,000	
Lead in Schools	-	50,000	50,000		50,000	
Municipal Facilities Consultation	3,600	-	3,600	720	2,880	
Waste Management Consultation	15,500	30,000	45,500			45,500
Leaking Underground Storage Tank Engineering Fees	595,000	-	595,000		595,000	
Targeted Brownfields	140,000	50,000	190,000		190,000	
Petroleum Tank Compensation Insurance Underwriting/Legal	-	155,000	155,000			155,000
Hazardous Materials Training	35,000	25,000	60,000		60,000	
Total Professional Services	\$ 1,785,946	\$ 984,704	\$ 2,770,650	\$ 280,520	\$ 1,833,364	\$ 656,766

Information Technology (IT) Contractual Services

Description	2017-19 Base Budget	Increase / (Decrease)	2019-21 Executive Budget	2019-21 General Fund	2019-21 Federal Funds	2019-21 Special Funds
Indoor Air Radiation System Development & Maintenance	75,000	-	75,000		40,000	35,000
Air Quality Database & System Development & Maintenance	16,600	68,400	85,000		50,000	35,000
Chemistry Laboratory Information Management System Maintenance	-	6,050	6,050			6,050
Gas Chromatograph Maintenance	-	17,750	17,750			17,750
Surface Water Mapping Tool Maintenance	10,000	-	10,000	2,000	8,000	
ND Pollutant Discharge Elimination System Database Maintenance	10,000	30,000	40,000	5,000	15,000	20,000
Municipal Facilities Inspections Database Maintenance	10,000	10,000	20,000		20,000	
Municipal Facilities Safe Drinking Water Information System	105,266	(5,266)	100,000	20,000	80,000	
Waste Management Leaking Underground Storage Tank IT Maintenance	45,000	983	45,983	6,368	37,565	2,050
Waste Management Solid Waste IT Maintenance	50,000	-	50,000			50,000
Petroleum Tank Database Development & Maintenance	-	60,000	60,000			60,000
Information Exchange System Development & Maintenance	135,000	(45,000)	90,000		90,000	
Enforcement System Maintenance	20,000	-	20,000	4,000	16,000	
Public Environmental Data Web Site Development	-	60,000	60,000	12,000	48,000	
Electronic Reporting System Development & Maintenance	-	80,000	80,000	36,000	44,000	
State and Local Emissions Inventory System (SLEIS) Development & Maintenance	-	40,000	40,000	8,000	32,000	
Total IT Contractual Services	\$ 476,866	\$ 322,917	\$ 799,783	\$ 93,368	\$ 480,565	\$ 225,850

**North Dakota Department of Environmental Quality
2019-21 Executive Budget**

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Grant Line Item

Description	2017-19 Base Budget	Increase / (Decrease)	2019-21 Executive Budget	2019-21 General Fund	2019-21 Federal Funds	2019-21 Special Funds
319 Nonpoint Source	8,800,000	(150,000)	8,650,000		8,650,000	
604 B Water Quality Management Program	110,000	-	110,000		110,000	
EPA Wetlands Protection Funds	500,000	(500,000)				
Environmental Rangeland Protection Trust Fund to ND Stockmen's Association	50,000	-	50,000			50,000
Clean Diesel Equipment Grants	390,000	260,000	650,000		650,000	
Water Development Trust Fund Grants	200,000	-	200,000			200,000
Water Quality Monitoring Grants	200,000	-	200,000		200,000	
Water Pollution Grants to Local Public Health	200,000	-	200,000		200,000	
Abandoned Vehicle Grants	250,000	-	250,000			250,000
Water Pollution Grants to LPH (EPA Block)	50,000	-	50,000		50,000	
Radon Grants to LPH and others (EPA Block)	80,000	(55,000)	25,000		25,000	
Public Water Control (EPA Block)	77,000	-	77,000	15,400	61,600	
Volkswagen Settlement Grants	2,500,000	2,899,529	5,399,529			5,399,529
Total Grants	\$ 13,407,000	\$ 2,454,529	\$ 15,861,529	\$ 15,400	\$ 9,946,600	\$ 5,899,529

**North Dakota Department of Environmental Quality
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Equipment > \$5,000

Description\Narrative	Quantity	Base Price	2019-21 Executive Budget	2019-21 General Fund	2019-21 Federal Funds	2019-21 Special Funds
Nitrogen Oxide Analyzer	2	13,500	27,000			27,000
Ozone Analyzer	3	12,500	37,500			37,500
Sulfur Dioxide (SO2) Analyzer	2	13,000	26,000			26,000
Particulate Mass Analyzer	2	23,000	46,000		46,000	
Air Monitoring Shelter	2	47,000	94,000			94,000
X-Ray Equipment	1	20,000	20,000			20,000
Quad O and Quad Oa Forward Looking Infrared (FLIR) Cameras	5	100,000	500,000			500,000
Copier	1	6,000	6,000			6,000
Photo Diode Array Detector for Liquid Chromatograph Mass Spectrometry	1	17,000	17,000			17,000
Fluorescence Detector	1	15,000	15,000			15,000
Inductively Coupled Mass Spectrometer	1	150,000	150,000			150,000
Gas Chromatograph Mass Spectrometer	2	110,000	220,000			220,000
Gas Chromatograph Electron Capture Detector	1	40,000	40,000			40,000
Gas Chromatograph Mass Spectrometer Mass Spectrometer	1	200,000	200,000			200,000
Acoustic Doppler Velocimeter	1	9,000	9,000		9,000	
Copier	1	7,500	7,500		7,500	
			-			
Total Equipment > \$5,000			\$ 1,415,000	\$ -	\$ 62,500	\$ 1,352,500

IT Equipment/Software > \$5,000

Description\Narrative	Quantity	Base Price	2019-21 Executive Budget	2019-21 General Fund	2019-21 Federal Funds	2019-21 Special Funds
Chromatograph Data System Server	1	10,000	10,000			10,000
eSIMS Inventory Management Software	1	10,000	10,000			10,000
Quad O and Quad Oa Tracking Software	1	500,000	500,000			500,000
Electronic Reporting System Software	1	35,000	35,000		35,000	
State and Local Emissions Inventory Software	1	50,000	50,000		50,000	
			-			
Total IT Equipment/Software > \$5,000			\$ 605,000	\$ -	\$ 85,000	\$ 520,000

**North Dakota Department of Environmental Quality
2019-21 Executive Budget
Extraordinary Repairs**

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Environmental Training Center

Description	2019-21 Executive Budget	2019-21 General Fund	2019-21 Federal Funds	2019-21 Special Funds
Flush and Refill Hot Water Heating System	1,000	1,000		
Replace Laboratory Window	3,000	2,866	134	
Replace Northwest Atrium Window	3,000		3,000	
Re-Carpet Office Area	10,000		10,000	
Install HVAC Ductwork East Mechanical Room	2,000		2,000	
Repair and Re-Install Environmental Training Center Sign	1,000		1,000	
Weather-strip Exterior Doors	1,000		1,000	
Repair Sidewalk	2,000		2,000	
Repair Lights	2,000		2,000	
Replace Deteriorating Doors	2,000		2,000	
Total Environmental Training Center	\$ 27,000	\$ 3,866	\$ 23,134	\$ -

**North Dakota Department of Environmental Quality
2019-21 Executive Budget**

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Temporary / Overtime Salaries

Duties / Timeframe	2017-19 Base Budget	Increase / (Decrease)	2019-21 Executive Budget	2019-21 General Fund	2019-21 Federal Funds	2019-21 Special Funds
Temporary dollars to assist with Air Quality Monitoring tasks. These services were previously performed through a contract. These costs are ongoing.	124,000	(4,000)	120,000			120,000
Temporary dollars to hire staff during the summer to address the increased sample workload. These are usually students and they assist with sample preparation and analysis responsibilities. These costs are ongoing for the Chemistry Lab.	62,280	6,230	68,510			68,510
Temporary dollars to hire staff to clean lab supplies. These services were previously paid by ND DoH but will now be paid by Chemistry Lab. These costs are ongoing.	-	31,200	31,200			31,200
Temporary dollars to hire staff during the summer for water quality sampling, office, and lab work. These costs are ongoing.	25,000	-	25,000	6,250	18,750	
Overtime for Oil Impact. These costs are ongoing	115,000	(10,000)	105,000	105,000		
Temporary dollars to hire staff during the summer for water quality sampling, office and lab work. These costs are ongoing.	45,000	-	45,000	45,000		
Temporary dollars to assist with environmental issues. These cost are ongoing.	30,000	-	30,000	7,500	22,500	
Overtime for Environmental Scientist in Chief's Office. The position is part-time. Budgeting for hours that exceed part-time. These costs are ongoing.		52,500	52,500		52,500	
Total Temporary and Overtime	\$ 401,280	\$ 75,930	\$ 477,210	\$ 163,750	\$ 93,750	\$ 219,710

Analysis of North Dakota's Adoption of NSPS OOOO and OOOOa

Summary:

Subparts OOOO and OOOOa together apply to crude oil and natural gas production, transmission, and distribution facilities that commenced construction, modification, or reconstruction after August 23, 2011. Requirements of the subparts include substantial monitoring, recordkeeping, and reporting. The subparts apply to several source types including upstream oil and gas wells, midstream compressor stations, gas plants and crude oil storage and transmission. Each facility subject to either Subpart OOOO and/or Subpart OOOOa will require a permit, annual emissions inventory reports, periodic inspections, semi-annual reporting for OOOO and/or OOOOa, and quarterly Leak Detection and Repair (LDAR) reporting.

The North Dakota Department of Health, Division of Air Quality (Department) reached out to other oil producing states and determined that adoption of these Subparts will at minimum:

- **Create 85,800 extra hours of report review time and field work each year**
- **Cost approximately \$7.4 million for North Dakota per biennium**
- **Require 41 new FTEs and an integrated environmental software system**

The above is based on the review outlined below.

Assessment of Affected North Dakota Facilities and Workload

Upstream crude petroleum and natural gas extraction:

- The Department estimates at least 12,000 currently registered oil and gas production facilities would need to be permitted
- Approximately 2,000 new sources are expected in the coming 1–2 years due to new well production

Midstream natural gas distribution:

- Approximately 160 currently permitted facilities would be affected
- Approximately 75 facilities not currently permitted would be subject to permitting with the adoption of these subparts
- 50 new facilities are expected in the coming 1–2 years with gas capture development

Midstream pipeline transportation of crude oil:

- Approximately 50 currently permitted facilities would be affected
- The Department estimates at least 100 facilities not currently permitted would be subject to permitting with the adoption of these NSPS (New Source Performance Standards)
- New facilities are expected in the coming 1–2 years with pipeline development

Midstream pipeline transportation of natural gas:

- Approximately 30 currently permitted facilities would be affected
- 10 new facilities to be subject in the coming 4–6 years with gas capture development

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Workload and Cost Increase:

As outlined above, substantial paperwork will be required for a variety of sources. Every facility not currently permitted by the Department, excluding oil and gas wells, would add approximately 40 more hours of report review time annually. Each facility that is currently permitted would require approximately 10 additional hours of report review time annually. All oil and gas wells, which are currently not permitted, would require approximately 4 more hours of report review time annually, including the need for annual inspections. This equates to a total increased workload of ~85,800 extra hours of staff time each year, ~\$3,700,000 annually, or ~41 new FTEs based on a mid-range salary of \$62,376 (includes ~\$28,000/year in benefits). These costs would be in line with what other states have already provided. Colorado currently employs 25 FTEs and Wyoming currently employs 22 FTEs. These FTEs are all assigned strictly to oil and gas work with NSPS OOOO and OOOOa. North Dakota produces over five times as much oil as Wyoming and nearly three times as much oil as Colorado. North Dakota is the United States' second highest producer of crude oil and has only two FTEs focused on oil and gas exclusively.

Environmental Software System Reporting Tool:

To process the increased notification and reporting from the adoption of Subparts OOOO and OOOOa, an integrated environmental reporting tool will be required. The current database is out-of-date and not capable of accepting the volume and type of OOOO/OOOOa reports. Custom off the shelf (COS) systems cost approximately \$383,000 for the initial setup and integration with existing database systems. The annual maintenance contract will cost approximately \$45,000 for support and improvements and a \$72,000 license cost annually. An electronic system would allow for more efficient reporting for industry, many of whom already utilize electronic systems for their recordkeeping and reporting requirements under NSPS OOOO and OOOOa. Furthermore, other states, such as Texas, Wyoming, Montana, and Colorado, are already using electronic systems. If North Dakota utilizes a COS compatible electronic reporting system, it would be much more efficient and convenient for filing reports. This system would also allow the Department to better handle the increased reporting. The Department currently has no system to handle electronic reporting and recordkeeping. Adequate adoption and implementation of Subparts OOOO and OOOOa using our current system would be impossible.

Other Concerns:

EPA is currently reconsidering portions of Subpart OOOOa. Adopting Subpart OOOOa while it is being amended would create significant uncertainty and confusion for industry and state regulators.

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PROPOSED AMENDMENTS TO HOUSE BILL NO. 1024

Page 1, line 2, after "quality" insert: "; to amend and reenact sections 23-37-02, 23-37-04, 23-37-05, 23-37-06, 23-37-10, 23-37-11, 23-37-14, 23-37-14, 23-37-15, 23-37-17, 23-37-18, 23-37-19, 23-37-20, 23-37-23, 23-37-24, 23-37-25, 23-37-26, 23-37-27, 23-37-28, 23-37-29, and 23-37-30 of the North Dakota Century Code, relating to petroleum release remediation; and to amend and reenact sections 26.1-22.1-02, 26.1-22.1-03, 26.1-22.1-04, subsection 1 of 26.1-22.1-07, 26.1-22.1-08, 26.1-22.1-09, 26.1-22.1-10, 26.1-22.1-12, and 26.1-22.1-14 of the North Dakota Century Code, relating to boiler inspections"

Page 1, line 12, replace the second occurrence of "\$27,040,544" with "\$27,845,054"

Page 1, line 13, replace the second occurrence of "\$8,005,878" with "\$8,170,188"

Page 1, line 16, replace the second occurrence "\$49,711,671" with "\$50,680,491"

Page 1, line 18, replace the second occurrence "\$10,724,151" with "\$11,692,971"

Page 1, line 19, replace the second occurrence of "152.50" with "156.50"

Page 2, after line 9, insert:

SECTION 4. AMENDMENT. Section 23-37-02 of the North Dakota Century Code is amended and reenacted as follows:

23-37-02. Definitions.

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

1. "Actually incurred" means, in the case of corrective action expenditures, that the owner, the operator, the landowner, an insurer, or a contractor hired by the owner, operator, or the landlord has expended time and materials and that only that person is receiving reimbursement from the fund.
2. ~~"Administrator" means the manager of the state fire and tornado fund.~~
32. "Board" means the petroleum release compensation board.
4. ~~"Commissioner" means the insurance commissioner.~~
53. "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.
64. "Dealer" means any person licensed by the tax commissioner to sell motor vehicle fuel or special fuels within the state.
75. "Department" means the state department of health.
86. "Fund" means the petroleum release compensation fund.
97. "Location" means a physical address or site that has contiguous properties.
Noncontiguous properties within a municipality or other governmental jurisdiction are considered separate locations.

408. "Operator" means any person in control of, or having responsibility for, the daily operation of a tank under this chapter.
449. "Owner" means any person who holds title to, controls, or possesses an interest in the tank before the discontinuation of its use.
4210. "Person" means an individual, trust, firm, joint stock company, federal agency, corporation, state, municipality, commission, political subdivision of a state, or any interstate body. The term also includes a consortium, a joint venture, a commercial entity, and the United States government.
4311. "Petroleum" means any of the following:
- a. Gasoline and petroleum products as defined in chapter 19-10.
 - b. Constituents of gasoline and fuel oil under subdivision a.
 - c. Oil sludge and oil refuse.
4412. "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.
4513. "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.
4614. "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. 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, regulated under:
 - (1) The Natural Gas Pipeline Safety Act of 1968.
 - (2) The Hazardous Liquid Pipeline Safety Act of 1979.
 - (3) An interstate pipeline facility regulated under state laws comparable to the provisions of law in paragraph 1 or 2.
 - 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.
1715. "Tank integrity test" means a test to determine that a tank is sound and not leaking.
For an underground tank, the term means a certified third-party test that meets environmental protection agency leak detection requirements. For an aboveground tank, the term means a test conducted according to steel tank institute SP 001 or American petroleum institute 653.
1816. "Third party" means a person who is damaged by the act of a registered owner, operator, or dealer requiring corrective action or a person who suffers bodily injury or property damage caused by a petroleum release.

SECTION 5. AMENDMENT. Section 23-37-04 of the North Dakota Century Code is amended and reenacted as follows:

23-37-04. Administration of fund - Staff. (Contingent repeal - See note)

The administrator department of environmental quality shall administer the fund according to this chapter. The administrator department of environmental quality shall convene the board as may be necessary to keep the board apprised of the fund's general operations. However, the board shall meet at least once each half of each calendar year to review and to advise the administrator department of environmental quality regarding the administration of the fund, the fund's general operations, and to hear and decide denials of claims by the administrator department of environmental quality which may be appealed to the board, and to discuss all claims against the fund. The administrator department of environmental quality may employ any assistance and staff necessary to administer the fund within the limits of legislative appropriation. A claimant aggrieved by a decision of the administrator department of environmental quality regarding a claim upon the fund may appeal the decision to the board. The board may sustain, modify, or reverse the decision of the administrator department of environmental quality. The claimant or the administrator department of environmental quality may appeal the board's decision to the ~~commissioner~~ state health officer. The decision of the ~~commissioner~~ state health officer may be appealed under chapter 28-32.

SECTION 6. AMENDMENT. Section 23-37-05 of the North Dakota Century Code is amended and reenacted as follows:

23-37-05. Adoption of rules.

The administrator department of environmental quality shall adopt rules regarding the practices and procedures of the fund, the form and procedure for applications for compensation from the fund, procedures for investigation of claims, procedures for determining the amount and type of costs that are eligible for reimbursement from the fund, procedures for persons to perform services for the fund, procedures for appeals to the board by claimants aggrieved by an adverse decision of the administrator department of environmental quality, and any other rules as may be appropriate to administer this chapter.

SECTION 7. AMENDMENT. Section 23-37-06 of the North Dakota Century Code is amended and reenacted as follows:

23-37-06. Release discovery.

If the department has reason to believe a release has occurred, it shall notify the administrator department of environmental quality. The department shall direct the owner or operator to take reasonable and necessary corrective actions as provided under federal or state law or under adopted rules.

SECTION 8. AMENDMENT. Section 23-37-10 of the North Dakota Century Code is amended and reenacted as follows:

23-37-10. Providing of information.

Any person whom the administrator department of environmental quality or the department has reason to believe is an owner or operator, the owner of real property where corrective action is ordered to be taken, or any person who may have information concerning a release shall, if requested by the administrator department of environmental quality or the department, or any member, employee, or agent of the administrator department of environmental quality or the department, furnish to the administrator department of environmental quality or the department any information that person has or may reasonably obtain that is relevant to the release.

SECTION 9. AMENDMENT. Section 23-37-11 of the North Dakota Century Code is amended and reenacted as follows:

23-37-11. Examination of records.

Any employee of the administrator department of environmental quality or the department may, upon presentation of official credentials:

1. Examine and copy books, papers, records, memoranda, or data of any person who has a duty to provide information to the administrator department of environmental quality or the department under section 23-37-10; and
2. Enter upon public or private property for the purpose of taking action authorized by this section, including obtaining information from any person who has a duty to provide the information under section 23-37-10, conducting surveys and investigations, and taking corrective action.

SECTION 10. AMENDMENT. Section 23-37-14 of the North Dakota Century Code is amended and reenacted as follows:

23-37-14. Other remedies.

This chapter does not limit the powers of the administrator department of environmental quality or department, or preclude the pursuit of any other administrative, civil, injunctive, or criminal remedies by the administrator department of environmental quality or department or any other person. Administrative remedies need not be exhausted in order to proceed under this chapter. The remedies provided by this chapter are in addition to those provided under existing statutory or common law.

SECTION 11. AMENDMENT. Section 23-37-15 of the North Dakota Century Code is amended and reenacted as follows:

23-37-15. Revenue to the fund.

Revenue from the following sources must be deposited in the state treasury and credited to the fund:

1. Any registration fees collected under section 23-37-17;
2. Any money recovered by the fund under section 23-37-23, and any money paid under an agreement, stipulation, or settlement;
3. Any interest attributable to investment of money in the fund; and
4. Any money received by the administrator department of environmental quality in the form of gifts, grants, reimbursements, or appropriations from any source intended to be used for the purposes of the fund.

SECTION 12. AMENDMENT. Section 23-37-17 of the North Dakota Century Code is amended and reenacted as follows:

23-37-17. Registration fee.

1. An owner or operator of a tank shall pay an annual registration fee of fifty dollars for each aboveground or underground tank owned or operated by that person. If after the fiscal year has been closed and all expenses relating to the fiscal year have been accounted for, the fund balance is less than six million dollars, the annual registration fee of fifty dollars is increased to one hundred dollars. If after the fiscal year has been closed and all expenses relating to the fiscal year have been accounted for, the fund balance is five million five hundred thousand dollars or more and the annual registration fee has been increased to one hundred dollars, the fee must be reduced to fifty dollars. If after the fiscal year has been closed and all expenses relating to the fiscal year have been accounted for, the fund balance exceeds nine million dollars, the annual registration fee is reduced to five dollars. Annual registration fees must continue at five dollars until the fund balance does not exceed nine million dollars.
2. An owner or operator of an existing tank that is discovered at a location that currently and previously has had tanks registered with the fund shall pay an additional twenty-five dollar penalty fee in addition to the

- registration fee for each aboveground tank and each underground tank owned or operated by that person for each previous year that the tank was required to be registered for which a fee was not paid. The payment includes the fees and the penalty for the failure to register.
3. An owner or operator of an existing tank at a location that was not previously and continuously registered with the fund, whether the registration was required by law or not must provide the fund with a phase two environmental study conducted by a qualified firm according to American society for testing materials standards. A tank integrity test must also be performed. The environmental study and tank integrity test must be reviewed by the commissioner department of environmental quality along with the application for registration with the fund. If the commissioner department of environmental quality rejects the application, the applicant is denied eligibility to the fund. However, if the site is remediated and the leaking tank is replaced, the applicant may reapply for registration with the fund. A new installation that is using a used tank must provide tank integrity test results for the used tank. Use of a synthetic liner in an aboveground dike system negates the need for a tank integrity test. The owner or operator of a new tank at a new site or a new tank at an existing site that had a tank registered at the site previously need only pay the required fees for registration with the fund.
 4. If accepted for registration with the fund, the owner or operator of the tank shall pay an additional twenty-five dollar penalty fee in addition to the registration fee for each aboveground tank and underground tank owned or operated by that person for each previous year that the tank was required to be registered for which a fee was not paid, regardless of ownership in each of those years. The payment includes the fees and the penalty for the failure to register.
 5. The registration fees collected under this section must be paid to the ~~fund~~ administrator department of environmental quality for deposit in the state treasury for the dedicated credit to the petroleum release compensation fund.
 6. If a registration payment is not received within sixty days of July first by the Commissioner department of environmental quality, a late fee of twenty-five dollars per tank per month must be imposed on the tank owner or operator.

SECTION 13. AMENDMENT. Section 23-37-18 of the North Dakota Century Code is amended and reenacted as follows:

23-37-18. Reimbursement for corrective action.

1. The administrator department of environmental quality shall reimburse an eligible owner or operator for ninety percent of the costs of corrective action, including the investigation, which are greater than five thousand dollars and less than one million dollars per occurrence and two million dollars in the aggregate. An eligible tank owner or operator may not be

liable for more than twenty thousand dollars out-of-pocket expenses for any one release. A reimbursement may not be made unless the administrator department of environmental quality determines that:

- a. At the time the release was discovered the owner or operator and the tank were in compliance with state and federal rules and rules applicable to the tank, including rules relating to financial responsibility, rules relating to infrastructure compatibility, and all rules relating to health and safety which were in effect at the time of the release;
 - b. The department was given notice of the release as required by federal and state law;
 - c. The owner or operator has paid the first five thousand dollars of the cost of corrective action; and
 - d. The owner or operator, to the extent possible, fully cooperated with the department and the administrator department of environmental quality in responding to the release.
2. The fund shall compensate third parties for corrective action taken for a petroleum release if the provisions of subdivisions a, b, c, and d of subsection 1 were met at the time the release was discovered. Compensation for third-party corrective action includes compensation for costs incurred in returning the real estate to that level deemed duly remediated by the department.
3. The fund shall reimburse the tank owner, operator, or dealer for bodily injuries to a third party caused by a petroleum release if the provisions of subdivisions a, b, c, and d of subsection 1 were met at the time the release was discovered in an amount determined by:
- a. Findings reduced to judgment in federal or state district court within the state of North Dakota or such other court having jurisdiction over the matter in a proceeding in which the fund has been made a party;
 - b. Findings by an arbitration panel agreed upon in writing by the parties in a proceeding in which the fund has been made a party; or
 - c. A written settlement entered into by the parties in which the commissioner state health officer or the commissioner's state health officer's agent has participated. The settlement must be reviewed and approved by the commissioner state health officer.
4. In any civil action against the owner, operator, or dealer for damages resulting from a petroleum release, if the pre-leak condition of real estate is an issue and if there is no reasonable means of determining the pre-leak condition of real estate, the condition is that which exists at the time the department determines the real estate has been duly remediated.
5. The fund may not compensate for attorney's fees of owners, operators, or dealers, nor may the fund compensate for exemplary damages, criminal fines, or administrative penalties.
6. A third party accepting monetary compensation directly from the fund for damages due to a release caused by a tank owner, operator, or dealer

covered by the fund is deemed to have waived any cause of action against the fund or against the tank owner, operator, or dealer.

7. The fund shall reimburse the department for all costs, attorney's fees, and other legal expenses relating to administrative and adjudicative proceedings under this chapter and any subsequent legal proceeding. Any monies reimbursed must be deposited in the department's operating fund in the state treasury and must be spent subject to appropriation by the legislative assembly.

SECTION 14. AMENDMENT. Section 23-37-19 of the North Dakota Century Code is amended and reenacted as follows:

23-37-19. Application for reimbursement.

Any owner or operator who is a first-party claimant who proposes to take corrective action or has undertaken corrective action in response to a release, the time of such release being unknown, may apply to the administrator department of environmental quality for partial or full reimbursement under section 23-37-18. An owner or operator who is a first-party claimant may be reimbursed only for costs incurred after July 1, 1989, even if the releases were discovered before July 1, 1989, up to the maximum of twenty-five thousand dollars per location.

SECTION 15. AMENDMENT. Section 23-37-20 of the North Dakota Century Code is amended and reenacted as follows:

23-37-20. Administrator Department of environmental quality to determine costs.

A reimbursement for corrective actions taken by an owner, operator, or dealer may not be made from the fund until the administrator department of environmental quality has determined that the costs for which reimbursement is requested were actually incurred and were reasonable. All necessary loss adjustment expenses must be included as a component of the loss and must be paid out of the fund.

SECTION 16. AMENDMENT. Section 23-37-23 of the North Dakota Century Code is amended and reenacted as follows:

23-37-23. Recovery of expenses.

Any reasonable and necessary expenses incurred by the fund, which exceed the coverage limits provided by section 23-37-18, in taking a corrective action, including costs of investigating a release, and in taking legal actions may be recovered in a civil action in district court brought by the administrator department of environmental quality against an owner or operator. The certification of expenses by an approved agent of the fund is prima facie evidence that the expenses are reasonable and necessary. Any expenses that are recovered under this section must be deposited in the fund.

SECTION 17. AMENDMENT. Section 23-37-24 of the North Dakota Century Code is amended and reenacted as follows:

23-37-24. Costs exceeding reimbursement.

If the cost of any extraordinary authorized action under this chapter exceeds amounts awarded to the administrator department of environmental quality or the department from the federal government, the administrator department of environmental quality may pay the department the cost of the corrective actions, including the cost of investigating a release, if the board finds that the cause was a petroleum substance, that an adequate amount exists in the fund to pay for the corrective action, that the occurrence was extraordinary in scope and size, and that a danger to the health and safety of citizens exists.

SECTION 18. AMENDMENT. Section 23-37-25 of the North Dakota Century Code is amended and reenacted as follows:

23-37-25. Coordination of benefits.

If an owner or operator has an insurance policy that provides the same coverage as the fund, the administrator department of environmental quality of the fund shall pay the share of the covered loss or damage for which the fund is responsible. The share that must be paid from the fund is equal to the proportion that the applicable limit of coverage under the fund bears to the limits of insurance of all insurance coverage on the same basis.

SECTION 19. AMENDMENT. Section 23-37-26 of the North Dakota Century Code is amended and reenacted as follows:

23-37-26. Third-party damages - Participation in actions and review of settlements.

1. An owner or operator who is sued for damages resulting from a release shall notify the administrator department of environmental quality within fourteen days of being served with a summons and complaint. The owner or operator shall also advise the administrator department of environmental quality if any insurer is defending the owner or operator and provide to the administrator department of environmental quality the name of that insurer.
2. An owner or operator who, before litigation, enters into negotiations with a third party who claims to have been damaged by a release, or who receives a demand for payment of damages to a third party who claims to have been damaged by a release, shall notify the administrator department of environmental quality within fourteen days of the demand or the negotiations.
3. The administrator department of environmental quality and the board shall review the conduct of any litigation or negotiation. The administrator department of environmental quality may not assume any legal costs incurred by the defendant or plaintiff, but may participate in discovery, trial proceedings, or settlement negotiations of either disputed liability or damages that bear on the determination of a plaintiff's damages.

4. The ~~administrator~~ department of environmental quality and the board shall review any settlement negotiations to determine the dollar amount of bodily injury or property damage actually, necessarily, and reasonably incurred by third parties which, if paid by the defendant, would be considered eligible costs.

SECTION 20. AMENDMENT. Section 23-37-27 of the North Dakota Century Code is amended and reenacted as follows:

23-37-27. Third-party damages - Documentation.

1. An applicant's payments for third-party damages pursuant to a judgment entered in a court must include copies of the notice of entry of judgment and abstract of costs.
2. An applicant's payments for third-party damages made by agreement in settlement of litigation must include copies of the settlement agreement and such supporting documents as may be required by the administrator department of environmental quality.
3. An applicant's payments for third-party damages made by agreement without reference to litigation must include copies of the settlement and such supporting documents as may be required by the administrator department of environmental quality.
4. The administrator department of environmental quality and the board may require a third party who claims bodily injury to be examined by a physician and require that the physician's report be submitted to the administrator department of environmental quality. The administrator department of environmental quality may require a third party who claims property damage to permit a property appraiser or claims adjuster retained by the administrator department of environmental quality to inspect the property and report to the administrator department of environmental quality.
5. The fund shall pay a judgment against an owner, operator, or dealer awarded to a third party as a result of a third-party claim and property damage against an owner, operator, or dealer registered by the fund.
6. The fund shall pay for corrective action as awarded to a third party in any judgment against an owner, operator, or dealer.
7. Liability of the tank owner, operator, dealer, or fund to third parties for corrective action or personal injuries and property damage may not exceed, per person, one million dollars. Maximum liability of the fund, including all claims by third parties, may not exceed, for any release site, the maximum provided in section 23-37-18.
8. A third party may not bring an action against any owner, operator, or dealer more than three years after a corrective action plan has been approved by the department if the owner, operator, or dealer fully implements and complies with the corrective action plan.
9. In investigating a release site or reviewing the implementation of any corrective action plan approved by the department, the department shall

determine whether the release currently threatens public health or the environment. The department shall require, based on science and technology appropriate for the site, any monitoring, remediation, or other appropriate corrective action that is reasonably necessary to protect public health or the environment. The department may require corrective action at a release site at any time after a release occurs.

SECTION 21. AMENDMENT. Section 23-37-28 of the North Dakota Century Code is amended and reenacted as follows:

23-37-28. Matching federal funds.

The ~~administrator~~ department of environmental quality and the board may annually allow the department a ten percent matching grant for federal leaking underground storage tank funds to be paid out of the fund if the moneys are available and the ~~administrator~~ department of environmental quality and the board determine the allowance appropriate.

SECTION 22. AMENDMENT. Section 23-37-29 of the North Dakota Century Code is amended and reenacted as follows:

23-37-29. Fund appropriations.

Money in the fund is continuously appropriated to the ~~administrator~~ department of environmental quality for the purpose of making reimbursements under this chapter.

SECTION 23. AMENDMENT. Section 23-37-30 of the North Dakota Century Code is amended and reenacted as follows:

23-37-30. Investment of fund.

Investment of the fund is under the supervision of the state investment board in accordance with chapter 21-10. The ~~commissioner~~ state health officer may purchase a contract for reinsurance of any risk to be paid by the fund. The ~~administrator~~ department of environmental quality may investigate the purchase of insurance that reimburses an owner or operator for property damage claims by third parties other than claims for costs of corrective action.

SECTION 24. AMENDMENT. Section 26.1-22.1-02 of the North Dakota Century Code is amended and reenacted as follows:

26.1-22.1-02. Chief boiler inspector, deputy inspectors - Appointment - Jurisdiction.

The ~~commissioner~~, as manager of the state fire and tornado fund department of environmental quality, shall employ a chief boiler inspector and deputy inspectors. The chief boiler inspector has jurisdiction over all boilers in this state except as otherwise provided.

SECTION 25. AMENDMENT. Section 26.1-22.1-03 of the North Dakota Century Code is amended and reenacted as follows:

26.1-22.1-03. Qualifications of chief boiler inspector - Deputy inspectors.

1. No person is eligible to the office of chief boiler inspector unless that person:
 - a. Has had at the time of the appointment at least five years' experience in the construction, inspection, operation, maintenance, or repair of high pressure boilers and pressure vessels as a mechanical engineer, boilermaker, steam operating engineer, or boiler inspector. An applicant possessing a mechanical engineering degree from an accredited school may substitute that degree for two years of the five years' experience, at the discretion of the commissioner department of environmental quality.
 - b. Holds a commission issued by the national board of boiler and pressure vessel inspectors or obtains the commission within one year after the date of appointment by the commissioner department of environmental quality.
 - c. Is not directly or indirectly interested in the manufacture or sale of boilers or steam machinery or articles used in the construction or maintenance of engines or boilers.
2. The commissioner department of environmental quality shall establish qualifications for a deputy inspector which are not inconsistent with the requirements of the position.

SECTION 26. AMENDMENT. Section 26.1-22.1-04 of the North Dakota Century Code is amended and reenacted as follows:

26.1-22.1-04. Powers and duties of chief boiler inspector.

1. The chief boiler inspector shall:
 - a. Keep a complete record of the type, dimensions, maximum allowable working pressure, age, condition, location, and date of the last-recorded internal and external inspection of boilers to which this chapter applies.
 - b. Cooperate and assist in loss prevention programs sponsored by the commissioner department of environmental quality.
2. The chief boiler inspector may delegate powers and duties to any deputy inspector or special inspector.

SECTION 27. AMENDMENT. Subsection 1 of section 26.1-22.1-07 of the North Dakota Century Code is amended and reenacted as follows:

26.1-22.1-07. Inspection of boilers.

1. The chief boiler inspector shall inspect each boiler used or proposed to be used within this state. The inspection must be thorough as to the

construction, installation, condition, and operation as provided by the rules adopted to implement this chapter.

An exempt boiler may be inspected by the chief boiler inspector when the owner, the owner's agent, or the user of the boiler makes written request for inspection to the commissioner department of environmental quality.

SECTION 28. AMENDMENT. Section 26.1-22.1-08 of the North Dakota Century Code is amended and reenacted as follows:

26.1-22.1-08. Special inspector.

1. Upon written request of an employer, the commissioner department of environmental quality may appoint as a special inspector an inspector in the employ of:
 - a. An insurance company authorized to insure boilers in this state against loss from explosion;
 - b. A company qualified by the national board of boiler and pressure vessel inspectors as an accredited owner/user inspection organization; or
 - c. A company qualified by the national board of boiler and pressure vessel inspectors as an accredited authorized inspection agency. A person may not be appointed as a special inspector unless that person has passed the examination prescribed by the national board of boiler and pressure vessel inspectors.
2. An inspection performed by a special inspector must be performed in accordance with this chapter and a complete report of the inspection must be filed with the commissioner department of environmental quality in the time, manner, and form as prescribed by the commissioner department of environmental quality.
3. If a complete report is not filed by the special inspector's employer with the commissioner department of environmental quality within ninety days from the certificate due date, the chief boiler inspector may make the required inspection, unless an extension of time is granted by the chief boiler inspector. The special inspector's employer must pay the inspection fees as required by section 26.1-22.1-09 for a special inspection.
4. The chief boiler inspector may inspect any boiler to which a special inspection applies.
5. The commissioner department of environmental quality may, for cause, suspend or revoke the appointment of any special inspector.

SECTION 29. AMENDMENT. Section 26.1-22.1-09 of the North Dakota Century Code is amended and reenacted as follows:

26.1-22.1-09. Inspection and certificate fees.

Upon completion of inspection, the owner or user of a boiler shall pay to the commissioner department of environmental quality fees or a combination of inspection and certificate fees. Inspection fees must be determined by the commissioner

department of environmental quality. Certificate fees are determined by section 26.1-22.1-10. The commissioner department of environmental quality must determine and may annually adjust a fee scale for the internal inspections of power boilers, internal inspections of low pressure heating boilers, external inspections of all boilers, and inspection of boilers used exclusively for exhibition purposes.

Not more than two hundred dollars may be charged or collected for any one inspection of a boiler except for special inspections made upon request. All other inspections made by the chief boiler inspector, including shop inspections and reviews and special inspections when requested by the owner or user of a boiler, must be charged at a rate not to exceed five hundred dollars per day or three hundred dollars per half day of four hours or less, plus payment for mileage, meals, and hotel expenses as allowed by sections 44-08-04 and 54-06-09, except that the mileage rate for a state-owned vehicle will be the actual amount incurred by the commissioner department of environmental quality. The annual fee for the issuance of a reciprocal commission card for a special inspector is forty dollars and the annual fee for the issuance of a welder-qualified card is twenty dollars. The fee for taking an examination for a hobby boiler operating license is twenty-five dollars and the fee for a hobby boiler operating license is twenty-five dollars. A hobby boiler operating license issued under this section is valid for six years.

SECTION 30. AMENDMENT. Section 26.1-22.1-10 of the North Dakota Century Code is amended and reenacted as follows:

26.1-22.1-10. Certificate of inspection - Certificate to be posted.

The commissioner department of environmental quality shall issue a certificate of inspection for each boiler inspected upon receipt of an inspection report certifying that the boiler is in a safe condition to be operated. The commissioner department of environmental quality shall charge a fee of twenty dollars per year for each year that a certificate is valid, or part of a year thereof, for each certificate of inspection issued as the result of inspections authorized under sections 26.1-22.1-07 and 26.1-22.1-08. The fees are the liability of the owner or user and must be paid in accordance with rules adopted by the commissioner department of environmental quality.

No certificate may be issued for any boiler not in a safe condition to be operated or for a boiler for which the inspection and certificate fees have not been paid in full. No certificate is valid for a period of more than thirty-six months for power boilers described in subsection 2 of section 26.1-22.1-07, and no more than twelve months for other power boilers, twelve months for steam traction engines, and thirty-six months for low pressure boilers except that a two-month grace period may be extended for any certificate. Upon written request from a special inspector, the chief boiler inspector may issue a short-term certificate. Each certificate of inspection must be posted conspicuously under glass in the boiler room or adjacent to the boiler inspected.

SECTION 31. AMENDMENT. Section 26.1-22.1-12 of the North Dakota Century Code is amended and reenacted as follows:

26.1-22.1-12. Manufacturer's data report.

The boiler manufacturer shall provide the commissioner department of environmental quality with a manufacturer's data report. When signed by an authorized inspector, this data sheet together with the stamp on the boiler is the record denoting that the boiler has been constructed in accordance with the rules adopted to implement this chapter.

SECTION 32. AMENDMENT. Section 26.1-22.1-14 of the North Dakota Century Code is amended and reenacted as follows:

26.1-22.1-14. Rules - Penalty for violation - Hearing.

The commissioner department of environmental quality shall adopt rules for the safe and proper installation, use, operation, and inspection of boilers and pressure vessels subject to this chapter. The commissioner department of environmental quality shall adopt rules for the licensing of operators of hobby boilers used during parades, exhibitions, and threshing shows where the public is invited. A fee must be charged for an operating license, for a license renewal, and for an examination conducted to determine minimum competence. Individuals operating hobby boilers within this state as of July 1, 2007, are considered acceptable for a license without additional training or examination. An individual who is not a resident of this state and who holds a boiler operator license or credential in another state or Canadian province is exempt from licensure as a hobby boiler operator in this state. The commissioner department of environmental quality may not issue a certificate of inspection to any owner or user of a boiler who fails or refuses to comply with those rules. The commissioner department of environmental quality shall revoke any certificate presently in force upon evidence that the owner or user of the boiler is failing or refusing to comply with the rules. Any owner or user of a boiler may request a hearing before the commissioner department of environmental quality within fifteen days from service of an order refusing or revoking a certificate of inspection. It is the burden of the owner or user to show cause why the certificate of inspection should not be refused or revoked. If no hearing is requested within the required period, the order of the commissioner department of environmental quality becomes final and is not subject to further proceedings.

Renumber accordingly

HB 1024
2/5/2019
A

Department of Environmental Quality - Budget No. 303
House Bill No. 1024
Base Level Funding Changes

	Executive Budget Recommendation				House Version				House Changes to Executive Budget Increase (Decrease) - Executive Budget			
	FTE Position	General Fund	Other Funds	Total	FTE Position	General Fund	Other Funds	Total	FTE Positions	General Fund	Other Funds	Total
2019-21 Biennium Base Level	152.50	\$10,724,151	\$38,987,520	\$49,711,671	152.50	\$10,724,151	\$38,987,520	\$49,711,671	0.00	\$0	\$0	\$0
2019-21 Ongoing Funding Changes												
Base payroll changes		(\$175,616)	\$322,006	\$146,390		(\$175,616)	\$322,006	\$146,390				\$0
Salary increase		394,147	763,581	1,157,728		231,686	453,656	685,342		(162,461)	(309,925)	(472,386)
Health insurance increase		194,274	376,366	570,640		224,830	448,944	673,774		30,556	72,578	103,134
Retirement contribution increase		48,951	94,832	143,783				0		(48,951)	(94,832)	(143,783)
Cost to continue adjustments		(162,976)	957,799	794,823				0		162,976	(957,799)	(794,823)
Removes funding for 3 FTE positions	(3.00)	(94,123)	(271,407)	(365,530)				0	3.00	94,123	271,407	365,530
Adds 2 FTE positions related to the transfer of the petroleum tank release program from the Insurance Department to the Department of Environmental Quality	2.00		575,069	575,069				0	(2.00)		(575,069)	(575,069)
Transfers 1 FTE computer and network specialist III position to the Information Technology Department for the information technology unification initiative	(1.00)	3,078	12,304	15,382				0	1.00	(3,078)	(12,304)	(15,382)
Adds contingent funding for 10 FTE positions, including related operating expenses, in the 2nd year of the biennium for the supremacy of federal programs	10.00	1,248,945		1,248,945				0	(10.00)	(1,248,945)		(1,248,945)
Reduces funding for training water treatment system operators to provide a total of \$125,000 from the general fund		(55,000)		(55,000)				0		55,000		55,000
Adds funding for Microsoft Office 365 licensing expenses		20,048	64,538	84,586				0		(20,048)	(64,538)	(84,586)
Adjusts funding for bond and capital payments to provide a total of \$216,429, of which \$93,691 is from the general fund		1,864	1,541	3,405				0		(1,864)	(1,541)	(3,405)
Adjusts funding for extraordinary repairs to provide a total of \$27,000, of which \$6,866 is from the general fund		(55,650)	(217,700)	(273,350)				0		55,650	217,700	273,350
Adjusts funding for equipment and information technology equipment over \$5,000 to provide a total ongoing appropriation of \$1,020,000 of other funds			275,125	275,125				0			(275,125)	(275,125)
Increases funding for grants to accept and disburse funding from the Volkswagen trust settlement			2,899,529	2,899,529				0			(2,899,529)	(2,899,529)
Total ongoing funding changes	8.00	\$1,367,942	\$5,853,583	\$7,221,525	0.00	\$280,900	\$1,224,606	\$1,505,506	(8.00)	(\$1,087,042)	(\$4,628,977)	(\$5,716,019)

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HB1024
2/5/2019
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One-time funding items												
No one-time funding items				\$0				\$0			\$0	
Adds contingent one-time funding from the strategic investment and improvements fund for capital assets and operating expenses related to the establishment of federal program supremacy		\$1,040,000	\$1,040,000				0		(1,040,000)	(1,040,000)		
Total one-time funding changes	0.00	\$0	\$1,040,000	\$1,040,000	0.00	\$0	\$0	\$0	0.00	\$0	(\$1,040,000)	(\$1,040,000)
Total Changes to Base Level Funding	8.00	\$1,367,942	\$6,893,583	\$8,261,525	0.00	\$280,900	\$1,224,606	\$1,505,506	(8.00)	(\$1,087,042)	(\$5,668,977)	(\$6,756,019)
2019-21 Total Funding	160.50	\$12,092,093	\$45,881,103	\$57,973,196	152.50	\$11,005,051	\$40,212,126	\$51,217,177	(8.00)	(\$1,087,042)	(\$5,668,977)	(\$6,756,019)

Other Sections for Department of Environmental Quality - Budget No. 303

	<u>Executive Budget Recommendation</u>	<u>House Version</u>
Appropriation - Additional income	Section 3 would appropriate any additional income from federal or other funds, which may become available to the Department of Environmental Quality during the 2019-21 biennium.	
Transfers	Section 4 would allow the Department of Environmental Quality to transfer between appropriation line items up to 10 percent of the department's total appropriation during the 2019-21 biennium and would require the department to notify the Office of Management and Budget and the Legislative Council of any transfers.	
Environment and rangeland protection fund	Section 5 would authorize the department to spend \$250,000 from the environment and rangeland protection fund for the ground water testing programs. Of this amount, \$50,000 is for a grant to the North Dakota Stockmen's Association for the environmental services program.	
Strategic investment and improvements fund	Section 6 would designate \$1,040,000 from the strategic investment and improvements fund for the Department of Environmental Quality for air pollution program equipment for the 2019-21 biennium.	
Contingent appropriation - Strategic investment and improvements fund	Section 7 would provide a contingent appropriation of \$2,288,945, of which \$1,248,945 is from the general fund and \$1,040,000 is a one-time appropriation from the strategic investment and improvements fund. The appropriation is contingent upon receiving approval from the federal Environmental Protection Agency for the state to assume primacy over the Quad O and Quad Oa federal air pollution programs. Section 7 would also provide contingent authority for 10 FTE positions effective July 1, 2020.	

Other Sections for Department of Environmental Quality - Budget No. 303

HB1024
2/15/19
A

Executive Budget Recommendation

House Version

Petroleum release remediation program transfer

Section 8 would provide the statutory amendments necessary to transfer the administration of the petroleum tank release compensation fund tank integrity testing from the Insurance Commissioner to the Department of Environmental Quality.

HB1024
2/8/2019
A

Department of Environmental Quality - Budget No. 303
House Bill No. 1024
Base Level Funding Changes

	Executive Budget Recommendation				House Version				House Changes to Executive Budget Increase (Decrease) - Executive Budget			
	FTE Position	General Fund	Other Funds	Total	FTE Position	General Fund	Other Funds	Total	FTE Positions	General Fund	Other Funds	Total
2019-21 Biennium Base Level	152.50	\$10,724,151	\$38,987,520	\$49,711,671	152.50	\$10,724,151	\$38,987,520	\$49,711,671	0.00	\$0	\$0	\$0
2019-21 Ongoing Funding Changes												
Base payroll changes		(\$175,616)	\$322,006	\$146,390		(\$175,616)	\$322,006	\$146,390				\$0
Salary increase		394,147	763,581	1,157,728		231,686	472,755	704,441		(162,461)	(290,826)	(453,287)
Health insurance increase		194,274	376,366	570,640		224,830	466,792	691,622		30,556	90,426	120,982
Retirement contribution increase		48,951	94,832	143,783				0		(48,951)	(94,832)	(143,783)
Cost to continue adjustments		(162,976)	957,799	794,823		(162,976)	957,799	794,823				0
Removes funding for 3 FTE positions	(3.00)	(94,123)	(271,407)	(365,530)	(3.00)	(94,123)	(271,407)	(365,530)				0
Adds 2 FTE positions related to the transfer of the petroleum tank release program from the Insurance Department to the Department of Environmental Quality	2.00		575,069	575,069	2.00		575,069	575,069				0
Adds 4 FTE positions and funding from the state fire and tornado fund related to the transfer of the boiler inspection program from the Insurance Department to the Department of Environmental Quality				0	4.00		842,365	842,365	4.00		842,365	842,365
Transfers 1 FTE computer and network specialist III position to the Information Technology Department for the information technology unification initiative	(1.00)	3,078	12,304	15,382				0	1.00	(3,078)	(12,304)	(15,382)
Adds contingent funding for 10 FTE positions, including related operating expenses, in the 2nd year of the biennium for the supremacy of federal programs	10.00	1,248,945		1,248,945	10.00	1,248,945		1,248,945				0
Reduces funding for training water treatment system operators to provide a total of \$125,000 from the general fund		(55,000)		(55,000)		(55,000)		(55,000)				0
Adds funding for Microsoft Office 365 licensing expenses		20,048	64,538	84,586		20,048	64,538	84,586				0
Adjusts funding for bond and capital payments to provide a total of \$216,429, of which \$93,691 is from the general fund		1,864	1,541	3,405		1,864	1,541	3,405				0
Adjusts funding for extraordinary repairs to provide a total of \$27,000, of which \$6,866 is from the general fund		(55,650)	(217,700)	(273,350)		(55,650)	(217,700)	(273,350)				0

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Adjusts funding for equipment and information technology equipment over \$5,000 to provide a total ongoing appropriation of \$1,020,000 of other funds			275,125	275,125	275,125	275,125				0		
Increases funding for grants to accept and disburse funding from the Volkswagen trust settlement			2,899,529	2,899,529	2,899,529	2,899,529				0		
Total ongoing funding changes	8.00	\$1,367,942	\$5,853,583	\$7,221,525	13.00	\$1,184,008	\$6,388,412	\$7,572,420	5.00	(\$183,934)	\$534,829	\$350,895
One-time funding items												
Adds contingent one-time funding from the strategic investment and improvements fund for capital assets and operating expenses related to the establishment of federal program supremacy			\$1,040,000	\$1,040,000		1,040,000	1,040,000			0		0
Total one-time funding changes	0.00	\$0	\$1,040,000	\$1,040,000	0.00	\$0	\$1,040,000	\$1,040,000	0.00	\$0	\$0	\$0
Total Changes to Base Level Funding	8.00	\$1,367,942	\$6,893,583	\$8,261,525	13.00	\$1,184,008	\$7,428,412	\$8,612,420	5.00	(\$183,934)	\$534,829	\$350,895
2019-21 Total Funding	160.50	\$12,092,093	\$45,881,103	\$57,973,196	165.50	\$11,908,159	\$46,415,932	\$58,324,091	5.00	(\$183,934)	\$534,829	\$350,895

Other Sections for Department of Environmental Quality - Budget No. 303

	<u>Executive Budget Recommendation</u>	<u>House Version</u>
Appropriation - Additional income	Section 3 would appropriate any additional income from federal or other funds, which may become available to the Department of Environmental Quality during the 2019-21 biennium.	The House did not included this section.
Transfers	Section 4 would allow the Department of Environmental Quality to transfer between appropriation line items up to 10 percent of the department's total appropriation during the 2019-21 biennium and would require the department to notify the Office of Management and Budget and the Legislative Council of any transfers.	The House did not included this section.
Environment and rangeland protection fund	Section 5 would authorize the department to spend \$250,000 from the environment and rangeland protection fund for the ground water testing programs. Of this amount, \$50,000 is for a grant to the North Dakota Stockmen's Association for the environmental services program.	Section 3 authorizes the department to spend \$250,000 from the environment and rangeland protection fund for the ground water testing programs. Of this amount, \$50,000 is for a grant to the North Dakota Stockmen's Association for the environmental services program.
State fire and tornado fund		Section 4 authorizes the department to spend \$879,312 from the state fire and tornado fund for the boiler inspection program.
Strategic investment and improvements fund - Contingent one-time funding	Section 6 would designate \$1,040,000 from the strategic investment and improvements fund for the Department of Environmental Quality for air pollution program equipment for the 2019-21 biennium.	Section 5 authorizes the department to spend \$1,040,000 from the strategic investment and improvements fund for air pollution program equipment. The one-time funding is contingent on Environmental Protection Agency approval of the Department of Environmental Quality assuming the duties of federal air pollution programs.

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Other Sections for Department of Environmental Quality - Budget No. 303

	<u>Executive Budget Recommendation</u>	<u>House Version</u>
Contingent appropriation	Section 7 would provide a contingent appropriation of \$2,288,945, of which \$1,248,945 is from the general fund and \$1,040,000 is a one-time appropriation from the strategic investment and improvements fund. The appropriation is contingent upon receiving approval from the federal Environmental Protection Agency for the state to assume primacy over the Quad O and Quad Oa federal air pollution programs. Section 7 would also provide contingent authority for 10 FTE positions effective July 1, 2020.	Section 6 identifies \$1,248,945 from the general fund provided in Section 1 is contingent upon receiving approval from the federal Environmental Protection Agency for the state to assume primacy over the Quad O and Quad Oa federal air pollution programs. The section also provides contingent authority for 10 FTE positions effective July 1, 2020.
Petroleum release remediation program transfer	Section 8 would provide the statutory amendments necessary to transfer the administration of the petroleum tank release compensation fund tank integrity testing from the Insurance Commissioner to the Department of Environmental Quality.	Sections are added provide the statutory amendments to Chapter 23.1-12 necessary to transfer the administration of the petroleum tank release compensation fund tank integrity testing from the Insurance Commissioner to the Department of Environmental Quality.
Create Chapter 23.1-16 for the boiler inspection program		Sections are added to create Chapter 23.1-16 to transfer the boiler inspection program from the Insurance Commissioner to the Department of Environmental Quality.
Repeal Chapter 26.1-22.1		A section is added to repeal the boiler inspection program in Chapter 26.1-22.1 because it is created in Chapter 23.1-16.
Effective date		A section is added to provide effective dates for the program transfers.

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PROPOSED AMENDMENTS TO HOUSE BILL NO. 1024

Page 1, line 2, after "quality" insert "; to create and enact chapter 23.1-16 of the North Dakota Century Code, relating to boiler inspections; to amend and reenact sections 23.1-12-02, 23.1-12-04, 23.1-12-05, 23.1-12-06, 23.1-12-10, 23.1-12-11, 23.1-12-14, 23.1-12-15, 23.1-12-17, 23.1-12-18, 23.1-12-19, 23.1-12-20, 23.1-12-23, 23.1-12-24, 23.1-12-25, 23.1-12-26, 23.1-12-27, 23.1-12-28, 23.1-12-29, and 23.1-12-30 of the North Dakota Century Code, relating to the duties of the department of environmental quality; to repeal chapter 26.1-22.1 of the North Dakota Century Code, relating to boiler inspections; and to provide for a contingent effective date"

Page 1, replace lines 10 through 19 with:

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Salaries and wages	\$27,040,544	\$3,156,409	\$30,196,953
Operating expenses	8,005,878	1,996,302	10,002,180
Capital assets	1,258,249	1,005,180	2,263,429
Grants	<u>13,407,000</u>	<u>2,454,529</u>	<u>15,861,529</u>
Total all funds	\$49,711,671	\$8,612,420	\$58,324,091
Less estimated income	<u>38,987,520</u>	<u>7,428,412</u>	<u>46,415,932</u>
Total general fund	\$10,724,151	\$1,184,008	\$11,908,159
Full-time equivalent positions	152.50	13.00	165.50"

Page 1, line 20, after "BUDGET" insert "- REPORT TO SIXTY-SEVENTH LEGISLATIVE ASSEMBLY"

Page 1, line 22, after "biennium" insert "and the 2019-21 biennium one-time funding items included in the appropriation in section 1 of this Act"

Page 2, replace lines 1 through 3 with:

<u>One-Time Funding Description</u>	<u>2017-19</u>	<u>2019-21</u>
Environmental protection agency lawsuit	\$500,000	\$0
Air pollution program equipment	<u>0</u>	<u>1,040,000</u>
Total estimated income	\$500,000	\$1,040,000

The 2019-21 biennium one-time funding amounts are not a part of the entity's base budget for the 2021-23 biennium. The department of environmental quality shall report to the appropriations committees of the sixty-seventh legislative assembly on the use of this one-time funding for the biennium beginning July 1, 2019, and ending June 30, 2021."

Page 2, after line 9, insert:

"SECTION 4. STATE FIRE AND TORNADO FUND. The estimated income line item included in section 1 of this Act includes \$879,312, or so much of the sum as may be necessary, to be made available to the department of environmental quality from the state fire and tornado fund for the boiler inspection program, for the biennium beginning July 1, 2019, and ending June 30, 2021.

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SECTION 5. STRATEGIC INVESTMENT AND IMPROVEMENTS FUND - CONTINGENT ONE-TIME FUNDING - FEDERAL PROGRAM SUPREMACY. The estimated income line item included in section 1 of this Act includes \$1,040,000, or so much of the sum as may be necessary, to be made available to the department of environmental quality from the strategic investment and improvements fund for one-time funding of air pollution program equipment related to the establishment of federal program supremacy, for the biennium beginning July 1, 2019, and ending June 30, 2021. The funding may be spent only upon certification by the director of the department of environmental quality to the director of the office of management and budget that the federal environmental protection agency has approved the department of environmental quality assuming the duties of federal air pollution programs.

SECTION 6. CONTINGENT APPROPRIATION - FEDERAL PROGRAM SUPREMACY. The amount of \$1,248,945 from the general fund and ten full-time equivalent positions included in section 1 of this Act are effective July 1, 2020, and may be spent only upon certification by the director of the department of environmental quality to the director of the office of management of budget that the federal environmental protection agency has approved the state assuming primacy over the quad O and quad Oa federal air pollution programs.

SECTION 7. AMENDMENT. Section 23.1-12-02 of the North Dakota Century Code is amended and reenacted as follows:

23.1-12-02. Definitions. (Contingent effective date - [See note](#))

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. "~~Administrator~~" means ~~the manager of the state fire and tornado fund.~~
3. "Board" means the petroleum release compensation board.
4. "~~Commissioner~~" means ~~the insurance commissioner.~~
- 5.3. "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.
- 6.4. "Dealer" means a person licensed by the tax commissioner to sell motor vehicle fuel or special fuels within the state.
- 7.5. "Department" means the department of environmental quality.
- 8.6. "Fund" means the petroleum release compensation fund.
- 9.7. "Location" means a physical address or site that has contiguous properties. Noncontiguous properties within a municipality or other governmental jurisdiction are considered separate locations.

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~~10.8.~~ "Operator" means a person in control of, or having responsibility for, the daily operation of a tank under this chapter.

~~11.9.~~ "Owner" means a person who holds title to, controls, or possesses an interest in the tank before the discontinuation of its use.

~~12.10.~~ "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.

~~13.11.~~ "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.

~~14.12.~~ "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.

~~15.13.~~ "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. 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.

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- 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.
- 16.14. "Tank integrity test" means a test to determine that a tank is sound and not leaking. For an underground tank, the term means a certified third-party test that meets environmental protection agency leak detection requirements. For an aboveground tank, the term means a test conducted according to steel tank institute SP 001 or American petroleum institute 653.
- 17.15. "Third party" means a person who is damaged by the act of a registered owner, operator, or dealer requiring corrective action, or a person who suffers bodily injury or property damage caused by a petroleum release.

SECTION 8. AMENDMENT. Section 23.1-12-04 of the North Dakota Century Code is amended and reenacted as follows:

23.1-12-04. Administration of fund - Staff. (Contingent effective date - [See note](#))

The ~~administrator~~department shall administer the fund according to this chapter. The ~~administrator~~department shall convene the board as may be necessary to keep the board apprised of the fund's general operations. However, the board shall meet at least once each half of each calendar year to review and to advise the ~~administrator~~department regarding the administration of the fund, the fund's general operations, and to hear and decide denials of claims by the ~~administrator~~department which may be appealed to the board, and to discuss all claims against the fund. The ~~administrator~~department may employ any assistance and staff necessary to administer the fund within the limits of legislative appropriation. A claimant aggrieved by a decision of the ~~administrator~~department regarding a claim upon the fund may appeal the decision to the board. The board may sustain, modify, or reverse the decision of the ~~administrator~~department. The claimant or the ~~administrator~~department may appeal the board's decision to the commissioner. The decision of the commissioner may be appealed under chapter 28-32.

SECTION 9. AMENDMENT. Section 23.1-12-05 of the North Dakota Century Code is amended and reenacted as follows:

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23.1-12-05. Adoption of rules. (Contingent effective date - [See note](#))

The ~~administrator~~department shall adopt rules regarding the practices and procedures of the fund, the form and procedure for applications for compensation from the fund, procedures for investigation of claims, procedures for determining the amount and type of costs that are eligible for reimbursement from the fund, procedures for persons to perform services for the fund, procedures for appeals to the board by claimants aggrieved by an adverse decision of the ~~administrator~~department, and any other rules as may be appropriate to administer this chapter.

SECTION 10. AMENDMENT. Section 23.1-12-06 of the North Dakota Century Code is amended and reenacted as follows:

23.1-12-06. Release discovery. (Contingent effective date - [See note](#))

If the department has reason to believe a release has occurred, it shall ~~notify the administrator.~~ The department shall direct the owner or operator to take reasonable and necessary corrective actions as provided under federal or state law or under adopted rules.

SECTION 11. AMENDMENT. Section 23.1-12-10 of the North Dakota Century Code is amended and reenacted as follows:

23.1-12-10. Providing of information. (Contingent effective date - [See note](#))

A person ~~the administrator or~~ the department has reason to believe is an owner or operator, the owner of real property where corrective action is ordered to be taken, or a person that may have information concerning a release shall, if requested by ~~the administrator or~~ the department, or any member, employee, or agent of ~~the administrator or~~ the department, furnish to the ~~administrator or~~ the department any information that person has or may reasonably obtain which is relevant to the release.

SECTION 12. AMENDMENT. Section 23.1-12-11 of the North Dakota Century Code is amended and reenacted as follows:

23.1-12-11. Examination of records. (Contingent effective date - [See note](#))

Any employee of the ~~administrator or~~ the department may, upon presentation of official credentials:

1. Examine and copy books, papers, records, memoranda, or data of any person that has a duty to provide information to the ~~administrator or~~ the department under section 23.1-12-10; and
2. Enter upon public or private property to take action authorized by this section, including obtaining information from a person that has a duty to provide the information under section 23.1-12-10, conducting surveys and investigations, and taking corrective action.

SECTION 13. AMENDMENT. Section 23.1-12-14 of the North Dakota Century Code is amended and reenacted as follows:

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23.1-12-14. Other remedies. (Contingent effective date - [See note](#))

This chapter does not limit the powers of the ~~administrator~~ or department, or preclude the pursuit of any other administrative, civil, injunctive, or criminal remedies by the ~~administrator~~ or department or any other person. Administrative remedies need not be exhausted to proceed under this chapter. The remedies provided by this chapter are in addition to those provided under existing statutory or common law.

SECTION 14. AMENDMENT. Section 23.1-12-15 of the North Dakota Century Code is amended and reenacted as follows:

23.1-12-15. Revenue to the fund. (Contingent effective date - [See note](#))

Revenue from the following sources must be deposited in the state treasury and credited to the fund:

1. Any ~~registration~~ fees collected under section 23.1-12-17;
2. Any money recovered by the fund under section 23.1-12-23, and any money paid under an agreement, stipulation, or settlement;
3. Any interest attributable to investment of money in the fund; and
4. Any money received by the ~~administrator~~department in the form of gifts, grants, reimbursements, or appropriations from any source intended to be used for the purposes of the fund.

SECTION 15. AMENDMENT. Section 23.1-12-17 of the North Dakota Century Code is amended and reenacted as follows:

23.1-12-17. Registration fee. (Contingent effective date - [See note](#))

1. An owner or operator of a tank shall pay an annual registration fee of fifty dollars for each aboveground or underground tank owned or operated by that person. If after the fiscal year has been closed and all expenses relating to the fiscal year have been accounted for, the fund balance is less than six million dollars, the annual registration fee of fifty dollars is increased to one hundred dollars. If after the fiscal year has been closed and all expenses relating to the fiscal year have been accounted for, the fund balance is five million five hundred thousand dollars or more and the annual registration fee has been increased to one hundred dollars, the fee must be reduced to fifty dollars. If after the fiscal year has been closed and all expenses relating to the fiscal year have been accounted for, the fund balance exceeds nine million dollars, the annual registration fee is reduced to five dollars. Annual registration fees must continue at five dollars until the fund balance does not exceed nine million dollars.
2. An owner or operator of an existing tank that is discovered at a location that currently and previously has had tanks registered with the fund shall pay an additional twenty-five dollar penalty fee in addition to the registration fee for each aboveground tank and each underground tank owned or operated by that person for each previous year that the tank was required to be registered for which a fee was not paid. The payment includes the fees and the penalty for the failure to register.

3. An owner or operator of an existing tank at a location that was not previously and continuously registered with the fund, whether the registration was required by law or not must provide the fund with a phase two environmental study conducted by a qualified firm according to American society for testing materials standards. A tank integrity test must also be performed. The environmental study and tank integrity test must be reviewed by the ~~commissioner~~department along with the application for registration with the fund. If the ~~commissioner~~department rejects the application, the applicant is denied eligibility to the fund. However, if the site is remediated and the leaking tank is replaced, the applicant may reapply for registration with the fund. A new installation that is using a used tank must provide tank integrity test results for the used tank. Use of a synthetic liner in an aboveground dike system negates the need for a tank integrity test. The owner or operator of a new tank at a new site or a new tank at an existing site that had a tank registered at the site previously need only pay the required fees for registration with the fund.
4. If accepted for registration with the fund, the owner or operator of the tank shall pay an additional twenty-five dollar penalty fee in addition to the registration fee for each aboveground tank and underground tank owned or operated by that person for each previous year that the tank was required to be registered for which a fee was not paid, regardless of ownership in each of those years. The payment includes the fees and the penalty for the failure to register.
5. The registration fees collected under this section must be paid to the ~~fund~~ administratordepartment for deposit in the state treasury for the dedicated credit to the petroleum release compensation fund.
6. If a registration payment is not received within sixty days of July first by the ~~commissioner~~department, a late fee of twenty-five dollars per tank per month must be imposed on the tank owner or operator.

SECTION 16. AMENDMENT. Section 23.1-12-18 of the North Dakota Century Code is amended and reenacted as follows:

23.1-12-18. Reimbursement for corrective action. (Contingent effective date - [See note](#))

1. The ~~administrator~~department shall reimburse an eligible owner or operator for ninety percent of the costs of corrective action, including the investigation, which are greater than five thousand dollars and less than one million dollars per occurrence and two million dollars in the aggregate. An eligible tank owner or operator may not be liable for more than twenty thousand dollars out-of-pocket expenses for any one release. A reimbursement may not be made unless the ~~administrator~~department determines that:
 - a. At the time the release was discovered the owner or operator and the tank were in compliance with state and federal rules and rules applicable to the tank, including rules relating to financial responsibility, rules relating to infrastructure compatibility, and all rules relating to health and safety which were in effect at the time of the release;

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- b. The department was given notice of the release as required by federal and state law;
 - c. The owner or operator has paid the first five thousand dollars of the cost of corrective action; and
 - d. The owner or operator, to the extent possible, fully cooperated with the department ~~and the administrator~~ in responding to the release.
2. The fund shall compensate third parties for corrective action taken for a petroleum release if the provisions of subdivisions a, b, c, and d of subsection 1 were met at the time the release was discovered. Compensation for third-party corrective action includes compensation for costs incurred in returning the real estate to that level deemed duly remediated by the department.
 3. The fund shall reimburse the tank owner, operator, or dealer for bodily injuries to a third party caused by a petroleum release if the provisions of subdivisions a, b, c, and d of subsection 1 were met at the time the release was discovered in an amount determined by:
 - a. Findings reduced to judgment in federal or state district court or such other court having jurisdiction over the matter in a proceeding in which the fund has been made a party;
 - b. Findings by an arbitration panel agreed upon in writing by the parties in a proceeding in which the fund has been made a party; or
 - c. A written settlement entered into by the parties in which the ~~commissioner~~director of the department or the ~~commissioner's~~department's agent has participated. The settlement must be reviewed and approved by the ~~commissioner~~director of the department.
 4. In any civil action against the owner, operator, or dealer for damages resulting from a petroleum release, if the pre-leak condition of real estate is an issue, and if there is no reasonable means of determining the pre-leak condition of real estate, the condition is that which exists at the time the department determines the real estate has been duly remediated.
 5. The fund may not compensate for attorney's fees of owners, operators, or dealers, nor may the fund compensate for exemplary damages, criminal fines, or administrative penalties.
 6. A third party accepting monetary compensation directly from the fund for damages due to a release caused by a tank owner, operator, or dealer covered by the fund is deemed to have waived any cause of action against the fund or against the tank owner, operator, or dealer.
 7. The fund shall reimburse the department for all costs, attorney's fees, and other legal expenses relating to administrative and adjudicative proceedings under this chapter and any subsequent legal proceeding. Any moneys reimbursed must be deposited in the department's operating fund in the state treasury and must be spent subject to appropriation by the legislative assembly.

SECTION 17. AMENDMENT. Section 23.1-12-19 of the North Dakota Century Code is amended and reenacted as follows:

23.1-12-19. Application for reimbursement. (Contingent effective date - [See note](#))

An owner or operator that is a first-party claimant and that proposes to take corrective action or has undertaken corrective action in response to a release, the time of the release being unknown, may apply to the ~~administrator~~ department for partial or full reimbursement under section 23.1-12-18. An owner or operator who is a first-party claimant may be reimbursed only for costs incurred after July 1, 1989, even if the releases were discovered before July 1, 1989, up to the maximum of twenty-five thousand dollars per location.

SECTION 18. AMENDMENT. Section 23.1-12-20 of the North Dakota Century Code is amended and reenacted as follows:

23.1-12-20. ~~Administrator~~Department to determine costs. (Contingent effective date - [See note](#))

A reimbursement for corrective actions taken by an owner, operator, or dealer may not be made from the fund until the ~~administrator~~ department has determined that the costs for which reimbursement is requested were actually incurred and were reasonable. All necessary loss adjustment expenses must be included as a component of the loss and must be paid out of the fund.

SECTION 19. AMENDMENT. Section 23.1-12-23 of the North Dakota Century Code is amended and reenacted as follows:

23.1-12-23. Recovery of expenses. (Contingent effective date - [See note](#))

Any reasonable and necessary expenses incurred by the fund, which exceed the coverage limits provided by section 23.1-12-18, in taking a corrective action, including costs of investigating a release, and in taking legal actions, may be recovered in a civil action in district court brought by the ~~administrator~~ department against an owner or operator. The certification of expenses by an approved agent of the fund is prima facie evidence that the expenses are reasonable and necessary. Any expenses that are recovered under this section must be deposited in the fund.

SECTION 20. AMENDMENT. Section 23.1-12-24 of the North Dakota Century Code is amended and reenacted as follows:

23.1-12-24. Costs exceeding reimbursement. (Contingent effective date - [See note](#))

If the cost of any extraordinary authorized action under this chapter exceeds amounts awarded to the ~~administrator~~ or the department from the federal government, ~~the administrator may pay the department the cost of themay pay the department's~~ corrective actions costs, including the cost of investigating a release, if the board finds that the cause was a petroleum substance, that an adequate amount exists in the fund to pay for the corrective action, that the occurrence was extraordinary in scope and size, and that a danger to the health and safety of citizens exists.

SECTION 21. AMENDMENT. Section 23.1-12-25 of the North Dakota Century Code is amended and reenacted as follows:

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23.1-12-25. Coordination of benefits. (Contingent effective date - [See note](#))

If an owner or operator has an insurance policy that provides the same coverage as the fund, the ~~administrator of the fund~~department shall pay the share of the covered loss or damage for which the fund is responsible. The share that must be paid from the fund is equal to the proportion that the applicable limit of coverage under the fund bears to the limits of insurance of all insurance coverage on the same basis.

SECTION 22. AMENDMENT. Section 23.1-12-26 of the North Dakota Century Code is amended and reenacted as follows:

23.1-12-26. Third-party damages - Participation in actions and review of settlements. (Contingent effective date - [See note](#))

1. An owner or operator sued for damages resulting from a release shall notify the ~~administrator~~department within fourteen days of being served with a summons and complaint. The owner or operator also shall advise the ~~administrator~~department if any insurer is defending the owner or operator and provide to the ~~administrator~~department the name of that insurer.
2. An owner or operator that, before litigation, enters negotiations with a third party that claims to have been damaged by a release, or that receives a demand for payment of damages to a third party that claims to have been damaged by a release, shall notify the ~~administrator~~department within fourteen days of the demand or the negotiations.
3. The ~~administrator~~department and the board shall review the conduct of any litigation or negotiation. The ~~administrator~~department may not assume any legal costs incurred by the defendant or plaintiff, but may participate in discovery, trial proceedings, or settlement negotiations of either disputed liability or damages that bear on the determination of a plaintiff's damages.
4. The ~~administrator~~department and the board shall review any settlement negotiations to determine the dollar amount of bodily injury or property damage actually, necessarily, and reasonably incurred by third parties which, if paid by the defendant, would be considered eligible costs.

SECTION 23. AMENDMENT. Section 23.1-12-27 of the North Dakota Century Code is amended and reenacted as follows:

23.1-12-27. Third-party damages - Documentation. (Contingent effective date - [See note](#))

1. An applicant's payments for third-party damages pursuant to a judgment entered in a court must include copies of the notice of entry of judgment and abstract of costs.
2. An applicant's payments for third-party damages made by agreement in settlement of litigation must include copies of the settlement agreement and supporting documents required by the ~~administrator~~department.
3. An applicant's payments for third-party damages made by agreement without reference to litigation must include copies of the settlement and supporting documents required by the ~~administrator~~department.

4. The ~~administrator~~department and the board may require a third party who claims bodily injury to be examined by a physician and require that the physician's report to be submitted to the ~~administrator~~department. The ~~administrator~~department may require a third party that claims property damage to permit a property appraiser or claims adjuster retained by the ~~administrator~~department to inspect the property and report to the ~~administrator~~department.
5. The fund shall pay a judgment against an owner, operator, or dealer awarded to a third party as a result of a third-party claim and property damage against an owner, operator, or dealer registered by the fund.
6. The fund shall pay for corrective action as awarded to a third party in any judgment against an owner, operator, or dealer.
7. Liability of the tank owner, operator, dealer, or fund to third parties for corrective action or personal injuries and property damage may not exceed, per person, one million dollars. Maximum liability of the fund, including all claims by third parties, may not exceed, for any release site, the maximum provided in section 23.1-12-18.
8. A third party may not bring an action against an owner, operator, or dealer more than three years after a corrective action plan has been approved by the department if the owner, operator, or dealer fully implements and complies with the corrective action plan.
9. In investigating a release site or reviewing the implementation of a corrective action plan approved by the department, the department shall determine whether the release threatens public health or the environment. The department shall require, based on science and technology appropriate for the site, any monitoring, remediation, or other appropriate corrective action that is reasonably necessary to protect public health or the environment. The department may require corrective action at a release site at any time after a release occurs.

SECTION 24. AMENDMENT. Section 23.1-12-28 of the North Dakota Century Code is amended and reenacted as follows:

23.1-12-28. Matching federal funds. (Contingent effective date - [See note](#))

The ~~administrator~~department and the board may annually allow the department a ten percent matching grant for federal leaking underground storage tank funds to be paid out of the fund if the moneys are available and the ~~administrator~~department and the board determine the allowance appropriate.

SECTION 25. AMENDMENT. Section 23.1-12-29 of the North Dakota Century Code is amended and reenacted as follows:

23.1-12-29. Fund appropriations. (Contingent effective date - [See note](#))

Money in the fund is continuously appropriated to the ~~administrator~~department for the purpose of making reimbursements under this chapter.

SECTION 26. AMENDMENT. Section 23.1-12-30 of the North Dakota Century Code is amended and reenacted as follows:

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23.1-12-30. Investment of fund. (Contingent effective date - [See note](#))

Investment of the fund is under the supervision of the state investment board in accordance with chapter 21-10. The ~~commissioner~~department may purchase a contract for reinsurance of any risk to be paid by the fund. The ~~administrator~~department may investigate the purchase of insurance that reimburses an owner or operator for property damage claims by third parties other than claims for costs of corrective action.

SECTION 27. Chapter 23.1-16 of the North Dakota Century Code is created and enacted as follows:

23.1-16-01. Definitions.

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

1. "Boiler" means a closed vessel in which water is heated, steam is generated, steam is superheated, or any combination thereof, under pressure or vacuum for use externally to the boiler by the direct application of heat from the combustion of fuels, or from electricity or nuclear energy. The term includes fired units for vaporizing liquids other than water when these units are separate from processing systems and are complete within themselves.
2. "Department" means the department of environmental quality.

23.1-16-02. Chief boiler inspector, deputy inspectors - Appointment - Jurisdiction.

The department shall employ a chief boiler inspector and deputy inspectors. The chief boiler inspector has jurisdiction over all boilers in this state except as otherwise provided.

23.1-16-03. Qualifications of chief boiler inspector - Deputy inspectors.

1. An individual is not eligible to the office of chief boiler inspector unless that individual:
 - a. Has had at the time of the appointment at least five years' experience in the construction, inspection, operation, maintenance, or repair of high-pressure boilers and pressure vessels as a mechanical engineer, boilermaker, steam operating engineer, or boiler inspector. An applicant possessing a mechanical engineering degree from an accredited school may substitute that degree for two years of the five years' experience, at the discretion of the department.
 - b. Holds a commission issued by the national board of boiler and pressure vessel inspectors or obtains the commission within one year after the date of appointment by the department.
 - c. Is not directly or indirectly interested in the manufacture or sale of boilers or steam machinery or articles used in the construction or maintenance of engines or boilers.
2. The department shall establish qualifications for a deputy inspector which are not inconsistent with the requirements of the position.

23.1-16-04. Powers and duties of chief boiler inspector.

1. The chief boiler inspector shall:
 - a. Keep a complete record of the type, dimensions, maximum allowable working pressure, age, condition, location, and date of the last-recorded internal and external inspection of boilers to which this chapter applies.
 - b. Cooperate and assist in loss prevention programs sponsored by the department.
2. The chief boiler inspector may delegate powers and duties to any deputy inspector or special inspector.

23.1-16-05. General requirement.

Every boiler in this state must be constructed, installed, and maintained according to rules adopted to implement this chapter.

23.1-16-06. Exempt boilers - Inspection of exempt boilers.

This chapter does not apply to:

1. Any boiler subject to federal inspection or under federal control.
2. Any boiler located on a farm and used solely for agricultural purposes.
3. Any heating boiler located in a private residence or in an apartment house of less than six family units.
4. Any hot water supply boiler not exceeding the following limitations:
 - a. Input of two hundred thousand British thermal units per hour.
 - b. Pressure of one hundred sixty pounds per square inch [1103.16 kilopascals] gauge.
 - c. Temperature of two hundred fifty degrees Fahrenheit [121.11 degrees Celsius].
5. Any portable steam cleaner commonly used in a garage.
6. Any boiler of a miniature model locomotive, boat, tractor, or stationary engine design constructed as a hobby, not for commercial use, having an inside diameter not exceeding ten inches [25.4 centimeters] and a grate area not exceeding one and one-half square feet [1393.54 square centimeters] and which is properly equipped with a safety valve, water level indicator, and pressure gauge.
7. Any electric boiler used as an integral part of an espresso coffee machine, provided that the boiler does not exceed one and one-half cubic feet [.0566 cubic meter] in water capacity, does not exceed fifty pounds per square inch [344.74 kilopascals] pressure, and is constructed, approved, or certified to the American society of mechanical engineers code or to other national or international standards.

23.1-16-07. Inspection of boilers.

1. The chief boiler inspector shall inspect each boiler used or proposed to be used within this state. The inspection must be thorough as to the construction, installation, condition, and operation as provided by the rules adopted to implement this chapter. An exempt boiler may be inspected by the chief boiler inspector when the owner, the owner's agent, or the user of the boiler makes written request for inspection to the department.

2. Each boiler of one hundred thousand pounds [45359.24 kilograms] per hour or more capacity, used or proposed to be used within this state, which has internal continuous water treatment under the direct supervision of a graduate engineer or chemist, or one having equivalent experience in the treatment of boiler water when the water treatment is for the purpose of controlling and limiting serious corrosion and other deteriorating factors, and with respect to which boiler the chief boiler inspector has determined the owner or user has complied with the prescribed recordkeeping requirements, must be inspected at least once every thirty-six months internally while not under pressure, and at least once every twelve months externally while under pressure. If a hydrostatic test is necessary to determine the safety of a boiler, the test must be conducted by the owner or user of the equipment under the supervision of the chief boiler inspector. The owner or user of a boiler of one hundred thousand pounds [45359.24 kilograms] per hour or more capacity desiring to qualify for thirty-six-month internal inspection intervals shall keep available for examination by the chief boiler inspector accurate records showing the date and actual time the boiler is out of service and the reason or reasons therefor, and the results of the chemical and physical analysis of the boiler water, whether from laboratory analysis of samples taken at regular intervals of not more than forty-eight hours or from continuous online analysers, which will adequately show the condition of the water and any other elements or characteristics of the water capable of producing corrosion or other deterioration of the boiler or its parts. If an inspection discloses deficiencies in equipment or in operating procedures, inspections may be required once every twelve months.

23.1-16-08. Special inspector.

1. Upon written request of an employer, the department may appoint as a special inspector an inspector in the employ of:
 - a. An insurance company authorized to insure boilers in this state against loss from explosion;
 - b. A company qualified by the national board of boiler and pressure vessel inspectors as an accredited owner/user inspection organization; or
 - c. A company qualified by the national board of boiler and pressure vessel inspectors as an accredited authorized inspection agency.

2. An individual may not be appointed as a special inspector unless that individual has passed the examination prescribed by the national board of boiler and pressure vessel inspectors.

3. An inspection performed by a special inspector must be performed in accordance with this chapter and a complete report of the inspection must be filed with the department in the time, manner, and form as prescribed by the department.
4. If a complete report is not filed by the special inspector's employer with the department within ninety days from the certificate due date, the chief boiler inspector may make the required inspection, unless an extension of time is granted by the chief boiler inspector. The special inspector's employer must pay the inspection fees as required by section 23.1-16-09 for a special inspection.
5. The chief boiler inspector may inspect any boiler to which a special inspection applies.
6. The department may, for cause, suspend or revoke the appointment of any special inspector.

23.1-16-09. Inspection and certificate fees.

1. Upon completion of inspection, the owner or user of a boiler shall pay to the department fees or a combination of inspection and certificate fees. The department shall determine the inspection fees. Certificate fees are determined by section 23.1-16-10. The department shall determine and annually may adjust a fee scale for the internal inspections of power boilers, internal inspections of low-pressure heating boilers, external inspections of all boilers, and inspection of boilers used exclusively for exhibition purposes.
2. Not more than two hundred dollars may be charged or collected for any one inspection of a boiler, except for special inspections made upon request. All other inspections made by the chief boiler inspector, including shop inspections and reviews and special inspections when requested by the owner or user of a boiler, must be charged at a rate not to exceed five hundred dollars per day or three hundred dollars per half day of four hours or less, plus payment for mileage, meals, and hotel expenses as allowed by sections 44-08-04 and 54-06-09, except that the mileage rate for a state-owned vehicle will be the actual amount incurred by the department.
3. The annual fee for the issuance of a reciprocal commission card for a special inspector is forty dollars and the annual fee for the issuance of a welder-qualified card is twenty dollars.
4. The fee for taking an examination for a hobby boiler operating license is twenty-five dollars and the fee for a hobby boiler operating license is twenty-five dollars.
5. A hobby boiler operating license issued under this section is valid for six years.

23.1-16-10. Certificate of inspection - Certificate to be posted.

The department shall issue a certificate of inspection for each boiler inspected upon receipt of an inspection report certifying that the boiler is in a safe condition to be operated. The department shall charge a fee of twenty dollars per year for each year

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that a certificate is valid, or part of a year thereof, for each certificate of inspection issued as the result of inspections authorized under sections 23.1-16-07 and 23.1-16-08. The fees are the liability of the owner or user and must be paid in accordance with rules adopted by the department. A certificate may not be issued for any boiler not in a safe condition to be operated or for a boiler for which the inspection and certificate fees have not been paid in full. A certificate is not valid for a period of more than thirty-six months for power boilers described in subsection 2 of section 23.1-16-07, and no more than twelve months for other power boilers, twelve months for steam traction engines, and thirty-six months for low-pressure boilers except that a two-month grace period may be extended for any certificate. Upon written request from a special inspector, the chief boiler inspector may issue a short-term certificate. Each certificate of inspection must be posted conspicuously under glass in the boiler room or adjacent to the boiler inspected.

23.1-16-11. Certificate of inspection required - Penalty.

A person may not operate a boiler in this state without a valid certificate of inspection. A violation of this section is a class A misdemeanor on the part of the owner, user, or operator of the boiler.

23.1-16-12. Manufacturer's data report.

The boiler manufacturer shall provide the department with a manufacturer's data report. When signed by an authorized inspector, this data sheet together with the stamp on the boiler is the record denoting the boiler has been constructed in accordance with the rules adopted to implement this chapter.

23.1-16-13. Disposition of funds.

All funds collected and received under this chapter must be paid to the state treasurer and deposited in the state fire and tornado fund to be used to defray the costs of boiler inspections.

23.1-16-14. Rules - Penalty for violation - Hearing.

1. The department shall adopt rules for the safe and proper installation, use, operation, and inspection of boilers and pressure vessels subject to this chapter.
2. The department shall adopt rules for the licensing of operators of hobby boilers used during parades, exhibitions, and threshing shows where the public is invited.
3. A fee must be charged for an operating license, for a license renewal, and for an examination conducted to determine minimum competence. Individuals operating hobby boilers within this state as of July 1, 2007, are considered acceptable for a license without additional training or examination. An individual who is not a resident of this state and who holds a boiler operator license or credential in another state or Canadian province is exempt from licensure as a hobby boiler operator in this state.
4. The department may not issue a certificate of inspection to any owner or user of a boiler who fails or refuses to comply with the rules. The department shall revoke any certificate presently in force upon evidence

that the owner or user of the boiler is failing or refusing to comply with the rules.

5. Any owner or user of a boiler may request a hearing before the department within fifteen days from service of an order refusing or revoking a certificate of inspection. It is the burden of the owner or user to show cause why the certificate of inspection should not be refused or revoked. If no hearing is requested within the required period, the order of the department becomes final and is not subject to further proceedings.

SECTION 28. REPEAL. Chapter 26.1-22.1 of the North Dakota Century Code is repealed.

SECTION 29. EFFECTIVE DATE. Sections 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, and 28 of this Act become effective on July 1, 2019, if the legislative council has received certification from the chief of the environmental health section of the state department of health that all authority, powers, and duties from the environmental health section of the state department of health have been transferred to the department of environmental quality. If the certification is not received by July 1, 2019, sections 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, and 28 of this Act become effective on the date certification is received."

Renumber accordingly

STATEMENT OF PURPOSE OF AMENDMENT:

House Bill No. 1024 - Department of Environmental Quality - House Action

	Base Budget	House Changes	House Version
Salaries and wages	\$27,040,544	\$3,156,409	\$30,196,953
Operating expenses	8,005,878	1,996,302	10,002,180
Capital assets	1,258,249	1,005,180	2,263,429
Grants	13,407,000	2,454,529	15,861,529
Total all funds	\$49,711,671	\$8,612,420	\$58,324,091
Less estimated income	38,987,520	7,428,412	46,415,932
General fund	\$10,724,151	\$1,184,008	\$11,908,159
FTE	152.50	13.00	165.50

Department 303 - Department of Environmental Quality - Detail of House Changes

	Adjusts Funding for Base Payroll Changes ¹	Adds Funding for Salary and Benefit Increases ²	Cost to Continue Adjustments ³	Removes 3 FTE Positions ⁴	Adds Funding to Transfer the Petroleum Tank Release Program ⁵	Adds Funding to Transfer the Boiler Inspection Program ⁶
Salaries and wages	\$146,390	\$1,396,063		(\$365,530)	\$336,481	\$753,365
Operating expenses			\$1,239,823		238,588	89,000
Capital assets						
Grants			(445,000)			
Total all funds	\$146,390	\$1,396,063	\$794,823	(\$365,530)	\$575,069	\$842,365
Less estimated income	322,006	939,547	957,799	(271,407)	575,069	842,365
General fund	(\$175,616)	\$456,516	(\$162,976)	(\$94,123)	\$0	\$0
FTE	0.00	0.00	0.00	(3.00)	2.00	4.00

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	Adds Contingent Funding and FTE Positions for the Supremacy of Federal Programs ⁷	Decreases Funding for Water Treatment System Training ⁸	Adds Funding for Microsoft Office 365 Licensing ⁹	Adjusts Funding for Bond and Capital Payments ¹⁰	Reduces Funding for Extraordinary Repairs ¹¹	Increases Funding for Equipment ¹²
Salaries and wages	\$889,640					
Operating expenses	359,305	(\$55,000)	\$84,586			
Capital assets				\$3,405	(\$273,350)	\$275,125
Grants						
Total all funds	\$1,248,945	(\$55,000)	\$84,586	\$3,405	(\$273,350)	\$275,125
Less estimated income	0	0	64,538	1,541	(217,700)	275,125
General fund	\$1,248,945	(\$55,000)	\$20,048	\$1,864	(\$55,650)	\$0
FTE	10.00	0.00	0.00	0.00	0.00	0.00

	Adds Funding for Grants from the Volkswagen Trust Settlement ¹³	Adds One- Time Contingent Funding to Establish Federal Program Supremacy ¹⁴	Total House Changes
Salaries and wages			\$3,156,409
Operating expenses		\$40,000	1,996,302
Capital assets		1,000,000	1,005,180
Grants	\$2,899,529		2,454,529
Total all funds	\$2,899,529	\$1,040,000	\$8,612,420
Less estimated income	2,899,529	1,040,000	7,428,412
General fund	\$0	\$0	\$1,184,008
FTE	0.00	0.00	13.00

¹ Funding is adjusted for base payroll changes.

² The following funding is added for 2019-21 biennium salary adjustments of 2 percent per year and increases in health insurance premiums from \$1,241 to \$1,427 per month:

	General Fund	Other Funds	Total
Salary increase	\$231,686	\$472,755	\$704,441
Health insurance increase	224,830	466,792	691,622
Total	\$456,516	\$939,547	\$1,396,063

³ Funding is adjusted for cost to continue changes to the base budget.

⁴ Three FTE positions and related funding for salaries and wages are removed.

⁵ Two FTE positions and related funding from the petroleum tank release compensation fund for salaries and wages and operating expenses are transferred from the Insurance Department to the Department of Environmental Quality for the petroleum tank release program.

⁶ Four FTE positions are added to transfer the boiler inspection program from the Insurance Department to the Department of Environmental Quality, including funding from the state fire and tornado fund for base salaries and wages of \$753,365 and operating expenses of \$89,000.

⁷ Contingent funding and 10 FTE positions are added in the 2nd year of the biennium for the supremacy of federal programs, including funding for salaries and wages of \$889,640 and operating expenses of \$359,305. The appropriation and FTE positions are contingent on federal Environmental Protection Agency approval of the Department of Environmental Quality assuming the duties of federal air pollution programs.

⁸ Funding for operating expenses related to training water treatment system operators is reduced to provide a total of \$125,000 from the general fund.

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⁹ Funding is added for Microsoft Office 365 license expenses.

¹⁰ Funding for bond and capital payments is increased to provide a total of \$216,429, of which \$93,691 is from the general fund.

¹¹ Funding for extraordinary repairs is reduced to provide a total of \$27,000, of which \$6,866 is from the general fund.

¹² Funding for equipment and information technology equipment over \$5,000 is increased to provide a total ongoing appropriation of \$1,020,000 from other funds.

¹³ Funding for grants is increased to accept and disburse funding from the Volkswagen trust settlement to provide a total of \$5,399,529.

¹⁴ One-time funding is added from the strategic investment and improvements fund for capital assets of \$1 million and operating expenses of \$40,000 related to the establishment of federal program supremacy. The funding is contingent on Environmental Protection Agency approval of the Department of Environmental Quality assuming the duties of federal air pollution programs.

This amendment also adds sections to:

- Identify funding from the state fire and tornado fund for the boiler inspection program;
- Identify contingent one-time funding of \$1,040,000 from the strategic investment and improvements fund for air pollution program equipment related to the establishment of federal program supremacy. The funding provided is available the 2nd year of the biennium and is contingent on Environmental Protection Agency approval of the Department of Environmental Quality assuming the duties of federal air pollution programs;
- Identify contingent funding of \$1,248,945 from the general fund and 10 FTE positions related to the establishment of federal program supremacy effective July 1, 2020;
- Amend various sections of Chapter 23.1-12 to transfer the petroleum tank release program from the Insurance Commissioner to the Department of Environmental Quality;
- Create Chapter 23.1-16 to transfer the boiler inspection program from the Insurance Commissioner to the Department of Environmental Quality;
- Repeal Chapter 26.1-22.1 related to the boiler inspection program; and
- Provide effective dates for the program transfers.

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Title.

Prepared by the Legislative Council staff for
the House Appropriations - Human Resources
Division Committee

Fiscal No. 1

February 7, 2019

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1024

Page 1, line 2, after "quality" insert "; to create and enact chapter 23.1-16 of the North Dakota Century Code, relating to boiler inspections; to amend and reenact sections 23.1-12-02, 23.1-12-04, 23.1-12-05, 23.1-12-06, 23.1-12-10, 23.1-12-11, 23.1-12-14, 23.1-12-15, 23.1-12-17, 23.1-12-18, 23.1-12-19, 23.1-12-20, 23.1-12-23, 23.1-12-24, 23.1-12-25, 23.1-12-26, 23.1-12-27, 23.1-12-28, 23.1-12-29, and 23.1-12-30 of the North Dakota Century Code, relating to the duties of the department of environmental quality; to repeal chapter 26.1-22.1 of the North Dakota Century Code, relating to boiler inspections; and to provide for a contingent effective date"

Page 1, replace lines 10 through 19 with:

	<u>Base Level</u>	<u>Adjustments or Enhancements</u>	<u>Appropriation</u>
Salaries and wages	\$27,040,544	\$3,156,409	\$30,196,953
Operating expenses	8,005,878	1,996,302	10,002,180
Capital assets	1,258,249	1,005,180	2,263,429
Grants	<u>13,407,000</u>	<u>2,454,529</u>	<u>15,861,529</u>
Total all funds	\$49,711,671	\$8,612,420	\$58,324,091
Less estimated income	<u>38,987,520</u>	<u>7,428,412</u>	<u>46,415,932</u>
Total general fund	\$10,724,151	\$1,184,008	\$11,908,159
Full-time equivalent positions	152.50	13.00	165.50"

Page 1, line 20, after "**BUDGET**" insert "**- REPORT TO SIXTY-SEVENTH LEGISLATIVE ASSEMBLY**"

Page 1, line 22, after "biennium" insert "and the 2019-21 biennium one-time funding items included in the appropriation in section 1 of this Act"

Page 2, replace lines 1 through 3 with:

<u>One-Time Funding Description</u>	<u>2017-19</u>	<u>2019-21</u>
Environmental protection agency lawsuit	\$500,000	\$0
Air pollution program equipment	<u>0</u>	<u>1,040,000</u>
Total estimated income	\$500,000	\$1,040,000

The 2019-21 biennium one-time funding amounts are not a part of the entity's base budget for the 2021-23 biennium. The department of environmental quality shall report to the appropriations committees of the sixty-seventh legislative assembly on the use of this one-time funding for the biennium beginning July 1, 2019, and ending June 30, 2021."

Page 2, after line 9, insert:

"SECTION 4. STATE FIRE AND TORNADO FUND. The estimated income line item included in section 1 of this Act includes \$879,312, or so much of the sum as may be necessary, to be made available to the department of environmental quality from the state fire and tornado fund for the boiler inspection program, for the biennium beginning July 1, 2019, and ending June 30, 2021."

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SECTION 5. STRATEGIC INVESTMENT AND IMPROVEMENTS FUND - CONTINGENT ONE-TIME FUNDING - FEDERAL PROGRAM SUPREMACY. The estimated income line item included in section 1 of this Act includes \$1,040,000, or so much of the sum as may be necessary, to be made available to the department of environmental quality from the strategic investment and improvements fund for one-time funding of air pollution program equipment related to the establishment of federal program supremacy, for the biennium beginning July 1, 2019, and ending June 30, 2021. The funding may be spent only upon certification by the director of the department of environmental quality to the director of the office of management and budget that the federal environmental protection agency has approved the department of environmental quality assuming the duties of federal air pollution programs.

SECTION 6. CONTINGENT APPROPRIATION - FEDERAL PROGRAM SUPREMACY. The amount of \$1,248,945 from the general fund and ten full-time equivalent positions included in section 1 of this Act are effective July 1, 2020, and may be spent only upon certification by the director of the department of environmental quality to the director of the office of management of budget that the federal environmental protection agency has approved the state assuming primacy over the quad O and quad Oa federal air pollution programs.

SECTION 7. AMENDMENT. Section 23.1-12-02 of the North Dakota Century Code is amended and reenacted as follows:

23.1-12-02. Definitions. (Contingent effective date - See note)

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. "~~Administrator~~" means ~~the manager of the state fire and tornado fund.~~
3. "Board" means the petroleum release compensation board.
4. "~~Commissioner~~" means ~~the insurance commissioner.~~
- 5-3. "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.
- 6-4. "Dealer" means a person licensed by the tax commissioner to sell motor vehicle fuel or special fuels within the state.
- 7-5. "Department" means the department of environmental quality.
- 8-6. "Fund" means the petroleum release compensation fund.
- 9-7. "Location" means a physical address or site that has contiguous properties. Noncontiguous properties within a municipality or other governmental jurisdiction are considered separate locations.

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- ~~10~~.8. "Operator" means a person in control of, or having responsibility for, the daily operation of a tank under this chapter.
- ~~11~~.9. "Owner" means a person who holds title to, controls, or possesses an interest in the tank before the discontinuation of its use.
- ~~12~~.10. "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~~.11. "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~~.12. "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~~.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. 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.
- ~~16-14.~~ "Tank integrity test" means a test to determine that a tank is sound and not leaking. For an underground tank, the term means a certified third-party test that meets environmental protection agency leak detection requirements. For an aboveground tank, the term means a test conducted according to steel tank institute SP 001 or American petroleum institute 653.
- ~~17-15.~~ "Third party" means a person who is damaged by the act of a registered owner, operator, or dealer requiring corrective action, or a person who suffers bodily injury or property damage caused by a petroleum release.

SECTION 8. AMENDMENT. Section 23.1-12-04 of the North Dakota Century Code is amended and reenacted as follows:

23.1-12-04. Administration of fund - Staff. (Contingent effective date - See note)

The ~~administrator~~department shall administer the fund according to this chapter. The ~~administrator~~department shall convene the board as may be necessary to keep the board apprised of the fund's general operations. However, the board shall meet at least once each half of each calendar year to review and to advise the ~~administrator~~department regarding the administration of the fund, the fund's general operations, and to hear and decide denials of claims by the ~~administrator~~department which may be appealed to the board, and to discuss all claims against the fund. The ~~administrator~~department may employ any assistance and staff necessary to administer the fund within the limits of legislative appropriation. A claimant aggrieved by a decision of the ~~administrator~~department regarding a claim upon the fund may appeal the decision to the board. The board may sustain, modify, or reverse the decision of the ~~administrator~~department. The claimant or the ~~administrator~~department may appeal the board's decision to the commissioner. ~~The decision of the commissioner may be appealed under chapter 28-32.~~

SECTION 9. AMENDMENT. Section 23.1-12-05 of the North Dakota Century Code is amended and reenacted as follows:

23.1-12-05. Adoption of rules. (Contingent effective date - See note)

The ~~administrator~~ department shall adopt rules regarding the practices and procedures of the fund, the form and procedure for applications for compensation from the fund, procedures for investigation of claims, procedures for determining the amount and type of costs that are eligible for reimbursement from the fund, procedures for persons to perform services for the fund, procedures for appeals to the board by claimants aggrieved by an adverse decision of the ~~administrator~~ department, and any other rules as may be appropriate to administer this chapter.

SECTION 10. AMENDMENT. Section 23.1-12-06 of the North Dakota Century Code is amended and reenacted as follows:

23.1-12-06. Release discovery. (Contingent effective date - See note)

If the department has reason to believe a release has occurred, it ~~shall notify the administrator.~~ The department shall direct the owner or operator to take reasonable and necessary corrective actions as provided under federal or state law or under adopted rules.

SECTION 11. AMENDMENT. Section 23.1-12-10 of the North Dakota Century Code is amended and reenacted as follows:

23.1-12-10. Providing of information. (Contingent effective date - See note)

A person ~~the administrator or~~ the department has reason to believe is an owner or operator, the owner of real property where corrective action is ordered to be taken, or a person that may have information concerning a release shall, if requested by ~~the administrator or~~ the department, or any member, employee, or agent of ~~the administrator or~~ the department, furnish to the ~~administrator or~~ the department any information that person has or may reasonably obtain which is relevant to the release.

SECTION 12. AMENDMENT. Section 23.1-12-11 of the North Dakota Century Code is amended and reenacted as follows:

23.1-12-11. Examination of records. (Contingent effective date - See note)

Any employee of the ~~administrator or~~ the department may, upon presentation of official credentials:

1. Examine and copy books, papers, records, memoranda, or data of any person that has a duty to provide information to the ~~administrator or~~ the department under section 23.1-12-10; and
2. Enter upon public or private property to take action authorized by this section, including obtaining information from a person that has a duty to provide the information under section 23.1-12-10, conducting surveys and investigations, and taking corrective action.

SECTION 13. AMENDMENT. Section 23.1-12-14 of the North Dakota Century Code is amended and reenacted as follows:

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23.1-12-14. Other remedies. (Contingent effective date - See note)

This chapter does not limit the powers of the ~~administrator or~~ department, or preclude the pursuit of any other administrative, civil, injunctive, or criminal remedies by the ~~administrator or~~ department or any other person. Administrative remedies need not be exhausted to proceed under this chapter. The remedies provided by this chapter are in addition to those provided under existing statutory or common law.

SECTION 14. AMENDMENT. Section 23.1-12-15 of the North Dakota Century Code is amended and reenacted as follows:

23.1-12-15. Revenue to the fund. (Contingent effective date - See note)

Revenue from the following sources must be deposited in the state treasury and credited to the fund:

1. Any ~~registration~~ fees collected under section 23.1-12-17;
2. Any money recovered by the fund under section 23.1-12-23, and any money paid under an agreement, stipulation, or settlement;
3. Any interest attributable to investment of money in the fund; and
4. Any money received by the ~~administrator or~~ department in the form of gifts, grants, reimbursements, or appropriations from any source intended to be used for the purposes of the fund.

SECTION 15. AMENDMENT. Section 23.1-12-17 of the North Dakota Century Code is amended and reenacted as follows:

23.1-12-17. Registration fee. (Contingent effective date - See note)

1. An owner or operator of a tank shall pay an annual registration fee of fifty dollars for each aboveground or underground tank owned or operated by that person. If after the fiscal year has been closed and all expenses relating to the fiscal year have been accounted for, the fund balance is less than six million dollars, the annual registration fee of fifty dollars is increased to one hundred dollars. If after the fiscal year has been closed and all expenses relating to the fiscal year have been accounted for, the fund balance is five million five hundred thousand dollars or more and the annual registration fee has been increased to one hundred dollars, the fee must be reduced to fifty dollars. If after the fiscal year has been closed and all expenses relating to the fiscal year have been accounted for, the fund balance exceeds nine million dollars, the annual registration fee is reduced to five dollars. Annual registration fees must continue at five dollars until the fund balance does not exceed nine million dollars.
2. An owner or operator of an existing tank that is discovered at a location that currently and previously has had tanks registered with the fund shall pay an additional twenty-five dollar penalty fee in addition to the registration fee for each aboveground tank and each underground tank owned or operated by that person for each previous year that the tank was required to be registered for which a fee was not paid. The payment includes the fees and the penalty for the failure to register.

3. An owner or operator of an existing tank at a location that was not previously and continuously registered with the fund, whether the registration was required by law or not must provide the fund with a phase two environmental study conducted by a qualified firm according to American society for testing materials standards. A tank integrity test must also be performed. The environmental study and tank integrity test must be reviewed by the ~~commissioner~~department along with the application for registration with the fund. If the ~~commissioner~~department rejects the application, the applicant is denied eligibility to the fund. However, if the site is remediated and the leaking tank is replaced, the applicant may reapply for registration with the fund. A new installation that is using a used tank must provide tank integrity test results for the used tank. Use of a synthetic liner in an aboveground dike system negates the need for a tank integrity test. The owner or operator of a new tank at a new site or a new tank at an existing site that had a tank registered at the site previously need only pay the required fees for registration with the fund.
4. If accepted for registration with the fund, the owner or operator of the tank shall pay an additional twenty-five dollar penalty fee in addition to the registration fee for each aboveground tank and underground tank owned or operated by that person for each previous year that the tank was required to be registered for which a fee was not paid, regardless of ownership in each of those years. The payment includes the fees and the penalty for the failure to register.
5. The registration fees collected under this section must be paid to the ~~fund~~ administratordepartment for deposit in the state treasury for the dedicated credit to the petroleum release compensation fund.
6. If a registration payment is not received within sixty days of July first by the ~~commissioner~~department, a late fee of twenty-five dollars per tank per month must be imposed on the tank owner or operator.

SECTION 16. AMENDMENT. Section 23.1-12-18 of the North Dakota Century Code is amended and reenacted as follows:

23.1-12-18. Reimbursement for corrective action. (Contingent effective date - See note)

1. The ~~administrator~~department shall reimburse an eligible owner or operator for ninety percent of the costs of corrective action, including the investigation, which are greater than five thousand dollars and less than one million dollars per occurrence and two million dollars in the aggregate. An eligible tank owner or operator may not be liable for more than twenty thousand dollars out-of-pocket expenses for any one release. A reimbursement may not be made unless the ~~administrator~~department determines that:
 - a. At the time the release was discovered the owner or operator and the tank were in compliance with state and federal rules and rules applicable to the tank, including rules relating to financial responsibility, rules relating to infrastructure compatibility, and all rules relating to health and safety which were in effect at the time of the release;

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- b. The department was given notice of the release as required by federal and state law;
 - c. The owner or operator has paid the first five thousand dollars of the cost of corrective action; and
 - d. The owner or operator, to the extent possible, fully cooperated with the department ~~and the administrator~~ in responding to the release.
2. The fund shall compensate third parties for corrective action taken for a petroleum release if the provisions of subdivisions a, b, c, and d of subsection 1 were met at the time the release was discovered. Compensation for third-party corrective action includes compensation for costs incurred in returning the real estate to that level deemed duly remediated by the department.
 3. The fund shall reimburse the tank owner, operator, or dealer for bodily injuries to a third party caused by a petroleum release if the provisions of subdivisions a, b, c, and d of subsection 1 were met at the time the release was discovered in an amount determined by:
 - a. Findings reduced to judgment in federal or state district court or such other court having jurisdiction over the matter in a proceeding in which the fund has been made a party;
 - b. Findings by an arbitration panel agreed upon in writing by the parties in a proceeding in which the fund has been made a party; or
 - c. A written settlement entered into by the parties in which the ~~commissioner~~director of the department or the ~~commissioner's~~department's agent has participated. The settlement must be reviewed and approved by the ~~commissioner~~director of the department.
 4. In any civil action against the owner, operator, or dealer for damages resulting from a petroleum release, if the pre-leak condition of real estate is an issue, and if there is no reasonable means of determining the pre-leak condition of real estate, the condition is that which exists at the time the department determines the real estate has been duly remediated.
 5. The fund may not compensate for attorney's fees of owners, operators, or dealers, nor may the fund compensate for exemplary damages, criminal fines, or administrative penalties.
 6. A third party accepting monetary compensation directly from the fund for damages due to a release caused by a tank owner, operator, or dealer covered by the fund is deemed to have waived any cause of action against the fund or against the tank owner, operator, or dealer.
 7. The fund shall reimburse the department for all costs, attorney's fees, and other legal expenses relating to administrative and adjudicative proceedings under this chapter and any subsequent legal proceeding. Any moneys reimbursed must be deposited in the department's operating fund in the state treasury and must be spent subject to appropriation by the legislative assembly.

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SECTION 17. AMENDMENT. Section 23.1-12-19 of the North Dakota Century Code is amended and reenacted as follows:

23.1-12-19. Application for reimbursement. (Contingent effective date - See note)

An owner or operator that is a first-party claimant and that proposes to take corrective action or has undertaken corrective action in response to a release, the time of the release being unknown, may apply to the ~~administrator~~department for partial or full reimbursement under section 23.1-12-18. An owner or operator who is a first-party claimant may be reimbursed only for costs incurred after July 1, 1989, even if the releases were discovered before July 1, 1989, up to the maximum of twenty-five thousand dollars per location.

SECTION 18. AMENDMENT. Section 23.1-12-20 of the North Dakota Century Code is amended and reenacted as follows:

23.1-12-20. ~~Administrator~~Department to determine costs. (Contingent effective date - See note)

A reimbursement for corrective actions taken by an owner, operator, or dealer may not be made from the fund until the ~~administrator~~department has determined that the costs for which reimbursement is requested were actually incurred and were reasonable. All necessary loss adjustment expenses must be included as a component of the loss and must be paid out of the fund.

SECTION 19. AMENDMENT. Section 23.1-12-23 of the North Dakota Century Code is amended and reenacted as follows:

23.1-12-23. Recovery of expenses. (Contingent effective date - See note)

Any reasonable and necessary expenses incurred by the fund, which exceed the coverage limits provided by section 23.1-12-18, in taking a corrective action, including costs of investigating a release, and in taking legal actions, may be recovered in a civil action in district court brought by the ~~administrator~~department against an owner or operator. The certification of expenses by an approved agent of the fund is prima facie evidence that the expenses are reasonable and necessary. Any expenses that are recovered under this section must be deposited in the fund.

SECTION 20. AMENDMENT. Section 23.1-12-24 of the North Dakota Century Code is amended and reenacted as follows:

23.1-12-24. Costs exceeding reimbursement. (Contingent effective date - See note)

If the cost of any extraordinary authorized action under this chapter exceeds amounts awarded to the ~~administrator or the~~ department from the federal government, ~~the administrator may pay the department the cost of themay pay the department's~~ corrective actions costs, including the cost of investigating a release, if the board finds that the cause was a petroleum substance, that an adequate amount exists in the fund to pay for the corrective action, that the occurrence was extraordinary in scope and size, and that a danger to the health and safety of citizens exists.

SECTION 21. AMENDMENT. Section 23.1-12-25 of the North Dakota Century Code is amended and reenacted as follows:

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23.1-12-25. Coordination of benefits. (Contingent effective date - See note)

If an owner or operator has an insurance policy that provides the same coverage as the fund, the ~~administrator of the fund~~department shall pay the share of the covered loss or damage for which the fund is responsible. The share that must be paid from the fund is equal to the proportion that the applicable limit of coverage under the fund bears to the limits of insurance of all insurance coverage on the same basis.

SECTION 22. AMENDMENT. Section 23.1-12-26 of the North Dakota Century Code is amended and reenacted as follows:

23.1-12-26. Third-party damages - Participation in actions and review of settlements. (Contingent effective date - See note)

1. An owner or operator sued for damages resulting from a release shall notify the ~~administrator~~department within fourteen days of being served with a summons and complaint. The owner or operator also shall advise the ~~administrator~~department if any insurer is defending the owner or operator and provide to the ~~administrator~~department the name of that insurer.
2. An owner or operator that, before litigation, enters negotiations with a third party that claims to have been damaged by a release, or that receives a demand for payment of damages to a third party that claims to have been damaged by a release, shall notify the ~~administrator~~department within fourteen days of the demand or the negotiations.
3. The ~~administrator~~department and the board shall review the conduct of any litigation or negotiation. The ~~administrator~~department may not assume any legal costs incurred by the defendant or plaintiff, but may participate in discovery, trial proceedings, or settlement negotiations of either disputed liability or damages that bear on the determination of a plaintiff's damages.
4. The ~~administrator~~department and the board shall review any settlement negotiations to determine the dollar amount of bodily injury or property damage actually, necessarily, and reasonably incurred by third parties which, if paid by the defendant, would be considered eligible costs.

SECTION 23. AMENDMENT. Section 23.1-12-27 of the North Dakota Century Code is amended and reenacted as follows:

23.1-12-27. Third-party damages - Documentation. (Contingent effective date - See note)

1. An applicant's payments for third-party damages pursuant to a judgment entered in a court must include copies of the notice of entry of judgment and abstract of costs.
2. An applicant's payments for third-party damages made by agreement in settlement of litigation must include copies of the settlement agreement and supporting documents required by the ~~administrator~~department.
3. An applicant's payments for third-party damages made by agreement without reference to litigation must include copies of the settlement and supporting documents required by the ~~administrator~~department.

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4. The ~~administrator~~department and the board may require a third party who claims bodily injury to be examined by a physician and require that the physician's report to be submitted to the ~~administrator~~department. The ~~administrator~~department may require a third party that claims property damage to permit a property appraiser or claims adjuster retained by the ~~administrator~~department to inspect the property and report to the ~~administrator~~department.
5. The fund shall pay a judgment against an owner, operator, or dealer awarded to a third party as a result of a third-party claim and property damage against an owner, operator, or dealer registered by the fund.
6. The fund shall pay for corrective action as awarded to a third party in any judgment against an owner, operator, or dealer.
7. Liability of the tank owner, operator, dealer, or fund to third parties for corrective action or personal injuries and property damage may not exceed, per person, one million dollars. Maximum liability of the fund, including all claims by third parties, may not exceed, for any release site, the maximum provided in section 23.1-12-18.
8. A third party may not bring an action against an owner, operator, or dealer more than three years after a corrective action plan has been approved by the department if the owner, operator, or dealer fully implements and complies with the corrective action plan.
9. In investigating a release site or reviewing the implementation of a corrective action plan approved by the department, the department shall determine whether the release threatens public health or the environment. The department shall require, based on science and technology appropriate for the site, any monitoring, remediation, or other appropriate corrective action that is reasonably necessary to protect public health or the environment. The department may require corrective action at a release site at any time after a release occurs.

SECTION 24. AMENDMENT. Section 23.1-12-28 of the North Dakota Century Code is amended and reenacted as follows:

23.1-12-28. Matching federal funds. (Contingent effective date - See note)

The ~~administrator~~department and the board may annually allow the department a ten percent matching grant for federal leaking underground storage tank funds to be paid out of the fund if the moneys are available and the ~~administrator~~department and the board determine the allowance appropriate.

SECTION 25. AMENDMENT. Section 23.1-12-29 of the North Dakota Century Code is amended and reenacted as follows:

23.1-12-29. Fund appropriations. (Contingent effective date - See note)

Money in the fund is continuously appropriated to the ~~administrator~~department for the purpose of making reimbursements under this chapter.

SECTION 26. AMENDMENT. Section 23.1-12-30 of the North Dakota Century Code is amended and reenacted as follows:

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23.1-12-30. Investment of fund. (Contingent effective date - See note)

Investment of the fund is under the supervision of the state investment board in accordance with chapter 21-10. The ~~commissioner~~department may purchase a contract for reinsurance of any risk to be paid by the fund. The ~~administrator~~department may investigate the purchase of insurance that reimburses an owner or operator for property damage claims by third parties other than claims for costs of corrective action.

SECTION 27. Chapter 23.1-16 of the North Dakota Century Code is created and enacted as follows:

23.1-16-01. Definitions.

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

1. "Boiler" means a closed vessel in which water is heated, steam is generated, steam is superheated, or any combination thereof, under pressure or vacuum for use externally to the boiler by the direct application of heat from the combustion of fuels, or from electricity or nuclear energy. The term includes fired units for vaporizing liquids other than water when these units are separate from processing systems and are complete within themselves.
2. "Department" means the department of environmental quality.

23.1-16-02. Chief boiler inspector, deputy inspectors - Appointment - Jurisdiction.

The department shall employ a chief boiler inspector and deputy inspectors. The chief boiler inspector has jurisdiction over all boilers in this state except as otherwise provided.

23.1-16-03. Qualifications of chief boiler inspector - Deputy inspectors.

1. An individual is not eligible to the office of chief boiler inspector unless that individual:
 - a. Has had at the time of the appointment at least five years' experience in the construction, inspection, operation, maintenance, or repair of high-pressure boilers and pressure vessels as a mechanical engineer, boilermaker, steam operating engineer, or boiler inspector. An applicant possessing a mechanical engineering degree from an accredited school may substitute that degree for two years of the five years' experience, at the discretion of the department.
 - b. Holds a commission issued by the national board of boiler and pressure vessel inspectors or obtains the commission within one year after the date of appointment by the department.
 - c. Is not directly or indirectly interested in the manufacture or sale of boilers or steam machinery or articles used in the construction or maintenance of engines or boilers.
2. The department shall establish qualifications for a deputy inspector which are not inconsistent with the requirements of the position.

23.1-16-04. Powers and duties of chief boiler inspector.

1. The chief boiler inspector shall:
 - a. Keep a complete record of the type, dimensions, maximum allowable working pressure, age, condition, location, and date of the last-recorded internal and external inspection of boilers to which this chapter applies.
 - b. Cooperate and assist in loss prevention programs sponsored by the department.
2. The chief boiler inspector may delegate powers and duties to any deputy inspector or special inspector.

23.1-16-05. General requirement.

Every boiler in this state must be constructed, installed, and maintained according to rules adopted to implement this chapter.

23.1-16-06. Exempt boilers - Inspection of exempt boilers.

This chapter does not apply to:

1. Any boiler subject to federal inspection or under federal control.
2. Any boiler located on a farm and used solely for agricultural purposes.
3. Any heating boiler located in a private residence or in an apartment house of less than six family units.
4. Any hot water supply boiler not exceeding the following limitations:
 - a. Input of two hundred thousand British thermal units per hour.
 - b. Pressure of one hundred sixty pounds per square inch [1103.16 kilopascals] gauge.
 - c. Temperature of two hundred fifty degrees Fahrenheit [121.11 degrees Celsius].
5. Any portable steam cleaner commonly used in a garage.
6. Any boiler of a miniature model locomotive, boat, tractor, or stationary engine design constructed as a hobby, not for commercial use, having an inside diameter not exceeding ten inches [25.4 centimeters] and a grate area not exceeding one and one-half square feet [1393.54 square centimeters] and which is properly equipped with a safety valve, water level indicator, and pressure gauge.
7. Any electric boiler used as an integral part of an espresso coffee machine, provided that the boiler does not exceed one and one-half cubic feet [.0566 cubic meter] in water capacity, does not exceed fifty pounds per square inch [344.74 kilopascals] pressure, and is constructed, approved, or certified to the American society of mechanical engineers code or to other national or international standards.

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23.1-16-07. Inspection of boilers.

1. The chief boiler inspector shall inspect each boiler used or proposed to be used within this state. The inspection must be thorough as to the construction, installation, condition, and operation as provided by the rules adopted to implement this chapter. An exempt boiler may be inspected by the chief boiler inspector when the owner, the owner's agent, or the user of the boiler makes written request for inspection to the department.
2. Each boiler of one hundred thousand pounds [45359.24 kilograms] per hour or more capacity, used or proposed to be used within this state, which has internal continuous water treatment under the direct supervision of a graduate engineer or chemist, or one having equivalent experience in the treatment of boiler water when the water treatment is for the purpose of controlling and limiting serious corrosion and other deteriorating factors, and with respect to which boiler the chief boiler inspector has determined the owner or user has complied with the prescribed recordkeeping requirements, must be inspected at least once every thirty-six months internally while not under pressure, and at least once every twelve months externally while under pressure. If a hydrostatic test is necessary to determine the safety of a boiler, the test must be conducted by the owner or user of the equipment under the supervision of the chief boiler inspector. The owner or user of a boiler of one hundred thousand pounds [45359.24 kilograms] per hour or more capacity desiring to qualify for thirty-six-month internal inspection intervals shall keep available for examination by the chief boiler inspector accurate records showing the date and actual time the boiler is out of service and the reason or reasons therefor, and the results of the chemical and physical analysis of the boiler water, whether from laboratory analysis of samples taken at regular intervals of not more than forty-eight hours or from continuous online analysers, which will adequately show the condition of the water and any other elements or characteristics of the water capable of producing corrosion or other deterioration of the boiler or its parts. If an inspection discloses deficiencies in equipment or in operating procedures, inspections may be required once every twelve months.

23.1-16-08. Special inspector.

1. Upon written request of an employer, the department may appoint as a special inspector an inspector in the employ of:
 - a. An insurance company authorized to insure boilers in this state against loss from explosion;
 - b. A company qualified by the national board of boiler and pressure vessel inspectors as an accredited owner/user inspection organization; or
 - c. A company qualified by the national board of boiler and pressure vessel inspectors as an accredited authorized inspection agency.
2. An individual may not be appointed as a special inspector unless that individual has passed the examination prescribed by the national board of boiler and pressure vessel inspectors.

3. An inspection performed by a special inspector must be performed in accordance with this chapter and a complete report of the inspection must be filed with the department in the time, manner, and form as prescribed by the department.
4. If a complete report is not filed by the special inspector's employer with the department within ninety days from the certificate due date, the chief boiler inspector may make the required inspection, unless an extension of time is granted by the chief boiler inspector. The special inspector's employer must pay the inspection fees as required by section 23.1-16-09 for a special inspection.
5. The chief boiler inspector may inspect any boiler to which a special inspection applies.
6. The department may, for cause, suspend or revoke the appointment of any special inspector.

23.1-16-09. Inspection and certificate fees.

1. Upon completion of inspection, the owner or user of a boiler shall pay to the department fees or a combination of inspection and certificate fees. The department shall determine the inspection fees. Certificate fees are determined by section 23.1-16-10. The department shall determine and annually may adjust a fee scale for the internal inspections of power boilers, internal inspections of low-pressure heating boilers, external inspections of all boilers, and inspection of boilers used exclusively for exhibition purposes.
2. Not more than two hundred dollars may be charged or collected for any one inspection of a boiler, except for special inspections made upon request. All other inspections made by the chief boiler inspector, including shop inspections and reviews and special inspections when requested by the owner or user of a boiler, must be charged at a rate not to exceed five hundred dollars per day or three hundred dollars per half day of four hours or less, plus payment for mileage, meals, and hotel expenses as allowed by sections 44-08-04 and 54-06-09, except that the mileage rate for a state-owned vehicle will be the actual amount incurred by the department.
3. The annual fee for the issuance of a reciprocal commission card for a special inspector is forty dollars and the annual fee for the issuance of a welder-qualified card is twenty dollars.
4. The fee for taking an examination for a hobby boiler operating license is twenty-five dollars and the fee for a hobby boiler operating license is twenty-five dollars.
5. A hobby boiler operating license issued under this section is valid for six years.

23.1-16-10. Certificate of inspection - Certificate to be posted.

The department shall issue a certificate of inspection for each boiler inspected upon receipt of an inspection report certifying that the boiler is in a safe condition to be operated. The department shall charge a fee of twenty dollars per year for each year

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that a certificate is valid, or part of a year thereof, for each certificate of inspection issued as the result of inspections authorized under sections 23.1-16-07 and 23.1-16-08. The fees are the liability of the owner or user and must be paid in accordance with rules adopted by the department. A certificate may not be issued for any boiler not in a safe condition to be operated or for a boiler for which the inspection and certificate fees have not been paid in full. A certificate is not valid for a period of more than thirty-six months for power boilers described in subsection 2 of section 23.1-16-07, and no more than twelve months for other power boilers, twelve months for steam traction engines, and thirty-six months for low-pressure boilers except that a two-month grace period may be extended for any certificate. Upon written request from a special inspector, the chief boiler inspector may issue a short-term certificate. Each certificate of inspection must be posted conspicuously under glass in the boiler room or adjacent to the boiler inspected.

23.1-16-11. Certificate of inspection required - Penalty.

A person may not operate a boiler in this state without a valid certificate of inspection. A violation of this section is a class A misdemeanor on the part of the owner, user, or operator of the boiler.

23.1-16-12. Manufacturer's data report.

The boiler manufacturer shall provide the department with a manufacturer's data report. When signed by an authorized inspector, this data sheet together with the stamp on the boiler is the record denoting the boiler has been constructed in accordance with the rules adopted to implement this chapter.

23.1-16-13. Disposition of funds.

All funds collected and received under this chapter must be paid to the state treasurer and deposited in the state fire and tornado fund to be used to defray the costs of boiler inspections.

23.1-16-14. Rules - Penalty for violation - Hearing.

1. The department shall adopt rules for the safe and proper installation, use, operation, and inspection of boilers and pressure vessels subject to this chapter.
2. The department shall adopt rules for the licensing of operators of hobby boilers used during parades, exhibitions, and threshing shows where the public is invited.
3. A fee must be charged for an operating license, for a license renewal, and for an examination conducted to determine minimum competence. Individuals operating hobby boilers within this state as of July 1, 2007, are considered acceptable for a license without additional training or examination. An individual who is not a resident of this state and who holds a boiler operator license or credential in another state or Canadian province is exempt from licensure as a hobby boiler operator in this state.
4. The department may not issue a certificate of inspection to any owner or user of a boiler who fails or refuses to comply with the rules. The department shall revoke any certificate presently in force upon evidence

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that the owner or user of the boiler is failing or refusing to comply with the rules.

5. Any owner or user of a boiler may request a hearing before the department within fifteen days from service of an order refusing or revoking a certificate of inspection. It is the burden of the owner or user to show cause why the certificate of inspection should not be refused or revoked. If no hearing is requested within the required period, the order of the department becomes final and is not subject to further proceedings.

SECTION 28. REPEAL. Chapter 26.1-22.1 of the North Dakota Century Code is repealed.

SECTION 29. EFFECTIVE DATE. Sections 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, and 28 of this Act become effective on July 1, 2019, if the legislative council has received certification from the chief of the environmental health section of the state department of health that all authority, powers, and duties from the environmental health section of the state department of health have been transferred to the department of environmental quality. If the certification is not received by July 1, 2019, sections 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, and 28 of this Act become effective on the date certification is received."

Renumber accordingly

STATEMENT OF PURPOSE OF AMENDMENT:

House Bill No. 1024 - Department of Environmental Quality - House Action

	Base Budget	House Changes	House Version
Salaries and wages	\$27,040,544	\$3,156,409	\$30,196,953
Operating expenses	8,005,878	1,996,302	10,002,180
Capital assets	1,258,249	1,005,180	2,263,429
Grants	13,407,000	2,454,529	15,861,529
Total all funds	\$49,711,671	\$8,612,420	\$58,324,091
Less estimated income	38,987,520	7,428,412	46,415,932
General fund	\$10,724,151	\$1,184,008	\$11,908,159
FTE	152.50	13.00	165.50

Department 303 - Department of Environmental Quality - Detail of House Changes

	Adjusts Funding for Base Payroll Changes ¹	Adds Funding for Salary and Benefit Increases ²	Cost to Continue Adjustments ³	Removes 3 FTE Positions ⁴	Adds Funding to Transfer the Petroleum Tank Release Program ⁵	Adds Funding to Transfer the Boiler Inspection Program ⁶
Salaries and wages	\$146,390	\$1,396,063		(\$365,530)	\$336,481	\$753,365
Operating expenses			\$1,239,823		238,588	89,000
Capital assets						
Grants			(445,000)			
Total all funds	\$146,390	\$1,396,063	\$794,823	(\$365,530)	\$575,069	\$842,365
Less estimated income	322,006	939,547	957,799	(271,407)	575,069	842,365
General fund	(\$175,616)	\$456,516	(\$162,976)	(\$94,123)	\$0	\$0
FTE	0.00	0.00	0.00	(3.00)	2.00	4.00

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	Adds Contingent Funding and FTE Positions for the Supremacy of Federal Programs ⁷	Decreases Funding for Water Treatment System Training ⁸	Adds Funding for Microsoft Office 365 Licensing ⁹	Adjusts Funding for Bond and Capital Payments ¹⁰	Reduces Funding for Extraordinary Repairs ¹¹	Increases Funding for Equipment ¹²
Salaries and wages	\$889,640					
Operating expenses	359,305	(\$55,000)	\$84,586			
Capital assets				\$3,405	(\$273,350)	\$275,125
Grants						
Total all funds	\$1,248,945	(\$55,000)	\$84,586	\$3,405	(\$273,350)	\$275,125
Less estimated income	0	0	64,538	1,541	(217,700)	275,125
General fund	\$1,248,945	(\$55,000)	\$20,048	\$1,864	(\$55,650)	\$0
FTE	10.00	0.00	0.00	0.00	0.00	0.00

	Adds Funding for Grants from the Volkswagen Trust Settlement ¹³	Adds One- Time Contingent Funding to Establish Federal Program Supremacy ¹⁴	Total House Changes
Salaries and wages			\$3,156,409
Operating expenses		\$40,000	1,996,302
Capital assets		1,000,000	1,005,180
Grants	\$2,899,529		2,454,529
Total all funds	\$2,899,529	\$1,040,000	\$8,612,420
Less estimated income	2,899,529	1,040,000	7,428,412
General fund	\$0	\$0	\$1,184,008
FTE	0.00	0.00	13.00

¹ Funding is adjusted for base payroll changes.

² The following funding is added for 2019-21 biennium salary adjustments of 2 percent per year and increases in health insurance premiums from \$1,241 to \$1,427 per month:

	General Fund	Other Funds	Total
Salary increase	\$231,686	\$472,755	\$704,441
Health insurance increase	224,830	466,792	691,622
Total	\$456,516	\$939,547	\$1,396,063

³ Funding is adjusted for cost to continue changes to the base budget.

⁴ Three FTE positions and related funding for salaries and wages are removed.

⁵ Two FTE positions and related funding from the petroleum tank release compensation fund for salaries and wages and operating expenses are transferred from the Insurance Department to the Department of Environmental Quality for the petroleum tank release program.

⁶ Four FTE positions are added to transfer the boiler inspection program from the Insurance Department to the Department of Environmental Quality, including funding from the state fire and tornado fund for base salaries and wages of \$753,365 and operating expenses of \$89,000.

⁷ Contingent funding and 10 FTE positions are added in the 2nd year of the biennium for the supremacy of federal programs, including funding for salaries and wages of \$889,640 and operating expenses of \$359,305. The appropriation and FTE positions are contingent on federal Environmental Protection Agency approval of the Department of Environmental Quality assuming the duties of federal air pollution programs.

⁸ Funding for operating expenses related to training water treatment system operators is reduced to provide a total of \$125,000 from the general fund.

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⁹ Funding is added for Microsoft Office 365 license expenses.

¹⁰ Funding for bond and capital payments is increased to provide a total of \$216,429, of which \$93,691 is from the general fund.

¹¹ Funding for extraordinary repairs is reduced to provide a total of \$27,000, of which \$6,866 is from the general fund.

¹² Funding for equipment and information technology equipment over \$5,000 is increased to provide a total ongoing appropriation of \$1,020,000 from other funds.

¹³ Funding for grants is increased to accept and disburse funding from the Volkswagen trust settlement to provide a total of \$5,399,529.

¹⁴ One-time funding is added from the strategic investment and improvements fund for capital assets of \$1 million and operating expenses of \$40,000 related to the establishment of federal program supremacy. The funding is contingent on Environmental Protection Agency approval of the Department of Environmental Quality assuming the duties of federal air pollution programs.

This amendment also adds sections to:

- Identify funding from the state fire and tornado fund for the boiler inspection program;
- Identify contingent one-time funding of \$1,040,000 from the strategic investment and improvements fund for air pollution program equipment related to the establishment of federal program supremacy. The funding provided is available the 2nd year of the biennium and is contingent on Environmental Protection Agency approval of the Department of Environmental Quality assuming the duties of federal air pollution programs;
- Identify contingent funding of \$1,248,945 from the general fund and 10 FTE positions related to the establishment of federal program supremacy effective July 1, 2020;
- Amend various sections of Chapter 23.1-12 to transfer the petroleum tank release program from the Insurance Commissioner to the Department of Environmental Quality;
- Create Chapter 23.1-16 to transfer the boiler inspection program from the Insurance Commissioner to the Department of Environmental Quality;
- Repeal Chapter 26.1-22.1 related to the boiler inspection program; and
- Provide effective dates for the program transfers.

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1024

Page 1, line 2, after "quality" insert "; to amend and reenact subsection 1 of section 23.1-12-17 of the North Dakota Century Code, relating to the petroleum tank release compensation fund; to provide an effective date; and to provide an expiration date"

Page 2, after line 9, insert:

"SECTION 4. AMENDMENT. Subsection 1 of section 23.1-12-17 of the North Dakota Century Code is amended and reenacted as follows:

1. ~~An owner or operator of a tank shall pay an annual registration fee of fifty dollars for each aboveground or underground tank owned or operated by that person. If after the fiscal year has been closed and all expenses relating to the fiscal year have been accounted for, the fund balance is less than six million dollars, the annual registration fee of fifty dollars is increased to one hundred dollars. If after the fiscal year has been closed and all expenses relating to the fiscal year have been accounted for, the fund balance is five million five hundred thousand dollars or more and the annual registration fee has been increased to one hundred dollars, the fee must be reduced to fifty dollars. If after the fiscal year has been closed and all expenses relating to the fiscal year have been accounted for, the fund balance exceeds nine million dollars, the annual registration fee is reduced to five dollars. Annual registration fees must continue at five dollars until the fund balance does not exceed nine million dollars. Upon the recommendation and approval of the petroleum tank release compensation fund board, the department shall classify tanks with respect to degree of hazard, determine the risks of each classification, and fix the registration fee for each classification at a rate sufficient to provide for:~~
 - a. The payment of the expenses of administration of the fund;
 - b. The reimbursement for corrective action provided under this chapter;
and
 - c. The maintenance by the fund of adequate reserves and surplus so the fund may be kept solvent at all times.
2. The department shall establish the schedule of registration fees by rules adopted in accordance with chapter 28-32.

SECTION 5. EFFECTIVE DATE - EXPIRATION DATE. Section 4 of this Act becomes effective on August 1, 2019, if the legislative council has received certification from the chief of the environmental health section of the state department of health that all authority, powers, and duties from the environmental health section of the state department of health have been transferred to the department of environmental quality. If the certification is not received by August 1, 2019, section 4 of this Act becomes effective on the date certification is received."

Renumber accordingly

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1024

Page 1, line 2, after "quality" insert "; to create and enact chapter 23.1-16 of the North Dakota Century Code, relating to boiler inspections; to amend and reenact sections 23.1-12-02, 23.1-12-04, 23.1-12-05, 23.1-12-06, 23.1-12-10, 23.1-12-11, 23.1-12-14, 23.1-12-15, 23.1-12-17, 23.1-12-18, 23.1-12-19, 23.1-12-20, 23.1-12-23, 23.1-12-24, 23.1-12-25, 23.1-12-26, 23.1-12-27, 23.1-12-28, 23.1-12-29, and 23.1-12-30 of the North Dakota Century Code, relating to the duties of the department of environmental quality; to repeal chapter 26.1-22.1 of the North Dakota Century Code, relating to boiler inspections; and to provide for a contingent effective date"

Page 1, replace lines 10 through 19 with:

	Base Level	Adjustments or Enhancements	Appropriation
Salaries and wages	\$27,040,544	\$3,156,409	\$30,196,953
Operating expenses	8,005,878	1,996,302	10,002,180
Capital assets	1,258,249	1,005,180	2,263,429
Grants	13,407,000	2,454,529	15,861,529
Total all funds	\$49,711,671	\$8,612,420	\$58,324,091
Less estimated income	38,987,520	7,428,412	46,415,932
Total general fund	\$10,724,151	\$1,184,008	\$11,908,159
Full-time equivalent positions	152.50	13.00	165.50"

Page 1, line 20, after "BUDGET" insert "- REPORT TO SIXTY-SEVENTH LEGISLATIVE ASSEMBLY"

Page 1, line 22, after "biennium" insert "and the 2019-21 biennium one-time funding items included in the appropriation in section 1 of this Act"

Page 2, replace lines 1 through 3 with:

One-Time Funding Description	2017-19	2019-21
Environmental protection agency lawsuit	\$500,000	\$0
Air pollution program equipment	0	1,040,000
Total estimated income	\$500,000	\$1,040,000

The 2019-21 biennium one-time funding amounts are not a part of the entity's base budget for the 2021-23 biennium. The department of environmental quality shall report to the appropriations committees of the sixty-seventh legislative assembly on the use of this one-time funding for the biennium beginning July 1, 2019, and ending June 30, 2021."

Page 2, after line 9, insert:

"SECTION 4. STATE FIRE AND TORNADO FUND. The estimated income line item included in section 1 of this Act includes \$879,312, or so much of the sum as may be necessary, to be made available to the department of environmental quality from the state fire and tornado fund for the boiler inspection program, for the biennium beginning July 1, 2019, and ending June 30, 2021.

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SECTION 5. STRATEGIC INVESTMENT AND IMPROVEMENTS FUND - CONTINGENT ONE-TIME FUNDING - FEDERAL PROGRAM SUPREMACY. The estimated income line item included in section 1 of this Act includes \$1,040,000, or so much of the sum as may be necessary, to be made available to the department of environmental quality from the strategic investment and improvements fund for one-time funding of air pollution program equipment related to the establishment of federal program supremacy, for the biennium beginning July 1, 2019, and ending June 30, 2021. The funding may be spent only upon certification by the director of the department of environmental quality to the director of the office of management and budget that the federal environmental protection agency has approved the department of environmental quality assuming the duties of federal air pollution programs.

SECTION 6. CONTINGENT APPROPRIATION - FEDERAL PROGRAM SUPREMACY. The amount of \$1,248,945 from the general fund and ten full-time equivalent positions included in section 1 of this Act are effective July 1, 2020, and may be spent only upon certification by the director of the department of environmental quality to the director of the office of management of budget that the federal environmental protection agency has approved the state assuming primacy over the quad O and quad Oa federal air pollution programs.

SECTION 7. AMENDMENT. Section 23.1-12-02 of the North Dakota Century Code is amended and reenacted as follows:

23.1-12-02. Definitions. (Contingent effective date - See note)

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. "~~Administrator~~" means ~~the manager of the state fire and tornado fund.~~
3. "Board" means the petroleum release compensation board.
4. "~~Commissioner~~" means ~~the insurance commissioner.~~
- 5.3. "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.
- 6.4. "Dealer" means a person licensed by the tax commissioner to sell motor vehicle fuel or special fuels within the state.
- 7.5. "Department" means the department of environmental quality.
- 8.6. "Fund" means the petroleum release compensation fund.
- 9.7. "Location" means a physical address or site that has contiguous properties. Noncontiguous properties within a municipality or other governmental jurisdiction are considered separate locations.

- ~~10-8.~~ "Operator" means a person in control of, or having responsibility for, the daily operation of a tank under this chapter.
- ~~11-9.~~ "Owner" means a person who holds title to, controls, or possesses an interest in the tank before the discontinuation of its use.
- ~~12-10.~~ "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.
- ~~13-11.~~ "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.
- ~~14-12.~~ "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.
- ~~15-13.~~ "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. 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.

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- 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.

46-14. "Tank integrity test" means a test to determine that a tank is sound and not leaking. For an underground tank, the term means a certified third-party test that meets environmental protection agency leak detection requirements. For an aboveground tank, the term means a test conducted according to steel tank institute SP 001 or American petroleum institute 653.

47-15. "Third party" means a person who is damaged by the act of a registered owner, operator, or dealer requiring corrective action, or a person who suffers bodily injury or property damage caused by a petroleum release.

SECTION 8. AMENDMENT. Section 23.1-12-04 of the North Dakota Century Code is amended and reenacted as follows:

23.1-12-04. Administration of fund - Staff. (Contingent effective date - See note)

The ~~administrator~~department shall administer the fund according to this chapter. The ~~administrator~~department shall convene the board as may be necessary to keep the board apprised of the fund's general operations. However, the board shall meet at least once each half of each calendar year to review and to advise the ~~administrator~~department regarding the administration of the fund, the fund's general operations, and to hear and decide denials of claims by the ~~administrator~~department which may be appealed to the board, and to discuss all claims against the fund. The ~~administrator~~department may employ any assistance and staff necessary to administer the fund within the limits of legislative appropriation. A claimant aggrieved by a decision of the ~~administrator~~department regarding a claim upon the fund may appeal the decision to the board. The board may sustain, modify, or reverse the decision of the ~~administrator~~department. The claimant or the ~~administrator~~department may appeal the board's decision to the commissioner. ~~The decision of the commissioner may be appealed~~ under chapter 28-32.

SECTION 9. AMENDMENT. Section 23.1-12-05 of the North Dakota Century Code is amended and reenacted as follows:

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23.1-12-05. Adoption of rules. (Contingent effective date - See note)

The ~~administrator~~department shall adopt rules regarding the practices and procedures of the fund, the form and procedure for applications for compensation from the fund, procedures for investigation of claims, procedures for determining the amount and type of costs that are eligible for reimbursement from the fund, procedures for persons to perform services for the fund, procedures for appeals to the board by claimants aggrieved by an adverse decision of the ~~administrator~~department, and any other rules as may be appropriate to administer this chapter.

SECTION 10. AMENDMENT. Section 23.1-12-06 of the North Dakota Century Code is amended and reenacted as follows:

23.1-12-06. Release discovery. (Contingent effective date - See note)

If the department has reason to believe a release has occurred, it shall ~~notify the administrator.~~ The department shall direct the owner or operator to take reasonable and necessary corrective actions as provided under federal or state law or under adopted rules.

SECTION 11. AMENDMENT. Section 23.1-12-10 of the North Dakota Century Code is amended and reenacted as follows:

23.1-12-10. Providing of information. (Contingent effective date - See note)

A person ~~the administrator or~~ the department has reason to believe is an owner or operator, the owner of real property where corrective action is ordered to be taken, or a person that may have information concerning a release shall, if requested by ~~the administrator or~~ the department, or any member, employee, or agent of ~~the administrator or~~ the department, furnish to the ~~administrator or~~ the department any information that person has or may reasonably obtain which is relevant to the release.

SECTION 12. AMENDMENT. Section 23.1-12-11 of the North Dakota Century Code is amended and reenacted as follows:

23.1-12-11. Examination of records. (Contingent effective date - See note)

Any employee of the ~~administrator or~~ the department may, upon presentation of official credentials:

1. Examine and copy books, papers, records, memoranda, or data of any person that has a duty to provide information to the ~~administrator or~~ the department under section 23.1-12-10; and
2. Enter upon public or private property to take action authorized by this section, including obtaining information from a person that has a duty to provide the information under section 23.1-12-10, conducting surveys and investigations, and taking corrective action.

SECTION 13. AMENDMENT. Section 23.1-12-14 of the North Dakota Century Code is amended and reenacted as follows:

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23.1-12-14. Other remedies. (Contingent effective date - See note)

This chapter does not limit the powers of the administrator or department, or preclude the pursuit of any other administrative, civil, injunctive, or criminal remedies by the administrator or department or any other person. Administrative remedies need not be exhausted to proceed under this chapter. The remedies provided by this chapter are in addition to those provided under existing statutory or common law.

SECTION 14. AMENDMENT. Section 23.1-12-15 of the North Dakota Century Code is amended and reenacted as follows:

23.1-12-15. Revenue to the fund. (Contingent effective date - See note)

Revenue from the following sources must be deposited in the state treasury and credited to the fund:

1. Any registration fees collected under section 23.1-12-17;
2. Any money recovered by the fund under section 23.1-12-23, and any money paid under an agreement, stipulation, or settlement;
3. Any interest attributable to investment of money in the fund; and
4. Any money received by the administrator department in the form of gifts, grants, reimbursements, or appropriations from any source intended to be used for the purposes of the fund.

SECTION 15. AMENDMENT. Section 23.1-12-17 of the North Dakota Century Code is amended and reenacted as follows:

23.1-12-17. Registration fee. (Contingent effective date - See note)

1. ~~An owner or operator of a tank shall pay an annual registration fee of fifty dollars for each aboveground or underground tank owned or operated by that person. If after the fiscal year has been closed and all expenses relating to the fiscal year have been accounted for, the fund balance is less than six million dollars, the annual registration fee of fifty dollars is increased to one hundred dollars. If after the fiscal year has been closed and all expenses relating to the fiscal year have been accounted for, the fund balance is five million five hundred thousand dollars or more and the annual registration fee has been increased to one hundred dollars, the fee must be reduced to fifty dollars. If after the fiscal year has been closed and all expenses relating to the fiscal year have been accounted for, the fund balance exceeds nine million dollars, the annual registration fee is reduced to five dollars. Annual registration fees must continue at five dollars until the fund balance does not exceed nine million dollars. Upon the recommendation and approval of the petroleum tank release compensation fund board, the department shall classify tanks with respect to degree of hazard, determine the risks of each classification, and fix the registration fee for each classification at a rate sufficient to provide for:~~
 - a. The payment of the expenses of administration of the fund;
 - b. The reimbursement for corrective action provided under this chapter; and

c. The maintenance by the fund of adequate reserves and surplus so the fund may be kept solvent at all times.

2. The department shall establish the schedule of registration fees by rules adopted in accordance with chapter 28-32.

~~2-3.~~ An owner or operator of an existing tank that is discovered at a location that currently and previously has had tanks registered with the fund shall pay an additional twenty-five dollar penalty fee in addition to the registration fee for each aboveground tank and each underground tank owned or operated by that person for each previous year that the tank was required to be registered for which a fee was not paid. The payment includes the fees and the penalty for the failure to register.

~~3-4.~~ An owner or operator of an existing tank at a location that was not previously and continuously registered with the fund, whether the registration was required by law or not must provide the fund with a phase two environmental study conducted by a qualified firm according to American society for testing materials standards. A tank integrity test must also be performed. The environmental study and tank integrity test must be reviewed by the ~~commissioner~~department along with the application for registration with the fund. If the ~~commissioner~~department rejects the application, the applicant is denied eligibility to the fund. However, if the site is remediated and the leaking tank is replaced, the applicant may reapply for registration with the fund. A new installation that is using a used tank must provide tank integrity test results for the used tank. Use of a synthetic liner in an aboveground dike system negates the need for a tank integrity test. The owner or operator of a new tank at a new site or a new tank at an existing site that had a tank registered at the site previously need only pay the required fees for registration with the fund.

~~4-5.~~ If accepted for registration with the fund, the owner or operator of the tank shall pay an additional twenty-five dollar penalty fee in addition to the registration fee for each aboveground tank and underground tank owned or operated by that person for each previous year that the tank was required to be registered for which a fee was not paid, regardless of ownership in each of those years. The payment includes the fees and the penalty for the failure to register.

~~5-6.~~ The registration fees collected under this section must be paid to the ~~fund~~ administrator~~department~~ for deposit in the state treasury for the dedicated credit to the petroleum release compensation fund.

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

SECTION 16. AMENDMENT. Section 23.1-12-18 of the North Dakota Century Code is amended and reenacted as follows:

23.1-12-18. Reimbursement for corrective action. (Contingent effective date - See note)

1. The administrator~~department~~ shall reimburse an eligible owner or operator for ninety percent of the costs of corrective action, including the

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investigation, which are greater than five thousand dollars and less than one million dollars per occurrence and two million dollars in the aggregate. An eligible tank owner or operator may not be liable for more than twenty thousand dollars out-of-pocket expenses for any one release. A reimbursement may not be made unless the ~~administrator~~department determines that:

- a. At the time the release was discovered the owner or operator and the tank were in compliance with state and federal rules and rules applicable to the tank, including rules relating to financial responsibility, rules relating to infrastructure compatibility, and all rules relating to health and safety which were in effect at the time of the release;
 - b. The department was given notice of the release as required by federal and state law;
 - c. The owner or operator has paid the first five thousand dollars of the cost of corrective action; and
 - d. The owner or operator, to the extent possible, fully cooperated with the department ~~and the administrator~~ in responding to the release.
2. The fund shall compensate third parties for corrective action taken for a petroleum release if the provisions of subdivisions a, b, c, and d of subsection 1 were met at the time the release was discovered. Compensation for third-party corrective action includes compensation for costs incurred in returning the real estate to that level deemed duly remediated by the department.
3. The fund shall reimburse the tank owner, operator, or dealer for bodily injuries to a third party caused by a petroleum release if the provisions of subdivisions a, b, c, and d of subsection 1 were met at the time the release was discovered in an amount determined by:
- a. Findings reduced to judgment in federal or state district court or such other court having jurisdiction over the matter in a proceeding in which the fund has been made a party;
 - b. Findings by an arbitration panel agreed upon in writing by the parties in a proceeding in which the fund has been made a party; or
 - c. A written settlement entered into by the parties in which the ~~commissioner~~director of the department or the ~~commissioner's~~department's agent has participated. The settlement must be reviewed and approved by the ~~commissioner~~director of the department.
4. In any civil action against the owner, operator, or dealer for damages resulting from a petroleum release, if the pre-leak condition of real estate is an issue, and if there is no reasonable means of determining the pre-leak condition of real estate, the condition is that which exists at the time the department determines the real estate has been duly remediated.

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5. The fund may not compensate for attorney's fees of owners, operators, or dealers, nor may the fund compensate for exemplary damages, criminal fines, or administrative penalties.
6. A third party accepting monetary compensation directly from the fund for damages due to a release caused by a tank owner, operator, or dealer covered by the fund is deemed to have waived any cause of action against the fund or against the tank owner, operator, or dealer.
7. The fund shall reimburse the department for all costs, attorney's fees, and other legal expenses relating to administrative and adjudicative proceedings under this chapter and any subsequent legal proceeding. Any moneys reimbursed must be deposited in the department's operating fund in the state treasury and must be spent subject to appropriation by the legislative assembly.

SECTION 17. AMENDMENT. Section 23.1-12-19 of the North Dakota Century Code is amended and reenacted as follows:

23.1-12-19. Application for reimbursement. (Contingent effective date - See note)

An owner or operator that is a first-party claimant and that proposes to take corrective action or has undertaken corrective action in response to a release, the time of the release being unknown, may apply to the ~~administrator~~department for partial or full reimbursement under section 23.1-12-18. An owner or operator who is a first-party claimant may be reimbursed only for costs incurred after July 1, 1989, even if the releases were discovered before July 1, 1989, up to the maximum of twenty-five thousand dollars per location.

SECTION 18. AMENDMENT. Section 23.1-12-20 of the North Dakota Century Code is amended and reenacted as follows:

23.1-12-20. ~~Administrator~~Department to determine costs. (Contingent effective date - See note)

A reimbursement for corrective actions taken by an owner, operator, or dealer may not be made from the fund until the ~~administrator~~department has determined that the costs for which reimbursement is requested were actually incurred and were reasonable. All necessary loss adjustment expenses must be included as a component of the loss and must be paid out of the fund.

SECTION 19. AMENDMENT. Section 23.1-12-23 of the North Dakota Century Code is amended and reenacted as follows:

23.1-12-23. Recovery of expenses. (Contingent effective date - See note)

Any reasonable and necessary expenses incurred by the fund, which exceed the coverage limits provided by section 23.1-12-18, in taking a corrective action, including costs of investigating a release, and in taking legal actions, may be recovered in a civil action in district court brought by the ~~administrator~~department against an owner or operator. The certification of expenses by an approved agent of the fund is prima facie evidence that the expenses are reasonable and necessary. Any expenses that are recovered under this section must be deposited in the fund.

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SECTION 20. AMENDMENT. Section 23.1-12-24 of the North Dakota Century Code is amended and reenacted as follows:

23.1-12-24. Costs exceeding reimbursement. (Contingent effective date - See note)

If the cost of any extraordinary authorized action under this chapter exceeds amounts awarded to the ~~administrator or the~~ department from the federal government, ~~the administrator may pay the department the cost of themay pay the department's~~ corrective actions costs, including the cost of investigating a release, if the board finds that the cause was a petroleum substance, that an adequate amount exists in the fund to pay for the corrective action, that the occurrence was extraordinary in scope and size, and that a danger to the health and safety of citizens exists.

SECTION 21. AMENDMENT. Section 23.1-12-25 of the North Dakota Century Code is amended and reenacted as follows:

23.1-12-25. Coordination of benefits. (Contingent effective date - See note)

If an owner or operator has an insurance policy that provides the same coverage as the fund, the ~~administrator of the fund~~department shall pay the share of the covered loss or damage for which the fund is responsible. The share that must be paid from the fund is equal to the proportion that the applicable limit of coverage under the fund bears to the limits of insurance of all insurance coverage on the same basis.

SECTION 22. AMENDMENT. Section 23.1-12-26 of the North Dakota Century Code is amended and reenacted as follows:

23.1-12-26. Third-party damages - Participation in actions and review of settlements. (Contingent effective date - See note)

1. An owner or operator sued for damages resulting from a release shall notify the ~~administrator~~department within fourteen days of being served with a summons and complaint. The owner or operator also shall advise the ~~administrator~~department if any insurer is defending the owner or operator and provide to the ~~administrator~~department the name of that insurer.
2. An owner or operator that, before litigation, enters negotiations with a third party that claims to have been damaged by a release, or that receives a demand for payment of damages to a third party that claims to have been damaged by a release, shall notify the ~~administrator~~department within fourteen days of the demand or the negotiations.
3. The ~~administrator~~department and the board shall review the conduct of any litigation or negotiation. The ~~administrator~~department may not assume any legal costs incurred by the defendant or plaintiff, but may participate in discovery, trial proceedings, or settlement negotiations of either disputed liability or damages that bear on the determination of a plaintiff's damages.
4. The ~~administrator~~department and the board shall review any settlement negotiations to determine the dollar amount of bodily injury or property damage actually, necessarily, and reasonably incurred by third parties which, if paid by the defendant, would be considered eligible costs.

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SECTION 23. AMENDMENT. Section 23.1-12-27 of the North Dakota Century Code is amended and reenacted as follows:

23.1-12-27. Third-party damages - Documentation. (Contingent effective date - See note)

1. An applicant's payments for third-party damages pursuant to a judgment entered in a court must include copies of the notice of entry of judgment and abstract of costs.
2. An applicant's payments for third-party damages made by agreement in settlement of litigation must include copies of the settlement agreement and supporting documents required by the ~~administrator~~department.
3. An applicant's payments for third-party damages made by agreement without reference to litigation must include copies of the settlement and supporting documents required by the ~~administrator~~department.
4. The ~~administrator~~department and the board may require a third party who claims bodily injury to be examined by a physician and require that the physician's report to be submitted to the ~~administrator~~department. The ~~administrator~~department may require a third party that claims property damage to permit a property appraiser or claims adjuster retained by the ~~administrator~~department to inspect the property and report to the ~~administrator~~department.
5. The fund shall pay a judgment against an owner, operator, or dealer awarded to a third party as a result of a third-party claim and property damage against an owner, operator, or dealer registered by the fund.
6. The fund shall pay for corrective action as awarded to a third party in any judgment against an owner, operator, or dealer.
7. Liability of the tank owner, operator, dealer, or fund to third parties for corrective action or personal injuries and property damage may not exceed, per person, one million dollars. Maximum liability of the fund, including all claims by third parties, may not exceed, for any release site, the maximum provided in section 23.1-12-18.
8. A third party may not bring an action against an owner, operator, or dealer more than three years after a corrective action plan has been approved by the department if the owner, operator, or dealer fully implements and complies with the corrective action plan.
9. In investigating a release site or reviewing the implementation of a corrective action plan approved by the department, the department shall determine whether the release threatens public health or the environment. The department shall require, based on science and technology appropriate for the site, any monitoring, remediation, or other appropriate corrective action that is reasonably necessary to protect public health or the environment. The department may require corrective action at a release site at any time after a release occurs.

SECTION 24. AMENDMENT. Section 23.1-12-28 of the North Dakota Century Code is amended and reenacted as follows:

23.1-12-28. Matching federal funds. (Contingent effective date - See note)

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The ~~administrator~~department and the board may annually allow the department a ten percent matching grant for federal leaking underground storage tank funds to be paid out of the fund if the moneys are available and the ~~administrator~~department and the board determine the allowance appropriate.

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SECTION 25. AMENDMENT. Section 23.1-12-29 of the North Dakota Century Code is amended and reenacted as follows:

23.1-12-29. Fund appropriations. (Contingent effective date - See note)

Money in the fund is continuously appropriated to the ~~administrator~~department for the purpose of making reimbursements under this chapter.

SECTION 26. AMENDMENT. Section 23.1-12-30 of the North Dakota Century Code is amended and reenacted as follows:

23.1-12-30. Investment of fund. (Contingent effective date - See note)

Investment of the fund is under the supervision of the state investment board in accordance with chapter 21-10. The ~~commissioner~~department may purchase a contract for reinsurance of any risk to be paid by the fund. The ~~administrator~~department may investigate the purchase of insurance that reimburses an owner or operator for property damage claims by third parties other than claims for costs of corrective action.

SECTION 27. Chapter 23.1-16 of the North Dakota Century Code is created and enacted as follows:

23.1-16-01. Definitions.

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

1. "Boiler" means a closed vessel in which water is heated, steam is generated, steam is superheated, or any combination thereof, under pressure or vacuum for use externally to the boiler by the direct application of heat from the combustion of fuels, or from electricity or nuclear energy. The term includes fired units for vaporizing liquids other than water when these units are separate from processing systems and are complete within themselves.
2. "Department" means the department of environmental quality.

23.1-16-02. Chief boiler inspector, deputy inspectors - Appointment - Jurisdiction.

The department shall employ a chief boiler inspector and deputy inspectors. The chief boiler inspector has jurisdiction over all boilers in this state except as otherwise provided.

23.1-16-03. Qualifications of chief boiler inspector - Deputy inspectors.

1. An individual is not eligible to the office of chief boiler inspector unless that individual:

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- a. Has had at the time of the appointment at least five years' experience in the construction, inspection, operation, maintenance, or repair of high-pressure boilers and pressure vessels as a mechanical engineer, boilermaker, steam operating engineer, or boiler inspector. An applicant possessing a mechanical engineering degree from an accredited school may substitute that degree for two years of the five years' experience, at the discretion of the department.
 - b. Holds a commission issued by the national board of boiler and pressure vessel inspectors or obtains the commission within one year after the date of appointment by the department.
 - c. Is not directly or indirectly interested in the manufacture or sale of boilers or steam machinery or articles used in the construction or maintenance of engines or boilers.
2. The department shall establish qualifications for a deputy inspector which are not inconsistent with the requirements of the position.

23.1-16-04. Powers and duties of chief boiler inspector.

1. The chief boiler inspector shall:
 - a. Keep a complete record of the type, dimensions, maximum allowable working pressure, age, condition, location, and date of the last-recorded internal and external inspection of boilers to which this chapter applies.
 - b. Cooperate and assist in loss prevention programs sponsored by the department.
2. The chief boiler inspector may delegate powers and duties to any deputy inspector or special inspector.

23.1-16-05. General requirement.

Every boiler in this state must be constructed, installed, and maintained according to rules adopted to implement this chapter.

23.1-16-06. Exempt boilers - Inspection of exempt boilers.

This chapter does not apply to:

1. Any boiler subject to federal inspection or under federal control.
2. Any boiler located on a farm and used solely for agricultural purposes.
3. Any heating boiler located in a private residence or in an apartment house of less than six family units.
4. Any hot water supply boiler not exceeding the following limitations:
 - a. Input of two hundred thousand British thermal units per hour.
 - b. Pressure of one hundred sixty pounds per square inch [1103.16 kilopascals] gauge.

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- c. Temperature of two hundred fifty degrees Fahrenheit [121.11 degrees Celsius].
5. Any portable steam cleaner commonly used in a garage.
6. Any boiler of a miniature model locomotive, boat, tractor, or stationary engine design constructed as a hobby, not for commercial use, having an inside diameter not exceeding ten inches [25.4 centimeters] and a grate area not exceeding one and one-half square feet [1393.54 square centimeters] and which is properly equipped with a safety valve, water level indicator, and pressure gauge.
7. Any electric boiler used as an integral part of an espresso coffee machine, provided that the boiler does not exceed one and one-half cubic feet [.0566 cubic meter] in water capacity, does not exceed fifty pounds per square inch [344.74 kilopascals] pressure, and is constructed, approved, or certified to the American society of mechanical engineers code or to other national or international standards.

23.1-16-07. Inspection of boilers.

1. The chief boiler inspector shall inspect each boiler used or proposed to be used within this state. The inspection must be thorough as to the construction, installation, condition, and operation as provided by the rules adopted to implement this chapter. An exempt boiler may be inspected by the chief boiler inspector when the owner, the owner's agent, or the user of the boiler makes written request for inspection to the department.
2. Each boiler of one hundred thousand pounds [45359.24 kilograms] per hour or more capacity, used or proposed to be used within this state, which has internal continuous water treatment under the direct supervision of a graduate engineer or chemist, or one having equivalent experience in the treatment of boiler water when the water treatment is for the purpose of controlling and limiting serious corrosion and other deteriorating factors, and with respect to which boiler the chief boiler inspector has determined the owner or user has complied with the prescribed recordkeeping requirements, must be inspected at least once every thirty-six months internally while not under pressure, and at least once every twelve months externally while under pressure. If a hydrostatic test is necessary to determine the safety of a boiler, the test must be conducted by the owner or user of the equipment under the supervision of the chief boiler inspector. The owner or user of a boiler of one hundred thousand pounds [45359.24 kilograms] per hour or more capacity desiring to qualify for thirty-six-month internal inspection intervals shall keep available for examination by the chief boiler inspector accurate records showing the date and actual time the boiler is out of service and the reason or reasons therefor, and the results of the chemical and physical analysis of the boiler water, whether from laboratory analysis of samples taken at regular intervals of not more than forty-eight hours or from continuous online analysers, which will adequately show the condition of the water and any other elements or characteristics of the water capable of producing corrosion or other deterioration of the boiler or its parts. If an inspection discloses deficiencies in equipment or in operating procedures, inspections may be required once every twelve months.

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23.1-16-08. Special inspector.

1. Upon written request of an employer, the department may appoint as a special inspector an inspector in the employ of:
 - a. An insurance company authorized to insure boilers in this state against loss from explosion;
 - b. A company qualified by the national board of boiler and pressure vessel inspectors as an accredited owner/user inspection organization; or
 - c. A company qualified by the national board of boiler and pressure vessel inspectors as an accredited authorized inspection agency.
2. An individual may not be appointed as a special inspector unless that individual has passed the examination prescribed by the national board of boiler and pressure vessel inspectors.
3. An inspection performed by a special inspector must be performed in accordance with this chapter and a complete report of the inspection must be filed with the department in the time, manner, and form as prescribed by the department.
4. If a complete report is not filed by the special inspector's employer with the department within ninety days from the certificate due date, the chief boiler inspector may make the required inspection, unless an extension of time is granted by the chief boiler inspector. The special inspector's employer must pay the inspection fees as required by section 23.1-16-09 for a special inspection.
5. The chief boiler inspector may inspect any boiler to which a special inspection applies.
6. The department may, for cause, suspend or revoke the appointment of any special inspector.

23.1-16-09. Inspection and certificate fees.

1. Upon completion of inspection, the owner or user of a boiler shall pay to the department fees or a combination of inspection and certificate fees. The department shall determine the inspection fees. Certificate fees are determined by section 23.1-16-10. The department shall determine and annually may adjust a fee scale for the internal inspections of power boilers, internal inspections of low-pressure heating boilers, external inspections of all boilers, and inspection of boilers used exclusively for exhibition purposes.
2. Not more than two hundred dollars may be charged or collected for any one inspection of a boiler, except for special inspections made upon request. All other inspections made by the chief boiler inspector, including shop inspections and reviews and special inspections when requested by the owner or user of a boiler, must be charged at a rate not to exceed five hundred dollars per day or three hundred dollars per half day of four hours or less, plus payment for mileage, meals, and hotel expenses as allowed

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by sections 44-08-04 and 54-06-09, except that the mileage rate for a state-owned vehicle will be the actual amount incurred by the department.

3. The annual fee for the issuance of a reciprocal commission card for a special inspector is forty dollars and the annual fee for the issuance of a welder-qualified card is twenty dollars.
4. The fee for taking an examination for a hobby boiler operating license is twenty-five dollars and the fee for a hobby boiler operating license is twenty-five dollars.
5. A hobby boiler operating license issued under this section is valid for six years.

23.1-16-10. Certificate of inspection - Certificate to be posted.

The department shall issue a certificate of inspection for each boiler inspected upon receipt of an inspection report certifying that the boiler is in a safe condition to be operated. The department shall charge a fee of twenty dollars per year for each year that a certificate is valid, or part of a year thereof, for each certificate of inspection issued as the result of inspections authorized under sections 23.1-16-07 and 23.1-16-08. The fees are the liability of the owner or user and must be paid in accordance with rules adopted by the department. A certificate may not be issued for any boiler not in a safe condition to be operated or for a boiler for which the inspection and certificate fees have not been paid in full. A certificate is not valid for a period of more than thirty-six months for power boilers described in subsection 2 of section 23.1-16-07, and no more than twelve months for other power boilers, twelve months for steam traction engines, and thirty-six months for low-pressure boilers except that a two-month grace period may be extended for any certificate. Upon written request from a special inspector, the chief boiler inspector may issue a short-term certificate. Each certificate of inspection must be posted conspicuously under glass in the boiler room or adjacent to the boiler inspected.

23.1-16-11. Certificate of inspection required - Penalty.

A person may not operate a boiler in this state without a valid certificate of inspection. A violation of this section is a class A misdemeanor on the part of the owner, user, or operator of the boiler.

23.1-16-12. Manufacturer's data report.

The boiler manufacturer shall provide the department with a manufacturer's data report. When signed by an authorized inspector, this data sheet together with the stamp on the boiler is the record denoting the boiler has been constructed in accordance with the rules adopted to implement this chapter.

23.1-16-13. Disposition of funds.

All funds collected and received under this chapter must be paid to the state treasurer and deposited in the state fire and tornado fund to be used to defray the costs of boiler inspections.

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23.1-16-14. Rules - Penalty for violation - Hearing.

1. The department shall adopt rules for the safe and proper installation, use, operation, and inspection of boilers and pressure vessels subject to this chapter.
2. The department shall adopt rules for the licensing of operators of hobby boilers used during parades, exhibitions, and threshing shows where the public is invited.
3. A fee must be charged for an operating license, for a license renewal, and for an examination conducted to determine minimum competence. Individuals operating hobby boilers within this state as of July 1, 2007, are considered acceptable for a license without additional training or examination. An individual who is not a resident of this state and who holds a boiler operator license or credential in another state or Canadian province is exempt from licensure as a hobby boiler operator in this state.
4. The department may not issue a certificate of inspection to any owner or user of a boiler who fails or refuses to comply with the rules. The department shall revoke any certificate presently in force upon evidence that the owner or user of the boiler is failing or refusing to comply with the rules.
5. Any owner or user of a boiler may request a hearing before the department within fifteen days from service of an order refusing or revoking a certificate of inspection. It is the burden of the owner or user to show cause why the certificate of inspection should not be refused or revoked. If no hearing is requested within the required period, the order of the department becomes final and is not subject to further proceedings.

SECTION 28. REPEAL. Chapter 26.1-22.1 of the North Dakota Century Code is repealed.

SECTION 29. EFFECTIVE DATE. Sections 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, and 28 of this Act become effective on July 1, 2019, if the legislative council has received certification from the chief of the environmental health section of the state department of health that all authority, powers, and duties from the environmental health section of the state department of health have been transferred to the department of environmental quality. If the certification is not received by July 1, 2019, sections 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, and 28 of this Act become effective on the date certification is received."

Renumber accordingly

STATEMENT OF PURPOSE OF AMENDMENT:

House Bill No. 1024 - Department of Environmental Quality - House Action

	Base Budget	House Changes	House Version
Salaries and wages	\$27,040,544	\$3,156,409	\$30,196,953
Operating expenses	8,005,878	1,996,302	10,002,180
Capital assets	1,258,249	1,005,180	2,263,429
Grants	13,407,000	2,454,529	15,861,529

Total all funds	\$49,711,671	\$8,612,420	\$58,324,091
Less estimated income	38,987,520	7,428,412	46,415,932
General fund	\$10,724,151	\$1,184,008	\$11,908,159
FTE	152.50	13.00	165.50

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Department 303 - Department of Environmental Quality - Detail of House Changes

	Adjusts Funding for Base Payroll Changes ¹	Adds Funding for Salary and Benefit Increases ²	Cost to Continue Adjustments ³	Removes 3 FTE Positions ⁴	Adds Funding to Transfer the Petroleum Tank Release Program ⁵	Adds Funding to Transfer the Boiler Inspection Program ⁶
Salaries and wages	\$146,390	\$1,396,063		(\$365,530)	\$336,481	\$753,365
Operating expenses			\$1,239,823		238,588	89,000
Capital assets						
Grants			(445,000)			
Total all funds	\$146,390	\$1,396,063	\$794,823	(\$365,530)	\$575,069	\$842,365
Less estimated income	322,006	939,547	957,799	(271,407)	575,069	842,365
General fund	(\$175,616)	\$456,516	(\$162,976)	(\$94,123)	\$0	\$0
FTE	0.00	0.00	0.00	(3.00)	2.00	4.00

	Adds Contingent Funding and FTE Positions for the Supremacy of Federal Programs ⁷	Decreases Funding for Water Treatment System Training ⁸	Adds Funding for Microsoft Office 365 Licensing ⁹	Adjusts Funding for Bond and Capital Payments ¹⁰	Reduces Funding for Extraordinary Repairs ¹¹	Increases Funding for Equipment ¹²
Salaries and wages	\$889,640					
Operating expenses	359,305	(\$55,000)	\$84,586			
Capital assets				\$3,405	(\$273,350)	\$275,125
Grants						
Total all funds	\$1,248,945	(\$55,000)	\$84,586	\$3,405	(\$273,350)	\$275,125
Less estimated income	0	0	64,538	1,541	(217,700)	275,125
General fund	\$1,248,945	(\$55,000)	\$20,048	\$1,864	(\$55,650)	\$0
FTE	10.00	0.00	0.00	0.00	0.00	0.00

	Adds Funding for Grants from the Volkswagen Trust Settlement ¹³	Adds One-Time Contingent Funding to Establish Federal Program Supremacy ¹⁴	Total House Changes
Salaries and wages			\$3,156,409
Operating expenses		\$40,000	1,996,302
Capital assets		1,000,000	1,005,180
Grants	\$2,899,529		2,454,529
Total all funds	\$2,899,529	\$1,040,000	\$8,612,420
Less estimated income	2,899,529	1,040,000	7,428,412
General fund	\$0	\$0	\$1,184,008
FTE	0.00	0.00	13.00

¹ Funding is adjusted for base payroll changes.

² The following funding is added for 2019-21 biennium salary adjustments of 2 percent per year and increases in health insurance premiums from \$1,241 to \$1,427 per month:

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	<u>General Fund</u>	<u>Other Funds</u>	<u>Total</u>
Salary increase	\$231,686	\$472,755	\$704,441
Health insurance increase	224,830	466,792	691,622
Total	\$456,516	\$939,547	\$1,396,063

³ Funding is adjusted for cost to continue changes to the base budget.

⁴ Three FTE positions and related funding for salaries and wages are removed.

⁵ Two FTE positions and related funding from the petroleum tank release compensation fund for salaries and wages and operating expenses are transferred from the Insurance Department to the Department of Environmental Quality for the petroleum tank release program.

⁶ Four FTE positions are added to transfer the boiler inspection program from the Insurance Department to the Department of Environmental Quality, including funding from the state fire and tornado fund for base salaries and wages of \$753,365 and operating expenses of \$89,000.

⁷ Contingent funding and 10 FTE positions are added in the 2nd year of the biennium for the supremacy of federal programs, including funding for salaries and wages of \$889,640 and operating expenses of \$359,305. The appropriation and FTE positions are contingent on federal Environmental Protection Agency approval of the Department of Environmental Quality assuming the duties of federal air pollution programs.

⁸ Funding for operating expenses related to training water treatment system operators is reduced to provide a total of \$125,000 from the general fund.

⁹ Funding is added for Microsoft Office 365 license expenses.

¹⁰ Funding for bond and capital payments is increased to provide a total of \$216,429, of which \$93,691 is from the general fund.

¹¹ Funding for extraordinary repairs is reduced to provide a total of \$27,000, of which \$6,866 is from the general fund.

¹² Funding for equipment and information technology equipment over \$5,000 is increased to provide a total ongoing appropriation of \$1,020,000 from other funds.

¹³ Funding for grants is increased to accept and disburse funding from the Volkswagen trust settlement to provide a total of \$5,399,529.

¹⁴ One-time funding is added from the strategic investment and improvements fund for capital assets of \$1 million and operating expenses of \$40,000 related to the establishment of federal program supremacy. The funding is contingent on Environmental Protection Agency approval of the Department of Environmental Quality assuming the duties of federal air pollution programs.

This amendment also adds sections to:

- Identify funding from the state fire and tornado fund for the boiler inspection program;
- Identify contingent one-time funding of \$1,040,000 from the strategic investment and improvements fund for air pollution program equipment related to the establishment of federal program supremacy. The funding provided is available the 2nd year of the biennium and is contingent on Environmental Protection Agency approval of the Department of Environmental Quality assuming the duties of federal air pollution programs;
- Identify contingent funding of \$1,248,945 from the general fund and 10 FTE positions related to the establishment of federal program supremacy effective July 1, 2020;
- Amend various sections of Chapter 23.1-12 to transfer the petroleum tank release program from the Insurance Commissioner to the Department of Environmental Quality and to provide the Department of Environmental Quality set registration fees by rule;
- Create Chapter 23.1-16 to transfer the boiler inspection program from the Insurance Commissioner to the Department of Environmental Quality;
- Repeal Chapter 26.1-22.1 related to the boiler inspection program; and
- Provide effective dates for the program transfers.

**Department 303 - Department of Environmental Quality
House Bill No. 1024**

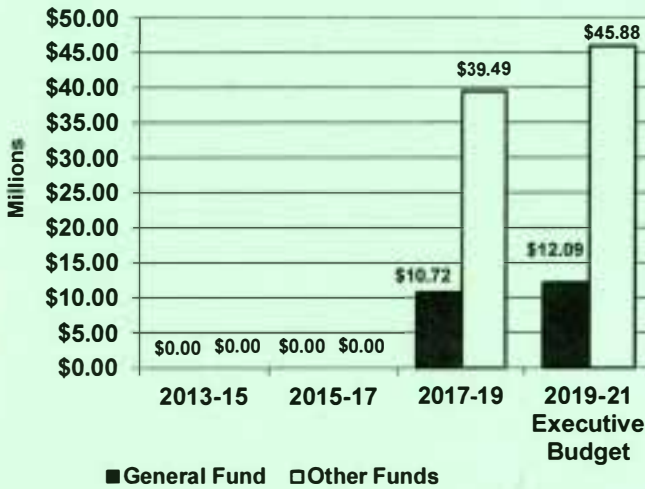
Executive Budget Comparison to Prior Biennium Appropriations

	FTE Positions	General Fund	Other Funds	Total
2019-21 Executive Budget	160.50	\$12,092,093	\$45,881,103	\$57,973,196
2017-19 Legislative Appropriations	152.50	10,724,151	39,487,520	50,211,671
Increase (Decrease)	8.00	\$1,367,942	\$6,393,583	\$7,761,525

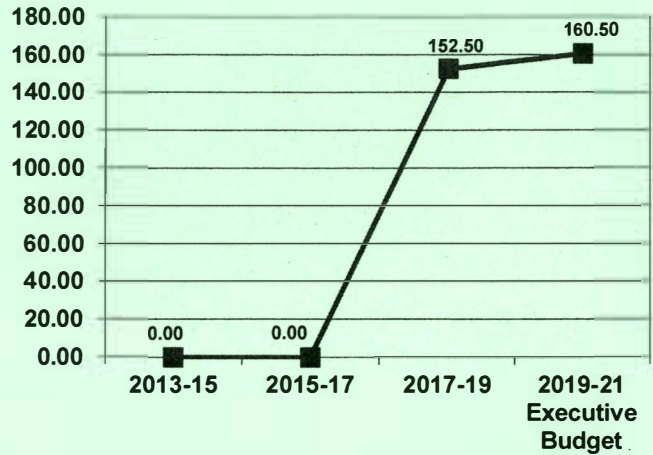
Ongoing and One-Time General Fund Appropriations

	Ongoing General Fund Appropriation	One-Time General Fund Appropriation	Total General Fund Appropriation
2019-21 Executive Budget	\$12,092,093	\$0	\$12,092,093
2017-19 Legislative Appropriations	10,724,151	0	10,724,151
Increase (Decrease)	\$1,367,942	\$0	\$1,367,942

Agency Funding¹



FTE Positions¹



¹In 2017 Senate Bill No. 2327, the Legislative Assembly transferred the Environmental Health Section of the State Department of Health to the new Department of Environmental Quality. Funding and FTE positions prior to the 2017-19 biennium are not available.

Executive Budget Comparison to Base Level

	General Fund	Other Funds	Total
2019-21 Executive Budget	\$12,092,093	\$45,881,103	\$57,973,196
2019-21 Base Level	10,724,151	38,987,520	49,711,671
Increase (Decrease)	\$1,367,942	\$6,893,583	\$8,261,525

First House Action

Attached is a comparison worksheet detailing first house changes to base level funding and the executive budget.

**Executive Budget Highlights
(With First House Changes in Bold)**

	General Fund	Other Funds	Total
1. Adds funding for state employee salary and benefit increases, of which \$1,157,728 is for salary increases, \$570,640 is for health insurance increases, and \$143,783 is for retirement contribution increases. The House added funding for salary adjustments of 2 percent per year and increases in health insurance premiums from \$1,241 to \$1,427 per month. The House did not add funding for retirement contribution increases.	\$637,372	\$1,234,779	\$1,872,151
2. Adjusts base payroll.	(\$175,616)	\$322,006	\$146,390

3. Cost-to-continue program adjustments, including increases in operating expenses of \$1,239,823 and decreases in grants of \$445,000.	(\$162,976)	\$957,799	\$794,823
4. Removes 3 FTE positions.	(\$94,123)	(\$271,407)	(\$365,530)
5. Adds 2 FTE positions related to the transfer of the petroleum tank release program from the Insurance Department to the Department of Environmental Quality, including funding for salaries and wages of \$336,481 and operating expenses of \$238,588. The House also added 4 FTE positions to transfer the boiler inspection program from the Insurance Department to the Department of Environmental Quality, including \$879,312 from the state fire and tornado fund for salaries and wages of \$790,312 and operating expenses of \$89,000.	\$0	\$575,069	\$575,069
6. Transfers 1 FTE computer and network specialist III position to the Information Technology Department for the information technology unification initiative and reduces salaries and wages \$207,423 and increases operating expenses \$222,805. The House did not transfer FTE positions or provide funding for the information technology unification initiative.	\$3,078	\$12,304	\$15,382
7. Adds 10 FTE positions in the 2 nd year of the biennium for the supremacy of federal programs, including funding for salaries and wages of \$889,640 and operating expenses of \$359,305. The appropriation is contingent on federal Environmental Protection Agency approval of the Department of Environmental Quality assuming the duties of federal air pollution programs.	\$1,248,945	\$0	\$1,248,945
8. Reduces funding for operating expenses related to training water treatment system operators to provide a total of \$125,000 from the general fund.	(\$55,000)	\$0	(\$55,000)
9. Adds funding for Microsoft Office 365 licensing expenses.	\$20,048	\$64,538	\$84,586
10. Adjusts funding for bond and capital payments to provide a total of \$216,429, of which \$93,691 is from the general fund.	\$1,864	\$1,541	\$3,405
11. Adjusts funding for extraordinary repairs to provide a total of \$27,000, of which \$6,866 is from the general fund.	(\$55,650)	(\$217,700)	(\$273,350)
12. Adjusts funding for equipment and information technology equipment over \$5,000 to provide a total ongoing appropriation of \$1,020,000 of other funds.	\$0	\$275,125	\$275,125
13. Increases funding for grants to accept and disburse funding from the Volkswagen trust settlement to provide a total of \$5,399,529.	\$0	\$2,899,529	\$2,899,529
14. Adds one-time funding from the strategic investment and improvements fund for capital assets of \$1 million and operating expenses of \$40,000 related to the establishment of federal program supremacy, contingent on Environmental Protection Agency approval of the Department of Environmental Quality assuming the duties of federal air pollution programs.	\$0	\$1,040,000	\$1,040,000

Other Sections in House Bill No. 1024

Environment and rangeland protection fund - Section 3 authorizes the department to spend \$250,000 from the environment and rangeland protection fund for the ground water testing programs. Of this amount, \$50,000 is for a grant to the North Dakota Stockmen's Association for the environmental services program.

State fire and tornado fund - Section 4 identifies \$879,312 of estimated income from the state fire and tornado fund for the boiler inspection program.

Strategic investment and improvements fund - Contingent one-time funding - Section 5 authorizes the department to spend \$1,040,000 from the strategic investment and improvements fund for air pollution program equipment. The one-time funding is contingent on federal Environmental Protection Agency approval of the Department of Environmental Quality assuming the duties of federal air pollution programs.

Contingent appropriation - General fund - Section 6 identifies \$1,248,945 from the general fund provided in Section 1 of the bill is contingent upon receiving approval from the federal Environmental Protection Agency for the state to assume primacy over the Quad O and Quad Oa federal air pollution programs. The section also provides contingent authority for 10 FTE positions effective July 1, 2020.

Petroleum release remediation program transfer - Sections 7 through 26 provide the statutory amendments to North Dakota Century Code Chapter 23.1-12 necessary to transfer the administration of the petroleum tank release compensation fund tank

integrity testing from the Insurance Commissioner to the Department of Environmental Quality. The amendments also provide the department establish registration fees by rule.

Boiler inspection program transfer - Section 27 creates Chapter 23.1-16 to transfer the boiler inspection program from the Insurance Commissioner to the Department of Environmental Quality. Section 28 repeals the boiler inspection program in Chapter 26.1-22.1 because it is created in Chapter 23.1-16.

Effective date - Section 29 provides effective dates for the program transfers.

Continuing Appropriations

Environmental quality restoration fund - Sections 23-31-01 and 23-31-02 - Allows the Department of Environmental Quality to provide immediate and timely response to catastrophic events that threaten the public and environmental health and when the responsible party is late in responding or cannot be located.

Deficiency Appropriation

There are no deficiency appropriations for this agency.

Significant Audit Findings

There are no significant audit findings for this agency.

Major Related Legislation

Senate Bill No. 2010 - This bill is the appropriation bill for the Insurance Commissioner. Section 6 of the bill creates Chapter 23.1-16 to transfer the boiler inspection program from the Insurance Commissioner to the Department of Environmental Quality and Section 15 of the bill repeals the boiler inspection program in Chapter 26.1-22.1 because it is created in Chapter 23.1-16. Section 16 of the bill provides the effective date of the program transfer in Sections 6 and 15.

Senate Bill No. 2107 - Relates to a certification program for environmental laboratories.

Senate Bill No. 2108 - Relates to coal combustion residuals.

Senate Bill No. 2109 - Relates to the duties and responsibilities of the Department of Environmental Quality.

Department of Environmental Quality - Budget No. 303
House Bill No. 1024
Base Level Funding Changes

	Executive Budget Recommendation				House Version			
	FTE Position	General Fund	Other Funds	Total	FTE Position	General Fund	Other Funds	Total
2019-21 Biennium Base Level	152.50	\$10,724,151	\$38,987,520	\$49,711,671	152.50	\$10,724,151	\$38,987,520	\$49,711,671
2019-21 Ongoing Funding Changes								
Base payroll changes		(\$175,616)	\$322,006	\$146,390		(\$175,616)	\$322,006	\$146,390
Salary increase		394,147	763,581	1,157,728		231,686	472,755	704,441
Health insurance increase		194,274	376,366	570,640		224,830	466,792	691,622
Retirement contribution increase		48,951	94,832	143,783				0
Cost to continue adjustments		(162,976)	957,799	794,823		(162,976)	957,799	794,823
Removes funding for 3 FTE positions	(3.00)	(94,123)	(271,407)	(365,530)	(3.00)	(94,123)	(271,407)	(365,530)
Adds 2 FTE positions related to the transfer of the petroleum tank release program from the Insurance Department to the Department of Environmental Quality	2.00		575,069	575,069	2.00		575,069	575,069
Adds 4 FTE positions and funding from the state fire and tornado fund related to the transfer of the boiler inspection program from the Insurance Department to the Department of Environmental Quality				0	4.00		842,365	842,365
Transfers 1 FTE computer and network specialist III position to the Information Technology Department for the information technology unification initiative	(1.00)	3,078	12,304	15,382				0
Adds contingent funding for 10 FTE positions, including related operating expenses, in the 2nd year of the biennium for the supremacy of federal programs	10.00	1,248,945		1,248,945	10.00	1,248,945		1,248,945
Reduces funding for training water treatment system operators to provide a total of \$125,000 from the general fund		(55,000)		(55,000)		(55,000)		(55,000)
Adds funding for Microsoft Office 365 licensing expenses		20,048	64,538	84,586		20,048	64,538	84,586
Adjusts funding for bond and capital payments to provide a total of \$216,429, of which \$93,691 is from the general fund		1,864	1,541	3,405		1,864	1,541	3,405
Adjusts funding for extraordinary repairs to provide a total of \$27,000, of which \$6,866 is from the general fund		(55,650)	(217,700)	(273,350)		(55,650)	(217,700)	(273,350)

Adjusts funding for equipment and information technology equipment over \$5,000 to provide a total ongoing appropriation of \$1,020,000 of other funds			275,125	275,125			275,125	275,125
Increases funding for grants to accept and disburse funding from the Volkswagen trust settlement			2,899,529	2,899,529			2,899,529	2,899,529
Total ongoing funding changes	8.00	\$1,367,942	\$5,853,583	\$7,221,525	13.00	\$1,184,008	\$6,388,412	\$7,572,420
One-time funding items								
Adds contingent one-time funding from the strategic investment and improvements fund for capital assets and operating expenses related to the establishment of federal program supremacy			\$1,040,000	\$1,040,000			\$1,040,000	\$1,040,000
Total one-time funding changes	0.00	\$0	\$1,040,000	\$1,040,000	0.00	\$0	\$1,040,000	\$1,040,000
Total Changes to Base Level Funding	8.00	\$1,367,942	\$6,893,583	\$8,261,525	13.00	\$1,184,008	\$7,428,412	\$8,612,420
2019-21 Total Funding	160.50	\$12,092,093	\$45,881,103	\$57,973,196	165.50	\$11,908,159	\$46,415,932	\$58,324,091

Other Sections for Department of Environmental Quality - Budget No. 303

	Executive Budget Recommendation	House Version
Appropriation - Additional income	Section 3 would appropriate any additional income from federal or other funds, which may become available to the Department of Environmental Quality during the 2019-21 biennium.	The House did not include this section.
Transfers	Section 4 would allow the Department of Environmental Quality to transfer between appropriation line items up to 10 percent of the department's total appropriation during the 2019-21 biennium and would require the department to notify the Office of Management and Budget and the Legislative Council of any transfers.	The House did not include this section.
Environment and rangeland protection fund	Section 5 would authorize the department to spend \$250,000 from the environment and rangeland protection fund for the ground water testing programs. Of this amount, \$50,000 is for a grant to the North Dakota Stockmen's Association for the environmental services program.	Section 3 authorizes the department to spend \$250,000 from the environment and rangeland protection fund for the ground water testing programs. Of this amount, \$50,000 is for a grant to the North Dakota Stockmen's Association for the environmental services program.
State fire and tornado fund		Section 4 authorizes the department to spend \$879,312 from the state fire and tornado fund for the boiler inspection program.

Other Sections for Department of Environmental Quality - Budget No. 303

Executive Budget Recommendation

Strategic investment and improvements fund -
Contingent one-time funding

Section 6 would designate \$1,040,000 from the strategic investment and improvements fund for the Department of Environmental Quality for air pollution program equipment for the 2019-21 biennium.

Contingent appropriation

Section 7 would provide a contingent appropriation of \$2,288,945, of which \$1,248,945 is from the general fund and \$1,040,000 is a one-time appropriation from the strategic investment and improvements fund. The appropriation is contingent upon receiving approval from the federal Environmental Protection Agency for the state to assume primacy over the Quad O and Quad Oa federal air pollution programs. Section 7 would also provide contingent authority for 10 FTE positions effective July 1, 2020.

Petroleum release remediation program transfer

Section 8 would provide the statutory amendments necessary to transfer the administration of the petroleum tank release compensation fund tank integrity testing from the Insurance Commissioner to the Department of Environmental Quality.

Create Chapter 23.1-16 for the boiler inspection program

Repeal Chapter 26.1-22.1

Effective date

House Version

Section 5 authorizes the department to spend \$1,040,000 from the strategic investment and improvements fund for air pollution program equipment. The one-time funding is contingent on federal Environmental Protection Agency approval of the Department of Environmental Quality assuming the duties of federal air pollution programs.

Section 6 identifies \$1,248,945 from the general fund provided in Section 1 is contingent upon receiving approval from the federal Environmental Protection Agency for the state to assume primacy over the Quad O and Quad Oa federal air pollution programs. The section also provides contingent authority for 10 FTE positions effective July 1, 2020.

Sections 7 through 26 provide the statutory amendments to Chapter 23.1-12 necessary to transfer the administration of the petroleum tank release compensation fund tank integrity testing from the Insurance Commissioner to the Department of Environmental Quality and to provide the department establish registration fees by rule.

Section 27 creates Chapter 23.1-16 to transfer the boiler inspection program from the Insurance Commissioner to the Department of Environmental Quality.

Section 28 repeals the boiler inspection program in Chapter 26.1-22.1 because it is created in Chapter 23.1-16.

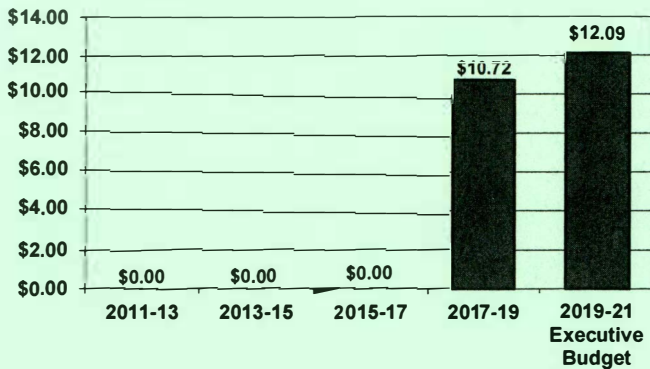
Section 29 provides effective dates for the program transfers.

Department 303 - Department of Environmental Quality

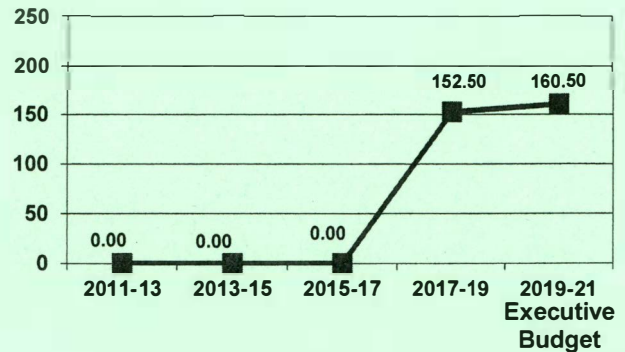
Historical Appropriations Information

Ongoing General Fund Appropriations Since 2011-13

Agency Funding (in Millions)¹



FTE Positions¹



Ongoing General Fund Appropriations¹

	2011-13	2013-15	2015-17	2017-19	2019-21 Executive Budget
Ongoing general fund appropriations	N/A	N/A	N/A	\$10,724,151	\$12,092,093
Increase (decrease) from previous biennium	N/A	N/A	N/A	N/A	\$1,367,942
Percentage increase (decrease) from previous biennium	N/A	N/A	N/A	N/A	12.8%
Cumulative percentage increase (decrease) from 2011-13 biennium	N/A	N/A	N/A	N/A	N/A

¹In Senate Bill No. 2327 (2017), the Legislative Assembly transferred the Environmental Health Section of the State Department of Health to the new Department of Environmental Quality. Funding and FTE positions prior to the 2017-19 biennium are not available.

Major Increases (Decreases) in Ongoing General Fund Appropriations

2013-15 Biennium

- Added funding for FTE positions (\$1,137,068) in air quality (1 FTE position), municipal facilities (3 FTE positions), waste management (1 FTE position), and water quality (3 FTE positions) to meet increased demands in oil-impacted areas, including operating expenses (\$602,963) and equipment over \$5,000 (\$272,000). \$1,409,382

2015-17 Biennium

- Added funding for costs related to the Environmental Protection Agency lawsuit. \$500,000
- Added funding, including \$500,010 from special funds, for 10 FTE positions in the Environmental Health Section, including air quality (3 FTE positions), municipal facilities (2 FTE positions), waste management (2 FTE positions), and water quality (3 FTE positions) to meet increased demands in oil-impacted areas, including salaries and wages (\$1,388,986) and operating expenses (\$315,518). \$1,204,494

2017-19 Biennium

- Removed 1 FTE electronics technician II position from the Air Quality Division of the Environmental Health Section and related funding for salaries and wages. (\$111,233)
- Adjusted the funding source for litigation fees related to the Environmental Protection Agency lawsuit to provide funding from the strategic investment and improvements fund instead of the general fund. (\$500,000)

2019-21 Biennium (Executive Budget Recommendation)

- Removes 3 FTE positions. (\$94,123)
- Transfers 1 FTE computer and network specialist III position to the Information Technology Department for the information technology unification initiative and reduces salaries and wages \$207,423 and increases operating expenses \$222,805. **The House did not transfer FTE positions or provide funding for the information technology unification initiative.** \$3,078

- | | |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------|
| 3. Adds 10 FTE positions in the 2 nd year of the biennium for the supremacy of federal programs, including funding for salaries and wages of \$889,640 and operating expenses of \$359,305. The appropriation is contingent on Environmental Protection Agency approval of the Department of Environmental Quality assuming the duties of federal air pollution programs. | \$1,248,945 |
| 4. Reduces funding for operating expenses related to training water treatment system operators to provide a total of \$125,000 from the general fund. | (\$55,000) |
| 5. Adds funding for Microsoft Office 365 licensing expenses. | \$20,048 |

**GOVERNOR'S RECOMMENDATION FOR THE
DEPARTMENT OF ENVIRONMENTAL QUALITY
AS SUBMITTED BY THE
OFFICE OF MANAGEMENT AND BUDGET**

SECTION 1. APPROPRIATION. The funds provided in this section, or so much of the funds as may be necessary, are appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds and other income, to the state department of environmental quality for the purpose of defraying the expenses of the state department of environmental quality, for the biennium beginning July 1, 2019, and ending June 30, 2021, as follows:

	Adjustments or		
	Base Level	Enhancements	Appropriation
Salaries and wages	\$27,040,544	\$2,671,709	\$29,712,253
Operating expenses	8,005,878	2,130,107	10,135,985
Capital assets	1,258,249	1,005,180	2,263,429
Grants	<u>13,407,000</u>	<u>2,454,529</u>	<u>15,861,529</u>
Total all funds	\$49,711,671	\$8,261,525	\$57,973,196
Less estimated income	<u>38,987,520</u>	<u>6,893,583</u>	<u>45,881,103</u>
Total general fund	\$10,724,151	\$1,367,942	\$12,092,093
Full-time equivalent positions	152.50	8.00	160.50

SECTION 2. ONE-TIME FUNDING - EFFECT ON BASE BUDGET - REPORT TO SIXTY-SEVENTH LEGISLATIVE ASSEMBLY. The following amounts reflect the one-time funding items approved by the sixty-fifth legislative assembly for the 2017-19 biennium and 2019-21 one-time funding items included in the appropriation in section 1 of this Act:

One-Time Funding Description	2017-19	2019-21
EPA lawsuit	\$500,000	
Air pollution program equipment		<u>\$1,040,000</u>
Total all funds	\$500,000	\$1,040,000
Less estimated income	<u>500,000</u>	<u>1,040,000</u>
Total general fund	\$0	\$0

The 2019-21 one-time funding amounts are not a part of the entity's base budget for the 2021-23 biennium. The state department of environmental quality shall report to the appropriations committees of the sixty-seventh legislative assembly on the use of this one-time funding for the biennium beginning July 1, 2019, and ending June 30, 2021.

SECTION 3. APPROPRIATION - In addition to the amounts appropriated to the state department of environmental quality in section 1 of this Act, there is appropriated any additional income from federal or other funds which may become available to the agency for the biennium beginning July 1, 2019, and ending June 30, 2021.

SECTION 4. FUNDING TRANSFERS – EXCEPTION – AUTHORIZATION. Notwithstanding section 54-16-04, the department of environmental quality may transfer between line items within section 1 of this Act up to ten percent of the total appropriation contained in section 1 during the biennium beginning July 1, 2019, and ending June 30, 2021. The department shall notify the office of management and budget and the legislative council of any transfer made pursuant to this section.

SECTION 5. ENVIRONMENT AND RANGELAND PROTECTION FUND. The estimated income line item included in section 1 of this Act includes \$250,000, or so much of the sum as may be necessary, to be made available to the state department of environmental quality from the environment and rangeland protection fund, for the biennium beginning July 1, 2019, and ending June 30, 2021. This amount includes \$50,000 for a grant to the North Dakota stockmen's association environmental services program.

SECTION 6. STRATEGIC INVESTMENT AND IMPROVEMENT FUND. The estimated income line item included in section 1 of this Act includes \$1,040,000, or so much of the sum as may be necessary, to be made available to the state department of environmental quality from the strategic investment and improvement fund for air pollution program equipment, for the biennium beginning July 1, 2019, and ending June 30, 2021.

SECTION 7. CONTINGENT APPROPRIATION. Section 1 of this Act includes a contingent appropriation of \$2,288,945, of which \$1,248,945 is from the general fund and \$1,040,000 is a one-time appropriation from the strategic investment and improvement fund; and contingent authority for ten FTE positions effective July 1, 2020 upon the federal environmental protection agency approving the state assuming primacy over the Quad O and Quad Oa federal air pollution programs.

SECTION 8 AMENDMENT. Section 23-37 of the North Dakota Century Code is amended and reenacted as follows:

CHAPTER 23.1-37 – PETROLEUM RELEASE REMEDIATION

23.1-37-01. Declaration of purpose. The purpose of this chapter is to establish:

1. A petroleum tank release compensation fund; and
2. A petroleum tank release compensation advisory board authorized to review claims against the fund.

23.1-37-02. Definitions.

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

1. "Actually incurred" means, in the case of corrective action expenditures, that the owner, the operator, the landowner, an insurer, or a contractor hired by the owner, operator, or the landlord has expended time and materials and that only that person is receiving reimbursement from the fund.
- ~~2.~~ "Administrator" means the manager of the state fire and tornado fund.
- ~~32.~~ "Board" means the petroleum release compensation board.
- ~~4.~~ "Commissioner" means the insurance commissioner.
- ~~53.~~ "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.
- ~~64.~~ "Dealer" means any person licensed by the tax commissioner to sell motor vehicle fuel or special fuels within the state.
- ~~75.~~ "Department" means the ~~state department of health~~ department of environmental quality.
- ~~86.~~ "Fund" means the petroleum release compensation fund.
- ~~97.~~ "Location" means a physical address or site that has contiguous properties. Noncontiguous properties within a municipality or other governmental jurisdiction are considered separate locations.
- ~~408.~~ "Operator" means any person in control of, or having responsibility for, the daily operation of a tank under this chapter.
- ~~449.~~ "Owner" means any person who holds title to, controls, or possesses an interest in the tank before the discontinuation of its use.
- ~~4210.~~ "Person" means an individual, trust, firm, joint stock company, federal agency, corporation, state, municipality, commission, political subdivision of a state, or any interstate body. The term also includes a consortium, a joint venture, a commercial entity, and the United States government.
- ~~4311.~~ "Petroleum" means any of the following:
 - a. Gasoline and petroleum products as defined in chapter 19-10.
 - b. Constituents of gasoline and fuel oil under subdivision a.
 - c. Oil sludge and oil refuse.
- ~~4412.~~ "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.
- ~~4513.~~ "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.
- ~~4614.~~ "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. 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, regulated under:
 - (1) The Natural Gas Pipeline Safety Act of 1968.
 - (2) The Hazardous Liquid Pipeline Safety Act of 1979.
 - (3) An interstate pipeline facility regulated under state laws comparable to the provisions of law in paragraph 1 or 2.
 - 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.
4715. "Tank integrity test" means a test to determine that a tank is sound and not leaking. For an underground tank, the term means a certified third-party test that meets environmental protection agency leak detection requirements. For an aboveground tank, the term means a test conducted according to steel tank institute SP 001 or American petroleum institute 653.
4816. "Third party" means a person who is damaged by the act of a registered owner, operator, or dealer requiring corrective action or a person who suffers bodily injury or property damage caused by a petroleum release.

23.1-37-03. Petroleum release compensation board.

The petroleum release compensation advisory board consists of five members appointed by the governor, three of whom are active in petroleum marketing, one of whom is active in the petroleum, crude oil, or refining industry, and one of whom is active in the insurance industry. A member active in petroleum marketing must be appointed from a list of three recommended by the North Dakota retail petroleum marketers association. A member active in the petroleum, crude oil, or refining industry must be appointed from a list of three recommended by the North Dakota petroleum council. A member active in the insurance industry must be appointed from a list of three recommended by the North Dakota professional insurance agents association. Members must be appointed to terms of three years with the terms arranged so that the term of at least one member, but no more than two members, expires June thirtieth of each year. A member shall hold office until a successor is duly appointed and qualified. Each member of the board is entitled to receive sixty-two dollars and fifty cents per diem for each day actually spent in the performance of official duties, plus mileage and expenses as are allowed to other state officers.

23.1-37-04. Administration of fund - Staff.

The ~~administrator~~ department shall administer the fund according to this chapter. The ~~administrator~~ department shall convene the board as may be necessary to keep the board apprised of the fund's general operations. However, the board shall meet at least once each half of each calendar year to review and to advise the ~~administrator~~ department regarding the administration of the fund, the fund's general operations, and to hear and decide denials of claims by the ~~administrator~~ department which may be appealed to the board, and to discuss all claims against the fund. The ~~administrator~~ department may employ any assistance and staff necessary to administer the fund within the limits of legislative appropriation. A claimant aggrieved by a decision of the ~~administrator~~ department regarding a claim upon the fund may appeal the decision to the board. The board may sustain, modify, or reverse the decision of the ~~administrator~~ department. The claimant or the ~~administrator~~ department may appeal the board's decision to the ~~commissioner~~. The decision of the ~~commissioner~~ may be appealed under chapter 28-32.

23.1-37-05. Adoption of rules.

The ~~administrator~~ department shall adopt rules regarding the practices and procedures of the fund, the form and procedure for applications for compensation from the fund, procedures for investigation of claims, procedures for determining the amount and type of costs that are eligible for reimbursement from the fund, procedures for persons to perform services for the fund,

procedures for appeals to the board by claimants aggrieved by an adverse decision of the ~~administrator~~ department, and any other rules as may be appropriate to administer this chapter.

23.1-37-06. Release discovery. If the department has reason to believe a release has occurred, it shall ~~notify the administrator.~~ The department shall direct the owner or operator to take reasonable and necessary corrective actions as provided under federal or state law or under adopted rules.

23.1-37-07. Owner or operator not identified.

The department may cause legal action to be brought to compel performance of a corrective action if an identified owner or operator fails or refuses to comply with an order of the department, or the department may engage the services of qualified contractors for performance of a corrective action if an owner or operator cannot be identified.

23.1-37-08. Imminent hazard.

Upon receipt of information that a petroleum release has occurred which may present an imminent or substantial endangerment of health or the environment, the department may take such emergency action as it determines necessary to protect health or the environment.

23.1-37-09. Duty to notify.

This chapter does not limit any person's duty to notify the department and to take action related to a release. However, payment for corrective actions required as a result of a petroleum release is governed by this chapter.

23.1-37-10. Providing of information. Any person whom the ~~administrator or the~~ department has reason to believe is an owner or operator, the owner of real property where corrective action is ordered to be taken, or any person who may have information concerning a release shall, if requested by the ~~administrator or the~~ department, or any member, employee, or agent of the ~~administrator or the~~ department, furnish to the ~~administrator or the~~ department any information that person has or may reasonably obtain that is relevant to the release.

23.1-37-11. Examination of records.

Any employee of the ~~administrator or the~~ department may, upon presentation of official credentials:

1. Examine and copy books, papers, records, memoranda, or data of any person who has a duty to provide information to the ~~administrator or the~~ department under section 23.1-37-10; and
2. Enter upon public or private property for the purpose of taking action authorized by this section, including obtaining information from any person who has a duty to provide the information under section 23.1-37-10, conducting surveys and investigations, and taking corrective action.

23.1-37-12. Responsibility for cost.

The owner or operator is liable for the cost of the corrective action required by the department, including the cost of investigating the releases. This chapter does not create any new cause of action for damages on behalf of third parties for release of petroleum products against the fund or licensed dealers.

23.1-37-13. Liability avoided.

No owner or operator may avoid liability by means of a conveyance of any right, title, or interest in real property or by any indemnification, hold harmless agreement, or similar agreement. However, this chapter does not:

1. Prohibit a person who may be liable from entering into an agreement by which the person is insured or is a member of a risk retention group, and is thereby indemnified for part or all of the liability;
2. Prohibit the enforcement of an insurance, hold harmless, or indemnification agreement; or
3. Bar a claim for relief brought by a person who may be liable or by an insurer or guarantor, whether by right of subrogation or otherwise.

23.1-37-14. Other remedies.

This chapter does not limit the powers of the ~~administrator or~~ department, or preclude the pursuit of any other administrative, civil, injunctive, or criminal remedies by the ~~administrator or~~ department or any other person. Administrative remedies need not be exhausted in order to proceed under this chapter. The remedies provided by this chapter are in addition to those provided under existing statutory or common law.

23.1-37-15. Revenue to the fund.

Revenue from the following sources must be deposited in the state treasury and credited to the fund:

1. Any registration fees collected under section 23.1-37-17;
2. Any money recovered by the fund under section 23.1-37-23, and any money paid under an agreement, stipulation, or settlement;
3. Any interest attributable to investment of money in the fund; and
4. Any money received by the ~~administrator~~ department in the form of gifts, grants, reimbursements, or appropriations from any source intended to be used for the purposes of the fund.

23.1-37-16. Penalty.

A tank owner violating section 23.1-37-17 is guilty of a class B misdemeanor unless another penalty is specifically provided.

23.1-37-17. Registration fee.

1. An owner or operator of a tank shall pay an annual registration fee of fifty dollars for each aboveground or underground tank owned or operated by that person. If after the fiscal year has been closed and all expenses relating to the fiscal year have been accounted for, the fund balance is less than six million dollars, the annual registration fee of fifty dollars is increased to one hundred dollars. If after the fiscal year has been closed and all expenses relating to the fiscal year have been accounted for, the fund balance is five million five hundred thousand dollars or more and the annual registration fee has been increased to one hundred dollars, the fee must be reduced to fifty dollars. If after the fiscal year has been closed and all expenses relating to the fiscal year have been accounted for, the fund balance exceeds nine million dollars, the annual registration fee is reduced to five dollars. Annual registration fees must continue at five dollars until the fund balance does not exceed nine million dollars.
2. An owner or operator of an existing tank that is discovered at a location that currently and previously has had tanks registered with the fund shall pay an additional twenty-five dollar penalty fee in addition to the registration fee for each aboveground tank and each underground tank owned or operated by that person for each previous year that the tank was required to be registered for which a fee was not paid. The payment includes the fees and the penalty for the failure to register.
3. An owner or operator of an existing tank at a location that was not previously and continuously registered with the fund, whether the registration was required by law or not must provide the fund with a phase two environmental study conducted by a qualified firm according to American society for testing materials standards. A tank integrity test must also be performed. The environmental study and tank integrity test must be reviewed by the ~~commissioner~~ department along with the application for registration with the fund. If the ~~commissioner~~ department rejects the application, the applicant is denied eligibility to the fund. However, if the site is remediated and the leaking tank is replaced, the applicant may reapply for registration with the fund. A new installation that is using a used tank must provide tank integrity test results for the used tank. Use of a synthetic liner in an aboveground dike system negates the need for a tank integrity test. The owner or operator of a new tank at a new site or a new tank at an existing site that had a tank registered at the site previously need only pay the required fees for registration with the fund.
4. If accepted for registration with the fund, the owner or operator of the tank shall pay an additional twenty-five dollar penalty fee in addition to the registration fee for each aboveground tank and underground tank owned or operated by that person for each previous year that the tank was required to be registered for which a fee was not paid, regardless of ownership in each of those years. The payment includes the fees and the penalty for the failure to register.
5. The registration fees collected under this section must be paid to the ~~fund~~ Administrator department for deposit in the state treasury for the dedicated credit to the petroleum release compensation fund.
6. If a registration payment is not received within sixty days of July first by the ~~Commissioner~~

department, a late fee of twenty-five dollars per tank per month must be imposed on the tank owner or operator.

23.1-37-18. Reimbursement for corrective action.

1. The ~~administrator~~ department shall reimburse an eligible owner or operator for ninety percent of the costs of corrective action, including the investigation, which are greater than five thousand dollars and less than one million dollars per occurrence and two million dollars in the aggregate. An eligible tank owner or operator may not be liable for more than twenty thousand dollars out-of-pocket expenses for any one release. A reimbursement may not be made unless the ~~administrator~~ department determines that:
 - a. At the time the release was discovered the owner or operator and the tank were in compliance with state and federal rules and rules applicable to the tank, including rules relating to financial responsibility, rules relating to infrastructure compatibility, and all rules relating to health and safety which were in effect at the time of the release;
 - b. The department was given notice of the release as required by federal and state law;
 - c. The owner or operator has paid the first five thousand dollars of the cost of corrective action; and
 - d. The owner or operator, to the extent possible, fully cooperated with the department and the ~~administrator~~ in responding to the release.
2. The fund shall compensate third parties for corrective action taken for a petroleum release if the provisions of subdivisions a, b, c, and d of subsection 1 were met at the time the release was discovered. Compensation for third-party corrective action includes compensation for costs incurred in returning the real estate to that level deemed duly remediated by the department.
3. The fund shall reimburse the tank owner, operator, or dealer for bodily injuries to a third party caused by a petroleum release if the provisions of subdivisions a, b, c, and d of subsection 1 were met at the time the release was discovered in an amount determined by:
 - a. Findings reduced to judgment in federal or state district court within the state of North Dakota or such other court having jurisdiction over the matter in a proceeding in which the fund has been made a party;
 - b. Findings by an arbitration panel agreed upon in writing by the parties in a proceeding in which the fund has been made a party; or
 - c. A written settlement entered into by the parties in which the ~~commissioner~~ director of the department or the ~~commissioner's~~ department's agent has participated. The settlement must be reviewed and approved by the ~~commissioner~~ director of the department.
4. In any civil action against the owner, operator, or dealer for damages resulting from a petroleum release, if the pre-leak condition of real estate is an issue and if there is no reasonable means of determining the pre-leak condition of real estate, the condition is that which exists at the time the department determines the real estate has been duly remediated.
5. The fund may not compensate for attorney's fees of owners, operators, or dealers, nor may the fund compensate for exemplary damages, criminal fines, or administrative penalties.
6. A third party accepting monetary compensation directly from the fund for damages due to a release caused by a tank owner, operator, or dealer covered by the fund is deemed to have waived any cause of action against the fund or against the tank owner, operator, or dealer.
7. The fund shall reimburse the department for all costs, attorney's fees, and other legal expenses relating to administrative and adjudicative proceedings under this chapter and any subsequent legal proceeding. Any monies reimbursed must be deposited in the department's operating fund in the state treasury and must be spent subject to appropriation by the legislative assembly.

23.1-37-19. Application for reimbursement.

Any owner or operator who is a first-party claimant who proposes to take corrective action or has undertaken corrective action in response to a release, the time of such release being unknown, may apply to the administratordepartment for partial or full reimbursement under section 23.1-37-18. An owner or operator who is a first-party claimant may be reimbursed only for costs incurred after July 1, 1989, even if the releases were discovered before July 1, 1989, up to the maximum of twenty-five thousand dollars per location.

23.1-37-20. Administrator Department to determine costs.

A reimbursement for corrective actions taken by an owner, operator, or dealer may not be made from the fund until the administratordepartment has determined that the costs for which reimbursement is requested were actually incurred and were reasonable. All necessary loss adjustment expenses must be included as a component of the loss and must be paid out of the fund.

23.1-37-21. Liability of responsible person. The right to apply for reimbursement and the receipt of reimbursement does not limit the liability of an owner or operator for damages or costs incurred as the result of a release.

23.1-37-22. Reimbursement not subject to attachment.

The amount of reimbursement to be paid for corrective action that was done by a third party is not subject to legal process or attachment if actually paid to a third party who performed the corrective action.

23.1-37-23.1. Recovery of expenses.

Any reasonable and necessary expenses incurred by the fund, which exceed the coverage limits provided by section 23.1-37-18, in taking a corrective action, including costs of investigating a release, and in taking legal actions may be recovered in a civil action in district court brought by the administratordepartment against an owner or operator. The certification of expenses by an approved agent of the fund is prima facie evidence that the expenses are reasonable and necessary. Any expenses that are recovered under this section must be deposited in the fund.

23.1-37-24. Costs exceeding reimbursement.

If the cost of any extraordinary authorized action under this chapter exceeds amounts awarded to the ~~administrator or the~~ department from the federal government, the administratordepartment may pay the department's ~~the cost of the~~ corrective actions costs, including the cost of investigating a release, if the board finds that the cause was a petroleum substance, that an adequate amount exists in the fund to pay for the corrective action, that the occurrence was extraordinary in scope and size, and that a danger to the health and safety of citizens exists.

23.1-37-25. Coordination of benefits.

If an owner or operator has an insurance policy that provides the same coverage as the fund, the ~~administrator of the fund~~ department shall pay the share of the covered loss or damage for which the fund is responsible. The share that must be paid from the fund is equal to the proportion that the applicable limit of coverage under the fund bears to the limits of insurance of all insurance coverage on the same basis.

23.1-37-26. Third-party damages - Participation in actions and review of settlements.

1. An owner or operator who is sued for damages resulting from a release shall notify the administratordepartment within fourteen days of being served with a summons and complaint. The owner or operator shall also advise the administratordepartment if any insurer is defending the owner or operator and provide to the administratordepartment the name of that insurer.
2. An owner or operator who, before litigation, enters into negotiations with a third party who claims to have been damaged by a release, or who receives a demand for payment of damages to a third party who claims to have been damaged by a release, shall notify the administratordepartment within fourteen days of the demand or the negotiations.
3. The administratordepartment and the board shall review the conduct of any litigation or negotiation. The administratordepartment may not assume any legal costs incurred by the defendant or plaintiff, but may participate in discovery, trial proceedings, or settlement negotiations of either disputed liability or damages that bear on the determination of a plaintiff's damages.
4. The administratordepartment and the board shall review any settlement negotiations to

determine the dollar amount of bodily injury or property damage actually, necessarily, and reasonably incurred by third parties which, if paid by the defendant, would be considered eligible costs.

23.1-37-27. Third-party damages - Documentation.

1. An applicant's payments for third-party damages pursuant to a judgment entered in a court must include copies of the notice of entry of judgment and abstract of costs.
2. An applicant's payments for third-party damages made by agreement in settlement of litigation must include copies of the settlement agreement and such supporting documents as may be required by the administratordepartment.
3. An applicant's payments for third-party damages made by agreement without reference to litigation must include copies of the settlement and such supporting documents as may be required by the administratordepartment.
4. The administratordepartment and the board may require a third party who claims bodily injury to be examined by a physician and require that the physician's report be submitted to the administratordepartment. The administratordepartment may require a third party who claims property damage to permit a property appraiser or claims adjuster retained by the administratordepartment to inspect the property and report to the administratordepartment.
5. The fund shall pay a judgment against an owner, operator, or dealer awarded to a third party as a result of a third-party claim and property damage against an owner, operator, or dealer registered by the fund.
6. The fund shall pay for corrective action as awarded to a third party in any judgment against an owner, operator, or dealer.
7. Liability of the tank owner, operator, dealer, or fund to third parties for corrective action or personal injuries and property damage may not exceed, per person, one million dollars. Maximum liability of the fund, including all claims by third parties, may not exceed, for any release site, the maximum provided in section 23.1-37-18.
8. A third party may not bring an action against any owner, operator, or dealer more than three years after a corrective action plan has been approved by the department if the owner, operator, or dealer fully implements and complies with the corrective action plan.
9. In investigating a release site or reviewing the implementation of any corrective action plan approved by the department, the department shall determine whether the release currently threatens public health or the environment. The department shall require, based on science and technology appropriate for the site, any monitoring, remediation, or other appropriate corrective action that is reasonably necessary to protect public health or the environment. The department may require corrective action at a release site at any time after a release occurs.

23.1-37-28. Matching federal funds.

The administratordepartment and the board may annually allow the department a ten percent matching grant for federal leaking underground storage tank funds to be paid out of the fund if the moneys are available and the administratordepartment and the board determine the allowance appropriate.

23.1-37-29. Fund appropriations.

Money in the fund is continuously appropriated to the administratordepartment for the purpose of making reimbursements under this chapter.

23.1-37-30. Investment of fund.

Investment of the fund is under the supervision of the state investment board in accordance with chapter 21-10. The commissionerdepartment may purchase a contract for reinsurance of any risk to be paid by the fund. The administratordepartment may investigate the purchase of insurance that reimburses an owner or operator for property damage claims by third parties other than claims for costs of corrective action.

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Testimony
House Bill 1024
Senate Appropriations Committee
March 7, 2019, 11:00 a.m.
North Dakota Department of Environmental Quality

Good morning Chairman Holmberg and members of the Senate Appropriations Committee. My name is David Glatt, Environmental Health Section Chief for the North Dakota Department of Health (NDDoH). I am here today to testify in support of the North Dakota Department of Environmental Quality (NDDEQ) appropriation. Due to the anticipated transition to the NDDEQ before the next biennium, we will be discussing a separate budget for the new agency.

My testimony will highlight the following:

- Establishment of the NDDEQ and transition status
- NDDEQ program overview
- Oil development and production impacts

Brenda Weisz, Chief Financial Officer for the NDDoH, will present the NDDEQ budget and associated information.

North Dakota Department of Environmental Quality (NDDEQ)

During the last legislative session, SB 2327 was approved establishing a new separate environmental protection agency for the state of North Dakota. In general, SB 2327 removes the Environmental Health Section and its current programs from the NDDoH and establishes a Department of Environmental Quality. The move to a stand-alone environmental agency was pursued for the following reasons:

- Environmental programs have grown in both size and technical complexity since the formation of the NDDoH. At present, environmental staff comprise about 40 percent (152 FTEs) of the NDDoH, with a biennial budget of approximately \$50 million dollars.
- Federal and state environmental protection regulations have become a major consideration in the evaluation and operation of almost all industrial, municipal and agricultural activities.
- Due to the wide range of medical, public health/wellness and environmental activities in the NDDoH, it was difficult to set priorities to address all issues. The result was a disparate and complicated management process that unintentionally left behind or deemphasized some very important programs.

- Nationally only five states have combined health and environmental protection programs into one agency.
- Over the years, operation and management of the environmental programs have grown apart from the other NDDoH programs due to different federal requirements and required educational/technical expertise. The result has been an environmental program operating for all practical purposes as a separate agency.

For the reasons stated, SB2327 authorized the establishment of the NDDEQ to serve as the primary environmental protection agency in North Dakota. The legislation will result in a new cabinet level agency and has directed the following:

- The new department will be established no later than July 1, 2019.
- The current Water Pollution Control and the Air Quality Advisory boards will be combined into a single NDDEQ advisory board comprised of three ex officio and 10 members appointed by the governor.
- The transition to a new agency will not result in the need to increase overall budget expenditures.
- The director of the NDDEQ will be appointed by and work at the pleasure of the governor as a member of the cabinet.
- The NDDEQ director will be required to have educational degrees in either the sciences or engineering and relevant work experience, preferably in North Dakota.
- The transition also will maintain regulatory primacy of all current U.S. Environmental Protection Agency (USEPA) programs delegated to the state.

Following the directives of SB2327, the status of the transition is as follows:

- Approximately 90 percent of the USEPA primacy programs delegated to the state have been approved for transfer to the NDDEQ. The remaining programs are in the federal transfer process and are anticipated to be completed no later than April 30, 2019. It is important to note that the federal government shutdown did impact the final NDDEQ transfer date.
- Operational efficiencies are being pursued which will result in the sharing of some administrative services to include accounting and human resources with the NDDoH.
- A stand-alone budget has been proposed in anticipation of the establishment of the NDDEQ.

NDDEQ Program Overview

To provide clarity and avoid confusion, I will refer to all environmental activities in my remaining testimony as if they are now part of an established NDDEQ, rather than a section in the NDDoH.

The NDDEQ is responsible for safeguarding North Dakota's air, land and water resources. In cooperation with the general public, industry and government at all levels, the NDDEQ implements protective programs and standards to help maintain and improve environmental quality. To guide us, we follow a vision which acknowledges the role of sustainability and the desire for a high-quality environment for current and future generations. We accomplish our environmental stewardship through the administration of five divisions which employ 152 FTEs comprised of engineers, scientists of various disciplines, chemists, technicians and administrative support. All employees strive for transparency in their decisions and accessibility to the public while following applicable science and the law.

Figure 1 provides an organizational overview of the NDDEQ and identifies key program areas in each of the divisions of Air Quality, Water Quality, Municipal Facilities, Waste Management and Chemistry.

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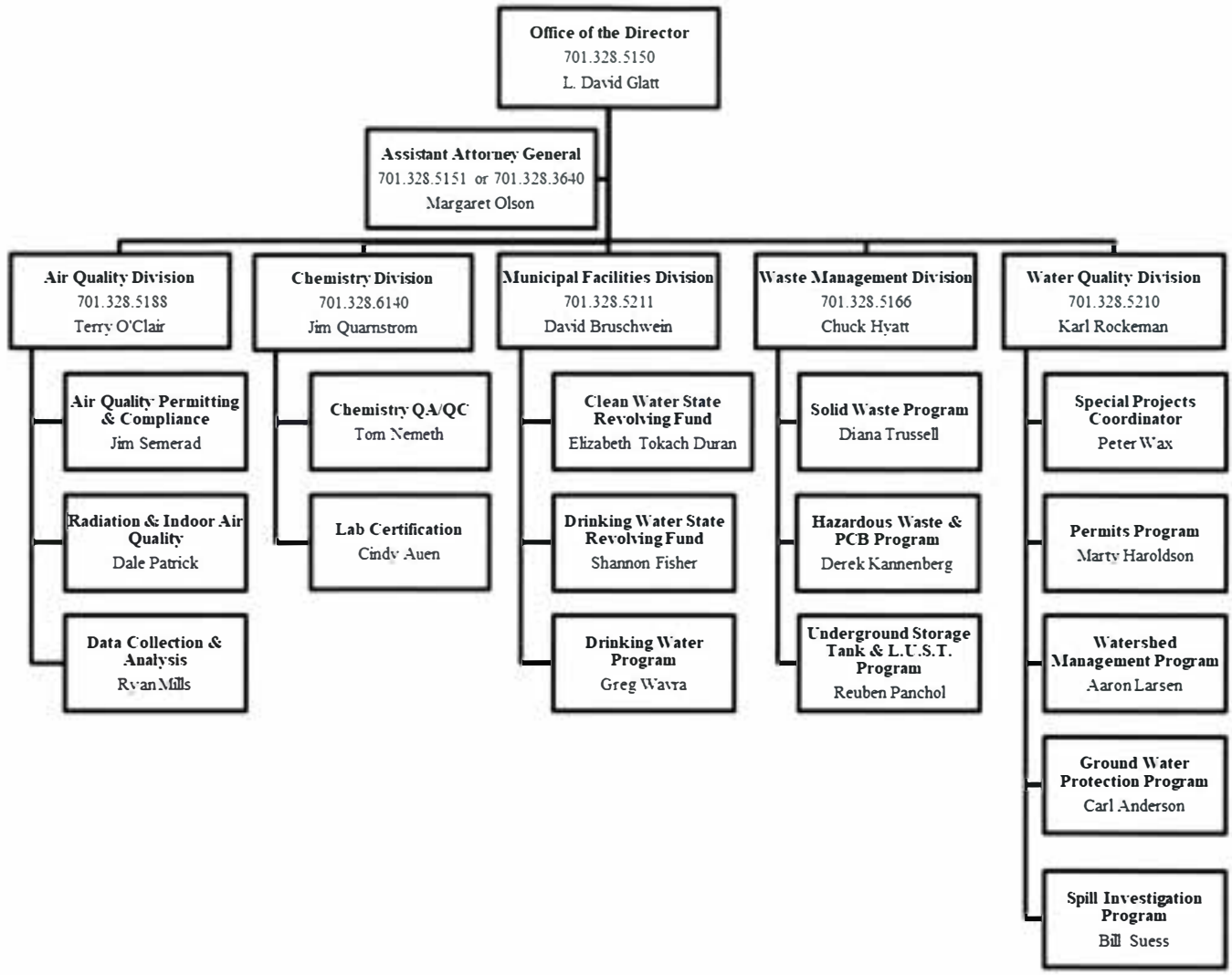


Figure 1. North Dakota Department of Environmental Quality Organizational Chart

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Division of Air Quality (35.5 FTEs)

The Division of Air Quality implements the federal Clean Air Act (CAA) working in cooperation with the USEPA. The division also works as an agreement state with the Nuclear Regulatory Commission to oversee the handling, storage, disposal and use of radioactive materials.

Air Permitting and Compliance Program

The Air Quality Permitting and Compliance Program develops and oversees air quality control permits, conducts air quality impact analyses through application of approved computer models, develops state air quality implementation plans and inspects a wide range of air emission sources to ensure compliance. This program requires a high level of expertise to evaluate the application of environmental regulations, design and operation of control devices, and the implementation of best management practices throughout the state.

Radiation and Indoor Air Quality Program

Through an agreement with the Nuclear Regulatory Commission and implementation of state-only rules such as Technologically Enhanced Naturally Occurring Radioactive Materials (TENORM), the Radiation Control Program is directed to ensure the safe use, handling, storage, shipment and disposal of radioactive materials. Radioactive materials are evident in many areas of our lives including the use of x-ray machines, nuclear isotopes used in medical treatments and research, and meters of various types. This program requires staff to obtain extensive training to ensure protection of the general public, as well as themselves, from undue exposure to radioactive sources.

In addition, the Indoor Air Program implements our radon gas, asbestos and lead programs designed to identify risks, prevent exposure and provide best management practices for these parameters in indoor air environments. This is accomplished through public education, training and licensing of qualified abatement contractors, and field inspections.

Data Collection and Analysis Program

The Data Collection and Analysis Program maintains a 24-hour/7-days-per-week ambient air quality monitoring network in North Dakota. Information from these monitors continues to indicate that North Dakota is one of a handful of states that complies with all national ambient air quality standards. Additional duties include compliance inspections of industry-maintained monitors and analysis of data generated by the air quality monitors.

Division of Air Quality - Oilfield Impacts

I have included along with my testimony an updated report titled *Oilfield Impacts and the North Dakota Department of Environmental Quality*. The report outlines the ongoing impacts oilfield development continues to have on every program within the NDDEQ. I will highlight some of the division-specific impacts we experience daily. For a more complete accounting of the impacts, I direct you to the report.

Workload impacts for the Division of Air Quality continue to increase with each oil well completed, resulting in new compliance points, inspections, citizen complaints and processing facilities. Each well drilled results in the addition of multiple points that must be regulated, inspected and monitored to control air emissions or radioactive sources. Figure 5 of the report indicates more than an 800 percent increase in oil well registrations since the start of the Bakken development (page 8 of report).

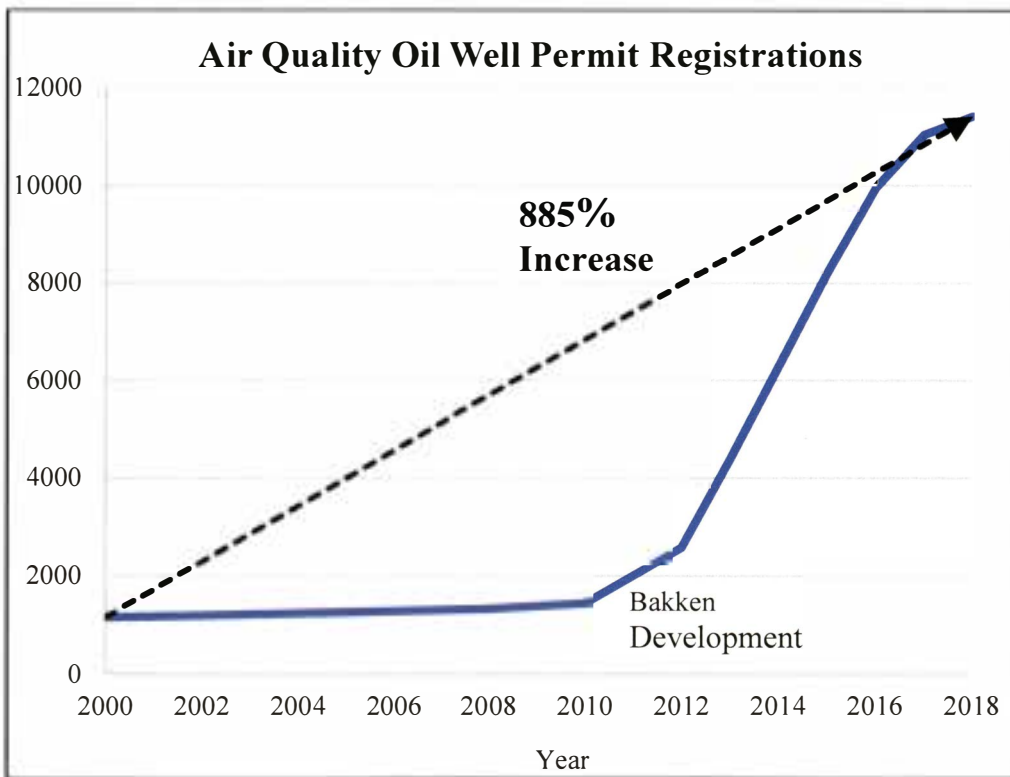


Figure 5. Air Quality Oil Well Permit Registrations

Division of Chemistry (16 FTEs)

The Division of Chemistry provides organic and inorganic laboratory analysis services to all NDDEQ programs, some municipal facilities and private individuals, pursuant to federal requirements or individual concerns. In addition, the division provides emergency analytical services in cases of accidental contaminant releases to the environment. Because quality and verifiable data is a requirement for the proper evaluation of environmental and public health, the division also conducts laboratory certification services for all outside environmental laboratories that submit compliance or assessment data to the NDDEQ.

Division of Chemistry - Oilfield Impacts

The Division of Chemistry continues to provide necessary oilfield analytical support for regulatory and emergency response activities. Impact assessments of land and water from oil and produced water spills continue to be a challenge due to the analytical complexity of the samples brought to our laboratory. Figure 7 of the report identifies the number of oilfield response and special project samples analyzed by the laboratory (page 10 of report).

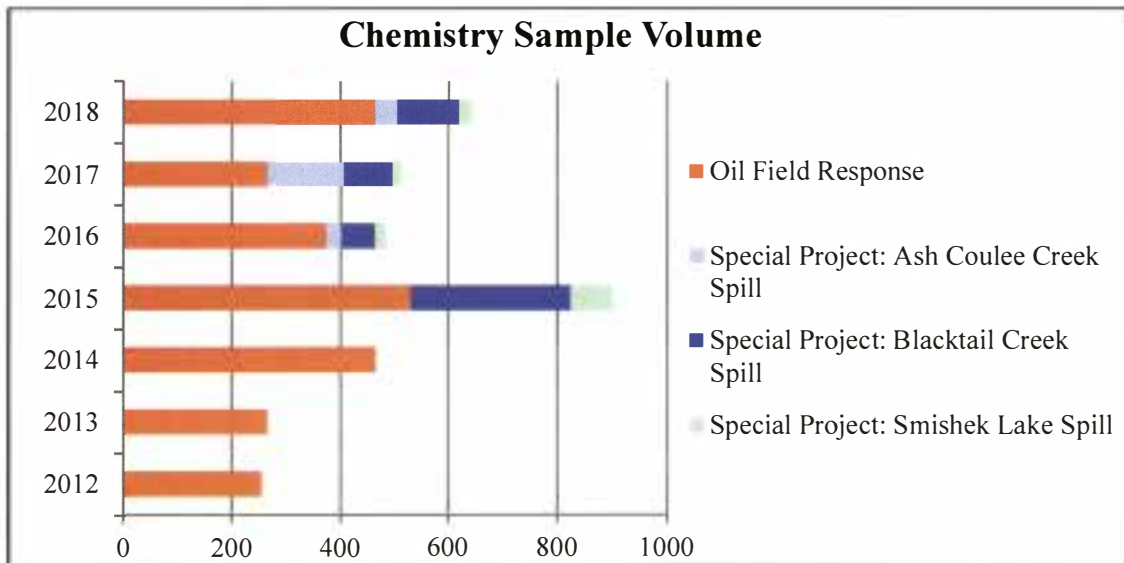


Figure 7. Chemistry Sample Volume

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Division of Municipal Facilities (31 FTEs)

State Revolving Loan Fund Programs

The Division of Municipal Facilities is responsible for the administration of two low-interest state revolving loan funds to help maintain municipal water and wastewater treatment infrastructure. By maintaining treatment, collection and distribution infrastructure, municipalities are better able to comply with the federal and state regulatory requirements and protect public health and the environment.

Working in cooperation with the Bank of North Dakota Public Finance Authority, the Clean Water State Revolving Fund (CWSRF) has loaned \$813.4 million for wastewater treatment and collection facilities since the program's inception in 1990. The Drinking Water State Revolving Fund (DWSRF) has loaned \$602.8 million for municipal drinking water treatment and distribution infrastructure since program inception in 1999. SRF program staff review and approve engineering plans and specifications, conduct on-site construction inspections and evaluate funding needs through an intended use plan.

Drinking Water Program

The Drinking Water Program implements the federal Safe Drinking Water Act (SDWA) at the state level. The SDWA requires oversight of treatment facilities, operator training and certification, inspections, drinking water monitoring, and compliance assistance and enforcement. Recent national headlines highlighting lead in the drinking water of Flint, Michigan, and cyanobacteria toxins in the drinking water of Toledo, Ohio, emphasize the need and obligation to implement a robust, multi-program regulatory structure to protect public health and the environment.

Division of Municipal Facilities - Oilfield Impacts

Although the number of new water and wastewater treatment systems being constructed has tapered off in recent years, challenges remain. Failing or unsafe facilities built or expanded without local or state approval require considerable evaluation and trouble shooting from staff. The result has been the enforcement of boil orders, increased drinking water violations and subpar construction, creating unnecessary public health concerns. Figure 13 of the report identifies the number of projects not meeting public health requirements (page 14 of report).

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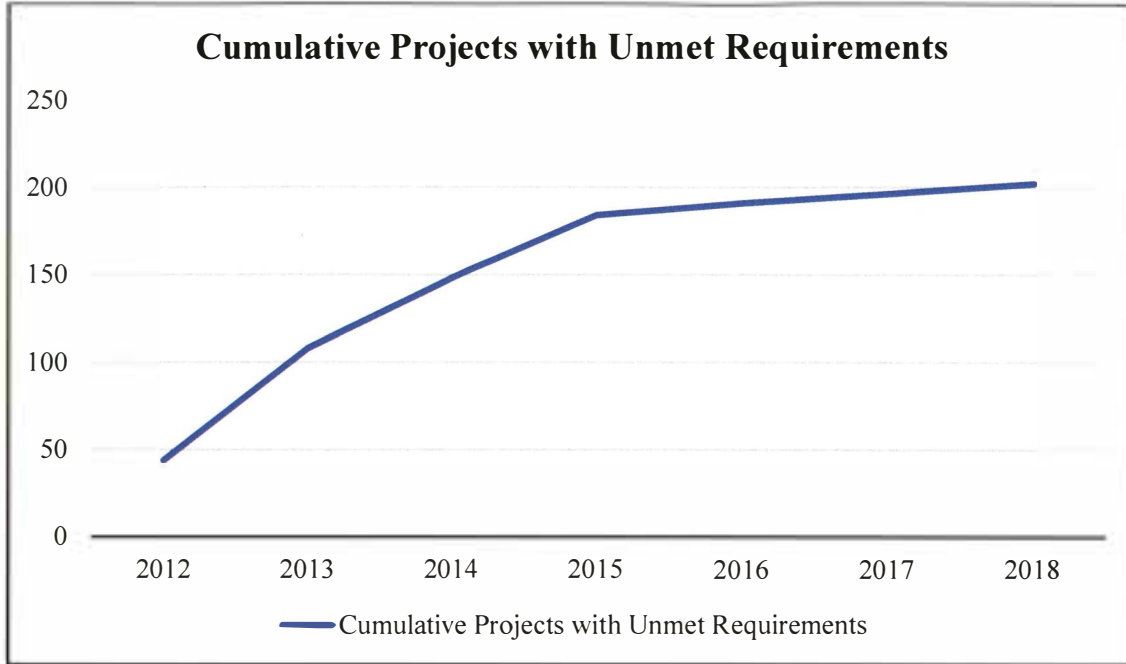


Figure 13. Cumulative Projects with Unmet Requirements

Division of Waste Management (25.5 FTEs)

The Division of Waste Management implements regulatory and nonregulatory programs to ensure the proper handling, transportation and disposal of nonhazardous and hazardous waste. In addition, it regulates the operation, construction and monitoring of underground fuel storage tanks.

Solid Waste Program

The Solid Waste Program permits the storage, transportation, handling and disposal of nonhazardous waste materials. Special waste, industrial, municipal and inert landfills are regulated through an extensive permitting process. Each landfill must comply with clearly defined design, operational, monitoring and closure requirements. These facilities are inspected routinely to assess compliance with applicable rules.

Hazardous Waste and Polychlorinated Biphenyl (PCB) Program

The Hazardous Waste Program regulates the handling, storage, transportation and disposal of hazardous waste generated within the state. Following the federal Resource Conservation and Recovery Act (RCRA), the program conducts routine inspections, provides oversight for remedial actions, permits facilities and initiates enforcement actions as needed. Regulated entities include industry, utilities, universities and federal facilities.

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PCB oversight has been focused on the proper handling and cleanup of spilled materials containing PCBs. PCBs were once widely used as dielectric and coolant fluids in electrical apparatuses and created environmental problems due to their persistence and impacts on organisms in the ecosystem. Older electrical transformers have historically been the source of PCB-containing oil.

Underground Storage Tank (UST) and Leaking Underground Storage Tank (LUST) Programs

The UST Program regulates the underground storage of hydrocarbon products in tanks with volumes of more than 110 gallons (excluding farm or residential tanks of 1,100 gallons or less capacity used for storing motor fuel for noncommercial purposes). The program specifies construction, reporting, monitoring, operator training and routine leak testing requirements. The NDDEQ also conducts on-site monitoring and witnesses tank removals. In cases of leaking underground storage tanks, the NDDEQ provides oversight of cleanup activities.

The LUST Program provides federal funding to hire remediation consultants to address environmental contamination at sites where the responsible party/owner is financially unable, recalcitrant or absent. This federal program requires a 10 percent match which is provided by the North Dakota Petroleum Tank Fund.

Division of Waste Management - Oilfield Impacts

Oil development and extraction activities continue to have a significant impact on the Solid Waste Program. Waste generated from drilling, normal operations (e.g., filter socks, tank bottoms) and spill cleanup remains at significantly higher levels than pre-Bakken development. Special waste or oilfield waste generated from 2001 to the present is represented in Figure 17 (page 17 of report).

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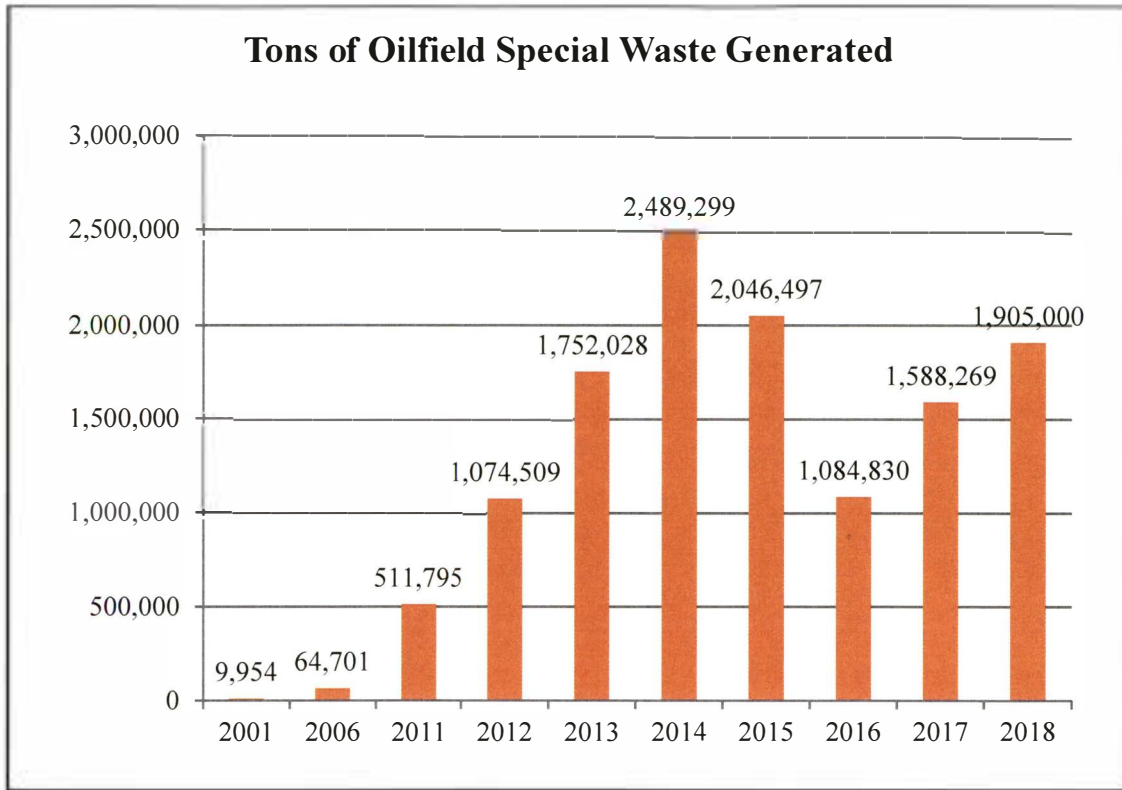


Figure 17. Tons of Oilfield Special Waste Generated

Economic development not directly associated with oil and gas continues to increase regulated infrastructure in many areas. One example is the UST Program where new facilities (e.g., gas station/convenience stores selling gas) continue to be built, increasing the number of underground storage tank installations. Figure 18 identifies the increasing number of regulated tanks since 2007 (page 17 of report).

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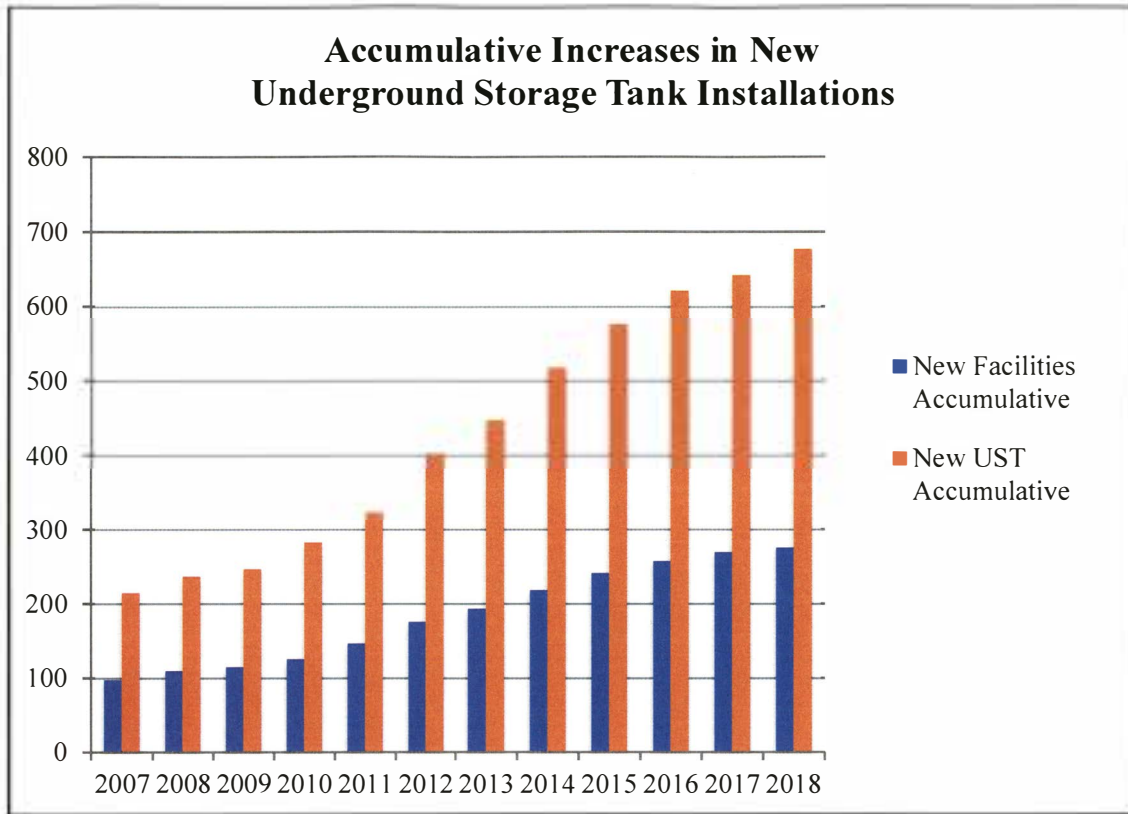


Figure 18. Accumulative Increases in New Underground Storage Tank Installations

Division of Water Quality (37 FTEs)

The Division of Water Quality implements programs to maintain and improve the quality of surface water and groundwater resources for beneficial use. Beneficial use is defined as water for consumption, recreational, industrial, aquatic habitat and agricultural uses.

Permit Programs

The NDDEQ implements several permit programs designed to protect surface water quality through primacy agreements with EPA and through several state-specific rules. The major programs are:

- North Dakota Pollutant Discharge Elimination System (NDPDES)
Establishes discharge and treatment standards for municipal and industrial waste discharges.
- Stormwater Permit Program
Requires the implementation of best management practices to reduce sediment/contaminant runoff from construction sites and paved surfaces.

- **Confined Animal Feedlot Operations**
Identifies the design, operation and nutrient management requirements for large, medium and small animal feeding operations. Large and medium facilities must receive permits to operate from the NDDEQ.

Watershed Management Program

The NDDEQ implements monitoring and assessment programs to determine the quality and beneficial use impairments of surface waters. Water quality and aquatic life samples are analyzed to ascertain the extent of manmade impacts on surface water. Impacts are addressed in TMDL (Total Maximum Daily Load) plans which identify the impairment; pinpoint the problem; and initiate land use, industrial or agricultural changes that will improve water quality over time.

To assist in selected activities which reduce water quality impacts, our Nonpoint Source Pollution Program can provide cost-share dollars (60 percent federal/40 percent local) to modify operation or design practices. Water quality reports identify areas of concern and trends. One recent report is the draft Nutrient Reduction Plan identifying priority watersheds where efforts to reduce nutrient inputs may result in decreasing algal blooms and their impacts on beneficial use of surface water.

Groundwater Protection Program

To protect subsurface water, the NDDEQ implements the Underground Injection Control (UIC) Program, Source Water Protection Program, as well as the Groundwater Assessment and Remediation programs.

UIC permits regulating the subsurface disposal of industrial waste, completion of ambient groundwater quality assessments in the oilfield, agricultural sampling programs, and active contaminant remedial action oversight help the NDDEQ in its efforts to maintain or improve water quality.

Special Projects Coordinator

The NDDEQ Special Project Coordinator maintains water quality standards, reviews projects for water quality certifications, responds to dredge and fill requests, and works in a team environment to address special large projects such as the Red River Water Supply or Fargo Diversion.

Spills Investigation Program

The NDDEQ coordinates a multi-division effort to respond to, assess and oversee cleanup of accidents and spills. The 24/7 spill team responds to

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releases into the environment that have the potential to impact soils, surface and groundwater quality. Although spills can occur from municipal, industrial or agricultural activities across the state, most recent spill response efforts have taken place in oil development counties.

Division of Water Quality - Oilfield Impacts

As stated earlier, a vast majority of spill response activity has occurred in oil development-impacted areas. Although the number of spills has declined in recent years, which can be attributed to better facility design, containment structures and changes in reporting requirements, spill reports remain at more than twice the pre-Bakken development years. Figure 21 indicates annual spill reports since 2005 (page 20 of report).

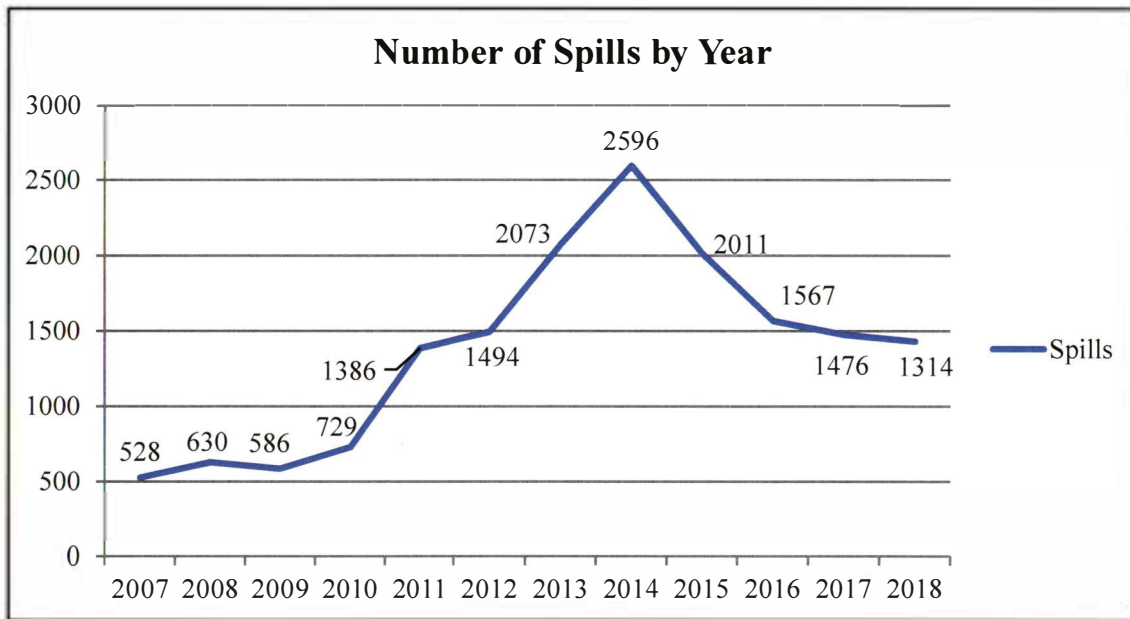


Figure 21. Number of Spills by Year

(In 2017, the reporting threshold was raised from 1 to 10 barrels for oil and brine releases that remain on oil production sites built after 2000.)

Legal Compliance/Enforcement

The NDDEQ strives to reach high compliance rates in all programs and activities. This is pursued through public outreach, educational training opportunities and compliance assistance at all levels within the agency. However, there are instances when the agency is forced to utilize a handful of enforcement actions which can include pursuing court action, penalty collection or development of consent

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agreements. Figure 27 illustrates the dollar amount of penalties collected as part of a completed enforcement action (page 26 of report).

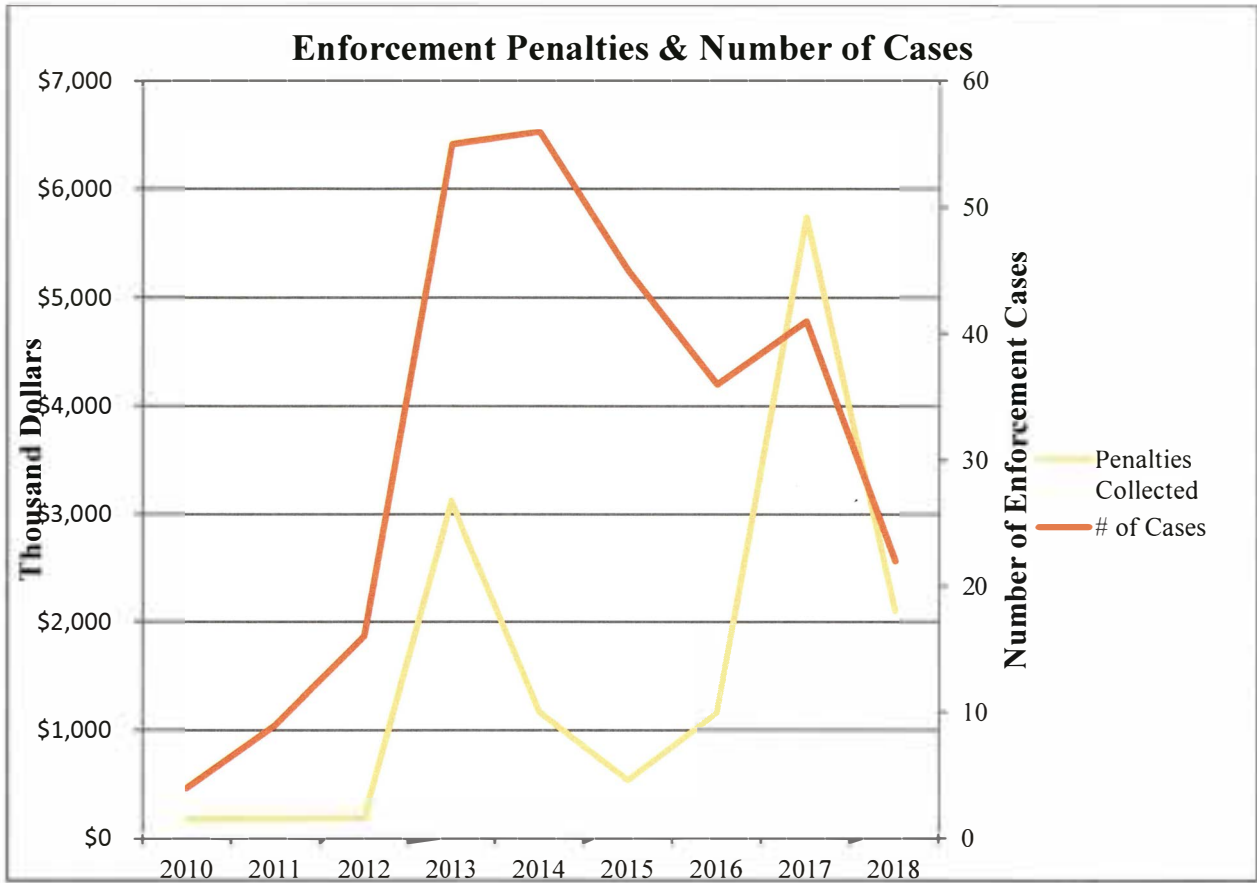


Figure 27. Enforcement Penalties and Number of Cases

It is important to note that the legal counsel assigned to the NDDEQ has also been active in defending challenges to NDDEQ permit decisions in state court, cooperating with federal agencies in pursuing alleged environmental violations in North Dakota, state rule development, and working with outside legal counsel as we challenge federal regulations which have the potential to impact state decision authority.

This concludes the first part of our testimony. I will follow up later with additional insight on specific elements of the NDDEQ budget. I will now introduce Brenda Weisz, Chief Financial Officer, to continue the NDDEQ testimony on appropriations.



North Dakota Department of Health Environmental Health Section

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Fax Number (701) 328-5200
Website: www.ndhealth.gov/ehs



Information Directory

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Environmental Health Section Chief's Office (701) 328-5150

Chief: L. David Glatt

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- Performance Partnership Agreement & Grants Coordination - Teri Lunde
- Information Technology Coordination - Gold Seal Center Campus - Allen Johnson
- Data Management - Gary Haberstroh
- Public Information, Staff Training & Quality Assurance - Melissa Miller
- Geographic Information System Coordination - Ann Fritz
- Legal - Margaret Olson (701) 328-5151

Division of Air Quality (701) 328-5188

Director: Terry O'Clair

Air Quality Permitting & Compliance - Jim Semerad

- > Air Quality Permits
- > Air Quality Inspections
- > Emission/Stack Testing
- > Emission Inventory
- > Open Burning (other than landfills)
- > Visible Emission/Odor Certification
- > Oil and Gas Wells
- > Air Quality Questions and Complaints
- > Dispersion Modeling - Permitting

Data Collection & Analysis - Ryan Mills

- > Ambient Air Quality Data
- > Ambient Network Operations
- > Dispersion Modeling - Planning
- > State Implementation Planning

Radiation & Indoor Air Quality - Dale Patrick

- > Radioactive Materials
- > Radon
- > X-Ray Machines
- > Asbestos
- > Indoor Air Quality
- > Mammography Quality Assurance
- > Lead Paint

Laboratory Services - Division of Chemistry (701) 328-6140

2635 East Main, P.O. Box 5520, Bismarck, ND 58506-5520, Fax: (701) 328-6280

Director: Jim Quarnstrom

North Dakota Environmental Laboratory
Certification Program (NDELCP) - Cindy Auen
ND Environmental Laboratory Certification
Laboratory Quality Assurance/Quality Control -
Tom Nemeth

Analysis of Environmental Samples

Information Technology Coordination - Lab
Campus - Kevin Kosse, John Gabriel

Division of Municipal Facilities (701) 328-5211

(701) 328-6628 (Environmental Training Center)

Director: David Bruschwein

Clean Water State Revolving Loan Fund Program - Dave Bergsagel

- > Clean Water Revolving Loan Fund
- > Plan Review (wastewater systems)

Drinking Water State Revolving Loan Fund Program - Shannon Fisher

- > Drinking Water Revolving Loan Fund
- > Plan Review (water systems)

Drinking Water Program - Greg Wavra

- > Safe Drinking Water Act
- > Community Fluoridation Program
- > Training and Certification of Water & Wastewater Facility Operators
- > Inspections of Water & Wastewater Facilities
- > North Dakota Water & Pollution Control Conference
- > Publication of the *Official Bulletin*

Division of Waste Management (701) 328-5166

Director: Chuck Hyatt

#1

Solid Waste Program - Diana Trussell

Solid Waste Management:
Municipal, Industrial, Special & Inert Waste
> Permits, Inspections
> Operator Training & Certification
> Open Burning (at solid waste facilities)
> Transfer Stations
Coal Combustion & Offsite Oilfield Waste
Land Treatment
Scrap Tires & Tire Recycling
Waste Reduction, Recycling & Composting
Energy Recovery
Biomass (waste wood, etc.)
Nutrient Management (Ag Processing)
Emergency Waste & Debris Management
Abandoned & Dangerous Buildings
Abandoned Motor Vehicle Projects, Auto
Salvage & Scrap Metal
Pollution Prevention (P2)
Solid Waste Planning

**Hazardous Waste Program & Toxic
Substance Control Act - Derek Kannenberg**

Hazardous Waste
> Permits
> Inspections
> Corrective Action
Superfund
> CERCLIS Sites
> Emergency Response
Emergency Spill Response
> Site Assessment
> Site Remediation
Brownfields
Laboratory/Agricultural/Household Chemical
Wastes
Polychlorinated Biphenyls (PCBs)
Used Oil
Infectious Waste
Waste Transporter Permits

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Underground Storage Tank Program - Carl Ness

Underground Storage Tanks (USTs)
> Petroleum
> Hazardous Substances
Above-ground Storage Tanks (ASTs)
> Spills, Assessments
> Certification of Biofuels Blender Pump Installation
Leaking Underground Storage Tank (L.U.S.T.)
Trust Fund
> Assessment, Remediation
Antifreeze Registration
Petroleum Products Testing
Spill Response

Division of Water Quality (701) 328-5210

Director: Karl Rockeman

Watershed Management - Michael Ell

> Water Quality Standards
> Nonpoint Source Pollution Management
> Rivers and Stream Monitoring and Assessment
> Clean Lakes Assessments
> Fish Consumption Advisory
> Watershed Management
> Water Quality Modeling

Water Quality Special Projects - Peter Wax

> 404 Dredge & Fill
> 401 Water Quality Certification
> Environmental Impact Statements
(EIS) Review
> Water Quality Standards

Spill Investigation Program - Bill Sues

> Spill Response

Wastewater Facility/Permits - Marty Haroldson

> North Dakota Pollutant Discharge Elimination
System (NDPDES) Permits
> Wastewater Releases
> Stormwater Regulations
> Feedlot Inspections/Approval/Runoff
> Septic Pumps
> Small Business Assistance
> Pretreatment

**Groundwater Protection Program - Carl
Anderson**

> Underground Injection Control (UIC) Program
> Source Water Protection
> Groundwater Remediation and Assessment

OTHER Environmental Information

Environmental Health Section

Fargo Office, 1120 28th Ave. N., Suite B, Fargo, ND 58102, (701) 499-5207, Fax (701) 235-7394

Towner Office, 314 Main St. S. #2, Towner, ND 58788, (701) 537-2043, Fax (701) 537-2044

Environmental Hot Line 1-800-755-1625

Environmental Training Center 2639 E. Main Ave., Bismarck, ND 58501, (701) 328-6628, Fax (701) 328-6206

Approvals of Anhydrous Ammonia Facilities - State Ag Dept. (701) 328-2231

Emergency Response Spills - State Radio 1-800-472-2121 (in-state) or (701) 328-9921 (out-of-state)

Environmental Microbiology - Christie Massen (701) 328-6272

Oil Field Related Spills - Oil & Gas Division (701) 328-8020

Petroleum Tank Release Compensation Fund (PTRCF) - Jeff Bitz - ND Insurance Dept. (701) 328-9600

SARA Title III - Department of Emergency Services Fraine Barracks, P.O. Box 5511, Bismarck, ND 58506-5511, (701) 328-8100

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**Oilfield Impacts and the
North Dakota Department of Environmental Quality**

December 2018

North Dakota Department of
Environmental Quality
918 East Divide Avenue
Bismarck, North Dakota

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Oilfield Impacts and the North Dakota Department of Environmental Quality

I. Background

The North Dakota Department of Environmental Quality (NDDEQ) is responsible for safeguarding North Dakota's air, land and water resources. The NDDEQ, which has 152 employees, works closely with local, state and federal entities to address public and environmental health concerns and implement protection policies and programs. The NDDEQ consists of the Office of the Director and five divisions: Air Quality, Chemistry, Municipal Facilities, Waste Management and Water Quality.

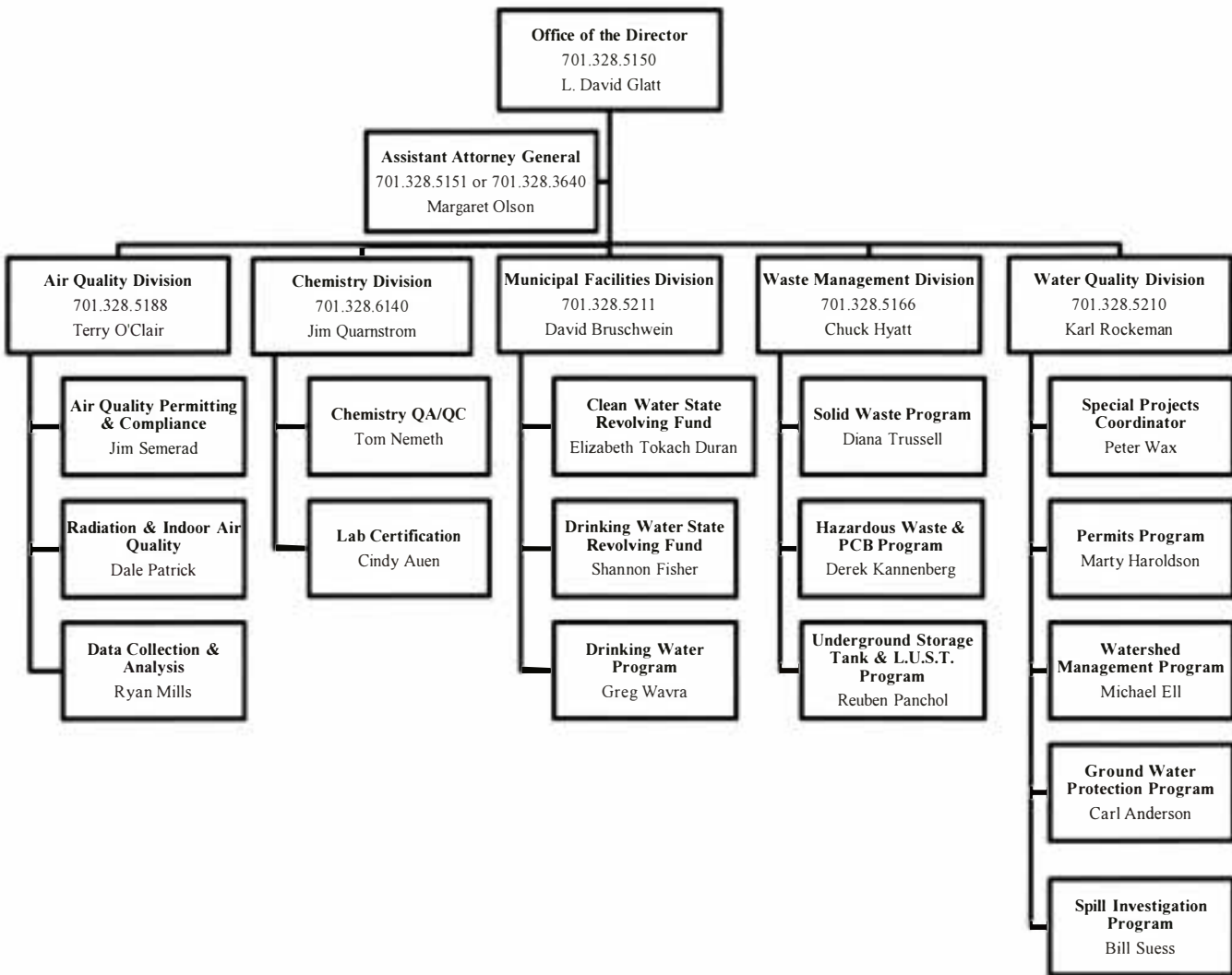


Figure 1. North Dakota Department of Environmental Quality Organizational Chart

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A. Division of Air Quality

The Division of Air Quality consists of two major programs with 35 full-time positions and one half-time position. There are 23.5 environmental scientist positions, one environmental sciences administrator, and five environmental engineers which all require the minimum of a four-year degree. In addition, there are three electronic technicians and one data processing coordinator who have two-year technical degrees, and two administrative support staff.

Air Pollution Control Program

This program promotes clean air activities, conducts compliance activities and initiates enforcement actions to correct air pollution problems. Program staff responsibilities include implementing the Clean Air Act (CAA), evaluating permit applications, conducting computer modeling of potential impacts to air quality, issuing permits that restrict emission levels to ensure standards are met, operating an ambient air quality monitoring network, and responding to complaints and air quality concerns throughout the state.

Radiation Control and Indoor Air Quality Program

This program performs two major functions: (1) regulating the development and use of ionizing and non-ionizing radiation sources to protect North Dakotans and the environment, and (2) evaluating and mitigating asbestos, radon, lead and other indoor air quality concerns, as well as implementing a public awareness and education program concerning these health risks.

Field activities supporting the above programs include inspecting facilities to ensure compliance, enforcing laws, investigating air pollution complaints and operating a statewide ambient air quality monitoring network.

B. Division of Chemistry

The Division of Chemistry has 16 full-time employees. Thirteen are professional chemist positions requiring the minimum of a four-year degree. One position is a laboratory technician, one is a medical laboratory technician (pending reclassification to a laboratory technician), and one is an administrative assistant position.

The chemistry laboratory provides analytical data to environmental protection, public health, agricultural and petroleum regulatory programs in the state. The division maintains a laboratory certification program for laboratories submitting compliance samples to the NDDEQ. The department's environmental protection programs use laboratory data to monitor and/or regulate solid and hazardous waste; municipal wastewater; agricultural runoff; surface, ground and drinking water quality; petroleum products; and other media of environmental or public health concern.

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C. Division of Municipal Facilities

The Division of Municipal Facilities administers three programs. There are 31 full-time employees. Fifteen are environmental scientists, and 13 are environmental engineers requiring the minimum of a four-year degree. There is one grants/contract officer position, which also requires a four-year degree, and two administrative support personnel.

Public Water Supply Supervision (PWSS)

This program works with the public water systems (PWS) in North Dakota (currently 531) to ensure drinking water meets all standards established by the Safe Drinking Water Act (SDWA). This is accomplished by monitoring drinking water quality and providing technical assistance. Currently, 99.9 percent of community water systems are meeting all applicable health-based standards under the SDWA – one of the highest compliance rates in the region and country. The U.S. Environmental Protection Agency (EPA) goal for 2017 was 85 percent nationwide.

Training and certification are provided for operators of water treatment and distribution facilities and wastewater collection and treatment plants. There are about 1,099 certified operators in the state. A total of 89 percent of public water systems are meeting operator certification requirements for water treatment (no EPA goal). There are 81 percent of community water systems meeting operator certification requirements for water distribution (no EPA goal).

Staff administer the fluoridation program and provide technical assistance to private systems. A total of 65 communities add fluoride to their drinking water. Of the population served by these communities, 97 percent (about 676,187) receive optimally fluoridated drinking water (no EPA goal).

Drinking Water State Revolving Loan Fund (DWSRF)

This program provides low-interest loans to help public water systems finance the infrastructure needed to comply with the SDWA. Since program inception (1997) through December 31, 2017, loans totaling about \$552 million have been approved. Staff members also review drinking water projects to ensure compliance with state design criteria before construction and provide technical assistance.

Clean Water State Revolving Loan Fund (CWSRF)

This program provides low-interest loans to fund conventional wastewater and nonpoint source pollution control needs. Since program inception (1990) through December 31, 2017, loans totaling about \$650 million have been approved. Staff members also review wastewater projects to ensure compliance with state design criteria before construction and provide technical assistance.

Field activities supporting the above programs include: (1) inspecting about 552 public water and wastewater systems to ensure compliance with all public health standards, (2) inspecting State Revolving Loan Fund construction projects to ensure they meet state and federal requirements, and (3) investigating complaints.

D. Division of Waste Management

The Division of Waste Management works to safeguard public health through four programs. There are 25 full-time positions and one half-time position, consisting of 16 environmental scientists, five

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environmental engineers, one environmental sciences administrator, the division director (all of which require the minimum of a four-year degree), and three administrative support staff.

Hazardous Waste Program

This program regulates 760 facilities that generate, store, treat, dispose or transport hazardous waste. The program also coordinates assessments and cleanups at Brownfield sites (properties underdeveloped due to actual/perceived contamination) and performs inspections and compliance assistance for businesses and utilities that have equipment containing polychlorinated biphenyls (PCBs).

Solid Waste Program

This program regulates the collection, transportation, storage and disposal of nonhazardous solid waste. Resource recovery, waste reduction and recycling are promoted. The program helps individuals, businesses and communities provide efficient, environmentally acceptable waste management systems. The program regulates 379 solid waste facilities including infectious waste/medical waste facilities, industrial waste landfills, land treatment facilities, municipal solid waste landfills, special waste facilities, transfer stations and inert waste landfills/compost facilities. In addition, 838 permitted waste transport companies are regulated.

Underground Storage Tank Program

This program regulates petroleum and hazardous substance storage tanks, establishes technical standards for the installation and operation of underground tanks, maintains a tank notification program, establishes financial responsibility requirements for tank owners and provides for state inspection and enforcement. The program works with retailers and manufacturers to ensure specifications and standards for petroleum and antifreeze are met. There are 830 facilities currently regulated under this program. In addition, the UST Program supervises the cleanup of any leaking underground storage tank facility and other petroleum product releases.

Abandoned Motor Vehicle Program

The Abandoned Motor Vehicle Program focuses on assisting political subdivisions in the cleanup of abandoned motor vehicles and scrap metal.

Field activities supporting the above programs includes compliance assistance, sampling, training, site inspections and complaint investigations.

E. Division of Water Quality

The Division of Water Quality protects water quality through five programs. There are 37 full-time positions, consisting of 28 environmental scientists, four environmental sciences administrators, four environmental engineers (all of which require the minimum of a four-year degree) and one administrative assistant.

North Dakota Pollutant Discharge Elimination System (NDPDES) Permit Program

This program issues the federally required National Pollutant Discharge Elimination System (NPDES) permits for discharge of pollutants to surface waters. This may include pollutants carried by stormwater, in addition to direct discharge of wastewater. Many industries and municipalities require these permits. This program also issues permits to septic tank pumpers regulating the collection and proper disposal of

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domestic wastewater. The permits may be individual permits issued to one facility or general permits where multiple facilities are covered under one permit.

Watershed Management Program

This program monitors the health of North Dakota watersheds through sampling and analysis of water quality and aquatic life in lakes, rivers, streams and reservoirs. For those water bodies that are not usable for their designated use, plans are developed to achieve improvements in water quality. These plans are implemented in conjunction with the local conservation districts and landowners. This program also provides cost share assistance, information and education to help meet water quality goals.

Ground Water Protection Program

This program includes the (1) Wellhead and Source Water Protection Programs to define the susceptibility of public water systems to contaminant sources, (2) Underground Injection Control (UIC) Program which helps prevent contamination of drinking water by injection wells, and (3) Ambient Ground Water Monitoring Program which assesses the quality of ground water resources with regard to agricultural and oilfield-related chemical contamination. In addition, trained personnel provide immediate response to spills and continued investigation/enforcement if necessary to fully address environmental impacts. Program staff also fulfill open records requests typically received as part of property transactions or as Freedom of Information Act requests from the general public.

Spill Investigation Program

This program receives and reviews all the spill reports for the state and responds with the assistance of other NDDEQ divisions and other agencies. The response may include the collection of additional information, assignment to other agencies, field inspection and on-scene coordination. Staff with this program collect environmental samples of soil and water, and work with the responsible party to ensure spills are remediated and waters of the state, both ground and surface water, are protected. To provide a timely response to a critical incident, this program maintains two staff in the field five days a week and one staff person on call weekends and holidays. One staff person maintains phone coverage 24 hours a day, seven days a week in case of an incident. Staff members also work with various industries to prepare incident response actions and to educate them on proper remediation and spill assessment.

Field activities supporting the above programs include inspecting wastewater treatment facilities and septic tank pumpers, and compliance audits/sampling to ensure permit requirements are met; inspecting construction and industrial site stormwater controls; meetings with local/state entities to assess nonpoint source project goals; ambient monitoring of lakes and rivers; evaluating domestic water sources for potential contaminant sources; annual collection/analysis of samples from vulnerable aquifers; overseeing remediation of spills with potential to reach water sources; and responding to complaints.

F. Office of the Director

Division activities are coordinated by the Office of the Director, which has 7.25 full-time employees (FTEs) and an attorney assigned by the Office of Attorney General. Employees oversee quality assurance procedures; help coordinate public information efforts; and assist with staff training and data management activities, emergency response efforts, enforcement of environmental regulations and funding requests. The Office of the Director works with the department's divisions, various government agencies, industry and the public to set environmental protection policy and ensure the proper implementation of environmental protection programs.

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II. Impacts of Oilfield Activity

A. Division of Air Quality

Increasing oil well counts and improved unconventional oil and gas extraction techniques have elevated the amount and complexity of work related to permitting, inspections, enforcements and citizen complaint mitigation efforts.

The sheer number of existing oil wells, paired with new wells, continue to impact the division's workload. The number of oil wells registered with the division has more than tripled since 2010. In addition to an increase in well count, there has been an increase in oil- and gas-related projects (i.e., crude oil storage tank facilities, oil terminals and refineries), along with an expansion of infrastructure to improve natural gas capture to meet the North Dakota Industrial Commission's (NDIC) gas capture rule. Each facility developed in conjunction with the NDIC's rule requires, at a minimum, an air quality regulatory review and often a permit to construct and permit to operate.

Most facilities that require permits under the federal CAA require compliance inspections by program staff on a regular basis. Figures 2 through 6 show trends illustrating the change in workload. Depending on the complexity of a project and the level of public interest, an individual project or facility such as a gas plant or refinery may require substantially more staff resources. The amount of effort involved in permitting these types of projects is not directly reflected in the figures themselves.

The increase in the number of regulated air pollution sources, as well as more complex regulations, has resulted in the continued need to recruit and retain significant staff expertise and resources. Adding to the division's workload are the number of department enforcement actions which correlate with the heightened activity and development in the state.

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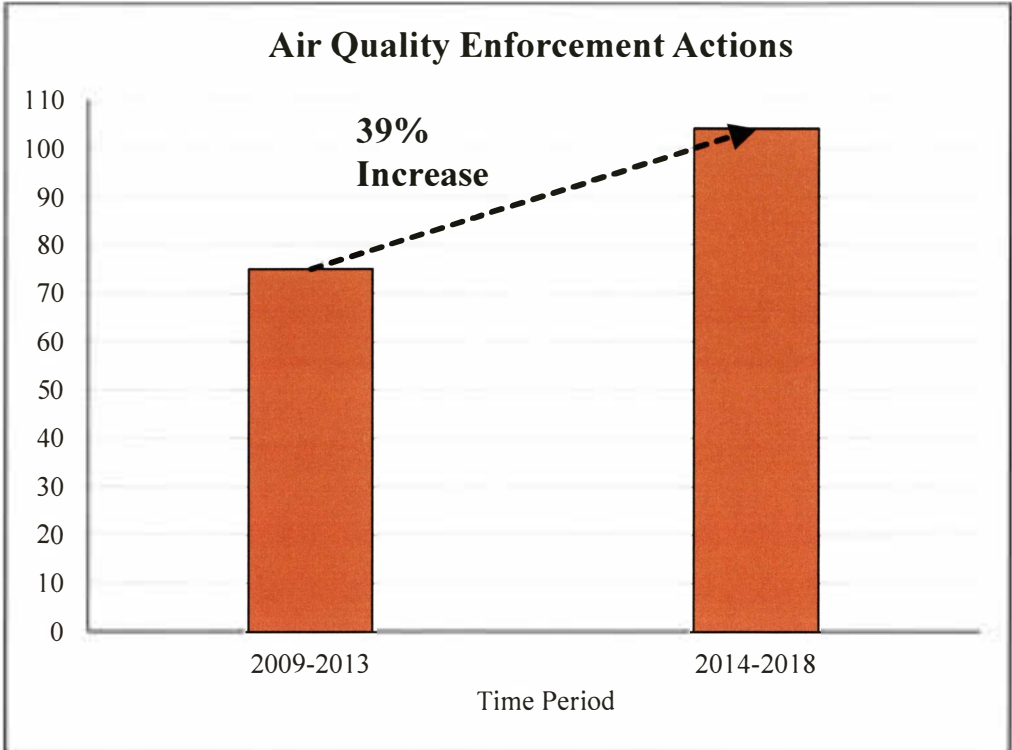


Figure 2. Air Quality Enforcement Actions

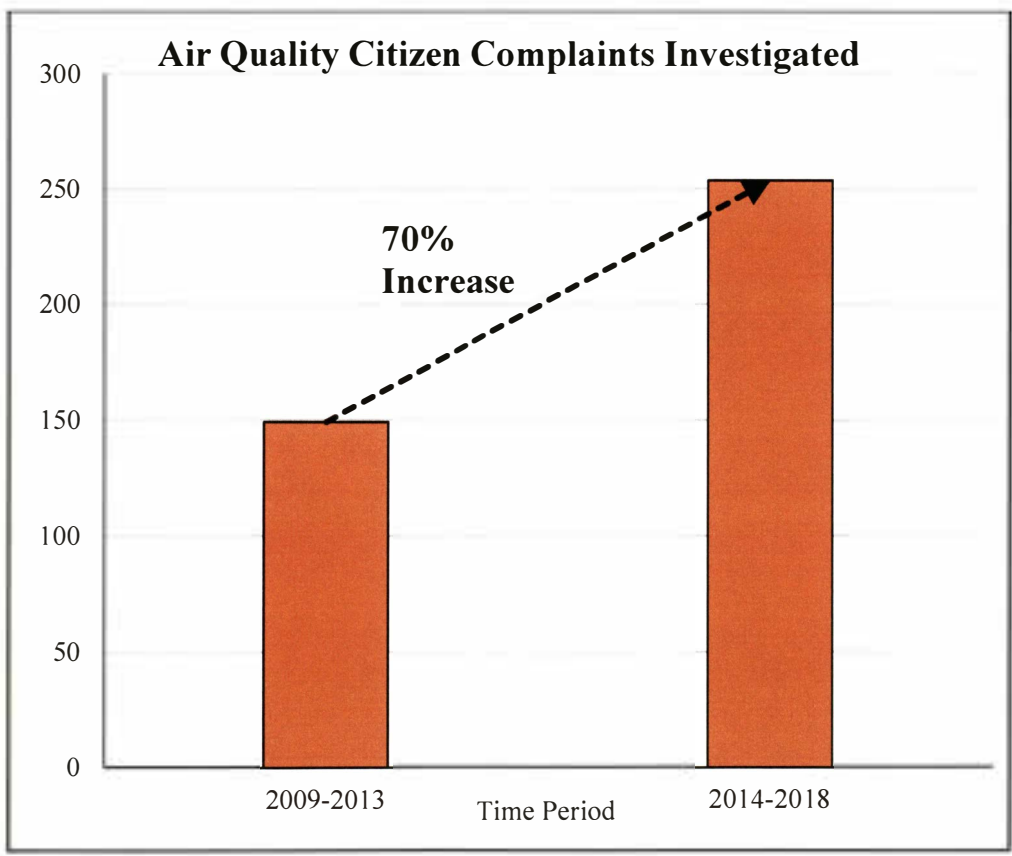


Figure 3. Air Quality Citizen Complaints Investigated

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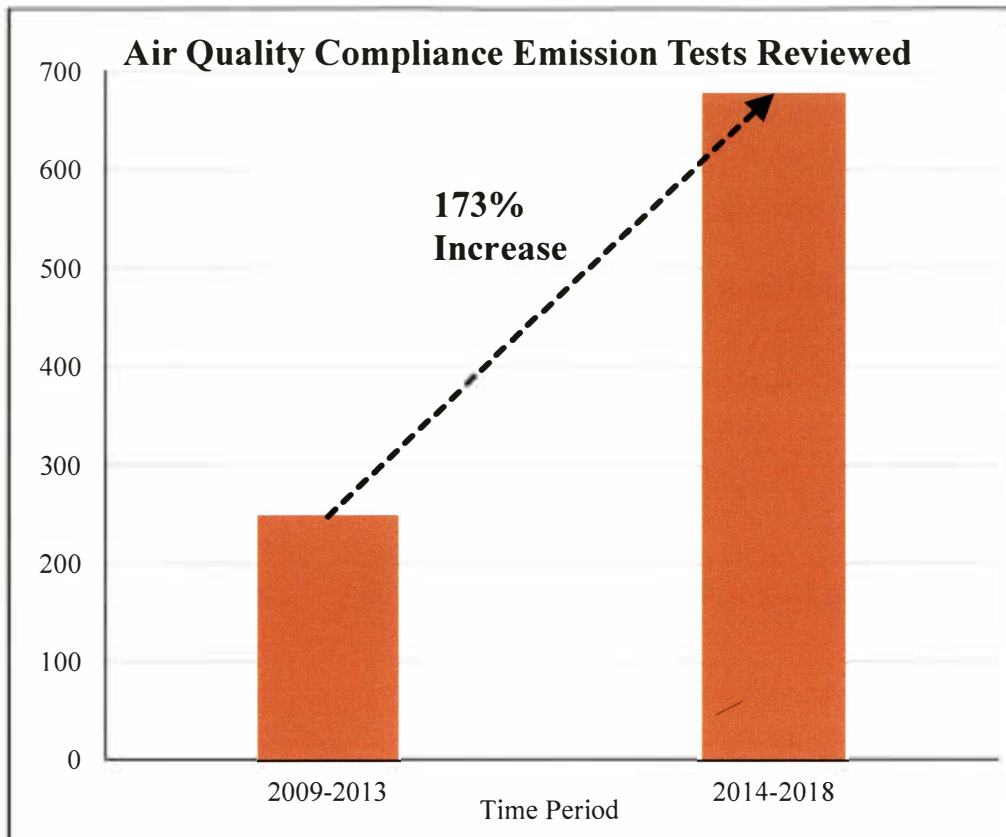


Figure 4. Air Quality Compliance Emission Tests Reviewed

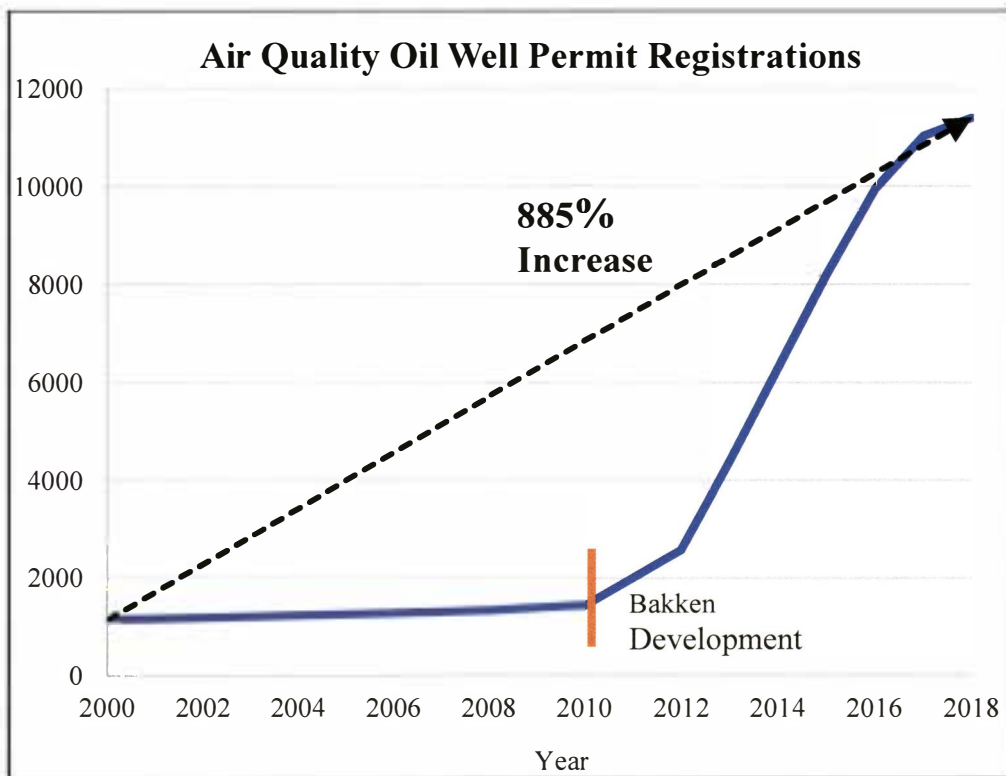


Figure 5. Air Quality Oil Well Permit Registrations

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Many companies in the oilfield use instrumentation technologies containing radioactive material, and there has been a large increase in the number of companies actively using such materials. Periodically, operators have been identified as improperly using radioactive materials, potentially placing members of the public and the environment at risk. In response, the NDDEQ has investigated an increasing number of allegations regarding improper handling of radioactive materials.

Activities related to the licensing of radioactive materials have significantly increased since 2016 (Figure 6). A few of these include inspections, license renewal notifications, issuing license amendments and holding public hearings.

The NDDEQ published TENORM (Technologically Enhanced, Naturally Occurring Radioactive Materials) rules, which became effective January 1, 2016. To increase knowledge about the rules, the NDDEQ is conducting more public and industry informational workshops. Additional workload also has resulted from the licensing of all TENORM radioactive waste transporters, the growing number of facilities that treat TENORM, and the increased frequency in inspections of these facilities.

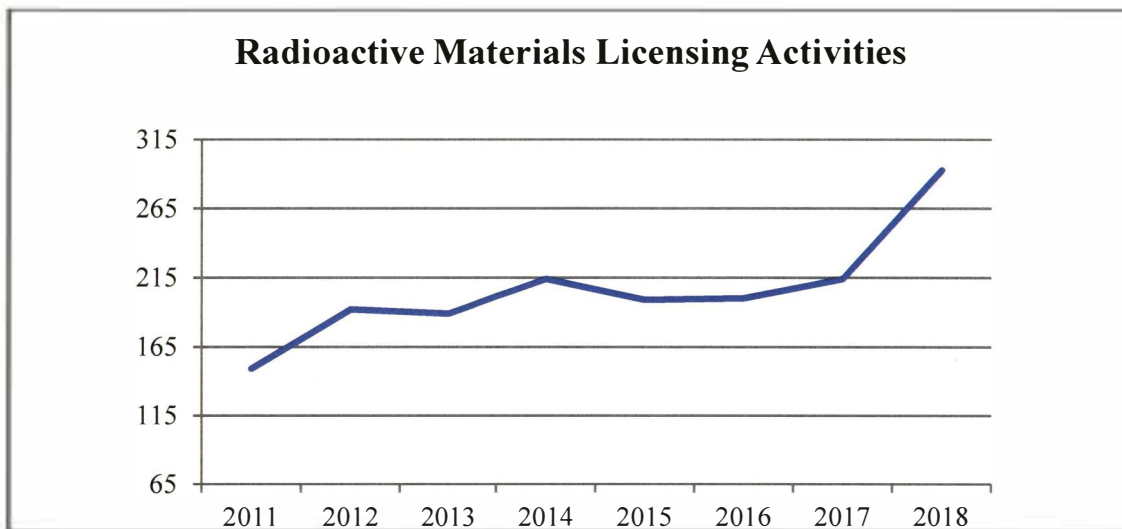


Figure 6. Radioactive Materials Licensing Activities

Additional direct and indirect impacts on the division include:

- Expansion of the Tesoro Mandan Refinery, plus permitting work for proposed diesel refineries and including the Meridian Davis Refinery and subsequent appeal.
- Increased compliance activities (inspections, testing/report reviews, etc.) relating to the new Tesoro Dickinson Refinery (formally Dakota Prairie Refinery).
- Increased permitting and compliance activities relating to gas plants, compressor stations and oil storage terminals, including increases in pre-construction modeling as gas plants and compressor stations become bigger to accommodate state flaring regulations.
- Extensive effort with the enforcement initiative to reduce and mitigate fugitive emissions from upstream oil and gas production activities.
- Conducted survey of Bakken shale play with EPA utilizing Geospatial Mapping of Air Pollution (GMAP) to gather real-time analytical data of air contaminants.

- Increased telephone and email inquiries pertaining to air pollution control requirements.
- Increased oil- and gas-related complaints and inquiries from public.
- Heightened public awareness of air quality permitting, including increased public participation during the review and issuance of construction permits.
- Operating of a new monitoring site to measure air quality.
- Increased permitting activity, along with increased particulate control inspections of more rock, sand and gravel plants (three times higher than in the past), due to greater demand for these materials in the oilfield.
- Road dust has become a significant source of air pollution leading to additional public inquiries and complaints.
- New EPA regulations directed at energy development.
- Expansion of the Tioga Gas Plant.

B. Division of Chemistry

The analyses of water, soil and other matrices to determine impacts of oilfield events remain steady. Since tracking of these investigations began in 2012, about 470 samples per year have been analyzed for the determination of oilfield parameters. A sample can have one parameter or more than 100.

Figure 7 represents the number of oilfield-related samples received since tracking began in 2012. It includes data tracking samples for three long-term projects that have spanned multiple years. These include the Blacktail Creek spill (first samples received in January 2015), the Smishek Lake spill (May 2015), and the Ash Coulee Creek spill (December 2016).

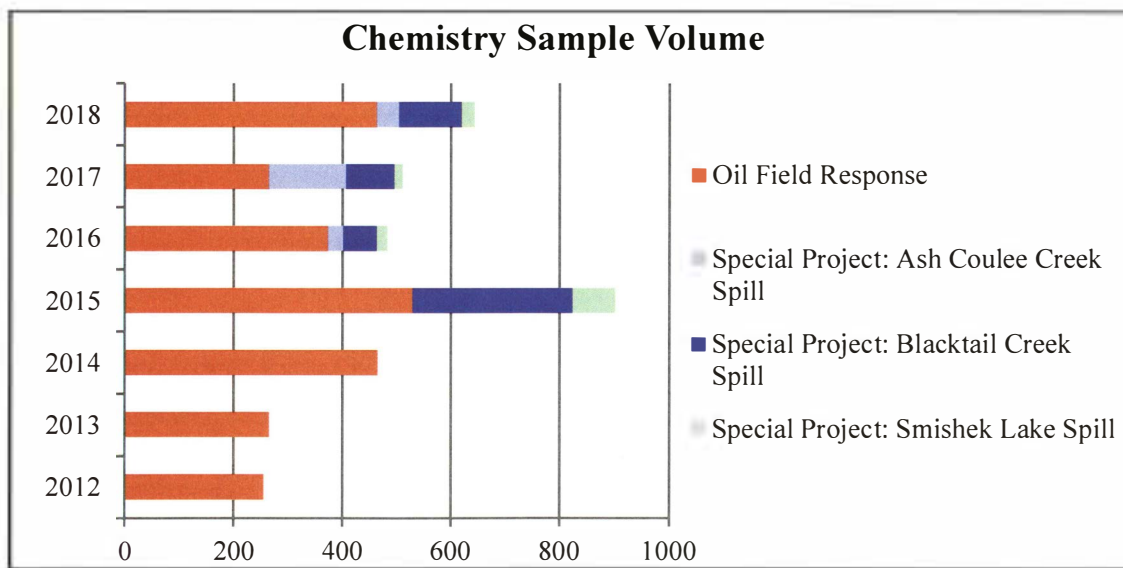


Figure 7. Chemistry Sample Volume

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C. Division of Municipal Facilities

The number of new facilities and compliance challenges may have peaked in 2014 (Figures 8 and 9), but the division continues to find non-approved facilities every year. These are drinking water and wastewater facilities in oil-impacted areas that were never approved for operation. These facilities are challenging to work with, and a considerable amount of time is required to bring these systems into compliance. These are in addition to known facilities that did not meet all construction requirements.

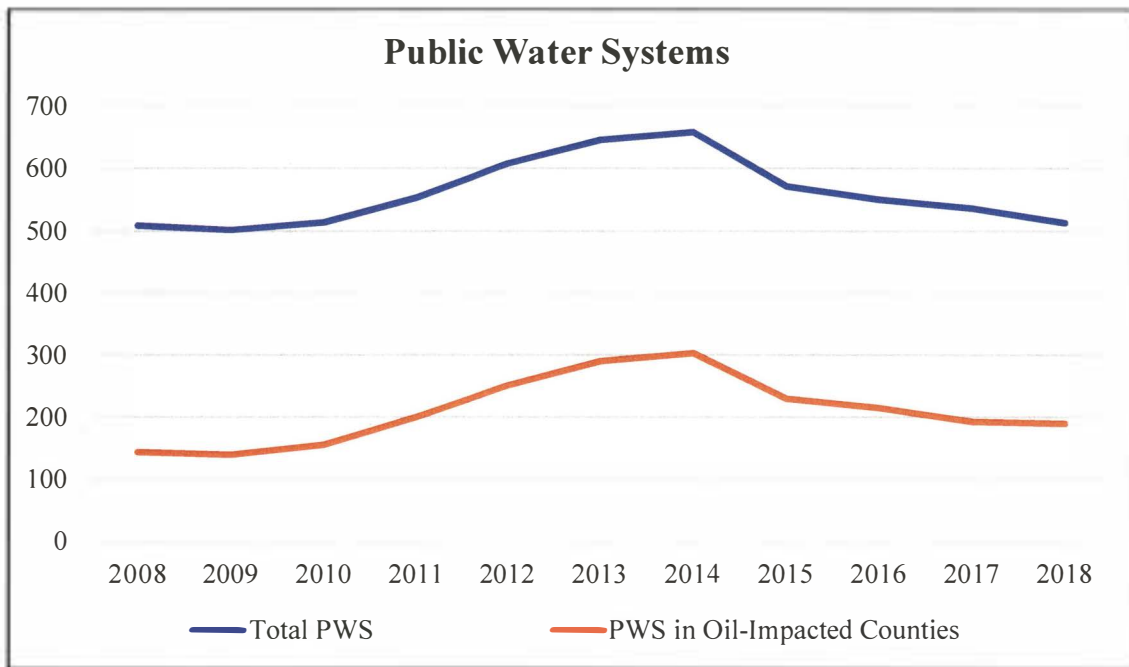


Figure 8. Public Water Systems

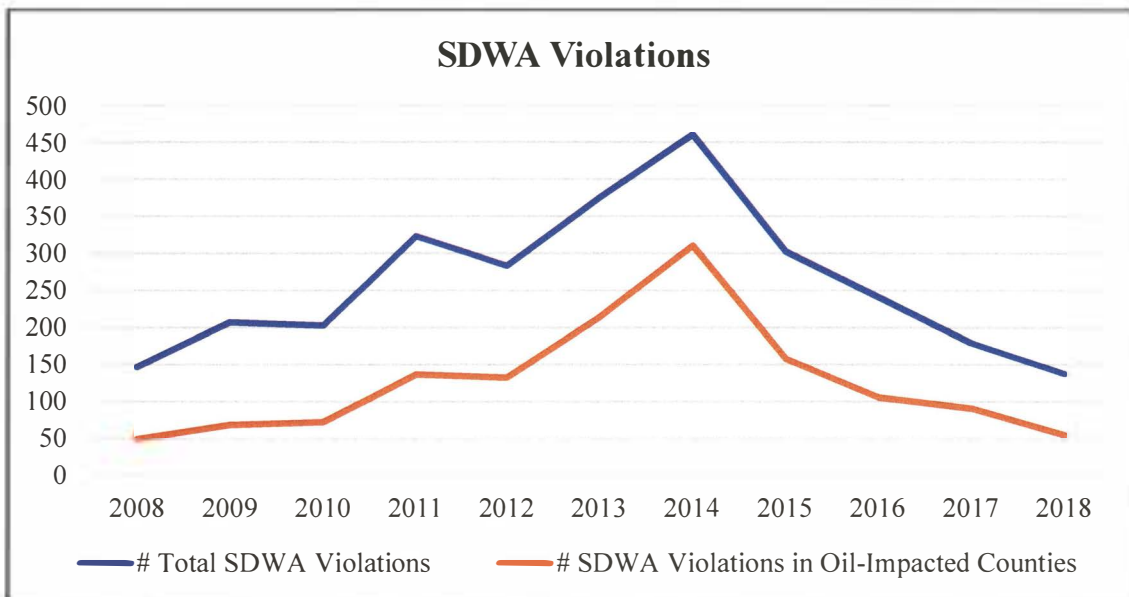


Figure 9. SDWA Violations

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Under state law (North Dakota Century Code 33.1-19), all persons operating water and wastewater systems, with some exceptions, must be certified by the NDDEQ. Figure 10 generally shows decreased numbers of water distribution operators being certified since 2011. This is despite an increased number of operator certification exams being taken as shown in Figure 11. Two principal factors have been responsible for the decrease in certification: (1) operator turnover (certified operators leaving for higher paying jobs in the oilfield); and (2) new systems that do not have a certified operator. Through training and site inspections, the division continues to stress the importance of having a certified operator. In oil-impacted counties, the primary need has been for water distribution operators because most new systems obtain drinking water from other regulated sources (no treatment required) and either haul wastewater to another permitted system or provide on-site wastewater disposal. Compliance with operator certification requirements for water treatment and wastewater collection/treatment also may decrease if more systems choose to develop/treat their own drinking water sources or treat/discharge wastewater.

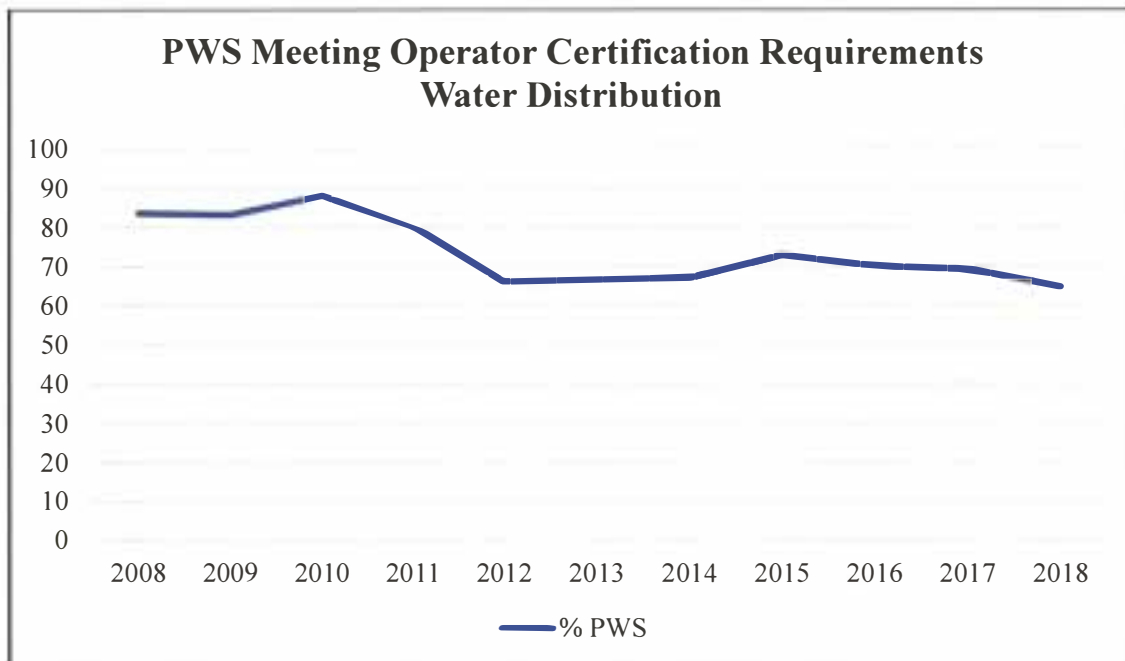


Figure 10. PWS Meeting Operator Certification Requirements - Water Distribution

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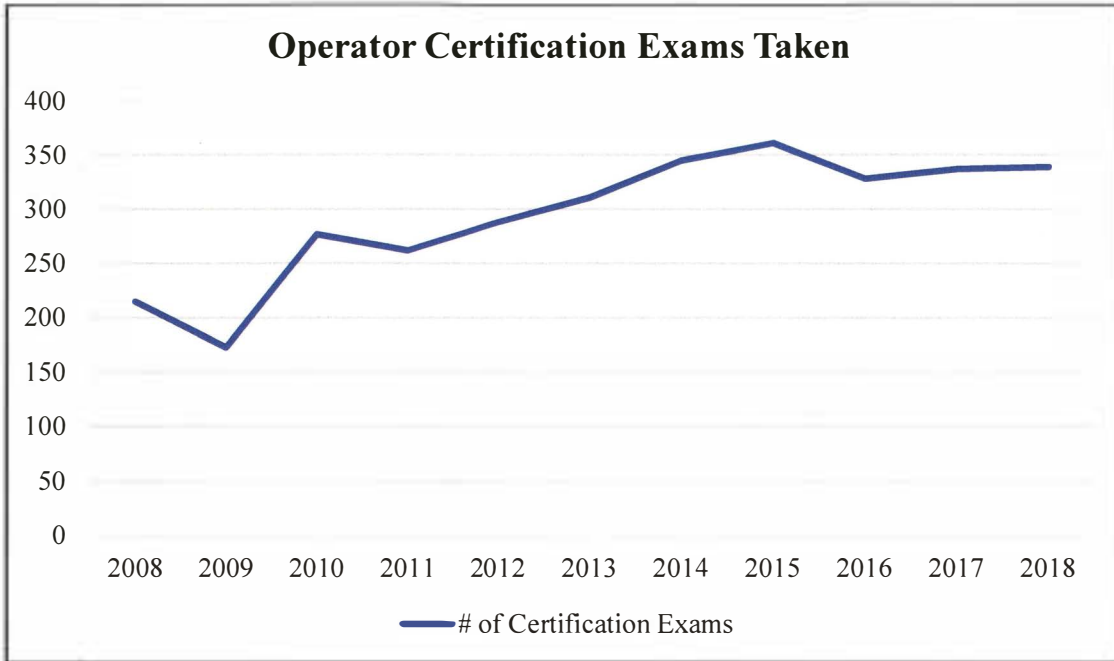


Figure 11. Operator Certification Exams Taken

Figure 12 shows plans and specifications submittals/approvals peaked in 2013, largely due to projects in the oilfield.

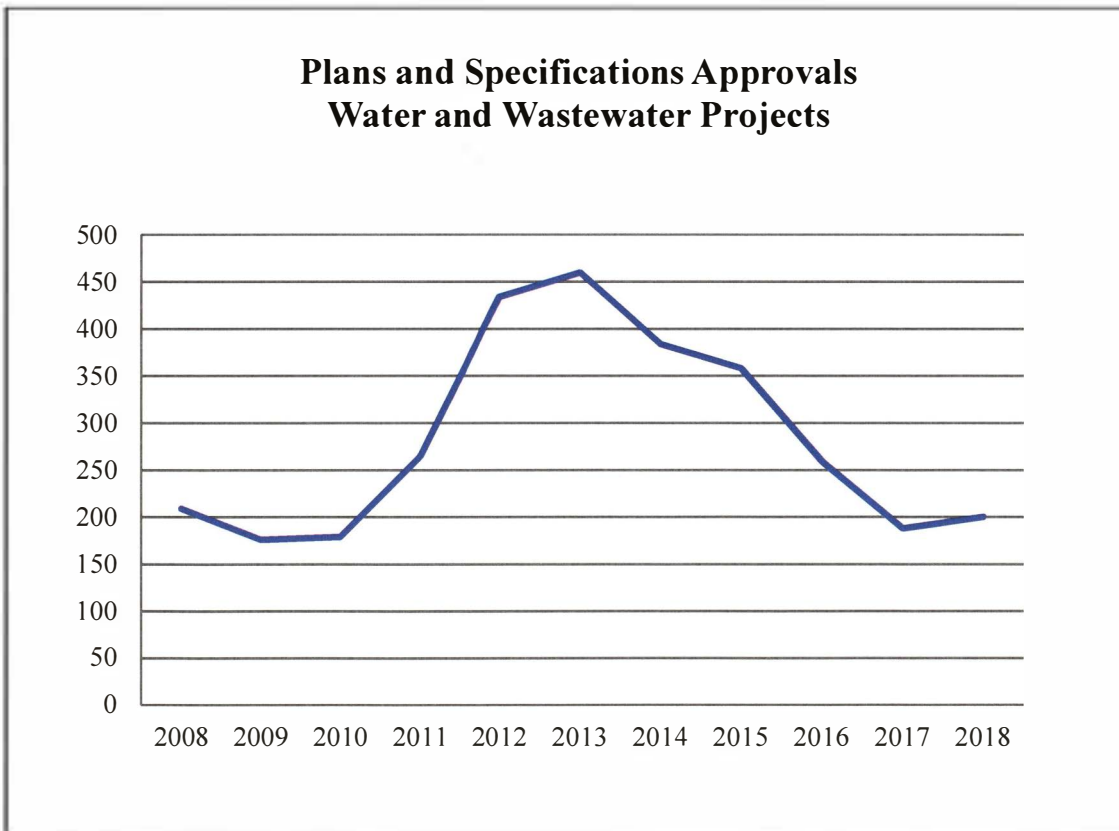


Figure 12. Plans and Specifications Approvals - Water and Wastewater Projects

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Figure 13 shows the number of projects that were built without approval or facilities built that did not meet construction requirements. Many were submitted by out-of-state engineering firms unfamiliar with North Dakota requirements, resulting in extended review time. Others have mechanical wastewater treatment plants and/or large on-site disposal systems which required additional time for review and approval, because they had not historically been used by small facilities. Finally, a number of facilities involved as-built situations for which more time was required to resolve design and construction issues.

Considerable time also is spent evaluating and addressing noncompliant or failing wastewater systems, many of which were built and expanded without local or state approval and which have undergone numerous ownership or management changes.

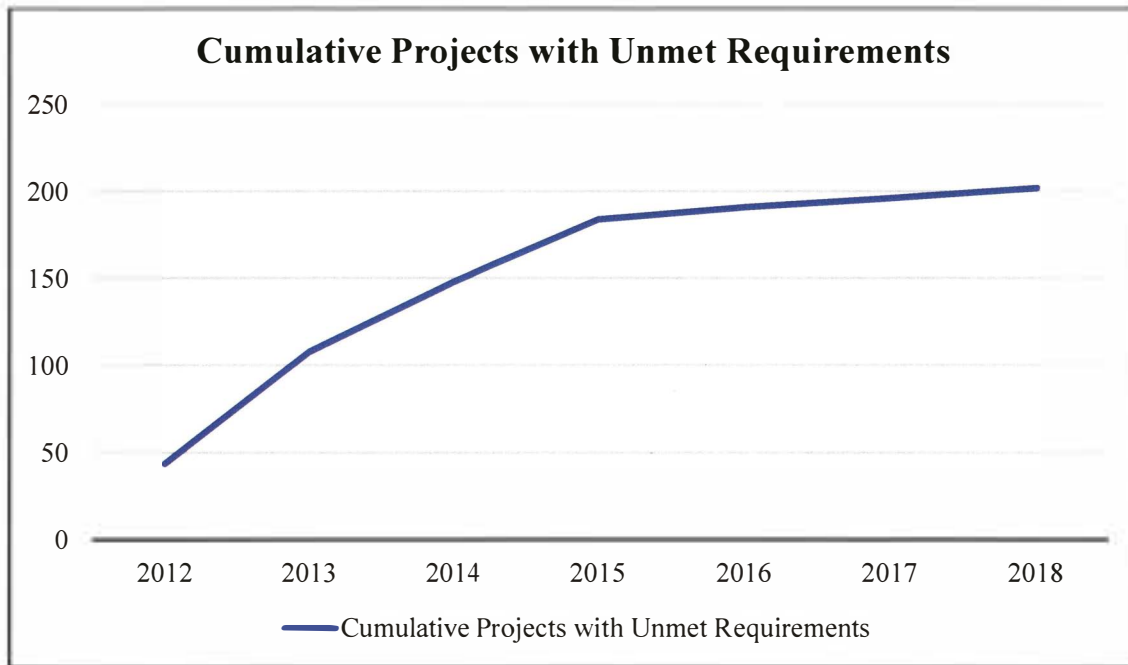


Figure 13. Cumulative Projects with Unmet Requirements

Figure 14 shows the number of projects started each year for the CWSRF and DWSRF programs since 2010. Since 2015, 25 to 30 percent of projects have been in oil-impacted counties. As of November 2018, 43 new loans had already been awarded, and an additional two loans were expected to be awarded yet in 2018. This will result in a high number of SRF projects to implement, increasing workload on top of keeping pace with more technical reviews for non-SRF and oilfield projects.

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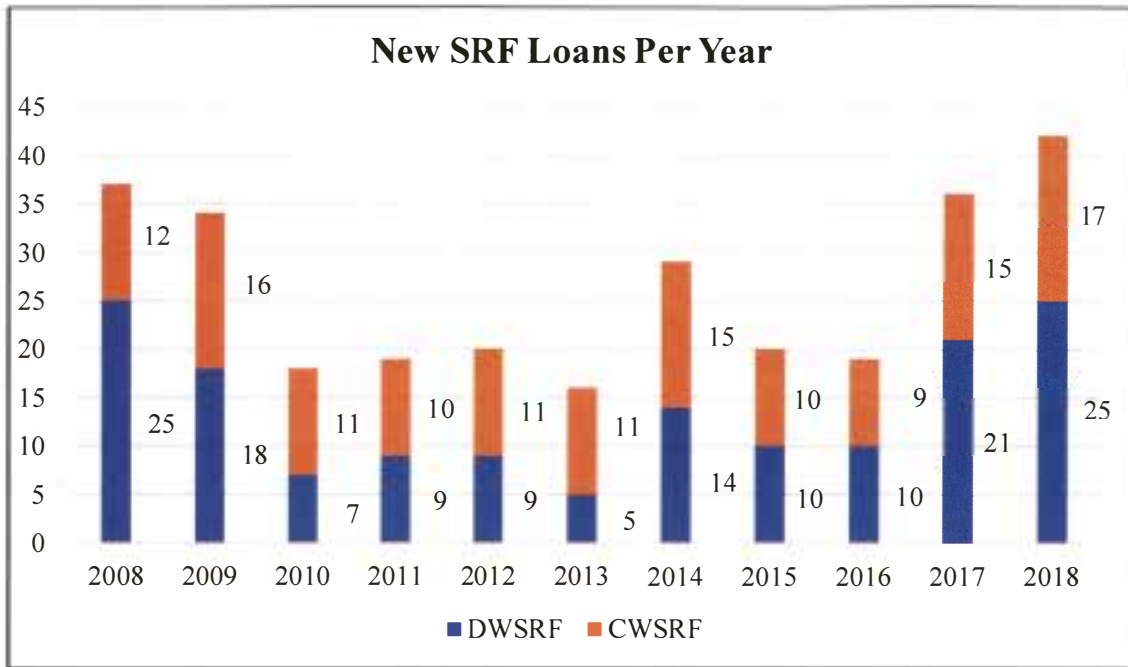


Figure 14. New SRF Loans Per Year

Additional workload impacts to those shown in the above tables include: educating systems on SDWA requirements, implementing/enforcing the requirements, and compliance/technical assistance in addressing SDWA violations; responding to complaints; answering calls and emails about proposals for the reactivation of housing facilities; addressing vendor/engineer inquiries; and attending presentations on alternative wastewater treatment systems and project proposals.

D. Division of Waste Management

Oilfield activity has significantly increased the workload, from facilities directly operated by oilfield-related businesses and from peripheral businesses supporting the increasing general population. There are more oilfield service companies and other support businesses, such as tank manufacturers, generating large quantities of hazardous waste. Even with the slowdown in oil well drilling activity, the service and support companies remain active. There has been no decrease in the number of large quantity generators of hazardous waste or the overall quantity of hazardous waste generated. New gas stations and truck stops are being built or expanded. Both municipal landfills and oilfield special waste landfills are dealing with new types and greatly increased volumes of waste. Figures 15 through 20 show the increase in hazardous waste large quantity generators (LQGs), municipal solid waste (MSW) and special waste landfills, tons of oilfield special waste, number of solid waste inspections, new or expanded underground storage tank (UST) facilities and new waste transporter permits. The division also has three staff members working part-time on the Division of Water Quality spill response team, which requires considerable field work and office follow-up. Figure 22 on page 21 of this report shows spill response numbers.

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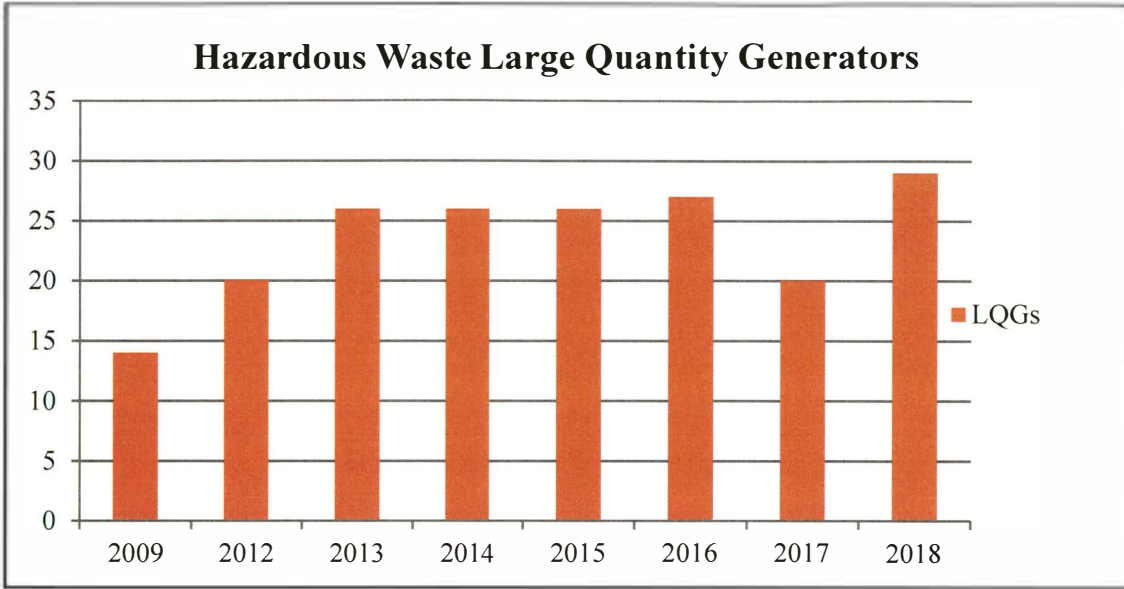


Figure 15. Hazardous Waste Large Quantity Generators

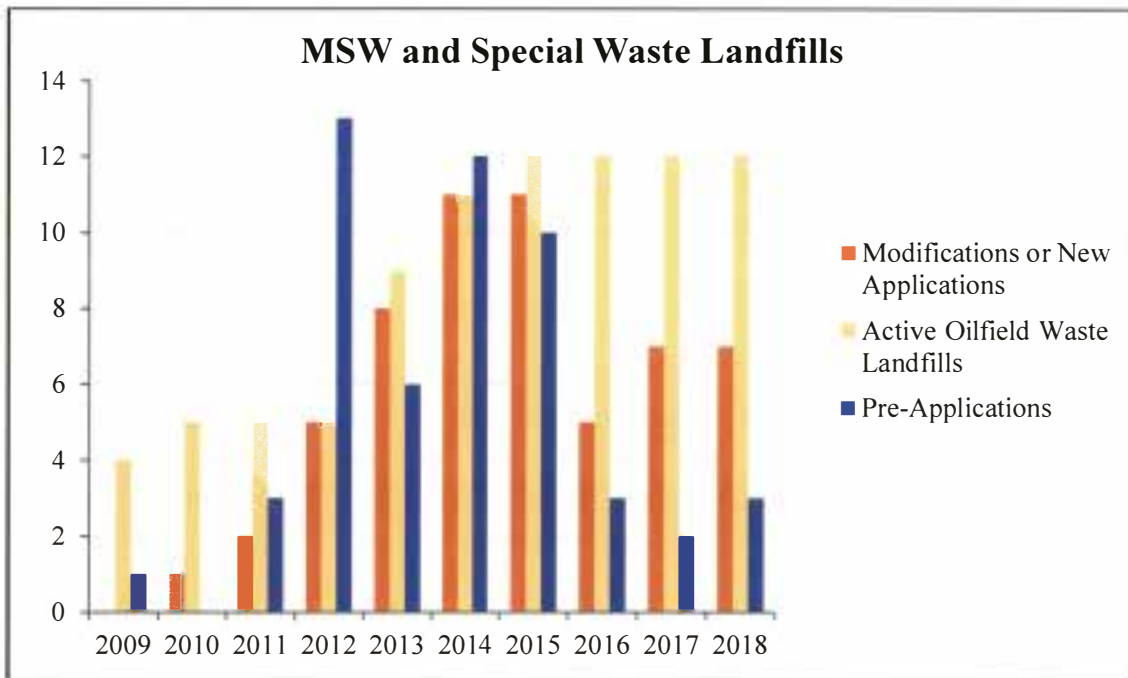


Figure 16. MSW and Special Waste Landfills

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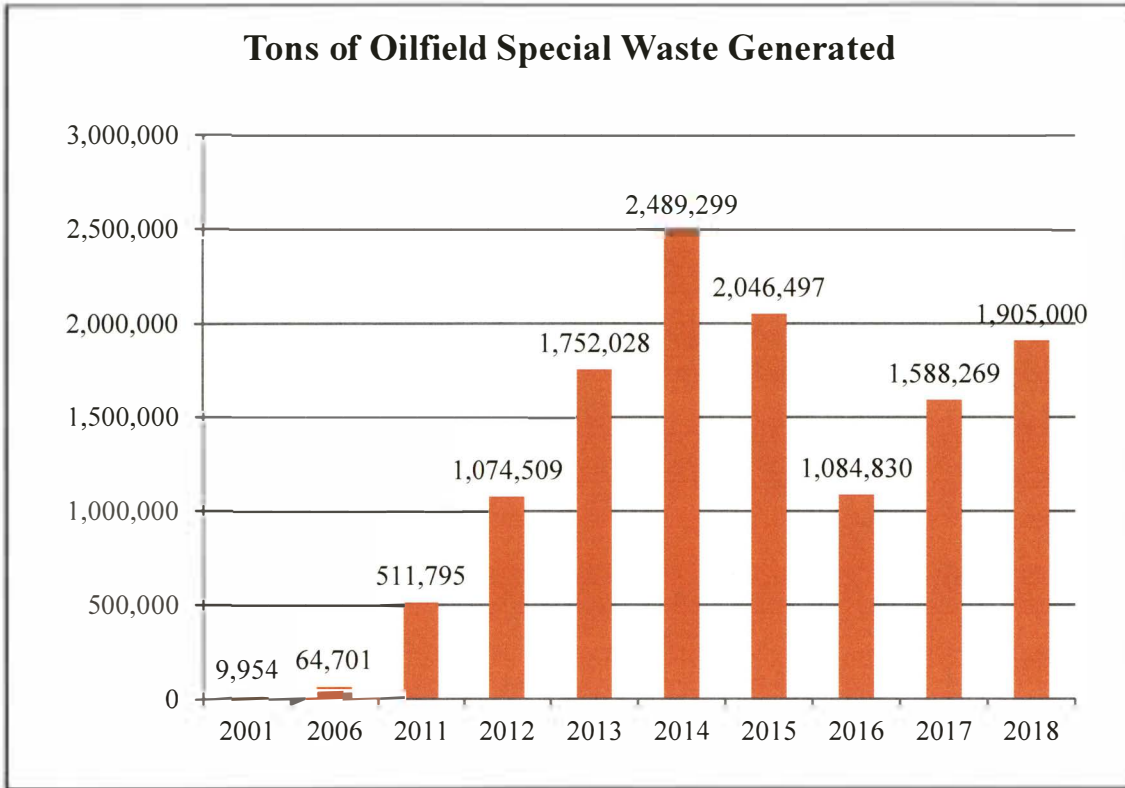


Figure 17. Tons of Oilfield Special Waste Generated

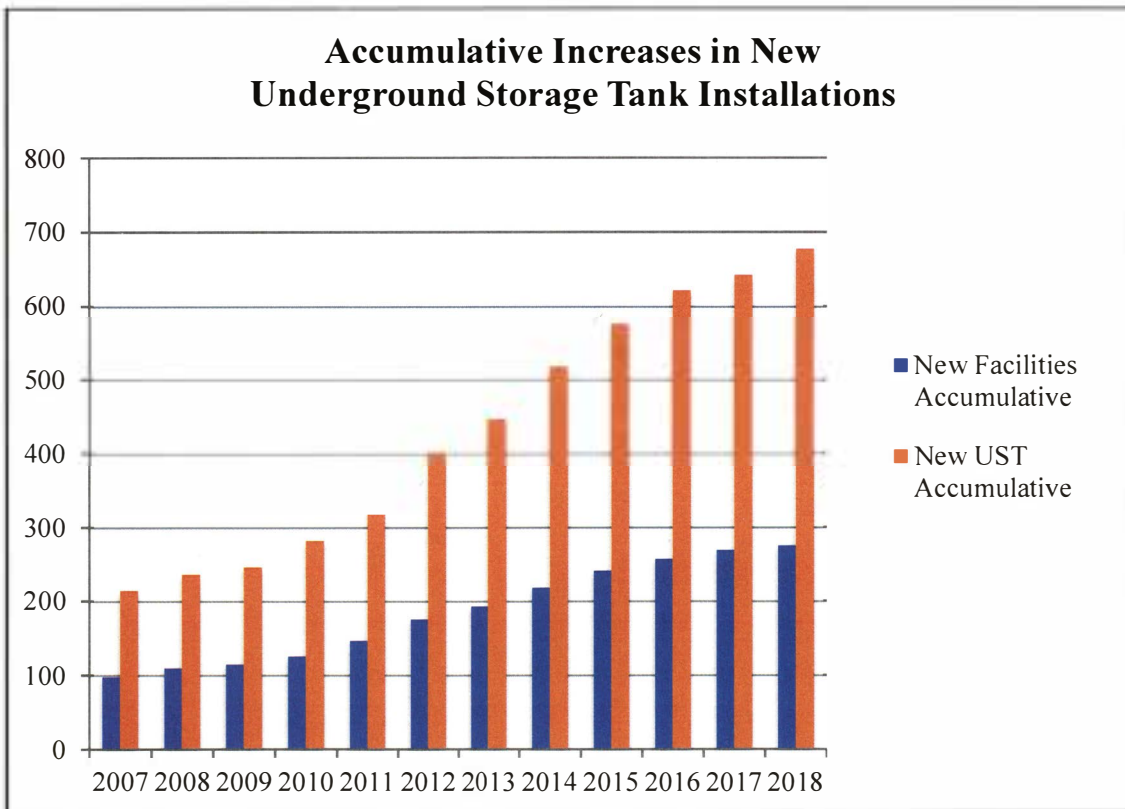


Figure 18. Accumulative Increases in New Underground Storage Tank Installations

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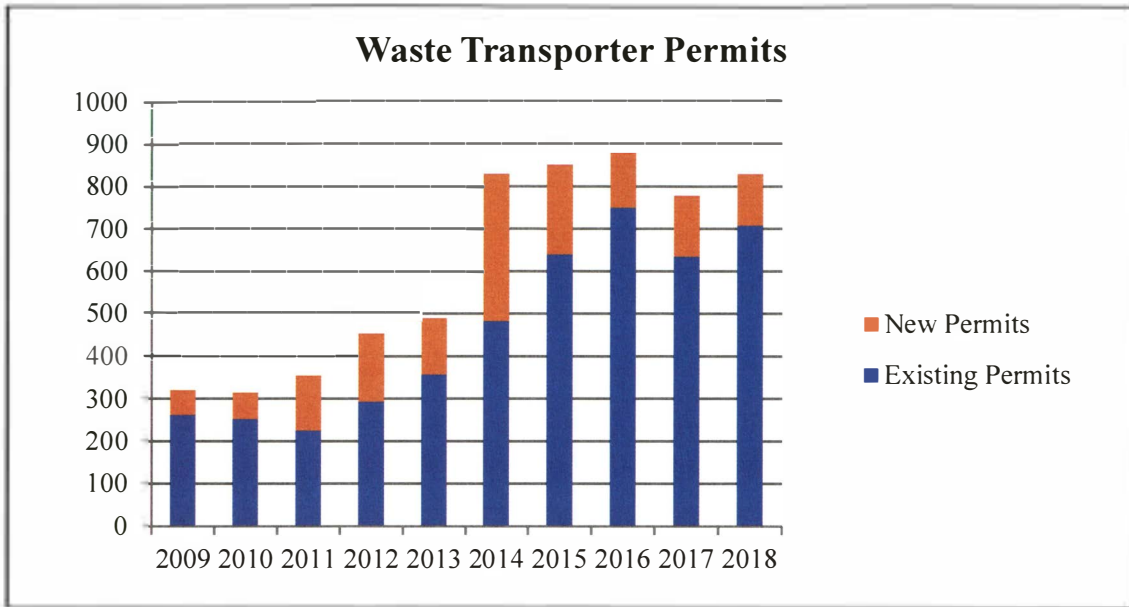


Figure 19. Waste Transporter Permits

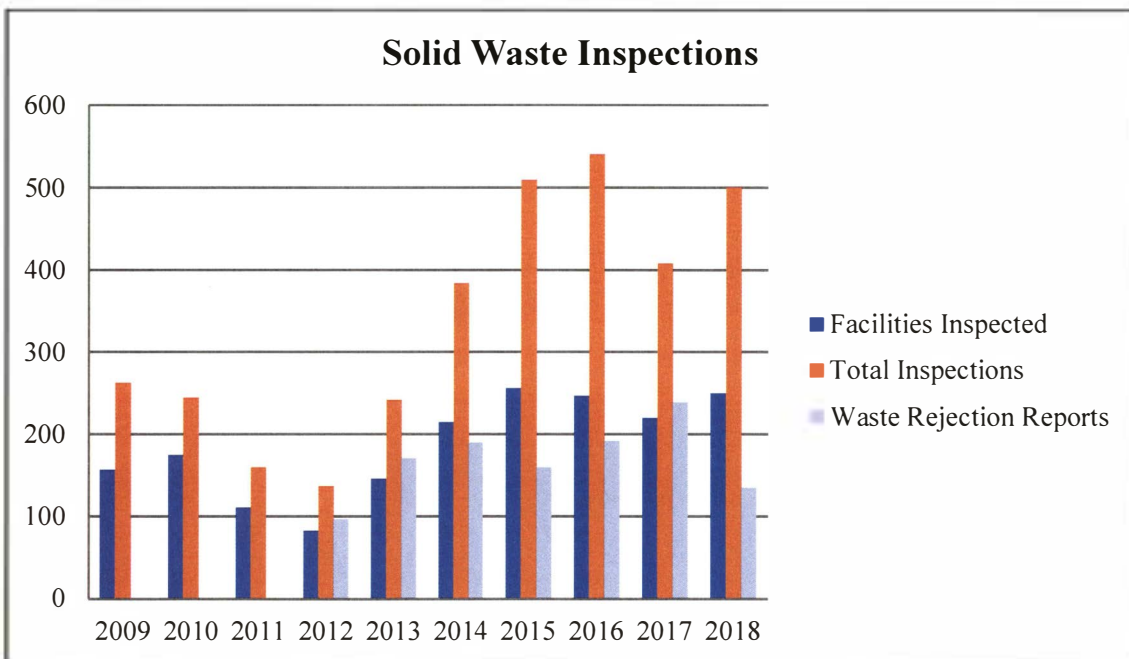


Figure 20. Solid Waste Inspections

Pre-applications and applications for new or expanding landfills continue to be higher than the historical average. During the oil boom, the department saw a significant increase in new permit applications and permit modifications. Although detailed and highly technical, these applications tended to address short-term requirements as they arose. This has now transitioned into applications for modifications and permit renewals focused on long-term strategic planning, including increasing capacity and changing waste streams for today and into the future. Many of the applications received are those that were put on hold by applicants during the boom to see how the industry would develop before committing resources

toward design. Applications, which can be more than a thousand pages in length, are subjected to a thorough review (requiring expertise in soils, hydrogeology, plant science and engineering). The high numbers of reviews continue to put pressure on the Solid Waste Program as workload and staffing are prioritized.

At the same time, there is an increased need for inspections at the existing facilities and site visits to the new facility locations, which also takes significant staff time. This has resulted in a backlog for inspections and permits for other regulated solid waste facilities around the state. All of the programs in the Division of Waste Management have been affected by oilfield activities, but the Solid Waste Program has been affected the most.

In 2016, permits for 12 oilfield and industrial waste landfills were modified by the Solid Waste Program to include additional waste screening and waste sampling provisions. The Solid Waste Program conducted 540 inspections of 247 facilities and followed up on 192 reports of prohibited waste rejected by solid waste disposal facilities. Three pre-application reviews were completed for expansions of municipal solid waste landfills in 2016.

In 2017, two pre-application reviews were completed for expansions of one oilfield/industrial waste landfill and one municipal solid waste landfill. The Solid Waste Program conducted 406 inspections of 220 facilities and followed up on 239 reports of prohibited waste rejected by solid waste disposal facilities.

By the end of June 2018, the Solid Waste Program had conducted 200 inspections of 104 facilities and followed up on 93 reports of waste rejected by solid waste disposal facilities due to prohibited waste (including potential radioactive materials).

In 2016 and 2017, the division issued a contract with the Upper Missouri District Health Unit and McKenzie County for up to \$100,000 from the Abandoned Auto Program Fund to address the problem of campers, trailers and mobile homes abandoned due to the decline in oilfield activity.

An entirely new issue arose during the Bakken oil boom regarding the generation and proper management of Technologically Enhanced Naturally Occurring Radioactive Material (TENORM). TENORM is low-level radioactive waste that is generated primarily in oilfield exploration and production activities. It includes materials such as filter socks, tank bottom sludge and pipe scale. Responding to illegal dumping and improper management incidents has taken considerable staff time, as TENORM is a major concern of the public. The division is overseeing rejected waste loads at landfills and the cleanup of illegal dump sites, although the number of incidents has decreased since implementation of requirements for TENORM waste containers on all well sites. The division worked with Argonne National Laboratory to study the risks to oilfield workers and the general public. New administrative rules regarding the proper handling, recordkeeping, reporting and disposal of TENORM were approved and are being implemented. Three landfill applications for managing TENORM have been received for review.

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E. Division of Water Quality

Spill Investigation Program

This program is primarily responsible for responding to spills with the potential to impact waters of the state and following up on appropriate remediation. The program handles two different types of spills: oilfield and non-oilfield related. Of the spills that have been reported since January 1, 2017, there are currently less than 20 oilfield-related spills and less than 20 non-oilfield related spills awaiting initial inspection. Between January 1, 2017 and June 30, 2018, the program reviewed 2,170 total spills and has responded to 935, assigning the rest to other agencies. Of the 935, there are 391 that need additional on-site follow-up. It is estimated that between July 1, 2018 and December 31, 2018, there will be approximately 737 spills reported. Spills with the greatest potential to adversely impact the environment are evaluated as soon as possible. As the number of oil and gas facilities increase, the potential for the number of spills is expected to increase as well. Figures 21 and 22 illustrate the change in number of spills reported and the response by staff for each calendar year.

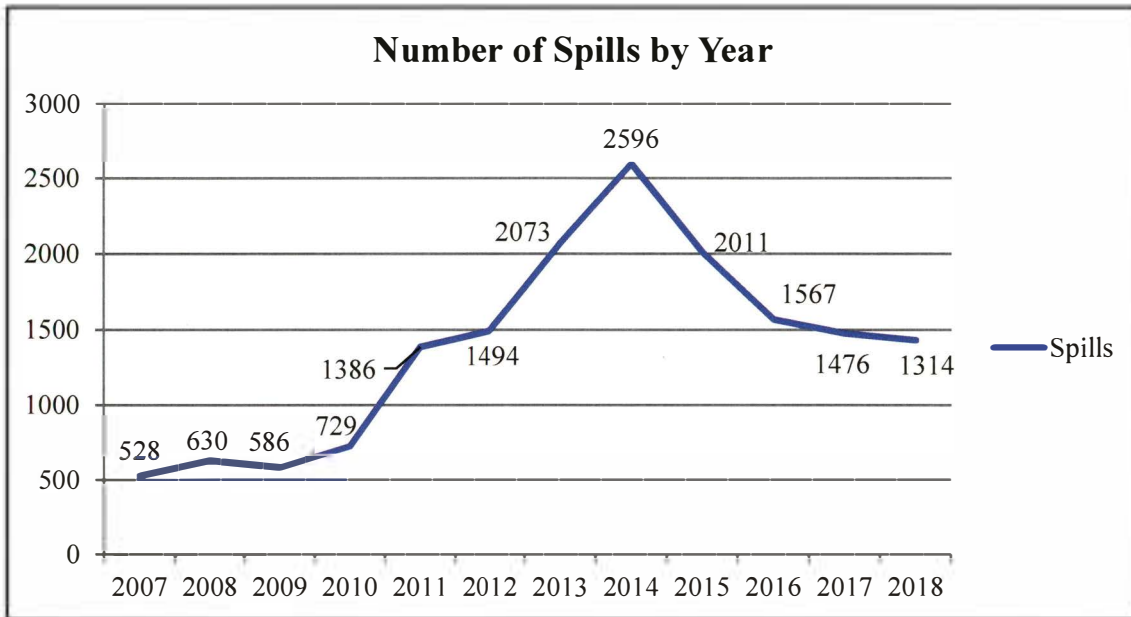


Figure 21. Number of Spills by Year

(In 2017, the reporting threshold was raised from 1 to 10 barrels for oil and brine releases that remain on oil production sites built after 2000.)

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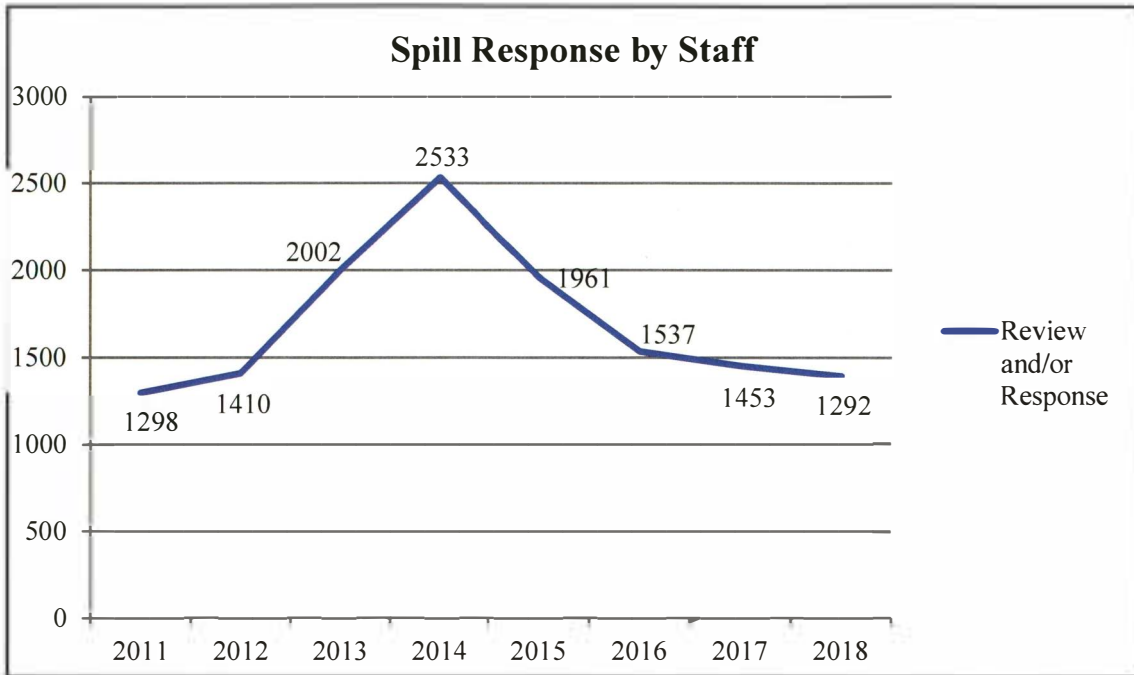


Figure 22. Spill Response by Staff
(Response may include several actions such as review to determine if follow-up is necessary, phone conversations and inspections.)

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NDPDES Permits Program

There is an ongoing demand for the issuance of all permits. Most remarkable is the continued high demand for septic pumps (Figure 23). This permitted group maintains roughly a 218 percent increase in permits from pre-oil boom numbers.

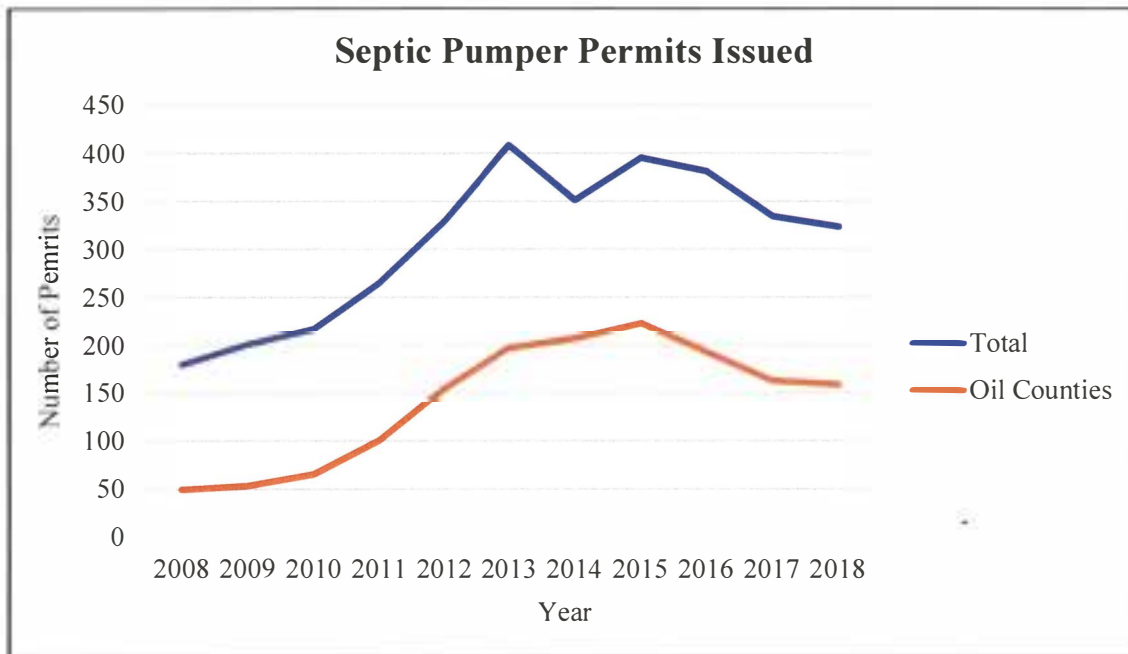


Figure 23. Septic Pumper Permits Issued

Except for septic pumps, all of the following permits issued are federally required:

- Construction stormwater
- Dewatering and hydrostatic testing (including pipelines and tanks)
- Industrial stormwater
- Wastewater general permits (typically small domestic wastewater treatment facilities)
- Wastewater individual permits (typically major municipalities and industries)

It should be noted that some of these permit types now cover permanent facilities which require more oversight to maintain permit compliance.

The overall increase in permits has resulted in additional inspections and response to complaints in all areas. This is especially true for septic pumps, stormwater controls, and crew camp and hauled wastewater treatment facilities. The numbers of new permits have stabilized as demonstrated for stormwater construction permits in Figure 24. However, issues like abandoned facilities (e.g., RV campgrounds with lagoon systems) that may need cleanup must still be addressed.

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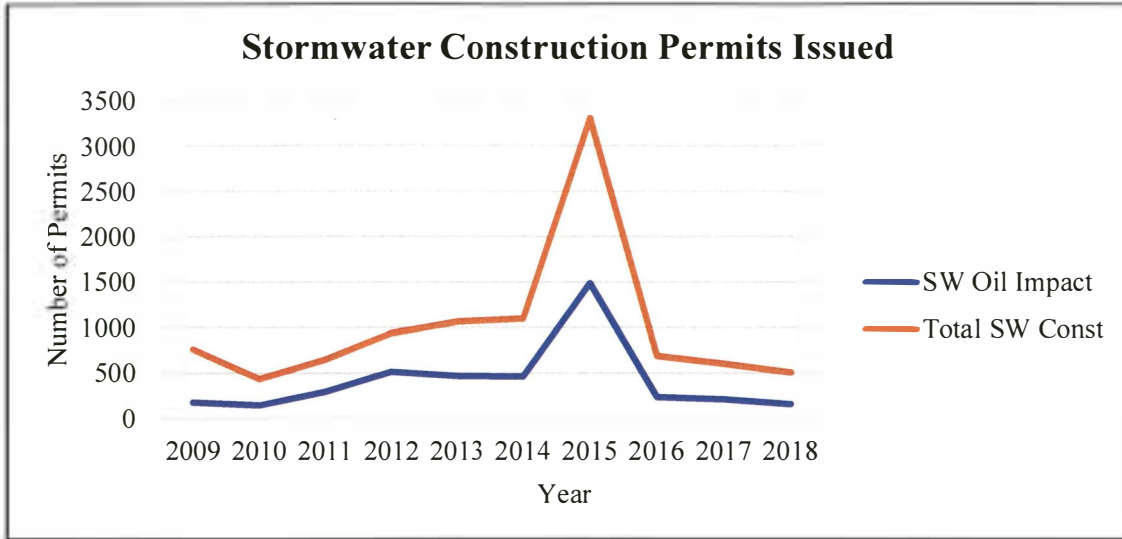


Figure 24. Stormwater Construction Permits Issued

As the oil and natural gas industry continues to grow, there is increased interest in petrochemical manufacturing and the mining of produced water. Because of their complexity, facilities engaged in these activities will require highly trained staff to issue permits in a timely manner.

Retaining well-qualified staff is essential to the success of this program.

Ground Water Protection Program

The oil boom has significantly increased the water appropriation applications received by the State Water Commission for review (Figure 25), primarily related to industrial uses of ground water. Approximately 50 water appropriation permit reviews were completed in 2017, and it is estimated that 62 reviews will be completed in 2018.

Figure 25 also shows significant impact on the UIC Program. The number of potential UIC sites (crew camps, oil service companies, vehicle repair businesses, etc.) continues to increase. In 2015, it was estimated that about 325 businesses in western North Dakota had Class V wells and therefore required inspection. Available staff was able to inspect approximately 35 facilities in 2015. In 2016, it was estimated about 350 facilities warranted inspection, and it is estimated approximately 250 facilities will warrant inspections by the end of 2018. The program has responded to many requests for information about Class I injection wells and is in the process of permitting one Class I well. Two new Class I wells are projected for permitting in 2018. Several proposed oilfield waste disposal sites are also considering Class I wells, and some facilities are evaluating injection of treated wastewater as a disposal option.

The number of public water systems in the oilfield has significantly increased, and each system requires the completion of a Wellhead Protection Area report. This report includes the delineation of the protection area, completion of a contaminant source inventory and a susceptibility analysis (Figure 26). In 2016, 17 non-community water system reports were updated and reports for two new water systems were completed. Eight non-community water system and 29 community water system reports were completed in 2017. It is estimated that 10 non-community and 30 community water system reports will be updated, and one report for a new water system will be completed in 2018.

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A significant number of calls have come from the public related to sampling of private wells (e.g., how to sample, where to send samples, what to analyze, perceived impacts to wells, etc.). Workload related to facility siting reviews (e.g., municipal and special waste landfills, pipelines, concentrated animal feeding operations, wind farms, power transmission lines, well pads, construction sites) has increased significantly (Figure 26). Forty-six facility siting reviews were completed in 2016, 267 reviews were completed in 2017, and it is estimated that 250 reviews will be completed in 2018.

The Western Ground Water Monitoring Program was implemented in 2013 to evaluate ground water conditions in selected aquifers within the oil-producing areas of northwestern North Dakota. Approximately 135 observation wells in 20 aquifers are sampled as part of the Western Program. The initial round of sampling was completed between fall of 2013 and 2015. Sampling is currently being conducted on a 1.5-year rotation; approximately 45 wells are sampled each spring and each fall. Based on the results obtained as the sampling program progresses, wells may be added or deleted from the sampling program. The Western Program is conducted separately from the Agricultural Ground Water Monitoring Program that was implemented in 1992.

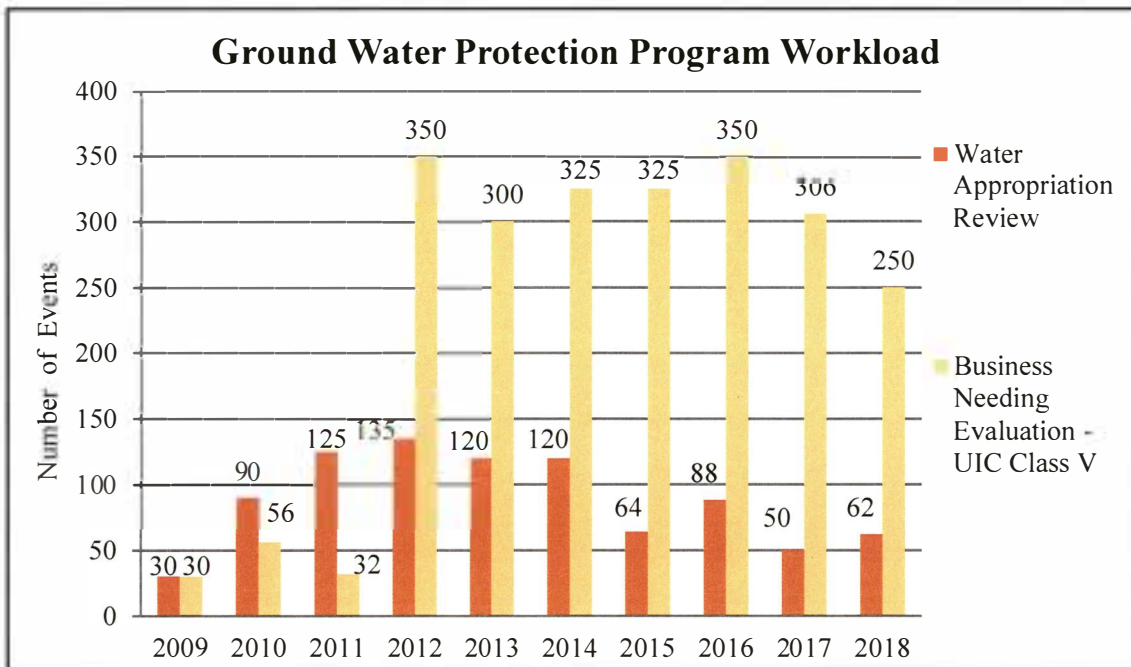


Figure 25. Ground Water Protection Program Workload (2009-Present)

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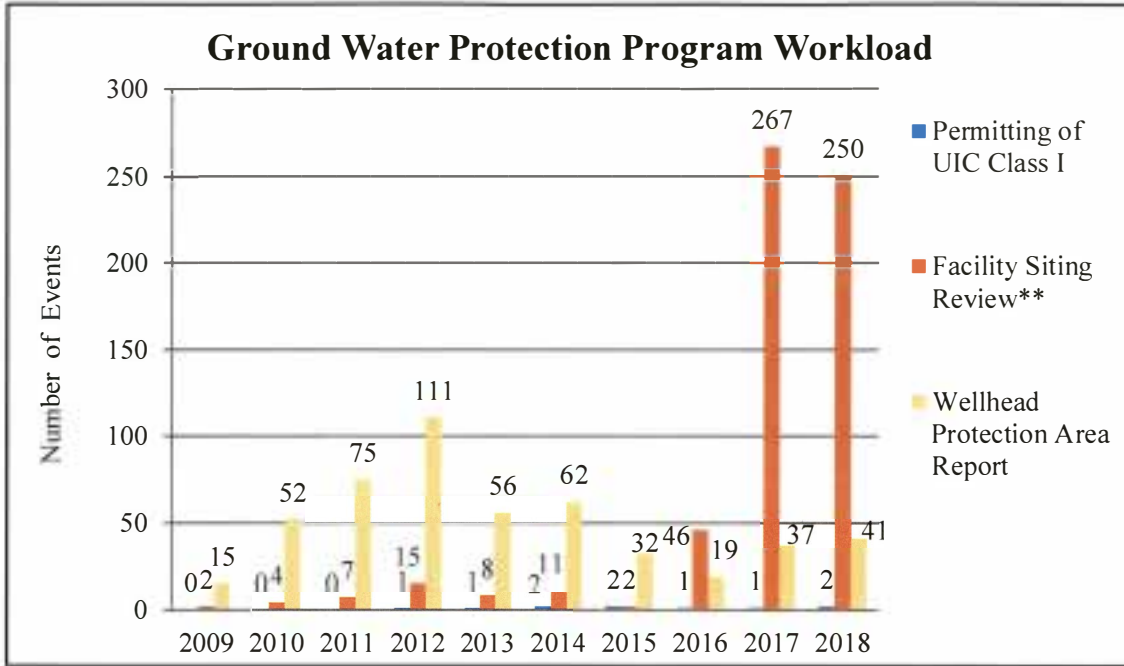


Figure 26. Ground Water Protection Program Workload (2009-Present)
 (**Reflects change in types of sites reviewed.)

Figure 27 shows formal enforcement actions relating to violations of environmental statutes from 2010 to date. Enforcement actions require considerable staff time relating to case investigation, technical evaluation, monitoring and compliance reviews.

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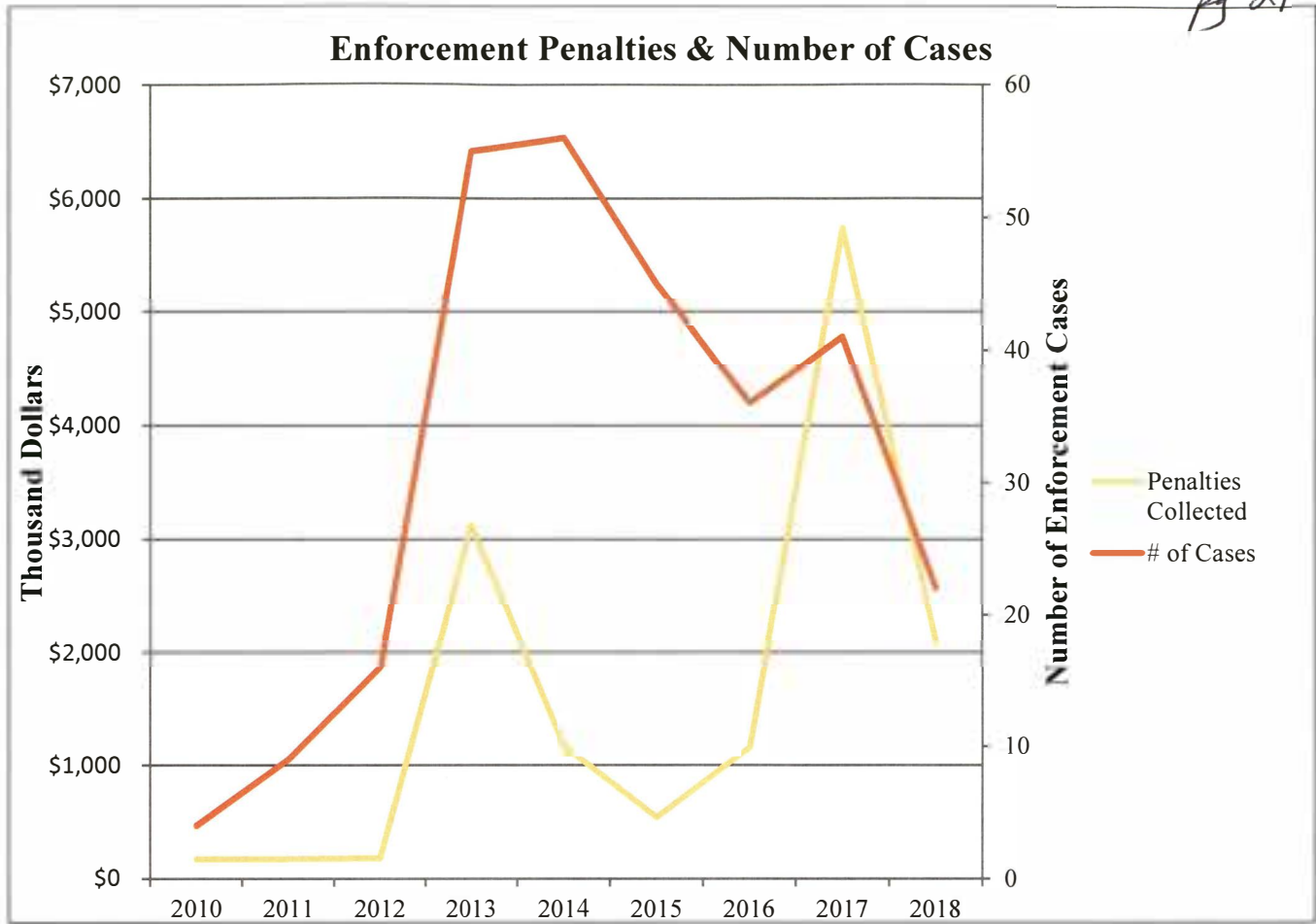


Figure 27. Enforcement Penalties and Number of Cases

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III. Current Needs

North Dakota is known nationwide as a large oil- and gas-producing state, and this has resulted in increased open records requests from across the country. Many of these requests are broad in scope and take additional staff time to compile. In 2017, there were 279 requests, and in 2018 it is estimated there will be more than 250. These requests take considerable time to fulfill, and nearly all the divisions have the common need for additional resources to address the many requests.

A. Division of Air Quality

Given the increase in both workload and complexity of the rules and regulations implemented and enforced by the division, additional resources will be required to hire and retain qualified staff. Training staff to be competent and have the required knowledge base to regulate effectively takes two to three years. Resources also will be needed for equipment to enhance air quality monitoring (e.g., FLIR infrared camera, flame ionization detector, analyzers for ambient air quality, robust database, etc.).

B. Division of Chemistry

The division is requesting new equipment to replace or upgrade existing instrumentation. This will allow the division to keep up with emerging methods and technologies that can improve efficiency and effectiveness.

C. Division of Municipal Facilities

The division continues to experience increases in workload due to oilfield development activities. The increased workload is compounded by implementation of new and revised SDWA and State Revolving Loan Fund (SRLF) Program requirements; heightened community interest in using the SRLF programs for financial assistance to address infrastructure needs; and stagnant or reduced federal funding which impacts the division's ability to maintain state delegation for its programs. These challenges are not short-term but long-term.

D. Division of Waste Management

Oilfield development and established oilfield activities continue to impact the work focus of the division. Solid waste management facilities are expanding their operations in response to increased population and industrial activity. Some landfills are looking to accept additional waste streams, including industrial and TENORM wastes. At the same time, there is a push to develop programs due to new federal regulations or requests from the regulated community for clarity and consistency. Existing facilities will continue to require oversight to ensure long-term compliance. Staffing pressures are likely to continue to increase. Future needs will capitalize on efficiencies through applying IT solutions to current data collection management methods. Expansion of database capability is needed to accommodate Freedom of Information Act requests. The ability to manage permit applications and landfill waste rejection reports through electronic reporting systems will need to be developed.

E. Division of Water Quality

The Division of Water Quality continues to address both current and past spills to ensure appropriate cleanup. Continued oversight of ongoing remediation projects will require the retention of existing trained staff and the training of replacements due to turnover. Enforcement actions and field/permitting activities will be prioritized.

Budget Overview

Good morning Chairman Holmberg and members of the Senate Appropriations committee. I am Brenda Weisz, Chief Financial Officer for the Department of Health and serve in the same capacity for the Department of Environmental Quality (DEQ). The information before you will provide a budget overview of the funding included in HB 1024, the appropriation for the DEQ. I will first address the base budget for 2017-2019, walk you through the budget changes to arrive at the Governor's Recommendation, discuss the changes made by the House Appropriations Committee and close with a final summary.

2017-2019 Base Budget

The department pursues its goals and objectives by working closely with federal, state, and local governments, along with private industry and agriculture, to safeguard the quality of North Dakota's air, land and water resources. The base budget is comprised of the Director's Office and five divisions: Air Quality, Chemistry Laboratory Services, Municipal Facilities, Water Quality and Waste Management along with 152.50 FTE.

The base level budget reflected in HB 1024 is the first time a separate budget has been prepared for the DEQ. Previously, this budget was reflected as the Environmental Health Section within the Department of Health. During the 2017 Legislative Session, SB 2327 established the DEQ. While DEQ will be a separate state agency, the Department of Health will continue to provide shared services comprised of the following: accounting, budgeting, contracting, federal grant review, payroll and human resources/personnel management.

In addition, the 2017-2019 appropriation for the DEQ did include one-time costs of \$500,000 from the Strategic Improvement and Investment Fund for legal challenges against the Environmental Protection Agency (EPA). To date, we have expended just over \$110,000 toward those legal challenges.

2019-2021 Budget Changes as Recommended by the Governor

In April 2018 the Governor released budget guidelines requesting the DEQ to submit a 90 percent general fund budget, a 90 percent special fund budget, and a 5 percent reduction in FTE as a starting point in the budget process. Below is an overview of the net effect of the budget changes made to the 2017-2019 base budget to arrive at the Governor's recommended budget for the 2019-2021 biennium.

FTE

- Reduces 3.0 FTE for funding associated with positions equivalent to a 1.0 Administrative Assistant, a 1.0 Office Assistant, and a 1.0 Legal Assistant as we look for efficiencies throughout our administrative functions - \$365,500 total funds. This staffing proposal was supported by the House.
- Reinstates 4.5 FTE including 3.5 Environmental Scientists and 1.0 Environmental Engineer, which were initially submitted as part of the budget plan to reach the goals identified in the budget guidelines.

These FTE are responsible for the following:

- reviewing and approving permit applications and licenses pertaining to facilities in the oil field;
- conducting landfill inspections and assisting with oil field waste issues;
- conducting inspections of new/modified water and wastewater system infrastructure;
- providing technical assistance pertaining to oil field issues; and
- providing follow-up assistance to oil spills.

With oil activity on the uptake and the need to continuously monitor oil impact activity along with the responsibility for spill response, these positions vital in getting the work done, are included in the Governor's Recommendation.

These FTE were supported by the House.

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- Reinstates \$125,000 of the Operator Certificate Training Program. The program provides reimbursement to small drinking water system operators in North Dakota. These systems serve less than 3,300 people and the financial assistance has been a key factor in maintaining the high compliance rate (above 95 percent) of public water systems state-wide with health-based standards under the Safe Drinking Water Act. A budget reduction of \$180,000 was initially submitted as part of the budget plan to reach the goals identified in the budget guidelines. This program was supported by the House.
- Includes funding to extend grants from the Volkswagen Trust Settlement Fund. On October 2, 2017, an environmental mitigation trust was finalized as part of the nationwide Volkswagen Settlement. With the Settlement, funding is available to all states to mitigate negative air quality impacts caused by Volkswagen's use of emissions testing defeat devices in vehicles sold and operated in the U.S. The devices violated the Clean Air Act and increased emissions of nitrogen oxide (NOx). North Dakota's share will be approximately \$8.125 million to reimburse eligible and awarded projects over the course of the project up to 10 years. To receive funding, a state must outline the mitigation actions planned to reduce NOx emissions. The Governor's Office has appointed the North Dakota Department of Environmental Quality (DEQ) to develop and implement a mitigation plan. The plan must be based on the list of eligible actions to reduce NOx emissions as identified in the settlement agreement and provide the greatest air quality benefit. A copy of the mitigation plan, as well as other Volkswagen Settlement information, can be found at <https://deq.nd.gov/AQ/planning/VW.aspx>. Total amounts reflected in the Governor's Recommendation includes \$5.4 million special funds. This level of funding was supported by the House.
- Includes the transfer in administration of the Petroleum Tank Release Fund from the Insurance Department to the DEQ. The Governor's Recommendation includes the addition of two FTE and related

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- operating expenses to administer this fund and provide oversight and enforcement of the current requirements outlined in statute, along with \$575,000 in special funds. This transfer from the Insurance Department was supported by the House.
- Adds funding and 10 FTE for the DEQ to assume primacy over the Quad O and Quad Oa federal air pollution programs. This appropriation is contingent upon approval from the federal Environmental Protection Agency. The program includes the following costs: salaries and wages - \$890,000 from the general fund for 10 FTE effective July 1, 2020; operating expenses - \$399,000 with all but \$40,000 from the general fund; and \$1,000,000 special funds under the capital line item for air pollution equipment and a database tracking system for the program. This amount, along with one-time computer purchases and other office equipment included in the operating expenses for the 10 FTE, are funded from the strategic investment and improvement fund and reflected as one-time funding for the 2019-2021 biennium in HB 1024. The House supported the addition of these programs at the level of funding proposed.
 - Incorporated IT Unification by moving salary funding to the operating line and shifting 1.0 FTE to ITD. The goal of this change is to better meet current and future technology and security needs in a unified approach - just over \$200,000 was moved from salaries to operating. The House did not support IT unification, reinstated the FTE and moved funding from the operating line back to the salary line.
 - Incorporated the executive compensation package of a 4 percent and a 2 percent salary increase for years one and two, respectively, in addition to covering the increased cost in health insurance and a 1 percent increase in the state's share toward the retirement contribution - \$1.87 million total funds; \$637,000 general fund; \$800,000 federal funds; and \$432,000 special funds. The House supported a compensation package of 2 percent salary increase each year of the next biennium, the

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- grandfathered health insurance plan, and does not reflect the 1 percent increase in the state's share toward the retirement contribution.
- Adds funding for Microsoft 365 functionality for all staff - \$85,000, which was supported by the House.

For your reference, Attachment A identifies the specific reductions submitted to meet the budget guidelines of a 90 percent general fund and a 90 percent special fund budget.

Finally, the Governor's Recommendation also included flexibility in the 2019-2021 biennium first by providing the ability to accept additional federal or other fund revenue should such funding become available. There are times during the biennium when the total grant amount we have estimated and built in the budget for a specific grant is awarded at an amount different than anticipated. This flexibility would have allowed for the department to immediately accept the grant funds. This option will become increasingly important with the separation of the DEQ and the Department of Health. When both agencies were combined as one agency, we had a larger base from which to manage federal and other authority. Additionally, flexibility was proposed for the ability to transfer between line items up to ten percent of the total appropriation. This flexibility is beneficial when contracting and issuing grant awards. When building the budget, an estimate is used to determine whether the funds will be extended as a purchase of service contract which is funded in the operating line item, or whether the funds will be extended under a grant award which is funded in the grants line item. Should circumstances change from the time the budget was built to the time the funds are extended, the inability to move between line items causes inefficiencies. In the past, this flexibility has been extended to other state agencies or areas of government such as the Legislative Assembly, the Judicial Branch, the Department of Transportation and the Department of Human Services. To date, I do believe the flexibility has been appreciated and used appropriately. The House did not support either component of flexibility.

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Summary of Adjustments made by the House Appropriations Committee

The House Appropriations Committee supported the budget recommendation presented by the Governor with the exceptions or specific changes noted below:

- Modifies the executive compensation package to reflect a 2 percent increase for state employees each year of the biennium, providing health insurance under the current plan, and foregoing the increase in the retirement contribution by the state.
- Reverses the adoption of IT Unification by restoring the FTE and moving funding from the operating line back to the salary line.
- Transfers the Boiler Inspector Program from the Insurance Department to the DEQ. The transfer includes four FTE totaling \$753,365, along with operating expenses of \$89,000. The funding for the positions and operating is supported by the Fire and Tornado Fund.

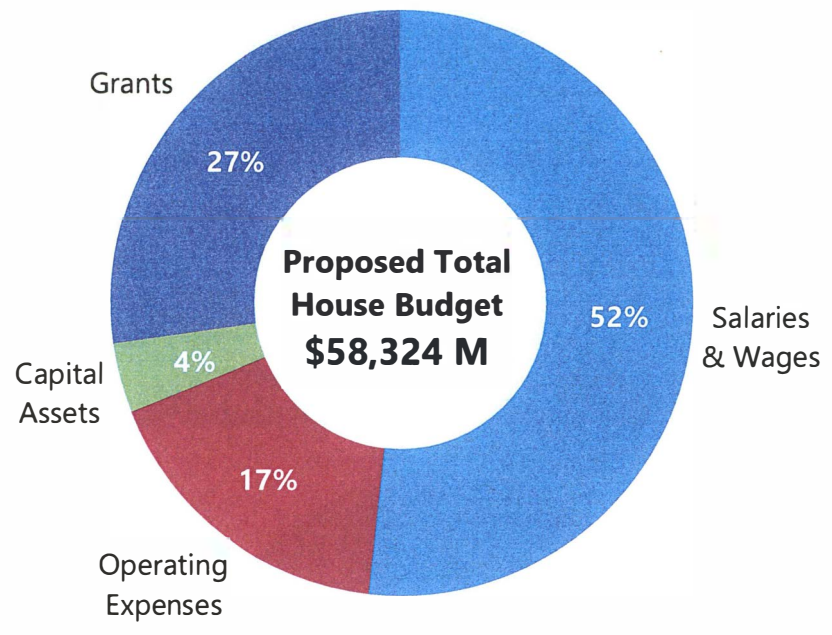
2019-2021 Summary of the House Budget

The budget before you for the DEQ addresses environmental needs. It provides funding to preserve and improve the quality of North Dakota's environment to benefit public and environmental health and allow for sustained use and enjoyment of the state's natural resources. One means to accomplish this is by extending funds through grants and contracts. The House Budget includes \$18.6 million or 32 percent, which is planned to be passed through to the soil conservation districts, political subdivisions, state agencies, universities and other various entities to address environmental health needs and issues.

Overall, the House Budget includes a total of \$58,324,091 along with 165.50 FTE, and it is comprised of the following elements.

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2019-21 HB 1024 BY LINE ITEM



Salaries and Wages

Salaries and wages make up \$30,196,953 or 52 percent of our budget. The increase to the salaries line item is attributed to the executive compensation package along with new programs added.

Operating Expenses

The operating budget recommendation of \$10,002,180 makes up 17 percent of our budget. Operating Expenses increased primarily as a result of the new programs added and additional professional and IT contractual services funded with federal grants.

Capital Assets

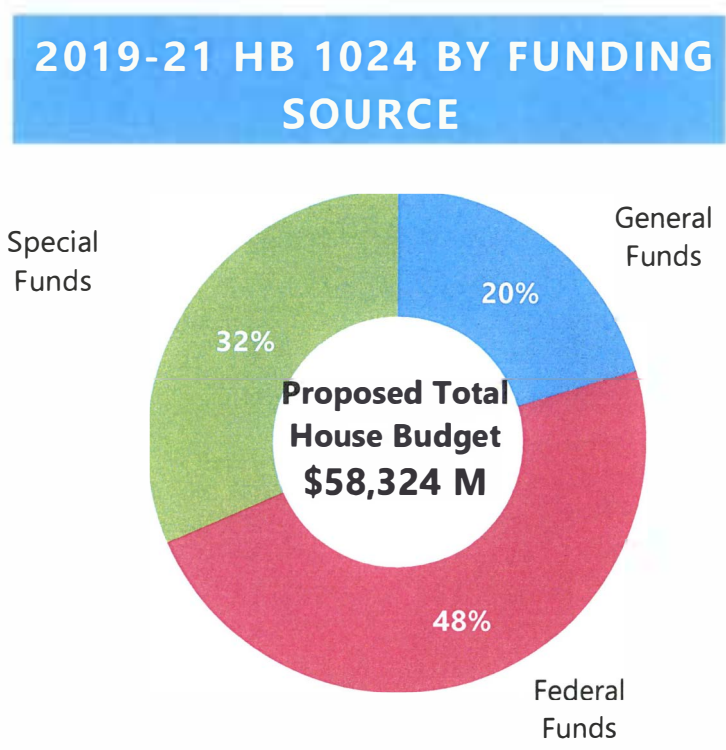
Capital assets of \$2,263,429 make up only 4 percent of our total budget. The equipment costs in excess of \$5,000, a portion of the bond payment in lieu of rent at the state laboratory, along with the new air monitoring equipment and the database needed for the Quad O and Quad Oa programs, are included here.

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Grants

Grants, which are provided to many local entities across the state, are at \$15,861,529 and make up 27 percent of our budget. The increase in Grants is primarily a result of the additional funds available to be awarded from the Volkswagen Trust Settlement.

Finally, the breakdown by funding source of the House Budget for the DEQ is as follows.



Federal Funding Changes

As noted in the above chart, just under half of the DEQ is funded with federal funds of \$28,016,687 at 48 percent of the budget. Our budget request includes a minimal increase in federal funding of approximately \$1.4 million with half of that amount associated with the executive compensation package. The remaining increase is associated with anticipated carryover and a slight increase available for direct services in the EPA Performance Partnership Grant, which is often referred to as the EPA block grant.

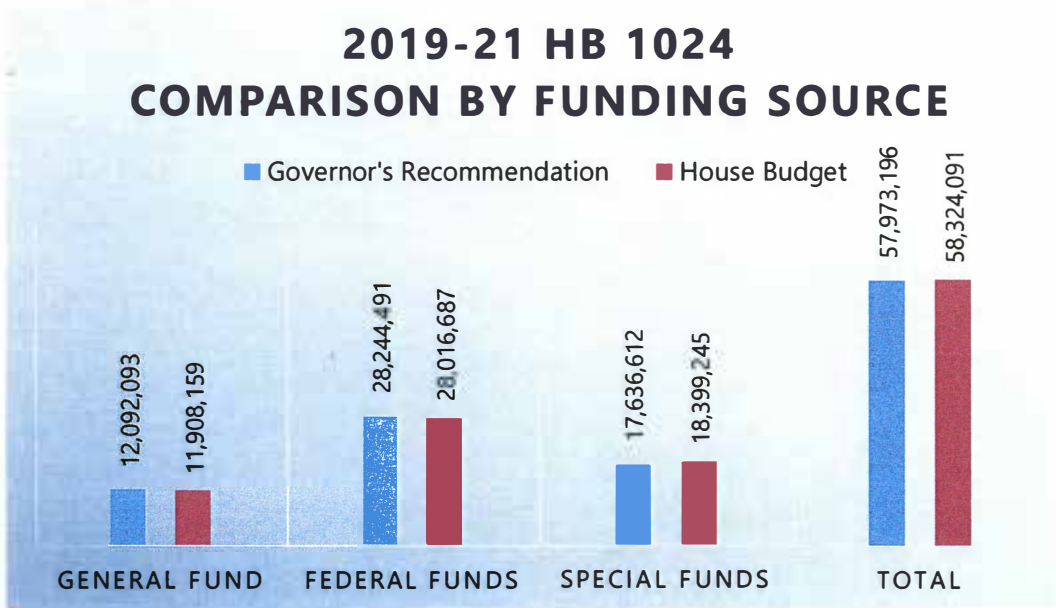
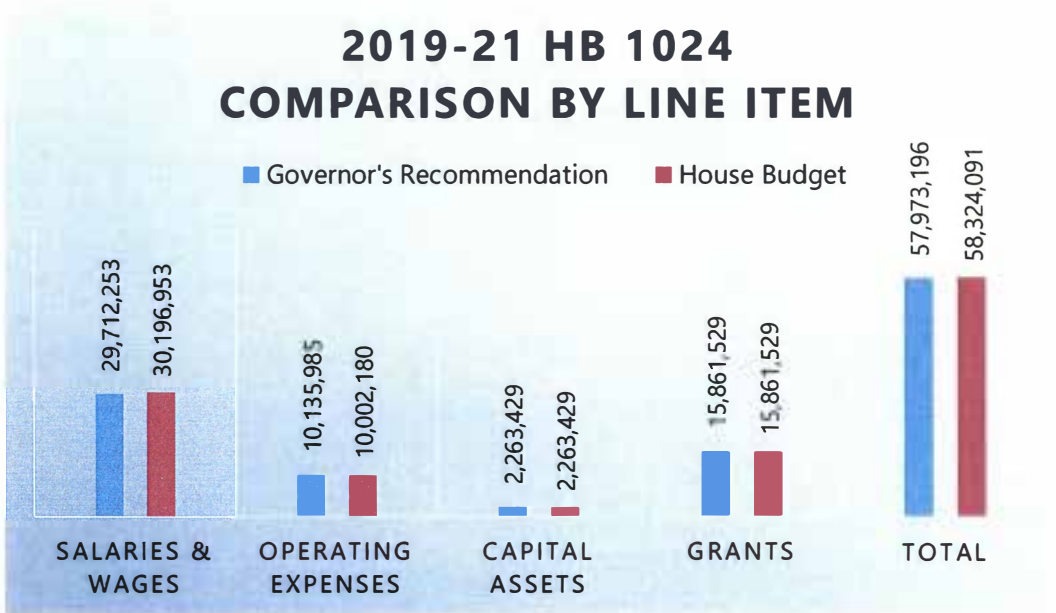
The status of our federal funding is often uncertain. With that uncertainty, we prepared our budget by assuming that federal grant amounts will essentially

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hold even, except as noted above. We recognize that as we proceed through the next biennium we will have to adjust our budget, operations and possibly staffing if federal funding changes from the amounts included in our budget request.

Comparison of the Executive Budget to the House Budget



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Optional Requests

Attachment B reflects the Optional Adjustment Requests submitted by the department, along with indication of the requests that were funded in the Governor's Recommendation.

Conclusion

Chairman Holmberg and members of the Committee, this concludes my testimony on House Bill 1024. In the upcoming weeks, we look forward to working with you on the details of the Governor's recommended appropriation for the DEQ, along with the House amendments. I will now turn it back to Dave Glatt, who has some additional comments regarding HB 1024.

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Testimony
House Bill 1024
Senate Appropriations Committee
Thursday, March 7, 2019

FTE / General Fund / Special Fund Reductions to Meet Budget Guidelines

FTE

Reductions were made as follows:

- Reduced a 1.0 Environmental Scientist II and a 1.0 Environmental Scientist III in the Water Quality Division. These positions provided support in the area of oil impact monitoring (\$312,909)
- Reduced a 1.0 Environmental Engineer II and a .50 Environmental Scientist III in the Municipal Facilities Division. These positions provided support in the area of oil impact monitoring (\$272,626)
- Reduced funding equivalent to a 1.0 Administrative Assistant, a 1.0 Office Assistant, and reduced a 1.0 Environmental Scientist II in the Waste Management Division. The Environmental Scientist position supports the solid waste program associated with oil impact monitoring. (\$379,484)
- Reduced funding equivalent to a 1.0 Legal Assistant in the Environmental Chief's Office. (\$134,184)
- Total Reduction 7.50 FTE
- Total Funds - \$1,099,203
- General Fund - \$827,796
- Special Fund - 271,407

General Fund

In addition to the General Fund reduction related to FTE the following additional reduction was made to the General Fund:

Reduction of \$180,000 in the Operator Certificate Program which provides training for those becoming certified in water treatment systems.

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Special Funds

In addition to the Special Fund reduction related to FTE the following additional reduction(s) was made to Special Funds:

Reduction of \$941,100 in grants in the Air Quality Division for the Volkswagen Trust Settlement program. This is a new initiative and is an environmental mitigation trust finalized as part of the nationwide Volkswagen Settlement. Funds are available to all states to mitigate negative air quality impacts caused by Volkswagen's use of emissions testing defeat devices in vehicles sold and operated in the US. The devices violated the Clean Air Act and increased emissions of nitrogen oxide. Reduction was made as a function of the budget guidelines.

ND Department of Environmental Quality
 HB 1024
 Senate Appropriations Committee
 Optional Adjustment Request (OAR) Summary
 2019 - 2021 Biennium

	Governor's Strategic Initiative	FTE	General Fund	Federal Funds	Special Funds	TOTAL BUDGET ADJUSTMENT REQUEST BY CLASS			
						Salaries	Operating & Cap Assets	Grants	Total
3% Contingency Savings Package – Reduction in Force – Oil Field and Spill Response		(2.00)	(302,337)			(302,337)			(302,337)
Oil Field/Spill Response Restoration	Main Street Initiative	4.50	733,673			733,673			733,673
Operator Certificate Training Program Restoration	Main Street Initiative	0.00	180,000				180,000		180,000
Volkswagen Settlement Funds - Special Fund Restoration	Main Street Initiative	0.00			4,655,000			4,655,000	4,655,000
Petroleum Tank Compensation Fund	Reinventing Government	2.00			575,069	336,481	238,588		575,069
Total		6.50	\$ 913,673	\$ -	\$ 5,230,069	\$ 1,070,154	\$ 418,588	\$ 4,655,000	\$ 6,143,742

Funded in the Governor's Executive Budget

Partially funded in the Governor's Executive Budget - \$125,000

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 Attachment B

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Prepared by the North Dakota^{pg 1}
Insurance Department
March 7, 2019

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1024

Page 21, line 15, replace "state fire and tornado" with "general"

Renumber accordingly

**DEPARTMENT OF COMMERCE TESTIMONY
SUPPORT FOR HB 1024
SENATE APPROPRIATIONS COMMITTEE
SENATOR RAY HOLMBERG, CHAIRMAN**

JONATHAN RUSSO, ENERGY BUSINESS DEVELOPMENT MANAGER, ND DEPARTMENT OF COMMERCE

Good morning, Mr. Chairman and members of the committee, my name is Jonathan Russo, and I serve as the Energy Business Development Manager for the North Dakota Department of Commerce. The Commerce Commissioner serves as the chairman of the EmPower North Dakota Commission and I am here today representing EmPower.

The EmPower North Dakota Commission was established by the 2007 legislative assembly and made permanent by the 2009 legislative assembly. Its members are appointed by the Governor. It is an industry lead effort that allows our energy industries, both renewable and traditional, to have a voice into the state's energy policy.

During 2017-2018, the EmPower North Dakota Commission focused on three key areas for continuing to grow energy production and new energy-related industries:

1. **Infrastructure** – Up-to-date infrastructure is the foundation for continuing existing development and expanding into new areas.
2. **Research and Development** – Research and development serves as the bridge for industry to move from ideas to new development and commercialization.
3. **Public Policy** – In any society, governmental entities enact laws, make policies, and allocate resources.

HB 1024 creates the Department of Environmental Quality (DEQ). The Empower Commission supports the departments creation and the transference of regulatory authority to DEQ, especially as it pertains to federal EPA regulatory issues. It is important the newly established department receive the appropriate level of resources to ensure it operates effectively and efficiently, as well as, placing it in a position to assume EPA primacy related duties. This bill will help ensure this transition.

Mr. Chairman and members of the Senate Appropriations Committee, there are others in the audience who can speak to more specifics. That concludes my testimony and I am happy to entertain any questions.

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North Dakota Stockmen's Association
Testimony to the Senate Appropriations Committee on HB 1024
March 7, 2019

Good morning, Mr. Chairman and members of the Senate Appropriations Committee. My name is Julie Ellingson and I represent the North Dakota Stockmen's Association.

I appear here in support of HB 1024 and, specifically, the grant which supports the association's Environmental Services Program. The Environmental Services Program is a statewide program launched in 2001 to help cattle producers minimize air and water quality impacts and comply with state and federal environmental regulations. The program helps producers identify and implement cost-effective solutions that enhance the environment and their potential for profitability.

Since its debut and with the support of the Health Department (now DEQ) and the State Legislature, the program has been very effective. Our Environmental Services director has been invited onto more than 700 beef cattle operations – at least one in every county – to conduct a free, confidential assessment of the animal feeding operation and to determine how it fits with state and federal regulations. From those on-site assessments, the director has also developed nearly 200 Stockmen's Stewardship Support Program and Environmental Quality Incentive Program contracts for cost-share assistance to help producers install appropriate animal waste handling systems and other environmentally friendly best management practices.

Even more impressive is how the program has helped reduce the amount of pollutants, such as suspended solids, nitrogen, phosphorus and fecal coli-form, from entering into waters of the state. Since 2001, it has helped permit nearly 100,000 head of cattle and, more significantly, reduce nitrogen and phosphorus

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runoff levels by more than 80 percent on those operations.

The Stockmen's Association enjoys a strong working relationship with the DEQ. Because of our daily contact and close affiliation with the state's cattle producers, we are able to administer services and answer questions for folks who may not be inclined to contact a regulatory agency directly.

Cattle producers' livelihood and legacy depend on the way they care for their animals, the land they graze and the water they drink. Your support helps us enhance environmental stewardship in our state, which benefits this and future generations.

For these reasons, we ask for your favorable consideration of this program.

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pg 1

Department of Environmental Quality - Budget No. 303
House Bill No. 1024
Base Level Funding Changes

	Executive Budget Recommendation				House Version				House Changes to Executive Budget Increase (Decrease) - Executive Budget			
	FTE Position	General Fund	Other Funds	Total	FTE Position	General Fund	Other Funds	Total	FTE Positions	General Fund	Other Funds	Total
2019-21 Biennium Base Level	152.50	\$10,724,151	\$38,987,520	\$49,711,671	152.50	\$10,724,151	\$38,987,520	\$49,711,671	0.00	\$0	\$0	\$0
2019-21 Ongoing Funding Changes												
Base payroll changes		(\$175,616)	\$322,006	\$146,390		(\$175,616)	\$322,006	\$146,390				\$0
Salary increase		394,147	763,581	1,157,728		231,686	472,755	704,441		(162,461)	(290,826)	(453,287)
Health insurance increase		194,274	376,366	570,640		224,830	466,792	691,622		30,556	90,426	120,982
Retirement contribution increase		48,951	94,832	143,783				0		(48,951)	(94,832)	(143,783)
Cost to continue adjustments		(162,976)	957,799	794,823		(162,976)	957,799	794,823				0
Removes funding for 3 FTE positions	(3.00)	(94,123)	(271,407)	(365,530)	(3.00)	(94,123)	(271,407)	(365,530)				0
Adds 2 FTE positions related to the transfer of the petroleum tank release program from the Insurance Department to the Department of Environmental Quality	2.00		575,069	575,069	2.00		575,069	575,069				0
Adds 4 FTE positions and funding from the state fire and tornado fund related to the transfer of the boiler inspection program from the Insurance Department to the Department of Environmental Quality				0	4.00		842,365	842,365	4.00		842,365	842,365
Transfers 1 FTE computer and network specialist III position to the Information Technology Department for the information technology unification initiative	(1.00)	3,078	12,304	15,382				0	1.00	(3,078)	(12,304)	(15,382)
Adds contingent funding for 10 FTE positions, including related operating expenses, in the 2nd year of the biennium for the supremacy of federal programs	10.00	1,248,945		1,248,945	10.00	1,248,945		1,248,945				0
Reduces funding for training water treatment system operators to provide a total of \$125,000 from the general fund		(55,000)		(55,000)		(55,000)		(55,000)				0
Adds funding for Microsoft Office 365 licensing expenses		20,048	64,538	84,586		20,048	64,538	84,586				0
Adjusts funding for bond and capital payments to provide a total of \$216,429, of which \$93,691 is from the general fund		1,864	1,541	3,405		1,864	1,541	3,405				0
Adjusts funding for extraordinary repairs to provide a total of \$27,000, of which \$6,866 is from the general fund		(55,650)	(217,700)	(273,350)		(55,650)	(217,700)	(273,350)				0

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Adjusts funding for equipment and information technology equipment over \$5,000 to provide a total ongoing appropriation of \$1,020,000 of other funds			275,125	275,125			275,125	275,125				
Increases funding for grants to accept and disburse funding from the Volkswagen trust settlement			2,899,529	2,899,529			2,899,529	2,899,529				0
Total ongoing funding changes	8.00	\$1,367,942	\$5,853,583	\$7,221,525	13.00	\$1,184,008	\$6,388,412	\$7,572,420	5.00	(\$183,934)	\$534,829	\$350,895
One-time funding items												
Adds contingent one-time funding from the strategic investment and improvements fund for capital assets and operating expenses related to the establishment of federal program supremacy			\$1,040,000	\$1,040,000			\$1,040,000	\$1,040,000			0	0
Total one-time funding changes	0.00	\$0	\$1,040,000	\$1,040,000	0.00	\$0	\$1,040,000	\$1,040,000	0.00	\$0	\$0	\$0
Total Changes to Base Level Funding	8.00	\$1,367,942	\$6,893,583	\$8,261,525	13.00	\$1,184,008	\$7,428,412	\$8,612,420	5.00	(\$183,934)	\$534,829	\$350,895
2019-21 Total Funding	160.50	\$12,092,093	\$45,881,103	\$57,973,196	165.50	\$11,908,159	\$46,415,932	\$58,324,091	5.00	(\$183,934)	\$534,829	\$350,895

Other Sections for Department of Environmental Quality - Budget No. 303

	<u>Executive Budget Recommendation</u>	<u>House Version</u>
Appropriation - Additional income	Section 3 would appropriate any additional income from federal or other funds, which may become available to the Department of Environmental Quality during the 2019-21 biennium.	The House did not include this section.
Transfers	Section 4 would allow the Department of Environmental Quality to transfer between appropriation line items up to 10 percent of the department's total appropriation during the 2019-21 biennium and would require the department to notify the Office of Management and Budget and the Legislative Council of any transfers.	The House did not include this section.
Environment and rangeland protection fund	Section 5 would authorize the department to spend \$250,000 from the environment and rangeland protection fund for the ground water testing programs. Of this amount, \$50,000 is for a grant to the North Dakota Stockmen's Association for the environmental services program.	Section 3 authorizes the department to spend \$250,000 from the environment and rangeland protection fund for the ground water testing programs. Of this amount, \$50,000 is for a grant to the North Dakota Stockmen's Association for the environmental services program.
State fire and tornado fund		Section 4 authorizes the department to spend \$879,312 from the state fire and tornado fund for the boiler inspection program.
Strategic investment and improvements fund - Contingent one-time funding	Section 6 would designate \$1,040,000 from the strategic investment and improvements fund for the Department of Environmental Quality for air pollution program equipment for the 2019-21 biennium.	Section 5 authorizes the department to spend \$1,040,000 from the strategic investment and improvements fund for air pollution program equipment. The one-time funding is contingent on federal Environmental Protection Agency approval of the Department of Environmental Quality assuming the duties of federal air pollution programs.

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Other Sections for Department of Environmental Quality - Budget No. 303

Executive Budget Recommendation

House Version

Contingent appropriation

Section 7 would provide a contingent appropriation of \$2,288,945, of which \$1,248,945 is from the general fund and \$1,040,000 is a one-time appropriation from the strategic investment and improvements fund. The appropriation is contingent upon receiving approval from the federal Environmental Protection Agency for the state to assume primacy over the Quad O and Quad Oa federal air pollution programs. Section 7 would also provide contingent authority for 10 FTE positions effective July 1, 2020.

Section 6 identifies \$1,248,945 from the general fund provided in Section 1 is contingent upon receiving approval from the federal Environmental Protection Agency for the state to assume primacy over the Quad O and Quad Oa federal air pollution programs. The section also provides contingent authority for 10 FTE positions effective July 1, 2020.

Petroleum release remediation program transfer

Section 8 would provide the statutory amendments necessary to transfer the administration of the petroleum tank release compensation fund tank integrity testing from the Insurance Commissioner to the Department of Environmental Quality.

Sections 7 through 26 provide the statutory amendments to Chapter 23.1-12 necessary to transfer the administration of the petroleum tank release compensation fund tank integrity testing from the Insurance Commissioner to the Department of Environmental Quality and to provide the department establish registration fees by rule.

Create Chapter 23.1-16 for the boiler inspection program

Section 27 creates Chapter 23.1-16 to transfer the boiler inspection program from the Insurance Commissioner to the Department of Environmental Quality.

Repeal Chapter 26.1-22.1

Section 28 repeals the boiler inspection program in Chapter 26.1-22.1 because it is created in Chapter 23.1-16.

Effective date

Section 29 provides effective dates for the program transfers.

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1024

Page 1, line 2, after "23.1-16" insert "and a new section to chapter 23.1-12"

Page 1, line 3, after "inspections" insert "and the petroleum tank release compensation fund"

Page 1, line 8, remove "and"

Page 1, line 9, remove "for"

Page 1, line 9, after "date" insert "; and to provide a contingent expiration date"

Page 1, remove lines 19 through 24

Page 2, replace line 1 with:

"Salaries and wages	\$27,040,544	\$3,510,909	\$30,551,453
Operating expenses	8,005,878	1,996,302	10,002,180
Capital assets	1,258,249	1,005,180	2,263,429
Grants	<u>13,407,000</u>	<u>2,454,529</u>	<u>15,861,529</u>
Total all funds	\$49,711,671	\$8,966,920	\$58,678,591
Less estimated income	<u>38,987,520</u>	<u>7,520,361</u>	<u>46,507,881</u>
Total general fund	\$10,724,151	\$1,446,559	\$12,170,710"

Page 2, line 22, replace "\$879,312" with "\$882,537"

Page 2, after line 25, insert:

"SECTION 5. PETROLEUM RELEASE COMPENSATION FUND. The estimated income line item included in section 1 of this Act includes \$593,834, or so much of the sum as may be necessary, to be made available to the department of environmental quality from the petroleum release compensation fund for expenses related to the petroleum tank release program, for the biennium beginning July 1, 2019, and ending June 30, 2021."

Page 3, line 6, replace "\$1,248,945" with "\$1,056,767"

Page 3, line 6, replace "ten" with "eight"

Page 10, after line 6, insert:

"SECTION 17. A new section to chapter 23.1-12 of the North Dakota Century Code is created and enacted as follows:

Registration fees before adoption of rules.

Until the department adopts rules establishing a schedule of registration fees under section 23.1-12-17, registration fees must comply with this section. An owner or operator of a tank shall pay an annual registration fee of fifty dollars for each aboveground or underground tank owned or operated by the person. If, after the fiscal year has been closed and all expenses relating to the fiscal year have been accounted for, the fund balance is less than six million dollars, the annual registration fee of fifty dollars is increased to one hundred dollars. If, after the fiscal year has been closed and all expenses relating to the fiscal year have been accounted for, the fund balance is

five million five hundred thousand dollars or more and the annual registration fee has been increased to one hundred dollars, the fee must be reduced to fifty dollars. If, after the fiscal year has been closed and all expenses relating to the fiscal year have been accounted for, the fund balance exceeds nine million dollars, the annual registration fee is reduced to five dollars. Annual registration fees must continue at five dollars until the fund balance does not exceed nine million dollars.

- Page 22, line 7, remove "7,"
- Page 22, line 8, remove "and"
- Page 22, line 8, after "28" insert ", 29, and 30"
- Page 22, line 12, remove "7,"
- Page 22, line 13, remove "and"
- Page 22, line 13, after "28" insert ", 29, and 30"
- Page 22, after line 14, insert:

SECTION 32. CONTINGENT EXPIRATION DATE. Section 17 of this Act is effective until the date the legislative council receives certification from the department of environmental quality that rules establishing a schedule of registration fees under section 23.1-12-17 have been adopted, and after that date is ineffective.

Renumber accordingly

STATEMENT OF PURPOSE OF AMENDMENT:

House Bill No. 1024 - Department of Environmental Quality - Senate Action

	Base Budget	House Version	Senate Changes	Senate Version
Salaries and wages	\$27,040,544	\$30,196,953	\$354,500	\$30,551,453
Operating expenses	8,005,878	10,002,180		10,002,180
Capital assets	1,258,249	2,263,429		2,263,429
Grants	13,407,000	15,861,529		15,861,529
Total all funds	\$49,711,671	\$58,324,091	\$354,500	\$58,678,591
Less estimated income	38,987,520	46,415,932	91,949	46,507,881
General fund	\$10,724,151	\$11,908,159	\$262,551	\$12,170,710
FTE	152.50	165.50	0.00	165.50

Department 303 - Department of Environmental Quality - Detail of Senate Changes

	Adds Funding for Salary Increases ¹	Adds Funding for Health Insurance Increases ²	Adds 2 FTE Positions for the Supremacy of Federal Programs ³	Removes 2 FTE Positions for the Supremacy of Federal Programs ⁴	Total Senate Changes
Salaries and wages	\$148,936	\$13,386	\$384,356	(\$192,178)	\$354,500
Operating expenses					
Capital assets					
Grants					
Total all funds	\$148,936	\$13,386	\$384,356	(\$192,178)	\$354,500
Less estimated income	88,379	3,570	0	0	91,949
General fund	\$60,557	\$9,816	\$384,356	(\$192,178)	\$262,551
FTE	0.00	0.00	2.00	(2.00)	0.00

¹ Funding is added to provide for employee salary increases of 2 percent on July 1, 2019, with a minimum monthly

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increase of \$80, and an increase of 3 percent on July 1, 2020. The House provided funding for a salary increase of 2 percent on July 1, 2019, and 2 percent increase on July 1, 2020.

² Funding is added for health insurance increases related to information technology unification FTE positions not removed and the 2 FTE positions related to the supremacy of federal programs.

³ Two of the contingent FTE positions provided by the House and related funding for salaries and wages are added in the 1st year of the biennium for the supremacy of federal programs. The House provided contingent funding and 10 FTE positions in the 2nd year of the biennium for the supremacy of federal programs.

⁴ Two of the contingent 10 FTE positions provided by the House in the 2nd year of the biennium for the supremacy of federal programs and related funding for salaries and wages are removed because they are added in the 1st year of the biennium by the Senate, to provide 8 FTE positions in the 2nd year of the biennium.

This amendment also:

- Adds a section to identify funding from the petroleum release compensation fund for expenses related to the petroleum release program;
- Adjusts the contingent appropriation from the general fund for federal program supremacy to reduce total funding and FTE added in the 2nd year of the biennium;
- Adds a section to provide for petroleum tank fees to be assessed until the Department of Environmental Quality adopts rules regarding fees; and
- Adds a section to provide for a contingent expiration date for the section which provides for petroleum tank fees to be assessed until the Department of Environmental Quality adopts rules regarding fees.

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PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1024

Page 1, line 2, after "23.1-16" insert "and a new section to chapter 23.1-12"

Page 1, line 3, after "inspections" insert "and the petroleum tank release compensation fund"

Page 1, line 8, remove "and"

Page 1, line 9, remove "for"

Page 1, line 9, after "date" insert "; and to provide a contingent expiration date"

Page 1, remove lines 19 through 24

Page 2, replace line 1 with:

"Salaries and wages	\$27,040,544	\$3,546,814	\$30,587,358
Operating expenses	8,005,878	1,996,302	10,002,180
Capital assets	1,258,249	1,005,180	2,263,429
Grants	<u>13,407,000</u>	<u>2,454,529</u>	<u>15,861,529</u>
Total all funds	\$49,711,671	\$9,002,825	\$58,714,496
Less estimated income	<u>38,987,520</u>	<u>6,661,022</u>	<u>45,648,542</u>
Total general fund	\$10,724,151	\$2,341,803	\$13,065,954"

Page 2, replace lines 21 through 25 with:

**"SECTION 4. ESTIMATED INCOME - PETROLEUM RELEASE
COMPENSATION FUND.** The estimated income line item included in section 1 of this Act includes \$594,434, or so much of the sum as may be necessary, to be made available to the department of environmental quality from the petroleum release compensation fund for expenses related to the petroleum tank release program, for the biennium beginning July 1, 2019, and ending June 30, 2021."

Page 3, line 5, replace "APPROPRIATION" with "FUNDING"

Page 3, line 6, replace "\$1,248,945" with "\$1,056,767"

Page 3, line 6, replace "ten" with "eight"

Page 10, after line 6, insert:

"SECTION 16. A new section to chapter 23.1-12 of the North Dakota Century Code is created and enacted as follows:

Registration fees before adoption of rules.

Until the department adopts rules establishing a schedule of registration fees under section 23.1-12-17, registration fees must comply with this section. An owner or operator of a tank shall pay an annual registration fee of fifty dollars for each aboveground or underground tank owned or operated by the person. If, after the fiscal year has been closed and all expenses relating to the fiscal year have been accounted for, the fund balance is less than six million dollars, the annual registration fee of fifty dollars is increased to one hundred dollars. If, after the fiscal year has been closed and all expenses relating to the fiscal year have been accounted for, the fund balance is

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five million five hundred thousand dollars or more and the annual registration fee has been increased to one hundred dollars, the fee must be reduced to fifty dollars. If, after the fiscal year has been closed and all expenses relating to the fiscal year have been accounted for, the fund balance exceeds nine million dollars, the annual registration fee is reduced to five dollars. Annual registration fees must continue at five dollars until the fund balance does not exceed nine million dollars.

Page 21, line 15, replace "state fire and tornado fund" with "general fund"

Page 22, after line 6, insert:

"SECTION 30. BOILER INSPECTION PROGRAM EVALUATION - PLAN - REPORT TO LEGISLATIVE MANAGEMENT. The department of environmental quality shall evaluate the boiler inspection program during the 2019-20 interim, develop a plan for program fees to meet program expenses, and report to the legislative management regarding the plan before June 30, 2020."

Page 22, line 8, remove "and"

Page 22, line 8, after "28" insert ", and 29"

Page 22, line 13, remove "and"

Page 22, line 13, after "28" insert ", and 29"

Page 22, after line 14, insert:

"SECTION 32. CONTINGENT EXPIRATION DATE. Section 16 of this Act is effective until the date the legislative council receives certification from the department of environmental quality that rules establishing a schedule of registration fees under section 23.1-12-17 have been adopted, and after that date is ineffective."

Re-number accordingly

STATEMENT OF PURPOSE OF AMENDMENT:

House Bill No. 1024 - Department of Environmental Quality - Senate Action

	Base Budget	House Version	Senate Changes	Senate Version
Salaries and wages	\$27,040,544	\$30,196,953	\$390,405	\$30,587,358
Operating expenses	8,005,878	10,002,180		10,002,180
Capital assets	1,258,249	2,263,429		2,263,429
Grants	13,407,000	15,861,529		15,861,529
Total all funds	\$49,711,671	\$58,324,091	\$390,405	\$58,714,496
Less estimated income	38,987,520	46,415,932	(767,390)	45,648,542
General fund	\$10,724,151	\$11,908,159	\$1,157,795	\$13,065,954
FTE	152.50	165.50	0.00	165.50

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Department 303 - Department of Environmental Quality - Detail of Senate Changes

	Adds Funding for Salary Increases ¹	Adds Funding for Health Insurance Increases ²	Adds 2 FTE Positions for the Supremacy of Federal Programs ³	Removes 2 FTE Positions for the Supremacy of Federal Programs ⁴	Adjusts the Funding Source of the Boiler Inspection Program ⁵	Total Senate Changes
Salaries and wages	\$184,841	\$13,386	\$384,356	(\$192,178)		\$390,405
Operating expenses						
Capital assets						
Grants						
Total all funds	\$184,841	\$13,386	\$384,356	(\$192,178)	\$0	\$390,405
Less estimated income	111,289	3,570	0	0	(882,249)	(767,390)
General fund	\$73,552	\$9,816	\$384,356	(\$192,178)	\$882,249	\$1,157,795
FTE	0.00	0.00	2.00	(2.00)	0.00	0.00

¹ Funding is added to provide for employee salary increases of 2 percent on July 1, 2019, with a minimum monthly increase of \$120 and a maximum monthly increase of \$200, and an increase of 2.5 percent on July 1, 2020. The House provided funding for a salary increase of 2 percent on July 1, 2019, and a 2 percent increase on July 1, 2020.

² Funding is added for health insurance increases related to an information technology unification FTE position not removed and the 2 FTE positions related to the supremacy of federal programs.

³ Two of the contingent FTE positions provided by the House and related funding for salaries and wages are added in the 1st year of the biennium for the supremacy of federal programs. The House provided contingent funding and 10 FTE positions in the 2nd year of the biennium for the supremacy of federal programs.

⁴ Two of the contingent 10 FTE positions provided by the House in the 2nd year of the biennium for the supremacy of federal programs and related funding for salaries and wages are removed because they are added in the 1st year of the biennium by the Senate, to provide 8 FTE positions in the 2nd year of the biennium.

⁵ Funding provided for the boiler inspection program, including funding for salaries and wages of \$793,249 and operating expenses of \$89,000, is provided from the general fund instead of the state fire and tornado fund.

This amendment also:

- Removes a section identifying funding from the state fire and tornado fund for the boiler inspection program because funding for the program is provided from the general fund;
- Adds a section to identify funding from the petroleum release compensation fund for expenses related to the petroleum release program;
- Adjusts the contingent appropriation from the general fund for federal program supremacy to reduce total funding and FTE added in the 2nd year of the biennium;
- Adds a section to provide for petroleum tank fees to be assessed until the Department of Environmental Quality adopts rules regarding fees;
- Amends the section created to transfer the boiler inspection program to the Department of Environmental Quality to require fees collected under the section are deposited in the general fund, which will result in an estimated increase in general fund revenues of \$600,000;
- Adds a section to require that the Department of Environmental Quality review the boiler inspection program during the 2019-20 interim, develop a plan for program fees to meet program expenses, and report to the Legislative Management regarding the plan before June 30, 2020; and
- Adds a section to provide for a contingent expiration date for the section which provides for petroleum tank fees to be assessed until the Department of Environmental Quality adopts rules regarding fees.

STATEMENT OF PURPOSE OF AMENDMENT:

House Bill No. 1024 - Funding Summary

	Base Budget	House Version	Senate Changes	Senate Version
Department of Environmental Quality				
Salaries and wages	\$27,040,544	\$30,196,953	\$390,405	\$30,587,358
Operating expenses	8,005,878	10,002,180		10,002,180
Capital assets	1,258,249	2,263,429		2,263,429
Grants	13,407,000	15,861,529		15,861,529
Total all funds	\$49,711,671	\$58,324,091	\$390,405	\$58,714,496
Less estimated income	38,987,520	46,415,932	(767,390)	45,648,542
General fund	\$10,724,151	\$11,908,159	\$1,157,795	\$13,065,954
FTE	152.50	165.50	0.00	165.50
Bill total				
Total all funds	\$49,711,671	\$58,324,091	\$390,405	\$58,714,496
Less estimated income	38,987,520	46,415,932	(767,390)	45,648,542
General fund	\$10,724,151	\$11,908,159	\$1,157,795	\$13,065,954
FTE	152.50	165.50	0.00	165.50

House Bill No. 1024 - Department of Environmental Quality - House Action

	Base Budget	House Changes	House Version
Salaries and wages	\$27,040,544	\$3,156,409	\$30,196,953
Operating expenses	8,005,878	1,996,302	10,002,180
Capital assets	1,258,249	1,005,180	2,263,429
Grants	13,407,000	2,454,529	15,861,529
Total all funds	\$49,711,671	\$8,612,420	\$58,324,091
Less estimated income	38,987,520	7,428,412	46,415,932
General fund	\$10,724,151	\$1,184,008	\$11,908,159
FTE	152.50	13.00	165.50

Department 303 - Department of Environmental Quality - Detail of House Changes

	Adjusts Funding for Base Payroll Changes ¹	Adds Funding for Salary and Benefit Increases ²	Cost to Continue Adjustments ³	Removes 3 FTE Positions ⁴	Adds Funding to Transfer the Petroleum Tank Release Program ⁵	Adds Funding to Transfer the Boiler Inspection Program ⁶
Salaries and wages	\$146,390	\$1,396,063		(\$365,530)	\$336,481	\$753,365
Operating expenses			\$1,239,823		238,588	89,000
Capital assets						
Grants			(445,000)			
Total all funds	\$146,390	\$1,396,063	\$794,823	(\$365,530)	\$575,069	\$842,365
Less estimated income	322,006	939,547	957,799	(271,407)	575,069	842,365
General fund	(\$175,616)	\$456,516	(\$162,976)	(\$94,123)	\$0	\$0
FTE	0.00	0.00	0.00	(3.00)	2.00	4.00

	Adds Contingent Funding and FTE Positions for the Supremacy of Federal Programs ⁷	Decreases Funding for Water Treatment System Training ⁸	Adds Funding for Microsoft Office 365 Licensing ⁹	Adjusts Funding for Bond and Capital Payments ¹⁰	Reduces Funding for Extraordinary Repairs ¹¹	Increases Funding for Equipment ¹²
Salaries and wages	\$889,640					
Operating expenses	359,305	(\$55,000)	\$84,586			
Capital assets				\$3,405	(\$273,350)	\$275,125
Grants						
Total all funds	\$1,248,945	(\$55,000)	\$84,586	\$3,405	(\$273,350)	\$275,125
Less estimated income	0	0	64,538	1,541	(217,700)	275,125
General fund	\$1,248,945	(\$55,000)	\$20,048	\$1,864	(\$55,650)	\$0
FTE	10.00	0.00	0.00	0.00	0.00	0.00

	Adds Funding for Grants from the Volkswagen Trust Settlement ¹³	Adds One- Time Contingent Funding to Establish Federal Program Supremacy ¹⁴	Total House Changes
Salaries and wages			\$3,156,409
Operating expenses		\$40,000	1,996,302
Capital assets		1,000,000	1,005,180
Grants	\$2,899,529		2,454,529
Total all funds	\$2,899,529	\$1,040,000	\$8,612,420
Less estimated income	2,899,529	1,040,000	7,428,412
General fund	\$0	\$0	\$1,184,008
FTE	0.00	0.00	13.00

¹ Funding is adjusted for base payroll changes.

² The following funding is added for 2019-21 biennium salary adjustments of 2 percent per year and increases in health insurance premiums from \$1,241 to \$1,427 per month:

	General Fund	Other Funds	Total
Salary increase	\$231,686	\$472,755	\$704,441
Health insurance increase	224,830	466,792	691,622
Total	\$456,516	\$939,547	\$1,396,063

³ Funding is adjusted for cost to continue changes to the base budget.

⁴ Three FTE positions and related funding for salaries and wages are removed.

⁵ Two FTE positions and related funding from the petroleum tank release compensation fund for salaries and wages and operating expenses are transferred from the Insurance Department to the Department of Environmental Quality for the petroleum tank release program.

⁶ Four FTE positions are added to transfer the boiler inspection program from the Insurance Department to the Department of Environmental Quality, including funding from the state fire and tornado fund for base salaries and wages of \$753,365 and operating expenses of \$89,000.

⁷ Contingent funding and 10 FTE positions are added in the 2nd year of the biennium for the supremacy of federal programs, including funding for salaries and wages of \$889,640 and operating expenses of \$359,305. The appropriation and FTE positions are contingent on federal Environmental Protection Agency approval of the Department of Environmental Quality assuming the duties of federal air pollution programs.

⁸ Funding for operating expenses related to training water treatment system operators is reduced to provide a total of \$125,000 from the general fund.

⁹ Funding is added for Microsoft Office 365 license expenses.

¹⁰ Funding for bond and capital payments is increased to provide a total of \$216,429, of which \$93,691 is from the general fund.

¹¹ Funding for extraordinary repairs is reduced to provide a total of \$27,000, of which \$6,866 is from the general fund.

¹² Funding for equipment and information technology equipment over \$5,000 is increased to provide a total ongoing appropriation of \$1,020,000 from other funds.

¹³ Funding for grants is increased to accept and disburse funding from the Volkswagen trust settlement to provide a total of \$5,399,529.

¹⁴ One-time funding is added from the strategic investment and improvements fund for capital assets of \$1 million and operating expenses of \$40,000 related to the establishment of federal program supremacy. The funding is contingent on Environmental Protection Agency approval of the Department of Environmental Quality assuming the duties of federal air pollution programs.

This amendment also adds sections to:

- Identify funding from the state fire and tornado fund for the boiler inspection program;
- Identify contingent one-time funding of \$1,040,000 from the strategic investment and improvements fund for air pollution program equipment related to the establishment of federal program supremacy. The funding provided is available the 2nd year of the biennium and is contingent on Environmental Protection Agency approval of the Department of Environmental Quality assuming the duties of federal air pollution programs;
- Identify contingent funding of \$1,248,945 from the general fund and 10 FTE positions related to the establishment of federal program supremacy effective July 1, 2020;
- Amend various sections of Chapter 23.1-12 to transfer the petroleum tank release program from the Insurance Commissioner to the Department of Environmental Quality and to provide the Department of Environmental Quality set registration fees by rule;
- Create Chapter 23.1-16 to transfer the boiler inspection program from the Insurance Commissioner to the Department of Environmental Quality;
- Repeal Chapter 26.1-22.1 related to the boiler inspection program; and
- Provide effective dates for the program transfers.

House Bill No. 1024 - Department of Environmental Quality - Senate Action

	Base Budget	House Version	Senate Changes	Senate Version
Salaries and wages	\$27,040,544	\$30,196,953	\$390,405	\$30,587,358
Operating expenses	8,005,878	10,002,180		10,002,180
Capital assets	1,258,249	2,263,429		2,263,429
Grants	13,407,000	15,861,529		15,861,529
Total all funds	\$49,711,671	\$58,324,091	\$390,405	\$58,714,496
Less estimated income	38,987,520	46,415,932	(767,390)	45,648,542
General fund	\$10,724,151	\$11,908,159	\$1,157,795	\$13,065,954
FTE	152.50	165.50	0.00	165.50

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Department 303 - Department of Environmental Quality - Detail of Senate Changes

	Adds Funding for Salary Increases ¹	Adds Funding for Health Insurance Increases ²	Adds 2 FTE Positions for the Supremacy of Federal Programs ³	Removes 2 FTE Positions for the Supremacy of Federal Programs ⁴	Adjusts the Funding Source of the Boiler Inspection Program ⁵	Total Senate Changes
Salaries and wages	\$184,841	\$13,386	\$384,356	(\$192,178)		\$390,405
Operating expenses						
Capital assets						
Grants						
Total all funds	\$184,841	\$13,386	\$384,356	(\$192,178)	\$0	\$390,405
Less estimated income	111,289	3,570	0	0	(882,249)	(767,390)
General fund	\$73,552	\$9,816	\$384,356	(\$192,178)	\$882,249	\$1,157,795
FTE	0.00	0.00	2.00	(2.00)	0.00	0.00

¹ Funding is added to provide for employee salary increases of 2 percent on July 1, 2019, with a minimum monthly increase of \$120 and a maximum monthly increase of \$200, and an increase of 2.5 percent on July 1, 2020. The House provided funding for a salary increase of 2 percent on July 1, 2019, and a 2 percent increase on July 1, 2020.

² Funding is added for health insurance increases related to an information technology unification FTE position not removed and the 2 FTE positions related to the supremacy of federal programs.

³ Two of the contingent FTE positions provided by the House and related funding for salaries and wages are added in the 1st year of the biennium for the supremacy of federal programs. The House provided contingent funding and 10 FTE positions in the 2nd year of the biennium for the supremacy of federal programs.

⁴ Two of the contingent 10 FTE positions provided by the House in the 2nd year of the biennium for the supremacy of federal programs and related funding for salaries and wages are removed because they are added in the 1st year of the biennium by the Senate, to provide 8 FTE positions in the 2nd year of the biennium.

⁵ Funding provided for the boiler inspection program, including funding for salaries and wages of \$793,249 and operating expenses of \$89,000, is provided from the general fund instead of the state fire and tornado fund.

This amendment also:

- Removes a section identifying funding from the state fire and tornado fund for the boiler inspection program because funding for the program is provided from the general fund;
- Adds a section to identify funding from the petroleum release compensation fund for expenses related to the petroleum release program;
- Adjusts the contingent appropriation from the general fund for federal program supremacy to reduce total funding and FTE added in the 2nd year of the biennium;
- Adds a section to provide for petroleum tank fees to be assessed until the Department of Environmental Quality adopts rules regarding fees;
- Amends the section created to transfer the boiler inspection program to the Department of Environmental Quality to require fees collected under the section are deposited in the general fund, which will result in an estimated increase in general fund revenues of \$600,000;
- Adds a section to require that the Department of Environmental Quality review the boiler inspection program during the 2019-20 interim, develop a plan for program fees to meet program expenses, and report to the Legislative Management regarding the plan before June 30, 2020; and
- Adds a section to provide for a contingent expiration date for the section which provides for petroleum tank fees to be assessed until the Department of Environmental Quality adopts rules regarding fees.

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Department of Environmental Quality - Budget No. 303
House Bill No. 1024
Base Level Funding Changes

	House Version				Senate Version				Senate Changes to House Version Increase (Decrease) - House Version			
	FTE Position	General Fund	Other Funds	Total	FTE Position	General Fund	Other Funds	Total	FTE Positions	General Fund	Other Funds	Total
2019-21 Biennium Base Level	152.50	\$10,724,151	\$38,987,520	\$49,711,671	152.50	\$10,724,151	\$38,987,520	\$49,711,671	0.00	\$0	\$0	\$0
2019-21 Ongoing Funding Changes												
Base payroll changes		(\$175,616)	\$322,006	\$146,390		(\$175,616)	\$322,006	\$146,390				\$0
Salary increase		231,686	472,755	704,441		305,238	584,044	889,282		73,552	111,289	184,841
Health insurance increase		224,830	466,792	691,622		234,646	470,362	705,008		9,816	3,570	13,386
Retirement contribution increase				0				0				0
Cost to continue adjustments		(162,976)	957,799	794,823		(162,976)	957,799	794,823				0
Removes funding for 3 FTE positions	(3.00)	(94,123)	(271,407)	(365,530)	(3.00)	(94,123)	(271,407)	(365,530)				0
Adds 2 FTE positions related to the transfer of the petroleum tank release program from the Insurance Department to the Department of Environmental Quality	2.00		575,069	575,069	2.00		575,069	575,069				0
Adds 4 FTE positions and funding from the state fire and tornado fund related to the transfer of the boiler inspection program from the Insurance Department to the Department of Environmental Quality	4.00		842,365	842,365	4.00		842,365	842,365				0
Adjusts the funding source of the boiler inspection program from the state fire and tornado fund to the general fund				0		882,249	(882,249)	0		882,249	(882,249)	0
Transfers 1 FTE computer and network specialist III position to the Information Technology Department for the information technology unification initiative				0				0				0
Adds contingent funding for FTE positions, including related operating expenses, in the 2nd year of the biennium for the supremacy of federal programs	10.00	1,248,945		1,248,945	8.00	1,056,767		1,056,767	(2.00)	(192,178)		(192,178)
Adds 2 FTE positions related the supremacy of federal programs (Quad O and Quad Oa) in the first				0	2.00	384,356		384,356	2.00	384,356		384,356
Reduces funding for training water treatment system operators to provide a total of \$125,000 from the general fund		(55,000)		(55,000)		(55,000)		(55,000)				0
Adds funding for Microsoft Office 365 licensing expenses		20,048	64,538	84,586		20,048	64,538	84,586				0

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Adjusts funding for bond and capital payments to provide a total of \$216,429, of which \$93,691 is from the general fund	1,864	1,541	3,405	1,864	1,541	3,405				0		
Adjusts funding for extraordinary repairs to provide a total of \$27,000, of which \$6,866 is from the general fund	(55,650)	(217,700)	(273,350)	(55,650)	(217,700)	(273,350)				0		
Adjusts funding for equipment and information technology equipment over \$5,000 to provide a total ongoing appropriation of \$1,020,000 of other funds		275,125	275,125		275,125	275,125				0		
Increases funding for grants to accept and disburse funding from the Volkswagen trust settlement		2,899,529	2,899,529		2,899,529	2,899,529				0		
Total ongoing funding changes	13.00	\$1,184,008	\$6,388,412	\$7,572,420	13.00	\$2,341,803	\$5,621,022	\$7,962,825	0.00	\$1,157,795	(\$767,390)	\$390,405
One-time funding items												
Adds contingent one-time funding from the strategic investment and improvements fund for capital assets and operating expenses related to the establishment of federal program supremacy			\$1,040,000	\$1,040,000			1,040,000	1,040,000				0
Total one-time funding changes	0.00	\$0	\$1,040,000	\$1,040,000	0.00	\$0	\$1,040,000	\$1,040,000	0.00	\$0	\$0	\$0
Total Changes to Base Level Funding	13.00	\$1,184,008	\$7,428,412	\$8,612,420	13.00	\$2,341,803	\$6,661,022	\$9,002,825	0.00	\$1,157,795	(\$767,390)	\$390,405
2019-21 Total Funding	165.50	\$11,908,159	\$46,415,932	\$58,324,091	165.50	\$13,065,954	\$45,648,542	\$58,714,496	0.00	\$1,157,795	(\$767,390)	\$390,405

Other Sections for Department of Environmental Quality - Budget No. 303

	House Version	Senate Version
Environment and rangeland protection fund	Section 3 authorizes the department to spend \$250,000 from the environment and rangeland protection fund for the ground water testing programs. Of this amount, \$50,000 is for a grant to the North Dakota Stockmen's Association for the environmental services program.	Section 3 authorizes the department to spend \$250,000 from the environment and rangeland protection fund for the ground water testing programs. Of this amount, \$50,000 is for a grant to the North Dakota Stockmen's Association for the environmental services program.
State fire and tornado fund	Section 4 authorizes the department to spend \$879,312 from the state fire and tornado fund for the boiler inspection program.	The Senate removed this section. Funding for the boiler inspection program is provided from the general fund.
Petroleum release compensation fund		Section 4 authorizes the department to spend \$594,434 from the petroleum release compensation fund for expenses related to the petroleum tank release program.
Strategic investment and improvements fund - Contingent one-time funding	Section 5 authorizes the department to spend \$1,040,000 from the strategic investment and improvements fund for air pollution program equipment. The one-time funding is contingent on federal Environmental Protection Agency approval of the Department of Environmental Quality assuming the duties of federal air pollution programs.	Section 5 authorizes the department to spend \$1,040,000 from the strategic investment and improvements fund for air pollution program equipment. The one-time funding is contingent on federal Environmental Protection Agency approval of the Department of Environmental Quality assuming the duties of federal air pollution programs.

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Other Sections for Department of Environmental Quality - Budget No. 303

	House Version	Senate Version
Contingent appropriation	Section 6 identifies \$1,248,945 from the general fund provided in Section 1 is contingent upon receiving approval from the federal Environmental Protection Agency for the state to assume primacy over the Quad O and Quad Oa federal air pollution programs. The section also provides contingent authority for 10 FTE positions effective July 1, 2020.	Section 6 identifies \$1,056,767 from the general fund provided in Section 1 is contingent upon receiving approval from the federal Environmental Protection Agency for the state to assume primacy over the Quad O and Quad Oa federal air pollution programs. The section also provides contingent authority for 8 FTE positions effective July 1, 2020.
Petroleum release remediation program transfer	Sections 7 through 26 provide the statutory amendments to Chapter 23.1-12 necessary to transfer the administration of the petroleum tank release compensation fund tank integrity testing from the Insurance Commissioner to the Department of Environmental Quality and to provide the department establish registration fees by rule.	Sections 7 through 27 provide the statutory amendments to Chapter 23.1-12 necessary to transfer the administration of the petroleum tank release compensation fund tank integrity testing from the Insurance Commissioner to the Department of Environmental Quality and to provide for fee collection until the department establish registration fees by rule.
Create Chapter 23.1-16 for the boiler inspection program	Section 27 creates Chapter 23.1-16 to transfer the boiler inspection program from the Insurance Commissioner to the Department of Environmental Quality.	Section 28 creates Chapter 23.1-16 to transfer the boiler inspection program from the Insurance Commissioner to the Department of Environmental Quality and to provide fees are deposited in the general fund instead of the state fire and tornado fund.
Repeal Chapter 26.1-22.1	Section 28 repeals the boiler inspection program in Chapter 26.1-22.1 because it is created in Chapter 23.1-16.	Section 29 repeals the boiler inspection program in Chapter 26.1-22.1 because it is created in Chapter 23.1-16.
Legislative intent - Boiler inspection program		Section 30 provides legislative intent requiring the Department of Environmental Quality review the boiler inspection program during the 2019-20 interim, develop a plan for program fees to meet program expenses, and report to Legislative Management regarding the plan before June 30, 2020
Effective date	Section 29 provides effective dates for the program transfers.	Section 31 provides effective dates for the program transfers.
Contingent expiration date		Section 32 provides a contingent expiration date for Section 16 which provides for petroleum tank fees to be assessed until the Department of Environmental Quality adopts rules regarding fees.

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1024

That the Senate recede from its amendments as printed on pages 1667-1669 of the House Journal and pages 1354-1357 of the Senate Journal and that Engrossed House Bill No. 1024 be amended as follows:

Page 1, line 2, after "enact" insert "a new section to chapter 23.1-12 and"

Page 1, line 3, after "inspections" insert "and the petroleum tank release compensation fund"

Page 1, line 6, remove "and"

Page 1, line 6, after "23.1-12-30" insert ", and 23.1-16-13"

Page 1, line 8, remove "and"

Page 1, line 9, replace "for a contingent" with "an"

Page 1, line 9, after "date" insert "; and to provide a contingent expiration date"

Page 1, remove lines 19 through 24

Page 2, replace line 1 with:

"Salaries and wages	\$27,040,544	\$3,546,814	\$30,587,358
Operating expenses	8,005,878	1,996,302	10,002,180
Capital assets	1,258,249	1,005,180	2,263,429
Grants	<u>13,407,000</u>	<u>2,454,529</u>	<u>15,861,529</u>
Total all funds	\$49,711,671	\$9,002,825	\$58,714,496
Less estimated income	<u>38,987,520</u>	<u>7,246,054</u>	<u>46,233,574</u>
Total general fund	\$10,724,151	\$1,756,771	\$12,480,922"

Page 2, line 22, replace "\$879,312" with "\$882,249"

Page 2, after line 25, insert:

**"SECTION 5. ESTIMATED INCOME - PETROLEUM RELEASE
COMPENSATION FUND.** The estimated income line item included in section 1 of this Act includes \$297,217, or so much of the sum as may be necessary, to be made available to the department of environmental quality from the petroleum release compensation fund for expenses related to the petroleum tank release program, for the biennium beginning July 1, 2019, and ending June 30, 2021."

Page 2, line 26, remove "**CONTINGENT**"

Page 3, line 1, remove "The funding may be spent only upon certification by the"

Page 3, remove lines 2 through 4

Page 3, line 5, replace "**CONTINGENT APPROPRIATION**" with "**FUNDING**"

Page 3, line 6, replace "\$1,248,945" with "\$1,056,767"

Page 3, line 6, replace "ten" with "eight"

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A Page 3, line 6, after "positions" insert ", related to the state assuming primacy over the quad O and quad Oa federal air pollution programs,"

Page 3, line 7, remove ", and may be spent only upon certification by"

Page 3, remove lines 8 and 9

Page 3, line 10, remove "assuming primacy over the quad O and quad Oa federal air pollution programs"

Page 10, after line 6, insert:

"**SECTION 17.** A new section to chapter 23.1-12 of the North Dakota Century Code is created and enacted as follows:

Registration fees before adoption of rules.

Until the department adopts rules establishing a schedule of registration fees under section 23.1-12-17, registration fees must comply with this section. An owner or operator of a tank shall pay an annual registration fee of fifty dollars for each aboveground or underground tank owned or operated by the person. If, after the fiscal year has been closed and all expenses relating to the fiscal year have been accounted for, the fund balance is less than six million dollars, the annual registration fee of fifty dollars is increased to one hundred dollars. If, after the fiscal year has been closed and all expenses relating to the fiscal year have been accounted for, the fund balance is five million five hundred thousand dollars or more and the annual registration fee has been increased to one hundred dollars, the fee must be reduced to fifty dollars. If, after the fiscal year has been closed and all expenses relating to the fiscal year have been accounted for, the fund balance exceeds nine million dollars, the annual registration fee is reduced to five dollars. Annual registration fees must continue at five dollars until the fund balance does not exceed nine million dollars."

Page 22, after line 5, insert:

"**SECTION 30. AMENDMENT.** Section 23.1-16-13 of the North Dakota Century Code is amended and reenacted as follows:

23.1-16-13. Disposition of funds.

All funds collected and received under this chapter must be paid to the state treasurer and deposited in the ~~state fire and tornado~~ department of environmental quality operating fund to be used to defray the costs of boiler inspections."

Page 22, after line 6, insert:

"**SECTION 32. BOILER INSPECTION PROGRAM EVALUATION - PLAN - REPORT TO LEGISLATIVE MANAGEMENT.** The department of environmental quality shall evaluate the boiler inspection program during the 2019-20 interim, develop a plan for program fees to meet program expenses, and report to the legislative management regarding the plan before June 30, 2020."

Page 22, line 7, remove "Sections 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19,"

Page 22, replace lines line 8 through 14 with "Section 30 of this Act becomes effective on July 1, 2020."

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SECTION 34. CONTINGENT EXPIRATION DATE. Section 17 of this Act is effective until the date the legislative council receives certification from the department of environmental quality that rules establishing a schedule of registration fees under section 23.1-12-17 have been adopted, and after that date is ineffective."

Renumber accordingly

STATEMENT OF PURPOSE OF AMENDMENT:

House Bill No. 1024 - Department of Environmental Quality - Conference Committee Action

	Base Budget	House Version	Conference Committee Changes	Conference Committee Version	Senate Version	Comparison to Senate
Salaries and wages	\$27,040,544	\$30,196,953	\$390,405	\$30,587,358	\$30,587,358	
Operating expenses	8,005,878	10,002,180		10,002,180	10,002,180	
Capital assets	1,258,249	2,263,429		2,263,429	2,263,429	
Grants	13,407,000	15,861,529		15,861,529	15,861,529	
Total all funds	\$49,711,671	\$58,324,091	\$390,405	\$58,714,496	\$58,714,496	\$0
Less estimated income	38,987,520	46,415,932	(182,358)	46,233,574	45,648,542	585,032
General fund	\$10,724,151	\$11,908,159	\$572,763	\$12,480,922	\$13,065,954	(\$585,032)
FTE	152.50	165.50	0.00	165.50	165.50	0.00

Department 303 - Department of Environmental Quality - Detail of Conference Committee Changes

	Adds Funding for Salary Increases ¹	Adds Funding for Health Insurance Increases ²	Adds 2 FTE Positions for the Supremacy of Federal Programs ³	Removes 2 FTE Positions for the Supremacy of Federal Programs ⁴	Adjusts the Funding Source of the Petroleum Tank Release Program ⁵	Total Conference Committee Changes
Salaries and wages	\$184,841	\$13,386	\$384,356	(\$192,178)		\$390,405
Operating expenses						
Capital assets						
Grants						
Total all funds	\$184,841	\$13,386	\$384,356	(\$192,178)	\$0	\$390,405
Less estimated income	111,289	3,570	0	0	(297,217)	(182,358)
General fund	\$73,552	\$9,816	\$384,356	(\$192,178)	\$297,217	\$572,763
FTE	0.00	0.00	2.00	(2.00)	0.00	0.00

¹ Funding is added to provide for employee salary increases of 2 percent on July 1, 2019, with a minimum monthly increase of \$120 and a maximum monthly increase of \$200, and an increase of 2.5 percent on July 1, 2020, the same as the Senate version. The House provided funding for a salary increase of 2 percent on July 1, 2019, and a 2 percent increase on July 1, 2020.

² Funding is added for health insurance increases related to an information technology unification FTE position not removed and the 2 FTE positions related to the supremacy of federal programs, the same as the Senate version.

³ Two of the FTE positions provided by the House in the 2nd year of the biennium and related funding for salaries and wages are added in the 1st year of the biennium for the supremacy of federal programs, the same as the Senate version. The House provided contingent funding and 10 FTE positions in the 2nd year of the biennium for the supremacy of federal programs.

⁴ Two of the contingent 10 FTE positions provided by the House in the 2nd year of the biennium for the supremacy of federal programs and related funding for salaries and wages are removed because they are added in the 1st year of the biennium, the same as the Senate version, to provide 8 FTE positions in the 2nd year of the biennium.

⁵ Funding for 50 percent of the total provided for defraying the expenses of the petroleum tank release program is provided from the general fund, instead of the petroleum release compensation fund. The House and the Senate provided \$594,434, including funding for salaries and wages of \$355,846 and operating expenses of \$238,588, from the petroleum release compensation fund for the program.

This amendment also:

- Amends a section identifying funding from the state fire and tornado fund for the boiler inspection program. The Senate provided the funding for the program from the general fund;
- Adds a section to identify funding from the petroleum release compensation fund for 50 percent of the funding related to the petroleum release program. Both the House and Senate had provided 100 percent of the funding for the program from the petroleum release compensation fund;
- Adjusts the section relating to the appropriation from the general fund for federal program supremacy to reduce total funding and FTE added in the 2nd year of the biennium;
- Adds a section to provide for petroleum tank fees to be assessed until the Department of Environmental Quality adopts rules regarding fees, the same as the Senate version;
- Amends the section related to the disposition of funds in the boiler inspection program, created to transfer the boiler inspection program to the Department of Environmental Quality, to require fees collected under the section are deposited in the Department of Environmental Quality operating fund beginning July 1, 2020. The House had continued to deposit the fees in the state fire and tornado fund and the senate had provided the fees be deposited in the general fund;
- Adds a section to require that the Department of Environmental Quality review the boiler inspection program during the 2019-20 interim, develop a plan for program fees to meet program expenses, and report to the Legislative Management regarding the plan before June 30, 2020, the same as the Senate version;
- Removes the contingent effective date related to Department of Environmental Quality programs because the department has received federal certification of the transfer of authority, powers, and duties to the Department of Environmental Quality; and
- Adds a section to provide for a contingent expiration date for the section which provides for petroleum tank fees to be assessed until the Department of Environmental Quality adopts rules regarding fees, the same as the Senate version.

House Bill No. 1024 - Other Changes - Conference Committee Action

The Conference Committee provided \$882,249 for the boiler inspection program, including funding for salaries and wages of \$793,249 and operating expenses of \$89,000, from the state fire and tornado fund, the same as the House version, instead of the general fund which was included in the Senate version. The Conference Committee also amended North Dakota Century Code Section 23.1-16-13, related to the disposition of boiler inspection funds, to provide, effective July 1, 2020, fees related to the boiler inspection program are deposited in the Department of Environmental Quality operating fund. The Senate provided for fees to be deposited in the general fund effective July 1, 2019, which would have increased general fund revenues by \$600,000.

Sixty-sixth
Legislative Assembly
of North Dakota

ENGROSSED HOUSE BILL NO. 1024

Introduced by

Appropriations Committee

1 A BILL for an Act to provide an appropriation for defraying the expenses of the department of
 2 environmental quality; to create and enact a new section to chapter 23.1-12 and chapter
 3 23.1-16 of the North Dakota Century Code, relating to boiler inspections and the petroleum tank
 4 release compensation fund; to amend and reenact sections 23.1-12-02, 23.1-12-04, 23.1-12-05,
 5 23.1-12-06, 23.1-12-10, 23.1-12-11, 23.1-12-14, 23.1-12-15, 23.1-12-17, 23.1-12-18,
 6 23.1-12-19, 23.1-12-20, 23.1-12-23, 23.1-12-24, 23.1-12-25, 23.1-12-26, 23.1-12-27,
 7 23.1-12-28, 23.1-12-29, ~~and 23.1-12-30~~, and 23.1-16-13 of the North Dakota Century Code,
 8 relating to the duties of the department of environmental quality; to repeal chapter 26.1-22.1 of
 9 the North Dakota Century Code, relating to boiler inspections; to provide for a report; ~~and to~~
 10 provide ~~for a contingent~~ an effective date; and to provide a contingent expiration date.

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

12 **SECTION 1. APPROPRIATION.** The funds provided in this section, or so much of the funds
 13 as may be necessary, are appropriated out of any moneys in the general fund in the state
 14 treasury, not otherwise appropriated, and from special funds derived from federal funds and
 15 other income, to the department of environmental quality for the purpose of defraying the
 16 expenses of the department of environmental quality, for the biennium beginning July 1, 2019,
 17 and ending June 30, 2021, as follows:

	Adjustments or		
	Base Level	Enhancements	Appropriation
20 Salaries and wages	\$27,040,544	\$3,156,409	\$30,196,953
21 Operating expenses	8,005,878	1,996,302	10,002,180
22 Capital assets	1,258,249	1,005,180	2,263,429
23 Grants	13,407,000	2,454,529	15,861,529
24 Total all funds	\$49,711,671	\$8,612,420	\$58,324,091

1	Less estimated income	38,987,520	7,428,412	46,415,932
2	Total general fund	\$10,724,151	\$1,184,008	\$11,908,159
3	Salaries and wages	\$27,040,544	\$3,546,814	\$30,587,358
4	Operating expenses	8,005,878	1,996,302	10,002,180
5	Capital assets	1,258,249	1,005,180	2,263,429
6	Grants	13,407,000	2,454,529	15,861,529
7	Total all funds	\$49,711,671	\$9,002,825	\$58,714,496
8	Less estimated income	38,987,520	7,246,054	46,233,574
9	Total general fund	\$10,724,151	\$1,756,771	\$12,480,922
10	Full-time equivalent positions	152.50	13.00	165.50

SECTION 2. ONE-TIME FUNDING - EFFECT ON BASE BUDGET - REPORT TO

SIXTY-SEVENTH LEGISLATIVE ASSEMBLY. The following amounts reflect the one-time funding items approved by the sixty-fifth legislative assembly for the 2017-19 biennium and the 2019-21 biennium one-time funding items included in the appropriation in section 1 of this Act:

15	<u>One-Time Funding Description</u>	<u>2017-19</u>	<u>2019-21</u>
16	Environmental protection agency lawsuit	\$500,000	\$0
17	Air pollution program equipment	0	1,040,000
18	Total estimated income	\$500,000	\$1,040,000

The 2019-21 biennium one-time funding amounts are not a part of the entity's base budget for the 2021-23 biennium. The department of environmental quality shall report to the appropriations committees of the sixty-seventh legislative assembly on the use of this one-time funding for the biennium beginning July 1, 2019, and ending June 30, 2021.

SECTION 3. ENVIRONMENT AND RANGELAND PROTECTION FUND. The estimated income line item included in section 1 of this Act includes \$250,000, or so much of the sum as may be necessary, to be made available to the department of environmental quality from the environment and rangeland protection fund, for the biennium beginning July 1, 2019, and ending June 30, 2021. This amount includes \$50,000 for a grant to the North Dakota stockmen's association environmental services program.

SECTION 4. STATE FIRE AND TORNADO FUND. The estimated income line item included in section 1 of this Act includes ~~\$879,312~~\$882,249, or so much of the sum as may be necessary, to be made available to the department of environmental quality from the state fire

1 and tornado fund for the boiler inspection program, for the biennium beginning July 1, 2019, and
2 ending June 30, 2021.

3 **SECTION 5. ESTIMATED INCOME - PETROLEUM RELEASE COMPENSATION FUND.**

4 The estimated income line item included in section 1 of this Act includes \$297,217, or so much
5 of the sum as may be necessary, to be made available to the department of environmental
6 quality from the petroleum release compensation fund for expenses related to the petroleum
7 tank release program, for the biennium beginning July 1, 2019, and ending June 30, 2021.

8 **SECTION 6. STRATEGIC INVESTMENT AND IMPROVEMENTS FUND - ~~CONTINGENT~~**

9 **ONE-TIME FUNDING - FEDERAL PROGRAM SUPREMACY.** The estimated income line item
10 included in section 1 of this Act includes \$1,040,000, or so much of the sum as may be
11 necessary, to be made available to the department of environmental quality from the strategic
12 investment and improvements fund for one-time funding of air pollution program equipment
13 related to the establishment of federal program supremacy, for the biennium beginning July 1,
14 2019, and ending June 30, 2021. ~~The funding may be spent only upon certification by the~~
15 ~~director of the department of environmental quality to the director of the office of management~~
16 ~~and budget that the federal environmental protection agency has approved the department of~~
17 ~~environmental quality assuming the duties of federal air pollution programs.~~

18 **SECTION 7. ~~CONTINGENT APPROPRIATION~~ FUNDING - FEDERAL PROGRAM**

19 **SUPREMACY.** The amount of ~~\$1,248,945~~ \$1,056,767 from the general fund and ~~ten~~ eight
20 full-time equivalent positions, related to the state assuming primacy over the quad O and quad
21 Oa federal air pollution programs, included in section 1 of this Act are effective July 1, 2020, ~~and~~
22 ~~may be spent only upon certification by the director of the department of environmental quality~~
23 ~~to the director of the office of management of budget that the federal environmental protection~~
24 ~~agency has approved the state assuming primacy over the quad O and quad Oa federal air~~
25 ~~pollution programs.~~

26 **SECTION 8. AMENDMENT.** Section 23.1-12-02 of the North Dakota Century Code is
27 amended and reenacted as follows:

28 **23.1-12-02. Definitions. (Contingent effective date - [See note](#))**

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

- 30 1. "Actually incurred" means, in the case of corrective action expenditures, the owner,
31 operator, landowner, an insurer, or a contractor hired by the owner, operator, or the

- 1 landlord has expended time and materials, and only that person is receiving
2 reimbursement from the fund.
- 3 ~~2.~~ "Administrator" means the manager of the state fire and tornado fund.
- 4 ~~3.~~ "Board" means the petroleum release compensation board.
- 5 ~~4.~~ "Commissioner" means the insurance commissioner.
- 6 ~~5-3.~~ "Corrective action" means an action required by the department to minimize, contain,
7 eliminate, remediate, mitigate, or clean up a release, including any remedial
8 emergency measures. The term does not include the repair or replacement of
9 equipment or preconstructed property.
- 10 ~~6-4.~~ "Dealer" means a person licensed by the tax commissioner to sell motor vehicle fuel or
11 special fuels within the state.
- 12 ~~7-5.~~ "Department" means the department of environmental quality.
- 13 ~~8-6.~~ "Fund" means the petroleum release compensation fund.
- 14 ~~9-7.~~ "Location" means a physical address or site that has contiguous properties.
15 Noncontiguous properties within a municipality or other governmental jurisdiction are
16 considered separate locations.
- 17 ~~10-8.~~ "Operator" means a person in control of, or having responsibility for, the daily
18 operation of a tank under this chapter.
- 19 ~~11-9.~~ "Owner" means a person who holds title to, controls, or possesses an interest in the
20 tank before the discontinuation of its use.
- 21 ~~12-10.~~ "Petroleum" means any of the following:
22 a. Gasoline and petroleum products as defined in chapter 23.1-13.
23 b. Constituents of gasoline and fuel oil under subdivision a.
24 c. Oil sludge and oil refuse.
- 25 ~~13-11.~~ "Portable tank" means a storage tank along with its piping and wiring that is not
26 stationary or affixed, including a tank that is on skids.
- 27 ~~14-12.~~ "Release" means any unintentional spilling, leaking, emitting, discharging, escaping,
28 leaching, or disposing of petroleum from a tank into the environment whether
29 occurring before or after the effective date of this chapter, but does not include
30 discharges or designed venting allowed under federal or state law or under adopted
31 rules.

- 1 45-13. "Tank" means any one or a combination of containers, vessels, and enclosures,
2 whether aboveground or underground, including associated piping or appurtenances
3 used to contain an accumulation of petroleum. The term does not include:
- 4 a. Tanks owned by the federal government.
 - 5 b. Tanks used for the transportation of petroleum.
 - 6 c. A pipeline facility, including gathering lines:
 - 7 (1) Regulated under the Natural Gas Pipeline Safety Act of 1968.
 - 8 (2) Regulated under the Hazardous Liquid Pipeline Safety Act of 1979.
 - 9 (3) Regulated under state laws comparable to the provisions of law in
10 paragraph 1 or 2, if the facility is an interstate pipeline facility.
 - 11 d. An underground farm or residential tank with a capacity of one thousand one
12 hundred gallons [4163.94 liters] or less or an aboveground farm or residential
13 tank of any capacity used for storing motor fuel for noncommercial purposes.
14 However, the owner of an aboveground farm or residential tank may, upon
15 application, register the tank and be eligible for reimbursement under this
16 chapter.
 - 17 e. A tank used for storing heating oil for consumptive use on the premises where
18 stored.
 - 19 f. A surface impoundment, pit, pond, or lagoon.
 - 20 g. A flowthrough process tank.
 - 21 h. A liquid trap or associated gathering lines directly related to oil or gas production
22 or gathering operations.
 - 23 i. A storage tank situated in an underground area such as a basement, cellar, mine
24 working, drift, shaft, or tunnel, if the storage tank is situated upon or above the
25 surface of the floor.
 - 26 j. A tank used for the storage of propane.
 - 27 k. A tank used to fuel rail locomotives or surface coal mining equipment.
 - 28 l. An aboveground tank used to feed diesel fuel generators. Upon application, the
29 owner or operator of an aboveground tank used to feed diesel fuel generators
30 may register the tank and is eligible for reimbursement under this chapter.
 - 31 m. A portable tank.

1 n. A tank with a capacity under one thousand three hundred twenty gallons
2 [4996.728 liters] used to store lubricating oil.

3 ~~46-14.~~ "Tank integrity test" means a test to determine that a tank is sound and not leaking.
4 For an underground tank, the term means a certified third-party test that meets
5 environmental protection agency leak detection requirements. For an aboveground
6 tank, the term means a test conducted according to steel tank institute SP 001 or
7 American petroleum institute 653.

8 ~~47-15.~~ "Third party" means a person who is damaged by the act of a registered owner,
9 operator, or dealer requiring corrective action, or a person who suffers bodily injury or
10 property damage caused by a petroleum release.

11 **SECTION 9. AMENDMENT.** Section 23.1-12-04 of the North Dakota Century Code is
12 amended and reenacted as follows:

13 **23.1-12-04. Administration of fund - Staff. (Contingent effective date - [See note](#))**

14 The ~~administrator~~department shall administer the fund according to this chapter. The
15 ~~administrator~~department shall convene the board as may be necessary to keep the board
16 apprised of the fund's general operations. However, the board shall meet at least once each half
17 of each calendar year to review and to advise the ~~administrator~~department regarding the
18 administration of the fund, the fund's general operations, and to hear and decide denials of
19 claims by the ~~administrator~~department which may be appealed to the board, and to discuss all
20 claims against the fund. The ~~administrator~~department may employ any assistance and staff
21 necessary to administer the fund within the limits of legislative appropriation. A claimant
22 aggrieved by a decision of the ~~administrator~~department regarding a claim upon the fund may
23 appeal the decision to the board. The board may sustain, modify, or reverse the decision of the
24 ~~administrator~~department. The claimant or the ~~administrator~~department may appeal the board's
25 decision to the commissioner. ~~The decision of the commissioner may be appealed under~~
26 chapter 28-32.

27 **SECTION 10. AMENDMENT.** Section 23.1-12-05 of the North Dakota Century Code is
28 amended and reenacted as follows:

29 **23.1-12-05. Adoption of rules. (Contingent effective date - [See note](#))**

30 The ~~administrator~~department shall adopt rules regarding the practices and procedures of
31 the fund, the form and procedure for applications for compensation from the fund, procedures

1 for investigation of claims, procedures for determining the amount and type of costs that are
2 eligible for reimbursement from the fund, procedures for persons to perform services for the
3 fund, procedures for appeals to the board by claimants aggrieved by an adverse decision of the
4 ~~administrator~~department, and any other rules as may be appropriate to administer this chapter.

5 **SECTION 11. AMENDMENT.** Section 23.1-12-06 of the North Dakota Century Code is
6 amended and reenacted as follows:

7 **23.1-12-06. Release discovery. (Contingent effective date - [See note](#))**

8 If the department has reason to believe a release has occurred, it shall notify the
9 administrator. ~~The department~~ shall direct the owner or operator to take reasonable and
10 necessary corrective actions as provided under federal or state law or under adopted rules.

11 **SECTION 12. AMENDMENT.** Section 23.1-12-10 of the North Dakota Century Code is
12 amended and reenacted as follows:

13 **23.1-12-10. Providing of information. (Contingent effective date - [See note](#))**

14 A person ~~the administrator or~~ the department has reason to believe is an owner or operator,
15 the owner of real property where corrective action is ordered to be taken, or a person that may
16 have information concerning a release shall, if requested by ~~the administrator or~~ the
17 department, or any member, employee, or agent of ~~the administrator or~~ the department, furnish
18 to the ~~administrator or~~ the department any information that person has or may reasonably
19 obtain which is relevant to the release.

20 **SECTION 13. AMENDMENT.** Section 23.1-12-11 of the North Dakota Century Code is
21 amended and reenacted as follows:

22 **23.1-12-11. Examination of records. (Contingent effective date - [See note](#))**

23 Any employee of the ~~administrator or~~ the department may, upon presentation of official
24 credentials:

- 25 1. Examine and copy books, papers, records, memoranda, or data of any person that
26 has a duty to provide information to the ~~administrator or~~ the department under section
27 23.1-12-10; and
- 28 2. Enter upon public or private property to take action authorized by this section,
29 including obtaining information from a person that has a duty to provide the
30 information under section 23.1-12-10, conducting surveys and investigations, and
31 taking corrective action.

1 **SECTION 14. AMENDMENT.** Section 23.1-12-14 of the North Dakota Century Code is
2 amended and reenacted as follows:

3 **23.1-12-14. Other remedies. (Contingent effective date - [See note](#))**

4 This chapter does not limit the powers of the ~~administrator or~~ department, or preclude the
5 pursuit of any other administrative, civil, injunctive, or criminal remedies by the ~~administrator or~~
6 department or any other person. Administrative remedies need not be exhausted to proceed
7 under this chapter. The remedies provided by this chapter are in addition to those provided
8 under existing statutory or common law.

9 **SECTION 15. AMENDMENT.** Section 23.1-12-15 of the North Dakota Century Code is
10 amended and reenacted as follows:

11 **23.1-12-15. Revenue to the fund. (Contingent effective date - [See note](#))**

12 Revenue from the following sources must be deposited in the state treasury and credited to
13 the fund:

- 14 1. Any ~~registration~~ fees collected under section 23.1-12-17;
- 15 2. Any money recovered by the fund under section 23.1-12-23, and any money paid
16 under an agreement, stipulation, or settlement;
- 17 3. Any interest attributable to investment of money in the fund; and
- 18 4. Any money received by the ~~administrator~~department in the form of gifts, grants,
19 reimbursements, or appropriations from any source intended to be used for the
20 purposes of the fund.

21 **SECTION 16. AMENDMENT.** Section 23.1-12-17 of the North Dakota Century Code is
22 amended and reenacted as follows:

23 **23.1-12-17. Registration fee. (Contingent effective date - [See note](#))**

- 24 1. ~~An owner or operator of a tank shall pay an annual registration fee of fifty dollars for~~
25 ~~each aboveground or underground tank owned or operated by that person. If after the~~
26 ~~fiscal year has been closed and all expenses relating to the fiscal year have been~~
27 ~~accounted for, the fund balance is less than six million dollars, the annual registration~~
28 ~~fee of fifty dollars is increased to one hundred dollars. If after the fiscal year has been~~
29 ~~closed and all expenses relating to the fiscal year have been accounted for, the fund~~
30 ~~balance is five million five hundred thousand dollars or more and the annual~~
31 ~~registration fee has been increased to one hundred dollars, the fee must be reduced~~

- 1 to fifty dollars. If after the fiscal year has been closed and all expenses relating to the
2 fiscal year have been accounted for, the fund balance exceeds nine million dollars, the
3 annual registration fee is reduced to five dollars. Annual registration fees must
4 continue at five dollars until the fund balance does not exceed nine million
5 dollars. Upon the recommendation and approval of the petroleum tank release
6 compensation fund board, the department shall classify tanks with respect to degree
7 of hazard, determine the risks of each classification, and fix the registration fee for
8 each classification at a rate sufficient to provide for:
- 9 a. The payment of the expenses of administration of the fund;
 - 10 b. The reimbursement for corrective action provided under this chapter; and
 - 11 c. The maintenance by the fund of adequate reserves and surplus so the fund may
12 be kept solvent at all times.
- 13 2. The department shall establish the schedule of registration fees by rules adopted in
14 accordance with chapter 28-32.
- 15 2-3. An owner or operator of an existing tank that is discovered at a location that currently
16 and previously has had tanks registered with the fund shall pay an additional
17 twenty-five dollar penalty fee in addition to the registration fee for each aboveground
18 tank and each underground tank owned or operated by that person for each previous
19 year that the tank was required to be registered for which a fee was not paid. The
20 payment includes the fees and the penalty for the failure to register.
- 21 3-4. An owner or operator of an existing tank at a location that was not previously and
22 continuously registered with the fund, whether the registration was required by law or
23 not must provide the fund with a phase two environmental study conducted by a
24 qualified firm according to American society for testing materials standards. A tank
25 integrity test must also be performed. The environmental study and tank integrity test
26 must be reviewed by the ~~commissioner~~department along with the application for
27 registration with the fund. If the ~~commissioner~~department rejects the application, the
28 applicant is denied eligibility to the fund. However, if the site is remediated and the
29 leaking tank is replaced, the applicant may reapply for registration with the fund. A new
30 installation that is using a used tank must provide tank integrity test results for the
31 used tank. Use of a synthetic liner in an aboveground dike system negates the need

1 for a tank integrity test. The owner or operator of a new tank at a new site or a new
2 tank at an existing site that had a tank registered at the site previously need only pay
3 the required fees for registration with the fund.

4 4.5. If accepted for registration with the fund, the owner or operator of the tank shall pay an
5 additional twenty-five dollar penalty fee in addition to the registration fee for each
6 aboveground tank and underground tank owned or operated by that person for each
7 previous year that the tank was required to be registered for which a fee was not paid,
8 regardless of ownership in each of those years. The payment includes the fees and
9 the penalty for the failure to register.

10 5.6. The registration fees collected under this section must be paid to the ~~fund~~
11 ~~administrator~~department for deposit in the state treasury for the dedicated credit to the
12 petroleum release compensation fund.

13 6.7. If a registration payment is not received within sixty days of July first by the
14 ~~commissioner~~department, a late fee of twenty-five dollars per tank per month must be
15 imposed on the tank owner or operator.

16 **SECTION 17.** A new section to chapter 23.1-12 of the North Dakota Century Code is
17 created and enacted as follows:

18 **Registration fees before adoption of rules.**

19 Until the department adopts rules establishing a schedule of registration fees under section
20 23.1-12-17, registration fees must comply with this section. An owner or operator of a tank shall
21 pay an annual registration fee of fifty dollars for each aboveground or underground tank owned
22 or operated by the person. If, after the fiscal year has been closed and all expenses relating to
23 the fiscal year have been accounted for, the fund balance is less than six million dollars, the
24 annual registration fee of fifty dollars is increased to one hundred dollars. If, after the fiscal year
25 has been closed and all expenses relating to the fiscal year have been accounted for, the fund
26 balance is five million five hundred thousand dollars or more and the annual registration fee has
27 been increased to one hundred dollars, the fee must be reduced to fifty dollars. If, after the
28 fiscal year has been closed and all expenses relating to the fiscal year have been accounted
29 for, the fund balance exceeds nine million dollars, the annual registration fee is reduced to five
30 dollars. Annual registration fees must continue at five dollars until the fund balance does not
31 exceed nine million dollars.

1 **SECTION 18. AMENDMENT.** Section 23.1-12-18 of the North Dakota Century Code is
2 amended and reenacted as follows:

3 **23.1-12-18. Reimbursement for corrective action. (Contingent effective date - [See](#)**
4 **[note](#))**

- 5 1. The ~~administrator~~department shall reimburse an eligible owner or operator for ninety
6 percent of the costs of corrective action, including the investigation, which are greater
7 than five thousand dollars and less than one million dollars per occurrence and two
8 million dollars in the aggregate. An eligible tank owner or operator may not be liable for
9 more than twenty thousand dollars out-of-pocket expenses for any one release. A
10 reimbursement may not be made unless the ~~administrator~~department determines that:
- 11 a. At the time the release was discovered the owner or operator and the tank were
12 in compliance with state and federal rules and rules applicable to the tank,
13 including rules relating to financial responsibility, rules relating to infrastructure
14 compatibility, and all rules relating to health and safety which were in effect at the
15 time of the release;
 - 16 b. The department was given notice of the release as required by federal and state
17 law;
 - 18 c. The owner or operator has paid the first five thousand dollars of the cost of
19 corrective action; and
 - 20 d. The owner or operator, to the extent possible, fully cooperated with the
21 department ~~and the administrator~~ in responding to the release.
- 22 2. The fund shall compensate third parties for corrective action taken for a petroleum
23 release if the provisions of subdivisions a, b, c, and d of subsection 1 were met at the
24 time the release was discovered. Compensation for third-party corrective action
25 includes compensation for costs incurred in returning the real estate to that level
26 deemed duly remediated by the department.
- 27 3. The fund shall reimburse the tank owner, operator, or dealer for bodily injuries to a
28 third party caused by a petroleum release if the provisions of subdivisions a, b, c, and
29 d of subsection 1 were met at the time the release was discovered in an amount
30 determined by:

- 1 a. Findings reduced to judgment in federal or state district court or such other court
- 2 having jurisdiction over the matter in a proceeding in which the fund has been
- 3 made a party;
- 4 b. Findings by an arbitration panel agreed upon in writing by the parties in a
- 5 proceeding in which the fund has been made a party; or
- 6 c. A written settlement entered into by the parties in which the ~~commissioner~~director
- 7 of the department or the ~~commissioner's~~department's agent has participated. The
- 8 settlement must be reviewed and approved by the ~~commissioner~~director of the
- 9 department.
- 10 4. In any civil action against the owner, operator, or dealer for damages resulting from a
- 11 petroleum release, if the pre-leak condition of real estate is an issue, and if there is no
- 12 reasonable means of determining the pre-leak condition of real estate, the condition is
- 13 that which exists at the time the department determines the real estate has been duly
- 14 remediated.
- 15 5. The fund may not compensate for attorney's fees of owners, operators, or dealers, nor
- 16 may the fund compensate for exemplary damages, criminal fines, or administrative
- 17 penalties.
- 18 6. A third party accepting monetary compensation directly from the fund for damages due
- 19 to a release caused by a tank owner, operator, or dealer covered by the fund is
- 20 deemed to have waived any cause of action against the fund or against the tank
- 21 owner, operator, or dealer.
- 22 7. The fund shall reimburse the department for all costs, attorney's fees, and other legal
- 23 expenses relating to administrative and adjudicative proceedings under this chapter
- 24 and any subsequent legal proceeding. Any moneys reimbursed must be deposited in
- 25 the department's operating fund in the state treasury and must be spent subject to
- 26 appropriation by the legislative assembly.

27 **SECTION 19. AMENDMENT.** Section 23.1-12-19 of the North Dakota Century Code is
28 amended and reenacted as follows:

29 **23.1-12-19. Application for reimbursement. (Contingent effective date - [See note](#))**

30 An owner or operator that is a first-party claimant and that proposes to take corrective
31 action or has undertaken corrective action in response to a release, the time of the release

1 being unknown, may apply to the ~~administrator~~department for partial or full reimbursement
2 under section 23.1-12-18. An owner or operator who is a first-party claimant may be reimbursed
3 only for costs incurred after July 1, 1989, even if the releases were discovered before July 1,
4 1989, up to the maximum of twenty-five thousand dollars per location.

5 **SECTION 20. AMENDMENT.** Section 23.1-12-20 of the North Dakota Century Code is
6 amended and reenacted as follows:

7 **23.1-12-20. ~~Administrator~~Department to determine costs. (Contingent effective date -**
8 **See note)**

9 A reimbursement for corrective actions taken by an owner, operator, or dealer may not be
10 made from the fund until the ~~administrator~~department has determined that the costs for which
11 reimbursement is requested were actually incurred and were reasonable. All necessary loss
12 adjustment expenses must be included as a component of the loss and must be paid out of the
13 fund.

14 **SECTION 21. AMENDMENT.** Section 23.1-12-23 of the North Dakota Century Code is
15 amended and reenacted as follows:

16 **23.1-12-23. Recovery of expenses. (Contingent effective date - See note)**

17 Any reasonable and necessary expenses incurred by the fund, which exceed the coverage
18 limits provided by section 23.1-12-18, in taking a corrective action, including costs of
19 investigating a release, and in taking legal actions, may be recovered in a civil action in district
20 court brought by the ~~administrator~~department against an owner or operator. The certification of
21 expenses by an approved agent of the fund is prima facie evidence that the expenses are
22 reasonable and necessary. Any expenses that are recovered under this section must be
23 deposited in the fund.

24 **SECTION 22. AMENDMENT.** Section 23.1-12-24 of the North Dakota Century Code is
25 amended and reenacted as follows:

26 **23.1-12-24. Costs exceeding reimbursement. (Contingent effective date - See note)**

27 If the cost of any extraordinary authorized action under this chapter exceeds amounts
28 awarded to the ~~administrator~~ or the department from the federal government, the ~~administrator~~
29 ~~may pay the department~~ the cost of the ~~may pay the department's~~ corrective actions costs,
30 including the cost of investigating a release, if the board finds that the cause was a petroleum
31 substance, that an adequate amount exists in the fund to pay for the corrective action, that the

1 occurrence was extraordinary in scope and size, and that a danger to the health and safety of
2 citizens exists.

3 **SECTION 23. AMENDMENT.** Section 23.1-12-25 of the North Dakota Century Code is
4 amended and reenacted as follows:

5 **23.1-12-25. Coordination of benefits. (Contingent effective date - [See note](#))**

6 If an owner or operator has an insurance policy that provides the same coverage as the
7 fund, the ~~administrator of the fund~~department shall pay the share of the covered loss or damage
8 for which the fund is responsible. The share that must be paid from the fund is equal to the
9 proportion that the applicable limit of coverage under the fund bears to the limits of insurance of
10 all insurance coverage on the same basis.

11 **SECTION 24. AMENDMENT.** Section 23.1-12-26 of the North Dakota Century Code is
12 amended and reenacted as follows:

13 **23.1-12-26. Third-party damages - Participation in actions and review of settlements.**
14 **(Contingent effective date - [See note](#))**

- 15 1. An owner or operator sued for damages resulting from a release shall notify the
16 ~~administrator~~department within fourteen days of being served with a summons and
17 complaint. The owner or operator also shall advise the ~~administrator~~department if any
18 insurer is defending the owner or operator and provide to the ~~administrator~~department
19 the name of that insurer.
- 20 2. An owner or operator that, before litigation, enters negotiations with a third party that
21 claims to have been damaged by a release, or that receives a demand for payment of
22 damages to a third party that claims to have been damaged by a release, shall notify
23 the ~~administrator~~department within fourteen days of the demand or the negotiations.
- 24 3. The ~~administrator~~department and the board shall review the conduct of any litigation
25 or negotiation. The ~~administrator~~department may not assume any legal costs incurred
26 by the defendant or plaintiff, but may participate in discovery, trial proceedings, or
27 settlement negotiations of either disputed liability or damages that bear on the
28 determination of a plaintiff's damages.
- 29 4. The ~~administrator~~department and the board shall review any settlement negotiations
30 to determine the dollar amount of bodily injury or property damage actually,

1 necessarily, and reasonably incurred by third parties which, if paid by the defendant,
2 would be considered eligible costs.

3 **SECTION 25. AMENDMENT.** Section 23.1-12-27 of the North Dakota Century Code is
4 amended and reenacted as follows:

5 **23.1-12-27. Third-party damages - Documentation. (Contingent effective date - [See](#)**
6 **[note](#))**

- 7 1. An applicant's payments for third-party damages pursuant to a judgment entered in a
8 court must include copies of the notice of entry of judgment and abstract of costs.
- 9 2. An applicant's payments for third-party damages made by agreement in settlement of
10 litigation must include copies of the settlement agreement and supporting documents
11 required by the ~~administrator~~department.
- 12 3. An applicant's payments for third-party damages made by agreement without
13 reference to litigation must include copies of the settlement and supporting documents
14 required by the ~~administrator~~department.
- 15 4. The ~~administrator~~department and the board may require a third party who claims
16 bodily injury to be examined by a physician and require that the physician's report to
17 be submitted to the ~~administrator~~department. The ~~administrator~~department may
18 require a third party that claims property damage to permit a property appraiser or
19 claims adjuster retained by the ~~administrator~~department to inspect the property and
20 report to the ~~administrator~~department.
- 21 5. The fund shall pay a judgment against an owner, operator, or dealer awarded to a third
22 party as a result of a third-party claim and property damage against an owner,
23 operator, or dealer registered by the fund.
- 24 6. The fund shall pay for corrective action as awarded to a third party in any judgment
25 against an owner, operator, or dealer.
- 26 7. Liability of the tank owner, operator, dealer, or fund to third parties for corrective action
27 or personal injuries and property damage may not exceed, per person, one million
28 dollars. Maximum liability of the fund, including all claims by third parties, may not
29 exceed, for any release site, the maximum provided in section 23.1-12-18.
- 30 8. A third party may not bring an action against an owner, operator, or dealer more than
31 three years after a corrective action plan has been approved by the department if the

1 owner, operator, or dealer fully implements and complies with the corrective action
2 plan.

3 9. In investigating a release site or reviewing the implementation of a corrective action
4 plan approved by the department, the department shall determine whether the release
5 threatens public health or the environment. The department shall require, based on
6 science and technology appropriate for the site, any monitoring, remediation, or other
7 appropriate corrective action that is reasonably necessary to protect public health or
8 the environment. The department may require corrective action at a release site at any
9 time after a release occurs.

10 **SECTION 26. AMENDMENT.** Section 23.1-12-28 of the North Dakota Century Code is
11 amended and reenacted as follows:

12 **23.1-12-28. Matching federal funds. (Contingent effective date - [See note](#))**

13 The ~~administrator~~department and the board may annually allow the department a ten
14 percent matching grant for federal leaking underground storage tank funds to be paid out of the
15 fund if the moneys are available and the ~~administrator~~department and the board determine the
16 allowance appropriate.

17 **SECTION 27. AMENDMENT.** Section 23.1-12-29 of the North Dakota Century Code is
18 amended and reenacted as follows:

19 **23.1-12-29. Fund appropriations. (Contingent effective date - [See note](#))**

20 Money in the fund is continuously appropriated to the ~~administrator~~department for the
21 purpose of making reimbursements under this chapter.

22 **SECTION 28. AMENDMENT.** Section 23.1-12-30 of the North Dakota Century Code is
23 amended and reenacted as follows:

24 **23.1-12-30. Investment of fund. (Contingent effective date - [See note](#))**

25 Investment of the fund is under the supervision of the state investment board in accordance
26 with chapter 21-10. The ~~commissioner~~department may purchase a contract for reinsurance of
27 any risk to be paid by the fund. The ~~administrator~~department may investigate the purchase of
28 insurance that reimburses an owner or operator for property damage claims by third parties
29 other than claims for costs of corrective action.

30 **SECTION 29.** Chapter 23.1-16 of the North Dakota Century Code is created and enacted
31 as follows:

1 **23.1-16-01. Definitions.**

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

3 1. "Boiler" means a closed vessel in which water is heated, steam is generated, steam is
4 superheated, or any combination thereof, under pressure or vacuum for use externally
5 to the boiler by the direct application of heat from the combustion of fuels, or from
6 electricity or nuclear energy. The term includes fired units for vaporizing liquids other
7 than water when these units are separate from processing systems and are complete
8 within themselves.

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

10 **23.1-16-02. Chief boiler inspector, deputy inspectors - Appointment - Jurisdiction.**

11 The department shall employ a chief boiler inspector and deputy inspectors. The chief boiler
12 inspector has jurisdiction over all boilers in this state except as otherwise provided.

13 **23.1-16-03. Qualifications of chief boiler inspector - Deputy inspectors.**

14 1. An individual is not eligible to the office of chief boiler inspector unless that individual:

15 a. Has had at the time of the appointment at least five years' experience in the
16 construction, inspection, operation, maintenance, or repair of high-pressure
17 boilers and pressure vessels as a mechanical engineer, boilermaker, steam
18 operating engineer, or boiler inspector. An applicant possessing a mechanical
19 engineering degree from an accredited school may substitute that degree for two
20 years of the five years' experience, at the discretion of the department.

21 b. Holds a commission issued by the national board of boiler and pressure vessel
22 inspectors or obtains the commission within one year after the date of
23 appointment by the department.

24 c. Is not directly or indirectly interested in the manufacture or sale of boilers or
25 steam machinery or articles used in the construction or maintenance of engines
26 or boilers.

27 2. The department shall establish qualifications for a deputy inspector which are not
28 inconsistent with the requirements of the position.

29 **23.1-16-04. Powers and duties of chief boiler inspector.**

30 1. The chief boiler inspector shall:

- 1 a. Keep a complete record of the type, dimensions, maximum allowable working
- 2 pressure, age, condition, location, and date of the last-recorded internal and
- 3 external inspection of boilers to which this chapter applies.
- 4 b. Cooperate and assist in loss prevention programs sponsored by the department.
- 5 2. The chief boiler inspector may delegate powers and duties to any deputy inspector or
- 6 special inspector.

7 **23.1-16-05. General requirement.**

8 Every boiler in this state must be constructed, installed, and maintained according to rules
9 adopted to implement this chapter.

10 **23.1-16-06. Exempt boilers - Inspection of exempt boilers.**

11 This chapter does not apply to:

- 12 1. Any boiler subject to federal inspection or under federal control.
- 13 2. Any boiler located on a farm and used solely for agricultural purposes.
- 14 3. Any heating boiler located in a private residence or in an apartment house of less than
- 15 six family units.
- 16 4. Any hot water supply boiler not exceeding the following limitations:
 - 17 a. Input of two hundred thousand British thermal units per hour.
 - 18 b. Pressure of one hundred sixty pounds per square inch [1103.16 kilopascals]
 - 19 gauge.
 - 20 c. Temperature of two hundred fifty degrees Fahrenheit [121.11 degrees Celsius].
- 21 5. Any portable steam cleaner commonly used in a garage.
- 22 6. Any boiler of a miniature model locomotive, boat, tractor, or stationary engine design
- 23 constructed as a hobby, not for commercial use, having an inside diameter not
- 24 exceeding ten inches [25.4 centimeters] and a grate area not exceeding one and
- 25 one-half square feet [1393.54 square centimeters] and which is properly equipped with
- 26 a safety valve, water level indicator, and pressure gauge.
- 27 7. Any electric boiler used as an integral part of an espresso coffee machine, provided
- 28 that the boiler does not exceed one and one-half cubic feet [.0566 cubic meter] in
- 29 water capacity, does not exceed fifty pounds per square inch [344.74 kilopascals]
- 30 pressure, and is constructed, approved, or certified to the American society of
- 31 mechanical engineers code or to other national or international standards.

1 **23.1-16-07. Inspection of boilers.**

- 2 1. The chief boiler inspector shall inspect each boiler used or proposed to be used within
3 this state. The inspection must be thorough as to the construction, installation,
4 condition, and operation as provided by the rules adopted to implement this chapter.
5 An exempt boiler may be inspected by the chief boiler inspector when the owner, the
6 owner's agent, or the user of the boiler makes written request for inspection to the
7 department.
- 8 2. Each boiler of one hundred thousand pounds [45359.24 kilograms] per hour or more
9 capacity, used or proposed to be used within this state, which has internal continuous
10 water treatment under the direct supervision of a graduate engineer or chemist, or one
11 having equivalent experience in the treatment of boiler water when the water treatment
12 is for the purpose of controlling and limiting serious corrosion and other deteriorating
13 factors, and with respect to which boiler the chief boiler inspector has determined the
14 owner or user has complied with the prescribed recordkeeping requirements, must be
15 inspected at least once every thirty-six months internally while not under pressure, and
16 at least once every twelve months externally while under pressure. If a hydrostatic test
17 is necessary to determine the safety of a boiler, the test must be conducted by the
18 owner or user of the equipment under the supervision of the chief boiler inspector. The
19 owner or user of a boiler of one hundred thousand pounds [45359.24 kilograms] per
20 hour or more capacity desiring to qualify for thirty-six-month internal inspection
21 intervals shall keep available for examination by the chief boiler inspector accurate
22 records showing the date and actual time the boiler is out of service and the reason
23 for being out of service, and the results of the chemical and physical analysis of the
24 boiler water, whether from laboratory analysis of samples taken at regular intervals of
25 not more than forty-eight hours or from continuous online analysers, which will
26 adequately show the condition of the water and any other elements or characteristics
27 of the water capable of producing corrosion or other deterioration of the boiler or its
28 parts. If an inspection discloses deficiencies in equipment or in operating procedures,
29 inspections may be required once every twelve months.

1 **23.1-16-08. Special inspector.**

- 2 1. Upon written request of an employer, the department may appoint as a special
3 inspector an inspector in the employ of:
- 4 a. An insurance company authorized to insure boilers in this state against loss from
5 explosion;
- 6 b. A company qualified by the national board of boiler and pressure vessel
7 inspectors as an accredited owner/user inspection organization; or
- 8 c. A company qualified by the national board of boiler and pressure vessel
9 inspectors as an accredited authorized inspection agency.
- 10 2. An individual may not be appointed as a special inspector unless that individual has
11 passed the examination prescribed by the national board of boiler and pressure vessel
12 inspectors.
- 13 3. An inspection performed by a special inspector must be performed in accordance with
14 this chapter and a complete report of the inspection must be filed with the department
15 in the time, manner, and form as prescribed by the department.
- 16 4. If a complete report is not filed by the special inspector's employer with the department
17 within ninety days from the certificate due date, the chief boiler inspector may make
18 the required inspection, unless an extension of time is granted by the chief boiler
19 inspector. The special inspector's employer must pay the inspection fees as required
20 by section 23.1-16-09 for a special inspection.
- 21 5. The chief boiler inspector may inspect any boiler to which a special inspection applies.
- 22 6. The department may, for cause, suspend or revoke the appointment of any special
23 inspector.

24 **23.1-16-09. Inspection and certificate fees.**

- 25 1. Upon completion of inspection, the owner or user of a boiler shall pay to the
26 department fees or a combination of inspection and certificate fees. The department
27 shall determine the inspection fees. Certificate fees are determined by section
28 23.1-16-10. The department shall determine and annually may adjust a fee scale for
29 the internal inspections of power boilers, internal inspections of low-pressure heating
30 boilers, external inspections of all boilers, and inspection of boilers used exclusively for
31 exhibition purposes.

1 2. Not more than two hundred dollars may be charged or collected for any one inspection
2 of a boiler, except for special inspections made upon request. All other inspections
3 made by the chief boiler inspector, including shop inspections and reviews and special
4 inspections when requested by the owner or user of a boiler, must be charged at a
5 rate not to exceed five hundred dollars per day or three hundred dollars per half day of
6 four hours or less, plus payment for mileage, meals, and hotel expenses as allowed by
7 sections 44-08-04 and 54-06-09, except that the mileage rate for a state-owned
8 vehicle will be the actual amount incurred by the department.

9 3. The annual fee for the issuance of a reciprocal commission card for a special
10 inspector is forty dollars and the annual fee for the issuance of a welder-qualified card
11 is twenty dollars.

12 4. The fee for taking an examination for a hobby boiler operating license is twenty-five
13 dollars and the fee for a hobby boiler operating license is twenty-five dollars.

14 5. A hobby boiler operating license issued under this section is valid for six years.

15 **23.1-16-10. Certificate of inspection - Certificate to be posted.**

16 The department shall issue a certificate of inspection for each boiler inspected upon receipt
17 of an inspection report certifying that the boiler is in a safe condition to be operated. The
18 department shall charge a fee of twenty dollars per year for each year that a certificate is valid,
19 or part of a year thereof, for each certificate of inspection issued as the result of inspections
20 authorized under sections 23.1-16-07 and 23.1-16-08. The fees are the liability of the owner or
21 user and must be paid in accordance with rules adopted by the department. A certificate may
22 not be issued for any boiler not in a safe condition to be operated or for a boiler for which the
23 inspection and certificate fees have not been paid in full. A certificate is not valid for a period of
24 more than thirty-six months for power boilers described in subsection 2 of section 23.1-16-07,
25 and no more than twelve months for other power boilers, twelve months for steam traction
26 engines, and thirty-six months for low-pressure boilers except that a two-month grace period
27 may be extended for any certificate. Upon written request from a special inspector, the chief
28 boiler inspector may issue a short-term certificate. Each certificate of inspection must be posted
29 conspicuously under glass in the boiler room or adjacent to the boiler inspected.

1 **23.1-16-11. Certificate of inspection required - Penalty.**

2 A person may not operate a boiler in this state without a valid certificate of inspection. A
3 violation of this section is a class A misdemeanor on the part of the owner, user, or operator of
4 the boiler.

5 **23.1-16-12. Manufacturer's data report.**

6 The boiler manufacturer shall provide the department with a manufacturer's data report.
7 When signed by an authorized inspector, this data sheet together with the stamp on the boiler is
8 the record denoting the boiler has been constructed in accordance with the rules adopted to
9 implement this chapter.

10 **23.1-16-13. Disposition of funds.**

11 All funds collected and received under this chapter must be paid to the state treasurer and
12 deposited in the state fire and tornado fund to be used to defray the costs of boiler inspections.

13 **23.1-16-14. Rules - Penalty for violation - Hearing.**

- 14 1. The department shall adopt rules for the safe and proper installation, use, operation,
15 and inspection of boilers and pressure vessels subject to this chapter.
- 16 2. The department shall adopt rules for the licensing of operators of hobby boilers used
17 during parades, exhibitions, and threshing shows where the public is invited.
- 18 3. A fee must be charged for an operating license, for a license renewal, and for an
19 examination conducted to determine minimum competence. Individuals operating
20 hobby boilers within this state as of July 1, 2007, are considered acceptable for a
21 license without additional training or examination. An individual who is not a resident of
22 this state and who holds a boiler operator license or credential in another state or
23 Canadian province is exempt from licensure as a hobby boiler operator in this state.
- 24 4. The department may not issue a certificate of inspection to any owner or user of a
25 boiler who fails or refuses to comply with the rules. The department shall revoke any
26 certificate presently in force upon evidence that the owner or user of the boiler is
27 failing or refusing to comply with the rules.
- 28 5. Any owner or user of a boiler may request a hearing before the department within
29 fifteen days from service of an order refusing or revoking a certificate of inspection. It
30 is the burden of the owner or user to show cause why the certificate of inspection

1 should not be refused or revoked. If no hearing is requested within the required period,
2 the order of the department becomes final and is not subject to further proceedings.

3 **SECTION 30. AMENDMENT.** Section 23.1-16-13 of the North Dakota Century Code is
4 amended and reenacted as follows:

5 **23.1-16-13. Disposition of funds.**

6 All funds collected and received under this chapter must be paid to the state treasurer and
7 deposited in the ~~state fire and tornado~~ department of environmental quality operating fund to be
8 used to defray the costs of boiler inspections.

9 **SECTION 31. REPEAL.** Chapter 26.1-22.1 of the North Dakota Century Code is repealed.

10 **SECTION 32. BOILER INSPECTION PROGRAM EVALUATION - PLAN - REPORT TO**
11 **LEGISLATIVE MANAGEMENT.** The department of environmental quality shall evaluate the
12 boiler inspection program during the 2019-20 interim, develop a plan for program fees to meet
13 program expenses, and report to the legislative management regarding the plan before
14 June 30, 2020.

15 **SECTION 33. EFFECTIVE DATE.** ~~Sections 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19,~~
16 ~~20, 21, 22, 23, 24, 25, 26, 27, and 28 of this Act become effective on July 1, 2019, if the~~
17 ~~legislative council has received certification from the chief of the environmental health section of~~
18 ~~the state department of health that all authority, powers, and duties from the environmental~~
19 ~~health section of the state department of health have been transferred to the department of~~
20 ~~environmental quality. If the certification is not received by July 1, 2019, sections 7, 8, 9, 10, 11,~~
21 ~~12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, and 28 of this Act become effective~~
22 ~~on the date certification is received.~~ Section 30 of this Act becomes effective on July 1, 2020.

23 **SECTION 34. CONTINGENT EXPIRATION DATE.** Section 17 of this Act is effective until
24 the date the legislative council receives certification from the department of environmental
25 quality that rules establishing a schedule of registration fees under section 23.1-12-17 have
26 been adopted, and after that date is ineffective.