

**FIRST ENGROSSMENT  
with Senate Amendments**

Fifty-seventh  
Legislative Assembly  
of North Dakota

**ENGROSSED HOUSE BILL NO. 1391**

Introduced by

Representatives Wald, Aarsvold, Galvin, Weiler

Senators Lindaas, Stenehjem

1 A BILL for an Act to amend and reenact sections 23-37-01, 23-37-02, 23-37-03, 23-37-04,  
2 23-37-05, 23-37-06, 23-37-07, 23-37-08, 23-37-09, 23-37-10, 23-37-11, 23-37-12, 23-37-13,  
3 23-37-14, 23-37-15, 23-37-16, 23-37-17, 23-37-18, 23-37-19, 23-37-20, 23-37-21, 23-37-22,  
4 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  
5 North Dakota Century Code, relating to petroleum release remediation.

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

7 **SECTION 1. AMENDMENT.** Section 23-37-01 of the 1999 Supplement to the North  
8 Dakota Century Code is amended and reenacted as follows:

9 **23-37-01. (Effective through July 31, 2009 2011) Declaration of purpose.** The  
10 purpose of this chapter is to establish:

- 11 1. A petroleum tank release compensation fund; and
- 12 2. A petroleum tank release compensation advisory board authorized to review
- 13 claims against the fund.

14 **SECTION 2. AMENDMENT.** Section 23-37-02 of the 1999 Supplement to the North  
15 Dakota Century Code is amended and reenacted as follows:

16 **23-37-02. (Effective through July 31, 2009 2011) Definitions.** As used in this  
17 chapter, unless the context otherwise requires:

- 18 1. "Actually incurred" means in the case of corrective action expenditures, that the  
19 owner, the operator, the landowner, an insurer ~~of the owner or operator~~, or a  
20 contractor hired by the owner, operator, or insurer ~~has made a payment or that a~~  
21 ~~contractor~~ the landlord has expended time and materials and that only that person  
22 is receiving reimbursement from the fund.
- 23 2. "Administrator" means the manager of the state fire and tornado fund.
- 24 3. "Board" means the petroleum release compensation ~~advisory~~ board.

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- 1           4.   "Commissioner" means the insurance commissioner.
- 2           ~~4.~~ 5.   "Corrective action" means an action ~~taken to~~ required by the department to  
3           minimize, contain, eliminate, remediate, mitigate, or clean up a release, including  
4           any remedial emergency measures. ~~The term also includes compensation paid to~~  
5           ~~third parties for bodily injury or property damage which is determined by the board~~  
6           ~~to be eligible for reimbursement.~~ The term does not include the repair or  
7           replacement of equipment or preconstructed property.
- 8           ~~5.~~ 6.   "Dealer" means any person licensed by the tax commissioner to sell motor vehicle  
9           fuel or special fuels within the state.
- 10          ~~6.~~ 7.   "Department" means the state department of health.
- 11          ~~7.~~ 8.   "Fund" means the petroleum release compensation fund.
- 12          ~~8.~~ 9.   "Operator" means any person in control of, or having responsibility for, the daily  
13          operation of a tank under this chapter.
- 14          ~~9.~~ 10. "Owner" means any person who holds title to, controls, or possesses an interest in  
15          the tank before the discontinuation of its use.
- 16          ~~10.~~ 11. "Person" means an individual, trust, firm, joint stock company, federal agency,  
17          corporation, state, municipality, commission, political subdivision of a state, or any  
18          interstate body. The term also includes a consortium, a joint venture, a  
19          commercial entity, and the United States government.
- 20          ~~11.~~ 12. "Petroleum" means any of the following:  
21               a.   Gasoline and petroleum products as defined in chapter 19-10.  
22               b.   Constituents of gasoline and fuel oil under subdivision a.  
23               c.   Oil sludge and oil refuse.
- 24          ~~12.~~ 13. "Release" means any unintentional spilling, leaking, emitting, discharging,  
25          escaping, leaching, or disposing of petroleum from a tank into the environment  
26          whether occurring before or after the effective date of this chapter, but does not  
27          include discharges or designed venting allowed under federal or state law or under  
28          adopted rules.
- 29          ~~13.~~ 14. "Tank" means any one or a combination of containers, vessels, and enclosures,  
30          whether aboveground or underground, including associated piping or

- 1            appurtenances used to contain an accumulation of petroleum. The term does not  
2            include:
- 3            a.    Tanks owned by the federal government.
  - 4            b.    Tanks used for the transportation of petroleum.
  - 5            c.    A pipeline facility, including gathering lines, regulated under:
    - 6            (1)    The Natural Gas Pipeline Safety Act of 1968.
    - 7            (2)    The Hazardous Liquid Pipeline Safety Act of 1979.
    - 8            (3)    An interstate pipeline facility regulated under state laws comparable to  
9            the provisions of law in paragraph 1 or 2.
  - 10           d.    An underground farm or residential tank with a capacity of one thousand one  
11           hundred gallons [4163.94 liters] or less or an aboveground farm or residential  
12           tank of any capacity used for storing motor fuel for noncommercial purposes.  
13           However, the owner of an aboveground farm or residential tank may, upon  
14           application, register the tank and be eligible for reimbursement under this  
15           chapter.
  - 16           e.    A tank used for storing heating oil for consumptive use on the premises where  
17           stored.
  - 18           f.    A surface impoundment, pit, pond, or lagoon.
  - 19           g.    A flowthrough process tank.
  - 20           h.    A liquid trap or associated gathering lines directly related to oil or gas  
21           production or gathering operations.
  - 22           i.    A storage tank situated in an underground area such as a basement, cellar,  
23           mine working, drift, shaft, or tunnel if the storage tank is situated upon or  
24           above the surface of the floor.
  - 25           j.    A tank used for the storage of propane.
  - 26           k.    A tank used to fuel rail locomotives or surface coal mining equipment.
  - 27           l.    An aboveground tank used to feed diesel fuel generators. Upon application,  
28           the owner or operator of an aboveground tank used to feed diesel fuel  
29           generators may register the tank and is eligible for reimbursement under this  
30           chapter.

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

4           **SECTION 3. AMENDMENT.** Section 23-37-03 of the 1999 Supplement to the North  
5 Dakota Century Code is amended and reenacted as follows:

6           **23-37-03. (Effective through July 31, 2009 2011) Petroleum release compensation**  
7 **advisory board.** The petroleum release compensation advisory board consists of ~~three~~ five  
8 members appointed by the governor, ~~two~~ three of whom are active in petroleum marketing,  
9 appointed by the governor one of whom is active in the petroleum, crude oil, or refining  
10 industry, and one of whom is active in the insurance industry. A member active in petroleum  
11 marketing must be appointed from a list of three recommended by the North Dakota retail  
12 petroleum marketers association. A member active in the petroleum, crude oil, or refining  
13 industry must be appointed from a list of three recommended by the North Dakota petroleum  
14 council. A member active in the insurance industry must be appointed from a list of three  
15 recommended by the North Dakota professional insurance agents association. Members must  
16 be appointed to terms of three years with the terms arranged so that the term of at least one  
17 member, ~~but no more than two members~~, expires June thirtieth of each year. A member shall  
18 hold office until a successor is duly appointed and qualified. Each member of the board ~~shall~~ is  
19 entitled to receive sixty-two dollars and fifty cents per diem for each day actually spent in the  
20 performance of official duties, plus mileage and expenses as are allowed to other state officers.

21           **SECTION 4. AMENDMENT.** Section 23-37-04 of the 1999 Supplement to the North  
22 Dakota Century Code is amended and reenacted as follows:

23           **23-37-04. (Effective through July 31, 2009 2011) Administration of fund - Staff.**  
24 The administrator shall administer the fund according to this chapter. The administrator shall  
25 convene the board as ~~is~~ may be necessary to keep the board apprised of the fund's general  
26 operations. However, the board shall meet at least once each half of each calendar year to  
27 review and to advise the administrator regarding the administration of the fund, the fund's  
28 general operations, and to hear and decide denials of claims by the administrator which may be  
29 appealed to the board, and to discuss all claims against the fund. The administrator may  
30 employ any assistance and staff necessary to administer the fund within the limits of legislative  
31 appropriation. A claimant aggrieved by a decision of the administrator regarding a claim upon

1 the fund may appeal the decision to the board. The board may sustain, modify, or reverse the  
2 decision of the administrator. The claimant or the administrator may appeal the board's  
3 decision to the commissioner. The decision of the commissioner may be appealed under  
4 chapter 28-32.

5 **SECTION 5. AMENDMENT.** Section 23-37-05 of the 1999 Supplement to the North  
6 Dakota Century Code is amended and reenacted as follows:

7 **23-37-05. (Effective through July 31, 2009 2011) Adoption of rules.** The  
8 administrator shall adopt rules regarding ~~its~~ the practices and procedures of the fund, the form  
9 and procedure for applications for compensation from the fund, procedures for investigation of  
10 claims, procedures for determining the amount and type of costs that are eligible for  
11 reimbursement from the fund, ~~and~~ procedures for persons to perform services for the fund,  
12 procedures for appeals to the board by claimants aggrieved by an adverse decision of the  
13 administrator, and any other rules as may be appropriate to administer this chapter.

14 **SECTION 6. AMENDMENT.** Section 23-37-06 of the 1999 Supplement to the North  
15 Dakota Century Code is amended and reenacted as follows:

16 **23-37-06. (Effective through July 31, 2009 2011) Release discovery.** If the  
17 department has reason to believe a release has occurred, it shall notify the administrator. The  
18 department shall direct the owner or operator to take reasonable and necessary corrective  
19 actions as provided under federal or state law or under adopted rules.

20 **SECTION 7. AMENDMENT.** Section 23-37-07 of the 1999 Supplement to the North  
21 Dakota Century Code is amended and reenacted as follows:

22 **23-37-07. (Effective through July 31, 2009 2011) Owner or operator not identified.**  
23 The department may cause legal action to be brought to compel performance of a corrective  
24 action if an identified owner or operator fails or refuses to comply with an order of the  
25 department, or the department may engage the services of qualified contractors for  
26 performance of a corrective action if an owner or operator cannot be identified.

27 **SECTION 8. AMENDMENT.** Section 23-37-08 of the 1999 Supplement to the North  
28 Dakota Century Code is amended and reenacted as follows:

29 **23-37-08. (Effective through July 31, 2009 2011) Imminent hazard.** Upon receipt of  
30 information that a petroleum release has occurred which may present an imminent or

1 substantial endangerment of health or the environment, the department may take such  
2 emergency action as it determines necessary to protect health or the environment.

3 **SECTION 9. AMENDMENT.** Section 23-37-09 of the 1999 Supplement to the North  
4 Dakota Century Code is amended and reenacted as follows:

5 **23-37-09. (Effective through July 31, 2009 2011) Duty to notify.** ~~Nothing in this~~ This  
6 chapter ~~limits~~ does not limit any person's duty to notify the department and to take action  
7 related to a release. However, payment for corrective actions required as a result of a  
8 petroleum release is governed by this chapter.

9 **SECTION 10. AMENDMENT.** Section 23-37-10 of the 1999 Supplement to the North  
10 Dakota Century Code is amended and reenacted as follows:

11 **23-37-10. (Effective through July 31, 2009 2011) Providing of information.** Any  
12 person whom the administrator or the department has reason to believe is an owner or  
13 operator, ~~or~~ the owner of real property where corrective action is ordered to be taken, or any  
14 person who may have information concerning a release, shall, if requested by the administrator  
15 or the department, or any member, employee, or agent of the administrator or the department,  
16 furnish to the administrator or the department any information that person has or may  
17 reasonably obtain that is relevant to the release.

18 **SECTION 11. AMENDMENT.** Section 23-37-11 of the 1999 Supplement to the North  
19 Dakota Century Code is amended and reenacted as follows:

20 **23-37-11. (Effective through July 31, 2009 2011) Examination of records.** Any  
21 employee of the administrator or the department may, upon presentation of official credentials:

- 22 1. Examine and copy books, papers, records, memoranda, or data of any person who  
23 has a duty to provide information to the administrator or the department under  
24 section 23-37-10; and
- 25 2. Enter upon public or private property for the purpose of taking action authorized by  
26 this section, including obtaining information from any person who has a duty to  
27 provide the information under section 23-37-10, conducting surveys and  
28 investigations, and taking corrective action.

29 **SECTION 12. AMENDMENT.** Section 23-37-12 of the 1999 Supplement to the North  
30 Dakota Century Code is amended and reenacted as follows:

1           **23-37-12. (Effective through July 31, 2009 2011) Responsibility for cost.** The  
2 owner or operator is liable for the cost of the corrective action required by the department,  
3 including the cost of investigating the releases, ~~and for legal actions of the administrator or the~~  
4 ~~department.~~ This chapter does not create any new cause of action for damages on behalf of  
5 third parties for release of petroleum products against the fund or licensed dealers.

6           **SECTION 13. AMENDMENT.** Section 23-37-13 of the 1999 Supplement to the North  
7 Dakota Century Code is amended and reenacted as follows:

8           **23-37-13. (Effective through July 31, 2009 2011) Liability avoided.** No owner or  
9 operator may avoid liability by means of a conveyance of any right, title, or interest in real  
10 property or by any indemnification, hold harmless agreement, or similar agreement. However,  
11 ~~the provisions of this chapter do~~ does not:

- 12           1. Prohibit a person who may be liable from entering into an agreement by which the  
13           person is insured or is a member of a risk retention group, and is thereby  
14           indemnified for part or all of the liability;
- 15           2. Prohibit the enforcement of an insurance, hold harmless, or indemnification  
16           agreement; or
- 17           3. Bar a ~~cause of action~~ claim for relief brought by a person who may be liable or by  
18           an insurer or guarantor, whether by right of subrogation or otherwise.

19           **SECTION 14. AMENDMENT.** Section 23-37-14 of the 1999 Supplement to the North  
20 Dakota Century Code is amended and reenacted as follows:

21           **23-37-14. (Effective through July 31, 2009 2011) Other remedies.** ~~Nothing in this~~  
22 This chapter limits does not limit the powers of the administrator or department, or ~~precludes~~  
23 preclude the pursuit of any other administrative, civil, injunctive, or criminal remedies by the  
24 administrator or department or any other person. Administrative remedies need not be  
25 exhausted in order to proceed under this chapter. The remedies provided by this chapter are in  
26 addition to those provided under existing statutory or common law.

27           **SECTION 15. AMENDMENT.** Section 23-37-15 of the 1999 Supplement to the North  
28 Dakota Century Code is amended and reenacted as follows:

29           **23-37-15. (Effective through July 31, 2009 2011) Revenue to the fund.** Revenue  
30 from the following sources must be deposited in the state treasury and credited to the fund:

- 31           1. Any registration fees collected under section 23-37-17;

- 1           2. Any money recovered by the fund under section 23-37-23, and any money paid
- 2                     under an agreement, stipulation, or settlement;
- 3           3. Any interest attributable to investment of money in the fund; and
- 4           4. Any money received by the administrator in the form of gifts, grants,
- 5                     reimbursements, or appropriations from any source intended to be used for the
- 6                     purposes of the fund.

7           **SECTION 16. AMENDMENT.** Section 23-37-16 of the 1999 Supplement to the North  
8 Dakota Century Code is amended and reenacted as follows:

9           **23-37-16. (Effective through July 31, ~~2009~~ 2011) Penalty.** A tank owner violating  
10 section 23-37-17 is guilty of a class B misdemeanor, unless another penalty is specifically  
11 provided.

12           **SECTION 17. AMENDMENT.** Section 23-37-17 of the 1999 Supplement to the North  
13 Dakota Century Code is amended and reenacted as follows:

14           **23-37-17. (Effective through July 31, ~~2009~~ 2011) Registration fee.** An owner or  
15 operator of a tank shall pay an annual registration fee of fifty dollars for each aboveground or  
16 underground tank owned or operated by that person. If on the first day of July in any year the  
17 amount of money in the petroleum release compensation fund is less than ~~five~~ six million  
18 dollars, the annual registration fee of fifty dollars is increased to one hundred dollars. If on the  
19 first day of July in any year the amount of money in the petroleum release compensation fund is  
20 five million five hundred thousand dollars or more and the annual registration fee has been  
21 increased to one hundred dollars, the fee must be reduced to fifty dollars. Annual registration  
22 fees must be reduced to five dollars if on the first day of July in any year the amount of money  
23 in the fund exceeds nine million dollars. Annual registration fees must continue at the fee of  
24 five dollars until the money in the fund does not exceed nine million dollars. An owner or  
25 operator of a tank that was required to be registered by law on or before July 1, ~~1999~~ 2001,  
26 shall pay seventy-five dollars for each aboveground tank and one hundred twenty-five dollars  
27 for each underground tank owned or operated by that person for any previous years that the  
28 tank was required to be registered for which a fee was not paid. The registration fees collected  
29 under this section must be paid to the administrator for deposit in the state treasury for credit to  
30 the petroleum release compensation fund.



1           **SECTION 18. AMENDMENT.** Section 23-37-18 of the 1999 Supplement to the North  
2 Dakota Century Code is amended and reenacted as follows:

3           **23-37-18. (Effective through July 31, 2009 2011) Reimbursement for corrective**  
4 **action.**

5           1. The administrator shall reimburse an eligible owner or operator for ninety percent  
6 of the costs of corrective action, including the investigation, which are greater than  
7 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  
9 liable for more than twenty thousand dollars out-of-pocket expenses for any one  
10 release. A reimbursement may not be made unless the administrator determines  
11 that:

12           ~~1.~~ a. At the time the release was discovered the owner or operator and the tank  
13 were in compliance with state and federal rules and rules applicable to the  
14 tank, including rules relating to financial responsibility which were in effect at  
15 the time of the release;

16           ~~2.~~ b. The department was given notice of the release as required by federal and  
17 state law;

18           ~~3.~~ c. The owner or operator has paid the first five thousand dollars of the cost of  
19 corrective action; and

20           ~~4.~~ 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  
24 the time the release was discovered. Compensation for third-party corrective  
25 action includes compensation for costs incurred in returning the real estate to that  
26 level 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,  
29 and d of subsection 1 were met at the time the release was discovered in an  
30 amount determined by:

- 1           a. Findings reduced to judgment in federal or state district court within the state  
2           of North Dakota or such other court having jurisdiction over the matter in a  
3           proceeding in which the fund has been 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 or  
7           the commissioner's agent has participated. The settlement must be reviewed  
8           and approved by the commissioner.
- 9           4. In any civil action against the owner, operator, or dealer for damages resulting  
10           from a petroleum release, if the pre-leak condition of real estate is an issue and if  
11           there is no reasonable means of determining the pre-leak condition of real estate,  
12           the condition is that which exists at the time the department determines the real  
13           estate has been duly remediated.
- 14           5. The fund may not compensate for attorneys' fees of owners, operators, or dealers,  
15           nor may the fund compensate for exemplary damages, criminal fines, or  
16           administrative penalties.
- 17           6. A third party accepting monetary compensation directly from the fund for damages  
18           due to a release caused by a tank owner, operator, or dealer covered by the fund  
19           is deemed to have waived any cause of action against the fund or against the tank  
20           owner, operator, or dealer.
- 21           7. The fund shall reimburse the department for all costs, attorneys' fees, and other  
22           legal expenses relating to administrative and adjudicative proceedings under this  
23           chapter and any subsequent legal proceeding. Any monies reimbursed must be  
24           deposited in the department's operating fund in the state treasury and must be  
25           spent subject to appropriation by the legislative assembly.

26           **SECTION 19. AMENDMENT.** Section 23-37-19 of the 1999 Supplement to the North  
27           Dakota Century Code is amended and reenacted as follows:

28           **23-37-19. (Effective through July 31, 2009 2011) Application for reimbursement.**

29           Any owner or operator who is a first-party claimant who proposes to take corrective action or  
30           has undertaken corrective action in response to a release, the time of such release being  
31           unknown, may apply to the administrator for partial or full reimbursement under section

1 23-37-18. An owner or operator who is a first-party claimant may be reimbursed only for costs  
2 incurred after July 1, 1989, even if the releases were discovered before July 1, 1989, up to the  
3 maximum of twenty-five thousand dollars per location.

4 **SECTION 20. AMENDMENT.** Section 23-37-20 of the 1999 Supplement to the North  
5 Dakota Century Code is amended and reenacted as follows:

6 **23-37-20. (Effective through July 31, 2009 2011) Administrator to determine**  
7 **costs.** A reimbursement for corrective actions taken by an owner, operator, or dealer may not  
8 be made from the fund until the administrator has determined that the costs for which  
9 reimbursement is requested were actually incurred and were reasonable. All necessary loss  
10 adjustment expenses must be included as a component of the loss and must be paid out of the  
11 fund.

12 **SECTION 21. AMENDMENT.** Section 23-37-21 of the 1999 Supplement to the North  
13 Dakota Century Code is amended and reenacted as follows:

14 **23-37-21. (Effective through July 31, 2009 2011) Liability of responsible person.**  
15 The right to apply for reimbursement and the receipt of reimbursement does not limit the liability  
16 of an owner or operator for damages or costs incurred as the result of a release.

17 **SECTION 22. AMENDMENT.** Section 23-37-22 of the 1999 Supplement to the North  
18 Dakota Century Code is amended and reenacted as follows:

19 **23-37-22. (Effective through July 31, 2009 2011) Reimbursement not subject to**  
20 **attachment.** The amount of reimbursement to be paid for corrective action that was done by a  
21 third party is not subject to legal process or attachment if actually paid to a third party who  
22 performed the corrective action.

23 **SECTION 23. AMENDMENT.** Section 23-37-23 of the 1999 Supplement to the North  
24 Dakota Century Code is amended and reenacted as follows:

25 **23-37-23. (Effective through July 31, 2009 2011) Recovery of expenses.** Any  
26 reasonable and necessary expenses incurred by the fund, which exceed the ~~amount allowed~~  
27 by coverage limits provided by section 23-37-18, in taking a corrective action, including costs of  
28 investigating a release, and in taking legal actions may be recovered in a civil action in district  
29 court brought by the administrator against an owner or operator. The certification of expenses  
30 by an approved agent of the fund is prima facie evidence that the expenses are reasonable and  
31 necessary. Any expenses that are recovered under this section must be deposited in the fund.

1           **SECTION 24. AMENDMENT.** Section 23-37-24 of the 1999 Supplement to the North  
2 Dakota Century Code is amended and reenacted as follows:

3           **23-37-24. (Effective through July 31, 2009 2011) Costs exceeding reimbursement.**

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

10           **SECTION 25. AMENDMENT.** Section 23-37-25 of the 1999 Supplement to the North  
11 Dakota Century Code is amended and reenacted as follows:

12           **23-37-25. (Effective through July 31, 2009 2011) Coordination of benefits.** If an  
13 owner or operator has an insurance policy that provides the same coverage as the fund, the  
14 administrator of the fund shall pay the share of the covered loss or damage for which the fund  
15 is responsible. The share that must be paid from the fund is equal to the proportion that the  
16 applicable limit of coverage under the fund bears to the limits of insurance of all insurance  
17 coverage on the same basis.

18           **SECTION 26. AMENDMENT.** Section 23-37-26 of the 1999 Supplement to the North  
19 Dakota Century Code is amended and reenacted as follows:

20           **23-37-26. (Effective through July 31, 2009 2011) Third-party damages -**  
21 **Participation in actions and review of settlements.**

22           1. An owner or operator who is sued for damages resulting from a release shall notify  
23 the administrator within ~~forty-eight hours~~ fourteen days of being served with a  
24 summons and complaint. The owner or operator shall also advise the  
25 administrator if any insurer is defending the owner or operator and provide to the  
26 administrator the name of that insurer.

27           2. An owner or operator who, before litigation, enters into negotiations with a third  
28 party who claims to have been damaged by a release, or who receives a demand  
29 for payment of damages to a third party who claims to have been damaged by a  
30 release, shall notify the administrator within ~~forty-eight hours~~ fourteen days of the  
31 demand or the negotiations.

1           3. The administrator and the board shall review the conduct of any litigation or  
2           negotiation. The administrator may not assume any legal costs incurred by the  
3           defendant or plaintiff, but may participate in discovery, trial proceedings, or  
4           settlement negotiations of either disputed liability or damages that bear on the  
5           determination of a plaintiff's damages.

6           4. The administrator and the board shall review any settlement negotiations to  
7           determine the dollar amount of bodily injury or property damage actually,  
8           necessarily, and reasonably incurred by third parties which, if paid by the  
9           defendant, would be considered eligible costs.

10           **SECTION 27. AMENDMENT.** Section 23-37-27 of the 1999 Supplement to the North  
11   Dakota Century Code is amended and reenacted as follows:

12           **23-37-27. (Effective through July 31, 2009 2011) Third-party damages -**  
13   **Documentation.**

14           1. An applicant's payments for third-party damages pursuant to a judgment entered in  
15           a court must include copies of the notice of entry of judgment; and abstract of  
16           costs; ~~and a declaration of the fees paid by the defendant to each attorney who~~  
17           ~~appeared in the proceeding.~~

18           2. An applicant's payments for third-party damages made by agreement in settlement  
19           of litigation must include copies of the settlement agreement and such supporting  
20           documents as may be required by the administrator.

21           3. An applicant's payments for third-party damages made by agreement without  
22           reference to litigation must include copies of the settlement and such supporting  
23           documents as may be required by the administrator.

24           4. The administrator and the board may require a third party who claims bodily injury  
25           to be examined by a physician and require that the physician's report be submitted  
26           to the administrator. The administrator may require a third party who claims  
27           property damage to permit a property appraiser or claims adjuster retained by the  
28           administrator to inspect the property and report to the administrator.

29           5. The fund shall pay a judgment against an owner, operator, or dealer awarded to a  
30           third party as a result of a third-party claim and property damage against an owner,

- 1 operator, or dealer ~~covered~~ registered by the fund, ~~excluding claims for punitive~~  
2 ~~damages or damages for criminal acts.~~
- 3 6. The fund shall pay for corrective action as awarded to a third party in any judgment  
4 against an owner, operator, or dealer.
- 5 7. Liability of the tank owner, operator, dealer, or fund to third parties for corrective  
6 action or personal injuries and property damage may not exceed, per person, ~~the~~  
7 ~~maximum liability allowed per person under subsection 2 of section 32-12.2-02 one~~  
8 million dollars. Maximum liability of the fund, including all claims by third parties,  
9 may not exceed, for any release site, the maximum provided in section 23-37-18.
- 10 8. A third party may not bring an action against any owner, operator, or dealer more  
11 than three years after a corrective action plan has been approved by the  
12 department if the owner, operator, or dealer fully implements and complies with the  
13 corrective action plan.
- 14 9. In investigating a release site or reviewing the implementation of any corrective  
15 action plan approved by the department, the department shall determine whether  
16 the release currently threatens public health or the environment. The department  
17 shall require, based on science and technology appropriate for the site, any  
18 monitoring, remediation, or other appropriate corrective action that is reasonably  
19 necessary to protect public health or the environment. The department may  
20 require corrective action at a release site at any time after a release occurs.

21 **SECTION 28. AMENDMENT.** Section 23-37-28 of the 1999 Supplement to the North  
22 Dakota Century Code is amended and reenacted as follows:

23 **23-37-28. (Effective through July 31, 2009 2011) Matching federal funds.** The  
24 administrator and the board may annually allow the department a ten percent matching grant  
25 for federal leaking underground storage tank funds to be paid out of the fund if the moneys are  
26 available and the administrator and the board determine the allowance appropriate.

27 **SECTION 29. AMENDMENT.** Section 23-37-29 of the 1999 Supplement to the North  
28 Dakota Century Code is amended and reenacted as follows:

29 **23-37-29. (Effective through July 31, 2009 2011) Fund appropriations.** Money in  
30 the fund is continuously appropriated to the administrator for the purpose of making  
31 reimbursements under this chapter.

1           **SECTION 30. AMENDMENT.** Section 23-37-30 of the 1999 Supplement to the North  
2 Dakota Century Code is amended and reenacted as follows:

3           **23-37-30. (Effective through July 31, 2009 2011) Investment of fund.** Investment of  
4 the fund is under the supervision of the state investment board in accordance with chapter  
5 21-10. The commissioner may purchase a contract for reinsurance of any risk to be paid by the  
6 fund. The administrator may investigate the purchase of insurance that reimburses an owner  
7 or operator for property damage claims by third parties other than claims for costs of corrective  
8 action.