

Testimony
House Bill 1113
Senate Energy and Natural Resources Committee
Thursday, March 26, 2015; 4:00 p.m.
North Dakota Department of Health

Good afternoon Chairman Schaible and members of the Energy and Natural Resources Committee. My name is David Glatt, Section Chief of the Environmental Health Section (EHS) for the North Dakota Department of Health (Department). The EHS's Radiation Control Program regulates the many forms of ionizing radiation, monitoring issues ranging from the safety and use of x-ray equipment to the storage and security of radioactive materials. The EHS operates its program through an agreement with the federal Nuclear Regulatory Commission and through the implementation of state laws. The EHS's Radiation Control Program also regulates technologically enhanced naturally occurring radioactive material (TENORM), which is not regulated by the Nuclear Regulatory Commission. I am here today to testify in support of House Bill 1113.

The Department has proposed the following amendments to NDCC 23-20.1:

- > Section 1 clarifies the procedures for appeals of NDCC 23-20.1 permit proceedings. These will be conducted using the same procedures as appeals of the Department's other permit proceedings. The Department believes that NDCC 23-20.1 was inadvertently omitted from the list of chapters referenced in this statute, as it is listed in a related statute (NDCC 23-01-23) that discusses the Department's permit procedures.

- > Section 2, starting on page 2, line 7, refers to the Department's proposal to exempt landfill operations that accept TENORM from the requirement to transfer title of the disposal facility to the United States or the State of North Dakota upon closure. The current law addresses how ownership of radioactive material should be addressed after a facility is closed. Specifically, the title of the facility would be transferred to the U.S. Government or the state, as required by federal law. Because TENORM waste is not regulated at the federal level, the requirement to transfer ownership does not apply. However, it is important to note that the facility ownership will be retained by the current landfill owner pursuant to the solid waste laws and rules. All existing provisions of NDCC 23.20.1 – Ionizing Radiation Development Law and Solid Waste provisions, identified in

NDCC 23-29, will continue to apply to these facilities to ensure the proper handling, storage and disposal of TENORM.

- > Section 3, starting on page 2, line 12, refers to the radiation material licensing process under Section 23-20.1-04.3, subsections 1 and 2. As currently written, the Department must provide an opportunity for a hearing on radioactive material license applications. Unlike other license hearings, there must be an opportunity for cross-examination. This process would require the Department to dedicate considerable funding and time to evaluate, approve or reject even the most basic and straightforward permits. In addition, the current statute is not consistent with NDCC 23-01-23, which discusses the procedures for permit hearings conducted under NDCC 23-20.1.

In the current bill draft, the Department proposed to delete the procedural requirements found in 23-20.1-04.3 and replace them with rules consistent with other public participation requirements found in the environmental programs in the state. This proposal has resulted in confusion, causing some to believe that the public participation process is being reduced. To address this confusion, the Department proposes to amend HB 1113 by deleting only Section (1)(b), which references cross examination, leaving the remaining portion of 23-20.1-4.3 intact. Because many licenses have little or no comment, this would allow the Department to expedite the licensing process while still providing for public comment. The Department has enhanced the appeal process by addressing this issue in the Section 1 amendment.

- > Section 4 on page 3 contains general editing, and deletes an unnecessary cross-reference.
- > Section 5 replaces references to the State Health Council with the “Department.” This deletion will make this section consistent with other statutes under which a hearing may be requested before the Department. Such hearings are generally conducted by an administrative law judge from the Office of Administrative Hearings.
- > Section 6 requests that Section 23-20.1-10 be revised to increase the civil penalty from \$10,000 per day per violation to \$12,500 per day per violation. The increased penalty is consistent with the penalty provisions of other divisions of the Department of Health. In addition, two subsections are added to define criminal violations and potential penalties for violations of the Radioactive Materials License rules. These penalties also are consistent

with those imposed on entities that violate the North Dakota Industrial Commission's oil and gas regulations requiring proper disposal of oilfield waste. The Department is also proposing minor amendments to the criminal penalty provisions, as recommended by the Attorney General's Office.

- > Finally, Section 7 requests that Section 23.20.1-09.1 – Confidentiality of Records of the North Dakota Century Code be repealed because other laws already address confidentiality for these records. Security of information related to radioactive materials is currently maintained in compliance with the requirements of the U.S. Nuclear Regulatory Commission and the U.S. Department of Homeland Security. Personal medical information is protected under the Health Insurance Portability and Accountability Act (HIPAA). All other information is publicly available pursuant to the state's open records laws.

This concludes my testimony. I am happy to answer any questions you may have.