

Testimony
House Bill 1390
Energy and Natural Resources Committee
January 29, 2015, 9:00 a.m.
North Dakota Department of Health

Good morning, Chairman Porter and members of the Energy and Natural Resources Committee. My name is Scott Radig, and I am director of the Waste Management Division of the North Dakota Department of Health. I am here today to provide testimony on House Bill 1390, which relates to licensing of commercial oilfield waste recycling operations.

House Bill 1390 proposes a process for licensing and regulating recyclers of drill cuttings and water that are products of drilling operations. In HB 1114, the Department of Health proposed to change the definition of “resource recovery” in Section 23-29-03 to include all solid waste instead of only municipal solid waste. If HB 1114 is passed, “resource recovery” will include special waste recycling, such as drill cuttings and water from drilling operations. HB 1114 would also give the Department of Health the authority to develop rules for a full recycling and beneficial use program for oilfield waste materials. However, as noted in the fiscal note for HB 1390, developing rules and enforcing regulations to recycle drill cuttings and water from drilling operations will take additional staff time and other resources which are not appropriated for in HB 1114, HB 1390 or HB 1004, the appropriation for the Department of Health.

Should the committee decide HB 1390 is needed, the Health Department suggests the following changes for your consideration:

First, if this bill is approved, the Department feels it should be amended to be an entirely new section within Chapter 23-29, Solid Waste Management. Section 1 of the bill proposes to enact a new section to Chapter 23-20.3, however 23-20.3 is the Hazardous Waste Management law, and oilfield waste materials are exempt from regulation as hazardous waste. Oilfield waste materials are defined as special waste, which is regulated under the Solid Waste Management law. Section 2 of the bill would create a new Chapter 23-48. We recommend both Sections 1 and 2 of the bill be incorporated into Chapter 23-29, which already has in place all of the definitions, authorities and provisions for financial assurance and penalties for managing solid waste. We would recommend that a new section, 23-29-04.2, be created, following section 23-20-04.1, which relates to acceptable beneficial use of coal combustion residues.

Second, the Health Department would like to note that these operations are currently required to be permitted by the North Dakota Industrial Commission, Oil and Gas Division, and this bill would result in dual permitting, inspections and financial assurance. The NDIC financial assurance covers expenses necessary to properly close and reclaim a site if the facility goes out of business. We think it should be clarified – either in the bill or in Department rules - that the financial assurance required by the Health Department should extend to the beneficial use aspect of the operation, covering locations where the treated waste materials are taken to be used, in case there are any unintended environmental impacts from the treated waste material.

Third, in several places the bill refers to licensing recycling operations for waste from “drilling operations.” The Department suggests that this is too narrow and, if the bill is approved, it should be amended to include waste from drilling and production operations or simply all oilfield special waste materials.

Finally, the Health Department has some concerns about the liability release provisions in the bill. There are no provisions for due diligence on the part of the waste generator. Simply dropping off waste at a facility, even if licensed by the Health Department, should not provide a full break in the responsibility for waste material. The Department suggests that if a liability release is provided, it should only take place after the waste material is treated and made into a product or by-product that can be beneficially used and has value as a legitimate substitute for another product or material. The treated material would become a new product and would not be regulated further as a waste material, thus breaking the ties back to the original generator.

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