

HOUSE BILL NO. 144

INTRODUCED BY HARRIS

BY REQUEST OF THE DEPARTMENT OF ENVIRONMENTAL QUALITY

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING CERTAIN UNDERGROUND STORAGE TANK LAWS; ~~MAKING TANK RELEASE CLEANUPS INELIGIBLE FOR VOLUNTARY CLEANUP PROCEDURES UNDER THE VOLUNTARY CLEANUP AND REDEVELOPMENT ACT; SUSPENDING~~ INCREASING THE TIME LIMIT FOR SUBMITTING CLEANUP EXPENSE REIMBURSEMENT REQUESTS ~~UPON APPEAL;~~ AMENDING DEFINITIONS; CHANGING THE ~~CAP ON~~ ANNUAL TANK REGISTRATION FEES; REVISING REQUIREMENTS FOR COMPLIANCE INSPECTIONS AND PERMITS; AMENDING SECTIONS ~~75-10-732,~~ 75-11-307, 75-11-503, 75-11-505, AND 75-11-509, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

~~Section 1. Section 75-10-732, MCA, is amended to read:~~

~~"75-10-732. Eligibility. (1) A facility where there has been a release or threatened release of a hazardous or deleterious substance that may present an imminent and substantial endangerment to the public health, safety, or welfare or the environment may be eligible for voluntary cleanup procedures under this part, except for facilities that meet one of the following criteria at the time of application for a voluntary cleanup plan:~~

~~(a) a facility that is listed or proposed for listing on the national priorities list pursuant to 42 U.S.C. 9601, et seq.;~~

~~(b) a facility for which an order has been issued or consent decree has been entered into pursuant to this part;~~

~~(c) a facility that is the subject of an agency order or an action filed in district court by any state agency that addresses the release or threatened release of a hazardous or deleterious substance; or~~

~~(d) a facility where the release or threatened release of a hazardous or deleterious substance is regulated by under the Montana Hazardous Waste Act and regulations rules under that act; or~~

~~(e) a facility where the release or threatened release of a hazardous or deleterious substance is regulated under the Montana Underground Storage Tank Act and rules under that act; or~~

~~———— (e)(f) a facility that is the subject of pending action under this part because the facility has been issued a notice commencing a specified period of negotiations on an administrative order on consent.~~

~~———— (2) Notwithstanding the provisions of subsections (1)(b) through (1)(e) (1)(f), the department may agree to accept and may approve an application for a voluntary cleanup plan for a facility.~~

~~———— (3) The department may determine that a facility that is potentially eligible for voluntary cleanup exhibits complexities regarding protection of public health, safety, and welfare and the environment and that the complexities should be addressed under an administrative order or consent decree pursuant to this part. This determination may be made only after consultation with any person desiring to conduct a voluntary cleanup at the facility.~~

~~———— (4) If an applicant who submits an application for a voluntary cleanup plan disagrees with the department's decision to reject the filing of the application under subsection (1) or (3) or disagrees with the department's decision to disapprove the voluntary cleanup plan submitted pursuant to 75-10-736, the applicant may, within 30 days of receipt of the department's written decision pursuant to 75-10-736, submit a written request for a hearing before the board of environmental review. In reviewing a department decision to reject an application under subsection (1) or (3) or to disapprove a voluntary cleanup plan submitted pursuant to 75-10-736, the board shall apply the standards of review specified in 2-4-704. The hearing must be held within 2 months at the regular meeting of the board or at the time mutually agreed to by the board, the department, and the applicant. The hearing and any appeals must be conducted in accordance with the contested case proceedings pursuant to Title 2, chapter 4, parts 6 and 7. A hearing before the board may not be requested regarding a decision of the department made pursuant to subsection (2)."~~

Section 1. Section 75-11-307, MCA, is amended to read:

"75-11-307. Reimbursement for expenses caused by a release. (1) Subject to the availability of money from the fund under subsection (5), an owner or operator who is eligible under 75-11-308 and who complies with 75-11-309 and any rules adopted to implement those sections must be reimbursed by the board from the fund for the following eligible costs caused by a release from a petroleum storage tank:

(a) corrective action costs as required by a department-approved corrective action plan, except if the corrective action plan addresses releases of substances other than petroleum products from an eligible petroleum storage tank, the board may reimburse only the costs that would have reasonably been incurred if the only release at the site was the release of the petroleum or petroleum products from the eligible petroleum

1 storage tank; and

2 (b) compensation paid to third parties for bodily injury or property damage. The board may not
3 reimburse for property damage until the corrective action is completed.

4 (2) An owner or operator may not be reimbursed from the fund for the following expenses:

5 (a) corrective action costs or the costs of bodily injury or property damage paid to third parties that are
6 determined by the board to be ineligible for reimbursement;

7 (b) costs for bodily injury and property damage, other than corrective action costs, incurred by the owner
8 or operator;

9 (c) penalties or payments for damages incurred under actions by the department, board, or federal,
10 state, local, or tribal agencies or other government entities involving judicial or administrative enforcement
11 activities and related negotiations;

12 (d) attorney fees and legal costs of the owner, the operator, or a third party;

13 (e) costs for the repair or replacement of a tank or piping or costs of other materials, equipment, or labor
14 related to the operation, repair, or replacement of a tank or piping;

15 (f) expenses incurred before April 13, 1989, for owners or operators seeking reimbursement from the
16 petroleum tank release cleanup fund and expenses incurred before May 15, 1991, for owners or operators
17 seeking reimbursement from the petroleum tank release cleanup fund for a tank storing heating oil for
18 consumptive use on the premises where it is stored or for a farm or residential tank with a capacity of 1,100
19 gallons or less that is used for storing motor fuel for noncommercial purposes;

20 (g) expenses exceeding the maximum reimbursements provided for in subsection (4); and

21 (h) expenses for work completed by or on behalf of the owner or operator more than ~~2~~ 5 years prior to
22 the owner's or operator's request for reimbursement. This limitation does not apply to claims for compensation
23 paid to third parties for bodily injury or property damage. The running of the 2-year 5-YEAR limitation period is
24 suspended by an appeal of the board's denial of eligibility for reimbursement. If a written request for hearing is
25 filed under 75-11-309, the suspension of the 2-year 5-YEAR limitation period is effective from the date of the
26 board's initial eligibility denial to the date on which the initial eligibility denial is overturned or reversed by the
27 board, a district court, or the state supreme court, whichever occurs latest. THE BOARD MAY GRANT REASONABLE
28 EXTENSIONS OF THIS LIMITATION PERIOD IF IT IS SHOWN THAT THE NEED FOR THE EXTENSION IS NOT DUE TO THE
29 NEGLIGENCE OF THE OWNER OR OPERATOR OR AGENT OF THE OWNER OR OPERATOR.

30 (3) An owner or operator may designate a person as an agent to receive the reimbursement if the owner

or operator remains legally responsible for all costs and liabilities incurred as a result of the release.

(4) Subject to the availability of funds under subsection (5):

(a) for releases eligible for reimbursement from the petroleum tank release cleanup fund that are discovered and reported on or after April 13, 1989, from a tank storing heating oil for consumptive use on the premises where it is stored or from a farm or residential tank with a capacity of 1,100 gallons or less that is used for storing motor fuel for noncommercial purposes, the board shall reimburse an owner or operator for:

(i) 50% of the first \$10,000 of eligible costs and 100% of subsequent eligible costs, up to a maximum total reimbursement of \$495,000:

(A) for single-walled tank system releases; and

(B) for double-walled tank system releases for which the release date was prior to October 1, 1993; or

(ii) 100% of the eligible costs, up to a maximum total reimbursement of \$500,000, for properly designed and installed double-walled tank system accidental releases that were discovered and reported on or after October 1, 1993; and

(b) for all other releases eligible for reimbursement from the petroleum tank release cleanup fund that are discovered and reported on or after April 13, 1989, the board shall reimburse an owner or operator for:

(i) 50% of the first \$35,000 of eligible costs and 100% of subsequent eligible costs, up to a maximum total reimbursement of \$982,500:

(A) for single-walled tank system releases; and

(B) for double-walled tank system releases for which the release date was prior to October 1, 1993; or

(ii) 100% of the eligible costs, up to a maximum total reimbursement of \$1 million, for properly designed and installed double-walled tank system accidental releases that were discovered and reported on or after October 1, 1993.

(5) If the fund does not contain sufficient money to pay approved claims for eligible costs, a reimbursement may not be made and the fund and the board are not liable for making any reimbursement for the costs at that time. When the fund contains sufficient money, eligible costs must be reimbursed subsequently in the order in which they were approved by the board."

Section 2. Section 75-11-503, MCA, is amended to read:

"75-11-503. Definitions. Unless the context requires otherwise, in this part, the following definitions apply:

1 (1) "Board" means the board of environmental review provided for in 2-15-3502.

2 (2) "Department" means the department of environmental quality provided for in 2-15-3501.

3 (3) "Dispose" or "disposal" means the discharge, injection, deposit, dumping, spilling, leaking, or placing
4 of any regulated substance into or onto the land or water so that the regulated substance or any constituent of
5 the regulated substance may enter the environment or be emitted into the air or discharged into any waters,
6 including ground water.

7 (4) "Person" means the United States, an individual, firm, trust, estate, partnership, company,
8 association, corporation, city, town, local governmental entity, or any other governmental or private entity,
9 whether organized for profit or not.

10 (5) "Regulated substance":
11

12 (a) means:

13 (i) a hazardous substance as defined in 75-10-602; or

14 (ii) petroleum, including crude oil or any fraction of crude oil, that is liquid at standard conditions of
15 temperature and pressure (60 degrees F and 14.7 pounds per square inch absolute);

16 (b) does not include a substance regulated as a hazardous waste under Title 75, chapter 10, part 4.

17 (6) "Storage" means the actual or intended containment of regulated substances, either on a temporary
18 basis or for a period of years.

19 (7) "Underground storage tank" or "tank":

20 (a) means, except as provided in subsections (7)(b)(i) through (7)(b)(xi):

21 (i) any one or a combination of tanks used to contain a regulated substance, the volume of which is 10%
22 or more beneath the surface of the ground; ~~and~~

23 (ii) any underground pipes used to contain or transport a regulated substance and connected to a
24 storage tank, whether the storage tank is entirely above ground, partially above ground, or entirely under ground;
25 and

26 (iii) ancillary equipment designed to prevent, detect, or contain a release from an underground storage
27 tank;

28 (b) does not include:

29 (i) a farm or residential tank that was installed as of April 27, 1995, that has a capacity of 1,100 gallons
30 or less; and that is used for storing motor fuel for noncommercial purposes;

(ii) a farm or residential tank that was installed as of April 27, 1995, that has a capacity of 1,100 gallons

1 or less; and that is used for storing heating oil for consumptive use on the premises where it is stored;
2 (iii) farm or residential underground pipes that were installed as of April 27, 1995, and that are used to
3 contain or to transport motor fuels for noncommercial purposes or heating oil for consumptive use on the
4 premises where it is stored from an aboveground storage tank with a capacity of 1,100 gallons or less;
5 (iv) a septic tank;
6 (v) a pipeline facility, including gathering lines, regulated under:
7 (A) the Natural Gas Pipeline Safety Act of 1968, 49 U.S.C. 1671, et seq.;
8 (B) the Hazardous Liquid Pipeline Safety Act of 1979, 49 U.S.C. 2001, et seq.; or
9 (C) state law comparable to the provisions of law referred to in subsection (7)(b)(v)(A) or (7)(b)(v)(B),
10 if the facility is intrastate;
11 (vi) a surface impoundment, pit, pond, or lagoon;
12 (vii) a storm water or wastewater collection system;
13 (viii) a flow-through process tank;
14 (ix) a liquid trap or associated gathering lines directly related to oil or gas production and gathering
15 operations;
16 (x) a storage tank situated in an underground area, such as a basement, cellar, mine, draft, shaft, or
17 tunnel, if the storage tank is situated upon or above the surface of the floor;
18 (xi) any pipe connected to a tank described in subsections (7)(b)(i) through (7)(b)(ix); or
19 (xii) underground pipes connected to an aboveground storage tank at a petroleum refinery that is subject
20 to ~~facility-wide~~ facilitywide corrective action permit provisions under 75-10-406 or the federal Resource
21 Conservation and Recovery Act of 1976, 42 U.S.C. 6901 through 6987, as amended."
22

23 **Section 3.** Section 75-11-505, MCA, is amended to read:

24 **"75-11-505. Administrative rules.** The department may adopt, amend, or repeal rules for the
25 prevention and correction of leakage from underground storage tanks, including:

- 26 (1) reporting by owners and operators;
27 (2) financial responsibility;
28 (3) release detection, prevention, and corrective action;
29 (4) procedures and standards for the issuance, nonissuance, renewal, nonrenewal, modification,
30 revocation, suspension, and enforcement of permits authorizing the operation of underground storage tanks;

(5) standards for design, construction, installation, and closure;

(6) development of a schedule of annual tank registration fees, ~~not to exceed \$70 for a tank over 1,100 gallons and not to exceed \$20 for a tank 1,100 gallons or less, per tank, for tank registration, NOT TO EXCEED \$108 FOR A TANK OVER 1,100 GALLONS AND NOT TO EXCEED \$36 FOR A TANK 1,100 GALLONS OR LESS, FOR EACH TANK, FOR TANK REGISTRATION~~ to defray ~~and not to exceed the~~ state and local costs of implementing an underground storage tank program. The department may prorate fees to cover periods not equal to 12 months in order to provide staggered scheduling of renewal dates.

(7) a penalty schedule and a system for assessment of administrative penalties, notice, and appeals under 75-11-525; and

(8) delegation of authority and funds to local agents for inspections and implementation. The delegation of authority to local agents must complement and may not duplicate existing authority for implementation of rules adopted by the department of justice that relate to underground storage tanks."

Section 4. Section 75-11-509, MCA, is amended to read:

"75-11-509. Inspections -- permits. (1) The owner or operator of an active underground storage tank must have the tank inspected for compliance with this part by January 1, 2002, and at least once every 3 years thereafter by an inspector who is licensed pursuant to Title 75, chapter 11, part 2, to perform underground storage tank inspections. The inspector may not be:

(a) the owner or operator of the tank;

(b) an employee of the owner or operator; or

(c) for the first inspection required by this subsection (1) and for a period of 3 years after the installation or modification of the tank was completed, the installer who installed or modified the tank and whose name or signature was on the permit required by 75-11-212.

(2) The owner or operator of an inactive underground storage tank shall comply with requirements for testing, inspection, recordkeeping, and reporting provided in rules adopted pursuant to this part.

(3) The department may by rule authorize temporary permits for the installation, testing, and operation of underground storage tanks. The requirements in subsection (8) for a 3-year permit term and for permit issuance only after inspection by a licensed inspector do not apply to temporary permits.

~~(2)(4)~~ The department shall by rule provide:

(a) requirements for the scope and timing of inspections; and

1 (b) requirements for testing, inspection, recordkeeping, and reporting for inactive tanks to ensure that
2 these tanks do not pose a threat to public health, safety, or the environment while inactive or upon their return
3 to active status.

4 ~~(3)~~(5) The inspector shall provide the owner or operator with an inspection report that meets the
5 requirements of rules adopted by the department to ensure compliance with this part and rules adopted pursuant
6 to this part.

7 ~~(4)~~(6) The owner or operator shall retain the original inspection report and mail a copy to the
8 department.

9 ~~(5)~~(7) If the inspection report indicates violations, the owner or operator shall correct the violations and
10 obtain a followup inspection. Followup inspection reports must be provided to the owner or operator and to the
11 department.

12 ~~(6)~~(8) A person may not place a regulated substance in an underground storage tank unless the owner
13 or operator has been issued a valid permit from the department for the tank. Permits must be issued for a term
14 of 3 years. The department may not issue or renew a permit unless the owner or operator has filed with the
15 department an inspection report by a licensed inspector, ~~who certifies that~~ Except as provided in subsection (9),
16 prior to issuing or renewing a permit, the department shall determine, on the basis of the inspection report and
17 other relevant information, that the operation and maintenance of the tank was in compliance with this part and
18 rules adopted pursuant to this part on the date of inspection.

19 (9) The department may issue and renew permits for tanks that are not in full compliance with the
20 operation and maintenance requirements of this part and rules adopted pursuant to this part only if the
21 department requires, in a compliance order issued pursuant to 75-11-512 or 75-11-525, that the noncompliance
22 be corrected at the earliest practicable time. The department may also take other enforcement actions, including
23 actions for penalties under this chapter, and may pursue any other remedy available to the department to
24 address noncompliance with this part or with rules, permits, or orders issued pursuant to this part.

25 (10) The department may determine to not issue or not renew a permit for a tank if the department finds
26 that there has been significant noncompliance with this part or with rules, permits, or orders issued pursuant to
27 this part. If the department proposes to not issue or not renew a permit, it must have a written notice letter served
28 personally or by certified mail on the owner or operator informing the owner or operator of the reason for the
29 action. The owner or operator may request a hearing before the board. The hearing request must be in writing
30 and must be filed with the board no later than 30 days after the service of the notice letter. The contested case

1 provisions of the Montana Administrative Procedure Act, provided for in Title 2, chapter 4, part 6, apply to a
2 hearing conducted under this section."

3
4 NEW SECTION. Section 5. Saving clause. [This act] does not affect rights and duties that matured,
5 penalties that were incurred, or proceedings that were begun before [the effective date of this act].

6
7 NEW SECTION. Section 6. Effective date. [This act] is effective on passage and approval.

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9 NEW SECTION. SECTION 7. APPLICABILITY. [SECTION 1] APPLIES TO ALL CLAIMS FOR REIMBURSEMENT OF
10 EXPENSES ON FILE WITH THE DEPARTMENT OF ENVIRONMENTAL QUALITY ON [THE EFFECTIVE DATE OF THIS ACT].

11 - END -