

HOUSE BILL NO. 628

INTRODUCED BY K. PETERSON

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING ELIGIBILITY REQUIREMENTS FOR EXPENSES CAUSED BY A RELEASE FROM CERTAIN UNDERGROUND STORAGE TANKS; AMENDING SECTIONS 75-11-307, 75-11-308, AND 75-11-309, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE."

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

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

"75-11-307. Reimbursement for expenses caused by 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 storage tank; and

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

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

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

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

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

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

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

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

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

10 (h) expenses for work completed by or on behalf of the owner or operator more than 5 years prior to the
11 owner's or operator's request for reimbursement. This limitation does not apply to claims for compensation paid
12 to third parties for bodily injury or property damage. The running of the 5-year limitation period is suspended by
13 an appeal of the board's denial of eligibility for reimbursement. If a written request for hearing is filed under
14 75-11-309, the suspension of the 5-year limitation period is effective from the date of the board's initial eligibility
15 denial to the date on which the initial eligibility denial is overturned or reversed by the board, a district court, or
16 the state supreme court, whichever occurs latest. The board may grant reasonable extensions of this limitation
17 period if it is shown that the need for the extension is not due to the negligence of the owner or operator or agent
18 of the owner or operator.

19 (3) An owner or operator may designate a person as an agent to receive the reimbursement if the owner
20 or operator remains legally responsible for all costs and liabilities incurred as a result of the release.

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

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

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

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

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

30 (ii) 100% of the eligible costs, up to a maximum total reimbursement of \$500,000, for properly designed

1 and installed double-walled tank system accidental releases that were discovered and reported on or after
2 October 1, 1993;

3 (b) for releases eligible for reimbursement from the petroleum tank release cleanup fund that are
4 discovered and reported on or after April 13, 1989, from an underground storage tank, as defined in 75-11-503,
5 with a capacity of 1,100 gallons or less that was not used commercially by the current owner of the property, the
6 board shall reimburse the owner of the property for 100% of eligible costs, up to a maximum total reimbursement
7 of \$1 million; and

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

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

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

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

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

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

21
22 **Section 2.** Section 75-11-308, MCA, is amended to read:

23 **"75-11-308. Eligibility.** (1) An owner or operator is eligible for reimbursement for the applicable
24 percentage as provided in 75-11-307(4)(a) ~~and (4)(b)~~ through (4)(c) of eligible costs caused by a release from
25 a petroleum storage tank only if:

26 (a) the release was discovered on or after April 13, 1989;

27 (b) the release occurred from:

28 (i) an underground storage tank, as defined in 75-11-503, that was in compliance with 75-11-509 at the
29 time that the release was discovered;

30 (ii) a petroleum storage tank, as defined in 75-11-302, that was in compliance with the applicable state

1 and federal laws and rules that the board determines pertain to the prevention and mitigation of a petroleum
2 release from a petroleum storage tank at the time that the release was discovered;

3 (iii) an underground storage tank, as defined in 75-11-503, with a capacity of 1,100 gallons or less that
4 was not used commercially by the current owner of the property; or

5 ~~(iii)~~(iv) an underground storage tank, as defined in 75-11-503, that the board determines was unknown
6 to both the property owner and the department prior to its discovery if the owner applies to the department for a
7 closure permit in accordance with 75-11-212 within 30 days of the date upon which the owner first had knowledge
8 of the tank and closes the tank in accordance with the requirements of the permit before the permit expires; and

9 (c) the release was an accidental release.

10 (2) An owner or operator is not eligible for reimbursement from the petroleum tank release cleanup fund
11 for expenses caused by releases from the following petroleum storage tanks:

12 (a) a tank located at a refinery or a terminal of a refiner;

13 (b) a tank located at an oil and gas production facility;

14 (c) a tank that is or was previously under the ownership or control of a railroad, except for a tank that was
15 operated by a lessee of a railroad in the course of nonrailroad operations;

16 (d) a tank belonging to the federal government;

17 (e) a tank owned or operated by a person who has been convicted of a substantial violation of state or
18 federal law or rule that relates to the installation, operation, or management of petroleum storage tanks; or

19 (f) a mobile storage tank used to transport petroleum or petroleum products from one location to
20 another."

21
22 **Section 3.** Section 75-11-309, MCA, is amended to read:

23 **"75-11-309. Procedures for reimbursement of eligible costs.** (1) An owner or operator seeking
24 reimbursement for eligible costs and the department shall comply with the following procedures:

25 (a) If an owner or operator discovers or is provided evidence that a release may have occurred from the
26 owner's or operator's petroleum storage tank, the owner or operator shall immediately notify the department of
27 the release and conduct an initial response to the release in accordance with state and federal laws and rules
28 to protect the public health and safety and the environment.

29 (b) Except for a tank for which a permit is sought under ~~75-11-308(1)(b)(iii)~~ 75-11-308(1)(b)(iv) and that
30 is closed within 120 days of discovery of the release or for a tank under 75-11-308(1)(b)(iii), following discovery

1 of the release, the petroleum storage tank must remain in compliance with applicable state and federal laws and
2 rules that the board determines pertain to prevention and mitigation of petroleum releases.

3 (c) The owner or operator shall conduct a thorough investigation of the release, report the findings to
4 the department, and, as determined necessary by the department, prepare and submit for approval by the
5 department a corrective action plan that conforms with state, tribal (when applicable), and federal corrective
6 action requirements.

7 (d) (i) The department shall review the corrective action plan and forward a copy to a local government
8 office and, when applicable, a tribal government office with jurisdiction over a corrective action for the release.
9 The local or tribal government office shall inform the department if it wants any modification of the proposed plan.

10 (ii) Based on its own review and comments received from a local government, tribal government, or other
11 source, the department may approve the proposed corrective action plan, make or request the owner or operator
12 to modify the proposed plan, or prepare its own plan for compliance by the owner or operator. A plan finally
13 approved by the department through any process provided in this subsection (1)(d) is the approved corrective
14 action plan.

15 (iii) After the department approves a corrective action plan, a local government or tribal government may
16 not impose different corrective action requirements on the owner or operator.

17 (e) The department shall notify the owner or operator of its approval of a corrective action plan and shall
18 promptly submit a copy of the approved corrective action plan to the board.

19 (f) The owner or operator shall implement the corrective action plan or plans approved by the department
20 until the release is resolved. The department may oversee the implementation of the plan, require reports and
21 monitoring from the owner or operator, undertake inspections, and otherwise exercise its authority concerning
22 corrective action under Title 75, chapter 10, part 7, Title 75, chapter 11, part 5, and other applicable law and rules.

23 (g) (i) The owner or operator shall document in the manner required by the board all expenses incurred
24 in preparing and implementing the corrective action plan. The owner or operator shall submit claims and
25 substantiating documents to the board in the form and manner required by the board.

26 (ii) The board shall review each claim and determine if the claims are actual, reasonable, and necessary
27 costs of responding to the release and implementing the corrective action plan.

28 (iii) If the board requires additional information to determine if a claimed cost is actual, reasonable, and
29 necessary, the board may request comment from the department and the owner or operator.

30 (iv) If the department determines that an owner or operator is failing to properly implement a corrective

1 action plan, it shall notify the board.

2 (h) The owner or operator shall document, in the manner required by the board, any payments to a third
3 party for bodily injury or property damage caused by a release. The owner or operator shall submit claims and
4 substantiating documents to the board in the form and manner required by the board.

5 (i) In addition to the documentation in subsections (1)(g) and (1)(h), when the release is claimed to have
6 originated from a double-walled tank system, the owner or operator shall document, in the manner required by
7 the board, the following:

8 (i) the date that the release was discovered;

9 (ii) that the originating tank was part of a double-walled tank system as defined in 75-11-302; and

10 (iii) that the double-walled tank system was properly installed and made of materials and constructed in
11 accordance with applicable department regulations.

12 (2) If an owner or operator is issued an administrative order for failure to comply with requirements
13 imposed by or pursuant to Title 75, chapter 11, part 5, or rules adopted pursuant to Title 75, chapter 11, part 5,
14 all reimbursement of claims submitted after the date of the order must be suspended. Upon a written
15 determination by the department that the owner or operator has returned to compliance with the requirements
16 of Title 75, chapter 11, part 5, or rules adopted pursuant to Title 75, chapter 11, part 5, suspended and future
17 claims may be reimbursed according to criteria established by the board. In establishing the criteria, the board
18 shall consider the effect and duration of the noncompliance.

19 (3) The board shall review each claim received under subsections (1)(g) and (1)(h), make the
20 determination required by this subsection, inform the owner or operator of its determination, and, as appropriate,
21 reimburse the owner or operator from the fund. Before approving a reimbursement, the board shall affirmatively
22 determine that:

23 (a) the expenses for which reimbursement is claimed:

24 (i) are eligible costs; and

25 (ii) were actually, necessarily, and reasonably incurred for the preparation or implementation of a
26 corrective action plan approved by the department or for payments to a third party for bodily injury or property
27 damage; and

28 (b) the owner or operator:

29 (i) is eligible for reimbursement under 75-11-308; and

30 (ii) has complied with this section and any rules adopted pursuant to this section. Upon a determination

1 by the board that the owner or operator has not complied with this section or rules adopted pursuant to this
2 section, all reimbursement of pending and future claims must be suspended. Upon a determination by the board
3 that the owner or operator has returned to compliance with this section or rules adopted pursuant to this section,
4 suspended and future claims may be reimbursed according to criteria established by the board. In establishing
5 the criteria, the board shall consider the effect and duration of the noncompliance.

6 (4) If an owner or operator disagrees with a board determination under subsection (3), the owner or
7 operator may submit a written request for a hearing before the board. The hearing must be held at a meeting of
8 the board or as otherwise permitted under the Montana Administrative Procedure Act no later than 120 days
9 following receipt of the request or at a time mutually agreed to by the board and the owner or operator.

10 (5) The board shall obligate money for reimbursement of eligible costs of owners and operators in the
11 order that the costs are finally approved by the board.

12 (6) (a) The board may, at the request of an owner or operator, guarantee in writing the reimbursement
13 of eligible costs that have been approved by the board but for which money is not currently available from the fund
14 for reimbursement.

15 (b) The board may, at the request of an owner or operator, guarantee in writing reimbursement of eligible
16 costs not yet approved by the board, including estimated costs not yet incurred. A guarantee for payment under
17 this subsection (6)(b) does not affect the order in which money in the fund is obligated under subsection (5).

18 (c) When considering a request for a guarantee of payment, the board may require pertinent information
19 or documentation from the owner or operator. The board may grant or deny, in whole or in part, any request for
20 a guarantee."

21
22 **NEW SECTION.** **Section 4. Effective date.** [This act] is effective on passage and approval.

23
24 **NEW SECTION.** **Section 5. Retroactive applicability.** [This act] applies retroactively, within the
25 meaning of 1-2-109, to an underground storage tank, as defined in 75-11-503, with a capacity of 1,100 gallons
26 or less that was not used commercially by the current owner of the property on or after January 1, 2006.

27 - END -