

**Legislative proposals proposed by the Petroleum Tank Release Compensation Board (the Board) and presented by the Department of Environmental Quality For the Environmental Quality Council's September 2008 meeting**

**Single Wall / Double Wall**

The federal Energy Policy Act of 2005 resulted in a state requirement that tank owners must upgrade to double-wall underground storage tanks (USTs) if significant alteration to the system is required. Thus, the industry will be migrating to exclusively double-wall tank systems. Under current law, an owner's co-pay is waived for releases involving properly designed and installed double-wall tank systems. The need for the fund to provide incentive for owners to install a double-wall tank is no longer necessary. Releases occurring from a double-wall tank system and discovered on or after October 1, 2009 will be required to contribute the same copayment as releases occurring from single wall tank systems.

**Controls on Fund Balance**

Under current law, collection of the \$.75/gallon fee for this fund is suspended after the unobligated balance in the fund equals or exceeds \$8 million. Collection is reinstated whenever the unobligated fund balance, less claims anticipated for board approval within the next 90 days, is less than \$4 million. These levels haven't changed since the fund's inception and do not reflect cost increases during that time. Suspension of collection during the 1990s helped create a funding backlog from which the fund is still struggling to recover.

**Judicial Action**

Current statute imposes reductions to reimbursement if a tank owner fails to remain in compliance and/or receives an administrative order. The department's regulatory activity may, under limited circumstances, result in the department pursuing a judicial action for non compliance rather than an administrative order. The inclusion of a judicial action as a trigger simplifies the application of the law and improves consistency in regulatory practice.

**Co-mingled Plume**

The board proposes placing into statute language promulgated in rule in 1999. This language would clarify that the cleanup of two eligible plumes having different co-payments shall be required to pay the larger co-payment on both releases, thus eliminating the expensive, difficult and often inconclusive need to scientifically determine plume separation.

**Insurance Incentive**

The Board proposes adding incentive for owners to have insurance and to use their insurance when a release has been discovered. This proposal would allow an owner's insurance to be credited toward his co-pay and would clarify that an owner need not obtain reimbursement from the Fund until all applicable insurance coverage has been exhausted.

**Statute of Limitations**

Recent Supreme Court decision places time limits on recovery efforts associated with corrective action of petroleum release. This proposal would require tank owners to file for eligibility in a timely fashion to allow the Board every opportunity to recover from any insurance the owner/operator may have and to ensure that decisions made by the Board become final after allowing the owner/operator an opportunity to contest a decision.