

HOUSE BILL NO. 368

INTRODUCED BY DEVLIN, BARRETT, A. OLSON, WANZENRIED, ANDERSON, MCCARTHY, TESTER

A BILL FOR AN ACT ENTITLED: "AN ACT ~~ELIMINATING~~ EXTENDING THE 2-YEAR TIME LIMIT FOR SUBMITTING CLAIMS FOR REIMBURSEMENT FROM THE PETROLEUM TANK RELEASE CLEANUP FUND; MODIFYING THE ELIGIBILITY REQUIREMENTS; REVISING PROCEDURES FOR REIMBURSEMENT OF ELIGIBLE COSTS; PROVIDING FOR THIRD-PARTY REVIEW OF CLAIMS AND PLANS; REVISING THE AUTHORITY OF THE BOARD; ~~AND~~ AMENDING SECTIONS 75-11-307, 75-11-308, 75-11-309, 75-11-313, AND 75-11-318, MCA; AND PROVIDING AN 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 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 that 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;

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

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

(f) (i) expenses incurred before April 13, 1989, for owners or operators seeking reimbursement from the petroleum tank release cleanup fund; and

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

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

~~— (h) expenses for work completed by or on behalf of the owner or operator more than 2 years prior to the owner's or operator's request for reimbursement. This limitation does not apply to claims for compensation paid to third parties for bodily injury or property damage; AND~~

(H) EXPENSES FOR WORK COMPLETED BY OR ON BEHALF OF THE OWNER OR OPERATOR MORE THAN 5 YEARS PRIOR TO THE OWNER'S OR OPERATOR'S REQUEST FOR REIMBURSEMENT. THIS LIMITATION DOES NOT APPLY TO CLAIMS FOR COMPENSATION PAID TO THIRD PARTIES FOR BODILY INJURY OR PROPERTY DAMAGE. THE RUNNING OF THE 5-YEAR LIMITATION PERIOD IS SUSPENDED BY AN APPEAL OF THE BOARD'S DENIAL OF ELIGIBILITY FOR REIMBURSEMENT. IF A WRITTEN REQUEST FOR HEARING IS FILED UNDER 75-11-309, THE SUSPENSION OF THE 5-YEAR LIMITATION PERIOD IS EFFECTIVE FROM THE DATE OF THE BOARD'S INITIAL ELIGIBILITY DENIAL TO THE DATE ON WHICH THE INITIAL ELIGIBILITY DENIAL IS OVERTURNED OR REVERSED BY THE BOARD, A DISTRICT COURT, OR THE STATE SUPREME COURT, WHICHEVER OCCURS LATEST. THE BOARD MAY GRANT REASONABLE EXTENSIONS OF THIS LIMITATION PERIOD IF IT IS SHOWN THAT THE NEED FOR THE EXTENSION IS NOT DUE TO THE NEGLIGENCE OF THE OWNER OR OPERATOR OR AGENT OF THE OWNER OR OPERATOR.

(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 75-11-308, MCA, is amended to read:

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

~~_____ (a) the release was discovered on or after April 13, 1989, and the underground storage tank from which the release occurred had a valid permit pursuant to 75-11-509 at the time that the release was discovered;~~

(A) THE RELEASE WAS DISCOVERED ON OR AFTER APRIL 13, 1989, AND THE RELEASE OCCURRED FROM:

(I) AN UNDERGROUND STORAGE TANK, AS DEFINED IN 75-11-503, THAT WAS IN COMPLIANCE WITH 75-11-509 AT THE TIME THAT THE RELEASE WAS DISCOVERED;

(II) A PETROLEUM STORAGE TANK, AS DEFINED IN 75-11-302, THAT WAS IN COMPLIANCE WITH THE APPLICABLE

STATE AND FEDERAL LAWS AND RULES THAT THE BOARD DETERMINES PERTAIN TO THE PREVENTION AND MITIGATION OF A PETROLEUM RELEASE FROM A PETROLEUM STORAGE TANK AT THE TIME THAT THE RELEASE WAS DISCOVERED; OR

(III) AN UNDERGROUND STORAGE TANK, AS DEFINED IN 75-11-503, THAT THE PROPERTY OWNER HAD NO PREVIOUS KNOWLEDGE OF IF THE TANK WAS IN COMPLIANCE WITH THE APPLICABLE STATE AND FEDERAL LAWS AND RULES THAT THE BOARD DETERMINES PERTAIN TO THE PREVENTION AND MITIGATION OF A PETROLEUM RELEASE AT THE TIME THAT THE RELEASE WAS DISCOVERED;

~~(b) the department is notified of the release in the manner and within the time provided by law or rule;~~

~~— (c) the department has been notified of the existence of the tank in the manner required by department rule or has waived the requirement for notification;~~

~~(d)~~(b) the release was an accidental release;

~~(e)~~(c) with the exception of the release, following the discovery of the release, the operation and management of the tank complied THE UNDERGROUND STORAGE TANK FROM WHICH THE RELEASE OCCURRED WAS REMOVED OR HAD A VALID PERMIT PURSUANT TO 75-11-509 AND THE PETROLEUM STORAGE TANK remained in compliance with applicable state and federal laws and rules that the board determines pertain to prevention and mitigation of petroleum releases ~~when the release was discovered and remained in compliance following discovery of the release;~~ and

~~(f)~~(d) the owner or operator undertakes corrective action to respond to the release and the corrective action is undertaken, in accordance with a corrective action plan approved by the department, from the time of discovery until the release is resolved.

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

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

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

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

(d) a tank belonging to the federal government;

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

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

(3) When, subsequent to the discovery of a release, an owner or operator fails to remain in compliance as required by subsection ~~(1)~~(e) (1)(c) or fails to conduct corrective action as required by subsection ~~(1)~~(f) (1)(d)

and is issued a violation letter by the department, all reimbursement of claims submitted after the date of the violation letter must be suspended. Upon a determination by the department that all violations identified in the violation letter have been corrected, all suspended and future claims may be reimbursed according to criteria established by the board. In determining the amount of reimbursement, if any, the board may consider the effect and duration of the noncompliance."

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

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

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

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

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

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

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

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

(e) The owner or operator shall implement the approved plan. The department may oversee the implementation of the plan, require reports and monitoring from the owner or operator, undertake inspections,

and otherwise exercise its authority concerning corrective action under Title 75, chapter 10, part 7, Title 75, chapter 11, part 5, and other applicable law and rules.

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

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

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

(iv) If the department determines that an owner or operator is failing to properly implement a corrective action plan, it shall notify the board. The board shall forward each claim and appropriate documentation to the department. The department shall notify the board of any costs that the department considers not reimbursable because of any failure to meet the requirements of subsection (2). The department shall inform the owner or operator of any notification given to the board.

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

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

(i) the date that the release was discovered;

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

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

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

(a) the expenses for which reimbursement is claimed:

(i) are eligible costs; and

(ii) were actually, necessarily, and reasonably incurred for the preparation or implementation of a

corrective action plan approved by the department or for payments to a third party for bodily injury or property damage; and

(b) the owner or operator:

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

(ii) has complied with this section and any rules adopted pursuant to this section.

(3) If an owner or operator disagrees with a board determination under subsection (2), the owner or operator may submit a written request for a hearing before the board. The hearing must be held at a meeting of the board or as otherwise permitted under the Montana Administrative Procedure Act no later than 120 days following receipt of the request or at a time mutually agreed to by the board and the owner or operator.

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

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

(b) The board may, at the request of an owner or operator, guarantee in writing reimbursement of eligible costs not yet approved by the board, including estimated costs not yet incurred. A guarantee for payment under this subsection (5)(b) does not affect the order in which money in the fund is obligated under subsection (4).

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

NEW SECTION. Section 4. Review of corrective action plans and claims. (1) To ensure that the fund provided for in 75-11-313 is being utilized in the most efficient manner, the board may implement a program of third-party review for corrective action plans and claims. The board may submit a corrective action plan or claim for review by a qualified third party of the board's choosing.

(2) If a third-party review ~~of~~ SUGGESTS THAT a corrective action plan is inappropriate for the release, the board may remand the plan to the department for further review.

(3) If a third-party review suggests that submitted costs do not comply with the requirements of 75-11-309(2)(a), the board may deny the costs, subject to 75-11-309(3).

Section 5. Section 75-11-313, MCA, is amended to read:

"75-11-313. Petroleum tank release cleanup fund. (1) There is a petroleum tank release cleanup fund in the state special revenue fund established in 17-2-102. The fund is administered as a revolving fund by the board and is statutorily appropriated, as provided in 17-7-502, for the purposes provided for under subsections ~~(3)(b)~~ (3)(c) and ~~(3)(e)~~ (3)(d). Administrative costs under ~~subsection~~ subsections (3)(a) and (3)(b) must be paid pursuant to a legislative appropriation.

(2) There is deposited in the fund:

(a) all revenue from the petroleum storage tank cleanup fee as provided in 75-11-314;

(b) money received by the board in the form of gifts, grants, reimbursements, or appropriations, from any source, intended to be used for the purposes of this fund;

(c) money appropriated or advanced to the fund by the legislature;

(d) money loaned to the board by the board of investments; and

(e) all interest earned on money in the fund.

(3) ~~The~~ As provided in 75-11-318, the fund may be used only:

(a) to administer this part, including payment of board ~~and department~~ expenses associated with administration;

(b) to pay the actual and necessary department expenses that the board determines necessary by budget review and approval ASSOCIATED WITH ADMINISTRATION;

~~(b)(c)~~ to reimburse owners and operators for eligible costs caused by a release from a petroleum storage tank and approved by the board; and

~~(e)(d)~~ for repayment of any advance and any loan made pursuant to 17-6-225, plus interest earned on the advance or loan.

(4) Whenever the board accepts a loan from the board of investments pursuant to 17-6-225, the receipts from the fees provided for in 75-11-314 in each fiscal year until the loan is repaid are pledged and dedicated for the repayment of the loan in an amount sufficient to meet the repayment obligation for that fiscal year."

Section 6. Section 75-11-318, MCA, is amended to read:

"75-11-318. Powers and duties of board. (1) The board shall administer the petroleum tank release cleanup fund in accordance with the provisions of this part, including the payment of reimbursement to owners and operators. The board may hire its own staff to assist in the implementation of this part.

(2) The board shall determine whether to approve reimbursement of eligible costs under the provisions of 75-11-309(2), shall obligate money from the fund for approved costs, and shall act on requests for the

guarantee of payments through the procedures and criteria provided in 75-11-309.

(3) The board may conduct meetings, hold hearings, undertake legal action, and conduct other business that may be necessary to administer its responsibilities under this part. The board shall meet at least quarterly for the purpose of reviewing and approving claims for reimbursement from the fund and conducting other business as necessary.

(4) ~~The department shall provide staff support to the board as the department determines it is able.~~ The board shall use the fund to pay for:

~~— (a) for department staff used expenses that the board determines by budget review and approval are needed for:~~

(A) DEPARTMENT EXPENSES INCURRED IN PROVIDING ASSISTANCE TO THE BOARD. THE BOARD SHALL REVIEW AND COMMENT ON ALL DEPARTMENT ADMINISTRATIVE BUDGET PROPOSALS THAT ARE ASSESSED AGAINST THE FUND PRIOR TO SUBMITTAL OF THE DEPARTMENT BUDGET FOR LEGISLATIVE APPROVAL. DEPARTMENT ADMINISTRATIVE EXPENSES ON BEHALF OF THE BOARD MAY INCLUDE:

(i) ~~for~~ the review or preparation of corrective action plans;

(ii) ~~for~~ the oversight of corrective action undertaken by owners and operators for the purposes of this part;

and

~~(iii) for the review and processing of claims for reimbursement submitted by owners and operators under this part~~ the actual and necessary administrative support provided to the board; ~~and~~

(b) ~~for~~ department of transportation staff expenses used for the collection of the petroleum storage tank cleanup fee;

(c) third-party review of corrective action plans or claims pursuant to [section 4];

(d) board staff expenses; and

(e) expenses of implementing the board's duties as provided in this part.

(5) The board shall adopt rules to administer this part, including:

(a) rules governing submission of claims by owners or operators to the department and board;

(b) procedures for determining owners or operators who are eligible for reimbursement and determining the validity of claims;

(c) procedures for the review and approval of corrective action plans;

(d) procedures for conducting board meetings, hearings, and other business necessary for the implementation of this part;

(e) the criteria and reimbursement rates applicable to those owners and operators who comply with a

violation letter issued by the department; and

(f) other rules necessary for the administration of this part.

(6) The board may apply for, accept, and repay loans from the board of investments pursuant to 17-6-225."

NEW SECTION. Section 7. Codification instruction. [Section 4] is intended to be codified as an integral part of Title 75, chapter 11, part 3, and the provisions of Title 75, chapter 11, part 3, apply to [section 4].

NEW SECTION. Section 8. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

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

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