

HOUSE BILL NO. 723

INTRODUCED BY J. MUSGROVE

BY REQUEST OF THE HOUSE JOINT APPROPRIATIONS SUBCOMMITTEE ON NATURAL RESOURCES
AND COMMERCE

A BILL FOR AN ACT ENTITLED: "AN ACT ELIMINATING THE PETROLEUM TANK RELEASE COMPENSATION BOARD; TRANSFERRING THE FUNCTIONS PERFORMED BY THE BOARD TO THE DEPARTMENT OF ENVIRONMENTAL QUALITY; PROVIDING FOR AN APPEAL FROM CERTAIN DETERMINATIONS BY THE DEPARTMENT TO THE BOARD OF ENVIRONMENTAL REVIEW; AMENDING SECTIONS 17-6-225, 75-11-302, 75-11-307, 75-11-308, 75-11-309, 75-11-313, 75-11-314, AND 75-11-318, MCA; AND REPEALING SECTION 2-15-2108, MCA."

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

Section 1. Section 17-6-225, MCA, is amended to read:

"17-6-225. Loans to petroleum tank release compensation board department of environmental quality. (1) The board of investments may loan funds to the petroleum tank release compensation ~~board~~ program administered by the department of environmental quality to cover temporary cash shortfalls. The total of all loans may not exceed the greater of \$15 million or 80% of the fees that the office of budget and program planning projects will be collected under 75-11-314 during the next 3 fiscal years. A loan must be amortized, based on projected fee revenue, over a period of not more than 10 years.

(2) The board shall establish the interest rate on the loan, considering the security and the term of the loan."

Section 2. Section 75-11-302, MCA, is amended to read:

"75-11-302. Definitions. Except as provided in subsections (2), (15), and (25), the following definitions apply to this part:

(1) "Accidental release" means a sudden or nonsudden release, neither expected nor intended by the tank owner or operator, of petroleum or petroleum products from a storage tank that results in a need for corrective action or compensation for third-party bodily injury or property damage.

(2) "Aviation gasoline" means aviation gasoline as defined in 15-70-201. For the purposes of this chapter,

aviation gasoline does not include JP-4 jet fuel sold to a federal defense fuel supply center.

(3) "Board" means the ~~petroleum tank release compensation board~~ of environmental review established in ~~2-15-2108~~ 2-15-3502.

(4) "Bodily injury" means physical injury, sickness, or disease sustained by an individual, including death that results from the physical injury, sickness, or disease at any time.

(5) "Claim" means a written request prepared and submitted by an owner or operator or an agent of the owner or operator for reimbursement of expenses caused by an accidental release from a petroleum storage tank.

(6) "Corrective action" means investigation, monitoring, cleanup, restoration, abatement, removal, and other actions necessary to respond to a release.

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

(8) "Distributor" means a person who is licensed to sell gasoline, as provided in 15-70-202, and who:

(a) in the state of Montana, engages in the business of producing, refining, manufacturing, or compounding gasoline, aviation gasoline, special fuel, or heating oil for sale, use, or distribution;

(b) imports gasoline, aviation gasoline, special fuel, or heating oil for sale, use, or distribution in this state;

(c) engages in wholesale distribution of gasoline, aviation gasoline, special fuel, or heating oil in this state;

(d) is an exporter;

(e) is a dealer licensed as of January 1, 1969, except a dealer at an established airport; or

(f) either blends gasoline with alcohol or blends heating oil with waste oil.

(9) "Double-walled tank system" means a petroleum storage tank and associated product piping that is designed and constructed with rigid inner and outer walls separated by an interstitial space and that is capable of being monitored for leakage. The design and construction of these tank systems must meet standards of the department and the department of justice fire prevention and investigation bureau. The material used in construction must be compatible with the liquid to be stored in the system, and the system must be designed to prevent the release of any stored liquid.

(10) "Eligible costs" means expenses reimbursable under 75-11-307.

(11) "Export" means to transport out of the state of Montana, by means other than in the fuel supply tank of a motor vehicle, gasoline, aviation gasoline, special fuel, or heating oil received from a refinery or pipeline terminal within the state of Montana.

(12) "Exporter" means a person who transports, by means other than in the fuel supply tank of a motor

vehicle, gasoline, aviation gasoline, special fuel, or heating oil received from a refinery or pipeline terminal within the state of Montana to a destination outside the state of Montana for sale, use, or consumption beyond the boundaries of the state of Montana.

(13) "Fee" means the petroleum storage tank cleanup fee provided for in 75-11-314.

(14) "Fund" means the petroleum tank release cleanup fund established in 75-11-313.

(15) "Gasoline" means gasoline as defined in 15-70-201. For the purposes of this chapter, gasoline does not include JP-4 jet fuel sold to a federal defense fuel supply center.

(16) "Heating oil" means petroleum that is No. 1, No. 2, No. 4-light, No. 4-heavy, No. 5-light, No. 5-heavy, and No. 6 technical grades of fuel oil; other residual fuel oils, including navy special fuel oil and bunker C; and other fuels when used as substitutes for one of these fuel oils. Heating oil is typically used in the operation of heating equipment, boilers, or furnaces.

(17) "Import" means to receive into a person's possession or custody first after its arrival and coming to rest at a destination within the state any gasoline, aviation gasoline, special fuel, or heating oil shipped or transported into this state from a point of origin outside this state, other than in the fuel supply tank of a motor vehicle.

(18) "Operator" means a person in control of or having responsibility for the daily operation of a petroleum storage tank.

(19) (a) "Owner" means:

(i) a person that holds title to, controls, or possesses an interest in a petroleum storage tank; or

(ii) a person that owns the property on which a petroleum storage tank from which a release occurred was located.

(b) The term does not include a person that holds an interest in a tank solely for financial security, unless through foreclosure or other related actions the holder of a security interest has taken possession of the tank.

(20) "Person" means an individual, firm, trust, estate, partnership, company, association, joint-stock company, syndicate, consortium, commercial entity, corporation, or agency of state or local government.

(21) "Petroleum" or "petroleum products" means crude oil or any fraction of crude oil that is liquid at standard conditions of temperature and pressure (60 degrees F and 14.7 pounds per square inch absolute) or motor fuel blend, such as gasohol, and that is not augmented or compounded by more than a de minimis amount of another substance.

(22) "Petroleum storage tank" means a tank that contains or contained petroleum or petroleum products and that is:

- (a) an underground storage tank as defined in 75-11-503;
- (b) a storage tank that is situated in an underground area, such as a basement, cellar, mine, drift, shaft, or tunnel;
- (c) an aboveground storage tank with a capacity less than 30,000 gallons; or
- (d) aboveground or underground pipes associated with tanks under subsections (22)(b) and (22)(c), except that pipelines regulated under the following laws are excluded:
 - (i) the Natural Gas Pipeline Safety Act of 1968 (49 U.S.C. 1671, et seq.);
 - (ii) the Hazardous Liquid Pipeline Safety Act of 1979 (49 U.S.C. 2001, et seq.); and
 - (iii) state law comparable to the provisions of law referred to in subsections (22)(d)(i) and (22)(d)(ii), if the facility is intrastate.

(23) "Property damage" means:

- (a) physical injury to tangible property, including loss of use of that property caused by the injury; or
- (b) loss of use of tangible property that is not physically injured.

(24) "Release" means any spilling, leaking, emitting, discharging, escaping, leaching, or disposing of petroleum or petroleum products from a petroleum storage tank into ground water, surface water, surface soils, or subsurface soils.

(25) "Special fuel" means those combustible liquids commonly referred to as diesel fuel or another volatile liquid of less than 46 degrees A.P.I. (American petroleum institute) gravity test, except liquid petroleum gas. For the purposes of this chapter, special fuel does not include diesel fuel sold to a railroad or a federal defense fuel supply center."

Section 3. 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~~ department 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~~ department 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~~ department 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~~ department 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) expenses incurred before April 13, 1989, for owners or operators seeking reimbursement from the petroleum tank release cleanup fund and 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;

(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.

(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~~ department 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~~ department 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~~ department 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~~ department."

Section 4. 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;

(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) the release was an accidental release;

(e) with the exception of the release, the operation and management of the tank complied 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) 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) or fails to conduct corrective action as required by subsection (1)(f) 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~~ department. In determining the amount of reimbursement, if any, the ~~board~~ department may consider the effect and duration of the noncompliance."

Section 5. 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.

(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) The owner or operator shall document in the manner required by the ~~board~~ department all expenses incurred in preparing and implementing the corrective action plan. The owner or operator shall submit claims and substantiating documents to the ~~board~~ department in the form and manner required by the ~~board~~ department. ~~The board shall forward each claim and appropriate documentation to the department.~~ The department shall notify the ~~board~~ owner or operator 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~~ may appeal the department's determination to the board.

(g) The owner or operator shall document, in the manner required by the ~~board~~ department, 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~~ department in the form and manner required by the ~~board~~ department.

(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~~ department, 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~~ department 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~~ department 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~~ department 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~~ department shall obligate money for reimbursement of eligible costs of owners and operators in the order that the costs are finally approved by the ~~board~~ department.

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

(b) The ~~board~~ department may, at the request of an owner or operator, guarantee in writing reimbursement of eligible costs not yet approved by the ~~board~~ department, 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~~ department may require pertinent information or documentation from the owner or operator. The ~~board~~ department may grant or deny, in whole or in part, any request for a guarantee."

Section 6. 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~~ department and is statutorily appropriated, as provided in 17-7-502, for the purposes provided for under subsections (3)(b) and (3)(c). Administrative costs under subsection (3)(a) 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~~ department by the board of investments; and

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

(3) The fund may be used only:

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

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

(c) 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~~ department 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 7. Section 75-11-314, MCA, is amended to read:

"75-11-314. Petroleum storage tank cleanup fee -- collection -- penalties -- warrant for distraint

-- **statute of limitations.** (1) Except as provided in subsection (4), each distributor shall pay to the department of transportation a petroleum storage tank cleanup fee for each gallon of gasoline, aviation gasoline, special fuel, or heating oil distributed by the distributor within the state and upon which the fee has not been paid by any other distributor. The fee must equal:

- (a) 1 cent for each gallon of gasoline distributed from July 1, 1989, through June 30, 1991;
- (b) 0.75 cent for each gallon of gasoline distributed after July 1, 1991;
- (c) 0.75 cent for each gallon of aviation gasoline distributed after July 1, 1993;
- (d) 0.75 cent for each gallon of special fuel distributed after July 1, 1993; and
- (e) 0.75 cent for each gallon of heating oil distributed after July 1, 1993.

(2) Gasoline, aviation gasoline, special fuel, and heating oil exported or sold for export out of the state must be included in the measure of a distributor's fee.

(3) Alcohol that is blended with gasoline to be sold as gasohol is subject to the fee provided in subsection (1).

(4) A fee may not be imposed or collected beginning on the first day of the first month in the first calendar quarter after the unobligated balance in the fund equals or exceeds \$8 million. Whenever the unobligated fund balance, less claims anticipated for board approval within the next 90 days, is less than \$4 million, the department of transportation shall, within 30 days, notify distributors by mail that the fee is reinstated beginning on the first day of the first month that begins no less than 30 days after the date of the notice. Once reinstated, the fee must be imposed and collected until the unobligated fund balance again equals or exceeds \$8 million.

(5) The department of transportation shall collect the fee in the same manner as the basic gasoline license tax under Title 15, chapter 70, part 2. The provisions of 15-70-103, 15-70-111, 15-70-202, 15-70-205, 15-70-206, 15-70-208 through 15-70-212, 15-70-221(2), and 15-70-232 apply to the fee. The provisions of 15-70-204, 15-70-207, 15-70-221(1), and 15-70-222 through 15-70-224 do not apply to the fee."

Section 8. Section 75-11-318, MCA, is amended to read:

"75-11-318. Powers and duties of ~~board~~ department. (1) The ~~board~~ department 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.

(2) The ~~board~~ department 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~~ department 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:

(a) for department staff used:

(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; and

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

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

NEW SECTION. Section 9. Repealer. Section 2-15-2108, MCA, is repealed.

- END -