

1 _____ BILL NO. _____

2 INTRODUCED BY _____
3 (Primary Sponsor)

4 A BILL FOR AN ACT ENTITLED: "AN ACT ELIMINATING THE PETROLEUM TANK RELEASE
5 COMPENSATION BOARD AND TRANSFERRING DUTIES TO THE DEPARTMENT OF ENVIRONMENTAL
6 QUALITY; REVISING RULEMAKING AUTHORITY; AMENDING SECTIONS 17-6-225, 75-11-302, 75-11-307,
7 75-11-308, 75-11-309, 75-11-312, 75-11-313, 75-11-314, 75-11-315, 75-11-318, 75-11-320, 75-11-407, AND
8 75-11-408, MCA; AND REPEALING SECTION 2-15-2108, MCA."
9

10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
11

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

13 **"17-6-225. Loans to ~~petroleum tank release compensation board~~ department of environmental**
14 **quality.** (1) The board of investments may loan funds to the ~~petroleum tank release compensation board~~
15 ~~department of environmental quality~~ to cover temporary cash shortfalls. The total of all loans may not exceed
16 the greater of \$15 million or 80% of the fees that the office of budget and program planning projects will be
17 collected under 75-11-314 during the next 3 fiscal years. A loan must be amortized, based on projected fee
18 revenue, over a period of not more than 10 years.

19 (2) The board shall establish the interest rate on the loan, considering the security and the term of the
20 loan."
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22 **Section 2.** Section 75-11-302, MCA, is amended to read:

23 **"75-11-302. Definitions.** Except as provided in subsections (2), ~~(14)~~ (13), and ~~(25)~~ (24), the following
24 definitions apply to this part:

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

28 (2) "Aviation gasoline" means aviation fuel as defined in 15-70-401. For the purposes of this chapter,

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

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

3 ~~(4)~~(3) "Bodily injury" means physical injury, sickness, or disease sustained by an individual, including
4 death that results from the physical injury, sickness, or disease at any time.

5 ~~(5)~~(4) "Claim" means a written request prepared and submitted by an owner or operator or an agent
6 of the owner or operator for reimbursement of expenses caused by an accidental release from a petroleum
7 storage tank.

8 ~~(6)~~(5) "Corrective action" means investigation, monitoring, cleanup, restoration, abatement, removal,
9 and other actions necessary to respond to a release.

10 ~~(7)~~(6) "Department" means the department of environmental quality provided for in 2-15-3501.

11 ~~(8)~~(7) "Distributor" means a person who is licensed to sell gasoline or special fuel, as provided in 15-
12 70-402, and who:

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

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

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

19 (d) is an exporter;

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

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

22 ~~(9)~~(8) "Eligible costs" means expenses reimbursable under 75-11-307.

23 ~~(10)~~(9) "Export" means to transport out of the state of Montana, by means other than in the fuel
24 supply tank of a motor vehicle, gasoline, aviation gasoline, special fuel, or heating oil received from a refinery or
25 pipeline terminal within the state of Montana.

26 ~~(11)~~(10) "Exporter" means a person who transports, by means other than in the fuel supply tank of a
27 motor vehicle, gasoline, aviation gasoline, special fuel, or heating oil received from a refinery or pipeline
28 terminal within the state of Montana to a destination outside the state of Montana for sale, use, or consumption

1 beyond the boundaries of the state of Montana.

2 ~~(12)~~(11) "Fee" means the petroleum storage tank cleanup fee provided for in 75-11-314.

3 ~~(13)~~(12) "Fund" means the petroleum tank release cleanup fund established in 75-11-313.

4 ~~(14)~~(13) "Gasoline" means gasoline as defined in 15-70-401. For the purposes of this chapter,
5 gasoline does not include JP-4 jet fuel sold to a federal defense fuel supply center.

6 ~~(15)~~(14) "Heating oil" means petroleum that is No. 1, No. 2, No. 4-light, No. 4-heavy, No. 5-light, No. 5-
7 heavy, and No. 6 technical grades of fuel oil; other residual fuel oils, including navy special fuel oil and bunker
8 C; and other fuels when used as substitutes for one of these fuel oils. Heating oil is typically used in the
9 operation of heating equipment, boilers, or furnaces.

10 ~~(16)~~(15) "Import" means to receive into a person's possession or custody first after its arrival and
11 coming to rest at a destination within the state any gasoline, aviation gasoline, special fuel, or heating oil
12 shipped or transported into this state from a point of origin outside this state, other than in the fuel supply tank
13 of a motor vehicle.

14 ~~(17)~~(16) "Operator" means a person in control of or having responsibility for the daily operation of a
15 petroleum storage tank.

16 ~~(18)~~(17) (a) "Owner" means:

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

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

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

23 ~~(19)~~(18) "Person" means an individual, firm, trust, estate, partnership, company, association, joint-
24 stock company, syndicate, consortium, commercial entity, corporation, or agency of state or local government.

25 ~~(20)~~(19) "Petroleum" or "petroleum products" means crude oil or any fraction of crude oil that is liquid
26 at standard conditions of temperature and pressure (60 degrees F and 14.7 pounds per square inch absolute)
27 or motor fuel blend, such as ethanol-blended gasoline, and that is not augmented or compounded by more than
28 a de minimis amount of another substance.

1 ~~(21)~~(20) "Petroleum storage tank" means a tank that contains or contained petroleum or petroleum
2 products and that is:

3 (a) an underground storage tank as defined in 75-11-503;

4 (b) a storage tank that is situated in an underground area, such as a basement, cellar, mine, drift,
5 shaft, or tunnel;

6 (c) an aboveground storage tank with a capacity of less than 30,000 gallons; or

7 (d) aboveground or underground pipes associated with tanks under subsections ~~(21)(b)~~(20)(b) and
8 ~~(21)(c)~~(20)(c), except that pipelines regulated under the following laws are excluded:

9 (i) the Natural Gas Pipeline Safety Act of 1968, 49 U.S.C. 1671, et seq.;

10 (ii) the Hazardous Liquid Pipeline Safety Act of 1979, 49 U.S.C. 2001, et seq.; and

11 (iii) state law comparable to the provisions of law referred to in subsections ~~(21)(d)(i)~~(20)(d)(i) and
12 ~~(21)(d)(ii)~~(20)(d)(ii), if the facility is intrastate.

13 ~~(22)~~(21) "Properly designed and installed double-walled tank system" means a petroleum storage tank
14 and associated product piping that is designed and constructed with rigid inner and outer walls separated by an
15 interstitial space and that is capable of being monitored for leakage. The design and construction of these tank
16 systems must meet any applicable standards of the department and the department of justice fire prevention
17 and investigation bureau. The material used in construction must be compatible with the liquid to be stored in
18 the system, and the system must be designed to prevent the release of any stored liquid.

19 ~~(23)~~(22) "Property damage" means:

20 (a) physical injury to tangible property, including loss of use of that property caused by the injury; or

21 (b) loss of use of tangible property that is not physically injured.

22 ~~(24)~~(23) "Release" means any spilling, leaking, emitting, discharging, escaping, leaching, or disposing
23 of petroleum or petroleum products from a petroleum storage tank into ground water, surface water, surface
24 soils, or subsurface soils.

25 ~~(25)~~(24) "Special fuel" means those combustible liquids commonly referred to as diesel fuel or another
26 volatile liquid of less than 46 degrees A.P.I. (American petroleum institute) gravity test, except liquid petroleum
27 gas. For the purposes of this chapter, special fuel does not include diesel fuel sold to a railroad or a federal
28 defense fuel supply center."

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Section 3. 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 (6), 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:

(i) 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; or

(ii) includes the establishment of a petroleum mixing zone, as defined in 75-11-503, the ~~board~~department may reimburse the cost of an easement established pursuant to 75-11-508; 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

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

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

6 (h) costs for which an owner or operator has received reimbursement or payment from an insurer or
7 other third party, including a grantor;

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

17 (j) costs that the ~~board~~ department has determined are not actual, reasonable, and necessary costs
18 of responding to the release and implementing the corrective action plan, as provided for in 75-11-309,
19 including costs included in a department-approved corrective action plan for the purpose of remediating the
20 release in excess of department standards.

21 (3) An owner or operator may designate a person, including a grantor, as an agent to receive the
22 reimbursement for eligible costs incurred by the person if the owner or operator remains legally responsible for
23 all costs and liabilities incurred as a result of the release.

24 (4) Subject to the availability of funds under subsection (6):

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

1 (i) 100% of the eligible costs, up to a maximum total reimbursement of \$500,000, for properly
2 designed and installed double-walled tank system releases that were discovered and reported on or after
3 October 1, 1993, and before October 1, 2009; or

4 (ii) 50% of the first \$10,000 of eligible costs and 100% of subsequent eligible costs, up to a maximum
5 total reimbursement of \$495,000 for all other releases; and

6 (b) for all other releases eligible for reimbursement from the fund that are discovered and reported on
7 or after April 13, 1989, the ~~board~~department shall reimburse an owner or operator for:

8 (i) 100% of the eligible costs, up to a maximum total reimbursement of \$1 million, for properly
9 designed and installed double-walled tank system releases that were discovered and reported on or after
10 October 1, 1993, and before October 1, 2009; or

11 (ii) 50% of the first \$35,000 of eligible costs and 100% of subsequent eligible costs, up to a maximum
12 total reimbursement of \$982,500 for all other releases.

13 (5) If an insurer or grantor pays or reimburses an owner or operator for costs that qualify as eligible
14 costs under subsection (1), the costs paid or reimbursed by the insurer or grantor:

15 (a) are considered to have been paid by the owner or operator toward satisfaction of the 50% share
16 requirements of subsection (4)(a)(ii) or (4)(b)(ii) if the owner or operator receives the payment or reimbursement
17 before applying for reimbursement from the ~~board~~department;

18 (b) are not reimbursable from the fund unless the grantor is designated by the owner or operator as
19 an agent to receive the reimbursement for eligible costs incurred by the grantor; and

20 (c) except for the amount considered to have been paid by the owner or operator pursuant to
21 subsection (5)(a), are considered to have been reimbursed from the fund for purposes of determining when the
22 ~~board~~department has paid the maximum amount payable from the fund under subsection (4)(a)(ii) or (4)(b)(ii).

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

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28 **Section 4.** Section 75-11-308, MCA, is amended to read:

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

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

5 (b) the release occurred from:

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

8 (ii) a petroleum storage tank, as defined in 75-11-302, that was in compliance with the applicable state
9 and federal laws and rules that the ~~board~~department determines pertain to the prevention and mitigation of a
10 petroleum release from a petroleum storage tank at the time that the release was discovered; or

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

16 (c) the release was an accidental release.

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

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

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

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

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

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

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

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1 **Section 5.** Section 75-11-309, MCA, is amended to read:

2 **"75-11-309. Procedures for reimbursement of eligible costs -- corrective action plans.** (1) An
3 owner or operator seeking reimbursement for eligible costs and the department shall comply with the following
4 procedures:

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

9 (b) Except for a tank for which a permit is sought under 75-11-308(1)(b)(iii) and that is closed within
10 120 days of discovery of the release, following discovery of the release, the petroleum storage tank must
11 remain in compliance with applicable state and federal laws and rules that the ~~board~~ department determines
12 pertain to prevention and mitigation of petroleum releases.

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

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

21 (ii) Based on its own review and comments received from a local government, tribal government, or
22 other source, the department, subject to 75-11-408(4)(b), may approve the proposed corrective action plan,
23 make or request the owner or operator to modify the proposed plan, or prepare its own plan for compliance by
24 the owner or operator. A plan finally approved by the department through any process provided in this
25 subsection (1)(d) is the approved corrective action plan.

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

28 (e) A corrective action plan prepared by the owner, operator, or department for any petroleum storage

1 tank release may include the establishment of a petroleum mixing zone as defined in 75-11-503.

2 (f) The department shall notify the owner or operator of its approval of a corrective action plan, which
3 may include a petroleum mixing zone pursuant to 75-11-508. ~~and shall promptly submit a copy of the approved~~
4 ~~corrective action plan to the board. Upon review, the board may request that the corrective action plan be~~
5 ~~amended pursuant to 75-11-508 to include a petroleum mixing zone. If the department finds that the conditions~~
6 ~~for establishment of a petroleum mixing zone in 75-11-508 are satisfied, the corrective action plan must be~~
7 ~~amended to include a petroleum mixing zone.~~

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

13 (h) (i) The owner or operator shall document in the manner required by the ~~board~~department all
14 expenses incurred in preparing and implementing the corrective action plan. The owner or operator shall submit
15 claims and substantiating documents to the ~~board~~department in the form and manner required by the ~~board~~
16 department.

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

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

22 ~~(iv) If the department determines that an owner or operator is failing to properly implement a corrective~~
23 ~~action plan, it shall notify the board.~~

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

28 (j) In addition to the documentation in subsections (1)(h) and (1)(i), when the release is claimed to

1 have originated from a properly designed and installed double-walled tank system, the owner or operator shall
2 document, in the manner required by the ~~board~~ department, the following:

- 3 (i) the date that the release was discovered; and
- 4 (ii) that the originating tank was part of a properly designed and installed double-walled tank system.

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

12 (3) The ~~board~~ department shall review each claim received under subsections (1)(h) and (1)(i), make
13 the determination required by this subsection, inform the owner or operator of its determination, and, as
14 appropriate, reimburse the owner or operator from the fund. Before approving a reimbursement, the ~~board~~
15 department shall affirmatively determine that:

- 16 (a) the expenses for which reimbursement is claimed:
 - 17 (i) are eligible costs; and
 - 18 (ii) were actually, necessarily, and reasonably incurred for the preparation or implementation of a
19 corrective action plan approved by the department or for payments to a third party for bodily injury or property
20 damage; and

21 (b) the owner or operator:

- 22 (i) is eligible for reimbursement under 75-11-308; and
- 23 (ii) has complied with this section and any rules adopted pursuant to this section. Upon a determination
24 by the ~~board~~ department that the owner or operator has not complied with this section or rules adopted
25 pursuant to this section, all reimbursement of pending and future claims must be suspended. Upon a
26 determination by the ~~board~~ department that the owner or operator has returned to compliance with this section
27 or rules adopted pursuant to this section, suspended and future claims may be reimbursed according to criteria
28 established by the ~~board~~ department. In establishing the criteria, the ~~board~~ department shall consider the effect

1 and duration of the noncompliance.

2 (4) (a) If an owner or operator disagrees with a ~~board~~ determination under subsection (3), the owner
3 or operator may submit a written request for a hearing before the ~~board~~ department.

4 (b) A written request for a hearing must be received ~~by the board~~ within 120 days after notice of the
5 ~~board's~~ determination is served on the owner or operator by certified mail. The notice of determination must
6 advise the owner or operator of the 120-day time limit for submitting a written request for a hearing to the ~~board~~
7 department. Not less than 50 days or more than 60 days after ~~the board serves~~ the notice of determination, the
8 ~~board~~ department shall serve on the owner or operator a second notice by certified mail advising the owner or
9 operator of the deadline for requesting a hearing. Service by certified mail is complete on the date shown on the
10 certified mail receipt.

11 (c) If a written request is received within 120 days, the hearing must be held at a meeting of the ~~board~~
12 department or as otherwise permitted under the Montana Administrative Procedure Act no later than 120 days
13 following receipt of the request or at a time mutually agreed to by the ~~board~~ department and the owner or
14 operator.

15 (d) If a written request is not received within 120 days, the determination of the ~~board~~ department is
16 final.

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

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

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

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

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Section 6. Section 75-11-312, MCA, is amended to read:

"75-11-312. Review of corrective action plans and claims. (1) To ensure that the fund provided for in 75-11-313 is being used in the most efficient manner, the ~~board~~-department may implement a program of third-party review for corrective action plans and claims. The ~~board~~-department may submit a corrective action plan or claim for review by a qualified third party of the ~~board's~~-department's choosing.

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

(3) If a third-party review suggests that submitted costs do not comply with the requirements of 75-11-309(3)(a), the ~~board~~-department may deny the costs, subject to 75-11-309(4)."

Section 7. 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)(c) and (3)(d). Administrative costs under 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~~-department by the board of investments; and

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

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

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

(b) to pay the actual and necessary department expenses associated with administration;

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

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

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

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10 **Section 8.** Section 75-11-314, MCA, is amended to read:

11 **"75-11-314. Petroleum storage tank cleanup fee -- collection -- penalties -- warrant for distraint**
12 **-- statute of limitations.** (1) Except as provided in subsection (4), each distributor shall pay to the department
13 of transportation a petroleum storage tank cleanup fee for each gallon of gasoline, aviation gasoline, special
14 fuel, or heating oil distributed by the distributor within the state and upon which the fee has not been paid by
15 any other distributor. The fee must equal:

16 (a) 0.75 cent for each gallon of gasoline;

17 (b) 0.75 cent for each gallon of aviation gasoline;

18 (c) 0.75 cent for each gallon of special fuel; or

19 (d) 0.75 cent for each gallon of heating oil.

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

22 (3) Ethanol that is blended with gasoline to be sold as ethanol-blended gasoline is subject to the fee
23 provided in subsection (1).

24 (4) A fee may not be imposed or collected beginning on the first day of the first month in the first
25 calendar quarter after the unobligated balance in the fund equals or exceeds \$10 million. Whenever the
26 unobligated fund balance, less claims anticipated for ~~board~~ department approval within the next 90 days, is less
27 than \$6 million, the department of transportation shall, within 30 days, notify distributors by mail that the fee is
28 reinstated beginning on the first day of the first month that begins no less than 30 days after the date of the

1 notice. Once reinstated, the fee must be imposed and collected until the unobligated fund balance again equals
2 or exceeds \$10 million.

3 (5) The department of transportation shall collect the fee in the same manner as the gasoline tax and
4 special fuel tax under Title 15, chapter 70, part 4. The provisions of 15-70-103, 15-70-111, 15-70-402, 15-70-
5 410, 15-70-411, 15-70-416 through 15-70-418, 15-70-420, 15-70-421, 15-70-425(3), and 15-70-443 apply to
6 the fee. The provisions of 15-70-403, 15-70-412, 15-70-425(1), and 15-70-426 do not apply to the fee."

7

8 **Section 9.** Section 75-11-315, MCA, is amended to read:

9 **"75-11-315. Nonimpairment by state.** In accordance with the constitutions of the United States and
10 the state of Montana, the state pledges that it may not in any way impair the obligations of any loan agreement
11 between the ~~board~~ department and the board of investments by repealing the petroleum storage tank cleanup
12 fee imposed by 75-11-314 or by reducing it below the amount necessary to make annual loan payments."

13

14 **Section 10.** Section 75-11-318, MCA, is amended to read:

15 **"75-11-318. Powers and duties of board department.** (1) The ~~board~~ department shall administer
16 the petroleum tank release cleanup fund in accordance with the provisions of this part, including the payment of
17 reimbursement to owners and operators. ~~The board may hire its own staff to assist in the implementation of this~~
18 ~~part.~~

19 (2) The ~~board~~ department shall determine whether to approve reimbursement of eligible costs under
20 the provisions of 75-11-309(3), shall obligate money from the fund for approved costs, and shall act on requests
21 for the guarantee of payments through the procedures and criteria provided in 75-11-309.

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

26 (4) The ~~board~~ department shall use the fund to pay for:

27 (a) ~~department expenses incurred in providing assistance to the board. The board shall review and~~
28 ~~comment on all department administrative budget proposals that are assessed against the fund prior to~~

1 ~~submittal of the department budget for legislative approval. Department administrative expenses on behalf of~~
2 ~~the board may include:~~

- 3 (i) the review or preparation of corrective action plans; and
- 4 (ii) the oversight of corrective action undertaken by owners and operators for the purposes of this part;
- 5 ~~and~~
- 6 ~~(iii) the actual and necessary administrative support provided to the board.~~

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

9 (c) third-party review of corrective action plans or claims pursuant to 75-11-312~~;~~

10 ~~(d) board staff expenses; and~~

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

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

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

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

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

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

19 ~~(e)~~(d) the criteria and reimbursement rates applicable to those owners and operators who comply with
20 a violation letter issued by the department; and

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

22 ~~(6) The board may apply for, accept, and repay loans from the board of investments pursuant to 17-6-~~
23 ~~225.~~

24 ~~(7)~~(6) The ~~board~~department shall conduct an analysis of the short-term and long-term viability of the
25 fund and report its findings to the ~~director of the department and the legislative auditor~~ by July 1 prior to each
26 regular legislative session. This analysis must include but is not limited to:

27 (a) trends in fund revenue and expenditure activity;

28 (b) exposure to long-term liabilities;

1 (c) impacts of changes in state and federal regulations relating to underground and aboveground
2 storage tanks;

3 (d) availability of petroleum storage tank liability insurance in the private sector and trends in
4 provisions of the insurance; and

5 (e) the continuing need for collection of all or part of the petroleum tank release cleanup fee."
6

7 **Section 11.** Section 75-11-320, MCA, is amended to read:

8 **"75-11-320. Other authorities unaffected.** Payment of reimbursement, approval of a corrective
9 action plan, or other action of the department ~~or the board~~ under this part does not affect the authority of the
10 department or any other state agency to pursue an action authorized by Title 75, chapter 10, parts 4 or 7, or
11 any other law or rule that applies to releases from petroleum storage tanks."
12

13 **Section 12.** Section 75-11-407, MCA, is amended to read:

14 **"75-11-407. Viability.** (1) For the purpose of determining the viability of a responsible party, the
15 department shall presume that:

16 (a) ongoing businesses or companies and government entities are viable unless there is information
17 suggesting that the presumption is not appropriate and the department determines the information is sufficient
18 to rebut the presumption in a particular case; and

19 (b) individuals and defunct or insolvent companies are not viable unless there is information
20 suggesting that the presumption is not appropriate and the department determines the information is sufficient
21 to rebut the presumption in a particular case.

22 (2) The department may not determine that a responsible party is viable based solely on the fact that
23 the owner or operator of the petroleum tank release site is eligible to be reimbursed ~~by the petroleum tank~~
24 ~~release compensation board established in 2-15-2108~~ from the petroleum tank release cleanup fund
25 established in 75-11-313.

26 (3) It is a grant recipient's responsibility to provide the department with sufficient financial information
27 about a responsible party identified in a petroleum brownfields site eligibility application to determine whether
28 the responsible party is a viable responsible party."

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Section 13. Section 75-11-408, MCA, is amended to read:

"75-11-408. Brownfields site eligibility at petroleum tank release sites -- determinations and limitations. (1) Before a grant recipient may expend federal brownfields funds at a petroleum tank release site, either the United States environmental protection agency or the department shall make a written determination that:

(a) the petroleum tank release site is of relatively low risk compared to other petroleum-contaminated sites;

(b) there is no viable responsible party for the petroleum tank release site;

(c) the petroleum tank release site will not be assessed, investigated, or cleaned up by a potentially liable person; and

(d) the petroleum tank release site is not subject to an order under section 9003(h) of the federal Solid Waste Disposal Act, 42 U.S.C. 6991b(h), or Title 75, chapter 11.

(2) After the department or the United States environmental protection agency determines that a petroleum tank release site is eligible for federal brownfields funding, the department shall encourage and may not limit the use of a grant recipient's federal petroleum brownfields funding at the site even if the site owner or operator, as defined in 75-11-302, is eligible for funding from the petroleum tank release cleanup fund established in 75-11-313.

(3) The department may not limit the use of money from the petroleum tank release cleanup fund established in 75-11-313 when used as a commitment to a federal brownfields loan made by a grant recipient for remediation at a petroleum tank release site.

(4) (a) Except as provided in subsection (4)(b), a determination made by the department or the United States environmental protection agency that a petroleum tank release site is eligible for federal brownfields funding does not limit or alter the owner's or operator's responsibility to assess or remediate the petroleum tank release site in accordance with Title 75, chapter 11.

(b) If the department determines that a grant recipient has proposed to conduct a timely and comprehensive remediation using federal brownfields funding at a petroleum tank release site that has been determined by the department or the United States environmental protection agency to be eligible for petroleum

1 brownfields funding and the proposed remediation plan is expected to meet or exceed remediation standards
2 required by the department and financial commitments required by the petroleum tank release compensation
3 board pursuant to Title 75, chapter 11, the department shall approve the comprehensive remediation plan and
4 allow for the use of federal brownfields funding at the petroleum tank release site."

5

6 NEW SECTION. Section 14. Repealer. The following section of the Montana Code Annotated is
7 repealed:

8 2-15-2108. Petroleum tank release compensation board.

9

10 NEW SECTION. Section 15. Name change -- directions to code commissioner. Wherever a
11 reference to the petroleum tank release compensation board appears in legislation enacted by the 2021
12 legislature, the code commissioner is directed to change it to a reference to the department of environmental
13 quality.

14

- END -