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September 19, 2022  
LEGISLATIVE AUDIT DIV.

Recommendation	Does the System Impact a Federal Program ?	CFD A	Management Response	Notes	Corrective Action Plan	Person Responsible	Target Date	Actions	Request for extension
1) We recommend the Petroleum Tank Release Compensation Board work with Department of Environmental Quality to collaborate during corrective action plan development to verify eligibility, assure fund availability, and provide any other relevant input for consideration prior to final plan approval by the department.	No	n/a	Board Concur DEQ Concur	<p>The Board has and will continue to work collaboratively with the department to improve the work plan review process and to ensure that information regarding eligibility, fund availability, and other relevant information is readily available for consideration prior to final plan approval by the department. The Board will work collaboratively with department staff and stakeholders to evaluate strategies to improve the business process of requesting work and ensuring work that has been obligated is implemented and completed in a timely manner in an effort to get releases to closure in a cost effective and well timed manner.</p> <p>DEQ is willing and eager to work collaboratively with Board and staff to explore options and determine a streamlined process for the Board's eligibility determination and fund obligations to move sites to closure in a timely and efficient manner. DEQ recognizes addressing this recommendation will likely require a statute change and is willing to work collaboratively in this process.</p> <p>The department will continue to encourage coordination and planning meetings with stakeholders to improve communication, transparency, and facilitate timely work plan approvals and fund obligations.</p> <p>The department has and will continue to copy Board staff as recipients on letters addressed to responsible parties for work plan requests, approvals, modifications, and extensions; provide copies of work plans for investigation and remediation sent out for sanitarian comment; and inform Board staff that the work plan will be approved within 15 days of receipt of sanitarian comment (or expiration of the comment period) in accordance with the Administrative Rules of Montana (ARM).</p>	<p>The Board will meet regularly with department staff to strategize on business process and database changes that will improve availability of eligibility, funding, and other information. The Board will work with the department staff to develop guidance on cleanup requirements. The Board will collaborate on public outreach to stakeholders to identifying evidence, methods of collection, and documentation so the information needing consideration can be available before work plan approval.</p> <p>DEQ CAP 1.The department is willing to meet within the regulatory reform framework (November/ early December 2021) to discuss the process and statute/rule changes necessary to ensure collaboration during CAP development to verify eligibility, assure fund availability and provide other relevant input. 2. DEQ will reach out to other states in the region to discuss their process for eligibility determination/fund availability and collaboration efforts between the fund and state. DEQ will determine what approaches seem most likely to work in Montana and engage the board/stakeholders for feedback. 3. DEQ will work with the Board to assist with process improvements (implementing and paying for planning meetings) and develop tools (such as a reasonable cost guidance/outreach/pre-release eligibility) to improve communication, transparency, and facilitate timely fund obligations. 4. As process improvements/ regulatory reform is discussed, the department will seek input from stakeholders, and assist with moving regulatory reform and/or stakeholder education forward.</p>	Board, Terry Wadsworth, Amy Steinmetz, Terri Mavencamp, Marla Stremcha	December 2022  DEQ recommends 1. Nov. & Dec. 2021 2. Q1 2022 3. Q2 2022 4. Q3 2022	<p>DEQ CAP: 1. The department and the board staff (Garnet) regularly met during regulatory reform 9/24/2021; 10/20/2021; 11/3/2021; 11/9/2021; 11/18/2021; 12/8/2021; and 12/9/2022. Eligibility can be determined by the fund staff if the owner/operator submits the eligibility documentation, the fund can also assure fund availability at this time and provide relevant input, the definition of which remains questionable as DEQ and the fund disagree on the use of "reasonable and necessary". Moving forward, DEQ will move forward with CAPs and will bring to the board's attention where the fund staff are denying costs based on what DEQ believes are technical aspects. Statutorily, this will be addressed under Audit finding #2.</p> <p>2) The Department met with EPA and Wyoming (12/7/2021) to discuss Wyoming's Actions process for approvals and obligations of funds. Releases in WY are eligible for funding (also housed w/in WY DEQ) if the owner pays the annual fee of \$200. There are no other restrictions on the eligibility/funding.</p> <p>3) DEQ and the board executive director continue to meet with the process improvement team to address cost guidance docuemnts for the board. In addition, the fund is working on getting the obligations into GIS.</p>	DEQ will continue to work with PTRCB on process improvements where there is agreement process improvements are needed. The fundamental disagreement between DEQ/PTRCB is that PTRCB does not have a technical oversight role, this disagreement makes process improvements difficult. DEQ proposes moving forward with audit finding #2 as a way to clarify roles and then continue to work with the board to verify eligibility, assure fund availability, and provide any other relevant input for cost consideration prior to final plan approval by the department.
2) We recommend the Montana legislature clarify statute by making amendments as needed to clarify the Petroleum Tank Release Compensation Board does not have a role in approving or basing reimbursement on the specific methods prescribed w/in approved corrective action plans that bring an eligible petroleum release to closure.		n/a	DEQ Concur	<p>DEQ agrees it would be helpful if there was clarity in statute and legislative intent for roles and responsibilities regarding what is needed for environmental protection and technical methodology or requirements of corrective action plans to bring releases to closure. The technical review and development of workplans should solely fall to environmental scientists, working with professional consultants, with specific knowledge, skills, and ability to oversee workplans and address site cleanup efforts. DEQ agrees to work with the Board and stakeholders to assist with amendments as needed to clarify statute to address recommendation #2, (75.11.309(3aii); 75.11.312; 75.11.318(4c)).</p>	<p>DEQ suggests, DEQ and the Board propose language to the Montana legislature during the 2023 session. DEQ and the Board should meet regularly to discuss and then conduct stakeholder outreach.</p> <p>1.The department is willing to meet with the Board to identify language that requires adjustment to clarify the Board's role in approving or basing reimbursement on the specific methods prescribed w/in approved corrective action plans that bring an eligible petroleum release to closure. 2. The department and Board identify language changes and engage stakeholders for input 3. The legislature moves forward with support from the department and Board on statute modifications.</p>	Mt legislature: Terry Wadsworth, Board, Amy Steinmetz, Terri Mavencamp, Marla Stremcha can suggest to legislature clarifying language	DEQ recommends Q1 - by Mar 2022 Q2 - by Jun 2022 Q3 - by Sep 2022	<p>DEQ: 1) The board staff and the department disagree on the role of the Board in approving or basing reimbursements on the specific methods prescribed in a Department approved corrective action plan. 2) The board has supplied DEQ with instances in the statute where they believe authority has been given to the board to perform technical reviews/oversight. DEQ has written a proposal for statute changes that would make clarifications as requested by the audit. DEQ will share these recommendations with the board and stakeholders by mid August. 3) DEQ would support legislation moving forward if the legislature were to carry this bill.</p>	Stakeholder input delayed to be initiated by mid-August.
3) We recommend the Petroleum Tank Release Compensation Board work with the Department of Environmental Quality to develop a process, seeking legislation if necessary, whereby remediation projects are competitively bid to bring releases to closure, in accordance with existing state procurement laws.	No  DEQ - could affect fund structure and the reauthorization of the fund in MT	n/a	Board Conditionally Concur DEQ Concur	<p>The Board is willing and eager to work collaboratively with the DEQ to explore options and determine a streamlined process for how improvement might be made to bring releases to closure. It is important to recognize that the state of Montana is not in the business of assuming liability, but, rather, in the business of funding cleanup to eliminate liability by closing petroleum contaminated sites. The Board is concerned that under Montana contract law, the Board would be indirectly accepting liability, on behalf of the state, via a contract with a consultant for cleanup of a contaminated site. The Board does not have authority to accept liability for the state, only to reimburse an owner for cleanup of petroleum contamination from eligible tanks. The implementation of this recommendation could directly impact external stakeholders such as consultants and owners/operators. The degree of impact depends on how the recommendation is implemented. Stakeholder involvement will be an important part of the evaluation and change process. If the owner is required by law to obtain several competitive bids for standardized cleanup activity, such as occurs with automotive repair, the owner/operator would retain the ability to select their consultant and be engaged in the cleanup process. This approach keeps the state from indirectly accepting liability. The Board believes that implementing a competitive bid process will require changes to state cleanup process guidance and will work collaboratively with the stakeholders to update guidance, as necessary.</p> <p>DEQ is willing and eager to work collaboratively with Board and staff to explore options and determine a streamlined process for how improvement can be made to bring releases to closure. Implementation of this recommendation would directly impact external stakeholders (such as consultants and owners/operators). This will be an important effort towards evaluation and regulatory reform. For other cleanup efforts lead by DEQ using other funding sources (such as one-time appropriation of funds for non-eligible petroleum releases), DEQ does use a competitive process that complies with state procurement laws. Any process changes and impacts to the cost eligibility and determination to obligate funds would have to ensure that projects could be managed with resources available, and in a manner that ensures increased efficiency and long-term success.</p>	<p>The Board will examine and evaluate the competitive bidding processes other states use to accomplish release cleanup. The Board will work with DEQ staff to conduct public outreach to stakeholders to provide input on the processes. The Board will develop possible alternatives and identify the best alternative. The Board will submit the chosen alternative for a legal reviewed to identify possible statutory changes. If statutory changes are identified the Board will seek a legislative bill sponsor and draft any necessary legislation. Once legislation is passed the Board will make updates to their database cost management and work plan tracking system. The Board will work with DEQ staff to conduct public outreach to stakeholders to provide information regarding the changes to the work plan process. The has made a practice of implementing changes to business processes in January of each year. Therefore, implementation of the bidding process would be expected in January of 2024.</p> <p>DEQ suggests learning about other state's processes that use a competitively bid process to bring releases to closure. DEQ will meet with Wyoming and EPA in the first quarter 2022 to learn about their process. In Q2 2022, DEQ will determine what approaches seem most likely to work in Montana and engage the board/stakeholders for feedback. In Q3 DEQ will work with the board and staff to identify regulatory/guidance changes needed to implement the competitive process.</p>	Board, Terry Wadsworth, Amy Steinmetz, Terri Mavencamp, Marla Stremcha	January 2024  DEQ recommends Q1 - by Mar 2022 Q2 - by Jun 2022 Q3 - by Sep 2022	<p>DEQ CAP Q1) 1) DEQ met w/ Wyoming 12/7/2021 and March 2nd, 2022 to discuss their process for competitive bids. DEQ met with Colorado 2/14/2022 and with Utah 2/15/2022. 2) On May 12, 2022, DEQ met w/ PTRCB to discuss DEQ's summaries of Utah, Colorado and Wyoming's processes to bring releases to closure. PTRCB also presented the results of their state interviews. DEQ and PTRCB continue to meet biweekly to discuss progress on the audit CAP. As part of the stakeholder outreach, DEQ posted the state summaries and a Montana summary on our website as well as a summary comparison table. In addition, DEQ sent out a Survey Monkey Poll to solicit feedback on PTRCB and DEQ processes, especially pertaining to a potential bid system. 3) After attending PTRCB's stakeholder meeting and going through the replies to date on the DEQ Survey Monkey Poll, DEQ proposes continuing to discuss alternative options and approaches to the funding process in 2025. The majority of stakeholders expressed that they are not in favor of the bid process. Stakeholders also clearly and unanimously expressed that they want to maintain decision making authority on who they have working on their property and cleaning up releases.</p>	Request an extension to continue the bid process discussions and look for other possible solutions over the next biennium. Assessment is needed to determine the legality of a bid process, how a bid process might be implemented, and if it would lead to increased efficiency (i.e., cost and cleanup times). We will continue to evaluate alternative options used by other states and may use a national conference as a forum to discuss possible options. Determine in 2025, if there is support for a proposal/bid process.
4) We recommend the Petroleum Tank Release Compensation Board work with the Department of Environmental Quality to seek legislation that prepares the fund for the eventual closure of all historic underground storage tank release in Montana.	No  DEQ - possible impacts to financial assurance requirements for underground storage tank leak prevention and reauthorization of the fund in MT	n/a	Board Partially Concur DEQ Concur	<p>The Board recognizes that the historic backlog of petroleum releases needs to be addressed. The Board looks forward to working with the DEQ on getting all petroleum releases assessed and in the process of being cleaned up, so that projects are managed along with available resources in a manner that ensures increased site closures and long-term success. The available funding in the Fund needs to be utilized for petroleum cleanup to the maximum extent possible. The amount of requested cleanup should be matched with available funding. Making use of all the available funding results in more timely site closures.</p> <p>DEQ agrees there will be a time in the future that historic backlog of petroleum releases will be addressed, however each year there are new releases that occur or are discovered. In accordance with the ARM 17.56.805, underground storage tank owners/operators must demonstrate financial responsibility for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental release arising from the operation of petroleum underground storage tanks. Under ARM 17.56.815 an owner or operator may satisfy any part of its financial responsibility requirements by using the Montana petroleum tank release cleanup fund. Many owners and operators rely on the fund and the statement of tangible net worth to satisfy the financial assurance requirements. There are other types of financial responsibility mechanisms that exist that could be used. As the audit outlines, other states have different funding structures that are used and should be evaluated. DEQ will work with the Board and staff on this recommendation, as it leads this effort.</p>	<p>The Board will work with the department to develop an overarching strategic plan of timely assessing all currently active releases, to have a have a cleanup remedy identified and a schedule for both the cleanup remedy and any subsequent activity. The Board will collaborate with the department to develop a process whereby the owners are inspired to timely start and complete any approved corrective action.</p> <p>DEQ - Q1 - Talk to other states that have plans in place for eventual closure of the fund. Q2 - Determine what approaches seem most likely to work in Montana and engage the Board and stakeholders to determine the best path forward. Q3 - DEQ will work with the board and staff to identify legislation needed to prepare the fund for the eventual closure of all historic underground storage tank release in Montana.</p>	Board, Terry Wadsworth, Amy Steinmetz, Terri Mavencamp, Marla Stremcha	December 2022  DEQ recommends Q1 - by Mar 2022 Q2 - by Jun 2022 Q3 - by Sep 2022	<p>DEQ: Q1_ see state discussions under #3 Q2- DEQ and the board have discussed options for the fund once all historical releases are closed. An important aspect of this is an updated prediction of cost to bring all current releases to closure. PTC estimates eligible releases will take approximately 114 Million to bring to closure, 26 Million for sites where eligibility is yet undetermined (have not applied, suspended or withdrawn. This is only for current sites and does not include an estimation to clean up future releases. Considering approximately 7 Million in revenue per year is distributed to the fund, it would take 20 years of funding just to resolve the current releases (considering all undetermined sites are found eligible). Due to this calculation, DEQ suggests discussing approaches with the board and stakeholders, but focusing on resolving releases versus legislation to close the fund (Q3)</p>	DEQ proposes to continue to discuss approaches for eventual closure of the fund with stakeholders and the Board. DEQ recommends that the fund soundness be evaluated routinely as historic (legacy) releases are resolved.  DEQ continues to use available financial (e.g. PTRCF, LUST/Trust, Brownfields, Special State Legislative Funding) and technical resources to investigate and cleanup legacy petroleum releases. All legacy releases are prioritized based on risk to human health, safety and the environment to efficiently direct finite financial and personnel resources. DEQ recognizes that corrective action at some legacy release are privately funded or do not qualify for other existing funding sources, influencing DEQ's ability to investigate, cleanup, and resolve these releases.

**This draft bill is an example of what the Petroleum Storage Tank Cleanup Laws might look like if the Legislature made changes to address the findings and recommendations from the 2021 Petroleum Tank Release Compensation Board audit.**

**This draft bill would only become a proposed law if it was introduced in the Legislature. A bill does not become a law (an "act" or "statute") until passed by the Legislature and signed by the Governor or passed over the Governor's veto or, in the case of a referendum, on approval by the electorate.**

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**BILL NO. \_\_\_\_**

**INTRODUCED BY \_\_\_\_\_**

***A BILL FOR AN ACT ENTITLED: "AN ACT ADDRESSING THE FINDINGS OF THE 2021 PETROLEUM TANK RELEASE COMPENSATION BOARD LEGISLATIVE AUDIT; AMENDING SECTIONS 75-11-302, 75-11-307, 75-11-309, AND REPEALING SECTION 75-11-312, MCA.***

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

**Section 1.** Section 75-11-302, MCA, is amended to read:

**75-11-302. Definitions.** Except as provided in subsections (2), (14), 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) "Actual Cost" means a cost:

(a) associated with the preparation or implementation of a corrective action plan supported by an invoice, receipt, or statement by contractor; or

(b) documented compensation made to a third party for bodily injury or property damage caused by a release.

~~(2)~~(3) "Aviation gasoline" means aviation fuel as defined in **15-70-401**. For the purposes of this chapter, aviation gasoline does not include JP-4 jet fuel sold to a federal defense fuel supply center.

~~(3)~~(4) "Board" means the petroleum tank release compensation board established in **2-15-2108**.

~~(4)~~(5) "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)~~(6) "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)~~(7) "Corrective action" means investigation, monitoring, cleanup, restoration, abatement, removal, and other actions necessary to respond to a release.

~~(7)~~(8) "Department" means the department of environmental quality provided for in **2-15-3501**.

~~(8)~~(9) "Distributor" means a person who is licensed to sell gasoline or special fuel, as provided in **15-70-402**, 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 ethanol or blends heating oil with waste oil.

~~(9)~~(10) "Eligible costs" means expenses reimbursable under **75-11-307**.

~~(10)~~(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.

~~(11)~~(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.

~~(12)~~(13) "Fee" means the petroleum storage tank cleanup fee provided for in **75-11-314**.

~~(13)~~(14) "Fund" means the petroleum tank release cleanup fund established in **75-11-313**.

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

~~(15)~~(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.

~~(16)~~(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) "Necessary Cost" means a cost associated with an action approved by the Department to prepare or implement an approved corrective action plan.

~~(17)~~(19) "Operator" means a person in control of or having responsibility for the daily operation of a petroleum storage tank.

~~(18)~~(20) (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 storage tank solely for financial security, unless through foreclosure or other related actions the holder of a security interest has taken possession of the tank.

~~(19)~~(21) "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.

~~(20)~~(22) "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 ethanol-blended gasoline, and that is not augmented or compounded by more than a de minimis amount of another substance.

~~(21)~~(23) "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 of less than 30,000 gallons; or
- (d) aboveground or underground pipes associated with tanks under subsections (21)(b) and (21)(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 (21)(d)(i) and (21)(d)(ii), if the facility is intrastate.

~~(22)~~(24) "Properly designed and installed 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 any applicable 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.

~~(23)~~(25) "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.

(26) "Reasonable Cost" means:

(a) an actual cost that falls within the range of allowable costs established by the board;

(b) an actual cost for work approved by the department in writing, to respond to an emergency at the site of a release in order to prevent more extensive damage or injury than would have occurred without such approval; or

(c) an actual cost for work approved by the department in writing, detailing the number of hours needed to complete a task, submitted with an approved hourly rate.

~~{24}~~(27) "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}~~(28) "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 2.** 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 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 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 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)~~(a) costs for bodily injury and property damage, other than corrective action costs, incurred by the owner or operator;

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

~~(e)~~(d) 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)~~(e) 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)~~(f) expenses exceeding the maximum reimbursements provided for in subsection (4);

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

(i)(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.

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

(3) An owner or operator may designate a person, including a grantor, as an agent to receive the reimbursement for eligible costs incurred by the person 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 (6):

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

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

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

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

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

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

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

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

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

(6) 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 3.** Section 75-11-309, MCA, is amended to read:

**75-11-309. Procedures for reimbursement of eligible costs -- corrective action plans.** (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) Except for a tank for which a permit is sought under **75-11-308(1)(b)(iii)** and that is closed within 120 days of discovery of the release, following discovery of the release, the petroleum storage tank must remain in compliance with applicable state and federal laws and rules that the board determines pertain to prevention and mitigation of petroleum releases.

(c) 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.

(d) (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, subject to **75-11-408(4)(b)**, 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)(d) 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.

(e) A corrective action plan prepared by the owner, operator, or department for any petroleum storage tank release may include the establishment of a petroleum mixing zone as defined in **75-11-503**.

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

(g) The owner or operator shall implement the corrective action plan or plans approved by the department until the release is resolved. 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.

(h) (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.

(i) 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.

(j) In addition to the documentation in subsections (1)(h) and (1)(i), when the release is claimed to have originated from a properly designed and installed 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; and

(ii) that the originating tank was part of a properly designed and installed double-walled tank system.

(2) If an owner or operator is issued an administrative order for failure to comply with requirements imposed by or pursuant to Title 75, chapter 11, part 5, or rules adopted pursuant to Title 75, chapter 11, part 5, all reimbursement of claims submitted after the date of the order must be suspended. Upon a



written determination by the department that the owner or operator has returned to compliance with the requirements of Title 75, chapter 11, part 5, or rules adopted pursuant to Title 75, chapter 11, part 5, suspended and future claims may be reimbursed according to criteria established by the board. In establishing the criteria, the board shall consider the effect and duration of the noncompliance.

(3) The board shall review each claim received under subsections (1)(h) and (1)(i), 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. Upon a determination by the board that the owner or operator has not complied with this section or rules adopted pursuant to this section, all reimbursement of pending and future claims must be suspended. Upon a determination by the board that the owner or operator has returned to compliance with this section or rules adopted pursuant to this section, suspended and future claims may be reimbursed according to criteria established by the board. In establishing the criteria, the board shall consider the effect and duration of the noncompliance.

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

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

(c) If a written request is received within 120 days, 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.

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

(5) 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.

(6) (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 (6)(b) does not affect the order in which money in the fund is obligated under subsection (5).

(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.** Repealer. The following sections of the Montana Code Annotated are repealed:

75-11-312. Review of corrective action plans and claims.

DRAFT