



Petroleum Tank Release Compensation Board

STATE OF MONTANA

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Website: <https://deq.mt.gov/cleanupandrec/programs/ptrcb>

September 26, 2022

Terri Mavencamp
Department of Environmental Quality
1520 E 6th Avenue
Helena, MT 59620

RECEIVED
October 4, 2022
LEGISLATIVE AUDIT DIV.

Subject: Opposition to DEQ's draft changes to the Petroleum Storage Tank Cleanup Statutes

Dear Ms. Mavencamp:

The Petroleum Tank Release Compensation Board (Board) writes to express strong opposition to the Department's proposed law changes. The Department's proposed language for Audit Recommendation #2 attempts to reduce the Board's effectiveness and ability to perform its duty to manage the Petroleum Tank Cleanup Fund (Fund). This recommendation was directed at the Legislature, not the Department; yet the department chooses to act on the recommendation by reviewing statutes, proposing language that reduces the ability of the Board to manage the Fund, and holding stakeholder meetings on the proposed language. These proposed changes would significantly curb the Board's ability to control spending on cleanup of petroleum releases, therefore making it nearly impossible for the Board to properly manage the Fund. The Department and the Board have different directives and interests in determining what is reimbursable by the Fund. The Board's current statutory duty is to determine what costs are actual, reasonable, and necessary and to reimburse only those costs, yet the Department proposes to change those very statutes so that they align with the Department's interests.

These changes would greatly impact the Board's ability to allocate funding and potentially make it so that the Fund is no longer actuarially sound. Most of the statutory changes are geared toward removing the Board's ability to determine whether costs are actual, necessary, and reasonable, and thereby giving carte blanche to any cost approved by the Department in a corrective action plan.

I. Definitions (Mont. Code Ann. § 75-11-302)

The Department's proposed definition of "actual cost" is limited to a cost of preparation and implementation of a corrective action plan supported by a receipt, invoice, or contractor statement, and compensation to a third party. The contractor statement is new and has not previously appeared as a method for demonstrating actual costs. The Department's proposal would remove significant authority by the Board to determine whether costs are eligible for reimbursement.

The Department's proposed definition of "necessary cost" to mean "a cost associated with an action

September 23, 2022

Mr. Chris Dorrington, Director, DEQ

Page 2 of 3

approved by the Department to prepare or implement an approved corrective action plan” likewise takes authority to determine what costs are necessary away from the Board and gives it to the Department.

The Department likewise seeks to remove authority from the Board with its definition of “reasonable cost,” to mean an actual cost “that falls within the range of allowable costs established by the board” or is “for work required by the department in writing, to respond to an emergency” or is “for work required by the department in writing” submitted with the number of hours and approved hourly rate. This eliminates the Board’s discretion to determine what is reasonable and gives it to the Department, since any work required by the Department in writing would have to be reimbursed. Additionally, the current administrative rules require that necessary costs be less than or equal to the costs in the corrective action plan budget, which does not appear in the proposed statutory language.

II. Reimbursement for expenses caused by release (Mont. Code Ann. § 75-11-307)

The Department seeks to remove the Board’s authority to not approve corrective action costs that address the release of substances other than petroleum products from an eligible petroleum storage tank. This means the Board could potentially be required to reimburse for non-petroleum products released into the environment. The Fund is a state special revenue account that results from a fee on the use of petroleum products. To suggest that a fee on petroleum should be used to clean up other contaminants is ill-advised.

In addition, the Department proposes removing the provision that an owner may not be reimbursed from the fund for “corrective action costs of bodily injury or property damage paid to third parties that are determined by the board to be ineligible for reimbursement.” According to the Department, this language is redundant because Mont. Code Ann. § 75-11-307(1) already requires parties to be eligible to be reimbursed. The Department may feel that the statutory provisions are similar; however, Mont. Code Ann. § 75-11-307(1) does not explicitly specify that it is the Board that makes the eligibility determination, which Mont. Code Ann. 75-11-307(2)(a) does.

Also, under this section, the Department proposes to remove the Board’s ability to not approve “costs included in a department approved corrective action plan for the purpose of remediating the release in excess of department standards.” This one is largely self-explanatory, that once the Department has approved a cost, the Board must reimburse it, thus removing all authority from the Board.

III. Procedures for reimbursement of eligible costs – corrective action plans (Mont. Code Ann. § 75-11-309)

Under this proposed statutory change, the Department seeks to remove the Board’s ability to request the corrective action plan be amended to include a petroleum mixing zone.

September 23, 2022
Mr. Chris Dorrington, Director, DEQ
Page 3 of 3

IV. Review of corrective action plans and claims (Mont. Code Ann. § 75-11-312)

The Department seeks to repeal this statute in its entirety. This statute provides an important method to address a disputed issue that may arise between the Department and the Board. It allows the possible resolution of a disputed issue without the use of the judicial system.

V. Summary

These changes, if adopted, will impact how the Board utilizes the Fund and what authority it has in making eligibility determinations. The Board's statutorily granted authority has a direct impact on the proper use of the state special revenue funds that are obtained from the taxpayers. If the Board does not have the ability to make these decisions, the Board does not have the ability to properly manage the Fund and there will be an actuarial impact to the fund that is outside the Board's control.

Sincerely,



Terry Wadsworth
Executive Director
Petroleum Tank Release Compensation Board