

SENATE BILL NO. 315

INTRODUCED BY J. ESP, J. ELLIS

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS RELATED TO THE PETROLEUM TANK RELEASE COMPENSATION BOARD; ESTABLISHING PROCEDURES FOR REIMBURSEMENT OF PREVENTATIVE MEASURES; PROVIDING A DISCRETIONARY MEETING UPON ON RELEASE; PROVIDING RULEMAKING AUTHORITY; AMENDING SECTIONS 75-11-309, 75-11-313, AND 75-11-318, MCA; PROVIDING A DELAYED EFFECTIVE DATE."

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

NEW SECTION. Section 1. Procedures for reimbursement of preventative measures. (1) Subject to the availability of money from the fund provided for in 75-11-307(6) and in accordance with rules adopted by the board, an owner or operator of a Montana facility that is actively dispensing petroleum must be reimbursed by the board for the following preventive measures:

- (a) removal of inactive tanks;
- (b) upgraded automatic tank gauges;
- (c) piping replacements for single-walled product piping;
- (d) replacement of single-wall steel tanks for underground tank systems that are 20 years old or older;
- (e) replacement of single wall fiberglass reinforced plastic tanks that are 20 years old or older;
- (f) underground storage tank removal investigations for aging tanks nearing 30 years old that have been in compliance; and

- (g) preventative inspections, including compliance and walk-through inspections.
- (2) The board shall reimburse an owner or operator up to \$2,000 a facility every 1,000 days.
- (3) (a) The owner or operator shall document in the manner required by the board all preventive measures and submit them for reimbursement to the board in the form and manner required by the board.
- (b) The owner or operator shall submit one claim for all costs for the 1,000 days following the

1 facility's last state-required compliance inspection. An owner or operator may submit only one claim every 1,000
2 days for a facility.

3 (c) The board may not consider claims for reimbursement submitted less than 1,000 days following
4 the facility's last state-required compliance inspection.

5 (4) The board shall review and approve each request that meets the requirements of this section,
6 inform the owner or operator of the approval, and reimburse the owner or operator from the fund.

7

8 **Section 2.** Section 75-11-309, MCA, is amended to read:

9 **"75-11-309. Procedures for reimbursement of eligible costs -- corrective action plans.** (1) An
10 owner or operator seeking reimbursement for eligible costs and the department shall comply with the following
11 procedures:

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

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

20 (c) The owner or operator shall conduct a thorough investigation of the release and, subject to
21 subsection (1)(d), report the findings to the department, and, as determined necessary by the department,
22 prepare and submit for approval by the department a corrective action plan that conforms with state, tribal
23 (when applicable), and federal corrective action requirements.

24 (d) For a release in which the costs are expected to exceed \$100,000, an owner or operator, a
25 representative of the owner or operator, the department, the board, and board staff ~~shall~~may meet to discuss
26 the response to the release. For a release in which the costs are expected to be less than \$100,000, an owner
27 or operator, a representative of the owner or operator, the department, the board, and board staff may meet to
28 discuss the response to the release if any party requests a meeting.

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

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

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

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

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

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

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

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

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

28 (iv) If the department determines that an owner or operator is failing to properly implement a

1 corrective action plan, it shall notify the board.

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

5 (k) In addition to the documentation in subsections (1)(i) and (1)(j), when the release is claimed to
6 have originated from a properly designed and installed double-walled tank system, the owner or operator shall
7 document, in the manner required by the board, the following:

8 (i) the date that the release was discovered; and

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

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

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

22 (a) the expenses for which reimbursement is claimed:

23 (i) are eligible costs; and

24 (ii) were actually, necessarily, and reasonably incurred for the preparation or implementation of a
25 corrective action plan approved by the department or for payments to a third party for bodily injury or property
26 damage; and

27 (b) the owner or operator:

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

1 (ii) has complied with this section and any rules adopted pursuant to this section. Upon a
2 determination by the board that the owner or operator has not complied with this section or rules adopted
3 pursuant to this section, all reimbursement of pending and future claims must be suspended. Upon a
4 determination by the board that the owner or operator has returned to compliance with this section or rules
5 adopted pursuant to this section, suspended and future claims may be reimbursed according to criteria
6 established by the board. In establishing the criteria, the board shall consider the effect and duration of the
7 noncompliance.

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

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

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

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

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

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

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

1 (c) When considering a request for a guarantee of payment, the board may require pertinent
2 information or documentation from the owner or operator. The board may grant or deny, in whole or in part, any
3 request for a guarantee."
4

5 **Section 3.** Section 75-11-313, MCA, is amended to read:

6 **"75-11-313. Petroleum tank release cleanup fund.** (1) There is a petroleum tank release cleanup
7 fund in the state special revenue fund established in 17-2-102. The fund is administered as a revolving fund by
8 the board and is statutorily appropriated, as provided in 17-7-502, for the purposes provided for under
9 subsections (3)(c) and ~~(3)(d)~~ through (3)(e). Administrative costs under subsections (3)(a) and (3)(b) must be
10 paid pursuant to a legislative appropriation.

11 (2) There is deposited in the fund:

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

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

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

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

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

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

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

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

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

23 (d) to reimburse owners and operators for preventative measures approved by the board pursuant
24 to [section 1]; and

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

27 (4) Whenever the board accepts a loan from the board of investments pursuant to 17-6-225, the
28 receipts from the fees provided for in 75-11-314 in each fiscal year until the loan is repaid are pledged and

dedicated for the repayment of the loan in an amount sufficient to meet the repayment obligation for that fiscal year."

Section 4. Section 75-11-318, MCA, is amended to read:

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

(2) The board shall determine whether to approve reimbursement of eligible costs under the provisions of 75-11-309(3) and costs of preventative measures under [section 1], shall obligate money from the fund for approved costs, and shall act on requests for the guarantee of payments through the procedures and criteria provided in 75-11-309.

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

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

(a) department expenses incurred in providing assistance to the board. The board shall review and comment on all department administrative budget proposals that are assessed against the fund prior to submittal of the department budget for legislative approval. Department administrative expenses on behalf of the board may include:

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

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

(iii) the actual and necessary administrative support provided to the board.

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

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

(d) board staff expenses; and

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

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

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

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

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

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

9 (e) the criteria and reimbursement rates applicable to those owners and operators who comply
10 with a violation letter issued by the department;

11 (f) procedures for third-party review of corrective action plans or claims pursuant to 75-11-312;
12 and

13 (g) procedures for reviewing and reimbursing costs of preventative measures pursuant to [section
14 1]; and

15 (g)(h) other rules necessary for the administration of this part.

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

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

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

22 (b) exposure to long-term liabilities;

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

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

27 (e) the continuing need for collection of all or part of the petroleum tank release cleanup fee."
28

