

1 SENATE BILL NO. 334
2 INTRODUCED BY J. ESP

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING DEFINITIONS TO CLARIFY IMPLEMENTATION OF
5 THE PETROLEUM STORAGE TANK CLEANUP PROGRAM; AMENDING SECTIONS ~~75-11-302~~, 75-11-307,
6 ~~AND 75-11-309~~, 75-11-312, AND 75-11-318, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

7
8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

9
10 **Section 1.** Section ~~75-11-302~~, MCA, is amended to read:

11 ~~"75-11-302. Definitions.~~ Except as provided in subsections (2), (14), and (25) ~~(3), (15), and (28)~~, the
12 following definitions apply to this part:

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

16 ~~(2) "Actual cost" means a cost:~~

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

19 ~~(b) that documents compensation made to a third party for bodily injury or property damage~~
20 ~~caused by a release.~~

21 ~~(2)(3) "Aviation gasoline" means aviation fuel as defined in 15-70-401. For the purposes of this~~
22 ~~chapter, aviation gasoline does not include JP-4 jet fuel sold to a federal defense fuel supply center.~~

23 ~~(3)(4) "Board" means the petroleum tank release compensation board established in 2-15-2108.~~

24 ~~(4)(5) "Bodily injury" means physical injury, sickness, or disease sustained by an individual, including~~
25 ~~death that results from the physical injury, sickness, or disease at any time.~~

26 ~~(5)(6) "Claim" means a written request prepared and submitted by an owner or operator or an agent~~
27 ~~of the owner or operator for reimbursement of expenses caused by an accidental release from a petroleum~~
28 ~~storage tank.~~

1 volatile liquid of less than 46 degrees A.P.I. (American petroleum institute) gravity test, except liquid petroleum
2 gas. For the purposes of this chapter, special fuel does not include diesel fuel sold to a railroad or a federal
3 defense fuel supply center."
4

5 **Section 1.** Section 75-11-307, MCA, is amended to read:

6 **"75-11-307. Reimbursement for expenses caused by release.** (1) Subject to the availability of
7 money from the fund under subsection (6), an owner or operator who is eligible under 75-11-308 and who
8 complies with 75-11-309 and any rules adopted to implement those sections must be reimbursed by the board
9 from the fund for the following eligible costs caused by a release from a petroleum storage tank:

10 (a) corrective action costs as required by a department-approved corrective action plan, except
11 that if the corrective action plan:

12 (i) addresses releases of substances other than petroleum products from an eligible petroleum
13 storage tank, the board may reimburse only the costs that would have reasonably been incurred if the only
14 release at the site was the release of the petroleum or petroleum products from the eligible petroleum storage
15 tank; ~~or~~

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

18 (iii) INCLUDES COSTS FOR THE PURPOSE OF INTENTIONALLY REMEDIATING THE RELEASE FROM A
19 PETROLEUM STORAGE TANK THAT EXCEED DEPARTMENT STANDARDS; and

20 (b) compensation paid to third parties for bodily injury or property damage. The board may not
21 reimburse for property damage until the corrective action is completed.

22 (2) An owner or operator may not be reimbursed from the fund for the following expenses:

23 (a) corrective action costs or the costs of bodily injury or property damage paid to third parties that
24 are determined by the board to be ineligible for reimbursement;

25 (b) costs for bodily injury and property damage, other than corrective action costs, incurred by the
26 owner or operator;

27 (c) penalties or payments for damages incurred under actions by the department, board, or
28 federal, state, local, or tribal agencies or other government entities involving judicial or administrative

1 enforcement activities and related negotiations;

2 (d) attorney fees and legal costs of the owner, the operator, or a third party;

3 (e) costs for the repair or replacement of a tank or piping or costs of other materials, equipment, or

4 labor related to the operation, repair, or replacement of a tank or piping;

5 (f) expenses incurred before April 13, 1989, for owners or operators seeking reimbursement from

6 the petroleum tank release cleanup fund and expenses incurred before May 15, 1991, for owners or operators

7 seeking reimbursement from the petroleum tank release cleanup fund for a tank storing heating oil for

8 consumptive use on the premises where it is stored or for a farm or residential tank with a capacity of 1,100

9 gallons or less that is used for storing motor fuel for noncommercial purposes;

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

11 (h) costs for which an owner or operator has received reimbursement or payment from an insurer

12 or other third party, including a grantor;

13 (i) expenses for work completed by or on behalf of the owner or operator more than 5 years prior

14 to the owner's or operator's request for reimbursement. This limitation does not apply to claims for

15 compensation paid to third parties for bodily injury or property damage. The running of the 5-year limitation

16 period is suspended by an appeal of the board's denial of eligibility for reimbursement. If a written request for

17 hearing is filed under 75-11-309, the suspension of the 5-year limitation period is effective from the date of the

18 board's initial eligibility denial to the date on which the initial eligibility denial is overturned or reversed by the

19 board, a district court, or the state supreme court, whichever occurs latest. The board may grant reasonable

20 extensions of this limitation period if it is shown that the need for the extension is not due to the negligence of

21 the owner or operator or agent of the owner or operator.

22 (j) costs that the board has determined are not ~~actual, reasonable, and necessary~~ costs of

23 responding to the release and implementing the corrective action plan, as provided for in 75-11-309, including

24 costs included in a department-approved corrective action plan for the purpose of remediating the release in

25 excess of department standards.

26 (3) An owner or operator may designate a person, including a grantor, as an agent to receive the

27 reimbursement for eligible costs incurred by the person if the owner or operator remains legally responsible for

28 all costs and liabilities incurred as a result of the release.

- 1 (4) Subject to the availability of funds under subsection (6):
- 2 (a) for releases eligible for reimbursement from the fund that are discovered and reported on or
- 3 after April 13, 1989, from a tank storing heating oil for consumptive use on the premises where it is stored or
- 4 from a farm or residential tank with a capacity of 1,100 gallons or less that is used for storing motor fuel for
- 5 noncommercial purposes, the board shall reimburse an owner or operator for:
- 6 (i) 100% of the eligible costs, up to a maximum total reimbursement of \$500,000, for properly
- 7 designed and installed double-walled tank system releases that were discovered and reported on or after
- 8 October 1, 1993, and before October 1, 2009; or
- 9 (ii) 50% of the first \$10,000 of eligible costs and 100% of subsequent eligible costs, up to a
- 10 maximum total reimbursement of \$495,000 for all other releases; and
- 11 (b) for all other releases eligible for reimbursement from the fund that are discovered and reported
- 12 on or after April 13, 1989, the board shall reimburse an owner or operator for:
- 13 (i) 100% of the eligible costs, up to a maximum total reimbursement of \$1 million, for properly
- 14 designed and installed double-walled tank system releases that were discovered and reported on or after
- 15 October 1, 1993, and before October 1, 2009; or
- 16 (ii) 50% of the first \$35,000 of eligible costs and 100% of subsequent eligible costs, up to a
- 17 maximum total reimbursement of \$982,500 for all other releases.
- 18 (5) If an insurer or grantor pays or reimburses an owner or operator for costs that qualify as eligible
- 19 costs under subsection (1), the costs paid or reimbursed by the insurer or grantor:
- 20 (a) are considered to have been paid by the owner or operator toward satisfaction of the 50%
- 21 share requirements of subsection (4)(a)(ii) or (4)(b)(ii) if the owner or operator receives the payment or
- 22 reimbursement before applying for reimbursement from the board;
- 23 (b) are not reimbursable from the fund unless the grantor is designated by the owner or operator
- 24 as an agent to receive the reimbursement for eligible costs incurred by the grantor; and
- 25 (c) except for the amount considered to have been paid by the owner or operator pursuant to
- 26 subsection (5)(a), are considered to have been reimbursed from the fund for purposes of determining when the
- 27 board has paid the maximum amount payable from the fund under subsection (4)(a)(ii) or (4)(b)(ii).
- 28 (6) If the fund does not contain sufficient money to pay approved claims for eligible costs ENDING

1 MONTHLY BALANCE OF THE FUND IS LESS THAN \$1.5 MILLION, excluding a reimbursement for a cost associated with
2 an emergency response, a reimbursement may not be made and the fund and the board are not liable for
3 making any reimbursement for the costs at that time. When the ENDING MONTHLY BALANCE OF THE fund contains
4 sufficient money MORE THAN \$1.5 MILLION, eligible costs must be reimbursed subsequently in the order in which
5 they were approved by the board."
6

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

8 **"75-11-309. Procedures for reimbursement of eligible costs -- corrective action plans.** (1) An
9 owner or operator seeking reimbursement for eligible costs and the department shall comply with the following
10 procedures:

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

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

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

23 (D) FOR A RELEASE IN WHICH THE COSTS ARE EXPECTED TO EXCEED \$100,000, AN OWNER OR
24 OPERATOR, A REPRESENTATIVE OF THE OWNER OR OPERATOR, THE DEPARTMENT, ~~AND THE BOARD~~, and board staff
25 SHALL MEET TO DISCUSS THE RESPONSE TO THE RELEASE. FOR A RELEASE IN WHICH THE COSTS ARE EXPECTED TO BE
26 LESS THAN \$100,000, AN OWNER OR OPERATOR, A REPRESENTATIVE OF THE OWNER OR OPERATOR, THE DEPARTMENT,
27 ~~AND THE BOARD~~, and board staff MAY MEET TO DISCUSS THE RESPONSE TO THE RELEASE IF ANY PARTY REQUESTS A
28 MEETING.

1 ~~(d)~~(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
3 corrective action for the release. The local or tribal government office AND THE BOARD shall inform the
4 department if it wants 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 ~~(e)~~(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 ~~(f)~~(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. ~~Upon review, the board may~~
16 ~~request that the corrective action plan be amended pursuant to 75-11-508 to include a petroleum mixing zone.~~
17 ~~If the department finds that the conditions for establishment of a petroleum mixing zone in 75-11-508 are~~
18 ~~satisfied, the corrective action plan must be amended to include a petroleum mixing zone.~~

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

24 ~~(h)~~(I) (i) The owner or operator shall document in the manner required by the board all expenses
25 incurred in preparing and implementing the corrective action plan. The owner or operator shall submit claims
26 and substantiating documents to the board in the form and manner required by the board.

27 (ii) The board shall review each claim and determine if the claims are ~~actual, reasonable, and~~
28 ~~necessary~~ ACTUAL, REASONABLE, AND NECESSARY costs of responding to the release and implementing the

1 corrective action plan.

2 (iii) If the board requires additional information to determine if a claimed cost is ~~actual, reasonable,~~
3 ~~and necessary~~ ACTUAL, REASONABLE, AND NECESSARY, the board may request comment from the department and
4 the owner or operator.

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

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

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

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

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

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

23 (3) The board shall review each claim received under subsections ~~(1)(h) and (1)(i)~~ (1)(l) AND (1)(j),
24 make the determination required by this subsection, inform the owner or operator of its determination, and, as
25 appropriate, reimburse the owner or operator from the fund. Before approving a reimbursement, the board shall
26 affirmatively determine that:

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

28 (i) are eligible costs; and

1 (ii) were ACTUALLY, NECESSARILY, AND ~~actually, necessarily, and~~ reasonably incurred for the
2 preparation or implementation of a corrective action plan approved by the department or for payments to a third
3 party for bodily injury or property damage; and

4 (b) the owner or operator:

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

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

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

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

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

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

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

27 (6) (a) The board may, at the request of an owner or operator, guarantee in writing the
28 reimbursement of eligible costs that have been approved by the board but for which money is not currently

1 available from the fund for reimbursement.

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

6 (c) When considering a request for a guarantee of payment, the board may require pertinent
7 information or documentation from the owner or operator. The board may grant or deny, in whole or in part, any
8 request for a guarantee."
9

10 **SECTION 3. SECTION 75-11-312, MCA, IS AMENDED TO READ:**

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

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

17 (3) If a third-party review suggests that submitted costs do not comply with the requirements of 75-
18 11-309(3)(a), the board may deny the costs, subject to 75-11-309(4)."
19

20 **SECTION 4. SECTION 75-11-318, MCA, IS AMENDED TO READ:**

21 **"75-11-318. Powers and duties of board.** (1) The board shall administer the petroleum tank release
22 cleanup fund in accordance with the provisions of this part, including the payment of reimbursement to owners
23 and operators. The board may hire its own staff to assist in the implementation of this part.

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

27 (3) The board may conduct meetings, hold hearings, undertake legal action, and conduct other
28 business that may be necessary to administer its responsibilities under this part. The board shall meet at least