

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~~

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Drafter: Jason Mohr, 406-444-1640

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1 ~~(24)(27)~~ "Release" means any spilling, leaking, emitting, discharging, escaping, leaching, or disposing
2 of petroleum or petroleum products from a petroleum storage tank into ground water, surface water, surface
3 soils, or subsurface soils.

4 ~~(25)(28)~~ "Special fuel" means those combustible liquids commonly referred to as diesel fuel or another
5 volatile liquid of less than 46 degrees A.P.I. (American petroleum institute) gravity test, except liquid petroleum
6 gas. For the purposes of this chapter, special fuel does not include diesel fuel sold to a railroad or a federal
7 defense fuel supply center."

8

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

10 **"75-11-307. Reimbursement for expenses caused by release.** (1) Subject to the availability of
11 money from the fund under subsection (6), an owner or operator who is eligible under 75-11-308 and who
12 complies with 75-11-309 and any rules adopted to implement those sections must be reimbursed by the board
13 from the fund for the following eligible costs caused by a release from a petroleum storage tank:

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

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

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

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

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

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

27 (a) corrective action costs or the costs of bodily injury or property damage paid to third parties that

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- 1 are determined by the board to be ineligible for reimbursement;
- 2 (b) costs for bodily injury and property damage, other than corrective action costs, incurred by the
- 3 owner or operator;
- 4 (c) penalties or payments for damages incurred under actions by the department, board, or
- 5 federal, state, local, or tribal agencies or other government entities involving judicial or administrative
- 6 enforcement activities and related negotiations;
- 7 (d) attorney fees and legal costs of the owner, the operator, or a third party;
- 8 (e) costs for the repair or replacement of a tank or piping or costs of other materials, equipment, or
- 9 labor related to the operation, repair, or replacement of a tank or piping;
- 10 (f) expenses incurred before April 13, 1989, for owners or operators seeking reimbursement from
- 11 the petroleum tank release cleanup fund and expenses incurred before May 15, 1991, for owners or operators
- 12 seeking reimbursement from the petroleum tank release cleanup fund for a tank storing heating oil for
- 13 consumptive use on the premises where it is stored or for a farm or residential tank with a capacity of 1,100
- 14 gallons or less that is used for storing motor fuel for noncommercial purposes;
- 15 (g) expenses exceeding the maximum reimbursements provided for in subsection (4);
- 16 (h) costs for which an owner or operator has received reimbursement or payment from an insurer
- 17 or other third party, including a grantor;
- 18 (i) expenses for work completed by or on behalf of the owner or operator more than 5 years prior
- 19 to the owner's or operator's request for reimbursement. This limitation does not apply to claims for
- 20 compensation paid to third parties for bodily injury or property damage. The running of the 5-year limitation
- 21 period is suspended by an appeal of the board's denial of eligibility for reimbursement. If a written request for
- 22 hearing is filed under 75-11-309, the suspension of the 5-year limitation period is effective from the date of the
- 23 board's initial eligibility denial to the date on which the initial eligibility denial is overturned or reversed by the
- 24 board, a district court, or the state supreme court, whichever occurs latest. The board may grant reasonable
- 25 extensions of this limitation period if it is shown that the need for the extension is not due to the negligence of
- 26 the owner or operator or agent of the owner or operator.
- 27 (j) costs that the board has determined are not actual, reasonable, and necessary costs of

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1 responding to the release and implementing the corrective action plan, as provided for in 75-11-309, including
2 costs included in a department-approved corrective action plan for the purpose of remediating the release in
3 excess of department standards.

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

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

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

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

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

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

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

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

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

26 (a) are considered to have been paid by the owner or operator toward satisfaction of the 50%
27 share requirements of subsection (4)(a)(ii) or (4)(b)(ii) if the owner or operator receives the payment or

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1 reimbursement before applying for reimbursement from the board;

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

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

7 (6) ~~If the fund does not contain sufficient money to pay approved claims for eligible costs~~ ENDING
8 MONTHLY BALANCE OF THE FUND IS LESS THAN \$1.5 MILLION, excluding a reimbursement for a cost associated with
9 an emergency response, a reimbursement may not be made and the fund and the board are not liable for
10 making any reimbursement for the costs at that time. When the ENDING MONTHLY BALANCE OF THE fund contains
11 ~~sufficient money~~ MORE THAN \$1.5 MILLION, eligible costs must be reimbursed subsequently in the order in which
12 they were approved by the board."
13

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

15 **"75-11-309. Procedures for reimbursement of eligible costs -- corrective action plans.** (1) An
16 owner or operator seeking reimbursement for eligible costs and the department shall comply with the following
17 procedures:

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

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

26 (c) The owner or operator shall conduct a thorough investigation of the release and, subject to
27 subsection (1)(d), report the findings to the department, and, as determined necessary by the department,

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1 prepare and submit for approval by the department a corrective action plan that conforms with state, tribal
2 (when applicable), and federal corrective action requirements.

3 (D) FOR A RELEASE IN WHICH THE COSTS ARE EXPECTED TO EXCEED \$100,000, AN OWNER OR
4 OPERATOR, A REPRESENTATIVE OF THE OWNER OR OPERATOR, THE DEPARTMENT, ~~AND THE BOARD, and board staff~~
5 SHALL MEET TO DISCUSS THE RESPONSE TO THE RELEASE. FOR A RELEASE IN WHICH THE COSTS ARE EXPECTED TO BE
6 LESS THAN \$100,000, AN OWNER OR OPERATOR, A REPRESENTATIVE OF THE OWNER OR OPERATOR, THE DEPARTMENT,
7 ~~AND THE BOARD, and board staff~~ MAY MEET TO DISCUSS THE RESPONSE TO THE RELEASE IF ANY PARTY REQUESTS A
8 MEETING.

9 ~~(d)~~(E) (i) The department shall review the corrective action plan and forward a copy to a local
10 government office, THE BOARD, and, when applicable, a tribal government office with jurisdiction over a
11 corrective action for the release. The local or tribal government office AND THE BOARD shall inform the
12 department if it wants any modification of the proposed plan.

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

18 (iii) After the department approves a corrective action plan, a local government, ~~or A~~ tribal
19 government, OR THE BOARD may not impose different corrective action requirements on the owner or operator.

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

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

27 ~~(g)~~(H) The owner or operator shall implement the corrective action plan or plans approved by the

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1 department until the release is resolved. The department may oversee the implementation of the plan, require
2 reports and monitoring from the owner or operator, undertake inspections, and otherwise exercise its authority
3 concerning corrective action under Title 75, chapter 10, part 7, Title 75, chapter 11, part 5, and other applicable
4 law and rules.

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

8 (ii) The board shall review each claim and determine if the claims are ~~actual, reasonable, and~~
9 ~~necessary~~ ACTUAL, REASONABLE, AND NECESSARY costs of responding to the release and implementing the
10 corrective action plan.

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

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

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

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

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

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

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

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

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

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

10 (i) are eligible costs; and

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

14 (b) the owner or operator:

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

16 (ii) has complied with this section and any rules adopted pursuant to this section. Upon a
17 determination by the board that the owner or operator has not complied with this section or rules adopted
18 pursuant to this section, all reimbursement of pending and future claims must be suspended. Upon a
19 determination by the board that the owner or operator has returned to compliance with this section or rules
20 adopted pursuant to this section, suspended and future claims may be reimbursed according to criteria
21 established by the board. In establishing the criteria, the board shall consider the effect and duration of the
22 noncompliance.

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

25 (b) A written request for a hearing must be received by the board within 120 days after notice of
26 the board's determination is served on the owner or operator by certified mail. The notice of determination must
27 advise the owner or operator of the 120-day time limit for submitting a written request for a hearing to the board.

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1 Not less than 50 days or more than 60 days after the board serves the notice of determination, the board shall
2 serve on the owner or operator a second notice by certified mail advising the owner or operator of the deadline
3 for requesting a hearing. Service by certified mail is complete on the date shown on the certified mail receipt.

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

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

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

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

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

17 (c) When considering a request for a guarantee of payment, the board may require pertinent
18 information or documentation from the owner or operator. The board may grant or deny, in whole or in part, any
19 request for a guarantee."
20

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

22 **"75-11-312. Review of corrective action plans and claims.** (1) To ensure that the fund provided for
23 in 75-11-313 is being used in the most efficient manner, the board ~~may~~shall implement a program of third-party
24 review for corrective action plans and claims. The board may submit a corrective action plan or claim for review
25 by a qualified third party of the board's choosing.

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