

SENATE BILL NO. 247

BY SENATOR CATHEY

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AN ACT

To amend and reenact R.S. 30:2194(B)(4) and (11), (C)(2), and (4), 2194.1, 2195(D) and (F)(3), 2195.2(A)(1)(c)(ii), 2195.4(A)(1) and (3)(c), and 2195.10(D), and to repeal R.S. 30:2195.4(A)(3)(d), relative to the Motor Fuels Underground Storage Tank Trust Dedicated Fund Account; to provide for definitions; to provide for storage of heating oil; to provide for registration of underground storage tanks; to provide for pipeline facilities; to provide for dispensing into unregistered tanks; to provide for abandoned motor fuel underground storage tanks; to provide for uses of the Tank Trust Account; to provide for disbursements from the Tank Trust Account; to provide for financial responsibility for noncompliance; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 30:2194(B)(4) and (11), (C)(2), and (4), 2194.1, 2195(D) and (F)(3), 2195.2(A)(1)(c)(ii), 2195.4(A)(1) and (3)(c), and 2195.10(D) are hereby amended and reenacted to read as follows:

§2194. Underground storage tanks; registration

* * *

B. As used in R.S. 30:2194 through 2195.11, the following terms shall have the meaning ascribed to them in this Subsection, unless the context clearly indicates otherwise:

(1)(a) * * *

1 (4) "Eligible participant" means any owner of an underground storage tank
 2 who has registered a newly installed or operating **or temporarily closed** tank with
 3 the department prior to the date of a release, has paid the annual tank registration
 4 fees along with any late payment fees, **and has not been excluded from coverage,**
 5 **as provided in** ~~has met the financial responsibility requirements imposed by R.S.~~
 6 ~~30:2195.9, and has met the noncompliance financial responsibility amounts imposed~~
 7 ~~by R.S. 30:2195.10.~~

8 * * *

9 (11) "Specialized services" means activities associated with the preparation
 10 of a reimbursement application, laboratory analysis, **site assessment and**
 11 **characterization,** or any construction activity, construction of trenches, excavations,
 12 installing monitoring wells, conducting borings, heavy equipment work, surveying,
 13 plumbing, and electrical work, which is carried out by a response action contractor
 14 or a subcontractor hired or retained by a response action contractor in response to a
 15 discharge or release or threatened release of motor fuels into the groundwater,
 16 surface waters, or soils.

17 * * *

18 C. The secretary shall promulgate regulations requiring the registration of all
 19 underground storage tanks with a capacity in excess of one hundred ten gallons
 20 which contain regulated substances. The secretary may adopt rules and regulations
 21 to require the registration of certain underground storage tanks; establish
 22 requirements for ensuring sound underground storage tank management for
 23 preventing, controlling, remediating, and abating actual or potential contamination
 24 of surface water, groundwater, or soils; establish requirements for reporting of
 25 known releases and for taking corrective action in response to known releases from
 26 underground storage tank systems; establish a field citation program with penalty
 27 imposing authority; and establish a certification program for persons installing,
 28 repairing, or closing underground storage tank systems. For the purpose of this
 29 Section, "underground storage tank" shall not include a:

30 * * *

1 (2) Tank used for storing heating oil, except heating oils blended with
2 hazardous waste, for consumptive use on the premises where stored.

3 * * *

4 (4) Pipeline facility, including gathering lines that are either of the
5 following:

6 (a) Regulated under ~~the Natural Gas Pipeline Safety Act of 1968, 49 U.S.C.A.~~
7 ~~1671 et seq.~~ 49 U.S.C. 601.

8 (b) ~~Regulated under the Hazardous Liquid Pipeline Safety Act of 1979, 49~~
9 ~~U.S.C.A. 2001 et seq.; or~~

10 (c) Which is an intrastate pipeline facility regulated under state laws
11 comparable to the provisions of law referred to in Subparagraph (a) ~~or (b) above of~~ of
12 this Paragraph and which is determined by the secretary of the United States
13 Department of Transportation to be connected to a pipeline, or to be operated
14 or intended to be capable of operating at pipeline pressure or as an integral part
15 of the pipeline.

16 * * *

17 §2194.1. Prohibitions

18 No person shall place or dispense a regulated substance into an underground
19 storage tank that has not been registered with the Louisiana Department of
20 Environmental Quality ~~and that does not have a current registration certificate.~~

21 §2195. Motor Fuels Underground Storage Tank Trust Dedicated Fund Account

22 * * *

23 D. The funds placed in the Tank Trust Account shall only be used in
24 accordance with the terms and conditions of R.S. 30:2194 through ~~2195-9~~ 2195.11
25 and shall not be placed in the general fund but shall be subject to the appropriation
26 process of the legislature. The monies in the Tank Trust Account shall be invested
27 by the state treasurer in the same manner as monies in the state general fund. Monies
28 deposited into this account shall be used to defray the cost of investment fees, and
29 shall be categorized as fees and self-generated revenue for the sole purpose of
30 reporting related to the executive budget, supporting documents, and general

1 appropriation bills and shall be available for annual appropriation by the legislature.

2 **All unexpended and unencumbered monies in the account at the end of the**
3 **fiscal year shall remain in the account and be available for expenditure in**
4 **future fiscal years.**

5 * * *

6 F.(1) * * *

7 (3) A tank may be declared to be an abandoned motor fuel underground
8 storage tank by the secretary upon a finding that ~~all~~ **any** of the following apply to the
9 site:

10 (a) **The release at the site is not eligible for the Tank Trust Account and**
11 **the secretary has determined that action by the department is the most timely**
12 **and efficient way to address conditions at the site.**

13 **(b) All of the following apply to the site:**

14 **(i)** It has received motor fuels in an underground storage tank.

15 ~~(b)~~**(ii)** The motor fuel underground storage tank was not closed or the site
16 was not assessed or remediated in accordance with the requirements of this Subtitle
17 and the regulations adopted hereunder.

18 ~~(c)~~**(iii)** It constitutes or may constitute a danger or potential danger to the
19 public health or the environment.

20 ~~(d)~~**(iv)** It has no financially responsible owner or operator who can be
21 located, or such person has failed or refused to undertake action ordered by the
22 secretary pursuant to R.S. 30:2194 and the regulations adopted thereunder.

23 ~~(e) The release at the site is not eligible for the Tank Trust Account or the~~
24 ~~secretary has determined that action by the department is the most timely and~~
25 ~~efficient way to address conditions at the site.~~

26 §2195.2. Uses of the Tank Trust Account

27 A. The department shall administer the Tank Trust Account and shall make
28 disbursements from the account for all necessary and appropriate expenditures.
29 Pursuant to the authorization in R.S. 30:2195, the secretary of the Department of
30 Environmental Quality shall use the Tank Trust Account as follows:

1 (1) Whenever in the secretary's determination incidence of surface water,
2 groundwater, or soils contamination resulting from the storage of motor fuels may
3 pose a threat to the environment or the public health, safety, and welfare and the
4 owner of the motor fuel underground storage tank has been found to be an eligible
5 participant, the department shall obligate monies available in the Tank Trust Account
6 to provide for the following response actions:

7 * * *

8 (c)(i) * * *

9 (ii) The monies expended from the Tank Trust Account for any of the above
10 approved costs shall be spent only up to such sums as that which is necessary to
11 satisfy federal petroleum underground storage tank financial responsibility
12 requirements (40 CFR 280.93) or ~~one~~ **two** million ~~five hundred thousand~~ dollars **per**
13 **occurrence**, whichever is greater. This amount shall include any third-party claim
14 arising from the release of motor fuels from a motor fuel underground storage tank.
15 **However, if the secretary determines that further action is needed to address a**
16 **condition that constitutes or may constitute a danger or potential danger to the**
17 **public health or the environment, monies from the Tank Trust Account may be**
18 **expended above the aggregate financial responsibility requirements of 40 CFR**
19 **280.93.**

20 * * *

21 §2195.4. Procedures for disbursements from the Tank Trust Account

22 A. Monies held in the Tank Trust Account established hereunder shall be
23 disbursed by the secretary in the following manner:

24 (1) ~~Payments shall be made in reasonable amounts to motor fuel underground~~
25 ~~storage tank owners for reimbursement of payment to approved response action~~
26 ~~contractors~~ **Notwithstanding any provision of R.S. 30:2194 through 2195.11 to**
27 **the contrary, any remediation work contracted for on or after August 1, 1995,**
28 **shall be paid by the department to the response action contractor who**
29 **performed the department-approved assessment or remediation work upon the**
30 **presentation of proper invoices** for response actions taken when authorized by the

1 secretary or his designee ~~only after the amounts required by R.S. 30:2195.9 and~~
 2 ~~2195.10 have been paid by the underground motor fuels storage tank owner or those~~
 3 ~~authorized to act for the owner.~~ The secretary may substitute a lien with the same
 4 ranking as that authorized by R.S. 30:2195(F)(2) for the amount required by R.S.
 5 30:2195.9 and 2195.10, but such lien shall not be substituted on behalf of an owner
 6 or operator who continues to operate the system. An underground motor fuel storage
 7 tank owner who is an eligible participant and a response action contractor will not
 8 be reimbursed for response actions, excluding emergency response actions
 9 performed during the first seventy-two hours following a release, performed at his
 10 own site. Underground motor fuel storage tank owners will not be reimbursed for
 11 response actions, excluding emergency response actions performed during the first
 12 seventy-two hours following a release, performed by a response action contractor
 13 who is known to have performed actions which contributed to or resulted in the
 14 release.

15 * * *

16 (3)(a) * * *

17 (c) ~~Initial assessments shall be initiated within two years from the receipt of~~
 18 ~~a request for assessment made by the secretary to be eligible for disbursement from~~
 19 ~~the Tank Trust Account.~~

20 (d) When the department's action results in a reimbursement application not
 21 being submitted within two years of the date the work was performed, the applicant
 22 will have ninety days from the date the issue is resolved to submit the reimbursement
 23 application.

24 * * *

25 §2195.10. Financial responsibility for noncompliance

26 * * *

27 D. Annually the advisory board shall review the financial responsibility
 28 requirements for noncompliance and may recommend adjustments to the
 29 requirements to the secretary. The secretary shall determine and set the financial
 30 responsibility amounts for noncompliance annually. ~~Adjustments to the financial~~

1 ~~responsibility for noncompliance shall be no less than the amounts currently~~
2 ~~established by law.~~
3 Section 2. R.S. 30:2195.4(A)(3)(d) is hereby repealed.

PRESIDENT OF THE SENATE

SPEAKER OF THE HOUSE OF REPRESENTATIVES

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____