

HOUSE BILL NO. 189

INTRODUCED BY M. BERTOGLIO

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A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE REIMBURSEMENT DATE FOR PETROLEUM STORAGE TANK CLEANUP FUNDS; EXTENDING RULEMAKING AUTHORITY; AMENDING SECTIONS 75-11-307 AND 75-11-308, MCA; AND PROVIDING AN EFFECTIVE DATE."

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

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

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

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

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

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

(iii) includes costs for the purpose of intentionally remediating the release from a petroleum storage tank that exceed department standards; and

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

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

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

- 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~~ January 1, 1984, for owners or operators seeking  
11 reimbursement from the petroleum tank release cleanup fund and expenses incurred before May 15, 1991, for  
12 owners or operators seeking reimbursement from the petroleum tank release cleanup fund for a tank storing  
13 heating oil for consumptive use on the premises where it is stored or for a farm or residential tank with a  
14 capacity of 1,100 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 reasonable costs of responding to the release and  
28 implementing the corrective action plan, as provided for in 75-11-309, including costs included in a department-

1 approved corrective action plan for the purpose of remediating the release in excess of department standards.

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

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

6 (a) for releases eligible for reimbursement from the fund that are discovered and reported on or  
7 after ~~April 13, 1989~~ January 1, 1984, from a tank storing heating oil for consumptive use on the premises where  
8 it is stored or from a farm or residential tank with a capacity of 1,100 gallons or less that is used for storing  
9 motor fuel for noncommercial purposes, the board shall reimburse an owner or operator for:

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

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

15 (b) for all other releases eligible for reimbursement from the fund that are discovered and reported  
16 on or after ~~April 13, 1989~~ January 1, 1984, the board shall reimburse an owner or operator for:

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

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

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

24 (a) are considered to have been paid by the owner or operator toward satisfaction of the 50%  
25 share requirements of subsection (4)(a)(ii) or (4)(b)(ii) if the owner or operator receives the payment or  
26 reimbursement before applying for reimbursement from the board;

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

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

4 (6) If the ending monthly balance of the fund is less than \$1.5 million, excluding a reimbursement  
 5 for a cost associated with an emergency response, a reimbursement may not be made and the fund and the  
 6 board are not liable for making any reimbursement for the costs at that time. When the ending monthly balance  
 7 of the fund contains more than \$1.5 million, eligible costs must be reimbursed subsequently in the order in  
 8 which they were approved by the board."

9

10 **Section 2.** Section 75-11-308, MCA, is amended to read:

11 **"75-11-308. Eligibility.** (1) An owner or operator is eligible for reimbursement for the applicable  
 12 percentage as provided in 75-11-307(4)(a) and (4)(b) of eligible costs caused by a release from a petroleum  
 13 storage tank only if:

14 (a) the release was discovered on or after ~~April 13, 1989~~ January 1, 1984;

15 (b) the release occurred from:

16 (i) an underground storage tank, as defined in 75-11-503, that was in compliance with 75-11-509  
 17 at the time that the release was discovered;

18 (ii) a petroleum storage tank, as defined in 75-11-302, that was in compliance with the applicable  
 19 state and federal laws and rules that the board determines pertain to the prevention and mitigation of a  
 20 petroleum release from a petroleum storage tank at the time that the release was discovered; or

21 (iii) an underground storage tank, as defined in 75-11-503, that the board determines was  
 22 unknown to both the property owner and the department prior to its discovery if the owner applies to the  
 23 department for a closure permit in accordance with 75-11-212 within 30 days of the date upon which the owner  
 24 first had knowledge of the tank and closes the tank in accordance with the requirements of the permit before  
 25 the permit expires; and

26 (c) the release was an accidental release.

27 (2) An owner or operator is not eligible for reimbursement from the petroleum tank release cleanup  
 28 fund for expenses caused by releases from the following petroleum storage tanks:

- 1 (a) a tank located at a refinery or a terminal of a refiner;
- 2 (b) a tank located at an oil and gas production facility;
- 3 (c) a tank that is or was previously under the ownership or control of a railroad, except for a tank
- 4 that was operated by a lessee of a railroad in the course of nonrailroad operations;
- 5 (d) a tank belonging to the federal government;
- 6 (e) a tank owned or operated by a person who has been convicted of a substantial violation of
- 7 state or federal law or rule that relates to the installation, operation, or management of petroleum storage tanks;
- 8 or
- 9 (f) a mobile storage tank used to transport petroleum or petroleum products from one location to
- 10 another."

11  
12 NEW SECTION. **Section 3. Effective date.** [This act] is effective July 1, 2025.

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