

SENATE BILL NO. 49

INTRODUCED BY J. KEANE

BY REQUEST OF THE DEPARTMENT OF ENVIRONMENTAL QUALITY

A BILL FOR AN ACT ENTITLED: "AN ACT EXPANDING WHERE A PETROLEUM MIXING ZONE MAY BE USED; PROVIDING RULEMAKING AUTHORITY; AMENDING SECTIONS 75-11-307 AND 75-11-508, MCA; AND PROVIDING AN IMMEDIATE 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; or

(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~~(3)(a)~~; 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 are determined by the board to be ineligible for reimbursement;

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

(c) penalties or payments for damages incurred under actions by the department, board, or federal, state,



1 local, or tribal agencies or other government entities involving judicial or administrative enforcement activities and
2 related negotiations;

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

4 (e) costs for the repair or replacement of a tank or piping or costs of other materials, equipment, or labor
5 related to the operation, repair, or replacement of a tank or piping;

6 (f) expenses incurred before April 13, 1989, for owners or operators seeking reimbursement from the
7 petroleum tank release cleanup fund and expenses incurred before May 15, 1991, for owners or operators
8 seeking reimbursement from the petroleum tank release cleanup fund for a tank storing heating oil for
9 consumptive use on the premises where it is stored or for a farm or residential tank with a capacity of 1,100
10 gallons or less that is used for storing motor fuel for noncommercial purposes;

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

12 (h) costs for which an owner or operator has received reimbursement or payment from an insurer or
13 other third party; and

14 (i) expenses for work completed by or on behalf of the owner or operator more than 5 years prior to the
15 owner's or operator's request for reimbursement. This limitation does not apply to claims for compensation paid
16 to third parties for bodily injury or property damage. The running of the 5-year limitation period is suspended by
17 an appeal of the board's denial of eligibility for reimbursement. If a written request for hearing is filed under
18 75-11-309, the suspension of the 5-year limitation period is effective from the date of the board's initial eligibility
19 denial to the date on which the initial eligibility denial is overturned or reversed by the board, a district court, or
20 the state supreme court, whichever occurs latest. The board may grant reasonable extensions of this limitation
21 period if it is shown that the need for the extension is not due to the negligence of the owner or operator or agent
22 of the owner or operator.

23 (3) An owner or operator may designate a person as an agent to receive the reimbursement if the owner
24 or operator remains legally responsible for all costs and liabilities incurred as a result of the release.

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

26 (a) for releases eligible for reimbursement from the fund that are discovered and reported on or after April
27 13, 1989, from a tank storing heating oil for consumptive use on the premises where it is stored or from a farm
28 or residential tank with a capacity of 1,100 gallons or less that is used for storing motor fuel for noncommercial
29 purposes, the board shall reimburse an owner or operator for:

30 (i) 100% of the eligible costs, up to a maximum total reimbursement of \$500,000, for properly designed

1 and installed double-walled tank system releases that were discovered and reported on or after October 1, 1993,
2 and before October 1, 2009; or

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

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

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

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

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

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

17 (b) are not reimbursable from the fund; and

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

21 (6) If the fund does not contain sufficient money to pay approved claims for eligible costs, a
22 reimbursement may not be made and the fund and the board are not liable for making any reimbursement for the
23 costs at that time. When the fund contains sufficient money, eligible costs must be reimbursed subsequently in
24 the order in which they were approved by the board."
25

26 **Section 2.** Section 75-11-508, MCA, is amended to read:

27 **"75-11-508. Corrective action -- petroleum mixing zones.** (1) A corrective action plan prepared
28 pursuant to 75-11-309 may include the use of a petroleum mixing zone, as defined in 75-11-503, in conjunction
29 with the final remediation and resolution of a petroleum release.

30 (2) If a petroleum mixing zone is included in a corrective action plan, it may be established only when:

- 1 (a) all source material has been removed to the maximum extent practicable;
- 2 (b) the extent of petroleum contamination has been defined;
- 3 (c) natural breakdown or attenuation is occurring within the plume; and
- 4 (d) no further corrective action is reasonably required at the site.
- 5 (3) The boundary of a petroleum mixing zone established in accordance with this section must be
- 6 contained within the:
- 7 ~~———(a) boundary of the property on which the petroleum release originated unless a recorded easement,~~
- 8 ~~a restrictive covenant, or another institutional control approved by the department on an adjoining property allows~~
- 9 ~~the petroleum mixing zone to extend onto the adjoining property; and~~
- 10 ~~———(b) unconfined aquifer.~~
- 11 (4) Monitoring of a petroleum mixing zone may not be required unless there is a unique, overriding,
- 12 site-specific, impact-related reason to require monitoring.
- 13 (5) At the downgradient boundary of a petroleum mixing zone, the concentration of any petroleum
- 14 constituent, including benzene, may not exceed a water quality standard adopted by the board pursuant to
- 15 75-5-301.
- 16 (6) If a petroleum mixing zone is established and maintained:
- 17 (a) the petroleum release is considered to be resolved;
- 18 (b) no further corrective action for the petroleum release is required; and
- 19 (c) the department shall issue a no-further-action letter to the owner or operator stating that a petroleum
- 20 mixing zone has been established for the release and describing any conditions required to maintain the
- 21 petroleum mixing zone.
- 22 (7) A corrective action plan approved by the department pursuant to 75-11-309 may be amended to
- 23 include a petroleum mixing zone in accordance with this section, including a corrective action plan approved prior
- 24 to April 15, 2011."
- 25

26 **NEW SECTION. Section 3. Effective date.** [This act] is effective on passage and approval.

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