HOUSE BILL NO. 485

INTRODUCED BY RANEY, HARP, STANG, O'KEEFE BY REQUEST OF THE PETROLEUM TANK RELEASE COMPENSATION BOARD

IN THE HOUSE

JANUARY	30,	1991	INT	RODUCED	AND	REFERRED	то	COMMITTEE
			ON	NATURAL	RESC	URCES.		

JANUARY 31, 1991 FIRST READING.

FEBRUARY 14, 1991 COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED.

FEBRUARY 15, 1991 PRINTING REPORT.

FEBRUARY 16, 1991 SECOND READING, DO PASS.

FEBRUARY 18, 1991 ENGROSSING REPORT.

FEBRUARY 19, 1991 THIRD READING, PASSED. AYES, 87; NOES, 10.

TRANSMITTED TO SENATE.

IN THE SENATE

FEBRUARY 20, 1991

INTRODUCED AND REFERRED TO COMMITTEE ON NATURAL RESOURCES.

FIRST READING.

MARCH 26, 1991 COMMITTEE RECOMMEND BILL BE CONCURRED IN. REPORT ADOPTED.

MARCH 28, 1991 SECOND READING, CONCURRED IN.

APRIL 1, 1991 THIRD READING, CONCURRED IN. AYES, 49; NOES, 0.

RETURNED TO HOUSE.

IN THE HOUSE

APRIL 1, 1991

SENT TO ENROLLING.

RECEIVED FROM SENATE.

REPORTED CORRECTLY ENROLLED.

52nd Legislature

LC 1200/01

DelSE BILL NO. 485 1 2 INTRODUCED BY BY REQUEST OF THE PETROLEUM TANK 3 RELEASE COMPENSATION BOARD 4 5

б A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE AUTHORITY OF THE PETROLEUM TANK RELEASE COMPENSATION BOARD; REVISING 7 8 CERTAIN DEFINITIONS IN TITLE 75, CHAPTER 11, PART 3: 9 CLARIFYING THE RESPONSIBILITIES OF A PETROLEUM STORAGE TANK 10 OWNER OR OPERATOR AND AN AGENT DESIGNATED FOR REIMBURSEMENT; 11 AUTHORIZING THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL 12 SCIENCES TO WAIVE NOTIFICATION OF THE EXISTENCE OF A PETROLEUM STORAGE TANK AS A PREREOUISITE TO TANK RELEASE 13 REIMBURSEMENT: PROVIDING FOR TRIBAL REVIEW OF CLEANUP PLANS 14 PROPOSED WITHIN A TRIBAL JURISDICTION; REVISING THE ROLES OF 15 16 THE PETROLEUM TANK RELEASE COMPENSATION BOARD AND THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES IN CLAIMS 17 REVIEW; AMENDING SECTIONS 75-11-302, 75-11-307, 75-11-308, 18 AND 75-11-309, MCA; AND PROVIDING AN EFFECTIVE DATE." 19

20

21 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
22 Section 1. Section 75-11-302, MCA, is amended to read:
23 "75-11-302. Definitions. The following definitions
24 apply to this part:

25 (1) "Accidental release" means a sudden or nonsudden



1 release, neither expected nor intended by the tank owner or 2 operator, of petroleum or petroleum products from a storage 3 tank that results in a need for corrective action or 4 compensation for third party bodily injury or property 5 damage.

6 (2) "Board" means the petroleum tank release
7 compensation board established in 2-15-2108.

8 (3) "Bodily injury" means physical injury, sickness, or
9 disease sustained by an individual, including death that
10 results from the physical injury, sickness, or disease at
11 any time.

12 (4) "Claim" means a written request prepared and
13 submitted by an owner or operator or an agent of the owner
14 or operator for reimbursement of expenses caused by an
15 accidental release from a petroleum storage tank.

16 (5) "Corrective action" means investigation,
17 monitoring, cleanup, restoration, abatement, removal, and
18 other actions necessary to respond to a release.

19 (6) "Department" means the department of health and
20 environmental sciences provided for in Title 2, chapter 15,
21 part 21.

(7) "Distributor" means a distributor as defined in15-70-201.

24 (8) "Eligible costs" means expenses reimbursable under
25 75-11-307.

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1	(9) "Fee" means the petroleum storage tank cleanup fee	1	is being used to actively receive, dispense, or store
2	provided for in 75-11-314.	2	petroleum or petroleum products when a release is discovered
3	(10) "Fund" means the petroleum tank release cleanup	3	or that was actively used for any of these purposes no more
4	fund established in 75-11-313.	4	than 1 year before the date that a release is discovered and
5	(11) "Gasoline" means gasoline as defined in 15-70-201.	5	that is:
6	(12) "Operator" means a person in control of or having	6	(a) an underground storage tank as defined in
7	responsibility for the daily operation of a petroleum	7	75-10-403;
8	storage tank.	8	(b) a storage tank that is situated in an underground
9	(13) "Owner" means a person who holds title to,	9	area such as a basement, cellar, mine, draft drift, shaft,
10	controls, or possesses an interest in a petroleum storage	10	or tunnel;
11	tank. The term does not include a person who holds an	11	(c) an above ground storage tank with a capacity less
12	interest in a tank solely for financial security, unless	12	than 30,000 gallons; or
13	through foreclosure or other related actions the holder of a	13	(d) above ground or underground pipes associated with
14	security interest has taken possession of the tank.	14	tanks under subsections (16)(b) and (16)(c), except that
15	(14) "Person" means an individual, firm, trust, estate,	15	pipelines regulated under the following laws are excluded:
16	partnership, company, association, joint stock company,	16	(i) the Natural Gas Pipeline Safety Act of 1968 (49
17	syndicate, consortium, commercial entity, corporation, or	17	U.S.C. 1671, et seq.);
18	agency of state or local government.	18	(ii) the Hazardous Liquid Pipeline Safety Act of 1979
19	(15) "Petroleum" or "petroleum products" means crude oil	19	(49 U.S.C. 2001, et seq.); and
20	or any fraction thereof that is liquid at standard	20	(iii) state law comparable to the provisions of law
21	conditions of temperature and pressure (60 degrees F and	21	referred to in subsections (16)(d)(i) and (16)(d)(ii), if
22	14.7 pounds per square inch absolute) and that is not	22	the facility is intrastate.
23	augmented or compounded by more than a minimal amount of	23	(17) "Property damage" means:
24	another substance.	24	(a) physical injury to tangible property, including
25	(16) "Petroleum storage tank" means a tank that contains	25	loss of use of that property caused by the injury; or

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(b) loss of use of tangible property that is not
 physically injured.

3 (18) "Release" means a-release;-as-defined-in-75-10-701;
4 any spilling, leaking, emitting, discharging, escaping,
5 leaching, or disposing of petroleum or petroleum products
6 from a petroleum storage tank into ground water, surface
7 water, surface soils, or subsurface soils."

Section 2. Section 75-11-307, MCA, is amended to read: 8 "75-11-307. Reimbursement for expenses caused by a 9 release. (1) Subject to the availability of funds under 10 11 subsection (5), an owner or operator who is eligible under 12 75-11-308 and complies with 75-11-309 and any rules adopted 13 to implement those sections must be reimbursed by the board from the fund for the following eligible costs caused by a 14 15 release from a petroleum storage tank:

16 (a) corrective action costs; and

17 (b) compensation paid to third parties for bodily18 injury or property damage.

19 (2) An owner or operator may not be reimbursed from the20 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

1 operator: 2 (c) penalties or payments for damages incurred under 3 actions by the department, board, or federal, state, local, 4 or tribal agencies or other government entities involving 5 judicial or administrative enforcement activities and related negotiations; 6 7 (d) attorney fees and legal costs of the owner, 8 operator, or a third party; 9 (e) costs for the repair or replacement of a tank or piping or costs of other materials, equipment, or labor 10 11 related to the operation, repair, or replacement of a tank 12 or piping; (f) expenses incurred before April 13, 1989; 13 14 (g) expenses exceeding the maximum reimbursements 15 provided for in subsection (4). 16 (3) An owner or operator may designate a person as his 17 agent to receive the reimbursement, provided that the owner 18 or operator remains legally responsible for all costs and 19 liabilities incurred as a result of the release. (4) Subject to the availability of funds under 20 21 subsection (5), for releases that are discovered and 22 reported on or after April 13, 1989, the board shall

of eligible costs and 100% of subsequent eligible costs, up

reimburse an owner or operator for 50% of the first \$35,000

25 to a maximum total reimbursement of \$982,500.

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1 (5) If the fund does not contain sufficient money to 2 pay approved claims for eligible costs, a reimbursement may 3 not be made and the fund and the board are not liable for 4 making any reimbursement for the costs at that time. When 5 the fund contains sufficient money, eligible costs must be 6 reimbursed subsequently in the order in which they were 7 approved by the board."

8 Section 3. Section 75-11-308, MCA, is amended to read:
9 "75-11-308. Eligibility. (1) An owner or operator is
10 eligible for reimbursement for eligible costs caused by a
11 release from a petroleum storage tank only if:

12 (a) the release was discovered on or after April 13, 13 1989;

14 (b) the department is notified of the release in the15 manner and within the time provided by law or rule;

16 (c) the department has been notified of the existence
17 of the tank in the manner required by department rule or has
18 waived the requirement for notification;

19 (d) the release was an accidental release; and

(e) with the exception of the release, the operation
and management of the tank complied with applicable state
and federal laws and rules when the release occurred and
remained in compliance following detection of the release.

24 (2) An owner or operator is not eligible for25 reimbursement for expenses caused by releases from the

1 following petroleum storage tanks:

2 (a) a tank located at a refinery or a terminal of a
3 refiner;

4 (b) a tank located at an oil and gas production 5 facility;

6 (c) a tank that is or was previously under the7 ownership or control of a railroad;

8 (d) a tank belonging to the federal government;

9 (e) a farm or residential tank with a capacity of 1,100 10 gallons or less that is used for storing motor fuel for 11 noncommercial purposes or a tank used for storing heating 12 oil for consumptive use on the premises where stored;

13 (f) a tank owned or operated by a person who has been
14 convicted of a substantial violation of state or federal law
15 or rule that relates to the installation, operation, or

16 management of petroleum storage tanks; or

17 (g) a mobile storage tank used to transport petroleum 18 or petroleum products from one location to another."

19 Section 4. Section 75-11-309, MCA, is amended to read:

20 "75-11-309. Procedures for reimbursement of eligible
21 costs. (1) An owner or operator seeking reimbursement for
22 eligible costs and the department shall comply with the
23 following procedures:

24 (a) If an owner or operator discovers or is provided25 evidence that a release may have occurred from his petroleum

storage tank, he shall immediately notify the department of the release and conduct an initial response to the release in accordance with state and federal laws and rules to protect public health and safety and the environment.

5 (b) The owner or operator shall conduct a thorough 6 investigation of the release, report the findings to the 7 department, and, as determined necessary by the department, 8 prepare and submit for approval by the department a 9 corrective action plan that conforms with state, tribal 10 (where applicable), and federal corrective action 11 requirements.

12 (c) (i) The department shall review the corrective 13 action plan and forward a copy to a local government office 14 and, where applicable, a tribal government office with 15 jurisdiction over a corrective action for the release. The 16 local or tribal government office shall inform the 17 department if it wants any modification of the proposed 18 plan.

(ii) Based on its own review and comments received from a local government, tribal government, or other source, the department may approve the proposed corrective action plan, make or request the owner or operator to modify the proposed plan, or prepare its own plan for compliance by the owner or operator. A plan finally approved by the department through any process provided in this subsection (c) is the approved 1 corrective action plan.

2 (iii) After the department approves a corrective action
3 plan, a local government or tribal government may not impose
4 different corrective action requirements on the owner or
5 operator.

6 (d) The department shall notify the owner or operator7 and the board of its approval of a corrective action plan.

8 (e) The owner or operator shall implement the approved 9 plan. The department may oversee the implementation of the 10 plan, require reports and monitoring from the owner or 11 operator, undertake inspections, and otherwise exercise its 12 authority concerning corrective action under Title 75, 13 chapter 10, parts 4 and 7, and other applicable law and 14 rules.

15 (f) The owner or operator shall document in the manner required by the board all expenses incurred in preparing and 16 implementing the corrective action plan. The owner or 17 operator shall submit claims and substantiating documents to 18 the department board in the form and manner required by the 19 board. The department board shall forward each claim and 20 21 appropriate documentation to the board department. and The department shall notify the board of any costs that the 22 23 department considers not reimbursable because of any failure 24 to meet the requirements of subsection (2). The department 25 shall inform the owner or operator of any notification given

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1 to the board.

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

8 (2) The board shall review each claim received under
9 subsections (1)(f) and (1)(g), make the determination
10 required by this subsection, inform the owner or operator of
11 its determination, and, as appropriate, reimburse the owner
12 or operator from the fund. Before approving a reimbursement,
13 the board shall affirmatively determine that:

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

15 (i) are eligible costs; and

16 (ii) were actually, necessarily, and reasonably incurred 17 for the preparation or implementation of a corrective action 18 plan approved by the department or for payments to a third 19 party for bodily injury or property damage; and

20 (b) the owner or operator:

(i) is eligible for reimbursement under 75-11-308; and
(ii) has complied with this section and any rules
adopted pursuant to this section.

24 (3) If an owner or operator disagrees with a board25 determination under subsection (2), he may submit a written

request for a hearing before the board. The hearing must be
 held at a meeting of the board no later than 120 days
 following receipt of the request or at a time mutually
 agreed to by the board and the owner or operator.

5 (4) The board shall obligate money for reimbursement of 6 eligible costs of owners and operators in the order that the 7 costs are finally approved by the board.

8 (5) (a) The board may, at the request of an owner or 9 operator, guarantee in writing the reimbursement of eligible 10 costs that have been approved by the board but for which 11 money is not currently available from the fund for 12 reimbursement.

13 (b) The board may, at the request of an owner or 14 operator, guarantee in writing reimbursement of eligible 15 costs not yet approved by the board, including estimated 16 costs not yet incurred. A guarantee for payment under this 17 subsection (5)(b) does not affect the order in which money 18 in the fund is obligated under subsection (4).

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

24 <u>NEW SECTION.</u> Section 5. saving clause. Nothing in
25 [this act] applies to alter a claim for reimbursement that

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was filed before [the effective date of this act] or that
 arose pursuant to a corrective action plan approved by the
 department before [the effective date of this act].
 NEW SECTION. Section 6. Effective date. [This act] is

5 effective July 1, 1991.

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STATE OF MONTANA - FISCAL NOTE Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for HB0485, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

A bill revising the authority of the petroleum tank release compensation board, revising certain definitions and clarifying the responsibilities of a petroleum storage tank owner or operator and an agent designated for reimbursement; authorizing the Department of Health and Environmental Sciences to waive notification of the existence of a petroleum storage tank as a prerequisite to tank release reimbursement; providing for tribal review of cleanup plans proposed within a tribal jurisdiction; and revising the roles of the petroleum tank release compensation board and the Department of Health and Environmental Sciences in claims review.

FISCAL IMPACT:

None.

DATE

ROD SUNDSTED, BUDGET DIRECTOR Office of Budget and Program Planning

RANEY, PRIMARY SPONSOR BOB

DATE

Fiscal Note for <u>HB0485</u>, as introduced.

52nd Legislature

HB 0485/02

APPROVED BY COMM. ON Natural resources

1	HOUSE BILL NO. 485
2	INTRODUCED BY RANEY, HARP, STANG, O'KEEFE
3	BY REQUEST OF THE PETROLEUM TANK
4	RELEASE COMPENSATION BOARD
5	

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE AUTHORITY 6 7 OF THE PETROLEUM TANK RELEASE COMPENSATION BOARD; REVISING CERTAIN DEFINITIONS IN TITLE 75, CHAPTER 11, PART 3; 8 9 CLARIFYING THE RESPONSIBILITIES OF A PETROLEUM STORAGE TANK 10 OWNER OR OPERATOR AND AN AGENT DESIGNATED FOR REIMBURSEMENT; AUTHORIZING THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL 11 12 SCIENCES TO WAIVE NOTIFICATION OF THE EXISTENCE OF A 13 PETROLEUM STORAGE TANK AS A PREREOUISITE TO TANK RELEASE REIMBURSEMENT; PROVIDING FOR TRIBAL REVIEW OF CLEANUP PLANS 14 PROPOSED WITHIN A TRIBAL JURISDICTION; REVISING THE ROLES OF 15 16 THE PETROLEUM TANK RELEASE COMPENSATION BOARD AND THE 17 DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES IN CLAIMS 18 REVIEW; AMENDING SECTIONS 75-11-302, 75-11-307, 75-11-308, AND 75-11-309, MCA; AND PROVIDING AN EFFECTIVE DATE." 19

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BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
 Section 1. Section 75-11-302, MCA, is amended to read:
 "75-11-302. Definitions. The following definitions

24 apply to this part:

25 (1) "Accidental release" means a sudden or nonsudden



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ı	release, neither expected nor intended by the tank owner or
2	operator, of petroleum or petroleum products from a storage
3	tank that results in a need for corrective action or
4	compensation for third party bodily injury or property
5	damage.
6	(2) "Board" means the petroleum tank release
7	compensation board established in 2-15-2108.
8	(3) "Bodily injury" means physical injury, sickness, or
9	disease sustained by an individual, including death that
10	results from the physical injury, sickness, or disease at
11	any time.
12	(4) "Claim" means a written request prepared and
13	submitted by an owner or operator or an agent of the owner
14	or operator for reimbursement of expenses caused by an
15	accidental release from a petroleum storage tank.
16	(5) "Corrective action" means investigation,
17	monitoring, cleanup, restoration, abatement, removal, and
18	other actions necessary to respond to a release.
19	(6) "Department" means the department of health and
20	environmental sciences provided for in Title 2, chapter 15,
21	part 21.
22	(7) "Distributor" means a distributor as defined in
23	15-70-201.
24	(8) "Eligible costs" means expenses reimbursable under
25	75-11-307.
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l	(9) "Fee" means the petroleum storage tank cleanup fee	1	CONTAINS OR CONTAINED is being used to actively receiver
2	provided for in 75-11-314.	2	<u>dispenserorstore</u> petroleum or petroleum products when-a
3	(10) "Fund" means the petroleum tank release cleanup	3	release-is-discovered-or-that-was-actively-used-foranyof
4	fund established in 75-11-313.	4	thesepurposesnomore-than-l-year-before-the-date-that-a
5	(11) "Gasoline" means gasoline as defined in 15-70-201.	5	release-is-discovered and that is:
6	(12) "Operator" means a person in control of or having	6	(a) an underground storage tank as defined in
7	responsibility for the daily operation of a petroleum	7	75-10-403;
8	storage tank.	8	(b) a storage tank that is situated in an underground
9	(13) "Owner" means a person who holds title to,	9	area such as a basement, cellar, mine, draft drift, shaft,
10	controls, or possesses an interest in a petroleum storage	10	or tunnel;
11	tank. The term does not include a person who holds an	11	(c) an above ground storage tank with a capacity less
12	interest in a tank solely for financial security, unless	12	than 30,000 gallons; or
13	through foreclosure or other related actions the holder of a	13	(d) above ground or underground pipes associated with
14	security interest has taken possession of the tank.	14	tanks under subsections (16)(b) and (16)(c), except that
15	(14) "Person" means an individual, firm, trust, estate,	15	pipelines regulated under the following laws are excluded:
16	partnership, company, association, joint stock company,	16	(i) the Natural Gas Pipeline Safety Act of 1968 (49
17	syndicate, consortium, commercial entity, corporation, or	17	U.S.C. 1671, et seq.);
18	agency of state or local government.	18	(ii) the Hazardous Liquid Pipeline Safety Act of 1979
19	(15) "Petroleum" or "petroleum products" means crude oil	19	(49 U.S.C. 2001, et seq.); and
20	or any fraction thereof that is liquid at standard	20	(iii) state law comparable to the provisions of law
21	conditions of temperature and pressure (60 degrees F and	21	referred to in subsections (16)(d)(i) and (16)(d)(ii), if
22	14.7 pounds per square inch absolute) OR MOTOR FUEL BLEND,	22	the facility is intrastate.
23	SUCH AS GASOHOL, and that is not augmented or compounded by	23	(17) "Property damage" means:
24	more than a minimal DE MINIMIS amount of another substance.	24	(a) physical injury to tangible property, including
25	(16) "Petroleum storage tank" means a tank that contains	25	loss of use of that property caused by the injury; or
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(b) loss of use of tangible property that is not
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(18) "Release" means a-releaser-as-defined-in-75-10-701;
any spilling, leaking, emitting, discharging, escaping,
leaching, or disposing of petroleum or petroleum products
from a petroleum storage tank into ground water, surface
water, surface soils, or subsurface soils."

Section 2. Section 75-11-307, MCA, is amended to read: 8 9 "75-11-307. Reimbursement for expenses caused by a 10 release. (1) Subject to the availability of funds under subsection (5), an owner or operator who is eligible under 11 75-11-308 and complies with 75-11-309 and any rules adopted 12 to implement those sections must be reimbursed by the board 13 14 from the fund for the following eligible costs caused by a 15 release from a petroleum storage tank:

16 (a) corrective action costs; and

17 (b) compensation paid to third parties for bodily18 injury or property damage.

19 (2) An owner or operator may not be reimbursed from the20 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

l operator;

(c) penalties or payments for damages incurred under 2 actions by the department, board, or federal, state, local, 3 or tribal agencies or other government entities involving 4 judicial or administrative enforcement activities and 5 6 related negotiations; (d) attorney fees and legal costs of the owner, 7 8 operator, or a third party; 9 (e) costs for the repair or replacement of a tank or 10 piping or costs of other materials, equipment, or labor 11 related to the operation, repair, or replacement of a tank 12 or piping; 13 (f) expenses incurred before April 13, 1989; 14 (q) expenses exceeding the maximum reimbursements 15 provided for in subsection (4). 16 (3) An owner or operator may designate a person as his 17 agent to receive the reimbursement, provided that the owner

18 or operator remains legally responsible for all costs and

19 liabilities incurred as a result of the release.

(4) Subject to the availability of funds under
subsection (5), for releases that are discovered and
reported on or after April 13, 1989, the board shall
reimburse an owner or operator for 50% of the first \$35,000
of eligible costs and 100% of subsequent eligible costs, up
to a maximum total reimbursement of \$982,500.

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1 (5) If the fund does not contain sufficient money to 2 pay approved claims for eligible costs, a reimbursement may 3 not be made and the fund and the board are not liable for 4 making any reimbursement for the costs at that time. When 5 the fund contains sufficient money, eligible costs must be 6 reimbursed subsequently in the order in which they were 7 approved by the board."

8 Section 3. Section 75-11-308, MCA, is amended to read:
9 "75-11-308. Eligibility. (1) An owner or operator is
10 eligible for reimbursement for eligible costs caused by a
11 release from a petroleum storage tank only if:

12 (a) the release was discovered on or after April 13,13 1989;

(b) the department is notified of the release in themanner and within the time provided by law or rule;

16 (c) the department has been notified of the existence
17 of the tank in the manner required by department rule or has
18 waived the requirement for notification;

19 (d) the release was an accidental release; and

(e) with the exception of the release, the operation
and management of the tank complied with applicable state
and federal laws and rules when the release occurred and
remained in compliance following detection of the release.
(2) An owner or operator is not eligible for
reimbursement for expenses caused by releases from the

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following petroleum storage tanks:

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(a) a tank located at a refinery or a terminal of a
 refiner;

4 (b) a tank located at an oil and gas production
 5 facility;

6 (c) a tank that is or was previously under the7 ownership or control of a railroad;

8 (d) a tank belonging to the federal government;

9 (e) a farm or residential tank with a capacity of 1,100 10 gallons or less that is used for storing motor fuel for 11 noncommercial purposes or a tank used for storing heating 12 oil for consumptive use on the premises where stored;

(f) a tank owned or operated by a person who has been
convicted of a substantial violation of state or federal law
or rule that relates to the installation, operation, or

16 management of petroleum storage tanks; or

17 (g) a mobile storage tank used to transport petroleum 18 or petroleum products from one location to another."

19 Section 4. Section 75-11-309, MCA, is amended to read:

20 "75-11-309. Procedures for reimbursement of eligible
21 costs. (1) An owner or operator seeking reimbursement for
22 eligible costs and the department shall comply with the
23 following procedures:

24 (a) If an owner or operator discovers or is provided
 25 evidence that a release may have occurred from his petroleum

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1 storage tank, he shall immediately notify the department of 2 the release and conduct an initial response to the release 3 in accordance with state and federal laws and rules to 4 protect public health and safety and the environment.

5 (b) The owner or operator shall conduct a thorough investigation of the release, report the findings to the 6 7 department, and, as determined necessary by the department, 8 prepare and submit for approval by the department a corrective action plan that conforms with state, tribal 9 federal corrective action 10 (where applicable), and 11 requirements.

12 (c) (i) The department shall review the corrective 13 action plan and forward a copy to a local government office 14 <u>and, where applicable, a tribal government office</u> with 15 jurisdiction over a corrective action for the release. The 16 local <u>or tribal</u> government office shall inform the 17 department if it wants any modification of the proposed 18 plan.

(ii) Based on its own review and comments received from a local government, tribal government, or other source, the department may approve the proposed corrective action plan, make or request the owner or operator to modify the proposed plan, or prepare its own plan for compliance by the owner or operator. A plan finally approved by the department through any process provided in this subsection (c) is the approved HB 0485/02

1 corrective action plan.

2 (iii) After the department approves a corrective action
3 plan, a local government or tribal government may not impose
4 different corrective action requirements on the owner or
5 operator.

6 (d) The department shall notify the owner or operator 7 and the board of its approval of a corrective action plan.

8 (e) The owner or operator shall implement the approved 9 plan. The department may oversee the implementation of the 10 plan, require reports and monitoring from the owner or 11 operator, undertake inspections, and otherwise exercise its 12 authority concerning corrective action under Title 75, 13 chapter 10, parts 4 and 7, and other applicable law and 14 rules.

15 (f) The owner or operator shall document in the manner 16 required by the board all expenses incurred in preparing and 17 implementing the corrective action plan. The owner or 18 operator shall submit claims and substantiating documents to 19 the department board in the form and manner required by the 20 board. The department board shall forward each claim and 21 appropriate documentation to the board department, and The 22 department shall notify the board of any costs that the 23 department considers not reimbursable because of any failure 24 to meet the requirements of subsection (2). The department 25 shall inform the owner or operator of any notification given

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1 to the board. 2 (g) The owner or operator shall document, in the manner 3 required by the board, any payments to a third party for 4 bodily injury or property damage caused by a release. The 5 owner or operator shall submit claims and substantiating 6 documents to the board in the form and manner required by 7 the board. 8 (2) The board shall review each claim received under 9 subsections (1)(f) and (1)(q), make the determination 10 required by this subsection, inform the owner or operator of 11 its determination, and, as appropriate, reimburse the owner or operator from the fund. Before approving a reimbursement, 12 13 the board shall affirmatively determine that: 14 (a) the expenses for which reimbursement is claimed: 15 (i) are eligible costs; and 16 (ii) were actually, necessarily, and reasonably incurred 17 for the preparation or implementation of a corrective action 18 plan approved by the department or for payments to a third 19 party for bodily injury or property damage; and 20 (b) the owner or operator: 21 (i) is eligible for reimbursement under 75-11-308; and 22 (ii) has complied with this section and any rules 23 adopted pursuant to this section. 24 (3) If an owner or operator disagrees with a board 25 determination under subsection (2), he may submit a written

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request for a hearing before the board. The hearing must be
 held at a meeting of the board no later than 120 days
 following receipt of the request or at a time mutually
 agreed to by the board and the owner or operator.

5 (4) The board shall obligate money for reimbursement of 6 eligible costs of owners and operators in the order that the 7 costs are finally approved by the board.

8 (5) (a) The board may, at the request of an owner or 9 operator, guarantee in writing the reimbursement of eligible 10 costs that have been approved by the board but for which 11 money is not currently available from the fund for 12 reimbursement.

13 (b) The board may, at the request of an owner or 14 operator, guarantee in writing reimbursement of eligible 15 costs not yet approved by the board, including estimated 16 costs not yet incurred. A guarantee for payment under this 17 subsection (5)(b) does not affect the order in which money 18 in the fund is obligated under subsection (4).

19 (c) When considering a request for a guarantee of 20 payment, the board may require pertinent information or 21 documentation from the owner or operator. The board may 22 grant or deny, in whole or in part, any request for a 23 guarantee."

24 <u>NEW SECTION.</u> Section 5. Saving clause. Nothing in
 25 [this act] applies to alter a claim for reimbursement that

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- 1 was filed before (the effective date of this act) or that
- 2 arose pursuant to a corrective action plan approved by the
- 3 department before [the effective date of this act].
- 4 NEW SECTION. Section 6. Effective date. [This act] is
- 5 effective July 1, 1991.

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1	HOUSE BILL NO. 485	1	release, neither expected nor intended by the tank owner or
2	INTRODUCED BY RANEY, HARP, STANG, O'KEEFE	2	operator, of petroleum or petroleum products from a storage
3	BY REQUEST OF THE PETROLEUM TANK	3	tank that results in a need for corrective action or
4	RELEASE COMPENSATION BOARD	4	compensation for third party bodily injury or property
5		5	damage.
6	A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE AUTHORITY	6	(2) "Board" means the petroleum tank release
7	OF THE PETROLEUM TANK RELEASE COMPENSATION BOARD; REVISING	7	compensation board established in 2-15-2108.
8	CERTAIN DEFINITIONS IN TITLE 75, CHAPTER 11, PART 3;	8	(3) "Bodily injury" means physical injury, sickness, or
9	CLARIFYING THE RESPONSIBILITIES OF A PETROLEUM STORAGE TANK	9	disease sustained by an individual, including death that
10	OWNER OR OPERATOR AND AN AGENT DESIGNATED FOR REIMBURSEMENT;	10	results from the physical injury, sickness, or disease at
11	AUTHORIZING THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL	11	any time.
12	SCIENCES TO WAIVE NOTIFICATION OF THE EXISTENCE OF A	12	(4) "Claim" means a written request prepared and
13	PETROLEUM STORAGE TANK AS A PREREQUISITE TO TANK RELEASE	13	submitted by an owner or operator or an agent of the owner
14	REIMBURSEMENT; PROVIDING FOR TRIBAL REVIEW OF CLEANUP PLANS	14	or operator for reimbursement of expenses caused by an
15	PROPOSED WITHIN A TRIBAL JURISDICTION; REVISING THE ROLES OF	15	accidental release from a petroleum storage tank.
16	THE PETROLEUM TANK RELEASE COMPENSATION BOARD AND THE	16	(5) "Corrective action" means investigation,
17	DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES IN CLAIMS	17	monitoring, cleanup, restoration, abatement, removal, and
18	REVIEW; AMENDING SECTIONS 75-11-302, 75-11-307, 75-11-308,	18	other actions necessary to respond to a release.
19	AND 75-11-309, MCA; AND PROVIDING AN EFFECTIVE DATE."	19	(6) "Department" means the department of health and
20		20	environmental sciences provided for in Title 2, chapter 15,
21	BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:	21	part 21.
22	Section 1. Section 75-11-302, MCA, is amended to read:	22	(7) "Distributor" means a distributor as defined in
23	*75-11-302. Definitions. The following definitions	23	15-70-201.
24	apply to this part:	24	(8) "Eligible costs" means expenses reimbursable under
25	(1) "Accidental release" means a sudden or nonsudden	25	75-11-307.
	(-,		-2- THIRD READING



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(9) "Fee" means the petroleum storage tank cleanup fee
 provided for in 75-11-314.

3 (10) "Fund" means the petroleum tank release cleanup
4 fund established in 75-11-313.

(11) "Gasoline" means gasoline as defined in 15-70-201.

5

6 (12) "Operator" means a person in control of or having
7 responsibility for the daily operation of a petroleum
8 storage tank.

9 (13) "Owner" means a person who holds title to, 10 controls, or possesses an interest in a petroleum storage 11 tank. The term does not include a person who holds an 12 interest in a tank solely for financial security, unless 13 through foreclosure or other related actions the holder of a 14 security interest has taken possession of the tank.

15 (14) "Person" means an individual, firm, trust, estate,
16 partnership, company, association, joint stock company,
17 syndicate, consortium, commercial entity, corporation, or
18 agency of state or local government.

(15) "Petroleum" or "petroleum products" means crude oil
or any fraction thereof that is liquid at standard
conditions of temperature and pressure (60 degrees F and
14.7 pounds per square inch absolute) OR MOTOR FUEL BLEND,
SUCH AS GASOHOL, and that is not augmented or compounded by
more than a minimal DE MINIMIS amount of another substance.
(16) "Petroleum storage tank" means a tank that contains

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1	CONTAINS OR CONTAINED is-being-usedtoactivelyreceiver
2	dispense7orstore petroleum or petroleum products when-a
3	<u>release-is-discovered-or-that-was-actively-used-foranyof</u>
4	thesepurposesnomore-than-1-year-before-the-date-that-a
5	release-is-discovered and that is:
6	(a) an underground storage tank as defined in
7	75-10-403;
8	(b) a storage tank that is situated in an underground
9	area such as a basement, cellar, mine, draft drift, shaft,
10	or tunnel;
11	(c) an above ground storage tank with a capacity less
12	than 30,000 gallons; or
13	(d) above ground or underground pipes associated with
14	tanks under subsections (16)(b) and (16)(c), except that
15	pipelines regulated under the following laws are excluded:
16	(i) the Natural Gas Pipeline Safety Act of 1968 (49
17	U.S.C. 1671, et seq.);
18	(ii) the Hazardous Liquid Pipeline Safety Act of 1979
19	(49 U.S.C. 2001, et seq.); and
20	(iii) state law comparable to the provisions of law
21	referred to in subsections (16)(d)(i) and (16)(d)(ii), if
22	the facility is intrastate.
23	(17) "Property damage" means:
24	(a) physical injury to tangible property, including
25	loss of use of that property caused by the injury; or

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(b) loss of use of tangible property that is not
 physically injured.

3 (18) "Release" means a-release7-as-defined-in-75-10-7017
4 any spilling, leaking, emitting, discharging, escaping,
5 leaching, or disposing of petroleum or petroleum products
6 from a petroleum storage tank into ground water, surface
7 water, surface soils, or subsurface soils."

8 Section 2. Section 75-11-307, MCA, is amended to read: 9 "75-11-307. Reimbursement for expenses caused by a 10 release. (1) Subject to the availability of funds under 11 subsection (5), an owner or operator who is eligible under 12 75-11-308 and complies with 75-11-309 and any rules adopted to implement those sections must be reimbursed by the board 13 14 from the fund for the following eligible costs caused by a 15 release from a petroleum storage tank:

16 (a) corrective action costs; and

17 (b) compensation paid to third parties for bodily18 injury or property damage.

19 (2) An owner or operator may not be reimbursed from the20 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

l operator;

2 (c) penalties or payments for damages incurred under
3 actions by the department, board, or federal, state, local,
4 or tribal agencies or other government entities involving
5 judicial or administrative enforcement activities and
6 related negotiations;

7 (d) attorney fees and legal costs of the owner,8 operator, or a third party;

9 (e) costs for the repair or replacement of a tank or 10 piping or costs of other materials, equipment, or labor 11 related to the operation, repair, or replacement of a tank 12 or piping;

13 (f) expenses incurred before April 13, 1989;

14 (g) expenses exceeding the maximum reimbursements15 provided for in subsection (4).

16 (3) An owner or operator may designate a person as his
agent to receive the reimbursement, provided that the owner
or operator remains legally responsible for all costs and
liabilities incurred as a result of the release.
20 (4) Subject to the availability of funds under
subsection (5), for releases that are discovered and

22 reported on or after April 13, 1989, the board shall 23 reimburse an owner or operator for 50% of the first \$35,000

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24 of eligible costs and 100% of subsequent eligible costs, up

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25 to a maximum total reimbursement of \$982,500.

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1 (5) If the fund does not contain sufficient money to 2 pay approved claims for eligible costs, a reimbursement may 3 not be made and the fund and the board are not liable for 4 making any reimbursement for the costs at that time. When 5 the fund contains sufficient money, eligible costs must be 6 reimbursed subsequently in the order in which they were 7 approved by the board."

8 Section 3. Section 75-11-308, MCA, is amended to read:
9 "75-11-308. Eligibility. (1) An owner or operator is
10 eligible for reimbursement for eligible costs caused by a
11 release from a petroleum storage tank only if:

12 (a) the release was discovered on or after April 13,13 1989;

(b) the department is notified of the release in themanner and within the time provided by law or rule;

16 (c) the department has been notified of the existence
17 of the tank in the manner required by department rule or has
18 waived the requirement for notification;

19 (d) the release was an accidental release; and

(e) with the exception of the release, the operation
and management of the tank complied with applicable state
and federal laws and rules when the release occurred and
remained in compliance following detection of the release.

24 (2) An owner or operator is not eligible for25 reimbursement for expenses caused by releases from the

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1 following petroleum storage tanks:

2 (a) a tank located at a refinery or a terminal of a
3 refiner;

4 (b) a tank located at an oil and gas production5 facility;

6 (c) a tank that is or was previously under the7 ownership or control of a railroad;

8 (d) a tank belonging to the federal government;

9 (e) a farm or residential tank with a capacity of 1,100 10 gallons or less that is used for storing motor fuel for 11 noncommercial purposes or a tank used for storing heating 12 oil for consumptive use on the premises where stored;

13 (f) a tank owned or operated by a person who has been 14 convicted of a substantial violation of state or federal law 15 or rule that relates to the installation, operation, or 16 management of petroleum storage tanks; or

17 (g) a mobile storage tank used to transport petroleum18 or petroleum products from one location to another."

19 Section 4. Section 75-11-309, MCA, is amended to read:

20 "75-11-309. Procedures for reimbursement of eligible
21 costs. (1) An owner or operator seeking reimbursement for
22 eligible costs and the department shall comply with the
23 following procedures:

24 (a) If an owner or operator discovers or is provided25 evidence that a release may have occurred from his petroleum

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storage tank, he shall immediately notify the department of
 the release and conduct an initial response to the release
 in accordance with state and federal laws and rules to
 protect public health and safety and the environment.

5 (b) The owner or operator shall conduct a thorough 6 investigation of the release, report the findings to the 7 department, and, as determined necessary by the department, 8 prepare and submit for approval by the department a 9 corrective action plan that conforms with state, tribal 10 <u>(where applicable)</u>, and federal corrective action 11 requirements.

12 (c) (i) The department shall review the corrective 13 action plan and forward a copy to a local government office 14 and, where applicable, a tribal government office with 15 jurisdiction over a corrective action for the release. The 16 local <u>or tribal</u> government office shall inform the 17 department if it wants any modification of the proposed 18 plan.

(ii) Based on its own review and comments received from a local government, tribal government, or other source, the department may approve the proposed corrective action plan, make or request the owner or operator to modify the proposed plan, or prepare its own plan for compliance by the owner or operator. A plan finally approved by the department through any process provided in this subsection (c) is the approved 1 corrective action plan.

2 (iii) After the department approves a corrective action
3 plan, a local government or tribal government may not impose
4 different corrective action requirements on the owner or
5 operator.

6 (d) The department shall notify the owner or operator7 and the board of its approval of a corrective action plan.

8 (e) The owner or operator shall implement the approved 9 plan. The department may oversee the implementation of the 10 plan, require reports and monitoring from the owner or 11 operator, undertake inspections, and otherwise exercise its 12 authority concerning corrective action under Title 75, 13 chapter 10, parts 4 and 7, and other applicable law and 14 rules.

(f) The owner or operator shall document in the manner 15 16 required by the board all expenses incurred in preparing and implementing the corrective action plan. The owner or 17 18 operator shall submit claims and substantiating documents to 19 the department board in the form and manner required by the 20 board. The department board shall forward each claim and 21 appropriate documentation to the board department. and The 22 department shall notify the board of any costs that the department considers not reimbursable because of any failure 23 24 to meet the requirements of subsection (2). The department shall inform the owner or operator of any notification given 25

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1	request for a hearing before the board. The hearing must be
2	held at a meeting of the board no later than 120 days
3	following receipt of the request or at a time mutually
4	agreed to by the board and the owner or operator.
5	(4) The board shall obligate money for reimbursement of
6	eligible costs of owners and operators in the order that the
7	costs are finally approved by the board.
8	(5) (a) The board may, at the request of an owner or
9	operator, guarantee in writing the reimbursement of eligible
10	costs that have been approved by the board but for which
11	money is not currently available from the fund for
12	reimbursement.
13	(b) The board may, at the request of an owner or
14	operator, guarantee in writing reimbursement of eligible
15	costs not yet approved by the board, including estimated
16	costs not yet incurred. A guarantee for payment under this
17	subsection (5)(b) does not affect the order in which money
18	in the fund is obligated under subsection (4).
19	(c) When considering a request for a guarantee of
20	payment, the board may require pertinent information or
21	documentation from the owner or operator. The board may
22	grant or deny, in whole or in part, any request for a
23	guarantee."
24	NEW SECTION. Section 5. Saving clause. Nothing in
25	(this act) applies to alter a claim for reimbursement that
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1 to the board.

2 (g) The owner or operator shall document, in the manner 3 required by the board, any payments to a third party for 4 bodily injury or property damage caused by a release. The 5 owner or operator shall submit claims and substantiating 6 documents to the board in the form and manner required by 7 the board.

8 (2) The board shall review each claim received under
9 subsections (1)(f) and (1)(g), make the determination
10 required by this subsection, inform the owner or operator of
11 its determination, and, as appropriate, reimburse the owner
12 or operator from the fund. Before approving a reimbursement,
13 the board shall affirmatively determine that:

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

15 (i) are eligible costs; and

16 (ii) were actually, necessarily, and reasonably incurred 17 for the preparation or implementation of a corrective action 18 plan approved by the department or for payments to a third 19 party for bodily injury or property damage; and

20 (b) the owner or operator:

(i) is eligible for reimbursement under 75-ll-308; and
(ii) has complied with this section and any rules
adopted pursuant to this section.

24 (3) If an owner or operator disagrees with a board
25 determination under subsection (2), he may submit a written

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1 was filed before [the effective date of this act] or that

2 arose pursuant to a corrective action plan approved by the

3 department before [the effective date of this act].

4 NEW SECTION. Section 6. Effective date. [This act] is

5 effective July 1, 1991.

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1	HOUSE BILL NO. 485
2	INTRODUCED BY RANEY, HARP, STANG, O'KEEFE
3	BY REQUEST OF THE PETROLEUM TANK
4	RELEASE COMPENSATION BOARD

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE AUTHORITY б 7 OF THE PETROLEUM TANK RELEASE COMPENSATION BOARD; REVISING 8 CERTAIN DEFINITIONS IN TITLE 75, CHAPTER 11, PART 3; 9 CLARIFYING THE RESPONSIBILITIES OF A PETROLEUM STORAGE TANK OWNER OR OPERATOR AND AN AGENT DESIGNATED FOR REIMBURSEMENT; 10 11 AUTHORIZING THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL 12 SCIENCES TO WAIVE NOTIFICATION OF THE EXISTENCE OF A 13 PETROLEUM STORAGE TANK AS A PREREOUISITE TO TANK RELEASE 14 REIMBURSEMENT: PROVIDING FOR TRIBAL REVIEW OF CLEANUP PLANS 15 PROPOSED WITHIN A TRIBAL JURISDICTION; REVISING THE ROLES OF 16 THE PETROLEUM TANK RELEASE COMPENSATION BOARD AND THE 17 DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES IN CLAIMS 18 REVIEW; AMENDING SECTIONS 75-11-302, 75-11-307, 75-11-308, 19 AND 75-11-309, MCA; AND PROVIDING AN EFFECTIVE DATE."

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

22 Section 1. Section 75-11-302, MCA, is amended to read:
23 "75-11-302. Definitions. The following definitions
24 apply to this part:

25 (1) "Accidental release" means a sudden or nonsudden



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release, neither expected nor intended by the tank owner or
 operator, of petroleum or petroleum products from a storage
 tank that results in a need for corrective action or
 compensation for third party bodily injury or property
 damage.

6 (2) "Board" means the petroleum tank release
7 compensation board established in 2-15-2108.

8 (3) "Bodily injury" means physical injury, sickness, or
9 disease sustained by an individual, including death that
10 results from the physical injury, sickness, or disease at
11 any time.

12 (4) "Claim" means a written request prepared and 13 submitted by an owner or operator or an agent of the owner 14 or operator for reimbursement of expenses caused by an 15 accidental release from a petroleum storage tank.

16 (5) "Corrective action" means investigation,
17 monitoring, cleanup, restoration, abatement, removal, and
18 other actions necessary to respond to a release.

19 (6) "Department" means the department of health and
20 environmental sciences provided for in Title 2, chapter 15,
21 part 21.

22 (7) "Distributor" means a distributor as defined in
23 15-70-201.

24 (8) "Eligible costs" means expenses reimbursable under25 75-11-307.

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REFERENCE BILL HB 485

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1	(9) "Fee" means the petroleum storage tank cleanup fee	1
2	provided for in 75-11-314.	2
3	(10) "Fund" means the petroleum tank release cleanup	3
4	fund established in 75-11-313.	4
5	(11) "Gasoline" means gasoline as defined in 15-70-201.	5
6	(12) "Operator" means a person in control of or having	6
7	responsibility for the daily operation of a petroleum	7
8	storage tank.	8
9	(13) "Owner" means a person who holds title to,	9
10	controls, or possesses an interest in a petroleum storage	10
11	tank. The term does not include a person who holds an	11
12	interest in a tank solely for financial security, unless	12
13	through foreclosure or other related actions the holder of a	13
14	security interest has taken possession of the tank.	14
15	(14) "Person" means an individual, firm, trust, estate,	15
16	partnership, company, association, joint stock company,	16
17	syndicate, consortium, commercial entity, corporation, or	17
18	agency of state or local government.	18
19	(15) "Petroleum" or "petroleum products" means crude oil	19
20	or any fraction thereof that is liquid at standard	20
21	conditions of temperature and pressure (60 degrees F and	21
22	14.7 pounds per square inch absolute) OR MOTOR FUEL BLEND,	22
23	SUCH AS GASOHOL, and that is not augmented or compounded by	23
24	more than a minimal DE MINIMIS amount of another substance.	24
25	(16) "Petroleum storage tank" means a tank that contains	25

release-is-discovered-or-that-was-actively-used-for--any--of these--purposes--no--more-than-1-year-before-the-date-that-a release-is-discovered and that is: (a) an underground storage defined in tank ae 75-10-403: (b) a storage tank that is situated in an underground area such as a basement, cellar, mine, draft drift, shaft, or tunnel; (c) an above ground storage tank with a capacity less than 30,000 gallons; or (d) above ground or underground pipes associated with tanks under subsections (16)(b) and (16)(c), except that pipelines regulated under the following laws are excluded: (i) the Natural Gas Pipeline Safety Act of 1968 (49 U.S.C. 1671, et seq.); (ii) the Hazardous Liquid Pipeline Safety Act of 1979 (49 U.S.C. 2001, et seq.); and (iii) state law comparable to the provisions of law

CONTAINS OR CONTAINED is-being--used--to--actively--receiver dispenser--or--store petroleum or petroleum products when-a

1 referred to in subsections (16)(d)(i) and (16)(d)(ii), if

22 the facility is intrastate.

23 (17) "Property damage" means:

(a) physical injury to tangible property, including
loss of use of that property caused by the injury; or

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(b) loss of use of tangible property that is not
 physically injured.

3 (18) "Release" means a-release;-as-defined-in-75-i0-70i;
4 any spilling, leaking, emitting, discharging, escaping,
5 leaching, or disposing of petroleum or petroleum products
6 from a petroleum storage tank into ground water, surface
7 water, surface soils, or subsurface soils."

8 Section 2. Section 75-11-307, MCA, is amended to read: 9 "75-11-307. Reimbursement for expenses caused by a 10 release. (1) Subject to the availability of funds under 11 subsection (5), an owner or operator who is eligible under 12 75-11-308 and complies with 75-11-309 and any rules adopted 13 to implement those sections must be reimbursed by the board 14 from the fund for the following eligible costs caused by a 15 release from a petroleum storage tank:

16 (a) corrective action costs; and

17 (b) compensation paid to third parties for bodily18 injury or property damage.

19 (2) An owner or operator may not be reimbursed from the20 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

25 than corrective action costs, incurred by the owner or

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3 operator; 2 (c) penalties or payments for damages incurred under actions by the department, board, or federal, state, local, 3 or tribal agencies or other government entities involving A judicial or administrative enforcement activities and 5 related negotiations; 6 (d) attorney fees and legal costs of the owner, 7 8 operator, or a third party: (e) costs for the repair or replacement of a tank or 9 piping or costs of other materials, equipment, or labor 10 11 related to the operation, repair, or replacement of a tank 12 or piping; (f) expenses incurred before April 13, 1989; 13 (g) expenses exceeding the maximum reimbursements 14 15 provided for in subsection (4). 16 (3) An owner or operator may designate a person as his 17 agent to receive the reimbursement, provided that the owner 18 or operator remains legally responsible for all costs and liabilities incurred as a result of the release. 19 20 (4) Subject to the availability of funds under 21 subsection (5), for releases that are discovered and 22 reported on or after April 13, 1989, the board shall 23 reimburse an owner or operator for 50% of the first \$35,000 ot eligible costs and 100% of subsequent eligible costs, up 24 to a maximum total reimbursement of \$982.500. 25

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1 (5) If the fund does not contain sufficient money to 2 pay approved claims for eligible costs, a reimbursement may 3 not be made and the fund and the board are not liable for 4 making any reimbursement for the costs at that time. When 5 the fund contains sufficient money, eligible costs must be 6 reimbursed subsequently in the order in which they were 7 approved by the board."

8 Section 3. Section 75-11-308, MCA, is amended to read:
9 "75-11-308. Eligibility. (1) An owner or operator is
10 eligible for reimbursement for eligible costs caused by a
11 release from a petroleum storage tank only if:

12 (a) the release was discovered on or after April 13,13 1989;

14 (b) the department is notified of the release in the15 manner and within the time provided by law or rule;

16 (c) the department has been notified of the existence
17 of the tank in the manner required by department rule or has
18 waived the requirement for notification;

19 (d) the release was an accidental release; and

(e) with the exception of the release, the operation
and management of the tank complied with applicable state
and federal laws and rules when the release occurred and
remained in compliance following detection of the release.
(2) An owner or operator is not eligible for

25 reimbursement for expenses caused by releases from the

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1 following petroleum storage tanks:

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2 (a) a tank located at a refinery or a terminal of a
3 refiner;

4 (b) a tank located at an oil and gas production 5 facility;

6 (c) a tank that is or was previously under the
7 ownership or control of a railroad;

8 (d) a tank belonging to the federal government;

9 (e) a farm or residential tank with a capacity of 1,100 10 gallons or less that is used for storing motor fuel for 11 noncommercial purposes or a tank used for storing heating 12 oil for consumptive use on the premises where stored;

(f) a tank owned or operated by a person who has been
convicted of a substantial violation of state or federal law
or rule that relates to the installation, operation, or
management of petroleum storage tanks; or

17 (g) a mobile storage tank used to transport petroleum18 or petroleum products from one location to another."

19 Section 4. Section 75-11-309, MCA, is amended to read:

20 "75-11-309. Procedures for reimbursement of eligible
21 costs. (1) An owner or operator seeking reimbursement for
22 eligible costs and the department shall comply with the
23 following procedures:

24 (a) If an owner or operator discovers or is provided
25 evidence that a release may have occurred from his petroleum

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storage tank, he shall immediately notify the department of
 the release and conduct an initial response to the release
 in accordance with state and federal laws and rules to
 protect public health and safety and the environment.

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5 (b) The owner or operator shall conduct a thorough 6 investigation of the release, report the findings to the 7 department, and, as determined necessary by the department, 8 prepare and submit for approval by the department a 9 corrective action plan that conforms with state, tribal 10 <u>(where applicable)</u>, and federal corrective action 11 requirements.

12 (c) (i) The department shall review the corrective 13 action plan and forward a copy to a local government office 14 and, where applicable, a tribal government office with 15 jurisdiction over a corrective action for the release. The 16 local or tribal government office shall inform the 17 department if it wants any modification of the proposed 18 plan.

(ii) Based on its own review and comments received from a local government, tribal government, or other source, the department may approve the proposed corrective action plan, make or request the owner or operator to modify the proposed plan, or prepare its own plan for compliance by the owner or operator. A plan finally approved by the department through any process provided in this subsection (c) is the approved

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1 corrective action plan.

2 (iii) After the department approves a corrective action
3 plan, a local government or tribal government may not impose
4 different corrective action requirements on the owner or
5 operator.

6 (d) The department shall notify the owner or operator7 and the board of its approval of a corrective action plan.

8 (e) The owner or operator shall implement the approved 9 plan. The department may oversee the implementation of the 10 plan, require reports and monitoring from the owner or 11 operator, undertake inspections, and otherwise exercise its 12 authority concerning corrective action under Title 75, 13 chapter 10, parts 4 and 7, and other applicable law and 14 rules.

15 (f) The owner or operator shall document in the manner 16 required by the board all expenses incurred in preparing and 17 implementing the corrective action plan. The owner or 18 operator shall submit claims and substantiating documents to 19 the department board in the form and manner required by the 20 board. The department board shall forward each claim and 21 appropriate documentation to the board department, and The 22 department shall notify the board of any costs that the 23 department considers not reimbursable because of any failure 24 to meet the requirements of subsection (2). The department 25 shall inform the owner or operator of any notification given

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1	to the board.	1	request for a hearing before the board. The hearing must be
2	(g) The owner or operator shall document, in the manner	2	held at a meeting of the board no later than 120 days
3	required by the board, any payments to a third party for	3	following receipt of the request or at a time mutually
4	bodily injury or property damage caused by a release. The	4	agreed to by the board and the owner or operator.
5	owner or operator shall submit claims and substantiating	5	(4) The board shall obligate money for reimbursement of
6	documents to the board in the form and manner required by	6	eligible costs of owners and operators in the order that the
7	the board.	7	costs are finally approved by the board.
8	(2) The board shall review each claim received under	8	(5) (a) The board may, at the request of an owner on
9	subsections (1)(f) and (1)(g), make the determination	9	operator, guarantee in writing the reimbursement of eligible
10	required by this subsection, inform the owner or operator of	10	costs that have been approved by the board but for which
11	its determination, and, as appropriate, reimburse the owner	11	money is not currently available from the fund for
12	or operator from the fund. Before approving a reimbursement,	12	reimbursement.
13	the board shall affirmatively determine that:	13	(b) The board may, at the request of an owner o
14	(a) the expenses for which reimbursement is claimed:	14	operator, guarantee in writing reimbursement of eligible
15	(i) are eligible costs; and	15	costs not yet approved by the board, including estimated
16	(ii) were actually, necessarily, and reasonably incurred	16	costs not yet incurred. A guarantee for payment under thi:
17	for the preparation or implementation of a corrective action	17	subsection (5)(b) does not affect the order in which mone
18	plan approved by the department or for payments to a third	18	in the fund is obligated under subsection (4).
19	party for bodily injury or property damage; and	19	(c) When considering a request for a guarantee o
20	(b) the owner or operator:	20	payment, the board may require pertinent information o
21	(i) is eligible for reimbursement under 75-11-308; and	21	documentation from the owner or operator. The board ma
22	(ii) has complied with this section and any rules	22	grant or deny, in whole or in part, any request for
23	adopted pursuant to this section.	23	guarantee."
24	(3) If an owner or operator disagrees with a board	24	NEW SECTION. Section 5. Saving clause. Nothing in
25	determination under subsection (2), he may submit a written	25	(this act) applies to alter a claim for reimbursement tha
	-11- НВ 485		-12- HB 48

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1 was filed before [the effective date of this act] or that

2 arose pursuant to a corrective action plan approved by the

3 department before (the effective date of this act).

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- 4 <u>NEW SECTION.</u> Section 6. Effective date. [This act] is
- 5 effective July 1, 1991.

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