

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 INTRODUCED AND REFERRED TO COMMITTEE
ON NATURAL RESOURCES.

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 RECEIVED FROM SENATE.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

1 *House* BILL NO. *485*
 2 INTRODUCED BY *Raney* *HARP* *Stang*
 3 *Grife* BY REQUEST OF THE PETROLEUM TANK
 4 RELEASE COMPENSATION BOARD
 5

6 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE AUTHORITY
 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
 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
 13 PETROLEUM STORAGE TANK AS A PREREQUISITE 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."
 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.

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.

INTRODUCED BILL
 HB 485



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

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

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

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.

19 (15) "Petroleum" or "petroleum products" means crude oil
20 or any fraction thereof that is liquid at standard
21 conditions of temperature and pressure (60 degrees F and
22 14.7 pounds per square inch absolute) and that is not
23 augmented or compounded by more than a minimal amount of
24 another substance.

25 (16) "Petroleum storage tank" means a tank that contains

1 is being used to actively receive, dispense, or store
2 petroleum or petroleum products when a release is discovered
3 or that was actively used for any of these purposes no more
4 than 1 year before the date that a release is discovered and
5 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

1 (b) loss of use of tangible property that is not
2 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."

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 bodily
18 injury or property damage.

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

21 (a) corrective action costs or the costs of bodily
22 injury or property damage paid to third parties that are
23 determined by the board to be ineligible for reimbursement;

24 (b) costs for bodily injury and property damage, other
25 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
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 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.

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
24 of eligible costs and 100% of subsequent eligible costs, up
25 to a maximum total reimbursement of \$982,500.

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 the
 15 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

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

24 (2) An owner or operator is not eligible for
 25 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 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;

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 provided
 25 evidence that a release may have occurred from his petroleum

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
 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.

19 (ii) Based on its own review and comments received from
 20 a local government, tribal government, or other source, the
 21 department may approve the proposed corrective action plan,
 22 make or request the owner or operator to modify the proposed
 23 plan, or prepare its own plan for compliance by the owner or
 24 operator. A plan finally approved by the department through
 25 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 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

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:

- 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

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

LC 1200/01

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.

-End-

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:

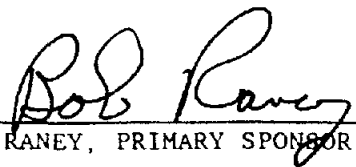
A bill revising the authority of the petroleum tank release compensation board, revising certain definitions and clarifying the responsibilities of a petroleum storage tank owner or operator and an agent designated for reimbursement; authorizing the Department of Health and Environmental Sciences to 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.



ROD SUNDSTED, BUDGET DIRECTOR 2-4-91 DATE
Office of Budget and Program Planning



BOB RANEY, PRIMARY SPONSOR 2/6 DATE
Fiscal Note for HB0485, as introduced. **HB 485**

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
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6 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE AUTHORITY
7 OF THE PETROLEUM TANK RELEASE COMPENSATION BOARD; REVISING
8 CERTAIN DEFINITIONS IN TITLE 75, CHAPTER 11, PART 3;
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13 PETROLEUM STORAGE TANK AS A PREREQUISITE TO TANK RELEASE
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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,
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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

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.

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.

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

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

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

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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.

19 (15) "Petroleum" or "petroleum products" means crude oil
20 or any fraction thereof that is liquid at standard
21 conditions of temperature and pressure (60 degrees F and
22 14.7 pounds per square inch absolute) OR MOTOR FUEL BLEND,
23 SUCH AS GASOHOL, and that is not augmented or compounded by
24 more than a ~~minima~~ DE MINIMIS amount of another substance.

25 (16) "Petroleum storage tank" means a tank that **contains**

1 CONTAINS OR CONTAINED ~~is-being-used-to-actively-receive,~~
2 ~~dispense, or store~~ petroleum or petroleum products ~~when-a~~
3 ~~release-is-discovered-or-that-was-actively-used-for-any-of~~
4 ~~these-purposes-no-more-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

1 (b) loss of use of tangible property that is not
2 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."

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 bodily
18 injury or property damage.

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

21 (a) corrective action costs or the costs of bodily
22 injury or property damage paid to third parties that are
23 determined by the board to be ineligible for reimbursement;

24 (b) costs for bodily injury and property damage, other
25 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
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 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.

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
24 of eligible costs and 100% of subsequent eligible costs, up
25 to a maximum total reimbursement of \$982,500.

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 the
 15 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

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

24 (2) An owner or operator is not eligible for
 25 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 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;

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 provided
 25 evidence that a release may have occurred from his petroleum

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
 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.

19 (ii) Based on its own review and comments received from
 20 a local government, tribal government, or other source, the
 21 department may approve the proposed corrective action plan,
 22 make or request the owner or operator to modify the proposed
 23 plan, or prepare its own plan for compliance by the owner or
 24 operator. A plan finally approved by the department through
 25 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 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

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:
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

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 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.

-End-

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
 6 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE AUTHORITY
 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
 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
 13 PETROLEUM STORAGE TANK AS A PREREQUISITE 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."

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.

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.

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

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

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

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.

19 (15) "Petroleum" or "petroleum products" means crude oil
20 or any fraction thereof that is liquid at standard
21 conditions of temperature and pressure (60 degrees F and
22 14.7 pounds per square inch absolute) OR MOTOR FUEL BLEND,
23 SUCH AS GASOHOL, and that is not augmented or compounded by
24 more than a minimal DE MINIMIS amount of another substance.

25 (16) "Petroleum storage tank" means a tank that contains

1 CONTAINS OR CONTAINED is-being--used--to--actively--receive,
2 dispense,--or--store petroleum or petroleum products when-a
3 release-is-discovered-or-that-was-actively-used-for-any-of
4 these--purposes--no--more--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

1 (b) loss of use of tangible property that is not
2 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."

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 bodily
18 injury or property damage.

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

- 21 (a) corrective action costs or the costs of bodily
22 injury or property damage paid to third parties that are
23 determined by the board to be ineligible for reimbursement;
- 24 (b) costs for bodily injury and property damage, other
25 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
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 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.

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
24 of eligible costs and 100% of subsequent eligible costs, up
25 to a maximum total reimbursement of \$982,500.

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 the
15 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

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

24 (2) An owner or operator is not eligible for
25 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 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;

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 provided
25 evidence that a release may have occurred from his petroleum

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
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.

19 (ii) Based on its own review and comments received from
20 a local government, tribal government, or other source, the
21 department may approve the proposed corrective action plan,
22 make or request the owner or operator to modify the proposed
23 plan, or prepare its own plan for compliance by the owner or
24 operator. A plan finally approved by the department through
25 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 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

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:

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

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 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.

-End-

HOUSE BILL NO. 485

INTRODUCED BY RANEY, HARP, STANG, O'KEEFE

BY REQUEST OF THE PETROLEUM TANK

RELEASE COMPENSATION BOARD

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE AUTHORITY OF THE PETROLEUM TANK RELEASE COMPENSATION BOARD; REVISING CERTAIN DEFINITIONS IN TITLE 75, CHAPTER 11, PART 3; 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; REVISING THE ROLES OF THE PETROLEUM TANK RELEASE COMPENSATION BOARD AND THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES IN CLAIMS REVIEW; AMENDING SECTIONS 75-11-302, 75-11-307, 75-11-308, AND 75-11-309, MCA; AND PROVIDING AN EFFECTIVE DATE."

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 apply to this part:

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

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.

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

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

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

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

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

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

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



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

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

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

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.

19 (15) "Petroleum" or "petroleum products" means crude oil
20 or any fraction thereof that is liquid at standard
21 conditions of temperature and pressure (60 degrees F and
22 14.7 pounds per square inch absolute) OR MOTOR FUEL BLEND,
23 SUCH AS GASOHOL, and that is not augmented or compounded by
24 more than a minimal DE MINIMIS amount of another substance.

25 (16) "Petroleum storage tank" means a tank that contains

1 CONTAINS OR CONTAINED is-being--used--to--actively--receiver
2 dispense,--or--store petroleum or petroleum products when-a
3 release-is-discovered-or-that-was-actively-used-for--any--of
4 these--purposes--no--more-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

1 (b) loss of use of tangible property that is not
2 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."

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 bodily
18 injury or property damage.

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

21 (a) corrective action costs or the costs of bodily
22 injury or property damage paid to third parties that are
23 determined by the board to be ineligible for reimbursement;

24 (b) costs for bodily injury and property damage, other
25 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
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 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.

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
24 of eligible costs and 100% of subsequent eligible costs, up
25 to a maximum total reimbursement of \$982,500.

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 the
 15 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

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

24 (2) An owner or operator is not eligible for
 25 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 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;

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 provided
 25 evidence that a release may have occurred from his petroleum

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
 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.

19 (ii) Based on its own review and comments received from
 20 a local government, tribal government, or other source, the
 21 department may approve the proposed corrective action plan,
 22 make or request the owner or operator to modify the proposed
 23 plan, or prepare its own plan for compliance by the owner or
 24 operator. A plan finally approved by the department through
 25 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 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

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:

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

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
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 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.

-End-