

HOUSE BILL NO. 512
INTRODUCED BY GILBERT, HARPER

IN THE HOUSE

FEBRUARY 6, 1993	INTRODUCED AND REFERRED TO COMMITTEE ON NATURAL RESOURCES.
	FIRST READING.
FEBRUARY 19, 1993	COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED.
FEBRUARY 20, 1993	PRINTING REPORT.
	SECOND READING, DO PASS.
FEBRUARY 22, 1993	ENGROSSING REPORT.
FEBRUARY 23, 1993	THIRD READING, PASSED. AYES, 99; NOES, 0.
FEBRUARY 24, 1993	TRANSMITTED TO SENATE.

IN THE SENATE

MARCH 1, 1993	INTRODUCED AND REFERRED TO COMMITTEE ON NATURAL RESOURCES.
	FIRST READING.
MARCH 27, 1993	COMMITTEE RECOMMEND BILL BE CONCURRED IN. REPORT ADOPTED.
MARCH 31, 1993	SECOND READING, CONCURRED IN.
APRIL 1, 1993	THIRD READING, CONCURRED IN. AYES, 45; NOES, 3.
	RETURNED TO HOUSE.

IN THE HOUSE

APRIL 2, 1993	RECEIVED FROM SENATE.
	SENT TO ENROLLING.
	REPORTED CORRECTLY ENROLLED.

1 House BILL NO. 512
2 INTRODUCED BY Billant
3
4 A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING THE PETROLEUM
5 TANK RELEASE COMPENSATION BOARD TO REIMBURSE ELIGIBLE
6 EXPENSES FOR ACCIDENTAL PETROLEUM RELEASES FROM PROPERLY
7 INSTALLED DOUBLE-WALLED TANK SYSTEMS AT THE RATE OF 100
8 PERCENT; AMENDING SECTIONS 75-11-301, 75-11-302, 75-11-307,
9 75-11-308, 75-11-309, AND 75-11-319, MCA; AND PROVIDING AN
10 IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE."

11
12 WHEREAS, the 1993 Legislature found that underground
13 storage tanks and underground pipes connected to underground
14 and above ground storage tanks must be regulated in order to
15 protect public health and safety, the health of living
16 organisms, and the environment; and

17 WHEREAS, the Department of Health and Environmental
18 Sciences adopted rules in 1989 that included design and
19 construction requirements for underground storage tanks and
20 underground pipes; and

21 WHEREAS, double-walled construction of underground
22 storage tanks and underground pipes should be encouraged
23 because it provides superior prevention of releases of
24 regulated substances to the environment over the operational
25 life of an underground storage tank system as well as

1 superior containment of regulated substances that are
2 released from the interior vessel until the substances can
3 be detected and removed.

4 STATEMENT OF INTENT

5 A statement of intent is required for this bill to
6 provide guidance to the department of health and
7 environmental sciences concerning the adoption of rules to
8 govern double-walled underground storage tank systems as
9 defined in 75-11-302(8). Double-walled construction is to be
10 encouraged because it provides superior prevention of
11 releases of regulated substances to the environment over the
12 operational life of an underground storage tank system as
13 well as superior containment of regulated substances that
14 are released from the interior vessel until the substances
15 can be detected and removed. The department is directed to
16 adopt rules that specify the types of materials or
17 combination of materials that must be used to appropriately
18 construct double-walled tank systems and that specify
19 necessary design, construction, and installation techniques.

20
21
22 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

23 Section 1. Section 75-11-301, MCA, is amended to read:

24 "75-11-301. Findings and purposes. (1) The legislature
25 finds that the use of petroleum products stored in tanks

1 contributes significantly to the economic well-being and
2 quality of life of Montana citizens.

3 (2) The legislature finds that leaks, spills, and other
4 releases of petroleum products from storage tanks endanger
5 public health and safety, ground water quality, and other
6 state resources.

7 (3) The legislature finds that current administrative
8 and financial resources of the public and private sectors
9 are inadequate to address problems caused by releases from
10 petroleum storage tanks and need to be supplemented by a
11 major program of release detection and corrective action.

12 (4) The legislature finds that proper funding for the
13 program is through a petroleum storage tank cleanup fee paid
14 by persons who use and receive the benefits of petroleum
15 products. The legislature further finds that this general
16 use fee, provided for in 75-11-314, is intended solely to
17 support a program to pay for corrective action and damages
18 caused by releases from petroleum storage tanks. The general
19 use fee is collected from distributors for administrative
20 convenience and is not intended as a method for collecting
21 highway revenue pursuant to the provisions of Article VIII,
22 section 6, of the Montana constitution. The fee is intended
23 to implement the legislature's duty to provide for the
24 administration and enforcement of maintaining and improving
25 a clean and healthful environment for present and future

1 generations, as required by Article IX, section 1, of the
2 Montana constitution.

3 (5) The purposes of this part are to:

4 (a) protect public health and safety and the
5 environment by providing prompt detection and cleanup of
6 petroleum tank releases;

7 (b) provide adequate financial resources and effective
8 procedures through which tank owners and operators may
9 undertake and be reimbursed for corrective action and
10 payment to third parties for damages caused by releases from
11 petroleum storage tanks; and

12 (c) assist certain tank owners and operators in meeting
13 financial assurance requirements under state and federal law
14 governing releases from petroleum storage tanks; and

15 (d) provide tank owners with incentives to improve
16 underground storage tank facilities in order to minimize the
17 likelihood of accidental releases."

18 **Section 2.** Section 75-11-302, MCA, is amended to read:

19 "75-11-302. Definitions. The following definitions
20 apply to this part:

21 (1) "Accidental release" means a sudden or nonsudden
22 release, neither expected nor intended by the tank owner or
23 operator, of petroleum or petroleum products from a storage
24 tank that results in a need for corrective action or
25 compensation for third party bodily injury or property

1 damage.

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

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

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

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

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

18 (7) "Distributor" means a distributor as defined in
19 15-70-201.

20 (8) "Double-walled tank system" means an underground
21 storage tank and associated product piping that is designed
22 and constructed of cathodically protected steel, fiberglass,
23 or composite materials with inner and outer walls separated
24 by an interstitial space and that is capable of being
25 monitored for leakage.

1 ~~†8†~~(9) "Eligible costs" means expenses reimbursable
2 under 75-11-307.

3 ~~†9†~~(10) "Fee" means the petroleum storage tank cleanup
4 fee provided for in 75-11-314.

5 ~~†10†~~(11) "Fund" means the petroleum tank release cleanup
6 fund established in 75-11-313.

7 ~~†11†~~(12) "Gasoline" means gasoline as defined in
8 15-70-201. For the purposes of this chapter, gasoline does
9 not include JP-4 jet fuel sold to the federal defense fuel
10 supply center.

11 ~~†12†~~(13) "Operator" means a person in control of or
12 having responsibility for the daily operation of a petroleum
13 storage tank.

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

20 ~~†14†~~(15) "Person" means an individual, firm, trust,
21 estate, partnership, company, association, joint stock
22 company, syndicate, consortium, commercial entity,
23 corporation, or agency of state or local government.

24 ~~†15†~~(16) "Petroleum" or "petroleum products" means crude
25 oil or any fraction thereof of crude oil 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 de minimis amount of another substance.

†16†(17) "Petroleum storage tank" means a tank that contains or contained petroleum or petroleum products and that is:

(a) an underground storage tank as defined in 75-10-403;

(b) a storage tank that is situated in an underground area such as a basement, cellar, mine, 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) (17)(b) and †16†(c) (17)(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 referred to in subsections †16†(d)†17 (17)(d)(i) and

†16†(d)†17 (17)(d)(ii), if the facility is intrastate.

†17†(18) "Property damage" means:

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

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

†18†(19) "Release" means 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 3. Section 75-11-307, MCA, is amended to read:

"75-11-307. Reimbursement for expenses caused by a release. (1) Subject to the availability of money from the fund under subsection (5), an owner or operator who is eligible under 75-11-308 and complies with 75-11-309 and any rules adopted to implement those sections must be reimbursed by the board from the fund for the following eligible costs caused by a release from a petroleum storage tank:

(a) corrective action costs; and

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

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

(a) corrective action costs or the costs of bodily

1 injury or property damage paid to third parties that are
2 determined by the board to be ineligible for reimbursement;

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

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

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

13 (e) costs for the repair or replacement of a tank or
14 piping or costs of other materials, equipment, or labor
15 related to the operation, repair, or replacement of a tank
16 or piping;

17 (f) expenses incurred before April 13, 1989, for owners
18 or operators seeking reimbursement from the petroleum tank
19 release cleanup fund and expenses incurred before May 15,
20 1991, for owners or operators seeking reimbursement from the
21 petroleum tank release cleanup fund for a tank storing
22 heating oil for consumptive use on the premises where it is
23 stored or a farm or residential tank with a capacity of
24 1,100 gallons or less that is used for storing motor fuel
25 for noncommercial purposes;

1 (g) expenses exceeding the maximum reimbursements
2 provided for in subsection (4).

3 (3) An owner or operator may designate a person as his
4 an agent to receive the reimbursement, provided that the
5 owner or operator remains legally responsible for all costs
6 and liabilities incurred as a result of the release.

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

9 (a) for releases eligible for reimbursement from the
10 petroleum tank release cleanup fund that are discovered and
11 reported on or after April 13, 1989, from a tank storing
12 heating oil for consumptive use on the premises where it is
13 stored or from a farm or residential tank with a capacity of
14 1,100 gallons or less that is used for storing motor fuel
15 for noncommercial purposes, the board shall reimburse an
16 owner or operator for 50% of the first \$10,000 of eligible
17 costs and 100% of subsequent eligible costs, up to a maximum
18 total reimbursement of \$495,000; and

19 ~~††~~(b) for all other releases eligible for
20 reimbursement from the petroleum tank release cleanup fund
21 that are discovered and reported on or after April 13, 1989,
22 the board shall reimburse an owner or operator for 50% of
23 the first \$35,000 of eligible costs and 100% of subsequent
24 eligible costs, up to a maximum total reimbursement of
25 \$982,500 for single-walled tank system releases and \$1

million for properly installed double-walled tank system releases, except for a tank storing heating oil for consumptive use on the premises where it is stored or a farm or residential tank with a capacity of 1,100 gallons or less that is used for storing motor fuel for noncommercial purposes accidental releases discovered and reported on or after [the effective date of this act] from properly installed double-walled tank systems, which release costs must be reimbursed at 100% of eligible costs; and.

(b) for releases eligible for reimbursement from the petroleum tank release cleanup fund that are discovered and reported on or after April 13, 1989, the board shall reimburse an owner or operator for 50% of the first \$10,000 of eligible costs and 100% of subsequent eligible costs, up to a maximum total reimbursement of \$495,000, for a tank storing heating oil for consumptive use on the premises where it is stored or a farm or residential tank with a capacity of 1,100 gallons or less that is used for storing motor fuel for noncommercial purposes.

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

approved by the board."

Section 4. Section 75-11-308, MCA, is amended to read:

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

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

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

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

(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 from the petroleum tank release cleanup fund for expenses caused by releases from the following petroleum storage tanks:

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

(b) a tank located at an oil and gas production

1 facility;

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

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

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

9 (f) a mobile storage tank used to transport petroleum
10 or petroleum products from one location to another."

11 **Section 5.** Section 75-11-309, MCA, is amended to read:

12 **"75-11-309. Procedures for reimbursement of eligible**
13 **costs.** (1) An owner or operator seeking reimbursement for
14 eligible costs and the department shall comply with the
15 following procedures:

16 (a) If an owner or operator discovers or is provided
17 evidence that a release may have occurred from his the owner
18 or operator's petroleum storage tank, he the owner or
19 operator shall immediately notify the department of the
20 release and conduct an initial response to the release in
21 accordance with state and federal laws and rules to protect
22 public health and safety and the environment.

23 (b) The owner or operator shall conduct a thorough
24 investigation of the release, report the findings to the
25 department, and, as determined necessary by the department,

1 prepare and submit for approval by the department a
2 corrective action plan that conforms with state, tribal
3 (where applicable), and federal corrective action
4 requirements.

5 (c) (i) The department shall review the corrective
6 action plan and forward a copy to a local government office
7 and, where applicable, a tribal government office with
8 jurisdiction over a corrective action for the release. The
9 local or tribal government office shall inform the
10 department if it wants any modification of the proposed
11 plan.

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

20 (iii) After the department approves a corrective action
21 plan, a local government or tribal government may not impose
22 different corrective action requirements on the owner or
23 operator.

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

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

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

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

25 (h) In addition to the documentation in subsections

1 (1)(f) and (1)(g), when the release is claimed to have
2 originated from a double-walled tank system, the owner or
3 operator shall document, in the manner required by the
4 board, the following:

5 (i) the date the release was discovered;

6 (ii) that the originating tank was part of a
7 double-walled tank system as defined in 75-11-302; and

8 (iii) that the double-walled tank system was properly
9 installed and made of materials and constructed in
10 accordance with applicable department regulations.

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

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

18 (i) are eligible costs; and

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

23 (b) the owner or operator:

24 (i) is eligible for reimbursement under 75-11-308; and

25 (ii) has complied with this section and any rules

1 adopted pursuant to this section.

2 (3) If an owner or operator disagrees with a board
3 determination under subsection (2), he the owner or operator
4 may submit a written request for a hearing before the board.
5 The hearing must be held at a meeting of the board no later
6 than 120 days following receipt of the request or at a time
7 mutually agreed to by the board and the owner or operator.

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

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

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

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

1 guarantee."

2 **Section 6.** Section 75-11-319, MCA, is amended to read:

3 "75-11-319. Rulemaking authority -- department and
4 department of transportation. (1) The department may adopt
5 rules necessary to administer its responsibilities under
6 this part, including rules for the design, construction,
7 installation, and operation of double-walled tank systems
8 and requirements for approval of corrective action plans.

9 (2) The department of transportation shall adopt rules
10 governing the collection of the petroleum storage tank
11 cleanup fee. The rules may include, at a minimum, reporting
12 and recordkeeping requirements, method and timing of
13 payment, and examination of records. The rules must be
14 generally consistent with procedures governing the
15 collection of the gasoline license tax provided for in Title
16 15, chapter 70."

17 **NEW SECTION. Section 7. Applicability.** [This act]
18 applies to releases discovered on or after October 1, 1993,
19 from double-walled underground storage tank systems
20 installed on or after October 1, 1993.

21 **NEW SECTION. Section 8. Effective date.** [This act] is
22 effective on passage and approval.

-End-

APPROVED BY COMM. ON
NATURAL RESOURCES

HOUSE BILL NO. 512

INTRODUCED BY GILBERT, HARPER

A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING THE PETROLEUM TANK RELEASE COMPENSATION BOARD TO REIMBURSE ELIGIBLE EXPENSES FOR ACCIDENTAL PETROLEUM RELEASES FROM PROPERLY INSTALLED DOUBLE-WALLED TANK SYSTEMS AT THE RATE OF 100 PERCENT; AMENDING SECTIONS 75-11-301, 75-11-302, 75-11-307, 75-11-308, AND 75-11-309, AND 75-11-319, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE."

WHEREAS, the 1993 Legislature found that underground PETROLEUM storage tanks and underground ASSOCIATED pipes connected to underground PETROLEUM and above-ground storage tanks must be regulated in order to protect public health and safety, the health of living organisms, and the environment; and

WHEREAS, the Department of Health and Environmental Sciences adopted rules in 1989 that included design and construction requirements for underground PETROLEUM storage tanks and underground ASSOCIATED pipes; and

WHEREAS, double-walled construction of underground PETROLEUM storage tanks and underground ASSOCIATED pipes should be encouraged because it provides superior prevention of releases of regulated substances to the environment over

the operational life of an-underground A PETROLEUM storage tank system as well as superior containment of regulated substances that are released from the interior vessel until the substances can be detected and removed.

STATEMENT OF INTENT

A statement of intent is required for this bill to provide guidance to the department of health and environmental sciences concerning the adoption of rules to govern double-walled underground PETROLEUM storage tank systems as defined in 75-11-302(8). Double-walled construction is to be encouraged because it provides superior prevention of releases of regulated substances to the environment over the operational life of an-underground A PETROLEUM storage tank system as well as superior containment of regulated substances that are released from the interior vessel until the substances can be detected and removed. The department is directed to adopt rules that specify the types of materials or combination of materials that must be used to appropriately construct double-walled tank systems and that specify necessary design, construction, and installation techniques.

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

Section 1. Section 75-11-301, MCA, is amended to read:

"75-11-301. Findings and purposes. (1) The legislature finds that the use of petroleum products stored in tanks contributes significantly to the economic well-being and quality of life of Montana citizens.

(2) The legislature finds that leaks, spills, and other releases of petroleum products from storage tanks endanger public health and safety, ground water quality, and other state resources.

(3) The legislature finds that current administrative and financial resources of the public and private sectors are inadequate to address problems caused by releases from petroleum storage tanks and need to be supplemented by a major program of release detection and corrective action.

(4) The legislature finds that proper funding for the program is through a petroleum storage tank cleanup fee paid by persons who use and receive the benefits of petroleum products. The legislature further finds that this general use fee, provided for in 75-11-314, is intended solely to support a program to pay for corrective action and damages caused by releases from petroleum storage tanks. The general use fee is collected from distributors for administrative convenience and is not intended as a method for collecting highway revenue pursuant to the provisions of Article VIII, section 6, of the Montana constitution. The fee is intended to implement the legislature's duty to provide for the

administration and enforcement of maintaining and improving a clean and healthful environment for present and future generations, as required by Article IX, section 1, of the Montana constitution.

(5) The purposes of this part are to:

(a) protect public health and safety and the environment by providing prompt detection and cleanup of petroleum tank releases;

(b) provide adequate financial resources and effective procedures through which tank owners and operators may undertake and be reimbursed for corrective action and payment to third parties for damages caused by releases from petroleum storage tanks; and

(c) assist certain tank owners and operators in meeting financial assurance requirements under state and federal law governing releases from petroleum storage tanks; and

(d) provide tank owners with incentives to improve underground PETROLEUM storage tank facilities in order to minimize the likelihood of accidental releases."

Section 2. 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

1 tank that results in a need for corrective action or
2 compensation for third party bodily injury or property
3 damage.

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

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

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11 submitted by an owner or operator or an agent of the owner
12 or operator for reimbursement of expenses caused by an
13 accidental release from a petroleum storage tank.

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

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

20 (7) "Distributor" means a distributor as defined in
21 15-70-201.

22 (8) "Double-walled tank system" means an-underground A
23 PETROLEUM storage tank and associated product piping that is
24 designed and constructed of--cathodically--protected--steel,
25 fiberglass,--or--composite--materials with RIGID inner and

1 outer walls separated by an interstitial space and that is
2 capable of being monitored for leakage. THE DESIGN AND
3 CONSTRUCTION OF THESE TANK SYSTEMS MUST MEET STANDARDS OF
4 THE DEPARTMENT AND THE DEPARTMENT OF JUSTICE FIRE PREVENTION
5 AND INVESTIGATION BUREAU. THE MATERIAL USED IN CONSTRUCTION
6 MUST BE COMPATIBLE WITH THE LIQUID TO BE STORED IN THE
7 SYSTEM, AND THE SYSTEM MUST BE DESIGNED TO PREVENT THE
8 RELEASE OF ANY STORED LIQUID.

9 {8}(9) "Eligible costs" means expenses reimbursable
10 under 75-11-307.

11 {9}(10) "Fee" means the petroleum storage tank cleanup
12 fee provided for in 75-11-314.

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14 fund established in 75-11-313.

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16 15-70-201. For the purposes of this chapter, gasoline does
17 not include JP-4 jet fuel sold to the federal defense fuel
18 supply center.

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20 having responsibility for the daily operation of a petroleum
21 storage tank.

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23 controls, or possesses an interest in a petroleum storage
24 tank. The term does not include a person who holds an
25 interest in a tank solely for financial security, unless

through foreclosure or other related actions the holder of a security interest has taken possession of the tank.

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~~(16)~~(17) "Petroleum storage tank" means a tank that contains or contained petroleum or petroleum products and that is:

(a) an underground storage tank as defined in 75-10-403;

(b) a storage tank that is situated in an underground area such as a basement, cellar, mine, 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)~~ (17)(b) and ~~(16)(c)~~ (17)(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 referred to in subsections ~~(16)(d)(i)~~ (17)(d)(i) and ~~(16)(d)(ii)~~ (17)(d)(ii), if the facility is intrastate.

~~(17)~~(18) "Property damage" means:

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

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

~~(18)~~(19) "Release" means 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 3. Section 75-11-307, MCA, is amended to read:

"75-11-307. **Reimbursement for expenses caused by a release.** (1) Subject to the availability of money from the fund under subsection (5), an owner or operator who is eligible under 75-11-308 and complies with 75-11-309 and any rules adopted to implement those sections must be reimbursed

1 by the board from the fund for the following eligible costs
2 caused by a release from a petroleum storage tank:

- 3 (a) corrective action costs; and
- 4 (b) compensation paid to third parties for bodily
5 injury or property damage.
- 6 (2) An owner or operator may not be reimbursed from the
7 fund for the following expenses:
- 8 (a) corrective action costs or the costs of bodily
9 injury or property damage paid to third parties that are
10 determined by the board to be ineligible for reimbursement;
- 11 (b) costs for bodily injury and property damage, other
12 than corrective action costs, incurred by the owner or
13 operator;
- 14 (c) penalties or payments for damages incurred under
15 actions by the department, board, or federal, state, local,
16 or tribal agencies or other government entities involving
17 judicial or administrative enforcement activities and
18 related negotiations;
- 19 (d) attorney fees and legal costs of the owner,
20 operator, or a third party;
- 21 (e) costs for the repair or replacement of a tank or
22 piping or costs of other materials, equipment, or labor
23 related to the operation, repair, or replacement of a tank
24 or piping;
- 25 (f) expenses incurred before April 13, 1989, for owners

1 or operators seeking reimbursement from the petroleum tank
2 release cleanup fund and expenses incurred before May 15,
3 1991, for owners or operators seeking reimbursement from the
4 petroleum tank release cleanup fund for a tank storing
5 heating oil for consumptive use on the premises where it is
6 stored or a farm or residential tank with a capacity of
7 1,100 gallons or less that is used for storing motor fuel
8 for noncommercial purposes;

9 (g) expenses exceeding the maximum reimbursements
10 provided for in subsection (4).

11 (3) An owner or operator may designate a person as ~~his~~
12 an agent to receive the reimbursement, provided that the
13 owner or operator remains legally responsible for all costs
14 and liabilities incurred as a result of the release.

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

17 (a) for releases eligible for reimbursement from the
18 petroleum tank release cleanup fund that are discovered and
19 reported on or after April 13, 1989, from a tank storing
20 heating oil for consumptive use on the premises where it is
21 stored or from a farm or residential tank with a capacity of
22 1,100 gallons or less that is used for storing motor fuel
23 for noncommercial purposes, the board shall reimburse an
24 owner or operator for:

25 (I) 50% of the first \$10,000 of eligible costs and 100%

1 of subsequent eligible costs, up to a maximum total
 2 reimbursement of \$495,000:

3 (A) FOR SINGLE-WALLED TANK SYSTEM RELEASES; AND

4 (B) FOR DOUBLE-WALLED TANK SYSTEM RELEASES FOR WHICH

5 THE RELEASE DATE WAS PRIOR TO OCTOBER 1, 1993; OR

6 (II) 100% OF THE ELIGIBLE COSTS, UP TO A MAXIMUM TOTAL

7 REIMBURSEMENT OF \$500,000, FOR PROPERLY DESIGNED AND

8 INSTALLED DOUBLE-WALLED TANK SYSTEM ACCIDENTAL RELEASES THAT

9 WERE DISCOVERED AND REPORTED ON OR AFTER OCTOBER 1, 1993;

10 and

11 (a)(b) for all other releases eligible for

12 reimbursement from the petroleum tank release cleanup fund

13 that are discovered and reported on or after April 13, 1989,

14 the board shall reimburse an owner or operator for:

15 (I) 50% of the first \$35,000 of eligible costs and 100%

16 of subsequent eligible costs, up to a maximum total

17 reimbursement of \$982,500;

18 (A) for single-walled tank system releases; AND

19 (B) FOR DOUBLE-WALLED TANK SYSTEM RELEASES FOR WHICH

20 THE RELEASE DATE WAS PRIOR TO OCTOBER 1, 1993; OR

21 (II) 100% OF THE ELIGIBLE COSTS, UP TO A MAXIMUM TOTAL

22 REIMBURSEMENT OF \$1 MILLION, FOR PROPERLY DESIGNED AND

23 INSTALLED DOUBLE-WALLED TANK SYSTEM ACCIDENTAL RELEASES THAT

24 WERE DISCOVERED AND REPORTED ON OR AFTER OCTOBER 1, 1993 and

25 \$1-million-for-properly-installed-double-walled-tank-system

1 releases,---except---for---a---tank---storing---heating---oil---for

2 consumptive-use-on-the-premises-where-it-is-stored-or-a-farm

3 or-residential-tank-with-a-capacity-of-17,100-gallons-or-less

4 that-is-used---for---storing---motor---fuel---for---noncommercial

5 purposes accidental--releases-discovered-and-reported-on-or

6 after--(the--effective--date--of--this--act)--from--property

7 installed-double-walled-tank-systems,---which---release---costs

8 must-be-reimbursed-at-100%-of-eligible-costs,---and.

9 (b)---for---releases---eligible---for-reimbursement-from-the

10 petroleum-tank-release-cleanup-fund-that-are-discovered---and

11 reported---on---or---after---April---13,---1989,---the---board-shall

12 reimburse-an-owner-or-operator-for-50%-of-the-first--\$10,000

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

14 to-a-maximum-total-reimbursement-of--\$495,000,---for---a---tank

15 storing---heating---oil---for---consumptive---use-on-the-premises

16 where-it-is-stored-or-a-farm---or---residential---tank---with---a

17 capacity---of---17,100-gallons-or-less-that-is-used-for-storing

18 motor-fuel-for-noncommercial-purposes.

19 (5) If the fund does not contain sufficient money to

20 pay approved claims for eligible costs, a reimbursement may

21 not be made and the fund and the board are not liable for

22 making any reimbursement for the costs at that time. When

23 the fund contains sufficient money, eligible costs must be

24 reimbursed subsequently in the order in which they were

25 approved by the board."

Section 4. Section 75-11-308, MCA, is amended to read:

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

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

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

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

(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 from the petroleum tank release cleanup fund for expenses caused by releases from the following petroleum storage tanks:

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

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

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

(d) a tank belonging to the federal government;

(e) 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

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

Section 5. Section 75-11-309, MCA, is amended to read:

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

(a) If an owner or operator discovers or is provided evidence that a release may have occurred from ~~his~~ the owner or operator's petroleum storage tank, ~~he~~ the owner or operator 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.

(b) The owner or operator shall conduct a thorough investigation of the release, report the findings to the department, and, as determined necessary by the department, prepare and submit for approval by the department a

corrective action plan that conforms with state, tribal (where applicable), and federal corrective action requirements.

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

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

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

(e) The owner or operator shall implement the approved

plan. The department may oversee the implementation of the plan, require reports and monitoring from the owner or operator, undertake inspections, and otherwise exercise its authority concerning corrective action under Title 75, chapter 10, parts 4 and 7, and other applicable law and rules.

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

(h) In addition to the documentation in subsections (1)(f) and (1)(g), when the release is claimed to have

1 originated from a double-walled tank system, the owner or
 2 operator shall document, in the manner required by the
 3 board, the following:

4 (i) the date the release was discovered;

5 (ii) that the originating tank was part of a
 6 double-walled tank system as defined in 75-11-302; and

7 (iii) that the double-walled tank system was properly
 8 installed and made of materials and constructed in
 9 accordance with applicable department regulations.

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

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

17 (i) are eligible costs; and

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

22 (b) the owner or operator:

23 (i) is eligible for reimbursement under 75-11-308; and

24 (ii) has complied with this section and any rules
 25 adopted pursuant to this section.

1 (3) If an owner or operator disagrees with a board
 2 determination under subsection (2), he the owner or operator
 3 may submit a written request for a hearing before the board.
 4 The hearing must be held at a meeting of the board no later
 5 than 120 days following receipt of the request or at a time
 6 mutually agreed to by the board and the owner or operator.

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

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

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

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

1 **Section 6.** ~~Section 75-11-319, MCA, is amended to read:~~

2 ~~"75-11-319. Rulemaking authority-----department---and~~
3 ~~department--of--transportation; (1) The department may adopt~~
4 ~~rules necessary to administer its responsibilities under~~
5 ~~this part, including rules for the design, construction,~~
6 ~~installation, and operation of double-walled tank systems~~
7 ~~and requirements for approval of corrective action plans.~~

8 ~~(2) The department of transportation shall adopt rules~~
9 ~~governing the collection of the petroleum storage tank~~
10 ~~cleanup fee. The rules may include, at a minimum, reporting~~
11 ~~and recordkeeping requirements, method and timing of~~
12 ~~payment, and examination of records. The rules must be~~
13 ~~generally consistent with procedures governing the~~
14 ~~collection of the gasoline license tax provided for in Title~~
15 ~~15, chapter 70."~~

16 NEW SECTION. **Section 6.** Applicability. [This act]
17 applies to releases discovered on or after October 1, 1993,
18 from PROPERLY DESIGNED AND INSTALLED double-walled
19 underground PETROLEUM storage tank systems installed--on--or
20 after--October-17-1993.

21 NEW SECTION. **Section 7.** Effective date. [This act] is
22 effective on passage and approval.

-End-

HOUSE BILL NO. 512

INTRODUCED BY GILBERT, HARPER

A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING THE PETROLEUM TANK RELEASE COMPENSATION BOARD TO REIMBURSE ELIGIBLE EXPENSES FOR ACCIDENTAL PETROLEUM RELEASES FROM PROPERLY INSTALLED DOUBLE-WALLED TANK SYSTEMS AT THE RATE OF 100 PERCENT; AMENDING SECTIONS 75-11-301, 75-11-302, 75-11-307, 75-11-308, AND 75-11-309, AND 75-11-319, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE."

WHEREAS, the 1993 Legislature found that underground PETROLEUM storage tanks and underground ASSOCIATED pipes connected to underground PETROLEUM and above-ground storage tanks must be regulated in order to protect public health and safety, the health of living organisms, and the environment; and

WHEREAS, the Department of Health and Environmental Sciences adopted rules in 1989 that included design and construction requirements for underground PETROLEUM storage tanks and underground ASSOCIATED pipes; and

WHEREAS, double-walled construction of underground PETROLEUM storage tanks and underground ASSOCIATED pipes should be encouraged because it provides superior prevention of releases of regulated substances to the environment over

the operational life of an underground A PETROLEUM storage tank system as well as superior containment of regulated substances that are released from the interior vessel until the substances can be detected and removed.

STATEMENT OF INTENT

A statement of intent is required for this bill to provide guidance to the department of health and environmental sciences concerning the adoption of rules to govern double-walled underground PETROLEUM storage tank systems as defined in 75-11-302(8). Double-walled construction is to be encouraged because it provides superior prevention of releases of regulated substances to the environment over the operational life of an underground A PETROLEUM storage tank system as well as superior containment of regulated substances that are released from the interior vessel until the substances can be detected and removed. The department is directed to adopt rules that

THERE ARE NO CHANGES IN THIS BILL
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REFER TO YELLOW COPY FOR COMPLETE TEXT.

HOUSE BILL NO. 512

INTRODUCED BY GILBERT, HARPER

A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING THE PETROLEUM TANK RELEASE COMPENSATION BOARD TO REIMBURSE ELIGIBLE EXPENSES FOR ACCIDENTAL PETROLEUM RELEASES FROM PROPERLY INSTALLED DOUBLE-WALLED TANK SYSTEMS AT THE RATE OF 100 PERCENT; AMENDING SECTIONS 75-11-301, 75-11-302, 75-11-307, 75-11-308, AND 75-11-309, AND ~~75-11-319~~, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE."

WHEREAS, the 1993 Legislature found that underground PETROLEUM storage tanks and underground ASSOCIATED pipes connected to underground PETROLEUM and above-ground storage tanks must be regulated in order to protect public health and safety, the health of living organisms, and the environment; and

WHEREAS, the Department of Health and Environmental Sciences adopted rules in 1989 that included design and construction requirements for underground PETROLEUM storage tanks and underground ASSOCIATED pipes; and

WHEREAS, double-walled construction of underground PETROLEUM storage tanks and underground ASSOCIATED pipes should be encouraged because it provides superior prevention of releases of regulated substances to the environment over

the operational life of an-underground A PETROLEUM storage tank system as well as superior containment of regulated substances that are released from the interior vessel until the substances can be detected and removed.

STATEMENT OF INTENT

A statement of intent is required for this bill to provide guidance to the department of health and environmental sciences concerning the adoption of rules to govern double-walled underground PETROLEUM storage tank systems as defined in 75-11-302(8). Double-walled construction is to be encouraged because it provides superior prevention of releases of regulated substances to the environment over the operational life of an-underground A PETROLEUM storage tank system as well as superior containment of regulated substances that are released from the interior vessel until the substances can be detected and removed. The department is directed to adopt rules that specify the types of materials or combination of materials that must be used to appropriately construct double-walled tank systems and that specify necessary design, construction, and installation techniques.

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

Section 1. Section 75-11-301, MCA, is amended to read:



1 "75-11-301. Findings and purposes. (1) The legislature
2 finds that the use of petroleum products stored in tanks
3 contributes significantly to the economic well-being and
4 quality of life of Montana citizens.

5 (2) The legislature finds that leaks, spills, and other
6 releases of petroleum products from storage tanks endanger
7 public health and safety, ground water quality, and other
8 state resources.

9 (3) The legislature finds that current administrative
10 and financial resources of the public and private sectors
11 are inadequate to address problems caused by releases from
12 petroleum storage tanks and need to be supplemented by a
13 major program of release detection and corrective action.

14 (4) The legislature finds that proper funding for the
15 program is through a petroleum storage tank cleanup fee paid
16 by persons who use and receive the benefits of petroleum
17 products. The legislature further finds that this general
18 use fee, provided for in 75-11-314, is intended solely to
19 support a program to pay for corrective action and damages
20 caused by releases from petroleum storage tanks. The general
21 use fee is collected from distributors for administrative
22 convenience and is not intended as a method for collecting
23 highway revenue pursuant to the provisions of Article VIII,
24 section 6, of the Montana constitution. The fee is intended
25 to implement the legislature's duty to provide for the

1 administration and enforcement of maintaining and improving
2 a clean and healthful environment for present and future
3 generations, as required by Article IX, section 1, of the
4 Montana constitution.

5 (5) The purposes of this part are to:

6 (a) protect public health and safety and the
7 environment by providing prompt detection and cleanup of
8 petroleum tank releases;

9 (b) provide adequate financial resources and effective
10 procedures through which tank owners and operators may
11 undertake and be reimbursed for corrective action and
12 payment to third parties for damages caused by releases from
13 petroleum storage tanks; and

14 (c) assist certain tank owners and operators in meeting
15 financial assurance requirements under state and federal law
16 governing releases from petroleum storage tanks; and

17 (d) provide tank owners with incentives to improve
18 underground PETROLEUM storage tank facilities in order to
19 minimize the likelihood of accidental releases."

20 **Section 2.** Section 75-11-302, MCA, is amended to read:

21 "75-11-302. Definitions. The following definitions
22 apply to this part:

23 (1) "Accidental release" means a sudden or nonsudden
24 release, neither expected nor intended by the tank owner or
25 operator, of petroleum or petroleum products from a storage

1 tank that results in a need for corrective action or
2 compensation for third party bodily injury or property
3 damage.

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

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

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

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

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

20 (7) "Distributor" means a distributor as defined in
21 15-70-201.

22 (8) "Double-walled tank system" means an-underground A
23 PETROLEUM storage tank and associated product piping that is
24 designed and constructed of--cathodically--protected--steel,
25 fiberglass,--or--composite--materials with RIGID inner and

1 outer walls separated by an interstitial space and that is
2 capable of being monitored for leakage. THE DESIGN AND
3 CONSTRUCTION OF THESE TANK SYSTEMS MUST MEET STANDARDS OF
4 THE DEPARTMENT AND THE DEPARTMENT OF JUSTICE FIRE PREVENTION
5 AND INVESTIGATION BUREAU. THE MATERIAL USED IN CONSTRUCTION
6 MUST BE COMPATIBLE WITH THE LIQUID TO BE STORED IN THE
7 SYSTEM, AND THE SYSTEM MUST BE DESIGNED TO PREVENT THE
8 RELEASE OF ANY STORED LIQUID.

9 {8}(9) "Eligible costs" means expenses reimbursable
10 under 75-11-307.

11 {9}(10) "Fee" means the petroleum storage tank cleanup
12 fee provided for in 75-11-314.

13 {10}(11) "Fund" means the petroleum tank release cleanup
14 fund established in 75-11-313.

15 {11}(12) "Gasoline" means gasoline as defined in
16 15-70-201. For the purposes of this chapter, gasoline does
17 not include JP-4 jet fuel sold to the federal defense fuel
18 supply center.

19 {12}(13) "Operator" means a person in control of or
20 having responsibility for the daily operation of a petroleum
21 storage tank.

22 {13}(14) "Owner" means a person who holds title to,
23 controls, or possesses an interest in a petroleum storage
24 tank. The term does not include a person who holds an
25 interest in a tank solely for financial security, unless

1 through foreclosure or other related actions the holder of a
2 security interest has taken possession of the tank.

3 ~~{14}~~(15) "Person" means an individual, firm, trust,
4 estate, partnership, company, association, joint stock
5 company, syndicate, consortium, commercial entity,
6 corporation, or agency of state or local government.

7 ~~{15}~~(16) "Petroleum" or "petroleum products" means crude
8 oil or any fraction thereof of crude oil that is liquid at
9 standard conditions of temperature and pressure (60 degrees
10 F and 14.7 pounds per square inch absolute) or motor fuel
11 blend, such as gasohol, and that is not augmented or
12 compounded by more than a de minimis amount of another
13 substance.

14 ~~{16}~~(17) "Petroleum storage tank" means a tank that
15 contains or contained petroleum or petroleum products and
16 that is:

17 (a) an underground storage tank as defined in
18 75-10-403;

19 (b) a storage tank that is situated in an underground
20 area such as a basement, cellar, mine, drift, shaft, or
21 tunnel;

22 (c) an above ground storage tank with a capacity less
23 than 30,000 gallons; or

24 (d) above ground or underground pipes associated with
25 tanks under subsections ~~{16}{b}~~ (17)(b) and ~~{16}{c}~~ (17)(c),

1 except that pipelines regulated under the following laws are
2 excluded:

3 (i) the Natural Gas Pipeline Safety Act of 1968 (49
4 U.S.C. 1671, et seq.);

5 (ii) the Hazardous Liquid Pipeline Safety Act of 1979
6 (49 U.S.C. 2001, et seq.); and

7 (iii) state law comparable to the provisions of law
8 referred to in subsections ~~{16}{d}{i}~~ (17)(d)(i) and
9 ~~{16}{d}{ii}~~ (17)(d)(ii), if the facility is intrastate.

10 ~~{17}~~(18) "Property damage" means:

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

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

15 ~~{18}~~(19) "Release" means any spilling, leaking,
16 emitting, discharging, escaping, leaching, or disposing of
17 petroleum or petroleum products from a petroleum storage
18 tank into ground water, surface water, surface soils, or
19 subsurface soils."

20 **Section 3.** Section 75-11-307, MCA, is amended to read:

21 **"75-11-307. Reimbursement for expenses caused by a**
22 **release.** (1) Subject to the availability of money from the
23 fund under subsection (5), an owner or operator who is
24 eligible under 75-11-308 and complies with 75-11-309 and any
25 rules adopted to implement those sections must be reimbursed

1 by the board from the fund for the following eligible costs
2 caused by a release from a petroleum storage tank:

- 3 (a) corrective action costs; and
- 4 (b) compensation paid to third parties for bodily
5 injury or property damage.
- 6 (2) An owner or operator may not be reimbursed from the
7 fund for the following expenses:
- 8 (a) corrective action costs or the costs of bodily
9 injury or property damage paid to third parties that are
10 determined by the board to be ineligible for reimbursement;
- 11 (b) costs for bodily injury and property damage, other
12 than corrective action costs, incurred by the owner or
13 operator;
- 14 (c) penalties or payments for damages incurred under
15 actions by the department, board, or federal, state, local,
16 or tribal agencies or other government entities involving
17 judicial or administrative enforcement activities and
18 related negotiations;
- 19 (d) attorney fees and legal costs of the owner,
20 operator, or a third party;
- 21 (e) costs for the repair or replacement of a tank or
22 piping or costs of other materials, equipment, or labor
23 related to the operation, repair, or replacement of a tank
24 or piping;
- 25 (f) expenses incurred before April 13, 1989, for owners

1 or operators seeking reimbursement from the petroleum tank
2 release cleanup fund and expenses incurred before May 15,
3 1991, for owners or operators seeking reimbursement from the
4 petroleum tank release cleanup fund for a tank storing
5 heating oil for consumptive use on the premises where it is
6 stored or a farm or residential tank with a capacity of
7 1,100 gallons or less that is used for storing motor fuel
8 for noncommercial purposes;

9 (g) expenses exceeding the maximum reimbursements
10 provided for in subsection (4).

11 (3) An owner or operator may designate a person as his
12 an agent to receive the reimbursement, provided that the
13 owner or operator remains legally responsible for all costs
14 and liabilities incurred as a result of the release.

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

17 (a) for releases eligible for reimbursement from the
18 petroleum tank release cleanup fund that are discovered and
19 reported on or after April 13, 1989, from a tank storing
20 heating oil for consumptive use on the premises where it is
21 stored or from a farm or residential tank with a capacity of
22 1,100 gallons or less that is used for storing motor fuel
23 for noncommercial purposes, the board shall reimburse an
24 owner or operator for:

25 (1) 50% of the first \$10,000 of eligible costs and 100%

of subsequent eligible costs, up to a maximum total reimbursement of \$495,000:

(A) FOR SINGLE-WALLED TANK SYSTEM RELEASES; AND

(B) FOR DOUBLE-WALLED TANK SYSTEM RELEASES FOR WHICH THE RELEASE DATE WAS PRIOR TO OCTOBER 1, 1993; OR

(II) 100% OF THE ELIGIBLE COSTS, UP TO A MAXIMUM TOTAL REIMBURSEMENT OF \$500,000, FOR PROPERLY DESIGNED AND INSTALLED DOUBLE-WALLED TANK SYSTEM ACCIDENTAL RELEASES THAT WERE DISCOVERED AND REPORTED ON OR AFTER OCTOBER 1, 1993; and

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

(I) 50% of the first \$35,000 of eligible costs and 100% of subsequent eligible costs, up to a maximum total reimbursement of \$982,500;

(A) for single-walled tank system releases; AND

(B) FOR DOUBLE-WALLED TANK SYSTEM RELEASES FOR WHICH THE RELEASE DATE WAS PRIOR TO OCTOBER 1, 1993; OR

(II) 100% OF THE ELIGIBLE COSTS, UP TO A MAXIMUM TOTAL REIMBURSEMENT OF \$1 MILLION, FOR PROPERLY DESIGNED AND INSTALLED DOUBLE-WALLED TANK SYSTEM ACCIDENTAL RELEASES THAT WERE DISCOVERED AND REPORTED ON OR AFTER OCTOBER 1, 1993 and \$1-million-for-properly-installed-double-walled-tank-system

releases, except for a tank storing heating oil for consumptive use on the premises where it is stored or a farm or residential tank with a capacity of 1,100 gallons or less that is used for storing motor fuel for noncommercial purposes accidental releases discovered and reported on or after the effective date of this act from property installed double-walled tank systems, which release costs must be reimbursed at 100% of eligible costs; and,

(b) for releases eligible for reimbursement from the petroleum tank release cleanup fund that are discovered and reported on or after April 13, 1989, the board shall reimburse an owner or operator for 50% of the first \$10,000 of eligible costs and 100% of subsequent eligible costs, up to a maximum total reimbursement of \$495,000, for a tank storing heating oil for consumptive use on the premises where it is stored or a farm or residential tank with a capacity of 1,100 gallons or less that is used for storing motor fuel for noncommercial purposes.

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

Section 4. Section 75-11-308, MCA, is amended to read:

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

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

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

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

(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 from the petroleum tank release cleanup fund for expenses caused by releases from the following petroleum storage tanks:

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

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

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

(d) a tank belonging to the federal government;

(e) 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

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

Section 5. Section 75-11-309, MCA, is amended to read:

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

(a) If an owner or operator discovers or is provided evidence that a release may have occurred from his the owner or operator's petroleum storage tank, he the owner or operator 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.

(b) The owner or operator shall conduct a thorough investigation of the release, report the findings to the department, and, as determined necessary by the department, prepare and submit for approval by the department a

1 corrective action plan that conforms with state, tribal
2 (where applicable), and federal corrective action
3 requirements.

4 (c) (i) The department shall review the corrective
5 action plan and forward a copy to a local government office
6 and, where applicable, a tribal government office with
7 jurisdiction over a corrective action for the release. The
8 local or tribal government office shall inform the
9 department if it wants any modification of the proposed
10 plan.

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

19 (iii) After the department approves a corrective action
20 plan, a local government or tribal government may not impose
21 different corrective action requirements on the owner or
22 operator.

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

25 (e) The owner or operator shall implement the approved

1 plan. The department may oversee the implementation of the
2 plan, require reports and monitoring from the owner or
3 operator, undertake inspections, and otherwise exercise its
4 authority concerning corrective action under Title 75,
5 chapter 10, parts 4 and 7, and other applicable law and
6 rules.

7 (f) The owner or operator shall document in the manner
8 required by the board all expenses incurred in preparing and
9 implementing the corrective action plan. The owner or
10 operator shall submit claims and substantiating documents to
11 the board in the form and manner required by the board. The
12 board shall forward each claim and appropriate documentation
13 to the department. The department shall notify the board of
14 any costs that the department considers not reimbursable
15 because of any failure to meet the requirements of
16 subsection (2). The department shall inform the owner or
17 operator of any notification given to the board.

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

24 (h) In addition to the documentation in subsections
25 (1)(f) and (1)(g), when the release is claimed to have

1 originated from a double-walled tank system, the owner or
 2 operator shall document, in the manner required by the
 3 board, the following:

4 (i) the date the release was discovered;

5 (ii) that the originating tank was part of a
 6 double-walled tank system as defined in 75-11-302; and

7 (iii) that the double-walled tank system was properly
 8 installed and made of materials and constructed in
 9 accordance with applicable department regulations.

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

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

17 (i) are eligible costs; and

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

22 (b) the owner or operator:

23 (i) is eligible for reimbursement under 75-11-308; and

24 (ii) has complied with this section and any rules
 25 adopted pursuant to this section.

1 (3) If an owner or operator disagrees with a board
 2 determination under subsection (2), he the owner or operator
 3 may submit a written request for a hearing before the board.
 4 The hearing must be held at a meeting of the board no later
 5 than 120 days following receipt of the request or at a time
 6 mutually agreed to by the board and the owner or operator.

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

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

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

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

1 **Section 6.** ~~Section 75-11-319, MCA, is amended to read:--~~

2 ~~"75-11-319.---Rulemaking---authority-----department---and~~
3 ~~department---of---transportation.-(1)-The-department-may-adopt~~
4 ~~rules-necessary-to-administer-its-responsibilities-under~~
5 ~~this-part,--including rules--for-the-design, construction,~~
6 ~~installation, and operation of--double-walled--tank--systems~~
7 ~~and requirements for approval of corrective action plans.~~

8 ~~{2}--The--department-of-transportation-shall-adopt-rules~~
9 ~~governing-the--collection--of--the--petroleum--storage--tank~~
10 ~~cleanup--fee. The rules may include, at a minimum, reporting~~
11 ~~and--recordkeeping--requirements,--method--and---timing---of~~
12 ~~payment,--and--examination--of--records.---The--rules-must-be~~
13 ~~generally---consistent---with---procedures---governing---the~~
14 ~~collection-of-the-gasoline-license-tax-provided-for-in>Title~~
15 ~~15, chapter 70."~~

16 NEW SECTION. **Section 6.** Applicability. [This act]
17 applies to releases discovered on or after October 1, 1993,
18 from PROPERLY DESIGNED AND INSTALLED double-walled
19 underground PETROLEUM storage tank systems installed--on--or
20 after October 1, 1993.

21 NEW SECTION. **Section 7.** Effective date. [This act] is
22 effective on passage and approval.

-End-