

SENATE BILL NO. 257

BY SENATOR WALSWORTH

1 AN ACT

2 To amend and reenact R.S. 30:2194(B)(1), (3) and (6), 2194.1, 2195(C), (E), (F)(1), and the
3 introductory paragraph of (3) and (3)(e), 2195.2(A)(1)(c)(ii), (2), (3), and (5),
4 2195.3(A)(1)(b), (6), and (10), 2195.4(A)(2) and (3) and (B)(1), 2195.8(A) and (C),
5 2195.9(B), 2195.10(C), 2195.12(A), and to enact R.S. 30:2194(B)(8)(c) and
6 2195.12(E), relative to underground storage tanks; to provide certain prohibitions;
7 to provide for monies deposited in the Tank Trust Fund; to provide certain reporting
8 requirements; to provide for monies received from certain payments; to provide for
9 certain third-party claims; to require the maintaining of certain documents and
10 records; to provide for the membership of the Motor Fuels Underground Storage
11 Tank Trust Fund Advisory Board; to provide for certain reimbursement eligibility
12 requirements; to provide for the issuance of loans relative to the delivery of motor
13 fuels; to provide terms, conditions, and requirements; and to provide for related
14 matters.

15 Be it enacted by the Legislature of Louisiana:

16 Section 1. R.S. 30:2194(B)(1), (3) and (6), 2194.1, 2195(C), (E), (F)(1), and the
17 introductory paragraph of (3) and (3)(e), 2195.2(A)(1)(c)(ii), (2), (3), and (5),
18 2195.3(A)(1)(b), (6), and (10), 2195.4(A)(2), (3), and (B)(1), 2195.8(A) and (C), 2195.9 (B),
19 2195.10(C), 2195.12(A) are hereby amended and reenacted and R.S. 30:2194(B)(8)(c), and
20 2195.12(E) are hereby enacted to read as follows:

21 §2194. Underground storage tanks; registration

22 * * *

23 B. As used in R.S. 30:2194 through 2195.11, the following terms shall have
24 the meaning ascribed to them in this Subsection, unless the context clearly indicates
25 otherwise:

26 (1)**(a)** "Bulk facility" means a facility, including pipeline terminals, refinery
27 terminals, motor fuel distribution terminals, rail and barge terminals, and associated

1 tanks, connected or separate, from which motor fuels are withdrawn from bulk and
2 delivered into a cargo tank or a barge used to transport these materials.

3 **(b) "Bulk facility" shall also mean a broker, reseller, or other person**
4 **that does not sell motor fuels to any person other than another bulk facility and**
5 **has registered and obtained a certificate from the department.**

6 * * *

7 (3) "Date of release" means the specific date in which evidence indicates that
8 a release (leak) is occurring or has occurred. If a tank is taken out-of-service, the date
9 of release is the last date of operation. **If no specific date is determined, the "date**
10 **of release" is the date the release is reported to the department.**

11 * * *

12 (6) "Motor fuels" shall be defined as all grades of gasoline including but not
13 limited to gasohol, No. 1 diesel, No. 2 diesel, kerosene, and all aviation fuels. ~~Liquid~~
14 ~~petroleum (LP) gas shall not be included in this definition of motor fuel. Effective~~
15 ~~September 6, 1991, this~~ **This** term shall include new and used motor oil that is used
16 for lubricating engines of motor vehicles. ~~If, however, used oil is determined to be~~
17 ~~a hazardous waste by the United States Environmental Protection Agency, used oil~~
18 ~~shall no longer be included in this term.~~ **"Motor fuels" may include, as determined**
19 **by the secretary, any product, petroleum or petroleum blend, biofuel or any**
20 **new fuel that may emerge for the propulsion of motor vehicles. However, liquid**
21 **petroleum (LP) gas, compressed natural gas (CNG), and liquefied natural gas**
22 **(LNG) shall not be included in this definition of motor fuels.**

23 * * *

24 (8) "Regulated substance" means:

25 * * *

26 **(c) Any motor fuels as determined by the secretary.**

27 * * *

28 §2194.1. Prohibitions

29 ~~On or after January 1, 1996, no~~ **No** person shall place or dispense a regulated
30 substance into an underground storage tank that has not been registered with the

1 Louisiana Department of Environmental Quality **and that does not have a current**
 2 **registration certificate.**

3 §2195. Motor Fuels Underground Storage Tank Trust Fund

4 * * *

5 C. Monies so deposited in the Environmental Trust Fund shall be used to
 6 defray the cost to the state of administering the underground storage tank program
 7 and the cost of investigation, testing, containment, control, and cleanup of releases
 8 from underground storage tanks containing regulated substances. **Only monies**
 9 **recovered pursuant to R.S. 30:2195.2(A)(2) and deposited in the Tank Trust**
 10 **Fund may be used for the loans authorized by R.S. 30:2195.12(E).** These monies
 11 shall also be used to provide money or services as the state share of matching funds
 12 for federal grants involving underground storage tanks. At the end of each fiscal
 13 year, all monies that were deposited into the Environmental Trust Fund from the fees
 14 established in R.S. 30:2195.3(A)(1)(a) and (B) which remain unspent, including all
 15 accrued interest, shall be transferred to the Tank Trust Fund.

16 * * *

17 E. Annually, the department shall prepare a report for the House Committee
 18 on Natural Resources and Environment and the Senate Committee on Environmental
 19 Quality of all disbursements of monies from the Tank Trust Fund and the
 20 Environmental Trust Fund. The report shall include **all loans made from the Tank**
 21 **Trust Fund,** the number of sites actively seeking reimbursement from the Tank
 22 Trust Fund as of June thirtieth of each year, the number of sites deemed eligible for
 23 the Tank Trust Fund during the previous fiscal year, and the number of sites that
 24 have been granted "No Further Action", and the department has received the last
 25 application for reimbursement during the previous fiscal year. Regarding
 26 disbursements from the Tank Trust Fund as provided by R.S. 30:2195.2, the report
 27 shall include a list of all reimbursements, all pending reimbursements, the date the
 28 application was made for reimbursement, and the date reimbursement was made by
 29 the department. The report shall be delivered to the respective legislative committees
 30 no later than March first of each year.

1 F.(1) ~~Beginning July 1, 2001, all~~ All interest monies earned by the Motor
 2 Fuels Underground Storage Tank Trust Fund ~~shall~~ **and all monies received from**
 3 **payments that are the result of cost recovery efforts shall** be used for the closure
 4 of abandoned motor fuel underground storage tanks, ~~and~~ assessment and remediation
 5 of property contaminated by abandoned motor fuel underground storage tanks, **and**
 6 **the loans authorized by R.S. 30:2195.12(E).**

7 * * *

8 (3) A ~~site~~ **tank** may be declared to be an abandoned motor fuel underground
 9 storage tank ~~site~~ by the secretary upon a finding that all of the following apply to the
 10 site:

11 * * *

12 (e) The release at the site is not eligible for the Motor Fuels Underground
 13 Storage Tank Trust Fund **or the secretary has determined that action by the**
 14 **department is the most timely and efficient way to address conditions at the site.**

15 §2195.2. Uses of the Tank Trust Fund

16 A. The department shall administer the Tank Trust Fund and shall make
 17 disbursements from the fund for all necessary and appropriate expenditures. Pursuant
 18 to the authorization in R.S. 30:2195, the secretary of the Department of
 19 Environmental Quality shall use the Tank Trust Fund as follows:

20 (1) Whenever in the secretary's determination incidence of surface water,
 21 groundwater, or soils contamination resulting from the storage of motor fuels may
 22 pose a threat to the environment or the public health, safety, and welfare and the
 23 owner of the motor fuel underground storage tank has been found to be an eligible
 24 participant, the department shall obligate monies available in the Tank Trust Fund
 25 to provide for the following response actions:

26 * * *

27 (c)(i) * * *

28 (ii) The monies expended from the Tank Trust Fund for any of the above
 29 approved costs shall be spent only up to such sums as that which is necessary to
 30 satisfy federal petroleum underground storage tank financial responsibility

1 requirements (40 CFR 280.93) or one million five hundred thousand dollars,
2 whichever is greater. **This amount shall include any third-party claim arising**
3 **from the release of motor fuels from a motor fuel underground storage tank.**

4 (2) Whenever costs have been incurred by the department for taking response
5 actions with respect to the release of motor fuels from an underground storage tank
6 or the department has expended funds from the Tank Trust Fund for response costs
7 or third-party liability claims, the owner of the motor fuel underground storage tank
8 shall be liable to the department for such costs only if the owner was not an eligible
9 participant on the date of discharge of the motor fuels which necessitates the
10 cleanup; otherwise liability is limited to the provisions contained in R.S. 30:2195.9
11 and 2195.10. The expenditure of funds to reimburse any party for costs otherwise
12 authorized by this Subsection shall be expressly prohibited if the costs were incurred
13 as the result of a release of motor fuels, excluding new and used motor oil, which
14 occurred prior to July 15, 1988. For new and used motor oil releases, the expenditure
15 of funds to reimburse any party for costs otherwise authorized by this Subsection
16 shall be expressly prohibited for any costs relating to a release which occurred prior
17 to September 6, 1991, **unless such release is determined by the secretary to have**
18 **been from an abandoned motor fuel underground storage tank.** Nothing
19 contained herein shall be construed so as to authorize the expenditure from the Tank
20 Trust Fund on behalf of any owner of an underground storage tank who is not an
21 eligible participant at the time of the release for any third-party liability.

22 (3) In the event funds have been expended by the secretary on behalf of an
23 owner who was not an eligible participant, and the Tank Trust Fund is entitled to
24 reimbursement of those funds so expended, the secretary shall use any and all
25 administrative and judicial remedies, including the filing of a lien with the same
26 ranking as that provided in R.S. 30:2195(F)(2), which may be necessary for recovery
27 of the expended funds plus legal interest from the date of payment by the secretary
28 and all costs associated with the recovery of the funds. **The secretary may expend**
29 **the recovered funds for any use authorized under this Section.**

30 * * *

1 (5) The Tank Trust Fund may be used to make payments to a third party who
 2 brings a third-party claim against the secretary of the department and any owner of
 3 a motor fuel underground storage tank because of damages sustained by a release
 4 into the groundwater, surface waters, or soils and who obtains a final judgment in
 5 said action enforceable in this state against the owner and the secretary if and only
 6 if it has been satisfactorily demonstrated that the owner was an eligible participant
 7 at the time that the release occurred as defined in R.S. 30:2194(B)(3). The
 8 indemnification limit of the trust with respect to satisfaction of third-party claims
 9 shall be that which is necessary to satisfy federal petroleum underground storage
 10 tank financial responsibility requirements.

11 * * *

12 §2195.3. Source of funding; limitations on disbursements from the Tank Trust Fund;
 13 limit on amount in Tank Trust Fund

14 A.(1)(a) * * *

15 (b) However, those persons ordering the withdrawal of motor fuel from a
 16 bulk facility into a cargo tank which is directly transported and completely unloaded
 17 into either tanks exempted from registration requirements as provided by R.S.
 18 30:2194(C), those underground storage tanks exempted from taxation pursuant to
 19 R.S. 47:715 and 720, or those underground storage tanks identified in R.S.
 20 30:2195.2(B)(1)(a) and (b) shall not be required to pay the fees established by this
 21 Paragraph. These fees shall also not apply to exchanges between **registered and**
 22 **certified** bulk facilities.

23 * * *

24 (6) All invoices or transaction statements issued by operators of bulk
 25 facilities for the transfer of motor fuels into a cargo tank shall clearly indicate
 26 whether or not the transaction was a withdrawal from bulk as defined by ~~R.S.~~
 27 ~~30:2194(B)(13)~~ **R.S. 30:2194. All records documenting transfers to and from**
 28 **bulk facilities shall be maintained for four years and be available for inspection**
 29 **by the department upon request.**

30 * * *

(10) Fees imposed by Subparagraph (A)(1)(a) of this Section shall not be collected or required to be paid on or after the first day of the second month following a determination that has been made by the board that the unobligated balance in the Tank Trust Fund equals or exceeds ~~twenty~~ **forty** million dollars. If the board determines that the unobligated balance in the Tank Trust Fund falls below ten million dollars, the fee shall be reinstated effective on the first day of the second month following this determination. For these purposes, the unobligated balance in the Tank Trust Fund shall be determined by subtracting from the cash balance in the Tank Trust Fund at the end of each month the sum of the total estimates made by the board of eligible payment requests pending review and the outstanding balance of the estimated costs to be incurred associated with ~~correction action plans approved by the department~~ **investigations, corrective action plans, and activities authorized under this Section.**

* * *

§2195.4. Procedures for disbursements from the Tank Trust Fund

A. Monies held in the Tank Trust Fund established hereunder shall be disbursed by the secretary in the following manner:

* * *

(2) The owner **or the owner's authorized agent** and response action contractor shall file a sworn application with the department indicating fair and reasonable value of the cost of site assessment and remediation, subject to those regulations and limitations as set by the department. Proof of payment of the financial responsibility amounts required by R.S. 30:2195.9 and 2195.10, or a certified copy of the lien authorized in this Section, shall be provided with the initial application for reimbursement.

(3)(a) Except in cases of emergency, no disbursement from the Tank Trust Fund may be made by the secretary until such time that the secretary obtains verification that the owner applicant is an eligible participant in compliance with the law.

(b) ~~Except as otherwise provided in Subparagraph (c), no~~ **No** disbursements

1 from the Motor Fuels Underground Storage Tank Trust Fund may be made by the
 2 secretary when the application for reimbursement is filed with the department more
 3 than two years after the date that the response action work is performed.

4 ~~(c)(i) When the initial site assessment has not been completed within two~~
 5 ~~years, the applicant will have ninety days from the completion of the initial site~~
 6 ~~assessment to submit the reimbursement application. **Initial assessments shall be**~~
 7 ~~**initiated within two years from the receipt of a request for assessment made by**~~
 8 ~~**the secretary to be eligible for disbursement from the Tank Trust Fund.**~~

9 ~~(d)(ii) When the department's action results in a reimbursement application~~
 10 ~~not being submitted within two years of the date the work was performed, the~~
 11 ~~applicant will have ninety days from the date the issue is resolved to submit the~~
 12 ~~reimbursement application.~~

13 B.(1) Payments shall be made to third parties who bring suit against the
 14 secretary in his official capacity as representative of the Tank Trust Fund and the
 15 owner of an underground motor fuel storage tank, who is an eligible participant as
 16 stated in R.S. 30:2194(B)(3), and such third party obtains a final judgment for a ~~third~~
 17 ~~party **third-party** claim which is enforceable in this state. ~~The owner shall pay the~~~~
 18 ~~amount required by R.S. 30:2195.9 toward the satisfaction of said judgment, and~~
 19 ~~after that payment has been made, the Tank Trust Fund will pay the remainder of~~
 20 ~~said judgment.~~

21 * * *

22 §2195.8. Advisory board

23 A. There shall be a Motor Fuels Underground Storage Tank Trust Fund
 24 Advisory Board, hereinafter referred to as the "board," to advise the secretary with
 25 regard to implementation of the Tank Trust Fund including investment of the trust,
 26 **issuance of loans**, changing of the trust ceiling if after a reasonable time this would
 27 be deemed appropriate and with regard to the minimum level of funding. The board
 28 shall annually review the "Louisiana Motor Fuels Underground Storage Tank Trust
 29 Fund Cost Control Guidance Document" and may make recommendations for
 30 changes. Prior to the promulgation of any proposed underground storage tank

1 regulations, the department shall provide proposed changes to the board for review.
 2 The board shall also determine the role of the Tank Trust Fund in establishing
 3 financial responsibility as required by federal or state law, except that such
 4 requirement shall not exceed those established by the U.S. Environmental Protection
 5 Agency. The board shall additionally examine claims made and loss experience,
 6 make recommendations to the secretary regarding minimum levels of financial
 7 responsibility for underground storage tank owners, and the necessity for and
 8 contents of rules and regulations issued under the Environmental Quality Act in
 9 similar matters. The board may recommend standards for the qualification of
 10 response action contractors as defined herein. The board may recommend at any time
 11 that response action contractors be added to or deleted from the list. The board shall
 12 also have the authority to review applications for disbursements from the Tank Trust
 13 Fund.

14 * * *

15 C. The board shall meet at least four times each year and each member, **or**
 16 **his designee**, shall have one vote concerning any matter coming before the board.
 17 The board shall elect its own chairman. The secretary shall provide notice of
 18 regularly held board meetings thirty days prior to the meeting. The board may meet
 19 at any other time upon twenty-four hour notice from the secretary, his designee, or
 20 any two of the board's members.

21 * * *

22 §2195.9. Financial responsibility

23 * * *

24 B. Financial responsibility **required by the United States Environmental**
 25 **Protection Agency** may be established by any one or combination of the following:
 26 insurance, **participation in the Tank Trust Fund**, guarantee, surety bond, letter of
 27 credit, or qualification as a self-insurer. A person may qualify as a self-insurer by
 28 showing tangible net worth in the amount established by the U.S. Environmental
 29 Protection Agency.

30 §2195.10. Financial responsibility for noncompliance

* * *

C. The secretary or his designee may exclude from coverage by the Tank Trust Fund any underground storage tank system whose owner or operator has been found to have consistently failed to comply with the requirements enumerated in Subsection B of this Section **as determined by the secretary after consultation with the board.** ~~Consistent failure is a failure to comply with more than three of the requirements enumerated in Subsection B or repeated releases from the same underground storage tank system accompanied by failure to comply with the regulations enumerated in Subsection B.~~ Notwithstanding any provision to the contrary, the secretary or his designee may prohibit the delivery of fuel to any underground storage tank excluded from coverage under this provision until such time as the owner operator secures financial assurance that satisfies the federal petroleum underground storage tank financial responsibility requirements.

* * *

§2195.12. Alternate generated power capacity for motor fuel dispensing facilities;
and other uses of the Tank Trust Fund

A. As used in this Section, the following terms and phrases shall have the following meanings unless the context clearly indicates otherwise:

~~(1)~~ "Motor fuel" means any petroleum product, including any special fuel, that is used for the propulsion of motor vehicles.

~~(2)~~**(1)** "Retail outlet" means a facility, including land and improvements, where motor fuel is offered for sale, at retail, to the motoring public.

~~(3)~~**(2)** "Sale" or "sell" means any transfer, gift, sale, offer for sale, or advertisement for sale in any manner or by any means whatsoever, including any transfer of motor fuel from a person to itself or an affiliate at another level of distribution, but does not include product exchanges at the wholesale level or distribution.

~~(4)~~**(3)** "Completely rebuilt motor fuel retail outlet" means a newly constructed outlet built after the previous outlet on the same site has been completely razed.

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* * *

E. The secretary may authorize use of any monies obtained in cost recovery actions or from interest on the Tank Trust Fund enumerated in R.S. 30:2195 to provide for loans necessary to nonpublic persons or entities, for upgrading or improving underground storage tanks to a standard dictated or recommended by federal or state environmental laws, regulations, or directives. The secretary shall promulgate regulations to govern the making and administration of such loans.

PRESIDENT OF THE SENATE

SPEAKER OF THE HOUSE OF REPRESENTATIVES

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____