

1 **UNDERGROUND STORAGE TANK AMENDMENTS**

2 2010 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Kay L. McIff**

5 Senate Sponsor: Ralph Okerlund

7 **LONG TITLE**

8 **General Description:**

9 This bill amends Title 19, Chapter 6, Part 4, Underground Storage Tank Act.

10 **Highlighted Provisions:**

11 This bill:

- 12 ▶ increases the coverage limits for participants in the Petroleum Storage Tank Trust
- 13 Fund;
- 14 ▶ increases maximum loan amounts from the Petroleum Storage Tank Loan Fund;
- 15 ▶ addresses the uses for which trust fund monies may be used; and
- 16 ▶ makes technical corrections.

17 **Monies Appropriated in this Bill:**

18 None

19 **Other Special Clauses:**

20 None

21 **Utah Code Sections Affected:**

22 **AMENDS:**

23 **19-6-405.3**, as last amended by Laws of Utah 2008, Chapter 382

24 **19-6-409**, as last amended by Laws of Utah 2002, Chapter 256

25 **19-6-419**, as last amended by Laws of Utah 1997, Chapter 172

26 **19-6-423**, as last amended by Laws of Utah 1997, Chapter 172

28 *Be it enacted by the Legislature of the state of Utah:*

29 Section 1. Section **19-6-405.3** is amended to read:

30 **19-6-405.3. Creation of Petroleum Storage Tank Loan Fund -- Purposes -- Loan**
31 **eligibility -- Loan restrictions -- Rulemaking.**

32 (1) There is created [~~the~~] a revolving loan fund [~~entitled~~] known as the Petroleum
33 Storage Tank Loan Fund.

34 (2) The sources of monies for the loan fund are:

35 (a) appropriations to the loan fund;

36 (b) principal and interest received from the repayment of loans made by the executive
37 secretary under Subsection (3); and

38 (c) all investment income derived from money in the fund.

39 (3) The executive secretary may loan, in accordance with this section, monies
40 available in the loan fund to [~~persons~~] a person to be used for:

41 (a) upgrading a petroleum storage [~~tanks and associated piping with corrosion~~
42 ~~protection, or spill and overfill prevention equipment as necessary to meet the federal deadline~~
43 ~~required under 40 CFR 280.21~~] tank;

44 (b) replacing an underground storage [~~tanks~~] tank; or

45 (c) permanently closing an underground storage [~~tanks~~] tank.

46 (4) A person may apply to the executive secretary for a loan under Subsection (3) if all
47 tanks owned or operated by that person are in substantial compliance with all state and federal
48 requirements or will be brought into substantial compliance using money from the loan fund.

49 (5) The executive secretary shall consider loan applications under Subsection (4) to
50 meet the following objectives:

51 (a) support availability of gasoline in rural parts of the state;

52 (b) support small businesses; and

53 (c) reduce the threat of a petroleum release endangering the environment.

54 (6) Loans made under this section [~~shall~~] may not:

55 (a) be for [~~no~~] more than [~~\$45,000~~] \$150,000 for all tanks at any one facility;

56 (b) be for [~~no~~] more than [~~\$15,000~~] \$50,000 per tank;

57 (c) be for [~~no~~] more than 80% of the total cost of:

- 58 (i) upgrading a tank [~~and associated piping to meet requirements of 40 CFR 280.21~~];
- 59 (ii) replacing the underground storage tank; or
- 60 (iii) permanently closing the underground storage tank;
- 61 (d) have a fixed annual interest rate of 3%;
- 62 (e) have a term no longer than 10 years;
- 63 (f) be made on the condition the loan applicant obtains adequate security for the loan
- 64 as established by board rule under Subsection (7); and
- 65 (g) comply with rules made by the board under Subsection (7).

66 (7) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act,
67 the board shall make rules establishing:

- 68 (a) form, content, and procedure for a loan [applications] application;
- 69 (b) criteria and procedures for prioritizing a loan [applications] application;
- 70 (c) requirements and procedures for securing [loans] a loan;
- 71 (d) procedures for making [the loans] a loan;
- 72 (e) procedures for administering and ensuring repayment of [loans] a loan, including
- 73 late payment penalties; and
- 74 (f) procedures for recovering on a defaulted [loans] loan.

75 (8) [~~The decisions of~~] A decision by the executive secretary [in loaning] to loan money
76 from the loan fund and otherwise [administering] administer the loan fund [are] is not subject
77 to Title 63G, Chapter 4, Administrative Procedures Act.

78 (9) The Legislature shall appropriate monies from the loan fund to the department for
79 the administration of the loan [fund to the department from the loan fund].

80 (10) The executive secretary may enter into [agreements] an agreement with a public
81 [entities] entity or private [organizations] organization to perform [any tasks] a task associated
82 with administration of the loan fund.

83 Section 2. Section **19-6-409** is amended to read:

84 **19-6-409. Petroleum Storage Tank Trust Fund created -- Source of revenues.**

85 (1) (a) There is created a private-purpose trust fund entitled the "Petroleum Storage

86 Tank Trust Fund."

87 (b) The sole sources of revenues for the fund are:

88 (i) petroleum storage tank fees paid under Section 19-6-411;

89 (ii) underground storage tank installation company permit fees paid under Section
90 19-6-411;

91 (iii) the environmental assurance fee and [~~any~~] penalties[;] paid under Section
92 19-6-410.5; and

93 (iv) [~~any~~] interest accrued on [~~these~~] revenues listed in this Subsection (1)(b).

94 (c) Interest earned on fund monies [~~shall be~~] is deposited into the fund.

95 [~~(2) Fund monies may be used to pay:~~]

96 (2) The executive secretary may expend monies from the fund to pay costs:

97 (a) [~~costs as provided in~~] covered by the fund under Section 19-6-419; [and]

98 [~~for the administration of the fund and the~~]

99 (b) of administering the:

100 (i) fund; and

101 (ii) environmental assurance program and fee under Section 19-6-410.5[-];

102 (c) incurred by the state for a legal service or claim adjusting service provided in
103 connection with a claim, judgment, award, or settlement for bodily injury or property damage
104 to a third party;

105 (d) incurred by the state risk manager in determining the actuarial soundness of the
106 fund;

107 (e) incurred by a third party claiming injury or damages from a release reported on or
108 after May 11, 2010, for hiring a certified underground storage tank consultant:

109 (i) to review an investigation or corrective action by a responsible party; and

110 (ii) in accordance with Subsection (4); and

111 (f) allowed under this part that are not listed under this Subsection (2).

112 (3) Costs for the administration of the fund and the environmental assurance fee shall
113 be appropriated by the Legislature.

114 ~~[(4) The executive secretary may expend monies from the fund for:]~~
115 ~~[(a) legal and claims adjusting costs incurred by the state in connection with claims;~~
116 ~~judgments, awards, or settlements for bodily injury or property damage to third parties;]~~
117 ~~[(b) costs incurred by the state risk manager in determining the actuarial soundness of~~
118 ~~the fund; and]~~
119 ~~[(c) other costs as provided in this part.]~~
120 (4) The executive secretary shall:
121 (a) in paying costs under Subsection (2)(e):
122 (i) determine a reasonable limit on costs paid based on the:
123 (A) extent of the release;
124 (B) impact of the release; and
125 (C) services provided by the certified underground storage tank consultant;
126 (ii) pay, per release, costs for one certified underground storage tank consultant agreed
127 to by all third parties claiming damages or injury;
128 (iii) include costs paid in the coverage limits allowed under Section 19-6-419; and
129 (iv) not pay legal costs of third parties;
130 (b) review and give careful consideration to reports and recommendations provided by
131 a certified underground storage tank consultant hired by a third party; and
132 (c) make reports and recommendations provided under Subsection (4)(b) available on
133 the Division of Environmental Response and Remediation's website.

134 Section 3. Section **19-6-419** is amended to read:

135 **19-6-419. Costs covered by the fund -- Costs paid by owner or operator --**

136 **Payments to third parties -- Apportionment of costs.**

137 (1) If all requirements of this part have been met and a release occurs from a tank that
138 is covered by the fund, the costs per release ~~[shall be]~~ are covered as provided under this
139 section.

140 (2) ~~[The]~~ For releases reported before May 11, 2010, the responsible party shall pay:

141 (a) the first \$10,000 of costs; and

- 142 (b) (i) all costs over \$1,000,000, if the release was from a tank:
- 143 (A) located at a facility engaged in petroleum production, refining, or marketing; or
- 144 (B) with an average monthly facility throughput of more than 10,000 gallons; and
- 145 (ii) all costs over \$500,000, if the release was from a tank:
- 146 (A) not located at a facility engaged in petroleum production, refining, or marketing;
- 147 and
- 148 (B) with an average monthly facility throughput of 10,000 gallons or less.

149 (3) [H] For releases reported before May 11, 2010, if money is available in the fund
150 and the responsible party has paid costs of \$10,000, the executive secretary shall pay costs
151 from the fund in an amount not to exceed:

- 152 (a) \$990,000 if the release was from a tank:
- 153 (i) located at a facility engaged in petroleum production, refining, or marketing; or
- 154 (ii) with an average monthly facility throughput of more than 10,000 gallons; and
- 155 (b) \$490,000 if the release was from a tank:
- 156 (i) not located at a facility engaged in petroleum production, refining, or marketing;
- 157 and
- 158 (ii) with an average monthly facility throughput of 10,000 gallons or less.

159 [~~(4) The total costs of tank releases regarding any responsible party that may be paid~~
160 ~~in any fiscal year by fund monies are:]~~

- 161 [~~(a) \$990,000 for a responsible party of one to 99 petroleum storage tanks; or]~~
- 162 [~~(b) \$1,990,000 for a responsible party of 100 or more petroleum storage tanks.]~~
- 163 (4) For a release reported on or after May 11, 2010, the responsible party shall pay:
- 164 (a) the first \$10,000 of costs; and
- 165 (b) (i) all costs over \$2,000,000, if the release was from a tank:
- 166 (A) located at a facility engaged in petroleum production, refining, or marketing; or
- 167 (B) with an average monthly facility throughput of more than 10,000 gallons; and
- 168 (ii) all costs over \$1,000,000, if the release was from a tank:
- 169 (A) not located at a facility engaged in petroleum production, refining, or marketing;

170 and

171 (B) with an average monthly facility throughput of 10,000 gallons or less.

172 (5) For a release reported on or after May 11, 2010, if money is available in the fund

173 and the responsible party has paid costs of \$10,000, the executive secretary shall pay costs

174 from the fund in an amount not to exceed:

175 (a) \$1,990,000 if the release was from a tank:

176 (i) located at a facility engaged in petroleum production, refining, or marketing; or

177 (ii) with an average monthly facility throughput of more than 10,000 gallons; and

178 (b) \$990,000 if the release was from a tank:

179 (i) not located at a facility engaged in petroleum production, refining, or marketing;

180 and

181 (ii) with an average monthly facility throughput of 10,000 gallons or less.

182 (6) The executive secretary may pay fund monies to a responsible party up to the

183 following amounts in a fiscal year:

184 (a) \$1,990,000 to a responsible party owning or operating less than 100 petroleum
185 storage tanks; or

186 (b) \$3,990,000 to a responsible party owning or operating 100 or more petroleum
187 storage tanks.

188 ~~[(5)]~~ (7) (a) In authorizing payments for costs from the fund, the executive secretary
189 shall apportion monies;

190 (i) first, to the following type of expenses incurred by the state:

191 (A) legal[;];

192 (B) adjusting[;]; and

193 (C) actuarial [expenses incurred by the state; expenses incurred in];

194 (ii) second, to costs incurred for:

195 (A) investigation[;];

196 (B) abatement action[;]; and

197 (C) corrective action; and [then]

198 (iii) third, to payment of;

199 (A) judgments[;];

200 (B) awards[~~;~~ or]; and

201 (C) settlements to third parties for bodily injury or property damage.

202 (b) The board shall make rules governing the apportionment of costs among third
203 party claimants.

204 Section 4. Section **19-6-423** is amended to read:

205 **19-6-423. Claim or suit against responsible parties -- Prerequisites for payment**
206 **from fund to responsible parties or third parties -- Limitations of liability for third party**
207 **claims.**

208 (1) (a) [~~In order to be eligible for~~] The executive secretary may authorize payments
209 from the fund[~~;~~ if] to a responsible party if the responsible party receives actual or constructive
210 notice [~~of an occurrence~~];

211 (i) of a release likely to give rise to a claim[~~;~~ that a]; or

212 (ii) that in connection with a release a:

213 (A) suit has been filed[;]; or [a]

214 (B) claim has been made against [him] the responsible party for:

215 (I) bodily injury; or

216 (II) property damage [~~connected with a release of petroleum from a petroleum storage~~
217 tank, the].

218 (b) A responsible party described in Subsection (1)(a) shall:

219 [~~(a)~~] (i) inform the state risk manager immediately of [the occurrence] a release, suit,
220 or claim described in Subsection (1)(a);

221 [~~(b)~~] (ii) allow the state risk manager and [his] the state risk manager's legal counsel to
222 participate with the responsible party and [his] the responsible party's legal counsel in:

223 [(i)] (A) the defense of [any] a suit;

224 [(ii)] (B) determination of legal strategy [~~and any~~];

225 (C) other decisions affecting the defense of [any] a suit; and

226 ~~[(iii) any]~~ (D) settlement negotiations; and

227 ~~[(e)]~~ (iii) conduct the defense of ~~[any]~~ a suit or claim in good faith.

228 (2) The executive secretary may ~~[not]~~ authorize payment of fund monies for ~~[any]~~ a

229 judgment or award to third parties ~~[unless]~~ if the state risk manager:

230 (a) ~~[indicates that he was not prevented from participating]~~ is allowed to participate in

231 the defense of the suit as required under Subsection (1)(b); and

232 (b) approves the settlement.

233 (3) ~~[In making payments to third parties from the fund]~~ The executive secretary may

234 make a payment from the fund to a third party pursuant to Section 19-6-421[;] or ~~[in funding~~

235 ~~a] fund a corrective action plan pursuant to Section 19-6-420[; the executive secretary may not~~

236 ~~pay an award or judgment or fund a corrective action plan to the extent that it imposes any~~

237 ~~liability or makes any]~~ if the payment or funding does not impose a liability or make a

238 payment for:

239 (a) ~~[obligations]~~ an obligation of a responsible party ~~[under a]~~ for:

240 (i) workers' compensation[;] benefits;

241 (ii) disability benefits[; or];

242 (iii) unemployment compensation [law or other similar law]; or

243 (iv) other benefits similar to benefits described in Subsections (3)(a)(i) through (iii);

244 (b) a bodily injury ~~[to an]~~ award to:

245 (i) a responsible party's employee [of the responsible party] arising from and in the

246 course of [his] the employee's employment; or [to]

247 (ii) the spouse, child, parent, brother, sister, heirs, or personal representatives of [that]

248 the employee [as a result of that bodily injury] described in Subsection (3)(b)(i);

249 (c) bodily injury or property damage arising from the ownership, maintenance, use, or

250 entrustment to others of ~~[any]~~ an aircraft, motor vehicle, or watercraft;

251 (d) property damage to ~~[any]~~ a property owned by, occupied by, rented to, loaned to,

252 bailed to, or otherwise in the care, custody, or control of ~~[the owner or operator]~~ a responsible

253 party except to the extent necessary to complete a corrective action plan;

254 (e) bodily injury or property damage for which ~~[the]~~ a responsible party is obligated to
255 pay damages ~~[only]~~ by reason of the assumption of liability in a contract or agreement~~[-other~~
256 ~~than a]~~ unless the responsible party entered into the contract or agreement ~~[entered into]~~ to
257 meet the financial responsibility requirements of:

258 (i) Subtitle I of the Resource Conservation and Recovery Act, 42 U.S.C.~~[-Section]~~
259 Sec. 6991c[-] et seq., or regulations issued under this act; or

260 (ii) this part, or ~~[regulations or]~~ rules made under ~~[either of them]~~ this part;

261 (f) bodily injury or property damage for which ~~[the]~~ a responsible party is liable to a
262 third party solely on account of personal injury to the third party's spouse ~~[of that third party];~~

263 (g) bodily injury ~~[or]~~, property damage, or the cost of corrective action caused by ~~[a~~
264 ~~release from a petroleum storage tank]~~ releases reported before May 11, 2010 that are covered
265 by the fund ~~[or the cost of a corrective action plan, where]~~ if the total amount previously paid
266 by the executive secretary to compensate third parties ~~[or for funding a]~~ and fund corrective
267 action ~~[plan in respect to that same accidental release from the covered tank equals \$990,000;~~
268 ~~or]~~ plans for the releases equals:

269 ~~[(h) bodily injury or property damage caused by a release from a petroleum storage~~
270 ~~tank covered by the fund or the cost of a corrective action plan when the total amount~~
271 ~~previously paid by the executive secretary to compensate third parties or for funding corrective~~
272 ~~action plans in respect to releases from tanks of any one responsible party during any fiscal~~
273 ~~year equals \$990,000 for a responsible party regarding one to 99 petroleum storage tanks or~~
274 ~~\$1,990,000 for a responsible party regarding 100 or more petroleum storage tanks.]~~

275 (i) \$990,000 for a single release; and

276 (ii) for all releases by a responsible party in a fiscal year:

277 (A) \$1,990,000 for a responsible party owning less than 100 petroleum storage tanks;

278 and

279 (B) \$3,990,000 for a responsible party owning 100 or more petroleum storage tanks;

280 and

281 (h) bodily injury, property damage, or the cost of corrective action caused by releases

282 reported on or after May 11, 2010, covered by the fund if the total amount previously paid by
283 the executive secretary to compensate third parties and fund corrective action plans for the
284 releases equals:

285 (i) \$1,990,000 for a single release; and

286 (ii) for all releases by a responsible party in a fiscal year:

287 (A) \$1,990,000 for a responsible party owning less than 100 petroleum storage tanks;

288 and

289 (B) \$3,990,000 for a responsible party owning 100 or more petroleum storage tanks.