

**UNDERGROUND STORAGE TANK PROGRAM AMENDMENTS**

1998 GENERAL SESSION

STATE OF UTAH

**Sponsor: Bill Wright**

AN ACT RELATING TO THE ENVIRONMENT; CREATING A TRUST FUND TO PROVIDE FOR EXPENSES OF CLEANUP OF RELEASES FROM TANKS NOT COVERED BY THE PETROLEUM STORAGE TANK FUND; SPECIFYING SOURCES OF FUNDING FOR THE TRUST FUND, INCLUDING RECOVERED CLEANUP COSTS; APPROPRIATING FOR FISCAL YEAR 1998-99 \$2,000,000 FROM THE PETROLEUM STORAGE TANK TRUST FUND TO THIS CLEANUP FUND; AND PROVIDING AN EFFECTIVE DATE.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:

**19-6-409**, as last amended by Chapters 172 and 272, Laws of Utah 1997

**19-6-418**, as last amended by Chapter 214, Laws of Utah 1992

**19-6-420**, as last amended by Chapter 172, Laws of Utah 1997

**19-6-424.5**, as last amended by Chapter 297, Laws of Utah 1994

ENACTS:

**19-6-405.7**, Utah Code Annotated 1953

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

Section 1. Section **19-6-405.7** is enacted to read:

**19-6-405.7. Petroleum Storage Tank Cleanup Fund - Revenue and purposes.**

(1) There is created an expendable trust fund entitled the Petroleum Storage Tank Cleanup Fund, which is referred to in this section as the cleanup fund.

(2) The cleanup fund sources of revenue are:

(a) any voluntary contributions received by the department for the cleanup of facilities;

(b) legislative appropriations made to the cleanup fund; and

(c) costs recovered under this part.

(3) The cleanup fund shall earn interest, which shall be deposited in the cleanup fund.

(4) The executive secretary may use the cleanup fund monies for administration.

investigation, abatement action, and preparing and implementing a corrective action plan regarding releases not covered by the Petroleum Storage Tank Trust Fund created in Section 19-6-409.

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

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

(1) (a) There is created an expendable trust fund entitled the Petroleum Storage Tank Trust Fund.

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

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

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

(iii) the environmental assurance fee paid under Section 19-6-410.5[; ~~and~~].

~~[(iv) costs recovered under this part.]~~

(c) Interest earned on fund monies shall be deposited into the fund.

(2) Fund monies may be used to pay:

(a) costs as provided in Section 19-6-419; and

(b) for the administration of the fund and the environmental assurance program and fee under Section 19-6-410.5.

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

(4) The executive secretary may expend monies from the fund for:

(a) legal and claims adjusting costs incurred by the state in connection with claims, judgments, awards, or settlements for bodily injury or property damage to third parties;

(b) costs incurred by the state risk manager in determining the actuarial soundness of the fund; and

(c) other costs as provided in this part.

(5) For fiscal year 1997-98, money in the Petroleum Storage Tank Trust Fund, up to a maximum of \$2,200,000, may be appropriated by the Legislature to the department as nonlapsing funds to be applied to the costs of investigation, abatement, and corrective action regarding releases not covered by the fund and not on the national priority list as defined in Section 19-6-302.

(6) The Legislature may appropriate \$2,000,000 for fiscal year 1998-99 from the Petroleum Storage Tank Trust Fund to the Petroleum Storage Tank Cleanup Fund created in Section 19-6-405.7.

Section 3. Section **19-6-418** is amended to read:

**19-6-418. Recovery of costs by executive secretary.**

(1) The executive secretary may recover:

(a) from a responsible party the proportionate share of costs the party is responsible for as determined under Section 19-6-424.5;

(b) any amount required to be paid by the owner under this part which the owner has not paid; and

(c) costs of collecting the amounts in Subsections (1)(a) and (1)(b).

(2) The executive secretary may pursue an action or recover costs from any other person if that person caused or substantially contributed to the release.

(3) All costs recovered under this section shall be deposited in the Petroleum Storage Tank Cleanup Fund created in Section 19-6-405.7.

Section 4. Section **19-6-420** is amended to read:

**19-6-420. Releases -- Abatement actions -- Corrective actions.**

(1) If the executive secretary determines that a release from a petroleum storage tank has occurred, he shall:

(a) identify and name as many of the responsible parties as reasonably possible; and

(b) determine which responsible parties, if any, are covered by the fund regarding the release in question.

(2) Regardless of whether the tank generating the release is covered by the fund, the executive secretary may:

(a) order the owner or operator to take abatement, investigative, or corrective action, including the submission of a corrective action plan; and

(b) if the owner or operator fails to take any of the abatement, investigative, or corrective action ordered by the executive secretary, the executive secretary may take any one or more of the

following actions:

(i) subject to the conditions in this part, use monies from the fund, if the tank involved is covered by the fund, [or] state cleanup appropriation, or the Petroleum Storage Tank Cleanup Fund created under Section 19-6-405.7 to perform investigative, abatement, or corrective action;

(ii) commence an enforcement proceeding;

(iii) enter into agreements or issue orders as allowed by Section 19-6-424.5; or

(iv) recover costs from responsible parties equal to their proportionate share of liability as determined by Section 19-6-424.5.

(3) (a) Subject to the limitations established in Section 19-6-419, the executive secretary shall provide monies from the fund for abatement action for a release generated by a tank covered by the fund if:

(i) the owner or operator takes the abatement action ordered by the executive secretary; and

(ii) the executive secretary approves the abatement action.

(b) If a release presents the possibility of imminent and substantial danger to the public health or the environment, the owner or operator may take immediate abatement action and petition the executive secretary for reimbursement from the fund for the costs of the abatement action. If the owner or operator can demonstrate to the satisfaction of the executive secretary that the abatement action was reasonable and timely in light of circumstances, the executive secretary shall reimburse the petitioner for costs associated with immediate abatement action, subject to the limitations established in Section 19-6-419.

(c) The owner or operator shall notify the executive secretary within 24 hours of the abatement action taken.

(4) (a) If the executive secretary determines corrective action is necessary, the executive secretary shall order the owner or operator to submit a corrective action plan to address the release.

(b) If the owner or operator submits a corrective action plan, the executive secretary shall review the corrective action plan and approve or disapprove the plan.

(c) In reviewing the corrective action plan, the executive secretary shall consider the following:

- (i) the threat to public health;
- (ii) the threat to the environment; and
- (iii) the cost-effectiveness of alternative corrective actions.

(5) If the executive secretary approves the corrective action plan or develops his own corrective action plan, he shall:

- (a) approve the estimated cost of implementing the corrective action plan;
- (b) order the owner or operator to implement the corrective action plan;
- (c) (i) if the release is covered by the fund, determine the amount of fund monies to be

allocated to an owner or operator to implement a corrective action plan; and

(ii) subject to the limitations established in Section 19-6-419, provide monies from the fund to the owner or operator to implement the corrective action plan.

(6) (a) The executive secretary may not distribute any monies from the fund for corrective action until the owner or operator obtains the executive secretary's approval of the corrective action plan.

(b) An owner or operator who begins corrective action without first obtaining approval from the executive secretary and who is covered by the fund may be reimbursed for the costs of the corrective action, subject to the limitations established in Section 19-6-419, if:

(i) the owner or operator submits the corrective action plan to the executive secretary within seven days after beginning corrective action; and

(ii) the executive secretary approves the corrective action plan.

(7) If the executive secretary disapproves the plan, he shall solicit a new corrective action plan from the owner or operator.

(8) If the executive secretary disapproves the second corrective action plan, or if the owner or operator fails to submit a second plan within a reasonable time, the executive secretary may:

- (a) develop his own corrective action plan; and
- (b) act as authorized under Subsections (2) and (5).

(9) (a) When notified that the corrective action plan has been implemented, the executive secretary shall inspect the location of the release to determine whether or not the corrective action

has been properly performed and completed.

(b) If the executive secretary determines the corrective action has not been properly performed or completed, he may issue an order requiring the owner or operator to complete the corrective action within the time specified in the order.

Section 5. Section **19-6-424.5** is amended to read:

**19-6-424.5. Apportionment of liability -- Liability agreements -- Legal remedies -- Amounts recovered.**

(1) After providing notice and opportunity for comment to responsible parties identified and named under Section 19-6-420, the executive secretary may:

(a) issue written orders determining responsible parties;

(b) issue written orders apportioning liability among responsible parties; and

(c) take action, including legal action or issuing written orders, to recover costs from responsible parties, including costs of any investigation, abatement, and corrective action performed under this part.

(2) (a) In any apportionment of liability, whether made by the executive secretary or made in any administrative proceeding or judicial action, the following standards apply:

(i) liability shall be apportioned among responsible parties in proportion to their respective contributions to the release; and

(ii) the apportionment of liability shall be based on equitable factors, including the quantity, mobility, persistence, and toxicity of regulated substances contributed by a responsible party, and the comparative behavior of a responsible party in contributing to the release, relative to other responsible parties.

(b) (i) The burden of proving proportionate contribution shall be borne by each responsible party.

(ii) If a responsible party does not prove his proportionate contribution, the court, the board, or the executive secretary shall apportion liability to the party based on available evidence and the standards of Subsection (2)(a).

(c) The court, the board, or the executive secretary may not impose joint and several liability.

(d) Each responsible party is strictly liable for his share of costs.

(3) The failure of the executive secretary to name all responsible parties is not a defense to an action under this section.

(4) The executive secretary may enter into an agreement with any responsible party regarding that party's proportionate share of liability or any action to be taken by that party.

(5) The executive secretary and a responsible party may not enter into an agreement under this part unless all responsible parties named and identified under Subsection 19-6-420(1)(a):

(a) have been notified in writing by either the executive secretary or the responsible party of the proposed agreement; and

(b) have been given an opportunity to comment on the proposed agreement prior to the parties' entering into the agreement.

(6) (a) Any party who incurs costs under this part in excess of his liability may seek contribution from any other party who is or may be liable under this part for the excess costs in the district court.

(b) In resolving claims made under Subsection (6)(a), the court shall allocate costs using the standards in Subsection (2).

(7) (a) A party who has resolved his liability under this part is not liable for claims for contribution regarding matters addressed in the agreement or order.

(b) (i) An agreement or order determining liability under this part does not discharge any of the liability of responsible parties who are not parties to the agreement or order, unless the terms of the agreement or order expressly provide otherwise.

(ii) An agreement or order determining liability made under this subsection reduces the potential liability of other responsible parties by the amount of the agreement or order.

(8) (a) If the executive secretary obtains less than complete relief from a party who has resolved his liability under this section, the executive secretary may bring an action against any party who has not resolved his liability as determined in an order.

(b) In apportioning liability, the standards of Subsection (2) apply.

(c) A party who resolved his liability for some or all of the costs under this part may seek

contribution from any person who is not a party to the agreement or order.

(9) (a) An agreement or order determining liability under this part may provide that the executive secretary will pay for costs of actions that the parties have agreed to perform, but which the executive secretary has agreed to finance, under the terms of the agreement or order.

(b) If the executive secretary makes payments from the fund or state cleanup appropriation, he may recover the amount paid using the authority of Section 19-6-420 and this section or any other applicable authority.

(c) Any amounts recovered under this section shall be deposited in the Petroleum Storage Tank Cleanup Fund created under Section 19-6-405.7.

**Section 6. Appropriation.**

There is appropriated for fiscal year 1998-99 \$2,000,000 from the Petroleum Storage Tank Trust Fund, created in Section 19-6-409, to the Petroleum Storage Tank Cleanup Fund which is created in Section 19-6-405.7.

**Section 7. Effective date.**

This act takes effect on July 1, 1998.