

(H.83)

An act relating to underground storage tanks and the petroleum cleanup fund.

It is hereby enacted by the General Assembly of the State of Vermont:

Sec. 1. 10 V.S.A. § 1922 is amended to read:

§ 1922. DEFINITIONS

* * *

(15) “Public building” shall have the same meaning as defined in 20 V.S.A. § 2730.

(B) Use of any portion of a building in a manner described in this subsection shall make the entire building a “public building” for purposes of this subsection. For purposes of this subsection, a “person” does not include an individual who is directly related to the employer and who resides in the employment-related building.

Sec. 2. 10 V.S.A. § 1926(a) is amended to read:

(a) Any underground storage tank that does not meet new construction standards as prescribed by the rules, and which has not been used for a period of one year shall be closed in accordance with tank closure requirements prescribed by the rules. Any underground storage tank which has not been used for a period of one year may be closed in accordance with tank closure requirements prescribed by rules adopted under this chapter.

Sec. 3. 10 V.S.A. § 1929b is added to read:

§ 1929b. REGULATION OF HEATING OIL TANKS AT PUBLIC BUILDINGS

The secretary shall establish tank registration requirements for underground storage tanks equal to or less than 1,100 gallons which are or have been used to contain fuel oil for on-premise heating purposes at a public building.

Sec. 4. 10 V.S.A. § 1941(b) and (g) are amended to read:

(b) The secretary may authorize disbursements from the fund for the purpose of the cleanup and restoration of contaminated soil and groundwater caused by releases of petroleum from underground storage tanks and aboveground storage tanks, including air emissions for remedial actions, and for compensation of third parties for injury and damage caused by a release.

This fund shall be used for no other governmental purposes, nor shall any portion of the fund ever be available to borrow from by any branch of government; it being the intent of the legislature that this fund and its increments shall remain intact and inviolate for the purposes set out in this chapter. Disbursements under this section may be made only for uninsured costs incurred after January 1, 1987 and for which a claim is made prior to July 1, ~~2009~~ 2014 and judged to be in conformance with prevailing industry rates. This includes:

* * *

(7) administrative and field supervision costs incurred by the secretary in carrying out the provisions of this subchapter. Annual disbursements shall not exceed ~~four~~ six percent of annual receipts;

* * *

(g) The owner of a farm or residential heating fuel storage tank used for on-premises heating or an underground or aboveground heating fuel storage tank used for on-premises heating by a mobile home park resident, as defined in section 6201 of this title, ~~that~~ who desires assistance to close, replace, or upgrade the tank may apply to the secretary for such assistance. The financial assistance may be in the form of grants of up to ~~\$1,000.00~~ \$2,000.00 or the costs of closure, replacement, or upgrade, whichever is less. Grants shall be made only to the current property owners, except at mobile home parks where a grant may be awarded to a mobile home park resident. To be eligible to receive the grant, an environmental site assessment must be conducted by a qualified consultant during the tank closure, replacement, or upgrade if the tank is an underground heating fuel storage tank. In addition, if the closed tank is to be replaced with an underground heating fuel storage tank, the replacement tank and piping shall provide a level of environmental protection at least equivalent to that provided by a double wall tank and secondarily contained piping. Grants shall be awarded on a priority basis to projects that will avoid the greatest environmental or health risks. The secretary shall also give priority to applicants who are replacing their underground heating fuel

tanks with aboveground heating fuel storage tanks that will be installed in accordance with the secretary's recommended standards. The secretary shall also give priority to lower income applicants. To be eligible to receive the grant, the owner must provide the previous year's financial information, and, if the replacement tank is an aboveground tank, must assure that any work to replace or upgrade a tank shall be done in accordance with industry standards (National Fire Protection Association, or NFPA, Code 31), as it existed on July 1, 2004, until another date or edition is specified by rule of the secretary. The secretary shall only authorize up to \$300,000.00 in assistance for underground and aboveground heating fuel tanks in any one fiscal year from the heating fuel account for this purpose. The application must be accompanied by the following information:

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Sec. 5. 10 V.S.A. § 1942 is amended to read:

§ 1942. PETROLEUM DISTRIBUTOR LICENSING FEE

(a) There is hereby established a licensing fee of one cent per gallon of motor fuel sold by a distributor or dealer or used by a user in this state, which will be assessed against every distributor, dealer or user as defined in 23 V.S.A. chapters 27 and 28, and which will be deposited into the petroleum cleanup fund. The secretary, in consultation with the Vermont Petroleum Association and the Vermont Fuel Dealers Association, Inc. shall annually determine whether or not to assess the one-cent licensing fee for the upcoming

year. If the unencumbered balance of the motor fuel account of the fund established under subsection 1941(a) of this title is equal to or greater than \$7,000,000.00, then the one-cent licensing assessment for the upcoming year shall not be assessed. If the unencumbered balance in the fund is less than \$7,000,000, then the annual fee may be assessed. The secretary shall notify all sellers assessing this fee of the status of the fee for the upcoming year. This fee will be paid in the same manner, at the same time, and subject to the same restrictions or limitations as the tax on motor fuels. The fee will be collected by the commissioner of motor vehicles and deposited into the petroleum cleanup fund. This fee requirement shall terminate on April 1, ~~2014~~ 2016.

(b) There is assessed against every seller receiving more than \$10,000.00 annually for the retail sale of heating oil ~~or~~, kerosene, or other dyed diesel fuel sold in this state and not used to propel a motor vehicle, a licensing fee of one-half cent per gallon of such heating oil ~~or~~, kerosene, or other dyed diesel fuel. This fee shall be subject to the collection, administration, and enforcement provisions of chapter 233 of Title 32, and the fees collected under this subsection by the commissioner of taxes shall be deposited into the petroleum cleanup fund. The secretary, in consultation with the Vermont Petroleum Association and the Vermont Fuel Dealers Association, Inc. shall annually determine whether or not to assess the one-half cent licensing fee for the upcoming year. If the unencumbered balance of heating fuel account of the fund established under subsection 1941(a) of this title is equal to or greater

than \$3,000,000.00, then the one-half cent licensing assessment for the upcoming year shall not be assessed. If the unencumbered balance in the fund is less than ~~\$3,000,000~~ \$3,000,000.00, then the annual fee may be assessed.

The secretary shall notify all sellers assessing this fee of the status of the fee for the upcoming year. This fee provision shall terminate April 1, ~~2011~~ 2016.

Sec. 6. 10 V.S.A. § 1943 is amended to read:

§ 1943. PETROLEUM TANK ASSESSMENT

(a) Each owner of a category one tank used for storage of petroleum products shall remit to the secretary on October 1 of each year beginning October 1, 1988, \$100.00 per tank, which shall be deposited to the petroleum cleanup fund established by section 1941 of this title, except that:

(1) The fee shall be \$50.00 per tank for retail gasoline outlets that sell less than 40,000 gallons of motor fuel per month.

(2) The fee shall be reduced by 50 percent if the owner or permittee provides to the satisfaction of the secretary evidence of financial responsibility to allow the taking of corrective action in the amount of \$100,000.00 per occurrence and the compensation of third parties for bodily injury and property damage in the amount of \$300,000.00 per occurrence.

(3) The fee shall be relieved if the owner provides to the satisfaction of the secretary, evidence of financial responsibility to allow the taking of corrective action and the compensation of third parties for bodily injury and property damage each in the amount of \$1,000,000.00 per occurrence.

(4) The fee for retail motor fuel outlets selling 20,000 gallons or less per month shall not exceed \$100.00 per year for all tanks at a single location.

(5) The fee shall be \$50.00 per tank for any municipality that uses less than an annual average of 40,000 gallons of motor fuel per month, provided that all of the tanks of that municipality meet the requirements of this chapter.

(b) For purposes of this section, an occurrence is an accident, including continuous or repeated exposure to conditions, which results in the release of petroleum from one or more underground storage tanks at the same site.

(c) This tank assessment shall terminate on July 1, ~~2009~~ 2014.

(d) The secretary shall establish forms and procedures for the payment of the petroleum tank assessment, including a notice of the obligation 30 days prior to being due. Failure to receive notice shall not waive the payment obligation.

Sec. 7. 32 V.S.A. § 3102(d)(3) is amended to read:

(3) to any person who inquires, provided that the information is limited to whether a person is registered to collect Vermont income withholding, sales and use, or meals and rooms tax; whether a person is in good standing with respect to the payment of these taxes; whether a person is authorized to buy or sell property free of tax; or whether a person holds a valid license under ~~chapters 201, chapter 205, or 239 of this title~~ or section 1942 of Title 10;

Sec. 8. PETROLEUM CLEANUP FUND ADVISORY COMMITTEE
STUDY

(a) The petroleum cleanup fund advisory committee, in consultation with the Vermont departments of taxes and of motor vehicles, shall determine whether the fees assessed pursuant to subsections 1942(a) and (b) of Title 10 should be collected by the department of motor vehicles or the department of taxes, develop a plan for implementing a single-agency collection, and present the plan to the general assembly on or before October 10, 2009.

(b) The petroleum cleanup fund advisory committee shall examine how disbursements from the petroleum cleanup fund are authorized when an owner or operator of an underground storage tank removes a tank for inspection, replacement, or remediation. The committee shall review whether an owner or operator of an underground storage tank should be compensated the maximum eligible amount for expenses related to remediation when contamination is identified and such contamination was caused by a prior spill or leaking underground storage tank that previous remediation failed to address. A summary of the advisory committee's discussion and its recommendations under this subsection shall be included in the 2010 annual report submitted to the general assembly.

Sec. 9. 10 V.S.A. § 1944 is amended to read:

§ 1944. UNDERGROUND STORAGE TANK LOAN ASSISTANCE
PROGRAM

* * *

(b) Loans shall be made to the person who owns the existing motor fuel tanks or will own the new motor fuel tanks. Loans will be in accordance with terms and conditions established by the secretary which shall include but not be limited to requirements that:

* * *

(4) loans have a satisfactory maturity date, in no case later than ten years from the date of the loan. The secretary may, upon a showing of financial hardship by the person who took out the loan, extend the maturity date for not more than an additional five years.

(c) The loans will be at a zero interest rate, except that a person who owns five or more facilities shall have an interest rate of ~~four~~ two percent. As used in this subsection, “facility” shall mean the property upon which a category one tank is located.

Sec. 9a. 33 V.S.A. § 2503 is amended to read:

§ 2503. FUEL GROSS RECEIPTS TAX

(a) There is imposed a gross receipts tax of 0.5 percent on the retail sale of the following types of fuel by sellers receiving more than \$10,000.00 annually for the sale of such fuels:

(1) ~~heating oil and kerosene not used to propel a motor vehicle dyed~~
diesel fuel used for heating;

(2) propane;

(3) natural gas;

(4) electricity;

(5) coal.

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Sec. 9b. 10 V.S.A. § 583 is added to read:

§ 583. REPEAL OF STAGE II VAPOR RECOVERY REQUIREMENTS

(a) Effective January 1, 2013, all rules of the secretary pertaining to stage II vapor recovery controls at gasoline dispensing facilities are repealed. The secretary may not issue further rules requiring such controls. For purposes of this section, “stage II vapor recovery” means a system for gasoline vapor recovery of emissions from the fueling of motor vehicles as described in 42 U.S.C. § 7511a(b)(3).

(b) Prior to January 1, 2013, stage II vapor recovery rules shall not apply to:

(1) Any newly constructed gasoline dispensing facility that commences operation after May 1, 2009;

(2) Any existing gasoline dispensing facility that has an annual gasoline throughput of 400,000 gallons or more for the first time beginning with the 2009 calendar year;

(3) Any existing gasoline dispensing facility that, after May 1, 2009, commences excavation for the installation or repair of any below-ground component of the stage II vapor recovery system, including gasoline storage tanks, upon verification and approval by the secretary; or

(4) Any existing gasoline dispensing facility that, after May 1, 2009, replaces all of its existing gasoline dispensers with new gasoline dispensers that support triple data encryption standard (TDES) usage or replaces one or more of its gasoline dispensers pursuant to a plan to achieve full TDES compliance, upon verification and approval by the secretary.

(c) Within two years of January 1, 2013, or of the secretary's verification and approval that such stage II vapor recovery rules do not apply to a gasoline dispensing facility pursuant to subdivision (b)(3) or (4) of this section, whichever is earlier, each gasoline dispensing facility shall decommission its stage II vapor recovery systems, including below-ground components, pursuant to methods approved by the secretary.

Sec. 9c. 10 V.S.A. § 561(c) is amended to read:

(c) Any variance or renewal thereof shall be granted within the requirements of subsection (a) of this section and for time periods and under conditions consistent with the reasons therefore, and within the following limitations:

(1) If the variance is granted on the ground that there is no practicable means known or available for the adequate prevention, abatement, or control of

the air pollution involved, it shall be only until the necessary practicable means for prevention, abatement, or control become known and available, and subject to the taking of any substitute or alternate measures that the secretary may prescribe.

(2) If the variance is granted on the ground that compliance with the particular requirement or requirements from which variance is sought will necessitate the taking of measures which, because of their extent or cost, must be spread over a considerable period of time, it shall be for a period not to exceed such reasonable time as, in the view of the secretary is requisite for the taking of the necessary measures. A variance granted on the ground specified herein shall contain a time schedule for the taking of action in an expeditious manner and shall be conditioned on adherence to the time schedule.

(3) If the variance is granted on the ground that it is justified to relieve or prevent hardship of a kind other than that provided for in subdivisions (1) and (2) of this subsection, it shall be for not more than one year, except that a variance granted from the rules of the secretary pertaining to stage II vapor recovery controls at gasoline dispensing facilities shall be for a period that extends until January 1, 2013.

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Sec. 10. EFFECTIVE DATE

This act shall take effect on July 1, 2009.