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S.80

An act relating to miscellaneous environmental conservation subjects

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

* * * Dam Registration and Design Standards * * *

Sec. 1. 2018 Acts and Resolves No. 161, Sec. 2 is amended to read:

Sec. 2. DAM REGISTRATION PROGRAM REPORT

On or before January 1, ~~2023~~ 2025, the Department of Environmental Conservation shall submit a report to the House Committees on ~~Natural Resources, Fish, and Wildlife~~ Environment and Energy and on Ways and Means and the Senate Committees on Natural Resources and Energy and on Finance. The report shall contain:

- (1) an evaluation of the dam registration program under 10 V.S.A. chapter 43;
- (2) a recommendation on whether to modify the fee structure of the dam registration program;
- (3) a summary of the dams registered under the program, organized by amount of water impounded and hazard potential classification; and
- (4) an evaluation of any other dam safety concerns related to dam registration.

1 Sec. 2. 2018 Acts and Resolves No. 161, Sec. 3 is amended to read:

2 Sec. 3. ADOPTION OF RULES

3 The Secretary of Natural Resources shall adopt the rules required under
4 10 V.S.A. § 1110 as follows:

5 (1) the rules required under 10 V.S.A. § 1110(1) (exemptions),
6 § 1110(3) (emergency action plan), § 1110(4) (hazard potential classification),
7 § 1110(5) (dam registration), and § 1110(6) (dam inspection) shall be adopted
8 on or before July 1, 2020; and

9 (2) the rules required under 10 V.S.A. § 1110(2) (dam design standards)
10 shall be adopted on or before July 1, ~~2022~~ 2024.

11 * * * Public Waters; Encroachment * * *

12 Sec. 3. 29 V.S.A. § 402(7) is amended to read:

13 (7) “Public waters” means navigable waters excepting those waters in
14 private ponds and private preserves as set forth in 10 V.S.A. ~~chapter 119~~
15 § 1442.

16 * * * Salvage Yards * * *

17 Sec. 4. 24 V.S.A. § 2248(d) is amended to read:

18 (d) No person may deliver salvage vehicles to or operate a mobile salvage
19 vehicle crusher at a salvage yard that does not hold a certificate of registration
20 under this subchapter. A salvage yard holding a certificate of registration
21 under this subchapter shall post a copy of its current certificate in a clearly

1 visible location in the proximity of each entrance to the salvage yard.
2 Notwithstanding any other provision of law to the contrary, a salvage yard that
3 does not hold a certificate of registration under this subchapter may operate a
4 mobile salvage vehicle crusher with a liquids collection system, in accordance
5 with the rules adopted under this subchapter for vehicle crushing, for the
6 purpose of closing the salvage yard after first notifying the Secretary in writing
7 of the intent to close the salvage yard.

8 * * * Water Quality Financing; State Revolving Loan Funds * * *

9 Sec. 5. 24 V.S.A. § 4753 is amended to read:

10 § 4753. REVOLVING LOAN FUNDS; AUTHORITY TO SPEND; REPORT

11 (a) There is hereby established a series of special funds to be known as:

12 (1) The Vermont Environmental Protection Agency (EPA) Pollution
13 Control Revolving Fund, which shall be used, consistent with federal law, to
14 provide loans for planning and construction of clean water projects, including
15 acquisitions of project-related easements, land, options to purchase land, and
16 temporary or permanent rights-of-way, and for implementing related
17 management programs.

18 * * *

19 (10) The Vermont Wastewater and Potable Water Revolving Loan
20 Fund, which shall be used to provide loans to individuals, in accordance with
21 section 4763b of this title, for the design and construction of repairs to or

1 replacement of wastewater systems and potable water supplies when the
2 wastewater system or potable water supply is a failed system or supply as
3 defined in 10 V.S.A. § 1972, or when a designer demonstrates that the
4 wastewater system or potable water supply has a high probability of failing.
5 The amount of up to \$275,000.00 from the fees collected pursuant to 3 V.S.A.
6 § 2822(j)(4) or from the Fund established in subdivision (1) of this subsection,
7 or a combination of both, shall be deposited into this Fund at the beginning of
8 each fiscal year to ensure a minimum balance of available funds of
9 \$275,000.00 exists for each fiscal year.

10 (b)(1) Each of such funds shall be established and held separate and apart
11 from any other funds or monies of the State and shall be used and administered
12 exclusively for the purpose of this chapter with the exception of transferring
13 funds from the Vermont Drinking Water Planning Loan Fund and the Vermont
14 Drinking Water Source Protection Fund to the Vermont Environmental
15 Protection Agency (EPA) Drinking Water State Revolving Fund, and from the
16 Vermont Pollution Control Revolving Fund to the Vermont Environmental
17 Protection Agency (EPA) Pollution Control Revolving Fund, when authorized
18 by the Secretary.

19 (2) These funds shall be administered by the Bond Bank on behalf of the
20 State, except that:

21 (A) the Vermont EPA Drinking Water State Revolving Fund and the

1 Vermont Drinking Water Planning Loan Fund shall be administered by VEDA
2 concerning loans to privately owned public water systems in accordance with
3 subchapter 3 of this chapter;

4 (B) the Vermont Environmental Protection Agency (EPA) Pollution
5 Control Revolving Fund shall be administered by VEDA concerning loans to
6 private entities for clean water projects in accordance with subchapter 4 of this
7 chapter; and

8 (C) the Vermont Environmental Protection Agency (EPA) Pollution
9 Control Revolving Fund and the Vermont Wastewater and Potable Water
10 Revolving Loan Fund may be administered by a community development
11 financial institution, as that term is defined in 12 U.S.C. § 4702, that is
12 contracted with by the State for the purpose of providing loans to individuals
13 ~~for failed wastewater systems and potable water supplies~~ in accordance with
14 section 4763b of this chapter.

15 * * *

16 Sec. 6. 24 V.S.A. chapter 120, subchapter 2 is amended to read:

17 Subchapter 2. ~~Municipal~~ Loans to Municipalities and Individuals

18 * * *

19 § 4757. REVOLVING LOAN FUNDS; ADDITIONAL USES

20 In addition to providing a source of funds from which loans may be made to
21 municipalities under this chapter, each fund created under section 4753 of this

1 chapter may be used for one or more of the following purposes:

2 (1) To make loans, to refund bonds or notes of a municipality issued
3 after March 7, 1985 for sewerage works, or after July 1, 1993 for water supply
4 systems for the purpose of financing the construction of any capital
5 improvements or management program described in section 4753 and certified
6 under section 4756 of this title.

7 (2) To guarantee or insure, directly or indirectly, the payment of notes or
8 bonds issued or to be issued by a municipality for the purpose of financing the
9 construction of any capital improvement or management program described in
10 section 4754 of this title and certified under section 4756.

11 (3) To guarantee or insure, directly or indirectly, funds established by
12 municipalities for the purpose of financing construction of any capital
13 improvement described in section 4754 of this title.

14 (4) To invest available fund balances, and to credit the net interest
15 income thereon to the particular fund providing investment funds.

16 (5) To pay the costs of the Bond Bank, VEDA, and the agency
17 associated with the administration of each fund; provided, however, that no
18 more than four percent of the aggregate of the highest fund balances in any
19 fiscal year shall be used for such purposes, and that a separate account be
20 established outside the Drinking Water State Revolving Fund for such
21 purposes. As used in this subsection, costs shall include fiscal, clerical,

1 administrative, and issuance expenditures directly attributable and allocated to
2 the maintenance implementation and administration of the loan funds created
3 under this chapter.

4 (6) To pay from the Vermont Environmental Protection (EPA) Pollution
5 Control Revolving Fund or the Vermont Wastewater and Potable Water
6 Revolving Loan Fund the costs of administration of loans awarded under
7 ~~subdivision 4753(a)(10)~~ section 4763b of this title.

8 * * *

9 § 4763b. LOANS TO INDIVIDUALS FOR FAILED WASTEWATER

10 SYSTEMS AND FAILED POTABLE WATER SUPPLIES

11 (a) Notwithstanding any other provision of law to the contrary, when the
12 wastewater system or potable water supply serving only single-family and
13 multifamily residences either meets the definition of a failed supply or system
14 in 10 V.S.A. § 1972 or is demonstrated by a designer to have a high probability
15 of failing, the Secretary of Natural Resources may lend monies to an owner of
16 one or more of the residences from the Vermont Wastewater and Potable
17 Water Revolving Loan Fund established in section 4753 of this title. In such
18 cases, the following conditions shall apply:

19 (1) a loan may only be made to an owner with a household income equal
20 to or less than 200 percent of the State average median household income;

21 (2) a loan may only be made to an owner who resides in one of the

1 residences served by the failed supply or system on a year-round basis;

2 (3) ~~a loan may only be made to an owner who has been denied financing~~
3 ~~for the repair, replacement, or construction due to involuntary disconnection by~~
4 ~~at least one other financing entity; [Repealed.]~~

5 (4) when the failed supply or system also serves residences owned by
6 persons other than the loan applicant, a loan may only be made for an equitable
7 share of the cost to repair or replace the failed supply or system that is
8 determined through agreement of all of the owners of residences served by the
9 failed system or supply;

10 (5) no construction loan shall be made to an individual under this
11 subsection, nor shall any part of any revolving loan made under this subsection
12 be expended, until all of the following take place:

13 (A) the Secretary of Natural Resources determines that if a
14 wastewater system and potable water supply permit is necessary for the design
15 and construction of the project to be financed by the loan, the permit has been
16 issued to the owner of the failed system or supply; and

17 (B) the individual applying for the loan certifies to the Secretary of
18 Natural Resources that the proposed project has secured all State and federal
19 permits, licenses, and approvals necessary to construct and operate the project
20 to be financed by the loan;

21 (6) all funds from the repayment of loans made under this section shall

1 be deposited into the Vermont Wastewater and Potable Water Revolving Loan
2 Fund.

3 (b) Notwithstanding any other provision of law to the contrary, when the
4 wastewater system serving only single-family and multifamily residences
5 either meets the definition of a failed system in 10 V.S.A. § 1972 or is
6 demonstrated by a designer to have a high probability of failing, the Secretary
7 of Natural Resources may lend monies to an owner of one or more of the
8 residences from the Vermont Wastewater and Potable Water Revolving Loan
9 Fund and capitalized by money that has been transferred from the Vermont
10 Environmental Protection Agency (EPA) Pollution Control Revolving Fund
11 pursuant to subdivision 4753(a)(10) of this title, provided that no State funds
12 are used. In such cases, all of the following conditions shall apply:

13 (1) A loan may only be made to an owner with a household income
14 equal to or less than 200 percent of the State average median household
15 income.

16 (2) A loan may only be made to an owner who resides in one of the
17 residences served by the failed system on a year-round basis.

18 (3) A loan may only be made to an owner who demonstrates sufficient
19 means to pay the principal and interest on the loan.

20 (4) A loan may only be made for a project that is a clean water project
21 the Secretary has designated as a priority for receipt of financial assistance.

1 (5) When the failed system also serves residences owned by persons
2 other than the loan applicant, a loan may only be made for an equitable share
3 of the cost to repair or replace the failed system that is determined through
4 agreement of all of the owners of residences served by the failed system.

5 (6) No construction loan shall be made to an individual under this
6 subsection, nor shall any part of any revolving loan made under this subsection
7 be expended, until all of the following take place:

8 (A) the Secretary of Natural Resources determines that if a
9 wastewater system and potable water supply permit is necessary for the design
10 and construction of the project to be financed by the loan, the permit has been
11 issued to the owner of the failed system; and

12 (B) the individual applying for the loan certifies to the Secretary of
13 Natural Resources that the proposed project has secured all State and federal
14 permits, licenses, and approvals necessary to construct and operate the project
15 to be financed by the loan.

16 (7) Loans shall be awarded at or below market interest rates.

17 (8) All funds from the repayment of loans made under this subsection
18 shall be deposited into the Vermont Environmental Protection Agency (EPA)
19 Pollution Control Revolving Fund.

20 (c) Loans awarded under this section:

21 (1) shall include a loan repayment schedule that commences not later

1 than one year after completion of the funded project for which loan funds have
2 been issued; and

3 (2) shall not be used for the operation and maintenance expenses, or
4 laboratory fees for monitoring, of a wastewater system or potable water supply.

5 (d) The Secretary of Natural Resources shall establish standards, policies,
6 and procedures as necessary for the implementation of this section. The
7 Secretary may establish criteria to extend the payment period of a loan or to
8 waive all or a portion of the loan amount.

9 * * *

10 Sec. 7. 2018 Acts and Resolves No. 185, Sec. 12 is amended to read:

11 Sec. 12. SUSPENSION OF PRIVATE LOANS FOR CLEAN WATER
12 PROJECTS

13 ~~(a) Neither the Vermont Economic Development Authority (VEDA) nor~~
14 ~~the Secretary of Natural Resources shall accept, review, or act on any~~
15 ~~applications for loans to private entities under 24 V.S.A. chapter 120,~~
16 ~~subchapter 4 submitted after June 30, 2023. However, VEDA and the~~
17 ~~Secretary shall continue to review and act on initial applications submitted on~~
18 ~~or before June 30, 2023, as well as any amendments to timely initial~~
19 ~~applications.~~

20 (b) It is the intent of the General Assembly that the private loans under
21 24 V.S.A. chapter 120, subchapter 4, the expansion of 24 V.S.A. chapter 120

1 to provide funding for natural resources projects, and the sponsorship program
2 defined at 24 V.S.A. § 4752(18) shall all be reviewed during the 2023
3 legislative session.

4 * * * Clean Water Reporting * * *

5 Sec. 8. 10 V.S.A. § 1264(k) is amended to read:

6 (k) Report on treatment practices. ~~Report on treatment practices.~~ As part
7 of the report required under section 1389a of this title, the Secretary annually
8 shall report the following:

9 (1) whether the phosphorus load from new development permitted under
10 this section by the Secretary in the Lake Champlain watershed in the previous
11 ~~calendar~~ State fiscal year is achieving at least a 70 percent average phosphorus
12 load reduction;

13 (2) the estimated total phosphorus load reduction from new
14 development, redevelopment, and retrofit of impervious surface permitted
15 under this section in the previous State fiscal year; and

16 (3) the number of projects and the percentage of projects as a whole that
17 implemented Tier 1 stormwater treatment practices, Tier 2 stormwater
18 treatment practices, or Tier 3 stormwater treatment practices in the previous
19 State fiscal year.

20 Sec. 9. 10 V.S.A. § 1389a(b)(6) is amended to read:

21 (6) Beginning on January ~~2023~~ 2024, a summary of the administration

1 of the grant programs established under sections 925–928 of this title,
2 including whether these grant programs are adequately funding
3 implementation of the Clean Water Initiative and whether the funding limits
4 for the Water Quality Enhancement Grants under subdivision 1389(e)(1)(D) of
5 this title should be amended to improve State implementation of the Clean
6 Water Initiative.

7 Sec. 10. 2019 Acts and Resolves No. 76, Sec. 7 is amended to read:

8 Sec. 7. RECOMMENDATIONS ON NUTRIENT CREDIT

9 TRADING

10 On or before July 1, ~~2022~~ 2024, the Secretary of Natural Resources, after
11 consultation with the Clean Water Board, shall submit to the Senate
12 Committees on Appropriations, on Natural Resources and Energy, and on
13 Finance and the House Committees on Appropriations, on ~~Natural Resources,~~
14 ~~Fish, and Wildlife~~ Environment and Energy, and on Ways and Means
15 recommendations regarding implementation of a market-based mechanism that
16 allows the purchase of water quality credits by permittees under 10 V.S.A.
17 chapter 47, and other entities. The report shall include information on the cost
18 to develop and manage any recommended trading program.

1 * * * ANR Enforcement Practices * * *

2 Sec. 11. 10 V.S.A. § 1527 is amended to read:

3 § 1527. PENALTY

4 A person who violates a provision of this chapter shall be fined ~~not more~~
5 ~~than \$1,000.00 for each violation~~ in accordance with chapter 201 of this title.

6 Sec. 12. 10 V.S.A. § 6697 is amended to read:

7 § 6697. CIVIL PENALTIES; WARNING

8 (a) A person, store, or food service establishment that violates the
9 requirements of this subchapter shall:

10 ~~(1) receive a written warning for a first offense;~~

11 ~~(2) be subject to a civil penalty of \$25.00 for a second offense; and~~

12 ~~(3) be subject to a civil penalty of \$100.00 for a third or subsequent~~
13 ~~offense~~ be fined in accordance with chapter 201 of this title.

14 (b) For the purposes of enforcement under this subchapter, an offense shall
15 be each day a person, store, or food service establishment is violating a
16 requirement of this subchapter.

17 Sec. 13. 24 V.S.A. § 2282 is amended to read:

18 § 2282. PENALTY

19 A person who violates this subchapter shall be fined by the legislative body
20 not less than \$5.00 nor more than \$50.00 for each day of the violation. A
21 person who violates the requirements of this subchapter shall be fined by the

1 Agency of Natural Resources in accordance with 10 V.S.A. chapter 201.

2 * * * Solid Waste Certification * * *

3 Sec. 14. 10 V.S.A. § 6605f(a) is amended to read:

4 (a) Disqualifying criteria. Any nongovernmental entity or person applying
5 for a certification under section 6605, 6605a, or 6606 of this title, for interim
6 certification under section 6605b of this title, ~~or for a waste transportation~~
7 ~~permit under section 6607a of this title~~, shall be denied certification or other
8 authorization if the Secretary finds:

9 * * *

10 * * * DEC Procedural Requirements * * *

11 Sec. 15. 10 V.S.A. § 7716 is amended to read:

12 § 7716. TYPE 5 PROCEDURES

13 (a) Purpose; scope.

14 (1) The purpose of this section is to establish the public notice and
15 comment requirements that the Department must follow when issuing
16 emergency permits and other permits listed in this section.

17 (2) The procedures under this section shall be known as Type 5
18 Procedures. This section shall govern each of the following:

19 * * *

20 (E) issuance of emergency sludge and septage disposal approvals
21 under section 6605 of this title; ~~and~~

1 (F) shoreland registrations authorized under chapter 49A of this title;

2 and

3 (G) issuance of authorization under the Construction General Permit

4 or individual stormwater permits issued pursuant to chapter 47 of this title, for

5 discharges of stormwater runoff related to emergency construction activities;

6 emergency construction activities are those necessary to address imminent risk

7 to life or a risk of damage to public or private property, including damage to

8 lifeline infrastructure, as determined by the Secretary.

9 (b) Notice of final decision. The Secretary shall provide notice of the final
10 decision through the environmental notice bulletin and shall post the decision
11 to the bulletin.

12 Sec. 16. 29 V.S.A. § 405(d) is added to read:

13 (d) A permit issued pursuant to this section shall be effective on the date
14 that is signed and issued to the applicant.

15 * * * Potable Water Supply * * *

16 Sec. 17. 10 V.S.A. § 1972(4) is amended to read:

17 (4)(A) “Failed supply” means a potable water supply:

18 (i) that has been found to exceed the standard set by the Secretary
19 in rule for one or more of the following contaminants:

20 (I) total coliform;

21 (II) nitrates;

1 (III) nitrites;

2 (IV) arsenic; or

3 (V) uranium;

4 (ii) that the Secretary affirmatively determines as not potable, due
5 to the presence of a contaminated site, a leaking underground storage tank, or
6 other known sources of groundwater contamination or naturally occurring
7 contaminants, ~~and that information has been posted on the Agency of Natural~~
8 ~~Resources' website;~~ or

9 (iii) the Secretary affirmatively determines to be failed due to the
10 supply providing an insufficient quantity of water to maintain the usual and
11 customary uses of a building or structure or campground, ~~and that information~~
12 ~~has been posted on the Agency of Natural Resources' website.~~

13 (B) Notwithstanding the provisions of this subdivision, a potable
14 water supply shall not be a failed supply if:

15 (i) these effects can be and are remedied solely by minor repairs,
16 including the repair of a broken pipe leading from a building or structure to a
17 well, the replacement of a broken pump, repair or replacement of a mechanical
18 component, or deepening or hydrofracturing a well; or

19 (ii) these effects have lasted for only a brief period of time, the
20 cause of the failure has been determined to be an unusual and nonrecurring
21 event, and the supply has recovered from the state of failure. Supplies that

1 have recurring, continuing, or seasonal failures shall be considered to be failed
2 supplies.

3 (C) If a project is served by multiple potable water supplies, the
4 failure of one supply will not require the issuance of a permit or permit
5 amendment for any other supply that is not in a state of failure.

6 * * * Petroleum Cleanup Fund Assistance Program * * *

7 Sec. 18. 10 V.S.A. § 1941 is amended to read:

8 § 1941. PETROLEUM CLEANUP FUND

9 * * *

10 (b) The Secretary may authorize disbursements from the Fund for the
11 purpose of the cleanup and restoration of contaminated soil and groundwater
12 caused by releases of petroleum, including aviation gasoline, from
13 underground storage tanks and aboveground storage tanks, including air
14 emissions for remedial actions, and for compensation of third parties for injury
15 and damage caused by a release. This Fund shall be used for no other
16 governmental purposes, nor shall any portion of the Fund ever be available to
17 borrow from by any branch of government; it being the intent of the General
18 Assembly that this Fund and its increments shall remain intact and inviolate for
19 the purposes set out in this chapter. Disbursements under this section may be
20 made only for uninsured costs incurred after January 1, 1987 and for which a
21 claim is made prior to July 1, 2029 and judged to be in conformance with

1 prevailing industry rates. This includes:

2 (1) Costs incurred by taking corrective action as directed by the
3 Secretary for any release of petroleum into the environment from:

4 (A) An underground storage tank defined as a category one tank used
5 for commercial purposes, provided disbursements on any site shall not exceed
6 \$1,240,000.00 and shall be made from the Motor Fuel Account, as follows:

7 (i) after the first \$10,000.00 of the cleanup costs have been borne
8 by the owners or operators of double-wall tank systems ~~used for commercial~~
9 ~~purposes~~ or single-wall tank systems that were either taken out of service or
10 abandoned prior to July 1, 1985; and

11 (ii) ~~after the first \$15,000.00 of cleanup costs have been borne by~~
12 ~~the owners or operators of combination tank systems, whether lined or unlined,~~
13 ~~used for commercial purposes, unless the system is a lined combination tank~~
14 ~~system that has been granted a five-year extension under subsection 1927(f) of~~
15 ~~this title;~~

16 (iii) after the first \$25,000.00 of cleanup costs have been borne by
17 the owners or operators of lined combination tank systems that have been
18 granted a five-year extension to operate under subsection 1927(f) of this title;

19 (iv) ~~after the first \$25,000.00 of cleanup costs have been borne by~~
20 ~~the owners or operators of single-wall tank systems used for commercial~~
21 ~~purposes.~~

1 (B) An underground motor fuel tank used for farming or residential
2 purposes either after the first \$250.00 of the cleanup costs have been borne by
3 the owners or operators of tanks with a capacity equal to or less than 1,100
4 gallons ~~and used for farming or residential purposes,~~ or after the first \$1,000.00
5 of the cleanup costs have been borne by the owners or operators of tanks with
6 capacities over 1,100 gallons. Disbursements on any site shall not exceed
7 ~~\$990,000.00~~ \$1,000,000.00 and shall be made from the Motor Fuel Account.

8 (C) An underground heating fuel tank used for on-premises heating
9 after the first \$10,000.00 of the cleanup costs have been borne by the owners
10 or operators of tanks with capacities over 1,100 gallons used for commercial
11 purposes, or after the first \$250.00 of the cleanup costs have been borne by the
12 owners or operators of tanks with capacities equal to or less than 1,100 gallons
13 used for commercial purposes, or after the first \$250.00 of the cleanup costs
14 have been borne by the owners or operators of residential and farm tanks.
15 Disbursements on any site shall not exceed ~~\$990,000.00~~ \$1,000,000.00 and
16 shall be made from the Heating Fuel Account.

17 (D) An aboveground storage tank site after the first \$1,000.00 of the
18 cleanup costs have been borne by the owners or operators of tanks used for
19 commercial purposes, or after the first \$250.00 of the cleanup costs have been
20 borne by the owners or operators of residential and farm tanks. Disbursements
21 under this subdivision (b)(1)(D) on any individual site shall not exceed

1 ~~\$25,000.00~~ \$50,000.00. These disbursements shall be made from the Motor
2 Fuel Account or Heating Fuel Account, depending upon the use or contents of
3 the tank.

4 (E) A bulk storage aboveground motor fuel or heating fuel storage
5 tank site after the first \$10,000.00 of the cleanup costs have been borne by the
6 owners or operators of tanks used for commercial purposes. Disbursements
7 under this subdivision (b)(1)(E) on any individual site shall not exceed
8 ~~\$990,000.00~~ \$1,000,000.00. These disbursements shall be made from the
9 Motor Fuel Account.

10 (F) If a site is contaminated by petroleum releases from both heating
11 fuel and motor fuel tanks, or where the source of the petroleum contamination
12 has not been ascertained, the Secretary shall have the discretion to disburse
13 funds from either the Heating Fuel or Motor Fuel Account, or both.

14 (2) Costs incurred in compensating third parties for bodily injury and
15 property damage, as approved by the Secretary in consultation with the
16 Commissioner of Financial Regulation, caused by release of petroleum from an
17 underground category one storage tank into the environment from a site, up to
18 \$1 million, but shall not include payment of any punitive damages.

19 (3) Costs incurred in taking immediate corrective action to contain or
20 mitigate the effects of any release of petroleum into the environment from an
21 underground storage tank or aboveground storage tank if, in the judgment of

1 the Secretary, such action is necessary to protect the public health and the
2 environment. The Secretary may seek reimbursement of the first \$10,000.00
3 of the costs.

4 (4) The cost of corrective action up to \$1 million for any release of
5 petroleum into the environment from an underground storage tank or tanks:

6 (A) whose owner, in the judgment of the Secretary, is incapable of
7 carrying out the corrective action; or

8 (B) whose owner or operator cannot be determined; or

9 (C) [Repealed.]

10 (D) whose owner, in the judgment of the Secretary, is financially
11 incapable of carrying out the corrective action in a timely manner.

12 (5) [Repealed.]

13 (6) The costs of creating and operating a risk retention pool authorized
14 by section 1939 of this title, which costs are in excess of a reasonable
15 contribution by participants, as determined by the Secretary with the advice of
16 the Commissioner of Financial Regulation. The authority for disbursements
17 under this subdivision shall terminate on June 1, 1992.

18 (7) Administrative and field supervision costs incurred by the Secretary
19 in carrying out the provisions of this subchapter. Annual disbursements shall
20 not exceed 10 percent of annual receipts.

21 (8) ~~The cost of initiating spill control procedures, removal actions, and~~

1 ~~remedial actions to clean up spills of oil and other petroleum products where~~
2 ~~the responsible party is unknown, cannot be contacted, is unwilling to take~~
3 ~~action, or does not take timely action that the Secretary considers necessary.~~

4 [Repealed.]

5 (c) The Secretary may authorize disbursements from the Fund for costs of
6 initiating spill control procedures, removal actions, and remedial actions to
7 clean up spills of oil and other petroleum products where the responsible party
8 is unknown, cannot be contacted, is unwilling to take action, or does not take
9 timely action that the Secretary considers necessary. The Secretary may seek
10 reimbursement of the costs, including any costs determined to be covered by
11 insurance.

12 (d) The Secretary may use up to one-half the amount deposited to the
13 Motor Fuel Account of the Fund from the licensing fees assessed under section
14 1942 of this title to capitalize the Underground Motor Fuel Storage Tank Loan
15 Assistance Program established by section 1944 of this title and the cost of
16 administering the Program. If the Secretary determines that a balance will
17 remain after all qualifying loan applications have been satisfied, the unneeded
18 balance may be used for cleanup. The Secretary may use the amount in the
19 Heating Fuel Account of the Fund for purposes of funding measures related to
20 heating oil and kerosene.

21 ~~(d)~~(e) Disbursements from the Fund for cleanup costs incurred prior to

1 passage shall be limited to uninsured costs.

2 ~~(e)~~(f) The Secretary shall establish the Petroleum Cleanup Fund Advisory
3 Committee that shall meet not less than annually to review receipts and
4 disbursements from the Fund, to evaluate the effectiveness of the Fund in
5 meeting its purposes and the reasonableness of the cost of cleanup and to
6 recommend alterations and statutory amendments deemed appropriate. The
7 Advisory Committee shall submit an annual report of its findings to the
8 General Assembly on January 15 of each year. In its annual report, the
9 Advisory Committee shall review the financial stability of the Fund, evaluate
10 the implementation of assistance related to underground farm or residential
11 heating fuel storage tanks and aboveground storage tanks, and the need for
12 continuing assistance, and shall include recommendations for sustainable
13 funding sources to finance the provision of that assistance. The provisions of 2
14 V.S.A. § 20(d) (expiration of required reports) shall not apply to the report to
15 be made under this subsection. The membership of the Committee shall
16 include the following or their designated representative:

- 17 (1) the Secretary of Natural Resources, who shall be chair;
- 18 (2) the Commissioner of Environmental Conservation;
- 19 (3) the Commissioner of Financial Regulation;
- 20 (4) a licensed gasoline distributor;
- 21 (5) a retail gasoline dealer;

1 (6) a representative of a statewide refining-marketing petroleum
2 association;

3 (7) one member of the House to be appointed by the Speaker of the
4 House;

5 (8) one member of the Senate to be appointed by the Committee on
6 Committees;

7 (9) a licensed heating fuel dealer;

8 (10) a representative of a statewide heating fuel dealers' association; and

9 (11) a licensed real estate broker.

10 ~~(f)~~(g) The Secretary may seek reimbursement to the Fund of cleanup
11 expenditures only when the owner of the tank is in significant violation of ~~his~~
12 ~~or her~~ the owner's permit or rules, or when a required fee has not been paid for
13 the tank from which the release occurred or, to the extent covered, when there
14 is insurance coverage. When the Secretary has paid the first \$10,000.00 of
15 costs under subdivision (b)(4)(D) of this section, the Secretary may seek
16 reimbursement of those costs.

17 ~~(g)~~(h) The owner of a farm or residential heating fuel storage tank used for
18 on-premises heating or an underground or aboveground heating fuel storage
19 tank used for on-premises heating by a mobile home park resident, as defined
20 in section 6201 of this title, who desires assistance to close, replace, or upgrade
21 the tank or replace their heating fuel system with advanced wood heat or a heat

1 pump may apply to the Secretary for such assistance. The financial assistance
2 may be in the form of grants of up to: ~~\$2,000.00~~ \$3,000.00 or the costs of
3 closure, replacement, or upgrade, whichever is less, for an aboveground
4 storage tank located inside a structure; up to ~~\$3,000.00~~ \$4,000.00 or the costs
5 of closure, replacement, or upgrade, whichever is less, for an aboveground
6 storage tank located outside a structure; ~~and up to \$4,000.00~~ \$5,000.00 or the
7 costs of closure, replacement, or upgrade, whichever is less, for an
8 underground storage tank; and up to \$4,000.00 or the actual cost of replacing
9 their heating system with advanced wood heat or a heat pump, whichever
10 amount is less. As used in this subsection, “structure” means any assembly of
11 materials that is intended for occupancy or use by a person and that has at least
12 three walls and a roof. Grants shall be made only to the current property
13 owners, except at mobile home parks where a grant may be awarded to a
14 mobile home park resident. To be eligible to receive the grant, an
15 environmental site assessment must be conducted by a qualified consultant
16 during the tank closure, replacement, or upgrade if the tank is an underground
17 heating fuel storage tank. In addition, if the closed tank is to be replaced with
18 an underground heating fuel storage tank, the replacement tank and piping
19 shall provide a level of environmental protection at least equivalent to that
20 provided by a double wall tank and secondarily contained piping. Grants shall
21 be awarded on a priority basis to projects that will avoid the greatest

1 environmental or health risks. The Secretary shall also give priority to
2 applicants who are replacing their underground heating fuel tanks with
3 aboveground heating fuel storage tanks that will be installed in accordance
4 with the Secretary's recommended standards. The Secretary shall also give
5 priority to ~~lower-income~~ lower-income applicants. To be eligible to receive the
6 grant, the owner must provide the previous year's financial information and, if
7 the replacement tank is an aboveground tank, must ensure that any work to
8 replace or upgrade a tank shall be done in accordance with industry standards
9 (National Fire Protection Association, or NFPA, Code 31), as it existed on July
10 1, 2004, until another date or edition is specified by rule of the Secretary. The
11 Secretary shall authorize only up to ~~\$400,000.00~~ \$500,000.00 in assistance for
12 underground and aboveground heating fuel tanks in any one fiscal year from
13 the Heating Fuel Account for this purpose. The application must be
14 accompanied by the following information:

15 (1) proof of ownership, including information disclosing all owners of
16 record of the property, except in the case where the applicant is a mobile home
17 park resident;

18 (2) for farm or residential aboveground heating fuel storage tank
19 owners, a copy of the federal income tax return for the previous year;

20 (3) identification of the contractor performing any heating fuel storage
21 tank closure, replacement, ~~or~~ upgrade, or system replacement;

