

H.226

An act relating to the regulation of underground storage tanks

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

~~For purposes of~~ As used in this chapter:

* * *

(20) “Petroleum Cleanup Fund” or “Fund” means the fund created by section 1941 of this title.

(21) “Motor Fuel Account” means the Motor Fuel Account of the Fund created by section 1941 of this title.

(22) “Heating Fuel Account” means the Heating Fuel Account of the Fund created by section 1941 of this title.

Sec. 2. 10 V.S.A. § 1927 is amended to read:

§ 1927. REGULATION OF CATEGORY ONE TANKS

* * *

(e) The following tank systems shall be closed in accordance with rules adopted by the Secretary:

(1) not later than January 1, 2016, single-wall tank systems; and

(2) not later than January 1, 2018, combination tank systems, except that combination tank systems in which the tank has been lined shall be closed by

January 1, 2018 or by ten years from the date by which the tank was lined, whichever is later.

(f) A tank owner may petition the Secretary to allow a lined combination tank system to remain in service an additional five years beyond the date established in subdivision (e)(2) of this section. The Secretary may grant the petition upon a determination that:

(1) no release has occurred from the tank system;

(2) the tank system has passed an inspection for lined tank systems adopted by the Secretary by rule; and

(3) no repairs are suggested or needed to the tank liner.

(g) On and after the effective date of this subsection, a person shall not line a single-wall or combination tank system, unless the single-wall or combination system meets standards for new lined systems adopted by procedure by the Secretary. At a minimum, these standards shall address the tank system's piping, secondary containment for all portions of the system except the tank, leak detection, liquid tight containment sumps on the tank top, and liquid tight dispenser sumps.

(h) Notwithstanding the provisions of subsection (g) of this section, a person shall not line a single-wall or combination tank system after January 1, 2014.

Sec. 3. 10 V.S.A. § 1941 is amended to read:

§ 1941. PETROLEUM CLEANUP FUND

* * *

(b) The ~~secretary~~ Secretary may authorize disbursements from the ~~fund~~ 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~~ Fund shall be used for no other governmental purposes, nor shall any portion of the ~~fund~~ Fund ever be available to borrow from by any branch of government; it being the intent of the ~~legislature~~ General Assembly that this ~~fund~~ 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, ~~2014~~ 2019 and judged to be in conformance with prevailing industry rates. This includes:

(1) costs incurred by taking corrective action as directed by the ~~secretary~~ Secretary for any release of petroleum into the environment from:

(A) an underground storage tank defined as a category one tank, provided disbursements on any site shall not exceed \$1,240,000.00 and shall be made from the Motor Fuel Account, as follows:

(i) after the first \$10,000.00 of the cleanup costs have been borne by the owners or operators of ~~tanks~~ double-wall tank systems used for commercial purposes ~~or after the first \$250.00 of the cleanup costs have been borne by the owners or operators of tanks with capacities equal to or less than 1,100 gallons used for farms or residential purposes. Disbursements on any site shall not exceed \$1,240,000.00. These disbursements shall be made from the motor fuel account;~~

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

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

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

(B) an underground motor fuel tank after the first \$250.00 of the cleanup costs have been borne by the owners or operators of tanks with a capacity equal to or less than 1,100 gallons and used for farming or residential

purposes. Disbursements on any site shall not exceed \$990,000.00 and shall be made from the Motor Fuel Account;

(C) an underground heating fuel tank used for on-premise heating after the first \$10,000.00 of the cleanup costs have been borne by the owners or operators of tanks with capacities over 1,100 gallons used for commercial purposes, or after the first \$250.00 of the cleanup costs have been borne by the owners or operators of tanks with capacities equal to or less than 1,100 gallons used for commercial purposes, or after the first \$250.00 of the cleanup costs have been borne by the owners or operators of residential and farm tanks.

~~These disbursements~~ Disbursements on any site shall not exceed \$990,000.00 and shall be made from the ~~heating fuel account~~ Heating Fuel Account;

~~(C)(D)~~ (D) an aboveground storage tank site after the first \$1,000.00 of the cleanup costs have been borne by the owners or operators of tanks used for commercial purposes, or after the first \$250.00 of the cleanup costs have been borne by the owners or operators of residential and farm tanks. Disbursements under this subdivision (b)(1)~~(C)(D)~~ on any individual site shall not exceed \$25,000.00. These disbursements shall be made from the ~~motor fuel account~~ or heating fuel account Motor Fuel Account or Heating Fuel Account, depending upon the use or contents of the tank;

~~(D)(E)~~ (E) a bulk storage aboveground motor fuel or heating fuel storage tank site after the first \$10,000.00 of the cleanup costs have been borne by the

owners or operators of tanks used for commercial purposes. Disbursements under this subdivision (b)(1)~~(D)~~(E) on any individual site shall not exceed \$990,000.00. These disbursements shall be made from the ~~motor fuel account~~ Motor Fuel Account;

~~(E)~~(F) ~~where~~ if a site is contaminated by petroleum releases from both heating fuel and motor fuel tanks, or where the source of the petroleum contamination has not been ascertained, the ~~secretary~~ Secretary shall have the discretion to disburse funds from either the ~~heating oil or motor fuel account~~ Heating Fuel or Motor Fuel Account, or both;

* * *

(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, who desires assistance to close, replace, or upgrade the tank may apply to the ~~secretary~~ Secretary for such assistance. The financial assistance may be in the form of grants of up to \$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~~ 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~~ Secretary's recommended standards. The ~~secretary~~ 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~~ Secretary. The ~~secretary~~ Secretary shall only authorize up to ~~\$300,000.00~~ \$350,000.00 in assistance for underground and aboveground heating fuel tanks in any one fiscal year from the ~~heating fuel account~~ Heating Fuel Account for this purpose. The application must be accompanied by the following information:

* * *

Sec. 4. 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~~ 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~~ Petroleum Cleanup Fund established pursuant to subsection 1941(a) of this title. The ~~secretary~~ Secretary, in consultation with the ~~petroleum cleanup fund advisory committee~~ Petroleum Cleanup Fund Advisory Committee established pursuant to subsection 1941(e) of this title, shall annually report to the ~~legislature~~ General Assembly on the balance of the ~~motor fuel account of the fund~~ Motor Fuel Account and shall make recommendations, if any, for changes to the program. The ~~secretary~~ Secretary shall also determine the unencumbered balance of the ~~motor fuel account of the fund~~ Motor Fuel Account as of May 15 of each year, and if the balance is equal to or greater than \$7,000,000.00, then the licensing fee shall not be assessed in the upcoming fiscal year. The ~~secretary~~ Secretary shall promptly notify all sellers assessing this fee of the status of the fee for the upcoming fiscal 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~~ Commissioner of

Motor Vehicles and deposited into the ~~petroleum cleanup fund~~ Petroleum Cleanup Fund. This fee requirement shall terminate on April 1, ~~2016~~ 2021.

(b) There is assessed ~~against every seller receiving more than \$10,000.00 annually for the bulk retail sale of heating oil, kerosene, or other dyed diesel fuel sold in this state~~ a licensing fee of one cent per gallon for the bulk retail sale of such heating oil, kerosene, or other dyed diesel fuel sold in this State. This fee shall be subject to the collection, administration, and enforcement provisions of 32 V.S.A. chapter 233, and the fees collected under this subsection by the ~~commissioner of taxes~~ Commissioner of Taxes shall be deposited into the ~~petroleum cleanup fund~~ Petroleum Cleanup Fund established pursuant to subsection 1941(a) of this title. The ~~secretary~~ Secretary, in consultation with the ~~petroleum cleanup fund advisory committee~~ Petroleum Cleanup Fund Advisory Committee established pursuant to subsection 1941(e) of this title, shall annually report to the ~~legislature~~ General Assembly on the balance of the ~~heating fuel account of the fund~~ Heating Fuel Account and shall make recommendations, if any, for changes to the program. The ~~secretary~~ Secretary shall also determine the unencumbered balance of the ~~heating fuel account of the fund~~ Heating Fuel Account as of May 15 of each year, and if the balance is equal to or greater than \$3,000,000.00, then the licensing fee shall not be assessed in the upcoming fiscal year. The ~~secretary~~ Secretary shall

promptly notify all sellers assessing this fee of the status of the fee for the upcoming fiscal year. This fee provision shall terminate April 1, ~~2016~~ 2021.

Sec. 5. 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 annually remit to the ~~secretary on October 1 of each year~~ Secretary \$100.00 per double-wall tank system; ~~\$150.00~~ \$250.00 per combination tank system if the single-wall tank has been lined; \$500.00 for all other combination tank systems; and ~~\$200.00~~ \$1,000.00 per single-wall tank system, which shall be deposited to the ~~petroleum cleanup fund~~ Petroleum Cleanup Fund established by section 1941 of this title, except that:

(1) For retail gasoline outlets that sell less than 40,000 gallons of motor fuel per month, the fee shall be:

- (A) \$75.00 per double-wall tank system;
- (B) \$125.00 per combination tank system; and
- (C) \$175.00 per single-wall tank system.

(2) The fee shall be reduced by 50 percent if the owner or permittee provides to the satisfaction of the ~~secretary~~ 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~~ 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 double-wall tanks at a single location and shall not exceed \$300.00 for all combination tank systems at a single location. This cap shall not apply to a retail motor fuel outlet utilizing a single-wall tank system.

(5) For any municipality that uses an annual average of less than 40,000 gallons of motor fuel per month, provided that all of the tanks of that municipality meet the requirements of this chapter, the fee shall be:

- (A) \$50.00 per double-wall tank system;
- (B) \$100.00 per combination tank system; and
- (C) \$150.00 per single-wall tank system.

* * *

(c) This tank assessment shall terminate on July 1, ~~2014~~ 2019.

* * *

Sec. 6. 10 V.S.A. § 1944(a) is amended to read:

(a) The ~~secretary~~ Secretary may make individual loans of up to ~~\$75,000.00~~ \$150,000.00 for:

(1) the replacement or removal of category one tanks used for the storage of petroleum products. These loans shall be made from the ~~motor fuel account of the fund established under subsection 1941(a) of this title~~ Motor Fuel Account;

(2) the removal, or the replacement or improvement, or both, of piping, tank-top sumps, and other components of the secondary containment and release detection systems of category one tanks, for the purpose of reducing the likelihood of a release of regulated substance to the environment. These loans shall be made from the ~~motor fuel account of the fund established under subsection 1941(a) of this title~~ Motor Fuel Account;

(3) the removal, replacement, or upgrade of an underground or aboveground storage tank used for the storage of petroleum products for the purpose of reducing the likelihood of a release of petroleum into the environment. These loans shall be made from the ~~motor fuel account or heating fuel account of the fund established under subsection 1941(a) of this title~~, Motor Fuel Account or Heating Fuel Account depending upon the use or contents of the tank.

Sec. 7. 10 V.S.A. § 1941a is added to read:

§ 1941a. SINGLE-WALL AND COMBINATION TANKS; TANK

REMOVAL

(a) Notwithstanding the requirements of 10 V.S.A. § 1941(b)(1)(A)(iv), when a release is discovered during the closure and removal of a single-wall underground storage tank, the Fund may pay cleanup costs after the first \$10,000.00, and disbursements on any site shall not exceed \$1,240,000.00.

(b) Notwithstanding the requirements of 10 V.S.A. § 1941(b)(1)(A)(ii), when a release is discovered during the closure and removal of a combination tank system, whether lined or unlined, the Fund may pay cleanup costs after the first \$10,000.00, and disbursements on any site shall not exceed \$1,240,000.00.

Sec. 8. PETROLEUM CLEANUP FUND ADVISORY COMMITTEE

REPORT FOR 2014

The annual report of the Petroleum Cleanup Fund Advisory Committee to be submitted to the General Assembly on January 15, 2014 pursuant to 10 V.S.A. § 1941 shall provide recommendations as to whether:

(1) 10 V.S.A. § 1941(b) should enable the Secretary to make disbursements from the Fund for the purpose of removing or remediating underground or aboveground storage tanks that present an actual or imminent threat of release;

(2) there should be an increase in the total annual amount that the Secretary is authorized to disburse pursuant to 10 V.S.A. § 1941(g) (grants to close, replace, or upgrade farm or residential underground or aboveground heating fuel storage tanks); and

(3) there should be an increase in the individual grant amount that the Secretary is authorized to disburse pursuant to 10 V.S.A. § 1941(g) (grants to close, replace, or upgrade farm or residential underground or aboveground heating fuel storage tanks).

Sec. 9. REPEAL

The following are repealed:

(1) 10 V.S.A. § 1941a(a) on January 1, 2016;

(2) 10 V.S.A. § 1941a(b) on January 1, 2018.

Sec. 10. EFFECTIVE DATES

This act shall take effect on passage, except Sec. 5 (petroleum tank assessment) of this act shall take effect on July 1, 2014.