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H.229

Introduced by Representative Marcotte of Coventry

Referred to Committee on

Date:

Subject: Conservation and development; Petroleum Cleanup Fund;
disbursements

Statement of purpose of bill as introduced: This bill proposes to clarify that the Secretary of Natural Resources may authorize disbursements from the Petroleum Cleanup Fund for costs of initiating spill control procedures, removal actions, and remedial actions to clean up spills of oil and other petroleum products where the responsible party is unknown, cannot be contacted, is unwilling to take action, or does not take timely action that the Secretary considers necessary. The bill would also increase the maximum amount of disbursements that may be made from the Petroleum Cleanup Fund for corrective actions or cleanup of spills. In addition, the bill increases the maximum amounts of grants issued from the Petroleum Cleanup Fund for closure, replacement, or upgrade of residential heating fuel storage tanks.

An act relating to the Petroleum Cleanup Fund

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

2 Sec. 1. 10 V.S.A. § 1941 is amended to read:

3 § 1941. PETROLEUM CLEANUP FUND

4 * * *

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

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

1 (A) An underground storage tank defined as a category one tank used
2 for commercial purposes, provided disbursements on any site shall not exceed
3 \$1,240,000.00 and shall be made from the Motor Fuel Account, as follows:

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

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

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

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

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

1 gallons ~~and used for farming or residential purposes,~~ or after the first \$1,000.00
2 of the cleanup costs have been borne by the owners or operators of tanks with
3 capacities over 1,100 gallons. Disbursements on any site shall not exceed
4 ~~\$990,000.00~~ \$1,000,000.00 and shall be made from the Motor Fuel Account.

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

14 (D) An aboveground storage tank site after the first \$1,000.00 of the
15 cleanup costs have been borne by the owners or operators of tanks used for
16 commercial purposes, or after the first \$250.00 of the cleanup costs have been
17 borne by the owners or operators of residential and farm tanks. Disbursements
18 under this subdivision (b)(1)(D) on any individual site shall not exceed
19 ~~\$25,000.00~~ \$50,000.00. These disbursements shall be made from the Motor
20 Fuel Account or Heating Fuel Account, depending upon the use or contents of
21 the tank.

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

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

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

16 (3) Costs incurred in taking immediate corrective action to contain or
17 mitigate the effects of any release of petroleum into the environment from an
18 underground storage tank or aboveground storage tank if, in the judgment of
19 the Secretary, such action is necessary to protect the public health and the
20 environment. The Secretary may seek reimbursement of the first \$10,000.00
21 of the costs.

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

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

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

6 (C) [Repealed.]

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

9 (5) [Repealed.]

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

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

18 (8) ~~The cost of initiating spill control procedures, removal actions, and~~
19 ~~remedial actions to clean up spills of oil and other petroleum products where~~
20 ~~the responsible party is unknown, cannot be contacted, is unwilling to take~~

1 ~~action, or does not take timely action that the Secretary considers necessary.~~

2 [Repealed.]

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

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

19 ~~(d)~~(e) Disbursements from the Fund for cleanup costs incurred prior to
20 passage shall be limited to uninsured costs.

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

- 16 (1) the Secretary of Natural Resources, who shall be chair;
- 17 (2) the Commissioner of Environmental Conservation;
- 18 (3) the Commissioner of Financial Regulation;
- 19 (4) a licensed gasoline distributor;
- 20 (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 may apply to the Secretary for such assistance. The financial

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

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

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

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

17 (3) identification of the contractor performing any heating fuel storage
18 tank closure, replacement, or upgrade;

19 (4) an estimated cost of tank closure, replacement, or upgrade;

20 (5) the amount and type of assistance requested;

21 (6) a schedule for the work;

1 (7) description of surrounding area, including location of water supply
2 wells, surface waters, and other sensitive receptors; and

3 (8) such other information and assurances as the Secretary may require.

4 Sec. 2. EFFECTIVE DATE

5 This act shall take effect on July 1, 2023.