

LEGISLATURE OF NEBRASKA
NINETY-SIXTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 270

Introduced by Bromm, 23; Bohlke, 33; Bruning, 3; Hudkins, 21;
Jones, 43; Preister, 5; Schrock, 38; Stuhr, 24

Read first time January 11, 1999

Committee: Natural Resources

A BILL

1 FOR AN ACT relating to petroleum release remedial action; to amend
2 sections 66-1519, 66-1523, 66-1525, and 66-1529.02,
3 Revised Statutes Supplement, 1998; to change the
4 reimbursement date; to repeal the original sections; and
5 to declare an emergency.
6 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 66-1519, Revised Statutes Supplement,
2 1998, is amended to read:

3 66-1519. There is hereby created the Petroleum Release
4 Remedial Action Cash Fund to be administered by the department.
5 Revenue from the following sources shall be remitted to the State
6 Treasurer for credit to the fund:

7 (1) The fees imposed by sections 66-1520 and 66-1521;

8 (2) Money paid under an agreement, stipulation,
9 cost-recovery award under section 66-1529.02, or settlement; and

10 (3) Money received by the department in the form of
11 gifts, grants, reimbursements, property liquidations, or
12 appropriations from any source intended to be used for the purposes
13 of the fund.

14 Money in the fund may only be spent for: (a)
15 Reimbursement for the costs of remedial action by a responsible
16 person or his or her designated representative and costs of
17 remedial action undertaken by the department in response to a
18 release first reported after July 17, 1983, and on or before June
19 30, ~~1999~~ 2004, including reimbursement for damages caused by the
20 department or a person acting at the department's direction while
21 investigating or inspecting or during remedial action on property
22 other than property on which a release or suspected release has
23 occurred; (b) payment of any amount due from a third-party claim;
24 (c) fee collection expenses incurred by the State Fire Marshal; (d)
25 direct expenses incurred by the department in carrying out the
26 Petroleum Release Remedial Action Act; (e) other costs related to
27 fixtures and tangible personal property as provided in section
28 66-1529.01; (f) interest payments as allowed by section 66-1524;

1 (g) expenses incurred by the technical advisory committee created
2 in section 81-15,189 in carrying out its duties pursuant to section
3 81-15,190; and (h) claims approved by the State Claims Board
4 authorized under section 66-1531.

5 Any money in the fund available for investment shall be
6 invested by the state investment officer pursuant to the Nebraska
7 Capital Expansion Act and the Nebraska State Funds Investment Act.

8 Sec. 2. Section 66-1523, Revised Statutes Supplement,
9 1998, is amended to read:

10 66-1523. (1) Except as provided in subsection (2) of
11 this section, the department shall provide reimbursement from the
12 fund in accordance with section 66-1525 to eligible responsible
13 persons for the cost of remedial action for releases reported after
14 July 17, 1983, and on or before June 30, ~~1999~~ 2004, and for the
15 cost of paying third-party claims. The reimbursement for the cost
16 of remedial action shall not exceed nine hundred seventy-five
17 thousand dollars per occurrence. The total of the claims paid
18 under section 66-1531 and the reimbursement for third-party claims
19 shall not exceed one million dollars per occurrence. The
20 responsible person shall pay the first ten thousand dollars of the
21 cost of the remedial action or third-party claim, twenty-five
22 percent of the remaining cost of the remedial action or third-party
23 claim not to exceed fifteen thousand dollars, and the amount of any
24 reduction authorized under subsection (5) of section 66-1525. If
25 the department determines that a responsible person was ordered to
26 take remedial action for a release which was later found to be from
27 a tank not owned or operated by such person, (a) such person shall
28 be fully reimbursed and shall not be required to pay the first cost

1 or percent of the remaining cost as provided in this subsection and
2 (b) the first cost and percent of the remaining cost not required
3 to be paid by the person ordered to take remedial action shall be
4 paid to the fund as a cost of remedial action by the owner or
5 operator of the tank found to be the cause of the release. In no
6 event shall reimbursements or payments from the fund exceed the
7 annual aggregate of one million nine hundred seventy-five thousand
8 dollars per responsible person. Reimbursement of a cost incurred
9 as a result of a suspension ordered by the department shall not be
10 limited by this subsection if the suspension was caused by
11 insufficiency in the fund to provide reimbursement.

12 (2) Upon the determination by the department that the
13 responsible person sold no less than two thousand gallons of
14 petroleum and no more than two hundred fifty thousand gallons of
15 petroleum during the calendar year immediately preceding the first
16 report of the release or stored less than ten thousand gallons of
17 petroleum in the calendar year immediately preceding the first
18 report of the release, the department shall provide reimbursement
19 from the fund in accordance with section 66-1525 to such an
20 eligible person for the cost of remedial action for releases
21 reported after July 17, 1983, and on or before June 30, ~~1999~~ 2004,
22 and for the cost of paying third-party claims. The reimbursement
23 for the cost of remedial action shall not exceed nine hundred
24 eighty-five thousand dollars per occurrence. The total of the
25 claims paid under section 66-1531 and the reimbursement for
26 third-party claims shall not exceed one million dollars per
27 occurrence. The responsible person shall pay the first five
28 thousand dollars of the cost of the remedial action or third-party

1 claim, twenty-five percent of the remaining cost of the remedial
2 action or third-party claim not to exceed ten thousand dollars, and
3 the amount of any reduction authorized under subsection (5) of
4 section 66-1525. If the department determines that a responsible
5 person was ordered to take remedial action for a release which was
6 later found to be from a tank not owned or operated by such person,
7 (a) such person shall be fully reimbursed and shall not be required
8 to pay the first cost or percent of the remaining cost as provided
9 in this subsection and (b) the first cost and percent of the
10 remaining cost not required to be paid by the person ordered to
11 take remedial action shall be paid to the fund as a cost of
12 remedial action by the owner or operator of the tank found to be
13 the cause of the release. In no event shall reimbursements or
14 payments from the fund exceed the annual aggregate of one million
15 nine hundred eighty-five thousand dollars per responsible person.
16 Reimbursement of a cost incurred as a result of a suspension
17 ordered by the department shall not be limited by this subsection
18 if the suspension was caused by insufficiency in the fund to
19 provide reimbursement.

20 (3) The department may make partial reimbursement during
21 the time that remedial action is being taken if the department is
22 satisfied that the remedial action being taken is as required by
23 the department.

24 (4) If the fund is insufficient for any reason to
25 reimburse the amount set forth in this section, the maximum amount
26 that the fund shall be required to reimburse is the amount in the
27 fund. If reimbursements approved by the department exceed the
28 amount in the fund, reimbursements with interest shall be made when

1 the fund is sufficiently replenished in the order in which the
2 applications for them were received by the department, except that
3 an application pending before the department on January 1, 1996,
4 submitted by a local government as defined in section 13-2202
5 shall, after July 1, 1996, be reimbursed first when funds are
6 available. This exception applies only to local government
7 applications pending on and not submitted after January 1, 1996.

8 (5) Applications for reimbursement properly made before,
9 on, or after April 16, 1996, shall be considered bills for goods or
10 services provided for third parties for purposes of the Prompt
11 Payment Act.

12 (6) Notwithstanding any other provision of law, there
13 shall be no reimbursement from the fund for the cost of remedial
14 action or for the cost of paying third-party claims for any
15 releases reported on or after July 1, ~~1999~~ 2004.

16 (7) For purposes of this section, occurrence shall mean
17 an accident, including continuous or repeated exposure to
18 conditions, which results in a release from a tank.

19 Sec. 3. Section 66-1525, Revised Statutes Supplement,
20 1998, is amended to read:

21 66-1525. (1) Any responsible person or his or her
22 designated representative who has taken remedial action in response
23 to a release first reported after July 17, 1983, and on or before
24 June 30, ~~1999~~ 2004, or against whom there is a third-party claim
25 may apply to the department under the rules and regulations adopted
26 and promulgated pursuant to section 66-1518 for reimbursement for
27 the costs of the remedial action or third-party claim. Partial
28 payment of such reimbursement to the responsible person may be

1 authorized by the department at the approved stages prior to the
2 completion of remedial action when a remedial action plan has been
3 approved. If any stage is projected to take more than ninety days
4 to complete partial payments may be requested every sixty days.
5 Such partial payment may include the eligible and reasonable costs
6 of such plan or pilot projects conducted during the remedial
7 action.

8 (2) No reimbursement may be made unless the department
9 makes the following eligibility determinations:

10 (a) The tank was in substantial compliance with any rules
11 and regulations of the United States Environmental Protection
12 Agency, the State Fire Marshal, and the department which were
13 applicable to the tank. Substantial compliance shall be determined
14 by the department taking into consideration the purposes of the
15 Petroleum Release Remedial Action Act and the adverse effect that
16 any violation of the rules and regulations may have had on the tank
17 thereby causing or contributing to the release and the extent of
18 the remedial action thereby required;

19 (b) Either the State Fire Marshal or the department was
20 given notice of the release in substantial compliance with the
21 rules and regulations adopted and promulgated pursuant to the
22 Environmental Protection Act and the Petroleum Products and
23 Hazardous Substances Storage and Handling Act. Substantial
24 compliance shall be determined by the department taking into
25 consideration the purposes of the Petroleum Release Remedial Action
26 Act and the adverse effect that any violation of the notice
27 provisions of the rules and regulations may have had on the
28 remedial action being taken in a prompt, effective, and efficient

1 manner;

2 (c) The responsible person reasonably cooperated with the
3 department and the State Fire Marshal in responding to the release;

4 (d) The department has approved the plan submitted by the
5 responsible person for the remedial action in accordance with rules
6 and regulations adopted and promulgated by the department pursuant
7 to the Environmental Protection Act or the Petroleum Products and
8 Hazardous Substances Storage and Handling Act or that portion of
9 the plan for which payment or reimbursement is requested. However,
10 responsible persons may undertake remedial action prior to approval
11 of a plan by the department or during the time that remedial action
12 at a site was suspended at any time after April 1995 because the
13 fund was insufficient to pay reimbursements and be eligible for
14 reimbursement at a later time if the responsible person complies
15 with procedures provided to the responsible party by the department
16 or set out in rules and regulations adopted and promulgated by the
17 Environmental Quality Council;

18 (e) The costs for the remedial action were actually
19 incurred by the responsible person or his or her designated
20 representative after May 27, 1989, and were eligible and
21 reasonable;

22 (f) If reimbursement for a third-party claim is involved,
23 the cause of action for the third-party claim accrued after April
24 26, 1991, and the Attorney General was notified by any person of
25 the service of summons for the action within ten days of such
26 service; and

27 (g) The responsible person or his or her designated
28 representative has paid the amount specified in subsection (1) or

1 (2) of section 66-1523.

2 (3) The State Fire Marshal shall review each application
3 prior to consideration by the department and provide to the
4 department any information the State Fire Marshal deems relevant to
5 subdivisions (2)(a) through (g) of this section. The State Fire
6 Marshal shall issue a determination with respect to an applicant's
7 compliance with rules and regulations adopted and promulgated by
8 the State Fire Marshal. The State Fire Marshal shall issue a
9 compliance determination to the department within thirty days after
10 receiving an application from the department.

11 (4) The department may withhold taking action on an
12 application during the pendency of an enforcement action by the
13 state or federal government related to the tank or a release from
14 the tank.

15 (5) Reimbursements made for a remedial action may be
16 reduced as much as one hundred percent for failure by the
17 responsible person to comply with applicable statutory or
18 regulatory requirements. In determining the amount of the
19 reimbursement reduction, the department shall consider:

20 (a) The extent of and reasons for noncompliance;

21 (b) The likely environmental impact of the noncompliance;

22 and

23 (c) Whether noncompliance was negligent, knowing, or
24 willful.

25 (6) Except as provided in subsection (4) of this section,
26 the department shall notify the responsible person of its approval
27 or denial of the remedial action plan within one hundred twenty
28 days after receipt of a remedial action plan which contains all the

1 required information. If after one hundred twenty days the
2 department fails to either deny, approve, or amend the remedial
3 action plan submitted, the proposed plan shall be deemed approved.
4 If the remedial action plan is denied, the department shall provide
5 the reasons for such denial.

6 Sec. 4. Section 66-1529.02, Revised Statutes Supplement,
7 1998, is amended to read:

8 66-1529.02. (1) The department may undertake remedial
9 actions in response to a release first reported after July 17,
10 1983, and on or before June 30, ~~1999~~ 2004, with money available in
11 the fund if:

12 (a) The responsible person cannot be identified or
13 located;

14 (b) An identified responsible person cannot or will not
15 comply with the remedial action requirements; or

16 (c) Immediate remedial action is necessary, as determined
17 by the Director of Environmental Quality, to protect human health
18 or the environment.

19 (2) The department may pay the costs of a third-party
20 claim meeting the requirements of subdivision (2)(f) of section
21 66-1525 with money available in the fund if the responsible person
22 cannot or will not pay the third-party claim.

23 (3) Reimbursement for any damages caused by the
24 department or a person acting at the department's direction while
25 investigating or inspecting or during remedial action on property
26 other than property on which a release or suspected release has
27 occurred shall be considered as part of the cost of remedial action
28 involving the site where the release or suspected release occurred.

1 The costs shall be reimbursed from money available in the fund. If
2 such reimbursement is deemed inadequate by the party claiming the
3 damages, the party's claim for damages caused by the department
4 shall be filed as provided in section 76-705.

5 (4) All expenses paid from the fund under this section,
6 court costs, and attorney's fees may be recovered in a civil action
7 in the district court of Lancaster County. The action may be
8 brought by the county attorney or Attorney General at the request
9 of the director against the responsible person. All recovered
10 expenses shall be deposited into the fund.

11 Sec. 5. Original sections 66-1519, 66-1523, 66-1525, and
12 66-1529.02, Revised Statutes Supplement, 1998, are repealed.

13 Sec. 6. Since an emergency exists, this act takes effect
14 when passed and approved according to law.