

LEGISLATURE OF NEBRASKA
ONE HUNDRED SECOND LEGISLATURE
SECOND SESSION
LEGISLATIVE BILL 873

Introduced by Schilz, 47.

Read first time January 06, 2012

Committee: Natural Resources

A BILL

1 FOR AN ACT relating to petroleum release remedial action; to amend
2 sections 66-1523, 66-1525, and 66-1529.02, Reissue
3 Revised Statutes of Nebraska, and section 66-1519,
4 Revised Statutes Supplement, 2011; to extend use of the
5 fund until June 30, 2016; to harmonize provisions; to
6 provide an operative date; to repeal the original
7 sections; and to declare an emergency.
8 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 66-1519, Revised Statutes Supplement,
2 2011, is amended to read:

3 66-1519 (1) 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 (a) The fees imposed by sections 66-1520 and 66-1521;

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

10 (c) 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 (2) Money in the fund may be spent for: (a) Reimbursement
15 for the costs of remedial action by a responsible person or his or
16 her designated representative and costs of remedial action undertaken
17 by the department in response to a release first reported after July
18 17, 1983, and on or before June 30, ~~2012~~, 2016, including
19 reimbursement for damages caused by the department or a person acting
20 at the department's direction while investigating or inspecting or
21 during remedial action on property other than property on which a
22 release or suspected release has occurred; (b) payment of any amount
23 due from a third-party claim; (c) fee collection expenses incurred by
24 the State Fire Marshal; (d) direct expenses incurred by the
25 department in carrying out the Petroleum Release Remedial Action Act;

1 (e) other costs related to fixtures and tangible personal property as
2 provided in section 66-1529.01; (f) interest payments as allowed by
3 section 66-1524; (g) claims approved by the State Claims Board
4 authorized under section 66-1531; and (h) the direct and indirect
5 costs incurred by the department in responding to spills and other
6 environmental emergencies related to petroleum or petroleum products.

7 (3) Transfers may be made from the Petroleum Release
8 Remedial Action Cash Fund to the General Fund at the direction of the
9 Legislature. The State Treasurer shall transfer one million five
10 hundred thousand dollars from the Petroleum Release Remedial Action
11 Cash Fund to the Ethanol Production Incentive Cash Fund on July 1 of
12 each of the following years: 2004 through 2011.

13 (4) Any money in the Petroleum Release Remedial Action
14 Cash Fund available for investment shall be invested by the state
15 investment officer pursuant to the Nebraska Capital Expansion Act and
16 the Nebraska State Funds Investment Act.

17 Sec. 2. Section 66-1523, Reissue Revised Statutes of
18 Nebraska, is amended to read:

19 66-1523 (1) Except as provided in subsection (2) of this
20 section, the department shall provide reimbursement from the fund in
21 accordance with section 66-1525 to eligible responsible persons for
22 the cost of remedial action for releases reported after July 17,
23 1983, and on or before June 30, ~~2012,~~ 2016, and for the cost of
24 paying third-party claims. The reimbursement for the cost of remedial
25 action shall not exceed nine hundred seventy-five thousand dollars

1 per occurrence. The total of the claims paid under section 66-1531
2 and the reimbursement for third-party claims shall not exceed one
3 million dollars per occurrence. The responsible person shall pay the
4 first ten thousand dollars of the cost of the remedial action or
5 third-party claim, twenty-five percent of the remaining cost of the
6 remedial action or third-party claim not to exceed fifteen thousand
7 dollars, and the amount of any reduction authorized under subsection
8 (5) of section 66-1525. If the department determines that a
9 responsible person was ordered to take remedial action for a release
10 which was later found to be from a tank not owned or operated by such
11 person, (a) such person shall be fully reimbursed and shall not be
12 required to pay the first cost or percent of the remaining cost as
13 provided in this subsection and (b) the first cost and percent of the
14 remaining cost not required to be paid by the person ordered to take
15 remedial action shall be paid to the fund as a cost of remedial
16 action by the owner or operator of the tank found to be the cause of
17 the release. In no event shall reimbursements or payments from the
18 fund exceed the annual aggregate of one million nine hundred seventy-
19 five thousand dollars per responsible person. Reimbursement of a cost
20 incurred as a result of a suspension ordered by the department shall
21 not be limited by this subsection if the suspension was caused by
22 insufficiency in the fund to provide reimbursement.

23 (2) Upon the determination by the department that the
24 responsible person sold no less than two thousand gallons of
25 petroleum and no more than two hundred fifty thousand gallons of

1 petroleum during the calendar year immediately preceding the first
2 report of the release or stored less than ten thousand gallons of
3 petroleum in the calendar year immediately preceding the first report
4 of the release, the department shall provide reimbursement from the
5 fund in accordance with section 66-1525 to such an eligible person
6 for the cost of remedial action for releases reported after July 17,
7 1983, and on or before June 30, ~~2012~~, 2016, and for the cost of
8 paying third-party claims. The reimbursement for the cost of remedial
9 action shall not exceed nine hundred eighty-five thousand dollars per
10 occurrence. The total of the claims paid under section 66-1531 and
11 the reimbursement for third-party claims shall not exceed one million
12 dollars per occurrence. The responsible person shall pay the first
13 five thousand dollars of the cost of the remedial action or third-
14 party claim, twenty-five percent of the remaining cost of the
15 remedial action or third-party claim not to exceed ten thousand
16 dollars, and the amount of any reduction authorized under subsection
17 (5) of section 66-1525. If the department determines that a
18 responsible person was ordered to take remedial action for a release
19 which was later found to be from a tank not owned or operated by such
20 person, (a) such person shall be fully reimbursed and shall not be
21 required to pay the first cost or percent of the remaining cost as
22 provided in this subsection and (b) the first cost and percent of the
23 remaining cost not required to be paid by the person ordered to take
24 remedial action shall be paid to the fund as a cost of remedial
25 action by the owner or operator of the tank found to be the cause of

1 the release. In no event shall reimbursements or payments from the
2 fund exceed the annual aggregate of one million nine hundred eighty-
3 five thousand dollars per responsible person. Reimbursement of a cost
4 incurred as a result of a suspension ordered by the department shall
5 not be limited by this subsection if the suspension was caused by
6 insufficiency in the fund to provide reimbursement.

7 (3) The department may make partial reimbursement during
8 the time that remedial action is being taken if the department is
9 satisfied that the remedial action being taken is as required by the
10 department.

11 (4) If the fund is insufficient for any reason to
12 reimburse the amount set forth in this section, the maximum amount
13 that the fund shall be required to reimburse is the amount in the
14 fund. If reimbursements approved by the department exceed the amount
15 in the fund, reimbursements with interest shall be made when the fund
16 is sufficiently replenished in the order in which the applications
17 for them were received by the department, except that an application
18 pending before the department on January 1, 1996, submitted by a
19 local government as defined in section 13-2202 shall, after July 1,
20 1996, be reimbursed first when funds are available. This exception
21 applies only to local government applications pending on and not
22 submitted after January 1, 1996.

23 (5) Applications for reimbursement properly made before,
24 on, or after April 16, 1996, shall be considered bills for goods or
25 services provided for third parties for purposes of the Prompt

1 Payment Act.

2 (6) Notwithstanding any other provision of law, there
3 shall be no reimbursement from the fund for the cost of remedial
4 action or for the cost of paying third-party claims for any releases
5 reported on or after July 1, ~~2012~~, 2016.

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

9 Sec. 3. Section 66-1525, Reissue Revised Statutes of
10 Nebraska, is amended to read:

11 66-1525 (1) Any responsible person or his or her
12 designated representative who has taken remedial action in response
13 to a release first reported after July 17, 1983, and on or before
14 June 30, ~~2012~~, 2016, or against whom there is a third-party claim may
15 apply to the department under the rules and regulations adopted and
16 promulgated pursuant to section 66-1518 for reimbursement for the
17 costs of the remedial action or third-party claim. Partial payment of
18 such reimbursement to the responsible person may be authorized by the
19 department at the approved stages prior to the completion of remedial
20 action when a remedial action plan has been approved. If any stage is
21 projected to take more than ninety days to complete partial payments
22 may be requested every sixty days. Such partial payment may include
23 the eligible and reasonable costs of such plan or pilot projects
24 conducted during the remedial action.

25 (2) No reimbursement may be made unless the department

1 makes the following eligibility determinations:

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

11 (b) Either the State Fire Marshal or the department was
12 given notice of the release in substantial compliance with the rules
13 and regulations adopted and promulgated pursuant to the Environmental
14 Protection Act and the Petroleum Products and Hazardous Substances
15 Storage and Handling Act. Substantial compliance shall be determined
16 by the department taking into consideration the purposes of the
17 Petroleum Release Remedial Action Act and the adverse effect that any
18 violation of the notice provisions of the rules and regulations may
19 have had on the remedial action being taken in a prompt, effective,
20 and efficient manner;

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

23 (d) The department has approved the plan submitted by the
24 responsible person for the remedial action in accordance with rules
25 and regulations adopted and promulgated by the department pursuant to

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

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

15 (f) If reimbursement for a third-party claim is involved,
16 the cause of action for the third-party claim accrued after April 26,
17 1991, and the Attorney General was notified by any person of the
18 service of summons for the action within ten days of such service;
19 and

20 (g) The responsible person or his or her designated
21 representative has paid the amount specified in subsection (1) or (2)
22 of section 66-1523.

23 (3) The State Fire Marshal shall review each application
24 prior to consideration by the department and provide to the
25 department any information the State Fire Marshal deems relevant to

1 subdivisions (2)(a) through (g) of this section. The State Fire
2 Marshal shall issue a determination with respect to an applicant's
3 compliance with rules and regulations adopted and promulgated by the
4 State Fire Marshal. The State Fire Marshal shall issue a compliance
5 determination to the department within thirty days after receiving an
6 application from the department.

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

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

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

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

17 and

18 (c) Whether noncompliance was negligent, knowing, or
19 willful.

20 (6) Except as provided in subsection (4) of this section,
21 the department shall notify the responsible person of its approval or
22 denial of the remedial action plan within one hundred twenty days
23 after receipt of a remedial action plan which contains all the
24 required information. If after one hundred twenty days the department
25 fails to either deny, approve, or amend the remedial action plan

1 submitted, the proposed plan shall be deemed approved. If the
2 remedial action plan is denied, the department shall provide the
3 reasons for such denial.

4 Sec. 4. Section 66-1529.02, Reissue Revised Statutes of
5 Nebraska, is amended to read:

6 66-1529.02 (1) The department may undertake remedial
7 actions in response to a release first reported after July 17, 1983,
8 and on or before June 30, ~~2012~~, 2016, with money available in the
9 fund if:

10 (a) The responsible person cannot be identified or
11 located;

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

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

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

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

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

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

12 Sec. 5. This act becomes operative on June 30, 2012.

13 Sec. 6. Original sections 66-1523, 66-1525, and
14 66-1529.02, Reissue Revised Statutes of Nebraska, and section
15 66-1519, Revised Statutes Supplement, 2011, are repealed.

16 Sec. 7. Since an emergency exists, this act takes effect
17 when passed and approved according to law.