

(b) The Secretary may authorize disbursements from the Fund for the purpose of the cleanup and restoration of contaminated soil and groundwater caused by releases of petroleum, including aviation gasoline, 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 shall be used for no other governmental purposes, nor shall any portion of the Fund ever be available to borrow from by any branch of government; it being the intent of the General Assembly that this 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, 2029 and judged to be in conformance with prevailing industry rates. This includes:

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

(A) An underground storage tank defined as a category one tank used for commercial purposes, 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 double-wall tank systems used for commercial purposes or single-wall tank systems that were either taken out-of-service or abandoned prior to July 1, 1985 (date of first UST Rules/permit requirements);

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

Commented [VS1]: Wanted to note that this "commercial purpose" language is currently limited to (A)(i) and does not apply to (ii).

Is there a reason it is not also specifically included in (ii)? I understand that category one tanks, in effect, essentially regulate only commercial tanks, but I would advise being consistent here [moving the commercial purpose up into (A)] if that is the intent

Commented [VS2]: The UST rule draws a distinction in its definition of "owner" based upon use after July 1, 1985 and ownership prior to discontinued use of a tank on July 1, 1985.

Commented [MM3]: New law enacted in 1985 for regulating construction, operation and maintenance of USTs. Permitting requirements under UST rules likely promulgated soon thereafter. Any research assistance would be great.

Commented [VS4]: Fine as is.

As noted in our conversation, the statute and UST regs do not define this specifically. As a result, we would be applying the ordinary meaning of these terms and should be wary of any amended regs or guidance or procedures that discuss/define this topic.

(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)(D) on any individual site shall not exceed \$~~25~~50,000.00. These disbursements shall be made from the Motor Fuel Account or Heating Fuel Account, depending upon the use or contents of the tank.

(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)(E) on any individual site shall not exceed \$990,000.00. These disbursements shall be made from the Motor Fuel Account.

(F) 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 shall have the discretion to disburse funds from either the Heating Fuel or Motor Fuel Account, or both.

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

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

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

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

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

(C) [Repealed.]

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

(5) [Repealed.]

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

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

Commented [MM5]: We need to increase this significantly by applying CPI to this amount from the time this statute was passed. Also, PCF Advisory Committee would like to add language allowing the Secretary to authorize disbursements above new cap if "in the judgment of the Secretary, such action is necessary to protect public health and the environment." It's similar language to (b)(3).

Commented [MM6R5]: AST coverage in statute enacted in 1998.

Commented [MM7R5]: According to Bureau of Labor Statistics CPI calculator, \$25,000 in July 1998 has same buying power as >\$45,000 in November 2022.

~~(8) The cost 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.~~

(c) The secretary may authorize disbursements from the 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 Secretary may seek reimbursement of the costs, including but not limited to any costs determined to be covered by insurance.

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

(ee) Disbursements from the Fund for cleanup costs incurred prior to passage shall be limited to uninsured costs.

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

- (1) the Secretary of Natural Resources, who shall be chair;
- (2) the Commissioner of Environmental Conservation;
- (3) the Commissioner of Financial Regulation;
- (4) a licensed gasoline distributor;
- (5) a retail gasoline dealer;
- (6) a representative of a statewide refining-marketing petroleum association;
- (7) one member of the House to be appointed by the Speaker of the House;
- (8) one member of the Senate to be appointed by the Committee on Committees;
- (9) a licensed heating fuel dealer;

Commented [MM8]: Moving (8) out from under (b) so that it is not ONLY tied to UST/AST releases.

Commented [MM9R8]: This change has been discussed with Matt Chapman but needs final clearance with PCF Advisory Committee for legislative report recommendation.

Commented [MM10]: Does this need to be changed given this was disbanded and now they're represented by the Vermont Retail Grocers Association?

Commented [VS11R10]: This is fine as the VRGA can be classified as a refining-marketing association

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

(11) a licensed real estate broker.

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

(hg) 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 for such assistance. The financial assistance may be in the form of grants of up to: \$23,000.00 or the costs of closure, replacement, or upgrade, whichever is less for an aboveground storage tank located inside a structure; up to \$34,000.00 or the costs of closure, replacement, or upgrade, whichever is less for an aboveground storage tank located outside a structure; and up to \$45,000.00 or the costs of closure, replacement, or upgrade, whichever is less for an underground storage tank. As used in this subsection, "structure" means any assembly of materials that is intended for occupancy or use by a person and that has at least three walls and a roof. 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 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 recommended standards. The 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 ensure 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. The Secretary shall authorize only up to \$4500,000.00 in assistance for underground and aboveground heating fuel tanks in any one fiscal year from the Heating Fuel Account for this purpose. The application must be accompanied by the following information:

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

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

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

- (4) an estimated cost of tank closure, replacement, or upgrade;
- (5) the amount and type of assistance requested;
- (6) a schedule for the work;
- (7) description of surrounding area, including location of water supply wells, surface waters, and other sensitive receptors; and

