

SENATE BILL No. 246

DIGEST OF INTRODUCED BILL

Citations Affected: IC 4-10-18-12; IC 5-1.2-12-3; IC 13-11-2; IC 13-14-9-1; IC 13-23; IC 13-27-8-3; IC 13-30; IC 16-44-2; IC 22-12-2-2.

Synopsis: Excess liability trust fund. Expands the use of the underground petroleum storage tank excess liability fund to include aboveground storage tanks. Transfers, from the state fire marshal and the fire prevention and building safety commission to the Indiana department of environmental management and the environmental rules board, the authority to issue certificates for people who work on underground storage tanks in Indiana. Makes conforming amendments.

Effective: July 1, 2023.

Niemeyer

January 11, 2023, read first time and referred to Committee on Environmental Affairs.



First Regular Session of the 123rd General Assembly (2023)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2022 Regular Session of the General Assembly.

SENATE BILL No. 246

A BILL FOR AN ACT to amend the Indiana Code concerning environmental law.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 4-10-18-12, AS AMENDED BY P.L.113-2014,
2 SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2023]: Sec. 12. If the amount of money in the ~~underground~~
4 petroleum storage tank excess liability trust fund established by
5 IC 13-23-7-1 reaches **fifteen million dollars (\$15,000,000)**, ~~zero (0)~~,
6 ten million dollars (\$10,000,000) shall be transferred to the
7 ~~underground~~ petroleum storage tank excess liability trust fund from the
8 fund if the:
9 (1) ~~underground~~ petroleum storage tank financial assurance
10 board, **established by IC 13-23-11-1**, recommends that the
11 appropriation should be made; and
12 (2) budget committee approves the appropriation.
13 SECTION 2. IC 5-1.2-12-3, AS AMENDED BY P.L.10-2019,
14 SECTION 24, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
15 JULY 1, 2023]: Sec. 3. (a) The Indiana brownfields fund is established
16 to provide money for grants, loans, and other financial assistance to or
17 for the benefit of political subdivisions under this chapter. The



1 authority shall administer, hold, and manage the Indiana brownfields
2 fund.

3 (b) Money in the fund at the end of a state fiscal year does not revert
4 to the state general fund.

5 (c) Expenses of administering the Indiana brownfields fund shall be
6 paid from money in the Indiana brownfields fund.

7 (d) The Indiana brownfields fund consists of the following:

8 (1) Appropriations made by the general assembly.

9 (2) Grants and gifts intended for deposit in the Indiana
10 brownfields fund.

11 (3) Repayments of loans and other financial assistance from the
12 Indiana brownfields fund, including premiums, interest, and
13 penalties.

14 (4) Proceeds from the sale of loans and other financial assistance
15 under section 8 of this chapter.

16 (5) Interest, premiums, gains, or other earnings on the Indiana
17 brownfields fund.

18 (6) Money transferred from the hazardous substances response
19 trust fund under IC 13-25-4-1(a)(9).

20 (7) Fees collected under section 6 of this chapter.

21 (8) Money transferred from the ~~underground~~ petroleum storage
22 tank excess liability trust fund under IC 13-23-7 for the purpose
23 of environmental assessment and remediation on a property
24 containing at least one (1) underground storage tank **or**
25 **aboveground storage tank**.

26 (9) Money transferred from the petroleum trust fund under
27 IC 13-23-12-4(1) for the purpose of corrective actions that
28 involve releases of regulated substances from underground
29 storage tanks **or aboveground storage tanks** and are ineligible
30 to receive funds from the ~~underground~~ petroleum storage tank
31 excess liability trust fund under IC 13-23-7.

32 (e) The authority shall invest the money in the Indiana brownfields
33 fund not currently needed to meet the obligations of the Indiana
34 brownfields fund in accordance with an investment policy adopted by
35 the authority. Interest, premiums, gains, or other earnings from the
36 investments shall be credited to and deposited in the Indiana
37 brownfields fund.

38 (f) As an alternative to subsection (e), the authority may invest or
39 cause to be invested all or a part of the Indiana brownfields fund in a
40 fiduciary account or accounts with a trustee that is a financial
41 institution. Notwithstanding any other law, any investment may be
42 made by the trustee in accordance with one (1) or more trust



1 agreements or indentures. A trust agreement or indenture may allow
 2 disbursements by the trustee to the authority, a participant, or any other
 3 person as provided in the trust agreement or indenture.

4 SECTION 3. IC 13-11-2-0.3 IS ADDED TO THE INDIANA CODE
 5 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 6 1, 2023]: **Sec. 0.3. "Aboveground petroleum storage tank", for**
 7 **purposes of IC 13-23, means an aboveground storage tank that is**
 8 **in operation after December 31, 1973.**

9 SECTION 4. IC 13-11-2-0.4 IS ADDED TO THE INDIANA CODE
 10 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 11 1, 2023]: **Sec. 0.4. (a) "Aboveground storage tank" (or AST), for**
 12 **purposes of this chapter and IC 13-23, means one (1) tank or**
 13 **combination of tanks:**

14 (1) that is used to contain an accumulation of regulated
 15 substances;

16 (2) the volume of which, including the volume of the
 17 aboveground connected pipes described in subsection (b), is
 18 not more than ten percent (10%) below the surface of the
 19 ground;

20 (3) with a capacity of over one thousand five hundred (1,500)
 21 gallons but not more than twenty thousand (20,000) gallons;
 22 and

23 (4) that is used at:

24 (A) a bulk plant or facility regulated under the Pipeline
 25 Safety Act (49 U.S.C. 60101 et seq.) for the bulk storage
 26 and distribution of motor fuel to retailers; or

27 (B) an airport, including both primary and nonprimary
 28 airports as defined in 49 U.S.C. 47102.

29 (b) If a:

30 (1) single tank; or

31 (2) combination of tanks;

32 constitutes an aboveground storage tank under subsection (a), any
 33 pipes that are connected to the single tank or combination of tanks
 34 are considered part of the aboveground storage tank.

35 (c) The term defined in subsection (a) includes a single tank:

36 (1) that meets the definition set forth in subsection (a); and

37 (2) in which there are separate compartments.

38 (d) The term does not include any of the following:

39 (1) A farm or residential tank with a capacity of not more
 40 than one thousand one hundred (1,100) gallons that is used for
 41 storing motor fuel for noncommercial purposes.

42 (2) A tank used for storing heating oil for consumptive use on



the premises on which the tank is stored.

(3) A septic tank.

(4) A surface impoundment, pit, pond, or lagoon.

(5) A storm water or wastewater collection system.

(6) A flow-through process tank.

(7) A liquid trap or associated gathering lines directly related to oil or gas production and gathering operations.

(8) Any other tank exempted by a rule adopted by the board in accordance with regulations adopted by the Administrator of the United States Environmental Protection Agency.

(9) A pipe connected to a tank described in subdivisions (1) through (8).

SECTION 5. IC 13-11-2-2, AS ADDED BY P.L.1-1996, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 2. (a) "Administrator", **except as provided in subsection (b)**, refers to the administrator of the United States Environmental Protection Agency.

(b) "Administrator", **for purposes of administering the ELTF, means the commissioner of the department of environmental management.**

SECTION 6. IC 13-11-2-15.3 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 15.3. "AST", **as used in this chapter and IC 13-23, refers to an aboveground storage tank (as defined in section 0.4 of this chapter).**

SECTION 7. IC 13-11-2-17, AS AMENDED BY P.L.13-2013, SECTION 46, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 17. (a) "Board", except as provided in subsections (b) through (d), refers to the environmental rules board established by IC 13-13-8-3.

(b) "Board", for purposes of IC 13-21, refers to the board of directors of a solid waste management district.

(c) "Board", for purposes of ~~IC 13-23-11~~, **IC 13-23**, refers to the ~~underground petroleum~~ storage tank financial assurance board **established by IC 13-23-11-1.**

(d) "Board", for purposes of IC 13-26, refers to the board of trustees of a regional water, sewage, or solid waste district.

SECTION 8. IC 13-11-2-50 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 50. (a) "Decommissioning", for purposes of IC 13-23, means the removal or closure of an underground storage tank **or aboveground storage tank.**

(b) "Decommissioning", for purposes of IC 13-29-1, means the



measures taken at the end of a facility's operating life to assure the continued protection of the public from any residual radioactivity or other potential hazards present at a facility.

SECTION 9. IC 13-11-2-62.5, AS ADDED BY P.L.96-2016, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 62.5. "Eligible party", as used in IC 13-23, means any of the following:

- (1) An owner, as defined in IC 13-11-2-150.
- (2) An operator, as defined in IC 13-11-2-148(d) and IC 13-11-2-148(e).
- (3) A former owner or operator of a UST **or AST**.
- (4) A transferee of property upon which a UST **or AST** is located.
- (5) A transferee of property upon which a UST **or AST** was located but from which the UST **or AST** has been removed.

SECTION 10. IC 13-11-2-62.7, AS ADDED BY P.L.96-2016, SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 62.7. "Eligible release", as used in IC 13-23, means a release of petroleum that meets all of the following criteria:

- (1) The release is from a UST **or AST** that was registered with the department before the date ~~of the ELTF claim on which the claimant confirmed the existence of the release or (if earlier) first suspected the existence of the release.~~
- (2) The release is reported to the department **in accordance with applicable regulations and statutes** not later than thirty (30) days after the date on which the claimant ~~discovered the release; confirmed the existence of the release or (if earlier) first suspected the existence of the release.~~
- (3) An initial site characterization of the facility on which the release occurred is submitted to the department as required by rules adopted by the environmental rules board.
- (4) The release from the UST **or AST** is from the tank or dispensing components of the UST **or AST**, not including the nozzle or hose connecting the nozzle to the pump.

SECTION 11. IC 13-11-2-63.5, AS ADDED BY P.L.96-2016, SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 63.5. "ELTF", as used in this chapter and IC 13-23, refers to the ~~underground~~ petroleum storage tank excess liability trust fund established by IC 13-23-7-1.

SECTION 12. IC 13-11-2-73, AS AMENDED BY P.L.96-2016, SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 73. "Excess liability trust fund", for purposes of IC 13-23, refers to the ~~underground~~ petroleum storage tank excess



liability trust fund (or ELTF) established by IC 13-23-7-1.

SECTION 13. IC 13-11-2-75 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 75. "Exposure assessment", for purposes of IC 13-23, means an assessment to determine the extent of exposure, or potential for exposure, of individuals to any regulated substance from a release from an underground storage tank **or aboveground storage tank** based on factors such as the following:

- (1) The nature and extent of contamination and the existence of or potential for pathways of human exposure, including ground or surface water contamination, air emissions, and food chain contamination.
- (2) The size of the community within the likely pathway of exposure.
- (3) The comparison of expected human exposure levels to the short term and long term health effects associated with identified contaminants and any available recommended exposure or tolerance limits for those contaminants.

SECTION 14. IC 13-11-2-77, AS AMENDED BY P.L.221-2007, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 77. (a) "Facility", for purposes of IC 13-15-1-3, means a structure or an area of land used for the disposal, treatment, storage, recovery, processing, or transferring of solid waste, hazardous waste, or atomic radiation. The term includes the following:

- (1) A hazardous waste facility.
- (2) An incinerator.
- (3) A solid waste landfill.
- (4) A transfer station.

(b) "Facility", for purposes of IC 13-17-7, means a single structure, piece of equipment, installation, or operation that:

- (1) emits; or
- (2) has the potential to emit;

a regulated air pollutant.

(c) "Facility", for purposes of IC 13-18-5, means a building, a structure, equipment, or other stationary item that is located on:

- (1) a single site; or
- (2) contiguous or adjacent sites that are owned by, operated by, or under common control of the same person.

(d) "Facility", for purposes of IC 13-21, means a facility, a plant, a works, a system, a building, a structure, an improvement, machinery, equipment, a fixture, or other real or personal property of any nature that is to be used, occupied, or employed for the collection, storage,



1 separation, processing, recovery, treatment, marketing, transfer, or
2 disposal of solid waste.

3 **(e) "Facility", for purposes of IC 13-23, means a parcel of land**
4 **or site, together with the structures, equipment, and improvements**
5 **on or appurtenant to the land or site, which is used or is being**
6 **developed for the storage or distribution of petroleum.**

7 ~~(e)~~ **(f)** "Facility", for purposes of IC 13-25-2, means all buildings,
8 equipment, structures, and other stationary items that are:

- 9 (1) located on a single site or on contiguous or adjacent sites; and
10 (2) owned or operated by:
11 (A) the same person; or
12 (B) any person that controls, is controlled by, or is under
13 common control with the same person.

14 For purposes of IC 13-25-2-6, the term includes motor vehicles, rolling
15 stock, and aircraft.

16 ~~(f)~~ **(g)** "Facility", for purposes of IC 13-25-4, has the meaning set
17 forth in 42 U.S.C. 9601(9).

18 ~~(g)~~ **(h)** "Facility", for purposes of IC 13-29-1, means a parcel of land
19 or site, together with the structures, equipment, and improvements on
20 or appurtenant to the land or site, which is used or is being developed
21 for the treatment, storage, or disposal of low-level radioactive waste.

22 SECTION 15. IC 13-11-2-81 IS AMENDED TO READ AS
23 FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 81. (a) "Fiduciary", for
24 purposes of IC 13-23-13:

- 25 (1) means a person acting for the benefit of another party as a
26 bona fide:
27 (A) trustee;
28 (B) executor;
29 (C) administrator;
30 (D) custodian;
31 (E) guardian of estates or guardian ad litem;
32 (F) receiver;
33 (G) conservator;
34 (H) committee of estates of incapacitated persons;
35 (I) personal representative;
36 (J) trustee (including a successor to a trustee) under an
37 indenture agreement, trust agreement, lease, or similar
38 financing agreement for debt securities, certificates of interest
39 or certificates of participation in debt securities, or other forms
40 of indebtedness as to which the trustee is not, in the capacity
41 of trustee, the lender; or
42 (K) representative in a capacity that is similar to the capacities



- 1 referred to in clauses (A) through (J); and
 2 (2) does not include:
 3 (A) a person that is acting as a fiduciary with respect to a trust
 4 or other fiduciary estate that was organized for the primary
 5 purpose of, or is engaged in, actively carrying on a trade or
 6 business for profit, unless the trust or other fiduciary estate
 7 was created as part of, or to facilitate, at least one (1) estate
 8 plan or because of the incapacity of a natural person; or
 9 (B) a person that acquires ownership or control of an
 10 underground storage tank **or aboveground storage tank** with
 11 the objective purpose of avoiding liability of the person or
 12 another person.
 13 (b) "Fiduciary", for purposes of IC 13-24-1:
 14 (1) means a person acting for the benefit of another party as a
 15 bona fide:
 16 (A) trustee;
 17 (B) executor;
 18 (C) administrator;
 19 (D) custodian;
 20 (E) guardian of estates or guardian ad litem;
 21 (F) receiver;
 22 (G) conservator;
 23 (H) committee of estates of incapacitated persons;
 24 (I) personal representative;
 25 (J) trustee (including a successor to a trustee) under an
 26 indenture agreement, trust agreement, lease, or similar
 27 financing agreement for debt securities, certificates of interest
 28 or certificates of participation in debt securities, or other forms
 29 of indebtedness as to which the trustee is not, in the capacity
 30 of trustee, the lender; or
 31 (K) representative in a capacity that is similar to the capacities
 32 referred to in clauses (A) through (J); and
 33 (2) does not include:
 34 (A) a person that is acting as a fiduciary with respect to a trust
 35 or other fiduciary estate that was organized for the primary
 36 purpose of, or is engaged in, actively carrying on a trade or
 37 business for profit, unless the trust or other fiduciary estate
 38 was created as part of, or to facilitate, at least one (1) estate
 39 plan or because of the incapacity of a natural person; or
 40 (B) a person that acquires ownership or control of a petroleum
 41 facility with the purpose of avoiding liability of the person or
 42 of another person.



(c) "Fiduciary", for purposes of IC 13-25-4:

(1) means a person acting for the benefit of another party as a bona fide:

- (A) trustee;
- (B) executor;
- (C) administrator;
- (D) custodian;
- (E) guardian of estates or guardian ad litem;
- (F) receiver;
- (G) conservator;
- (H) committee of estates of incapacitated persons;
- (I) personal representative;
- (J) trustee (including a successor to a trustee) under an indenture agreement, trust agreement, lease, or similar financing agreement for debt securities, certificates of interest or certificates of participation in debt securities, or other forms of indebtedness as to which the trustee is not, in the capacity of trustee, the lender; or
- (K) representative in a capacity that is similar to the capacities referred to in clauses (A) through (J); and

(2) does not include:

- (A) a person that is acting as a fiduciary with respect to a trust or other fiduciary estate that was organized for the primary purpose of, or is engaged in, actively carrying on a trade or business for profit, unless the trust or other fiduciary estate was created as part of, or to facilitate, at least one (1) estate plan or because of the incapacity of a natural person; or
- (B) a person that acquires ownership or control of a vessel or facility with the objective purpose of avoiding liability of the person or of another person.

SECTION 16. IC 13-11-2-81.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 81.5. (a) "Fiduciary capacity", for purposes of IC 13-23-13, means the capacity of a person in holding title to an underground storage tank **or aboveground storage tank** pursuant to the exercise of the responsibilities of the person as a fiduciary.

(b) "Fiduciary capacity", for purposes of IC 13-24-1, means the capacity of a person in holding title to a petroleum facility pursuant to the exercise of the responsibilities of the person as a fiduciary.

(c) "Fiduciary capacity", for purposes of IC 13-25-4, means the capacity of a person in holding title to a vessel or facility pursuant to the exercise of the responsibilities of the person as a fiduciary.



1 SECTION 17. IC 13-11-2-84 IS AMENDED TO READ AS
 2 FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 84. "Financial
 3 assurance board", for purposes of IC 13-23, refers to the ~~underground~~
 4 petroleum storage tank financial assurance board **established by**
 5 **IC 13-23-11-1.**

6 SECTION 18. IC 13-11-2-85.6, AS ADDED BY P.L.159-2011,
 7 SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 8 JULY 1, 2023]: Sec. 85.6. "Foreclosure", for purposes of sections
 9 148(e)(2), 150(c), and 151(e) of this chapter, means the acquisition of
 10 a vessel or facility for purposes of IC 13-25-4-8(c), an underground
 11 storage tank **or aboveground storage tank** for purposes of
 12 IC 13-23-13, or a petroleum facility for purposes of IC 13-24-1 through
 13 any of the following:

14 (1) If the vessel or facility, underground storage tank **or**
 15 **aboveground storage tank**, or petroleum facility was security for
 16 an extension of credit previously contracted:

17 (A) purchase at sale under a judgment or decree, power of
 18 sale, or nonjudicial foreclosure;

19 (B) a deed in lieu of foreclosure or a similar conveyance from
 20 a trustee; or

21 (C) repossession.

22 (2) Conveyance under an extension of credit previously
 23 contracted, including the termination of a lease agreement.

24 (3) Any other formal or informal manner by which the person
 25 acquires, for subsequent disposition, title to or possession of a
 26 vessel or facility, underground storage tank **or aboveground**
 27 **storage tank**, or petroleum facility in order to protect the security
 28 interest of the person.

29 SECTION 19. IC 13-11-2-87, AS AMENDED BY P.L.100-2021,
 30 SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 31 JULY 1, 2023]: Sec. 87. (a) "Fund", for purposes of IC 13-14-12, refers
 32 to the environmental management special fund.

33 (b) "Fund", for purposes of IC 13-15-10, refers to the waste facility
 34 operator trust fund.

35 (c) "Fund", for purposes of IC 13-15-11, refers to the environmental
 36 management permit operation fund.

37 (d) "Fund", for purposes of IC 13-17-6, refers to the asbestos trust
 38 fund.

39 (e) "Fund", for purposes of IC 13-17-8, refers to the Title V
 40 operating permit program trust fund.

41 (f) "Fund", for purposes of IC 13-18-8-5, refers to a sanitary fund.

42 (g) "Fund", for purposes of IC 13-19-3-3.2, refers to the CCR



1 program fund.

2 (h) "Fund", for purposes of IC 13-20-13, refers to the waste tire
3 management fund.

4 (i) "Fund", for purposes of IC 13-20-22, refers to the state solid
5 waste management fund.

6 (j) "Fund", for purposes of IC 13-21-7, refers to the waste
7 management district bond fund.

8 (k) "Fund", for purposes of IC 13-21-13-2, refers to a district solid
9 waste management fund.

10 (l) "Fund", for purposes of IC 13-23-6, refers to the ~~underground~~
11 petroleum storage tank trust fund.

12 (m) "Fund", for purposes of IC 13-23-7 and IC 13-23-8, refers to the
13 ~~underground~~ petroleum storage tank excess liability trust fund (or
14 ELTF).

15 (n) "Fund", for purposes of IC 13-25-4, refers to the hazardous
16 substances response trust fund.

17 (o) "Fund", for purposes of IC 13-25-5, refers to the voluntary
18 remediation fund.

19 (p) "Fund", for purposes of IC 13-28-2, refers to the voluntary
20 compliance fund.

21 SECTION 20. IC 13-11-2-93 IS AMENDED TO READ AS
22 FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 93. (a) "Guarantor", for
23 purposes of IC 13-22-8, means a person, other than the owner or
24 operator of a hazardous waste facility, who provides evidence of
25 financial responsibility for the owner or operator under IC 13-22-8.

26 (b) "Guarantor", for purposes of IC 13-23-4-6, means any person,
27 other than the owner or operator of an underground storage tank **or**
28 **aboveground storage tank**, who provides evidence of financial
29 responsibility for an owner or operator under:

30 (1) IC 13-23-4-1 or IC 13-23-4-2; and

31 (2) the rules adopted under IC 13-23-1-2(c)(6).

32 SECTION 21. IC 13-11-2-119, AS AMENDED BY P.L. 113-2014,
33 SECTION 51, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
34 JULY 1, 2023]: Sec. 119. (a) "Lender", for purposes of IC 13-23-13,
35 means any of the following:

36 (1) An insured depository institution (as defined in Section 3 of
37 the Federal Deposit Insurance Act (12 U.S.C. 1813)).

38 (2) An insured credit union (as defined in Section 101 of the
39 Federal Credit Union Act (12 U.S.C. 1752)).

40 (3) A bank or association chartered under the Farm Credit Act of
41 1971 (12 U.S.C. 2001 et seq.).

42 (4) A leasing or trust company that is an affiliate of an insured



depository institution.

(5) A person (including a successor or assignee of the person) that:

(A) makes a bona fide extension of credit to; or

(B) takes or acquires a security interest from;
a nonaffiliated person.

(6) The Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Federal Agricultural Mortgage Corporation, or an entity that buys or sells loans or interests in loans in a bona fide manner.

(7) A person that:

(A) insures or guarantees against a default in the repayment of an extension of credit; or

(B) acts as a surety with respect to an extension of credit;
to a nonaffiliated person.

(8) A person that provides title insurance and that acquires an underground storage tank **or aboveground storage tank** as a result of assignment or conveyance in the course of underwriting claims and claims settlement.

(b) "Lender", for purposes of IC 13-24-1, means any of the following:

(1) An insured depository institution (as defined in Section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813)).

(2) An insured credit union (as defined in Section 101 of the Federal Credit Union Act (12 U.S.C. 1752)).

(3) A bank or association chartered under the Farm Credit Act of 1971 (12 U.S.C. 2001 et seq.).

(4) A leasing or trust company that is an affiliate of an insured depository institution.

(5) A person (including a successor or assignee of the person) that:

(A) makes a bona fide extension of credit to; or

(B) takes or acquires a security interest from;
a nonaffiliated person.

(6) The Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Federal Agricultural Mortgage Corporation, or an entity that buys or sells loans or interests in loans in a bona fide manner.

(7) A person that:

(A) insures or guarantees against a default in the repayment of an extension of credit; or

(B) acts as a surety with respect to an extension of credit;



1 to a nonaffiliated person.

2 (8) A person that provides title insurance and that acquires a
3 petroleum facility as a result of assignment or conveyance in the
4 course of underwriting claims and claims settlement.

5 (c) "Lender", for purposes of IC 13-25-4, means any of the
6 following:

7 (1) An insured depository institution (as defined in Section 3 of
8 the Federal Deposit Insurance Act (12 U.S.C. 1813)).

9 (2) An insured credit union (as defined in Section 101 of the
10 Federal Credit Union Act (12 U.S.C. 1752)).

11 (3) A bank or association chartered under the Farm Credit Act of
12 1971 (12 U.S.C. 2001 et seq.).

13 (4) A leasing or trust company that is an affiliate of an insured
14 depository institution.

15 (5) A person (including a successor or assignee of the person)
16 that:

17 (A) makes a bona fide extension of credit to; or

18 (B) takes or acquires a security interest from;

19 a nonaffiliated person.

20 (6) The Federal National Mortgage Association, the Federal
21 Home Loan Mortgage Corporation, the Federal Agricultural
22 Mortgage Corporation, or an entity that buys or sells loans or
23 interests in loans in a bona fide manner.

24 (7) A person that:

25 (A) insures or guarantees against a default in the repayment of
26 an extension of credit; or

27 (B) acts as a surety with respect to an extension of credit;

28 to a nonaffiliated person.

29 (8) A person that provides title insurance and that acquires a
30 vessel or facility as a result of assignment or conveyance in the
31 course of underwriting claims and claims settlement.

32 SECTION 22. IC 13-11-2-142 IS AMENDED TO READ AS
33 FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 142. "Nonoperational
34 storage tank", for purposes of IC 13-23, means an underground storage
35 tank **or aboveground storage tank:**

36 (1) in which regulated substances are not deposited; or

37 (2) from which regulated substances are not dispensed;

38 after November 8, 1984.

39 SECTION 23. IC 13-11-2-148, AS AMENDED BY P.L.6-2012,
40 SECTION 100, IS AMENDED TO READ AS FOLLOWS
41 [EFFECTIVE JULY 1, 2023]: Sec. 148. (a) "Operator", for purposes of
42 IC 13-18-10, means the person in direct or responsible charge or



control of one (1) or more confined feeding operations.

(b) "Operator", for purposes of IC 13-18-11 and environmental management laws, means the person in direct or responsible charge and supervising the operation of:

- (1) a water treatment plant;
- (2) a wastewater treatment plant; or
- (3) a water distribution system.

(c) "Operator", for purposes of IC 13-20-6, means a corporation, a limited liability company, a partnership, a business association, a unit, or an individual who is a sole proprietor that is one (1) of the following:

- (1) A broker.
- (2) A person who manages the activities of a transfer station that receives municipal waste.
- (3) A transporter.

(d) "Operator", for purposes of IC 13-23, except as provided in subsections (e), (g), and (h), means a person:

- (1) in control of; or
- (2) having responsibility for;

the daily operation of an underground storage tank **or aboveground storage tank**.

(e) "Operator", for purposes of IC 13-23-13, does not include the following:

- (1) A person who:
 - (A) does not participate in the management of an underground storage tank **or aboveground storage tank**;
 - (B) is otherwise not engaged in the:
 - (i) production;
 - (ii) refining; and
 - (iii) marketing;
 of regulated substances; and
 - (C) holds evidence of ownership, primarily to protect the owner's security interest in the tank.
- (2) A person that is a lender that did not participate in management of an underground storage tank **or aboveground storage tank** before foreclosure, notwithstanding that the person:
 - (A) forecloses on the vessel or facility; and
 - (B) after foreclosure, sells, re-leases (in the case of a lease finance transaction), or liquidates the underground storage tank **or aboveground storage tank**, maintains business activities, winds up operations, undertakes a response action under Section 107(d)(1) of CERCLA (42 U.S.C. 9607(d)(1)) or under the direction of an on-scene coordinator appointed



under the National Contingency Plan with respect to the underground storage tank **or aboveground storage tank**, or takes any other measure to preserve, protect, or prepare the underground storage tank **or aboveground storage tank** prior to sale or disposition;
 if the person seeks to sell, re-lease (in the case of a lease finance transaction), or otherwise divest the person of the underground storage tank **or aboveground storage tank** at the earliest practicable, commercially reasonable time, on commercially reasonable terms, taking into account market conditions and legal and regulatory requirements.

(3) A person who:

(A) does not own or lease, directly or indirectly, the facility or business at which the underground storage tank **or aboveground storage tank** is located;

(B) does not participate in the management of the facility or business described in clause (A); and

(C) is engaged only in:

(i) filling;

(ii) gauging; or

(iii) filling and gauging;

the product level in the course of delivering fuel to an underground storage tank **or aboveground storage tank**.

(4) A political subdivision (as defined in IC 36-1-2-13) or unit of federal or state government that:

(A) acquires ownership or control of an underground storage tank **or aboveground storage tank** on a brownfield because of:

(i) bankruptcy;

(ii) foreclosure;

(iii) tax delinquency, including an acquisition under IC 6-1.1-24 or IC 6-1.1-25;

(iv) abandonment;

(v) the exercise of eminent domain, including any purchase of property once an offer to purchase has been tendered under IC 32-24-1-5;

(vi) receivership;

(vii) transfer from another political subdivision or unit of federal or state government;

(viii) acquiring an area needing redevelopment (as defined in IC 36-7-1-3) or conducting redevelopment activities, specifically under IC 36-7-14-22.2, IC 36-7-14-22.5,



IC 36-7-15.1-15.1, IC 36-7-15.1-15.2, and
IC 36-7-15.1-15.5;

(ix) other circumstances in which the political subdivision
or unit of federal or state government involuntarily acquired
an interest in the property because of the political
subdivision's or unit's function as sovereign; or

(x) any other means to conduct remedial actions on a
brownfield; and

(B) is engaged only in activities in conjunction with:

(i) investigation or remediation of hazardous substances,
petroleum, and other pollutants associated with a
brownfield, including complying with land use restrictions
and institutional controls; or

(ii) monitoring or closure of an underground storage tank **or
aboveground storage tank**;

unless existing contamination on the brownfield is exacerbated
due to gross negligence or intentional misconduct by the
political subdivision or unit of federal or state government.

(f) For purposes of subsection (e)(4)(B), reckless, willful, or wanton
misconduct constitutes gross negligence.

(g) "Operator" does not include a person that after June 30, 2009,
meets, for purposes of the determination under IC 13-23-13 of liability
for a release from an underground storage tank **or aboveground
storage tank**, the exemption criteria under Section 107(q) of CERCLA
(42 U.S.C. 9607(q)) that apply for purposes of the determination of
liability for a release of a hazardous substance.

(h) "Operator" does not include a person that meets, for purposes of
the determination under IC 13-23-13 of liability for a release from an
underground storage tank **or aboveground storage tank**, the
exemption criteria under Section 107(r) of CERCLA (42 U.S.C.
9607(r)) that apply for purposes of the determination of liability for a
release of a hazardous substance, except that the person acquires
ownership of the facility after June 30, 2009.

SECTION 24. IC 13-11-2-150, AS AMENDED BY P.L.159-2011,
SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
JULY 1, 2023]: Sec. 150. (a) "Owner", for purposes of IC 13-23
(except as provided in subsections (b), (c), (d), (e), (f) and (g)) means:

(1) for an underground storage tank **or aboveground storage
tank** that:

(A) was:

(i) in use on November 8, 1984; or

(ii) brought into use after November 8, 1984;



for the storage, use, or dispensing of regulated substances, a person who owns the underground storage tank **or aboveground storage tank** or the real property that is the underground storage tank site **or aboveground storage tank site**, or both; or

(B) was:

(i) in use before November 8, 1984; but

(ii) no longer in use on November 8, 1984;

a person who owned the tank immediately before the discontinuation of the tank's use; or

(2) a person who conveyed ownership or control of the underground storage tank **or aboveground storage tank** to a political subdivision (as defined in IC 36-1-2-13) or unit of federal or state government because of:

(A) bankruptcy;

(B) foreclosure;

(C) tax delinquency, including a conveyance under IC 6-1.1-24 or IC 6-1.1-25;

(D) abandonment;

(E) the exercise of eminent domain, including any purchase of property once an offer to purchase has been tendered under IC 32-24-1-5;

(F) receivership;

(G) acquiring an area needing redevelopment (as defined in IC 36-7-1-3) or conducting redevelopment activities, specifically under IC 36-7-14-22.2, IC 36-7-14-22.5, IC 36-7-15.1-15.1, IC 36-7-15.1-15.2, and IC 36-7-15.1-15.5;

(H) other circumstances in which a political subdivision or unit of federal or state government involuntarily acquired ownership or control because of the political subdivision's or unit's function as sovereign; or

(I) any other means to conduct remedial actions on a brownfield;

if the person was a person described in subdivision (1) immediately before the person conveyed ownership or control of the underground storage tank **or aboveground storage tank**.

(b) "Owner", for purposes of IC 13-23-13, does not include a person who:

(1) does not participate in the management of an underground storage tank **or aboveground storage tank**;

(2) is otherwise not engaged in the:

(A) production;



- 1 (B) refining; and
- 2 (C) marketing;
- 3 of regulated substances; and
- 4 (3) holds indicia of ownership primarily to protect the owner's
- 5 security interest in the tank.
- 6 (c) "Owner", for purposes of IC 13-23, does not include a person
- 7 that is a lender that did not participate in management of an
- 8 underground storage tank **or aboveground storage tank** before
- 9 foreclosure, notwithstanding that the person:
- 10 (1) forecloses on the underground storage tank **or aboveground**
- 11 **storage tank**; and
- 12 (2) after foreclosure, sells, re-leases (in the case of a lease finance
- 13 transaction), or liquidates the underground storage tank **or**
- 14 **aboveground storage tank**, maintains business activities, winds
- 15 up operations, undertakes a response action under Section
- 16 107(d)(1) of CERCLA (42 U.S.C. 9607(d)(1)) or under the
- 17 direction of an on-scene coordinator appointed under the National
- 18 Contingency Plan with respect to the underground storage tank **or**
- 19 **aboveground storage tank**, or takes any other measure to
- 20 preserve, protect, or prepare the underground storage tank **or**
- 21 **aboveground storage tank** prior to sale or disposition;
- 22 if the person seeks to sell, re-lease (in the case of a lease finance
- 23 transaction), or otherwise divest the person of the underground storage
- 24 tank **or aboveground storage tank** at the earliest practicable,
- 25 commercially reasonable time, on commercially reasonable terms,
- 26 taking into account market conditions and legal and regulatory
- 27 requirements.
- 28 (d) "Owner", for purposes of IC 13-23, does not include a political
- 29 subdivision (as defined in IC 36-1-2-13) or unit of federal or state
- 30 government that acquired ownership or control of an underground
- 31 storage tank **or aboveground storage tank** because of:
- 32 (1) bankruptcy;
- 33 (2) foreclosure;
- 34 (3) tax delinquency, including an acquisition under IC 6-1.1-24 or
- 35 IC 6-1.1-25;
- 36 (4) abandonment;
- 37 (5) the exercise of eminent domain, including any purchase of
- 38 property once an offer to purchase has been tendered under
- 39 IC 32-24-1-5;
- 40 (6) receivership;
- 41 (7) transfer from another political subdivision or unit of federal or
- 42 state government;



(8) acquiring an area needing redevelopment (as defined in IC 36-7-1-3) or conducting redevelopment activities, specifically under IC 36-7-14-22.2, IC 36-7-14-22.5, IC 36-7-15.1-15.1, IC 36-7-15.1-15.2, and IC 36-7-15.1-15.5;

(9) other circumstances in which the political subdivision or unit of federal or state government involuntarily acquired ownership or control because of the political subdivision's or unit's function as sovereign; or

(10) any other means to conduct remedial actions on a brownfield;

unless the political subdivision or unit of federal or state government causes or contributes to the release or threatened release of a regulated substance, in which case the political subdivision or unit of federal or state government is subject to IC 13-23 in the same manner and to the same extent as a nongovernmental entity under IC 13-23.

(e) "Owner", for purposes of IC 13-23, does not include a nonprofit corporation that acquired ownership or control of an underground storage tank **or aboveground storage tank** to assist and support a political subdivision's revitalization and reuse of a brownfield for noncommercial purposes, including conservation, preservation, and recreation, unless the nonprofit corporation causes or contributes to the release or threatened release of a regulated substance, in which case the nonprofit corporation is subject to IC 13-23 in the same manner and to the same extent as any other nongovernmental entity under IC 13-23.

(f) "Owner" does not include a person that after June 30, 2009, meets, for purposes of the determination under IC 13-23-13 of liability for a release from an underground storage tank **or aboveground storage tank**, the exemption criteria under Section 107(q) of CERCLA (42 U.S.C. 9607(q)) that apply for purposes of the determination of liability for a release of a hazardous substance.

(g) "Owner" does not include a person that meets, for purposes of the determination under IC 13-23-13 of liability for a release from an underground storage tank **or aboveground storage tank**, the exemption criteria under Section 107(r) of CERCLA (42 U.S.C. 9607(r)) that apply for purposes of the determination of liability for a release of a hazardous substance, except that the person acquires ownership of the facility after June 30, 2009.

SECTION 25. IC 13-11-2-151.2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 151.2. (a) "Participate in management", for purposes of IC 13-23-13, means actually participating in the management or operational affairs of an underground storage tank **or aboveground storage tank**.



(b) The term does not include the following:

(1) Merely having the capacity to influence, or the unexercised right to control, underground **or aboveground** storage operations.

(2) Performing an act or failing to perform an act before the time at which a security interest is created in an underground storage tank **or aboveground storage tank**.

(3) Holding a security interest or abandoning a security interest.

(4) Including in the terms of an extension of credit, or in a contract or security agreement relating to the extension, a covenant, a warranty, or another term or condition that relates to environmental compliance.

(5) Monitoring or enforcing the terms and conditions of the extension of credit or security interest.

(6) Monitoring or undertaking at least one (1) inspection of an underground storage tank **or aboveground storage tank**.

(7) Requiring a response action or other lawful means of addressing the release or threatened release of a hazardous substance in connection with the underground storage tank **or aboveground storage tank** prior to, during, or on the expiration of the term of the extension of credit.

(8) Providing financial advice or other advice or counseling in an effort to mitigate, prevent, or cure default or decrease in the value of an underground storage tank **or aboveground storage tank**.

(9) Restructuring, renegotiating, or otherwise agreeing to alter the terms and conditions of the extension of credit or security interest, exercising forbearance.

(10) Exercising other remedies that may be available under applicable law for the breach of a term or condition of the extension of credit or security agreement.

(11) Conducting a response action under Section 107(d) of CERCLA (42 U.S.C. 9607(d)) or under the direction of an on-scene coordinator appointed under the National Contingency Plan, unless the person conducting the response action assumes or manifests responsibility:

(A) for the overall management of the underground storage tank **or aboveground storage tank**, encompassing day to day decision making with respect to environmental compliance; or

(B) over all or substantially all of the operational functions (as distinguished from financial or administrative functions) of the underground storage tank **or aboveground storage tank** other than the function of environmental compliance.

(c) As used in this section, "extension of credit" includes a lease



1 finance transaction:

2 (1) in which the lessor does not initially select the leased
3 underground storage tank **or aboveground storage tank** and
4 does not during the lease term control the daily operations or
5 maintenance of the underground storage tank **or aboveground**
6 **storage tank**; or

7 (2) that conforms with regulations issued by:

8 (A) the appropriate federal banking agency or the appropriate
9 state bank supervisor (as those terms are defined in Section 3
10 of the Federal Deposit Insurance Act, 12 U.S.C. 1813); or

11 (B) the National Credit Union Administration Board.

12 SECTION 26. IC 13-11-2-161 IS AMENDED TO READ AS
13 FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 161. (a) "Petroleum
14 facility", for purposes of IC 13-24-1, means any of the following:

15 (1) A building.

16 (2) A structure.

17 (3) An installation.

18 (4) A piece of equipment.

19 (5) A pipe, including a pipe that runs into a sewer or publicly
20 owned treatment facility.

21 (6) A well.

22 (7) A pit.

23 (8) A pond.

24 (9) A lagoon.

25 (10) An impoundment.

26 (11) A ditch.

27 (12) A landfill.

28 (13) A storage container.

29 (14) A motor vehicle.

30 (15) Rolling stock.

31 (16) Aircraft.

32 (17) A site or an area on which petroleum has been:

33 (A) deposited;

34 (B) stored;

35 (C) disposed of;

36 (D) placed; or

37 (E) located.

38 (b) The term does not include the following:

39 (1) A consumer product in consumer use.

40 (2) An underground storage tank **or aboveground storage tank**.

41 SECTION 27. IC 13-11-2-163 IS AMENDED TO READ AS
42 FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 163. "Petroleum trust



fund", for purposes of IC 13-23, refers to the ~~underground~~ petroleum storage tank trust fund established by IC 13-23-6-1.

SECTION 28. IC 13-11-2-172, AS AMENDED BY P.L.189-2018, SECTION 115, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 172. "Program", for purposes of IC 13-23, refers to an underground storage tank **and aboveground storage tank** release:

- (1) detection;
- (2) prevention; and
- (3) correction;

program created in accordance with the requirements of IC 13-23 or IC 13-7-20 (before its repeal).

SECTION 29. IC 13-11-2-184 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 184. (a) "Release", for purposes of IC 13-23, means any:

- (1) spilling;
- (2) leaking;
- (3) emitting;
- (4) discharging;
- (5) escaping;
- (6) leaching; or
- (7) disposing;

from an underground storage tank **or aboveground storage tank** into ground water, surface water, subsurface soils, or surface soils.

(b) "Release", for purposes of IC 13-24-1, means:

- (1) a spill;
- (2) a leak;
- (3) an emission;
- (4) a discharge;
- (5) an escape;
- (6) a leaching; or
- (7) a disposing;

of petroleum into ground water, surface water, subsurface soils, or surface soils. The term does not include the release of petroleum into land used by a scrap metal processor (as defined in IC 9-13-2-162) or farmer, unless the commissioner determines that the release of the petroleum is adverse to human health.

(c) "Release", for purposes of IC 13-25-2, means any:

- (1) spilling;
- (2) leaking;
- (3) pumping;
- (4) pouring;



- 1 (5) emitting;
- 2 (6) emptying;
- 3 (7) discharging;
- 4 (8) injecting;
- 5 (9) escaping;
- 6 (10) leaching;
- 7 (11) dumping; or
- 8 (12) disposing;
- 9 into the environment of any hazardous chemical, extremely hazardous
- 10 substance, or toxic chemical. The term includes the abandonment or
- 11 discarding of barrels, containers, and other closed receptacles.
- 12 (d) "Release", for purposes of IC 13-25-4, means any:
- 13 (1) spilling;
- 14 (2) leaking;
- 15 (3) pumping;
- 16 (4) pouring;
- 17 (5) emitting;
- 18 (6) emptying;
- 19 (7) discharging;
- 20 (8) injecting;
- 21 (9) escaping;
- 22 (10) leaching;
- 23 (11) dumping; or
- 24 (12) disposing;
- 25 into the environment. The term includes the abandonment or discarding
- 26 of barrels, containers, or other closed receptacles containing any
- 27 hazardous substance.
- 28 (e) "Release", for purposes of IC 13-25-5, means any:
- 29 (1) spilling;
- 30 (2) leaking;
- 31 (3) pumping;
- 32 (4) pouring;
- 33 (5) emitting;
- 34 (6) emptying;
- 35 (7) discharging;
- 36 (8) injecting;
- 37 (9) escaping;
- 38 (10) leaching;
- 39 (11) dumping; or
- 40 (12) disposing;
- 41 into the environment. The term includes the abandonment or discarding
- 42 of barrels, containers, or other closed receptacles containing any



hazardous substance or petroleum.

SECTION 30. IC 13-11-2-194, AS AMENDED BY P.L.178-2009, SECTION 21, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 194. (a) "Retailer", for purposes of IC 13-20-14, means a person engaged in the business of selling new tires at retail in Indiana.

(b) "Retailer", for purposes of IC 13-20-16, means a person engaged in the business of selling lead acid batteries at retail in Indiana.

(c) "Retailer", for purposes of section 195.7 of this chapter and IC 13-20.5, means a person that sells, rents, or leases, through sales outlets, catalogs, or the Internet, a video display device to a covered entity and not for resale in any form.

(d) "Retailer", for purposes of section 0.4 of this chapter and IC 13-23, means a person who purchases motor fuel for sale to the general public for ultimate consumption.

SECTION 31. IC 13-11-2-204 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 204. "Small business petroleum marketer", for purposes of IC 13-23-4-3, means a petroleum marketer that owns or operates not more than twelve (12) underground storage tanks **or twelve (12) aboveground storage tanks.**

SECTION 32. IC 13-11-2-241, AS AMENDED BY P.L.96-2016, SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 241. (a) "Underground storage tank" (or UST), for purposes of this chapter and IC 13-23, means one (1) tank or a combination of tanks:

- (1) that is used to contain an accumulation of regulated substances; and
- (2) the volume of which, including the volume of the underground connected pipes described in subsection (b), is at least ten percent (10%) beneath the surface of the ground.

(b) If:

- (1) a single tank; or
- (2) a combination of tanks;

constitutes an underground storage tank under subsection (a), any underground pipes that are connected to the single tank or combination of tanks are also part of the underground storage tank.

(c) The term defined in subsection (a) includes a single tank:

- (1) that meets the definition set forth in subsection (a); and
- (2) in which there are separate compartments.

(d) The term does not include any of the following:

- (1) A farm or residential tank with a capacity of not more than one thousand one hundred (1,100) gallons that is used for storing



motor fuel for noncommercial purposes.

(2) A tank used for storing heating oil for consumptive use on the premises on which the tank is stored.

(3) A septic tank.

(4) A pipeline facility, including gathering lines, that:

(A) is regulated under ~~the Pipeline Safety Act the Natural Gas Pipeline Safety Act of 1968 (49 U.S.C. 1671 et seq.);~~

~~(B) is regulated under the Hazardous Liquid Pipeline Safety Act of 1979 (49 U.S.C. 60101 et seq.); or~~

~~(C) (B)~~ is an intrastate pipeline facility regulated under state laws comparable to the laws identified in ~~clauses~~ **clause** (A) through (B);

(5) A surface impoundment, pit, pond, or lagoon.

(6) A ~~stormwater~~ **storm water** or wastewater collection system.

(7) A flow-through process tank.

(8) A liquid trap or associated gathering lines directly related to oil or gas production and gathering operations.

(9) A storage tank situated in an underground area such as:

(A) a basement;

(B) a cellar;

(C) a mineworking;

(D) a drift;

(E) a shaft; or

(F) a tunnel;

if the storage tank is situated upon or above the surface of the floor.

(10) Any other tank exempted by a rule adopted by the board in accordance with regulations adopted by the Administrator of the United States Environmental Protection Agency.

(11) A pipe connected to a tank described in subdivisions (1) through (10).

SECTION 33. IC 13-14-9-1, AS AMENDED BY P.L.133-2012, SECTION 89, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 1. (a) Except as provided in sections 8 and 14 of this chapter, this chapter applies to the following:

(1) The board.

(2) The ~~underground~~ **petroleum** storage tank financial assurance board established by IC 13-23-11-1.

(b) In addition to the requirements of IC 4-22-2 and IC 13-14-8, a board may not adopt a rule except in accordance with this chapter.

SECTION 34. IC 13-23-1-1, AS AMENDED BY P.L.133-2012, SECTION 153, IS AMENDED TO READ AS FOLLOWS



[EFFECTIVE JULY 1, 2023]: Sec. 1. (a) The department shall establish and operate an underground storage tank **and aboveground storage tank** release detection, prevention, and correction program under this article according to rules adopted by the board.

(b) The department may contract with another state agency to jointly operate the program under a memorandum of agreement that:

(1) may be amended;

(2) must contain the specific duties of the department and the contracting agency; and

(3) is available to the public for inspection.

SECTION 35. IC 13-23-1-2, AS AMENDED BY P.L.38-2012, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 2. (a) The board shall adopt rules under IC 4-22-2, IC 13-14-8, and IC 13-14-9 for the establishment and operation of the program established under section 1 of this chapter.

(b) The rules must not be less stringent than the regulations adopted by the Administrator of the United States Environmental Protection Agency under Section 9003 of the federal Solid Waste Disposal Act, as amended (42 U.S.C. 6991b, as amended).

(c) The rules adopted under subsection (a) must include the following:

(1) Requirements for maintaining:

(A) a leak detection system;

(B) an inventory control system coupled with tank testing; or

(C) a comparable system or method;

designed to identify releases in a manner consistent with the protection of human health and the environment.

(2) Requirements for maintaining records of any:

(A) monitoring;

(B) leak detection system;

(C) inventory control system or tank testing; or

(D) comparable system.

(3) Requirements for reporting of:

(A) any releases; and

(B) corrective action taken in response to a release.

(4) Requirements for ordering or taking corrective action in response to a release.

(5) Requirements for closure of underground storage tanks **and aboveground storage tanks** to prevent future releases of regulated substances into the environment.

(6) Requirements for maintaining evidence of financial responsibility for:



- 1 (A) taking corrective action; and
- 2 (B) compensating third parties for bodily injury and property
- 3 damage caused by sudden and nonsudden accidental releases
- 4 arising from the operation of an underground storage tank **or**
- 5 **aboveground storage tank.**
- 6 (7) Standards of performance for new underground storage tanks
- 7 **and aboveground storage tanks.**
- 8 (8) Requirements for the following:
- 9 (A) Providing notice to the department of the existence of
- 10 operational and nonoperational underground storage tanks **and**
- 11 **aboveground storage tanks**, as required **by the**
- 12 **commissioner and** under 42 U.S.C. 6991a(a).
- 13 (B) Providing the information required on the form prescribed
- 14 **by the commissioner and** under 42 U.S.C. 6991a(b)(2).
- 15 (C) Providing notice, by any person who sells a tank intended
- 16 to be used as an underground storage tank **or an aboveground**
- 17 **storage tank**, to the purchaser of that tank of the owner's
- 18 notification requirements established by this article, **the**
- 19 **commissioner**, and 42 U.S.C. 6991a(a).
- 20 (9) Requirements for the delivery prohibition program prescribed
- 21 **by the commissioner and** under 42 U.S.C. 6991k, including:
- 22 (A) notice to owners or operators when an underground
- 23 storage tank **or an aboveground storage tank** is declared
- 24 ineligible for delivery, deposit, or acceptance of a regulated
- 25 substance; and
- 26 (B) procedures to enforce the delivery prohibition that include
- 27 the use of a temporary emergency order under IC 4-21.5-4 for
- 28 violations of section 4(a) of this chapter.
- 29 SECTION 36. IC 13-23-1-5 IS ADDED TO THE INDIANA CODE
- 30 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
- 31 1, 2023]: **Sec. 5. (a) The board shall adopt rules under IC 4-22-2,**
- 32 **IC 13-14-8, and IC 13-14-9 for the establishment and operation of**
- 33 **the program established under section 1 of this chapter.**
- 34 **(b) The rules adopted under subsection (a) must include:**
- 35 **(1) reimbursement from the fund for fifty percent (50%) of**
- 36 **costs of decommissioning or replacing underground**
- 37 **petroleum storage tanks that meet the criteria under**
- 38 **IC 13-23-9-1.7; and**
- 39 **(2) procedures to reopen ELTF eligibility and funding for a**
- 40 **release previously granted "no further action" (NFA) status**
- 41 **by the department should either the department or the owner**
- 42 **of the underground petroleum storage tank or aboveground**



1 **petroleum storage tank subsequently decide to permanently**
 2 **decommission the use of the site as a petroleum facility and**
 3 **undertake the investigation and remediation of any residual**
 4 **contamination arising from the site's former use as a**
 5 **petroleum facility. Before reopening ELTF eligibility and**
 6 **funding, the administrator may require that the applicant**
 7 **provide information regarding the planned future use of the**
 8 **site.**

9 SECTION 37. IC 13-23-2-2 IS AMENDED TO READ AS
 10 FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 2. A unit of local
 11 government may not enact or enforce an ordinance that requires:

- 12 (1) a permit;
- 13 (2) a license;
- 14 (3) an approval;
- 15 (4) an inspection; or
- 16 (5) the payment of a fee or tax;

17 for the installation, use, retrofitting, closure, or removal of an
 18 underground storage tank **or aboveground storage tank** unless the
 19 department has approved the ordinance or a proposed ordinance in
 20 writing.

21 SECTION 38. IC 13-23-3-1 IS AMENDED TO READ AS
 22 FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 1. (a) The ~~state fire~~
 23 ~~marshal department~~ shall, under rules adopted by the ~~fire prevention~~
 24 ~~and building safety commission board~~ under IC 4-22-2 **and**
 25 **IC 13-14-9**, establish a certification program for persons who
 26 supervise, manage, or direct underground storage tank **or**
 27 **aboveground storage tank:**

- 28 (1) installation or retrofitting;
- 29 (2) testing;
- 30 (3) cathodic protection procedures; or
- 31 (4) decommissioning.

32 (b) A person may be certified by the ~~state fire marshal department~~
 33 if the person submits evidence to the ~~state fire marshal department~~
 34 that the person has successfully completed:

- 35 (1) the International Fire Code Institute examination; or
- 36 (2) another appropriate examination approved by the state fire
 37 marshal.

38 (c) The ~~state fire marshal department~~ may create a supplemental
 39 educational library concerning proper installation and closure of
 40 underground storage tanks **or aboveground storage tanks**, which
 41 includes the American Petroleum Institute's series, "An Education and
 42 Certification Program for Underground Storage Tank Professionals"



1 **and "API 653 Aboveground Storage Tank Inspector Certification**
 2 **Program".**

3 SECTION 39. IC 13-23-3-3 IS AMENDED TO READ AS
 4 FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 3. (a) A person
 5 described under section 1 of this chapter may not:

- 6 (1) install or retrofit;
 7 (2) test;
 8 (3) provide cathodic protection for; or
 9 (4) decommission;

10 an underground storage tank **or aboveground storage tank** unless the
 11 person has been certified by the ~~state fire marshal~~ **department**.

12 (b) The ~~state fire marshal~~ **department** may temporarily deny or
 13 revoke the certification of a person made under subsection (a) if the
 14 person has negligently violated a standard established by the board ~~or~~
 15 ~~the fire prevention and building safety commission~~ concerning the:

- 16 (1) installation or retrofitting;
 17 (2) testing;
 18 (3) cathodic protection; or
 19 (4) decommissioning;

20 of an underground storage tank **or aboveground storage tank**.

21 (c) If a person:

- 22 (1) has been denied certification; or
 23 (2) had the person's certification revoked under subsection (b) or
 24 IC 13-7-20-13.3(b) (before its repeal);

25 the ~~state fire marshal~~ **department** may certify the person only if the
 26 person files a performance bond with the ~~state fire marshal~~
 27 **department** in an amount established by the ~~fire prevention and~~
 28 ~~building safety commission~~ **board**.

29 (d) If a person who is certified or attempts to become certified under
 30 subsection (c) intentionally or negligently violates a standard
 31 established by the board ~~or the fire prevention and building safety~~
 32 ~~commission~~ concerning the installation or retrofitting of, testing of,
 33 provision of cathodic protection for, or decommissioning of an
 34 underground storage tank **or aboveground storage tank**, the ~~state fire~~
 35 ~~marshal~~ **department** may:

- 36 (1) permanently deny the certification of the person; or
 37 (2) permanently revoke the certification of the person.

38 SECTION 40. IC 13-23-3-4 IS AMENDED TO READ AS
 39 FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 4. (a) A certificate
 40 issued under section 1 of this chapter expires two (2) years from the
 41 date a person successfully completes the examination to qualify to
 42 obtain the certificate.



(b) The ~~fire prevention and building safety commission board~~ may adopt rules establishing renewal procedures for certificates that expire under subsection (a).

SECTION 41. IC 13-23-4-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 2. The rules adopted under IC 13-23-1-2(c)(6) may require the use of certain policy provisions or contract terms, including provisions or terms concerning the following:

(1) The minimum amount of coverage required for various classes and categories of underground storage tanks **and aboveground storage tanks** established under section 4 of this chapter.

(2) Conditions or defenses that are necessary or unacceptable in establishing evidence of financial responsibility.

SECTION 42. IC 13-23-4-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 3. (a) The commissioner may provide a method under which the owner or operator of an underground storage tank **or aboveground storage tank** may establish evidence of financial responsibility as required under sections 1 and 2 of this chapter and 42 U.S.C. 6991b(c)(6) with respect to the part of the potential liability of the owner or operator that is not covered through the excess liability trust fund established by IC 13-23-7-1.

(b) A method provided by the commissioner under this section must be acceptable to the Administrator of the United States Environmental Protection Agency.

(c) A method provided by the commissioner under this section must establish requirements for the establishment of evidence of financial responsibility by a small business petroleum marketer that are less stringent than the requirements applying to a petroleum marketer that owns or operates more than twelve (12) underground storage tanks **or twelve (12) aboveground storage tanks**.

SECTION 43. IC 13-23-4-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 4. (a) The rules adopted under IC 13-23-1-2(c)(6) may require a minimum amount of coverage for particular classes or categories of underground storage tanks **or aboveground storage tanks** containing petroleum. Minimum coverage amounts established under this subsection must be at least one million dollars (\$1,000,000) for each occurrence, with an appropriate aggregate amount.

(b) The board may by rule set minimum coverage amounts lower than the amount set forth in subsection (a) for underground storage tanks **or aboveground storage tanks** containing petroleum that are:



(1) not located at facilities engaged in the production, refining, or marketing of petroleum; and

(2) not used to handle substantial quantities of petroleum.

(c) In adopting rules establishing classes and categories of underground storage tanks **or aboveground storage tanks** containing petroleum for purposes of this section, the board may consider the following factors:

(1) The:

(A) size, type, location, storage, and handling capacity of underground storage tanks **or aboveground storage tanks** in the class or category; and

(B) volume of petroleum handled by those tanks.

(2) The:

(A) likelihood of release; and

(B) potential extent of damage from any release; from underground storage tanks **or aboveground storage tanks** in the class or category.

(3) The economic impact of the limits on the owners and operators of each class or category, particularly relating to the small business segment of the petroleum marketing industry.

(4) The availability of methods of financial responsibility in amounts greater than the amount established by this section.

(5) Any other factors that the board considers pertinent.

SECTION 44. IC 13-23-4-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 5. (a) The commissioner, upon the application of any affected person or in the absence of any application, may suspend enforcement of the financial responsibility requirements for a particular class or category of underground storage tanks **or aboveground storage tanks** if the commissioner determines that the following conditions exist:

(1) The methods of financial responsibility satisfying the requirements of this article are not generally available for underground storage tanks **or aboveground storage tanks** in that class or category.

(2) Steps are being taken:

(A) to form a risk retention group for the class or category; or

(B) to establish a fund under Section 9004(c)(1) of the federal Solid Waste Disposal Act, as amended (42 U.S.C. 6991c(c)(1), as amended), to be submitted as evidence of financial responsibility.

(b) A suspension of enforcement under this section may not exceed one hundred eighty (180) days. Following a suspension of enforcement



under this section, the commissioner may suspend enforcement for additional successive periods of not more than one hundred eighty (180) days if:

(1) the commissioner determines that substantial progress has been made in establishing a risk retention group; or

(2) the owners or operators of underground storage tanks **or aboveground storage tanks** in the class or category demonstrate to the satisfaction of the commissioner that:

(A) the formation of a risk retention group is not possible; and

(B) the state is unable or unwilling to establish a fund as described in subsection (a)(2)(B).

(c) A determination to suspend enforcement of the financial responsibility requirements for a particular class or category of underground storage tanks **or aboveground storage tanks** under subsection (a) or (b) may not be effective until the Administrator of the United States Environmental Protection Agency has made the same determination under Section 9003(d)(5)(D) of the federal Solid Waste Disposal Act, as amended (42 U.S.C. 6991b(d)(5)(D), as amended), with respect to the same class or category of underground storage tanks **or aboveground storage tanks**.

SECTION 45. IC 13-23-4-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 6. (a) If:

(1) the owner or operator of an underground storage tank **or aboveground storage tank** is in bankruptcy, reorganization, or arrangement under the federal bankruptcy law; or

(2) despite the exercise of reasonable diligence, no state or federal court could obtain jurisdiction over an owner or operator likely to be solvent at the time of judgment;

any claim arising from conduct for which evidence of financial responsibility is provided may be asserted directly against the guarantor.

(b) In an action based upon a claim under subsection (a), the guarantor may invoke:

(1) all rights and defenses that would have been available to the owner or operator if the action had been brought against the owner or operator by the claimant; and

(2) all rights and defenses that would have been available to the guarantor if an action had been brought against the guarantor by the owner or operator.

(c) The total liability of a guarantor under this section is limited to the aggregate amount in which the guarantor has provided evidence of financial responsibility for the owner or operator of an underground



1 storage tank **or aboveground storage tank**. This section does not do
 2 any of the following:

3 (1) Limit any other liability of a guarantor to the owner or
 4 operator of an underground storage tank **or aboveground storage**
 5 **tank**, such as liability for bad faith in:

6 (A) negotiating; or

7 (B) failing to negotiate;

8 the settlement of any claim.

9 (2) Diminish the liability of any person under the following:

10 (A) Section 107 or 111 of the federal Comprehensive
 11 Environmental Response, Compensation, and Liability Act of
 12 1980 (42 U.S.C. 9607 or 9611).

13 (B) Any other applicable law.

14 SECTION 46. IC 13-23-5-1, AS AMENDED BY P.L.96-2016,
 15 SECTION 11, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 16 JULY 1, 2023]: Sec. 1. (a) Subject to section 2 of this chapter, and
 17 except as provided in subsection (b), an underground storage tank **or**
 18 **aboveground storage tank**, whether of single or double wall
 19 construction, may not be installed before the effective date of the rules
 20 adopted under IC 13-23-1-2 for the purpose of storing regulated
 21 substances unless:

22 (1) the tank will prevent releases due to corrosion or structural
 23 failure for the operational life of the tank;

24 (2) the tank is:

25 (A) cathodically protected against corrosion;

26 (B) constructed of noncorrosive material;

27 (C) steel clad with a noncorrosive material; or

28 (D) designed to prevent the release or threatened release of
 29 any stored substance;

30 (3) the material used in the construction or lining of the tank is
 31 compatible with the substance to be stored; and

32 (4) after July 1, 2007, all newly installed or replaced piping
 33 connected to the tank meets the secondary containment
 34 requirements adopted by the board.

35 (b) An underground storage tank **or aboveground storage tank**
 36 system that contains alcohol blended fuels composed of greater than
 37 fifteen percent (15%) alcohol ~~is a petroleum UST system (as defined~~
 38 ~~in 329 IAC 9-1-36 as in effect January 1, 2007)~~ and may be installed
 39 during the period referred to in subsection (a) if the system is otherwise
 40 in compliance with rules adopted by the board concerning technical
 41 and safety requirements relating to the physical characteristics of
 42 underground petroleum storage tanks **or aboveground petroleum**



1 **storage tanks** and ancillary equipment, including dispensing
 2 equipment, used in the storing or dispensing of alcohol blended fuels
 3 for purposes of all other provisions of this article.

4 (c) Owners and operators of underground storage tank **or**
 5 **aboveground storage tank** systems that store, carry, or dispense
 6 alcohol blended fuels composed of greater than fifteen percent (15%)
 7 alcohol that comply with subsection (b) are considered to meet the
 8 standards of:

9 (1) compatibility under subsection (a)(3); and

10 (2) compliance for purposes of all other provisions of this article.

11 SECTION 47. IC 13-23-5-3, AS AMENDED BY P.L.113-2014,
 12 SECTION 77, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 13 JULY 1, 2023]: Sec. 3. (a) An underground storage tank **or**
 14 **aboveground storage tank** system that contains fuel composed of
 15 greater than fifteen percent (15%) alcohol is considered to comply with
 16 section 1(b) of this chapter if either of the following applies:

17 (1) The system predates May 11, 2007.

18 (2) The system predates the adoption by:

19 (A) the solid waste management board (established by
 20 IC 13-19-2, before its repeal); or

21 (B) the environmental rules board;

22 after May 11, 2007, of any additional rules concerning technical
 23 and safety requirements for storing and dispensing alcohol
 24 blended fuel.

25 (b) Replacement tanks or ancillary equipment installed in existing
 26 underground storage tank **or aboveground storage tank** systems
 27 storing or dispensing alcohol blended fuels must meet the standards
 28 contained in additional rules as described in subsection (a)(2) that were
 29 adopted by the solid waste management board before January 1, 2013,
 30 or are adopted by the environmental rules board only if the installation
 31 occurs after the adoption of those rules.

32 SECTION 48. IC 13-23-6-1 IS AMENDED TO READ AS
 33 FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 1. The ~~underground~~
 34 petroleum storage tank trust fund is established to provide a source of
 35 money for the uses set forth in IC 13-23-13-6.

36 SECTION 49. IC 13-23-6-2, AS AMENDED BY P.L.38-2012,
 37 SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 38 JULY 1, 2023]: Sec. 2. The sources of money for the fund are as
 39 follows:

40 (1) Grants made by the United States Environmental Protection
 41 Agency to the state under cooperative agreements under Section
 42 9003(h)(7) of the federal Solid Waste Disposal Act (42 U.S.C.



6991b(h)(7)).

(2) Costs recovered by the state under IC 13-23-13-8 in connection with any corrective action undertaken under IC 13-23-13-2 with respect to a release of petroleum.

(3) Costs recovered by the state in connection with the enforcement of this article with respect to any release of petroleum.

(4) Appropriations made by the general assembly, gifts, and donations intended for deposit in the fund.

(5) Penalties imposed under IC 13-23-14.

(6) Revenue from the ~~underground~~ petroleum storage tank registration fee deposited in the fund under IC 13-23-12-4.

SECTION 50. IC 13-23-7-1, AS AMENDED BY P.L.96-2016, SECTION 12, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 1. (a) The ~~underground~~ petroleum storage tank excess liability trust fund (or ELTF) is established for the following purposes:

(1) Assisting owners and operators of underground petroleum storage tanks **and aboveground petroleum storage tanks** to establish evidence of financial responsibility as required under IC 13-23-4.

(2) Providing a source of money to satisfy liabilities for corrective action.

(3) Providing a source of money for the indemnification of third parties under IC 13-23-9-3.

(4) Providing a source of money to pay for the expenses of the department incurred in:

(A) paying and administering claims against the ELTF for those job activities and expenses that consist exclusively of administering the ELTF;

(B) inspecting underground storage tanks **and aboveground storage tanks; and**

(C) establishing and implementing an online underground storage tank **and aboveground storage tank** operator training program that complies with the requirements of the federal Energy Policy Act of 2005; **and**

(D) project management and oversight of eligible releases.

(5) Providing a source of money to pay for the expenses of the department incurred under section 7(b) of this chapter.

(b) The expenses described in subsection (a)(4) that are paid from the ELTF in a state fiscal year may not exceed eleven percent (11%) of the fund income in the immediately preceding state fiscal year.



(c) The ELTF is designated as a trust fund.

SECTION 51. IC 13-23-9-1.3, AS AMENDED BY P.L.200-2017, SECTION 14, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 1.3. (a) The total amount otherwise available from the ELTF in connection with an eligible release discovered on or after July 1, 2016, shall be reduced by:

- (1) a deductible amount of fifteen thousand dollars (\$15,000); and
- (2) if any annual registration fees that were due in 2014 or a later year are not paid in full before the submittal of the initial site characterization as required by the rules adopted by the environmental rules board, an additional amount under subsection (b).

(b) The additional amount referred to in subsection (a)(2) is the sum of:

(1) all annual registration fees due under IC 13-23-12-1 for USTs **and ASTs, as applicable**, located at the facility from which the release occurred that:

- (A) were due in 2014 or a later year; and
- (B) have not been paid; plus

(2) an additional amount of one thousand dollars (\$1,000) for each annual registration fee imposed by IC 13-23-12-1 on a UST **and AST, as applicable**, located at the facility from which the release occurred that:

- (A) was due in 2014 or a later year; and
- (B) was not paid in the year the fee was originally due.

SECTION 52. IC 13-23-9-1.5, AS AMENDED BY P.L.200-2017, SECTION 15, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 1.5. (a) The administrator may pay ELTF claims only for costs that:

- (1) are reasonable and cost effective; and
- (2) result from or reimburse the claimant for the following:
 - (A) Work performed for site characterization.
 - (B) Development and implementation of a corrective action plan that:
 - (i) is approved by the commissioner under rules adopted by the environmental rules board; and
 - (ii) has not been suspended.
 - (C) Work performed as part of an emergency response necessary to abate an immediate threat of harm to human health, property, or the environment.
 - (D) Third party indemnification claims submitted in accordance with section 3 of this chapter.



(E) Reasonable attorney's fees incurred in defense of third party claims.

(F) Releases that occurred on or after April 1, 1988.

(G) Compensation paid by the claimant to technicians for services performed in preparation of the claimant's ELTF claim.

(H) Work performed to decommission or replace an underground petroleum storage tank as provided under section 1.7 of this chapter.

(b) The administrator may also pay ELTF claims for costs not described in subsection (a) if allowed under rules adopted by the **petroleum storage tank** financial assurance board.

SECTION 53. IC 13-23-9-1.7 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: **Sec. 1.7. (a) The administrator may pay an ELTF claim for fifty percent (50%) of the costs of decommissioning or replacing an underground petroleum storage tank, provided that:**

(1) the applicant is the owner of the tank;

(2) such decommissioning or replacement is necessary, in the judgment of the administrator, to protect human health and the environment considering the age, obsolescence, and level of deterioration of the tank; and

(3) the costs are:

(A) reasonable and cost effective; and

(B) result from or reimburse the claimant for work performed decommissioning the tank or replacing the tank with a new tank.

(b) The expenses described in subsection (a) that are paid from the ELTF in a state fiscal year may not exceed:

(1) ten million dollars (\$10,000,000) each year for claims submitted by applicants owning not more than twelve (12) underground petroleum storage tanks;

(2) seven million five hundred thousand dollars (\$7,500,000) each year for claims submitted by applicants owning more than twelve (12) but not more than one hundred (100) underground petroleum storage tanks; and

(3) two million five hundred dollars (\$2,500,000) each year for claims submitted by applicants owning more than one hundred (100) underground petroleum storage tanks.

SECTION 54. IC 13-23-11-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: **Sec. 1. The ~~underground~~**



petroleum storage tank financial assurance board is created.

SECTION 55. IC 13-23-11-2, AS AMENDED BY P.L.200-2017, SECTION 16, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 2. (a) The board consists of the following nine (9) members:

(1) The commissioner or the commissioner's designee.

(2) One (1) member nominated by the treasurer of state in consultation with the commissioner of the department of state revenue.

(3) One (1) member representing the independent petroleum wholesale distributor-marketer industry. In making this appointment, the governor may consider the recommendation of the Indiana petroleum marketers and convenience store association.

(4) One (1) member representing the petroleum refiner-supplier industry. In making this appointment, the governor may consider the recommendation of the Indiana petroleum council.

(5) One (1) member of the financial lending community who has experience with loan guaranty programs.

(6) One (1) member representing the convenience store operator industry or independent petroleum retail distributor-marketer industry. In making this appointment, the governor may consider the recommendation of the Indiana petroleum marketers and convenience store association.

(7) One (1) member representing environmental interests.

(8) One (1) member representing an environmental consulting firm that performs work involving underground storage tank **or aboveground storage tank** corrective actions.

(9) One (1) member representing the property and casualty insurance industry.

(b) The governor shall appoint the members specified in subsection (a)(2) through (a)(9) for terms of two (2) years.

SECTION 56. IC 13-23-11-7, AS AMENDED BY P.L.96-2016, SECTION 40, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 7. (a) The board shall do the following:

(1) Adopt rules under IC 4-22-2 and IC 13-14-9 necessary to do the following:

(A) Carry out the duties of the board under this article.

(B) Establish standards and procedures under which:

(i) eligible parties may submit ELTF claims; and

(ii) the administrator of the ELTF may pay ELTF claims.

(C) Establish standards for determining the reasonableness and



1 cost effectiveness of corrective action for purposes of
2 reimbursement from the ELTF under IC 13-23-9-1.5(a)(1).

3 (D) Establish standards for priorities in the payment of ELTF
4 claims, including a priority for claims associated with releases
5 from USTs **and ASTs** that pose an immediate and significant
6 threat to the environment.

7 (2) Take testimony and receive a written report at every meeting
8 of the board from the commissioner or the commissioner's
9 designee regarding the financial condition and operation of the
10 ELTF, including:

11 (A) a detailed breakdown of contractual and administrative
12 expenses the department is claiming from the ELTF under
13 IC 13-23-7-1(a)(4); and

14 (B) a claims statistics report consisting of:

- 15 (i) the status and amounts of claims submitted to the ELTF;
16 and
17 (ii) ELTF claims payments made.

18 Testimony shall be taken and a written report shall be received
19 under this subdivision at every meeting of the board. However,
20 the testimony and written report are not required more than one
21 (1) time during any thirty (30) day period.

22 (3) Consult with the department on administration of the ELTF in
23 developing uniform policies and procedures for revenue
24 collection and claims administration of the ELTF.

25 (b) The department shall consult with the board on administration
26 of the ELTF. The consultation must include evaluation of alternative
27 means of administering the ELTF in a cost effective and efficient
28 manner.

29 (c) At each meeting of the board, the department shall provide the
30 board with a written report on the financial condition and operation of
31 the ELTF.

32 SECTION 57. IC 13-23-12-1, AS AMENDED BY P.L.96-2016,
33 SECTION 41, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
34 JULY 1, 2023]: Sec. 1. (a) Each year, if an underground storage tank
35 **or aboveground storage tank** has not been closed before January 1 of
36 the year under:

37 (1) rules adopted under IC 13-23-1-2; or

38 (2) a requirement imposed by the commissioner before the
39 adoption of rules under IC 13-23-1-2;

40 the owner of the underground storage tank **or aboveground storage**
41 **tank** shall pay to the department an annual registration fee.

42 (b) The annual registration fee required by this section is as follows:



(1) Ninety dollars (\$90) for each underground petroleum storage tank **or aboveground petroleum storage tank**.

(2) Two hundred forty-five dollars (\$245) for each underground storage tank **or aboveground storage tank** containing regulated substances other than petroleum.

(c) If an underground storage tank **or aboveground storage tank** consists of a single tank in which there are separate compartments, a separate fee shall be paid under subsection (b) for each compartment within the single tank.

(d) If an underground storage tank **or aboveground storage tank** consists of a combination of tanks, a separate fee shall be paid under subsection (b) for each compartment within each tank in the combination of tanks.

(e) The following apply to tanks that contain separate compartments and that were in use before July 1, 2014:

(1) For the period preceding July 1, 2014, the payment of a single annual fee of ninety dollars (\$90) for a tank containing separate compartments shall be deemed to satisfy the requirements of subsection (b).

(2) The department shall not be required to pay any refunds to a tank owner that paid a separate fee under subsection (b) for each compartment within a tank before July 1, 2014.

SECTION 58. IC 13-23-12-4, AS AMENDED BY P.L.220-2014, SECTION 28, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 4. The department shall collect the fees paid under this chapter and deposit the fees as follows:

(1) Fees paid in connection with underground petroleum storage tanks **or aboveground petroleum storage tanks** shall be deposited in the petroleum trust fund.

(2) Fees paid in connection with underground storage tanks **or aboveground storage tanks** used to contain regulated substances other than petroleum shall be deposited in the hazardous substances response trust fund.

SECTION 59. IC 13-23-13-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 1. (a) The commissioner may, under rules adopted under IC 13-23-1-2:

(1) issue an order under IC 13-14-2-7 or IC 4-21.5-4; or

(2) proceed under IC 13-14-2-6;

to require the owner or operator of an underground storage tank **or aboveground storage tank** to undertake corrective action with respect to any release of a regulated substance.

(b) If the commissioner determines that the corrective action will be



done properly and promptly by the owner or operator of the underground storage tank **or aboveground storage tank** from which the release occurs, the commissioner may enter into an agreed order with the owner or operator to implement necessary corrective action.

SECTION 60. IC 13-23-13-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 2. The commissioner, under rules adopted under IC 13-23-1-2, may undertake corrective action with respect to any release of a regulated substance into the environment from an underground storage tank **or aboveground storage tank** if:

(1) that action is necessary, in the judgment of the commissioner, to protect human health and the environment; and

(2) at least one (1) of the following conditions exists:

(A) A person cannot be found not later than ninety (90) days after a suspected or confirmed release is identified (or a shorter time necessary to protect human health and the environment) who is:

(i) an owner or operator of the underground storage tank **or aboveground storage tank**;

(ii) subject to the rules concerning corrective action; and

(iii) capable of properly carrying out corrective action with respect to the release.

(B) An existing situation requires prompt action by the commissioner under this section to protect human health and the environment.

(C) The cost of corrective action at the site of an underground storage tank **or aboveground storage tank** exceeds the amount of financial responsibility required under IC 13-23-1-2(c)(6), IC 13-23-4-4, and IC 13-23-4-5 and, considering the class or category of underground storage tank **or aboveground storage tank** from which the release occurred, expenditures by the state are necessary to ensure an effective corrective action.

(D) The owner or operator of the underground storage tank **or aboveground storage tank** has failed or refused to comply with an order of the commissioner or a judgment of a court of competent jurisdiction under section 1 of this chapter to take corrective action with respect to the release.

SECTION 61. IC 13-23-13-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 4. In:

(1) issuing orders requiring corrective action under section 1 of this chapter; or



(2) undertaking corrective action under section 2 of this chapter; the commissioner shall give priority to releases of regulated substances from underground storage tanks **or aboveground storage tanks** that pose the greatest threat to human health and the environment.

SECTION 62. IC 13-23-13-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 5. In issuing orders requiring corrective action under section 1 of this chapter or undertaking corrective action under section 2 of this chapter the commissioner may:

(1) require only a limited form of corrective action; and

(2) implement streamlined administrative procedures;

with respect to a release of a regulated substance from an underground storage tank **or aboveground storage tank** that, in the judgment of the commissioner, poses little or no immediate threat to human health or to the environment.

SECTION 63. IC 13-23-13-5.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 5.5. (a) Notwithstanding any other provision of this chapter, a person who is not an owner or operator of an underground storage tank **or an aboveground storage tank** is liable to the state only for corrective action to address a surface spill or overfill of a regulated substance from the underground storage tank **or aboveground storage tank** that is intentionally caused by the person during the delivery of the regulated substance into the underground storage tank **or aboveground storage tank**.

(b) A person who is liable for corrective action under subsection (a) is subject to a claim for contribution to corrective action costs arising solely from the surface spill or overfill by a person described in section 8(b)(1) or 8(b)(2) of this chapter. Except as otherwise provided in ~~subsection~~ **subsections** (c) and (d), an action for contribution under this section may be brought in the same manner and is subject to the same provisions as an action brought under section 8(b) of this chapter.

(c) Before a person brings a contribution action under this section, the person must provide written notice of intent to bring the action by certified mail to:

(1) the department; and

(2) each person allegedly responsible for the surface spill or overfill that occurred during the delivery of a regulated substance into the underground storage tank **or aboveground storage tank**.

(d) A person that provides notice under subsection (c) may not bring a contribution action if:

(1) the department commences an administrative proceeding or



a civil action concerning the alleged surface spill or overfill not later than ninety (90) days after receiving notice under subsection (c)(1); or
 (2) the person who receives the notice under subsection (c)(2) agrees in writing, within ninety (90) days after receipt of the notice, to remediate the surface spill or overfill in accordance with the state's rules governing spills and overfills.

SECTION 64. IC 13-23-13-6, AS AMENDED BY P.L.220-2014, SECTION 31, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 6. (a) Except as provided in subsection (b), the commissioner, under rules adopted under IC 13-23-1-2, may use money in the petroleum trust fund to pay the following costs and expenses associated with underground petroleum storage tanks **or aboveground petroleum storage tanks**:

(1) Costs incurred for corrective action conducted under cooperative agreements entered into between the state and the Administrator of the United States Environmental Protection Agency under Section 9003(h)(7) of the federal Solid Waste Disposal Act (42 U.S.C. 6991b(h)(7)), in accordance with the provisions of the cooperative agreements.

(2) Expenses incurred by the state for the following:

(A) Corrective actions that are ordered or undertaken under this chapter.

(B) Enforcement of this article.

(3) Expenses incurred by the state under section 8 of this chapter in recovering the costs of corrective actions undertaken under section 2 of this chapter.

(4) Administrative expenses and personnel expenses incurred by the state in carrying out this article.

(b) Notwithstanding subsection (a), fifty percent (50%) of the fees deposited in the petroleum trust fund under IC 13-23-12-4(1) shall be used by the commissioner to pay for corrective actions:

(1) taken under this chapter that involve releases of regulated substances from underground storage tanks **or aboveground storage tanks**; and

(2) that are not eligible to receive funds from the ~~underground~~ petroleum storage tank excess liability trust fund under IC 13-23-7.

Not more than eleven percent (11%) of the funds expended under this subsection may be used to pay for administrative and personnel expenses incurred in carrying out this subsection.

SECTION 65. IC 13-23-13-7 IS AMENDED TO READ AS



FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 7. The commissioner, under rules adopted under IC 13-23-1-2, may use money in the hazardous substances response trust fund to pay the following expenses associated with underground storage tanks **or aboveground storage tanks** used to contain regulated substances other than petroleum:

(1) Expenses incurred by the state for the following:

(A) Corrective actions that are ordered or undertaken under this chapter.

(B) Enforcement of this article.

(2) Expenses incurred by the state under section 8 of this chapter in recovering the costs of corrective actions.

(3) Administrative expenses and personnel expenses incurred by the state in carrying out this article.

SECTION 66. IC 13-23-13-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 8. (a) Except where an owner or operator can prove that a release from an underground storage tank **or aboveground storage tank** was caused solely by:

(1) an act of God;

(2) an act of war;

(3) negligence on the part of the state or the United States government; or

(4) any combination of the causes set forth in subdivisions (1) through (3);

the owner or operator of an underground storage tank **or aboveground storage tank** is liable to the state for the actual costs of any corrective action taken under section 2 of this chapter or IC 13-7-20-19(b) (before its repeal) involving the underground storage tank **or aboveground storage tank** and is responsible for undertaking any corrective action, including undertaking an exposure assessment, ordered under this chapter, IC 13-23-14-1, IC 13-7-20-19 (before its repeal), or IC 13-7-20-26 (before its repeal), or required by this title or a rule adopted under this title.

(b) A person who:

(1) pays to the state the costs described under subsection (a); or

(2) undertakes corrective action resulting from a release from an underground storage tank **or aboveground storage tank**, regardless of whether the corrective action is undertaken voluntarily or under an order issued under this chapter, IC 13-23-14-1, IC 13-7-20-19 (before its repeal), or IC 13-7-20-26 (before its repeal);

is entitled to receive a contribution from a person who owned or operated the underground storage tank **or aboveground storage tank**



1 at the time the release occurred. A person who brings a successful
 2 action to receive a contribution from an owner or operator is also
 3 entitled to receive reasonable attorney's fees and court costs from the
 4 owner or operator. An action brought under this subsection may be
 5 brought in a circuit or superior court. In resolving a contribution claim,
 6 a court may allocate the cost of a corrective action among the parties
 7 to the action using equitable factors that the court determines are
 8 appropriate.

9 (c) Money recovered by the state under this section in connection
 10 with any corrective action undertaken with respect to a release of
 11 petroleum shall be deposited in the petroleum trust fund.

12 (d) Money recovered by the state under this section in connection
 13 with any corrective action undertaken with respect to a release of a
 14 regulated substance other than petroleum shall be deposited in the
 15 hazardous substances response trust fund.

16 (e) The state may recover corrective action costs under this section
 17 in an action commenced under IC 13-14-2-6, IC 13-14-2-7, IC 13-7-5-7
 18 (before its repeal), or IC 13-7-5-8 (before its repeal). An action to
 19 recover corrective action costs under this section may be combined, as
 20 appropriate, with an action to enforce an order issued under section 1
 21 of this chapter or IC 13-7-20-19(a) (before its repeal) to require
 22 corrective action not already undertaken by the commissioner.

23 SECTION 67. IC 13-23-13-9 IS AMENDED TO READ AS
 24 FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 9. In determining the
 25 equities for seeking the recovery of costs under section 8 of this
 26 chapter, the commissioner may consider the following:

27 (1) The amount of financial responsibility required to be
 28 maintained under IC 13-23-1-2(c)(6).

29 (2) The factors considered in establishing that amount for
 30 underground storage tanks containing petroleum **or aboveground**
 31 **storage tanks containing petroleum** under IC 13-23-4-4.

32 SECTION 68. IC 13-23-13-10 IS AMENDED TO READ AS
 33 FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 10. (a) An
 34 indemnification agreement, a hold harmless agreement, or other similar
 35 agreement or conveyance is not effective to transfer the liability
 36 imposed under section 8 of this chapter from:

37 (1) the owner or operator of an:

38 (A) underground storage tank; or

39 (B) **aboveground storage tank; or**

40 (2) any person who may be liable for a release or threat of release
 41 under this article;

42 to any other person.



(b) This section does not bar an agreement to:

- (1) insure;
- (2) hold harmless; or
- (3) indemnify;

a party to an agreement for any liability under this article.

SECTION 69. IC 13-23-13-12 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 12. (a) For the purpose of enabling the commissioner to take or to assess the need for corrective action under this chapter or to enforce this article, an owner or operator of an underground storage tank **or aboveground storage tank**, upon the request of an officer, an employee, or a designated representative of the department, shall do the following:

(1) Furnish information relating to the:

- (A) underground storage tank; ~~or~~
- (B) **aboveground storage tank**; or
- (C) associated equipment or contents.

(2) Conduct monitoring or testing of the underground storage tank **or aboveground storage tank**, including associated equipment or contents.

(3) Conduct monitoring or testing of soils, air, surface water, or ground water surrounding the underground storage tank **or aboveground storage tank** if:

- (A) tank testing, using methods that are applicable to but not in excess of federal standards, confirms a release of regulated substance; or
- (B) other evidence exists that gives cause for reasonable suspicion that a release has occurred.

(4) Permit, at all reasonable times, the officer, employee, or designated representative to have access to and to copy all records relating to the underground storage tank **or aboveground storage tank**.

(5) Permit the officer, employee, or designated representative to have access for corrective action.

(b) For the purposes set forth in subsection (a), an officer, an employee, or a designated representative of the department may enter at reasonable times any establishment or other place where an underground storage tank **or aboveground storage tank** is located or where a regulated substance may be present due to a release from an underground storage tank **or aboveground storage tank** to do the following:

- (1) Inspect and obtain samples from any person of any regulated substances contained in the underground storage tank **or**



aboveground storage tank.

(2) Conduct monitoring or testing of:

(A) the underground storage tank;

(B) the aboveground storage tank;

~~(B)~~ (C) associated equipment or contents; or

~~(C)~~ (D) surrounding:

(i) soils;

(ii) air;

(iii) surface water; or

(iv) ground water.

(3) Take corrective action under section 2 of this chapter.

(c) Every action authorized by this section shall be commenced and completed with reasonable promptness.

SECTION 70. IC 13-23-13-14, AS AMENDED BY P.L.159-2011, SECTION 38, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 14. For purposes of IC 13-11-2-148(e), IC 13-11-2-150(b), and IC 13-11-2-150(c), a person that is a lender and that holds evidence of ownership primarily to protect a security interest in an underground storage tank **or aboveground storage tank** shall be considered to participate in management (as defined in IC 13-11-2-151.2) of the underground storage tank **or aboveground storage tank** only if, while the borrower is still in possession of the underground storage tank **or aboveground storage tank** encumbered by the security interest, the person:

(1) exercises decision making control over the environmental compliance related to the underground storage tank **or aboveground storage tank** such that the person has undertaken responsibility for the hazardous substance handling or disposal practices related to the underground storage tank **or aboveground storage tank**; or

(2) exercises control at a level comparable to that of a manager of the underground storage tank **or aboveground storage tank** such that the person has assumed or manifested responsibility:

(A) for the overall management of the underground storage tank **or aboveground storage tank** encompassing day to day decision making with respect to environmental compliance; or

(B) over all or substantially all of the operational functions (as distinguished from financial or administrative functions) of the underground storage tank **or aboveground storage tank** other than the function of environmental compliance.

SECTION 71. IC 13-23-13-15 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 15. (a) The liability of



1 a fiduciary under this title for the release or threatened release of a
 2 hazardous substance at, from, or in connection with an underground
 3 storage tank **or aboveground storage tank** held in a fiduciary capacity
 4 shall not exceed the assets held in the fiduciary capacity.

5 (b) Subsection (a) does not apply to the extent that a person is liable
 6 under this title independently of the person's ownership of an
 7 underground storage tank **or aboveground storage tank** as a fiduciary
 8 or actions taken in a fiduciary capacity.

9 (c) Subsections (a) and (d) do not limit the liability pertaining to a
 10 release or threatened release of a hazardous substance if negligence of
 11 a fiduciary causes or contributes to the release or threatened release.

12 (d) A fiduciary is not liable in its personal capacity under this title
 13 for any of the following:

14 (1) Undertaking or directing another person to undertake a
 15 response action under 42 U.S.C. 9607(d)(1) or under the direction
 16 of an on-scene coordinator designated under the National
 17 Contingency Plan.

18 (2) Undertaking or directing another person to undertake other
 19 lawful means of addressing a hazardous substance in connection
 20 with the underground storage tank **or aboveground storage tank**.

21 (3) Terminating the fiduciary relationship.

22 (4) Including in the terms of the fiduciary agreement a covenant,
 23 warranty, or other term or condition that relates to compliance
 24 with an environmental law, or monitoring, modifying, or
 25 enforcing the term or condition.

26 (5) Monitoring or undertaking at least one (1) inspection of the
 27 underground storage tank **or aboveground storage tank**.

28 (6) Providing financial advice or other advice or counseling to
 29 other parties to the fiduciary relationship, including the settlor or
 30 beneficiary.

31 (7) Restructuring, renegotiating, or otherwise altering the terms
 32 and conditions of the fiduciary relationship.

33 (8) Administering, as a fiduciary, an underground storage tank **or**
 34 **aboveground storage tank** that was contaminated before the
 35 fiduciary relationship began.

36 (9) Declining to take any of the actions referred to in subdivisions
 37 (2) through (8).

38 (e) This section does not apply to a person if the person:

39 (1) acts in a capacity other than:

40 (A) a fiduciary capacity; or

41 (B) a beneficiary capacity;

42 and, in that capacity, directly or indirectly benefits from a trust or



1 fiduciary relationship; or

2 (2) is a beneficiary and a fiduciary with respect to the same
3 fiduciary estate and, as a fiduciary, receives benefits that exceed
4 customary or reasonable compensation and incidental benefits
5 permitted under other applicable law.

6 (f) This section does not preclude a claim against the assets of the
7 estate or trust administered by:

8 (1) the fiduciary; or

9 (2) a nonemployee agent or independent contractor retained by a
10 fiduciary.

11 (g) This section does not:

12 (1) affect the rights, immunities, or other defenses that are
13 available under:

14 (A) this title; or

15 (B) other law that is applicable to a person subject to this
16 chapter; or

17 (2) create:

18 (A) any liability for a person; or

19 (B) a private right of action against a fiduciary or any other
20 person.

21 SECTION 72. IC 13-23-13-16, AS ADDED BY P.L.221-2007,
22 SECTION 15, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
23 JULY 1, 2023]: Sec. 16. (a) A political subdivision or unit of federal
24 or state government that acquired ownership or control of an
25 underground storage tank **or aboveground storage tank** on a
26 brownfield by any of the means listed in IC 13-11-2-150(c) and
27 IC 13-11-2-151(b) may undertake any activity in conjunction with:

28 (1) investigation or remediation of hazardous substances,
29 petroleum, and other pollutants associated with a brownfield,
30 including complying with land use restrictions and institutional
31 controls; or

32 (2) monitoring or closure of an:

33 (A) underground storage tank; **or**

34 (B) **aboveground storage tank;**

35 without being considered as contributing to the existing release or
36 threatened release of a regulated substance on, in, or at the brownfield
37 unless existing contamination on the brownfield is exacerbated due to
38 gross negligence or intentional misconduct by the political subdivision
39 or unit of federal or state government.

40 (b) For purposes of subsection (a), reckless, willful, or wanton
41 misconduct constitutes gross negligence.

42 SECTION 73. IC 13-23-14-2 IS AMENDED TO READ AS



1 FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 2. A person who
 2 violates a rule adopted under IC 13-23-1-2 by:

- 3 (1) knowingly failing to give a required notification; or
 4 (2) submitting false information;

5 is subject to a civil penalty of not more than ten thousand dollars
 6 (\$10,000) for each underground storage tank **or aboveground storage**
 7 **tank** for which a required notification is not given or for which false
 8 information is submitted.

9 SECTION 74. IC 13-23-14-3 IS AMENDED TO READ AS
 10 FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 3. (a) Except as
 11 provided in subsection (b), a person who violates:

- 12 (1) a requirement or standard set forth in this article; or
 13 (2) a rule adopted under IC 13-23-1-2 other than a violation
 14 described in section 2 of this chapter;

15 is subject to a civil penalty of not more than ten thousand dollars
 16 (\$10,000) per underground storage tank **or aboveground storage tank**
 17 for each day of violation.

18 (b) A person is not subject to the civil penalty described in
 19 subsection (a) if:

- 20 (1) the violation arose from an underground storage tank **or**
 21 **aboveground storage tank** that is on a brownfield;
 22 (2) the person was not the owner or operator of the underground
 23 storage tank **or aboveground storage tank** when the violation
 24 first occurred;
 25 (3) the person does not dispense a regulated substance into or
 26 from the underground **storage tank or aboveground storage**
 27 **tank**:

28 (A) for any purpose other than temporary or permanent
 29 closure; or

30 (B) in violation of any federal, state, or local regulations; and

- 31 (4) the underground storage tank **or aboveground storage tank**
 32 is brought into compliance with this article not later than one (1)
 33 year after the person acquired ownership of the property.

34 SECTION 75. IC 13-23-14-4, AS AMENDED BY P.L.38-2012,
 35 SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 36 JULY 1, 2023]: Sec. 4. (a) A person who fails to comply with an order
 37 issued by the commissioner under this article or IC 13-7-20 (before its
 38 repeal) after the order becomes effective is subject to a civil penalty of
 39 not more than twenty-five thousand dollars (\$25,000) for each day of
 40 continued noncompliance.

41 (b) It is a defense to a violation of this section due to noncompliance
 42 with an order issued under IC 13-23-1-4 that the person has not been



1 notified that an underground storage tank **or aboveground storage**
 2 **tank** that is the subject of the order is ineligible for delivery, deposit,
 3 or acceptance of a regulated substance as determined by the
 4 commissioner.

5 SECTION 76. IC 13-23-16-2, AS ADDED BY P.L.221-2007,
 6 SECTION 16, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 7 JULY 1, 2023]: Sec. 2. If the department receives a report concerning:

8 (1) the discovery of released regulated substances at an
 9 underground storage tank **or aboveground storage tank** site or
 10 in the surrounding area under 329 IAC 9-4-1(1); or

11 (2) a spill or overfill under 329 IAC 9-4-4(a);

12 the department shall, not more than seven (7) days after receiving the
 13 report, provide notice of the release, spill, or overfill to the county
 14 health officer of each county in which the release, spill, or overfill
 15 occurred.

16 SECTION 77. IC 13-27-8-3, AS AMENDED BY P.L.133-2012,
 17 SECTION 155, IS AMENDED TO READ AS FOLLOWS
 18 [EFFECTIVE JULY 1, 2023]: Sec. 3. (a) The following boards may
 19 adopt rules to implement this chapter to the extent consistent with
 20 federal law:

21 (1) The board.

22 (2) The ~~underground~~ **petroleum** storage tank financial assurance
 23 board established by IC 13-23-11-1.

24 (b) The rules adopted under subsection (a) may establish the
 25 following:

26 (1) Eligibility requirements for participation in environmental
 27 performance based programs.

28 (2) Compliance methods and schedules that:

29 (A) differ from compliance methods and schedules that apply
 30 to nonparticipants in environmental performance based
 31 programs under rules adopted by the boards;

32 (B) apply only to participants in environmental performance
 33 based programs; and

34 (C) include any of the following:

35 (i) Changes to monitoring and reporting requirements and
 36 schedules.

37 (ii) Streamlined submission requirements for permit
 38 renewals.

39 (iii) Prioritized applications.

40 (iv) Authorization to make without prior governmental
 41 approval certain operational changes that do not result in
 42 additional environmental impact.



(3) Recognition incentives to encourage participation in environmental performance based programs.

(4) Other incentives consistent with the policies of this title and federal law to encourage participation in environmental performance based programs.

(5) Requirements for participants in environmental performance based programs to implement any of the following:

(A) Continuous improvement environmental systems.

(B) Pollution prevention and waste minimization programs developed under IC 13-27-7.

SECTION 78. IC 13-30-3-11, AS AMENDED BY P.L.133-2012, SECTION 159, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 11. An order of the commissioner under this chapter may do any of the following:

(1) Include a direction to cease and desist from violations of the following:

(A) Environmental management laws.

(B) Air pollution control laws.

(C) Water pollution control laws.

(D) A rule adopted by the board.

(E) A rule adopted by the ~~underground petroleum~~ storage tank financial assurance board ~~created~~ **established** by IC 13-23-11-1.

(2) Impose monetary penalties in accordance with the following:

(A) Environmental management laws.

(B) Air pollution control laws.

(C) Water pollution control laws.

(3) Mandate corrective action, including corrective action to be taken beyond the boundaries of the area owned or controlled by the person to whom the order is directed, to alleviate the violation.

(4) Revoke a permit or condition or modify the terms of a permit.

SECTION 79. IC 13-30-4-1, AS AMENDED BY P.L.133-2012, SECTION 160, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 1. (a) Subject to IC 13-14-6 and except as provided in IC 13-23-14-2 and IC 13-23-14-3, a person who violates:

(1) any provision of:

(A) environmental management laws;

(B) air pollution control laws;

(C) water pollution control laws;

(D) IC 13-18-14-1;

(E) a rule or standard adopted by the board; or



(F) a rule or standard adopted by the ~~underground petroleum~~
storage tank financial assurance board ~~created~~ **established** by
IC 13-23-11-1; or

(2) any determination, permit, or order made or issued by the
commissioner under:

(A) environmental management laws or IC 13-7 (before its
repeal);

(B) air pollution control laws or IC 13-1-1 (before its repeal);
or

(C) water pollution control laws or IC 13-1-3 (before its
repeal);

is liable for a civil penalty not to exceed twenty-five thousand dollars
(\$25,000) per day of any violation.

(b) The department may:

(1) recover the civil penalty described in subsection (a) in a civil
action commenced in any court with jurisdiction; and

(2) request in the action that the person be enjoined from
continuing the violation.

SECTION 80. IC 13-30-7-7, AS AMENDED BY P.L.133-2012,
SECTION 161, IS AMENDED TO READ AS FOLLOWS
[EFFECTIVE JULY 1, 2023]: Sec. 7. The following shall adopt rules
under IC 4-22-2 and IC 13-14-9 to administer this chapter:

(1) The board.

(2) The ~~underground petroleum~~ storage tank financial assurance
board ~~created~~ **established** by IC 13-23-11-1.

SECTION 81. IC 16-44-2-18.5, AS AMENDED BY P.L.1-2006,
SECTION 307, IS AMENDED TO READ AS FOLLOWS
[EFFECTIVE JULY 1, 2023]: Sec. 18.5. (a) As used in this section,
"special fuel" has the meaning set forth in IC 6-6-2.5-22, except that
the term does not include kerosene.

(b) Except as provided in subsection (c), fees for the inspection of
special fuel shall be at the rate of fifty cents (\$0.50) per barrel (fifty
(50) gallons) on all special fuel sold or used in producing or generating
power for propelling motor vehicles in Indiana less deductions
provided in this section.

(c) A fee for the inspection of special fuel may not be charged with
respect to special fuel that is exempt from the special fuel tax under
IC 6-6-2.5-30.

(d) The fee imposed by this chapter on special fuel sold or used in
producing or generating power for propelling motor vehicles in Indiana
shall be collected and remitted to the state at the same time, by the
same person, and in accordance with the same requirements for



1 collection and remittance of the special fuels tax under IC 6-6-2.5-35.

2 (e) Fees collected under this section shall be deposited by the
3 department in the ~~underground~~ petroleum storage tank excess liability
4 trust fund established by IC 13-23-7-1.

5 (f) A person who receives a refund of special fuel tax under
6 IC 6-6-2.5 is also entitled to a refund of fees paid under this section if:

7 (1) the fees were paid with respect to special fuel that was used
8 for an exempt purpose described in IC 6-6-2.5-30; and

9 (2) the person submits to the department of state revenue a claim
10 for a refund, in the form prescribed by the department of state
11 revenue, that includes the following information:

12 (A) Any evidence requested by the department of state
13 revenue concerning the person's:

14 (i) payment of the fee imposed by this section; and

15 (ii) receipt of a refund of special fuel taxes from the
16 department of state revenue under IC 6-6-2.5.

17 (B) Any other information reasonably requested by the
18 department of state revenue.

19 The department of state revenue may make any investigation it
20 considers necessary before refunding fees to a person.

21 SECTION 82. IC 16-44-2-19 IS AMENDED TO READ AS
22 FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 19. All money collected
23 for inspections under this chapter shall be deposited in the ~~underground~~
24 petroleum storage tank excess liability trust fund established by
25 IC 13-23-7-1.

26 SECTION 83. IC 22-12-2-2, AS AMENDED BY P.L.249-2019,
27 SECTION 14, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
28 JULY 1, 2023]: Sec. 2. (a) The commission consists of eleven (11)
29 members, nine (9) of whom shall be appointed by the governor.

30 (b) The term of a commission member is four (4) years.

31 (c) The state health commissioner or the commissioner's designee
32 shall serve as a member of the commission, and the commissioner of
33 labor or the commissioner's designee shall serve as a member of the
34 commission.

35 (d) Each appointed member of the commission must have a
36 recognized interest, knowledge, and experience in the field of fire
37 prevention, fire protection, building safety, or other related matters.
38 The governor shall consider appointing individuals to the commission
39 with experience in the following:

40 (1) A paid fire department.

41 (2) A volunteer fire department.

42 (3) The field of fire insurance.



- (4) The fire service industry.
 - (5) The manufactured housing industry.
 - (6) The field of fire protection engineering.
 - (7) As a professionally licensed engineer.
 - (8) Building contracting.
 - (9) The field of building one (1) and two (2) family dwellings.
 - (10) As a professionally licensed architect.
 - (11) The design or construction of heating, ventilating, air conditioning, or plumbing systems.
 - (12) The design or construction of regulated lifting devices.
 - (13) City, town, or county building inspection.
 - (14) Regulated amusement devices.
 - (15) Accessibility requirements and personal experience with a disability.
 - ~~(16) Underground and aboveground motor fuel storage tanks and dispensing systems.~~
 - ~~(17)~~ **(16)** The masonry trades.
 - ~~(18)~~ **(17)** Energy conservation codes and standards, including the manner in which energy conservation codes and standards apply to:
 - (A) residential;
 - (B) single and multiple family dwelling; or
 - (C) commercial; building codes.
 - ~~(19)~~ **(18)** The boiler and pressure vessel industry.
 - (e) Not more than five (5) of the appointed members of the commission may be affiliated with the same political party.
- SECTION 84. [EFFECTIVE JULY 1, 2023] (a) As used in this SECTION, "board" refers to the environmental rules board established by IC 13-13-8-3.**
- (b) As used in this SECTION, "department" means the department of environmental management established by IC 13-13-1-1.**
- (c) On July 1, 2023, all powers, duties, agreements, and liabilities of the:**
- (1) state fire marshal to regulate the certification of underground storage tank workers under IC 13-23-3, before its amendment by this act, are transferred to the department; and**
 - (2) fire prevention and building safety commission to regulate the certification of underground storage tank workers under IC 13-23-3, before its amendment by this act, are transferred**



to the board.

(d) On July 1, 2023, all records, property, and funds used by the:

(1) state fire marshal to regulate the certification of underground storage tank workers under IC 13-23-3, before its amendment by this act, are transferred to the department; and

(2) fire prevention and building safety commission to regulate the certification of underground storage tank workers under IC 13-23-3, before its amendment by this act, are transferred to the board.

(e) After June 30, 2023, any amounts owed to the:

(1) state fire marshal in connection with regulation of the certification of underground storage tank workers before July 1, 2023, are considered to be owed to the department as the successor agency; and

(2) fire prevention and building safety commission in connection with the regulation of certification of underground storage tank workers before July 1, 2023, are considered to be owed to the board as the successor agency.

(f) The rules adopted by the fire prevention and building safety commission before July 1, 2023, under 675 IAC 12-12, concerning the underground storage tank certification program are considered, after June 30, 2023, rules of the board.

(g) This SECTION expires July 1, 2024.

SECTION 85. [EFFECTIVE JULY 1, 2023] (a) The administrator may reimburse the following costs from the fund:

(1) Investigation and remediation of petroleum contamination from an eligible above ground petroleum storage tank;

(2) Fifty percent (50%) of decommissioning or replacing of an underground petroleum storage tank, if the administrator determines that removal is necessary to protect human health and the environment, considering the condition of the tank, including the age, level of deterioration, and obsolescence of the tank; and

(3) Costs for investigation and remediation of a site for which a "no further action (NFA)" has been granted if the owner decides to permanently decommission the site as a petroleum facility and undertake the investigation and remediation of the remaining contamination for the site's former use as a petroleum facility. The administrator shall allow for the restoration of ELTF eligibility in such a case and may require



- 1 information regarding the planned future use for the site.
- 2 (b) This SECTION expires upon the effective date of the rules
- 3 adopted by the petroleum storage tank financial assurance board
- 4 under IC 13-23-1-5.

