

HOUSE BILL NO. 54

INTRODUCED BY J. READ

BY REQUEST OF THE DEPARTMENT OF ENVIRONMENTAL QUALITY

A BILL FOR AN ACT ENTITLED: "AN ACT REMOVING THE "RELATIVELY LOW RISK" REQUIREMENT FROM THE MONTANA PETROLEUM BROWNFIELDS REVITALIZATION ACT; AMENDING SECTIONS 75-11-403 AND 75-11-408, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 75-11-403, MCA, is amended to read:

"75-11-403. Definitions -- application. (1) The definitions used in this part are for the purpose of determining the eligibility of petroleum release sites to receive and expend federal brownfields funding received by a grant recipient from the United States environmental protection agency under the federal Brownfields Revitalization and Environmental Restoration Act ~~of~~ of 2001, Title II of Public Law 107-118.

(2) As used in this part, the following definitions apply:

(a) "Department" means the department of environmental quality provided for in 2-15-3501.

(b) "Grant recipient" means a city, town, county, consolidated city-county, tribal government, economic development organization, nonprofit organization, or state agency that has received federal brownfields money from the environmental protection agency.

(c) "Person" means an individual, firm, trust, estate, partnership, company, association, joint-stock company, syndicate, consortium, commercial entity, corporation, state government agency, or local government.

(d) "Petroleum brownfields sites" means real property where the expansion, redevelopment, or reuse is or may be complicated by the presence or perceived presence of petroleum contamination.

(e) "Petroleum tank release site" means a site where there has been a release from a petroleum storage tank and assessment, remediation, or both are being pursued in accordance with Title 75, chapter 11, part 3.

1 (f) "Potentially liable person" means a grant recipient who:

2 (i) dispensed or disposed of, or owned the site when others dispensed or disposed of, petroleum
3 or petroleum product at the site;

4 (ii) exacerbated existing petroleum contamination at the site; or

5 (iii) failed to take reasonable steps with regard to petroleum contamination at the site.

6 (g) "Reasonable steps" means, as appropriate, stopping continuing releases, preventing
7 threatened future releases, or preventing or limiting human, environmental, or natural resource exposure to
8 earlier petroleum or petroleum product releases. The term may include limiting access to the property,
9 monitoring known contaminants, and complying with state, local, or both state and local requirements.

10 (h) ~~"Relatively low risk" refers to a petroleum tank release site that is not being assessed,~~
11 ~~investigated, or cleaned up by the department using funds from the federal leaking underground storage tank~~
12 ~~trust fund and is not subject to a response under the federal Oil Pollution Act.~~

13 (i)—"Responsible party" means:

14 (i) a person who is responsible for conducting the assessment, investigation, and cleanup at a
15 petroleum tank release site as determined through:

16 (A) a judgment rendered in a court of law or an administrative order;

17 (B) an enforcement action by federal authorities or the department; or

18 (C) a citizen suit, contribution action, or other third-party claim brought against the current owner of
19 the petroleum tank release site; or

20 (ii) a current owner of a petroleum tank release site who:

21 (A) dispensed or disposed of petroleum or petroleum product contamination at the site;

22 (B) exacerbated existing petroleum contamination at the site;

23 (C) owned the site when any dispensing or disposal of petroleum by others took place; or

24 (D) failed to take reasonable steps with regard to petroleum contamination at the site.

25 (i)(i) "Viable responsible party" means a responsible party who is determined by the department in
26 accordance with 75-11-407 to have the financial capability to conduct the assessment, investigation, or cleanup
27 activities at a petroleum tank release site."

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1 **Section 2.** Section 75-11-408, MCA, is amended to read:

2 **"75-11-408. Brownfields site eligibility at petroleum tank release sites -- determinations and**
3 **limitations.** (1) Before a grant recipient may expend federal brownfields funds at a petroleum tank release site,
4 either the United States environmental protection agency or the department shall make a written determination
5 that:

6 (a) ~~the petroleum tank release site is of relatively low risk compared to other petroleum-~~
7 ~~contaminated sites;~~

8 ~~(b)~~—there is no viable responsible party for the petroleum tank release site;

9 ~~(e)~~(b) the petroleum tank release site will not be assessed, investigated, or cleaned up by a
10 potentially liable person; and

11 ~~(d)~~(c) the petroleum tank release site is not subject to an order under section 9003(h) of the federal
12 Solid Waste Disposal Act, 42 U.S.C. 6991b(h), or Title 75, chapter 11.

13 (2) After the department or the United States environmental protection agency determines that a
14 petroleum tank release site is eligible for federal brownfields funding, the department shall encourage and may
15 not limit the use of a grant recipient's federal petroleum brownfields funding at the site even if the site owner or
16 operator, as defined in 75-11-302, is eligible for funding from the petroleum tank release cleanup fund
17 established in 75-11-313.

18 (3) The department may not limit the use of money from the petroleum tank release cleanup fund
19 established in 75-11-313 when used as a commitment to a federal brownfields loan made by a grant recipient
20 for remediation at a petroleum tank release site.

21 (4) (a) Except as provided in subsection (4)(b), a determination made by the department or the
22 United States environmental protection agency that a petroleum tank release site is eligible for federal
23 brownfields funding does not limit or alter the owner's or operator's responsibility to assess or remediate the
24 petroleum tank release site in accordance with Title 75, chapter 11.

25 (b) If the department determines that a grant recipient has proposed to conduct a timely and
26 comprehensive remediation using federal brownfields funding at a petroleum tank release site that has been
27 determined by the department or the United States environmental protection agency to be eligible for petroleum
28 brownfields funding and the proposed remediation plan is expected to meet or exceed remediation standards

1 required by the department and financial commitments required by the petroleum tank release compensation
2 board pursuant to Title 75, chapter 11, the department shall approve the comprehensive remediation plan and
3 allow for the use of federal brownfields funding at the petroleum tank release site."
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5 NEW SECTION. **Section 3. Saving clause.** [This act] does not affect rights and duties that matured,
6 penalties that were incurred, or proceedings that were begun before [the effective date of this act].
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8 NEW SECTION. **Section 4. Effective date.** [This act] is effective on passage and approval.
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