

LEGISLATURE OF NEBRASKA
ONE HUNDREDTH LEGISLATURE
SECOND SESSION
LEGISLATIVE BILL 1145

Introduced by Louden, 49.

Read first time January 23, 2008

Committee: Natural Resources

A BILL

1 FOR AN ACT relating to the Petroleum Release Remedial Action
2 Act; to amend sections 66-1519, 66-1523, 66-1525, and
3 66-1529.02, Revised Statutes Cumulative Supplement, 2006;
4 to change dates relating to expenditure of a cash fund;
5 and to repeal the original sections.
6 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 66-1519, Revised Statutes Cumulative
2 Supplement, 2006, is amended to read:

3 66-1519 (1) There is hereby created the Petroleum Release
4 Remedial Action Cash Fund to be administered by the department.
5 Revenue from the following sources shall be remitted to the State
6 Treasurer for credit to the fund:

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

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

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

14 (2) Money in the fund may be spent for: (a) Reimbursement
15 for the costs of remedial action by a responsible person or his
16 or her designated representative and costs of remedial action
17 undertaken by the department in response to a release first
18 reported after July 17, 1983, and on or before June 30, ~~2009~~, 2012,
19 including reimbursement for damages caused by the department or
20 a person acting at the department's direction while investigating
21 or inspecting or during remedial action on property other than
22 property on which a release or suspected release has occurred;
23 (b) payment of any amount due from a third-party claim; (c) fee
24 collection expenses incurred by the State Fire Marshal; (d) direct
25 expenses incurred by the department in carrying out the Petroleum

1 Release Remedial Action Act; (e) other costs related to fixtures
2 and tangible personal property as provided in section 66-1529.01;
3 (f) interest payments as allowed by section 66-1524; (g) expenses
4 incurred by the technical advisory committee created in section
5 81-15,189 in carrying out its duties pursuant to section 81-15,190;
6 (h) claims approved by the State Claims Board authorized under
7 section 66-1531; (i) a grant to a city of the metropolitan class
8 in the amount of three hundred thousand dollars, provided no later
9 than September 15, 2005, to carry out the federal Residential
10 Lead-Based Paint Hazard Reduction Act of 1992, 42 U.S.C. 4851 et
11 seq., as such act existed on October 1, 2003; and (j) methyl
12 tertiary butyl ether testing, to be conducted randomly at terminals
13 within the state for up to two years ending June 30, 2003. The
14 amount expended on the testing shall not exceed forty thousand
15 dollars. The testing shall be conducted by the Department of
16 Agriculture. The department may enter into contractual arrangements
17 for such purpose. The results of the tests shall be made available
18 to the Department of Environmental Quality.

19 (3) Transfers may be made from the Petroleum Release
20 Remedial Action Cash Fund to the General Fund at the direction of
21 the Legislature. Transfers may be made from the Petroleum Release
22 Remedial Action Cash Fund to the Water Policy Task Force Cash
23 Fund at the direction of the Legislature. The State Treasurer
24 shall transfer one million five hundred thousand dollars from
25 the Petroleum Release Remedial Action Cash Fund to the Ethanol

1 Production Incentive Cash Fund on July 1 of each of the following
2 years: 2004 through 2011.

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

7 Sec. 2. Section 66-1523, Revised Statutes Cumulative
8 Supplement, 2006, is amended to read:

9 66-1523 (1) Except as provided in subsection (2) of
10 this section, the department shall provide reimbursement from the
11 fund in accordance with section 66-1525 to eligible responsible
12 persons for the cost of remedial action for releases reported after
13 July 17, 1983, and on or before June 30, ~~2009~~, 2012, and for
14 the cost of paying third-party claims. The reimbursement for the
15 cost of remedial action shall not exceed nine hundred seventy-five
16 thousand dollars per occurrence. The total of the claims paid under
17 section 66-1531 and the reimbursement for third-party claims shall
18 not exceed one million dollars per occurrence. The responsible
19 person shall pay the first ten thousand dollars of the cost of
20 the remedial action or third-party claim, twenty-five percent of
21 the remaining cost of the remedial action or third-party claim
22 not to exceed fifteen thousand dollars, and the amount of any
23 reduction authorized under subsection (5) of section 66-1525. If
24 the department determines that a responsible person was ordered to
25 take remedial action for a release which was later found to be from

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

14 (2) Upon the determination by the department that the
15 responsible person sold no less than two thousand gallons of
16 petroleum and no more than two hundred fifty thousand gallons
17 of petroleum during the calendar year immediately preceding the
18 first report of the release or stored less than ten thousand
19 gallons of petroleum in the calendar year immediately preceding
20 the first report of the release, the department shall provide
21 reimbursement from the fund in accordance with section 66-1525
22 to such an eligible person for the cost of remedial action for
23 releases reported after July 17, 1983, and on or before June 30,
24 ~~2009~~, 2012, and for the cost of paying third-party claims. The
25 reimbursement for the cost of remedial action shall not exceed

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

25 (3) The department may make partial reimbursement during

1 the time that remedial action is being taken if the department is
2 satisfied that the remedial action being taken is as required by
3 the department.

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

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

20 (6) Notwithstanding any other provision of law, there
21 shall be no reimbursement from the fund for the cost of remedial
22 action or for the cost of paying third-party claims for any
23 releases reported on or after July 1, ~~2009~~ 2012.

24 (7) For purposes of this section, occurrence shall
25 mean an accident, including continuous or repeated exposure to

1 conditions, which results in a release from a tank.

2 Sec. 3. Section 66-1525, Revised Statutes Cumulative
3 Supplement, 2006, is amended to read:

4 66-1525 (1) Any responsible person or his or her
5 designated representative who has taken remedial action in response
6 to a release first reported after July 17, 1983, and on or before
7 June 30, ~~2009~~, 2012, or against whom there is a third-party claim
8 may apply to the department under the rules and regulations adopted
9 and promulgated pursuant to section 66-1518 for reimbursement for
10 the costs of the remedial action or third-party claim. Partial
11 payment of such reimbursement to the responsible person may be
12 authorized by the department at the approved stages prior to the
13 completion of remedial action when a remedial action plan has
14 been approved. If any stage is projected to take more than ninety
15 days to complete partial payments may be requested every sixty
16 days. Such partial payment may include the eligible and reasonable
17 costs of such plan or pilot projects conducted during the remedial
18 action.

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

21 (a) The tank was in substantial compliance with any
22 rules and regulations of the United States Environmental Protection
23 Agency, the State Fire Marshal, and the department which were
24 applicable to the tank. Substantial compliance shall be determined
25 by the department taking into consideration the purposes of the

1 Petroleum Release Remedial Action Act and the adverse effect that
2 any violation of the rules and regulations may have had on the tank
3 thereby causing or contributing to the release and the extent of
4 the remedial action thereby required;

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

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

18 (d) The department has approved the plan submitted by the
19 responsible person for the remedial action in accordance with rules
20 and regulations adopted and promulgated by the department pursuant
21 to the Environmental Protection Act or the Petroleum Products and
22 Hazardous Substances Storage and Handling Act or that portion of
23 the plan for which payment or reimbursement is requested. However,
24 responsible persons may undertake remedial action prior to approval
25 of a plan by the department or during the time that remedial action

1 at a site was suspended at any time after April 1995 because the
2 fund was insufficient to pay reimbursements and be eligible for
3 reimbursement at a later time if the responsible person complies
4 with procedures provided to the responsible party by the department
5 or set out in rules and regulations adopted and promulgated by the
6 Environmental Quality Council;

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

11 (f) If reimbursement for a third-party claim is involved,
12 the cause of action for the third-party claim accrued after April
13 26, 1991, and the Attorney General was notified by any person of
14 the service of summons for the action within ten days of such
15 service; and

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

19 (3) The State Fire Marshal shall review each application
20 prior to consideration by the department and provide to the
21 department any information the State Fire Marshal deems relevant
22 to subdivisions (2)(a) through (g) of this section. The State Fire
23 Marshal shall issue a determination with respect to an applicant's
24 compliance with rules and regulations adopted and promulgated by
25 the State Fire Marshal. The State Fire Marshal shall issue a

1 compliance determination to the department within thirty days after
2 receiving an application from the department.

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

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

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

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

14 and

15 (c) Whether noncompliance was negligent, knowing, or
16 willful.

17 (6) Except as provided in subsection (4) of this section,
18 the department shall notify the responsible person of its approval
19 or denial of the remedial action plan within one hundred twenty
20 days after receipt of a remedial action plan which contains all
21 the required information. If after one hundred twenty days the
22 department fails to either deny, approve, or amend the remedial
23 action plan submitted, the proposed plan shall be deemed approved.
24 If the remedial action plan is denied, the department shall provide
25 the reasons for such denial.

1 Sec. 4. Section 66-1529.02, Revised Statutes Cumulative
2 Supplement, 2006, is amended to read:

3 66-1529.02 (1) The department may undertake remedial
4 actions in response to a release first reported after July 17,
5 1983, and on or before June 30, ~~2009~~, 2012, with money available
6 in the fund if:

7 (a) The responsible person cannot be identified or
8 located;

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

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

14 (2) The department may pay the costs of a third-party
15 claim meeting the requirements of subdivision (2)(f) of section
16 66-1525 with money available in the fund if the responsible person
17 cannot or will not pay the third-party claim.

18 (3) Reimbursement for any damages caused by the
19 department or a person acting at the department's direction while
20 investigating or inspecting or during remedial action on property
21 other than property on which a release or suspected release has
22 occurred shall be considered as part of the cost of remedial action
23 involving the site where the release or suspected release occurred.
24 The costs shall be reimbursed from money available in the fund.
25 If such reimbursement is deemed inadequate by the party claiming

1 the damages, the party's claim for damages caused by the department
2 shall be filed as provided in section 76-705.

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

9 Sec. 5. Original sections 66-1519, 66-1523, 66-1525,
10 and 66-1529.02, Revised Statutes Cumulative Supplement, 2006, are
11 repealed.