

1 2195.3(A)(1)(b), (6), and (10), 2195.4(A)(2), (3), and (B)(1) , 2195.8(A), and (C), 2195.9
 2 (B), 2195.10(C), 2195.12(A) are hereby amended and reenacted and R.S. 30:2194(B)(8)(c),
 3 and 2195.12(E) are hereby enacted to read as follows:

4 §2194. Underground storage tanks; registration

5 * * *

6 B. As used in R.S. 30:2194 through 2195.11, the following terms shall have
 7 the meaning ascribed to them in this Subsection, unless the context clearly indicates
 8 otherwise:

9 (1)(a) "Bulk facility" means a facility, including pipeline terminals, refinery
 10 terminals, motor fuel distribution terminals, rail and barge terminals, and associated
 11 tanks, connected or separate, from which motor fuels are withdrawn from bulk and
 12 delivered into a cargo tank or a barge used to transport these materials.

13 **(b) "Bulk facility" shall also mean a broker, reseller, or other person**
 14 **that does not sell motor fuels to any person other than another bulk facility and**
 15 **has registered and obtained a certificate from the department.**

16 * * *

17 (3) "Date of release" means the specific date in which evidence indicates that
 18 a release (leak) is occurring or has occurred. If a tank is taken out-of-service, the date
 19 of release is the last date of operation. **If no specific date is determined, the "date**
 20 **of release" is the date the release (leak) is reported to the department.**

21 * * *

22 (6) "Motor fuels" shall be defined as all grades of gasoline including but not
 23 limited to gasohol, No. 1 diesel, No. 2 diesel, kerosene, and all aviation fuels. ~~Liquid~~
 24 ~~petroleum (LP) gas shall not be included in this definition of motor fuel. Effective~~
 25 ~~September 6, 1991, this~~ **This** term shall include new and used motor oil that is used
 26 for lubricating engines of motor vehicles. ~~If, however, used oil is determined to be~~
 27 ~~a hazardous waste by the United States Environmental Protection Agency, used oil~~
 28 ~~shall no longer be included in this term.~~ **"Motor fuels" may include, as determined**
 29 **by the secretary, any product, petroleum or petroleum blend, biofuel or any**

1 new fuel that may emerge for the propulsion of motor vehicles.

2 * * *

3 (8) "Regulated substance" means:

4 * * *

5 (c) Any motor fuels as determined by the secretary.

6 * * *

7 §2194.1. Prohibitions

8 ~~On or after January 1, 1996, no~~ **No** person shall place or dispense a regulated
9 substance into an underground storage tank that has not been registered with the
10 Louisiana Department of Environmental Quality **and that does not have a current**
11 **registration certificate.**

12 §2195. Motor Fuels Underground Storage Tank Trust Fund

13 * * *

14 C. Monies so deposited in the Environmental Trust Fund **or the Tank Trust**
15 **Fund** shall be used to defray the cost to the state of administering the underground
16 storage tank program and the cost of investigation, testing, containment, control, and
17 cleanup of releases from underground storage tanks containing regulated substances.
18 **Only monies recovered pursuant to R.S. 30:2195.2(A)(2) and deposited in the**
19 **Tank Trust Fund may be used for loans associated with the provisions of R.S.**
20 **30:2194 through 2195.12. The secretary shall promulgate regulations governing**
21 **loans from the Tank Trust Fund.** These monies shall also be used to provide
22 money or services as the state share of matching funds for federal grants involving
23 underground storage tanks. At the end of each fiscal year, all monies that were
24 deposited into the Environmental Trust Fund from the fees established in R.S.
25 30:2195.3(A)(1)(a) and (B) which remain unspent, including all accrued interest,
26 shall be transferred to the Tank Trust Fund.

27 * * *

28 E. Annually, the department shall prepare a report for the House Committee
29 on Natural Resources and Environment and the Senate Committee on Environmental

1 Quality of all disbursements of monies from the Tank Trust Fund and the
 2 Environmental Trust Fund. The report shall include all loans made from the Tank
 3 Trust Fund, the number of sites actively seeking reimbursement from the Tank
 4 Trust Fund as of June thirtieth of each year, the number of sites deemed eligible for
 5 the Tank Trust Fund during the previous fiscal year, and the number of sites that
 6 have been granted "No Further Action", and the department has received the last
 7 application for reimbursement during the previous fiscal year. Regarding
 8 disbursements from the Tank Trust Fund as provided by R.S. 30:2195.2, the report
 9 shall include a list of all reimbursements, all pending reimbursements, the date the
 10 application was made for reimbursement, and the date reimbursement was made by
 11 the department. The report shall be delivered to the respective legislative committees
 12 no later than March first of each year.

13 F.(1) ~~Beginning July 1, 2001, all~~ All interest monies earned by the Motor
 14 Fuels Underground Storage Tank Trust Fund ~~shall~~ and all monies received from
 15 payments that are the result of cost recovery efforts may be used for the closure
 16 of abandoned motor fuel underground storage tanks, ~~and~~ assessment and remediation
 17 of property contaminated by abandoned motor fuel underground storage tanks, and
 18 loans associated with the operation of underground storage tanks.

19 * * *

20 (3) A site tank may be declared to be an abandoned motor fuel underground
 21 storage tank ~~site~~ by the secretary upon a finding that all of the following apply to the
 22 site:

23 * * *

24 (e) The release at the site is not eligible for the Motor Fuels Underground
 25 Storage Tank Trust Fund or the secretary has determined that action by the
 26 department is the most timely and efficient way to address conditions at the site.

27 §2195.2. Uses of the Tank Trust Fund

28 A. The department shall administer the Tank Trust Fund and shall make
 29 disbursements from the fund for all necessary and appropriate expenditures. Pursuant

1 to the authorization in R.S. 30:2195, the secretary of the Department of
2 Environmental Quality shall use the Tank Trust Fund as follows:

3 (1) Whenever in the secretary's determination incidence of surface water,
4 groundwater, or soils contamination resulting from the storage of motor fuels may
5 pose a threat to the environment or the public health, safety, and welfare and the
6 owner of the motor fuel underground storage tank has been found to be an eligible
7 participant, the department shall obligate monies available in the Tank Trust Fund
8 to provide for the following response actions:

9 * * *

10 (c)(i) * * *

11 (ii) The monies expended from the Tank Trust Fund for any of the above
12 approved costs shall be spent only up to such sums as that which is necessary to
13 satisfy federal petroleum underground storage tank financial responsibility
14 requirements (40 CFR 280.93) or one million five hundred thousand dollars,
15 whichever is greater. **This amount shall include any third-party claim arising**
16 **from the release of motor fuels from a motor fuel underground storage tank.**

17 (2) Whenever costs have been incurred by the department for taking response
18 actions with respect to the release of motor fuels from an underground storage tank
19 or the department has expended funds from the Tank Trust Fund for response costs
20 or third-party liability claims, the owner of the motor fuel underground storage tank
21 shall be liable to the department for such costs only if the owner was not an eligible
22 participant on the date of discharge of the motor fuels which necessitates the
23 cleanup; otherwise liability is limited to the provisions contained in R.S. 30:2195.9
24 and 2195.10. The expenditure of funds to reimburse any party for costs otherwise
25 authorized by this Subsection shall be expressly prohibited if the costs were incurred
26 as the result of a release of motor fuels, excluding new and used motor oil, which
27 occurred prior to July 15, 1988. For new and used motor oil releases, the expenditure
28 of funds to reimburse any party for costs otherwise authorized by this Subsection
29 shall be expressly prohibited for any costs relating to a release which occurred prior

1 to September 6, 1991, unless such release is determined by the secretary to have
 2 been from an abandoned motor fuel underground storage tank. Nothing
 3 contained herein shall be construed so as to authorize the expenditure from the Tank
 4 Trust Fund on behalf of any owner of an underground storage tank who is not an
 5 eligible participant at the time of the release for any third-party liability.

6 (3) In the event funds have been expended by the secretary on behalf of an
 7 owner who was not an eligible participant, and the Tank Trust Fund is entitled to
 8 reimbursement of those funds so expended, the secretary shall use any and all
 9 administrative and judicial remedies, including the filing of a lien with the same
 10 ranking as that provided in R.S. 30:2195(F)(2), which may be necessary for recovery
 11 of the expended funds plus legal interest from the date of payment by the secretary
 12 and all costs associated with the recovery of the funds. The secretary may expend
 13 the recovered funds for any use authorized under this Section.

14 * * *

15 (5) The Tank Trust Fund may be used to make payments to a third party who
 16 brings a third-party claim against the secretary of the department and any owner of
 17 a motor fuel underground storage tank because of damages sustained by a release
 18 into the air, the groundwater, surface waters, or soils and who obtains a final
 19 judgment in said action enforceable in this state against the owner and the secretary
 20 if and only if it has been satisfactorily demonstrated that the owner was an eligible
 21 participant at the time that the release occurred as defined in R.S. 30:2194(B)(3). The
 22 indemnification limit of the trust with respect to satisfaction of third-party claims
 23 shall be that which is necessary to satisfy federal petroleum underground storage
 24 tank financial responsibility requirements.

25 * * *

26 §2195.3. Source of funding; limitations on disbursements from the Tank Trust Fund;
 27 limit on amount in Tank Trust Fund

28 A.(1)(a) * * *
 29 (b) However, those persons ordering the withdrawal of motor fuel from a

1 bulk facility into a cargo tank which is directly transported and completely unloaded
 2 into either tanks exempted from registration requirements as provided by R.S.
 3 30:2194(C), those underground storage tanks exempted from taxation pursuant to
 4 R.S. 47:715 and 720, or those underground storage tanks identified in R.S.
 5 30:2195.2(B)(1)(a) and (b) shall not be required to pay the fees established by this
 6 Paragraph. These fees shall also not apply to exchanges between **registered and**
 7 **certified** bulk facilities.

8 * * *

9 (6) All invoices or transaction statements issued by operators of bulk
 10 facilities for the transfer of motor fuels into a cargo tank shall clearly indicate
 11 whether or not the transaction was a withdrawal from bulk as defined by ~~R.S.~~
 12 ~~30:2194(B)(13)~~ **R.S. 30:2194. All records documenting transfers to and from**
 13 **bulk facilities shall be maintained for four years and be available for inspection**
 14 **by the department upon request.**

15 * * *

16 (10) Fees imposed by Subparagraph (A)(1)(a) of this Section shall not be
 17 collected or required to be paid on or after the first day of the second month
 18 following a determination that has been made by the board that the unobligated
 19 balance in the Tank Trust Fund equals or exceeds ~~twenty~~ **forty** million dollars. If the
 20 board determines that the unobligated balance in the Tank Trust Fund falls below ten
 21 million dollars, the fee shall be reinstated effective on the first day of the second
 22 month following this determination. For these purposes, the unobligated balance in
 23 the Tank Trust Fund shall be determined by subtracting from the cash balance in the
 24 Tank Trust Fund at the end of each month the sum of the total estimates made by the
 25 board of eligible payment requests pending review and the outstanding balance of
 26 the estimated costs to be incurred associated with ~~correction action plans approved~~
 27 ~~by the department~~ **investigations, corrective action plans, and activities**
 28 **authorized under this Section.**

29 * * *

1 §2195.4. Procedures for disbursements from the Tank Trust Fund

2 A. Monies held in the Tank Trust Fund established hereunder shall be
3 disbursed by the secretary in the following manner:

4 * * *

5 (2) The owner **or the owner's authorized agent** and response action
6 contractor shall file a sworn application with the department indicating fair and
7 reasonable value of the cost of site assessment and remediation, subject to those
8 regulations and limitations as set by the department. Proof of payment of the
9 financial responsibility amounts required by R.S. 30:2195.9 and 2195.10, or a
10 certified copy of the lien authorized in this Section, shall be provided with the initial
11 application for reimbursement.

12 (3)(a) Except in cases of emergency, no disbursement from the Tank Trust
13 Fund may be made by the secretary until such time that the secretary obtains
14 verification that the owner applicant is an eligible participant in compliance with the
15 law.

16 (b) ~~Except as otherwise provided in Subparagraph (c), no~~ **No** disbursements
17 from the Motor Fuels Underground Storage Tank Trust Fund may be made by the
18 secretary when the application for reimbursement is filed with the department more
19 than two years after the date that the response action work is performed.

20 (c)(i) ~~When the initial site assessment has not been completed within two~~
21 ~~years, the applicant will have ninety days from the completion of the initial site~~
22 ~~assessment to submit the reimbursement application.~~ **Initial assessments shall be**
23 **initiated within two years of the date of release for the site to be eligible for**
24 **disbursement from the Tank Trust Fund.**

25 (d)(ii) When the department's action results in a reimbursement application
26 not being submitted within two years of the date the work was performed, the
27 applicant will have ninety days from the date the issue is resolved to submit the
28 reimbursement application.

29 B.(1) Payments shall be made to third parties who bring suit against the

1 secretary in his official capacity as representative of the Tank Trust Fund and the
2 owner of an underground motor fuel storage tank, who is an eligible participant as
3 stated in R.S. 30:2194(B)(3), and such third party obtains a final judgment for a third
4 party claim which is enforceable in this state. ~~The owner shall pay the amount~~
5 ~~required by R.S. 30:2195.9 toward the satisfaction of said judgment, and after that~~
6 ~~payment has been made, the Tank Trust Fund will pay the remainder of said~~
7 ~~judgment.~~

8 * * *

9 §2195.8. Advisory board

10 A. There shall be a Motor Fuels Underground Storage Tank Trust Fund
11 Advisory Board, hereinafter referred to as the "board," to advise the secretary with
12 regard to implementation of the Tank Trust Fund including investment of the trust,
13 **issuance of loans**, changing of the trust ceiling if after a reasonable time this would
14 be deemed appropriate and with regard to the minimum level of funding. The board
15 shall annually review the "Louisiana Motor Fuels Underground Storage Tank Trust
16 Fund Cost Control Guidance Document" and may make recommendations for
17 changes. Prior to the promulgation of any proposed underground storage tank
18 regulations, the department shall provide proposed changes to the board for review.
19 The board shall also determine the role of the Tank Trust Fund in establishing
20 financial responsibility as required by federal or state law, except that such
21 requirement shall not exceed those established by the U.S. Environmental Protection
22 Agency. The board shall additionally examine claims made and loss experience,
23 make recommendations to the secretary regarding minimum levels of financial
24 responsibility for underground storage tank owners, and the necessity for and
25 contents of rules and regulations issued under the Environmental Quality Act in
26 similar matters. The board may recommend standards for the qualification of
27 response action contractors as defined herein. The board may recommend at any time
28 that response action contractors be added to or deleted from the list. The board shall
29 also have the authority to review applications for disbursements from the Tank Trust

1 Fund.

2 * * *

3 C. The board shall meet at least four times each year and each member, or
4 his designee, shall have one vote concerning any matter coming before the board.

5 The board shall elect its own chairman. The secretary shall provide notice of
6 regularly held board meetings thirty days prior to the meeting. The board may meet
7 at any other time upon twenty-four hour notice from the secretary, his designee, or
8 any two of the board's members.

9 * * *

10 §2195.9. Financial responsibility

11 * * *

12 B. Financial responsibility required by the United States Environmental
13 Protection Agency may be established by any one or combination of the following:
14 insurance, participation in the Tank Trust Fund, guarantee, surety bond, letter of
15 credit, or qualification as a self-insurer. A person may qualify as a self-insurer by
16 showing tangible net worth in the amount established by the U.S. Environmental
17 Protection Agency.

18 §2195.10. Financial responsibility for noncompliance

19 * * *

20 C. The secretary or his designee may exclude from coverage by the Tank
21 Trust Fund any underground storage tank system whose owner or operator has been
22 found to have consistently failed to comply with the requirements enumerated in
23 Subsection B of this Section as determined by the secretary after consultation
24 with the board. ~~Consistent failure is a failure to comply with more than three of the~~
25 ~~requirements enumerated in Subsection B or repeated releases from the same~~
26 ~~underground storage tank system accompanied by failure to comply with the~~
27 ~~regulations enumerated in Subsection B.~~ Notwithstanding any provision to the
28 contrary, the secretary or his designee may prohibit the delivery of fuel to any
29 underground storage tank excluded from coverage under this provision until such

1 time as the owner operator secures financial assurance that satisfies the federal
2 petroleum underground storage tank financial responsibility requirements.

3 * * *

4 §2195.12. Alternate generated power capacity for motor fuel dispensing facilities;

5 **and other uses of the Tank Trust Fund**

6 A. As used in this Section, the following terms and phrases shall have the
7 following meanings unless the context clearly indicates otherwise:

8 ~~(1)~~ "Motor fuel" means any petroleum product, including any special fuel,
9 that is used for the propulsion of motor vehicles.

10 ~~(2)~~**(1)** "Retail outlet" means a facility, including land and improvements,
11 where motor fuel is offered for sale, at retail, to the motoring public.

12 ~~(3)~~**(2)** "Sale" or "sell" means any transfer, gift, sale, offer for sale, or
13 advertisement for sale in any manner or by any means whatsoever, including any
14 transfer of motor fuel from a person to itself or an affiliate at another level of
15 distribution, but does not include product exchanges at the wholesale level or
16 distribution.

17 ~~(4)~~**(3)** "Completely rebuilt motor fuel retail outlet" means a newly
18 constructed outlet built after the previous outlet on the same site has been completely
19 razed.

20 * * *

21 **E. The secretary may authorize use of any monies obtained in cost**
22 **recovery actions or from interest on the Tank Trust Fund enumerated in R.S.**
23 **30:2195 to provide for loans necessary to insure delivery of motor fuels to the**
24 **public.**

The original instrument was prepared by McHenry Lee. The following digest, which does not constitute a part of the legislative instrument, was prepared by Thomas L. Tyler.

DIGEST

SB 257 Reengrossed

2016 Regular Session

Walsworth

Present law provides for the definition of "bulk facility".

Proposed law retains present law but adds that a "bulk facility" may mean a broker, reseller, or other person that sells exclusively to another "bulk facility" and has registered and obtained a certificate from the DEQ.

Present law provides for the definitions of "date of release", "motor fuels", and "regulated substance".

Proposed law revises those definitions.

Present law prohibits any person after Jan. 1, 1996, from placing or dispensing a regulated substance into an underground storage tank that has not been registered with the department.

Proposed law removes the January 1, 1996 date and provides that the present prohibition includes a person not only placing a regulated substance in a storage tank not registered with the department but that the person also does not have a current registration certificate.

Present law provides that monies deposited in the Environmental Trust Fund will be used to defray the cost to the state of administering the underground storage tank program and to provide money or services as the state share of matching funds for federal grants.

Proposed law retains present law but includes monies deposited into the Tank Trust Fund will also be used for those purposes. Further provides that only monies recovered from certain response actions and deposited into the trust fund may be used for certain loans, and authorizes the secretary to promulgate regulations.

Present law requires the department to report annually the disbursements of all monies from the Tank Trust Fund and the Environmental Trust Fund to the House Committee on Natural Resources and Environment and the Senate Committee on Environmental Quality.

Proposed law adds requirement that the report must include all loans made from the Tank Trust Fund.

Present law requires that beginning July 1, 2001, all interest monies earned by the Motor Fuels Underground Storage Tank Trust Fund be used for the closure of abandoned motor fuels underground storage tanks, assessment and remediation of property contaminated by abandoned motor fuel underground storage tanks.

Proposed law removes the July 1, 2001, date and provides that monies earned by the Motor Fuels Underground Storage Tank Trust Fund and monies received from payments resulting from cost recovery efforts are authorized, in addition to the uses provided in present law, to be used for loans associated with the operation of underground storage tanks.

Present law provides that a site may be declared an abandoned motor fuel underground storage tank site if certain conditions are met.

Proposed law changes "site" to "tank" and adds an additional requirement.

Proposed law includes as a use for the monies any loans associated with the operation of

underground storage tanks.

Present law requires that monies expended from the Tank Trust Fund for any approved costs must be spent only up to such sums as are necessary to satisfy federal petroleum underground storage tank financial responsibility requirements or \$1,500,000, whichever is greater.

Proposed law retains present law but includes any third-party claim arising out of the release of regulated substances as part of the sum.

Present law prohibits the expenditure of funds from the Tank Trust Fund for new and used motor oil releases which occur prior to Sept. 6, 1991.

Proposed law retains present law but allows the expenditure of funds if the secretary determines the release to have been from an abandoned motor fuel storage tank.

Present law requires that all invoices or transaction statements issued by operators of bulk facilities for the transfer of motor fuels into a cargo tank must clearly indicate whether or not the transaction was a withdrawal from bulk.

Proposed law retains present law but further requires that all records from bulk facilities must be maintained for four years and be available for inspection by the department.

Present law provides for the use of certain fees and provides a cap when the fee balance equals or exceeds \$20 million.

Proposed law changes the fee balance cap from \$20 million to \$40 million and provides for the calculation of the unobligated balance in the fund.

Present law provides that when the initial site assessment has not been completed within two years, the applicant will have 90 days from the completion of the initial site assessment to submit the reimbursement application.

Proposed law removes present law and requires initial assessments to be initiated within two years of the confirmed release for the site to be eligible for disbursement from the Tank Trust Fund.

Present law provides that the owner shall pay the amount required by present law toward the satisfaction of certain third party judgments, and after payment has been made, the fund will pay the remainder of said judgment.

Proposed law removes present law.

Present law establishes the Motor Fuels Underground Storage Tank Trust Fund Advisory Board to advise the secretary with regard to implementation of the Tank Trust Fund.

Proposed law retains present law but also allows the board to advise the secretary on the issuance of loans in regard to the fund.

Proposed law provides the criteria to meet the E.P.A.'s financial requirements.

Proposed law allows the secretary or his designee to exclude any owner from coverage by the Tank Trust Fund who has consistently failed to comply with the requirements outlined in present law.

Proposed law provides that the secretary may authorize the use of any monies obtained in cost recovery actions or from interest on the Tank Trust Fund as outlined in present law and after consultation with the Tank Trust Fund Advisory Board to provide loans necessary to

ensure delivery of motor fuels to the public.

Effective August 1, 2016.

(Amends R.S. 30:2194(B)(1), (3) and (6), 2194.1, 2195(C), (E), (F)(1), (3)(intro para) and (3)(e), 2195.2(A)(1)(c)(ii), (2), (3), and (5), 2195.3(A)(1)(b), (6), and (10), 2195.4(A)(2) and (3), (B)(1), 2195.8(A) and (C), 2195.9(B), 2195.10(C), 2195.12(A); adds R.S. 30:2194(B)(8)(c) and 2195.12(E))

Summary of Amendments Adopted by Senate

Committee Amendments Proposed by Senate Committee on Environmental Quality to the original bill

1. Removes provisions allowing the secretary to issue grants.
2. Adds requirement as to when a tank may be declared to be abandoned.
3. Removes provision allowing the secretary to declare a rebate to certain bulk dealers who have paid into the trust fund.
4. Restores provisions that provide financial responsibility requirements for taking response actions and third-party judgments.
5. Adds provision requiring the secretary to consult with the board when excluding underground storage tank systems from the trust fund.
6. Adds requirement that certain monies deposited into trust fund may be used only for loans.

Senate Floor Amendments to engrossed bill

1. Technical amendments only.