



Petroleum Tank Release Fund Subcommittee

60th Montana Legislature

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6/6/08

To: The Legislative Finance Committee

From: The Petroleum Tank Release Fund Subcommittee

Re: Summary of work to analyze the solvency of the Petroleum Tank Release Fund

Overview

The Petroleum Tank Release Fund Subcommittee, a joint body of the Legislative Finance Committee and the Environmental Quality Council, met on May 13 and June 4, 2008 to consider issues surrounding the solvency of the Petroleum Tank Release Fund, which posted a \$2.4 million shortfall in FY 2007. The Fund is the default payer for cleanup of discharges from underground and aboveground petroleum storage tanks, as well as home heating oil tanks.

This memorandum is a summary of the subcommittee's work, thus far, with a more detailed report to come. The subcommittee is asking LFC and EQC to review this work and provide direction as to how to proceed. The subcommittee does not feel, at this time, that its purpose is to recommend legislation, but would be willing to do so, if directed. Conversely, the subcommittee feels it could be appropriate for the committees of the whole to review this complex situation.

Meanwhile, the Fund has agreed to participate in a voluntary audit of petroleum cleanup programs in 14 states being conducted this year by the U.S. Environmental Protection Agency. The involved programs represent those with the largest backlog of cleanups in the country, or the greatest percentage backlog in their region, as is the case for Montana.

Participating stakeholders

During the May and June meetings, the subcommittee heard from representatives of the following groups or organizations: DEQ, Montana Petroleum Tank Release Compensation Board, Montana Petroleum Marketers and Convenience Store Association, American Insurance Association, and State Farm Insurance Company.

Findings

Based on testimony before the subcommittee and information gathered during the meetings in May and June, the subcommittee finds that improving the solvency of the Fund is a complex intersection of three main issues:

1. Revenue generation: The Fund is currently funded with a \$.0075/gallon fuel tax that has generated more than \$6 million in revenue annually since 2000. Revenue is expected to decline given the state of the market, as motorists reduce consumption. Fund expenditures have varied between \$5.5 million and \$9.4 million since 2000, including an average of \$1.6 million in administrative costs that come directly out of the Fund and are not paid by General Fund money.

The Petroleum Tank Release Compensation Board, a citizen board that oversees the Fund, has proposed legislative changes to improve the Fund's solvency. These include raising the fuel tax to a full cent per gallon and obligating administrative costs to the General Fund or another revenue source. The Board also proposes increasing the deductible that owners and operators pay when a leak occurs from \$17,500 per incident to \$25,000 per incident, plus 5 % of the total bill up to \$1,000,000. The Board feels this would encourage greater use of private insurance. The subcommittee has taken no position on any of these proposals.

2. Private insurance: Current use of private insurance appears to be limited, with the Fund remaining the default payer for many cleanups at petroleum discharge sites. With mixed experience in other states, where some insurers are declining to cover petroleum discharges, or take long periods of time to pay claims, the subcommittee does not feel Montana is ready to transition to a system that mandates use of private insurance for all tank owners and operators.

3. Extent of cleanups: There is disagreement between industry and the Department of Environmental Quality as to the extent that cleanups should occur. Montana has stricter statutory and constitutional standards than many states, but industry argues that DEQ is following more stringent protocols than necessary. DEQ says it can't close sites (meaning no further cleanup is necessary), if they don't meet drinking water standards. But DEQ says it is looking more closely at closing sites where contaminants remain in the soil or groundwater, if they pose no risk of spreading or causing harm.

The EPA recommends this "risk based" approach as the most efficient use of time and funding. Many states are employing it in some form. Montana is using risk based assessments in developing cleanup plans for contaminated sites, but not for site closure. Industry says it won't support increased deductibles for owners and operators, as proposed by the compensation board, unless DEQ alters its protocols.