

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2022

A N A C T

RELATING TO WATERS AND NAVIGATION -- RHODE ISLAND UNDERGROUND
STORAGE TANK FINANCIAL RESPONSIBILITY ACT

Introduced By: Senators Kallman, Euer, DiMario, Zurier, Seveney, Miller, Rogers,
Sosnowski, Valverde, and Goodwin

Date Introduced: March 24, 2022

Referred To: Senate Environment & Agriculture

(Dept. of Environmental Management)

It is enacted by the General Assembly as follows:

1 SECTION 1. Sections 46-12.9-3, 46-12.9-5, 46-12.9-6, 46-12.9-7 and 46-12.9-11 of the
2 General Laws in Chapter 46-12.9 entitled "Rhode Island Underground Storage Tank Financial
3 Responsibility Act" are hereby amended to read as follows:

4 **46-12.9-3. Definitions.**

5 When used in this chapter:

6 ~~(1) "Advisory board" means the Rhode Island underground storage tank financial~~
7 ~~responsibility advisory board established pursuant to the provisions of § 46-12.9-8.~~

8 ~~(2)~~(1) "Department" means the Rhode Island department of environmental management.

9 ~~(3)~~(2) "Director" means the director of the department of environmental management, or
10 his or her designee.

11 ~~(4)~~(3) "Eligible costs" means costs, expenses, and other obligations as incurred by a
12 responsible party for site investigation, site remediation, or other corrective action activities ordered
13 or directed, and approved, by the department or performed by the responsible party and not
14 specifically identified by the department as ineligible.

15 ~~(5)~~(4) "Facility" means any parcel of real estate or contiguous parcels of real estate owned
16 and/or operated by the same person(s), which together with all land, structures, facility components,
17 improvements, fixtures, and other appurtenances located therein, form a distinct geographic unit
18 and at which petroleum products or hazardous materials are or have been stored in underground

1 storage tanks.

2 ~~(6)~~(5) "Fund" means the Rhode Island underground storage tank financial responsibility
3 fund established herein.

4 ~~(7)~~(6) "Operator" means any person in control of, or having the responsibility for, the daily
5 operation of an underground storage tank system.

6 ~~(8)~~(7) "Owner" means any person, corporation, group, or other entity who or that holds
7 exclusive or joint title to, or lawful possession of, a facility or part of a facility.

8 ~~(9)~~(8) "Petroleum product" means crude oil, or any fractions thereof, that is liquid at
9 standard conditions of temperature sixty degrees Fahrenheit (60°F) and pressure fourteen and seven
10 tenths pounds per square inch absolute (14.7 psia) and includes substances derived from crude oil
11 including, but not limited to, the following:

12 (i) Gasoline;

13 (ii) Fuel Oils;

14 (iii) Diesel Oils;

15 (iv) Waste Oils;

16 (v) Gasohol, lubricants and solvents.

17 ~~(10)~~(9) "Release" means any spilling, leaking, pumping, pouring, injecting, emitting,
18 escaping, leaching, discharging, or disposing of any material stored in an underground storage tank
19 system subject to these regulations into groundwater, surface water, soil, air, or any other
20 environmental media.

21 ~~(11)~~(10) "Responsible party" means the person or persons liable for release of petroleum
22 or the remediation of a release.

23 ~~(12)~~(11) "Site" means any location at which, or from which, there has been a release of
24 petroleum associated with an underground storage tank or an underground storage tank system, or
25 any location to which such petroleum has migrated.

26 ~~(13)~~(12) "UST" or "Underground storage tank system" means any one or more
27 underground tanks, and their associated components, including piping, used to contain, transport,
28 or store petroleum product or hazardous material whose volume is ten percent (10%) or more
29 beneath the surface of the ground.

30 **46-12.9-5. Purpose of fund.**

31 (a) The purpose of the fund shall be to facilitate the clean-up of releases from leaking
32 underground storage tanks, underground storage tank systems, [residential heating oil tanks](#),
33 including those located on sites in order to protect the environment, including drinking water
34 supplies and public health.

1 (b) The fund shall provide reimbursement to responsible parties for the eligible costs
2 incurred by them as a result of releases of certain petroleum from underground storage tanks or
3 underground storage tank systems, or residential heating oil tanks as provided herein. Monies in
4 the fund shall be dispensed only upon the order of the department for the following purposes:

5 (1) The fund shall pay not more than one million dollars (\$1,000,000) per incident, and up
6 to two million dollars (\$2,000,000) in the aggregate, for damages of eligible costs, as defined in
7 regulations promulgated hereunder and, as further defined in § 46-12.9-3, excluding legal costs and
8 expenses, incurred by a responsible party as a result of a release of petroleum from an underground
9 storage tank, ~~or~~ underground storage tank system, or residential heating oil tank; provided,
10 however, that a responsible party may be responsible for the first twenty thousand dollars (\$20,000)
11 of said eligible costs;

12 (2) Reimbursement for any third-party claim including, but not limited to, claims for bodily
13 injury, property damage, and damage to natural resources that are asserted against a responsible
14 party and that have arisen as a result of a release of petroleum from an underground storage tank,
15 ~~or~~ underground storage tank system, or residential heating oil tank, in an amount not to exceed one
16 million dollars (\$1,000,000) for each release as set forth in subsection (b)(1); provided, that such
17 claims are found by the department to be justified, reasonable, related to the release of petroleum,
18 and not excessive or spurious in nature;

19 (3) Costs incurred by the department in carrying out the investigative, remedial, and
20 corrective action activities at sites of a petroleum release associated with an underground storage
21 tank, ~~or~~ underground storage tank system, or residential heating oil tank where the responsible party
22 fails to comply with an order of the department to undertake such activities. In the event of such
23 failure or documented inability to comply, the department may access the fund to perform the
24 ordered work and may proceed to recover from the responsible party, on behalf of the fund, any
25 amount expended from the fund by the department;

26 (4) Nothing contained in this chapter shall be construed to prevent subrogation by the state
27 of Rhode Island against any responsible party, other than the owner and/or operator, for all sums
28 of money that the fund shall be obligated to pay hereunder, plus reasonable attorney's fees and costs
29 of litigation and such right of subrogation is hereby created; and

30 (5) Eligible costs incurred by the department to support the fund, including, but not limited
31 to, all personnel support to process and review claims in order to formulate recommendations for
32 reimbursement for consideration, ~~and providing meeting space for board meetings~~; provided,
33 however, that no more than ~~five hundred and fifty thousand dollars (\$550,000)~~ seven hundred fifty
34 thousand dollars (\$750,000) shall be dispensed from the fund for administrative purposes during

1 any fiscal year. The department shall directly access the fund, pursuant to the limits set forth in
2 subdivision (b)(1) of this section, to pay for such expenses.

3 (6) [Deleted by P.L. 2016, ch. 148, § 1 and P.L. 2016, ch. 160, § 1].

4 **46-12.9-6. Eligibility.**

5 (a) In order to be eligible for reimbursement from the fund for eligible costs, a responsible
6 party must be subject to financial responsibility as required by the EPA (40 C.F.R. part 280 subpart
7 H) and:

8 (1) Have substantially complied with all state regulatory requirements for underground
9 storage tanks and underground storage tank systems as promulgated by the department of
10 environmental management pursuant to chapter 12 of this title and chapter 17.1 of title 42,
11 including, but not limited to, requirements for registration, proper installation, spill containment,
12 line leak detection, corrosion protection, leak detection, tank tightness testing, inventory control,
13 closure, and leak or spill reporting;

14 (2) Have incurred an eligible cost in excess of the deductible amount specified in § 46-
15 12.9-5(b)(1) whether for clean-up or related matters or for claims of third parties as set forth in §
16 46-12.9-3 resulting from a release of petroleum, subject to the motor and special fuels tax from an
17 underground storage tank or underground storage tank system. In order to apply for reimbursement
18 from the fund, it shall not be necessary that the third party and the responsible party complete
19 adjudication of any claim before submission to the department; provided, however, that all such
20 claims shall be reasonably verified and must be demonstrated to the reasonable satisfaction of the
21 department in order to be considered eligible for reimbursement.

22 (b) Notwithstanding the financial responsibility requirement of this section, responsible
23 parties may be eligible for reimbursement of eligible costs incurred for sites provided that:

24 (1) A city, town, the state, or a state agency is the responsible party for a release at the site
25 and was the owner of the site at the time of the release;

26 (2) A city, town, the state, or a state agency is the responsible party and owner of the site
27 at the time of application on which a release occurred prior to the city, town, or state agency's
28 ownership, provided that the government entity purchased the property prior to March 1, 1998; or

29 (3) A city, town, the state, or a state agency was the responsible party at the time of the
30 release and the site is owned by a successor in interest at the time of application.

31 [\(4\) The release occurred from a residential heating oil tank.](#)

32 (c) Incurred costs eligible for reimbursement may be submitted to the department up to two
33 (2) years from the date on the originally issued invoice(s) for the incurred costs. Any invoices
34 submitted after this two-year (2) deadline will be considered ineligible for reimbursement.

1 (d) Notwithstanding the requirement that the released petroleum be subject to the motor
2 and special fuels tax, underground storage tanks containing petroleum products for which the motor
3 and special fuels tax is inapplicable including, but not limited to, underground storage tanks used
4 for the distribution of No. 2 heating oil, [residential heating oil](#), used/waste oil, kerosene, or other
5 materials as deemed appropriate by the department may be eligible for reimbursement with the
6 following exceptions:

7 (1) Underground storage tanks containing heating or fuel oils used solely for onsite
8 consumption [other than residential heating oil tanks](#) shall not be eligible.

9 (2) ~~Underground~~ [Other than residential heating oil tanks, underground](#) storage tanks
10 exempted from the department's "regulations for underground storage facilities used for petroleum
11 products and hazardous materials."

12 **46-12.9-7. Rules and regulations.**

13 The department is hereby authorized to promulgate, implement, and amend regulations, in
14 accordance with the provisions of chapter 35 of title 42, providing for the submission of claims to
15 the fund and the timely disbursement of monies from the fund. Such regulations shall include, but
16 not be limited to, the following:

17 (1) A means of notifying all eligible parties of the existence and functioning of the fund;

18 (2) The record keeping required of eligible parties for submission to, and reimbursement
19 from, the fund;

20 (3) A set criteria that establishes the eligibility for reimbursement of specific costs,
21 expenses, and other obligations;

22 (4) A method of providing periodic reimbursement for eligible costs incurred by an eligible
23 party after July 8, 1994. Such reimbursement shall be processed in the order that the claims were
24 filed, subject to funds availability, except in the case where the director finds that funds must be
25 expended out of order in order to abate an environmental emergency;

26 (5) A requirement that the department render its decisions to an eligible party upon the
27 receipt of a complete claim for reimbursement within ninety (90) days following its receipt of
28 completed claim;

29 (6) Establishing procedures for verifying claims presented under this chapter;

30 (7) Establishing procedures for approving, modifying, or denying claims;

31 (8) The eligibility of claims shall be determined by the department; provided, however,
32 that no claims shall be considered for costs incurred prior to January 1, 1994, by responsible parties
33 who are owners or operators of no more than one location containing underground storage tanks
34 and July 8, 1994, by all other responsible parties;

1 (9) Empowering the department to recognize and arrange for performance-based and other
2 contracts with the responsible party and/or contractor for the remediation of a release; ~~and~~

3 (10) Empowering the department to arrange for the establishment of alternate means of
4 financial responsibility; ~~and~~

5 (11) Establishing new regulations specific to residential heating oil tank releases.

6 **46-12.9-11. Fundings.**

7 (a) There is hereby imposed an environmental protection regulatory fee of one cent (\$0.01)
8 per gallon payable of motor fuel, to be collected by distributors of motor fuel when the product is
9 sold to owners and/or operators of underground storage tanks. Each distributor shall be responsible
10 to the tax administrator for the collection of the regulatory fee, and if the distributor is unable to
11 recover the fee from the person who ordered the product, the distributor shall nonetheless remit to
12 the tax administrator the regulatory fee associated with the delivery. In accordance with the
13 regulations to be promulgated hereunder, the fee shall be collected, reported, and paid to the Rhode
14 Island division of taxation as a separate, line-item entry, on a quarterly tax report by those persons
15 charged with the collection, reporting, and payment of motor fuels taxes. This fee shall be
16 administered and collected by the division of taxation. Notwithstanding the provisions of this
17 section, the fee shall not be applicable to purchases by the United States government.

18 (b) Of the one-cent-per-gallon (\$0.01) environmental protection regulatory fee collected
19 by distributors of motor fuel and paid to the Rhode Island division of taxation, one-half cent
20 (\$0.005) shall be deposited in the intermodal surface transportation fund to be distributed pursuant
21 to § 31-36-20 and one-half cent (\$0.005) shall be paid to the fund. All environmental protection
22 regulatory fees paid to the department shall be received by the department, which shall keep such
23 money in a distinct, interest-bearing, restricted-receipt account to the credit of, and for the exclusive
24 use of, the fund provided that for the period January 1, 2008, through June 30, 2008, all revenues
25 generated by the environmental protection regulatory fee, up to a maximum of two million dollars
26 (\$2,000,000), shall be deposited into the general fund. In fiscal year 2009, all revenues generated
27 by the environmental protection regulatory fee, up to a maximum equivalent to two million two
28 hundred thirty-seven thousand five hundred dollars (\$2,237,500), shall be deposited into the
29 intermodal surface transportation fund. All fees collected may be invested as provided by law and
30 all interest received on such investment shall be credited to the fund.

31 (c) When the fund reaches the sum of eight million dollars (\$8,000,000), the imposition of
32 the fee set forth in this chapter shall be suspended, and the division of taxation shall notify all
33 persons responsible for the collection, reporting, and payments of the fee of the suspension. In the
34 event that the account balance of the fund subsequently is reduced to a sum less than five million

1 dollars (\$5,000,000) as a result of fund activity, the fee shall be reinstated by the division of
2 taxation, following proper notice thereof, and once reinstated, the collection, reporting, and
3 payment of the fee shall continue until the account balance again reaches the sum of eight million
4 dollars (\$8,000,000).

5 (d) Upon the determination by ~~the advisory board and~~ the department that the fund has
6 reached a balance sufficient to satisfy all pending or future claims, the ~~advisory board~~ department
7 shall recommend to the general assembly the discontinuation of the imposition of the fee created
8 in this section.

9 SECTION 2. Section 46-12.9-8 of the General Laws in Chapter 46-12.9 entitled "Rhode
10 Island Underground Storage Tank Financial Responsibility Act" is hereby repealed.

11 **~~46-12.9-8. Advisory board.~~**

12 ~~(a) There is hereby authorized, created, and established the "underground storage tank~~
13 ~~advisory board," to have such powers as are provided herein.~~

14 ~~(b) The advisory board shall consist of seven (7) members, as follows: the director of the~~
15 ~~department of environmental management, or his or her designee, who shall be a subordinate within~~
16 ~~the department of environmental management. The governor, with the advice and consent of the~~
17 ~~senate, shall appoint six (6) public members, one of whom shall have expertise and experience in~~
18 ~~financial matters. In making these appointments the governor shall give due consideration to~~
19 ~~recommendations from the American Petroleum Institute, the Independent Oil Marketers~~
20 ~~Association, the Oil Heat Institute, the Environment Council, the Independent Oil Dealers~~
21 ~~Association, and the Rhode Island Marine Trade Association. The newly appointed members will~~
22 ~~serve for a term of three (3) years commencing on the day they are qualified. Any vacancy which~~
23 ~~may occur on the board shall be filled by the governor, with the advice and consent of the senate,~~
24 ~~for the remainder of the unexpired term in the same manner as the member's predecessor as~~
25 ~~prescribed in this section. The members of the board shall be eligible to succeed themselves.~~
26 ~~Members shall serve until their successors are appointed and qualified. No one shall be eligible for~~
27 ~~appointment unless he or she is a resident of this state. The members of the board shall serve without~~
28 ~~compensation. Those members of the board, as of the effective date of this act [July 15, 2005], who~~
29 ~~were appointed to the board by members of the general assembly, shall cease to be members of the~~
30 ~~board on the effective date of this act, and the governor shall thereupon nominate three (3)~~
31 ~~members, each of whom shall serve the balance of the unexpired term of his or her predecessor.~~
32 ~~Those members of the board, as of the effective date of this act [July 15, 2005], who were appointed~~
33 ~~to the board by the governor, shall continue to serve the balance of their current terms. Thereafter,~~
34 ~~the appointments shall be made by the governor as prescribed in this section.~~

1 ~~(c) The advisory board shall meet at the call of the chair. All meetings shall be held~~
2 ~~consistent with chapter 46 of title 42.~~

3 ~~(d) The advisory board and its corporate existence shall continue until terminated by law.~~
4 ~~Upon termination of the existence of the advisory board, all its rights and properties shall pass to~~
5 ~~and be vested in the state.~~

6 ~~(e) The advisory board shall have the following powers and duties, together with all powers~~
7 ~~incidental thereto or necessary for the performance of those stated in this chapter:~~

8 ~~(1) To elect or appoint officers and agents of the advisory board, and to define their duties:~~

9 ~~(2) To make and alter bylaws, not inconsistent with this chapter, for the administration of~~
10 ~~the affairs of the advisory board. Such bylaws may contain provisions indemnifying any person~~
11 ~~who is, or was, a director or a member of the advisory board, in the manner and to the extent~~
12 ~~provided in § 7-6-6 of the Rhode Island nonprofit corporation act;~~

13 ~~(3) To oversee, review, and evaluate the condition and performance of the underground~~
14 ~~storage tank fund and approve and submit an annual report after the end of each fiscal year to the~~
15 ~~governor, the speaker of the house of representatives, the president of the senate, and the secretary~~
16 ~~of state, of its activities during that fiscal year. The report shall provide information provided by~~
17 ~~the department, including: an operating statement summarizing meetings held, including meeting~~
18 ~~minutes, subjects addressed, and decisions rendered; a summary of the advisory board's actions,~~
19 ~~fees levied, collected, or received, as prescribed in §§ 46-12.9-7 and 46-12.9-11, claims submitted,~~
20 ~~verified, approved, modified, and denied, as prescribed in § 46-12.9-7, and reconsideration hearings~~
21 ~~held; a synopsis of any law suits or other legal matters related to the fund; and a summary of~~
22 ~~performance during the previous fiscal year, including accomplishments, shortcomings, and~~
23 ~~remedies; a briefing on anticipated activities in the upcoming fiscal year; and findings and~~
24 ~~recommendations for improvements; and a summary of any training courses held pursuant to~~
25 ~~subdivision (e)(4). The report shall be posted electronically as prescribed in § 42-20-8.2. The~~
26 ~~advisory board may make recommendations or suggestions on the claims process and/or the~~
27 ~~condition and management of the fund, and the department shall respond, in writing, to any of these~~
28 ~~suggestions or recommendations; and~~

29 ~~(4) To conduct a training course for newly appointed and qualified members and new~~
30 ~~designees of ex officio members within six (6) months of their qualification or designation. The~~
31 ~~course shall be developed by the executive director, approved by the board, and conducted by the~~
32 ~~executive director. The board may approve the use of any board or staff members or other~~
33 ~~individuals to assist with training. The training course shall include instruction in the following~~
34 ~~areas: the provisions of chapter 12.9 of title 46, chapter 46 of title 42, chapter 14 of title 36 and~~

1 ~~chapter 2 of title 38; and the board's rules and regulations. The director of the department of~~
2 ~~administration shall, within ninety (90) days of the effective date of this act [July 15, 2005], prepare~~
3 ~~and disseminate training materials relating to the provisions of chapter 14 of title 36, chapter 2 of~~
4 ~~title 38, and chapter 46 of title 42.~~

5 (f) ~~Upon the passage of this act and the appointment and qualification of the three (3) new~~
6 ~~members prescribed in subsection (b), the board shall elect, from among its members, a chair.~~
7 ~~Thereafter, the board shall elect annually, in February, a chair from among the members. The board~~
8 ~~may elect, from among its members, such other officers as it deems necessary.~~

9 (g) ~~Four (4) members of the board shall constitute a quorum and the vote of the majority~~
10 ~~of the members present shall be necessary and shall suffice for any action taken by the board. No~~
11 ~~vacancy in the membership of the board shall impair the right of a quorum to exercise all of the~~
12 ~~rights and perform all of the duties of the board.~~

13 (h) ~~Members of the board shall be removable by the governor pursuant to § 36-1-7 and~~
14 ~~removal solely for partisan or personal reasons unrelated to capacity or fitness for the office shall~~
15 ~~be unlawful.~~

16 SECTION 3. This act shall take effect upon passage.

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LC005345
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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF

A N A C T

RELATING TO WATERS AND NAVIGATION -- RHODE ISLAND UNDERGROUND
STORAGE TANK FINANCIAL RESPONSIBILITY ACT

- 1 This act would eliminate the Rhode Island Underground Storage Tank financial advisory
- 2 board and include the cleanup of residential heating oil tanks under the eligibility for
- 3 reimbursement from the cleanup fund.
- 4 This act would take effect upon passage.

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LC005345
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