



General Assembly

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Amendment

LCO No. 4805

SB0054304805HDO

Offered by:

REP. WIDLITZ, 98th Dist.

To: Subst. Senate Bill No. 543

File No. 344

Cal. No. 511

"AN ACT CONCERNING THE COMMERCIAL UNDERGROUND STORAGE TANK ACCOUNT."

1 After the last section, add the following and renumber sections and
2 internal references accordingly:

3 "Sec. 501. Section 22a-449c of the general statutes is repealed and the
4 following is substituted in lieu thereof (*Effective from passage*):

5 (a) (1) There is established an account to be known as the
6 "underground storage tank petroleum clean-up account". The
7 underground storage tank petroleum clean-up account shall be an
8 account of the Environmental Quality Fund. Notwithstanding any
9 provision of the general statutes to the contrary, any moneys collected
10 shall be deposited in the Environmental Quality Fund and credited to
11 the underground storage tank petroleum clean-up account. Any
12 balance remaining in said account at the end of any fiscal year shall be
13 carried forward in said account for the fiscal year next succeeding.

14 (2) The account shall be used by the Commissioner of

15 Environmental Protection to provide money for reimbursement or
16 payment pursuant to section 22a-449f to responsible parties or parties
17 supplying goods or services, or both, to responsible parties for costs,
18 expenses and other obligations paid or incurred, as the case may be, as
19 a result of releases, and suspected releases, costs of investigation of
20 releases and suspected releases, and third party claims for bodily
21 injury, property damage and damage to natural resources.
22 Notwithstanding the provisions of this section regarding
23 reimbursements of parties pursuant to section 22a-449f, regulations
24 promulgated pursuant to section 22a-449e, and regardless of when an
25 application for payment or reimbursement may have been submitted
26 to the board, after June 1, 2004, no payment or reimbursement shall be
27 made for any costs, expenses and other obligations paid or incurred for
28 remediation, including any monitoring to determine the effectiveness
29 of the remediation, of a release to levels more stringent than or beyond
30 those specified in the remediation standards established pursuant to
31 section 22a-133k, except to the extent the applicant demonstrates that it
32 has been directed otherwise by the Department of Environmental
33 Protection. In addition, notwithstanding the provisions of this section
34 regarding reimbursements of parties pursuant to section 22a-449f, the
35 responsible party for a release shall bear all costs of the release that are
36 less than ten thousand dollars or more than one million dollars, except
37 that for any such release which was reported to the department prior
38 to December 31, 1987, and for which more than five hundred thousand
39 dollars has been expended by the responsible party to remediate such
40 release prior to June 19, 1991, the responsible party for the release shall
41 bear all costs of such release which are less than ten thousand dollars
42 or more than five million dollars, provided the portion of any
43 reimbursement or payment in excess of three million dollars may, at
44 the discretion of the commissioner, be made in annual payments for up
45 to a five-year period. There shall be allocated to the department
46 annually, for administrative costs, two million dollars.

47 (b) There is established a subaccount within the underground
48 storage tank petroleum clean-up account to be known as the

49 "residential underground heating oil storage tank system clean-up
50 subaccount" to be used solely for the provision of reimbursements
51 under sections 22a-449l and 22a-449n, for the remediation of
52 contamination attributed to residential underground heating oil
53 storage tank systems. The subaccount shall hold the proceeds of the
54 bond funds allocated pursuant to section 51 of public act 00-167*.

55 Sec. 502. Section 22a-449f of the general statutes is repealed and the
56 following is substituted in lieu thereof (*Effective from passage*):

57 (a) A responsible party may apply to the Underground Storage
58 Tank Petroleum Clean-Up Account Review Board established under
59 section 22a-449d, for reimbursement for costs paid and payment of
60 costs incurred as a result of a release, or a suspected release, including
61 costs of investigating a release, or a suspected release, incurred or paid
62 by a responsible party who is determined not to have been liable for
63 any such release. If a person or entity, other than a responsible party,
64 claims to have suffered damage or personal injury from a release, and
65 the responsible party denies there was a release or does not apply to
66 the board for payment of such claim, the person or entity holding such
67 claim may apply to the board for payment for such damage or
68 personal injury. The board shall order reimbursement or payment
69 from the account for any cost paid or incurred, as the case may be, if,
70 (1) such cost is or was incurred after July 5, 1989, (2) the responsible
71 party was or would have been required to demonstrate financial
72 responsibility under 40 CFR Part 280.90 et seq. as said regulation was
73 published in the Federal Register of October 26, 1988, for the
74 underground storage tank or underground storage tank system from
75 which the release emanated, whether or not such owner is required to
76 comply with said requirements on the date any such cost is incurred,
77 provided if the state is the responsible party, the board may order
78 payment from the account without regard to whether the state was or
79 would have been required to demonstrate financial responsibility
80 under said sections 40 CFR Part 280.90 et seq., (3) after the release, if
81 any, the responsible party incurred a cost, expense or obligation for
82 investigation, cleanup or for claims of third parties resulting from a

83 release, provided any third party claim shall be required to be finally
84 adjudicated or settled with the prior written approval of the board
85 before an application for reimbursement or payment is made, (4) the
86 board determines that the cost is for damage that was incurred as a
87 result of the release, and that the grounds for recovery specified in
88 subsection (b) of this section do not exist at the time such
89 determination is made, [and] (5) the responsible party notified the
90 board as soon as practicable of the release, and of any third party claim
91 resulting from the release, in accordance with the regulations adopted
92 pursuant to section 22a-449e, and (6) the applicant demonstrates the
93 remediation, including any monitoring to determine the effectiveness
94 of the remediation, for which payment or reimbursement is sought is
95 not more stringent than that required by the remediation standards
96 established pursuant to section 22a-133k, except to the extent the
97 applicant demonstrates that it has been directed otherwise by the
98 Department of Environmental Protection. In acting on a request for
99 payment or reimbursement, the board, using funds from the
100 underground storage tank petroleum clean-up account, may contract
101 with experts, including, but not limited to, attorneys and medical
102 professionals, to better evaluate and defend against claims and
103 negotiate third party claims. The costs of the board for experts shall not
104 be charged to the amount allocated to the Department of
105 Environmental Protection pursuant to section 22a-449c.

106 (b) (1) For all work or services performed or materials provided
107 after October 1, 2004, the board shall not order payment or
108 reimbursement from the account for any cost paid or incurred, unless
109 the application or preauthorization request seeking payment or
110 reimbursement is received by the board within one hundred eighty
111 days of the date that such work or services were rendered or
112 performed or the date that any material was provided.

113 (2) For all work or services performed or materials provided before
114 October 1, 2004, the board shall not order payment or reimbursement
115 from the account for any cost paid or incurred, unless the application
116 or preauthorization request seeking payment or reimbursement is

117 received by the board on or before April 1, 2005.

118 (3) For purposes of this subsection, work or services shall be
119 deemed rendered or performed on the date such work is rendered or
120 performed and a material shall be deemed provided on the date a
121 material is made available for use.

122 (c) The Attorney General, upon the request of the board, may
123 institute an action in the superior court for the judicial district of
124 Hartford to recover the amounts specified in this section from the
125 responsible party if: (1) ~~[prior]~~ Prior to the occurrence of the release,
126 the underground storage tank or underground storage tank system
127 from which the release emanated was required by regulations adopted
128 under section 22a-449, as amended, to be the subject of a notification to
129 the Commissioner of Environmental Protection but the responsible
130 party knowingly and intentionally failed to notify the commissioner;
131 (2) the release results from a reckless, wilful, wanton or intentional act
132 or omission of a responsible party; or (3) the release occurs from an
133 underground storage tank or system which is not in compliance with
134 an order issued by the commissioner or with the general statutes and
135 regulations governing the installation, operation and maintenance of
136 underground storage tanks and such lack of compliance was a
137 proximate cause of such release. All costs to the state relating to actions
138 to recover such payments, including but not limited to, reasonable
139 attorneys' fees, shall initially be paid from the underground storage
140 tank petroleum clean-up account. In any recovery the board is entitled
141 to recover from a responsible party (A) all payments made by the
142 board with respect to a release or suspected release, including, but not
143 limited to, payments to third parties, (B) all payments made by the
144 Department of Environmental Protection pursuant to subsection (d) of
145 this section with respect to a release or suspected release, (C) interest
146 on such payments at a rate of ten per cent per year from the date such
147 payments were made, and (D) all costs of the state relating to actions to
148 recover such payments, including, but not limited to, reasonable
149 attorneys' fees. All actions brought pursuant to this section shall have
150 precedence in the order of trial, as provided in section 52-191.

151 [(c)] (d) The review board shall render its decision not more than
152 ninety days after receipt of an application from a responsible party or a
153 third party provided, in the case of a second or subsequent application,
154 the board shall render its decision not more than forty-five days after
155 receipt of such application. A copy of the decision shall be sent to the
156 Commissioner of Environmental Protection and the applicant or
157 responsible party by certified mail, return receipt requested. The
158 Commissioner of Environmental Protection or any person aggrieved
159 by the decision of the board may, within twenty days from the date of
160 issuance of such decision, request a hearing before the board in
161 accordance with the provisions of chapter 54. After such hearing, the
162 board shall consider the information submitted to it and affirm or
163 modify its decision on the application. A copy of the affirmed or
164 modified decision shall be sent to the applicant or responsible party by
165 certified mail, return receipt requested.

166 [(d)] (e) Whenever the commissioner determines that as a result of a
167 release, as defined in section 22a-449a, or a suspected release, a clean-
168 up is necessary, including, but not limited to, actions to prevent or
169 abate pollution or a potential source of pollution and to provide
170 potable drinking water, the commissioner may undertake such actions
171 using not more than one million dollars from the underground storage
172 tank petroleum clean-up account for each release or suspected release
173 from an underground storage tank or an underground storage tank
174 system for which the responsible party is the state or for which the
175 responsible party was or would have been required to demonstrate
176 financial responsibility under 40 CFR Part 280.90 et seq., as said
177 regulation was published in the Federal Register of October 26, 1988.
178 In addition, if a responsible party refuses to pay the first ten thousand
179 dollars of third party claims, and has not already paid ten thousand
180 dollars of costs resulting from the release or suspected release, the
181 commissioner shall, upon order of the board pursuant to this section,
182 make payment or reimbursement of the first ten thousand dollars of
183 third party claims, provided (1) no more than ten thousand dollars of
184 third party claims shall be paid pursuant to this subsection for each

185 release or suspected release from an underground storage tank system
186 for which the responsible party is the state or for which the responsible
187 party was or would have been required to demonstrate financial
188 responsibility under 40 CFR Part 280.90 et seq., as said regulation was
189 published in the Federal Register of October 26, 1988, and (2) that the
190 board shall be entitled to recover such ten thousand dollars,
191 notwithstanding the existence of the conditions specified in
192 subdivisions (1) to (3), inclusive, of subsection (b) of this section. "