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SENATE BILL 1083

**48TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2007**

INTRODUCED BY

Timothy Z. Jennings

AN ACT

RELATING TO THE ENVIRONMENT; AMENDING A SECTION OF THE GROUND  
WATER PROTECTION ACT TO PROVIDE FOR USE OF MONEY IN THE  
CORRECTIVE ACTION FUND FOR LOW-INTEREST LOANS TO IMPROVE  
GASOLINE STORAGE FACILITIES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 74-6B-7 NMSA 1978 (being Laws 1990,  
Chapter 124, Section 7, as amended) is amended to read:

"74-6B-7. CORRECTIVE ACTION FUND CREATED--AUTHORIZATION  
FOR EXPENDITURES.--

A. There is created the "corrective action fund".  
The fund is intended to provide for financial assurance  
coverage and shall be used by the department to the extent that  
revenues are available to take corrective action in response to  
a release, to pay for the costs of a minimum site assessment in

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1 excess of ten thousand dollars (\$10,000), to pay the state's  
2 share of federal leaking underground storage tank trust fund  
3 cleanup costs as required by the federal Resource Conservation  
4 and Recovery Act, ~~and~~ to make payments to or on behalf of  
5 owners and operators for corrective action taken in accordance  
6 with Section 74-6B-13 NMSA 1978 and for low-interest loans to  
7 improve gasoline storage facilities. The legislature may  
8 appropriate up to thirty percent of the annual distribution to  
9 the fund pursuant to Section 7-1-6.25 NMSA 1978 to the  
10 department to match federal funds, for underground  
11 contamination cleanup and to address water needs. The owner or  
12 operator of a site shall not use the corrective action fund as  
13 evidence of financial assurance to satisfy claims of third  
14 parties.

15 B. The board, after recommendations from the  
16 storage tank committee, shall adopt rules for establishing  
17 priorities for corrective action at sites contaminated by  
18 storage tanks. The priorities for corrective action shall be  
19 based on public health, safety and welfare and environmental  
20 concerns. In adopting rules pursuant to this subsection, the  
21 board shall follow the procedures of Section 74-4-5 NMSA 1978.  
22 The provisions of that section relating to all other matters in  
23 connection with the adoption of rules shall apply. The  
24 department shall establish priority lists of sites in  
25 accordance with the rules adopted by the board.

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1           C. The department shall make expenditures from the  
2 corrective action fund in accordance with rules adopted by the  
3 board or the secretary for corrective action taken by the  
4 state, owners or operators at sites contaminated by storage  
5 tanks; provided that:

6                   (1) payments may be made only for corrective  
7 action taken by persons qualified by the department to perform  
8 the work pursuant to rules adopted by the board;

9                   (2) no expenditures from the fund shall be  
10 paid to or on behalf of an owner or operator for corrective  
11 action, other than a minimum site assessment or sampling, if  
12 the corrective action is conducted by a person that is a  
13 subsidiary or parent of or that is otherwise affiliated with  
14 the owner or operator;

15                   (3) expenditures shall be made by the  
16 department to perform corrective action, to pay for the costs  
17 of minimum site assessment in excess of ten thousand dollars  
18 (\$10,000) or to make payments to or on behalf of an owner or  
19 operator in accordance with Section 74-6B-13 NMSA 1978;

20                   (4) any corrective action taken shall be taken  
21 at sites in the order of priority appearing on the priority  
22 lists, unless an emergency threat to public health, safety and  
23 welfare or to the environment exists;

24                   (5) when available revenues are limited and  
25 the fund can no longer be approved as a financial

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1 responsibility mechanism, priorities for expenditures from the  
2 fund shall also be based on financial need as determined by  
3 rules adopted by the board; and

4 (6) corrective action involving remediation  
5 shall follow a competitive bidding procedure based on technical  
6 merit and cost effectiveness.

7 D. No expenditure from the corrective action fund  
8 shall be authorized for corrective action at sites owned or  
9 operated by the United States or any agency or instrumentality  
10 thereof.

11 E. Nothing in this section authorizes payments for  
12 the repair or replacement of a storage tank or equipment.

13 F. Nothing in this section authorizes payments or  
14 commitments for payments in excess of the funds available.

15 G. The board, by rule, may provide for a specific  
16 amount to be reserved in the fund for emergencies. The amount  
17 reserved may be expended by the department only for corrective  
18 action necessary when an emergency threat to public health,  
19 safety and welfare or to the environment exists.

20 H. Within sixty days after receipt of notification  
21 that the corrective action fund has become incapable of paying  
22 for assured corrective actions, the owner or operator shall  
23 obtain alternative financial assurance acceptable to the  
24 department."