

HOUSE BILL 125

53RD LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2018

INTRODUCED BY

Cathrynn N. Brown

AN ACT

RELATING TO PUBLIC SAFETY; ESTABLISHING AN ANNUAL DISTRIBUTION FROM THE CORRECTIVE ACTION FUND TO THE CARLSBAD BRINE WELL REMEDIATION FUND; PROVIDING A TIME LIMIT ON THE DISTRIBUTION OF FUNDS; MAKING AN APPROPRIATION.

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". Except as provided by Subsection I of this section, 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,

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1 to pay for the costs of a minimum site assessment in excess of
2 ten thousand dollars (\$10,000), to pay the state's share of
3 federal leaking underground storage tank trust fund cleanup
4 costs as required by the federal Resource Conservation and
5 Recovery Act of 1976 and to make payments to or on behalf of
6 owners and operators for corrective action taken in accordance
7 with Section 74-6B-13 NMSA 1978. 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 contamination
11 cleanup and to address water needs. The owner or operator of a
12 site shall not use the corrective action fund as evidence of
13 financial assurance to satisfy claims of third parties.

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

25 C. The department shall make expenditures from the

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1 corrective action fund in accordance with rules adopted by the
2 board or the secretary for corrective action taken by the
3 state, owners or operators at sites contaminated by storage
4 tanks; provided that:

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

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

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

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

23 (5) when available revenues are limited and
24 the fund can no longer be approved as a financial
25 responsibility mechanism, priorities for expenditures from the

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1 fund shall also be based on financial need as determined by
2 rules adopted by the board; and

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

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

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

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

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

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

24 I. On July 1 of fiscal years 2019, 2020, 2021 and
25 2022, a distribution shall be made from the corrective action

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1 fund to the Carlsbad brine well remediation fund in the amount
2 of three million dollars (\$3,000,000) for remediation of the
3 Carlsbad brine well."

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