

1991 Assembly Bill 299

Date of enactment: **November 25, 1991**
Date of publication*: **December 10, 1991**

1991 WISCONSIN ACT 82

AN ACT *to repeal* 101.143 (3) (a) 10 and 11; *to amend* 101.142 (2), 101.143 (4) (c) 7, 101.143 (4) (d) 2. (intro.), 101.143 (4) (d) 3. (intro.), 101.143 (4) (e) 2 and 101.143 (4) (e) 3; and *to create* 101.143 (1) (g), 101.143 (2) (d), 101.143 (3) (bm), 101.143 (3) (bn), 101.143 (3) (cm) and 101.143 (4m) of the statutes, **relating to:** reimbursement for costs incurred because of discharges from petroleum product storage tanks, inventory of petroleum product storage tanks and making an exemption from, and extending the time limit for, emergency rule procedures.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 101.142 (2) of the statutes is amended to read:

101.142 (2) INVENTORY OF STORAGE TANKS. The department shall undertake a program to inventory and determine the location of aboveground storage tanks and ~~unused~~ underground storage tanks. The department may require its deputies and any person engaged in the business of distributing petroleum products to provide information on the location of aboveground storage tanks and ~~unused~~ underground storage tanks. The department shall develop uniform procedures for reporting the location of aboveground storage tanks and ~~unused~~ underground storage tanks.

SECTION 2. 101.143 (1) (g) of the statutes is created to read:

101.143 (1) (g) "Program year" means the period beginning on August 1, and ending on the following July 31.

SECTION 3. 101.143 (2) (d) of the statutes is created to read:

101.143 (2) (d) The department shall reserve a portion, not to exceed 20%, of the amount annually appropriated under s. 20.445 (1) (v) for awards under this section to be used to fund emergency remedial action and claims that exceed the amount initially anticipated.

SECTION 4. 101.143 (3) (a) 10. and 11. of the statutes, as created by 1991 Wisconsin Act 39, are repealed.

SECTION 5. 101.143 (3) (bm) of the statutes is created to read:

101.143 (3) (bm) *Agents.* Except as provided in par. (bn), an owner or operator or a person owning a home oil tank system may enter into a written agreement with another person under which that other person acts as an agent for the owner or operator or person owning a home oil tank system in conducting the activities required under par. (c). The owner or operator or person owning a home oil tank system shall jointly submit the claim for an award under sub. (4).

SECTION 5g. 101.143 (3) (bn) of the statutes is created to read:

101.143 (3) (bn) *Department of transportation as agent.* With the prior approval of the department and the owner or operator or person owning a home oil tank system, the department of transportation may act as an agent for an owner or operator or a person owning a home oil tank system whose petroleum product storage system or home oil tank system is located on property that is or may be affected by a transportation project under the jurisdiction of the department of transportation. The scope of the department of transportation's agency shall be limited to conducting the activities required under par. (c) and submitting the claim for an award under sub. (4) to be jointly paid to the owner or operator or person and the depart-

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ment of transportation for the eligible costs incurred by the department of transportation in conducting the activities required under par. (c).

SECTION 6. 101.143 (3) (cm) of the statutes is created to read:

101.143 (3) (cm) *Monitoring as remedial action.* An owner or operator or person owning a home oil tank system may, with the approval of the department of natural resources, satisfy the requirements of par. (c) 2. and 3. by proposing and implementing monitoring to ensure the effectiveness of the natural process of degradation of petroleum product contamination.

SECTION 7. 101.143 (4) (c) 7. of the statutes, as created by 1991 Wisconsin Act 39, is amended to read:

101.143 (4) (c) 7. Costs of emptying, cleaning and disposing of the tank and other costs normally associated with closing or removing any petroleum product storage system or home oil tank system unless those costs were incurred before November 1, 1991, or unless the claimant had signed a contract for services for activities required under sub. (3) (c) or a loan agreement, note or commitment letter for a loan for the purpose of conducting activities required under sub. (3) (c) before November 1, 1991.

SECTION 8. 101.143 (4) (d) 2. (intro.) of the statutes, as affected by 1991 Wisconsin Act 39, is amended to read:

101.143 (4) (d) 2. (intro.) The department shall issue the award under this paragraph without regard to fault in an amount equal to the amount of the eligible costs that exceeds a deductible amount of ~~either \$5,000 or \$2,500~~ plus 5% of the eligible costs, whichever is greater but not more than \$7,500 per occurrence. An award issued under this paragraph may not exceed the following for each occurrence:

SECTION 9. 101.143 (4) (d) 3. (intro.) of the statutes is amended to read:

101.143 (4) (d) 3. (intro.) The department may not issue awards under this paragraph to an owner or operator for eligible costs incurred in one program year that total more than the following:

SECTION 10. 101.143 (4) (e) 2. of the statutes, as affected by 1991 Wisconsin Act 39, is amended to read:

101.143 (4) (e) 2. The department shall issue the award under this paragraph without regard to fault in an amount equal to the amount of the eligible costs that exceeds a deductible amount of ~~either \$5,000 or \$2,500~~ plus 5% of the eligible costs, whichever is greater but not more than \$7,500 per occurrence, for eligible costs incurred before July 1, 1993, or a deductible amount of \$10,000 for eligible costs incurred on or after July 1, 1993. An award issued under this paragraph may not exceed \$195,000 for eligible costs incurred before July 1, 1993, or \$190,000 for eligible costs incurred on or after July 1, 1993, for each occurrence.

SECTION 11. 101.143 (4) (e) 3. of the statutes is amended to read:

101.143 (4) (e) 3. The department may not issue awards under this paragraph to an owner or operator for eligible costs incurred in one program year that total more than \$195,000 for eligible costs incurred before July 1, 1993, or \$190,000, for eligible costs incurred on or after July 1, 1993.

SECTION 12. 101.143 (4m) of the statutes is created to read:

101.143 (4m) **ASSIGNMENT OF AWARDS.** The filing by a claimant with the department of an assignment of an award under sub. (4) to a person who loans money to the claimant for the purpose of conducting activities required under sub. (3) (c) creates and perfects a lien in favor of the assignee in the proceeds of the award. The lien secures all principal, interest, fees, costs and expenses of the assignee related to the loan. The lien under this subsection has priority over any previously existing or subsequently created lien, assignment, security interest or other interest in the proceeds of the award.

SECTION 13. Nonstatutory provisions. (1) **RECONSIDERATION OF ELIGIBILITY.** If the department of industry, labor and human relations denied a claim for an award under section 101.143 of the statutes because of section 101.143 (3) (a) 10. or 11. of the statutes, as created by 1991 Wisconsin Act 39, the department shall reconsider the claim without applying section 101.143 (3) (a) 10. and 11 of the statutes, as created by 1991 Wisconsin Act 39.

(2) **RECALCULATION OF AWARDS.** If the department of industry, labor and human relations paid an award under section 101.143 of the statutes and determined the amount of the award based on the deductible amount under section 101.143 (4) (d) 2. (intro.) of the statutes, as affected by 1991 Wisconsin Act 39 but not by this act, the department shall recalculate the amount of the award based on the deductible amount under section 101.143 (4) (d) 2. (intro.) of the statutes, as affected by this act.

(3) **STUDY OF PRIVATE INSURANCE.** The department of industry, labor and human relations and the office of the commissioner of insurance shall jointly study the insurance market and make recommendations to facilitate the reintroduction of private pollution liability insurance for owners and operators of underground petroleum product storage tank systems. The department and the office shall submit the results of the study and their recommendations, no later than January 31, 1992, to the joint committee on finance and the chief clerk of each house of the legislature for distribution to the legislature in the manner provided in section 13.172 (2) of the statutes.

(4) **EMERGENCY RULE MAKING.** The department of industry, labor and human relations may use the procedure under section 227.24 of the statutes to promulgate any rules necessary to administer section 101.143 of the statutes, as affected by this act. Notwithstanding section 227.24 (1) and (3) of the statutes, the department is not required to make a finding of emergency. Notwithstand-

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ing section 227.24 (1) (c) of the statutes, a rule promulgated under this subsection remains in effect for 12

months unless the rule is extended by the joint committee for review of administrative rules.

