

TABLE 5. STATE FUND LEGISLATIVE UPDATES

AK	
AL	<i>No legislative changes have occurred or are predicted during the next year.</i>
AR	<p><i>1997 ACTS THAT WILL IMPACT THE REGULATED STORAGE TANK DIVISION'S ADMINISTRATIVE ACTIVITIES:</i></p> <p><i>Legal Notice Requirements Changed: Act 641 of 1997 reduces the time frame for providing ADPC&E with written notice of filed third party claims from 60 days to 20 days. This change corrects the statutory language to conform with standard legal response time frames. The change was made to protect the Petroleum Storage Tank Trust Fund from possible default judgements resulting from an owner's failure to respond within the required legal time frame. The Act also added "adjusted" to the term "fund balance" for purposes of determining the rate of fee collection for maintenance of the fund balance at or around the maximum cap allowance. Several minor language changes were also made for clarification.</i></p> <p><i>Trust Fund Deductible Reduced: Act 642 of 1997 lowers the Petroleum Storage Tank Trust Fund corrective action and third party claim deductibles from \$25,000 each to \$15,000 each. This represents a potential savings of \$20,000 to owners who have an eligible release which results in both corrective action costs and third party claims. Reducing the financial burden faced by owners with leaking tanks should be an incentive for those owners to report and remediate releases in a more timely manner.</i></p> <p><i>Notification Changes for Aboveground Storage Tanks: Act 1027 of 1997 changes the size limit for registering aboveground storage tanks with ADPC&E. Previously, any aboveground petroleum storage tank 1,320 gallons to 30,000 gallons had to register with ADPC&E and pay annual tank fees of \$50 per tank. This new act increases the upper registration limit to 40,000 gallons, effective immediately.</i></p> <p><i>Act 1027 of 1997 also added language about "unknown petroleum storage tanks" to the Petroleum Storage Tank Trust Fund Act. Essentially, under certain circumstances as described in the act, corrective action or third party costs associated with "unknown" tanks may be eligible for trust fund coverage.</i></p>
AZ	<i>1) Definition of 'owner' changed. 2) Limited circumstances under which claims contractor can be paid out of the State Assurance Fund. 3) Any employee of an owner or operator may submit a claim on behalf of the owner/operator. 4) Limitations enacted on when state can withhold payment of claims due to delinquent fuel tax or tank fees, or pending enforcement actions. 5) Established that corrective action costs that are performed at the written request of the department are by definition, reasonable, necessary and reimbursable. 6) Several 'common sense' approaches utilized by prior fund administration have now been legislated into law to alleviate 'authority of interpretation' issues.</i>
CA	<i>CA Senate Bill SB562 (became effective 1/1/97): 1) Eligible RP's (claimants to Fund) can request suspension of corrective action work. 2) Requires regulatory agency and Fund to coordinate. Cost pre-approval with RP. 3) Fund manager must automatically review Fund claims older than 5 years for possible closure. 4) Requires uniform site closure letter. 5) Any RP can request Fund Manager to review their case if they feel that their corrective action workplan has been satisfactorily implemented. 6) Established commingled plume program (# in US).</i>
CO	<i>State legislature extended environmental surcharge indefinitely.</i>
CT	<i>None.</i>
DE	
FL	<i>None in last year - Though major changes in 1996 legislation included: 1. Abolished Reimbursement Program. 2. 12/31/96 deadline to submit all reimbursement claims. 3. All new work in priority order and within fiscal year budget. 4. All new work preapproved for scope and cost with direct contract between state and cleanup contractor. 5. Pilot projects for competitive bidding and pay for performance. 6. Mandated RBCA principles with cleanup through natural attenuation where possible.</i>
GA	
IA	

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ID	<p>Last year, the State Supreme Court ruled that PSTF's funding mechanism was indeed a gas tax and therefore, it was declared unconstitutional. The mechanism which yielded approximately \$8 million annually was derived via a "transfer fee" of \$0.01 per gallon which was paid by the first licensed distributor. The penny a gallon fee continues to be collected - 80% is earmarked for the Department of Transportation and PSTF is entitled to the remaining 20% as this was determined to be the percentage collected for non-highway usage.</p> <p>In addition to the approximate \$1.8 million collected from the above, PSTF receives in the vicinity of \$2 million annually from interest.</p> <p>The petroleum marketers proposed a constitutional amendment to the legislature which would enable the "transfer fee" to be resurrected. The House was strongly supportive but the Senate was not so the marketers are back at the drawing board.</p>
IL	None.
IN	
KS	
KY	No longer governed by a commission. New regulations became effective April 9, 1997 which established new cost guidelines. There is currently pending regulations which should be effective August, 1997 which will cover tank removal which have no contamination if certain criteria are met, such as income and number of tanks.
LA	None.
MA	N/A
MD	None.
ME	-Amended statute to extend revenue collection through December 31, 2005. Originally, statute called for a reduction in fees effective December 31, 1999. - Amended statute to terminate eligibility for all underground oil storage tank owners who failed to remove non-conforming tanks by October 1, 1998. Exception provided for tanks taken out of service, where tank owner provides evidence of unavailable financing or unavailability of certified tank installer in the form of three separate written acknowledgments. - Amended statute to provide Department with authority to place a lien on real estate of responsible party for clean-up costs expended that are not eligible for coverage by the Fund.
MI	-May 3, 1996 final Legislature amendments were passed which allowed the Fund to borrow on future revenue to pay off existing invoices. Amendment also required checks to be issued to both owner and qualified consultants unless owner has already paid consultant. Requires an affidavit to be filed and notice provided to consultant. The financing allowed the Fund to borrow up to 225 million to pay off existing invoices. The revenue collection was extended to the date which obligations of the Fund are paid. -A proposed bill has been introduced to create a new environmental cleanup reimbursement program and assigns a 9/10 cent regulatory fee to fund. It established a Board to employ a claims administration, to collect fees, establish and administer the program. However, there is substantial debate in this state in regards to raising a gasoline tax. - A proposed bill has been introduced that would set aside 5% of the State's revenue collected from video gaming for the Mustafa Fund. However, it does not address the use of such revenue. Other Legislation is under development at this time.
MN	In 1996 the Minnesota Legislature passes a bill that provides for 100% reimbursement to tank owners whose cleanup costs are in excess of \$250,000. The law is limited to those tank owners who dispense less than 1,000,000 gallons of petroleum at each of their locations for the past three years. The tank owner cannot own more than three locations and must have discontinued all petroleum retail operations. The 100% reimbursement is also available to those tank owners who have dispensed less than 1,000,000 gallons of petroleum in each of the last three years AND have owned no more than one location in the state in which motor fuel was dispensed into motor vehicles.

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MO	<i>Passage of Senate Bill 708: Expanded the fund to cover ASTs. Including insurance benefits for active tanks and remedial benefits for past releases. Insurance benefits include third party. Also created Board of Trustees responsible for fiduciary management of the fund. *The AST universe is currently undefined.</i>
MS	<i>None.</i>
MT	<i>In the last year, three major modifications were made to the regulations of Montana's Petroleum Tank Release Compensation Board (Board) and the Petroleum Tank Release Cleanup Fund (Fund). The first modification, or authority, was embodied in legislation of House Bill 214. Effective July 1, 1997, HB214 contains three major authorizations. First, the law tightened up the definition of corrective action of petroleum releases. The new section of law states the Board may reimburse only the costs that would have been incurred if the only release at the site was the release of petroleum products from an eligible petroleum storage tank and not releases of substances other than petroleum products. Further defining corrective action of petroleum releases has limited Fund coverage to only petroleum releases. Secondly, the bill states that the Board may not reimburse for third party property damage until the corrective action is completed. Montana's Fund reimburses compensation paid to third parties for bodily injury and property damage. This new section of law was adopted in anticipation of creating savings to the Fund with the assumption that property damages diminish as corrective action is completed. Third, the law allows the Board to secure loans from the Board of Investments to cover temporary cash shortfalls. This section of the law was enacted to preserve Fund solvency. The second major regulatory change to the Fund was the recent repeal of certain Rules For The Montana Petroleum Tank Release Compensation Board dated November 12, 1993. One rule repeal has significantly impacted certain tank owners/operators in terms of eligibility. The repeal eliminated the eligibility rule (16.47.321,ARM) which allowed the Board to grant eligibility to a tank operator even if compliance violations existed. Previously the Board could consider whether a tank operator had made a good faith effort to comply with tank regulations. The rule also allowed the Board to waive noncompliance if such noncompliance did not increase eligible costs. The eligibility rule was repealed because eligibility is addressed in the Fund's eligibility statute (75-11-308,MCA). The Fund's eligibility statute is comparatively stringent relative to the eligibility rule because it does not mention good faith or an ability to waive noncompliance. Contained in the eligibility statute is language which has denied eligibility to many noncompliant tank owners/operators/ it states that a tank owner/operator is eligible for reimbursement of eligible costs caused by a release from a petroleum storage tank only if the operation and management of the tank complied with applicable state and federal laws and rules when the release occurred and remained in compliance following detection of the release. As a result of the eligibility rule repeal, eligibility determinations are currently being made pursuant to the statute rather than the rule. In certain recent examples eligibility has been denied based on the statute, whereas if the rule was still in place eligibility may have been granted. It should be mentioned as a third regulatory change that Montana deregulated farm and residential tanks with a capacity of 1100 gallons or less used for storing motor fuel or heating oil for noncommercial purposes or consumptive use on the premises where it is stored. As a result of deregulating small tanks, Fund eligibility to those tanks was cut. However, if a small tank owner voluntarily complies with tank regulations, costs associated with release cleanup and third party damages may be eligible for reimbursement.</i>
NC	
ND	
NE	<i>In April, 1996, LB1226 was enacted. This bill contained several important provisions that affect both the LUST and reimbursement programs. Some of the more significant changes: *allows DEQ to require cost estimates for phases of remedial action, procurement requirements, and reuse of remedial equipment. *allows a site's costs to exceed the \$1 million limit if the reason that the site exceeded the limit is the insufficiency of the fund. * allows partial payments to be made for phases of remediation that are projected to take more than 90 days. * allows responsible persons to proceed with remediation prior to DEQ plan approval and still be eligible for reimbursement if certain procedures are followed. * allows DEQ to use risk-based corrective action principles in its decision-making process. * allows DEQ to make interest payments for applications that are not paid within the appropriate time frame. * creates a technical advisory committee, appointed by the DEQ Director, that will provide input on regulation and guideline development. * allows the reimbursement program to obtain a loan from the State Revolving Loan Fund to pay all applications pending as of December 31, 1996.</i>
NH	
NM	<i>In 1996, the State Legislature approved an increase in the loading fee which is expected to generate approximately \$14 million in FY 97 (July 1996 - June 1997) and \$17 million in subsequent years compared to \$6.7 million in FY 96 and \$12.1 million in FY 95. The State started FY 97 with a backlog of claims totaling \$8 million.</i>
NV	<i>None.</i>
NY	
OH	<i>None.</i>

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OK	<p>SR323: Extends the life of the indemnity by 10 years. Sunset date was 12/31/99, now it is 12/31/09. Bill passed unanimously in both houses to Governor for signature. Governor signed bill on 5/12/97.</p> <p>SR342: Allows some tank owners who were not in compliance with regulatory guidelines at the time of their release, to pay a fine (imposed by the regulatory division) and gain access to the indemnity Fund. Currently, if a tank owner is found to be out of compliance, they are denied access to the Fund.</p> <p>SR342: Allows persons who became tank owners by inheritance of a facility through a determination of the courts to apply for access to the indemnity Fund. Currently State law specifies that applicants must have been the owner or operator of the facility in order to be considered for eligibility.</p>
PA	<p>House Bill 1476: Amending the act of July 6, 1989 (P.L. 169, No. 32), ENTITLED "An act providing for the regulation of storage tanks and tank facilities; imposing additional powers and duties on the Department of Environmental Resources and the Environmental Quality Board; and making an appropriation," further providing the Underground Storage Tank Indemnification Board and its powers and duties, for the Underground Storage Tank Indemnification Fund, for eligibility of claimants including certified tank installers and for audit, sunset and performance reviews,; and providing for Underground Storage Tank Environmental Cleanup Program and the Upgrade Loan Program.</p>
RI	
SC	<p>Proposed change will allow third party fund to pay directly instead of reimbursing tank owner. This will allow EPA to approve the third party fund.</p>
SD	
TN	<p>Bond funding legislation pending.</p>
TX	<p>None.</p>
UT	<p>On October 29, 1996, the Utah State Supreme Court ruled that the half cent environmental surcharge levied on petroleum fuel products to be a tax. As a tax, the use of the money to provide financial assurance and reimburse owners for cleaning up sites is unconstitutional because it is not included in the specific allowable uses written into the Utah Constitution. However, the ruling did not become effective until May 5, 1997. This gave industry groups and the state time to craft an alternative program. The alternative, now passed into law, is a voluntary state fund that owners may participate in to meet the federal requirements for financial assurance. Owners who decide not to participate must provide evidence they meet one of the other federally approved assurance mechanisms. All of the rules, policies and logistics to implement this new system have to be in place by July 1, 1997. The necessity to re-write the law gave certain industry groups an opening to challenge areas of the UST program with which they disagree. Discussions with these groups were directed by the Legislature and are on-going.</p>
VA	<p>None.</p>
VT	<p>In 1997, a bill was signed into law which enables the program to go forward with a site cleanup without the owner spending the required \$10,000 deductible. The bill allows the Secretary to "defer" the payment to a future date for owners who are financially incapable of incurring this expense, and provides authority to recover these funds at that later date.</p>

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WA	<p>On April 15, 1997, legislation was passed as an amendment to the statute that established the Heating Oil Pollution Liability Insurance Program (PLIA). The legislation responds to what has become a serious problem and an impediment to the conclusion of real estate transactions if the property in question has an active or abandoned consumptive use heating oil tank. Sellers of properties with an active or abandoned heating oil tank are often being required to spend considerable sums to either remove a heating oil tank that is no longer in service, or to effect a cleanup of contamination that may be minor in nature and does not constitute a threat to human health or the environment. These requirements being imposed on property owners are the result of confusion and a lack of information on the part of several parties to a real estate transfer.</p> <p>The amendment authorizes PLIA:</p> <ul style="list-style-type: none"> -To provide informal advice and technical assistance to owners and operators of active, as well as abandoned heating oil tanks; -To provide written opinions on the results of testing and assessment, noting, if appropriate, that contamination resulting from a tank is not a release of a hazardous substance that constitutes a threat to human health or the environment; and -To collect, from the party requesting advice or assistance, the costs incurred in providing such advice and assistance. <p>The legislation also authorizes PLIA to establish a public information program to publish information regarding liability, as well as technical and environmental requirements associated with heating oil tanks.</p> <p>The purpose of the new program that has been authorized by the Legislature is to assist in determining if contamination from heating oil is or is not present. The program will further assist the owner or operator of an active or abandoned heating oil tank in determining if there has, or has not, been a release that constitutes a threat to human health or the environment. If the site is determined to apparently not involve contamination that constitutes a threat to human health or the environment, the property owner will be so advised. If, on the other hand, contamination is discovered and determined to require corrective action, the property owner will be so informed and must then take appropriate steps to accomplish cleanup and satisfy the requirements of the Model Toxics Control Act (MTCA).</p> <p>The new program will in no way relieve or excuse the tank owner or operator from his or her responsibility with regard to MTCA cleanup requirements and procedures, or any local regulations. The new program will in no way change the responsibilities of the Department of Ecology with regard to the supervision of corrective action, if such action is required.</p> <p>Before the new program is implemented, rules must be developed to provide specific procedures and instructions. The rule-making process will include input and review by various stakeholder groups, a public hearing and extensive legal review. We anticipate that rules should be completed and adopted in late October 1997.</p>
WI	
WV	None.
WY	None.