

1993 Senate Bill 15

Date of enactment: **April 22, 1994**Date of publication\*: **May 6, 1994**

# 1993 WISCONSIN ACT 416

AN ACT *to repeal* 101.143 (3) (a) 10 and 11; *to renumber and amend* 101.143 (4) (e) 1; *to amend* 101.143 (1) (fg), 101.143 (2) (title), 101.143 (3) (a) (intro.), 101.143 (4) (d) 2. (intro.), 101.143 (4) (d) 2. b., 101.143 (4) (e) 2, 101.143 (4) (ee), 101.143 (4) (em) 2 and 168.12 (1); and *to create* 101.09 (3) (c), 101.143 (1) (am), 101.143 (1) (hm), 101.143 (2) (e), 101.143 (2) (f), 101.143 (2) (g), 101.143 (3) (ae), 101.143 (3) (am), 101.143 (3) (as), 101.143 (3) (av), 101.143 (4) (a) 6, 101.143 (4) (a) 7, 101.143 (4) (d) 2. c., 101.143 (4) (d) 2. d., 101.143 (4) (dm), 101.143 (4) (e) 1. b. and 101.143 (4) (ei) of the statutes, **relating to:** reimbursement for costs incurred because of discharges from petroleum product storage tanks, the petroleum inspection fee, requirements for persons providing services relating to tanks storing flammable and combustible liquids, granting rule-making authority and making an appropriation.

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

**SECTION 1.** 101.09 (3) (c) of the statutes is created to read:

101.09 (3) (c) The rule promulgated under par. (a) may require the certification or registration of persons who install, remove, clean, line, perform tightness testing on and inspect tanks and persons who perform site assessments. Any rule requiring certification or registration shall also authorize the revocation or suspension of the certification or registration.

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

101.143 (1) (am) "Case closure letter" means a letter provided by the department of natural resources that states that, based on information available to the department of natural resources, no further remedial action is necessary with respect to a discharge.

**SECTION 3.** 101.143 (1) (fg) of the statutes is amended to read:

101.143 (1) (fg) "Petroleum product storage system" means a storage tank that is located in this state and is used to store petroleum products together with any on-site integral piping or dispensing system. The term does not include pipeline facilities; tanks of 110 gallons or

less capacity, ~~farm and~~ residential tanks of 1,100 gallons or less capacity storing petroleum products that are not for resale; ~~farm tanks of 1,100 gallons or less capacity storing petroleum products that are not for resale, except as provided in sub. (4) (ei);~~ tanks used for storing heating oil for consumptive use on the premises where stored, except for heating oil tanks owned by school districts and heating oil tanks owned by technical college districts and except as provided in sub. (4) (ei); or tanks owned by this state or the federal government.

**SECTION 4.** 101.143 (1) (hm) of the statutes is created to read:

101.143 (1) (hm) "Terminal" means a petroleum product storage system that is itself connected to a pipeline facility, as defined in 49 USC Appendix 2001 (4) or is one of a number of connected petroleum product storage systems at least one of which is connected to a pipeline facility, as defined in 49 USC Appendix 2001 (4).

**SECTION 5.** 101.143 (2) (title) of the statutes is amended to read:

101.143 (2) (title) POWERS AND DUTIES OF THE DEPARTMENT.

**SECTION 6.** 101.143 (2) (e) of the statutes is created to read:

101.143 (2) (e) The department shall promulgate rules, with an effective date of no later than January 1,

1996, specifying the methods the department will use under sub. (3) (ae), (am) and (as) to identify the petroleum product storage system or home oil tank system which discharged the petroleum product that caused an area of contamination and to determine when a petroleum product discharge that caused an area of contamination occurred. The department shall write the rule in a way that permits a clear determination of what petroleum product contamination is eligible for an award under sub. (4) after December 31, 1995.

**SECTION 7.** 101.143 (2) (f) of the statutes is created to read:

101.143 (2) (f) The department shall promulgate a rule establishing a priority system for paying awards under sub. (4) for petroleum product storage systems that are owned by school districts and that are used for storing heating oil for consumptive use on the premises where stored.

**SECTION 8.** 101.143 (2) (g) of the statutes is created to read:

101.143 (2) (g) The department may promulgate, by rule, requirements for the certification or registration of persons who provide consulting services to owners and operators who file claims under this section. Any rule requiring certification or registration shall also authorize the revocation or suspension of the certification or registration.

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

101.143 (3) (a) *Who may submit a claim.* (intro.) An ~~Subject to pars. (ae), (am) and (as), an~~ owner or operator or a person owning a home oil tank system may submit a claim to the department for an award under sub. (4) to reimburse the owner or operator or the person for the eligible costs under sub. (4) (b) that the owner or operator or the person incurs because of a petroleum products discharge from a petroleum product storage system or home oil tank system if all of the following apply:

**SECTION 10.** 101.143 (3) (a) 10. and 11. of the statutes, as created by 1993 Wisconsin Act 16, are repealed.

**SECTION 11.** 101.143 (3) (ae) of the statutes is created to read:

101.143 (3) (ae) *New systems.* 1. An owner or operator or a person owning a home oil tank system is not eligible for an award under this section for costs incurred because of a petroleum product discharge from a petroleum product storage system or a home oil tank system that meets the performance standards in 40 CFR 280.20 or s. ILHR 10.51, Wis. adm. code, except as provided in subd. 2.

2. If a petroleum product storage system or home oil tank system that meets the performance standards in 40 CFR 280.20 or s. ILHR 10.51, Wis. adm. code, is located on a site on which a petroleum product discharge is confirmed before the date on which the petroleum product storage system or home oil tank system is installed and

the department of natural resources does not issue a case closure letter with respect to that discharge before the installation date, then the owner or operator or person owning the home oil tank system remains eligible for an award for costs incurred because of a petroleum product discharge, from that petroleum product storage system or home oil tank system, which is confirmed, and with respect to which activities under par. (c) or (g) are begun, before January 1, 1996, or before the 91st day after the day on which the department of natural resources issues a case closure letter with respect to the discharge that occurred before the installation of the petroleum product storage system or home oil tank system, whichever is earlier.

**SECTION 12.** 101.143 (3) (am) of the statutes is created to read:

101.143 (3) (am) *Upgraded systems.* 1. An owner or operator or a person owning a home oil tank system is not eligible for an award under this section for costs incurred because of a petroleum product discharge from a petroleum product storage system or a home oil tank system if the discharge is confirmed, or activities under par. (c) or (g) are begun with respect to that discharge, after the day on which the petroleum product storage system or home oil tank system first meets the upgrading requirements in 40 CFR 280.21 (b) to (d) or s. ILHR 10.52 (2) to (4), Wis. adm. code, except as provided in subds. 2 to 4.

2. If a petroleum product storage system or home oil tank system first meets the upgrading requirements in 40 CFR 280.21 (b) to (d) or s. ILHR 10.52 (2) to (4), Wis. adm. code, after December 31, 1993, and the owner or operator or person owning the home oil tank system applies for private pollution liability insurance covering the petroleum product storage system or home oil tank system within 30 days after the day on which the petroleum product storage system or home oil tank system first meets those upgrading requirements, then the owner or operator or person remains eligible for an award for costs incurred because of a petroleum product discharge, from that petroleum product storage system or home oil tank system, which is confirmed, and with respect to which activities under par. (c) or (g) are begun, before the 91st day after the day on which the petroleum product storage system or home oil tank system first meets those upgrading requirements.

3. If a petroleum product storage system first met the upgrading requirements in 40 CFR 280.21 (b) to (d) before May 1, 1991, then the owner or operator remains eligible for an award for costs incurred because of a petroleum product discharge, from that petroleum product storage system, which is confirmed, and with respect to which activities under par. (c) or (g) are begun, before January 1, 1996.

4. If a petroleum product storage system or home oil tank system first meets the upgrading requirements in 40

## 1993 Senate Bill 15

CFR 280.21 (b) to (d) or s. ILHR 10.52 (2) to (4), Wis. adm. code, after April 30, 1991, and is located on a site on which a petroleum product discharge is confirmed before the date on which the petroleum product storage system or home oil tank system first meets those upgrading requirements and the department of natural resources does not issue a case closure letter with respect to that discharge before that date, then the owner or operator or person owning the home oil tank system remains eligible for an award for costs incurred because of a petroleum product discharge, from that petroleum product storage system or home oil tank system, which is confirmed, and with respect to which activities under par. (c) or (g) are begun, before January 1, 1996, or before the 91st day after the day on which the department of natural resources issues a case closure letter with respect to the discharge that occurred before the upgrading requirements were met, whichever is earlier.

**SECTION 13.** 101.143 (3) (as) of the statutes is created to read:

101.143 (3) (as) *Previous awards.* 1. An owner or operator or a person owning a home oil tank system is not eligible for an award under this section for costs incurred because of any petroleum product discharge from a petroleum product storage system or home oil tank system if the discharge occurs after the department issues an award under this section for remedial action activities that were necessitated by an earlier petroleum product discharge from the same petroleum product storage system or home oil tank system and the later discharge is within the area on which those remedial action activities were conducted, except as provided in subd. 2, 3 or 4.

2. Subdivision 1 does not apply if a change in rules promulgated by the department of natural resources necessitates further remedial action activities with respect to the earlier petroleum product discharge.

3. If the department issues an award under this section for remedial action activities that were necessitated by a petroleum product discharge and a later petroleum product discharge that is from the same petroleum product storage system or home oil tank system and within the same area is confirmed before the department of natural resources approves the remedial action activities performed with respect to the first discharge, then the owner or operator or person owning a home oil tank system remains eligible for an award for costs incurred because of any petroleum product discharge from that petroleum product storage system or home oil tank system which is confirmed, and with respect to which activities under par. (c) or (g) are begun, before January 1, 1996, or before the 91st day after the day on which the department of natural resources approves the remedial action activities with respect to the first discharge, whichever is earlier.

4. If the department issues an award under this section for remedial action activities that were necessitated by a petroleum product discharge from a petroleum prod-

uct storage system or home oil tank system that does not meet the performance standards in 40 CFR 280.20 or s. ILHR 10.51, Wis. adm. code, and that, at the time of that discharge, does not meet the upgrading requirements in 40 CFR 280.21 (b) to (d) or s. ILHR 10.52 (2) to (4), Wis. adm. code, then the owner or operator or person owning the home oil tank system remains eligible for an award for costs incurred because of any later petroleum product discharge from the same petroleum product storage system or home oil tank system and within the same area which is confirmed, and with respect to which activities under par. (c) or (g) are begun, before January 1, 1996, or before the 91st day after the day on which the petroleum product storage system or home oil tank system first meets those upgrading requirements, whichever is earlier.

**SECTION 14.** 101.143 (3) (av) of the statutes is created to read:

101.143 (3) (av) *Claims submitted for petroleum product storage systems on tribal trust lands.* The owner or operator of a petroleum product storage system located on trust lands of an American Indian tribe may submit a claim for an award under sub. (4) if the owner or operator otherwise satisfies par. (a) and complies with the rules promulgated under this section and any other rules promulgated by the department concerning petroleum product storage systems.

**SECTION 15.** 101.143 (4) (a) 6. of the statutes is created to read:

101.143 (4) (a) 6. In any fiscal year, the department may not award more than 5% of the amount appropriated under s. 20.445 (1) (v) as awards for petroleum product storage systems described in par. (ei) 1.

**SECTION 16.** 101.143 (4) (a) 7. of the statutes is created to read:

101.143 (4) (a) 7. In any fiscal year, the department may not award more than 5% of the amount appropriated under s. 20.445 (1) (v) as awards for petroleum product storage systems that are owned by school districts and that are used for storing heating oil for consumptive use on the premises where stored.

**SECTION 17.** 101.143 (4) (d) 2. (intro.) of the statutes 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 \$2,500 plus 5% of the eligible costs, but not more than \$7,500 per occurrence, except that the deductible amount for a petroleum product storage system that is owned by a school district or a technical college district and that is used for storing heating oil for consumptive use on the premises is 25% of eligible costs. An award issued under this paragraph may not exceed the following for each occurrence:

**SECTION 18.** 101.143 (4) (d) 2. b. of the statutes is amended to read:

101.143 (4) (d) 2. b. For an owner or operator other than an owner or operator under subd. 2. a., c. or d., \$500,000.

**SECTION 19.** 101.143 (4) (d) 2. c. of the statutes is created to read:

101.143 (4) (d) 2. c. For an owner or operator of a petroleum product storage system described in par. (ei) 1, \$100,000.

**SECTION 20.** 101.143 (4) (d) 2. d. of the statutes is created to read:

101.143 (4) (d) 2. d. For a school district or a technical college district with respect to a discharge from a petroleum product storage system that is used for storing heating oil for consumptive use on the premises where stored, \$190,000.

**SECTION 21.** 101.143 (4) (dm) of the statutes is created to read:

101.143 (4) (dm) *Awards for aboveground systems for a specified period.* 1. The department shall issue an award under this paragraph for a claim for eligible costs, under par. (b), incurred on or after the effective date of this subdivision .... [revisor inserts date], and before July 1, 1998, by the owner or operator of a petroleum product storage system that is not an underground petroleum product storage tank system and for eligible costs, under par. (b), incurred on or after July 1, 1998, by the owner or operator of a petroleum product storage system that is not an underground petroleum product storage tank system if the petroleum product discharge on which the claim is based is confirmed and activities under sub. (3) (c) or (g) are begun before July 1, 1998.

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 the following deductible:

a. For the owner or operator of a terminal, \$15,000 plus 5% of the amount by which eligible costs exceed \$200,000.

b. For a school district or a technical college district with respect to a discharge from a petroleum product storage system that is used for storing heating oil for consumptive use on the premises where stored, 25% of eligible costs.

c. For the owner or operator of a petroleum product storage system that is described in par. (ei) 1, \$2,500 plus 5% of eligible costs but not more than \$7,500 per occurrence.

d. For an owner or operator other than an owner or operator under subd. 2. a., b. or c., \$15,000 plus 2% of the amount by which eligible costs exceed \$200,000.

3. An award issued under this paragraph may not exceed the following for each occurrence:

a. For an owner or operator of a petroleum product storage system that is located at a facility at which petroleum is stored for resale or an owner or operator of a petroleum product storage system that handles an annual

average of more than 10,000 gallons of petroleum per month, \$1,000,000.

b. For a school district or a technical college district with respect to a discharge from a petroleum product storage system that is used for storing heating oil for consumptive use on the premises where stored, \$190,000.

c. For an owner or operator of a petroleum product storage system described in par. (ei) 1, \$100,000.

d. For an owner or operator other than an owner or operator under subd. 3. a., b. or c., \$500,000.

4. 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:

a. For an owner or operator of 100 or fewer petroleum product storage systems that are not underground petroleum product storage tank systems, \$1,000,000.

b. For an owner or operator of more than 100 petroleum product storage systems that are not underground petroleum product storage tank systems, \$2,000,000.

**SECTION 22.** 101.143 (4) (e) 1. of the statutes, as affected by 1993 Wisconsin Act 16, is renumbered 101.143 (4) (e) 1. (intro.) and amended to read:

101.143 (4) (e) 1. (intro.) The department shall issue an award under this paragraph for a claim for ~~eligible~~ any of the following:

a. Eligible costs, under par. (b), incurred before the effective date of this subd. 1. a. .... [revisor inserts date], by the owner or operator of a petroleum product storage system that is not an underground petroleum product storage tank system or for eligible.

c. Eligible costs, under par. (b), incurred on or after July 1, 1998, by the owner or operator of an underground petroleum product storage tank system if those costs are not reimbursable under par. (d) 1.

**SECTION 23.** 101.143 (4) (e) 1. b. of the statutes is created to read:

101.143 (4) (e) 1. b. Eligible costs, under par. (b), incurred on or after July 1, 1998, by the owner or operator of a petroleum product storage system that is not an underground petroleum product storage system if those costs are not reimbursable under par. (dm) 1.

**SECTION 24.** 101.143 (4) (e) 2. of the statutes 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 \$2,500 plus 5% of the eligible costs, 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, except that the deductible amount for a petroleum product storage system that is owned by a school district or a technical college district and that is used for storing heating oil for consumptive use on the premises where stored is 25% of eligible costs and except

## 1993 Senate Bill 15

that the deductible for a petroleum product storage system that is described in par. (ei) 1 is \$2,500 plus 5% of the eligible costs, but not more than \$7,500 per occurrence without regard to when the eligible costs are incurred.

2m. 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, except that an award under this paragraph to a school district or a technical college district with respect to a discharge from a petroleum product storage system that is used for storing heating oil for consumptive use on the premises where stored is \$190,000 for each occurrence, without regard to when the eligible costs are incurred, and except that an award under this paragraph to the owner or operator of a petroleum product storage system described in par. (ei) 1 may not exceed \$100,000 per occurrence.

**SECTION 25.** 101.143 (4) (ee) of the statutes is amended to read:

101.143 (4) (ee) *Waiver of deductible.* Notwithstanding par. (d) 2., ~~(dm) 2~~ or (e) 2., the department may waive the requirement that an owner or operator pay the deductible amount if the department determines that the owner or operator is unable to pay. If the department waives the requirement that an owner or operator pay the deductible, the department shall file a statement of lien with the register of deeds of the county in which the petroleum product storage system is located. If the department files the statement of lien, the department has a lien on the property on which the petroleum product storage system is located in the amount of the deductible that was waived. The property remains subject to the lien until that amount is paid in full.

**SECTION 26.** 101.143 (4) (ei) of the statutes is created to read:

101.143 (4) (ei) *Awards for certain farm tanks.* 1. A farm tank of 1,100 gallons or less capacity storing petroleum products that are not for resale, together with any on-site integral piping or dispensing system, is a petroleum product storage system for the purposes of this section, if all of the following apply:

a. The owner or operator of the farm tank owns a parcel of 35 or more acres of contiguous land which is devoted primarily to agricultural use, as defined in s. 91.01 (1), including land designated by the department of natural resources as part of the ice age trail under s. 23.17, which during the year preceding submission of a claim under sub. (3) produced gross farm profits, as defined in s. 71.58 (4), of not less than \$6,000 or which, during the 3 years preceding that submission produced gross farm profits, as defined in s. 71.58 (4), of not less than \$18,000, or a parcel of 35 or more acres of which at least 35 acres, during part or all of the year preceding that submission, were enrolled in the conservation reserve program under 16 USC 3831 to 3836.

b. The owner or operator of the farm tank has received a letter or notice from the department of natural resources indicating that the owner or operator must conduct a site investigation or remedial action because of a discharge from the farm tank or an order to conduct such an investigation or remedial action.

2. The department shall promulgate a rule establishing a priority system for paying awards for farm tanks described in subd. 1.

**SECTION 27.** 101.143 (4) (em) 2 of the statutes is amended to read:

101.143 (4) (em) 2. The department shall issue the award under this paragraph without regard to fault for each home oil tank system in an amount equal to 75% of the amount of the eligible costs, except that if the home oil tank system is owned by a nonprofit organization that provides housing assistance to families with incomes below 80% of the median income, as defined in s. 234.49 (1) (g), of the county in which the home oil tank system is located, then the award shall equal 100% of the amount of the eligible costs. The department shall recalculate any award made to such a nonprofit organization under this paragraph before the effective date of this subdivision .... [revisor inserts date], based on 100% of eligible costs and shall issue an award for the difference between the award as recalculated and the award issued before the effective date of this subdivision .... [revisor inserts date].

3. An award issued under this paragraph may not exceed \$7,500.

**SECTION 28.** 168.12 (1) of the statutes, as affected by 1993 Wisconsin Act 16, is amended to read:

168.12 (1) The department shall demand and receive within 2 weeks after demand, from the owner or other person for whom it inspects any petroleum product, an inspection fee. ~~Before July 1, 1995, or the day after publication of the 1995-97 biennial budget act, whichever is later the~~ The fee is 3 cents for each gallon from which the sample was taken. ~~Beginning on July 1, 1995, or the day after publication of the 1995-97 biennial budget act, whichever is later, the fee is 1.74 cents for each gallon from which the sample was taken.~~ The fee shall be credited to the petroleum inspection fund.

**SECTION 29. Nonstatutory provisions; industry, labor and human relations.** (1) PETROLEUM STORAGE REMEDIAL ACTION POSITIONS. The authorized FTE positions for the department of industry, labor and human relations are decreased by 2.0 SEG project positions and increased by 2.0 SEG permanent positions to be funded from the appropriation under section 20.445 (1) (w) of the statutes for the petroleum storage remedial action program.

(2) PETROLEUM STORAGE REMEDIAL ACTION ADMINISTRATION APPROPRIATION INCREASE. Notwithstanding section 16.42 (1) (e) of the statutes, in submitting information under section 16.42 of the statutes for the purposes

of the 1995–97 biennial budget bill, the department of industry, labor and human relations shall submit information concerning the appropriation under section 20.445 (1) (w) of the statutes as though the increase in that appropriation by SECTION 30 (1) of this act had been \$17,900 less than the actual increase.

(3) **PETROLEUM CLEANUP AWARDS APPROPRIATION.** Notwithstanding section 16.42 (1) (e) of the statutes, in submitting information under section 16.42 (1) (e) of the statutes for the purposes of the 1995–97 biennial budget bill, the department of industry, labor and human relations shall submit information concerning the appropriation under section 20.445 (1) (v) of the statutes as though the total amount appropriated under that appropriation in fiscal year 1994–95 was \$8,500,000 more than the amount actually appropriated.

(4) **TOLL-FREE TELEPHONE LINE STUDY.** The department of industry, labor and human relations shall study the feasibility of establishing a toll-free telephone line to respond to questions about the petroleum storage remedial action program. The department shall report the results of its study to the joint committee on finance no later than September 1, 1994.

**SECTION 30. Appropriation changes; industry, labor and human relations.** (1) **PETROLEUM STORAGE REMEDIAL ACTION POSITIONS.** In the schedule under section 20.005 (3) of the statutes for the appropriation to the department of industry, labor and human relations under section 20.445 (1) (w) of the statutes, as affected by the acts of 1993, the dollar amount is increased by \$200,300, of which \$17,900 is for start-up costs, for fiscal year 1994–95 to increase the authorized FTE positions for the department by 2.8 SEG positions to process claims under the petroleum storage remedial action program and by 1.0 SEG position to provide outreach services and answer questions concerning that program and for related costs.

**SECTION 31. Initial applicability.** The treatment of section 101.143 (3) (a) 10. and 11., (ae), (am) and (as) of the statutes first applies to awards for discharges that are confirmed on the effective date of this SECTION.

**SECTION 32. Effective dates.** This act takes effect on the day after publication, except as follows:

(1) The treatment of section 101.143 (3) (a) (intro.), 10 and 11, (ae), (am) and (as) of the statutes and SECTION 31 of this act take effect retroactively to January 1, 1994.