

48 Op. Att'y Gen. No. 9

ENVIRONMENTAL QUALITY, DEPARTMENT OF - Reimbursement for expenses associated with release from petroleum storage tank;

PETROLEUM TANK RELEASE COMPENSATION FUND - Continued compliance with state and federal laws required for reimbursement;

UNDERGROUND STORAGE TANKS - Eligibility requirements for reimbursement for expenses associated with release from petroleum storage tank;

MONTANA CODE ANNOTATED - Title 75, chapter 11, part 3; sections 1-2-101, 75-11-301(5), -307, -308.

HELD:

A tank that has been granted eligibility for reimbursement under Mont. Code Ann. § 75-11-308 loses its eligibility status if the tank falls out of compliance with applicable state and federal laws and rules.

February 17, 2000

Mr. Tim Hornbacher, Chair
Petroleum Tank Release Compensation Board
1721 Cedar
Helena, MT 59601

Dear Mr. Hornbacher:

The Montana Petroleum Tank Release Compensation Board ("Board") has requested my opinion regarding the eligibility requirements for reimbursement for expenses associated with a release from a petroleum storage tank. As you know, the Board administers the Montana Petroleum Cleanup Fund ("Fund") which was created in 1989 to assist with the cost of cleaning up releases from underground storage tanks containing petroleum products.

Pursuant to title 75, chapter 11, part 3 of the Montana Code Annotated, owners and operators of petroleum storage tanks may obtain reimbursement from the Fund for expenses caused by a release. See Mont. Code Ann. § 75-11-307 (authorizing reimbursement for certain expenses but not for others). In order to qualify for reimbursement, however, the owner or operator must meet the eligibility requirements of Mont. Code Ann. § 75-11-308(1), which provides:

An owner or operator is eligible for reimbursement for the applicable percentage as provided in 75-11-307(4)(a) and (4)(b) of eligible costs caused by a release from a petroleum storage tank only if:

the release was discovered on or after April 13, 1989;

the department is notified of the release in the manner and within the time provided by law or rule;

the department has been notified of the existence of the tank in the manner required by department rule or has waived the requirement for notification;

the release was an accidental release;

with the exception of the release, the operation and management of the tank complied with applicable state and federal laws and rules that the board determines pertain to prevention and mitigation of petroleum releases when the release was discovered and remained in compliance following discovery of the release; and

the owner or operator undertakes corrective action to respond to the release and the corrective action is undertaken, in accordance with a corrective action plan approved by the department, from the time of discovery until the release is resolved.

Because this statute is written in the conjunctive, all six of these requirements must be met before an owner or operator is eligible for reimbursement. See State v. Hall, 1999 MT 297, 56 State Rptr. 1190, ____ P.2d ____.

Your question involves an interpretation of subsection (1)(e). Specifically, you ask:

If a tank that has been granted eligibility for reimbursement under Mont. Code Ann. § 75-11-308 falls out of compliance with applicable state and federal laws and rules, does the tank lose eligibility for reimbursement from the fund for the existing release?

By its plain terms, Mont. Code Ann. § 75-11-308(1)(e) renders ineligible for reimbursement any owner or operator whose tank subsequently falls out of compliance with applicable state and federal laws and rules. The Board relies upon this plain language to further conclude that eligibility is not restored even if the tank is subsequently brought back into compliance with applicable law.

In light of the rules of statutory construction, I conclude that the Board's interpretation of the statute is correct. Where the statutory language is plain and unambiguous, that language speaks for itself and there is no need to resort to extrinsic means of interpretation. Seypar, Inc. v. Water & Sewer Dist. No. 363, 1998 MT 149, ¶ 26, 289 Mont. 263, 960 P.2d 311. The function of statutory construction is "simply to ascertain and declare what is in terms or in substance contained therein, not to insert what has been omitted or to omit what has been inserted." Mont. Code Ann. § 1-2-101.

Here, the operative language of subsection (1)(e) is the phrase "remained in compliance." By its plain terms, this phrase requires that the tank be in an ongoing state of compliance in order for it to be eligible for reimbursement. It is not sufficient for the tank to "have been in" compliance at the time reimbursement is sought, then "go out of" compliance before full reimbursement is made, even if compliance is restored at some point. The statute clearly requires that compliance be maintained throughout the process in order for the eligibility requirement in subsection (1)(e) to be met. The legislature's use of the term "remained in" precludes any other interpretation of the statute.

As the Board points out, this determination does not render the tank ineligible for all times, but only for the then existing release. I acknowledge that this result may appear contrary to the overall intent of the legislature when it created the Fund and the statutes governing its administration. It is clear from the history of section 4, chapter 528 of the 1989 Laws of Montana that the legislature intended to mitigate financial impacts on small owners and operators who are forced to comply with federal regulations by providing a method of reimbursement for tank releases, while at the same time promoting environmental health. See Mins. on H.B. 603, House Taxation Comm., Feb. 14, 1989, at 1-5. These goals are further stated in Mont. Code Ann. § 75-11-301(5).

The statement of purpose and the legislative history of the bill would seem to favor reimbursement, rather than allowing an owner or operator to face potential bankruptcy as a result of an accidental release. Moreover, the interpretation of Mont. Code Ann. § 75-11-308(1)(e) rendered herein does not provide an incentive to owners and operators to bring into compliance any tank for which reimbursement has already been approved if that tank somehow falls out of compliance before reimbursement is complete. Nonetheless, I am bound by the plain words of the statute, which clearly require ongoing compliance with applicable law. The legislature should consider whether amendments are necessary to adjust the fit between its stated objectives and the language it adopted in the provision.

THEREFORE, IT IS MY OPINION:

A tank that has been granted eligibility for reimbursement under Mont. Code Ann. § 75-11-308 loses its eligibility status if the tank falls out of compliance with applicable state and federal laws and rules.

Sincerely,

JOSEPH P. MAZUREK
Attorney General
jpm/jma/dm