

State of South Dakota

SEVENTY-FIFTH SESSION
LEGISLATIVE ASSEMBLY, 2000

400D0787

SENATE BILL NO. 197

Introduced by: The Committee on State Affairs at the request of the Governor

1 FOR AN ACT ENTITLED, An Act to create a statewide underground tank cleanup program.

2 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

3 Section 1. That chapter 34A-13 be amended by adding thereto a NEW SECTION to read
4 as follows:

5 There is hereby created within the petroleum release compensation fund, a new program to
6 be known as the abandoned tank removal program. Under this program, the director may
7 provide payments for tank pulling and corrective action at abandoned sites where the owner or
8 the person having legal custody of an abandoned site has voluntarily requested such action in the
9 manner and time established by the secretaries of the departments of transportation and
10 environment and natural resources and if the following criteria are met:

11 (1) The owner or person having legal custody of the abandoned site has submitted to the
12 director a written request to have the tank removed. The request shall be made in the
13 manner established by the secretary of the Department of Transportation to include
14 documentation of eligibility for the site to participate in the abandoned tank removal
15 program, proof of ownership, and legal description;

16 (2) The owner or person having legal custody of the abandoned site has, in writing,
17 waived all claims against the state, its officers, agents, and employees for damages

1 resulting directly or indirectly from the tank pulling or corrective action;

2 (3) If the abandoned site is on private property, all property taxes are current; and

3 (4) The owner or person having legal custody of the abandoned site has agreed to transfer
4 ownership of the removed tank and its contents to the state.

5 No tank is eligible for coverage under this program if the tank is located at the site of a
6 commercially operational motor fuel vendor in service on or after April 1, 1998.

7 Section 2. That chapter 34A-13 be amended by adding thereto a NEW SECTION to read
8 as follows:

9 Payments made from the director for tank pulling and corrective action under the abandoned
10 tank removal program may include:

11 (1) Tank pulling, as defined in this chapter, including the disposal of tank contents and
12 specifically excluding the replacement of surface above the backfill area; and

13 (2) Removal of abandoned waste oil tanks and corrective action of a waste oil release
14 located on an abandoned site.

15 Section 3. That chapter 34A-13 be amended by adding thereto a NEW SECTION to read
16 as follows:

17 The owner or person having legal custody of the abandoned site shall, as a condition of
18 approval for participation in the abandoned tank removal program, execute a legally binding five-
19 year lien running with the land providing that any compensation received by the owner, the
20 owner's heirs, successors in interest, or assigns, for transfer of any interest in or part of the site,
21 shall be paid to the secretary of the Department of Transportation and deposited in the fund. No
22 lien may be for an amount more than ten thousand dollars or the cost of tank pulling and
23 corrective action identified in the lien by the director, whichever is less. Any lien provided by this
24 section is valid for five years from the date of recordation.

25 Section 4. That chapter 34A-13 be amended by adding thereto a NEW SECTION to read

1 as follows:

2 The Department of Environment and Natural Resources shall be responsible for conducting
3 or providing technical oversight of tank pulling and corrective actions subject to this Act. The
4 department may contract directly with consultants, contractors, other service providers, state
5 agencies, subdivisions of government, counties, cities, townships, and tribes, and purchase or
6 lease equipment necessary to conduct tank pulling and corrective action at abandoned sites that
7 meet the criteria of the abandoned tank removal program provided for in this Act. After receiving
8 itemized documentation of all actual costs from the department, the director shall make payment
9 within thirty days of receipt. All tank removals, pollution assessments, and corrective actions
10 taken under this Act shall comply with chapters 34A-2 and 34A-12 and the rules promulgated
11 thereunder.

12 Section 5. That chapter 34A-13 be amended by adding thereto a NEW SECTION to read
13 as follows:

14 The secretaries of the departments of transportation and environment and natural resources
15 may promulgate, pursuant to chapter 1-26, rules regarding practices and procedures necessary
16 to carry out the provisions of the abandoned tank removal program including the form and
17 procedure for application for qualifying for tank pulling and corrective action.

18 Section 6. That chapter 34A-13 be amended by adding thereto a NEW SECTION to read
19 as follows:

20 Except at sites determined to be high risk by the secretary of the Department of Environment
21 and Natural Resources using risk-based corrective action criteria, the director shall suspend
22 payments for tank pulling and corrective action at abandoned sites eligible for the abandoned
23 tank removal program if the balance of the fund is five million dollars or below. The director
24 shall resume payments for tank pulling and corrective action at abandoned sites eligible for the
25 abandoned tank removal program if the fund balance exceeds five million dollars. Except as

- 1 provided in this Act, all other limits of coverage, conditions, and criteria in this chapter apply to
- 2 tank pulling and corrective action taken at abandoned sites.