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BULLETIN 92-6

TO: Owners/Operators of Petroleum Storage Tanks Subject to Registration Under the Petroleum Release Compensation Fund Act

FROM: Earl R. Pomeroy, Commissioner

DATE: August 27, 1992

SUBJECT: Recent Supreme Court Case
West Plains Electric Cooperative

Recently, the North Dakota Supreme Court issued a ruling which affected the Petroleum Tank Release Compensation Fund. This bulletin is intended to explain the coverage provided by the Fund in light of the court's ruling. The court held in West Plains Electric Cooperative, Inc. v. Petroleum Tank Release Compensation Fund that reimbursement would be allowed for a nonregistered tank under the following narrow range of circumstances:

1. Tank removal prior to the June 1989 effective date of the Petroleum Tank Release Compensation Fund Act.

2. A release from the tank which occurred before the effective date of the Act and discovered after the effective date of the Act.

3. At the time of the release, the owner or operator of the tank was in compliance with state and federal rules and rules applicable to the tank, including rules relating to financial responsibility which were in effect at the time of the release.

The Supreme Court indicated that tanks in existence on the effective date of the Act and which continue to be in existence would require current and continued registration to be eligible for reimbursement. Registration fees will be assessed from the date the mandatory fee became required (April 18, 1991) in order to qualify for coverage under the Fund. Owner/operators of eligible petroleum tanks which are not presently registered are

in violation of North Dakota law. Tank owner/operators not current with registration are committing a Class B misdemeanor and would be ineligible for reimbursement if any leaks are discovered.

Tank owner/operators covered by the Fund obtain coverage in the amount of $1 million for clean-up costs and third-party liability. The annual fee requirement is $125 for underground storage tanks and $75 for aboveground storage tanks.

Should any tank owner have any questions regarding this case and/or the Fund in general, please contact Bob Olson, Administrator, or William E. Maxwell, Legal Counsel, of the North Dakota Insurance Department.

ERP/njb