

CHAPTER 50
HOUSE BILL No. 2756

AN ACT amending the Kansas storage tank act; providing for the reimbursement of certain expenses; establishing the Kansas essential fuels supply trust fund and the Kansas essential fuel supply trust fund compensation advisory board; amending K.S.A. 65-34,117 and K.S.A. 2005 Supp. 65-34,102 and repealing the existing sections.

Be it enacted by the Legislature of the State of Kansas:

New Section 1. (a) There is hereby established as a segregated fund in the state treasury the Kansas essential fuels supply trust fund. The fuels supply fund shall be administered by the secretary. Revenue from the following sources shall be deposited in the state treasury and credited to the fuels supply fund:

(1) The applicable proceeds of the environmental assurance fee imposed by K.S.A. 65-34,117, and amendments thereto; and

(2) interest attributable to investment of moneys in the fuels supply fund.

(b) The fuels supply fund shall be used for the following:

(1) To reimburse an eligible owner of an aboveground storage tank or bulk plant in accordance with the provisions of section 2, and amendments thereto, for allowable expenses for an upgrade or permanent closure of an aboveground storage tank or bulk plant; and

(2) payment of the administrative technical and legal costs incurred by the secretary in carrying out the provisions of sections 1 and 2, and amendments thereto, including the cost of any additional employees or increased general operating costs of the department attributable thereto, which costs shall not be payable from any moneys other than those credited to the fuels supply trust fund.

(c) On or before the 10th of each month, the director of accounts and reports shall transfer from the state general fund to the above Kansas essential fuels supply trust fund interest earnings based on:

(1) The average daily balance of moneys in the above Kansas essential fuels supply trust fund for the preceding month; and

(2) the net earnings rate of the pooled money investment portfolio for the preceding month.

(d) All expenditures from the above Kansas essential fuels supply trust fund shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the secretary for the purposes set forth in this section.

(e) This section shall be part of and supplemental to the Kansas storage tank act.

New Sec. 2. (a) The secretary may provide for the reimbursement to eligible owners of aboveground storage tanks or bulk plants in accordance with the provisions of this section and subject to the availability of moneys in the Kansas essential fuels supply trust fund. An aboveground storage tank or bulk plant shall be eligible for reimbursement under this section, if such aboveground storage tank or bulk plant is used for the storage of petroleum products for resale.

(b) The secretary may reimburse the owner of an aboveground storage tank facility or bulk plant for upgrade expenses or permanent closure expenses, in the amount specified in subsection (c), if all of the following criteria are met:

(1) The aboveground storage tank facility was registered with the department on or after November 22, 1993;

(2) the aboveground storage tank contains petroleum products;

(3) application is made on or before January 1, 2009, on a form provided by the department;

(4) upgrade expenses must be incurred after August 1, 2001, and not later than October 30, 2007. Upgrade expenses are limited to reasonable and necessary to the installation or improvement of equipment or systems required for compliance with 40 CFR 112. Such expenses shall include, but are not limited to, installation or upgrade of the following:

(A) Secondary containment;

(B) integrity testing;

(C) corrosion protection;

(D) loss prevention;

(E) engineering costs;

(F) security;

(G) drainage; and

(H) removal of noncompliant tanks;

(5) expenses for permanent closure activities, must be incurred after August 1, 2001, and not later than October 30, 2007. Only expenses for activities reasonable and necessary to permanently close an aboveground storage tank facility are eligible for reimbursement. Reasonable and necessary activities eligible for reimbursement include, but are not limited to, the following:

(A) Removal of the tank and piping system;

(B) removal of tank support and confinement systems;

(C) removal of security systems;

(D) cleaning of tanks; and

(E) disposal of waste petroleum and other waste material including concrete.

(c) Applications for reimbursement must be made on forms supplied by the department. Applications for reimbursement must include documentation of the facility upgrade or permanent closure activities and expense. Proof of payment of all expenses for which reimbursement is requested must be provided. The department will review those expenses based on current industry costs and provide reimbursement of reasonable and necessary costs. The department shall reimburse an applicant for 90% of the approved cost of the facility upgrade or permanent closure not to exceed \$25,000 per facility. Disputes regarding application approval, reimbursement rates or reimbursement amounts will be referred to the Kansas essential fuel supply trust fund compensation advisory board.

(d) If the owner of an aboveground storage tank facility contracts with another individual or business entity to perform the upgrade or permanent closure activities, the expenses may be submitted to the department for reimbursement under this section. The department may deny any claim for reimbursement that fails to provide adequate proof of payment in full to the contracting party. The owner may obtain prior approval from the department of the activities to be performed and the expenses to be incurred.

(e) Owners of aboveground storage tanks or bulk plant may enter into an agreement with the department to perform upgrades or permanent closures after the deadline and receive reimbursement if they comply with the following criteria:

(1) The owner has signed a contract with a vendor to perform the work prior to the deadline; and

(2) the vendor indicates that they are unable to perform the work before the deadline.

(f) The secretary may adopt such rules and regulations deemed necessary to carry out the provisions of this section.

(g) The provisions of this section shall be part of and supplemental to the Kansas storage tank act.

New Sec. 3. (a) There is hereby established the Kansas essential fuel supply trust fund compensation advisory board composed of five members, including the state fire marshal or the state fire marshal's designee, the director of the division of environment of the department or designee, two representatives from the petroleum industry, at least one of which shall be a petroleum marketer and one representative from the petroleum equipment installation industry. The governor shall appoint the appointive members of the board, and the members so appointed shall serve for terms of the duration of fuels supply fund. The governor also shall designate a member of the board as its chair, to serve in such capacity at the pleasure of the governor. The secretary shall provide staff to support the activities of the board.

(b) Appointed members of the board attending meetings of such board, or attending a subcommittee meeting thereof, when authorized by such board, shall receive the amounts provided in subsection (e) of K.S.A. 75-3223, and amendments thereto.

(c) The board shall provide advice and counsel and make recommendations to the secretary regarding disputes over the disbursement of moneys from the Kansas essential fuel supply trust fund.

New Sec. 4. Except as provided in K.S.A. 74-7246, and amendments thereto, the board and the Kansas essential fuels supply trust fund shall be and are hereby abolished on July 1, 2010. At the time of such abolishment remaining funds shall be deposited in the underground fund.

Sec. 5. K.S.A. 2005 Supp. 65-34,102 is hereby amended to read as

follows: 65-34,102. As used in the Kansas storage tank act:

(a) "Aboveground storage tank" means:

(1) Any storage tank in which greater than 90% of the tank volume, including volume of the piping, is not below the surface of the ground;

or

(2) any storage tank situated in an underground area, such as a basement, cellar, mine working, drift, shaft or tunnel, if the storage tank is situated upon or above the surface of the floor.

(b) "Aboveground fund" means the aboveground petroleum storage tank release trust fund.

(c) "Department" means the Kansas department of health and environment.

(d) "Facility" means all contiguous land, structures and other appurtenances and improvements on the land used in connection with one or more storage tanks.

(e) "Federal act" means the solid waste disposal act, 42 U.S.C. sections 3152 et seq., as amended, particularly by the hazardous and solid waste amendments of 1984, P.L. 98-616, 42 U.S.C. sections 6991 et seq., as amended by P.L. 99-499, 1986, and rules and regulations adopted pursuant to such federal laws and in effect on the effective date of this act.

(f) "Financial responsibility" means insurance, guarantee, surety bond, letter of credit, qualification as a self-insurer or any other method satisfactory to the secretary to provide for taking corrective action, including cleanup and restoration of any damage to the land, air or waters of the state, and compensating third parties for cleanup, bodily injury or property damage resulting from a sudden or nonsudden release of a regulated substance arising from the construction, relining, ownership or operation of an underground storage tank and in the amount specified in the federal act.

(g) "Guarantor" means any person, other than an owner or operator, who provides evidence of financial responsibility for an owner or operator.

(h) "Operator" means any person in control of or having responsibility for the daily operation of a storage tank, but such term shall not include a person whose only responsibility regarding such storage tank is filling such tank with a regulated substance and who does not dispense or have control of the dispensing of regulated substances from the storage tank.

(i) "Own" means to hold title to or possess an interest in a storage tank or the regulated substance in a storage tank.

(j) (1) "Owner" means any person who: (A) Is or was the owner of any underground storage tank which was in use on November 8, 1984, or brought into use subsequent to that date; (B) in the case of an underground storage tank in use prior to November 8, 1984, owned such tank immediately prior to the discontinuation of its use; (C) is or was the owner of any aboveground storage tank which was in use on July 1, 1992, or brought into use subsequent to that date; or (D) in the case of an aboveground storage tank in use prior to July 1, 1992, owned such tank immediately prior to the discontinuation of its use.

(2) Owner does not include: (A) A person who holds an interest in a petroleum storage tank solely for financial security, unless through foreclosure or other related actions the holder of a security interest has taken possession of the storage tank; and (B) any city or county which obtains a storage tank or regulated substance as a result of tax foreclosure proceedings.

(k) "Person" means an individual, trust, firm, joint venture, consortium, joint-stock company, corporation, partnership, association, state, interstate body, municipality, commission, political subdivision or any agency, board, department or bureau of this state or of any other state or of the United States government.

(l) "Petroleum" means petroleum, including crude oil or any fraction thereof, which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pound per square inch absolute), including but not limited to, gasoline, gasohol, diesel fuel, fuel oils ~~and~~, kerosene *and biofuels*.

(m) "Petroleum product" means petroleum other than crude oil.

(n) "Petroleum storage tank" means any storage tank used to contain an accumulation of petroleum.

(o) "Regulated substance" means petroleum or any element, compound, mixture, solution or substance defined in section 101(14) of the

Comprehensive Environmental Response, Compensation and Liability Act of 1980 of the United States as in effect on January 1, 1989, but not if regulated as a hazardous waste under the Resource Conservation and Recovery Act of 1976 (42 U.S.C. Secs. 6921 through 6939b), as in effect on January 1, 1989.

(p) "Release" means any spilling, leaking, emitting, discharging, escaping, leaching or disposing from a storage tank into groundwater, surface water or soils.

(q) "Removal" means the process of removing or disposing of a storage tank, no longer in service, and also shall mean the process of abandoning such tank, in place.

(r) "Repair" means modification or correction of a storage tank through such means as relining, replacement of piping, valves, fillpipes, vents and liquid level monitoring systems, and the maintenance and inspection of the efficacy of cathodic protection devices, but the term does not include the process of conducting a tightness test to establish the integrity of a tank.

(s) "Secretary" means the secretary of health and environment.

(t) "Storage tank" means any one or combination of tanks used to contain an accumulation of regulated substances, the associated piping and ancillary equipment and the containment system.

(u) "Tank" means a stationary device designed to contain an accumulation of substances and constructed of non-earthen materials such as concrete, steel or plastic, that provide structural support.

(v) "Terminal" means a bulk storage facility for storing petroleum supplied by pipeline or marine vessel.

(w) "Trade secret" has the same meaning as provided in K.S.A. 60-3320 and amendments thereto.

(x) "Underground storage tank" means any storage tank in which 10% or more of the tank volume, including volume of the piping, is below the surface of the ground. Underground storage tank does not include any storage tank situated in an underground area, such as a basement, cellar, mine working, drift, shaft or tunnel, if the storage tank is situated upon or above the surface of the floor.

(y) "Underground storage tank contractor" or "contractor" means a business which holds itself out as being qualified to install, repair or remove underground storage tanks.

(z) "Underground fund" means the underground petroleum storage tank release trust fund.

(aa) "Underground storage tank installer" or "installer" means an individual who has an ownership interest or exercises a management or supervisory position with an underground storage tank contractor. The term shall include the crew chief, expediter, engineer, supervisor, leadman or foreman in charge of a tank installation project.

(bb) "*Bulk plant*" means an aboveground storage tank facility, not located at a pipeline terminal or located on a federal facility, with a storage capacity of 1,320 gallons or more, but less than 1,000,000 gallons, used to dispense petroleum to tanker trucks for transportation and sale at another location;

(cc) "*fuels supply fund*" means the Kansas essential fuels supply trust fund.

Sec. 6. K.S.A. 65-34,117 is hereby amended to read as follows: 65-34,117. (a) There is hereby established on and after July 1, 1992, an environmental assurance fee of \$.01 on each gallon of petroleum product, other than aviation fuel, manufactured in or imported into this state. The environmental assurance fee shall be paid by the manufacturer, importer or distributor first selling, offering for sale, using or delivering petroleum products within this state. The environmental assurance fee shall be paid to the department of revenue at the same time and in the same manner as the inspection fee established pursuant to K.S.A. 55-426, and amendments thereto, is paid. The secretary of revenue shall remit the environmental assurance fees paid hereunder to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of either the aboveground fund or underground fund, as provided by subsection (b). Exchanges of petroleum products on a gallon-for-gallon basis within a terminal and petroleum product which is subsequently exported from this state shall be exempt from this fee.

(b) Moneys collected from the environmental assurance fee imposed by this section shall be credited as follows:

(1) At any time when the unobligated principal balance of the underground fund is equal to \$2,000,000 or less, the moneys shall be credited to the underground fund until the unobligated principal balance of underground fund equals or exceeds \$5,000,000.

(2) At any time when the unobligated principal balance of the aboveground fund is equal to \$500,000 or less and the moneys are not required to be credited to the underground fund under subsection (b)(1), such moneys shall be credited to the aboveground fund until the unobligated principal balance of the aboveground fund equals or exceeds \$1,500,000 or until subsection (b)(1) requires moneys to be credited to the underground fund, whichever occurs first. At any time when the unobligated principal balance of the aboveground fund exceeds \$1,500,000, the excess shall be transferred to the underground fund.

(3) At any time when the moneys cease to be credited to aboveground fund before the unobligated principal balance of the aboveground fund equals or exceeds \$1,500,000, such moneys shall again be credited to the aboveground fund when the unobligated principal balance of the underground fund equals or exceeds \$5,000,000. Such moneys shall continue to be credited to the aboveground fund until the unobligated principal balance of the aboveground fund equals or exceeds \$1,500,000 or until subsection (b)(1) requires moneys to be credited to the underground fund, whichever occurs first.

(4) *At any time when subsections (b)(1), (b)(2) and (b)(3) do not require moneys to be credited to either the underground fund or the aboveground fund, the excess shall be transferred to the Kansas essential fuels supply trust fund. If the unobligated principal balance of the Kansas essential fuels supply trust fund is equal to \$2,000,000 or less, the moneys shall be credited to the Kansas essential fuels supply trust fund until the unobligated principal balance of the Kansas essential fuels supply trust fund equals or exceeds \$5,000,000 or until subsections (b)(1), (b)(2) or (b)(3) require money.*

(c) At any time when subsections (b)(1), (b)(2) ~~and~~, (b)(3) and (b)(4) do not require moneys to be credited to either the underground fund or the aboveground fund, no environmental assurance fees shall be levied unless and until such time as the unobligated principal balance in the underground fund is less than or equal to \$2,000,000 or the unobligated principal balance in the aboveground fund is less than or equal to \$500,000, in which case the collection of the environmental assurance fee will resume within 90 days following the end of the month in which such unobligated balance occurs. If no environmental assurance fees are being levied, the director of accounts and reports shall notify the secretary of revenue whenever the unobligated principal balance in the underground fund is \$2,000,000 or the unobligated principal balance in the aboveground fund is \$500,000, and the secretary of revenue shall then give notice to each person subject to the environmental assurance fee as to the imposition of the fee and the duration thereof.

The director of accounts and reports shall cause to be published each month, in the second issue of the Kansas register published in such month, the amount of the unobligated principal balances in the underground fund and the aboveground fund on the last day of the preceding calendar month.

(d) Every manufacturer, importer or distributor of any petroleum product liable for the payment of environmental assurance fees as provided in this act, shall report in full and detail before the 25th day of every month to the secretary of revenue, on forms prepared and furnished by the secretary of revenue, and at the time of forwarding such report, shall compute and pay to the secretary of revenue the amount of fees due on all petroleum products subject to such fee during the preceding month.

(e) All fees imposed under the provisions of this section and not paid on or before the 25th day of the month succeeding the calendar month in which such petroleum products were subject to such fee shall be deemed delinquent and shall bear interest at the rate of 1% per month, or fraction thereof, from such due date until paid. In addition thereto, there is hereby imposed upon all amounts of such fees remaining due and unpaid after such due date a penalty in the amount of 5% thereof. Such penalty shall be added to and collected as a part of such fees by the

secretary of revenue.

(f) The secretary of revenue is hereby authorized to adopt such rules and regulations as may be necessary to carry out the responsibilities of the secretary of revenue under this section.

Sec. 7. K.S.A. 65-34,117 and K.S.A. 2005 Supp. 65-34,102 are hereby repealed.

Sec. 8. This act shall take effect and be in force from and after its publication in the statute book.

Approved March 28, 2006.
