

CHAPTER 34

SENATE BILL No. 190
(Amended by Chapter 180)

AN ACT relating to the Kansas storage tank act; concerning training for operators of underground storage tanks; funding; amending K.S.A. 65-34,110 and 65-34,114 and K.S.A. 2006 Supp. 65-34,132 and 65-34,134 and repealing the existing sections.

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

New Section 1. (a) Operators of underground storage tanks must complete a training program commensurate with their responsibility for the operation of underground storage tanks. The training program shall be approved by the department and will encompass three levels of training:

(1) Persons having primary responsibility for on-site operation and maintenance of underground storage tank systems;

(2) persons having daily on-site responsibility for the operation and maintenance of underground storage tank systems;

(3) daily, on-site employees having primary responsibility for addressing emergencies presented by a spill or release from an underground storage tank system.

(b) Storage tank operators must demonstrate that they have completed the training required by the department in order to obtain an annual permit for the operation of underground storage tanks.

(c) Operators of underground storage tanks must repeat the applicable training if the tank for which they have primary daily on-site management responsibilities is determined to be out of compliance with a requirement or a standard of the department.

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

Sec. 2. K.S.A. 65-34,110 is hereby amended to read as follows: 65-34,110. (a) It shall be unlawful for any person to practice, or hold oneself out as authorized to practice, as an underground storage tank installer or underground storage tank contractor or use other words or letters to indicate such person is a licensed installer or contractor unless the person is licensed in accordance with this section.

(b) The secretary shall:

(1) Develop and administer a written examination to candidates for licensing under the terms of this section. Questions used in the examination shall be derived from standard instructions and recommended practices published by such authorities as the Petroleum Equipment Institute, American Petroleum Institute, Steel Tank Institute, National Association of Corrosion Engineers, Fiberglass Tank and Pipe Manufacturers Institute, National Fire Protection Association, Western Fire Chiefs Association and Underwriters Laboratories. Additional questions shall be derived from state and federal regulations applicable to storage tanks. The secretary shall make available sample questions and related material to qualified candidates to be used as a study guide in preparation for the examination.

(2) Conduct at least one on-site inspection annually, observing procedures used by each licensed underground storage tank contractor for installing, repairing or removing an underground storage tank.

(c) Any person who willfully violates any provision of subsection (a) shall be guilty of a class C misdemeanor and, upon conviction thereof, shall be punished as provided by law.

(d) Prior to 12 months after the effective date of this act, the department shall conduct written examinations, at such times and locations within the state as the department may designate, for the purpose of identifying installers as being qualified to receive an underground tank installer's license. Each underground tank installer's license shall be issued for a period of two years and shall be subject to periodic renewal thereafter under procedures prescribed by the department.

(e) Beginning 18 months after the effective date of this act, no contractor shall engage in the installation, repair or removal of an underground storage tank unless such contractor has been issued a contractor license. Each contractor license shall be issued for a period of two years and shall be subject to periodic renewal thereafter under procedures prescribed by the department.

(f) A contractor must meet the following requirements to qualify for

a contractor license:

(1) At least one active officer or executive of the business must possess a valid underground storage tank installer's license.

~~(2) The contractor must submit documentation showing that it has insurance, surety bonds or liquid company assets which, in combination, represent a value equal to the value of the largest underground storage tank installation, removal or repair contract performed by the contractor during the previous two years. Any person who manufactures an underground fuel storage tank for use in Kansas, or piping for such tank, or who installs or repairs such tanks or piping, shall maintain evidence of financial responsibility in an amount equal to or greater than \$1,000,000 per occurrence and \$2,000,000 annual aggregate for the costs of corrective action directly related to releases caused by improper manufacture, installation or repair of such tank or piping.~~

(3) *The requirement in paragraph (2) shall not apply to the installation or repair of a fuel tank or piping performed by the owner or operator of such fuel tank or piping.*

(4) *Evidence of financial responsibility shall be presented with an application for a contractor license and subsequent renewals of contractor license to the department.*

~~(5)~~ (5) The contractor must state in its license application and agree that at all times on any and all jobs involving the installation, repair or removal of an underground storage tank, an individual who possesses a valid underground storage tank installer's license will be present at the job site not less than 75% of the time during the progress of the work, and that such installer shall exercise responsible supervisory control over the work.

(6) *The secretary may promulgate rules and regulations to implement the provisions of this subsection.*

(g) The secretary may elect to establish reciprocal arrangements with states having similar licensing requirements and to provide for the licensing in this state of persons who have successfully completed examinations and otherwise qualified for licensure in another state.

(h) A valid interim contractor license or an unexpired contractor license shall be valid in all counties and municipalities throughout the state, and the issuance of either license to a contractor shall serve as authority for the contractor to engage in the installation, repair and removal of underground storage tanks in any jurisdiction within the state without requirement for obtaining additional county or local licenses. However, local jurisdictions may impose more stringent requirements for installation, repair or removal of such tanks than are imposed by state regulations, in which case a contractor shall be required to conduct its operations in the local jurisdiction in conformity with the local requirements.

Sec. 3. K.S.A. 65-34,114 is hereby amended to read as follows: 65-34,114. (a) There is hereby established as a segregated fund in the state treasury the underground petroleum storage tank release trust fund, which shall be a continuation of the petroleum storage tank release trust fund. The underground fund shall be administered by the secretary. Revenue from the following sources shall be deposited in the state treasury and credited to the underground fund:

(1) The applicable proceeds of the environmental assurance fee imposed by this act;

(2) any moneys recovered by the state under the provisions of this act relating to underground storage tanks, including administrative expenses, civil penalties and moneys paid under an agreement, stipulation or settlement;

(3) interest attributable to investment of moneys in the underground fund;

(4) moneys received by the secretary in the form of gifts, grants, reimbursements or appropriations from any source intended to be used for the purposes of the underground fund, but excluding federal grants and cooperative agreements; and

(5) amounts transferred to the underground fund by the plan adopted pursuant to K.S.A. 65-34,126 and amendments thereto, as provided by K.S.A. 65-34,126 and amendments thereto.

(b) The underground fund shall be administered so as to assist owners and operators of underground petroleum storage tanks in providing evidence of financial responsibility for corrective action required by a release from any such tank. Moneys deposited in the underground fund may be

expended for the purpose of reimbursing owners and operators and such others as provided by this act for the costs of corrective action and for transfers to the plan adopted pursuant to K.S.A. 65-34,126 and amendments thereto, as provided by K.S.A. 65-34,126 and amendments thereto subject to the conditions and limitations prescribed by this act, but moneys in the underground fund shall not otherwise be used for compensating third parties for bodily injury or property damage caused by a release from an underground petroleum storage tank, other than property damage included in a corrective action plan approved by the secretary. In addition, moneys credited to the underground fund may be expended for the following purposes:

(1) To permit the secretary to take whatever emergency action is necessary or appropriate to assure that the public health or safety is not threatened whenever there is a release or potential release from an underground petroleum storage tank;

(2) to permit the secretary to take corrective action where the release or potential release presents an actual or potential threat to human health or the environment, if the owner or operator has not been identified or is unable or unwilling to perform corrective action, including but not limited to providing for alternative water supplies;

(3) payment of the state's share of the federal leaking underground storage tank trust fund cleanup costs, as required by the resource conservation and recovery act, 42 U.S.C. § 6991b(h)(7)(B);

(4) payment of the administrative, technical and legal costs incurred by the secretary in carrying out the provisions of K.S.A. 65-34,114 through 65-34,124, and amendments thereto, with respect to underground storage tanks, 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 underground fund;

(5) reimbursement of persons as authorized by subsection (g) of K.S.A. 65-34,119 and amendments thereto; ~~and~~

(6) payment of refunds as authorized by subsection (h) of K.S.A. 65-34,119 and amendments thereto; *and*

(7) *payment of the administrative, technical and legal costs incurred by the secretary in carrying out the provisions of K.S.A. 65-34,104 through 65-34,113, and amendments thereto, with respect to underground storage tanks, providing additional enforcement, reporting and operator training required by the energy policy act of 2005, including the cost of any additional employees, contracting 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 underground fund.*

(c) The underground fund shall be used for the purposes set forth in this act and for no other governmental purposes. It is the intent of the legislature that the underground fund shall remain intact and inviolate for the purposes set forth in this act, and moneys in the underground fund shall not be subject to the provisions of K.S.A. 75-3722, 75-3725a and 75-3726a, and amendments thereto.

(d) Neither the state of Kansas nor the underground fund shall be liable to an owner or operator for the loss of business, damages or taking of property associated with any corrective or enforcement action taken pursuant to this act.

(e) On or before the 10th of each month, the director of accounts and reports shall transfer from the state general fund to the underground fund interest earnings based on:

(1) The average daily balance of moneys in the underground fund for the preceding month; and

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

(f) All expenditures from the underground 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.

Sec. 4. K.S.A. 2006 Supp. 65-34,132 is hereby amended to read as follows: 65-34,132. (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~~ *July 1, 2009*. 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~~ *July 1, 2009*. 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.

Sec. 5. K.S.A. 2006 Supp. 65-34,134 is hereby amended to read as follows: 65-34,134. ~~Except as provided in K.S.A. 74-7246, and amendments thereto,~~ The *Kansas essential fuels supply trust fund compensation advisory* board and the Kansas essential fuels supply trust fund shall be and are hereby abolished on July 1, ~~2010~~ 2012. At the time of such abolishment remaining funds shall be deposited in the underground fund.

Sec. 6. K.S.A. 65-34,110 and 65-34,114 and K.S.A. 2006 Supp. 65-34,132 and 65-34,134 are hereby repealed.

Sec. 7. This act shall take effect and be in force from and after its publication in the statute book.

Approved March 23, 2007.
