PMCA
of Kansas

March 11, 2015

Memorandum:

To: Senate Natural Resources Committee
From: Thomas M. Palace Executive Director
PMCA of Kansas
Re: Testimony Supporting HB 2192

Mr. Chairman and Members of the Senate Natural Resources Committee:

My name is Tom Palace. I am the Executive Director of the Petroleum Marketers and Convenience Store Association of Kansas (PMCA of Kansas), a statewide trade association representing over 300 independent Kansas petroleum distribution companies and convenience store retailers throughout Kansas.

We stand before you as a proponent of HB 2192.

This bill:

- Creates the Environmental Stewardship Fund (ESF) to be used for whatever emergency action is necessary to respond to environment threat to public safety.
- The Environmental Trust Fund fee of $.01 will be used to fund the UST, AST, Redevelopment Fund and ETF.
- Incentivizes Underground Storage Tank Owners to upgrade single wall USTs to double wall USTs using the Redevelopment fund. Double wall tank systems are a requirement established by the EPA and put in statute in accordance with the 2005 Federal Energy and Policy Act.
- Incentive is $50,000 – new sites would not be eligible for this money…only replacement of existing tanks is eligible.
- The fund would pay out up to $3 million annually.
- Reimbursement would begin July 2015 and end July 2020.
- Retroactive to 2005 (when the Federal Energy Bill was passed Congress) for facilities that replaced single wall tanks.
- Waive the deductible for facilities entering the trust fund 2015-2020.
- The Environmental Trust Fund Fee will go on and off as fund balances reach certain limits. UST - $2-$5M; AST - $500,000 - $1.5M; Redevelopment Fund - $2-$5m; ESF - $2-$5M.

PMCA has worked closely with the Kansas Department of Health and Environment on many issues related to the Underground Storage Tank (UST) program that was established in 1989.

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Senate Natural Resources
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Our working relationship requires both KDHE and PMCA to be flexible when a federal mandate is passed down from the EPA.

The 2005 Federal Energy and Policy Act require UST owners to protect groundwater from releases of regulated substances…in our case releases from USTs. Currently, KDHE requires UST owners to upgrade single wall tank systems to double wall tank systems if more than 51% of the tank is damaged and needs repair. HB 2192 potentially could speed that process up if UST owners can apply and receive the reimbursement provided in this bill.

Upgrading USTs is an expensive endeavor with costs that can reach $250,000 per site and NO return on investment. UST owners have no way to recoup costs associated tank upgrades.

I have attached a document that will help the committee understand how the $.01 environmental fee works and why this program is essential to UST owners in Kansas.

In closing, the committee should be aware that the environmental trust fund that KDHE administrates is probably one of the best programs in the United States. We applaud the efforts of Leo Henning and Randy Carlson for their supervision over the Bureau of Environmental Remediation.

Thank you

The Kansas Petroleum Storage Tank Release Trust Funds

Overview

The Storage Tank Act establishes two separate Trust Funds to assist owners and operators of storage tanks with the cost of remedial actions. Both funds are designed to provide financial assistance to owners and operators of facilities where contamination from petroleum storage tanks has occurred. The Trust Funds are financed from a $.01 fee placed on each gallon of petroleum (except aviation fuel) product manufactured in or imported into the state. The funds will be abolished on July 1, 2024 by the sunset provision unless reenacted by the Legislature. Outlined below is a brief summary of the program.

Who Qualifies for Reimbursement from the State Trust Funds:

- Owners or operators of underground and aboveground storage tanks. Private businesses, local and state governments who own/operate petroleum storage tanks are eligible.
- To be eligible, the contamination at the site must have been discovered on or after December 22, 1988.
- Owners or operators of farm or residential tanks of 1,100 gallons or less and tanks used to store heating oil at a single family residence may qualify for reimbursement.

Who Does Not Qualify for Reimbursement:

- The federal government.
- Owners or operators who meet the federal criteria for self-insurance and whose leaking tank is located on a facility that is engaged in the refining or production of petroleum.
- Owners or operators who knowingly allow a release of petroleum to occur or who do not cooperate in conducting the appropriate corrective action.
- Owners or operators of storage tanks at pipeline facilities where releases have occurred.

How to Obtain Reimbursement from the State Trust Funds:

- Submit an application for assistance from the appropriate fund.
- KDHE Trust Fund Staff will prepare and provide the owner with a pre-approved corrective action plan at a time determined by the priority ranking system. The work-scope will be prepared to assist the owner or operator in obtaining the required competitive bids.
- Three bids for all work associated with the remedial action must be obtained and approved in writing by KDHE Trust Fund Staff prior to the work being conducted.
- KDHE offers a bid assistance program for those who prefer to have KDHE obtain bids for them.
- The applicant must sign a consent agreement with KDHE related to implementation of the corrective action under the applicable fund.

Compliance Requirements:

To avoid potential fines, all regulated storage tanks must be registered with KDHE and must be in compliance with inventory control, release detection, and release reporting requirements. At the time they are approved for Trust Fund assistance, storage tank owners or operators who are not in compliance will be fined based upon the following:

- Failure to register STs: $50.00 per ST
- Failure to maintain inventory control: $300.00 per ST (first violation)
- Failure to perform release detection: $2,000.00 per ST, $250.00 per line system
- Failure to immediately (within 24 hours) report a release: $2,500.00 per release
- Failure to cooperate with KDHE directives: $2,500.00 per site
- Operating STs without a permit: $2,000.00 per site (first time offense per owner)
- Failure to provide financial responsibility (third party liability coverage) for underground storage tanks: $500 per UST.

Petroleum Storage Tank Release Trust Fund Site Ranking System:

Due to the overwhelming number of applications for assistance from the funds, KDHE has developed a ranking system which evaluates the risk associated with each site. This ranking system takes into account several factors related to each site to determine which sites pose the greatest risk to the public. Using the ranking system KDHE assigns a score to each site. This score will establish the order in which sites are investigated and remediated. By using this method KDHE can focus limited resources on resolving the greatest risks to the public.

Costs Covered by the State Trust Funds:
(Cost must be pre-approved in writing by KDHE Trust Fund staff prior to the start of work)

- Preparation of corrective action plans which address the extent of contamination.
- Investigation and assessment of the contamination or petroleum release.
- Disposal and treatment of contaminated soil, groundwater, and/or surface water.
- Removal of contaminants from soil, groundwater, and/or surface water.
- Monitoring of the soil, groundwater, and/or surface water and maintenance of the monitoring equipment.
- Restoration or replacement of public water supplies.

Costs Not Covered by the State Trust Funds:

- Repair, removal, replacement, or disposal of tanks, product in tanks, lines, or dispensers.
- Costs for the loss of business or costs for third party bodily injury or property damage.
- Work or costs not approved in writing by KDHE Trust Fund Staff prior to the work being conducted.

Deductibles:

The deductible for each release is $3,000 plus $500 for each tank (above and below ground) located at the site of the release.

Financial Limitations of the Trust Funds:

- For each petroleum release: one million dollars, less the deductible.
- For owners or operators who own less than 100 tanks: a total annual amount of $1,000,000 for all sites owned or operated, less any deductibles.
- For owners or operators who own more than 100 tanks: a total annual amount of $2,000,000 for all sites owned or operated, less any deductibles.
- Reimbursement will not be provided for costs covered by insurance policies, warranties, or other financial assistance.

Underground Storage Tank Third Party Liability Insurance (Financial Responsibility):

- Third Party Liability Insurance is available through your local insurance agent for USTs.