

**65-34,114. Underground petroleum storage tank release trust fund.** (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;
- (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.

**History:** L. 1989, ch. 186, § 15; L. 1990, ch. 229, § 1; L. 1992, ch. 305, § 3; L. 1996, ch. 253, § 18; L. 2007, ch. 34, § 3; July 1.