

SENATE BILL No. 27

AN ACT concerning health and environment; relating to the Kansas storage tank act; increasing the limit of certain liability amounts; reimbursements; extending the existence of the underground fund, aboveground fund, UST redevelopment fund and the UST redevelopment fund compensation advisory board; amending K.S.A. 65-34,105, 65-34,118, 65-34,119, 65-34,120, 65-34,123, 65-34,128, 65-34,134 and 65-34,139 and repealing the existing sections.

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

Section 1. K.S.A. 65-34,105 is hereby amended to read as follows: 65-34,105. (a) The secretary is authorized and directed to adopt rules and regulations necessary to administer and enforce the provisions of this act. Any rules and regulations so adopted shall be reasonably necessary to preserve, protect and maintain the waters and other natural resources of this state, and reasonably necessary to provide for the prompt investigation and cleanup of sites contaminated by a release from a storage tank. In addition, any rules and regulations or portions thereof ~~which~~ *that* pertain to underground storage tanks or the owners and operators thereof shall be adopted for the purpose of enabling the secretary and the department to implement the federal act, and such rules and regulations so adopted shall be consistent with the federal act. Consistent with these purposes, the secretary shall adopt rules and regulations:

(1) Establishing performance standards for underground storage tanks first brought into use on or after May 18, 1989. The performance standards for new underground storage tanks shall include, but are not limited to, design, construction, installation, release detection and product compatibility standards;

(2) establishing performance standards for aboveground storage tanks brought into use after May 18, 1989. The performance standards shall not exceed those performance standards adopted by the administrator of the U.S. environmental protection agency and for new aboveground storage tanks shall include, but are not limited to, design, construction, installation, release detection and product compatibility standards;

(3) establishing performance standards for the inground repair of underground storage tanks. The performance standards shall include, but are not limited to, specifying under what circumstances an underground storage tank may be repaired and specifying design, construction, installation, release detection, product compatibility standards and warranty;

(4) establishing performance standards for maintaining spill and overflow equipment, leak detection systems and comparable systems or methods designed to prevent or identify releases. In addition, the secretary shall establish standards for maintaining records and reporting leak detection monitoring, inventory control and tank testing or comparable systems;

(5) establishing requirements for reporting a release and for reporting and taking corrective action in response to a release;

(6) establishing requirements for maintaining evidence of financial responsibility to be met by owners and operators of underground storage tanks;

(7) establishing requirements for the closure of storage tanks including the removal and disposal of storage tanks and regulated substance residues contained therein to prevent future releases of regulated substances into the environment;

(8) for the approval of tank tightness testing methods, including determination of the qualifications of persons performing or offering to perform such testing;

(9) establishing site selection and cleanup criteria regarding corrective actions related to a release, ~~which~~. *Such* criteria shall address

the following: The physical and chemical characteristics of the released substance, including toxicity, persistence and potential for migration; the hydrogeologic characteristics of the release site and the surrounding land; the proximity, quality and current and future uses of groundwater; an exposure assessment; the proximity, quality and current and future use of surface water; and the level of the released substance allowed to remain on the facility following cleanup;

(10) prescribing fees for the following with regard to storage tanks: Registration, issuance of permits, approval of plans for new installations and conducting of inspections. The fees shall be established in such amounts that revenue from such fees does not exceed the amount of revenue required for the purposes provided by ~~subsection (b) of K.S.A. 65-34,128(b)~~. All fees for ~~underground storage tanks shall be deposited in the state general fund and all fees for aboveground storage tanks collected pursuant to this subsection~~ shall be deposited in the storage tank fee fund;

(11) for determining the qualifications, adequacy of performance and financial responsibility of persons desiring to be licensed as underground storage tank installers or contractors. In adopting rules and regulations, the secretary may specify classes of specialized activities, such as the installation of corrosion protection devices or inground relining of underground storage tanks, and may require persons wishing to engage in such activities to demonstrate additional qualifications to perform these services;

(12) prescribing fees for the issuance of licenses to underground storage tank installers and contractors. The fees shall be established in such amounts that revenue from such fees does not exceed the amount of revenue determined by the secretary to be required for administration of the provisions of K.S.A. 65-34,110 and amendments thereto; and

(13) adopting schedules requiring the retrofitting of underground storage tanks in existence on May 18, 1989, and aboveground storage tanks in existence on July 1, 1992, and for the retirement from service of underground storage tanks placed in service prior to May 18, 1989, and aboveground storage tanks placed in service prior to July 1, 1992. Such schedules shall be based on the age and location of the storage tank and the type of substance stored. Such retrofitting shall include secondary containment, corrosion protection, linings, leak detection equipment and spill and overfill equipment.

(b) In adopting rules and regulations under this section, the secretary shall take notice of rules and regulations pertaining to fire prevention and safety adopted by the state fire marshal pursuant to ~~subsection (a)(1) of K.S.A. 31-133(a)(1)~~, and amendments thereto.

(c) Nothing in this section shall interfere with the right of a city or county having authority to adopt a building or fire code from imposing requirements more stringent than those adopted by the secretary pursuant to subsections (a)(1), (2), (3), (7) and (13), or affect the exercise of powers by cities, counties and townships regarding the location of storage tanks and the visual compatibility of aboveground storage tanks with surrounding property.

Sec. 2. K.S.A. 65-34,118 is hereby amended to read as follows: 65-34,118. (a) Whenever the secretary has reason to believe that there is or has been a release into the environment from a petroleum storage tank and has reason to believe that such release poses a danger to human health or the environment, the secretary shall obtain corrective action for such release from the owner or operator, or both, or from any past owner or operator who has contributed to such release. Such corrective action shall be performed in accordance with a plan approved by the secretary. Upon approval of such plan, the owner or

operator shall obtain and submit to the secretary at least three bids from persons qualified to perform the corrective action except that, the secretary may waive this requirement upon a showing that the owner or operator has made a good faith effort but has not been able to obtain three bids from qualified bidders.

(b) If the owner or operator is unable or unwilling to perform corrective action as provided for in subsection (a) or no owner or operator can be found, the secretary may undertake appropriate corrective action utilizing funds from the underground fund, if the release was from an underground petroleum storage tank, or from the aboveground fund, if the release was from an aboveground petroleum storage tank. Costs incurred by the secretary in taking a corrective action, including administrative and legal expenses, are recoverable from the owner or operator and may be recovered in a civil action in district court brought by the secretary. Corrective action costs recovered under this section shall be deposited in the underground fund, if the release was from an underground petroleum storage tank, or ~~from~~ *in* the aboveground fund, if the release was from an aboveground petroleum storage tank. Corrective action taken by the secretary under this subsection need not be completed in order to seek recovery of corrective action costs, and an action to recover such costs may be commenced at any stage of a corrective action.

(c) An owner or operator shall be liable for all costs of corrective action incurred by the state of Kansas as a result of a release from a petroleum storage tank, unless the owner or operator, or both, enter into a consent agreement with the secretary in the name of the state within a reasonable period of time, ~~which~~. *Such* time period may be specified by ~~rule rules~~ and ~~regulation regulations~~. At a minimum, the owner or operator, or both, must agree that:

(1) The owner or operator shall be liable for the appropriate amounts pursuant to K.S.A. 65-34,119, and amendments thereto;

(2) the state of Kansas and the respective fund are relieved of all liability to an owner or operator for any loss of business, damages and taking of property associated with the corrective action;

(3) the department or its contractors may enter upon the property of the owner or operator, at such time and in such manner as deemed necessary, to monitor and provide oversight for the necessary corrective action to protect human health and the environment;

(4) the owner or operator shall be fully responsible for removal, replacement or retrofitting of petroleum storage tanks and the cost thereof shall not be reimbursable from the respective fund;

(5) the owner or operator shall effectuate corrective action according to a plan approved by the secretary pursuant to subsection (a);

(6) the liability of the state and the respective fund shall not exceed ~~\$1,000,000~~ *\$2,000,000*, less the deductible amount, for any release from a petroleum storage tank; and

(7) such other provisions as are deemed appropriate by the secretary to ensure adequate protection of human health and the environment.

(d) For purposes of this act, corrective action costs shall include the actual costs incurred for the following:

(1) Removal of petroleum products from petroleum storage tanks, surface waters, groundwater or soil;

(2) investigation and assessment of contamination caused by a release from a petroleum storage tank;

(3) preparation of corrective action plans approved by the secretary;

(4) removal of contaminated soils;

- (5) soil treatment and disposal;
- (6) environmental monitoring;
- (7) lease, purchase and maintenance of corrective action equipment;
- (8) restoration of a private or public potable water supply, where possible, or replacement thereof, if necessary; and
- (9) other costs identified by the secretary as necessary for proper investigation, corrective action planning and corrective action activities to meet the requirements of this act.

Sec. 3. K.S.A. 65-34,119 is hereby amended to read as follows: 65-34,119. (a) (1) Subject to the provisions of subsection (b), an owner or operator is entitled to reimbursement of reasonable costs of corrective action taken in response to a release from a petroleum storage tank if:

- ~~(1)~~(A) The owner or operator is not the United States government or any of its agencies;
- ~~(2)~~(B) the owner or operator is in substantial compliance, as provided in subsections (e) and (f);
- ~~(3)~~(C) the owner or operator undertakes corrective action, either through personnel of the owner or operator or through response action contractors or subcontractors; and
- ~~(4)~~(D) the corrective action is not in response to a release from an aboveground storage tank described in K.S.A. 65-34,103(g) or (h), and amendments thereto.

(2) If the release is from an underground petroleum storage tank, reimbursement shall be from the underground fund and, if the release is from an aboveground petroleum storage tank, reimbursement shall be from the aboveground fund.

(b) Reimbursement pursuant to subsection (a) is subject to the following provisions:

(1) Except as provided in subsections (g) and (h), the owner or operator shall be liable for the first costs of corrective action taken in response to a release from any petroleum storage tank in an amount equal to \$3,000 plus \$500 for each such tank owned or operated by the owner or operator at the site of the release or \$100,000, whichever is less. The first costs of corrective actions will be waived for any site where petroleum contamination is discovered and reported during the replacement of a single-wall underground storage tank from July 1, 2015, to June 30, ~~2020~~ 2030, if such single-wall underground storage tank system is replaced with a secondary containment system in accordance with provisions of K.S.A. 65-34,138, and amendments thereto;

(2) the owner or operator ~~must~~ shall submit to and receive from the secretary approval of the proposed corrective action plan, together with projected costs of the corrective action;

(3) the secretary may, in the secretary's discretion, determine those costs ~~which that~~ are allowable as corrective action costs and those ~~which that~~ are attributable or ancillary to removal, replacement or retrofitting of storage tanks;

(4) the owner or operator, or agents thereof, shall keep and preserve suitable records demonstrating compliance with the approved corrective action plan and all invoices and financial records associated with costs for which reimbursement will be requested;

(5) within 30 days of receipt of a complete corrective action plan, or as soon as practicable thereafter, the secretary shall make a determination and provide written notice as to whether the owner or operator responsible for corrective action is eligible or ineligible for reimbursement of corrective action costs and, should the secretary determine the owner or operator is ineligible, the secretary shall include

in the written notice an explanation setting forth in detail the reasons for the determination;

(6) the owner or operator shall submit to the secretary a written notice that corrective action has been completed within 30 days of completing corrective action;

(7) no later than 30 days from the submission of the notice as required by subsection (b)(6), the owner or operator must submit an application for reimbursement of corrective action costs in accordance with criteria established by the secretary, and the application for reimbursement must include the total amount of the corrective action costs and the amount of reimbursement sought. In no case shall the total amount of reimbursement exceed the lesser of the actual costs of the corrective action or the amount of the lowest bid submitted pursuant to K.S.A. 65-34,118, and amendments thereto, and approved by the secretary, less the appropriate deductible amount;

(8) interim payments shall be made to an owner or operator in accordance with the plan approved by the secretary pursuant to K.S.A. 65-34,118, and amendments thereto, except that the secretary, for good cause shown, may refuse to make interim payments or withhold the final payment until completion of the corrective action;

(9) the owner or operator shall be fully responsible for removal, replacement or retrofitting of petroleum storage tanks and the cost thereof, and costs attributable or ancillary thereto, shall not be reimbursable from the respective fund;

(10) the owner or operator shall provide evidence satisfactory to the secretary that corrective action costs equal to the appropriate deductible amount have been paid by the owner or operator, and such costs shall not be reimbursed to the owner or operator;

(11) with regard to an underground petroleum storage tank, the owner or operator submits to the secretary proof, satisfactory to the secretary, that: (A) Such owner or operator is unable to satisfy the criteria for self-insurance under the federal act; or (B) such owner or operator is able to satisfy the criteria for self-insurance under the federal act but the release is from an underground petroleum storage tank not located at a facility engaged in production or refining of petroleum;

(12) with regard to an aboveground petroleum storage tank, the owner or operator submits to the secretary proof, satisfactory to the secretary, that the release is from an aboveground petroleum storage tank not located at a facility engaged in production or refining of petroleum; and

(13) the owner or operator shall be liable for all costs ~~which~~ *that* are paid by or for which the owner or operator is entitled to reimbursement from insurance coverage, warranty coverage or any other source.

(c) For the purpose of determining an owner's or operator's eligibility for reimbursement and the applicable deductible of such owner or operator, the secretary shall consider all owners and operators owned or controlled by the same interests to be a single owner or operator, except that each state agency to which moneys are appropriated shall be considered individually as an owner or operator for such purpose.

(d) Notwithstanding the provisions of K.S.A. 65-34,118(c), and amendments thereto, should the secretary find that any of the following situations exist, any or all owners or operators shall, in the discretion of the secretary, be liable for 100% of costs associated with corrective action necessary to protect health or the environment, if:

(1) The release was due to willful or wanton actions by the owner or operator;

(2) the owner or operator is in arrears for moneys owed, other than environmental assurance fees, to either the underground fund or the aboveground fund;

(3) the release was from a tank not registered with the department;

(4) the owner or operator fails to comply with any provision of the agreement specified in K.S.A. 65-34,118(c), and amendments thereto;

(5) the owner or operator moves in any way to obstruct the efforts of the department or its contractors to investigate the presence or effects of a release or to effectuate corrective action;

(6) the owner or operator is not in substantial compliance with any provision of this act or rules and regulations promulgated hereunder; or

(7) the owner or operator allowed, failed to report or failed to take corrective action in response to such release, knowing or having reason to know of such release.

(e) Except as otherwise provided in subsections (f) and (g), an owner or operator is in substantial compliance with this act and the rules and regulations adopted hereunder, if:

(1) Each petroleum storage tank owned or operated by such owner or operator has been registered with the secretary, in accordance with the applicable laws of this state and any rules and regulations adopted thereunder;

(2) the owner or operator has entered into an agreement with the secretary, as provided in K.S.A. 65-34,118(c), and amendments thereto;

(3) the owner or operator has complied with any applicable financial responsibility requirements imposed by the Kansas storage tank act and the rules and regulations adopted thereunder; and

(4) the owner or operator has otherwise made a good faith effort to comply with the federal act if applicable, this act, any other law of this state regulating petroleum storage tanks and all applicable rules and regulations adopted under any of them.

(f) An owner or operator shall be deemed to be in substantial compliance with this act with respect to the following tanks if such owner or operator has notified the department, on forms provided by the department, of the tank's existence, including age, size, type, location, associated equipment and uses:

(1) Any farm or residential tank of 1,100 gallons or less capacity used for storing motor fuel for noncommercial purposes;

(2) any aboveground tank of less than 660 gallons capacity; and

(3) any tank used for storing heating oil for consumptive use on the single family residential premise where stored.

(g) (1) Except as provided by ~~subsection (g)~~ *paragraph (2)*, a person who owns property where a petroleum storage tank is located shall not be required to register such tank to be eligible for reimbursement from the respective fund of all costs of any necessary corrective action taken in response to a release from such tank and shall not be subject to the provisions of subsection (b)(1) if such person has at no time placed petroleum in such tank or withdrawn petroleum from such tank and such person:

(A) Submitted a corrective action plan prior to July 1, 1990, with respect to an underground petroleum storage tank, or prior to July 1, 1993, with respect to an aboveground petroleum storage tank;

(B) acquired such tank before December 22, 1988; or

(C) acquired such tank by intestate succession or testamentary disposition.

(2) A person shall not be eligible for reimbursement under ~~subsection (g)~~ *paragraph (1)* unless the owner or operator of the tank is unable or unwilling to perform corrective action or cannot be found, in which case the secretary may recover all reimbursement paid, and any related administrative and legal expenses, from the owner or operator

as provided by K.S.A. 65-34,118(b), and amendments thereto.

(h) An owner or operator shall be entitled, upon written notification to the secretary, to elect between the deductible provided by this section before July 1, 1992, and the deductible provided by this section on and after July 1, 1992, with respect to costs of corrective action taken on or after April 1, 1990, if such owner or operator has applied before July 1, 1992, for reimbursement of such costs from the respective fund. If an owner or operator or former owner or operator has paid a deductible that is greater than the deductible provided by this section on and after July 1, 1992, such owner or operator or former owner or operator may apply to the secretary for a refund of the difference in such deductibles. If the owner or operator or former owner or operator has died or no longer exists, no such refund shall be paid.

Sec. 4. K.S.A. 65-34,120 is hereby amended to read as follows: 65-34,120. (a) Nothing in this act shall establish or create any liability or responsibility on the part of the secretary, the department or its agents or employees; or the state of Kansas to pay any corrective action costs from any source other than the respective fund created by this act.

(b) In no event shall the underground fund be liable for the payment of corrective action costs in an amount in excess of the following, less any applicable deductible amounts of the owner or operator:

(1) For costs incurred in response to any one release from an underground petroleum storage tank, ~~\$1,000,000~~ \$2,000,000;

(2) ~~subject to the provisions of subsection (a)(4),~~ for an owner or operator of 100 or fewer underground petroleum storage tanks, an annual aggregate of \$1,000,000; and

(3) ~~subject to the provisions of subsection (a)(4),~~ for an owner or operator of more than 100 underground petroleum storage tanks, an annual aggregate of \$2,000,000.

(c) In no event shall the aboveground fund be liable for the payment of corrective action costs in an amount in excess of the following, less the deductible amounts of the owner or operator:

(1) For costs incurred in response to any one release from an aboveground petroleum storage tank, ~~\$1,000,000~~ \$2,000,000;

(2) for an owner or operator of 100 or fewer aboveground petroleum storage tanks, an annual aggregate of \$1,000,000; and

(3) for an owner or operator of more than 100 aboveground petroleum storage tanks, an annual aggregate of \$2,000,000.

(d) This act is intended to assist an owner or operator only to the extent provided for in this act, and it is in no way intended to relieve the owner or operator of any liability that cannot be satisfied by the provisions of this act.

(e) Neither the secretary nor the state of Kansas shall have any liability or responsibility to make any payments for corrective action if the respective fund created herein is insufficient to do so. In the event the respective fund is insufficient to make the payments at the time the claim is filed, such claims shall be paid in the order of filing at such time as moneys are paid into the respective fund.

(f) No common-law liability, and no statutory liability ~~which~~ that is provided in a statute other than in this act, for damages resulting from a release from a petroleum storage tank is affected by this act. The authority, power and remedies provided in this act are in addition to any authority, power or remedy provided in any statute other than a section of this act or provided at common law.

(g) If a person conducts a corrective action activity in response to a release from a petroleum storage tank, whether or not the person files a claim against the respective fund under this act, the claim and

corrective action activity conducted are not evidence of liability or an admission of liability for any potential or actual environmental pollution or third-party claim.

Sec. 5. K.S.A. 65-34,123 is hereby amended to read as follows: 65-34,123. The underground fund and the aboveground fund shall be and are hereby abolished on July 1, ~~2024~~ 2034.

Sec. 6. K.S.A. 65-34,128 is hereby amended to read as follows: 65-34,128. (a) There is hereby established as a segregated fund in the state treasury the storage tank fee fund. Revenue from the following sources shall be deposited in the state treasury and credited to the fund:

(1) Moneys collected from fees for registration of ~~aboveground~~ storage tanks, issuance of storage tank permits, approval of plans for new storage tank installations and conducting of storage tank inspections;

(2) any 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 fund; and

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

(b) Moneys in the storage tank fee fund shall be expended only for:

(1) Enforcement of storage tank performance standards and registration requirements;

(2) programs intended to prevent releases from storage tanks; and

(3) administration of the provisions of the Kansas storage tank act.

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

(1) The average daily balance of moneys in the storage tank fee 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 storage tank fee 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 a part of and supplemental to the Kansas storage tank act.

Sec. 7. K.S.A. 65-34,134 is hereby amended to read as follows: 65-34,134. The UST redevelopment fund compensation advisory board and the UST redevelopment fund shall be and are hereby abolished on July 1, ~~2024~~ 2032. At the time of such abolishment, remaining funds shall be deposited in the underground fund.

Sec. 8. K.S.A. 65-34,139 is hereby amended to read as follows: 65-34,139. (a) The secretary may provide for the reimbursement to eligible owners of underground storage tanks in accordance with the provisions of this section up to \$3,000,000 per state fiscal year and subject to the availability of moneys in the UST redevelopment fund. An owner of an underground storage tank shall be eligible for reimbursement under this section if the:

(1) Underground storage tank system is used for the storage of petroleum products for resale and is subject to the environmental assurance fee in accordance with provisions of K.S.A. 65-34,117, and amendments thereto;

(2) owner has been approved by the secretary and is not the United States government or any federal agency;

(3) owner replaces all components of a single-wall storage tank system with a secondary containment system that complies with K.S.A. 65-34,138, and amendments thereto, after August 8, 2005, and before June 30, ~~2020~~ 2030;

(4) owner is in substantial compliance with the Kansas storage tank act;

(5) owner provides 30-day notice and access to the department to perform an environmental assessment of the site:

(A) During replacement of the single-wall storage tank system with the secondary containment system installation, if done after July 1, 2015; and

(B) that determines that petroleum contamination exists and the owner applies to the underground fund to perform corrective action to address the contamination; and

(6) underground storage tank was registered with the department on or after May 1, 1981.

(b) Reimbursement pursuant to subsection (a) is subject to the following:

(1) For replacements undertaken after July 1, 2015, the storage tank owner must submit an application for reimbursement on forms supplied by the department and receive approval from the secretary of the proposed secondary containment system plan;

(2) upon approval of such plan, the owner shall obtain and submit to the secretary at least three bids from persons qualified to perform the secondary containment system installation except that, the secretary may waive this requirement upon a showing that the owner has made a good faith effort, but has not been able to obtain three bids from qualified bidders;

(3) for replacements undertaken before July 1, 2015, the owner must submit an application for reimbursement on forms supplied by the department with proof of costs and receive approval from the secretary; and

(4) the secretary may, in the secretary's discretion, determine those costs ~~which~~ that are allowable as secondary containment system installation costs.

(c) Applications for reimbursement must include documentation of the secondary containment system installation 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 the approved cost of the secondary containment system not to exceed \$50,000 per facility for replacement work completed on and after August 8, 2005, and prior to July 1, 2020. *The department shall reimburse an applicant for the approved cost of the secondary containment system not to exceed \$100,000 per facility for replacement work completed on and after July 1, 2020, and prior to July 1, 2030. Any applicant who did not receive the maximum reimbursement amount allowable for work completed after July 1, 2020, may submit a written request to the department for the remaining reimbursement amount for work completed. Such written requests shall include documentation of all expenses for which reimbursement is requested and documentation of reimbursements previously received for work completed.*

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

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

Sec. 9. K.S.A. 65-34,105, 65-34,118, 65-34,119, 65-34,120, 65-34,123, 65-34,128, 65-34,134 and 65-34,139 are hereby repealed.

Sec. 10. This act shall take effect and be in force from and after its publication in the statute book.

I hereby certify that the above BILL originated in the SENATE, and passed that body

President of the Senate.

Secretary of the Senate.

Passed the HOUSE _____

Speaker of the House.

Chief Clerk of the House.

APPROVED _____

Governor.