

in the building's parking garage. From the street, both the west entrance to the building on Jackson Street and the north entrance on 8th Street are accessible.

A summary of the proposed regulation and the economic impact follows:

K.A.R. 100-7-1. Designated examinations for medicine and surgery and osteopathic medicine and surgery; limitation on attempts.

This regulation revision deals with examination requirements for the purpose of evaluating applicants for licensure in medicine and surgery. This revision, along with several others, has been the subject of communications over several years in regard to the need to update the healing arts regulations and bring them into more consistency with standard practices and educational programs in the industry. This process involved representatives from the University of Kansas School of Medicine, the Kansas Medical Association, and other stakeholders. Further, it should be noted that the Board of Healing Arts is comprised of medical practitioners, business owners, and members of the public. Further, the agency intends to comply with all public hearing requirements involved in the promulgation process.

Tucker Poling
Acting Executive Director

Doc. No. 048230

State of Kansas

Department of Health and Environment

Permanent Administrative Regulations

Article 44. — PETROLEUM
PRODUCTS STORAGE TANKS

28-44-12. General provisions. (a) The following changes shall be made to any provision in 40 C.F.R. part 280 that is adopted by reference in these regulations:

(1) "The United States" shall be replaced with "the state of Kansas."

(2) "Environmental protection agency," "implementing agency," and "EPA" shall be replaced with "department" except as follows:

(A) "Environmental protection agency" shall not be replaced with "department" when used in 40 C.F.R. 280.103(b)(1) in the second sentence of the trust agreement.

(B) "Implementing agency" shall not be replaced with "department" when used in the following sections:

(i) 280.12 as stated in the definition of "implementing agency"; and

(ii) 280.92 as stated in the definition of "director of the implementing agency."

(C) "EPA" shall not be replaced with "department" when used in the following sections:

(i) 280.92 as stated in the definition of "director of implementing agency";

(ii) 280.92 as stated in the definition of "legal defense cost";

(iii) 280.95(b)(1)(i) through (iii);

(iv) 280.95(d) as stated in the "Letter from Chief Financial Officer";

(v) 280.103(b)(1); and

(vi) appendix III.

(3) "Administrator," "regional administrator," and "director" shall be replaced with "secretary" except as follows:

(A) In 40 C.F.R. 280.92 in the definition of "director of the implementing agency," "regional administrator" shall not be replaced with "secretary."

(B) In 40 C.F.R. 280.92 in the definition of "director of the implementing agency," the first occurrence of the word "director" shall not be replaced.

(4) "Federal register" shall be replaced with "Kansas register."

(5) "Must" shall be replaced with "shall."

(6) "Will" shall be replaced with "shall."

(7) "October 13, 2015" shall be replaced with "the effective date of these regulations."

(8) "October 13, 2018" shall be replaced with "October 13, 2021," except in 40 C.F.R. 280.36(a) as adopted in K.A.R. 28-44-19.

(b) Each owner or operator, or both, shall be assessed penalty fees by the department for noncompliance. The penalty fees shall be in addition to the required registration and permit fees specified in these regulations.

(c) Any UST license may be suspended or revoked if the requirements specified in K.A.R. 28-44-21 and K.A.R. 28-44-22 are not met. If any license is suspended or revoked, the licensee shall meet the requirements established by the secretary as provided in the order issuing the suspension or revocation to be considered for reinstatement or renewal.

(d) The fees required by these regulations shall be submitted in the form of a check, money order, or electronic payment made payable to the Kansas department of health and environment. (Authorized by and implementing K.S.A. 65-34,105; effective Nov. 26, 1990; amended July 6, 2020.)

28-44-13. Program scope. The provisions of 40 C.F.R. 280.10 and 280.11, dated July 1, 2015, as amended by 80 fed. reg. 41624-41625 (2015) and effective on October 13, 2015, are hereby adopted by reference. (Authorized by and implementing K.S.A. 65-34,105; effective Nov. 26, 1990; amended July 6, 2020.)

28-44-14. Definitions. (a) Each of the terms defined in this regulation, as used in these regulations, shall have the meaning specified in this regulation.

(b)(1) The terms and definitions in the following federal regulations are hereby adopted by reference:

(A) 40 C.F.R. 280.12 and 280.92, dated July 1, 2015, as amended by 80 fed. reg. 41625-41627 and 41640-41641 (2015) and effective on October 13, 2015; and

(B) 40 C.F.R. 280.250, published at 80 fed. reg. 41667 (2015) and effective on October 13, 2015.

(2) If the same term is defined differently both in K.S.A. 65-34,100 et seq. and amendments thereto or these regulations and in any federal regulation adopted by reference in these regulations, the definition prescribed in the Kansas statutes or these regulations shall control.

(c)(1) "Drop ticket" shall mean a bill of lading, invoice, or similar document that reflects fuel delivery by a pe-

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roleum transport company to a specific facility and includes the deliverer's name, the delivery date, and the quantity delivered.

(2) "EPA" shall mean United States environmental protection agency.

(3) "Installation" shall mean the work involved in placing a UST system or any part of a UST system in the ground, including excavation, tank placement, line placement, backfilling, and preparing a UST to be placed into service.

(4) "License" shall mean a document issued by the department to a qualified individual or contractor authorizing the person to engage in the business of installing, removing, modifying, upgrading, repairing, or testing underground storage tanks. A license specifies the types of services that the individual or contractor is qualified to perform.

(5) "Out-of-service," when used to describe a UST or UST system, shall mean that the UST or UST system is removed from use as a permitted UST or UST system storing a regulated substance.

(6) "Overfill" shall mean to supply a UST with more fuel than the UST can contain.

(7) "Site assessment" shall mean a determination of the presence or absence of petroleum contamination in areas where a release from a UST or UST system could have occurred or is suspected. This term shall include UST and UST system inspection in addition to the collection and analysis of samples from the areas surrounding and beneath the UST and UST system.

(8) "Storage tank operation" shall mean the use, storage, filling, or dispensing of petroleum contained in a UST or UST system.

(9) "These regulations" shall mean article 44 of the department's regulations.

(10) "UST remover" shall mean a type of underground storage tank contractor. (Authorized by and implementing K.S.A. 65-34,105; effective Nov. 26, 1990; amended July 6, 2020.)

28-44-15. Application for installation or modification of an underground storage tank. (a) Each owner shall obtain an installation or modification permit from the department before installing or modifying a UST or UST system. The application requirements and procedures for installation or modification of a UST or UST system shall be those specified in the department's "Kansas storage tank program document," dated July 22, 2019, which is hereby adopted by reference.

(b) Each owner shall submit a nonrefundable installation application fee of \$100.00 for each tank. The installation application fee for a new UST shall include the registration fee and the first year's operating permit fee as required by K.A.R. 28-44-17. (Authorized by K.S.A. 65-34,105; implementing K.S.A. 65-34,105 and 65-34,106; effective Nov. 26, 1990; amended July 6, 2020.)

28-44-16. Underground storage tank systems: design, construction, installation, modification, and notification. (a) C.F.R. adoptions. The provisions of 40 C.F.R. 280.20, 280.21, and 280.22 and appendix III to part 280, dated July 1, 2015, as amended by 80 fed. reg. 41627-41630 and 41677 (2015) and effective on October 13, 2015,

are hereby adopted by reference, with the following changes to the sections specified:

(1) In 280.20(a)(2)(iv), "in writing" shall be added after "or according to guidelines established by the implementing agency."

(2) In 280.20(a)(5), (b)(4), and (c)(2)(i), "in writing" shall be added after "determined by the implementing agency."

(3) In 280.20(b)(2)(iv), "in writing" shall be added after "or guidelines established by the implementing agency."

(4) In 280.20(c)(3), "may not" shall be replaced with "shall not."

(5)(A) 280.20(e)(1) shall be replaced with the following: "(e)(1) Each owner or operator of a new UST system shall ensure that an installer licensed by the department certifies that the UST system has been properly installed."

(B) 280.20(e)(2) shall be replaced with the following:

"(e)(2) Each owner or operator shall provide the completed manufacturer's installation checklist and installation certification to the department with the UST registration notification form as required by K.A.R. 28-44-17."

(C) 280.20(e)(3) through (6) shall be deleted.

(6) In 280.22(a), the last sentence shall be replaced with the following sentences: "Owners shall use the form provided by the department in accordance with paragraph (c) of this section. The form is available from the department upon request."

(7) 280.22(b) shall be replaced with the following:

"(b) Within 30 days of acquisition, any person who assumes ownership of a regulated underground storage tank system, except as described in paragraph (a) of this section, shall submit notice of the ownership change to the department using forms provided by the department upon request."

(8) 280.22(c) shall be replaced with the following:

"(c) Owners shall use forms provided by the department upon request in lieu of forms set forth in appendix I and appendix II of this part. The information prescribed in appendix I and appendix II shall be collected on forms provided by the department."

(b) UST system requirements. The UST system requirements shall be those specified in the department's "Kansas storage tank program document," as adopted in K.A.R. 28-44-15.

(c) Verification. Each owner or operator shall submit verification of each installation or modification not later than 30 days after completion of the installation or modification. The verification shall be submitted to the department on forms provided by the department. (Authorized by and implementing K.S.A. 65-34,105; effective Nov. 26, 1990; amended July 6, 2020.)

28-44-17. Underground storage tank registration and operating permit. (a) Registration of each UST shall include notice of UST existence. Each owner or operator shall submit notice to the department and include the registration documentation specified in the department's "Kansas storage tank program document," as adopted in K.A.R. 28-44-15.

(b) Each owner of a UST shall remit a nonrefundable registration fee of \$20.00 for each tank, which shall be submitted to the department with the registration notification form provided by the department.

(c) Each owner shall be assessed a penalty fee of \$50.00 for each tank if the owner fails to submit the completed registration notification form within seven days of either of the following:

- (1) Bringing a UST or UST system into use; or
- (2) assuming ownership of a regulated UST or UST system.

(d) Each owner or operator shall submit an annual operating permit fee of \$25.00 for each tank before April 30 of each year. The operating permit requirements shall be those specified in the department's "Kansas storage tank program document," as adopted in K.A.R. 28-44-15.

(e) Each owner who fails to secure all necessary annual operating permits for each facility before April 30 of each year shall be assessed a penalty fee of \$50.00 for each tank. Each owner shall be assessed an additional penalty fee of \$100.00 for each tank if the owner fails to secure all necessary operating permits before August 1 of each year.

(f) An annual operating permit shall not be issued by the department until all permit fees and applicable penalty fees have been paid.

(g) No owner or operator shall operate a regulated UST system unless a valid operating permit issued by the department is displayed at the facility and is visible to the public. (Authorized by and implementing K.S.A. 65-34,105 and 65-34,106; effective Nov. 26, 1990; amended July 6, 2020.)

28-44-18. Registration of nonregulated underground storage tanks. (a) Any owner or operator of a nonregulated tank may register that tank with the department for the purpose of qualifying the owner or operator to participate in the petroleum storage tank release trust funds. Each registration shall be submitted to the department with the following information on a form provided by the department:

- (1) Owner's name, address, and telephone number;
- (2) facility address or location;
- (3) tank operating status;
- (4) tank age;
- (5) tank capacity;
- (6) UST system construction details; and
- (7) type of each regulated substance stored.

(b) Voluntary registration of each nonregulated UST shall not bring the owner or operator under the mandatory provisions of the Kansas storage tank act, K.S.A. 65-34,101 et seq. and amendments thereto. (Authorized by and implementing K.S.A. 65-34,105; effective Nov. 26, 1990; amended July 6, 2020.)

28-44-19. General operating requirements. (a) The provisions of 40 C.F.R. 280.30, 280.31, 280.32, 280.33, and 280.34, dated July 1, 2015, as amended by 80 fed. reg. 41630-41632 (2015) and effective on October 13, 2015, are hereby adopted by reference, with the following changes to the sections specified:

(1) In 280.31(b)(1), "or according to another reasonable time frame established by the implementing agency" shall be deleted.

(2) In 280.31(c), the cathodic protection inspection date of "every 60 days" shall be replaced with an inspection date of "every 30 days."

(3) In 280.32(b)(2), "in writing" shall be added after "Use another option determined by the implementing agency."

(4) In 280.33(b), "may" shall be replaced with "shall."

(5) In 280.33(c), the second sentence shall be replaced with the following: "Non-corrodible pipes and fittings shall be replaced or repaired in accordance with the manufacturer's specifications."

(6) In 280.33(d), "in writing" shall be added after "or according to requirements established by the implementing agency."

(7) In 280.33(d)(3), "in writing" shall be added after "determined by the implementing agency."

(8)(A) In 280.34, "Section 9005 of Subtitle I of the Solid Waste Disposal Act, as amended" shall be replaced with "K.S.A. 65-34,108, as amended."

(B) In 280.34(b), the following changes shall be made:

(i) The word "and" shall be deleted from the end of paragraph (b)(8).

(ii) The period at the end of paragraph (b)(9) shall be replaced with "; and".

(iii) The following paragraph shall be added after paragraph (b)(9):

"(10) The drop tickets for the preceding 12 months."

(b) The provisions of 40 C.F.R. 280.35 and 280.36, published at 80 fed. reg. 41632-41633 (2015) and effective on October 13, 2015, are hereby adopted by reference, with the following changes to the sections specified:

(1) In 280.35(a)(1)(ii)(C), "in writing" shall be added after "requirements determined by the implementing agency."

(2) In 280.36(a)(3), "in writing" shall be added after "developed by the implementing agency."

(c) The general operating requirements shall be those specified in the department's "Kansas storage tank program document," as adopted in K.A.R. 28-44-15. (Authorized by and implementing K.S.A. 65-34,105; effective Nov. 26, 1990; amended July 6, 2020.)

28-44-20. Underground storage tank contractor licensing. (a) Each person installing, removing, or testing a UST or UST system shall be licensed in Kansas.

(b) Each person applying for a new UST contractor license shall submit the following to the department:

(1) A completed application on a form provided by the department; and

(2) a nonrefundable licensing fee of \$200.00 for a license effective for two years from the initial licensing date.

(c) Upon completion of the initial two years of licensure, each applicant for renewal of a UST contractor license shall submit the following to the department:

(1) A completed application on a form provided by the department; and

(2) a nonrefundable annual renewal fee of \$100.00. (Authorized by and implementing K.S.A. 65-34,105; effective Nov. 26, 1990; amended July 6, 2020.)

28-44-21. Underground storage tank installer and remover licensing. (a) Any individual may apply for one or a combination of licenses. The requirements for an installer license and a remover license shall be those specified in the department's "Kansas storage tank program document," as adopted in K.A.R. 28-44-15.

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(b)(1) For each initial license, each applicant shall submit a nonrefundable license fee of \$100.00. Each initial license shall be effective for two years from the initial licensing date.

(2) For license renewal, each individual shall submit a nonrefundable annual renewal fee of \$50.00 for the 12-month period beginning on the effective date of each renewal license. (Authorized by and implementing K.S.A. 65-34,105; effective Nov. 26, 1990; amended July 6, 2020.)

28-44-22. Underground storage tank tester licensing. (a) No individual shall test a UST system unless that individual is licensed as required by this regulation. The requirements for a tester license shall be those specified in the department's "Kansas storage tank program document," as adopted in K.A.R. 28-44-15.

(b) Each individual who applies for any kind of tester license shall submit the following to the department:

(1) For each initial license, a nonrefundable licensing fee of \$100.00 for each license effective for two years from the initial licensing date; and

(2) for each license renewal, a nonrefundable annual renewal fee of \$50.00. The fee shall cover a 12-month period beginning on the effective date of the renewal of each license.

(c) Any license application may be denied or any license issued may be suspended or revoked for any UST or UST system tester license pursuant to these regulations if the applicant or licensee meets any of the following conditions:

(1) Has fraudulently or deceptively obtained or attempted to obtain a license;

(2) has failed at any time to meet the qualifications for a license or comply with any provision or requirement of these regulations; or

(3) has failed to submit to the department a copy of each UST or UST system test performed on a regulated tank in the state of Kansas. (Authorized by and implementing K.S.A. 65-34,105; effective Nov. 26, 1990; amended July 6, 2020.)

28-44-23. Release detection. The provisions of 40 C.F.R. 280.40, 280.41, 280.42, 280.43, 280.44, and 280.45, dated July 1, 2015, as amended by 80 fed. reg. 41633-41636 (2015) and effective on October 13, 2015, are hereby adopted by reference, with the following changes:

(a) In 40 C.F.R. 280.40(a)(3), "in writing" shall be added after "or requirements determined by the implementing agency."

(b) In 40 C.F.R. 280.41, paragraph (a)(1)(i) shall be deleted.

(c) The following paragraph shall be added after 40 C.F.R. 280.43(a)(6):

"(7) Each standby generator tank of any size and each waste oil UST with a capacity of 2,000 gallons or less shall be exempt from the inventory control requirements of this section."

(d) In 40 C.F.R. 280.43(b)(5), "may not" shall be replaced with "shall not."

(e) The following paragraph shall be added after 40 C.F.R. 280.43(e)(7):

"(8) The provisions of 40 C.F.R. 280.43(e) shall apply only to field-constructed tanks and airport hydrant fuel

distribution systems. Each owner or operator previously approved for vapor monitoring for other USTs governed by these regulations shall use an approved release detection method beginning not later than October 13, 2021."

(f) In 40 C.F.R. 280.43, paragraph (f) shall be deleted.

(g) In 40 C.F.R. 280.43, paragraph (i)(2) shall be replaced with the following:

"(i)(2) If another method is proposed, the owner and operator shall demonstrate that the method can detect a release as effectively as any of the methods allowed in paragraphs (c) through (h) of this section. The owner and operator shall provide information to be reviewed by the department concerning the size of release that the method can detect and the frequency and reliability with which it can be detected. The owner and operator shall comply with any approval conditions to ensure the protection of human health and the environment."

(h) Each occurrence of the following phrases shall be deleted:

(1) ", or for another reasonable period of time determined by the implementing agency"; and

(2) ", or for another reasonable time period determined by the implementing agency."

(Authorized by and implementing K.S.A. 65-34,105; effective Nov. 26, 1990; amended July 6, 2020.)

28-44-24. Release reporting, investigation, and confirmation. The provisions of 40 C.F.R. 280.50, 280.51, 280.52, and 280.53, dated July 1, 2015, as amended by 80 fed. reg. 41636-41637 (2015) and effective on October 13, 2015, are hereby adopted by reference with the following changes:

(a) Each occurrence of the following phrases shall be deleted:

(1) ", or another reasonable period specified by the implementing agency";

(2) ", or another reasonable time period specified by the implementing agency";

(3) ", or another reasonable time period established by the implementing agency"; and

(4) ", or another reasonable amount specified by the implementing agency."

(b) In 40 C.F.R. 280.51, "in writing" shall be added after "When required by the implementing agency."

(c) In 40 C.F.R. 280.52, "in writing" shall be added after "or another procedure approved by the implementing agency." (Authorized by and implementing K.S.A. 65-34,105; effective Nov. 26, 1990; amended July 6, 2020.)

28-44-25. Release response and corrective action for UST systems. The provisions of 40 C.F.R. 280.60, 280.61, 280.62, 280.63, 280.64, 280.65, 280.66, and 280.67, dated July 1, 2015, as amended by 80 fed. reg. 41637-41639 (2015) and effective on October 13, 2015, are hereby adopted by reference with the following changes:

(a) The phrase "in writing" shall be added after each occurrence of the phrase "unless directed to do otherwise by the implementing agency."

(b) Each occurrence of the following phrases shall be deleted:

(1) "or within another reasonable period of time determined by the implementing agency";

(2) ", or within another reasonable period of time determined by the implementing agency,"; and

(3) "or another reasonable period of time determined by the implementing agency."

(c) In 40 C.F.R. 280.63(b), "in writing" shall be added after "or in a format and according to the schedule required by the implementing agency."

(d) In 40 C.F.R. 280.64, "in writing" shall be added after "to the maximum extent practicable as determined by the implementing agency."

(e)(1) In 40 C.F.R. 280.65(a)(4), "in writing" shall be added after "The implementing agency requests an investigation."

(2) In 40 C.F.R. 280.65(b), "in writing" shall be added after "or in accordance with a schedule established by the implementing agency."

(f)(1) In 40 C.F.R. 280.66(a), "in writing" shall be added after "according to a schedule and format established by the implementing agency" and after "as determined by the implementing agency."

(2) In 40 C.F.R. 280.66, paragraph (b) shall be replaced with the following paragraph:

"(b) Owners and operators shall not begin implementation of the corrective action plan until the department has determined that implementation of the plan would adequately protect human health, safety, and the environment. The following factors shall be considered in making this determination:"

(3) In 40 C.F.R. 280.66(c), "in writing" shall be added after "or as directed by the implementing agency" and after "in accordance with a schedule and in a format established by the implementing agency."

(4) In 40 C.F.R. 280.66(d)(2), "in writing" shall be added after "conditions imposed by the implementing agency."

(g)(1) In 40 C.F.R. 280.67(a), the first sentence shall be replaced with the following sentence: "For each confirmed release that requires a corrective action plan, public notice provided by the department shall be designed to reach those members directly affected by the release and the planned corrective action."

(2) In 40 C.F.R. 280.67, paragraph (b) shall be replaced with the following paragraph:

"(b) Site release information and decisions concerning the corrective action plan shall be made available to the public for inspection upon request to the department."

(3) In 40 C.F.R. 280.67, paragraph (d) shall be replaced with the following paragraph:

"(d) If an approved corrective action plan implemented by the party or parties performing corrective action does not achieve the established cleanup levels in the plan and termination of that plan is under consideration by the department, the public shall receive notice in compliance with paragraph (a) of this section." (Authorized by and implementing K.S.A. 65-34,105; effective Nov. 26, 1990; amended July 6, 2020.)

28-44-26. Out-of-service UST systems and closure.

(a) The provisions of 40 C.F.R. 280.70, 280.71, 280.72, 280.73, and 280.74, dated July 1, 2015, as amended by 80 fed. reg. 41639-41640 (2015) and effective on October 13, 2015, are hereby adopted by reference, with the following changes:

(1) The phrase "in writing" shall be added after each occurrence of "in a manner approved by the implementing agency" and "when directed by the implementing agency."

(2) In 40 C.F.R. 280.70(c), "in writing" shall be added after "unless the implementing agency provides."

(3)(A) In 40 C.F.R. 280.71(a), "or within another reasonable time period determined by the implementing agency" shall be deleted.

(B) In 40 C.F.R. 280.71(b), "in writing" shall be added after "or closed in place in a manner approved by the implementing agency."

(C) The following sentence shall be added at the end of 40 C.F.R. 280.71(b): "Within 15 days of permanent closure, each owner or operator shall ensure that each contractor submits the completed permanent tank abandonment form to the department."

(4) In 40 C.F.R. 280.72(a), the third sentence shall be deleted.

(5) In 40 C.F.R. 280.73, "based on the totality of the circumstances" shall be added after "in the judgment of the implementing agency."

(b) The results of each site assessment shall be prepared and signed by an individual qualified to perform a site assessment in accordance with standard industry practices and the applicable requirements of the state board of technical professions. (Authorized by and implementing K.S.A. 65-34,105; effective Nov. 26, 1990; amended July 6, 2020.)

28-44-27. Financial responsibility. The provisions of 40 C.F.R. 280.90, 280.91, 280.93 through 280.99, and 280.102 through 280.115, dated July 1, 2015, as amended by 80 fed. reg. 41640, 41641-41648, and 41649-41662 (2015) and effective on October 13, 2015, are hereby adopted by reference, with the following changes to the sections specified:

(a) In 280.94(b), "Attorney(s) General of the state(s) in which the tanks are located" shall be replaced with "State Attorney General or attorneys within the department reviewing guarantees or surety bonds as Special Assistant Attorney(s) General."

(b)(1) In 280.95, the first sentence in paragraph (f) shall be replaced with the following sentence: "When directed by the secretary in writing, the owner or operator, and/or guarantor shall submit reports of financial condition."

(2) In 280.95(g), "written" shall be added before "notification by the Director of the implementing agency."

(c)(1) In 280.96(b), "in writing" shall be added after "If the Director of the implementing agency notifies the guarantor."

(2) In 280.96(d), "written" shall be added before "instructions from the Director of the implementing agency."

(d)(1) In 280.97(b)(1), "in writing" shall be added after each occurrence of "Whenever requested by [a Director of an implementing agency]."

(2) In 280.97, paragraph (c) shall be replaced with the following paragraph:

"(c) Each insurance endorsement or certificate language shall be worded with the language specified in paragraph (b) of this subsection or shall be amended to evidence the coverage of corrective action by the underground petroleum storage tank release trust fund by submitting a statement of eligibility in accordance with K.S.A. 65-34,115, and amendments thereto. Amendments

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shall reflect the standards specified in K.S.A. 65-34,114, and amendments thereto."

(e)(1) In 280.98(b), in the fourth paragraph of the "Performance Bond," "written" shall be added after "the Director of the state implementing agency's."

(2) In 280.98(b), in the third and fourth paragraphs under subsection (e) of the "Performance Bond," "written" shall be added before "notification" and "instructions."

(3) In 280.98(d), "written" shall be added before "instructions."

(f)(1) In 280.99(b) in the "Irrevocable Standby Letter of Credit," "may not" shall be replaced with "shall not."

(2) In 280.99(c), "written" shall be added before "instructions."

(g) In 280.102, paragraph (f) shall be replaced with the following paragraph:

"(f) Within 60 days after receiving a request from the owner or operator for release of funds as specified in paragraph (d) or (e) of this section, the trustee shall release funds to the owner or operator as instructed by the secretary in writing."

(h)(1) In 280.103(b)(1) in the paragraph immediately following the title "Section 3. Establishment of Fund," "written" shall be added before "instruction."

(2) In 280.103(b)(1), "Section 4. Payment for ['Corrective Action' and/or 'Third-Party Liability Claims']," the first indented sentence shall be replaced with the following sentence: "The Trustee shall make payments from the fund as directed by [the Director of the implementing agency]."

(3) In 280.103(b)(1) in the second sentence following the title "Section 4. Payment for ['Corrective Action' and/or 'Third-Party Liability Claims']," "may not" shall be replaced with "shall not."

(4) In 280.103, paragraph (c) shall be replaced with the following paragraph:

"(c) When instructed by the secretary in writing, the trustee shall refund the balance of the standby trust fund to the provider of financial assurance if the secretary determines that no additional corrective action costs or third-party liability claims will occur as a result of a release covered by the financial assurance mechanism for which the standby trust fund was established."

(i)(1) In 280.104(a) in the third sentence, "may not" shall be replaced with "shall not."

(2) In 280.104(f), the first sentence shall be replaced with the following sentence: "When directed by the secretary in writing, the local government owner or operator, or local government guarantor shall submit reports of financial condition."

(3) In 280.104(h), "written" shall be added after "within 30 days of."

(j)(1) In 280.105(e), the first sentence shall be replaced with the following sentence: "When directed by the secretary in writing, the local government owner or operator shall submit reports of financial condition."

(2) In 280.105(f), "written" shall be added after "within 30 days of."

(k)(1) In 280.106(c)(1) and (c)(2), "in writing" shall be added after "as directed by the Director of the implementing agency."

(2) In 280.106(d), each occurrence of "upon instructions" shall be replaced with "upon written instructions."

(l)(1) In 280.107 in the first paragraph, the text "may not" shall be replaced with "shall not."

(2) In 280.107(b) in the last sentence, "may not" shall be replaced with "shall not."

(m)(1) In 280.109(a)(1), "may not" shall be replaced with "shall not."

(2) In 280.109(a)(2), each occurrence of "may not" shall be replaced with "shall not."

(n) In 280.110, paragraph (c) shall be replaced with the following paragraph:

"(c) When directed by the secretary, the owner or operator shall submit evidence of financial assurance as described in 40 C.F.R. 280.111(b) or other compliance information relevant to this subpart."

(o)(1) In 280.112, paragraph (a) shall be replaced with the following paragraph:

"(a) Except as specified in paragraph (d) of this section, the guarantor, surety, or institution issuing a letter of credit shall place the amount of funds stipulated by the secretary in writing, up to the limit of funds provided by the financial assurance mechanism, into the standby trust if:"

(2) In 280.112(b), the first sentence shall be replaced with the following: "A standby trust may be drawn on by the secretary when:"

(3) In 280.112(c), the second sentence shall be replaced with the following sentence: "Third party liability claims shall be paid in the order in which the secretary receives certifications under paragraph (b)(2)(i) of this section and valid court orders under paragraph (b)(2)(ii) of this section."

(4) In 280.112(d), "in writing" shall be added after "as directed by the Director."

(p) In 280.113, "is no longer required" shall be replaced with "shall no longer be required."

(q) In 280.115(a) in the first sentence, "written" shall be added before "instruction." (Authorized by and implementing K.S.A. 65-34,105; effective Nov. 26, 1990; amended July 6, 2020.)

28-44-28. (Authorized by and implementing K.S.A. 65-34,105; effective Nov. 22, 1993; revoked July 6, 2020.)

28-44-29. Aboveground storage tank operating permit. (a) Before an operating permit for an aboveground storage tank may be obtained or renewed, each owner shall comply with the following requirements:

(1) Each aboveground storage tank shall be registered with the department pursuant to K.S.A. 65-34,104, and amendments thereto. The registration application shall be submitted on forms provided by the department and shall include the following information:

- (A) Owner's name, address, and telephone number;
- (B) facility address or location;
- (C) tank status;
- (D) tank age;
- (E) tank capacity;
- (F) storage tank construction details; and
- (G) type of regulated substance stored.

(2) Each owner or operator shall pay to the department a nonrefundable annual registration fee of \$10.00 for each aboveground storage tank before December 31 of each year.

(3) A penalty fee of \$50.00 shall be charged for each tank if the owner or operator does not submit the required fees before December 31 of each year.

(b) A regulated substance shall not be placed in an aboveground storage tank unless a valid operating permit is displayed at the facility and is visible to the public. (Authorized by and implementing K.S.A. 65-34,105 and 65-34,106; effective Nov. 22, 1993; amended July 6, 2020.)

28-44-30. Operator training and requirements. (a) The provisions of 40 C.F.R. 280.240, 280.241, 280.242, 280.243, 280.244, and 280.245, published at 80 fed. reg. 41666-41667 (2015) and effective on October 13, 2015, are hereby adopted by reference with the following changes to the sections specified:

(1) In 280.242, the following changes shall be made:

(A) In the second sentence, "or comparable examination" shall be deleted.

(B) In paragraph (a), the following text shall be deleted: "either" and "or pass a comparable examination in accordance with paragraph (e) of this section."

(C) After paragraph (a)(2), the following text shall be added:

"Each class A operator of a facility or group of facilities shall reside or be stationed within four hours of each managed facility to respond to emergencies as needed."

(D) In paragraph (b), the following text shall be deleted: "either" and "or pass a comparable examination, in accordance with paragraph (e) of this section."

(E) In paragraph (c), the first sentence shall be replaced with the following sentence: "Each designated Class C operator shall be trained by a Class A or Class B operator in accordance with paragraphs (c)(1) and (2) of this section and complete a training program in accordance with paragraphs (c)(1) and (2) of this section."

(F) Paragraph (e) shall be deleted.

(2) In the first sentence of 280.244, "in writing" shall be added after "determined by the implementing agency."

(b) Each class A operator, each class B operator, and each class C operator shall complete the training and testing required in the department's "Kansas storage tank program document," as adopted in K.A.R. 28-44-15. (Authorized by and implementing K.S.A. 65-34,105; effective July 6, 2020.)

28-44-31. UST systems with field-constructed tanks and airport hydrant fuel distribution systems. The provisions of 40 C.F.R. 280.251 and 280.252, published at 80 fed. reg. 41667-41669 (2015) and effective on October 13, 2015, are hereby adopted by reference, with the following changes to the sections specified:

(a) In 280.251, paragraph (b) shall be replaced with the following paragraphs:

"(b)(1) Each owner of an existing, out-of-service UST system with field-constructed tanks (FCTs) and airport hydrant fuel distribution systems (AHFDSs) shall submit to the department a one-time registration of UST system existence on a form provided by the department. This form shall be submitted to the department not later than 60 days after the effective date of these regulations, or upon discovery.

"(2) Each owner or operator of an active, in use UST system with FCTs and AHFDSs shall comply with the registration notification and operating permit requirements specified in K.A.R. 28-44-17. Each owner or operator of these UST systems shall demonstrate financial responsibility as required by K.A.R. 28-44-27 at the time of submission of the registration notification form."

(b)(1) In 280.252(b)(1)(ii)(B), "in writing" shall be added after "another method determined by the implementing agency."

(2) In 280.252(d)(1) and (d)(2), "in writing" shall be added after "approved by the implementing agency."

(3) In 280.252(d)(1)(vi), the last sentence shall be replaced with the following sentence: "The owner and operator shall submit data showing the size of release that the method can detect, and the frequency and reliability of detection for the department's consideration."

(4) In 280.252(d)(2)(i)(B), the table titled "Phase In For Piping Segments \geq 100,000 Gallons In Volume" shall be replaced with the list titled "Phase-in testing for piping segments greater than or equal to 100,000 gallons in volume" on page 8 of the department's "Kansas storage tank program document," as adopted in K.A.R. 28-44-15.

(5) In 280.252(d)(2)(iv), the last sentence shall be replaced with the following sentence: "The owner and operator shall provide information to be reviewed by the department concerning the size of release that the method can detect and the frequency and reliability with which it can be detected."

(6) In 280.252(e), the following changes shall be made:

(A) The phrase "in writing" shall be added after "When directed by the implementing agency."

(B) The phrase "based on the totality of the circumstances" shall be added after "in the judgment of the implementing agency." (Authorized by and implementing K.S.A. 65-34,105; effective July 6, 2020.)

Lee A. Norman
Secretary

Doc. No. 048218