

## KANSAS STORAGE TANK ACT – KSA 65-34

**65-34,100. Kansas storage tank act; statement of legislative findings.** The legislature finds that:

(a) Protection of the environment of this state promotes the health and general welfare of the citizens of this state; and

(b) the state's responsibility to promote the public health and welfare requires a comprehensive approach to protect the environment by preventing and remedying the pollution of the state's natural resources and providing funding of the management, conservation and development of those resources.

**History:** L. 1989, ch. 186, § 1; May 18.

**65-34,101. Same; citation of act.** K.S.A. 65-34,101 through [65-34,124](#) shall be known and may be cited as the Kansas storage tank act.

**History:** L. 1989, ch. 186, § 2; May 18.

**65-34,102. Definitions.** As used in the Kansas storage tank act:

(a) "Aboveground storage tank" means:

(1) Any storage tank in which greater than 90% of the tank volume, including volume of the piping, is not below the surface of the ground; or

(2) any storage tank situated in an underground area, such as a basement, cellar, mine working, drift, shaft or tunnel, if the storage tank is situated upon or above the surface of the floor.

(b) "Aboveground fund" means the aboveground petroleum storage tank release trust fund.

(c) "Department" means the Kansas department of health and environment.

(d) "Facility" means all contiguous land, structures and other appurtenances and improvements on the land used in connection with one or more storage tanks.

(e) "Federal act" means the solid waste disposal act (42 U.S.C. § 3152 et seq., 42 U.S.C. § 6991 et seq., as in effect on January 1, 2012) and rules and regulations adopted pursuant to such federal laws and in effect on January 1, 2012.

(f) "Financial responsibility" means insurance, guarantee, surety bond, letter of credit, qualification as a self-insurer or any other method satisfactory to the secretary to provide for taking corrective action, including cleanup and restoration of any damage to the land, air or waters of the state, and compensating third parties for cleanup, bodily injury or property damage resulting from a sudden or nonsudden release of a regulated substance arising from the construction, relining, ownership or operation of an underground storage tank and in the amount specified in the federal act.

(g) "Guarantor" means any person, other than an owner or operator, who provides evidence of financial responsibility for an owner or operator.

(h) "Operator" means any person in control of or having responsibility for the daily operation of a storage tank, but such term shall not include a person whose only responsibility regarding such storage tank is filling such tank with a regulated substance and who does not dispense or have control of the dispensing of regulated substances from the storage tank.

(i) "Own" means to hold title to or possess an interest in a storage tank or the regulated substance in a storage tank.

(j) (1) "Owner" means any person who: (A) Is or was the owner of any underground storage tank which was in use on November 8, 1984, or brought into use subsequent to that date; (B) in the case

of an underground storage tank in use prior to November 8, 1984, owned such tank immediately prior to the discontinuation of its use; (C) is or was the owner of any aboveground storage tank which was in use on July 1, 1992, or brought into use subsequent to that date; or (D) in the case of an aboveground storage tank in use prior to July 1, 1992, owned such tank immediately prior to the discontinuation of its use.

(2) Owner does not include: (A) A person who holds an interest in a petroleum storage tank solely for financial security, unless through foreclosure or other related actions the holder of a security interest has taken possession of the storage tank; and (B) any city or county which obtains a storage tank or regulated substance as a result of tax foreclosure proceedings.

(k) "Person" means an individual, trust, firm, joint venture, consortium, joint-stock company, corporation, partnership, association, state, interstate body, municipality, commission, political subdivision or any agency, board, department or bureau of this state or of any other state or of the United States government.

(l) "Petroleum" means petroleum, including crude oil or any fraction thereof, which is liquid at standard conditions of temperature and pressure, 60 degrees Fahrenheit and 14.7 pound per square inch absolute, including, but not limited to, gasoline, gasohol, diesel fuel, fuel oils, kerosene and biofuels.

(m) "Petroleum product" means petroleum other than crude oil.

(n) "Petroleum storage tank" means any storage tank used to contain an accumulation of petroleum.

(o) "Regulated substance" means petroleum or any element, compound, mixture, solution or substance defined in section 101(14) of the comprehensive environmental response, compensation and liability act of 1980 of the United States as in effect on January 1, 1989, but not if regulated as a hazardous waste under the resource conservation and recovery act of 1976, 42 U.S.C. §§ 6921 through 6939b, as in effect on January 1, 1989.

(p) "Release" means any spilling, leaking, emitting, discharging, escaping, leaching or disposing from a storage tank into groundwater, surface water or soils.

(q) "Removal" means the process of removing or disposing of a storage tank, no longer in service, and also shall mean the process of abandoning such tank, in place.

(r) "Repair" means to restore a tank, pipe, spill prevention equipment, overfill prevention equipment, corrosion protection equipment, release detection equipment or other UST system component that has caused a release or a suspected release of product from the UST system or has failed to function properly. The term includes modification or correction of a storage tank through such means as relining, replacement of piping, valves, fillpipes, vents and liquid level monitoring systems, and the maintenance and inspection of the efficacy of cathodic protection devices, but the term does not include the process of conducting a tightness test to establish the integrity of a tank.

(s) "Secretary" means the secretary of health and environment.

(t) "Storage tank" means any one or combination of tanks used to contain an accumulation of regulated substances, the associated piping and ancillary equipment and the containment system.

(u) "Tank" means a stationary device designed to contain an accumulation of substances and constructed of non-earthen materials such as concrete, steel or plastic, that provide structural support.

(v) "Terminal" means a bulk storage facility for storing petroleum supplied by pipeline or marine vessel.

(w) "Trade secret" has the same meaning as provided in K.S.A. [60-3320](#), and amendments thereto.

(x) "Underground storage tank" means any storage tank in which 10% or more of the tank volume, including volume of the piping, is below the surface of the ground. Underground storage

tank does not include any storage tank situated in an underground area, such as a basement, cellar, mine working, drift, shaft or tunnel, if the storage tank is situated upon or above the surface of the floor.

(y) "Underground storage tank contractor" or "contractor" means a business which holds itself out as being qualified to install, repair or remove underground storage tanks.

(z) "Underground fund" means the underground petroleum storage tank release trust fund.

(aa) "Underground storage tank installer" or "installer" means an individual who has an ownership interest or exercises a management or supervisory position with an underground storage tank contractor. The term shall include the crew chief, expeditor, engineer, supervisor, leadman or foreman in charge of a tank installation project.

(bb) "UST redevelopment fund" means the Kansas UST property redevelopment trust fund.

(cc) "Abandoned underground storage tank" means an underground storage tank that exhibits one or more of the following conditions:

(1) Is not in use for more than three months;

(2) does not have a current tank permit issued by the department; or

(3) has been temporarily closed, in accordance with department guidelines, for more than 12 months.

(dd) "Property owner" means for the purposes of the UST redevelopment fund, a person who owns real property on which an abandoned underground storage tank is located.

(ee) "Installation of a new motor fuel dispenser system" means the installation of a new motor fuel dispenser and the equipment necessary to connect the dispenser to the underground storage tank system, but does not mean the installation of a motor fuel dispenser installed separately from the equipment needed to connect the dispenser to the underground storage tank system.

(ff) "Replaced" means: (1) For a tank, to remove a tank and install another tank; and

(2) for piping, to remove 50% or more of piping and install other piping, excluding connectors, connected to a single tank. For tanks with multiple piping runs, this definition applies independently to each piping run.

(gg) "Secondary containment" or "secondarily contained" means a release prevention and release detection system for a tank or piping. These systems have an inner and outer barrier with an interstitial space that is monitored for a release of regulated substances from the underground storage tank and piping.

(hh) "Safe suction piping" means underground piping that conveys regulated substances under suction, is designed and constructed to operate at less than atmospheric pressure, is sloped so that the contents of the pipe drain back into the storage tank if the suction is released and contains only one check valve in each suction line that is located directly below and as close as practical to the suction pump.

(ii) "Under-dispenser containment" means containment underneath a dispenser system designed to prevent dispenser system leaks from reaching soil or groundwater. The containment must be:

(1) Liquid tight on its sides, bottom and at any penetrations;

(2) compatible with the substance conveyed by the piping; and

(3) allow for visual inspection and access to the components in the containment or be monitored for a release of regulated substances from dispenser and piping.

**History:** L. 1989, ch. 186, § 3; L. 1992, ch. 311, § 1; L. 1996, ch. 125, § 1; L. 2005, ch. 67, § 9; L. 2006, ch. 50, § 5; L. 2012, ch. 22, § 1; L. 2013, ch. 18, § 2; July 1.

**65-34,103. Exceptions to application of act.** Except as provided in K.S.A. [65-34,119](#), and amendments thereto, the Kansas storage tank act shall not apply to:

(a) Farm or residential tanks of 1,100 gallons or less capacity used for storing motor fuel for noncommercial purposes;

(b) tanks used for storing heating oil for consumptive use on a single family residential premise where stored;

(c) a pipeline facility, including gathering lines, regulated under:

(1) U.S.C. 49 chapters 601 and 603 and which is determined by the secretary of transportation to be connected to a pipeline, or to be operated or intended to be capable of operating at pipeline pressure, or as an integral part of a pipeline; or

(2) state laws relating to intrastate pipelines comparable to the provisions of law referred to in subsection (c)(1);

(d) surface impoundments, pits, ponds, septic tanks or lagoons;

(e) storm water or waste water collection systems;

(f) flow-through process tanks;

(g) liquid traps, storage tanks or associated gathering lines directly related to oil or gas production and gathering operations;

(h) aboveground storage tanks of agricultural materials regulated by the Kansas department of agriculture;

(i) aboveground storage tanks located at a petroleum refining facility;

(j) pipeline terminals;

(k) aboveground tanks of less than 660 gallons capacity;

(l) storage tanks associated with oil and natural gas production; and

(m) electrical equipment which has as part of its design a storage tank containing one or more regulated substances.

**History:** L. 1989, ch. 186, § 4; L. 1992, ch. 311, § 2; L. 2004, ch. 101, § 104; L. 2013, ch. 18, § 3; July 1.

**65-34,104. Same; notification to department of tank's existence; form.** (a) Each owner of a storage tank shall notify the department of the tank's existence, including age, size, type, location, associated equipment and uses.

(b) In addition and to the extent known, each owner of an underground storage tank which has not been removed, but was taken out of service after January 1, 1974, and prior to May 8, 1986, shall notify the department of the date the tank was taken out of operation, the age of the tank on the date taken out of operation, the capacity, type and location of the tank, and the type and quantity of substances stored in the tank on the date taken out of operation.

(c) Notice shall be made on an approved form provided by the department.

**History:** L. 1989, ch. 186, § 5; May 18.

**65-34,105. Rules and regulations.** (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 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 overfill 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. 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 K.S.A. [65-34,128](#) (b). All fees 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 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.

**History:** L. 1989, ch. 186, § 6; L. 1992, ch. 305, § 1; L. 2021, ch. 3, § 1; July 1.

**Revisor's Note:**

Section was also amended by L. 1992, ch. 311, § 3, but that version was repealed by L. 1992, ch. 305, § 5.

**65-34,106. Permit to construct, install, modify or operate storage tank.** (a) No person shall construct, install, modify or operate a storage tank unless a permit or other approval is obtained from the secretary. Applications for permits shall include proof that the required performance standards will be met and applications for underground storage tank permits shall include evidence of financial responsibility. For purposes of administering this section, any underground storage tank registered with the department on May 18, 1989, and any aboveground storage tank registered with the department on July 1, 1992, shall be deemed to be a permitted storage tank so long as the owner or operator shall comply with all applicable provisions of this act.

(b) Permits may be transferred upon acceptance of the permit obligations by the person who is to assume the ownership or operational responsibility of the storage tank from the previous owner or operator. The department shall furnish a transfer of permit form providing for acceptance of the permit obligations. A transfer of permit form shall be submitted to the department not less than seven days prior to the transfer of ownership or operational responsibility of the storage tank.

(c) The secretary may deny, suspend or revoke any permit issued or authorized pursuant to this act if the secretary finds, after notice and the opportunity for a hearing conducted in accordance with the Kansas administrative procedure act, that the person has:

- (1) Fraudulently or deceptively obtained or attempted to obtain a storage tank permit;
- (2) failed at any time to maintain a storage tank in accordance with the requirements of this act or any rule and regulation promulgated hereunder;
- (3) failed at any time to comply with the requirements of this act or any rule and regulation promulgated hereunder; or
- (4) failed at any time to make any retrofit or improvement to a storage tank which is required by this act or any rule and regulation promulgated hereunder.

(d) Any person aggrieved by an order of the secretary may appeal the order in accordance with provisions of the Kansas judicial review act.

**History:** L. 1989, ch. 186, § 7; L. 1992, ch. 311, § 5; L. 2010, ch. 17, § 153; July 1.

**65-34,107. Same; evidence of financial responsibility required; limitation of liability.** (a) Each owner or operator of an underground storage tank shall provide evidence of financial responsibility.

(b) If the owner or operator is in bankruptcy, reorganization or arrangement pursuant to the federal bankruptcy law, or if jurisdiction in any state or federal court cannot be obtained over an owner or operator likely to be solvent at the time of judgment, any claim arising from conduct for which evidence of financial responsibility must be provided under this act may be asserted directly against the guarantor providing the evidence of financial responsibility. In the case of action pursuant to this subsection, the guarantor is entitled to invoke all rights and defenses which would have been available to the owner or operator if any action had been brought against the owner or operator by the claimant and which would have been available to the guarantor if any action had been brought against the guarantor by the owner or operator.

(c) The total liability of a guarantor shall be limited to the aggregate amount which the guarantor has provided as evidence of financial responsibility to the owner or operator under this section. This subsection does not limit any other state or federal statutory, contractual or common law liability of a guarantor to its owner or operator, including, but limited to, the liability of the guarantor for bad faith in negotiating or in failing to negotiate the settlement of any claim. This subsection does not diminish the liability of any person under section 107 or 111 of the comprehensive environmental response, compensation and liability act of 1980, or other applicable law.

**History:** L. 1989, ch. 186, § 8; May 18.

**65-34,108. Enforcement of act; duties of owner or operator; records, reports, documents, other information.** (a) For the purposes of developing or assisting in the development of any rule and regulation, conducting any study or enforcing the provisions of this act:

(1) It shall be the duty of any owner or operator of a storage tank, upon the request of any duly authorized representative of the secretary made at any reasonable time, to furnish information relating to the storage tank, including tank equipment and contents, to conduct monitoring or testing, to permit such authorized representative to have access to and to copy all records relating to such tank.

(2) Any authorized representative of the secretary is authorized to enter at reasonable times any establishment or place where a storage tank is located, to inspect and obtain samples from any person of any regulated substance contained in such storage tank, and to conduct or require the owner or operator to conduct monitoring or testing of such storage tank, associated equipment, tank contents or surrounding soils, air, surface water or groundwater.

(b) Each inspection shall be commenced and completed with reasonable promptness.

(c) Any records, reports, documents or information obtained from any person under this act shall be available to the public except as provided in this section.

(d) Any person submitting any records, reports, documents or information required by this act, may, upon a showing satisfactory to the secretary, claim any portion of such record, report, document or information confidential as a trade secret. The department shall establish procedures to insure that trade secrets are utilized by the secretary or any authorized representative of the secretary only in connection with the responsibilities of the department pursuant to this act. Trade secrets shall not be otherwise used or disseminated by the secretary or any representative of the secretary without the consent of the person furnishing the information.

(e) Notwithstanding any limitation contained in this section, all information reported to, or otherwise obtained by the department under this act, shall be made available to the administrator of the United States environmental protection agency, or an authorized representative of the administrator, upon written request. In submitting any trade secrets to such administrator or the authorized representative of such administrator, the secretary shall submit the claim of confidentiality to the administrator or authorized representative of the administrator.

**History:** L. 1989, ch. 186, § 9; L. 1992, ch. 311, § 6; July 1.

**65-34,109. Unlawful acts; penalties.** (a) It shall be unlawful for any owner or operator of a storage tank to deposit, store or dispense, or permit any person to deposit, store or dispense, any regulated substance into such storage tank which does not comply with the provisions of this act, the rules and regulations promulgated hereunder, or any order of the secretary.

(b) It shall be unlawful for any person to:

(1) Construct, install, modify or operate a storage tank without any required permit or other written approval from the secretary or otherwise be in violation of the rules and regulations, standards or orders of the secretary;

(2) prevent or hinder a properly identified officer or employee of the department or other authorized agent of the secretary from entering, inspecting or sampling at a facility on which a storage tank is located or from copying records concerning such storage tank as authorized by this act;

(3) knowingly make any false material statement or representation in any application, record, report, permit or other document filed, maintained or used for purposes of compliance with this act;

(4) knowingly destroy, alter or conceal any record required to be maintained by this act or rules and regulations promulgated hereunder;

(5) knowingly allow a release, knowingly fail to report a release or knowingly fail to take corrective action in response to a release of a regulated substance in violation of this act or rules and regulations promulgated hereunder; or

(6) deposit, store or dispense any regulated substance into any storage tank which does not comply with the provisions of this act, or the rules and regulations promulgated hereunder, after written notice by certified mail has been supplied by the secretary that such storage tanks do not comply with the provisions of the act or such rules and regulations.

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

**History:** L. 1989, ch. 186, § 10; L. 1992, ch. 311, § 7; L. 2003, ch. 12, § 1; July 1.

**65-34,110. Same; licensure of tank installers and contractors; duties of secretary; examinations; inspections; unlawful acts, penalties; qualifications for licensure; reciprocal agreements; validity of license.** (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) Any person who manufactures an underground 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 tank or piping performed by the owner or operator of such 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) 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.

**History:** L. 1989, ch. 186, § 11; L. 2007, ch. 34, § 2; L. 2012, ch. 22, § 2; July 1.

**65-34,111. Same; denial, suspension or revocation of license, when.** The secretary may deny any license applied for, or suspend or revoke any license issued, pursuant to K.S.A. [65-34,110](#) if the secretary finds, after notice and the opportunity for a hearing conducted in accordance with the provisions of the Kansas administrative procedure act, that the applicant or licensee, whichever is applicable, has:

- (a) Fraudulently or deceptively obtained or attempted to obtain a license;
- (b) failed at any time to meet the qualifications for a license or to comply with any provision or requirement of this act or of any rule and regulation adopted thereunder; or
- (c) failed to comply with local requirements of any jurisdiction within which the licensee has installed, repaired or removed an underground storage tank.

**History:** L. 1989, ch. 186, § 12; May 18.

**65-34,112. Same; agreements between secretary and local governments or agencies thereof to act as secretary's agent to carry out provisions of act.** The secretary and the governing body of any city, county or other political subdivision may enter into agreements authorizing the local fire department, building inspection department, health department, department of environmental control or other municipal, county or local governmental agency, to act as the secretary's agent to carry out the provisions of this act under such terms and conditions as the secretary shall prescribe.

**History:** L. 1989, ch. 186, § 13; May 18.

**65-34,113. Civil penalties and remedies for violations.** (a) Any person who violates any provisions of K.S.A. [65-34,109](#) or [65-34,110](#), and amendments thereto, shall incur, in addition to any other penalty provided by law, a civil penalty in an amount of up to \$10,000 for every such violation, and in case of a continuing violation, every day such violation continues shall be deemed a separate violation.

(b) The director of the division of environment, upon a finding that a person has violated any provision of K.S.A. [65-34,109](#) or [65-34,110](#), and amendments thereto, may impose a penalty within the limits provided in subsection (a), which penalty shall constitute an actual and substantial economic deterrent to the violation for which it is assessed.

(c) No penalty shall be imposed pursuant to this section except upon the written order of the director of the division of environment to the person who committed the violation. Such order shall state the violation, the penalty to be imposed and the right of such person to appeal to the secretary. Within 15 days after service of the order, any such person may make written request to the secretary for a hearing thereon in accordance with the Kansas administrative procedure act.

(d) Any action of the secretary pursuant to subsection (c), (e)(1) or (e)(2) is subject to review in accordance with the Kansas judicial review act.

(e) Notwithstanding any other provision of this act, the secretary, upon receipt of information that the storage or release of a regulated substance may present a hazard to the health of persons or to the environment, may take such action as the secretary determines to be necessary to protect the health of such persons or the environment. Operating a storage tank without a permit issued pursuant to K.S.A. [65-34,106](#), and amendments thereto, shall be deemed to constitute such a hazard. The action the secretary may take shall include, but is not limited to:

(1) Issuing an order, subject to review pursuant to the Kansas administrative procedure act, directing the owner or operator of the storage tank, or the custodian of the regulated substance which constitutes such hazard, to take such steps as are necessary to prevent the act, to eliminate the practice which constitutes such hazard, to investigate the extent of and remediate any pollution resulting from the storage or release. Such order may include, with respect to a facility or site, permanent or temporary cessation of operation.

(2) Issuing an order, subject to review pursuant to the Kansas administrative procedure act, directing an owner, tenant or holder of any right of way or easement of any real property affected by a known release from a storage tank to permit entry on to and egress from that property, by officers, employees, agents or contractors of the department or of the person responsible for the regulated substance or the hazard, for the purposes of monitoring the release or to perform such measures to mitigate the release as the secretary shall specify in the order.

(3) Commencing an action to enjoin acts or practices specified in this subsection or requesting the attorney general or appropriate county or district attorney to commence an action to enjoin those acts or practices. Upon a showing that a person has engaged in those acts or practices, a permanent or temporary injunction, restraining order or other order may be granted by any court of competent jurisdiction. An action for injunction under this subsection shall have precedence over other cases in respect to order of trial.

(4) Applying to the appropriate district court for an order of that court directing compliance with the order of the secretary pursuant to the Kansas judicial review act. Failure to obey the court order shall be punishable as contempt of the court issuing the order. The application under this subsection shall have precedence over other cases in respect to order of trial.

(f) In any civil action brought pursuant to this section in which a temporary restraining order, preliminary injunction or permanent injunction is sought it shall be sufficient to show that a violation of the provisions of this act, or the rules and regulations adopted thereunder has occurred or is imminent. It shall not be necessary to allege or prove at any stage of the proceeding that irreparable damage will occur should the temporary restraining order, preliminary injunction or permanent injunction not be issued or that the remedy at law is inadequate.

**History:** L. 1989, ch. 186, § 14; L. 1992, ch. 311, § 8; L. 2003, ch. 12, § 2; L. 2010, ch. 17, § 154; July 1.

**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 10<sup>th</sup> 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.

**Revisor's Note:**

Section was amended twice in the 1992 session, see also, 65-34,114a.

Section was also amended by L. 1992, ch. 311, § 9, but that version was repealed by L. 1992, ch. 305, § 5.

**65-34,115. Liability for costs of corrective action.** Except as otherwise provided in this act, an owner or operator of a petroleum storage tank, or both, shall be liable for all costs of corrective action taken in response to a release from such petroleum storage tank. Eligibility to participate in the underground fund may be submitted as evidence of financial responsibility required of owners and operators of underground petroleum storage tanks.

**History:** L. 1989, ch. 186, § 16; L. 1992, ch. 311, § 11; July 1.

**65-34,117. Environmental assurance fee; disposition of proceeds.** (a) There is hereby established on and after July 1, 1992, an environmental assurance fee of \$.01 on each gallon of petroleum product, other than aviation fuel, manufactured in or imported into this state. The environmental assurance fee shall be paid by the manufacturer, importer or distributor first selling, offering for sale, using or delivering petroleum products within this state. The environmental assurance fee shall be paid to the department of revenue at the same time and in the same manner as the inspection fee established pursuant to K.S.A. [55-426](#), and amendments thereto, is paid. The secretary of revenue shall remit the environmental assurance fees paid hereunder to the state treasurer in accordance with the provisions of K.S.A. [75-4215](#), and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the aboveground fund, the underground fund, the UST redevelopment fund or the environmental stewardship fund, as provided by subsection (b). Exchanges of petroleum products on a gallon-for-gallon basis within a terminal and petroleum product which is subsequently exported from this state shall be exempt from this fee.

(b) Moneys collected from the environmental assurance fee imposed by this section shall be credited as follows:

(1) At any time when the unobligated principal balance of the underground fund is equal to \$2,000,000 or less, the moneys shall be credited to the underground fund until the unobligated principal balance of the underground fund equals or exceeds \$5,000,000.

(2) At any time when the unobligated principal balance of the aboveground fund is equal to \$500,000 or less and the moneys are not required to be credited to the underground fund under subsection (b)(1), such moneys shall be credited to the aboveground fund until the unobligated principal balance of the aboveground fund equals or exceeds \$1,500,000 or until subsection (b)(1) requires moneys to be credited to the underground fund, whichever occurs first. At any time when the unobligated principal balance of the aboveground fund exceeds \$1,500,000, the excess shall be transferred to the underground fund.

(3) At any time when the moneys cease to be credited to the aboveground fund before the unobligated principal balance of the aboveground fund equals or exceeds \$1,500,000, such moneys shall again be credited to the aboveground fund when the unobligated principal balance of the underground fund equals or exceeds \$5,000,000. Such moneys shall continue to be credited to the

aboveground fund until the unobligated principal balance of the aboveground fund equals or exceeds \$1,500,000 or until subsection (b)(1) requires moneys to be credited to the underground fund, whichever occurs first.

(4) At any time when subsections (b)(1), (b)(2) and (b)(3) do not require moneys to be credited to either the underground fund or the aboveground fund, the excess shall be transferred to the UST redevelopment fund. If the unobligated principal balance of the UST redevelopment fund is equal to \$2,000,000 or less, the moneys shall be credited to the UST redevelopment fund until the unobligated principal balance of the UST redevelopment fund equals or exceeds \$5,000,000 or until subsections (b)(1), (b)(2) or (b)(3) require money.

(5) At any time when subsections (b)(1), (b)(2), (b)(3) and (b)(4) do not require moneys to be credited to either the underground fund, the aboveground fund or the UST redevelopment fund, the money shall be credited to the environmental stewardship fund. If the unobligated principal balance of the environmental stewardship fund is equal to \$2,000,000 or less, the money shall be credited to the environmental stewardship fund until the unobligated principal balance of the environmental stewardship fund equals or exceeds \$5,000,000 or until subsections (b)(1), (b)(2), (b)(3) or (b)(4) require money.

(c) At any time when subsections (b)(1), (b)(2), (b)(3), (b)(4) and (b)(5) do not require moneys to be credited to either the underground fund, the aboveground fund, the UST redevelopment fund or the environmental stewardship fund, no environmental assurance fees shall be levied unless and until such time as the unobligated principal balance in the underground fund is less than or equal to \$2,000,000 or the unobligated principal balance in the aboveground fund is less than or equal to \$500,000 or the unobligated principal balance in the UST redevelopment fund or environmental stewardship fund is less than or equal to \$2,000,000, in which case the collection of the environmental assurance fee will resume within 90 days following the end of the month in which such unobligated balance occurs. If no environmental assurance fees are being levied, the director of accounts and reports shall notify the secretary of revenue whenever the unobligated principal balance in the underground fund is \$2,000,000 or the unobligated principal balance in the aboveground fund is \$500,000 or the unobligated principal balance in the UST redevelopment fund or environmental stewardship fund is \$2,000,000, and the secretary of revenue shall then give notice to each person subject to the environmental assurance fee as to the imposition of the fee and the duration thereof.

The director of accounts and reports shall cause to be published each month, in the second issue of the Kansas register published in such month, the amount of the unobligated principal balances in the underground fund and the aboveground fund on the last day of the preceding calendar month.

(d) Every manufacturer, importer or distributor of any petroleum product liable for the payment of environmental assurance fees as provided in this act, shall report in full and detail before the 25<sup>th</sup> day of every month to the secretary of revenue, on forms prepared and furnished by the secretary of revenue, and at the time of forwarding such report, shall compute and pay to the secretary of revenue the amount of fees due on all petroleum products subject to such fee during the preceding month.

(e) All fees imposed under the provisions of this section and not paid on or before the 25<sup>th</sup> day of the month succeeding the calendar month in which such petroleum products were subject to such fee shall be deemed delinquent and shall bear interest at the rate of 1% per month, or fraction thereof, from such due date until paid. In addition thereto, there is hereby imposed upon all amounts of such fees remaining due and unpaid after such due date a penalty in the amount of 5% thereof. Such penalty shall be added to and collected as a part of such fees by the secretary of revenue.

(f) The secretary of revenue is hereby authorized to adopt such rules and regulations as may be necessary to carry out the responsibilities of the secretary of revenue under this section.

**History:** L. 1989, ch. 186, § 18; L. 1990, ch. 229, § 2; L. 1992, ch. 311, § 13; L. 1996, ch. 61, § 1; L. 2001, ch. 5, § 249; L. 2006, ch. 50, § 6; L. 2012, ch. 22, § 3; L. 2015, ch. 26, § 3; July 1.

**65-34,118. Corrective action; duties of owners and operators; duties of secretary; consent agreement, contents.** (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 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. Such time period may be specified by rules and 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 \$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.

**History:** L. 1989, ch. 186, § 19; L. 1992, ch. 311, § 14; L. 2021, ch. 3, § 2; July 1.

**65-34,119. Reimbursement from aboveground and underground funds for corrective actions; conditions.** (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:

- (A) The owner or operator is not the United States government or any of its agencies;
- (B) the owner or operator is in substantial compliance, as provided in subsections (e) and (f);
- (C) the owner or operator undertakes corrective action, either through personnel of the owner or operator or through response action contractors or subcontractors; and
- (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, 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 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 that are allowable as corrective action costs and those 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 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 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 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.

**History:** L. 1989, ch. 186, § 20; L. 1990, ch. 229, § 3; L. 1992, ch. 311, § 15; L. 2015, ch. 26, § 4; L. 2021, ch. 3, § 3; July 1.

**65-34,119a. Retroactive reimbursement from underground fund.** (a) An owner or operator shall be entitled to reimbursement from the underground fund for the costs of corrective action taken on or after April 1, 1990, in response to a release from an underground petroleum storage tank which was discovered on or after December 22, 1988, to the extent that such owner or operator would be entitled to reimbursement if the release had been discovered on or after April 1, 1990, including application of all applicable deductibles and conditions of reimbursement imposed by K.S.A. [65-34,119](#) and amendments thereto.

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

**History:** L. 1990, ch. 229, § 4; L. 1992, ch. 311, § 17; July 1.

**65-34,120. Liability of state and its officers and employees limited; fund liability limits.** (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, \$2,000,000;

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

(3) 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, \$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 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.

**History:** L. 1989, ch. 186, § 21; L. 1990, ch. 229, § 6; L. 1992, ch. 311, § 18; L. 1996, ch. 125, § 2; L. 2021, ch. 3, § 4; July 1.

**65-34,121. Annual report to governor and legislature.** On or before the first day of the regular session of the legislature in each year, the secretary shall prepare and submit a report to the governor and to the chairperson, vice-chairperson and ranking minority member of the standing committees on energy and natural resources of the house of representatives and the senate regarding the receipts and disbursements from the underground fund and the aboveground fund during the preceding fiscal year, indicating the extent of the corrective action taken under this act.

**History:** L. 1989, ch. 186, § 22; L. 1992, ch. 311, § 19; L. 1996, ch. 125, § 3; July 1.

**65-34,122. Same; appeals from orders or decisions of secretary, procedure.** (a) Any person adversely affected by any order or decision of the secretary may, within 15 days of service of the order or decision, request in writing a hearing. Hearings under this section shall be conducted in accordance with the provisions of the Kansas administrative procedure act.

(b) Any person adversely affected by any action of the secretary pursuant to this act may obtain review of such action in accordance with the Kansas judicial review act.

**History:** L. 1989, ch. 186, § 23; L. 2010, ch. 17, § 155; July 1.

**65-34,123. Abolishment of the underground fund and the aboveground fund.** The underground fund and the aboveground fund shall be and are hereby abolished on July 1, 2034.

**History:** L. 1989, ch. 186, § 24; L. 1992, ch. 311, § 20; L. 1993, ch. 56, § 1; L. 1996, ch. 125, § 4; L. 2001, ch. 143, § 1; L. 2012, ch. 22, § 4; L. 2021, ch. 3, § 5; July 1.

**65-34,124. Same; effective date of K.S.A. 65-34,114 through 65-34,123.** The provisions of K.S.A. [65-34,114](#) through [65-34,123](#) shall take effect and be in force on and after April 1, 1990.

**History:** L. 1989, ch. 186, § 25; May 18.

**65-34,125. Severability.** If any provisions of this act or the application thereof to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of this act which can be given effect without the invalid provisions or application. To this end the provisions of this act are severable.

**History:** L. 1989, ch. 186, § 36; May 18.

**65-34,126. Third party liability insurance plan.** (a) The commissioner of insurance shall adopt and implement a plan for applicants for insurance who are in good faith entitled to insurance necessary to achieve compliance with the financial responsibility requirements for third-party liability imposed by 40 C.F.R. part 280, subpart H, and part 281 adopted by the federal environmental protection agency. Insurers undertaking to transact the kinds of insurance specified in subsection (b) or (c) of K.S.A. [40-1102](#) and amendments thereto and rating organizations which file rates for such insurance shall cooperate in the preparation and submission to the commissioner of insurance of a plan or plans for the insurance specified in this section. Such plan shall provide:

(1) Insurance necessary to achieve compliance with the financial responsibility requirements for third-party liability imposed by 40 C.F.R. part 280, subpart H, and part 281;

(2) for the appointment by the plan of a servicing carrier which shall be: (A) An insurance company authorized to transact business in this state; (B) an insurance company which is listed with the commissioner pursuant to K.S.A. [40-246e](#) and amendments thereto; or (C) a risk retention group, as defined by K.S.A. [40-4101](#) and amendments thereto, which meets the requirements established under the federal liability risk retention act of 1986 (15 U.S.C. 3901 et seq.) and has registered with the commissioner pursuant to K.S.A. [40-4103](#) and amendments thereto;

(3) reasonable rules governing the plan, including provisions requiring, at the request of the applicant, an immediate assumption of the risk by an insurer or insurers upon completion of an application, payment of the specified premium and deposit of the application and the premium in the United States mail, postage prepaid and addressed to the plan's office;

(4) rates and rate modifications applicable to such risks, which rates shall be established as provided by subsection (b);

(5) the limits of liability which the insurer shall be required to assume;

(6) coverage for only underground storage tanks located within this state;

(7) coverage for at least 12 months from the date of the original application with respect to any underground storage tank which has been installed for less than 10 years, and may provide such coverage with respect to any such tank which has been installed 10 or more years, without requiring tank integrity tests, soil tests or other tests for insurability if, within six months immediately preceding application for insurance, the tank has been made to comply with all provisions of federal and state law, and all applicable rules and regulations adopted pursuant thereto, but the plan may provide for renewal or continuation of such coverage to be contingent upon satisfactory evidence that the tank or tanks to be insured continue to be in compliance with such laws and rules and regulations;

(8) exclusion from coverage of any damages for noneconomic loss and any damages resulting from intentional acts of the insured or agents of the insured;

(9) to the extent allowed by law, subrogation of the insurer to all rights of recovery from other sources for damages covered by the plan or plans;

(10) an optional deductible of the first \$2,500, \$5,000 or \$10,000 of liability per occurrence at any one location for compensation of third parties for bodily injury and property damage caused by either gradual or sudden and accidental releases from underground petroleum storage tanks, but no such deductible shall apply to reasonable and necessary attorney fees and other reasonable and necessary expenses incurred in defending a claim for such compensation;

(11) coverage only of claims for occurrences that commenced during the term of the policy and that are discovered and reported to the insurer during the policy period or within six months after the effective date of the cancellation or termination of the policy;

(12) a method whereby applicants for insurance, insureds and insurers may have a hearing on grievances and the right of appeal to the commissioner;

(13) a method whereby adequate reserves are established for open claims and claims incurred but not reported based on advice from an independent actuary retained by the plan at least annually, the cost of which shall be borne by the plan;

(14) a method whereby the plan shall compare the premiums earned to the losses and expenses sustained by the plan for the preceding fiscal year and if, for that year: (A) There is any excess of losses and expenses over premiums earned, plus amounts transferred pursuant to subsection (a)(15), an amount equal to such excess losses and expenses shall be transferred from the underground fund established by K.S.A. [65-34,114](#) and amendments thereto to the plan; or (B) there is any surplus of premiums earned, plus amounts transferred pursuant to subsection (a)(15), over losses, including loss reserves, and expenses sustained, ½ of such surplus shall be transferred to such fund from the plan and the remaining ½ of such surplus shall be refunded from the plan to the insureds in proportion to the amount each paid into the plan during the preceding fiscal year; and

(15) a method whereby, during any fiscal year, whenever the losses and expenses sustained by the plan exceed premiums earned, an amount equal to the excess of losses and expenses shall be transferred from the underground fund established by K.S.A. [65-34,114](#) and amendments thereto to the plan upon receipt by the secretary of health and environment of evidence, satisfactory to the secretary, of the amount of the excess losses and expenses.

(b) The commissioner of insurance shall establish rates, effective January 1 of each year, for coverage provided under the plan adopted pursuant to this section. Such rates shall be reasonable, adequate and not unfairly discriminatory. Such rates shall be based on loss and expense experience developed by risks insured by the plan and shall be in an amount deemed sufficient by the commissioner to fund anticipated claims based upon reasonably prudent actuarial principles, except that:

(1) Due consideration shall be given to the loss and expense experience developed by similar plans operating or trust funds offering third party liability coverage in other states and the voluntary market; and

(2) before January 1, 1992, the annual rate shall be not more than \$500 for each tank for which coverage is provided under the plan with selection of a \$10,000 deductible.

In establishing rates pursuant to this subsection, the commissioner shall establish, as appropriate, lower rates for tanks complying with all federal standards, including design, construction, installation, operation and release detection standards, with which such tanks are or will be required to comply by 40 C.F.R. part 280 as in effect on the effective date of this act.

(c) The commissioner of insurance shall appoint a governing board for the plan. The governing board shall meet at least annually to review and prescribe operating rules of the plan. Such board shall consist of five members appointed as follows: One representing domestic or foreign insurance companies, one representing independent insurance agents, one representing underground storage tank owners and operators and two representing the general public. No member representing the general public shall be, or be affiliated with, an insurance company, independent insurance agent or underground storage tank operator. Members shall be appointed for terms of three years, except that the initial appointment shall include two members appointed for two-year terms and one member appointed for a one-year term, as designated by the commissioner.

(d) Before adoption of a plan pursuant to this section, the commissioner of insurance shall hold a hearing thereon.

(e) An insurer participating in the plan adopted by the commissioner of insurance pursuant to this section may pay a commission with respect to insurance assigned under the plan to an agent licensed for any other insurer participating in the plan or to any insurer participating in the plan.

(f) The commissioner of insurance may adopt such rules and regulations as necessary to administer the provisions of this section.

(g) The department of health and environment and the plan shall provide to each other such information as necessary to implement and administer the provisions of this section. Any such information which is confidential while in the possession of the department or plan shall remain confidential after being provided to the other pursuant to this subsection.

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

**History:** L. 1990, ch. 229, § 5; L. 1992, ch. 311, § 21; L. 2001, ch. 143, § 2; July 1.

**65-34,127. Severability.** If any provisions of this act or the application thereof to any person or circumstances is held invalid the invalidity does not affect other provisions or applications of this act which can be given effect without the invalid provisions or application and to this end the provisions of this act are severable.

**History:** L. 1990, ch. 229, § 7; May 17.

**65-34,128. Storage tank fee fund.** (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 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 10<sup>th</sup> 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.

**History:** L. 1992, ch. 311, § 4; L. 1992, ch. 305, § 2; L. 1996, ch. 253, § 19; L. 2021, ch. 3, § 6; July 1.

**65-34,129. Aboveground petroleum storage tank release trust fund.** (a) There is hereby established as a segregated fund in the state treasury the aboveground petroleum storage tank release trust fund, to be administered by the secretary. Revenue from the following sources shall be deposited in the state treasury and credited to the aboveground 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 aboveground 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 aboveground fund; and

(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 aboveground fund, but excluding federal grants and cooperative agreements.

(b) Moneys deposited in the aboveground 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 subject to the conditions and limitations prescribed by this act, but moneys in the aboveground fund shall not otherwise be used for compensating third parties for bodily injury or property damage caused by a release from an aboveground petroleum storage tank, other than property damage included in a corrective action plan approved by the secretary. In addition, moneys credited to the aboveground 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 aboveground 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 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 aboveground 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 aboveground fund; and

(4) reimbursement of persons as authorized by subsection (g) of K.S.A. [65-34,119](#) and amendments thereto.

(c) The aboveground 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 aboveground fund shall remain intact and inviolate for the purposes set forth in this act, and moneys in the aboveground 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 aboveground 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 10<sup>th</sup> of each month, the director of accounts and reports shall transfer from the state general fund to the aboveground fund interest earnings based on:

(1) The average daily balance of moneys in the aboveground 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 aboveground 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.

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

**History:** L. 1992, ch. 311, § 10; L. 1992, ch. 305, § 4; L. 1996, ch. 253, § 20; May 23.



**65-34,130. Retroactive reimbursement from aboveground fund.** (a) An owner or operator shall be entitled to reimbursement from the aboveground fund for the costs of corrective action taken before July 1, 1992, in response to a release from an aboveground petroleum storage tank which was discovered on or after December 22, 1988, and for which written approval of any corrective action taken prior to July 1, 1992, has been granted by the secretary, subject to the following:

(1) Such owner or operator shall be entitled to reimbursement pursuant to this section only to the extent that such owner or operator would be entitled to reimbursement if the release had been discovered on or after the effective date of this act, including application of all applicable deductibles and conditions of reimbursement imposed by K.S.A. [65-34,119](#) and amendments thereto;

(2) such owner or operator shall be entitled to reimbursement pursuant to this section only if the owner or operator submits to the secretary proof, acceptable to the secretary, that such owner or operator is not engaged in production or refining of petroleum products;

(3) the aggregate of all reimbursement paid pursuant to this section shall not exceed \$3,200,000;

(4) the aggregate of all reimbursement paid to an owner or operator pursuant to this section shall not exceed \$100,000, after all applicable deductibles; and

(5) any claim for reimbursement pursuant to this section must be submitted to the secretary not later than December 31, 1992;

(b) If the aggregate of all reimbursement to which owners and operators would be otherwise entitled pursuant to this section exceeds \$3,200,000, reimbursement shall be paid from the aboveground fund as follows:

(1) Any owner or operator who owns or operates not more than 12 aboveground petroleum storage tanks and whose aggregate claims for reimbursement pursuant to this section do not exceed \$20,000, before applicable deductibles, shall receive full payment of the reimbursement to which such owner or operator is entitled unless the aggregate of all reimbursement to which all such owners and operators are entitled exceeds \$3,200,000. In that case, such owners and operators shall be paid on a pro rata basis and no payments shall be paid to other owners or operators.

(2) If the aggregate of all reimbursement paid pursuant to subsection (b)(1) is less than \$3,200,000, owners and operators other than those described in subsection (b)(1) shall receive full payment of the reimbursement to which they are entitled unless the aggregate of all reimbursement to which all such owners and operators are entitled, when added to the amount paid pursuant to subsection (b)(1), exceeds \$3,200,000. In that case, such owners and operators shall be paid on a pro rata basis.

(c) All reimbursement payable pursuant to this section shall be paid by the secretary prior to May 1, 1993.

(d) Subject to the provisions of K.S.A. [65-34,119](#) and amendments thereto, an owner or operator shall be entitled to reimbursement from the aboveground fund for the costs of corrective action taken on or after July 1, 1992, in response to a release from an aboveground petroleum storage tank which was discovered on or after December 22, 1988, if such owner or operator is entitled to reimbursement under subsection (a) for corrective action taken before July 1, 1992, with respect to such release.

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

**History:** L. 1992, ch. 311, § 16; July 1.

**65-34,131. UST redevelopment fund; expenditures.** (a) There is hereby established as a segregated fund in the state treasury the Kansas essential fuels supply trust fund. The Kansas essential fuels supply trust fund is hereby redesignated as the UST redevelopment fund. The UST

redevelopment fund shall be administered by the secretary. Revenue from the following sources shall be deposited in the state treasury and credited to the UST redevelopment fund:

(1) The applicable proceeds of the environmental assurance fee imposed by K.S.A. [65-34,117](#), and amendments thereto; and

(2) interest attributable to investment of moneys in the UST redevelopment fund.

(b) The funds credited to the UST redevelopment fund may be expended to:

(1) Reimburse an eligible property owner in accordance with the provisions of K.S.A. [65-34,132](#), and amendments thereto, for allowable expenses for permanent closure of an abandoned underground storage tank;

(2) permit the secretary to conduct activities to permanently close an abandoned underground storage tank, if the underground storage tank owner or operator has not been identified or is unable or unwilling to perform permanent closure of the underground storage tank;

(3) reimburse an eligible owner of an underground storage tank in accordance with the provisions of K.S.A. [65-34,139](#), and amendments thereto, for allowable expenses for replacement and installation of all components of a single-wall underground storage tank system with a secondary containment system that complies with K.S.A. [65-34,138](#), and amendments thereto; or

(4) pay the administrative technical and legal costs incurred by the secretary in carrying out the provisions of this section and K.S.A. [65-34,132](#), and amendments thereto, 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 UST redevelopment fund.

(c) On or before the 10<sup>th</sup> of each month, the director of accounts and reports shall transfer from the state general fund to the above UST redevelopment fund interest earnings based on:

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

**History:** L. 2006, ch. 50, § 1; L. 2012, ch. 22, § 5; L. 2015, ch. 26, § 5; July 1.

**65-34,132. UST redevelopment fund; reimbursement.** (a) The secretary may provide for the reimbursement to eligible property owners in accordance with the provisions of this section and subject to the availability of moneys in the UST redevelopment fund. A property owner shall be eligible for reimbursement under this section, if such property owner has been approved by the secretary and:

(1) The property owner has never placed petroleum in the underground storage tank or withdrawn petroleum from the underground storage tank;

(2) the property owner is not the United States government or any of its agencies;

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

(4) the property owner provides 30-day notice and access to the department to perform an environmental assessment of the site during the underground storage tank removal; and

(5) if petroleum contamination is discovered during the environmental assessment of this site, the property owner applies to the underground fund to perform corrective action to address the contamination.

(b) A property owner shall not be eligible for reimbursement unless the underground storage tank owner or operator is unable or unwilling to perform corrective action or cannot be found. In such case the secretary may recover all reimbursement paid and any related administrative and legal expenses, from the underground storage tank owner or operator.

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

(1) The property owner must submit an application for reimbursement on forms supplied by the department and receive approval from the secretary of the proposed underground storage tank removal plan;

(2) upon approval of such plan, the property owner shall obtain and submit to the secretary at least three bids from persons qualified to perform the underground storage tank removal except that, the secretary may waive this requirement upon a showing that the property owner has made a good faith effort, but has not been able to obtain three bids from qualified bidders.

(3) The secretary may, in the secretary's discretion, determine those costs which are allowable as underground storage tank removal costs.

(d) The secretary may reimburse the property owner for permanent closure expenses, in the amount specified in subsection (e), if all of the following criteria are met:

(1) The underground storage tank facility was registered with the department on or after May 1, 1981;

(2) the underground storage tank contained petroleum products; and

(3) a deed restriction was placed on the property prohibiting the installation of underground storage tanks for the 10 years following the date of the underground storage tank removal. As a condition for reimbursement, the applicant must provide a notarized copy of the recorded deed restriction for the property with the seal of the register of deeds to the department.

(e) Only expenses for activities reasonable and necessary to permanently close [an] underground 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) cleaning and disposal of tanks; and

(C) disposal of waste petroleum and other waste material including concrete.

(f) 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 UST redevelopment fund compensation advisory board.

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

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

**History:** L. 2006, ch. 50, § 2; L. 2007, ch. 34, § 4; L. 2007, ch. 180, § 16; L. 2012, ch. 22, § 6; July 1.

**65-34,133. UST redevelopment fund compensation advisory board.** (a) There is hereby established the UST redevelopment fund compensation advisory board composed of five members,

including the state fire marshal or the state fire marshal's designee, the director of the division of environment of the department or designee, two representatives from the petroleum industry, at least one of which shall be a petroleum marketer and one representative from the petroleum equipment installation industry. The governor shall appoint the appointive members of the board, and the members so appointed shall serve for terms of the duration of [the] UST redevelopment fund. The governor also shall designate a member of the board as its chair, to serve in such capacity at the pleasure of the governor. The secretary shall provide staff to support the activities of the board.

(b) Appointed members of the board attending meetings of such board, or attending a subcommittee meeting thereof, when authorized by such board, shall receive the amounts provided in subsection (e) of K.S.A. [75-3223](#), and amendments thereto.

(c) The board shall provide advice and counsel and make recommendations to the secretary regarding disputes over the disbursement of moneys from the UST redevelopment fund.

**History:** L. 2006, ch. 50, § 3; L. 2012, ch. 22, § 7; July 1.

**65-34,134. Abolishment of UST redevelopment fund and compensation advisory board.** The UST redevelopment fund compensation advisory board and the UST redevelopment fund shall be and are hereby abolished on July 1, 2032. At the time of such abolishment, remaining funds shall be deposited in the underground fund.

**History:** L. 2006, ch. 50, § 4; L. 2007, ch. 34, § 5; L. 2012, ch. 22, § 8; L. 2021, ch. 3, § 7; July 1.

**65-34,135. Underground storage tank operators, training program; requirements.** (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.

**History:** L. 2007, ch. 34, § 1; July 1.

**65-34,136. Non-fuel flammable or combustible liquid aboveground storage tanks; duties of state fire marshal; civil penalties; annual report; rules and regulations.** (a) As used in this section:

(1) "Facility" means all buildings, equipment, structures, tanks and other stationary items which are located on a single site or on contiguous or adjacent sites and which are owned or operated by the

same person or by any person which controls, is controlled by or under common control with such person, upon which one or more non-fuel flammable or combustible liquid aboveground storage tank system or systems is located, with bulk storage stations and terminals having a bulk storage total capacity of 10,000 gallons or more of flammable or combustible liquids.

(2) "Non-fuel flammable or combustible liquid" means flammable or combustible liquids not used for fuel including, but not limited to, solvents. "Non-fuel flammable or combustible liquid" shall not include the following compounds: New and used motor oil, transmission fluid, hydraulic oil, grease and lube oil; asphalt; asphalt emulsion; road oil; crude oil; mineral oil; processed fat; food grade oil; vegetable oil; and ethylene glycol.

(3) "Non-fuel flammable or combustible liquid aboveground storage tank system" means an aboveground storage tank system that contains non-fuel flammable or combustible liquids.

(b) (1) On or before July 1, 2009, the state fire marshal shall conduct an on-site inspection of each facility in existence on the effective date of this section to determine compliance with all standards concerning flammable and combustible liquids contained in national fire protection association pamphlet no. 30, 2008 edition, and all rules and regulations concerning aboveground storage tanks.

(2) If the state fire marshal determines that a facility is in compliance with such standards, rules and regulations, the state fire marshal shall conduct an on-site inspection of the facility at least once every three years thereafter to determine continued compliance with such standards, rules and regulations.

(3) If the state fire marshal determines that a facility is not in compliance with such standards, rules and regulations, the facility shall make all changes necessary to comply with such standards, rules and regulations as soon as practicable, but no later than July 1, 2012. Upon notification of compliance by the facility, but no later than July 1, 2012, the state fire marshal shall conduct an on-site inspection of the facility to determine compliance. Upon determination of compliance, the state fire marshal shall conduct an on-site inspection of the facility at least once every three years thereafter to determine continued compliance with such standards, rules and regulations.

(c) (1) An application and plan for design, construction, major modification and installation of all non-fuel flammable or combustible liquid aboveground storage tank facilities after the effective date of this section shall be submitted to the state fire marshal. Construction, major modification and installation of such facilities shall not commence until such application and plan is reviewed and approved by the state fire marshal in accordance with rules and regulations.

(2) The state fire marshal shall approve or deny such submitted applications and plans within 20 business days upon receipt of all necessary documentation as provided for in rules and regulations. If the state fire marshal requests additional information from the applicant, the state fire marshal shall have an additional 20 business days from the day of receipt of such information to approve or deny the submitted application and plan.

(3) The state fire marshal shall conduct an on-site inspection of each facility constructed after the effective date of this section, before such facility begins operation, to determine compliance with all standards concerning flammable and combustible liquids contained in national fire protection association pamphlet no. 30, 2008 edition, and all rules and regulations concerning aboveground storage tanks. Such facility shall not begin operation until the state fire marshal makes a determination of compliance. Upon determination of compliance, the state fire marshal shall conduct an on-site inspection of the facility at least once every three years thereafter to determine continued compliance with such standards, rules and regulations.

(d) On and after July 1, 2012, if the state fire marshal determines that a facility is not in compliance with all standards concerning flammable and combustible liquids contained in national fire protection association pamphlet no. 30, 2008 edition, and all rules and regulations concerning

aboveground storage tanks, such facility shall be subject to a fine of \$100 per tank every 30 days until the state fire marshal makes a determination of compliance. All fines assessed and collected under this section shall be remitted to the state treasurer in accordance with the provisions of K.S.A. [75-4215](#), and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the non-fuel flammable or combustible liquid aboveground storage tank system fund.

(e) The state fire marshal shall report annually to the senate standing committee on natural resources and the house of representatives standing committee on agriculture and natural resources regarding inspections and compliance pursuant to this section.

(f) On or before September 1, 2008, the state fire marshal shall adopt rules and regulations necessary to administer and enforce the provisions of this section. Such rules and regulations shall include adoption of all standards concerning flammable and combustible liquids contained in national fire protection association pamphlet no. 30, 2008 edition.

(g) The state fire marshal shall adopt rules and regulations specifying subsequent editions of national fire protection association pamphlet no. 30 which the state fire marshal has determined to be equivalent to the 2008 edition. Compliance with any subsequent edition specified by such rules and regulations shall be considered compliance with the 2008 edition specified in this section.

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

**History:** L. 2008, ch. 89, § 1; April 24.

**65-34,137. Non-fuel flammable or combustible liquid aboveground storage tank system fund.** (a) There is hereby established as a segregated fund in the state treasury the non-fuel flammable or combustible liquid aboveground storage tank system fund. Revenue from the fines assessed pursuant to K.S.A. [65-34,136](#), and amendments thereto, shall be deposited in the state treasury and credited to the fund.

(b) Moneys in the non-fuel flammable or combustible liquid aboveground storage tank system fund shall be expended only for administration and enforcement of the provisions of K.S.A. [65-34,136](#), and amendments thereto.

(c) All expenditures from the non-fuel flammable or combustible liquid aboveground storage tank system 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 state fire marshal.

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

**History:** L. 2008, ch. 89, § 2; April 24.

**65-34,138. Underground storage tank systems; secondary containment.** (a) Each underground storage tank, or piping connected to any such tank, installed or replaced on and after July 1, 2013, shall be secondarily contained and monitored for leaks. (1) All secondary containment systems shall: (A) Be designed, constructed and installed to contain regulated substances released from the tank system until they are detected and removed;

(B) prevent the release of regulated substances to the environment at any time during the operational life of the underground storage tank system; and

(C) be checked for evidence of a release using interstitial monitoring.

(2) Any installation or replacement of secondarily contained piping shall include installation of containment of the submersible pump, but the requirement for secondary containment shall not apply

to safe suction piping or repairs to an underground storage tank, piping or dispenser that are meant to restore a tank, pipe or dispenser to operating condition.

(b) The provisions of this section shall apply: (1) For a new underground storage tank system, to all underground storage tanks and connected pipes comprising the system, including systems comprised of multiple storage tanks or connected piping;

(2) for the replacement of an existing underground storage tank or existing piping connected to an underground storage tank system, to the specific underground storage tank or piping being replaced and not to other underground storage tanks and connected pipes comprising such system;

(3) to any new motor fuel dispenser system installed after June 30, 2013. Such system shall include under-dispenser spill containment. The containment must be: (A) Liquid tight on its sides, bottom and at any penetrations;

(B) compatible with the substance conveyed by the piping; and

(C) designed to allow for visual inspection and access to the components in the containment or to be monitored for a release of regulated substances from dispenser and piping.

**History:** L. 2013, ch. 18, § 1; July 1.

**65-34,139. Underground storage tank systems; reimbursement for replacement.** (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, 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 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.

**History:** L. 2015, ch. 26, § 2; L. 2021, ch. 3, § 8; July 1.