

UNDERGROUND STORAGE TANKS STATUTES RELATED TO FINANCIAL ASSURANCE

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68-215-107. Supervision, inspection, and enforcement responsibilities.

(a) The commissioner shall exercise general supervision over the placement and storage of petroleum substances in petroleum underground storage tanks, release prevention, release detection, release correction, closure, and, where applicable, post-closure care of petroleum underground storage tanks throughout the state. The supervision shall apply to all features of the installation of the petroleum underground storage tanks, the standards for permissible petroleum underground storage tanks, petroleum delivery requirements, release prevention requirements, release detection requirements, release correction requirements, facility **financial responsibility** requirements, facility closure requirements, and facility post-closure requirements which do or may affect the public health, safety or quality of the environment and which do or may affect the proper storage of petroleum substances.

(b) The commissioner is authorized to issue an order to any responsible party requiring such party to investigate, identify, contain and clean up, including monitoring and maintenance, any petroleum substance sites which pose or may pose a danger to public health, safety, or the environment because of release or threatened release of petroleum substances. Any person failing, neglecting or refusing to comply with any final order after a hearing shall be subject to the penalties provided in this chapter.

(c) In the event that any identified responsible party or parties are unable or unwilling to provide for the investigation, identification, or for the reasonable and safe containment and cleanup, including monitoring and maintenance, pursuant to an order issued under this section, or no such liable party can reasonably be identified by the commissioner, the commissioner may provide for such actions.

(d) If, at any time, the commissioner, after investigation, finds that a petroleum site constitutes an imminent, substantial danger to the public health, safety or environment, the commissioner may undertake such actions as are necessary to abate the imminent and substantial danger.

(e) For the purpose of developing or enforcing any rule or regulation authorized by this chapter, or enforcing any requirement of this chapter or order issued by the commissioner or board pursuant to this chapter, the commissioner or the commissioner's agent is authorized to:

(1) Enter at reasonable times any establishment or other place where a petroleum underground storage tank is located or where petroleum contamination is or may be present for the purpose of conducting investigations or remediating the contamination caused by a release from a petroleum underground storage tank;

(2) Inspect and obtain samples of any petroleum substance contained in such tank and allow for testing of samples by both the commissioner or the commissioner's agent and the owner/operator;

(3) Conduct monitoring or testing of the tanks, associated equipment, contents, or surrounding soils, air, surface water or groundwater;

(4) Require the owner/operator of a petroleum underground storage tank to prove the petroleum underground storage tank is not leaking, if there has been the release of petroleum substances in the area, including tightness testing of the petroleum underground storage tank, if deemed necessary; and

(5) Issue subpoenas to compel attendance of witnesses or production of documents or data.

(f) The board may promulgate and adopt such rules and regulations in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, as are required elsewhere in this chapter or are otherwise necessary or desirable to implement this chapter. Such rules and regulations shall include, but not be limited to:

(1) Requirements for maintaining a leak detection system, an inventory control system, together with tank testing, including a tank tightness testing certification program if deemed necessary, or a comparable system or method designated to identify releases in a manner consistent with the protection of human health and environment;

(2) Requirements for maintaining records of petroleum delivery or of any monitoring or leak detection system or inventory control system or tank testing or comparable system;

(3) Requirements for reporting releases and corrective actions taken in response to a release from a petroleum underground storage tank;

(4) Requirements for taking corrective action in response to a release from a petroleum underground storage tank;

(5) Requirements for the closure of petroleum underground storage tanks to prevent future releases of petroleum substances into the environment;

(6) Requirements that new petroleum underground storage tanks meet design standards promulgated by the board before such tanks may be installed;

(7) Requirements that existing petroleum underground storage tanks either be retrofitted to meet new petroleum tank standards or replaced with new petroleum tanks over a scheduled time period;

(8) (A) Requirements for maintaining evidence of **financial responsibility** for taking corrective action and compensating third parties for bodily injury and property damage caused by sudden and nonsudden accidental releases arising from operation of a petroleum underground storage tank, the mechanism by which the fund may provide relief of third party damages incurred by the petroleum site owner or the owner and/or operator at a petroleum site, and the mechanism by which the fund may provide relief for the costs of corrective action at fund eligible sites exceeding the **financial responsibility** requirements of the petroleum site owner or the owner and/or operator at the petroleum site; and

(B) Requirements to authorize any class or category of petroleum underground storage tank owners and/or operators to petition for changes in the foregoing **financial responsibility** requirements pursuant to § 4-5-201. In ruling on any request, the board may not allow the **financial responsibility** requirements to be less stringent than the federal **financial responsibility** requirements for enforcement;

(9) Requirements providing for the assessment and collection of fees as provided in this chapter;

(10) Provisions exempting certain classes of petroleum underground storage tanks from certain parts of the regulations; provided, that such exemptions do not make the regulations less stringent than federal law and regulation; and

(11) Requirements for two (2) certification programs, one (1) for installers of and service providers for tank systems and one (1) for owners or operators of tanks, including, but not limited to, the qualifications, the testing procedure, any continuing education requirements, sanctions for failing to comply with the programs, and fees adequate to support the programs.

(g) (1) The commissioner or board shall approve the clean-up plan only if it assures that implementation of the plan will provide adequate protection of human health, safety, and the environment. In making this determination, the commissioner or board shall consider:

(A) The physical and chemical characteristics of petroleum, including its toxicity,

persistence, and potential for migration;

(B) The hydrogeologic characteristics of the petroleum site and the surrounding land;

(C) The proximity, quality, and current and future uses of groundwater;

(D) An exposure assessment; and

(E) The proximity, quality, and current and future uses of surface waters.

(2) Upon approval of the clean-up plan, the owners and/or operators shall implement the plan and monitor, evaluate, and report the results of implementation, as required by the commissioner or board.

68-215-111. Use of fund.

(a) The fund shall be available to the board and the commissioner for expenditures for the purposes of providing for the investigation, identification, and for the reasonable and safe cleanup, including monitoring and maintenance, of petroleum sites and locations from which underground storage tank systems have been removed within the state as provided in this chapter.

(b) The fund may also be used by the commissioner as a source of federal matching funds for the state in the petroleum underground storage tank program.

(c) The commissioner may enter into contracts and use the fund for those purposes directly associated with identification, investigation, containment and cleanup, including monitoring and maintenance prescribed above, including:

(1) Hiring consultants and personnel;

(2) Purchase, lease or rental of necessary equipment; and

(3) Other necessary expenses.

(d) The fund may be used for the administrative costs of the underground storage tank program and be included in the department's annual budget request to the general assembly.

(e) The fund may be used to provide a mechanism to meet the **financial responsibility**

requirements for owners or operators, or both, of petroleum underground storage tanks for cleanup of contamination and third-party claims due to bodily injury or property damage, or both, caused by releases from petroleum underground storage tanks.

(f) The fund may be used to provide for cleanup of contamination in accordance with conditions for eligibility and coverage of releases established in this part and in rules of the board.

(1) Petroleum underground storage tanks for which notification has been received by the commissioner are eligible for reimbursement from the fund for the costs of cleanup of contamination caused by releases from the tanks; however, before costs related to a particular release may be reimbursed, all of the applicable requirements of this part and the rules must be met.

(2) The board is authorized to promulgate rules that establish the following:

(A) The amount of the deductible that must be incurred by either the tank owner or operator or the owner of the petroleum site at the time of corrective action before the tank owner or operator or the owner of the petroleum site is eligible to receive reimbursement from the fund. Notwithstanding this authority, in no event shall the board set the amount of this required deductible at a level greater than thirty thousand dollars (\$30,000) per occurrence; and

(B) A system of incentives to provide for reduced required deductible amounts in order to encourage tank owners to use technologies or management practices that go beyond the minimum requirements related to release detection and prevention for tanks and piping. In order to qualify for the incentives, the technologies or management practices must be found by the board to be proven methods of significantly enhancing prevention of releases or reducing the detection timeframe for releases.

(3) The amount of the deductible that must be incurred by either the tank owner or operator or the owner of the petroleum site, before the tank owner or operator or the owner of the petroleum site is eligible to receive reimbursement from the fund for an occurrence reported to the department on or after July 1, 2005, shall be twenty thousand dollars (\$20,000) per occurrence; provided, however, that, pursuant to subdivision (f)(2)(A), the board may promulgate rules raising the amount of the deductible to a maximum of thirty thousand dollars (\$30,000) per occurrence. In addition, the board is authorized to set the required deductible at lower amounts, if the board determines that the condition of the fund warrants setting it at lower amounts.

(4) The fund shall be responsible for up to a maximum of one million dollars (\$1,000,000) of cleanup costs. The sum of the deductible and the maximum reimbursement shall not exceed one million dollars (\$1,000,000). The fund shall be responsible for cleanup of contamination due to

releases from petroleum underground storage tanks on a per site per occurrence basis.

(5) Unless it has been determined by the commissioner that the expenditure of fund dollars for removal, replacement, or repair of property improvements, including, but not limited to, petroleum dispensing equipment, canopies, signage, buildings and out buildings would result in a reduction of the total cost of cleanup activities at a petroleum site from what would be required otherwise, neither the fund nor the deductible for cleanup shall be used for the repair, replacement, or maintenance of petroleum underground storage tanks or property improvement on which the petroleum underground storage tanks are located, including, but not limited to:

- (A)** Underground storage tank repair;
- (B)** Underground storage tank replacement;
- (C)** Repair or maintenance of associated lines; and
- (D)** Replacement of asphalt or concrete.

(6) **(A)** If there is evidence of a suspected or a confirmed release on or after July 1, 2004, in order for the tank owner, tank operator or petroleum site owner to receive reimbursement from the fund, an application for fund eligibility shall be filed:

(i) Within ninety (90) days of the discovery of evidence of a suspected release which is subsequently confirmed in accordance with the rules promulgated pursuant to this part; or

(ii) Within sixty (60) days of a release which was identified in any manner other than the process for confirmation of a suspected release stated in the rules promulgated pursuant to this part.

(B) The tank owner or tank operator shall send notification to the petroleum site owner by certified mail, return receipt requested, within seven (7) days of confirmation of a release. Failure to comply with the applicable deadline of subdivision (f)(6)(A)(i) or (f)(6)(A)(ii) shall make the release ineligible for reimbursement from the fund.

(7) On or after July 1, 2004, all applications for payment of costs of cleanup shall be received by the division within one (1) year of the performance of the task or tasks covered by that application in order to be eligible for payment from the fund.

(g) Petroleum underground storage tanks for which notification has been received by the commissioner are eligible for reimbursement from the fund for third-party claims involving

bodily injury or property damage caused by releases from petroleum underground storage tanks; however, before payment for the claims related to a particular release may be paid, all of the applicable requirements of this part and the rules promulgated by the board must be met.

(1) The board is authorized to promulgate rules that establish the amount of the deductible for third-party claims for bodily injury or property damage that must be incurred by either the tank owner or operator or the owner of the petroleum site subject to the claim, before the amount of the claim in excess of the deductible may be paid by the fund. Notwithstanding this authority, in no event shall the board set the amount of this required deductible at a level greater than thirty thousand dollars (\$30,000) per occurrence.

(2) The amount of the deductible for the third-party claims for the tank owner or operator or the owner of any petroleum site for an occurrence reported to the department on or after July 1, 2005, shall be twenty thousand dollars (\$20,000); provided, however, that, pursuant to subdivision (g)(1), the board may promulgate rules setting the amounts of **financial responsibility** at greater amounts, up to a maximum of thirty thousand dollars (\$30,000) per occurrence. In addition, the board is authorized to set the required deductible at lower amounts, if the board determines that the condition of the fund warrants setting it at lower amounts.

(3) The fund shall be responsible for court awards involving third-party claims up to a maximum of one million dollars (\$1,000,000). The sum of the deductible and the maximum reimbursement shall not exceed one million dollars (\$1,000,000). The fund shall be responsible for third-party claims involving bodily injury or property damage, or both, caused by releases from petroleum underground storage tanks on a per site per occurrence basis. All claims against the fund for third-party damages must have been awarded in a court of suitable jurisdiction.

(h) All claims against the fund are clearly obligations only of the fund and not of the state, and any amounts required to be paid under this part are subject to the availability of sufficient moneys in the fund. The full faith and credit of the state shall not in any way be pledged or considered to be available to guarantee payment from such fund.

(i) Notwithstanding any provision of this part, tanks that are owned by the state of Tennessee are not eligible for reimbursement for either cleanup costs or third party claims.