

PETROLEUM AND UNDERGROUND STORAGE TANK FEES

2012 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Gregory H. Hughes

Senate Sponsor: Lyle W. Hillyard

LONG TITLE

General Description:

This bill modifies Petroleum Storage Tank Trust Fund reporting requirements.

Highlighted Provisions:

This bill:

- ▶ transfers responsibility for the determination of the actuarial soundness of the Petroleum Storage Tank Trust Fund from the State Risk Manager to the Executive Director of the Department of Environmental Quality;

- ▶ gives the executive director discretion as to whether to petition the Legislature to increase fees to attain actuarial soundness; and

- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

19-6-409, as last amended by Laws of Utah 2010, Chapter 186

19-6-410.5, as last amended by Laws of Utah 2009, Chapter 212

19-6-411, as last amended by Laws of Utah 1998, Chapter 95

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **19-6-409** is amended to read:

30 **19-6-409. Petroleum Storage Tank Trust Fund created -- Source of revenues.**

31 (1) (a) There is created a private-purpose trust fund entitled the "Petroleum Storage
32 Tank Trust Fund."

33 (b) The sole sources of revenues for the fund are:

34 (i) petroleum storage tank fees paid under Section 19-6-411;

35 (ii) underground storage tank installation company permit fees paid under Section
36 19-6-411;

37 (iii) the environmental assurance fee and penalties paid under Section 19-6-410.5; and

38 (iv) interest accrued on revenues listed in this Subsection (1)(b).

39 (c) Interest earned on fund money is deposited into the fund.

40 (2) The executive secretary may expend money from the fund to pay costs:

41 (a) covered by the fund under Section 19-6-419;

42 (b) of administering the:

43 (i) fund; and

44 (ii) environmental assurance program and fee under Section 19-6-410.5;

45 (c) incurred by the state for a legal service or claim adjusting service provided in
46 connection with a claim, judgment, award, or settlement for bodily injury or property damage
47 to a third party;

48 (d) incurred by the ~~[state risk manager]~~ executive director in determining the actuarial
49 soundness of the fund;

50 (e) incurred by a third party claiming injury or damages from a release reported on or
51 after May 11, 2010, for hiring a certified underground storage tank consultant:

52 (i) to review an investigation or corrective action by a responsible party; and

53 (ii) in accordance with Subsection (4); and

54 (f) allowed under this part that are not listed under this Subsection (2).

55 (3) Costs for the administration of the fund and the environmental assurance fee shall
56 be appropriated by the Legislature.

57 (4) The executive secretary shall:

- 58 (a) in paying costs under Subsection (2)(e):
- 59 (i) determine a reasonable limit on costs paid based on the:
- 60 (A) extent of the release;
- 61 (B) impact of the release; and
- 62 (C) services provided by the certified underground storage tank consultant;
- 63 (ii) pay, per release, costs for one certified underground storage tank consultant agreed
- 64 to by all third parties claiming damages or injury;
- 65 (iii) include costs paid in the coverage limits allowed under Section 19-6-419; and
- 66 (iv) not pay legal costs of third parties;
- 67 (b) review and give careful consideration to reports and recommendations provided by
- 68 a certified underground storage tank consultant hired by a third party; and
- 69 (c) make reports and recommendations provided under Subsection (4)(b) available on
- 70 the Division of Environmental Response and Remediation's website.

71 Section 2. Section **19-6-410.5** is amended to read:

72 **19-6-410.5. Environmental assurance program -- Participant fee -- State Tax**
73 **Commission administration, collection, and enforcement of tax.**

- 74 (1) As used in this section:
- 75 (a) "Cash balance" means cash plus investments and current accounts receivable minus
- 76 current accounts payable, excluding the liabilities estimated by the [~~state risk manager~~
- 77 executive director.
- 78 (b) "Commission" means the State Tax Commission, as defined in Section 59-1-101.
- 79 (2) (a) There is created an Environmental Assurance Program.
- 80 (b) The program shall provide to a participating owner or operator, upon payment of
- 81 the fee imposed under Subsection (4), assistance with satisfying the financial responsibility
- 82 requirements of 40 C.F.R., Part 280, Subpart H, by providing funds from the Petroleum
- 83 Storage Tank Trust Fund established in Section 19-6-409, subject to the terms and conditions
- 84 of Chapter 6, Part 4, Underground Storage Tank Act, and rules implemented under that part.
- 85 (3) (a) Subject to Subsection (3)(b), participation in the program is voluntary.

86 (b) An owner or operator seeking to satisfy financial responsibility requirements
87 through the program shall use the program for all petroleum underground storage tanks that the
88 owner or operator owns or operates.

89 (4) (a) There is assessed an environmental assurance fee of 1/2 cent per gallon on the
90 first sale or use of petroleum products in the state.

91 (b) The environmental assurance fee and any other revenue collected under this section
92 shall be deposited in the Petroleum Storage Tank Trust Fund created in Section 19-6-409 and
93 used solely for the purposes listed in Section 19-6-409.

94 (5) (a) The commission shall administer, collect, and enforce the fee imposed under
95 this section according to the same procedures used in the administration, collection, and
96 enforcement of the state sales and use tax under:

- 97 (i) Title 59, Chapter 1, General Taxation Policies; and
- 98 (ii) Title 59, Chapter 12, Part 1, Tax Collection.

99 (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
100 commission shall make rules to establish:

- 101 (i) the method of payment of the environmental assurance fee;
- 102 (ii) the procedure for reimbursement or exemption of an owner or operator that does
103 not participate in the program, including an owner or operator of an above ground storage tank;
104 and
- 105 (iii) the procedure for confirming with the department that an owner or operator
106 qualifies for reimbursement or exemption under Subsection (5)(b)(ii).

107 (c) The commission may retain an amount not to exceed 2.5% of fees collected under
108 this section for the cost to the commission of rendering its services.

109 (6) (a) The person responsible for payment of the fee under this section shall, by the
110 last day of the month following the month in which the sale occurs:

- 111 (i) complete and submit the form prescribed by the commission; and
- 112 (ii) pay the fee to the commission.

113 (b) (i) The penalties and interest for failure to file the form or to pay the environmental

114 assurance fee are the same as the penalties and interest under Sections 59-1-401 and 59-1-402.

115 (ii) The commission shall deposit penalties and interest collected under this section in
116 the Petroleum Storage Tank Trust Fund.

117 (c) The commission shall report to the department a person who is delinquent in
118 payment of the fee under this section.

119 (7) (a) (i) If the cash balance of the Petroleum Storage Tank Trust Fund on June 30 of
120 any year exceeds \$20,000,000, the assessment of the environmental assurance fee as provided
121 in Subsection (4) is reduced to 1/4 cent per gallon beginning November 1.

122 (ii) The reduction under this Subsection (7)(a) remains in effect until modified by the
123 Legislature in a general or special session.

124 (b) The commission shall determine the cash balance of the fund each year as of June
125 30.

126 (c) Before September 1 of each year, the department shall provide the commission with
127 the accounts payable of the fund as of June 30.

128 Section 3. Section **19-6-411** is amended to read:

129 **19-6-411. Petroleum storage tank fee for program participants.**

130 (1) In addition to the underground storage tank registration fee paid in Section
131 19-6-408, the owner or operator of a petroleum storage tank who elects to participate in the
132 environmental assurance program under Section 19-6-410.5 shall also pay an annual petroleum
133 storage tank fee to the department for each facility as follows:

134 [~~(a) on and after July 1, 1990, through June 30, 1993, an annual fee of:]~~

135 [~~(i) \$250 for each tank:]~~

136 [~~(A) located at a facility engaged in petroleum production, refining, or marketing; or]~~

137 [~~(B) with an annual monthly throughput of more than 10,000 gallons; and]~~

138 [~~(ii) \$125 for each tank:]~~

139 [~~(A) not located at a facility engaged in petroleum production, refining, or marketing;~~

140 ~~and]~~

141 [~~(B) with an annual monthly throughput of 10,000 gallons or less;]~~

142 ~~[(b) on and after July 1, 1993, through June 30, 1994, an annual fee of:]~~
143 ~~[(i) \$150 for each tank:]~~
144 ~~[(A) located at a facility engaged in petroleum production, refining, or marketing; or]~~
145 ~~[(B) with an average monthly throughput of more than 10,000 gallons; and]~~
146 ~~[(ii) \$75 for each tank:]~~
147 ~~[(A) not located at a facility engaged in petroleum production, refining, or marketing;~~
148 ~~and]~~
149 ~~[(B) with an average monthly throughput of 10,000 gallons or less; and]~~
150 ~~[(c) on and after July 1, 1994,]~~
151 (a) an annual fee of:
152 (i) \$50 for each tank in a facility with an annual facility throughput rate of 400,000
153 gallons or less;
154 (ii) \$150 for each tank in a facility with an annual facility throughput rate of more than
155 400,000 gallons; and
156 (iii) \$150 for each tank in a facility regarding which:
157 (A) the facility's throughput rate is not reported to the department within 30 days after
158 the date this throughput information is requested by the department; or
159 (B) the owner or operator elects to pay the fee under this Subsection (1)(a)(iii), rather
160 than report under Subsection (1)~~(c)~~(a)(i) or (ii); and
161 ~~[(d) on and after July 1, 1998,]~~
162 (b) for any new tank:
163 (i) ~~[which]~~ that is installed to replace an existing tank at an existing facility, any annual
164 petroleum storage tank fee paid for the current fiscal year for the existing tank is applicable to
165 the new tank; and
166 (ii) installed at a new facility or at an existing facility, which is not a replacement for
167 another existing tank, the fees are as provided in Subsection (1)~~(c)~~(a) of this section.
168 (2) (a) As a condition of receiving a permit and being eligible for benefits under
169 Section 19-6-419 from the Petroleum Storage Tank Trust Fund, each underground storage tank

170 installation company shall pay to the department the following fees to be deposited in the fund:

171 (i) an annual fee of:

172 (A) \$2,000 per underground storage tank installation company if the installation
173 company has installed 15 or fewer underground storage tanks within the 12 months preceding
174 the fee due date; or

175 (B) \$4,000 per underground storage tank installation company if the installation
176 company has installed 16 or more underground storage tanks within the 12 months preceding
177 the fee due date; and

178 (ii) \$200 for each underground storage tank installed in the state, to be paid prior to
179 completion of installation.

180 (b) The board shall make rules specifying which portions of an underground storage
181 tank installation shall be subject to the permitting fees when less than a full underground
182 storage tank system is installed.

183 (3) (a) Fees under Subsection (1) are due on or before July 1 annually.

184 (b) If the department does not receive the fee on or before July 1, the department shall
185 impose a late penalty of \$60 per facility.

186 (c) (i) The fee and the late penalty accrue interest at 12% per annum.

187 (ii) If the fee, the late penalty, and all accrued interest are not received by the
188 department within 60 days after July 1, the eligibility of the owner or operator to receive
189 payments for claims against the fund lapses on the 61st day after July 1.

190 (iii) In order for the owner or operator to reinstate eligibility to receive payments for
191 claims against the fund, the owner or operator shall meet the requirements of Subsection
192 19-6-428(3).

193 (4) (a) (i) Fees under Subsection (2)(a)(i) are due on or before July 1 annually. If the
194 department does not receive the fees on or before July 1, the department shall impose a late
195 penalty of \$60 per installation company. The fee and the late penalty accrue interest at 12% per
196 annum.

197 (ii) If the fee, late penalty, and all accrued interest due are not received by the

198 department within 60 days after July 1, the underground storage tank installation company's
199 permit and eligibility to receive payments for claims against the fund lapse on the 61st day after
200 July 1.

201 (b) (i) Fees under Subsection (2)(a)(ii) are due prior to completion of installation. If
202 the department does not receive the fees prior to completion of installation, the department
203 shall impose a late penalty of \$60 per facility. The fee and the late penalty accrue interest at
204 12% per annum.

205 (ii) If the fee, late penalty, and all accrued interest are not received by the department
206 within 60 days after the underground storage tank installation is completed, eligibility to
207 receive payments for claims against the fund for that tank lapse on the 61st day after the tank
208 installation is completed.

209 (c) The executive secretary may not reissue the underground storage tank installation
210 company permit until the fee, late penalty, and all accrued interest are received by the
211 department.

212 (5) If the ~~[state risk manager]~~ executive director determines that the fees established in
213 Subsections (1) and (2) and the environmental assurance fee established in Section 19-6-410.5
214 are insufficient to maintain the fund on an actuarially sound basis, ~~[he shall]~~ the executive
215 director may petition the Legislature to increase the petroleum storage tank and underground
216 storage tank installation company permit fees, and the environmental assurance fee to a level
217 that will sustain the fund on an actuarially sound basis.

218 (6) The executive secretary may waive all or part of the fees required to be paid on or
219 before May 5, 1997, for a petroleum storage tank under this section if no fuel has been
220 dispensed from the tank on or after July 1, 1991.

221 (7) (a) Each petroleum storage tank or underground storage tank, for which payment of
222 fees has been made and other requirements have been met to qualify for a certificate of
223 compliance under this part, shall be issued a form of identification, as determined by the board
224 under Subsection (7)(b).

225 (b) The board shall make rules providing for the identification, through a tag or other

226 readily identifiable method, of petroleum storage tanks or underground storage tanks under
227 Subsection (7)(a) that qualify for a certificate of compliance under this part.