

HOUSE BILL No. 2305

AN ACT concerning the Kansas storage tank act; relating to secondary containment of underground storage tanks; amending K.S.A. 2012 Supp. 65-34,102 and 65-34,103 and repealing the existing sections.

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

New Section 1. (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.

Sec. 2. K.S.A. 2012 Supp. 65-34,102 is hereby amended to read as follows: 65-34,102. 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, expediter, 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.*

Sec. 3. K.S.A. 2012 Supp. 65-34,103 is hereby amended to read as follows: 65-34,103. 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) ~~The natural gas pipeline safety act of 1968, and~~
 - ~~(2) the hazardous liquid pipeline safety act of 1979 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 subsections subsection (c)(1) and (2);~~
 - (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.

Sec. 4. K.S.A. 2012 Supp. 65-34,102 and 65-34,103 are hereby repealed.

Sec. 5. This act shall take effect and be in force from and after its publication in the statute book.

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

HOUSE concurred in
SENATE amendments _____

Speaker of the House.

Chief Clerk of the House.

Passed the SENATE
as amended _____

President of the Senate.

Secretary of the Senate.

APPROVED _____

Governor.