

Effective 1/1/2015

19-6-410.5 Environmental Assurance Program -- Participant fee -- State Tax Commission administration, collection, and enforcement of tax.

- (1) As used in this section:
 - (a) "Cash balance" means cash plus investments and current accounts receivable minus current accounts payable, excluding the liabilities estimated by the executive director.
 - (b) "Commission" means the State Tax Commission, as defined in Section 59-1-101.
- (2)
 - (a) There is created an Environmental Assurance Program.
 - (b) The program shall provide to a participating owner or operator, upon payment of the fee imposed under Subsection (4), assistance with satisfying the financial responsibility requirements of 40 C.F.R., Part 280, Subpart H, by providing funds from the Petroleum Storage Tank Trust Fund established in Section 19-6-409, subject to the terms and conditions of Chapter 6, Part 4, Underground Storage Tank Act, and rules implemented under that part.
- (3)
 - (a) Subject to Subsection (3)(b), participation in the program is voluntary.
 - (b) An owner or operator seeking to satisfy financial responsibility requirements through the program shall use the program for all petroleum underground storage tanks that the owner or operator owns or operates.
- (4)
 - (a) There is assessed an environmental assurance fee of 13/20 cent per gallon on the first sale or use of petroleum products in the state.
 - (b) The environmental assurance fee and any other revenue collected under this section shall be deposited in the Petroleum Storage Tank Trust Fund created in Section 19-6-409 and used solely for the purposes listed in Section 19-6-409.
- (5)
 - (a) The commission shall administer, collect, and enforce the fee imposed under this section according to the same procedures used in the administration, collection, and enforcement of the state sales and use tax under:
 - (i) Title 59, Chapter 1, General Taxation Policies; and
 - (ii) Title 59, Chapter 12, Part 1, Tax Collection.
 - (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission shall make rules to establish:
 - (i) the method of payment of the environmental assurance fee;
 - (ii) the procedure for reimbursement or exemption of an owner or operator that does not participate in the program, including an owner or operator of an above ground storage tank; and
 - (iii) the procedure for confirming with the department that an owner or operator qualifies for reimbursement or exemption under Subsection (5)(b)(ii).
 - (c) The commission may retain an amount not to exceed 2.5% of fees collected under this section for the cost to the commission of rendering its services.
 - (d) By January 1, 2015, the division shall, by rule, create:
 - (i) a model for assessing the risk profile of each facility participating in the program, for purposes of qualifying for a rebate of a portion of the environmental assurance fee described in Subsection (4) collected from an owner or operator that participates in the program; and

- (ii) a rebate schedule listing the amount of the environmental assurance fee that an owner or operator participating in the program may qualify for based on risk profiles determined by the model developed under Subsection (5)(d)(i).
 - (e) The rebate described in Subsection (5)(d):
 - (i) may not exceed 40% of the actual fee collected from an owner or operator of a low-risk underground storage tank as defined in the risk-based model developed under Subsection (5)(d);
 - (ii) is administered on a per facility basis;
 - (iii) is based on the facility's risk profile at the end of the prior calendar year;
 - (iv) is only applicable to an environmental assurance fee collected after December 30, 2014; and
 - (v) shall be claimed in the form of a refund from the commission.
 - (f) The refund described in Subsection (5)(e)(v) may be claimed on a monthly basis.
- (6)
- (a) The person responsible for payment of the fee under this section shall, by the last day of the month following the month in which the sale occurs:
 - (i) complete and submit the form prescribed by the commission; and
 - (ii) pay the fee to the commission.
 - (b)
 - (i) The penalties and interest for failure to file the form or to pay the environmental assurance fee are the same as the penalties and interest under Sections 59-1-401 and 59-1-402.
 - (ii) The commission shall deposit penalties and interest collected under this section in the Petroleum Storage Tank Trust Fund.
 - (c) The commission shall report to the department a person who is delinquent in payment of the fee under this section.
- (7)
- (a)
 - (i) If the cash balance of the Petroleum Storage Tank Trust Fund on June 30 of any year exceeds \$30,000,000, the assessment of the environmental assurance fee as provided in Subsection (4) is reduced to 1/4 cent per gallon beginning November 1.
 - (ii) The reduction under this Subsection (7)(a) remains in effect until modified by the Legislature in a general or special session.
 - (b) The commission shall determine the cash balance of the fund each year as of June 30.
 - (c) Before September 1 of each year, the department shall provide the commission with the accounts payable of the fund as of June 30.
- (8) The department shall:
- (a)
 - (i) study the adverse selection of participants in the program and the actuarial deficit of the fund;
 - (ii) obtain an actuarial study and related consultation that provides the necessary calculations to minimize adverse selection in the program and the actuarial deficit of the fund;
 - (iii) develop a risk characterization profile for participants in the program and recommend a fee schedule based on fair market rates;
 - (iv) develop a strategy to reduce the negative equity balance of the fund and, based on the fee schedule described in Subsection (8)(a)(iii), a corresponding time schedule showing an actuarial reduction in the negative equity balance of the fund; and
 - (v) identify and study other adverse impacts to the program and the fund; and

- (b) based on the information obtained and developed under Subsection (8)(a), prepare a recommendation to implement a strategy to minimize adverse selection of participants in the program and eliminate or reduce the actuarial deficit of the fund.
- (9) The department shall report to the Natural Resources, Agriculture, and Environment Interim Committee before December 31, 2013, regarding:
 - (a) the information obtained and developed under Subsection (8)(a); and
 - (b) the recommendation prepared under Subsection (8)(b).

Amended by Chapter 227, 2014 General Session