

UNDERGROUND STORAGE TANK AMENDMENTS

2012 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Kay L. McIff

Senate Sponsor: Kevin T. Van Tassell

LONG TITLE

General Description:

This bill modifies certain requirements relating to the Petroleum Storage Tank Trust Fund.

Highlighted Provisions:

This bill:

- ▶ modifies the definition of "certified underground storage tank consultant";
- ▶ grants rulemaking authority relating to the registration of underground storage tank operators;
- ▶ provides for the identification of underground storage tanks that do not qualify for a certificate of compliance; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill coordinates with S.B. 21, Department of Environmental Quality Boards Revisions, by providing technical amendments.

Utah Code Sections Affected:

AMENDS:

19-6-402, as last amended by Laws of Utah 2010, Chapter 324

19-6-403, as last amended by Laws of Utah 2008, Chapters 56 and 382

19-6-405.3, as last amended by Laws of Utah 2010, Chapter 186

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

30 Utah Code Sections Affected by Coordination Clause:

31 19-6-411, as last amended by Laws of Utah 1998, Chapter 95



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

34 Section 1. Section 19-6-402 is amended to read:

35 **19-6-402. Definitions.**

36 As used in this part:

37 (1) "Abatement action" means action taken to limit, reduce, mitigate, or eliminate:

38 (a) a release from an underground storage tank or petroleum storage tank~~;~~; or [~~to limit~~
39 ~~or reduce, mitigate, or eliminate~~]

40 (b) the damage caused by that release.

41 (2) "Board" means the Solid and Hazardous Waste Control Board created in Section
42 19-1-106.

43 (3) "Bodily injury" means bodily harm, sickness, disease, or death sustained by [~~any~~] a
44 person.

45 (4) "Certificate of compliance" means a certificate issued to a facility by the executive
46 secretary:

47 (a) demonstrating that an owner or operator of a facility containing one or more
48 petroleum storage tanks has met the requirements of this part; and

49 (b) listing all tanks at the facility, specifying:

50 (i) which tanks may receive petroleum; and

51 (ii) which tanks have not met the requirements for compliance.

52 (5) "Certificate of registration" means a certificate issued to a facility by the executive
53 secretary demonstrating that an owner or operator of a facility containing one or more
54 underground storage tanks has:

55 (a) registered the tanks; and

56 (b) paid the annual underground storage tank fee.

57 (6) (a) "Certified underground storage tank consultant" means [~~any~~] a person who:

58 (i) ~~[meets the education and experience standards established by the board under~~
59 ~~Subsection 19-6-403(1)(a)(vi) in order to provide or contract]~~ for a fee, or in connection with
60 services for which a fee is charged, provides or contracts to provide information, opinions, or
61 advice relating to underground storage tank release:

- 62 (A) management~~[-,release];~~
- 63 (B) abatement~~[-];~~
- 64 (C) investigation~~[-];~~
- 65 (D) corrective action~~[-];~~ or
- 66 (E) evaluation ~~[for a fee, or in connection with the services for which a fee is charged;~~
67 ~~and];~~

68 (ii) has submitted an application to the board ~~[and];~~
69 (iii) received a written statement of certification from the board[-]; and
70 (iv) meets the education and experience standards established by the board under
71 Subsection 19-6-403(1)(a)(vii).

72 (b) "Certified underground storage tank consultant" does not include:

- 73 (i) (A) an employee of the owner or operator of the underground storage tank~~[-];~~ or
- 74 (B) an employee of a business operation that has a business relationship with the owner
75 or operator of the underground storage tank, and ~~[that]~~ markets petroleum products or manages
76 underground storage tanks; or

77 (ii) ~~[persons]~~ a person licensed to practice law in this state who ~~[offer]~~ offers only legal
78 advice on underground storage tank release:

- 79 (A) management~~[-,release];~~
- 80 (B) abatement~~[-];~~
- 81 (C) investigation~~[-];~~
- 82 (D) corrective action~~[-];~~ or
- 83 (E) evaluation.

84 (7) "Closed" means an underground storage tank no longer in use that has been:

- 85 (a) emptied and cleaned to remove all liquids and accumulated sludges; and

86 (b) (i) [~~either~~] removed from the ground; or

87 (ii) filled with an inert solid material.

88 (8) "Corrective action plan" means a plan for correcting a release from a petroleum
89 storage tank that includes provisions for [~~all or~~] any of the following:

90 (a) cleanup or removal of the release;

91 (b) containment or isolation of the release;

92 (c) treatment of the release;

93 (d) correction of the cause of the release;

94 (e) monitoring and maintenance of the site of the release;

95 (f) provision of alternative water supplies to [~~persons~~] a person whose drinking water
96 has become contaminated by the release; or

97 (g) temporary or permanent relocation, whichever is determined by the executive
98 secretary to be more cost-effective, of [~~persons~~] a person whose [~~dwellings have~~] dwelling has
99 been determined by the executive secretary to be no longer habitable due to the release.

100 (9) "Costs" means [~~any~~] money expended for:

101 (a) investigation;

102 (b) abatement action;

103 (c) corrective action;

104 (d) judgments, awards, and settlements for bodily injury or property damage to third
105 parties;

106 (e) legal and claims adjusting costs incurred by the state in connection with judgments,
107 awards, or settlements for bodily injury or property damage to third parties; or

108 (f) costs incurred by the state risk manager in determining the actuarial soundness of
109 the fund.

110 (10) "Covered by the fund" means the requirements of Section 19-6-424 have been
111 met.

112 (11) "Dwelling" means a building that is usually occupied by a person lodging there at
113 night.

114 (12) "Enforcement proceedings" means a civil action or the procedures to enforce
115 orders established by Section 19-6-425.

116 (13) "Executive secretary" means the executive secretary of the board.

117 (14) "Facility" means all underground storage tanks located on a single parcel of
118 property or on any property adjacent or contiguous to that parcel.

119 (15) "Fund" means the Petroleum Storage Tank Trust Fund created in Section
120 19-6-409.

121 (16) "Loan fund" means the Petroleum Storage Tank Loan Fund created in Section
122 19-6-405.3.

123 (17) "Operator" means ~~[any]~~ a person in control of or who is responsible on a daily
124 basis for the maintenance of an underground storage tank that is in use for the storage, use, or
125 dispensing of a regulated substance.

126 (18) "Owner" means:

127 (a) in the case of an underground storage tank in use on or after November 8, 1984,
128 ~~[any]~~ a person who owns an underground storage tank used for the storage, use, or dispensing
129 of a regulated substance; and

130 (b) in the case of ~~[any]~~ an underground storage tank in use before November 8, 1984,
131 but not in use on or after November 8, 1984, ~~[any]~~ a person who owned the tank immediately
132 before the discontinuance of its use for the storage, use, or dispensing of a regulated substance.

133 (19) "Petroleum" includes crude oil or ~~[any]~~ a fraction of crude oil that is liquid at:

134 (a) 60 degrees Fahrenheit; and ~~[at]~~

135 (b) a pressure of 14.7 pounds per square inch absolute.

136 (20) "Petroleum storage tank" means a tank that:

137 (a) (i) is underground;

138 (ii) is regulated under Subtitle I of the Resource Conservation and Recovery Act, 42
139 U.S.C. Section 6991c, et seq.; and

140 (iii) contains petroleum; or

141 (b) ~~[is a tank that]~~ the owner or operator voluntarily submits for participation in the

142 Petroleum Storage Tank Trust Fund under Section 19-6-415.

143 (21) "Petroleum Storage Tank Restricted Account" means the account created in
144 Section 19-6-405.5.

145 (22) "Program" means the Environmental Assurance Program under Section
146 19-6-410.5.

147 (23) "Property damage" means physical injury to ~~[or]~~, destruction of, or loss of use of
148 tangible property ~~[including loss of use of that property]~~.

149 (24) (a) "Regulated substance" means petroleum and petroleum-based substances
150 comprised of a complex blend of hydrocarbons derived from crude oil through processes of
151 separation, conversion, upgrading, and finishing~~[, and]~~.

152 (b) "Regulated substance" includes motor fuels, jet fuels, distillate fuel oils, residual
153 fuel oils, lubricants, petroleum solvents, and used oils.

154 (25) (a) "Release" means ~~[any]~~ spilling, leaking, emitting, discharging, escaping,
155 leaching, or disposing a regulated substance from an underground storage tank or petroleum
156 storage tank. ~~[The entire release is]~~

157 (b) A release of a regulated substance from an underground storage tank or petroleum
158 storage tank is considered a single release from that tank system.

159 (26) (a) "Responsible party" means ~~[any]~~ a person who:

160 (i) is the owner or operator of a facility;

161 (ii) owns or has legal or equitable title in a facility or an underground storage tank;

162 (iii) owned or had legal or equitable title in ~~[the]~~ a facility at the time ~~[any]~~ petroleum
163 was received or contained at the facility;

164 (iv) operated or otherwise controlled activities at ~~[the]~~ a facility at the time ~~[any]~~
165 petroleum was received or contained at the facility; or

166 (v) is an underground storage tank installation company.

167 (b) "Responsible party" as defined in Subsections (26)(a)(i), (ii), and (iii) does not
168 include:

169 (i) ~~[any]~~ a person who is not an operator and, without participating in the management

170 of a facility and otherwise not engaged in petroleum production, refining, and marketing, holds
171 indicia of ownership:

172 (A) primarily to protect his security interest in the facility; or

173 (B) as a fiduciary or custodian under Title 75, Utah Uniform Probate Code, or under an
174 employee benefit plan; or

175 (ii) governmental ownership or control of property by involuntary transfers as provided
176 in CERCLA Section 101(20)(D), 42 U.S.C. Sec. 9601(20)(D).

177 (c) The exemption created by Subsection (26)(b)(i)(B) does not apply to actions taken
178 by the state or its officials or agencies under this part.

179 (d) The terms and activities "indicia of ownership," "primarily to protect a security
180 interest," "participation in management," and "security interest" under this part are in
181 accordance with 40 CFR Part 280, Subpart I, as amended, and 42 U.S.C. Sec. 6991b(h)(9).

182 (e) The terms "participate in management" and "indicia of ownership" as defined in 40
183 CFR Part 280, Subpart I, as amended, and 42 U.S.C. Sec. 6991b(h)(9) include and apply to the
184 fiduciaries listed in Subsection (26)(b)(i)(B).

185 (27) "Soil test" means a test, established or approved by board rule, to detect the
186 presence of petroleum in soil.

187 (28) "State cleanup appropriation" means [~~the~~] money appropriated by the Legislature
188 to the department to fund the investigation, abatement, and corrective action regarding releases
189 not covered by the fund.

190 (29) "Underground storage tank" means [~~any~~] a tank regulated under Subtitle I,
191 Resource Conservation and Recovery Act, 42 U.S.C. Sec. 6991c, et seq., including:

192 (a) a petroleum storage tank;

193 (b) underground pipes and lines connected to a storage tank; [~~and~~]

194 (c) [~~any~~] underground ancillary equipment; and

195 (d) a containment system.

196 (30) "Underground storage tank installation company" means [~~any~~] a person, firm,
197 partnership, corporation, governmental entity, association, or other organization who installs

198 underground storage tanks.

199 (31) "Underground storage tank installation company permit" means a permit issued to
200 an underground storage tank installation company by the executive secretary.

201 (32) "Underground storage tank technician" means a person employed by and acting
202 under the direct supervision of a certified underground storage tank consultant to assist in
203 carrying out the functions described in Subsection (6)(a).

204 Section 2. Section **19-6-403** is amended to read:

205 **19-6-403. Powers and duties of board.**

206 The board shall regulate an underground storage tank or petroleum storage tank by:

207 (1) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act,
208 making rules that:

209 (a) provide for the:

210 (i) certification of an underground storage tank installer, inspector, tester, or remover;

211 (ii) registration of an underground storage tank operator;

212 [~~(ii)~~] (iii) registration of [a] an underground storage tank;

213 [~~(iii)~~] (iv) administration of the petroleum storage tank program;

214 [~~(iv)~~] (v) format of, and required information in, a record kept by [a] an underground
215 storage or petroleum storage tank owner or operator who is participating in the fund;

216 [~~(v)~~] (vi) voluntary participation in the fund for:

217 (A) an above ground petroleum storage tank; and

218 (B) a tank:

219 (I) exempt from regulation under 40 C.F.R., Part 280, Subpart (B); and

220 (II) specified in Section 19-6-415; and

221 [~~(vi)~~] (vii) certification of an underground storage tank consultant including:

222 (A) a minimum education or experience requirement; and

223 (B) a recognition of the educational requirement of a professional engineer licensed
224 under Title 58, Chapter 22, Professional Engineers and Professional Land Surveyors Licensing
225 Act, as meeting the education requirement for certification;

- 226 (b) adopt the requirements for an underground storage tank contained in:
227 (i) the Solid Waste Disposal Act, Subchapter IX, 42 U.S.C. Sec. 6991, et seq., as may
228 be amended in the future; and
229 (ii) an applicable federal requirement authorized by the federal law referenced in
230 Subsection (1)(b)(i); and
231 (c) comply with the requirements of the Solid Waste Disposal Act, Subchapter IX, 42
232 U.S.C. Sec. 6991c, et seq., as may be amended in the future, for the state's assumption of
233 primacy in the regulation of an underground storage tank; and
234 (2) applying the provisions of this part.

235 Section 3. Section **19-6-405.3** is amended to read:

236 **19-6-405.3. Creation of Petroleum Storage Tank Loan Fund -- Purposes -- Loan**
237 **eligibility -- Loan restrictions -- Rulemaking.**

- 238 (1) There is created a revolving loan fund known as the Petroleum Storage Tank Loan
239 Fund.
240 (2) The sources of money for the loan fund are:
241 (a) appropriations to the loan fund;
242 (b) principal and interest received from the repayment of loans made by the executive
243 secretary under Subsection (3); and
244 (c) all investment income derived from money in the fund.
245 (3) The executive secretary may loan, in accordance with this section, money available
246 in the loan fund to a person to be used for:
247 (a) upgrading a petroleum storage tank;
248 (b) replacing an underground storage tank; or
249 (c) permanently closing an underground storage tank.
250 (4) A person may apply to the executive secretary for a loan under Subsection (3) if all
251 tanks owned or operated by that person are in substantial compliance with all state and federal
252 requirements or will be brought into substantial compliance using money from the loan fund.
253 (5) The executive secretary shall consider loan applications under Subsection (4) to

254 meet the following objectives:

- 255 (a) support availability of gasoline in rural parts of the state;
- 256 (b) support small businesses; and
- 257 (c) reduce the threat of a petroleum release endangering the environment.

258 (6) ~~(a) [Loans]~~ A loan made under this section may not be for more than:

259 ~~[(a) be for more than]~~ (i) \$150,000 for all tanks at any one facility;

260 ~~[(b) be for more than]~~ (ii) \$50,000 per tank; and

261 ~~[(c) be for more than]~~ (iii) 80% of the total cost of:

262 ~~[(i)]~~ (A) upgrading a tank;

263 ~~[(ii)]~~ (B) replacing the underground storage tank; or

264 ~~[(iii)]~~ (C) permanently closing the underground storage tank[?].

265 (b) A loan made under this section shall:

266 ~~[(d)]~~ (i) have a fixed annual interest rate of 3%;

267 ~~[(e)]~~ (ii) have a term no longer than 10 years;

268 ~~[(f)]~~ (iii) be made on the condition the loan applicant obtains adequate security for the

269 loan as established by board rule under Subsection (7); and

270 ~~[(g)]~~ (iv) comply with rules made by the board under Subsection (7) .

271 (7) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
272 board shall make rules establishing:

273 (a) form, content, and procedure for a loan application;

274 (b) criteria and procedures for prioritizing a loan application;

275 (c) requirements and procedures for securing a loan;

276 (d) procedures for making a loan;

277 (e) procedures for administering and ensuring repayment of a loan, including late
278 payment penalties; and

279 (f) procedures for recovering on a defaulted loan.

280 (8) A decision by the executive secretary to loan money from the loan fund and
281 otherwise administer the loan fund is not subject to Title 63G, Chapter 4, Administrative

282 Procedures Act.

283 (9) The Legislature shall appropriate money from the loan fund to the department for
284 the administration of the loan fund.

285 (10) The executive secretary may enter into an agreement with a public entity or
286 private organization to perform a task associated with administration of the loan fund.

287 Section 4. Section **19-6-411** is amended to read:

288 **19-6-411. Petroleum storage tank fee for program participants.**

289 (1) In addition to the underground storage tank registration fee paid in Section
290 19-6-408, the owner or operator of a petroleum storage tank who elects to participate in the
291 environmental assurance program under Section 19-6-410.5 shall also pay an annual petroleum
292 storage tank fee to the department for each facility as follows:

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

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

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

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

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

298 [~~(A) not located at a facility engaged in petroleum production, refining, or marketing;~~
299 ~~and]~~

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

301 [~~(b) on and after July 1, 1993, through June 30, 1994, an annual fee of:]~~

302 [~~(i) \$150 for each tank:]~~

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

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

305 [~~(ii) \$75 for each tank:]~~

306 [~~(A) not located at a facility engaged in petroleum production, refining, or marketing;~~
307 ~~and]~~

308 [~~(B) with an average monthly throughput of 10,000 gallons or less; and]~~

309 [~~(c)~~] (a) [~~on and after July 1, 1994,]~~ an annual fee of:

- 310 (i) \$50 for each tank in a facility with an annual facility throughput rate of 400,000
311 gallons or less;
- 312 (ii) \$150 for each tank in a facility with an annual facility throughput rate of more than
313 400,000 gallons; and
- 314 (iii) \$150 for each tank in a facility regarding which:
- 315 (A) the facility's throughput rate is not reported to the department within 30 days after
316 the date this throughput information is requested by the department; or
- 317 (B) the owner or operator elects to pay the fee under this ~~[subsection]~~ Subsection
318 (1)(a)(iii), rather than report under Subsection (1)~~(c)~~(a)(i) or (ii); and
- 319 ~~(d)~~ (b) ~~[on and after July 1, 1998;]~~ for any new tank:
- 320 (i) which is installed to replace an existing tank at an existing facility, any annual
321 petroleum storage tank fee paid for the current fiscal year for the existing tank is applicable to
322 the new tank; and
- 323 (ii) installed at a new facility or at an existing facility, which is not a replacement for
324 another existing tank, the fees are as provided in Subsection (1)~~(c)~~(a) of this section.
- 325 (2) (a) As a condition of receiving a permit and being eligible for benefits under
326 Section 19-6-419 from the Petroleum Storage Tank Trust Fund, each underground storage tank
327 installation company shall pay to the department the following fees to be deposited in the fund:
- 328 (i) an annual fee of:
- 329 (A) \$2,000 per underground storage tank installation company if the installation
330 company has installed 15 or fewer underground storage tanks within the 12 months preceding
331 the fee due date; or
- 332 (B) \$4,000 per underground storage tank installation company if the installation
333 company has installed 16 or more underground storage tanks within the 12 months preceding
334 the fee due date; and
- 335 (ii) \$200 for each underground storage tank installed in the state, to be paid prior to
336 completion of installation.
- 337 (b) The board shall make rules specifying which portions of an underground storage

338 tank installation shall be subject to the permitting fees when less than a full underground
339 storage tank system is installed.

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

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

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

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

347 (iii) In order for the owner or operator to reinstate eligibility to receive payments for
348 claims against the fund, the owner or operator shall meet the requirements of Subsection
349 19-6-428(3).

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

354 (ii) If the fee, late penalty, and all accrued interest due are not received by the
355 department within 60 days after July 1, the underground storage tank installation company's
356 permit and eligibility to receive payments for claims against the fund lapse on the 61st day after
357 July 1.

358 (b) (i) Fees under Subsection (2)(a)(ii) are due prior to completion of installation. If
359 the department does not receive the fees prior to completion of installation, the department
360 shall impose a late penalty of \$60 per facility. The fee and the late penalty accrue interest at
361 12% per annum.

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

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

369 (5) If the state risk manager determines the fees established in Subsections (1) and (2)
370 and the environmental assurance fee established in Section 19-6-410.5 are insufficient to
371 maintain the fund on an actuarially sound basis, he shall petition the Legislature to increase the
372 petroleum storage tank and underground storage tank installation company permit fees, and the
373 environmental assurance fee to a level that will sustain the fund on an actuarially sound basis.

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

377 (7) (a) ~~[Each]~~ The executive secretary shall issue a certificate of compliance to the
378 owner or operator of a petroleum storage tank or underground storage tank, for which payment
379 of fees has been made and other requirements have been met to qualify for a certificate of
380 compliance under this part~~[, shall be issued a form of identification, as determined by the board~~
381 ~~under Subsection (7)(b)].~~

382 (b) The board shall make rules providing for the identification, through a tag or other
383 readily identifiable method, of a petroleum storage ~~[tanks]~~ tank or underground storage ~~[tanks]~~
384 tank under Subsection (7)(a) that does not qualify for a certificate of compliance under this
385 part.

386 Section 5. **Coordinating H.B. 343 with S.B. 21 -- Technical amendments.**

387 If this H.B. 343 and S.B. 21, Department of Environmental Quality Boards Revisions,
388 both pass and become law, the Legislature intends that:

389 (1) the reference in Subsection 19-6-411(7)(a) to "executive secretary" be replaced with
390 "director"; and

391 (2) the Office of Legislative Research and General Counsel make that change when
392 preparing the Utah Code database for publication.