

SENATE BILL No. 286

By Committee on Agriculture and Natural Resources

1-22

1 AN ACT concerning health and environment; relating to the Kansas
2 storage tank act; extending the existence of the underground fund and
3 aboveground fund and increasing the maximum liability thereof;
4 amending K.S.A. 65-34,118, 65-34,120 and 65-34,123 and repealing
5 the existing sections.
6

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

8 Section 1. K.S.A. 65-34,118 is hereby amended to read as follows:
9 65-34,118. (a) Whenever the secretary has reason to believe that there is or
10 has been a release into the environment from a petroleum storage tank and
11 has reason to believe that such release poses a danger to human health or
12 the environment, the secretary shall obtain corrective action for such
13 release from the owner or operator, or both, or from any past owner or
14 operator who has contributed to such release. Such corrective action shall
15 be performed in accordance with a plan approved by the secretary. Upon
16 approval of such plan, the owner or operator shall obtain and submit to the
17 secretary at least three bids from persons qualified to perform the
18 corrective action except that, the secretary may waive this requirement
19 upon a showing that the owner or operator has made a good faith effort but
20 has not been able to obtain three bids from qualified bidders.

21 (b) If the owner or operator is unable or unwilling to perform
22 corrective action as provided for in subsection (a) or no owner or operator
23 can be found, the secretary may undertake appropriate corrective action
24 utilizing funds from the underground fund, if the release was from an
25 underground petroleum storage tank, or from the aboveground fund, if the
26 release was from an aboveground petroleum storage tank. Costs incurred
27 by the secretary in taking a corrective action, including administrative and
28 legal expenses, are recoverable from the owner or operator and may be
29 recovered in a civil action in district court brought by the secretary.
30 Corrective action costs recovered under this section shall be deposited in
31 the underground fund, if the release was from an underground petroleum
32 storage tank, or ~~from~~ in the aboveground fund, if the release was from an
33 aboveground petroleum storage tank. Corrective action taken by the
34 secretary under this subsection need not be completed in order to seek
35 recovery of corrective action costs, and an action to recover such costs
36 may be commenced at any stage of a corrective action.

1 (c) An owner or operator shall be liable for all costs of corrective
2 action incurred by the state of Kansas as a result of a release from a
3 petroleum storage tank, unless the owner or operator, or both, enter into a
4 consent agreement with the secretary in the name of the state within a
5 reasonable period of time, ~~which.~~ *Such* time period may be specified by
6 ~~rule rules and regulation regulations.~~ At a minimum, the owner or
7 operator, or both, must agree that:

8 (1) The owner or operator shall be liable for the appropriate amounts
9 pursuant to K.S.A. 65-34,119, and amendments thereto;

10 (2) the state of Kansas and the respective fund are relieved of all
11 liability to an owner or operator for any loss of business, damages and
12 taking of property associated with the corrective action;

13 (3) the department or its contractors may enter upon the property of
14 the owner or operator, at such time and in such manner as deemed
15 necessary, to monitor and provide oversight for the necessary corrective
16 action to protect human health and the environment;

17 (4) the owner or operator shall be fully responsible for removal,
18 replacement or retrofitting of petroleum storage tanks and the cost thereof
19 shall not be reimbursable from the respective fund;

20 (5) the owner or operator shall effectuate corrective action according
21 to a plan approved by the secretary pursuant to subsection (a);

22 (6) the liability of the state and the respective fund shall not exceed
23 ~~\$1,000,000~~ \$2,000,000, less the deductible amount, for any release from a
24 petroleum storage tank; and

25 (7) such other provisions as are deemed appropriate by the secretary
26 to ensure adequate protection of human health and the environment.

27 (d) For purposes of this act, corrective action costs shall include the
28 actual costs incurred for the following:

29 (1) Removal of petroleum products from petroleum storage tanks,
30 surface waters, groundwater or soil;

31 (2) investigation and assessment of contamination caused by a release
32 from a petroleum storage tank;

33 (3) preparation of corrective action plans approved by the secretary;

34 (4) removal of contaminated soils;

35 (5) soil treatment and disposal;

36 (6) environmental monitoring;

37 (7) lease, purchase and maintenance of corrective action equipment;

38 (8) restoration of a private or public potable water supply, where
39 possible, or replacement thereof, if necessary; and

40 (9) other costs identified by the secretary as necessary for proper
41 investigation, corrective action planning and corrective action activities to
42 meet the requirements of this act.

43 Sec. 2. K.S.A. 65-34,120 is hereby amended to read as follows: 65-

1 34,120. (a) Nothing in this act shall establish or create any liability or
2 responsibility on the part of the secretary, the department or its agents or
3 employees; or the state of Kansas to pay any corrective action costs from
4 any source other than the respective fund created by this act.

5 (b) In no event shall the underground fund be liable for the payment
6 of corrective action costs in an amount in excess of the following, less any
7 applicable deductible amounts of the owner or operator:

8 (1) For costs incurred in response to any one release from an
9 underground petroleum storage tank, ~~\$1,000,000~~ \$2,000,000;

10 (2) ~~subject to the provisions of subsection (a)(4)~~, for an owner or
11 operator of 100 or fewer underground petroleum storage tanks, an annual
12 aggregate of \$1,000,000; and

13 (3) ~~subject to the provisions of subsection (a)(4)~~, for an owner or
14 operator of more than 100 underground petroleum storage tanks, an annual
15 aggregate of \$2,000,000.

16 (c) In no event shall the aboveground fund be liable for the payment
17 of corrective action costs in an amount in excess of the following, less the
18 deductible amounts of the owner or operator:

19 (1) For costs incurred in response to any one release from an
20 aboveground petroleum storage tank, ~~\$1,000,000~~ \$2,000,000;

21 (2) for an owner or operator of 100 or fewer aboveground petroleum
22 storage tanks, an annual aggregate of \$1,000,000; and

23 (3) for an owner or operator of more than 100 aboveground
24 petroleum storage tanks, an annual aggregate of \$2,000,000.

25 (d) This act is intended to assist an owner or operator only to the
26 extent provided for in this act, and it is in no way intended to relieve the
27 owner or operator of any liability that cannot be satisfied by the provisions
28 of this act.

29 (e) Neither the secretary nor the state of Kansas shall have any
30 liability or responsibility to make any payments for corrective action if the
31 respective fund created herein is insufficient to do so. In the event the
32 respective fund is insufficient to make the payments at the time the claim
33 is filed, such claims shall be paid in the order of filing at such time as
34 moneys are paid into the respective fund.

35 (f) No common-law liability, and no statutory liability ~~which~~ *that* is
36 provided in a statute other than in this act, for damages resulting from a
37 release from a petroleum storage tank is affected by this act. The authority,
38 power and remedies provided in this act are in addition to any authority,
39 power or remedy provided in any statute other than a section of this act or
40 provided at common law.

41 (g) If a person conducts a corrective action activity in response to a
42 release from a petroleum storage tank, whether or not the person files a
43 claim against the respective fund under this act, the claim and corrective

1 action activity conducted are not evidence of liability or an admission of
2 liability for any potential or actual environmental pollution or third-party
3 claim.

4 Sec. 3. K.S.A. 65-34,123 is hereby amended to read as follows: 65-
5 34,123. The underground fund and the aboveground fund shall be and are
6 hereby abolished on July 1, ~~2024~~ 2034.

7 Sec. 4. K.S.A. 65-34,118, 65-34,120 and 65-34,123 are hereby
8 repealed.

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