

## 2012 Kansas Statutes

**65-34,119. Reimbursement from above ground and underground funds; conditions.** (a) Subject to the provisions of subsection (b), an owner or operator is entitled to reimbursement of reasonable costs of corrective action taken in response to a release from a petroleum storage tank if: (1) The owner or operator is not the United States government or any of its agencies; (2) the owner or operator is in substantial compliance, as provided in subsections (e) and (f); (3) the owner or operator undertakes corrective action, either through personnel of the owner or operator or through response action contractors or subcontractors; and (4) the corrective action is not in response to a release from an aboveground storage tank described in subsection (g) or (h) of K.S.A. 65-34,103 and amendments thereto. If the release is from an underground petroleum storage tank, reimbursement shall be from the underground fund and, if the release is from an aboveground petroleum storage tank, reimbursement shall be from the aboveground tank [\*].

(b) Reimbursement pursuant to subsection (a) is subject to the following provisions:

(1) Except as provided in subsections (g) and (h), the owner or operator shall be liable for the first costs of corrective action taken in response to a release from any petroleum storage tank in an amount equal to \$3,000 plus \$500 for each such tank owned or operated by the owner or operator at the site of the release or \$100,000, whichever is less;

(2) the owner or operator must submit to and receive from the secretary approval of the proposed corrective action plan, together with projected costs of the corrective action;

(3) the secretary may, in the secretary's discretion, determine those costs which are allowable as corrective action costs and those which are attributable or ancillary to removal, replacement or retrofitting of storage tanks;

(4) the owner or operator, or agents thereof, shall keep and preserve suitable records demonstrating compliance with the approved corrective action plan and all invoices and financial records associated with costs for which reimbursement will be requested;

(5) within 30 days of receipt of a complete corrective action plan, or as soon as practicable thereafter, the secretary shall make a determination and provide written notice as to whether the owner or operator responsible for corrective action is eligible or ineligible for reimbursement of corrective action costs and, should the secretary determine the owner or operator is ineligible, the secretary shall include in the written notice an explanation setting forth in detail the reasons for the determination;

(6) the owner or operator shall submit to the secretary a written notice that corrective action has been completed within 30 days of completing corrective action;

(7) no later than 30 days from the submission of the notice as required by subsection (b)(6), the owner or operator must submit an application for reimbursement of corrective action costs in accordance with criteria established by the secretary, and the application for reimbursement must include the total amount of the corrective action costs and the amount of reimbursement sought. In no case shall the total amount of reimbursement exceed the lesser of the actual costs of the corrective action or the amount of the lowest bid submitted pursuant to K.S.A. 65-34,118 and amendments thereto and approved by the secretary, less the appropriate deductible amount;

(8) interim payments shall be made to an owner or operator in accordance with the plan approved by the secretary pursuant to K.S.A. 65-34,118 and amendments thereto, except that the secretary, for good cause shown, may refuse to make interim payments or withhold the final payment until completion of the corrective action;

(9) the owner or operator shall be fully responsible for removal, replacement or retrofitting of petroleum storage tanks and the cost thereof, and costs attributable or ancillary thereto, shall not be reimbursable from the respective fund;

(10) the owner or operator shall provide evidence satisfactory to the secretary that corrective action costs equal to the appropriate deductible amount have been paid by the owner or operator, and such costs shall not be reimbursed to the owner or operator;

(11) with regard to an underground petroleum storage tank, the owner or operator submits to the secretary proof, satisfactory to the secretary, that: (A) such owner or operator is unable to satisfy the criteria for self-insurance under the federal act; or (B) such owner or operator is able to satisfy the criteria for self-insurance under the federal act but the release is from an underground petroleum storage tank not located at a facility engaged in production or refining of petroleum;

(12) with regard to an aboveground petroleum storage tank, the owner or operator submits to the secretary proof, satisfactory to the secretary, that the release is from an aboveground petroleum storage tank not located at a facility engaged in production or refining of petroleum; and

(13) the owner or operator shall be liable for all costs which are paid by or for which the owner or operator is entitled to reimbursement from insurance coverage, warranty coverage or any other source.

(c) For the purpose of determining an owner's or operator's eligibility for reimbursement and the applicable deductible of such owner or operator, the secretary shall consider all owners and operators owned or controlled by the same interests to be a single owner or operator, except that each state agency to which moneys are appropriated shall be considered individually as an owner or operator for such purpose.

(d) Notwithstanding the provisions of subsection (c) of K.S.A. 65-34,118 and amendments thereto, should the secretary find that any of the following situations exist, any or all owners or operators shall, in the discretion of the secretary, be liable for 100% of costs associated with corrective action necessary to protect health or the environment, if:

(1) The release was due to willful or wanton actions by the owner or operator;

(2) the owner or operator is in arrears for moneys owed, other than environmental assurance fees, to either the underground fund or the aboveground fund;

(3) the release was from a tank not registered with the department;

(4) the owner or operator fails to comply with any provision of the agreement specified in subsection (c) of K.S.A. 65-34,118 and amendments thereto;

(5) the owner or operator moves in any way to obstruct the efforts of the department or its contractors to investigate the presence or effects of a release or to effectuate corrective action;

(6) the owner or operator is not in substantial compliance with any provision of this act or rules and regulations promulgated hereunder; or

(7) the owner or operator allowed, failed to report or failed to take corrective action in response to such release, knowing or having reason to know of such release.

(e) Except as otherwise provided in subsections (f) and (g), an owner or operator is in substantial compliance

with this act and the rules and regulations adopted hereunder, if:

(1) Each petroleum storage tank owned or operated by such owner or operator has been registered with the secretary, in accordance with the applicable laws of this state and any rules and regulations adopted thereunder;

(2) the owner or operator has entered into an agreement with the secretary, as provided in subsection (c) of K.S.A. 65-34,118 and amendments thereto;

(3) the owner or operator has complied with any applicable financial responsibility requirements imposed by the Kansas storage tank act and the rules and regulations adopted thereunder; and

(4) the owner or operator has otherwise made a good faith effort to comply with the federal act if applicable, this act, any other law of this state regulating petroleum storage tanks and all applicable rules and regulations adopted under any of them.

(f) An owner or operator shall be deemed to be in substantial compliance with this act with respect to the following tanks if such owner or operator has notified the department, on forms provided by the department, of the tank's existence, including age, size, type, location, associated equipment and uses:

(1) Any farm or residential tank of 1,100 gallons or less capacity used for storing motor fuel for noncommercial purposes;

(2) any aboveground tank of less than 660 gallons capacity; and

(3) any tank used for storing heating oil for consumptive use on the single family residential premise where stored.

(g) (1) Except as provided by subsection (g)(2), a person who owns property where a petroleum storage tank is located shall not be required to register such tank to be eligible for reimbursement from the respective fund of all costs of any necessary corrective action taken in response to a release from such tank and shall not be subject to the provisions of subsection (b)(1) if such person has at no time placed petroleum in such tank or withdrawn petroleum from such tank and such person: (A) Submitted a corrective action plan prior to July 1, 1990, with respect to an underground petroleum storage tank, or prior to July 1, 1993, with respect to an aboveground petroleum storage tank; (B) acquired such tank before December 22, 1988; or (C) acquired such tank by intestate succession or testamentary disposition.

(2) A person shall not be eligible for reimbursement under subsection (g)(1) unless the owner or operator of the tank is unable or unwilling to perform corrective action or cannot be found, in which case the secretary may recover all reimbursement paid, and any related administrative and legal expenses, from the owner or operator as provided by subsection (b) of K.S.A. 65-34,118 and amendments thereto.

(h) An owner or operator shall be entitled, upon written notification to the secretary, to elect between the deductible provided by this section before July 1, 1992, and the deductible provided by this section on and after July 1, 1992, with respect to costs of corrective action taken on or after April 1, 1990, if such owner or operator has applied before July 1, 1992, for reimbursement of such costs from the respective fund. If an owner or operator or former owner or operator has paid a deductible that is greater than the deductible provided by this section on and after July 1, 1992, such owner or operator or former owner or operator may apply to the secretary for a refund of the difference in such deductibles. If the owner or operator or former owner or operator has died or no longer exists, no such refund shall be paid.

**History:** L. 1989, ch. 186, § 20; L. 1990, ch. 229, § 3; L. 1992, ch. 311, § 15; July 1.

\* The word "tank" should be "fund".