



February 5, 2020

Memorandum:

To: Senate Agriculture and Natural Resource Committee Energy
From: Thomas M. Palace
Re: Testimony Supporting SB 286

Mr. Chairman and Members of the House Energy and Utilities Committee:

My name is Tom Palace. I am the Executive Director of the Petroleum Marketers and Convenience Store Association of Kansas (PMCA of Kansas), a statewide trade association representing over 300 independent Kansas petroleum distribution companies and convenience store owners throughout Kansas.

We stand before you as a proponent of SB 286.

Components of SB 286:

- Senate Bill 286 will extend the Kansas Underground and Aboveground Storage Tank Trust Fund that will sunset on July 1, 2024. The bill extends the fund 10 years to 2034.
- Increases the fund liability maximum from \$1,000,000 to \$2,000,000
- Kansas has one of the best UST/AST programs in the country.
- The number of existing and potential sites in the KDHE storage tank programs are evaluated regularly to ensure current and future spending is available to meet KDHE's regulatory mandates.
- The sunset date in this statute has been extended in previous Statute amendments, including 2001 and 2012. KDHE can confidently predict a need to extend the program through at least 2034.
- A higher maximum cap for reimbursement of clean-up costs is needed because the installation, implementation and maintenance of remedial systems cost significantly more than it did 20 years ago.
- Sites that were easier to clean up have been addressed. Of the sites that remain, much of the soil and groundwater contamination is in complex geology, which increases the overall cost of a site cleanup.
- The current number of sites that will be affected by the \$1M increase is less than 10.

The Kansas Underground and Aboveground Storage Tank Fund is extremely important to Kansas motor fuel distributors and retailers. The fund offers a pollution insurance policy that is vital to the petroleum industry due to pollution exclusions that are in most, if not all, insurance policies. PMCA enjoys a close working relationship with KDHE and we both have the same goal in mind...keeping Kansas environmentally safe.

Petroleum Marketers and Convenience Store Association of Kansas

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Extension of the trust fund:

The proposed amendments to the Storage Tank Act extend the life of the underground and aboveground funds. The UST fund was developed to satisfy the pollution liability insurance requirements established by the federal Environmental Protection Agency (EPA) regulations affecting underground storage tanks (USTs). The provisions for the third-party insurance coverage were assigned to a program within the Insurance Department. The act was amended in 1992 to include a reimbursement fund for aboveground tanks.

In addition to satisfying insurance requirements, the funds provide real financial relief to owners of petroleum tanks for the cost of corrective action at their facilities. The funds reimburse applicants for approved costs of remedial action after payment of the appropriate deductible. Without this mechanism to comply with the insurance requirements, many UST owners would be forced out of business.

Since the inception of the funds owner's of 1,115 petroleum storage tank facilities have participated in the underground and aboveground trust fund. Averages of 25 new facilities apply for assistance each year. Currently many of the facility owners continue to rely on these reimbursement funds to pay for ongoing cleanups.

The programs operate within the established funding mechanism and have facilitated a good working relationship between the state regulatory agency and the petroleum marketers. The programs have been a success due to the very well thought out design of the statutes. The credit for that success goes to those who had the forethought to include adequate funding and provisions for cost control which allowed the agency to operate well within the established budget.

Mr. Chairman, I appreciate the opportunity to comment on SB 286 ask the committee to adopt this legislation.

Thank You

The Kansas Petroleum Storage Tank Release Trust Funds

Overview

The Storage Tank Act establishes two separate Trust Funds to assist owners and operators of storage tanks with the cost of remedial actions. Both funds are designed to provide financial assistance to owners and operators of facilities where contamination from petroleum storage tanks has occurred. The Trust Funds are financed from a \$.01 fee placed on each gallon of petroleum (except aviation fuel) product manufactured in or imported into the state. The funds will be abolished on July 1, 2024 by the sunset provision unless reenacted by the Legislature. Outlined below is a brief summary of the program.

Who Qualifies for Reimbursement from the State Trust Funds:

- Owners or operators of underground and aboveground storage tanks. Private businesses, local and state governments who own/operate petroleum storage tanks are eligible.
- To be eligible, the contamination at the site must have been discovered on or after December 22, 1988.
- Owners or operators of farm or residential tanks of 1,100 gallons or less and tanks used to store heating oil at a single family residence may qualify for reimbursement.

Who Does Not Qualify for Reimbursement:

- The federal government.
- Owners or operators who meet the federal criteria for self-insurance and whose leaking tank is located on a facility that is engaged in the refining or production of petroleum.
- Owners or operators who knowingly allow a release of petroleum to occur or who do not cooperate in conducting the appropriate corrective action.
- Owners or operators of storage tanks at pipeline facilities where releases have occurred.

How to Obtain Reimbursement from the State Trust Funds:

- Submit an application for assistance from the appropriate fund.
- KDHE Trust Fund Staff will prepare and provide the owner with a pre-approved corrective action plan at a time determined by the priority ranking system. The work-scope will be prepared to assist the owner or operator in obtaining the required competitive bids.
- Three bids for all work associated with the remedial action must be obtained and approved in writing by KDHE Trust Fund Staff prior to the work being conducted.
- KDHE offers a bid assistance program for those who prefer to have KDHE obtain bids for them.
- The applicant must sign a consent agreement with KDHE related to implementation of the corrective action under the applicable fund.

Compliance Requirements:

To avoid potential fines, all regulated storage tanks must be registered with KDHE and must be in compliance with inventory control, release detection, and release reporting requirements. At the time they are approved for Trust Fund assistance, storage tank owners or operators who are not in compliance will be fined based upon the following:

- Failure to register STs: \$50.00 per ST
- Failure to maintain inventory control: \$300.00 per ST (first violation)
- Failure to perform release detection: \$2,000.00 per ST, \$250.00 per line system
- Failure to immediately (within 24 hours) report a release: \$2,500.00 per release
- Failure to cooperate with KDHE directives: \$2,500.00 per site
- Operating STs without a permit: \$2,000.00 per site (first time offense per owner)
- Failure to provide financial responsibility (third party liability coverage) for underground storage tanks: \$500 per UST.

Petroleum Storage Tank Release Trust Fund Site Ranking System:

Due to the overwhelming number of applications for assistance from the funds, KDHE has developed a ranking system which evaluates the risk associated with each site. This ranking system takes into account several factors related to each site to determine which sites pose the greatest risk to the public. Using the ranking system KDHE assigns a score to each site. This score will establish the order in which sites are investigated and remediated. By using this method KDHE can focus limited resources on resolving the greatest risks to the public.

Costs Covered by the State Trust Funds:

(Cost must be pre-approved in writing by KDHE Trust Fund staff prior to the start of work)

- Preparation of corrective action plans which address the extent of contamination.
- Investigation and assessment of the contamination or petroleum release.
- Disposal and treatment of contaminated soil, groundwater, and/or surface water.
- Removal of contaminants from soil, groundwater, and/or surface water.
- Monitoring of the soil, groundwater, and/or surface water and maintenance of the monitoring equipment.
- Restoration or replacement of public water supplies.

Costs Not Covered by the State Trust Funds:

- Repair, removal, replacement, or disposal of tanks, product in tanks, lines, or dispensers.
- Costs for the loss of business or costs for third party bodily injury or property damage.
- Work or costs not approved in writing by KDHE Trust Fund Staff prior to the work being conducted.

Deductibles:

The deductible for each release is \$3,000 plus \$500 for each tank (above and below ground) located at the site of the release.

Financial Limitations of the Trust Funds:

- For each petroleum release: one million dollars, less the deductible.
- For owners or operators who own less than 100 tanks: a total annual amount of \$1,000,000 for all sites owned or operated, less any deductibles.
- For owners or operators who own more than 100 tanks: a total annual amount of \$2,000,000 for all sites owned or operated, less any deductibles.
- Reimbursement will not be provided for costs covered by insurance policies, warranties, or other financial assistance.

Underground Storage Tank Third Party Liability Insurance (Financial Responsibility):

- Third Party Liability Insurance is available through your local insurance agent for USTs.