

SECOND REGULAR SESSION  
SENATE COMMITTEE SUBSTITUTE FOR  
**SENATE BILL NO. 907**  
94TH GENERAL ASSEMBLY

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Reported from the Committee on Commerce, Energy and the Environment, February 14, 2008, with recommendation that the Senate Committee Substitute do pass.

3580S.04C

TERRY L. SPIELER, Secretary.

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**AN ACT**

To repeal sections 260.1003, 319.129, 319.131, and 319.133, RSMo, and to enact in lieu thereof six new sections relating to the regulation of motor fuel tanks.

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*Be it enacted by the General Assembly of the State of Missouri, as follows:*

Section A. Sections 260.1003, 319.129, 319.131, and 319.133, RSMo, are  
2 repealed and six new sections enacted in lieu thereof, to be known as sections  
3 260.1003, 319.129, 319.131, 319.133, 319.136, and 414.036, to read as follows:

260.1003. As used in sections 260.1000 to 260.1039, the following terms  
2 shall mean:

3 (1) "Activity and use limitations", restrictions or obligations with respect  
4 to real property created under sections 260.1000 to 260.1039;

5 (2) "Department", the Missouri department of natural resources or any  
6 other state or federal department that determines or approves the environmental  
7 response project under which the environmental covenant is created;

8 (3) "Common interest community", a condominium, cooperative, or other  
9 real property with respect to which a person, by virtue of the person's ownership  
10 of a parcel of real property, is obligated to pay property taxes, insurance  
11 premiums, maintenance, or improvement of other real property described in a  
12 recorded covenant that creates the common interest community;

13 (4) "Environmental covenant", a servitude arising under an environmental  
14 response project that imposes activity and use limitations;

15 (5) "Environmental response project", a plan or work performed for  
16 environmental remediation of real property and conducted:

17 (a) Under a federal or state program governing environmental remediation

**EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.**

18 of real property, including but not limited to the Missouri hazardous waste  
19 management law as specified in this chapter;

20 (b) Incident to closure of a solid or hazardous waste management unit, if  
21 the closure is conducted with approval of the department; or

22 (c) Under a state voluntary cleanup program authorized in the Missouri  
23 hazardous waste management law as specified in this chapter.

24 **"Environmental response project" shall not include plans or work**  
25 **performed for environmental remediation of releases from aboveground**  
26 **storage tanks or underground storage tanks as defined in section**  
27 **319.100, RSMo;**

28 (6) "Holder", the grantee of an environmental covenant as specified in  
29 section 260.1006;

30 (7) "Person", an individual, corporation, business trust, estate, trust,  
31 partnership, limited liability company, association, joint venture, public  
32 corporation, government, governmental subdivision, department, or  
33 instrumentality, or any other legal or commercial entity;

34 (8) "Record", information that is inscribed on a tangible medium or that  
35 is stored in an electronic or other medium and is retrievable in perceivable form;

36 (9) "State", a state of the United States, the District of Columbia, Puerto  
37 Rico, the United States Virgin Islands, or any territory or insular possession  
38 subject to the jurisdiction of the United States.

319.129. 1. There is hereby created a special trust fund to be known as  
2 the "Petroleum Storage Tank Insurance Fund" within the state treasury which  
3 shall be the successor to the underground storage tank insurance fund **and shall**  
4 **be a body corporate and politic.** Moneys in such special trust fund shall not  
5 be deemed to be state funds, **shall not be credited to the state general**  
6 **revenue fund, and shall not be subject to transfer.** Notwithstanding the  
7 provisions of section 33.080, RSMo, to the contrary, moneys in the fund shall not  
8 be transferred to general revenue at the end of each biennium.

9 2. The owner or operator of any underground storage tank, including the  
10 state of Missouri and its political subdivisions and public transportation systems,  
11 in service on August 28, 1989, shall submit to the department a fee of one  
12 hundred dollars per tank on or before December 31, 1989. The owner or operator  
13 of any underground storage tank who seeks to participate in the petroleum  
14 storage tank insurance fund, including the state of Missouri and its political  
15 subdivisions and public transportation systems, and whose underground storage

16 tank is brought into service after August 28, 1998, shall transmit one hundred  
17 dollars per tank to the board with his or her initial application. Such amount  
18 shall be a one-time payment, and shall be in addition to the payment required by  
19 section 319.133. The owner or operator of any aboveground storage tank  
20 regulated by this chapter, including the state of Missouri and its political  
21 subdivisions and public transportation systems, who seeks to participate in the  
22 petroleum storage tank insurance fund, shall transmit one hundred dollars per  
23 tank to the board with his or her initial application. Such amount shall be a  
24 one-time payment and shall be in addition to the payment required by section  
25 319.133. Moneys received pursuant to this section shall be transmitted to the  
26 director of revenue for deposit in the petroleum storage tank insurance fund.

27 3. The state treasurer may deposit moneys in the fund in any of the  
28 qualified depositories of the state. All such deposits shall be secured in a manner  
29 and upon the terms as are provided by law relative to state deposits. Interest  
30 earned shall be credited to the petroleum storage tank insurance fund.

31 4. The general administration of the fund and the responsibility for the  
32 proper operation of the fund, including all decisions relating to payments from the  
33 fund, are hereby vested in a board of trustees. The board of trustees shall consist  
34 of the commissioner of administration or the commissioner's designee, the director  
35 of the department of natural resources or the director's designee, the director of  
36 the department of agriculture or the director's designee, and eight citizens  
37 appointed by the governor with the advice and consent of the senate. Three of  
38 the appointed members shall be owners or operators of retail petroleum storage  
39 tanks, including one tank owner or operator of greater than one hundred tanks;  
40 one tank owner or operator of less than one hundred tanks; and one aboveground  
41 storage tank owner or operator. One appointed trustee shall represent a financial  
42 lending institution, and one appointed trustee shall represent the insurance  
43 underwriting industry. One appointed trustee shall represent industrial or  
44 commercial users of petroleum. The two remaining appointed citizens shall have  
45 no petroleum-related business interest, and shall represent the nonregulated  
46 public at large. The members appointed by the governor shall serve four-year  
47 terms except that the governor shall designate two of the original appointees to  
48 be appointed for one year, two to be appointed for two years, two to be appointed  
49 for three years and two to be appointed for four years. Any vacancies occurring  
50 on the board shall be filled in the same manner as provided in this section.

51 5. The board shall meet in Jefferson City, Missouri, within thirty days

52 following August 28, 1996. Thereafter, the board shall meet upon the written call  
53 of the chairman of the board or by the agreement of any six members of the  
54 board. Notice of each meeting shall be delivered to all other trustees in person  
55 or by registered mail not less than six days prior to the date fixed for the  
56 meeting. The board may meet at any time by unanimous mutual consent. There  
57 shall be at least one meeting in each quarter.

58           6. Six trustees shall constitute a quorum for the transaction of business,  
59 and any official action of the board shall be based on a majority vote of the  
60 trustees present.

61           7. The trustees shall serve without compensation but shall receive from  
62 the fund their actual and necessary expenses incurred in the performance of their  
63 duties for the board.

64           8. All staff resources for the Missouri petroleum storage tank insurance  
65 fund shall be provided by the department of natural resources or another state  
66 agency as otherwise specifically determined by the board. The fund shall  
67 compensate the department of natural resources or other state agency for all costs  
68 of providing staff required by this subsection. Such compensation shall be made  
69 pursuant to contracts negotiated between the board and the department of  
70 natural resources or other state agency.

71           9. In order to carry out the fiduciary management of the fund, the board  
72 may select and employ, or may contract with, persons experienced in insurance  
73 underwriting, accounting, the servicing of claims and rate making, and legal  
74 counsel to defend third-party claims, who shall serve at the board's  
75 pleasure. Invoices for such services shall be presented to the board in sufficient  
76 detail to allow a thorough review of the costs of such services.

77           10. At the first meeting of the board, the board shall elect one of its  
78 members as chairman. The chairman shall preside over meetings of the board  
79 and perform such other duties as shall be required by action of the board.

80           11. The board shall elect one of its members as vice chairman, and the  
81 vice chairman shall perform the duties of the chairman in the absence of the  
82 latter or upon the chairman's inability or refusal to act.

83           12. The board shall determine and prescribe all rules and regulations as  
84 they relate to fiduciary management of the fund, pursuant to the purposes of  
85 sections 319.100 to 319.137. In no case shall the board have oversight regarding  
86 environmental cleanup standards for petroleum storage tanks.

87           13. No trustee or staff member of the fund shall receive any gain or profit

88 from any moneys or transactions of the fund. This shall not preclude any eligible  
89 trustee from making a claim or receiving benefits from the petroleum storage  
90 tank insurance fund as provided by sections 319.100 to 319.137.

91 14. The board may reinsure all or a portion of the fund's liability. Any  
92 insurer who sells environmental liability insurance in this state may, at the  
93 option of the board, reinsure some portion of the fund's liability.

94 15. The petroleum storage tank insurance fund shall expire on December  
95 31, [2010, or upon revocation of federal regulation 40 CFR Parts 280 and 285,  
96 whichever occurs first] **2020**, unless extended by action of the general  
97 assembly. After December 31, [2010] **2020**, the board of trustees may continue  
98 to function for the sole purpose of completing payment of claims made prior to  
99 December 31, [2010] **2020**.

100 16. The board shall annually commission an independent financial audit  
101 of the petroleum storage tank insurance fund. The board shall biennially  
102 commission an actuarial analysis of the petroleum storage tank insurance  
103 fund. The results of the financial audit and the actuarial analysis shall be made  
104 available to the public. The board may contract with third parties to carry out  
105 the requirements of this subsection.

319.131. 1. Any owner or operator of one or more petroleum storage tanks  
2 may elect to participate in the petroleum storage tank insurance fund to  
3 [partially] meet the financial responsibility requirements of sections [319.100 to  
4 319.137] **319.114 and 414.036, RSMo**. Subject to regulations of the board of  
5 trustees, owners or operators may elect to continue their participation in the fund  
6 subsequent to the transfer of their property to another party. Current or former  
7 refinery sites or petroleum pipeline or marine terminals are not eligible for  
8 participation in the fund.

9 2. The board shall establish an advisory committee which shall be  
10 composed of insurers [and], owners and operators of petroleum storage tanks,  
11 **and other interested parties**. The advisory committee established pursuant  
12 to this subsection shall report to the board. The committee shall monitor the  
13 fund and recommend statutory and administrative changes as may be necessary  
14 to assure efficient operation of the fund. The committee, in consultation with the  
15 board [and the department of insurance], shall [annually] report **every two**  
16 **years** to the general assembly on the availability and affordability of the private  
17 insurance market as a viable method of meeting the financial responsibilities  
18 required by state and federal law in lieu of the petroleum storage tank insurance

19 fund.

20           3. (1) Except as otherwise provided by this section, any person seeking  
21 to participate in the insurance fund shall submit an application to the board of  
22 trustees and shall certify that the petroleum tanks meet or exceed and are in  
23 compliance with all technical standards established by the United States  
24 Environmental Protection Agency, except those standards and regulations  
25 pertaining to spill prevention control and counter-measure plans, and rules  
26 established by the Missouri department of natural resources and the Missouri  
27 department of agriculture. The applicant shall submit proof that the applicant  
28 has a reasonable assurance of the tank's integrity. Proof of tank integrity may  
29 include but not be limited to any one of the following: tank tightness test,  
30 electronic leak detection, monitoring wells, daily inventory reconciliation, vapor  
31 test or any other test that may be approved by the director of the department of  
32 natural resources or the director of the department of agriculture. The applicant  
33 shall submit evidence that the applicant can meet all applicable financial  
34 responsibility requirements of this section.

35           (2) A creditor, specifically a person who, without participating in and not  
36 otherwise primarily engaged in petroleum production, refining, and marketing,  
37 holds indicia of ownership primarily for the purpose of, or in connection with,  
38 securing payment or performance of a loan or to protect a security interest in or  
39 lien on the tank or the property where the tank is located, or serves as trustee or  
40 fiduciary upon transfer or receipt of the property, may be a successor in interest  
41 to a debtor pursuant to this section, provided that the creditor gives notice of the  
42 interest to the insurance fund by certified mail, return receipt requested. Part  
43 of such notice shall include a copy of the lien, including but not limited to a  
44 security agreement or a deed of trust as appropriate to the property. The term  
45 "successor in interest" as provided in this section means a creditor to the debtor  
46 who had qualified real property in the insurance fund prior to the transfer of title  
47 to the creditor, and the term is limited to access to the insurance fund. The  
48 creditor may cure any of the debtor's defaults in payments required by the  
49 insurance fund, provided the specific real property originally qualified pursuant  
50 to this section. The creditor, or the creditor's subsidiary or affiliate, who  
51 forecloses or otherwise obtains legal title to such specific real property held as  
52 collateral for loans, guarantees or other credit, and which includes the debtor's  
53 aboveground storage tanks or underground storage tanks, or both such tanks  
54 shall provide notice to the fund of any transfer of creditor to subsidiary or

55 affiliate. Liability pursuant to sections 319.100 to 319.137 shall be confined to  
56 such creditor or such creditor's subsidiary or affiliate. A creditor shall apply for  
57 a transfer of coverage and shall present evidence indicating a lien, contractual  
58 right, or operation of law permitting such transfer, and may utilize the creditor's  
59 affiliate or subsidiary to hold legal title to the specific real property taken in  
60 satisfaction of debts. Creditors may be listed as insured or additional insured on  
61 the insurance fund, and not merely as mortgagees, and may assign or otherwise  
62 transfer the debtor's rights in the insurance fund to the creditor's affiliate or  
63 subsidiary, notwithstanding any limitations in the insurance fund on assignments  
64 or transfer of the debtor's rights.

65 (3) Any person participating in the fund shall annually submit an amount  
66 established pursuant to subsection 1 of section 319.133 which shall be deposited  
67 to the credit of the petroleum storage tank insurance fund.

68 4. Any person making a claim pursuant to this section and sections  
69 319.129 and 319.133 shall be liable for the first ten thousand dollars of the cost  
70 of cleanup associated with a release from a petroleum storage tank without  
71 reimbursement from the fund. The petroleum storage tank insurance fund shall  
72 assume all costs, except as provided in subsection 5 of this section, which are  
73 greater than ten thousand dollars but less than one million dollars per occurrence  
74 or two million dollars aggregate per year. The liability of the petroleum storage  
75 tank insurance fund is not the liability of the state of Missouri. The provisions  
76 of sections 319.100 to 319.137 shall not be construed to broaden the liability of  
77 the state of Missouri beyond the provisions of sections 537.600 to 537.610, RSMo,  
78 nor to abolish or waive any defense which might otherwise be available to the  
79 state or to any person. The presence of existing contamination at a site where a  
80 person is seeking insurance in accordance with this section shall not affect that  
81 person's ability to participate in this program, provided the person meets all  
82 other requirements of this section. Any person who qualifies pursuant to sections  
83 319.100 to 319.137 and who has requested approval of a project for remediation  
84 from the fund, which request has not yet been decided upon shall annually be  
85 sent a status report including an estimate of when the project may expect to be  
86 funded and other pertinent information regarding the request.

87 5. The fund shall provide coverage for third-party claims involving  
88 property damage or bodily injury caused by leaking petroleum storage tanks  
89 whose owner or operator is participating in the fund at the time the release  
90 occurs or is discovered. [Coverage for third-party bodily injury shall not exceed

91 one million dollars per occurrence.] Coverage for third-party property damage **or**  
92 **bodily injury** shall not exceed [one million dollars per occurrence] **the limits**  
93 **described in subsection 4 of this section.** The fund shall not compensate an  
94 owner or operator for repair of damages to property beyond that required to  
95 contain and clean up a release of a regulated substance or compensate an owner  
96 or operator or any third party for loss or damage to other property owned or  
97 belonging to the owner or operator, or for any loss or damage of an intangible  
98 nature, including, but not limited to, loss or interruption of business, pain and  
99 suffering of any person, lost income, mental distress, loss of use of any benefit,  
100 or punitive damages.

101 6. The fund shall, within limits specified in this section, assume costs of  
102 third-party claims and cleanup of contamination caused by releases from  
103 petroleum storage tanks. The fund shall provide the defense of eligible  
104 third-party claims including the negotiations of any settlement.

105 7. Nothing contained in sections 319.100 to 319.137 shall be construed to  
106 abrogate or limit any right, remedy, causes of action, or claim by any person  
107 sustaining personal injury or property damage as a result of any release from any  
108 type of petroleum storage tank, nor shall anything contained in sections 319.100  
109 to 319.137 be construed to abrogate or limit any liability of any person in any way  
110 responsible for any release from a petroleum storage tank or any damages for  
111 personal injury or property damages caused by such a release.

112 8. (1) The fund shall provide moneys for cleanup of contamination caused  
113 by releases from petroleum storage tanks, the owner or operator of which is  
114 participating in the fund or the owner or operator of which has made application  
115 for participation in the fund by December 31, 1997, regardless of when such  
116 release occurred, provided that those persons who have made application are  
117 ultimately accepted into the fund. Applicants shall not be eligible for fund  
118 benefits until they are accepted into the fund. This section shall not preclude the  
119 owner or operator of petroleum storage tanks coming into service after December  
120 31, 1997, from making application to and participating in the petroleum storage  
121 tank insurance fund.

122 (2) Notwithstanding the provisions of section 319.100 and the provisions  
123 of subdivision (1) of this section, the fund shall provide moneys for cleanup of  
124 contamination caused by releases from petroleum storage tanks owned by school  
125 districts all or part of which are located in a county of the third classification  
126 without a township form of government and having a population of more than ten



127 thousand seven hundred but less than eleven thousand inhabitants, and which  
128 make application for participation in the fund by August 28, 1999, regardless of  
129 when such release occurred. Applicants shall not be eligible for fund benefits  
130 until they are accepted into the fund, and costs incurred prior to that date shall  
131 not be eligible expenses.

132 9. (1) The fund shall provide moneys for cleanup of contamination caused  
133 by releases from underground storage tanks which contained petroleum and  
134 which have been taken out of use prior to December 31, 1997, provided such sites  
135 have been documented by or reported to the department of natural resources prior  
136 to December 31, 1997, and provided further that the fund shall make no  
137 reimbursements for expenses incurred prior to August 28, 1995. The fund shall  
138 also provide moneys for cleanup of contamination caused by releases from  
139 underground storage tanks which contained petroleum and which have been  
140 taken out of use prior to December 31, 1985, if the current owner of the real  
141 property where the tanks are located purchased such property before December  
142 31, 1985, provided such sites are reported to the fund on or before June 30,  
143 2000. The fund shall make no payment for expenses incurred at such sites prior  
144 to August 28, 1999. Nothing in sections 319.100 to 319.137 shall affect the  
145 validity of any underground storage tank fund insurance policy in effect on  
146 August 28, 1996.

147 (2) An owner or operator who submits a request as provided in this  
148 subsection is not required to bid the costs and expenses associated with  
149 professional environmental engineering services. The board may disapprove all  
150 or part of the costs and expenses associated with the environmental engineering  
151 services if the costs are excessive based upon comparable service costs or current  
152 market value of similar services. The owner or operator shall solicit bids for  
153 actual remediation and cleanup work as provided by rules of the board.

154 **(3) After December 31, 2017, the current legal owner of the site**  
155 **shall be the responsible party for corrective action, pursuant to section**  
156 **319.109, of any releases from underground storage tanks described in**  
157 **this subsection. Nothing in this subdivision shall in any way be**  
158 **construed to alter, alleviate, or modify in any manner any liabilities**  
159 **that the fund has to pay for in cleaning up the site.**

160 10. (1) The fund shall provide moneys for cleanup of contamination  
161 caused by releases from aboveground storage tanks utilized for the sale of  
162 products regulated by chapter 414, RSMo, which have been taken out of use prior

163 to December 31, 1997, provided such sites have been documented by or reported  
164 to the department of natural resources prior to December 31, 1997, and provided  
165 further that the fund shall make no reimbursements for expenses incurred prior  
166 to July 1, 1997.

167 **(2) After December 31, 2017, the current legal owner of the site**  
168 **shall be the responsible party for corrective action of any releases from**  
169 **aboveground storage tanks described in this subsection. Nothing in**  
170 **this subdivision shall in any way be construed to alter, alleviate, or**  
171 **modify in any manner any liabilities that the fund has to pay for in**  
172 **cleaning up the site.**

319.133. 1. The board shall, in consultation with the advisory committee  
2 established pursuant to subsection 2 of section 319.131, establish, by rule, the  
3 amount which each owner or operator who participates in the fund shall pay  
4 annually into the fund, but such amount shall not exceed the limits established  
5 in this section.

6 2. Each participant shall annually pay an amount which shall be at least  
7 one hundred dollars per year but not more than [three] five hundred dollars per  
8 year for any tank, as established by the board by rule.

9 3. No new registration fee is required for a change of ownership of a  
10 petroleum storage tank.

11 4. The board shall establish procedures where persons owning fifty or  
12 more petroleum storage tanks may pay any fee established pursuant to subsection  
13 1 of this section in installments.

14 5. All rules applicable to the former underground storage tank insurance  
15 fund not inconsistent with the provisions of sections 319.100 to 319.137 shall  
16 apply to the petroleum storage tank insurance fund as of August 28, 1996.

17 **6. The board may require some or all new applicants to conduct**  
18 **a site assessment before participating in the fund. The board also may**  
19 **require some or all new applicants to pay a surcharge of up to five**  
20 **hundred dollars per year per tank from the date the tank was eligible**  
21 **for coverage under the fund.**

22 7. Any rule or portion of a rule, as that term is defined in section  
23 536.010, RSMo, that is created under the authority delegated in this  
24 section shall become effective only if it complies with and is subject to  
25 all of the provisions of chapter 536, RSMo, and, if applicable, section  
26 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable

27 and if any of the powers vested with the general assembly pursuant to  
28 chapter 536, RSMo, to review, to delay the effective date, or to  
29 disapprove and annul a rule are subsequently held unconstitutional,  
30 then the grant of rulemaking authority and any rule proposed or  
31 adopted after August 28, 2008, shall be invalid and void.

319.136. 1. An underground storage tank shall be ineligible for  
2 delivery, deposit, or acceptance of petroleum if the underground  
3 storage tank meets one or more of the following conditions:

- 4 (1) Required spill prevention equipment is not installed;
- 5 (2) Required overfill protection equipment is not installed;
- 6 (3) Required leak detection equipment is not installed; or
- 7 (4) Required corrosion protection equipment is not  
8 installed. This subdivision shall not apply to a buried metal flexible  
9 connector.

10 2. Upon the discovery of a violation of this section, the  
11 department shall, within fourteen days, notify the owner or operator in  
12 writing of such violation and affix a red violation tag stating the  
13 underground storage tank is in violation and is ineligible to receive  
14 petroleum to the fill pipe of the noncompliant underground storage  
15 tank using a tamper-resistant strap or straps, fill pipe bag, or any  
16 combination thereof so the tag is visible to any person attempting to  
17 deliver petroleum to the underground storage tank.

18 3. Notwithstanding the provisions of subsection 1 of this section  
19 to the contrary, the department may authorize delivery, deposit, or  
20 acceptance of petroleum to an ineligible underground storage tank in  
21 the following circumstances:

- 22 (1) In an emergency situation; or
- 23 (2) If such activity is necessary to test or calibrate the  
24 underground storage tank or dispenser system.

25 In either case, the department may authorize delivery, deposit, or  
26 acceptance of petroleum to an otherwise ineligible underground  
27 storage tank for up to one hundred eighty days. If the department  
28 grants a waiver pursuant to this subdivision, no red violation tag, as  
29 required under subsection 1 of this section, shall be affixed to the fill  
30 pipe for the length of the waiver.

31 4. A violation of this section causes the individual tank in  
32 violation to become ineligible to receive petroleum, but shall not cause

33 other tanks at such facility to become ineligible to receive petroleum.

34 5. The owner or operator shall not allow petroleum to be  
35 deposited into an underground storage tank that has a red violation tag  
36 affixed to its fill pipe.

37 6. No person shall deface, alter, or otherwise tamper with a red  
38 violation tag so that the information contained on the tag is not  
39 legible. Removal of a red violation tag shall only be allowed pursuant  
40 to subsection 7 of this section.

41 7. Upon notification by the owner or operator to the department  
42 documenting that the violation has been corrected, the department  
43 shall immediately, unless an inspection is required, provide  
44 authorization to the owner or operator to remove the red violation tag.  
45 If the department requires an inspection to determine the violation has  
46 been corrected, such inspection shall be conducted within twenty-four  
47 hours after receiving notification from the owner or operator. If the  
48 department does not conduct the inspection within twenty-four hours  
49 after receiving notification from the owner or operator, the owner or  
50 operator may remove the red violation tag and immediately place the  
51 system and underground storage tank back into operation pending the  
52 inspection. A red violation tag that has been removed by the owner or  
53 operator shall be returned to the department within five business days  
54 in a postage paid envelope provided by the department.

55 8. The owner or operator may appeal any decision by the  
56 department regarding this section directly to the administrative  
57 hearing commission, pursuant to section 621.250, RSMo, or the  
58 appropriate circuit court.

414.036. 1. After December 31, 2010, the owner or operator of an  
2 aboveground storage tank defined in subsection 2 of this section shall  
3 maintain evidence of financial responsibility in an amount equal to or  
4 greater than one million dollars per occurrence and two million dollars  
5 annual aggregate for the costs of taking corrective action and  
6 compensating third parties for bodily injury and property damage  
7 caused by sudden and nonsudden accidental releases arising from the  
8 operation of the tank.

9 2. For the purposes of this section, "aboveground storage tank"  
10 is defined as any one or a combination of tanks, including pipes  
11 connected thereto, used to contain an accumulation of petroleum and

12 the volume of which, including the volume of the aboveground pipes  
13 connected thereto, is ninety percent or more above the surface of the  
14 ground, which is utilized for the sale of products regulated by this  
15 chapter. The term does not include those tanks described in  
16 paragraphs (a) to (k) of subdivision (16) of section 319.100, RSMo, nor  
17 does it include aboveground storage tanks at refineries, petroleum  
18 pipeline terminals, or marine terminals.

19 3. Owners and operators may meet the requirements of this  
20 section by participating in the petroleum storage tank insurance fund  
21 created in section 319.129, RSMo, or by any other method approved by  
22 the department.

23 4. The department shall promulgate rules to implement the  
24 provisions of this section. Any rule or portion of a rule, as that term is  
25 defined in section 536.010, RSMo, that is created under the authority  
26 delegated in this section shall become effective only if it complies with  
27 and is subject to all of the provisions of chapter 536, RSMo, and, if  
28 applicable, section 536.028, RSMo. This section and chapter 536, RSMo,  
29 are nonseverable and if any of the powers vested with the general  
30 assembly pursuant to chapter 536, RSMo, to review, to delay the  
31 effective date, or to disapprove and annul a rule are subsequently held  
32 unconstitutional, then the grant of rulemaking authority and any rule  
33 proposed or adopted after August 28, 2008, shall be invalid and void.

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