

SECOND REGULAR SESSION

SENATE BILL NO. 907

94TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR ENGLER.

Pre-filed January 7, 2008, and ordered printed.

TERRY L. SPIELER, Secretary.

3580S.03I

AN ACT

To repeal sections 260.1003, 319.107, 319.125, 319.129, 319.131, and 319.133, RSMo, and to enact in lieu thereof eight new sections relating to the regulation of motor fuel tanks.

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

Section A. Sections 260.1003, 319.107, 319.125, 319.129, 319.131, and 319.133, RSMo, are repealed and eight new sections enacted in lieu thereof, to be known as sections 260.1003, 319.107, 319.125, 319.129, 319.131, 319.133, 319.136, and 414.036, to read as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 shall mean:

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

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

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

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

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

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

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

319.107. The department shall establish standards of performance for
2 maintaining a leak detection system, an inventory control system together with
3 tank testing, or a comparable system or method designed to identify releases in
4 a manner consistent with the protection of human health and the
5 environment. The department shall establish requirements for maintaining
6 records of any such monitoring, leak detection, inventory control, or tank testing
7 system. An owner or operator of an underground storage tank, including an
8 out-of-service or nonoperational tank, not found to be the source of a release for
9 which the department has ordered nonroutine testing, who cooperates with the
10 department, shall be reimbursed for all reasonable direct costs, as determined by
11 the director, related to the testing and monitoring costs associated with the
12 detection of the alleged release incurred by such owner or operator, out of the
13 underground storage tank [insurance fund] **regulation program established**
14 **under section 319.123.**

319.125. 1. The department may deny or invalidate a certificate of registration issued under sections 319.120 and 319.123 if the department finds, after notice and a hearing pursuant to chapter 260, RSMo, that the owner has:

(1) Fraudulently or deceptively registered or attempted to register a tank; or

(2) Failed at any time to comply with any provision or requirement of sections 319.100 to 319.137 or any rules and regulations adopted by the department in accordance with the provisions of sections 319.100 to 319.137.

2. Upon the action of the department to invalidate or refuse to issue a certificate, the department shall advise the applicant of his right to have a hearing before the hazardous waste management commission. The hearing shall be conducted in accordance with the procedures established in chapter 260, RSMo.

3. When the department finds that a release from an underground storage tank presents, or is likely to present, an immediate threat to public health or safety or to the environment, it shall order correction of the problem, order cleanup or institute clean-up operations pursuant to the provisions of sections 260.500 to 260.550, RSMo.

4. If the owner or operator fails to perform or improperly performs any action required by the department to abate or eliminate an immediate threat to public health or safety or to the environment, the department or an authorized agent of the department may take any and all necessary action to abate or eliminate such threat. In addition to any other remedy or penalty provided by sections 319.100 to 319.137 or any other law, the owner or operator shall be held strictly liable for the reasonable costs incurred by the department in taking any such action.

[5. The denial of reregistration or the revocation of registration of any person participating in the underground storage tank insurance fund shall, upon completion of any appeal, terminate participation in the fund.]

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

8 2. The owner or operator of any underground storage tank, including the
9 state of Missouri and its political subdivisions and public transportation systems,
10 in service on August 28, 1989, shall submit to the department a fee of one
11 hundred dollars per tank on or before December 31, 1989. The owner or operator
12 of any underground storage tank who seeks to participate in the petroleum
13 storage tank insurance fund, including the state of Missouri and its political
14 subdivisions and public transportation systems, and whose underground storage
15 tank is brought into service after August 28, 1998, shall transmit one hundred
16 dollars per tank to the board with his or her initial application. Such amount
17 shall be a one-time payment, and shall be in addition to the payment required by
18 section 319.133. The owner or operator of any aboveground storage tank
19 regulated by this chapter, including the state of Missouri and its political
20 subdivisions and public transportation systems, who seeks to participate in the
21 petroleum storage tank insurance fund, shall transmit one hundred dollars per
22 tank to the board with his or her initial application. Such amount shall be a
23 one-time payment and shall be in addition to the payment required by section
24 319.133. Moneys received pursuant to this section shall be transmitted to the
25 director of revenue for deposit in the petroleum storage tank insurance fund.

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

30 4. The general administration of the fund and the responsibility for the
31 proper operation of the fund, including all decisions relating to payments from the
32 fund, are hereby vested in a board of trustees. The board of trustees shall consist
33 of the commissioner of administration or the commissioner's designee, the director
34 of the department of natural resources or the director's designee, the director of
35 the department of agriculture or the director's designee, and eight citizens
36 appointed by the governor with the advice and consent of the senate. Three of
37 the appointed members shall be owners or operators of retail petroleum storage
38 tanks, including one tank owner or operator of greater than one hundred tanks;
39 one tank owner or operator of less than one hundred tanks; and one aboveground
40 storage tank owner or operator. One appointed trustee shall represent a financial
41 lending institution, and one appointed trustee shall represent the insurance
42 underwriting industry. One appointed trustee shall represent industrial or
43 commercial users of petroleum. The two remaining appointed citizens shall have

44 no petroleum-related business interest, and shall represent the nonregulated
45 public at large. The members appointed by the governor shall serve four-year
46 terms except that the governor shall designate two of the original appointees to
47 be appointed for one year, two to be appointed for two years, two to be appointed
48 for three years and two to be appointed for four years. Any vacancies occurring
49 on the board shall be filled in the same manner as provided in this section.

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

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

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

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

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

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

79 11. The board shall elect one of its members as vice chairman, and the

80 vice chairman shall perform the duties of the chairman in the absence of the
81 latter or upon the chairman's inability or refusal to act.

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

86 13. No trustee or staff member of the fund shall receive any gain or profit
87 from any moneys or transactions of the fund. This shall not preclude any eligible
88 trustee from making a claim or receiving benefits from the petroleum storage
89 tank insurance fund as provided by sections 319.100 to 319.137.

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

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

99 16. The board shall annually commission an independent financial audit
100 of the petroleum storage tank insurance fund. The board shall biennially
101 commission an actuarial analysis of the petroleum storage tank insurance
102 fund. The results of the financial audit and the actuarial analysis shall be made
103 available to the public. The board may contract with third parties to carry out
104 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], **and upon joint**
16 **written request of the speaker of the house and the president pro tem**
17 **of the senate or every four years, whichever occurs sooner, shall report**
18 to the general assembly on the availability and affordability of the private
19 insurance market as a viable method of meeting the financial responsibilities
20 required by state and federal law in lieu of the petroleum storage tank insurance
21 fund.

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

37 (2) A creditor, specifically a person who, without participating in and not
38 otherwise primarily engaged in petroleum production, refining, and marketing,
39 holds indicia of ownership primarily for the purpose of, or in connection with,
40 securing payment or performance of a loan or to protect a security interest in or
41 lien on the tank or the property where the tank is located, or serves as trustee or
42 fiduciary upon transfer or receipt of the property, may be a successor in interest
43 to a debtor pursuant to this section, provided that the creditor gives notice of the
44 interest to the insurance fund by certified mail, return receipt requested. Part
45 of such notice shall include a copy of the lien, including but not limited to a
46 security agreement or a deed of trust as appropriate to the property. The term
47 "successor in interest" as provided in this section means a creditor to the debtor

48 who had qualified real property in the insurance fund prior to the transfer of title
49 to the creditor, and the term is limited to access to the insurance fund. The
50 creditor may cure any of the debtor's defaults in payments required by the
51 insurance fund, provided the specific real property originally qualified pursuant
52 to this section. The creditor, or the creditor's subsidiary or affiliate, who
53 forecloses or otherwise obtains legal title to such specific real property held as
54 collateral for loans, guarantees or other credit, and which includes the debtor's
55 aboveground storage tanks or underground storage tanks, or both such tanks
56 shall provide notice to the fund of any transfer of creditor to subsidiary or
57 affiliate. Liability pursuant to sections 319.100 to 319.137 shall be confined to
58 such creditor or such creditor's subsidiary or affiliate. A creditor shall apply for
59 a transfer of coverage and shall present evidence indicating a lien, contractual
60 right, or operation of law permitting such transfer, and may utilize the creditor's
61 affiliate or subsidiary to hold legal title to the specific real property taken in
62 satisfaction of debts. Creditors may be listed as insured or additional insured on
63 the insurance fund, and not merely as mortgagees, and may assign or otherwise
64 transfer the debtor's rights in the insurance fund to the creditor's affiliate or
65 subsidiary, notwithstanding any limitations in the insurance fund on assignments
66 or transfer of the debtor's rights.

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

70 4. Any person making a claim pursuant to this section and sections
71 319.129 and 319.133 shall be liable for the first ten thousand dollars of the cost
72 of cleanup associated with a release from a petroleum storage tank without
73 reimbursement from the fund. The petroleum storage tank insurance fund shall
74 assume all costs, except as provided in subsection 5 of this section, which are
75 greater than ten thousand dollars but less than one million dollars per occurrence
76 or two million dollars aggregate per year. The liability of the petroleum storage
77 tank insurance fund is not the liability of the state of Missouri. The provisions
78 of sections 319.100 to 319.137 shall not be construed to broaden the liability of
79 the state of Missouri beyond the provisions of sections 537.600 to 537.610, RSMo,
80 nor to abolish or waive any defense which might otherwise be available to the
81 state or to any person. The presence of existing contamination at a site where a
82 person is seeking insurance in accordance with this section shall not affect that
83 person's ability to participate in this program, provided the person meets all

84 other requirements of this section. Any person who qualifies pursuant to sections
85 319.100 to 319.137 and who has requested approval of a project for remediation
86 from the fund, which request has not yet been decided upon shall annually be
87 sent a status report including an estimate of when the project may expect to be
88 funded and other pertinent information regarding the request.

89 5. The fund shall provide coverage for third-party claims involving
90 property damage or bodily injury caused by leaking petroleum storage tanks
91 whose owner or operator is participating in the fund at the time the release
92 occurs or is discovered. [Coverage for third-party bodily injury shall not exceed
93 one million dollars per occurrence.] Coverage for third-party property damage **or**
94 **bodily injury** shall not exceed [one million dollars per occurrence] **the limits**
95 **described in subsection 4 of this section.** The fund shall not compensate an
96 owner or operator for repair of damages to property beyond that required to
97 contain and clean up a release of a regulated substance or compensate an owner
98 or operator or any third party for loss or damage to other property owned or
99 belonging to the owner or operator, or for any loss or damage of an intangible
100 nature, including, but not limited to, loss or interruption of business, pain and
101 suffering of any person, lost income, mental distress, loss of use of any benefit,
102 or punitive damages.

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

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

114 8. (1) The fund shall provide moneys for cleanup of contamination caused
115 by releases from petroleum storage tanks, the owner or operator of which is
116 participating in the fund or the owner or operator of which has made application
117 for participation in the fund by December 31, 1997, regardless of when such
118 release occurred, provided that those persons who have made application are
119 ultimately accepted into the fund. Applicants shall not be eligible for fund

120 benefits until they are accepted into the fund. This section shall not preclude the
121 owner or operator of petroleum storage tanks coming into service after December
122 31, 1997, from making application to and participating in the petroleum storage
123 tank insurance fund.

124 (2) Notwithstanding the provisions of section 319.100 and the provisions
125 of subdivision (1) of this section, the fund shall provide moneys for cleanup of
126 contamination caused by releases from petroleum storage tanks owned by school
127 districts all or part of which are located in a county of the third classification
128 without a township form of government and having a population of more than ten
129 thousand seven hundred but less than eleven thousand inhabitants, and which
130 make application for participation in the fund by August 28, 1999, regardless of
131 when such release occurred. Applicants shall not be eligible for fund benefits
132 until they are accepted into the fund, and costs incurred prior to that date shall
133 not be eligible expenses.

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

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

156 **(3) After December 31, 2017, the current legal owner of the site**
157 **shall be the responsible party for the cleanup of any contamination**
158 **from underground storage tanks described in this subsection.**

159 10. The fund shall provide moneys for cleanup of contamination caused
160 by releases from aboveground storage tanks utilized for the sale of products
161 regulated by chapter 414, RSMo, which have been taken out of use prior to
162 December 31, 1997, provided such sites have been documented by or reported to
163 the department of natural resources prior to December 31, 1997, and provided
164 further that the fund shall make no reimbursements for expenses incurred prior
165 to July 1, 1997. **After December 31, 2017, the current legal owner of the**
166 **site shall be the responsible party for the cleanup of any contamination**
167 **from aboveground storage tanks described in this subsection.**

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 is hereby granted the authority to promulgate rules**
18 **requiring some or all new applicants to conduct a site assessment**
19 **before participating in the fund. The board is also hereby granted the**
20 **authority to promulgate rules requiring some or all new applicants to**
21 **pay a surcharge of up to five hundred dollars per year per tank from**
22 **the date the tank was eligible for coverage under the fund.**

23 7. Any rule or portion of a rule, as that term is defined in section
24 536.010, RSMo, that is created under the authority delegated in this

25 section shall become effective only if it complies with and is subject to
26 all of the provisions of chapter 536, RSMo, and, if applicable, section
27 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable
28 and if any of the powers vested with the general assembly pursuant to
29 chapter 536, RSMo, to review, to delay the effective date, or to
30 disapprove and annul a rule are subsequently held unconstitutional,
31 then the grant of rulemaking authority and any rule proposed or
32 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 directly to the appropriate circuit court or the
57 administrative hearing commission.

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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