

ARTICLE 14
STORAGE TANKS

- 35-11-1401. Repealed by Laws 1990, ch. 98, § 3.
- 35-11-1402. Repealed by Laws 1990, ch. 98, § 3.
- 35-11-1403. Repealed by Laws 1990, ch. 98, § 3.
- 35-11-1404. Repealed by Laws 1990, ch. 98, § 3.
- 35-11-1405. Repealed by Laws 1990, ch. 98, § 3.
- 35-11-1406. Repealed by Laws 1990, ch. 98, § 3.
- 35-11-1407. Repealed by Laws 1990, ch. 98, § 3.
- 35-11-1408. Repealed by Laws 1990, ch. 98, § 3.
- 35-11-1409. Repealed by Laws 1990, ch. 98, § 3.
- 35-11-1410. Repealed by Laws 1990, ch. 98, § 3.
- 35-11-1411. Repealed by Laws 1990, ch. 98, § 3.
- 35-11-1412. Repealed by Laws 1990, ch. 98, § 3.
- 35-11-1413. Repealed by Laws 1990, ch. 98, § 3.
- 35-11-1414. Short title; purpose; department report.

(a) This article is known and may be cited as the "Storage Tank Act of 2007".

(b) The legislature recognizes the threat to the public health, safety, welfare and the environment caused by pollution to soil and water from underground and aboveground storage tanks. The purpose of this article is to take primacy of the underground storage tank program and to provide funding to take corrective actions at sites contaminated by underground storage tanks and aboveground storage tanks.

(c) The legislature also recognizes that owners and operators cannot take corrective action without placing their businesses' existence in financial jeopardy. The legislature finds that, because Wyoming is a large rural state, it is in the public interest to take corrective action at contaminated sites

so that fuel will continue to be readily available throughout Wyoming.

(d) The department shall prepare an annual report for the legislature identifying the actions taken and monies expended pursuant to this article.

35-11-1415. Definitions.

(a) As used in this article:

(i) "Corrective action" means an action taken to investigate, minimize, eliminate or clean up a release to protect the public health, safety and welfare or the environment;

(ii) "Corrective action account" means the account established in W.S. 35-11-1424;

(iii) "Department" means the department of environmental quality through its water quality division;

(iv) "Environmental pollution financial responsibility account" or "financial responsibility account" means the account established in W.S. 35-11-1427;

(v) "Operator" means any person in control of, or having responsibility for, the daily operation of the tank;

(vi) "Owner" means:

(A) In the case of an underground storage tank in use or brought into use on or after November 8, 1984, any person who owns an underground storage tank while it is used for the storage, use or dispensing of regulated substances;

(B) In the case of an underground storage tank in use before November 8, 1984, but no longer in use after that date, any person who owned such a tank immediately before the discontinuation of its use; and

(C) Any person who owns an aboveground storage tank meeting the definition of paragraph (xi) of this subsection.

(vii) "Regulated substance" means:

(A) Any substance defined in section 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 but not including any substance regulated as a hazardous waste under subtitle C of the Resource Conservation and Recovery Act; and

(B) Petroleum, including crude oil or any fraction thereof, which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute).

(viii) "Release" means any spilling, leaking, emitting, discharging, escaping, leaching or disposing from a tank into groundwater, surface water or subsurface soils;

(ix) "Underground storage tank" means and includes any one (1) or combination of underground storage tanks, including underground pipes connected thereto, used to contain an accumulation of regulated substances, and the volume of which, including the volume of the underground pipes connected thereto, is ten percent (10%) or more beneath the surface of the ground, but does not include:

(A) A farm or residential underground storage tank of one thousand one hundred (1,100) gallons or less capacity used for storing motor fuel for noncommercial or agricultural purposes;

(B) An underground storage tank used for storing heating oil for consumptive use on the premises where stored;

(C) Septic tanks;

(D) A pipeline facility, including gathering lines, regulated under:

(I) The Pipeline Safety Improvement Act of 2002;

(II) The Hazardous Liquid Pipeline Safety Act of 1995;

(III) An intrastate pipeline facility regulated under state laws comparable to the provisions of law in subdivision (I) or (II) of this paragraph.

(E) Surface impoundments, pits, ponds or lagoons;

(F) Storm water or wastewater collection systems including oil/water separators used to separate oil and water at oil production sites, gas processing plants and refineries;

(G) Flow-through process tanks;

(H) Liquid traps or associated gathering lines directly related to oil or gas production and gathering operations;

(J) Storage tanks situated in an underground area, if the storage tank is situated upon or above the surface of the floor;

(K) Underground storage tanks of one hundred ten (110) gallons or less of holding capacity;

(M) Underground storage tanks containing de minimus concentrations of regulated substances;

(N) Emergency or overflow underground storage tanks;

(O) An underground storage tank system holding hazardous wastes listed or identified under Subtitle C of the federal Solid Waste Disposal Act or a mixture of such hazardous waste and other regulated substances;

(P) A wastewater treatment tank system that is part of a wastewater treatment facility regulated under section 307(b) or 402 of the federal Clean Water Act;

(Q) Any equipment or machinery that contains regulated substances for operational purposes such as hydraulic lift tanks and electrical equipment tanks.

(x) "This article" means W.S. 35-11-1414 through 35-11-1428;

(xi) "Aboveground storage tank" means any one (1) or a combination of containers, vessels and enclosures, including structures and appurtenances connected to them, constructed of nonearthen materials including but not limited to concrete, steel or plastic which provides structural support, the volume of which including the pipes connected thereto is more than ninety percent (90%) above the surface of the ground, which is used by a dealer to dispense gasoline or diesel fuels;

(xii) "Dealer" means a person meeting the definition of W.S. 39-17-101(a)(v) or 39-17-201(a)(vi);

(xiii) "Tank" means and includes both underground and aboveground storage tanks as defined by this act.

35-11-1416. Rules and regulations.

(a) The council shall promulgate rules and regulations necessary to administer this article after recommendation from the director of the department, the administrators of the various divisions and their respective advisory boards. The rules shall include but shall not be limited to rules and regulations which:

(i) Provide for performance, operating and installation standards for underground storage tanks which shall be no less or no more stringent than the federal standards. The rules shall include, but shall not be limited to, standards for upgrading existing facilities, abandonment, closure, compatibility, construction, design, installation, record maintenance and release detection, spill and overflow, inspection procedures and compliance deadlines. The rules shall include standards for aboveground storage tanks determined by the council to be necessary to meet the goals of this paragraph;

(ii) Require proof of financial assurance as required by federal law;

(iii) Specify the requirements for delegating installation or modification inspection authority including but not limited to requirements for inspectors;

(iv) Establish a procedure or procedures for reporting any release from a tank;

(v) Require taking corrective action in response to a reported release from a tank. These rules may include provisions under which priorities for corrective action may be established considering the state resources available to take corrective actions and the threat posed to public health, safety and welfare or the environment;

(vi) Require records for compliance with repairs and upgrades to be maintained for the operational life of the tank;

(vii) Adopt the requirements for notification to the department when there is a change of ownership or control over a tank in accordance with W.S. 35-11-1420(a);

(viii) Specify the requirements for notifying the department of installations or modifications in accordance with W.S. 35-11-1420(b);

(ix) Specify standards for restoration of the environment.

35-11-1417. Noninsurance proviso.

Nothing in this article shall be construed as creating an insurance company nor in any way subjecting the accounts created to the laws of the state regulating insurance or insurance companies.

35-11-1418. Repealed By Laws 2007, Ch. 88, § 3.

35-11-1419. Tank registration; proof of insurance.

(a) After each new installation or modification of a regulated storage tank system the owner of a tank shall register the tank with the department on forms developed and furnished by the department. The registration form shall be submitted under oath or affirmation. The forms shall include but not be limited to:

(i) The name, address and telephone number of the tank owner;

(ii) The name, address and telephone number of the tank operator;

(iii) A description of the location of the facility where the tank is maintained or operated and the location of the tank at that facility;

(iv) The type and age of each tank at the facility;

(v) The type of substance stored or contained in the tank;

(vi) The size of each tank;

(vii) Whether the tank is currently in use, and if not, the most recent date of use of the tank if known;

(viii) The most recent date the tank was tested and a copy of the test results if not previously submitted;

(ix) Whether the owner of the tank has insurance or other types of financial assurance to cover at least thirty thousand dollars (\$30,000.00) as specified in W.S. 35-11-1428(c)(i);

(x) Proof as required by federal law that an owner of more than one hundred (100) underground storage tanks anywhere in the United States has insurance, or other environmental pollution financial responsibility instrument, indicating at least two million dollars (\$2,000,000.00) in liability protection for releases occurring from any of those regulated tanks; and

(xi) Other information as may be required by rules and regulations.

35-11-1420. Tank notification required; change of owner; installation requirements; inspections.

(a) In the event of the transfer of any tank to a different owner, notification of the transfer shall be provided to the department by the new and former owners. Such notifications shall be made on forms developed and provided by the department and shall include:

(i) The name, address and telephone number of the former and new tank owner;

(ii) The name, address and telephone number of the former and new tank operator;

(iii) A description of the location of the facility where the tank is maintained or operated and the location of the tank at that facility; and

(iv) Proof of insurance or other types of financial assurance by the new or former owner as applicable.

(b) No person shall install or substantially modify, or cause to be installed or substantially modified, any new or replacement tank without thirty (30) days prior notification to the department. Upon completion of the installation or

modification the owner shall notify the department and the department shall within ten (10) days of receiving notification of completion, inspect the site or have the site inspected by a qualified state, local government or private inspector. No tank shall be operated until the department determines the installation or modification meets the applicable standards and the department has issued a written inspection letter to the tank owner stating that the facility, as constructed or modified, meets state standards, except that if the department has not inspected the tank within fifteen (15) days after receiving notice of completion, the tank may be operated without written notification of the department until the tank is inspected.

(c) The department shall collect an installation or modification fee of two hundred fifty dollars (\$250.00) for each tank or for all multiple tanks installed or modified at the same time and at the same site. The fees collected under this subsection shall be deposited in the general fund.

(d) If an owner or operator is unable to comply with subsection (b) of this section because of an emergency, he shall inform the department as soon as possible after the emergency is known. The owner or operator shall provide the information on the installation or modifications as required by this section without delay thereafter but within five (5) working days from the time the department is informed of the emergency.

35-11-1421. Reporting releases.

An owner or operator shall report a known or suspected release to the department as required by rules and regulations.

35-11-1422. Right of entry; inspection.

(a) When requested by an authorized agent of the state the owner or operator shall:

(i) Provide information to determine compliance with the statutes and rules and regulations;

(ii) Provide access to any site or premises where a tank is located or where any records relevant to the operation of a tank are kept;

(iii) Provide copies of any records relevant to the operation of a tank;

(iv) Allow the authorized agent to obtain samples of the regulated substances;

(v) Allow the authorized agent to inspect or conduct the monitoring or testing of the tank system; and

(vi) Allow the authorized agent entry on the premises to do assessments and corrective actions.

(b) A duplicate sample taken by or for the state for testing shall be provided to the tank owner if requested by the owner. A duplicate copy of the analytical report from the department pertaining to the samples taken shall be provided as soon as practicable to the tank owner.

(c) No person conducting an inspection under this section shall unreasonably interfere with the operations, business or work, of any person at the site being inspected. The tank owner or operator shall be given the opportunity to accompany any person making an inspection.

(d) In carrying out a corrective action the department has the right to construct and maintain any structure, monitor well, recovery system or any other reasonable and necessary item associated with taking corrective action.

(e) The department shall give a minimum of seven (7) working days notice prior to an investigation unless an emergency exists.

35-11-1423. Public notice; right to intervene.

(a) The department shall notify the affected public of all confirmed releases requiring a plan for soil and groundwater remediation, and upon request, provide or make available to the interested public information concerning the nature of the release and the corrective actions planned or taken.

(b) Any person having an interest that is or may be adversely affected may intervene as a matter of right in any civil action for remedies specified in this act.

35-11-1424. Corrective action account created; use of monies; cost recovery.

(a) There is created the corrective action account. This account is intended to provide for financial assurance coverage required by federal law and shall be used by the department to take corrective action in response to a release. The department shall use monies from the corrective action account as appropriated by the legislature for the administration of this article. Interest earned by this account shall be deposited in the general fund. Monies in the corrective action account shall also be used for the state water pollution control revolving loan account pursuant to W.S. 16-1-201 through 16-1-206.

(b) The department shall establish priority lists of sites contaminated by tanks. The priorities shall be based on public health, safety and welfare and environmental concerns. The council after recommendation from the director of the department, the administrator of the various divisions and their respective advisory boards shall promulgate rules and regulations for defining priorities.

(c) The department shall use corrective action account monies to take corrective actions at sites contaminated by tanks. The department shall take corrective actions based on the sites' placement on the priority list. However, if an emergency threat to public health, safety and welfare or to the environment exists, or costs of cleanup may be significantly reduced, a site may be moved up on the priority list for immediate corrective action.

(d) For a site to be eligible for use of monies in the corrective action account, the owner or operator of the site shall, if required, pay the tank fee required by W.S. 35-11-1425, conduct a minimum site assessment, as defined by rule and regulation, and, if contamination is found, take action to prevent continuing contamination. The department shall notify all owners and operators on record at the department of the minimum site assessment requirements. Sites which do not meet the eligibility requirements specified in this subsection shall not be eligible for use of any monies in the corrective action account. Owners and operators of these ineligible sites shall not use the corrective action account for proof of financial assurance for the sites. Pending determination of the site's eligibility, the department may use corrective action account monies for corrective actions at a contaminated site.

(e) Sites where tanks have been removed or abandoned in accordance with any government regulations effective at the time of abandonment may become eligible for use of corrective action

account monies if the person who owns the site pays a two hundred dollar (\$200.00) annual fee per site and conducts a site assessment as required by subsection (d) of this section. The annual fee per site required under this subsection shall be paid for a maximum of ten (10) years and shall then lapse until corrective action is undertaken by the department. Failure to meet these requirements may subject the person who owns the site to suit for corrective action or cost recovery. The fee collected under this subsection shall be deposited in the corrective action account. The department shall notify all the owners and operators who are on record at the department who have removed or properly abandoned a tank of the provisions of this subsection.

(f) If, after due diligence, no owner or operator can be found, a contaminated site shall be placed on the priority list in appropriate rank with other sites. If an owner or operator of a site which is not in compliance and the owner or operator refuses to comply with subsection (d) of this section is discovered, that site shall be considered as ineligible for use of corrective action account monies and shall be treated as defined in subsection (g) of this section.

(g) The department may, by an action brought by the attorney general against an owner or operator, recover reasonable and necessary expenses incurred by the department in taking a corrective action. These recoverable expenses include but are not limited to costs of investigating a release, administrative costs and reasonable attorney fees. The department's certification of expenses is prima facie evidence the expenses are reasonable and necessary. Expenses recovered under this section shall be deposited in the corrective action account unless otherwise required by state or federal law. The department may sue for recovery of expenses only if:

(i) The owner or operator has failed to take the actions required for that site in subsection (d) of this section; or

(ii) The owner or operator had tank insurance for that site at the time of the release. However no such recovery under this subsection may exceed the limits or coverage of the insurance policy in question.

(h) The state has a right of subrogation to any insurance policies in existence at the time of the release to the extent of any rights the owner may have had under that policy. This right of subrogation shall apply regardless of the owner's

eligibility to use corrective action account monies under subsection (d) of this section. In implementing this section the department shall:

(i) Notify all known owners and operators, past and present, of sites where contamination from a tank is known to exist and request information relating to any insurance policies they possess or possessed at the time of release that may provide coverage for corrective action or cleanup of the contamination at the site;

(ii) Notify all insurance companies which have been identified to the department pursuant to W.S. 35-11-1419 and may have issued insurance policies that provide coverage for contamination from tanks and request copies of any such policies. In notifying insurance companies the department shall provide the insurance company with the name of all known owners, past and present, and the legal description of the site upon which the tank is or was located. The department notification shall require each insurance company to notify the department whenever there is a change in the insurance policy, including cancellation.

(j) Nothing in this section shall be construed to authorize payments for the repair, removal or replacement of any tank or equipment.

(k) Nothing in this section shall be construed to authorize payments or commitments for payments in amounts in excess of the monies available.

(m) Within thirty (30) days after receipt of notification that the corrective action account has become incapable of paying for assured corrective actions, the owner or operator shall obtain alternate financial assurance.

(n) Any person or insurance company notified by the department under paragraph (h)(i) or (ii) of this section shall provide the requested information to the department within thirty (30) days of receipt of the notification. In addition to other remedies provided for in this act, failure of any insurance company to provide copies of the requested policies shall result in the statute of limitations provided in subsection (o) of this section being tolled for any action the department may bring in subrogation until such time as the policy is discovered.

(o) Notwithstanding any other applicable period of limitation, upon notification by any owner, operator or insurance company of any insurance coverage in existence, the department shall have five (5) years to commence any action for the recovery of proceeds under the applicable policy.

35-11-1425. Tank fee; deposit into corrective action account; late fee.

(a) On or before January 1 of each year the owner of a tank shall pay a fee to the department of two hundred dollars (\$200.00) per tank owned, except the owner of an aboveground storage tank subject to this section that holds five thousand (5,000) gallons or less shall pay a fee of fifty dollars (\$50.00) per tank owned. This fee shall be deposited in the corrective action account.

(b) On April 1 of each year the department may assess a late payment fee of one hundred dollars (\$100.00) per tank or contaminated site against any owner who has not paid the annual fee required pursuant to subsection (a) of this section. This late fee shall be paid by the owner and shall be in addition to the annual fee required pursuant to subsection (a) of this section and shall be deposited in the department's corrective action account.

(c) The change from July 1 to January 1 for the due date of storage tank fees shall be revenue neutral. The department shall collect one-half (1/2) of the annual fee on July 1, 2007 and shall collect the full annual fee on January 1, 2008 and annually thereafter.

35-11-1426. Restoration standard.

Any owner or operator, department or other person taking a corrective action shall restore the environment to a condition and quality consistent with standards established in rules and regulations.

35-11-1427. Financial responsibility account.

There is created the environmental pollution financial responsibility account. This account is intended to provide for financial assurance coverage required by federal law and shall be for the purpose of compensating third parties for damage caused by releases from one (1) or more tanks. Interest earned by the account shall be deposited in the general fund.

35-11-1428. Uses of financial responsibility account monies.

(a) As provided in this section, the department shall, on application by an owner or operator, direct the payment of monies from the financial responsibility account to satisfy judgments against the owner or operator for third party property damage or personal injury.

(b) The attorney general shall be served by certified mail return receipt requested with a copy of the complaint filed in any suit initiated against an owner or operator for third party property damage or personal injury. Service of the complaint on the attorney general is a jurisdictional requirement in order to maintain the suit. The attorney general shall be notified in writing by certified mail return receipt requested of any judgment, compromise, settlement or release entered into by an owner or operator. As provided in this section, the department shall, on application by an owner or operator, direct the payment of monies from the financial responsibility account to pay settlements for third party property damage or personal injury on terms negotiated by the attorney general and approved by the council.

(c) The monies from the financial responsibility account shall only be used to pay judgments and settlements not to exceed one million dollars (\$1,000,000.00), for all the damages arising from releases from one (1) or more of the tanks on a site, provided that the owner or operator:

(i) Shall remain liable for payment of the judgment or settlement up to, but not exceeding, thirty thousand dollars (\$30,000.00). The department may bring an action against the owner or operator to recover any amount paid by the department pursuant to a judgment or settlement for which the owner or operator remains liable under this paragraph;

(ii) Has not been relieved of his responsibility for the judgment or settlement by operation of law or otherwise. For purposes of this paragraph, an owner or operator shall not be deemed to have been relieved of his responsibility for the judgment or settlement by virtue of the Governmental Claims Act; and

(iii) Pays the tank fee required by W.S. 35-11-1424(e) or 35-11-1425, conducts a minimum site assessment, as defined by

rule and regulation, and, if contamination is found, takes action to prevent continuing contamination.

(d) Nothing herein shall be construed to authorize the department to obligate funds from the financial responsibility account for payment of costs which may be associated with, but are not integral to, the personal injury or property damage such as the costs for modifying, removing or replacing tanks.

(e) The department shall establish a priority list for purposes of the financial responsibility account. The department shall not approve use of monies from the financial responsibility account if there are insufficient monies in the account to fund the application before the department and all other outstanding commitments.

(f) Nothing in this section shall be construed to authorize commitments to cover property or personal injury damages in excess of the balance in the financial responsibility account.

(g) Within thirty (30) days after receipt of notification that the financial responsibility account has become incapable of paying for assured third party compensation costs, the owner or operator shall obtain alternate financial assurance.

35-11-1429. Tank requirements; rulemaking authority.

(a) Cathodic protection shall be installed and operated on all internally lined underground storage tanks no later than June 30, 2008.

(b) All underground storage tank systems that dispense more than five hundred thousand (500,000) gallons per month of a regulated substance shall be replaced with double wall tanks and lines with interstitial leak monitoring no later than June 30, 2012, or thirty (30) years from the date of installation of the underground storage tank, whichever is later.

(c) Double wall underground storage tanks and lines with interstitial leak monitoring shall be installed whenever any underground storage tank is installed.

(d) Double wall underground storage tank system lines with interstitial leak monitoring shall be installed whenever any line is installed on any underground storage tank system.

(e) The council may promulgate rules and regulations to administer this section after recommendation from the director.

35-11-1430. W.S. 35-11-1430(b) repealed this section effective June 30, 2009. (Laws 2007, Ch. 172, § 1.)