GENERAL ASSEMBLY
COMMONWEALTH OF KENTUCKY

2010 REGULAR SESSION

HOUSE BILL NO. 124

WEDNESDAY, FEBRUARY 17, 2010

The following bill was reported to the Senate from the House and ordered to be printed.

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TREY GRAYSON
SECRETARY OF STATE
COMMONWEALTH OF KENTUCKY
BY R. Adler

AN ACT relating to petroleum storage tanks.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

1 ➔Section 1. KRS 224.60-142 is amended to read as follows:

2 (1) To be eligible to participate in the fund, the owner of any petroleum storage tank
3 containing motor fuels installed and placed in operation after July 15, 2004, shall
4 register the petroleum storage tank with the cabinet as required by KRS 224.60-105
5 prior to applying for participation in the financial responsibility account.

6 (2) The owner of any petroleum storage tank containing motor fuels currently existing,
7 or removed from the ground after January 1, 1974, shall register the petroleum
8 storage tank containing motor fuels with the cabinet prior to applying to the fund,
9 and shall register the petroleum storage tank containing motor fuels by July 15,
10 ***2013***[~~2010~~]. Owners or operators may submit affidavits and applications relevant to
11 current petroleum storage tank accounts through July 15, ***2013***[~~2010~~].

12 ➔Section 2. KRS 224.60-130 is amended to read as follows:

13 (1) The Environmental and Public Protection Cabinet, Department for Environmental
14 Protection, Division of Waste Management, shall:

15 (a) Establish by administrative regulation the policy, guidelines, and procedures
16 to administer the financial responsibility and petroleum storage tank accounts
17 of the petroleum storage tank environmental assurance fund. In adopting
18 administrative regulations to carry out this section, the division may
19 distinguish between types, classes, and ages of petroleum storage tanks. The
20 division may establish a range of amounts to be paid from the fund, or may
21 base payments on methods such as pay for performance, task order, or firm
22 fixed pricing, which are designed to provide incentives for contractors to more
23 tightly control corrective action costs, and shall establish criteria to be met by
24 persons who contract to perform corrective action to be eligible for
25 reimbursement from the fund. The criteria may include the certification of

1 individuals, partnerships, and companies. Criteria shall be established to
2 certify laboratories that contract to perform analytical testing related to the
3 underground storage tank program. Owners and operators shall have all
4 required analytical testing performed by a certified laboratory to be eligible for
5 fund participation. Persons who contract with petroleum storage tank owners
6 or operators shall not be paid more than the amount authorized by the division
7 for reimbursement from the fund for the performance of corrective action. At
8 a minimum, the division shall promulgate administrative regulations that will
9 insure an unobligated balance in the fund adequate to meet financial assurance
10 requirements and corrective action requirements of KRS 224.60-135(2) and
11 (4). If the unobligated balance in the fund is not adequate to meet the
12 requirements of this paragraph, the division shall obligate funds necessary to
13 meet these requirements;
14 (b) Establish by administrative regulation the criteria to be met to be eligible to
15 participate in the financial responsibility and petroleum storage tank accounts
16 and to receive reimbursement from these accounts. The division may establish
17 eligibility criteria for the petroleum storage tank account based upon the
18 financial ability of the petroleum storage tank owner or operator. Owners or
19 operators seeking coverage under the petroleum storage tank account shall file
20 for eligibility and for financial assistance with the division. To ensure cost
21 effectiveness, the division shall promulgate administrative regulations
22 specifying the circumstances under which prior approval of corrective action
23 costs shall be required for those costs to be eligible for reimbursement from
24 the fund. In promulgating administrative regulations to carry out this section,
25 the division may distinguish between types, classes, and ages of petroleum
26 storage tanks and the degree of compliance of the facility with any
27 administrative regulations of the cabinet promulgated pursuant to KRS

1 224.60-105 or applicable federal regulations;
2 (c) Establish a financial responsibility account within the fund which may be used
3 by petroleum storage tank owners and operators to demonstrate financial
4 responsibility as required by administrative regulations of the cabinet or the
5 federal regulations applicable to petroleum storage tanks, consistent with the
6 intent of the General Assembly as set forth in KRS 224.60-120(5). The
7 account shall receive four-tenths of one cent ($0.004) from the one and four-
8 tenths cent ($0.014) paid on each gallon of gasoline and special fuels received
9 in this state pursuant to KRS 224.60-145. To be eligible to use this account to
10 demonstrate compliance with financial responsibility requirements of the
11 cabinet or federal regulations, or to receive reimbursement from this account
12 for taking corrective action and for compensating third parties for bodily
13 injury and property damage, the petroleum storage tank owner or operator
14 shall meet the eligibility requirements established by administrative regulation
15 promulgated by the division;
16 (d) Establish a small operator assistance account within the fund which may be
17 used by the division to make or participate in the making of loans, to purchase
18 or participate in the purchase of the loans, which purchase may be from
19 eligible lenders, or to insure loans made by eligible lenders;
20 (e) Establish a petroleum storage tank account within the fund to be used to pay
21 the costs of corrective action due to a release from a petroleum storage tank
22 not eligible for reimbursement from the financial responsibility account.
23 Reimbursements of corrective action projects performed under the petroleum
24 storage tank account shall be carried out on or before July 15, ***2016***[~~2013~~].
25 Any corrective action costs incurred after this date shall not be eligible for
26 reimbursement under the petroleum storage tank account. The account shall
27 receive one cent ($0.01) from the one and four-tenths cent ($0.014) paid on

1 each gallon of gasoline and special fuels received in this state pursuant to
2 KRS 224.60-145. This account shall not be used to compensate third parties
3 for bodily injury and property damage. Within three (3) months after July 15,
4 2004, the division shall develop a plan to address the payment of claims and
5 completion of corrective action at facilities eligible for reimbursement from
6 this account. The division shall establish a ranking system to be used for the
7 distribution of amounts from this account for the purpose of corrective action.
8 In promulgating administrative regulations to carry out this section, the
9 division shall consider the financial ability of the petroleum storage tank
10 owner or operator to perform corrective action and the extent of damage
11 caused by a release into the environment from a petroleum storage tank;
12 (f) Hear complaints brought before the division regarding the payment of claims
13 from the fund in accordance with KRS 224.10-410 to 224.10-470;
14 (g) Establish and maintain necessary offices within this state, appoint employees
15 and agents as necessary, and prescribe their duties and compensation;
16 (h) Employ, in accordance with the procedures found in KRS 45A.690 to
17 45A.725 for awarding personal service contracts, a qualified actuary to
18 perform actuarial studies, as directed by the division, for determining an
19 appropriate reserve in the financial responsibility account and the petroleum
20 storage tank account sufficient to satisfy the obligations in each account for all
21 eligible facilities and to satisfy future liabilities and expenses necessary to
22 operate each account. The division shall, by administrative regulation, set the
23 entry level for participation in the fund;
24 (i) Authorize expenditures from the fund to carry out the purpose of KRS 224.60-
25 105 to 224.60-160, including reasonable costs of administering the fund, the
26 procurement of legal services, and the procurement of analytical testing
27 services when necessary to confirm the accuracy of analytical testing results

1 obtained by a petroleum storage tank owner or operator. The expenditures
2 shall be paid from the appropriate account;
3 (j) Establish a small operators' tank removal account within the fund to reimburse
4 the reasonable cost of tank system removal for small owners and operators.
5 The account shall not be used when an owner or operator is removing the tank
6 with the intention of replacing or upgrading the tank. In promulgating
7 administrative regulations to carry out this paragraph, the division may
8 distinguish among owners and operators based on income, number of tanks,
9 number of facilities, and types and classes of tanks;
10 (k) Establish by administrative regulation the policy, guidelines, and procedures
11 to perform financial audits of any petroleum storage tank owner or operator
12 receiving reimbursement from the fund or any entity contracting or
13 subcontracting to provide corrective action services for facilities eligible for
14 fund reimbursement. Financial audits shall be limited to those files, records,
15 computer records, receipts, and other documents related to corrective action
16 performed at a facility where the costs of corrective action have been
17 reimbursed by the fund. Files, records, computer records, receipts, and other
18 documents related to corrective action reimbursed by the fund shall be subject
19 to a financial audit for a period of three (3) years after the date of final
20 reimbursement from the fund. Results of the audits shall be protected from
21 disclosure as allowed by KRS 61.878(1)(c). Financial auditing services may
22 be contracted for or personnel may be employed as needed to implement the
23 requirements of this paragraph;
24 (l) Be authorized to enter and inspect any facility intending to seek
25 reimbursement for the cost of corrective action to determine the
26 reasonableness and necessity of the cost of corrective action. The division may
27 collect soil or water samples or require storage tank owners or operators to

1 split samples with the division for analytical testing. Refusal to allow entry
2 and inspection of a facility or refusal to allow the division to collect or split
3 samples shall make the facility ineligible for fund participation;
4 (m) Have inspectors on site at all tank system removals. Failure to comply with
5 this provision shall make the facility ineligible for fund participation. A
6 petroleum storage tank owner or operator may request through certified mail
7 that the division schedule an inspector to be present at an upcoming tank
8 removal. If the request is made at least two (2) weeks before the time for the
9 removal and an inspector fails to be present at the time scheduled, the tank
10 removal may proceed without making the facility ineligible for fund
11 participation unless the owner is notified by the division no later than ten (10)
12 days prior to the proposed date that an inspector is not available on the
13 proposed date, in which event a representative of the division shall contact the
14 operator and schedule a new date. If no inspector is present at the rescheduled
15 date, the removal may then proceed without penalty; and
16 (n) Establish that the deadline for submission of final reimbursement requests
17 under the petroleum storage tank account is two (2) years after receipt of a no
18 further action letter.
19 (2) The division may advise the cabinet on the promulgation of administrative
20 regulations concerning petroleum storage tanks.
21 (3) The division may sue and be sued in its own name.
22 (4) The division may transfer funds from the petroleum storage tank account to the
23 small operator tank removal account as needed to satisfy the obligations, future
24 liabilities, and expenses necessary to operate that account. The division may transfer
25 funds to the financial responsibility account as needed to maintain within that
26 account sufficient funds to demonstrate financial responsibility and to ensure
27 payment of claims as provided in subsection (1)(c) of this section.

1 ➔Section 3. KRS 224.60-145 is amended to read as follows:
2 (1) Except as provided in subsection (2) of this section, there is established a petroleum
3 environmental assurance fee to be paid by dealers on each gallon of gasoline and
4 special fuels received in this state.
5 (2) All deductions detailed in KRS 138.240(2) and all credits detailed in KRS 138.358
6 are exempt from the fee. If a dealer has on file, pursuant to KRS Chapter 138, a
7 statement supporting a claimed exemption, an additional statement shall not be
8 required for claiming exemption from the fee.
9 (3) The fee shall be reported and paid to the Department of Revenue at the same time
10 and in the same manner as is required for the reporting and payment of the gasoline
11 and special fuels taxes as provided by law.
12 (4) The petroleum environmental assurance fee shall be set at one and four-tenths cent
13 ($0.014) for each gallon. Four-tenths of a cent ($0.004) per gallon shall be
14 deposited in the financial responsibility account and one cent ($0.01) shall be
15 deposited in the petroleum storage tank account.
16 (5) Within thirty (30) days of the close of fiscal year 2001-2002 and each fiscal year
17 thereafter, the state budget director shall review the balance of each account to
18 determine if a surplus exists. "Surplus" means funds in excess of the amounts
19 necessary to satisfy the obligations in each account for all eligible facilities, to
20 satisfy future liabilities and expenses necessary to operate each account, and to
21 maintain an appropriate reserve in the financial responsibility account to
22 demonstrate financial responsibility and compensate for third-party claims. The
23 state budget director shall report the determination to the Interim Joint Committee
24 on Appropriations and Revenue. After a determination that a surplus exists, the
25 surplus shall be transferred to a restricted account and retained until appropriated by
26 the General Assembly.
27 (6) All provisions of law related to the Department of Revenue's administration and

1 enforcement of the gasoline and special fuels tax and all other powers generally
2 conveyed to the Department of Revenue by the Kentucky Revised Statutes for the
3 assessment and collection of taxes shall apply with regard to the fee levied by KRS
4 224.60-105 to 224.60-160.
5 (7) The Department of Revenue shall refund the fee imposed by KRS 224.60-145(1) to
6 any person who paid the fee provided they are entitled to a refund of motor fuel tax
7 under KRS 138.344 to KRS 138.355 and to any person who paid the fee on
8 transactions exempted under KRS 224.60-145(2).
9 (8) Notwithstanding any other provisions of KRS 65.180, 65.182, 68.600 to 68.606,
10 139.470, 183.165, 224.60-115, 224.60-130, 224.60-137, 224.60-140, 224.60-142,
11 and this section to the contrary, the small operator assistance account and small
12 operator tank removal account established under KRS 224.60-130 shall continue in
13 effect until July 15, ***2013***[~~2010~~], and thereafter until all eligible claims related to
14 tanks registered by that date are resolved, and sufficient money shall be allocated to
15 and maintained in that account to assure prompt payment of all eligible claims, and
16 to provide for removal of tanks for eligible owners and operators as directed by this
17 chapter.

Speaker-House of Representatives

President of Senate

Attest: Sean E. Burgin
Chief Clerk of House of Representatives

Approved
Governor

Date March 30, 2010