GENERAL ASSEMBLY
COMMONWEALTH OF KENTUCKY

2013 REGULAR SESSION

HOUSE BILL NO. 126

THURSDAY, FEBRUARY 21, 2013

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

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ALISON LUNDERGAN GRIMES
SECRETARY OF STATE
COMMONWEALTH OF KENTUCKY
BY R. Adler

1 AN ACT relating to the Petroleum Tank Environmental Assurance Fund.

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

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

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

8 (2) The owner of any petroleum storage tank containing motor fuels currently existing,
9 or removed from the ground after January 1, 1974, shall register the petroleum
10 storage tank containing motor fuels with the cabinet prior to applying to the fund,
11 and shall register the petroleum storage tank containing motor fuels by ***July 15,***
12 ***2016***[~~July 15, 2013~~]. Owners or operators may submit affidavits and applications
13 relevant to current petroleum storage tank accounts through ***July 15, 2016***[~~July 15,~~
14 ~~2013~~].

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

16 (1) The Energy and Environment Cabinet, Department for Environmental Protection,
17 Division of Waste Management, shall:

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

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

1 administrative regulations of the cabinet promulgated pursuant to KRS
2 224.60-105 or applicable federal regulations;
3 (c) Establish a financial responsibility account within the fund which may be used
4 by petroleum storage tank owners and operators to demonstrate financial
5 responsibility as required by administrative regulations of the cabinet or the
6 federal regulations applicable to petroleum storage tanks, consistent with the
7 intent of the General Assembly as set forth in KRS 224.60-120(5). The
8 account shall receive four-tenths of one cent ($0.004) from the one and four-
9 tenths cent ($0.014) paid on each gallon of gasoline and special fuels received
10 in this state pursuant to KRS 224.60-145. To be eligible to use this account to
11 demonstrate compliance with financial responsibility requirements of the
12 cabinet or federal regulations, or to receive reimbursement from this account
13 for taking corrective action and for compensating third parties for bodily
14 injury and property damage, the petroleum storage tank owner or operator
15 shall meet the eligibility requirements established by administrative regulation
16 promulgated by the division;
17 (d) Establish a small operator assistance account within the fund which may be
18 used by the division to make or participate in the making of loans, to purchase
19 or participate in the purchase of the loans, which purchase may be from
20 eligible lenders, or to insure loans made by eligible lenders;
21 (e) Establish a petroleum storage tank account within the fund to be used to pay
22 the costs of corrective action due to a release from a petroleum storage tank
23 not eligible for reimbursement from the financial responsibility account.
24 Reimbursements of corrective action projects performed under the petroleum
25 storage tank account shall be carried out on or before ***July 15, 2019***[~~July 15,~~
26 ~~2016~~]. Any corrective action costs incurred after this date shall not be eligible
27 for reimbursement under the petroleum storage tank account. The account

1 shall receive one cent ($0.01) from the one and four-tenths cent ($0.014) paid
2 on each gallon of gasoline and special fuels received in this state pursuant to
3 KRS 224.60-145. This account shall not be used to compensate third parties
4 for bodily injury and property damage. Within three (3) months after July 15,
5 2004, the division shall develop a plan to address the payment of claims and
6 completion of corrective action at facilities eligible for reimbursement from
7 this account. The division shall establish a ranking system to be used for the
8 distribution of amounts from this account for the purpose of corrective action.
9 In promulgating administrative regulations to carry out this section, the
10 division shall consider the financial ability of the petroleum storage tank
11 owner or operator to perform corrective action and the extent of damage
12 caused by a release into the environment from a petroleum storage tank;
13 (f) Hear complaints brought before the division regarding the payment of claims
14 from the fund in accordance with KRS 224.10-410 to 224.10-470;
15 (g) Establish and maintain necessary offices within this state, appoint employees
16 and agents as necessary, and prescribe their duties and compensation;
17 (h) Employ, in accordance with the procedures found in KRS 45A.690 to
18 45A.725 for awarding personal service contracts, a qualified actuary to
19 perform actuarial studies, as directed by the division, for determining an
20 appropriate reserve in the financial responsibility account and the petroleum
21 storage tank account sufficient to satisfy the obligations in each account for all
22 eligible facilities and to satisfy future liabilities and expenses necessary to
23 operate each account. The division shall, by administrative regulation, set the
24 entry level for participation in the fund;
25 (i) Authorize expenditures from the fund to carry out the purpose of KRS 224.60-
26 105 to 224.60-160, including reasonable costs of administering the fund, the
27 procurement of legal services, and the procurement of analytical testing

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

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

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

1 surplus shall be transferred to a restricted account and retained until appropriated by
2 the General Assembly.
3 (6) All provisions of law related to the Department of Revenue's administration and
4 enforcement of the gasoline and special fuels tax and all other powers generally
5 conveyed to the Department of Revenue by the Kentucky Revised Statutes for the
6 assessment and collection of taxes shall apply with regard to the fee levied by KRS
7 224.60-105 to 224.60-160.
8 (7) The Department of Revenue shall refund the fee imposed by KRS 224.60-145(1) to
9 any person who paid the fee provided they are entitled to a refund of motor fuel tax
10 under KRS 138.344 to KRS 138.355 and to any person who paid the fee on
11 transactions exempted under KRS 224.60-145(2).
12 (8) Notwithstanding any other provisions of KRS 65.180, 65.182, 68.600 to 68.606,
13 139.470, 183.165, 224.60-115, 224.60-130, 224.60-137, 224.60-140, 224.60-142,
14 and this section to the contrary, the small operator assistance account and small
15 operator tank removal account established under KRS 224.60-130 shall continue in
16 effect until ***July 15, 2016***~~[July 15, 2013]~~, and thereafter until all eligible claims
17 related to tanks registered by that date are resolved, and sufficient money shall be
18 allocated to and maintained in that account to assure prompt payment of all eligible
19 claims, and to provide for removal of tanks for eligible owners and operators as
20 directed by this chapter.

Speaker, House of Representatives

President of Senate

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

Approved
Governor

Date 3-21-13