

**65-34,105. Rules and regulations.** (a) The secretary is authorized and directed to adopt rules and regulations necessary to administer and enforce the provisions of this act. Any rules and regulations so adopted shall be reasonably necessary to preserve, protect and maintain the waters and other natural resources of this state, and reasonably necessary to provide for the prompt investigation and cleanup of sites contaminated by a release from a storage tank. In addition, any rules and regulations or portions thereof which pertain to underground storage tanks or the owners and operators thereof shall be adopted for the purpose of enabling the secretary and the department to implement the federal act, and such rules and regulations so adopted shall be consistent with the federal act. Consistent with these purposes, the secretary shall adopt rules and regulations:

(1) Establishing performance standards for underground storage tanks first brought into use on or after May 18, 1989. The performance standards for new underground storage tanks shall include, but are not limited to, design, construction, installation, release detection and product compatibility standards;

(2) establishing performance standards for aboveground storage tanks brought into use after May 18, 1989. The performance standards shall not exceed those performance standards adopted by the administrator of the U.S. environmental protection agency and for new aboveground storage tanks shall include, but are not limited to, design, construction, installation, release detection and product compatibility standards;

(3) establishing performance standards for the inground repair of underground storage tanks. The performance standards shall include, but are not limited to, specifying under what circumstances an underground storage tank may be repaired and specifying design, construction, installation, release detection, product compatibility standards and warranty;

(4) establishing performance standards for maintaining spill and overfill equipment, leak detection systems and comparable systems or methods designed to prevent or identify releases. In addition, the secretary shall establish standards for maintaining records and reporting leak detection monitoring, inventory control and tank testing or comparable systems;

(5) establishing requirements for reporting a release and for reporting and taking corrective action in response to a release;

(6) establishing requirements for maintaining evidence of financial responsibility to be met by owners and operators of underground storage tanks;

(7) establishing requirements for the closure of storage tanks including the removal and disposal of storage tanks and regulated substance residues contained therein to prevent future releases of regulated substances into the environment;

(8) for the approval of tank tightness testing methods, including determination of the qualifications of persons performing or offering to perform such testing;

(9) establishing site selection and cleanup criteria regarding corrective actions related to a release, which criteria address the following: The physical and chemical characteristics of the released substance, including toxicity, persistence and potential for migration; the hydrogeologic characteristics of the release site and the surrounding land; the proximity, quality and current and future uses of groundwater; an exposure assessment; the proximity, quality and current and future use of surface water; and the level of the released substance allowed to remain on the facility following cleanup;

(10) prescribing fees for the following with regard to storage tanks: Registration, issuance of permits, approval of plans for new installations and conducting of inspections. The fees shall be established in such amounts that revenue from such fees does not exceed the amount of revenue required for the purposes provided by subsection (b) of K.S.A. 65-34,128. All fees for underground storage tanks shall be deposited in the state general fund and all fees for aboveground storage tanks shall be deposited in the storage tank fee fund;

(11) for determining the qualifications, adequacy of performance and financial responsibility of persons desiring to be licensed as underground storage tank installers or contractors. In adopting rules and regulations, the secretary may specify classes of specialized activities, such as the installation of corrosion protection devices or inground relining of underground storage tanks, and may require persons wishing to engage in such activities to demonstrate additional qualifications to perform these services;

(12) prescribing fees for the issuance of licenses to underground storage tank installers and contractors. The fees shall be established in such amounts that revenue from such fees does not exceed the amount of revenue determined by the secretary to be required for administration of the provisions of K.S.A. 65-34,110 and amendments thereto; and

(13) adopting schedules requiring the retrofitting of underground storage tanks in existence on May 18, 1989, and aboveground storage tanks in existence on July 1, 1992, and for the retirement from service of underground storage tanks placed in service prior to May 18, 1989, and aboveground storage tanks placed in service prior to July 1, 1992. Such schedules shall be based on the age and location of the storage tank and the type of substance stored. Such retrofitting shall include secondary containment, corrosion protection, linings, leak detection equipment and spill and overfill equipment.

(b) In adopting rules and regulations under this section, the secretary shall take notice of rules and regulations pertaining to fire prevention and safety adopted by the state fire marshal pursuant to subsection (a)(1) of K.S.A. 31-133, and amendments thereto.

(c) Nothing in this section shall interfere with the right of a city or county having authority to adopt a building or fire code from imposing requirements more stringent than those adopted by the secretary pursuant to subsections (a)(1), (2), (3), (7) and (13), or affect the exercise of powers by cities, counties and townships regarding the location of storage tanks and the visual compatibility of aboveground storage tanks with surrounding property.

**History:** L. 1989, ch. 186, § 6; L. 1992, ch. 305, § 1; July 1.