

SECOND REGULAR SESSION
HOUSE COMMITTEE SUBSTITUTE FOR
SENATE COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 907
94TH GENERAL ASSEMBLY

Reported from the Committee on Conservation and Natural Resources April 16, 2008 with recommendation that House Committee Substitute for Senate Committee Substitute for Senate Bill No. 907 Do Pass. Referred to the Committee on Rules pursuant to Rule 25(21)(f).

D. ADAM CRUMBLISS, Chief Clerk

3580L.06C

AN ACT

To repeal sections 260.1003, 319.129, 319.131, 319.133, and 414.072, RSMo, and to enact in lieu thereof seven new sections relating to the regulation of motor fuel tanks and equipment.

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

- Section A. Sections 260.1003, 319.129, 319.131, 319.133, and 414.072, RSMo, are
- 2 repealed and seven new sections enacted in lieu thereof, to be known as sections 260.1003,
- 3 319.129, 319.131, 319.133, 319.136, 414.036, and 414.072, to read as follows:
- 260.1003. As used in sections 260.1000 to 260.1039, the following terms shall mean:
- 2 (1) "Activity and use limitations", restrictions or obligations with respect to real property
- 3 created under sections 260.1000 to 260.1039;
- 4 (2) "Department", the Missouri department of natural resources or any other state or
- 5 federal department that determines or approves the environmental response project under which
- 6 the environmental covenant is created;
- 7 (3) "Common interest community", a condominium, cooperative, or other real property
- 8 with respect to which a person, by virtue of the person's ownership of a parcel of real property,
- 9 is obligated to pay property taxes, insurance premiums, maintenance, or improvement of other
- 10 real property described in a recorded covenant that creates the common interest community;

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

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

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

15 (a) Under a federal or state program governing environmental remediation of real
16 property, including but not limited to the Missouri hazardous waste management law as specified
17 in this chapter;

18 (b) Incident to closure of a solid or hazardous waste management unit, if the closure is
19 conducted with approval of the department; or

20 (c) Under a state voluntary cleanup program authorized in the Missouri hazardous waste
21 management law as specified in this chapter.

22 **"Environmental response project" shall not include plans or work performed for**
23 **environmental remediation of releases from aboveground storage tanks or underground**
24 **storage tanks as defined in section 319.100, RSMo;**

25 (6) "Holder", the grantee of an environmental covenant as specified in section 260.1006;

26 (7) "Person", an individual, corporation, business trust, estate, trust, partnership, limited
27 liability company, association, joint venture, public corporation, government, governmental
28 subdivision, department, or instrumentality, or any other legal or commercial entity;

29 (8) "Record", information that is inscribed on a tangible medium or that is stored in an
30 electronic or other medium and is retrievable in perceivable form;

31 (9) "State", a state of the United States, the District of Columbia, Puerto Rico, the United
32 States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the
33 United States.

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

6 2. The owner or operator of any underground storage tank, including the state of
7 Missouri and its political subdivisions and public transportation systems, in service on August
8 28, 1989, shall submit to the department a fee of one hundred dollars per tank on or before
9 December 31, 1989. The owner or operator of any underground storage tank who seeks to
10 participate in the petroleum storage tank insurance fund, including the state of Missouri and its
11 political subdivisions and public transportation systems, and whose underground storage tank
12 is brought into service after August 28, 1998, shall transmit one hundred dollars per tank to the
13 board with his or her initial application. Such amount shall be a one-time payment, and shall be

14 in addition to the payment required by section 319.133. The owner or operator of any
15 aboveground storage tank regulated by this chapter, including the state of Missouri and its
16 political subdivisions and public transportation systems, who seeks to participate in the
17 petroleum storage tank insurance fund, shall transmit one hundred dollars per tank to the board
18 with his or her initial application. Such amount shall be a one-time payment and shall be in
19 addition to the payment required by section 319.133. Moneys received pursuant to this section
20 shall be transmitted to the director of revenue for deposit in the petroleum storage tank insurance
21 fund.

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

26 4. The general administration of the fund and the responsibility for the proper operation
27 of the fund, including all decisions relating to payments from the fund, are hereby vested in a
28 board of trustees. The board of trustees shall consist of the commissioner of administration or
29 the commissioner's designee, the director of the department of natural resources or the director's
30 designee, the director of the department of agriculture or the director's designee, and eight
31 citizens appointed by the governor with the advice and consent of the senate. Three of the
32 appointed members shall be owners or operators of retail petroleum storage tanks, including one
33 tank owner or operator of greater than one hundred tanks; one tank owner or operator of less than
34 one hundred tanks; and one aboveground storage tank owner or operator. One appointed trustee
35 shall represent a financial lending institution, and one appointed trustee shall represent the
36 insurance underwriting industry. One appointed trustee shall represent industrial or commercial
37 users of petroleum. The two remaining appointed citizens shall have no petroleum-related
38 business interest, and shall represent the nonregulated public at large. The members appointed
39 by the governor shall serve four-year terms except that the governor shall designate two of the
40 original appointees to be appointed for one year, two to be appointed for two years, two to be
41 appointed for three years and two to be appointed for four years. Any vacancies occurring on
42 the board shall be filled in the same manner as provided in this section.

43 5. The board shall meet in Jefferson City, Missouri, within thirty days following August
44 28, 1996. Thereafter, the board shall meet upon the written call of the chairman of the board or
45 by the agreement of any six members of the board. Notice of each meeting shall be delivered
46 to all other trustees in person or by registered mail not less than six days prior to the date fixed
47 for the meeting. The board may meet at any time by unanimous mutual consent. There shall be
48 at least one meeting in each quarter.

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

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

53 8. **[All] The board of trustees, and all of its authority, powers, duties, functions, and**
54 **records, are hereby transferred by type III transfer to the office of administration.**

55 9. Staff resources for the Missouri petroleum storage tank insurance fund [shall] **may**
56 be provided by the department of natural resources or another state agency as otherwise
57 specifically determined by the board. The fund shall compensate the department of natural
58 resources or other state agency for all costs of providing staff required by this subsection. Such
59 compensation shall be made pursuant to contracts negotiated between the board and the
60 department of natural resources or other state agency.

61 [9.] 10. In order to carry out the fiduciary management of the fund, the board may select
62 and employ, or may contract with, persons experienced in insurance underwriting, accounting,
63 the servicing of claims and rate making, and legal counsel to defend third-party claims, who shall
64 serve at the board's pleasure. Invoices for such services shall be presented to the board in
65 sufficient detail to allow a thorough review of the costs of such services.

66 [10.] 11. At the first meeting of the board, the board shall elect one of its members as
67 chairman. The chairman shall preside over meetings of the board and perform such other duties
68 as shall be required by action of the board.

69 [11.] 12. The board shall elect one of its members as vice chairman, and the vice
70 chairman shall perform the duties of the chairman in the absence of the latter or upon the
71 chairman's inability or refusal to act.

72 [12.] 13. The board shall determine and prescribe all rules and regulations as they relate
73 to fiduciary management of the fund, pursuant to the purposes of sections 319.100 to 319.137.
74 In no case shall the board have oversight regarding environmental cleanup standards for
75 petroleum storage tanks.

76 [13.] 14. No trustee or staff member of the fund shall receive any gain or profit from any
77 moneys or transactions of the fund. This shall not preclude any eligible trustee from making a
78 claim or receiving benefits from the petroleum storage tank insurance fund as provided by
79 sections 319.100 to 319.137.

80 [14.] 15. The board may reinsure all or a portion of the fund's liability. Any insurer who
81 sells environmental liability insurance in this state may, at the option of the board, reinsure some
82 portion of the fund's liability.

83 [15.] 16. The petroleum storage tank insurance fund shall expire on December 31, [2010,
84 or upon revocation of federal regulation 40 CFR Parts 280 and 285, whichever occurs first] **2020**,

85 unless extended by action of the general assembly. After December 31, [2010] **2020**, the board
86 of trustees may continue to function for the sole purpose of completing payment of claims made
87 prior to December 31, [2010] **2020**.

88 [16.] **17.** The board shall annually commission an independent financial audit of the
89 petroleum storage tank insurance fund. The board shall biennially commission an actuarial
90 analysis of the petroleum storage tank insurance fund. The results of the financial audit and the
91 actuarial analysis shall be made available to the public. The board may contract with third
92 parties to carry out the requirements of this subsection.

319.131. 1. Any owner or operator of one or more petroleum storage tanks may elect
2 to participate in the petroleum storage tank insurance fund to [partially] meet the financial
3 responsibility requirements of sections [319.100 to 319.137] **319.114 and 414.036, RSMo.**
4 Subject to regulations of the board of trustees, owners or operators may elect to continue their
5 participation in the fund subsequent to the transfer of their property to another party. Current or
6 former refinery sites or petroleum pipeline or marine terminals are not eligible for participation
7 in the fund.

8 2. The board shall establish an advisory committee which shall be composed of insurers
9 [and] , owners and operators of petroleum storage tanks, **and other interested parties.** The
10 advisory committee established pursuant to this subsection shall report to the board. The
11 committee shall monitor the fund and recommend statutory and administrative changes as may
12 be necessary to assure efficient operation of the fund. The committee, in consultation with the
13 board [and the department of insurance], shall [annually] report **every two years** to the general
14 assembly on the availability and affordability of the private insurance market as a viable method
15 of meeting the financial responsibilities required by state and federal law in lieu of the petroleum
16 storage tank insurance fund.

17 3. (1) Except as otherwise provided by this section, any person seeking to participate
18 in the insurance fund shall submit an application to the board of trustees and shall certify that the
19 petroleum tanks meet or exceed and are in compliance with all technical standards established
20 by the United States Environmental Protection Agency, except those standards and regulations
21 pertaining to spill prevention control and counter-measure plans, and rules established by the
22 Missouri department of natural resources and the Missouri department of agriculture. The
23 applicant shall submit proof that the applicant has a reasonable assurance of the tank's integrity.
24 Proof of tank integrity may include but not be limited to any one of the following: tank tightness
25 test, electronic leak detection, monitoring wells, daily inventory reconciliation, vapor test or any
26 other test that may be approved by the director of the department of natural resources or the
27 director of the department of agriculture. The applicant shall submit evidence that the applicant
28 can meet all applicable financial responsibility requirements of this section.

29 (2) A creditor, specifically a person who, without participating in and not otherwise
30 primarily engaged in petroleum production, refining, and marketing, holds indicia of ownership
31 primarily for the purpose of, or in connection with, securing payment or performance of a loan
32 or to protect a security interest in or lien on the tank or the property where the tank is located,
33 or serves as trustee or fiduciary upon transfer or receipt of the property, may be a successor in
34 interest to a debtor pursuant to this section, provided that the creditor gives notice of the interest
35 to the insurance fund by certified mail, return receipt requested. Part of such notice shall include
36 a copy of the lien, including but not limited to a security agreement or a deed of trust as
37 appropriate to the property. The term "successor in interest" as provided in this section means
38 a creditor to the debtor who had qualified real property in the insurance fund prior to the transfer
39 of title to the creditor, and the term is limited to access to the insurance fund. The creditor may
40 cure any of the debtor's defaults in payments required by the insurance fund, provided the
41 specific real property originally qualified pursuant to this section. The creditor, or the creditor's
42 subsidiary or affiliate, who forecloses or otherwise obtains legal title to such specific real
43 property held as collateral for loans, guarantees or other credit, and which includes the debtor's
44 aboveground storage tanks or underground storage tanks, or both such tanks shall provide notice
45 to the fund of any transfer of creditor to subsidiary or affiliate. Liability pursuant to sections
46 319.100 to 319.137 shall be confined to such creditor or such creditor's subsidiary or affiliate.
47 A creditor shall apply for a transfer of coverage and shall present evidence indicating a lien,
48 contractual right, or operation of law permitting such transfer, and may utilize the creditor's
49 affiliate or subsidiary to hold legal title to the specific real property taken in satisfaction of debts.
50 Creditors may be listed as insured or additional insured on the insurance fund, and not merely
51 as mortgagees, and may assign or otherwise transfer the debtor's rights in the insurance fund to
52 the creditor's affiliate or subsidiary, notwithstanding any limitations in the insurance fund on
53 assignments or transfer of the debtor's rights.

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

57 4. Any person making a claim pursuant to this section and sections 319.129 and 319.133
58 shall be liable for the first ten thousand dollars of the cost of cleanup associated with a release
59 from a petroleum storage tank without reimbursement from the fund. The petroleum storage
60 tank insurance fund shall assume all costs, except as provided in subsection 5 of this section,
61 which are greater than ten thousand dollars but less than one million dollars per occurrence or
62 two million dollars aggregate per year. The liability of the petroleum storage tank insurance fund
63 is not the liability of the state of Missouri. The provisions of sections 319.100 to 319.137 shall
64 not be construed to broaden the liability of the state of Missouri beyond the provisions of

65 sections 537.600 to 537.610, RSMo, nor to abolish or waive any defense which might otherwise
66 be available to the state or to any person. The presence of existing contamination at a site where
67 a person is seeking insurance in accordance with this section shall not affect that person's ability
68 to participate in this program, provided the person meets all other requirements of this section.
69 Any person who qualifies pursuant to sections 319.100 to 319.137 and who has requested
70 approval of a project for remediation from the fund, which request has not yet been decided upon
71 shall annually be sent a status report including an estimate of when the project may expect to be
72 funded and other pertinent information regarding the request.

73 5. The fund shall provide coverage for third-party claims involving property damage or
74 bodily injury caused by leaking petroleum storage tanks whose owner or operator is participating
75 in the fund at the time the release occurs or is discovered. [Coverage for third-party bodily injury
76 shall not exceed one million dollars per occurrence.] Coverage for third-party property damage
77 **or bodily injury shall be available in addition to the coverage described in subsection 4 of**
78 **this section but the total liability of the petroleum storage tank insurance fund for all**
79 **cleanup costs, property damage, and bodily injury** shall not exceed one million dollars per
80 occurrence **or two million dollars aggregate per year**. The fund shall not compensate an
81 owner or operator for repair of damages to property beyond that required to contain and clean
82 up a release of a regulated substance or compensate an owner or operator or any third party for
83 loss or damage to other property owned or belonging to the owner or operator, or for any loss or
84 damage of an intangible nature, including, but not limited to, loss or interruption of business,
85 pain and suffering of any person, lost income, mental distress, loss of use of any benefit, or
86 punitive damages.

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

91 7. Nothing contained in sections 319.100 to 319.137 shall be construed to abrogate or
92 limit any right, remedy, causes of action, or claim by any person sustaining personal injury or
93 property damage as a result of any release from any type of petroleum storage tank, nor shall
94 anything contained in sections 319.100 to 319.137 be construed to abrogate or limit any liability
95 of any person in any way responsible for any release from a petroleum storage tank or any
96 damages for personal injury or property damages caused by such a release.

97 8. (1) The fund shall provide moneys for cleanup of contamination caused by releases
98 from petroleum storage tanks, the owner or operator of which is participating in the fund or the
99 owner or operator of which has made application for participation in the fund by December 31,
100 1997, regardless of when such release occurred, provided that those persons who have made

101 application are ultimately accepted into the fund. Applicants shall not be eligible for fund
102 benefits until they are accepted into the fund. This section shall not preclude the owner or
103 operator of petroleum storage tanks coming into service after December 31, 1997, from making
104 application to and participating in the petroleum storage tank insurance fund.

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

113 9. (1) The fund shall provide moneys for cleanup of contamination caused by releases
114 from underground storage tanks which contained petroleum and which have been taken out of
115 use prior to December 31, 1997, provided such sites have been documented by or reported to the
116 department of natural resources prior to December 31, 1997, and provided further that the fund
117 shall make no reimbursements for expenses incurred prior to August 28, 1995. The fund shall
118 also provide moneys for cleanup of contamination caused by releases from underground storage
119 tanks which contained petroleum and which have been taken out of use prior to December 31,
120 1985, if the current owner of the real property where the tanks are located purchased such
121 property before December 31, 1985, provided such sites are reported to the fund on or before
122 June 30, 2000. The fund shall make no payment for expenses incurred at such sites prior to
123 August 28, 1999. Nothing in sections 319.100 to 319.137 shall affect the validity of any
124 underground storage tank fund insurance policy in effect on August 28, 1996.

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

131 (3) **After December 31, 2017, the current legal owner of the site shall be the**
132 **responsible party for corrective action, pursuant to section 319.109, of any releases from**
133 **underground storage tanks described in this subsection. Nothing in this subdivision shall**
134 **in any way be construed to alter, alleviate, or modify in any manner any liabilities that the**
135 **fund has to pay for in cleaning up the site.**

136 10. (1) The fund shall provide moneys for cleanup of contamination caused by releases
137 from aboveground storage tanks utilized for the sale of products regulated by chapter 414,
138 RSMo, which have been taken out of use prior to December 31, 1997, provided such sites have
139 been documented by or reported to the department of natural resources prior to December 31,
140 1997, and provided further that the fund shall make no reimbursements for expenses incurred
141 prior to July 1, 1997.

142 (2) **After December 31, 2017, the current legal owner of the site shall be the**
143 **responsible party for corrective action of any releases from aboveground storage tanks**
144 **described in this subsection. Nothing in this subdivision shall in any way be construed to**
145 **alter, alleviate, or modify in any manner any liabilities that the fund has to pay for in**
146 **cleaning up the site.**

 319.133. 1. The board shall, in consultation with the advisory committee established
2 pursuant to subsection 2 of section 319.131, establish, by rule, the amount which each owner or
3 operator who participates in the fund shall pay annually into the fund, but such amount shall not
4 exceed the limits established in this section.

5 2. Each participant shall annually pay an amount which shall be at least one hundred
6 dollars per year but not more than [three] **five** hundred dollars per year for any tank, as
7 established by the board by rule.

8 3. No new registration fee is required for a change of ownership of a petroleum storage
9 tank.

10 4. The board shall establish procedures where persons owning fifty or more petroleum
11 storage tanks may pay any fee established pursuant to subsection 1 of this section in installments.

12 5. All rules applicable to the former underground storage tank insurance fund not
13 inconsistent with the provisions of sections 319.100 to 319.137 shall apply to the petroleum
14 storage tank insurance fund as of August 28, 1996.

15 **6. The board may require any new applicant, who has not previously held private**
16 **insurance or other form of financial responsibility for the petroleum storage tank for**
17 **which application to the fund is made, to conduct a site assessment before participating in**
18 **the fund. The board also may require such new applicants to pay a surcharge per year per**
19 **tank from the date the tank was eligible for coverage under the fund, provided that each**
20 **year's surcharge shall not exceed the surcharge that was actually in effect for that**
21 **particular year.**

22 **7. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo,**
23 **that is created under the authority delegated in this section shall become effective only if**
24 **it complies with and is subject to all of the provisions of chapter 536, RSMo, and, if**
25 **applicable, section 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable**

26 and if any of the powers vested with the general assembly pursuant to chapter 536, RSMo,
27 to review, to delay the effective date, or to disapprove and annul a rule are subsequently
28 held unconstitutional, then the grant of rulemaking authority and any rule proposed or
29 adopted after August 28, 2008, shall be invalid and void.

319.136. 1. An underground storage tank shall be ineligible for delivery, deposit,
2 or acceptance of petroleum if the underground storage tank meets one or more of the
3 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 installed. This subdivision shall
8 not apply to a buried metal flexible connector.

9 2. Upon the discovery of a violation of this section, the department shall, within
10 fourteen days, notify the owner or operator in writing of such violation and affix a red
11 violation tag stating the underground storage tank is in violation and is ineligible to receive
12 petroleum to the fill pipe of the noncompliant underground storage tank using a tamper-
13 resistant strap or straps, fill pipe bag, or any combination thereof so the tag is visible to
14 any person attempting to deliver petroleum to the underground storage tank.

15 3. Notwithstanding the provisions of subsection 1 of this section to the contrary, the
16 department may authorize delivery, deposit, or acceptance of petroleum to an ineligible
17 underground storage tank in the following circumstances:

- 18 (1) In an emergency situation; or
- 19 (2) If such activity is necessary to test or calibrate the underground storage tank
20 or dispenser system.

21
22 In either case, the department may authorize delivery, deposit, or acceptance of petroleum
23 to an otherwise ineligible underground storage tank for up to one hundred eighty days.
24 If the department grants a waiver pursuant to this subdivision, no red violation tag, as
25 required under subsection 1 of this section, shall be affixed to the fill pipe for the length of
26 the waiver.

27 4. A violation of this section causes the individual tank in violation to become
28 ineligible to receive petroleum, but shall not cause other tanks at such facility to become
29 ineligible to receive petroleum.

30 5. The owner or operator shall not allow petroleum to be deposited into an
31 underground storage tank that has a red violation tag affixed to its fill pipe.

32 **6. No person shall deface, alter, or otherwise tamper with a red violation tag so that**
33 **the information contained on the tag is not legible. Removal of a red violation tag shall**
34 **only be allowed pursuant to subsection 7 of this section.**

35 **7. Upon notification by the owner or operator to the department documenting that**
36 **the violation has been corrected, the department shall immediately, unless an inspection**
37 **is required, provide authorization to the owner or operator to remove the red violation tag.**
38 **If the department requires an inspection to determine the violation has been corrected,**
39 **such inspection shall be conducted within twenty-four hours after receiving notification**
40 **from the owner or operator. If the department does not conduct the inspection within**
41 **twenty-four hours after receiving notification from the owner or operator, the owner or**
42 **operator may remove the red violation tag and immediately place the system and**
43 **underground storage tank back into operation pending the inspection. A red violation tag**
44 **that has been removed by the owner or operator shall be returned to the department**
45 **within five business days in a postage paid envelope provided by the department.**

46 **8. Notwithstanding the provisions of section 621.250, RSMo, to the contrary, when**
47 **the department has affixed a red violation tag to make a noncompliant underground**
48 **storage tank ineligible to receive petroleum, the owner or operator of that tank may, in**
49 **addition to all administrative appeals and remedies, appeal the department's action to the**
50 **circuit court in the county where the tank is located within ten business days of the**
51 **department's action.**

414.036. 1. After December 31, 2010, the owner or operator of an aboveground
2 **storage tank defined in subsection 2 of this section shall maintain evidence of financial**
3 **responsibility in an amount equal to or greater than one million dollars per occurrence and**
4 **two million dollars annual aggregate for the costs of taking corrective action and**
5 **compensating third parties for bodily injury and property damage caused by sudden and**
6 **nonsudden accidental releases arising from the operation of the tank.**

7 **2. For the purposes of this section, "aboveground storage tank" is defined as any**
8 **one or a combination of tanks, including pipes connected thereto, used to contain an**
9 **accumulation of petroleum and the volume of which, including the volume of the**
10 **aboveground pipes connected thereto, is ninety percent or more above the surface of the**
11 **ground, which is utilized for the sale of products regulated by this chapter. The term does**
12 **not include those tanks described in paragraphs (a) to (k) of subdivision (16) of section**
13 **319.100, RSMo, nor does it include aboveground storage tanks at refineries, petroleum**
14 **pipeline terminals, or marine terminals.**

15 **3. Owners and operators may meet the requirements of this section by participating**
16 **in the petroleum storage tank insurance fund created in section 319.129, RSMo, or by any**
17 **other method approved by the department.**

18 **4. The department shall promulgate rules to implement the provisions of this**
19 **section. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo,**
20 **that is created under the authority delegated in this section shall become effective only if**
21 **it complies with and is subject to all of the provisions of chapter 536, RSMo, and, if**
22 **applicable, section 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable**
23 **and if any of the powers vested with the general assembly pursuant to chapter 536, RSMo,**
24 **to review, to delay the effective date, or to disapprove and annul a rule are subsequently**
25 **held unconstitutional, then the grant of rulemaking authority and any rule proposed or**
26 **adopted after August 28, 2008, shall be invalid and void.**

 414.072. 1. At least every six months, the director shall test and inspect the measuring
2 devices used by any person selling an average of two hundred or more gallons of gasoline,
3 gasoline-alcohol blends, diesel fuel, heating oil, kerosene, or aviation turbine fuel per month at
4 either retail or wholesale in this state, except marine installations, which shall be tested and
5 inspected at least once per year.

6 2. When the director finds that any measuring device does not correctly and accurately
7 register and measure the monetary cost, if applicable, or the volume sold, he shall require the
8 correction, removal, or discontinuance of the same.

9 **3. Notwithstanding any other law or rule to the contrary, it has been and continues**
10 **to be the public policy of this state to prohibit gasoline and diesel motor fuel in a retail sale**
11 **transaction from being dispensed by any measuring device or equipment that is not**
12 **approved by the department of agriculture or the National Type Evaluation Program**
13 **(NTEP).**

✓