Senate Engrossed House Bill

FILED

JANICE K. BREWER
SECRETARY OF STATE

State of Arizona
House of Representatives
Forty-eighth Legislature
Second Regular Session
2008

CHAPTER 218

HOUSE BILL 2425

AN ACT

AMENDING SECTIONS 49-1001, 49-1002, 49-1003, 49-1009, 49-1013 AND 49-1021, ARIZONA REVISED STATUTES; AMENDING TITLE 49, CHAPTER 6, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING SECTION 49-1023; AMENDING SECTIONS 49-1031, 49-1081 AND 49-1082, ARIZONA REVISED STATUTES; AMENDING TITLE 49, CHAPTER 6, ARTICLE 5, ARIZONA REVISED STATUTES, BY ADDING SECTION 49-1083; RELATING TO UNDERGROUND STORAGE TANKS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

Be it enacted by the Legislature of the State of Arizona:

Section 1. Section 49-1001, Arizona Revised Statutes, is amended to read:

49-1001. Definitions

In this chapter, unless the context otherwise requires:

1. "Being used" means not having been taken out of operation.

2. "Closure" means the removal of an underground storage tank from operation.

3. "Corrective actions" means those actions that are prescribed pursuant to section 49-1005.

4. "Designated representative" means a person to whom an owner or an operator, or both, assign in writing any right, title or interest which the owner or operator, or both, may have in and to the proceeds of a reimbursement for a corrective action made under article 3 of this chapter.

5. "ENERGY POLICY ACT" MEANS THE UNDERGROUND STORAGE TANK COMPLIANCE ACT, TITLE XV, SUBTITLE B OF THE FEDERAL ENERGY POLICY ACT OF 2005 (P.L. 109-58; 119 STAT. 1092; 42 UNITED STATES CODE SECTION 6991), AS AMENDED.

~~5.~~ 6. "Fiduciary" means:

(a) A trust company or bank certified or authorized to engage in the trust business pursuant to title 6, chapter 8, article 1.

(b) Any person appointed by a court or testamentary act to act as personal representative, executor, trustee, administrator, guardian, conservator, receiver or trustee in bankruptcy.

(c) Any person acting as a trustee of a deed of trust pursuant to section 33-803.

(d) Any person acting as a trustee pursuant to title 14, chapter 7.

(e) Any person acting pursuant to and subject to fiduciary obligations under the employee retirement income security act of 1974~~,~~ (29 United States Code sections 1101 through 1114).

~~6.~~ 7. "Guarantor" means a person, other than an owner or operator, who provides evidence of financial responsibility for an owner or operator pursuant to this chapter.

~~7.~~ 8. "Motor fuel" means petroleum or a petroleum based substance that is motor gasoline, aviation gasoline, number 1 or number 2 diesel fuel or any grade of oxygenated gasoline typically used in the operation of a motor engine.

9. "NEW PIPING COMPONENT" MEANS ANY UNDERGROUND PIPE OR COMBINATION OF PIPES THAT CONTAINS AND CONVEYS A REGULATED SUBSTANCE BETWEEN A TANK AND A MOTOR FUEL DISPENSER, INCLUDING ANY VALVE, ELBOW, CONNECTOR OR JOINT THAT IS ADDED TO AN UNDERGROUND STORAGE TANK ON OR AFTER JANUARY 1, 2009 AND THAT WAS NOT ORIGINALLY INCLUDED OR INSTALLED AS PART OF THE UNDERGROUND STORAGE TANK.

~~8.~~ 10. "Occurrence" means an incident or accident, including continuous or repeated exposure to conditions, which results in a release from an underground storage tank.

~~9.~~ 11. "Operator" means a person in control of, or having responsibility for, the day-to-day operation of an underground storage tank.

~~10.~~ 12. "Out of operation" means having been closed in accordance with all applicable fire codes and other statutory and regulatory requirements for closure in effect on the date that closure was accomplished.

~~11.~~ 13. "Person" means an individual, trust, firm, joint stock company, corporation, joint venture, partnership, association, consortium, state, municipality, interstate body, commission, political subdivision of a state and the United States government.

~~12.~~ 14. "Petroleum" means petroleum, including crude oil or any fraction of crude oil, which is liquid at sixty degrees Fahrenheit and 14.7 pounds per square inch absolute, and petroleum based substances comprised of a complex blend of hydrocarbons derived from crude oil through processes of separation, conversion, upgrading and finishing, such as motor fuels, residual fuel oils, lubricants, jet fuels, distillate fuel oils, petroleum solvents and used oils.

~~13.~~ 15. "Political subdivision" means a county, city, town or other taxing district other than the state that is authorized to take property by eminent domain.

~~14.~~ 16. "Regulated substance" means:

(a) Petroleum.

(b) A substance specified in the comprehensive environmental response, compensation, and liability act of 1980 (P.L. 96-510; 94 Stat. 2767; 42 United States Code section 9601(14)) but not including a substance regulated as a hazardous waste under the solid waste disposal act of 1984 (P.L. 98-616; 98 Stat. 3221; 42 United States Code section 6921).

~~15.~~ 17. "Release" means a spill, leak, emission, discharge, escape, leach or disposal of a regulated substance from an underground storage tank into groundwater, surface water or soils.

~~16.~~ 18. "Suspected release" means any of the following:

(a) The discovery by owners and operators or others of released regulated substances at the underground storage tank site or in the surrounding area.

(b) Erratic behavior of regulated substance dispensing equipment, the sudden loss of a regulated substance from an underground storage tank, an unexplained presence of water in the underground storage tank or other extraordinary operating conditions that could reasonably be associated with a release from an underground storage tank and that are observed by owners and operators, unless system equipment is found to be defective but not leaking and is repaired or replaced immediately.

(c) That the monitoring results from a release detection method required under 40 Code of Federal Regulations sections 280.41 and 280.42, this chapter or rules adopted pursuant to this chapter indicate that a release may have occurred unless either of the following occurs:

(i) The monitoring device is found to be defective and is immediately repaired, recalibrated or replaced and additional monitoring data do not confirm the initial result.

(ii) In the case of inventory control, a second month of inventory reconciliation data does not confirm the initial result.

~~17.~~ 19. "Tank" means a stationary device constructed of wood, concrete, steel, plastic or other nonearthen materials and used to contain regulated substances.

20. "UNDER-DISPENSER CONTAINMENT" MEANS A SECONDARY CONTAINMENT DEVICE THAT IS BENEATH A MOTOR FUEL DISPENSER, THAT IS CONNECTED TO THE UNDERGROUND STORAGE TANK AND THAT IS DESIGNED TO BE LIQUID TIGHT.

~~18.~~ 21. "Underground storage tank" means a tank or combination of tanks and underground pipes and impact valves connected to tanks being used or having been used to contain regulated substances and which has at least ten per cent of the total volume of the tank and underground portions of pipes connected to the tank underground. Underground storage tank does not mean any of the following:

(a) A farm or residential tank of one thousand one hundred gallons or less capacity used for storing motor fuel for noncommercial purposes.

(b) A tank used for storing heating oil for consumptive use on the premises where stored.

(c) A septic tank.

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

(i) The natural gas pipeline safety act of 1968 (49 United States Code sections 1671 through 1686).

(ii) The hazardous liquid pipeline safety act of 1979 (49 United States Code section 2001).

(e) An intrastate pipeline facility regulated under a state law comparable to the provisions of law referred to in subdivision (d), item (i) or (ii).

(f) A surface impoundment, pit, pond or lagoon.

(g) A storm water or wastewater collection system.

(h) A flow-through process tank.

(i) A liquid trap or associated gathering lines directly related to oil or gas production and gathering operations.

(j) A storage tank situated in an underground area, such as a basement, cellar, mine working, drift, shaft or tunnel, if the storage tank is situated on or above the surface of the floor.

(k) Pipes connected to any of the structures described in subdivisions (a) through (j).

Sec. 2. Section 49-1002, Arizona Revised Statutes, is amended to read:

49-1002. Notification requirements; exemptions

A. Except as otherwise provided in this section, each owner of an underground storage tank shall notify the department in writing and shall specify the tank's age, size, type, location and use.

B. For an underground storage tank that was taken out of operation on or before January 1, 1974, regardless of whether the tank was removed from the ground, the owner is exempt from giving notice.

C. For an underground storage tank that was taken out of operation after January 1, 1974 but before November 8, 1984 and that was removed from the ground, the owner is exempt from giving notice.

D. For an underground storage tank that was taken out of operation after January 1, 1974 but before November 8, 1984 and that was not removed from the ground, the owner shall specify the type and quantity of the substances that were stored in the tank immediately before it was taken out of operation. These requirements are in addition to the requirements for notice prescribed in subsection A.

E. For an underground storage tank that was taken out of operation after November 8, 1984 but before December 22, 1988 the director may require the owner to make reasonable efforts to specify the age, size, location and use of the tank, the type and quantity of the substances that were stored in the tank immediately before it was taken out of operation and the date of its removal from operation.

F. An owner who brings an underground storage tank into operation shall meet the notification requirements of this section within thirty days after the tank is brought into operation. AN OWNER WHO BRINGS A NEW PIPING COMPONENT OR UNDER-DISPENSER CONTAINMENT INTO OPERATION ON OR AFTER JANUARY 1, 2009 SHALL MEET THE NOTIFICATION REQUIREMENTS OF THIS SECTION WITHIN THIRTY DAYS AFTER THE NEW PIPING COMPONENT OR UNDER-DISPENSER CONTAINMENT IS BROUGHT INTO OPERATION.

G. A person who sells a tank for use as an underground storage tank shall notify the purchaser of the notice requirements of subsection F.

H. The notices required by this section shall be made on forms prescribed by the department.

Sec. 3. Section 49-1003, Arizona Revised Statutes, is amended to read:

49-1003. Detection of releases; record keeping requirements

A. Until the rules adopted pursuant to subsection C are in effect, the owner and operator of an underground storage tank shall maintain a release detection system that complies with the requirements of 40 Code of Federal Regulations ~~parts~~ SECTIONS 280.40 through 280.44.

B. Until the rules adopted pursuant to subsection C are in effect, the owner and operator of an underground storage tank shall maintain systematic and complete records of release detection information that complies with the requirements of 40 Code of Federal Regulations ~~part~~ SECTION 280.45.

C. The director shall adopt rules establishing release detection requirements and release detection record keeping requirements. The rules adopted pursuant to this subsection shall be consistent with and no more stringent than the federal regulations in effect on the date on which the rules are adopted.

Sec. 4. Section 49-1009, Arizona Revised Statutes, is amended to read:

49-1009. Tank performance standards

A. ~~No~~ A person ~~may~~ SHALL NOT install an underground storage tank unless the UNDERGROUND STORAGE tank meets all of the following requirements:

1. IT is designed to prevent releases due to corrosion or structural failure for the operational life of the tank.

2. IT is cathodically protected against corrosion, constructed of noncorrosive material, steel clad with a noncorrosive material or designed in a manner to prevent the release of a regulated substance.

3. The material used in the construction or lining of the tank is compatible with the substance to be stored.

B. BEGINNING JANUARY 1, 2009, A PERSON SHALL NOT INSTALL AN UNDERGROUND STORAGE TANK UNLESS THE UNDERGROUND STORAGE TANK MEETS THE SECONDARY CONTAINMENT AND RELEASE DETECTION REQUIREMENTS FOR HAZARDOUS SUBSTANCE UNDERGROUND STORAGE TANK SYSTEMS IN 40 CODE OF FEDERAL REGULATIONS SECTION 280.42 AND THE INTERSTITIAL MONITORING REQUIREMENTS IN 40 CODE OF FEDERAL REGULATIONS SECTION 280.43, SUBSECTION G.

C. BEGINNING JANUARY 1, 2009, A PERSON SHALL NOT INSTALL A NEW PIPING COMPONENT THAT IS TWENTY-FIVE PER CENT OR MORE OF THE TOTAL LINEAR FOOTAGE OF ALL CONNECTED PIPING OF THE UNDERGROUND STORAGE TANK UNLESS ALL CONNECTED PIPING OF THE UNDERGROUND STORAGE TANK THAT CONVEYS A REGULATED SUBSTANCE UNDER PRESSURE IS BROUGHT INTO COMPLIANCE WITH THE SECONDARY CONTAINMENT AND RELEASE DETECTION REQUIREMENTS FOR HAZARDOUS SUBSTANCE UNDERGROUND STORAGE TANK SYSTEMS IN 40 CODE OF FEDERAL REGULATIONS SECTION 280.42 AND THE INTERSTITIAL MONITORING REQUIREMENTS IN 40 CODE OF FEDERAL REGULATIONS SECTION 280.43, SUBSECTION G.

D. BEGINNING JANUARY 1, 2009, AN OWNER OR OPERATOR WHO INSTALLS OR REPLACES A MOTOR FUEL DISPENSER THAT CONNECTS TO AN UNDERGROUND STORAGE TANK SHALL INSTALL UNDER-DISPENSER CONTAINMENT. THE UNDER-DISPENSER CONTAINMENT SHALL MEET THE RELEASE DETECTION REQUIREMENTS OF 40 CODE OF FEDERAL REGULATIONS SECTION 280.42, SUBSECTION B, PARAGRAPH 1.

~~B.~~ E. The owner and operator of an underground storage tank shall use an underground storage tank, A NEW PIPING COMPONENT, UNDER-DISPENSER CONTAINMENT AND ANY SECONDARY CONTAINMENT MATERIAL THAT IS made of or lined with materials that are compatible with the regulated substance stored in or dispensed from the underground storage tank.

~~C.~~ F. The director may adopt rules specifying design, construction, installation, performance and compatibility standards for underground storage tanks. The rules adopted pursuant to this subsection shall be consistent

with and no more stringent than federal regulations in effect on the date on which the rules are adopted.

~~D.~~ G. The director may require an owner and operator of an underground storage tank to perform or cause to be performed a tank test to determine compliance with the standards established pursuant to this section.

Sec. 5. Section 49-1013, Arizona Revised Statutes, is amended to read:

49-1013. Enforcement and penalties

A. If the director determines that a person is in violation of this chapter or the rules adopted pursuant to this chapter the director may issue an order requiring compliance within a reasonable time. A compliance order becomes final thirty days after the order is served unless within thirty days of service the person named on the order requests a hearing. A hearing shall be conducted pursuant to title 41, chapter 6, article 10. A compliance order that is the subject of a hearing as prescribed by this section becomes final and subject to appeal on the decision of the director to uphold the compliance order. Except as provided in section 41-1092.08, subsection H, the director's final decision may be appealed by any party to the superior court pursuant to title 12, chapter 7, article 6. A person becomes the subject of an enforcement proceeding pursuant to this chapter when a compliance order against that person becomes final.

B. IF THE DIRECTOR ISSUES A STOP USE ORDER PURSUANT TO SECTION 49-1023, THE OWNER OR OPERATOR MAY REQUEST A HEARING WITHIN THIRTY DAYS AFTER THE ISSUANCE OF THE STOP USE ORDER. A HEARING SHALL BE CONDUCTED PURSUANT TO TITLE 41, CHAPTER 6, ARTICLE 10. EXCEPT AS PROVIDED IN SECTION 41-1092.08, SUBSECTION H, THE DIRECTOR'S FINAL DECISION MAY BE APPEALED BY THE OWNER OR OPERATOR TO THE SUPERIOR COURT PURSUANT TO TITLE 12, CHAPTER 7, ARTICLE 6.

~~B.~~ C. If a person fails to comply with a final order under this section within the time specified in the order, the person is subject to a civil penalty of not to exceed twenty-five thousand dollars for each day of continued noncompliance.

~~C.~~ D. An owner who ~~knowingly~~ fails to notify or submits false information pursuant to section 49-1002 is subject to a civil penalty of not to exceed ten thousand dollars for each UNDERGROUND STORAGE tank for which notification is not given or false information is submitted.

~~D.~~ E. An owner or operator of an underground storage tank who fails to comply with any of the requirements or standards of this chapter OR WHO FAILS TO COMPLY WITH A STOP USE ORDER is subject to a civil penalty of not to exceed ten thousand dollars for each UNDERGROUND STORAGE tank for each day of violation.

F. A PRODUCT DELIVERER AS DEFINED IN SECTION 49-1023 WHO FAILS TO COMPLY WITH THE REQUIREMENTS OF SECTION 49-1023, SUBSECTION A IS SUBJECT TO A CIVIL PENALTY OF NOT TO EXCEED TEN THOUSAND DOLLARS FOR EACH UNDERGROUND STORAGE TANK FOR EACH VIOLATION.

~~E.~~ G. The penalties provided for in this section shall not be cumulated with any penalties sought and obtained by the department or the United States pursuant to title VI of the hazardous and solid waste amendments of 1984 (P.L. 98-616; 98 Stat. 3221).

~~F.~~ H. The director may file an action in the superior court to enforce this chapter and to collect penalties for violations of this chapter. The director may seek all appropriate relief including temporary and permanent injunctions.

~~G.~~ I. All monies collected under the penalty provisions of this section shall be deposited in the state general fund.

Sec. 6. Section 49-1021, Arizona Revised Statutes, is amended to read:

49-1021. Applicability

Until rules adopted pursuant to this chapter are in effect, this chapter shall apply only to the extent described by 40 code of federal regulations ~~part~~ SECTION 280.10 AND THE ENERGY POLICY ACT. Rules adopted pursuant to this chapter shall apply only to underground storage tanks not excluded or deferred by the federal regulations in effect on the date on which the rules are adopted.

Sec. 7. Title 49, chapter 6, article 1, Arizona Revised Statutes, is amended by adding section 49-1023, to read:

49-1023. Delivery prohibition; stop use tag; definitions

A. BEGINNING JANUARY 1, 2009, A PRODUCT DELIVERER SHALL NOT DELIVER, DEPOSIT OR PLACE A REGULATED SUBSTANCE INTO AN UNDERGROUND STORAGE TANK THAT HAS A STOP USE TAG FROM THE DIRECTOR AFFIXED TO A FILL PIPE OF THE UNDERGROUND STORAGE TANK PURSUANT TO SUBSECTION B OF THIS SECTION.

B. THE DIRECTOR MAY ISSUE A STOP USE ORDER TO THE OWNER AND OPERATOR OF THE UNDERGROUND STORAGE TANK AND AFFIX A STOP USE TAG THAT IS EASILY VISIBLE TO THE PRODUCT DELIVERER ON ALL FILL PIPES OF THE UNDERGROUND STORAGE TANK TO STOP OPERATION OF THE UNDERGROUND STORAGE TANK IF BOTH OF THE FOLLOWING EXIST:

1. THE DIRECTOR HAS DETERMINED THAT THE UNDERGROUND STORAGE TANK IS IN VIOLATION OF SECTION 49-1003 OR 49-1009 OR THE RULES ADOPTED PURSUANT TO THOSE SECTIONS, AS APPLICABLE.

2. THE CONTINUED OPERATION OF THE UNDERGROUND STORAGE TANK MAY RESULT IN A CONTINUED RELEASE OR NEW RELEASE FROM THE UNDERGROUND STORAGE TANK.

C. A STOP USE ORDER BECOMES EFFECTIVE IMMEDIATELY ON ISSUANCE AND SUSPENDS USE OF THE UNDERGROUND STORAGE TANK.

D. THE OWNER AND OPERATOR OF AN UNDERGROUND STORAGE TANK THAT HAS RECEIVED A STOP USE TAG PURSUANT TO SUBSECTION B OF THIS SECTION SHALL ENSURE THAT NO PERSON REMOVES OR TAMPERS WITH THE STOP USE TAG UNTIL THE REQUIREMENTS FOR RETURN OF THE UNDERGROUND STORAGE TANK TO OPERATION PURSUANT TO SUBSECTION E OF THIS SECTION ARE MET, AND SHALL IMMEDIATELY EMPTY THE UNDERGROUND STORAGE TANK AND COMPLY WITH THE REMAINING TEMPORARY CLOSURE REQUIREMENTS ADOPTED UNDER SECTION 49-1008.

E. AN OWNER OR OPERATOR SHALL NOT BRING AN UNDERGROUND STORAGE TANK THAT HAS RECEIVED A STOP USE TAG PURSUANT TO SUBSECTION B OF THIS SECTION BACK INTO OPERATION UNTIL THE OWNER OR OPERATOR HAS DEMONSTRATED TO THE DIRECTOR THAT THE UNDERGROUND STORAGE TANK MEETS THE REQUIREMENTS OF SECTIONS 49-1003 AND 49-1009 AND THE RULES ADOPTED PURSUANT TO THOSE SECTIONS, AS APPLICABLE, AND THE OWNER OR OPERATOR HAS RECEIVED WRITTEN CONFIRMATION FROM THE DIRECTOR THAT THE REQUIREMENTS OF SECTIONS 49-1003 AND 49-1009 AND THE RULES ADOPTED PURSUANT TO THOSE SECTIONS, AS APPLICABLE, HAVE BEEN MET. THE DIRECTOR SHALL PROVIDE WRITTEN CONFIRMATION AS SOON AS PRACTICABLE, BUT NOT LATER THAN FIVE BUSINESS DAYS, TO THE OWNER OR OPERATOR THAT THE REQUIREMENTS OF SECTIONS 49-1003 AND 49-1009 AND THE RULES ADOPTED PURSUANT TO THOSE SECTIONS HAVE BEEN MET.

F. UPON ISSUANCE OF A STOP USE ORDER, THE DIRECTOR SHALL NOTIFY PRODUCT DELIVERERS BY POSTING ON THE DEPARTMENT'S WEBSITE THE NAME AND LOCATION OF A FACILITY WITH AN UNDERGROUND STORAGE TANK THAT HAS A STOP USE TAG. THE NOTICE SHALL ALSO SPECIFY WHICH UNDERGROUND STORAGE TANK AT THE FACILITY HAS A STOP USE TAG.

G. THE DIRECTOR SHALL REMOVE THE STOP USE NOTICE FROM THE DEPARTMENT'S WEBSITE WITHIN FIVE BUSINESS DAYS AFTER DETERMINING THAT THE REQUIREMENTS OF SUBSECTION E OF THIS SECTION HAVE BEEN MET.

H. THE DIRECTOR MAY ADOPT RULES TO IMPLEMENT THIS SECTION.

I. FOR THE PURPOSES OF THIS SECTION:

1. "PRODUCT DELIVERER" MEANS A PERSON, INCLUDING AN OWNER, OPERATOR OR OIL COMPANY, OR A DISTRIBUTOR AS DEFINED IN SECTION 28-5601, A SUPPLIER AS DEFINED IN SECTION 28-5601, A PETROLEUM TRANSPORTATION COMPANY AND ANY OTHER ENTITY THAT DELIVERS, DEPOSITS OR PLACES A REGULATED SUBSTANCE INTO AN UNDERGROUND STORAGE TANK.

2. "STOP USE TAG" MEANS A TAG, DEVICE OR MECHANISM THAT IS PRESCRIBED BY THE DIRECTOR, THAT IS DESIGNED TO BE AFFIXED TO A FILL PIPE OF AN UNDERGROUND STORAGE TANK AND THAT CLEARLY STATES AND CONVEYS THAT IT IS UNLAWFUL TO DELIVER, DEPOSIT OR PLACE A REGULATED SUBSTANCE INTO THE UNDERGROUND STORAGE TANK TO WHICH IT IS AFFIXED.

Sec. 8. Section 49-1031, Arizona Revised Statutes, is amended to read:

49-1031. <u>Imposition of tax</u>

A. From and after July 1, 1990, there is imposed and the director shall collect an excise tax on the operation of underground storage tanks regulated under this chapter measured by the quantity of regulated substances placed in a tank in any calendar year. The tax is levied at the rate of one cent per gallon of regulated substance. On or before December 15 each year the director shall recommend to the legislature any revision to the tax rate necessary to maintain the assurance account of the underground storage tank revolving fund at the level prescribed by section 49-1051.

B. For proper administration of this article, and to prevent the evasion of the tax imposed by this article, it shall be presumed until the contrary is established by competent proof under rules and procedures adopted

by the director that all regulated substances which are motor vehicle fuel as defined in section 28-101, aviation fuel as defined in section 28-101 and diesel as defined in section 28-6001, subsection B and which are refined, manufactured, produced, compounded or blended in this state, or imported into this state, will be placed in an underground storage tank from which the fuel is dispensed to users who consume the fuel and do not further distribute it. Under this presumption, the owner and operator of an underground storage tank from which motor vehicle fuel, aviation fuel or diesel is dispensed and from which no further bulk distribution will be made, shall be considered to have paid the tax collected under title 28, chapter 16, article 6.

C. The tax imposed by this article does not apply to underground storage tanks operated by the United States or this state~~, its~~ OR agencies OF THE UNITED STATES OR THIS STATE or to any of the following substances placed in underground storage tanks:

1. Naphtha-type jet fuel or kerosene-type jet fuel.

2. Regulated substances as defined ~~pursuant to~~ IN section 49-1001, paragraph ~~14~~ 16, subdivision (b), unless such regulated substances were placed in an underground storage tank prior to July 1, 1997, and the owner or operator of the underground storage tank has paid prior to July 1, 1997 all taxes imposed by this article applicable to such regulated substances. If the owner or operator has paid those taxes, ~~they~~ THE OWNER OR OPERATOR may elect to continue to pay the tax imposed by this article regarding such regulated substances.

D. The owner and operator of an underground storage tank regulated under this chapter are jointly and severally liable for the tax, but the owner and operator may agree between themselves and file a notarized affidavit with the director designating either the owner or operator as primarily responsible for the tax under this article.

E. Any person who purchases motor vehicle fuel as defined in section 28-101, aviation fuel as defined in section 28-101, or diesel as defined in section 28-6001, subsection B for which the tax imposed by this section has been paid and which fuel has been placed in a tank which is not subject to the underground storage tank tax imposed by this section and from which no further bulk distribution of the fuel will be made, may claim a refund of the tax levied. Refunds shall be submitted on forms prescribed by the director and shall be supported by substantiation for the amount of the tax paid.

F. Any person eligible to claim a refund of the tax imposed by this section, including an assignee of a refund claim, may assign such claim to the person from whom the fuel was purchased, and the assignee of the claim may claim the refund allowed under subsection E of this section provided that the assignor of the claim certifies in writing to the assignee, on forms prescribed by the director, that the assignor relinquishes all interest in the refund and shall not also claim a refund from the director.

G. If a refund claim is assigned to a person who is required to make payments under title 28, chapter 16, article 6, the refund shall be taken into account in the manner provided in section 28-6005.

H. The director shall adopt temporary and permanent rules for administering the tax imposed by this article and specifying the forms of the return and of the certification provided for in sections 28-6003 AND 28-6004 ~~and 28-6005~~. The temporary and permanent rules shall prescribe the forms for and manner in which refunds may be claimed and refund claims assigned pursuant to subsection F of this section, shall specify the circumstances in which fuel may be excluded from the quantity of fuel used to measure the tax pursuant to title 28, chapter 16, article 6, and shall prescribe the forms for and manner which the certification provided in title 28, chapter 16, article 6 shall be made.

I. Title 41, chapter 6~~,~~ shall not apply to the temporary rules adopted pursuant to this section. The temporary rules shall be filed with the secretary of state and shall be effective for a period of one hundred eighty days from the date of filing with the secretary of state. The temporary rules may be renewed twice in the same manner as they were adopted, may be amended at the time or times they are renewed, and shall be effective for a period of one hundred eighty days from the date the renewed temporary rules are filed with the secretary of state.

J. The permanent rules adopted pursuant to this section shall be adopted as provided in title 41, chapter 6.

Sec. 9. Section 49-1081, Arizona Revised Statutes, is amended to read:

49-1081. Definitions

In this article, unless the context otherwise requires:

1. "ATTENDED FACILITY" MEANS AN UNDERGROUND STORAGE TANK FACILITY AT WHICH IT IS THE USUAL AND CUSTOMARY PRACTICE FOR THE OWNER OR OPERATOR, OR ANY EMPLOYEE OF THE OWNER OR OPERATOR, TO BE PRESENT ON SITE DURING NORMAL HOURS OF OPERATION.

2. "CLASS A INDIVIDUAL" MEANS A PERSON DESIGNATED BY THE OWNER OR OPERATOR AS HAVING PRIMARY MANAGEMENT RESPONSIBILITY OR DECISION-MAKING AUTHORITY FOR THE OPERATION, MAINTENANCE AND RECORD KEEPING OF AN UNDERGROUND STORAGE TANK FACILITY. THE PERSON MAY OR MAY NOT BE THE OWNER OR OPERATOR.

3. "CLASS B INDIVIDUAL" MEANS A PERSON DESIGNATED BY THE OWNER OR OPERATOR AS HAVING DAILY RESPONSIBILITY FOR THE OPERATION, MAINTENANCE AND RECORD KEEPING OF AN UNDERGROUND STORAGE TANK FACILITY. THE PERSON MAY OR MAY NOT BE THE OWNER OR OPERATOR.

4. "CLASS C INDIVIDUAL" MEANS A PERSON DESIGNATED BY THE OWNER OR OPERATOR AS HAVING DAILY RESPONSIBILITY FOR AN INITIAL RESPONSE TO AN ALARM OR OTHER INDICATION OF AN EMERGENCY CAUSED BY A RELEASE OR SUSPECTED RELEASE FROM AN UNDERGROUND STORAGE TANK. THE PERSON MAY OR MAY NOT BE THE OWNER OR OPERATOR.

~~1.~~ 5. "Supervision" means the immediate, on-site control and direction by a person certified by the department in accordance with ~~this article~~ SECTION 49-1082 and the rules adopted pursuant to ~~this article,~~ SECTION 49-1082 of a person who is performing tank service and who is not certified in accordance with ~~this article,~~ SECTION 49-1082 and the rules adopted pursuant to ~~this article,~~ SECTION 49-1082.

~~2.~~ 6. "Tank service" means installation, retrofitting, tank tightness testing, closure, cathodic protection or interior tank lining of an underground storage tank or a part of an underground storage tank.

Sec. 10. Section 49-1082, Arizona Revised Statutes, is amended to read:

49-1082. Certification of underground storage tank service providers; rules; suspension or revocation of certification

A. Beginning from and after December 31, 1996, a person shall not perform tank services on an underground storage tank system unless the person is certified in accordance with this ~~article~~ SECTION and the rules adopted pursuant to ~~this~~ article SECTION, or is supervised by a person certified in accordance with this ~~article~~ SECTION and the rules adopted pursuant to this ~~article~~ SECTION.

B. The department shall not certify a person as a tank service provider until that person completes the requirements of this ~~article~~ SECTION and the rules adopted pursuant to this ~~article~~ SECTION. In accordance with subsection D, the supervisor is responsible for all persons performing work under the DIRECTION OF THE supervisor and any violations of this ~~article~~ SECTION or rules adopted pursuant to this ~~article~~ SECTION are attributable to the supervisor.

C. By January 1, 1997, the department shall adopt rules for the establishment and maintenance of an underground storage tank service provider certification program. The certification program shall include the submittal and verification of information that the director determines is necessary to ensure that the tank service provider possesses and maintains the essential knowledge, skills and work history to perform the service effectively and in a manner that protects human health and the environment. The department may establish separate certification methods for each area of tank service as it is defined, and may define the duration of the certification period, which shall be at least one year.

D. The department, ~~upon~~ ON reasonable evidence, may suspend or revoke the certification of any person who fails to maintain the standards established pursuant to this ~~article~~ SECTION or who exhibits incompetence, negligence or fraud in performing the certified activity or in other work relating to the certified activity. A person whose certification is revoked or suspended pursuant to this subsection may appeal the decision pursuant to title 41, chapter 6, article 10.

Sec. 11. Title 49, chapter 6, article 5, Arizona Revised Statutes, is amended by adding section 49-1083, to read:

49-1083. Designation; training; record keeping requirements; rules

A. BEGINNING AUGUST 9, 2012, AN OWNER OR OPERATOR SHALL DESIGNATE A CLASS A INDIVIDUAL WHO MUST BE TRAINED PURSUANT TO SUBSECTIONS E AND F OF THIS SECTION WITHIN THIRTY DAYS OR ANOTHER PERIOD SPECIFIED BY THE DIRECTOR AFTER BEING DESIGNATED BY THE OWNER OR OPERATOR.

B. BEGINNING AUGUST 9, 2012, AN OWNER OR OPERATOR MUST DESIGNATE A CLASS B INDIVIDUAL WHO MUST BE TRAINED PURSUANT TO SUBSECTIONS E AND F OF THIS SECTION WITHIN THIRTY DAYS OR ANOTHER PERIOD SPECIFIED BY THE DIRECTOR AFTER BEING DESIGNATED BY THE OWNER OR OPERATOR.

C. BEGINNING AUGUST 9, 2012, AN OWNER OR OPERATOR MUST DESIGNATE ONE OR MORE CLASS C INDIVIDUALS WHO MUST BE TRAINED PURSUANT TO SUBSECTIONS E AND F OF THIS SECTION BEFORE ASSUMING THE ROLE OF A CLASS C INDIVIDUAL. FOR AN ATTENDED FACILITY, A CLASS C INDIVIDUAL MUST BE ON SITE DURING THE USUAL AND CUSTOMARY HOURS OF OPERATION.

D. THE CLASS A INDIVIDUAL AND CLASS B INDIVIDUAL SHALL BE RETRAINED IF THE DIRECTOR DETERMINES THAT AN UNDERGROUND STORAGE TANK AT THE FACILITY IS NOT EQUIPPED AND OPERATED IN ACCORDANCE WITH RELEASE DETECTION, CORROSION PROTECTION, SPILL PREVENTION AND OVERFILL PROTECTION IN COMPLIANCE WITH SECTIONS 49-1003, 49-1009 AND 49-1023 AND THE RULES ADOPTED UNDER THOSE SECTIONS, AS APPLICABLE. DOCUMENTATION OF THE RETRAINING MUST BE MAINTAINED IN ACCORDANCE WITH SUBSECTION G OF THIS SECTION.

E. THE DIRECTOR SHALL ESTABLISH THE DURATION FOR WHICH TRAINING IS VALID AND THE DURATION SHALL NOT BE LESS THAN ONE YEAR OR MORE THAN THREE YEARS.

F. THE TRAINING SHALL BE IN A FORMAT APPROVED BY THE DIRECTOR AND SHALL INCLUDE THE FOLLOWING:

1. FOR A CLASS A INDIVIDUAL, THE REQUIREMENTS ASSOCIATED WITH NOTIFICATION UNDER SECTION 49-1002, RELEASE DETECTION UNDER SECTION 49-1003, REPORTING REQUIREMENTS UNDER SECTION 49-1004, FINANCIAL RESPONSIBILITY UNDER SECTION 49-1006, CLOSURE UNDER SECTION 49-1008, UNDERGROUND STORAGE TANK PERFORMANCE UNDER SECTION 49-1009, DELIVERY PROHIBITION UNDER SECTION 49-1023 AND THIS SECTION AND THE RULES ADOPTED UNDER THOSE SECTIONS, AS APPLICABLE.

2. FOR A CLASS B INDIVIDUAL, THE REQUIREMENTS ASSOCIATED WITH RELEASE DETECTION UNDER SECTION 49-1003, REPORTING REQUIREMENTS UNDER SECTION 49-1004, UNDERGROUND STORAGE TANK PERFORMANCE UNDER SECTION 49-1009, DELIVERY PROHIBITION UNDER SECTION 49-1023, THE TRAINING REQUIREMENTS FOR A CLASS C INDIVIDUAL UNDER PARAGRAPH 3 AND THE RULES ADOPTED UNDER THOSE SECTIONS, AS APPLICABLE.

3. FOR A CLASS C INDIVIDUAL, INITIAL RESPONSE PROCEDURES TO AN ALARM OR OTHER INDICATION OF AN EMERGENCY CAUSED BY A RELEASE OR SUSPECTED RELEASE FROM AN UNDERGROUND STORAGE TANK, INCLUDING PROCEDURES FOR CONTACTING A CLASS A OR CLASS B INDIVIDUAL AND ANY EMERGENCY RESPONDER.

G. AN OWNER AND OPERATOR SHALL DOCUMENT THAT THE TRAINING REQUIREMENTS OF THIS SECTION HAVE BEEN MET FOR EACH CLASS A, CLASS B OR CLASS C INDIVIDUAL. TRAINING SHALL BE DOCUMENTED ON A FORM PRESCRIBED BY THE DIRECTOR. TRAINING RECORDS SHALL BE MAINTAINED FOR A PERIOD OF NOT LESS THAN THREE YEARS AFTER THE TRAINING IS COMPLETED AND SHALL BE AVAILABLE FOR INSPECTION BY THE DIRECTOR ON REQUEST.

H. THE DIRECTOR MAY ADOPT RULES TO IMPLEMENT THIS SECTION.

APPROVED BY THE GOVERNOR MAY 20, 2008.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MAY 20, 2008.