

## UST OPERATOR TRAINING

*Committee members will be invited to engage in a discussion of this subject at the meeting, and your ideas and feedback will be used to formulate plans for the Board to reach a decision on whether, when and how to impose this requirement on Missouri's UST owners/operators.*

### **Background**

In 2005 Congress passed a law, (the "Energy Policy Act," or EAct), which contained several provisions related to USTs. Missouri has implemented all but one of those provisions.

The "last piece" of the federal law relates to UST Operator Training. To implement this piece, the Missouri Legislature passed a state law (SB135) that requires the PSTIF Board of Trustees to "hold one or more public hearings to determine whether to create and fund" an UST operator training program. (This new state law is enclosed.)

*The PSTIF Board plans to make a decision at its meeting on July 25, 2012.*

### **What Is Required**

A synopsis of the federal requirement is enclosed. In essence, every UST facility must –

- Designate and properly train a **Class A Operator** – i.e., a person to have "primary responsibility to operate and maintain the UST system" and to "maintain compliance with regulatory requirements;"
- Designate and properly train a **Class B Operator** – i.e., a person to be responsible for "day-to-day aspects of operating, maintaining, and recordkeeping for the USTs;" and
- Document that it has trained every employee who is responsible for responding to alarms or other indications of emergencies would also have to receive training on what actions to take if there is a fuel spill or leak. (This generally includes every convenience store employee.)

EPA published "Guidance" in August 2007 that tells states how to meet this requirement. In November 2011, EPA proposed rules on this subject, which are in the "public comment" phase now. EPA's guidance and draft rules both say that a state must implement an UST Operator Training requirement in order to continue receiving its full share of federal money for its UST program. The DNR currently receives about \$1.7 million annually from EPA for its UST regulatory program.

## Other States

Approximately 35-40 states have established an UST Operator Training requirement; most have set August 12, 2012 as the deadline for compliance although a few – e.g., Iowa, Colorado, Oklahoma, South Carolina – had a deadline that has already passed. However, we are unaware of any state where all UST operators have been trained or where the training requirement is being actively enforced yet, and there are many unanswered questions about how states intend to enforce the requirement.

PSTIF and DNR staff have contacted the eight states adjacent to Missouri to learn what they have done or plan to do, and will verbally report on those contacts at Advisory Committee meeting. To date, no state has indicated it expects all of its facilities to be in compliance with its training requirement by the state's deadline.

## Issues To Discuss/Decide

### *1. Who would provide the training?*

Should Missouri review/approve and accept various training programs offered by one or more vendors? Or should we have a single training program or test?

Should Missouri accept other states' training programs, or in-house corporate training programs, as adequate?

### *2. How would the training be delivered?*

Some states are requiring operators to sit through classroom training, some are offering state-specific web-based training, some are reviewing/approving multiple vendors' training programs and allowing the UST operator to choose which he utilizes, and some simply require operators to take and pass a test.

### *3. What would it cost the PSTIF to provide this training, and is the cost worth the benefit?*

Other states' experiences indicate the cost for Class A/B training is typically in the range of \$100-150 per person. No one can accurately predict, however, how many Class A/B persons will have to be trained, because some companies designate the same person as their "Class A/B Operator" for multiple facilities, while some other UST owners want multiple persons to be trained as Class A/B Operators for a single UST facility.

When the bill was enacted last year, the PSTIF estimated its annual costs at \$213,000-\$361,000 the first two years, then \$161,000 - \$173,000 annually thereafter.

4. *What deadline would be set for UST operators to comply?*

The August 12, 2012 deadline set by EPA and used by many states is unrealistic for Missouri. How much time should Missouri owners/operators have to get their employees designated and trained?

5. *How would the training requirement be enforced? I.e., What should the consequence be for failing to have properly-trained and designated Class A/B persons, and/or for failing to provide Class C training to all employees?*

Currently, PSTIF-insured owners/operators have to demonstrate compliance with all other UST operating requirements *annually* in order to maintain their insurance coverage. Should this also be a requirement for maintaining PSTIF coverage? (EPA only requires states to check compliance with the operator training requirements once every three years, when the facility is inspected.) Who would enforce the requirement for non-PSTIF-insured facilities, and how often?

6. *All other UST rules apply to both the owner and the operator, but this one would apply only to operators. If an operator fails to comply with the training requirement, should the consequences be borne by the owner?*

This is particularly important if PSTIF coverage is terminated for failure to comply, and/or if the owner and operator are two different persons or companies.

7. *EPA envisions that states will require retraining if a UST facility is found to be significantly out of compliance with the UST operating rules. Who would make the decision to require retraining? When and how would the decision be made and enforced?*

No state has implemented this portion of EPA's requirements yet, so there is no experience to draw on from other states.

8. *Should the Board impose this new requirement on UST operators?*

Ultimately the Board will have to consider all these issues, and perhaps others, in its decision-making. Feedback from the Advisory Committee on how the Board can best analyze and evaluate these issues is welcome.

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**It is the Committee's prerogative whether to take a formal position on any of these issues.**

Excerpt from SB135

**319.130. 1. On or before April 1, 2012, the board of trustees of the petroleum storage tank insurance fund shall hold one or more public hearings to determine whether to create and fund an underground storage tank operator training program. The board shall consider at a minimum:**

- (1) Input from the department of natural resources, the department of agriculture, the board's advisory committee, and affected portions of the private sector;**
- (2) Relevant deadlines, time frames, costs, and benefits, including federal funding consequences for the state's underground storage tank regulatory program if such a training program is not implemented;**
- (3) Training programs already in existence in other states;**
- (4) Training programs already being used by tank owners and operators; and**
- (5) Such other factors as the board deems necessary and prudent.**

**2. If after completing the requirements of subsection 1 of this section, the board decides by majority vote to create and fund an underground storage tank operator training program, the training program shall at a minimum:**

- (1) Satisfy the federal requirements for such a program;**
- (2) Be developed in collaboration with the department of natural resources, the department of agriculture, the board's advisory committee, and affected portions of the private sector;**
- (3) Be offered at no cost to those who are required to participate;**
- (4) Specify standards, reporting, and documentation requirements; and**
- (5) Be established by rule.**

**3. The board may contract with one or more third parties to carry out the requirements of this section.**

**4. At any time after the board creates and funds the underground storage tank operator training program under subsection 2 of this section, the board may, by rule, modify or eliminate the program.**

**5. Any records created or maintained by the board as part of the underground**

**storage tank operator training program created herein shall be public records under chapter 610 and shall be made readily available to the department of natural resources.**

**6. Any rule or portion of a rule, as that term is defined in section 536.010, that is created under the authority delegated in this section shall become effective only if it complies with and is subject to all of the provisions of chapter 536 and, if applicable, section 536.028. This section and chapter 536 are nonseverable and if any of the powers vested with the general assembly under chapter 536 to review, to delay the effective date, or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after August 28, 2011, shall be invalid and void.**

319.132. 1. The board shall assess a surcharge on all petroleum products within this state which are enumerated by section 414.032. Except as specified by this section, such surcharge shall be administered pursuant to the provisions of subsections 1 to [3] 5 of section 414.102 and subsections 1 and 2 of section 414.152. Such surcharge shall be imposed upon such petroleum products within this state and shall be assessed on each transport load, or the equivalent of an average transport load if moved by other means. All revenue generated by the assessment of such surcharges shall be deposited to the credit of the special trust fund known as the petroleum storage tank insurance fund.