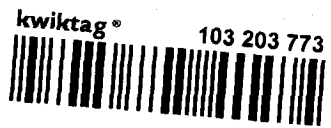


ENROLLMENT(S)



COUNCIL OF THE DISTRICT OF COLUMBIA

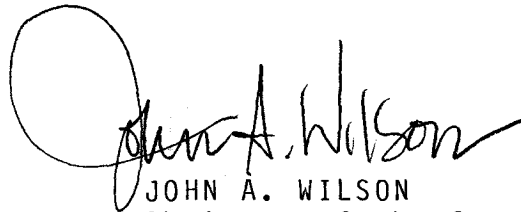
NOTICE

D.C. LAW 8-242

"District of Columbia Underground Storage
Tank Management Act of 1990".

Pursuant to Section 412 of the District of Columbia Self-Government and Governmental Reorganization Act, P. L. 93-198, "the Act", the Council of the District of Columbia adopted Bill No. 8-382 on first and second readings, December 4, 1990, and December 18, 1990, respectively. Following the signature of the Mayor on December 27, 1990, this legislation was assigned Act No. 8-325, published in the January 11, 1991, edition of the D.C. Register, (Vol. 38 page 344) and transmitted to Congress on January 15, 1991 for a 30-day review, in accordance with Section 602(c)(1) of the Act.

The Council of the District of Columbia hereby gives notice that the 30-day Congressional Review Period has expired, and therefore, cites this enactment as D.C. Law 8-242, effective March 8, 1991.



JOHN A. WILSON
Chairman of the Council

Dates Counted During the 30-day Congressional Review Period:

January 15,16,17,18,22,23,24,25,28,29,30,31
February 1,4,5,6,7,19,20,21,22,25,26,27,28
March 1,4,5,6,7

AN ACT

D.C. ACT 8-325

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

DEC. 27, 1990

To provide for the development and implementation of a comprehensive regulatory program for underground storage tanks to protect human health and the environment from soil, ground, and surface water contamination that results from leaking underground storage tanks, and to authorize the formation of an underground storage tank trust fund to ensure that corrective action will be initiated where a solvent owner or operator cannot be identified.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "District of Columbia Underground Storage Tank Management Act of 1990".

Sec. 2. Definitions.

For the purposes of this act, the term:

(1) "Facility" means 1 or more underground storage tanks at a given location.

(2) "Guarantor" means any person, other than the owner or operator, who provides evidence of financial responsibility for the underground storage tank facility.

(3) "Operator" means any person in control of, or having responsibility for, the daily operation of a facility, and includes:

(A) In the case of an underground storage tank in use on or after November 8, 1984, any person who owns an underground storage tank used for the storage, use, or dispensing of regulated substances; or

(B) In the case of any underground storage tank in use before November 8, 1984, but no longer in use on that date, any person who owned a tank immediately before discontinuation of its use.

(5) "Person" means any individual, partnership, corporation (including a government corporation), trust, firm, joint stock company, association, consortium, joint venture, commercial entity, State, municipality, commission,

New
section
6-1001

political subdivision of a State, the District of Columbia ("District") government, the United States government, a foreign government, or any interstate body.

(6) "Petroleum" means petroleum, including crude oil or any fraction of crude oil, that is liquid at standard conditions of temperature and pressure of 60 degrees Fahrenheit and 14.7 pounds per square inch absolute.

(7) "Regulated substance" means:

(A) Any substance defined in section 101(4) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, approved December 11, 1980 (94 Stat. 2767; 42 U.S.C. 9601(14)). The term "regulated substance" shall not include any substance regulated as a hazardous waste under subtitle C of title II of the Solid Waste Disposal Act, approved October 21, 1976 (90 Stat. 2806; 42 U.S.C. 6921 et seq.);

(B) Petroleum; or

(C) Any other substance designated by the Mayor in accordance with rules issued pursuant to section 13.

(8) "Release" means any spill, leak, emission, discharge, escape, leach, or disposal from an underground storage tank.

(9)(A) "Responsible party" means:

(i) An owner or operator as defined in this section;

(ii) A person who caused or contributed to a release from an underground storage tank system;

(iii) A person who caused a release as a result of transfer of a regulated substance to or from an underground storage tank system; or

(iv) A person found to be negligent, including any person who previously owned or operated an underground storage tank or facility, or who arranged for or agreed to the placement of an underground storage tank system by agreement or otherwise.

(B) If the owner and operator of a petroleum underground storage tank are separate persons, only the owner shall be required to demonstrate financial responsibility. Both the owner and operator shall be liable in the event of noncompliance with the requirements of 40 CFR 280.90 et seq.

(10) "Underground storage tank" means 1 or any combination of tanks, including underground pipes that connect tanks, that is used to contain an accumulation of regulated substances, and the volume of which (including the volume of the underground pipes connected thereto) is 10% or more beneath the surface of the ground. "Underground storage tank" does not mean a tank that is exempted in accordance with rules issued pursuant to section 13.

Sec. 3. Notification.

New
section
6-1002

(a) Within 120 days after the effective date of this act, the owner of an underground storage tank shall notify the Mayor of the existence of any tank and specify the age, size, type, location, and use of the tank and any other information required by the Mayor.

(b) Notice shall not be not required if the owner of an underground storage tank has:

(1) Taken the tank out of operation on or before January 1, 1974; or

(2) Previously filed a federal underground storage tank notification form with the Mayor.

(c) Any owner who brings into use an underground storage tank after the effective date of this act, shall notify the Mayor within 30 days of the existence of the tank as provided in subsection (a) of this section.

(d) Any owner of tanks located at different facilities shall file a separate notification form for each facility.

(e) An owner shall submit notice to the Mayor 30 days prior to a permanent removal from service or a change in the reported use, contents, or ownership of an underground storage tank.

(f) Beginning 30 days after the Mayor issues rules pursuant to section 13 regarding performance standards for new underground storage tanks, any person who deposits regulated substances into an underground storage tank or sells or leases an underground storage tank shall notify the owner of the tank of the notification requirement pursuant to section 3.

Sec. 4. Release notification requirements.

New
section
6-1003

(a) Any person who knows or has reason to know of a release from an underground storage tank shall notify the Mayor of the release.

(b) The notification shall consist of, if known, the name of the owner, operator, and any other responsible party, as well as the location, date, time, volume, and substance of the release. The notification shall include, if known, any immediate and ongoing action taken to mitigate the release, any subsequent hazardous conditions caused by the release, and an evaluation of any potential environmental hazard evident by the condition or disposition of the tank.

Sec. 5. Interim prohibition for installation.

New
section
6-1004

From the effective date of this act until the effective date of the rules issued pursuant to section 13 regarding performance standards for new underground storage tanks, no person may install an underground storage tank to store a regulated substance unless the tank, whether of single or

double wall construction, complies with the District of Columbia Fire Prevention Code and the new tank performance standards set forth in 40 CFR 280 et seq.

Sec. 6. Underground Storage Tank Trust Fund.

New
section
6-1005

(a) The District of Columbia Underground Storage Tank Trust Fund ("Fund") is hereby established as a nonlapsing, revolving fund, to be administered by the Mayor and used for the implementation of the District's regulatory program for underground storage tanks that contain regulated substances.

(b) The Fund shall be financed through tank registration fees, civil penalties, costs recovered, grants, contributions, and monies received as reimbursement pursuant to the provisions of this act.

(1) Interest earned on the Fund shall be credited to the Fund.

(2) If the monies in the Fund reach \$3,000,000, collection of the annual registration fee shall be suspended until the non-obligated balance falls to \$2,750,000, at which time the fee shall be reinstated. Funds in excess of \$3,000,000 at the end of the fiscal year shall remain in the Fund.

(c) The Fund shall be accounted for under procedures established pursuant to the District of Columbia Fund Account Act of 1980, effective June 14, 1980, (D.C. Law 3-70; D.C. Code, sec. 47-371 et seq.), and any other applicable law.

(d) Disbursements from the Fund may be made to undertake corrective action including site assessment, clean-up, and housing and relocation assistance. A disbursement may be made if there is a release of a regulated substance into the environment from an underground storage tank, based upon a priority system to be established by the Mayor, if the action is necessary to protect human health or the environment, and 1 or more of the following exist:

(1) No person can be found within 90 days or a shorter period, as may be necessary to protect human health or the environment, who is:

(A) An owner or operator;

(B) Subject to the corrective action rules issued pursuant to section 13; and

(C) Capable of proper implementation of the required corrective action.

(2) A situation exists that requires immediate action by the Mayor to protect human health and the environment.

(3) Corrective action costs at a facility exceed the amount of coverage required by the Mayor pursuant to the financial responsibility requirement imposed in the rules,

and expenditures from the Fund are necessary to ensure an effective corrective action.

(4) The responsible party for the tank has failed or refused to comply with an order issued by the Mayor that requires compliance with the corrective action rules.

(e) The District government's share of the cost of corrective action with respect to any release of regulated substances into the environment from an underground storage tank undertaken under a cooperative agreement with the United States Environmental Protection Agency shall be in accordance with the provisions section 9003 (h)(7)(B) of the Solid Waste Disposal Act, approved November 8, 1984 (98 Stat. 3279; 42 U.S.C. 6991b(h)(7)(B)).

(f) Disbursements from the Fund may be provided for administrative and operational costs incurred by the Mayor in the implementation of the provisions of the underground storage tank regulatory program.

(g) If costs are incurred by the District government for undertaking any corrective or enforcement action with respect to the release of a regulated substance from an underground storage tank, the responsible parties shall be jointly and severally liable to the District government for the costs. In addition to any other enforcement action, the Mayor may assess any reasonable costs of the correction of the condition and any related expenses as a tax against the property, carry the tax on the regular tax rolls, and collect the tax in the same manner as real estate taxes are collected. In determining the equities for seeking the recovery of costs under this subsection, the Mayor may consider the amount of financial responsibility required to be maintained under the rules issued pursuant to section 13.

(h) Nothing in this section shall be construed to make the District government responsible for corrective action costs to any person in excess of the monies in the Fund.

Sec. 7. Certification, registration, and licensing.

(a) The Mayor may require the licensing of any business and the certification of any individual who installs, removes, or tests underground storage tanks. The Mayor may, by rules issued in accordance with section 13, establish prerequisites for licensing and certification including minimum qualifications, proof of financial responsibility, application fees, and procedures.

(b) Any owner of an underground storage tank that contains a regulated substance shall register the tank with the Mayor on an annual basis pursuant to the rules issued and shall pay the required fee. A copy of the registration certificate shall be kept conspicuously displayed and available for inspection at any facility where the underground storage tank is located.

New
section
6-1006

(c) The annual registration fee shall be:

- (1) \$500 for an initial registration and \$200 for a renewal registration for a tank over 10,000 gallons; and
- (2) \$200 for an initial registration and \$100 for a renewal registration for a tank under 10,000 gallons.

(d) The Mayor may adjust fees in accordance with rules issued pursuant to section 13 beginning 2 years after the effective date of this act.

Sec. 8. Denial, suspension, or revocation.

The Mayor may suspend, revoke, or refuse to issue, renew, or restore a license or certificate issued under section 7 to protect the public health, safety, or welfare if the Mayor finds that the applicant or holder has:

(1) Failed to meet and maintain the standards established by this act or rules issued pursuant to this act;

(2) Submitted a false or fraudulent record, invoice, or report;

(3) Engaged in fraud or misrepresentation in the application for licensure or certification;

(4) Had a history of repeated violations; or

(5) Had his license or certification denied, revoked, or suspended in another state or jurisdiction.

New
section
6-1007

Sec. 9. Right of entry; inspections; analyses; corrective action.

(a) For the purpose of enforcing this act or any rule issued pursuant to this act, the Mayor or his or her designated representative may, at any reasonable time, upon the presentation of appropriate credentials to the owner, operator, or agent in charge:

(1) Enter without delay any place where an underground storage tank is or has been located;

(2) Inspect and obtain samples of any regulated substance contained in the tank;

(3) Inspect and copy any record, report, information, or test result required to be maintained pursuant to this act, rules issued pursuant to this act, or relevant to the operation of any underground storage tank; and

(4) Conduct monitoring or testing of any tank, associated equipment, contents, surrounding soils, air, surface water, or ground water.

(b) If the Mayor is denied access to any place where an underground storage tank is or has been located, the Mayor may apply to a court of competent jurisdiction for a search warrant.

(c) If a designated representative or employee of the Mayor obtains any sample prior to leaving the premises, he

New
section
6-1008

or she shall give the owner, operator, or agent in charge, a receipt that describes the sample obtained, and if requested, a portion of the sample equal in volume or weight to the portion obtained. If any analysis is made of a sample, a copy of the results of the analysis shall be furnished promptly to the owner, operator, or agent in charge.

(d) The Mayor may require the responsible party to provide any information or record with respect to any underground storage tank or system if the information or record is necessary to determine compliance with the rules or to conduct monitoring or testing of the tanks, associated equipment, contents, surrounding soils, air, or surface water or ground water. The Mayor may require the responsible party to take any necessary corrective action.

(e) After notification to the owner, operator, or agent in charge, the Mayor may take summary corrective action if a release of a regulated substance from an underground storage tank creates an imminent threat to human health or the environment. The Mayor shall provide an opportunity for review of the summary action, without prejudice to the authority of the Mayor to take and complete the action. The owner, operator, or agent in charge shall be notified by personal service or by registered mail to the last known address and by conspicuous posting on the property. If the owner, operator, or agent in charge is unknown or cannot be located, notice shall be provided by conspicuous posting on the property.

Sec. 10. Enforcement; Penalties.

(a) If the Mayor believes or has reason to believe that there is a violation or a threatened violation of this act or the rules issued pursuant to this act, the Mayor may give written notice of the violation or threatened violation to the owner, operator, or any other responsible party deemed appropriate by the Mayor, and may require the person to take the corrective measures the Mayor considers reasonable and necessary.

(1) The notice shall state the nature of violation or threatened violation, afford the right to a hearing, and allow a reasonable time for the performance of the necessary corrective measures, consistent with the likelihood for harm and the need to protect health, safety, life, property, and the environment.

(b) If a person fails to comply with a notice of violation issued pursuant to subsection (a) of this section within the time stated in the notice, the Mayor may issue a compliance order, a cease and desist order, or institute a court action for injunctive relief or recovery of any corrective action costs, as may be necessary to promptly and

New
section
6-1009

effectively terminate the violation or threatened violation, and protect life, property, or the environment.

(c) The Mayor may issue an immediate compliance order or seek a temporary restraining order, without first providing reasonable notice and an opportunity for a hearing as provided in subsections (a) and (b) of this section, to restrain any person from engaging in any unauthorized activity that immediately endangers or causes damage to public health or the environment.

(1) A compliance order or cease and desist order issued under this section shall become final unless any person named in the order requests a public hearing within 15 days after the order is served. If requested, the public hearing shall be conducted in compliance with the requirements of section 10 of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1208; D.C. Code, sec. 1-1509) ("APA").

(d) Any person who fails to comply with a compliance order or a cease and desist order issued pursuant to subsection (b) of this section shall be liable for a civil penalty of not more than \$25,000 for each day of noncompliance.

(e) Any owner who knowingly fails to notify or submits false information pursuant to section 3 shall be subject to a civil penalty not to exceed \$10,000 for each violation.

(f) Any person who fails to comply with any applicable rules issued pursuant to section 3 or with the requirements of section 5 shall be subject to a civil penalty not to exceed \$10,000 for each tank for each day of violation.

(g) A civil fine, penalty, or fee may be imposed as an alternative sanction for any infraction of the provisions of this act or the rules issued in accordance with this act, pursuant to titles I-III of the District of Columbia Civil Infraction Act of 1985, effective October 5, 1985 (D.C. Law 6-42; D.C. Code, sec. 6-2701 et seq. ("Civil Infractions Act")). Adjudication of any infraction shall be pursuant to titles I-III of the Civil Infractions Act.

(h) Any prosecution under this section shall be in the Superior Court of the District of Columbia ("Court") in the name of the District of Columbia, and shall be instituted by the Office of Corporation Counsel.

(i) In any action brought for civil penalties, damage, or equitable relief under this act, the statute of limitations shall not begin to toll until the injury is discovered or, with reasonable diligence, should have been discovered.

Sec. 11. Summary action.

(a) If the Mayor determines during or after an investigation, that the conduct of any business or

New
section
6-1010

individual who installs, removes, or tests an underground storage tank presents an imminent danger to the health or safety of the residents of the District, the Mayor may summarily suspend or restrict, without a hearing, the license of the business or certificate of the individual.

(b) At the time of the summary suspension or restriction, the Mayor shall provide the licensee or certificate holder with a written notice stating the action that is being taken, the basis for the action, and the right of the licensee or certificate holder to request a hearing.

(c) A licensee or certificate holder shall have the right to request a hearing within 72 hours after service of notice of the summary suspension or restriction of the license or certificate. The Mayor shall hold a hearing within 15 days of receipt of a timely request, and shall issue a decision within 15 days after the hearing.

(d) Any decision and order adverse to a licensee or certified holder shall be in writing and accompanied by findings of fact and conclusions of law. The Mayor shall provide a copy of the decision and order and findings of fact and conclusions of law to each party or his or her attorney of record.

(e) Any licensee or certificate holder aggrieved by a decision and order may file an appeal in accordance with section 11 of the APA (D.C. Code, sec. 1-1511).

Sec. 12. Citizens right of action.

(a) Any person aggrieved by a violation of any requirement of this act or rule issued pursuant to this act may commence a civil action on his or her own behalf against any person who is alleged to be in violation.

(b) The Court shall have jurisdiction in any action brought pursuant to subsection (a) of this section to enforce the requirement or to order any action necessary to correct the violation, and to impose any civil penalty provided for the violation.

(c) No action may be commenced under subsection (a) of this section until 30 days after the plaintiff has given notice of the violation to the Office of Corporation Counsel for the District of Columbia and to the alleged violator.

(d) No action may be commenced under subsection (a) of this section if the Mayor has commenced and is diligently prosecuting an action to obtain compliance with the requirement of this act or rule issued pursuant to this act concerned.

(e) The Court, in issuing any final order in any action brought pursuant to this section, may award costs of litigation, including reasonable attorney and expert witness fees, to the prevailing or substantially prevailing party if the court determines an award is appropriate.

New
section
6-1011

Sec. 13. Rules.

New
section
6-1012

(a) The Mayor shall, pursuant to title 1 of the APA (D.C. Code, sec. 1-1501 et seq.), issue and may revise, as appropriate, rules necessary to carry out the purposes and implement the provisions of this act, including rules regarding requirements for:

- (1) The maintenance of leak detection, prevention, inventory control, and tank testing systems;
- (2) The maintenance of records of any monitoring or leak detection system or an inventory control or tank testing system;
- (3) The reporting of releases and any corrective action taken;
- (4) The abandonment in place, closure, or removal of underground storage tanks to prevent future releases of regulated substances into the environment;
- (5) The maintenance of evidence of financial responsibility in order to take corrective action and compensate any 3rd party for bodily injury or property damage which shall conform to the federal financial responsibility requirements issued pursuant to section 9004 of the Solid Waste Disposal Act, approved November 8, 1984 (98 Stat. 3282; 42 USC 6991c);
- (6) The establishment of standards of performance for new underground storage tanks;
- (7) The taking of corrective action in response to a release from an underground storage tank that meets District and federal clean-up objectives;
- (8) Public participation in the development, revision, implementation, and enforcement of this act;
- (9) Standards and fees for the registration, installation, and abandonment of tanks; and
- (10) Tanks that are exempt from regulation.

(b) Until the Mayor, by rule, determines which tanks shall be exempt from regulation, the exemptions set forth in section 9001(1) of the Solid Waste Disposal Act (42 U.S.C. 6991(1)) shall be applicable.

Sec. 14. Conforming amendment

Section
6-930

Section 11(c) of the Water Pollution Control Act of 1984, effective March 16, 1985 (D.C. Law 5-188; D.C. Code, sec. 6-930(c)), is amended by adding the phrase "in conformity with the requirements of the District of Columbia Underground Storage Tank Management Act of 1990" after the word "leaks".

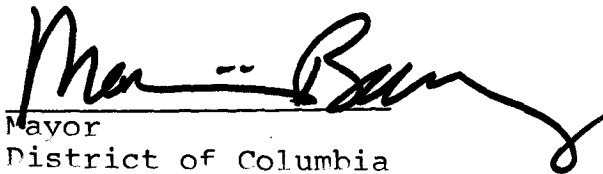
Sec. 15. Effective Date.

This act shall take effect after a 30-day period of Congressional review following approval by the Mayor (or in the event of veto by the Mayor, action by the Council of the

District of Columbia to override the veto) as provided in section 602(c)(1) of the District of Columbia Self-Government and Governmental Reorganization Act, approved December 24, 1973 (87 Stat. 813; D.C. Code, sec. 1-233(c)(1)), and publication in either the District of Columbia Register, the District of Columbia Statutes-at-Large, or the District of Columbia Municipal Regulations.



Chairman
Council of the District of Columbia



Mayor
District of Columbia

APPROVED: December 27, 1990



COUNCIL OF THE DISTRICT OF COLUMBIA
Council Period Eight

RECORD OF OFFICIAL COUNCIL VOTE

DOCKET NO: B8-382

Item on Consent Calendar

ACTION & DATE: Adopted First Reading, 12-04-90

VOICE VOTE: Approved

Recorded vote on request

Absent: all present

ROLL CALL VOTE: — RESULT _____ (/ / / /)

COUNCIL MEMBER	AYE	NAY	N.V.	A.B.	COUNCIL MEMBER	AYE	NAY	N.V.	A.B.	COUNCIL MEMBER	AYE	NAY	N.V.	A.B.
CHMN. CLARKE					MASON					THOMAS, SR.				
CRAWFORD					NATHANSON					WILSON				
JARVIS					RAY					WINTER				
KANE					ROLARK									
LIGHTFOOT					SMITH, JR.									

X — Indicates Vote A.B. — Absent N.V. — Present, not voting

CERTIFICATION RECORD

Russell G. Smith
 Secretary to the Council

21 December 1990
 Date

Item on Consent Calendar

ACTION & DATE: Adopted Final Reading, 12-18-90

VOICE VOTE: Approved

Recorded vote on request

Absent: Wilson

ROLL CALL VOTE: — RESULT _____ (/ / / /)

COUNCIL MEMBER	AYE	NAY	N.V.	A.B.	COUNCIL MEMBER	AYE	NAY	N.V.	A.B.	COUNCIL MEMBER	AYE	NAY	N.V.	A.B.
CHMN. CLARKE					MASON					THOMAS, SR.				
CRAWFORD					NATHANSON					WILSON				
JARVIS					RAY					WINTER				
KANE					ROLARK									
LIGHTFOOT					SMITH, JR.									

X — Indicates Vote A.B. — Absent N.V. — Present, not voting

CERTIFICATION RECORD

Russell G. Smith
 Secretary to the Council

21 December 1990
 Date

Item on Consent Calendar

ACTION & DATE: _____

VOICE VOTE: _____

Recorded vote on request

Absent: _____

ROLL CALL VOTE: — RESULT _____ (/ / / /)

COUNCIL MEMBER	AYE	NAY	N.V.	A.B.	COUNCIL MEMBER	AYE	NAY	N.V.	A.B.	COUNCIL MEMBER	AYE	NAY	N.V.	A.B.
CHMN. CLARKE					MASON					THOMAS, SR.				
CRAWFORD					NATHANSON					WILSON				
JARVIS					RAY					WINTER				
KANE					ROLARK									
LIGHTFOOT					SMITH, JR.									

X — Indicates Vote A.B. — Absent N.V. — Present, not voting

CERTIFICATION RECORD

 Secretary to the Council

 Date