

**The Code of Alabama 1975**

Title 22 HEALTH, MENTAL HEALTH, AND ENVIRONMENTAL CONTROL.

Chapter 36 ALABAMA UNDERGROUND STORAGE TANK AND WELLHEAD PROTECTION ACT.

**Section 22-36-1**

**Short title.**

This chapter may be cited as the "Alabama Underground Storage Tank and Wellhead Protection Act of 1988."

*(Acts 1988, No. 88-537, p. 823, §1.)*

**Section 22-36-2**

**Definitions.**

For the purposes of this chapter, unless otherwise indicated, the following terms shall have the meanings respectively ascribed to them by this section:

- (1) COMMISSION. The Alabama Environmental Management Commission.
- (2) DEPARTMENT. The Alabama Department of Environmental Management.
- (3) DIRECTOR. The Director of the Alabama Department of Environmental Management.
- (4) OPERATOR. Any person in control of, or having responsibility for, the daily operation of an underground storage tank.
- (5) OWNER OF AN UNDERGROUND STORAGE TANK:
  - a. In the case of an underground storage tank in use on November 8, 1984 or brought into use after that date, any person who owns an underground storage tank used for the storage, use, or dispensing of regulated substances, and
  - b. In the case of any underground storage tank in use before November 8, 1984 but no longer in use on that date, the present owner of the tank and any person who owned such tank immediately before the discontinuation of its use.
- (6) PERSON. Any natural person, any firm, association, partnership, corporation, trust, the state and any agency of the state, governmental entity, the United States and any agency of the United States, a consortium, a joint venture, a commercial entity and any other legal entity.
- (7) PETROLEUM. Crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute).

(8) POLLUTION. The presence or discharge of regulated substances in or on the land or in the water of the state.

(9) REGULATED SUBSTANCE:

a. Any substance identified as hazardous in Section 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. §9601 through 9675). This shall not include any substance regulated as a hazardous waste under the Alabama Hazardous Wastes Management Act of 1978 as amended, Section 22-30-1 et seq. or the regulations promulgated under such act; and

b. Petroleum.

(10) RELEASE. Any spilling, leaking, emitting, discharging, escaping, leaching, or disposing from an underground storage tank into waters or subsurface soils.

(11) UNDERGROUND STORAGE TANK. Any one or combination of tanks (including underground pipes connected thereto) used to contain an accumulation of regulated substances, and the volume of which (including the volume of the underground pipes connected thereto) is 10 percent or more beneath the surface of the ground. Such term does not include any:

a. Farm or residential tank of 1,100 gallons or less capacity used for storing motor fuel for noncommercial purposes;

b. Tank used for storing heating oil for consumptive use on the premises where stored;

c. Septic tank;

d. Pipeline facility (including gathering lines) regulated under:

1. The Natural Gas Pipeline Safety chapter of 1968 (49 U.S.C. App. 1671 et seq.),

2. The Hazardous Liquid Pipeline Safety chapter of 1979 (49 U.S.C. App. 2001 et seq.), or

3. State laws comparable to the provisions of law in subparagraph 1. or 2. above;

e. Surface impoundment, pit, pond, or lagoon;

f. Stormwater or wastewater collection system;

g. Flow-through process tank;

h. Liquid trap or associated gathering lines directly related to oil or gas production and gathering operations;

i. Storage tank situated in an underground area (such as a basement, cellar, mineworking, drift, shaft, or tunnel) if the storage tank is situated upon or above the surface of the floor;

j. Other tanks exempted by the administrator of the United States Environmental Protection Agency; and

k. Piping connected to any of the above exemptions.

(12) WATERS. All waters of any river, stream, watercourse, pond, lake, coastal, ground or surface water, wholly or partially within the state, natural or artificial. This does not include waters which are entirely confined and retained completely upon the property of a single individual, partnership or corporation unless such waters are used in interstate commerce.

(13) WELLHEAD PROTECTION AREA. The surface and subsurface area surrounding a water well or wellfield, supplying a public water system, through which contaminants are reasonably likely to move toward and reach such water well or well field.

*(Acts 1988, No. 88-537, p. 823, §2.)*

### **Section 22-36-3**

#### **Rules and regulations governing underground storage tanks.**

The department, acting through the commission, is authorized to promulgate rules and regulations governing underground storage tanks and is authorized to seek the approval of the United States Environmental Protection Agency to operate the state underground storage tank program in lieu of the federal program. In addition to specific authorities provided by this chapter, the department is authorized, acting through the commission, to adopt any rules or regulations that are mandatory requirements for approval of the State Underground Storage Tank Regulatory Program by the United States Environmental Protection Agency. Adoption of rules and regulations governing underground storage tanks shall not occur prior to adoption by the United States Environmental Protection Agency of regulations establishing the federal program.

(1) The department, acting through the commission, is authorized to promulgate rules and regulations relating to underground storage tanks which may:

- a. Establish construction and installation standards;
- b. Establish performance standards;
- c. Require persons owning or operating underground storage tanks to achieve and maintain compliance with this chapter and rules and regulations of the department, promulgated under this chapter;
- d. Require the owner or operator of an underground storage tank to provide to the department information concerning the underground storage tank which may include, but is not limited to the name of the owner, the name of the operator, the location, and description of the facility at which the underground storage tank is located, regulated substances and quantities of regulated substances used or stored, and other information required to assess compliance with this chapter or regulations promulgated under the authority of this chapter.
- e. Establish abandonment and closure standards for underground storage tanks and require owners to report the abandonment and closure of underground storage tanks;
- f. Require the owner or operator of an underground storage tank to perform tests, to install release detection devices, where appropriate to install cathodic protection, and perform monitoring and to report

the results of these activities to the department or maintain records of these activities which will be made available for inspection at all reasonable times.

(2) The department, acting through the commission, is authorized to promulgate rules and regulations which:

- a. Require the owner or operator of an underground storage tank which the director determines has released a regulated substance to perform investigations to determine the extent of pollution;
- b. Require the temporary or permanent cessation of the operation of an underground storage tank, modifications, and immediate removal or control of any regulated substance that is found to be causing pollution when such cessation, removal or control is determined to be required by the director;
- c. Require the owner or operator responsible for pollution to take corrective action to protect human health and the environment and maintain beneficial uses of affected waters.
- d. Require the owner or operator responsible for polluting a drinking water source beyond applicable drinking water standards or where no established drinking water standard exists, such standard as the director shall determine, to provide an alternate or temporary drinking water source to any person deprived of drinking water;
- e. Require any owner or operator of an underground storage tank which has released any regulated substance and who has knowledge that a release has occurred to make a timely report of the pollution or release and any resulting corrective action to the department.

(3) The department, acting through the commission, is authorized to promulgate rules and regulations requiring the owner or operator of an underground storage tank to maintain evidence of financial responsibility for taking corrective action, providing alternate or temporary drinking water, and compensating third parties for bodily injury and property damages resulting from groundwater pollution caused by the operation of an underground storage tank only when such a requirement is mandatory for delegation of authority to the department to manage a Federal Regulatory Program and only to the extent required for delegation of that Federal Regulatory Program.

*(Acts 1988, No. 88-537, p. 823, §3.)*

#### **Section 22-36-4**

**Information to be furnished by owner upon request of department; owner to permit access to records and entry and inspection of facilities.**

For the purposes of determining compliance with regulations or detecting pollution, any owner or operator of an underground storage tank shall upon request of a duly authorized representative of the department:

- (1) Furnish engineering, technical, and other information relative to such underground storage tank and installation;
- (2) Furnish information describing regulated substances stored in an underground storage tank;

- (3) Permit the representative, at all reasonable times, access to all records concerning the storage of regulated substances and permit the representative to copy said records; and
- (4) Permit the representative to enter, at all reasonable times, property and buildings where an underground storage tank is located and allow the representative to inspect facilities and equipment and to conduct monitoring and sampling.

*(Acts 1988, No. 88-537, p. 823, §4.)*

**Section 22-36-5**

**Tank regulation fee.**

To provide revenue for regulation, the department shall, beginning October 1, 1988, collect a tank regulation fee of not less than \$15.00 and not more than \$30.00 per regulated tank per year. This fee shall be collected in lieu of a permit or certification fee as provided by Section 22-22A-5.

*(Acts 1988, No. 88-537, p. 823, §5.)*

**Section 22-36-6**

**Expenditure of funds from leaking Underground Storage Tank Trust Fund; investigative and corrective powers in regard to administration of funds; liability of owner or operator for costs.**

- (a) The department shall be authorized to administer the expenditure of any funds made available from the Leaking Underground Storage Tank Trust Fund established by the Superfund Amendments and Reauthorization Act of 1986.
- (b) To enable the department to administer the Leaking Underground Storage Tank Trust Fund, or state fund, where applicable, the department:
  - (1) Shall have authority to take investigative and corrective action with respect to releases of petroleum from underground storage tanks;
  - (2) Shall have the authority to expend any state funds which may be made available for investigative and corrective action or federal funds which are authorized for state use under 42 U.S.C. §6991b.(h) for investigative or corrective action involving releases of petroleum from underground storage tanks. Prior to expenditure of funds, except when a delayed response will result in an imminent and substantial endangerment to human health or the environment, the department shall attempt to locate the person responsible for the release and shall attempt to require the responsible person, if the responsible person is solvent, to perform the investigation and to take corrective action. If no responsible person can be found within 90 days or such shorter period as may be necessary to protect human health and the environment, the department may proceed with expenditure of federal funds for investigative and corrective actions.
  - (3) Is authorized to enter private property for the purpose of taking investigative and corrective action with respect to releases of petroleum from underground storage tanks; and

(4) May authorize persons, who have been awarded contracts by the department to take investigative and corrective actions with respect to releases of petroleum from underground storage tanks, to enter private property for the purpose of taking investigative and corrective action.

(c) Whenever costs have been incurred by the department for taking corrective action or enforcement action with respect to the release of petroleum from an underground storage tank, the owner or operator of the underground storage tank shall be liable to the department for such costs. The department shall seek recovery of any federal funds expended only to the extent required by the federal law and regulations providing the funds and shall seek recovery of state funds expended unless recovery of these funds were not intended by the funding authority.

*(Acts 1988, No. 88-537, p. 823, §6.)*

### **Section 22-36-7**

#### **Rules and regulations to establish and protect wellhead areas.**

The department, acting through the commission, is authorized to promulgate rules and regulations to establish and protect wellhead areas, associated with public water supply systems, from contaminants which may have any adverse effect on the health of persons. The development and implementation of rules and regulations shall be in accordance with the United States Environmental Protection Agency guidelines, policies, and regulations relative to wellhead protection areas and shall not be more stringent than the United States Environmental Protection Agency program.

*(Acts 1988, No. 88-537, p. 823, §7.)*

### **Section 22-36-8**

#### **Availability to public of records, reports, or information obtained under chapter.**

Any records, reports, or information obtained under this chapter shall be available to the public; except that upon a showing satisfactory to the department by any person that records, reports or information, or a particular part thereof to which the department has access under this section if made public, would divulge production or sales figures or methods, processes or production unique to such person or would otherwise tend to affect adversely the competitive position of such person by revealing trade secrets, the department shall consider such record, report, or information or particular portion thereof, confidential. Nothing in this section shall be construed to prevent disclosures of such report, record, or information to federal or state representatives as necessary for purposes of administration of any federal or state laws or when relevant to proceedings under this chapter. Information concerning the presence or concentration of substances in waters shall not be considered confidential by the department.

*(Acts 1988, No. 88-537, p. 823, §8.)*

### **Section 22-36-9**

#### **Penalties.**

(a) Any person who willfully violates any provision of this chapter, or rule, regulation or standard adopted under this chapter, shall be punished by a fine of no more than \$25,000.00 per day of violation or by imprisonment for not more than one year, or by both. If the conviction is for a violation committed after a first conviction of such person under this subsection, punishment shall be by a fine of no more than \$50,000.00 per day of violation or by imprisonment for not more than two years, or by both.

(b) Any person who knowingly makes any false statement, representation or certification in any application record, report, plan or other document filed or required to be filed, or required to be maintained under this chapter, or who falsifies, tampers with or knowingly renders inaccurate any monitoring device or method required to be maintained under this chapter shall, upon conviction, be punished by a fine of not more than \$10,000.00 or by imprisonment for not more than six months, or by both.

*(Acts 1988, No. 88-537, p. 823, §10.)*

### **Section 22-36-10**

#### **Rules and regulations.**

Rules and regulations pertaining to this chapter shall be adopted in accordance with applicable state and federal laws.

*(Acts 1988, No. 88-537, p. 823, §11.)*