

## Underground Storage Tank Legislation HOUSE BILL 2425 July 2008

On May 20, 2008, Gov. Janet Napolitano signed into law House Bill (HB) 2425, a significant piece of underground storage tank (UST) legislation. HB 2425 is effective on Sept. 26, 2008, and brings substantive changes to the Arizona Department of Environmental Quality (ADEQ) and our customers. The new statutory requirements are based on the federal UST requirements of the Energy Policy Act of 2005.

### **DELIVERY PROHIBITION**

Beginning Jan. 1, 2009, ADEQ will have the authority to issue a “stop-use” order and attach a “stop-use” tag to the fill pipe of any UST that is significantly out of compliance with release detection or other operational requirements and operation of the UST may result in a continued or new release. After ADEQ places a “stop-use” tag on a tank, the UST owner is required to empty the tank immediately and fulfill other temporary closure requirements. The owner must maintain the condition of the “stop-use” tag so that a product deliverer can easily determine that a regulated substance is not to be placed into the UST. The UST owner is responsible for ensuring compliance with a “stop-use” order and is subject to enforcement and potential penalties for not complying with the order or not maintaining the “stop-use” tag.

ADEQ will post the facility name, address and specific USTs on the department’s Web site to inform product deliverers of the “stop-use” order ([www.azdeq.gov](http://www.azdeq.gov)). A product deliverer who ignores a visible “stop-use” tag on a UST also may be subject to enforcement with penalties.

Once the UST owner provides adequate compliance documentation to ADEQ, ADEQ will move quickly to terminate the “stop-use” order and then allow the “stop-use” tag to be removed.

### **SECONDARY CONTAINMENT**

**New UST Systems:** All UST systems installed on or after Jan. 1, 2009, must have secondary containment and interstitial monitoring. These requirements do not apply to any UST system installed prior to that date.

**Current UST Systems:** Beginning Jan. 1, 2009, if a person replaces 25 percent or more of the piping between the tank and the dispenser, all of that UST system’s connected piping that routinely conveys a regulated substance under pressure must be fitted with secondary containment and interstitial monitoring.

**Under-Dispenser Containment:** If a UST owner installs or replaces a motor fuel dispenser that connects to a UST on or after Jan. 1, 2009, under-dispenser containment must be installed.

### **OPERATOR TRAINING**

Beginning Aug. 9, 2012, UST owners must designate Class A, Class B, and Class C operators for all of their active USTs. Each operator class has specific training requirements:

#### **Class A Operator**

This class of operator must be knowledgeable in all administrative and technical requirements of UST release detection and release prevention, including notification, release detection, reporting, financial responsibility, UST closure, delivery prohibition, other UST performance standards, and the training requirements for Class B and Class C operators.

#### **Class B Operator**

This class of operator must be knowledgeable about specific requirements, including release detection, reporting, delivery prohibition, other UST performance standards, and the training requirements for Class C operators.

#### **Class C Operator**

This class of operator must be knowledgeable about initial response procedures associated with an emergency caused by a UST release or suspected release, including procedures for contacting Class A or Class B operators and any emergency responder.

A Class A operator may train both Class B and Class C operators; and a Class B operator may train Class C operators. A UST owner may designate Class A and Class B operators for USTs at more than one

facility. There must be at least one Class C operator designated and on-site during normal operating hours at “manned” facilities. A UST owner may designate one or more persons as Class A, Class B, and Class C operators for the UST(s) at any one facility.

Training is valid for at least one year and not more than three years. After completion of training, documentation of that training must be maintained for at least three years. This documentation must be available for ADEQ to inspect.

ADEQ will be developing rules with stakeholder input to address several issues, including types of training allowed, trainer qualifications, and format of the required training documentation.

## **FOR MORE INFORMATION ABOUT HB 2425**

HB 2425 can be viewed on the Secretary of State’s Web site:

[www.azsos.gov/public\\_services/Chapter\\_Laws/2008/48th\\_Legislature\\_2nd\\_Regular\\_Session/CH\\_218.pdf](http://www.azsos.gov/public_services/Chapter_Laws/2008/48th_Legislature_2nd_Regular_Session/CH_218.pdf)

If you would like more information, please contact:

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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)

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

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

4 49-1001. Definitions

5 In this chapter, unless the context otherwise requires:

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

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

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

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

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

19 ~~5-~~ 6. "Fiduciary" means:

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

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

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

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

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

31 ~~6-~~ 7. "Guarantor" means a person, other than an owner or operator,  
32 who provides evidence of financial responsibility for an owner or operator  
33 pursuant to this chapter.

34 ~~7-~~ 8. "Motor fuel" means petroleum or a petroleum based substance  
35 that is motor gasoline, aviation gasoline, number 1 or number 2 diesel fuel  
36 or any grade of oxygenated gasoline typically used in the operation of a  
37 motor engine.

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

43 ~~8-~~ 10. "Occurrence" means an incident or accident, including  
44 continuous or repeated exposure to conditions, which results in a release  
45 from an underground storage tank.

1           ~~9-~~ 11. "Operator" means a person in control of, or having  
2 responsibility for, the day-to-day operation of an underground storage tank.

3           ~~10-~~ 12. "Out of operation" means having been closed in accordance with  
4 all applicable fire codes and other statutory and regulatory requirements for  
5 closure in effect on the date that closure was accomplished.

6           ~~11-~~ 13. "Person" means an individual, trust, firm, joint stock  
7 company, corporation, joint venture, partnership, association, consortium,  
8 state, municipality, interstate body, commission, political subdivision of a  
9 state and the United States government.

10          ~~12-~~ 14. "Petroleum" means petroleum, including crude oil or any  
11 fraction of crude oil, which is liquid at sixty degrees Fahrenheit and 14.7  
12 pounds per square inch absolute, and petroleum based substances comprised of  
13 a complex blend of hydrocarbons derived from crude oil through processes of  
14 separation, conversion, upgrading and finishing, such as motor fuels,  
15 residual fuel oils, lubricants, jet fuels, distillate fuel oils, petroleum  
16 solvents and used oils.

17          ~~13-~~ 15. "Political subdivision" means a county, city, town or other  
18 taxing district other than the state that is authorized to take property by  
19 eminent domain.

20          ~~14-~~ 16. "Regulated substance" means:

21           (a) Petroleum.

22           (b) A substance specified in the comprehensive environmental response,  
23 compensation, and liability act of 1980 (P.L. 96-510; 94 Stat. 2767; 42  
24 United States Code section 9601(14)) but not including a substance regulated  
25 as a hazardous waste under the solid waste disposal act of 1984 (P.L. 98-616;  
26 98 Stat. 3221; 42 United States Code section 6921).

27          ~~15-~~ 17. "Release" means a spill, leak, emission, discharge, escape,  
28 leach or disposal of a regulated substance from an underground storage tank  
29 into groundwater, surface water or soils.

30          ~~16-~~ 18. "Suspected release" means any of the following:

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

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

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

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

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

6 ~~17-~~ 19. "Tank" means a stationary device constructed of wood,  
7 concrete, steel, plastic or other nonearthen materials and used to contain  
8 regulated substances.

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

12 ~~18-~~ 21. "Underground storage tank" means a tank or combination of  
13 tanks and underground pipes and impact valves connected to tanks being used  
14 or having been used to contain regulated substances and which has at least  
15 ten per cent of the total volume of the tank and underground portions of  
16 pipes connected to the tank underground. Underground storage tank does not  
17 mean any of the following:

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

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

22 (c) A septic tank.

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

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

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

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

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

33 (g) A storm water or wastewater collection system.

34 (h) A flow-through process tank.

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

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

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

1           Sec. 2. Section 49-1002, Arizona Revised Statutes, is amended to read:  
2           49-1002. Notification requirements; exemptions

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

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

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

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

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

24           F. An owner who brings an underground storage tank into operation  
25 shall meet the notification requirements of this section within thirty days  
26 after the tank is brought into operation. AN OWNER WHO BRINGS A NEW PIPING  
27 COMPONENT OR UNDER-DISPENSER CONTAINMENT INTO OPERATION ON OR AFTER JANUARY  
28 1, 2009 SHALL MEET THE NOTIFICATION REQUIREMENTS OF THIS SECTION WITHIN  
29 THIRTY DAYS AFTER THE NEW PIPING COMPONENT OR UNDER-DISPENSER CONTAINMENT IS  
30 BROUGHT INTO OPERATION.

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

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

35           Sec. 3. Section 49-1003, Arizona Revised Statutes, is amended to read:  
36           49-1003. Detection of releases; record keeping requirements

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

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

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

6 Sec. 4. Section 49-1009, Arizona Revised Statutes, is amended to read:  
7 49-1009. Tank performance standards

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

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

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

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

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

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

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

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

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

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

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

6 Sec. 5. Section 49-1013, Arizona Revised Statutes, is amended to read:  
7 49-1013. Enforcement and penalties

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

21 B. IF THE DIRECTOR ISSUES A STOP USE ORDER PURSUANT TO SECTION  
22 49-1023, THE OWNER OR OPERATOR MAY REQUEST A HEARING WITHIN THIRTY DAYS AFTER  
23 THE ISSUANCE OF THE STOP USE ORDER. A HEARING SHALL BE CONDUCTED PURSUANT TO  
24 TITLE 41, CHAPTER 6, ARTICLE 10. EXCEPT AS PROVIDED IN SECTION 41-1092.08,  
25 SUBSECTION H, THE DIRECTOR'S FINAL DECISION MAY BE APPEALED BY THE OWNER OR  
26 OPERATOR TO THE SUPERIOR COURT PURSUANT TO TITLE 12, CHAPTER 7, ARTICLE 6.

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

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

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

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

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

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

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

11           Sec. 6. Section 49-1021, Arizona Revised Statutes, is amended to read:  
12           49-1021. Applicability

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

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

21           49-1023. Delivery prohibition; stop use tag; definitions

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

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

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

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

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

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

1 E. AN OWNER OR OPERATOR SHALL NOT BRING AN UNDERGROUND STORAGE TANK  
2 THAT HAS RECEIVED A STOP USE TAG PURSUANT TO SUBSECTION B OF THIS SECTION  
3 BACK INTO OPERATION UNTIL THE OWNER OR OPERATOR HAS DEMONSTRATED TO THE  
4 DIRECTOR THAT THE UNDERGROUND STORAGE TANK MEETS THE REQUIREMENTS OF SECTIONS  
5 49-1003 AND 49-1009 AND THE RULES ADOPTED PURSUANT TO THOSE SECTIONS, AS  
6 APPLICABLE, AND THE OWNER OR OPERATOR HAS RECEIVED WRITTEN CONFIRMATION FROM  
7 THE DIRECTOR THAT THE REQUIREMENTS OF SECTIONS 49-1003 AND 49-1009 AND THE  
8 RULES ADOPTED PURSUANT TO THOSE SECTIONS, AS APPLICABLE, HAVE BEEN MET. THE  
9 DIRECTOR SHALL PROVIDE WRITTEN CONFIRMATION AS SOON AS PRACTICABLE, BUT NOT  
10 LATER THAN FIVE BUSINESS DAYS, TO THE OWNER OR OPERATOR THAT THE REQUIREMENTS  
11 OF SECTIONS 49-1003 AND 49-1009 AND THE RULES ADOPTED PURSUANT TO THOSE  
12 SECTIONS HAVE BEEN MET.

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

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

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

22 I. FOR THE PURPOSES OF THIS SECTION:

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

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

33 Sec. 8. Section 49-1031, Arizona Revised Statutes, is amended to read:  
34 49-1031. Imposition of tax

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

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

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

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

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

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

29 E. Any person who purchases motor vehicle fuel as defined in section  
30 28-101, aviation fuel as defined in section 28-101, or diesel as defined in  
31 section 28-6001, subsection B for which the tax imposed by this section has  
32 been paid and which fuel has been placed in a tank which is not subject to  
33 the underground storage tank tax imposed by this section and from which no  
34 further bulk distribution of the fuel will be made, may claim a refund of the  
35 tax levied. Refunds shall be submitted on forms prescribed by the director  
36 and shall be supported by substantiation for the amount of the tax paid.

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

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

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

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

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

24 Sec. 9. Section 49-1081, Arizona Revised Statutes, is amended to read:  
25 49-1081. Definitions

26 In this article, unless the context otherwise requires:

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

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

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

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

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

7       ~~2-~~ 6. "Tank service" means installation, retrofitting, tank tightness  
8 testing, closure, cathodic protection or interior tank lining of an  
9 underground storage tank or a part of an underground storage tank.

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

12       49-1082. Certification of underground storage tank service  
13 providers; rules; suspension or revocation of  
14 certification

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

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

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

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

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

3           49-1083. Designation; training; record keeping requirements;  
4                                   rules

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

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

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

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

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

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

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

36           2. FOR A CLASS B INDIVIDUAL, THE REQUIREMENTS ASSOCIATED WITH RELEASE  
37 DETECTION UNDER SECTION 49-1003, REPORTING REQUIREMENTS UNDER SECTION  
38 49-1004, UNDERGROUND STORAGE TANK PERFORMANCE UNDER SECTION 49-1009, DELIVERY  
39 PROHIBITION UNDER SECTION 49-1023, THE TRAINING REQUIREMENTS FOR A CLASS C  
40 INDIVIDUAL UNDER PARAGRAPH 3 AND THE RULES ADOPTED UNDER THOSE SECTIONS, AS  
41 APPLICABLE.

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

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

7           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.