

COLORADO DEPARTMENT OF REGULATORY AGENCIES
OFFICE OF POLICY AND RESEARCH

COLORADO UNDERGROUND STORAGE TANK INSTALLERS

1995 SUNSET REVIEW



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1995-1996 Members***

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June 30, 1995

The Honorable Richard Mutzebaugh, Chair
Joint Legislative Sunrise/Sunset Review Committee
State Capitol Building
Denver, Colorado 80203

Dear Senator Mutzebaugh:

The Colorado Department of Regulatory Agencies has completed the evaluation of the regulation of **underground storage tank installers**. We are pleased to submit this written report, which will be the basis for my office's oral testimony before the Joint Legislative Sunrise/Sunset Review Committee. The report is submitted pursuant to Section 24-34-104 (8)(a), of the Colorado Revised Statutes, which states in part:

"The Department of Regulatory Agencies shall conduct an analysis of the performance of each division, board or agency or each function scheduled for termination under this section..."

The Department of Regulatory Agencies shall submit a report and such supporting materials as may be requested, to the Sunrise and Sunset Review Committee created by joint rule of the Senate and House of Representatives, no later than July 1 of the year preceding the date established for termination..."

The report discusses the question of whether there is a need for the regulation provided under article 20 of title 8, C.R.S. The report also discusses the effectiveness of the division and staff in carrying out the intention of the statutes and makes recommendations for statutory and administrative changes in the event this regulatory program is continued by the General Assembly.

Sincerely,

Joseph A. Garcia
Executive Director

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EXECUTIVE SUMMARY

The Department of Regulatory Agencies has concluded its Sunset Review of the licensing of persons installing Underground Storage Tanks (UST), and recommends allowing the program to sunset as scheduled. In place of the licensing, the report recommends registration of UST installation contractors.

The State Inspector of Oils (SIO), in the Colorado Department of Labor and Employment (DOLE) is charged with developing a licensing program for people engaged in the business of installing UST. The most common application of this business is the installation of petroleum fuel tanks at service stations.

In the late 1970s and early 1980s the country was plagued by petroleum products leaking from aging UST. Congress directed the Environmental Protection Agency (EPA), to develop standards for the design, construction, installation, and leak prevention of replacement UST. All UST in the United States are to be replaced or upgraded to meet EPA standards by 1998. Colorado subsequently passed legislation to implement EPA standards.

Overall, the sunset review found the state and federal efforts to be very successful in the reduction of environmental damage caused by leaking UST. Environmental cleanups have increased, due to the discovery of previously undetected contamination.

The licensing of UST installers is the least significant component of a complex, long-term regulatory program. New tank design standards, leak detection equipment, corrosion prevention, and inspections, combined with the mandated replacement or upgrading of tanks, play a major role in leak prevention.

The sunset review found the UST installer license to be easily obtained. Formal education or practical experience is not required for licensing. Only nine applicants have failed the licensing examination since the program was implemented. A low failure rate on an examination does not necessarily mean the test is invalid. However, it does raise a reasonable doubt with respect to the ability of the examination process to effectively screen incompetent or unethical installers.

There is sufficient state and federal oversight of UST to protect the public without the installer licensing program. Inspectors from DOLE are required to approve plans for the installation of new tanks and inspect tanks prior to burial. The permitting and inspection program in DOLE is sufficient to protect the public without an installer licensing program. There is no evidence that states with strong inspection programs in place of an installer license have a higher incidence of leaks resulting from improperly installed UST. The substitution of a registration program will serve as a mechanism for DOLE prevent unethical individuals from continuing to install UST.

BACKGROUND

The Underground Storage Tank (UST) Installer Licensing program, operated under the authority of the State Inspector of Oils (SIO) in the Colorado Department of Labor and Employment (DOLE) shall be terminated July 1, 1996 unless continued by the General Assembly. During the year prior to this date it is the responsibility of the Department of Regulatory Agencies (DORA) to conduct an analysis of the program in compliance with 24-34-104, C.R.S.

The UST licensing program regulates persons installing, repairing and upgrading underground storage tank systems which contain regulated substances in order to assure UST systems are being installed, repaired or upgraded in a manner which will prevent leaking and protect the public health, lands and waters of the state. The purpose of this review is to determine whether UST Installer Licensing should be continued for the protection of the public health, safety and welfare. The report also evaluates the performance of the SIO, related to this program. During this review, the SIO must demonstrate that there is still a need for the licensing program and that the regulation is the least restrictive regulation consistent with the public interest. DORA's findings and recommendations are submitted to the Joint Legislative Sunrise and Sunset Review Committee of the Colorado General Assembly. Statutory criteria used in the sunset review is found in the appendix of this report.

The Sunset Review process included an analysis of the statute, interviews with state authorities, SIO staff, regulated individuals and the US Environmental Protection Agency (EPA). DORA made every effort to elicit information and comments from all interested parties.

SUMMARY OF STATUTE

Federal

In 1984, Congress passed amendments to the Resource Conservation and Recovery Act (RCRA). Subchapter IX of this Act, known as the Solid Waste Disposal Act (SWDA), provided for the regulation of USTs. The federal law required EPA to promulgate regulations implementing a schedule upgrading the nation's underground storage tanks to prevent environmental damage and associated health risks caused by defective USTs. The term Underground Storage Tank is defined in the Act as "any one or combination of tanks (including underground pipes connected thereto) which 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 percent or more beneath the surface of the ground." The Act exempts certain residential and agricultural tanks used to store motor fuel or heating oil.

In 1986 Congress passed legislation requiring owners of tanks to provide financial assurances to be used in the event a clean up of a contaminated site was necessary. The Act allows states to establish funds to meet the requirements in order to reduce the burden on small businesses.

EPA promulgated the final UST regulations in 1988. The regulations require all USTs in the country to be replaced, upgraded or closed by 1998. Replacement or upgraded tanks must have corrosion protection and leak detection equipment installed in accordance to the EPA schedule. EPA established minimum standards for the installation and removal of tanks. Individual states are allowed to submit programs to the EPA Administrator for approval and receive delegated approval to operate the program at the state level with EPA oversight. The licensing of UST installers is not required by federal law and no federal funds are dependent on continuing the program.

Colorado

The Colorado UST program is divided between three agencies. The Colorado Department of Revenue (DOR) collects a "tanker fee" at bulk storage facilities to fund the Leaking Underground Storage Tank (LUST) fund. The fund is used to reimburse the owners of tanks for some of the expenses associated with the clean up of sites contaminated by leaking tanks. The DOR has no environmental oversight, since it is strictly a conduit for the transfer of funds.

Recent legislation, HB 95-1183, transferred the administration of the LUST fund and oversight of contaminated site cleanup from the Hazardous Waste Division of the Colorado Department of Public Health and Environment (CDPHE) to the SIO. However, the cleanup of contaminated sites frequently involve regulations enforced by the Water Quality and Air Pollution Control Divisions of CDPHE.

In addition to the responsibilities transferred by HB 95-1183, the SIO is responsible for the leak prevention aspects of the UST program. The prevention program provides for periodic inspections of registered facilities for compliance with leak detection and tank maintenance requirements. The SIO registers existing tanks and approves plans for the installation of new tanks. The SIO has regulatory responsibility for the closure or removal of inactive tanks. The SIO also licenses UST installation contractors and inspectors.

The Colorado program operates under a Memorandum of Agreement between the various state agencies and EPA. The state agencies have not applied to EPA for delegated authority.

**Statute and
Regulation
Review**

The statutory provisions for the licensing of UST installers are contained in §8-20-601, et. seq. C.R.S. The Act, in §602, prohibits the use of the title "underground storage tank installer" by anyone not licensed by the SIO. The Act requires owners or operators of underground storage tanks to submit plans for the installation of new tanks or upgrades of existing tanks to the SIO for approval prior to the installation or upgrade. All installations or upgrades must be performed by a licensed installer and must be inspected by the SIO before being put into service.

Section 603 of the Act requires the SIO to promulgate regulations establishing training and testing requirements for licensure. Examinations must be conducted at least twice per year. The regulations are to include fees sufficient to recover the direct and indirect costs of the licensing program. The SIO is authorized to investigate any suspected violation of the statute or regulations, and to assess fines or deny, revoke, or suspend the license of an installer for violations. The SIO may appoint an advisory committee to make recommendations on the implementation of the Act.

Section 604 allows the SIO to grant licensure by endorsement to individuals licensed in another jurisdiction provided the jurisdiction's licensing requirements are substantially equivalent to those of the SIO. The SIO may grant restricted licenses to owners or manufactures of USTs for installation of their own tanks.

Section 605 outlines the grounds for disciplinary action, and §606 allows the SIO to apply to a court of jurisdiction for restraining orders, if necessary to prevent a person from violating the Act. Section 607 creates the UST licensing fund. Section 608 contains the sunset provision of the Act.

The regulations implementing the installer licensing program are contained in 7 CCR 1101-14. The regulations establish an application fee of \$85, an annual licensing fee of \$35 and a fee for the test training materials of \$35. The regulations require that all installations and upgrades of USTs be supervised by a licensed installer. The regulations also provide for the licensing of UST installation inspectors.

The examination for installers consists of two parts. Part one requires knowledge of state and federal regulations concerning UST installation and upgrades. The second part tests the applicant's knowledge of industry standards and practices concerning UST installation. A score of 75% is required for an installer license; 80% is the pass point for an inspector's license.

The regulations allow for the denial, suspension, or revocation of a license for fraud, failure to comply with UST installation standards or disciplinary action in another state or jurisdiction. Any licensee subject to disciplinary action may request a hearing in accordance with the State Administrative Procedure Act. The SIO has not initiated disciplinary actions against any licensed contractor to date.

PROGRAM DESCRIPTION AND ADMINISTRATION

Licensing

The licensing of UST Installation Contractors is one component of a program designed to reduce or eliminate environmental damage caused by leaking USTs. The EPA regulates tank construction and requires corrosion and leak detection equipment to be installed on all tanks. By regulating installers, requiring site plan approvals, and conducting construction inspections, Colorado has a stricter program than required by EPA.

The UST Installer Licensing program is cash funded by licensing fees. Licensed installers renew licenses annually for a fee of \$35. The program operates with an annual budget of \$15,000 and one part-time employee. All program fees were established by regulation in 1990 and have not been reviewed since. As the following chart from the SIO reflects, fee collections have exceeded expenses significantly every year except 1993.

OIL INSPECTION SECTION, REVENUE DATA

Source: State Inspector of Oils

YEAR	AUTHORIZED BUDGET	FTE	FEES COLLECTED	ACTUAL EXPENSES
1991	\$15,000	.7	\$20,949	\$ 1,055
1992	15,000	.5	17,567	4,257
1993	15,000	.6	19,109	20,197
1994	15,000	.4	18,585	8,274
1995	15,000	.8	*18,585	*8,691

* estimates supplied by the State Inspector of Oils

Since the licensing program was implemented in 1990, the training and examination process has been conducted by the Colorado School of Mines (CSM) under a contract with the SIO. Registered applicants receive a training guide produced by CSM prior to the examination date. On the examination date, the CSM conducts a training review course, followed by the examination. Since the inception of the program, the SIO has issued 574 licenses by examination and denied nine applicants. The SIO has also issued 28 licenses by endorsement.

In the initial year of the licensing program, the SIO investigated several complaints involving the installation of USTs by unlicensed installers. The SIO has never fined a licensed installer nor denied, revoked, or suspended an installer license.

Process

Prior to the installation of an UST, a permit application, \$150 fee and a plot plan of the site must be submitted to SIO for approval. The SIO reports that over 60% of the permit applications are submitted by the licensed installer. Over 90% of all permit applications are approved within five working days.

All UST installations must pass a final inspection by a licensed inspector of the SIO. The inspection is completed prior to the burial of the UST and includes all underground piping and connections. The SIO reports 90% of all UST installations pass the final inspection on the first try. The majority of those that do not pass the initial inspection fail because of loose piping connections that can be remedied immediately.

All UST owners must register their tanks with the SIO and pay a \$35 per tank, annual registration fee. USTs at retail establishments are checked annually by the SIO for compliance with leak detection and safety regulations as part of multi-purpose inspection. Bulk plant operations and non-retail USTs are not subject to the same annual inspection.

SUNSET ANALYSIS

State Oil Inspector History

The SIO was created in 1899 as the State Inspector of Illuminating Oils. The inspector, appointed by the governor, was charged with inspecting, for the purpose of insuring purity, kerosene sold in the state for use in illuminating lamps.

By 1915 the name had been changed to the State Inspector of Oils and the duties expanded to include inspection of all kerosene, gasoline or other fluid offered for sale and used for illumination, heat or power. The inspector also enforced safety regulations on containers used to sell the products and certified they contained the unit of measure listed on the label. Out of these responsibilities grew the practice of checking the grade of gasoline and calibration of pumps at fueling stations.

In 1963, the SIO was codified into the Colorado Industrial Commission. The General Assembly transferred the responsibilities of the Industrial Commission in HB 69-1279. This was an omnibus bill that reorganized DOLE. The SIO was transferred to DOLE by a Type I transfer and the Executive Director of DOLE was given the responsibility for appointing the Inspector and any deputies.

The SIO is currently responsible for the administration of several programs in addition to the UST Installer Licensing Program. These regulatory programs include: regulating aboveground storage tanks (AST), calibrating retail gas pumps, regulation of octane and reformulated fuel mixtures testing brake and transmission fluid sold in Colorado, and inspection of retail gas stations for compliance with air pollution regulations.

According to the CDPHE, 99% of the regulated USTs in Colorado contain petroleum products. Over half of these are considered retail USTs, such as gas stations. The SIO reported 16,100 active USTs in 1990. Since then the number of registered tanks declined every year, with the exception of 1994, when 200 tanks were added to the inventory. The SIO currently has 13,200 tanks on its active registry.

UNDERGROUND STORAGE TANKS IN COLORADO

Source: State Inspector of Oils

Year	1990	1991	1992	1993	1994	1995
New Tanks	NA	1,900	900	800	1,500	NA
Tank Closure	NA	2,800	2,100	1,600	1,300	NA
Total Tanks	16,100	15,200	14,000	13,200	13,400	13,200*

* estimate provided by SIO. NA = Information not available

Products leaking from USTs can cause extensive damage to the public health and environment. This damage can take on a variety of forms. A plume of contamination can travel several miles, potentially leaking into public water supplies. Most treatment facilities dependent on groundwater are not equipped to detect and treat this type of contamination. However, groundwater facilities usually obtain water from deeper sources which are not likely to be affected by leaking petroleum products. Surface water, such as lakes or reservoirs contaminated by leaking tanks are not suitable for recreational uses and animals dependent on these water supplies can be permanently damaged.

Soils contaminated with petroleum products have negative effects on vegetation and human health. Long term exposure to chemicals associated with gasoline have been linked to cancer in humans. Large leaks have been known to result in quantities of product to collect in low lying areas such as basements. Individuals exposed to fumes from gasoline collecting in basements can suffer nausea and respiratory problems. There have been incidents where sufficient quantities have collected in buildings or sewer lines resulting in explosions, causing severe property damage, injuries and fatalities.

Cleaning contaminated sites is expensive. Consultant fees for conducting a site assessment and developing a remediation plan average \$35,000. The total cost for a remediation depends on several factors, such as: amount of product leaked, migration of product through topography, soil composition, geographic setting (urban or rural), and proximity to ground or surface water. According to the CDPHE the average remediation cost is in the range of \$130,000, however, expenses could easily double if the contamination affects water supplies.

Developing and implementing a remediation plan is the responsibility of the owner or operator of the facility. Equipment manufacturers and installers have no legal liability for clean up at contaminated sites. Most contaminated sites are eligible for partial reimbursement through the LUST fund, provided the owner or operator was in compliance with all applicable regulations at the time the contamination was discovered.

According to industry and EPA studies in the late 1980s, over 40 percent of the leaks in USTs resulted from improper installation. Most of the remaining leaks were a result of the corrosion of older tanks. These studies resulted in EPA requirements for upgraded tanks, corrosion protection and leak detection equipment on all USTs.

Federal law requires the replacement, upgrade or closure of every UST in the United States by 1998. Owners and operators of USTs are required to demonstrate financial surety to clean up contaminated sights. Colorado established the LUST fund to provide financial surety for operators.

Nationally, reports of contamination from USTs have increased every year since the inception of UST regulations. Colorado has followed the national trend, as evidenced by the increase in reimbursement applications to the LUST fund from 140 in 1992 to 290 in 1994. State and EPA officials attribute this increase to compliance with federal UST regulations. As USTs are replaced, upgraded or closed, contamination is discovered and remedied. It is projected that the remediations will continue to increase or maintain current levels until the 1998 deadline for tank upgrades has passed.

LUST FUND APPLICATION ACTIVITY

Source: 1994 Legislative Storage Tank Report

YEAR	1992	1993	1994
APPLICATIONS RECEIVED	140	222	290

The number of active leaks reported by the SIO has declined from 191 in 1990 to just 44 in 1994. While no single factor can be documented as the primary cause of this decline, it is clear the UST regulatory program has been successful. Due to EPA required leak detection requirements, even when leaks occur they are usually detected sooner and damage is not as extensive as it could be.

LEAK REPORT DATA

Source: State Inspector of Oils

Year	1990	1991	1992	1993	1994	1995
Confirmed leaks	191	165	93	76	44	21*

* represents partial year data.

The development of competent UST Installation Contractors is one facet of the overall UST program. In Colorado, the examination and training program is conducted by the Colorado School of Mines (CSM), under contract with the SIO. The program is offered twice per year and consists of a five hour training session followed by the examination. To date, 583 individuals have taken the examination. All but nine have passed and obtained a license. The CSM contract expires this year and the SIO is considering eliminating the training session and using internal resources for all examination and licensing functions.

The SIO issues approximately 350 tank installation permits each year. Most permits are for multi-tank installations. Both the SIO and CDPHE have regulations concerning the closure and removal of USTs but neither have the authority to require a permit. The removal of an UST does not have to be performed by a licensed contractor and is not inspected by the SIO. According to the CDPHE, approximately 80% of the site assessments performed on closed USTs reveal previously unreported contamination.

Comparison to Other States

According to EPA most states regulate the installation of USTs. These range from relatively simple certification of UST consultants to a very restrictive licensing program for installers to a comprehensive permit and inspection program. Many state regulate several UST related occupations. Colorado licenses only UST installation contractors. However, the SIO has a very comprehensive permit and inspection program.

The most comprehensive program reviewed was the installer licensing program in Pennsylvania. The Pennsylvania program identifies 12 categories of USTs and requires a separate installation license for each category. In order to qualify to take the licensing examination, an individual must demonstrate a minimum of three years of experience with a licensed installer or an engineering degree and two years of experience. Pennsylvania also licenses 12 categories of Above Ground Storage Tank (AST) installers and several categories of UST and AST inspectors. Each license requires several years of experience or a combination of experience and a college degree.

The regulation of UST installation can be divided into three parts:

- Permit approval of new USTs;
- Inspection and approval of tank installations; and
- Licensing UST installers.

Most states require one, or some combination of the three components in their UST programs. A few require all three. The following table compares the requirements for the states in this area.

***UST Installer Licensing
State Program Comparison***

STATE	LICENSE REQUIRED	PERMIT REQUIRED	INSPECTION REQUIRED
Arizona	No	No	Yes
Colorado	Yes Written Exam \$85	Yes	Yes
Kansas	Yes Written exam \$100 Experience	No	No
Nebraska	Yes Written Exam \$0	Yes	Yes
New Mexico	Yes Written and Practical Exam \$250, Experience	No	No
Oklahoma	Yes Written Exam \$170 Experience	No	No
Utah	Yes Written Exam \$150 Experience	Yes	Yes
Wyoming	NO	No	Yes

**Relationship
to Other
Regulatory
Programs**

The safety inspections by the SIO conducted at service stations are closely related to fire inspections conducted by state and local fire marshals (most states UST programs are either in the environmental departments or under the state fire marshal). SIO inspectors have industry specific knowledge and experience that differentiate these inspections slightly. Since all inspections are performed by SIO staff, as opposed to local fire inspectors, the consistency of inspections are more reliable.

In Colorado, the responsibility for calibration of gas pumps and regulation of fuel mixtures by the SIO is a carry-over from the turn of the century. Most states delegate these programs to either measurement standards divisions or transportation departments. The calibration of gas pumps is the only statewide measurement standard not the responsibility of the Colorado Department of Agriculture, Weights and Measures Division.

RECOMMENDATIONS

Allow Program to Sunset

The number of leaking USTs has declined significantly in Colorado. This is due to a number of factors, the most significant of which is the federal requirement for upgrading and replacing tanks. While the proper installation of new USTs is important to protect the public, the licensing of the installers has not been demonstrated to be necessary. The qualifications for licensure are minimal, practical experience is not required and 98% of the individuals taking the examination receive a license. The SIO has never initiated a disciplinary action against a licensed UST contractor. This is most likely a result of the comprehensive approval and inspection program.

The installation approval and inspection program conducted by the SIO is a significant factor in ensuring proper installation. Before a new UST is installed, plot plans are submitted to the SIO for approval. Prior to an UST being placed in service, the SIO conducts an inspection. Currently 90% of all USTs are approved on the first inspection. The majority of those not passing the initial inspection require only minor changes or improvements. Mandatory approvals and final inspections are adequate means to protect the public.

Recommendation 1 - Allow the Underground Installation Contractor Licensing Program to sunset as scheduled.

Annual Inspections

As discussed above, the license is relatively simple to obtain and renew. It functions more like a registration program. The SIO strongly maintains the regulation of persons installing USTs is necessary to prevent unethical or unqualified contractors from deliberately violating installation standards. Replacing the current licensing requirement with a simplified registration process will institute the least restrictive form of regulation consistent with the public interest. Installers violating installation standards could be removed from the registry and prevented from performing further installations.

RECOMMENDATION 2 - Require persons installing USTs to register with the SIO.

Require Annual Inspections

Currently the SIO conducts safety and compliance inspections at retail USTs annually. There is no requirement to inspect non-retail USTs on an annual basis, although half of the USTs in Colorado are classified as non-retail. According to CDPHE and SIO data, there is no difference in the likelihood of site contamination between retail and non-retail USTs.

Recommendation 3 - Require annual inspections of all USTs.

Renewals

If recommendation one is not adopted, requiring an installer to demonstrate competency by either installing an UST or passing a refresher course in UST installation would serve to protect the public health and safety. Currently, the only requirement to maintain a license in good standing is to submit a \$35 renewal fee. It is conceivable that a licensee could have studied for and passed the licensing examination in 1990, and never have installed an UST.

Under current regulations, the SIO may only deny a license for fraud or failure to comply with the statute or regulations concerning UST installation. To date, the SIO has not initiated a single disciplinary action against a licensed UST installer. The license renewal is an administrative function. Extending the time-period between renewals would lower the cost to the agency for administration, thereby lowering the fees to licensees.

Recommendation 4 - Extend the renewal period and require practical experience for certification renewal.

Restricted License Provision

The SIO may review and approve private training and testing programs sponsored by manufacturers or owners of USTs with the restriction that the license only applies to USTs manufactured or owned by the sponsor of the program. The SIO has never received an application to approve a private program and no licenses have been issued under this provision.

Private certification should be encouraged if recommendation one is adopted. However, any private certification endorsed by the state should be comprehensive enough to cover all types of UST installation.

Recommendation 5 - The General Assembly should consider elimination of the restricted license provision contained in 8-20-604(2), C.R.S.

Administrative Recommendations

Through the Memorandum of Agreements, the program has been operating for several years as if it were a delegated program. According to EPA Region VIII UST officials, the Colorado UST program meets the EPA requirements to be operated as a state delegated program. The agencies involved in the UST program should jointly apply to the EPA Administrator for delegated authority.

Operating as a state delegated program will have little or no impact on the day to day operation of most regulated businesses. However, it allows Colorado operators a better opportunity to be involved in the regulatory process as regulations change on the federal level. It also requires the EPA to recognize state authority in regulating environmental clean ups involving leaking USTs.

Recommendation 1 - Apply to EPA for state delegated authority for the Colorado UST program.

Statistical data from the three agencies involved in UST contaminated site cleanup, EPA, SIO and CDPHE vary in enumerating the number of leaking USTs for any given time period. None of the agencies track data on the number of tanks, if any, that were installed by licensed installers. One explanation for this is that there are no disciplinary actions for contractors improperly installing tanks. All liability for site clean-up goes to the owner or operator of the tank. However, an operator may attempt to recover costs from negligent contractors through civil action. The collection of data on leaks from recently installed tanks would benefit consumers from the standpoint of evaluating prior performance of an installer. The information would also allow the SIO to identify problem installers.

Recommendation 2 - Develop a tracking mechanism to determine if leaking tanks were installed by regulated contractors.

The SIO regulations establishing the examination process provide for an oral examination at the request of the applicant if a showing of physical limitations justifies special testing conditions. Charging an additional fee based on physical limitations is a violation of the federal Americans with Disabilities Act and should be removed from the regulations.

Recommendation 3 - Remove additional fee for oral examination.

The SIO regulations contain references to mandatory continuing education to maintain inspectors licenses. The enabling legislation provides no authority for mandatory continuing education, nor does evidence indicate it is necessary. The SIO has never developed a continuing education program and the referenced section of the rules have not been promulgated.

SIO regulations provide for UST installers who were operating prior to the passage of the licensing program to operate for 12 months before passing the licensing examination. This provision is no longer necessary.

Recommendation 4 - Remove regulatory references to continuing education and interim licensing.

Typically, cash funded occupational licensing programs evaluate expenses annually and adjust the licensing fee by dividing the total cost by the number of licensees. In every year except 1993, the licensing program has operated at a budget surplus. However, the fees have never been adjusted. If recommendation one is not adopted, the fees should be adjusted annually.

Recommendation 5 - Evaluate fee structure to ensure lowest possible cost to participants.

APPENDICES

Sunset Statutory Evaluation Criteria

- (I) Whether regulation by the agency is necessary to protect the public health, safety and welfare; whether the conditions which led to the initial regulation have changed; and whether other conditions have arisen which would warrant more, less or the same degree of regulation;
- (II) If regulation is necessary, whether the existing statutes and regulations establish the least restrictive form of regulation consistent with the public interest, considering other available regulatory mechanisms and whether agency rules enhance the public interest and are within the scope of legislative intent;
- (III) Whether the agency operates in the public interest and whether its operation is impeded or enhanced by existing statutes, rules, procedures and practices of the Department of Regulatory Agencies and any other circumstances, including budgetary, resource and personnel matters;
- (IV) Whether an analysis of agency operations indicates that the agency performs its statutory duties efficiently and effectively;
- (V) Whether the composition of the agency's board or commission adequately represents the public interest and whether the agency encourages public participation in its decisions rather than participation only by the people it regulates;
- (VI) The economic impact of regulation and, if national economic information is available, whether the agency stimulates or restricts competition;
- (VII) Whether complaint, investigation and disciplinary procedures adequately protect the public and whether final dispositions of complaints are in the public interest or self-serving to the profession;
- (VIII) Whether the scope of practice of the regulated occupation contributes to the optimum utilization of personnel and whether entry requirements encourage affirmative action;
- (IX) Whether administrative and statutory changes are necessary to improve agency operations to enhance public interest.

Underground Storage Tank Installers Statute

8-20-601. Definitions. As used in this part 6, unless the context otherwise requires:

(1) The terms "operator", "owner", "person", "regulated substance", "tank", and "underground storage tank" shall have the meanings set out in section 8-20-502.

(2) "Upgrade" means to bring an existing underground storage tank into compliance with the requirements specified in 40 C.F.R. section 280.21 (1988).

8-20-602. Licensing of underground storage tank installers - required - installation and upgrading - plan submission and inspection required. (1) No person shall engage in the practice of installing underground storage tanks or hold himself out as being licensed or qualified to engage in the practice of installing or upgrading underground storage tanks or use the title "underground storage tank installer" unless he is licensed pursuant to the provisions of this part 6.

(2) No owner or operator shall have an underground storage tank installed or upgraded without first submitting a plan for installation or upgrading to the state inspector of oils, without having such installation or upgrading performed by an installer licensed pursuant to the provisions of this part 6, and without having such installation or upgrading inspected. The plan for installation or upgrading and the inspection shall be in accordance with section 8-20-505.

8-20-603. Duties of the state inspector of oils - repeal. (1) In addition to any other duties imposed upon him by this part 6 or any other provision of law, the state inspector of oils shall have the following duties and responsibilities under this part 6:

(a) To make, promulgate, and enforce regulations to implement and enforce the provisions of this part 6, including rules and regulations for the licensing of underground storage tank installers. Such regulations shall be adopted and promulgated under the provisions of section 24-4-103, C.R.S. Such regulations shall include application, licensing, and renewal fees, which fees shall be sufficient to offset the direct and indirect costs of such licensing.

(b) To determine the course of study required to train underground storage tank installers, including what training materials shall be used;

(c) To conduct examinations at least two times each year and to ensure that passing scores on such examinations are set to determine the minimum level of competency necessary to engage in the practice of installing underground storage tanks;

(d) To issue a license as an underground storage tank installer to any person who meets the requirements specified in this part 6;

(e) To suspend, revoke, or deny the license of any licensed underground storage tank installer who violates the provisions of this part 6 or any rules, regulations, or orders promulgated pursuant to this part 6;

(f) To assess fines pursuant to the provisions of this part 6 against any owner or operator or any person who violates the provisions of this part 6 or any rule or regulation adopted pursuant to this part 6;

(g) To investigate or cause to be investigated on his own motion or in response to complaints any suspected violation of the provisions of this part 6 or of the rules adopted pursuant to this part 6;

(h) To apply to a court of competent jurisdiction to enjoin any activity that is in violation of the provisions of this part 6 or the rules and regulations promulgated pursuant to this part 6;

(i) To appoint an advisory committee to advise him concerning implementation of the provisions of this part 6.

(2) (a) Paragraph (i) of subsection (1) of this section and this subsection (2) are repealed, effective July 1, 1995.

(b) Prior to said repeal, any advisory committee shall be reviewed as provided for in section 2-3-1203, C.R.S.

8-20-604. Requirements for licensure - installers - inspectors. (1) The state inspector of oils shall license as an underground storage tank installer any person who meets the following requirements:

(a) Has filed a written application containing all required information, including whether he has ever been disciplined for an action relating to the underground storage tank industry in any other state or jurisdiction, on a form prescribed by the state inspector of oils;

(b) Has paid a nonrefundable application fee;

(c) Has undergone a required course of study;

(d) Has passed a written examination.

(2) (a) The state inspector of oils may review and approve private training and testing programs sponsored by manufacturers or owners of underground storage tanks if the state inspector of oils determines that such program meets the standards he has established for adequacy of training and testing of underground storage tank installers under this part 6. An applicant who has completed such an approved private training and testing program and who complies with the requirements of paragraphs (a) and (b) of subsection (1) of this section may be issued a license as an underground storage tank installer. However, an underground storage tank installer licensed under the provisions of this subsection (2) if trained by a manufacturer shall install only those underground storage tanks made by such manufacturer and if trained by an owner shall install underground storage tanks only for use by such owner.

(b) An underground storage tank installer licensed pursuant to the provisions of paragraph (a) of this subsection (2) shall be subject to all the other provisions of this part 6 in the same manner and degree as if he had been licensed under the provisions of subsection (1) of this section.

(3) (a) The state inspector of oils may issue a license by endorsement to an underground storage installer who is licensed and in good standing under the laws of another state or jurisdiction if the applicant complies with paragraphs (a) and (b) of subsection (1) of this section and presents proof satisfactory to the state inspector of oils that the applicant is so licensed and in good standing and that such person possesses qualifications that are substantially equivalent to the requirements for licensure under this part 6.

(b) An underground storage tank installer licensed pursuant to the provisions of paragraph (a) of this subsection (3) shall be subject to all the other provisions of this part 6 in the same manner and degree as if he had been licensed under the provisions of subsection (1) of this section.

(4) A license issued under subsection (1), (2), or (3) of this section shall be valid for a period of one year and may be renewed thereafter upon application to the state inspector of oils and payment of a renewal fee, if the applicant is in compliance with all other provisions of this part 6.

8-20-605. Grounds for disciplinary action - denial of licensure - denial of renewal. (1) The state inspector of oils may deny an application for licensure or renewal of a license or suspend or revoke a license on any of the following grounds:

(a) The practice of any fraud or material misrepresentation or aiding or abetting another in the practice of any fraud or material misrepresentation in obtaining or attempting to obtain a license pursuant to the provisions of this part 6;

(b) The practice of any fraud or material misrepresentation or an attempt to practice any fraud or material misrepresentation with respect to any activity covered by the provisions of this part 6;

(c) Any act or omission that does not meet the generally accepted standards of practice in the underground storage tank industry;

(d) Violation of any provision of this part 6, any rule or regulation established pursuant to the provisions of this part 6, or any order issued pursuant to the provisions of this part 6.

(2) A disciplinary action relating to the underground storage tank industry in any other state or jurisdiction shall be deemed to be prima facie evidence of grounds for disciplinary action, including denial of licensure, under this part 6. This subsection (2) shall apply only to those disciplinary actions that are based upon acts or omissions in such other state or jurisdiction that are substantially similar to those set out as grounds for disciplinary action or denial of licensure under this part 6.

(3) Disciplinary proceedings shall be conducted by the state inspector of oils or by an administrative law judge appointed pursuant to part 10 of article 30 of title 24, C.R.S., and shall be held in the manner prescribed in article 4 of title 24, C.R.S. Final actions and orders under this part 6 that are appropriate for judicial review may be reviewed in the court of appeals.

8-20-606. Injunctions. In addition to any other remedies provided in this part 6, the state inspector of oils or his designee is authorized to apply to the district court, in the judicial district where the violation has occurred, for a temporary restraining order, a preliminary injunction, or a permanent injunction restraining any person from violating any provision of this part 6 or the rules and regulations promulgated pursuant to this part 6. In such proceedings, it shall not be necessary to allege or prove either that an adequate remedy at law does not exist or that substantial or irreparable damage would result from the continued violation thereof.

8-20-607. Underground storage tank licensing fund - creation. (1) There is hereby created in the state treasury the underground storage tank licensing fund, which shall consist of the following:

(a) All fees collected pursuant to this part 6. Such fees shall be transmitted to the state treasurer, who shall credit the same to the underground storage tank licensing fund.

(b) Civil penalties or fines collected pursuant to this part 6;

(c) Gifts or donations made to the state of Colorado or any agency thereof for the purpose of carrying out the provisions of this part 6;

(d) Any moneys appropriated to the fund by the general assembly.

(2) The moneys in the underground storage tank licensing fund and all interest earned by moneys in the fund shall not be credited or transferred to the general fund at the end of the fiscal year.

(3) The moneys in the fund shall be subject to annual appropriation by the general assembly for the following purposes:

(a) For any administrative costs including costs incurred by the state inspector of oil in carrying out his responsibilities pursuant to this part 6;

(b) For any federal program pertaining to underground storage tank installers which program requires state matching dollars.

8-20-608. Repeal of part - review of functions. This part 6 is repealed, effective July 1, 1996. Prior to such repeal, the licensing functions of the state inspector of oils shall be reviewed as provided for in section 24-34-104, C.R.S.