

Governor's Office of Management and Budget

Alexis Sturm

Director



IL Regulatory Sunset Act Review of The Petroleum Equipment Contractor Licensing Act

March 18, 2021

**To the Honorable JB Pritzker
Governor of Illinois**

Governor Pritzker:

The Governor's Office of Management and Budget (GOMB) in collaboration with the Office of the State Fire Marshal (OSFM), in compliance with the requirements set forth in the Illinois Regulatory Sunset Act (5 ILCS 80), has conducted a review of the Petroleum Equipment Contractor Licensing Act (225 ILCS 729), which is scheduled to sunset on January 1, 2022. The following recommendation is pursuant to this review:

The Petroleum Equipment Contractor Licensing Act (225 ILCS 729) should be continued with the following modifications to its existing statutory and administrative rule framework.

- Revising the subsection on business to require current business registration (rather than business registration) and allowing for denial of application or renewal without current business registration.
- Amending or removing provisions which reflect outdated processes.

The examination of this Act considered the nine factors set out in Section 6 of the Illinois Regulatory Sunset Act. The following report details the criteria and data utilized to come to the above recommendation.

Very sincerely and respectfully,

Alexis Sturm
Director
Governor's Office of Management and Budget

Criteria (1) "The extent to which the agency or program has permitted qualified applicants to serve the public."

Contractors that perform underground storage tank (UST) work in Illinois must hold a Petroleum Equipment Contractor Licensing Act (PECLA) license for each module (type of UST work) in which work is performed. Modules include the following types of activity: installation; repair; decommissioning; relining; tank and piping tightness testing; testing of cathodic protection systems; and any other category established by the Office of the State Fire Marshal (OSFM).

Per the OSFM's rules (41 Ill. Adm. Code 172.30), a "contractor" is a licensed person, excluding employees, who performs any UST activity and a "certified employee" is an individual who performs UST activity for a licensed UST contractor and has successfully completed the OSFM prescribed exams for the module in which the employee is conducting UST activity.

Year	Licensed Contractors	Certified Employees
2020	130	1,169
2019	137	1,257
2018	139	1,233
2017	138	1,215
2016	137	1,143
2015	139	1,147
2014	149	1,105

Each licensed contractor must have at least one certified employee who has passed an International Code Council (ICC) certification exam related to the type of UST work the contractor desires to perform. Licensure is based on the area of competency of certified employees, who supervise work. An Occupational Safety and Health Administration (OSHA) issued 40-hour safety training certificate, with annual 8-hour refresher courses, is also required for every employee.

The exams are offered by the International Code Council (ICC) and Occupational Safety and Health Administration (OSHA), respectively. The ICC and OSHA required training/exams are available in different formats and offered throughout the year. They are both used nationwide.

The ICC administered tests are valid for two years and the 8-hour OSHA refresher course is valid for one year. The OSHA 40-hour safety training course is a one-time requirement.

Manufacturers of certain types of equipment may require individuals be trained in the utilization of their products. Knowledge is usually gained through on-the-job training of an employee. Licensed contractors perform work throughout the state.

The current licensure fee scheme is as follows:

Type	Fee Amount
Application for a license fee	\$1,000
Renewal fee	\$1,000
Restoration fee for a license	\$50
Duplicate license fee	\$50

Multiple location license fee (branch offices)	\$50 per module
Change of name fee	\$100

In 1984, Congress directed the U.S. EPA to develop regulations for underground storage tank (UST) systems. U.S. EPA issued federal regulations, effective December 1988.

U.S. EPA published the current federal UST regulation in 2015. These revisions strengthen the 1988 federal regulations by increasing emphasis on properly operating and maintaining UST equipment. Federal UST regulations often require that industry codes and standards be followed to ensure that the UST system is properly designed, constructed, installed and maintained.

States are the primary implementers of the UST program created by U.S. EPA and may have requirements more stringent than the federal regulations. Thus, many other states in the U.S. have some type of regulatory oversight of these contractors formally in place through either regional or statewide authorities and require that those working on USTs be licensed or certified. Some states also have state-specific exams in addition to nationally recognized certification exams of the International Code Council.

Criteria (2) “The extent to which the trade, business, profession, occupation, or industry being regulated is being administered in a nondiscriminatory manner both in terms of employment and rendering of services.”

OSFM adheres to strict guidelines and requirements established by the Department. Licensing decisions are based on an applicant’s ability to meet the requirements established by statute and administrative rule. Neither race nor any other identifier is a consideration for licensure by the Department. Consequently, the Department does not collect information from applicants to disclose their race or other social identifiers that could potentially lead to the act or perception of discrimination in licensing decisions.

Criteria (3) “The extent to which the regulatory agency or program has operated in the public interest, and the extent to which its operation has been impeded or enhanced by existing statutes, procedures, and practices of any other department of state government, and any other circumstances, including budgetary resources, and personnel matters.”

OSFM has no such statutes or procedures to report. The OSFM has worked to utilize technological efficiencies to serve licensees effectively.

Criteria (4) “The extent to which the agency running the program has recommended statutory changes to the General Assembly that would benefit the public as opposed to the persons it regulates.”

No initiatives have been put forward for this Act over the past five years.

Criteria (5) “The extent to which the agency or program has required the persons it regulates to report to it concerning the impact of rules and decisions of the agency or the impact of the program on the public regarding improved service, economy of service, and availability of service.”

OSFM adopts administrative rules through the process established by the Joint Committee on Administrative Rules (JCAR). This process allows for input from licensees impacted by the Office’s proposed changes, as well as participation by members of the public.

Although contractors are not required to comment on agency rulemaking and decisions, OSFM proactively seeks input on its technical requirements and feedback on provision of service from contractors. In the Office's most recent rulemaking affecting these contractors, OSFM worked to inform contractors of upcoming changes as early as possible, to ensure contractors understood the effect on work and work processes, and to allow flexibility where safely possible, for the benefit of industry and affected public.

Criteria (6) "The extent to which persons regulated by the agency or under the program have been required to assess the problems in their industry that affect the public."

OSFM held statewide public outreach meetings before the formal rulemaking process began and invited affected stakeholders, including contractors regulated under PECLA and facility owners/operators of underground storage tanks to ask questions, make suggestions, and provide feedback. Throughout the rulemaking process OSFM accepted comments. After the rulemaking was adopted, the OSFM held informational sessions prior to the rulemaking's effective date to provide further information to contractors whose work was affected by the new requirements.

The OSFM also posted on its website a summary of the rulemaking and comments alongside a duplicate of the notice and rulemaking text in order to make the rulemaking more visible to both licensees and members of the general public.

Criteria (7) "The extent to which the agency or program has encouraged participation by the public in making its rules and decisions as opposed to participation solely by the persons it regulates and the extent to which such rules and decisions are consistent with statutory authority."

Petroleum equipment contractors are not required to provide an assessment to the agency. However, OSFM has been responsive to industry input. In response to industry comments/requests on expediting the issuance of licenses for UST work, OSFM implemented an electronic licensing system to allow all licensed contractors to obtain their permits through the online system. Many contractor forms can now also be submitted electronically, including applications for eligibility for the State's UST cleanup cost reimbursement fund. This effort reduced the time frame to obtain a permit and increased the ease and efficiency in obtaining a permit for work for the contractor. This effort has also benefited owners/operators and members of the public by allowing contractors to avoid processing delays when scheduling work.

Criteria (8) "The efficiency with which formal public complaints filed with the regulatory agency or under the program concerning persons subject to regulation have been processed to completion, by the executive director of the regulatory agencies or programs, by the Attorney General and by any other applicable department of the State government."

OSFM accepts public complaints via its website, email, and by phone. No average timelines are available for the period between receipt of complaint and closure of a case. However, following the administrative rules developed by the agency, disciplinary actions result from the issuance of a Contractor Notice of Violation (CNOV). An OSFM Storage Tank Safety Specialist (UST inspector employed by the agency) issues a CNOV based on violations. Copies are provided in the field to the contractor and forwarded to OSFM Division of Petroleum and Chemical Safety (DPCS), which reviews the CNOV for completeness and determines whether the agency will pursue discipline. The contractor receiving the CNOV will be notified within 15 days if the agency is moving forward with disciplinary action. The contractor will have 15 calendar days from receipt of the notice to appeal.

Criteria (9) "The extent to which changes are necessary in the enabling laws of the agency or program to adequately comply with the factors listed in this section."

The OSFM is in the process of reviewing the Act for necessary changes. Although this does not represent a comprehensive assessment, as of this submission, OSFM recommends 1) revising the subsection on business registration to require current business registration (rather than business registration) and allowing for denial of application or renewal without current business registration and 2) amending or removing provisions which reflect outdated processes.

Conclusion:

After a number of serious fires and explosions involving death and bodily harm to underground storage tank (UST) workers and nearby citizens, the Petroleum Equipment Contractors Licensing Act (PECLA) (225 ILCS 729) was passed in 2002 (P.A. 92-0618, eff. 07-11-02). This statute replaced the Office of the State Fire Marshal's (OSFM's) authority under the Gasoline Storage Act (430 ILCS 15) to license and regulate contractors working on underground storage tank systems. In addition to clarifying various licensure issues, PECLA also provided enforcement authority and hearing rights not previously contained in the Gasoline Storage Act. PECLA was previously renewed and revised effective August 16, 2011 (P.A. 97-0428).

The Act is designed to ensure that the quality of petroleum or hazardous substance underground storage tank (UST) work in Illinois meets the highest standards of safety and technical competency. Meeting those standards assures the owners/operators of USTs and the citizens of Illinois that the environment, citizen safety and the owner's/operator's businesses are getting the best service and protection possible.

Federal UST regulations (adopted by U.S. EPA) often require that industry codes and standards be followed to ensure that the UST systems are properly designed, constructed, installed, and maintained. The licensing and registration requirements of this Act exist because working on UST systems requires detailed technical knowledge.

Each licensed contractor must meet the educational and business requirements of 41 Ill. Adm. Code 172.40, and fulfill continuing education requirements to renew the license. Each licensed contractor must have at least one certified employee who has passed an International Code Council (ICC) certification exam related to the type of UST work the contractor desires to perform. Licensure is based on the area of competency of certified employees, who supervise work. An Occupational Safety and Health Administration (OSHA) issued 40-hour safety training certificate, with annual 8-hour refresher courses, is also required for every employee.

Licensure of contractors in this field supports both consumer protection and environmental protection. PECLA helps ensure the safety of the contractor and its employees, the owners/operators of USTs, the public that utilizes the systems, and the land and water resources surrounding and/or adjacent to the UST.