

PROGRAM DESCRIPTION

1. GENERAL

The Commonwealth of Pennsylvania (Commonwealth or Pennsylvania) is seeking re-approval of its Underground Storage Tank (UST) Program. On August 5, 1989, the General Assembly of the Commonwealth declared storage tank releases to be a threat to public health and safety and enacted the Storage Tank and Spill Prevention Act, P.L. 169, as amended, 35 P.S. §§ 6021.101-6021.2104 (Storage Tank Act). The Storage Tank Act became law after publication of the Federal regulations for USTs at 40 CFR Part 280 on September 23, 1988. Under section 501 of the Storage Tank Act (relating to underground storage tank requirements), the Pennsylvania Department of Environmental Protection (DEP) was authorized to adopt regulations and implement a program to regulate USTs containing petroleum and hazardous substances. On September 20, 1991, the Commonwealth adopted its first UST regulations, codified at 25 Pa Code Chapter 245 (Pennsylvania's UST regulations). These regulations adopted the Federal regulations by reference and established an interim certification program for installers and inspectors of USTs. Pennsylvania's UST regulations have been amended several times since 1991, the most recent amendments taking effect on December 22, 2018.

A major development in the regulation of underground storage tanks in the United States was the passage of the Federal Underground Storage Tank Compliance Act as part of the Energy Policy Act (Energy Policy Act) in August 2005. This legislation represented the first major amendments to the federal UST program since its initial adoption in 1984. In response to the Energy Policy Act, Pennsylvania's UST regulations were amended in November 10, 2007. These amendments improved upon the existing regulations and put into place some important provisions that helped to improve storage tank system compliance, reduce the number and significance of releases of regulated substances from storage tank systems, and provided for additional groundwater protection.

As a result of these amendments, Pennsylvania DEP implemented the following requirements of the Energy Policy Act Grant Guidelines:

- statewide secondary containment requirements were included in the rulemaking adopted November 10, 2007.
- Pennsylvania's existing delivery prohibition program was formalized in a program guidance that became effective February 9, 2008. A website listing of all USTs ineligible for delivery is maintained and updated daily.
- a program guidance to ensure the uniform application of the mandatory retraining provision when noncompliance is found during an onsite inspection was developed and finalized with notice in the *Pennsylvania Bulletin* on October 16, 2010.

- the first public record on the Storage Tank Program’s web page was posted on December 9, 2008. The public information page was last updated on December 16, 2020.
- all active UST systems were phased into a three-year inspection schedule and the required inspection due dates were entered into the Department’s database - Environment, Facility Application, Compliance Tracking System (eFACTs).

DEP updated its Underground Storage Tank Compliance Act (USTCA) guidelines compliance certification on December 16, 2020 and updated and resubmitted the certification on March 23, 2021.

The Commonwealth has no Federally recognized Indian tribes or country; therefore, there are no jurisdictional issues regarding UST program implementation for Federally recognized Indian tribes or country.

2. PROGRAM SCOPE

As of May 3, 2021, DEP regulated 21,518 active UST systems containing petroleum and hazardous substances at 7,312 facilities.

Pennsylvania’s UST regulations and the Federal regulations are similar. Although Pennsylvania’s UST regulations are no less stringent than the Federal regulations, differences exist which in some cases make certain provisions of Pennsylvania’s UST regulations more stringent or broader in scope. These program differences include:

A. Under Chapter 245, Subchapter D (relating to corrective action process for owners and operators of storage tanks and storage tank facilities and other responsible parties) of Pennsylvania’s UST regulations, a “responsible party” is required to perform corrective action for releases of regulated substances. A “responsible party” is defined in § 245.1 (relating to definitions) as “A person who is responsible or liable for corrective action under the act. The term includes: the owner or operator of a storage tank; the landowner or occupier; a person who on or after August 5, 1990, knowingly sold, distributed, deposited or filled an underground storage tank regulated by the act which never held a valid registration, with a regulated substance; ...” Under § 280.20(e) of the Federal regulations, there is no counterpart definition for “responsible party.” The Federal regulations limit corrective action requirements to owners and operators of UST systems. Therefore, Pennsylvania’s UST program is broader in scope than the Federal program in that, in Pennsylvania, additional persons may be held responsible for corrective action.

B. Section 108 (relating to interim certification of installers and inspectors) of the Storage Tank Act and Chapter 245, Subchapter B (relating to certification program for installers and inspectors of storage tanks and storage tank facilities) establishes a certification program for installers of UST systems. Subsection 280.20(e) requires owners and operators to obtain certification that a UST system has been properly installed. The Federal regulations provide several methods that may be utilized to demonstrate compliance. One of the options to demonstrate compliance

allows for use of an installer certified by the implementing agency. The Federal program does not establish a certification program for installers; therefore, Pennsylvania's UST program is broader in scope.

C. UST systems with field-constructed tanks and airport hydrant fuel distribution systems have always been subject to Pennsylvania's UST regulations. The requirements that apply to field-constructed tanks and airport hydrant fuel distribution systems are the same as the requirements for all other UST systems.

Under the Federal program, UST systems with field-constructed tanks and airport hydrant fuel distribution systems were deferred from subparts B, C, D, E and G of 40 CFR Part 280 until October 13, 2015. As of that date, UST systems with field-constructed tanks and airport hydrant fuel distribution systems are now fully regulated under the Federal program and subject to specific requirements under subpart K (relating to UST systems with field-constructed tanks and airport hydrant fuel distribution systems) of 40 CFR Part 280. However, Pennsylvania's UST program is more stringent since Pennsylvania's UST regulations do not have specific exclusions for installation requirements for field-constructed tanks and airport hydrant fuel distribution systems. For example, under § 280.252(a), "Owners and operators may use single walled piping when installing or replacing piping associated with UST systems with field-constructed tanks greater than 50,000 gallons and piping associated with airport hydrant systems." Under Pennsylvania's UST regulations, double-walled piping would be required unless the owner or operator requested and was granted a variance under § 245.404 (relating to variances).

D. Pennsylvania's UST regulations at § 245.231 (relating to scope) require a person to obtain a "site-specific installation permit" from DEP prior to installing a new highly hazardous substance UST system or constructing a new field-constructed UST system. Because the Federal regulations do not require "site-specific installation permits", Pennsylvania's UST program is broader in scope.

E. Section 504(a) of the Storage Tank Act (relating to permit requirements) and § 245.203 (relating to general requirements for permits) of Pennsylvania's UST regulations provide that a person may not operate or install a UST system or UST facility unless such person has obtained an "operating permit" for such activity from DEP. This permitting requirement assures that the UST is registered, tank handling and inspection activities were performed by certified individuals, and the UST is compliant with administrative, technical and operational requirements, including financial responsibility requirements. Because the Federal regulations do not require "operating permits", Pennsylvania's UST program is broader in scope.

F. Pursuant to § 245.411 (relating to inspection frequency), UST owners or operators must have their UST facilities inspected by a DEP-certified inspector at the frequency established by Pennsylvania's UST regulations. The Federal program establishes the same inspection frequencies but does not provide for a certified inspection program, making Pennsylvania's UST program broader in scope.

G. Subsection 245.306(e) (relating to interim remedial actions) requires a responsible party to notify DEP by telephone or electronic mail as soon as practicable, but no later than 24 hours, after the initiation of interim remedial actions. For releases associated with USTs, § 280.62 does not require the initiation of initial abatement measures to be reported. However, § 280.62(b) does require a report to be submitted within 20 days after release confirmation summarizing the initial abatement steps taken. Pennsylvania's UST regulations require interim remedial actions taken to be discussed in detail in the site characterization report required under § 245.310(a)(4) (relating to site characterization report). DEP believes it is imperative that interim remedial actions be initiated immediately upon confirmation of a release. If DEP has not been notified that interim remedial actions are being undertaken following a release, DEP can contact the facility owner to assure that this requirement is being met. These initial corrective action measures are extremely important in limiting the complexity of the release, the amount of corrective action that must be undertaken, and the ultimate cost of the corrective action. This notification requirement is more stringent than the Federal program.

H. Subsection 245.309(c)(24) (relating to site characterization) requires the responsible party to notify DEP by telephone or electronic mail as soon as practicable, but no later than 24 hours, after the initiation of site characterization activities. Concurrent with the implementation of interim remedial actions, site characterization activities are to be initiated. This provision assures DEP that responsible parties are proceeding with the required site characterization tasks. Too often, responsible parties delay the implementation of site characterization activities and find themselves requesting an extension to submit the site characterization report. It is believed that this requirement will have responsible parties immediately on track to complete the site characterization process and result in significantly fewer site characterization report extension requests being submitted to DEP. The Federal requirements at 40 CFR Part 280 do not include such a provision, therefore this notification requirement is more stringent than the Federal program. However, § 280.63(b) and § 280.64(d) require that owners and operators submit an initial site characterization report and a free product removal report within 45 days of release confirmation. Pennsylvania's UST regulations require a description of free product removal to be contained in the site characterization report (§ 245.310(a)(4)(iv)).

I. The December 22, 2018, revision of § 245.1 deleted the exclusion for "Tanks containing radioactive materials or coolants that are regulated under The Atomic Energy Act of 1954 (42 U.S.C.A. §§ 2011—2297)" and "An underground storage tank system that is part of an emergency generator system at nuclear power generation facilities regulated by the Nuclear Regulatory Commission under 10 CFR Part 50, Appendix A (relating to general design criteria for nuclear power plants)" in the definition of "underground storage tank." In addition, the exclusion for "A wastewater treatment tank system" was revised to read "A wastewater treatment tank system that is part of a wastewater treatment facility regulated under Section 402 or 307(b) of the Clean Water Act." EPA has always regulated these UST systems and owners and operators have been required to comply with requirements for interim prohibition and release response and corrective action (40 CFR Part 280, Subparts A and F) since the effective date of the 1988 Federal regulations. In the revised Federal regulations promulgated in 2015, EPA maintained its position that these regulated USTs only need to comply with Subparts A and F. With the December 22, 2018 DEP rulemaking, these USTs are now regulated in

Pennsylvania. In accordance with § 245.403(c) (relating to applicability), in general, these USTs need to meet the same requirements that all other regulated UST systems must meet. However, with regards to Subchapter E (relating to technical standards for underground storage tanks), these UST owners do not need to comply with §§ 245.411, 245.421(b)(3) (relating to performance standards for underground storage tank systems), 245.421(b)(4)(ii)-(iii), 245.422(d) (relating to upgrading of existing underground storage tank systems), 245.432(g) (relating to operation and maintenance including corrosion protection), and 245.436 – 245.446 (relating to operator training; periodic testing; periodic operation and maintenance walkthrough inspections; and release detection). These UST owners are not required to conduct facility inspections, install spill and overflow prevention equipment, check for water in petroleum storage tanks, implement operator training, conduct periodic operation and maintenance walkthrough inspections, and perform release detection. However, DEP believes that it is important for owners of these USTs to register the USTs, utilize DEP-certified installers and inspectors, and maintain financial responsibility. In addition, specifically with regards to Subchapter E, provisions concerning variances, applicable codes and standards, performance standards for new UST systems, upgrade requirements for existing UST systems, reuse of removed USTs, spill and overflow control, operation and maintenance including corrosion protection, compatibility, repairs allowed, reporting and recordkeeping, and closure, apply to these UST systems. These additional requirements result in Pennsylvania's UST program being more stringent than the Federal program.

J. With regards to § 245.421(b)(3)(i)(B)(III), this subsection was deleted. In 1991, EPA finalized a minor technical amendment to the Federal regulations (§ 280.20(c)(1)(ii)(C)) allowing this alternative overflow prevention equipment to be utilized closer to the tops of larger tanks if it could be done in a manner that achieved certain minimum levels of performance. Since DEP deleted this overflow prevention equipment option, it can be viewed as being more stringent than the Federal requirements. This overflow prevention equipment option was deleted as there is no known testing procedure to adequately evaluate the effectiveness of this equipment. While the Federal regulations continue to allow this equipment option, it is our understanding that EPA is also not aware of an adequate testing procedure. Further, DEP records indicate that there are no facilities that utilize this method of overflow prevention.

K. Subsection 245.434(4)(ii) (relating to repairs allowed) was deleted. This subsection stated that the repaired portion of the UST system can be monitored monthly for releases in lieu of tightness testing. Deletion of this subsection can be viewed as being more stringent than the Federal requirement at § 280.33(d)(2) (relating to repairs allowed) as EPA allows this option in lieu of tightness testing. The fact is that most manufacturer's specifications and nationally recognized codes of practice call for tightness testing of the UST system to determine competency prior to placing product in the UST system.

L. Section 103 (relating to definitions) of the Storage Tank Act and § 245.1 (relating to definitions) excludes from the definition of "release" a spill of hazardous substance to the environment less than the reportable quantity under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980. Section 280.12 (relating to definitions) defines "release" as any amount of hazardous substance to the environment. However,

§ 245.304(c)(3) (relating to investigation and reporting of suspected releases) requires a spill (while not a “release”) of hazardous substance to the environment in an amount less than the reportable quantity to still be cleaned up. If not cleaned up within 24 hours, it must be reported to DEP. Therefore, DEP’s reporting and corrective action requirements for spills of hazardous substances to the environment in an amount less than the reportable quantity are equivalent to the Federal program.

M. Based on the definition of “release” found in Section 103 (relating to definitions) of the Storage Tank Act and § 245.1 (relating to definitions) and the definition of “immediate threat of contamination” as defined in § 245.1 the following situations are “releases” under Pennsylvania’s UST program and more stringent than the Federal program: 1) any amount of petroleum in the interstitial space of a double-walled UST, 2) an amount of hazardous substance that equals or exceeds the reportable quantity in the interstitial space of a double-walled UST, 3) an amount of petroleum to a liquid-tight containment sump that is less than 25 gallons as a result of a tank handling activity and not totally cleaned up prior to the certified installer leaving the facility, and 4) an amount of petroleum to a containment sump which is at or above the lowest sump penetration. Federal regulations in Section 280.12 define a “release” as “any spilling, leaking, emitting, discharging, escaping, leaching or disposing from an UST into groundwater, surface water or subsurface soils” meaning under Federal regulations, impact to the environment must occur for it to be considered a release.

N. In section 103 of the Storage Tank Act (relating to definitions), the definition of “underground storage tank” states that “... The term shall not include: (13) Any other tank excluded by policy or regulations promulgated pursuant to this act.” 35 P.S. § 6021.103. In addition, § 245.1 (relating to definitions), the definition of “underground storage tank” restates the exclusion. 25 Pa Code § 245.1(xvii). DEP acknowledges that EPA will exclude 35 P.S. § 6021.103(13) and 25 Pa Code § 245.1(xvii) from the State Program Approval.

3. ORGANIZATION AND STRUCTURE OF PROGRAM

A. DEP

DEP is the lead agency for administration of the storage tank program in the Commonwealth. DEP regulates both USTs and aboveground storage tanks containing petroleum and hazardous substances. DEP’s storage tank program is headquartered in Harrisburg and is supported by 6 regional offices located in Norristown, Wilkes-Barre, Harrisburg, Williamsport, Pittsburgh and Meadville. Each regional office has jurisdiction over certain counties within the Commonwealth. For example, the Norristown regional office is responsible for the counties of Bucks, Chester, Delaware, Montgomery, and Philadelphia. See the DEP regional office map in Appendix A. DEP has a complement of 105 positions to administer the entire storage tank program.

Headquarters

DEP's storage tank program is organized in the Bureau of Environmental Cleanup and Brownfields which is under the Office of Waste, Air, Radiation and Remediation. The program's UST pollution prevention responsibilities are administered by the Division of Storage Tanks, while the cleanup component of the program is housed within the Storage Tanks and Hazardous Sites Cleanup Section under the Site Remediation Division. See the Bureau of Environmental Cleanup and Brownfields organization chart in Appendix B.

Division of Storage Tanks

The Division of Storage Tanks is organized into two sections, a Registration, Permitting and Certification Section and a Compliance and Enforcement Section. See the Division of Storage Tanks organization on the Bureau of Environmental Cleanup and Brownfields organization chart in Appendix B. The Division of Storage Tanks is responsible for developing, implementing and evaluating the UST pollution prevention program. The Division's overall responsibilities include:

- developing and revising regulations, policies, standard operating procedures, technical guidance documents, fact sheets and forms;
- assuring proper implementation of the regulations to prevent releases;
- developing and monitoring the annual spending plan for the Storage Tank Fund and the UST Pollution Prevention Program (the UST Pollution Prevention Program receives its' funding from the Underground Storage Tank Indemnification Fund (USTIF));
- monitoring the Storage Tank Fund complement;
- registering and permitting USTs that are compliant with administrative and technical requirements;
- processing annual registration fees submitted by UST owners and transmitting the revenue into the Storage Tank Fund;
- pursuing payment of delinquent registration fee and USTIF accounts;
- certifying individuals and companies to conduct tank handling and inspection activities;
- providing training and outreach to individual inspectors, tank handlers and tank handling companies to ensure consistency in the interpretation and application of the regulations;
- issuing course approvals to companies wishing to offer technical training to prospective DEP-certified individuals;
- reviewing tank handling and inspection reports submitted by DEP-certified individuals, evaluating the reports for completeness and accuracy, and identifying violations noted in the reports.
- referring violations discovered during review of tank handling and inspection reports to the regional offices for appropriate follow-up;
- overseeing the installer/inspector/company certification program by conducting periodic performance evaluations;
- taking enforcement actions against DEP-certified individuals and companies for failure to comply with the standards of performance established by regulation;

- issuing inspection reminder letters to UST owners for facilities with upcoming inspection due dates and Notice of Violation letters for facilities with overdue inspections;
- issuing course approvals to companies wishing to offer Class A and/or Class B operator training in Pennsylvania;
- approving variances in situations where UST owners can demonstrate that it is technically impractical, infeasible or unsafe to apply the regulations;
- issuing site-specific installation permits for new highly hazardous substance and field-constructed UST systems;
- taking enforcement actions against UST owners and operators for violations of the regulations;
- providing technical support and guidance to regional office staff;
- monitoring the status of violations and enforcement actions;
- evaluating training needs and providing staff training;
- maintaining the program's website;
- providing training for the regulated community;
- issuing reimbursement grants to eligible UST owners for the costs of pumping, cleaning and plugging their UST systems;
- providing technical and administrative support to the Storage Tank Advisory Committee (STAC);
- coordinating with USTIF staff in the Department of Insurance;
- developing state program approval materials needed to maintain federal UST program authorization status;
- preparing the federal LUST prevention grant application, monitoring central and regional office grant commitments, and reporting to EPA;
- responding to public records requests; and
- maintaining the toll-free customer service hotline to respond to UST related questions and issues.

Site Remediation Division, Storage Tanks and Hazardous Sites Cleanup Section

The Site Remediation Division, Storage Tanks and Hazardous Sites Cleanup Section is responsible for developing, implementing and evaluating the UST cleanup program. See the Site Remediation Division organization on the Bureau of Environmental Cleanup and Brownfields organization chart in Appendix B. The Division's overall responsibilities include:

- developing and revising regulations, policies, standard operating procedures, technical guidance documents, fact sheets and forms;
- assuring proper implementation of the regulations to address releases;
- developing and monitoring the annual spending plans for the UST Environmental Cleanup Program (funding received from USTIF) to carry out LUST state-lead cleanup activities;
- ranking and prioritizing each potential state-lead site for state-lead action;
- directing state-lead corrective action activities;

- assuring that contractual services are available to conduct the necessary state-lead corrective actions;
- providing technical support and guidance to regional office staff;
- monitoring the status of violations and enforcement actions;
- evaluating training needs and providing staff training;
- maintaining the program's website;
- providing training for the regulated community;
- issuing reimbursement grants to eligible owners of heating oil USTs for the costs of cleanup;
- coordinating with USTIF staff in the Department of Insurance;
- preparing the federal LUST cleanup grant application, monitoring central and regional office grant commitments, and reporting to EPA; and
- responding to public records requests.

Regional Offices

DEP's storage tank program is implemented in each of the six regional offices and is organized in the Environmental Cleanup and Brownfields Program. DEP's regional offices are under the Office of Field Operations. Each regional office has a Regional Director and the Environmental Cleanup and Brownfields Program in each region is led by a Program Manager. Each Program Manager is responsible for the storage tank, land recycling and hazardous sites cleanup program. See a typical Environmental Cleanup and Brownfields Program regional office organization chart in Appendix C. Each of the six regional offices are responsible for the following UST program activities:

- assisting in the development and revision of regulations, policies, standard operating procedures, technical guidance documents, fact sheets and forms;
- assuring proper implementation of the regulations to prevent and address releases;
- overseeing responsible-party lead cleanup activities;
- reviewing and acting on all corrective action reports received from responsible parties;
- identifying each potential state-lead site for state-lead action;
- overseeing state-lead corrective action activities;
- assuring that available contractual services are conducting the necessary state-lead corrective actions;
- taking cost recovery action against responsible parties for the costs of corrective action associated with state-lead cleanups;
- pursuing payment of delinquent registration fee and USTIF accounts;
- following up on violations discovered as a result of headquarters' review of tank handling and inspection reports;
- inspecting UST facilities to determine compliance with the regulations and to ensure that violations are corrected;
- overseeing the installer/inspector/company certification program by conducting periodic performance evaluations;

- reviewing site-specific installation permit applications for new highly hazardous substance and field-constructed UST systems;
- reviewing spill prevention response plans to determine administrative completeness and technical accuracy;
- taking enforcement actions against DEP-certified individuals and companies for failure to comply with the standards of performance established by regulation;
- taking enforcement actions against UST owners and operators for violations of the regulations;
- monitoring the status of violations and enforcement actions;
- evaluating training needs and providing staff training;
- maintaining the program's website;
- providing training for the regulated community;
- coordinating with USTIF staff in the Department of Insurance;
- responding to UST related questions and issues;
- investigating complaints; and
- responding to public records requests.

B. Pennsylvania Insurance Department

Section 704(a) (relating to underground storage tank indemnification fund) of the Storage Tank Act established a special fund in the Commonwealth Treasury known as USTIF. Moneys in the fund are used to make payments to owners, operators and certified tank installers of USTs who incur liability for taking corrective action or for bodily injury or property damage caused by a release from USTs. Every owner and certified tank installer of an UST in Pennsylvania must participate in USTIF.

USTIF is administered by the Pennsylvania Insurance Department, Bureau of Special Funds, with the assistance of ICF International (ICF), a third-party administrator. See organization chart for the Bureau of Special Funds and ICF in Appendix D. In addition to payments to owners, operators and certified tank installers of USTs, moneys in the fund support Bureau of Special Funds and ICF staff in the administration of USTIF and the Tank Installers Indemnification Program (TIIP). USTIF began operation in February 1994. TIIP went into effect in January 2002.

USTIF consists of fees assessed by the Underground Storage Tank Indemnification Board (established under section 703 of the Storage Tank Act, herein after referred to as the Board) and established in 25 Pa Code Chapter 977 (relating to underground storage tank indemnification fund), amounts recovered by the Board due to fraudulent or improper claims or as penalties for failure to pay fees when due, and funds earned by the investment and reinvestment of the moneys collected.

In accordance with § 977.12 (relating to owner and operator fees), UST owners and operators storing gasoline, new motor oil, hazardous substances, gasohol, aviation fuel, mixtures, farm diesel and other types of regulated substances based on the tank registration information

maintained by DEP are assessed a gallon (throughput) fee entering a UST of \$.011 per gallon. (For example, a delivery of 10,000 gallons at \$.011 per gallon equals \$110). For these throughput fees, each in-state distributor must assess the fee at the time of delivery and submit it to USTIF. Owners and operators of USTs that receive deliveries from out-of-state distributors are required to submit the throughput fee to USTIF. The bulk of throughput fees are generated by gasoline deliveries. A UST owner or operator which stores regulated substances including diesel, heating oil, used motor oil, kerosene and unknown substances based on the tank registration information maintained by DEP are assessed an annual capacity fee of \$.0825 per gallon of capacity. (For example, a 10,000-gallon UST at \$.0825 per gallon equals \$825).

The owner and operator of a UST storing 3,000 gallons or more of heating oil solely for consumptive use on the premises where stored (a non-regulated UST) may elect to participate in USTIF and thereby benefit from the indemnification provided by USTIF. When such an election is chosen, the owner and operator must pay the capacity fee required by USTIF, along with meeting all other requirements established in § 977.51 (relating to election requirements).

Under the TIIP and as established in § 977.19 (relating to certified company fees), DEP-certified companies are required to pay a fee of \$1,000 per year. In addition, an activity fee is assessed on all activities on a UST or an unregulated heating oil UST. The fees are as follows:

- (1) Installation Activity Fee of \$50.
- (2) Major Modification Activity Fee of \$50.
- (3) Removal Activity Fee of \$15.

To be eligible for USTIF or TIIP coverage, the participant must meet the following eligibility requirements (§ 977.31):

- (1) The claimant is the owner, operator or DEP-certified tank installer of the UST which is the subject of the claim.
- (2) The USTIF or TIIP fees have been paid.
- (3) The UST has been registered with DEP and all registration fees have been paid.
- (4) The participant has obtained any required permit or certification.
- (5) The release that is the subject of the claim occurred on or after February 1, 1994.
- (6) The participant cooperates with USTIF in its eligibility determination process, claims investigation, the defense of any suit, the pursuit of a subrogation action and other matters as requested.
- (7) The participant files a claim with USTIF within 60 days after the confirmation of a release.

USTIF will indemnify an eligible owner, operator or DEP-certified tank installer for up to the available coverage limit, for reasonable and necessary corrective action costs, and will indemnify an eligible participant, up to the available coverage limit, for bodily injury and property damage.

The owner, operator or DEP-certified tank installer is required to obtain coverage for liability not insured by USTIF (deductible) through any of the methods identified and in accordance with Section 245.704(b) (relating to general requirements) of Pennsylvania's UST regulations.

Payment of a claim for corrective action costs shall be subject to a deductible in an amount not less than \$5,000 per tank per occurrence for each UST or non-regulated heating oil UST that contributed to the release. If an eligible claim for bodily injury or property damage results from the release, an additional deductible per tank per occurrence in an amount not less than \$5,000 applies to all claims in addition to the deductible for corrective action. A certified company is subject to one deductible per tank per occurrence of not less than \$5,000. Prior to January 1, 1995, the deductible was \$10,000 per tank per occurrence.

Payments to eligible UST owners or operators shall be limited to the actual costs of corrective action and the amount of an award of damages by a court of competent jurisdiction for bodily injury, property damage or both, not to exceed a total of \$1,500,000 per tank per occurrence. In addition, payments shall not exceed an annual aggregate of \$1,500,000 for each owner and operator of 100 or less USTs; or an annual aggregate of \$3,000,000 for each owner and operator of 101 or more USTs, up to the total of \$1,500,000 per tank per occurrence or the total eligible costs or damages. Prior to January 1, 2002, the per tank per occurrence limit was \$1,000,000.

Payments to DEP-certified companies shall be limited to the actual costs of corrective action and the amount of an award of damages by a court of competent jurisdiction for bodily injury, property damage or both, not to exceed a total of \$1,500,000 per occurrence. Corrective action means releases caused by improper or faulty installations, modifications and removal of USTs. In addition, payments shall not exceed an annual aggregate of \$1,500,000 for certified tank installers who perform 100 or fewer installations or major modifications; or an annual aggregate of \$3,000,000 for certified tank installers who perform more than 100 installations or major modifications.

Moneys in USTIF are not used for the repair, replacement or maintenance of USTs or improvement of property on which the tanks are located.

4. CLEANUP STANDARDS APPLICABLE TO UST RELEASE SITES

In 1995, the General Assembly of the Commonwealth enacted the Land Recycling and Environmental Remediation Standards Act, P.L. 4, 35 P.S. §§ 6026.101-6026.908 (Act 2). DEP's cleanup standards for all releases are established by Act 2 and the Land Recycling Program regulations (25 Pa Code Chapter 250.1-250.708). Chapter 245 Subchapter D establishes a corrective process for owners and operators of storage tanks and storage tank facilities and other responsible parties but does not establish cleanup standards. Section 904(c) (relating to relationship to federal and state programs) of Act 2 preserved the corrective action process (established in Chapter 245 Subchapter D) for the remediation of releases from storage tanks regulated by the Storage Tank Act. The three types of cleanup standards available to responsible parties under Act 2 and Chapter 250 are background, statewide health and site-specific standards. Cleanup standards are discussed in detail in DEP's *Land Recycling Program Technical Guidance Manual*. A responsible party who adheres to the corrective action process established in Chapter 245 and meets one or more of the cleanup standards established under Act 2 and Chapter 250, will be relieved of liability for further cleanup when the chosen cleanup standard(s) is attained.

5. RESOURCE INFORMATION

A. Federal Grants

DEP is currently under a 3-year agreement (Federal fiscal year (FFY) 2020/2021/2022) with EPA for both a Leaking Underground Storage Tank (LUST) Prevention and LUST Cleanup grant. The Division of Storage Tanks manages the LUST Prevention grant and the Site Remediation Division is responsible for the LUST Cleanup grant. For FFY 2020 (October 1, 2019 through September 30, 2020), Federal funds provided to DEP through the LUST Prevention and LUST Cleanup grant are \$704,965 and \$1,500,565, respectively. Funding provided by both grants (\$2,205,530), together with state match of 25% for the LUST Prevention grant (\$234,988) and 10% for the LUST Cleanup grant (\$166,729), supports 6.35 prevention FTEs and 9.60 cleanup FTEs in the Storage Tank Program for FFY 2020.

B. Storage Tank Fund

Section 702(a) (relating to storage tank fund) of the Storage Tank Act created a special non-lapsing fund in the Pennsylvania Treasury known as the Storage Tank Fund. All registration fees, permit fees, reimbursement of investigation, closure, compliance and enforcement costs from USTIF, fines and penalties, interest, recovered costs, and miscellaneous revenue collected by DEP under the Storage Tank Act are deposited into the Storage Tank Fund. Whenever costs have been incurred by the Commonwealth for taking corrective action in response to a release, the owner or operator of such tank shall be liable to the Commonwealth for such costs (recovered costs). All moneys placed in the Storage Tank Fund and the interest it accrues are appropriated each state fiscal year, upon authorization by the Governor, to DEP for the costs of operating the aboveground storage tank and UST programs, including activities necessary for the elimination of releases from storage tanks and any other activities necessary to meet the requirements of the Storage Tank Act. For state fiscal year 2019-20, revenue from the sources identified above totaled \$10.874 million.

C. USTIF

As noted above, USTIF is administered by the Pennsylvania Insurance Department, Bureau of Special Funds. As of the end of state fiscal year 2019-20 (June 30, 2020), USTIF had assets of \$414,187,593 million. Imbedded in this amount are loans made to the General Fund totaling \$116,344,834. USTIF is required by the comptroller to count those loans as assets. Removing those loans as assets, USTIF has approximately \$297.8 million in assets at the end of the fiscal year. At the end of the previous fiscal year (June 30, 2019), USTIF had total assets of 396.5 million. Regarding revenue at the end of the last fiscal year, USTIF had total revenue of \$64,827,589. In the previous fiscal year, revenue totaled \$78,444, 447. Revenue was down over \$13.6 million, mainly due to loss of revenue as part of a decrease in gasoline usage and loss of income investments due to the current pandemic. Expenditures for the last fiscal year totaled \$45 million, resulting in an excess of \$19.9 million. As of June 30, 2020, the unfunded liability totals approximately \$45 million. USTIF's unfunded liability amount at the end of June 2011

was \$345 million. While this unfunded liability exists, and even without any increase in USTIF fees or any repayment of the General Fund Loan, it is projected that USTIF will have the ability to pay claims for at least an additional 20 years through June 30, 2040

Reimbursement of Investigation, Closure, Compliance and Enforcement Costs

Section 713 (relating to investigation, closure, compliance and enforcement costs) of the Storage Tank Act authorizes DEP to request reimbursement from USTIF, up to \$7,000,000 annually, for its costs related to investigating, determining responsibility, overseeing remediation and third-party response, and closing out cases of spills and leaks related to storage tanks; and for inspecting, determining compliance and taking enforcement actions against owners of storage tanks. Costs are initially paid out of the Storage Tank Fund. DEP requests reimbursement of identified, eligible costs from USTIF on a quarterly basis with the resulting revenue deposited into the Storage Tank Fund. For state fiscal year 2019-20, revenue received from USTIF totaled \$7.137 million. Expenses covered and paid by the LUST Prevention and LUST Cleanup grants are not submitted to USTIF for reimbursement.

UST Environmental Cleanup Program

Section 710 (relating to underground storage tank environmental cleanup program) of the Storage Tank Act authorizes DEP to request from USTIF, up to \$5,500,000 annually, to cover costs for state-lead corrective action activities at UST release sites. Up to \$750,000 of the potential \$5.5 million allocation may be used to assist owners of USTs with a capacity of 3,000 gallons or less solely used for storing heating oil for consumption on the premises where stored who are required to take corrective action in response to a release. Payments made for eligible releases are limited to the actual costs of corrective action or \$4,000, whichever is less, and are issued as reimbursement grants.

An additional allocation of up to \$5,500,000 may be requested annually to be used by DEP for corrective action associated with a catastrophic release. A catastrophic release is defined as a release that poses a threat to public health and safety and the environment where DEP determines that the costs of the corrective action may exceed \$3,000,000.

DEP makes the allocation requests at the December Board meeting each year. DEP staff time to oversee state-lead and catastrophic release corrective action activities and to administer grants to owners of heating oil USTs are eligible costs under the program. The UST Environmental Cleanup Program sunsets every 5 years unless reauthorized. The program is currently authorized through June 30, 2022.

While DEP may request up to \$11 million annually under the UST Environmental Cleanup Program, the actual request to the Board is based on the projected needs for the following state fiscal year to take and oversee the necessary state-lead and catastrophic release corrective actions and to administer the UST heating oil grant program. At the December 2020 Board meeting, DEP requested and received \$3.3 million for state fiscal year 2020-21 to conduct state-lead

corrective action activities and to provide heating oil reimbursement grants. Currently, there are no catastrophic release sites that need to be addressed by DEP, so no funding was requested under that allocation. Funding received for a given fiscal year and not expended in that year can be expended in the next fiscal year(s) until it is exhausted, upon approval by the Board.

UST Pollution Prevention Program

Section 711 (relating to underground storage tank pollution prevention program) of the Storage Tank Act authorizes DEP to request from USTIF, up to \$350,000 annually, to reimburse owners of six or fewer USTs for the cost of pumping product from their tanks, properly disposing of the product, cleaning the tanks if they elect to have it done, and grouting the fill pipes with concrete so that no further product can enter the tank. The UST must not have been upgraded to comply with Pennsylvania's UST regulations to be eligible for the up to \$2,500 per tank reimbursement grant. The owner remains responsible for ultimately closing the tank(s) in compliance with DEP closure requirements. The UST Pollution Prevention Program is commonly known as the "Pump and Plug" grant program. The UST Pollution Prevention Program sunsets every 5 years unless reauthorized. The program is currently authorized through June 30, 2022.

While DEP may request up to \$350,000 annually under the UST Pollution Prevention Program, the actual request is based on the projected needs for the following state fiscal year to administer the "Pump and Plug" grant program. At the December 2020 Board meeting, DEP requested a supplemental allocation of \$59,298 for state fiscal year 2019-20 and \$100,000 allocation for 2021-22. Funding received for a given fiscal year and not expended in that year can be expended in the next fiscal year(s) until it is exhausted, upon approval by the Board.

6. FISCAL STATUS OF STORAGE TANK PROGRAM

Revenue received from EPA under the LUST Prevention and LUST Cleanup grant, Storage Tank Fund receipts to include reimbursement of investigation, closure, compliance and enforcement costs from USTIF, and allocations received from USTIF under the UST Environmental Cleanup and Pollution Prevention Programs are adequate to support the administration and enforcement of Pennsylvania's Storage Tank Program at the current complement level.

APPENDICES

A - DEP Regional Office Map

B - Bureau of Environmental Cleanup and Brownfields Organization Chart

C - Environmental Cleanup and Brownfields Program Regional Office Organization Chart

D - Department of Insurance, Bureau of Special Funds and ICF International Organization Charts

APPENDIX A

APPENDIX B

APPENDIX C

APPENDIX D