SECTION 3

Attorney General Statement Table

Subpart C: Criteria For No Less Stringent

Attorney General's Statement of Applicable State Authorities

The following table contains references to the Commonwealth of Massachusetts' rules and statutes subject to enforcement of EPA's applicable statutory and regulatory provisions set forth in 40 CFR part 280 to administer a program that is no less stringent than the federal requirements as provided in 40 CFR part 281 subpart C.

Links to state rules and statutes that correspond to the regulatory requirements in 40 CFR part 280 are provided in Section 7.

40 CFR part 280 subpart C: Criteria for No Less Stringent

SPA Objective 40 CFR § 281.30
New UST System Design, Construction, Installation, and Notification

In order to be considered no less stringent than the corresponding federal requirements in 40 CFR part 280, the state must have requirements that ensure all new UST systems conform with the following system design, construction, installation and notification criteria:	**Corresponding State Rule Citation**	**State Statutory Citation**
(a) USTs and piping in contact with the ground must be designed, constructed, and installed in a manner that will prevent releases for their operating life due to manufacturing defects, structural failure, or corrosion. Unless the state requires manufacturer and installer financial responsibility and installer certification in accordance with section 9003(i)(2) of the Solid Waste Disposal Act (SWDA), then the state must meet the following: (1) New or replaced tanks and piping must use interstitial monitoring within secondary containment in accordance with section9003(i)(1) of SWDA except as follows: (i) Underground piping associated with airport hydrant systems (AHS) or field constructed tanks (FCT) greater than 50,000 gallons; or (ii) Underground suction piping that meets §281.33(d)(2)(ii). (2) New motor fuel dispenser systems installed and connected to an UST system must be equipped with under dispenser containment in accordance with section 9003(i)(1) of SWDA.	310 CMR 80.14, 80.16, 80.17, 80.18, 80.22, 80.64	M.G.L. c. 21O, § 5

In order to be considered no less stringent than the corresponding federal requirements in 40 CFR part 280, the state must have requirements that ensure all new UST systems conform with the following system design, construction, installation and notification criteria:	**Corresponding State Rule Citation**	**State Statutory Citation**
(b) Tanks must be provided with equipment to prevent spills and tank overfills when new tanks are installed or existing tanks are upgraded, unless the tank does not receive more than 25 gallons at one time. Flow restrictors used in vent lines are not allowable forms of overfill prevention when overfill prevention is installed or replaced.	310 CMR 80.21, 80.64	M.G.L. c. 21O, § 5
(c) Owners and operators must notify the implementing agency of any new UST system and notify within reasonable timeframe of assuming ownership of an UST.	310 CMR 80.23, 80.64	M.G.L c. 21O, § 3

Certification of SPA Objective 40 CFR § 281.30 New UST System Design, Construction, Installation, and Notification:

§ 281.30(a): The State must have requirements that ensure that all new UST systems conform with the following: "Be designed, constructed, and installed in a manner that will prevent releases for their operating life due to manufacturing defects, structural failure, or corrosion." [Note: Codes of practice developed by nationally recognized organizations may be used to demonstrate that the State program requirements are not less stringent in this area.]

State requirements: 310 CMR 80.14, 80.16, 80.17, 80.18, 80.22; 80.64; M.G.L. c. 21O, § 5

Pursuant to 310 CMR 80.14, MassDEP requires that the Owner and Operator of the UST system follow the installation requirements in 310 CMR 80.16, as well as the manufacturer's specifications.

Pursuant to 310 CMR 80.16, MassDEP requires that the Owner and Operator follow UST system installation requirements that include using certified persons to install the equipment, testing the tank and piping at installation to ensure they are tight and employing specific installation requirements to prevent damaging equipment that could lead to a release.

Pursuant to 310 CMR 80.17, MassDEP requires that, effective January 1, 1989, Owner and Operator shall only install certain cited "listed" tanks (excluding consumptive use tanks 1100 gallons capacity or less). In regard to tanks, "listed" is defined as equipment that is on a list published by a nationally recognized organization.

Pursuant to 310 CMR 80.18(2) and (3), MassDEP requires regulated substance piping installed between January 1, 1989 – January 2, 2015, to be constructed of non-corrodible material or cathodically protected, which prevents leaks from developing in the UST system tanks and components, and, except for European suction systems and siphon bars between tanks, installed with secondary containment, which prevents releases into the environment. All regulated substance piping, except for European suction systems and siphon bars between tanks, installed after

January 2, 2015, shall be double-walled, product compatible, and constructed of non-corrodible material or cathodically protected, all of which requirements protect against the development of leaks from the UST systems.

Pursuant to 310 CMR 80.22, MassDEP requires all UST systems to be protected from corrosion. Metal components of the UST system that are in contact with the ground must have cathodic protection, all of which requirements protect against the development of leaks from the UST systems.

Pursuant to 310 CMR 80.64, all airport hydrant systems installed after October 1 ,2021 must comply with 310 CMR 80.64. Those installed on or before October 1, 2021, must upgrade in accordance with the schedule in 310 CMR 80.64(1)(a). They are subject to leak detection requirements, and requirements for spill buckets, overfill prevention equipment and corrosion protection, all of which will protect against leaks to the environment.

The state program is more stringent or broader in scope than Federal Program as follows:

- Consumptive use tanks of 1100 gallons or less installed after March 21, 2008, must be double-walled (310 CMR 80.17(3))

§ 281.30(b): The State must have requirements that ensure that all new UST systems conform with the following: "Be provided with equipment to prevent spills and tank overfills when new tanks are installed or existing tanks are upgraded, unless the tank does not receive more than 25 gallons at one time. Flow restrictors used in vent lines are not allowable forms of overfill prevention when overfill prevention is installed or replaced."

State requirements: 310 CMR 80.21, 80.64; M.G.L. c. 21O, § 5(1)

Pursuant to 310 CMR 80.21(1), all fill ports used for regulated substance must be equipped with a spill bucket. 310 CMR 80.21(2) requires that all UST systems have an overfill prevention device. After January 2, 2015, new or replacement ball float valves are not allowed to be used as the primary overfill prevention device.

The state program is more stringent or broader in scope than Federal Program as follows:

- All UST systems, regardless of the amount of regulated product received at one time, are required to have a spill bucket and an overfill prevention device (310 CMR 80.21)
- Spill buckets installed after January 2, 2015 must be at least 5 gallons (310 CMR 80.21(1)(a))
- Spill buckets shall pass a tightness test at installation (310 CMR 80.21(1)(c))
- Ball floats valves are not allowed to be installed as primary overfill prevention after January 2, 2015 (310 CMR 80.21(2)

§ 281.30(c): The State must have requirements that ensure that all new UST systems conform with the following: "All UST system owners and operators must notify the implementing agency of the existence of any new UST system and notify the implementing agency within a reasonable timeframe when assuming ownership of an UST system using a process designated by the implementing agency."

State requirements: 310 CMR 80.23(1), 310 CMR 80.64; M.G.L. c. 21O, § 5(8)

Pursuant to 310 CMR 80.23(1) and 310 CMR 80.64(2), MassDEP requires the UST-system Owner to notify MassDEP of installation of the UST system, within 30 days of receiving regulated substance into the UST system, on a form provided by MassDEP. Pursuant to 310 CMR 80.23(5), before the sale of an UST facility, the Owner must provide MassDEP with the new Owner's name, address and contact information. And a new Owner is required to update the

registration within 30 days under 310 CMR 80.23(1)(c).

It is the opinion of the Commonwealth of Massachusetts' Attorney General the state meets the no less stringent criterion for SPA Objective 40 CFR § 281.30

SPA Objective 40 CFR § 281.31 Upgrading existing UST Systems

In order to be considered no less stringent than the corresponding federal requirements in 40 CFR part 280, the state must have requirements that ensure existing UST systems are upgraded to conform with the following:	**Corresponding State Rule Citation**	**State Statutory Citation**
The state must have requirements that ensure existing UST systems meet the requirements of 40 CFR 281.30; are upgraded to prevent releases for their operating life due to corrosion, spills or overfills; or are permanently closed with the following exceptions: (a) Upgrade requirements for previously deferred UST systems. Previously deferred airport hydrant fuel distribution systems and USTs with field-constructed tanks must within three years of the effective date of its state requirements meet the requirements of 40 CFR 281.30 or be permanently closed. This provision would not apply, however, to states that did not defer these UST systems and already had, prior to the effective date of this provision, existing requirements with specified compliance periods for these types of UST systems.	310 CMR 80.19, 80.21, 80.22, 80.64	M.G.L. c. 21O, § 5
(b) Upgrade requirements for other UST systems. States may allow UST systems to be upgraded if the state determines that the upgrade is appropriate to prevent releases for the operating life of the UST system due to corrosion and spills or overfills.	NA	

Certification of SPA Objective 40 CFR § 281.31 Upgrading Existing UST Systems:

40 CFR § 281.31

"The state must have requirements that ensure existing UST systems meet the requirements of 40 CFR 281.30; are upgraded to prevent releases for their operating life due to corrosion, spills or overfills; or are permanently closed with the following exceptions:

(a) Upgrade requirements for previously deferred UST systems. Previously deferred airport hydrant fuel distribution systems and USTs with field-constructed tanks must within three years of the effective date of its state requirements meet the requirements of 40 CFR 281.30 or be permanently closed. This provision would not apply, however, to states that did not defer these UST systems and already had, prior to the effective date of this provision, existing requirements with specified compliance periods for these types of UST systems."

State requirements: 310 CMR 80.19(3)(d), 80.21, 80.22(4), 80.64; M.G.L. c. 21O, § 5

MassDEP previously regulated field constructed tanks prior to the effective date of this provision. Pursuant to 310 CMR 80.22(4), Owners and Operators of field-constructed cathodic protection systems shall be designed by a corrosion expert and meet certain design, installation, and repair requirements.

Pursuant to 310 CMR 80.64, MassDEP requires airport hydrant fuel distribution systems installed after October 1, 2021, to comply with 310 CMR 80.00. Those installed on or before October 1, 2021, must comply with 310 CMR 80.00 in accordance with the schedule in 310 CMR 80.64(1)(a).

- All UST systems are required to have leak detection (310 CMR 80.19)
- All metal tanks and piping are required to have cathodic protection (310 CMR 80.22)
- All UST systems are required to have spill buckets and overfill prevention equipment (310 CMR 80.21)

The state program is more stringent or broader in scope than Federal Program as follows:

- Spill buckets that are replaced after January 2, 2015, must be five gallons. [310 CMR 80.21(1)(a)]

It is the opinion of Commonwealth of Massachusetts Attorney General the state meets the no less stringent criterion for SPA Objective 40 CFR § 281.31

SPA Objective 40 CFR § 281.32 General Operating Requirements

In order to be considered no less stringent than the corresponding federal requirements in 40 CFR part 280, the state must have general operating requirements that ensure all new and existing UST systems conform with the following:	**Corresponding State Rule Citation**	**State Statutory Citation**
(a) Prevent spills and overfills by ensuring that the space in the tank is sufficient to receive the volume to be transferred and that the transfer operation is monitored constantly.	310 CMR 80.28, 80.64	M.G.L. c. 21O, § 5
(b) Where equipped with cathodic protection, be operated and maintained by a person with sufficient training and experience in preventing corrosion, and in a manner that ensures that no releases occur during the operating life of the UST system. Note to paragraph (b): Codes of practice developed by nationally recognized organizations and national independent testing laboratories may be used to demonstrate the state program requirements are no less stringent.	310 CMR 80.03, 80.22, 80.29, 80.64	M.G.L. c. 21O, §5
(c) Be made of or lined with materials that are compatible with the substance stored; in order to ensure compatibility, the state requirements must also include provisions for demonstrating compatibility with new and innovative regulated substances or other regulated substances identified by the implementing agency or include other provisions determined by the implementing agency to be no less protective of human health and the environment than the provisions for demonstrating compatibility.	310 CMR 80.04, 80.18, 80.30, 80.64	M.G.L. c. 21O, § 5
(d) At the time of upgrade or repair, be structurally sound and upgraded or repaired in a manner that will prevent releases due to structural failure or corrosion during their operating lives.	310 CMR 80.27, 80.28, 80.29, 80.33, 80.64	M.G.L. c. 21O, § 5
(e) Have spill and overfill prevention equipment periodically tested or inspected in a manner and frequency that ensures its functionality for the operating life of the equipment and have the integrity of containment sumps used for interstitial monitoring of piping periodically tested in a manner and frequency that prevents releases during the operating life of the UST system	310 CMR 80.27, 80.28, 80.35, 80.64	M.G.L. c. 21O, § 5

In order to be considered no less stringent than the corresponding federal requirements in 40 CFR part 280, the state must have general operating requirements that ensure all new and existing UST systems conform with the following:	Corresponding State Rule Citation	State Statutory Citation
(f) Have operation and maintenance walkthrough inspections periodically conducted in a manner and frequency that ensures proper operation and maintenance for the operating life of the UST system.	310 CMR 80.35, 80.64	M.G.L. c. 21O, § 5
(g) Have records of monitoring, testing, repairs, and inspections. These records must be made readily available when requested by the implementing agency.	310 CMR 80.10, 80.26, 80.27, 80.28, 80.29, 80.30, 80.31, 80.32, 80.33, 80.35, 80.36, 80.64	M.G.L. c. 21O, § 6

Certification of SPA Objective 40 CFR § 281.32 General Operating Requirements:

§**281.32(a):** The State must have requirements that ensure all new and existing UST systems conform to the following: "Prevent spills and overfills by ensuring that the space in the tank is sufficient to receive the volume to be transferred and that the transfer operation is monitored consistently."

State requirements: 310 CMR 80.28(4), 80.64 M.G.L. c. 21O, § 5

Pursuant to 310 CMR 80.28(4), before a transfer of regulated substance is made, the Owner or Operator shall ensure that the volume in the tank is greater than the volume of regulated substance to be transferred into the tank. The regulations include a requirement that the transfer operation is monitored constantly.

Pursuant to 310 CMR 80.64, MassDEP requires airport hydrant fuel distribution systems installed after October 1, 2021, comply with 310 CMR 80.00. Those installed on or before October 1, 2021, must comply with the overfill prevention requirements at 310 CMR 80.28 in accordance with the schedule in 310 CMR 80.64(1)(a).

§**281.32(b):** The State must have requirements that ensure all new and existing UST systems conform to the following: "Where equipped with cathodic protection, be operated and maintained by a person with sufficient training and experience in preventing corrosion, and in a manner that ensures that no releases occur during the operating life of the UST system; Note to paragraph (b). Codes of practice developed by nationally-recognized organizations and national independent testing laboratories may be used to demonstrate the State program requirements are no less stringent."

State requirements: 310 CMR 80.03, 80.22(5), (6), 80.29(3), (4), (5), (6), 80.64; M.G.L. c. 21O, § 5

Pursuant to 310 CMR 80.03, there is a definition for the term "Cathodic Protection Tester" and "Corrosion Expert" as used in 310 CMR 80.22 and 80.29.

Pursuant to 310 CMR 80.22(5) and (6) and 310 CMR 80.29(3) – (4), (6), sacrificial and galvanic anode cathodic protection systems must be tested by a cathodic protection tester in accordance with NACE Standard TM0101 2012 or NACE Standard TM 0497-2012.

Pursuant to 310 CMR 80.29(5), if a cathodic protection system fails a test, the Owner or Operator shall retain a corrosion expert.

Pursuant to 310 CMR 80.64(1)(a), airport hydrant systems must upgrade to the corrosion protection requirements in 310 CMR 80.22 and 80.29 no later than October 13, 2022. Pursuant to 310 CMR 80.64(7) airport hydrant systems operations must assess metal tanks greater than 10 years old without cathodic protection to ensure the tank is structurally sound and free of corrosion holes prior to adding cathodic protection no later than October 13, 2022.

§**281.32(c):** The State must have requirements that ensure all new and existing UST systems conform to the following: "Be made of or lined with materials that are compatible with the substance stored; in order to ensure compatibility, the state requirements must also include provisions for demonstrating compatibility with new and innovative regulated substances or other regulated substances identified by the implementing agency or include other provisions determined by the implementing agency to be no less protective of human health and the environment than the provisions for demonstrating compatibility."

State requirements: 310 CMR 80.04(7), 80.18(3)(b) 80.30(1) & (2), 80.64; M.G.L. c. 21O, § 5

Pursuant to 310 CMR 80.04(7), UST systems that are exempt from certain requirements of 310 CMR 80.00 must be constructed or lined with a material that is compatible with the stored regulated substance.

Pursuant to 80.18(3)(b), effective January 2, 2015, all installed regulated piping must be product compatible.

Pursuant to 80.30(1)& (2), UST Owner and Operators shall not introduce, or allow to be introduced, any regulated substance that is not compatible with the UST system. Pursuant to 310 CMR 80.30(2), the UST system itself must be compatible with the soil into which it is installed. 310 CMR 80.30(3) requires that Owners or Operators with tanks holding regulated substance with more than 10% ethanol or 20% biofuel must show the fuel is compatible with the tank, piping and UST components by certification or manufacturer's approval.

Pursuant to 310 CMR 80.64, airport hydrant fuel distribution systems installed after October 1, 2021, comply with 310 CMR 80.00. Those installed on or before October 1, 2021, must comply with compatibility requirements at 310 CMR 80.30 no later than October 13, 2022.

§**281.32(d):** The State must have requirements that ensure all new and existing UST systems conform to the following: "At the time of upgrade or repair, be structurally sound and upgraded or repaired in a manner that will prevent releases due to structural failure or corrosion during their operating lives."

State requirements: 310 CMR 80.27(9), 80.28(2), (3), 80.29(6), 80.33, 80.64; M.G.L. c. 21O, § 5

Pursuant to 310 CMR 80.27(9), if a sump fails a test, the Owner or Operator shall investigate the failure and shall make any necessary repairs in accordance with 310 CMR 80.33.

Pursuant to 310 CMR 80.28(2)(h), the Owner or Operator shall repair or replace spill buckets as necessary. 310 CMR 80.28(2)(h) requires spill buckets to be tested after repair and prior to commencing operation.

Pursuant to 310 CMR 80.28(3)(b), the Owner or Operator shall repair or replace components of overfill prevention equipment as necessary. Overfill prevention equipment shall be tested after repair, prior to commencing operation under 310 CMR 80.28(3)(b).

Pursuant to 310 CMR 80.29(6), cathodic protection systems must be tested within 60 days of repair to ensure proper operation.

Pursuant to 310 CMR 80.33, UST systems and components may be repaired or replaced. Tank repairs must be performed by the tank manufacturer and re-certified or re-warrantied by the manufacturer. Repaired tanks and piping must pass a tightness test prior to commencing operation. In 310 CMR 80.33(5), any repair to the UST system or UST component must be made by a qualified individual in accordance with the MassDEP UST regulations, manufacturer's specifications and relevant codes and standards.

Pursuant to 310 CMR 80.64, airport hydrant fuel distribution systems installed on or before October 1, 2021, must be upgraded to comply with the requirements of 310 CMR 80.00 in accordance with the schedule in 310 CMR 80.64(1)(a).

The state program is more stringent or broader in scope than Federal Program as follows:

- All Sumps must pass an integrity test after repairs (310 CMR 80.27(9))
- Cathodic protection systems must be tested within 60 days of repair (310 CMR 80.29(6))

§**281.32(e):** The State must have requirements that ensure all new and existing UST systems conform to the following: "Have spill and overfill prevention equipment periodically tested or inspected in a manner and frequency that ensures its functionality for the operating life of the equipment and have the integrity of containment sumps used for interstitial monitoring of piping periodically tested in a manner and frequency that prevents releases during the operating life of the UST system."

State requirements: 310 CMR 80.27, 80.28(2) and (3), 80.35, 80.64; M.G.L. c. 21O, § 5

Pursuant to 310 CMR 80.27, turbine, intermediate and dispenser sumps are required to be tested every three years. There is a list of sumps that are exempt from the testing requirements listed at 310 CMR 80.27(8).

Pursuant to 310 CMR 80.28(2)(e), Owners and Operators must inspect spill buckets no less frequently than every thirty days. 310 CMR 80.28(2)(f) requires that Owners and Operators test spill buckets every three years. Double-walled spill bucket, if the integrity of both walls are monitored every 30 days are exempt from the testing requirement.

Pursuant to 310 CMR 80.28(3)(a), Owners and Operators must inspect and test overfill prevention equipment annually.

310 CMR 80.35 also sets forth the requirements for inspecting and testing spill buckets and overfill prevention equipment.

Pursuant to 310 CMR 80.64, MassDEP requires airport hydrant fuel distribution systems installed after October 1, 2021, to comply with the sump testing requirements and spill bucket and overfill prevention requirements inspection and testing requirements at 310 CMR 80.27 and 80.28, respectively. Those installed on or before October 1, 2021, must comply with those requirements in accordance with the schedule in 310 CMR 80.64(1)(a).

The state program is more stringent or broader in scope than Federal Program as follows:

- 310 CMR 80.27(7) requires testing of certain types of sumps other than sumps that support interstitial monitoring of piping.

§ **281.32(f):** The State must have requirements that ensure all new and existing UST systems conform to the following: "[H]ave operation and maintenance walkthrough inspections periodically conducted in a manner and frequency that ensures proper operation and maintenance for the operating life of the UST system."

State requirements: 310 CMR 80.35, 80.64; M.G.L. c. 21O,§ 5

Pursuant to 310 CMR 80.35, Owners and Operators are responsible for ensuring that periodic visual inspections for leak detection equipment, spill buckets and fill covers (every 30 days), sumps without continuous monitoring (every 90 days) and sumps with continuous monitoring and hand-held release detection equipment (annually) are conducted at all underground storage tank systems.

Pursuant to 310 CMR 80.64, in addition to the periodic inspection requirements in 310 CMR 80.35, Owners and Operators shall inspect hydrant fuel pits and hydrant piping vaults at least once every 30 days if confined space entry according to the Occupational Safety and Health Administration (see 29 CFR part 1910) is not required or at least annually if confined space entry is required and keep documentation of the inspection according to 310 CMR 80.35(4).

§ **281.32(g)**: The State must have requirements that ensure all new and existing UST systems conform to the following: "Have records of monitoring, testing, repairs, and inspections. These records must be made readily available when requested by the implementing agency."

State requirements: 310 CMR 80.10, 80.26(13), 80.27(9), 80.28(2) and (3), 80.29(7), 80.30(4), 80.31(4) - 80.32(2), 80.33(7), 80.35(7), 80.36, 80.64; M.G.L. c. 21O, § 5

Pursuant to 310 CMR 80.10, an Owner or Operator, upon reasonable request, shall provide MassDEP with a copy of all records of UST systems and UST components.

Pursuant to 310 CMR 80.26(13) (leak detection systems), 80.27(9) (turbine, intermediate, and dispenser sumps), 80.28(2)(i) and (3)(c) (spill buckets and overfill prevention equipment), 80.29(7) (corrosion protection), 80.30(4) (compatibility), 80.31(4) (inventory monitoring), 80.32(2)(c) tank and piping/line tightness testing): records of inspections, testing and repairs as applicable, are required to be maintained.

Pursuant to 310 CMR 80.33(7), records of UST system repairs must be maintained for the remaining operating life of the system.

Pursuant to 310 CMR 80.35(7), records of each periodic inspection must be recorded and maintained.

Pursuant to 310 CMR 80.36, contains requirements for how long applicable for records must be maintained.

Pursuant to 310 CMR 80.64, airport hydrant fuel distribution systems installed after October 1, 2021, must comply with recordkeeping requirements upon installation. Those installed on or before October 1, 2021, were required to comply with record keeping requirements at 310 CMR 80.36 by October 1, 2021.

It is the opinion of Commonwealth of Massachusetts Attorney General the state meets the no less stringent criterion for SPA Objective 40 CFR § 281.32.

SPA Objective 40 CFR § 281.33 Release Detection

In order to be considered no less stringent than the corresponding federal requirements in 40 CFR part 280, the state must have release detection requirements that ensure all UST systems conform with the following:	**Corresponding State Rule Citation**	**State Statutory Citation**
(a) Ensure all UST owners and operators have a method, or combination of release detection methods, that is: (1) Capable of detecting a release of the regulated substance from any portion of the UST system that routinely contains regulated substances – as effectively as any of the methods allowed under this part – for as long as the UST system is in operation. In comparing methods, the implementing agency shall consider the size of the release that the method can detect and the speed and reliability with which the release can be detected. (2) Designed, installed, calibrated, operated and maintained so that releases will be detected in accordance with the capabilities of the method. (3) Operated and maintained, and electronic and mechanical components and other equipment are tested or inspected periodically, in a manner and frequency that ensures proper operation to detect releases for the operating life of the release detection equipment.	310 CMR 80.19, 80.26, 80.35, 80.64	M.G.L. c. 21O, § 5(1)
(b) Release detection requirements must, at a minimum, be applied at all UST systems immediately, except for UST systems previously deferred under §280.10(a)(1). Release detection requirements must, at a minimum, be scheduled to be applied to those previously deferred UST systems as follows: (1) Immediately when a new previously deferred UST system is installed, and (2) For any previously deferred UST system within three years of the effective date of its state requirements. Note: This provision does not apply to states that did not defer these UST systems and already had, prior to the effective date of this provision, existing release detection requirements with specified compliance periods for these types of UST systems.	310 CMR 80.04, 80.19, 80.64	M.G.L. c. 21O, § 5(1)

In order to be considered no less stringent than the corresponding federal requirements in 40 CFR part 280, the state must have release detection requirements that ensure all UST systems conform with the following:	**Corresponding State Rule Citation**	**State Statutory Citation**
(c) All petroleum tanks must meet the following requirements: (1) Be sampled, tested or checked for releases at least monthly, except that tanks installed before October 13, 2015 or upgraded tanks (that is, tanks and piping protected from releases due to corrosion and equipped with both spill and overfill prevention devices) may temporarily use monthly inventory control (or its equivalent) conducted every five years for the first 10 years after the tank is installed; and (2) New or replaced petroleum tanks must use interstitial monitoring within secondary containment in accordance with section 9003(i)(1) of the Soild Waste Disposal Act (SDWA) except when the state requires manufacturer and installer financial responsibility and installer certification in accordance with section 9003(i)(2) of SWDA.	310 CMR 80.19, 80.26, 80.31, 80.64	M.G.L. c. 21O, § 5(1)
(d) All underground piping attached to the tank that routinely conveys petroleum must conform to the following: (1) If the petroleum is conveyed under greater than atmospheric pressure: (i) The piping must be equipped with release detection that detects a release within an hour by restricting or shutting off flow or sounding an alarm; and (ii) The piping must have monthly monitoring applied or annual tightness tests conducted. (2) If suction lines are used: (i) Tightness tests must be conducted at least once every three years, unless a monthly method of detection is applied to this piping; or (ii) The piping is designed to allow the contents of the pipe to drain back into the storage tank if the suction is released and is also designed to allow an inspector to immediately determine the integrity of the piping system.	310 CMR 80.04, 80.19, 80.64	M.G.L. c. 21O, § 5(1)

In order to be considered no less stringent than the corresponding federal requirements in 40 CFR part 280, the state must have release detection requirements that ensure all UST systems conform with the following:	**Corresponding State Rule Citation**	**State Statutory Citation**
(3) Except as provided for in § 281.30(a)(1) new or replaced petroleum piping must use interstitial monitoring within secondary containment in accordance with section 9003(i)(1) of the SWDA except when the state requires evidence of financial responsibility and certification in accordance with section 9003(i)(2) of SWDA.		
(e) All new hazardous substance UST systems must use interstitial monitoring within secondary containment of the tanks and the attached underground piping that conveys the regulated substance stored in the tank. For hazardous substance UST systems installed prior to October 13, 2015, owners and operators can use another form of release detection if the owner and operator can demonstrate to the state (or the state otherwise determines) that another method will detect a release of the regulated substance as effectively as other methods allowed under the state program for petroleum UST systems and that effective corrective action technology is available for the hazardous substance being stored that can be used to protect human health and the environment.	310 CMR 80.19, 80.64	M.G.L. c. 21O, § 5(1)

Certification of SPA Objective 40 CFR § 281.33 Release Detection:

§ 281.33(a)(1): Ensure all UST owners and operators have a method, or combination of methods, that is "capable of detecting a release of the regulated substance from any portion of the UST system that routinely contains regulated substances – as effectively as any of the methods allowed under this part – for as long as the UST system is in operation. In comparing methods, the implementing agency shall consider the size of the release that the method can detect and the speed and reliability with which the release can be detected**.**"

State requirements: 310 CMR 80.19, 80.26(2), 80.64; M.G.L. c. 210, § 5(1)

Pursuant to 310 CMR 80.19(1), Owners and Operators shall equip UST systems (tanks and piping) with required leak detection equipment. MassDEP requires tanks installed after January 1, 1989, have a system that continuously monitors interstitial space (interstitial monitoring), except for tanks used to supply regulated substance to emergency engines, which are required to have interstitial monitoring if installed after January 2, 2015. This is to

comply with the new federal regulations that no longer allow manual tank gauging for tanks that supply regulated substance to emergency engines. For tanks installed before January 1, 1989, Owners or Operators may equip the tank with interstitial monitoring, continuous in-tank monitoring, in-tank monitoring every 30 days or statistical inventory reconciliation.

Pursuant to 310 CMR 80.19(4), piping installed on or after May 28, 1999, it must be equipped with interstitial monitoring For piping installed before May 28, 1999, piping must have interstitial monitoring, quarterly visual inspections and an annual tightness test, or statistical inventory reconciliation. In addition, all pressurized piping must have an automatic line leak detector.

Pursuant to 310 CMR 80.26(2), Owners or Operators shall operate and maintain leak detection systems at all times and in accordance with manufacturer's specifications and 310 CMR 80.26.

Pursuant to 310 CMR 80.64, MassDEP requires that tanks in airport hydrant fuel distribution systems installed after October 1, 2021 comply with leak detection requirements at 310 CMR 80.19 and 80.26, as discussed above. Piping in airport hydrant fuel distribution systems must comply with the requirements for piping discussed above or the requirements at 310 CMR 80.64(9). The requirements at 310 CMR 80.64(9) are tightness tests that are identical to those in the federal regulations. Those systems installed on or before October 1, 2021 must comply with the leak detection requirements at 310 CMR 80.19, 80.26 and 80.64(9) no later than October 13, 2022. 310 CMR 80.64(9) are two alternative leak detection methods for underground piping associated with airport hydrant systems that an Owner or Operator may comply with instead of piping leak detection requirements at 310 CMR 80.19 and 80.26.

The state program is more stringent or broader in scope than Federal Program as follows:

- MassDEP does not allow vapor monitoring and groundwater monitoring as leak detection methods.
- MassDEP does not allow inventory control as a method of leak detection. It is required as an additional measure for UST systems that are single-walled and do not have continuous monitoring.
- MassDEP has required secondary containment and interstitial monitoring for tanks since January 1, 1989; whereas EPA has required it since April 11, 2016.

§ **281.33(a)(2):** Ensure all owners and operators have a method, or combination of methods, that is "designed, installed, calibrated, operated and maintained so that releases will be detected in accordance with the capabilities of the method."

State requirements: 310 CMR 80.19(2)-(4), 80.26(2), 80.64; M.G.L. c. 210, § 5(1)

Pursuant to 310 CMR 80.19(2), Owners and Operators shall install, calibrate, operate and maintain leak detection equipment in accordance with the leak detection requirements in 310 CMR 80.00 and the manufacturer's specifications. 310 CMR 80.19(2) – (4) contain leak detection requirements for tanks and piping.

Pursuant to 310 CMR 80.26(2), Owners or Operators shall operate and maintain leak detection systems at all times and in accordance with manufacturer's specifications and 310 CMR 80.26.

Pursuant to 310 CMR 80.64, MassDEP requires airport hydrant fuel distribution systems installed after October 1, 2021 comply with leak detection requirements at 310 CMR 80.19 and 80.26. Those installed on or before October 1, 2021 must comply with the leak detection requirements at 310 CMR 80.19 and 80.26 no later than October 13, 2022.

§ **228.33(a)(3):** Ensure all UST owners and operators have a method, or a combination of release detection methods

that is “operated and maintained, and electronic and mechanical components and other equipment are tested or inspected periodically, in a manner and frequency that ensures proper operation to detect releases for the operating life of the release detection equipment.”

State requirements: 310 CMR 80.26(2), 80.35(2) and (4), 80.64; M.G.L. c. 210, § 5(1)

Pursuant to 310 CMR 80.26(2), Owners or Operators shall operate and maintain leak detection systems at all times and in accordance with manufacturer’s specifications and 310 CMR 80.26, and shall inspect and test leak detection systems annually in accordance with the requirements of 80.26 and 80.35.

Pursuant to 310 CMR 80.35, Owners and Operators are responsible for ensuring that leak detection equipment and records are inspected every 30 days and hand-held release detection equipment is inspected annually, in accordance with 310 CMR 80.35(2) through (4), respectively.

Pursuant to 310 CMR 80.64, MassDEP requires airport hydrant fuel distribution systems installed after October 1, 2021 comply with leak detection requirements at 310 CMR 80.26 and 80.35. Those installed on or before October 1, 2021 must comply with 310 CMR 80.26 and 80.35 no later than October 13, 2022.

The state program is more stringent or broader in scope than Federal Program as follows:

- After January 2, 2017, Owners and Operators may no longer use soil vapor monitoring as its primary form of leak detection (310 CMR 80.19(3)(c))
- Groundwater monitoring is not permitted as a form of leak detection .

§ **281.33(b):** “Release detection requirements must, at a minimum, be scheduled to be applied at all UST systems immediately, except for UST systems previously deferred under §280.10(a)(1). Release detection requirements must, a minimum, be scheduled to be applied to those previously deferred UST systems as follows: (1) immediately when a new previously deferred UST system is installed, and (2) for any previously deferred UST system within three years of the effective date of its state requirements.” Note: “This provision does not apply to states that did not defer these UST systems and already had, prior to the effective date of this provision, existing release detection requirements with specified compliance periods for these types of UST systems.”

State requirements: 310 CMR 80.04(3), 80.19(1) – (4), 80.64; M.G.L. c. 21O, §5(1)

Leak detection is required for all UST systems pursuant to 310 CMR 80.19. Pursuant to 310 CMR 80.04(3),Table A: Schedule of Upgrades, includes an upgrade of leak detection systems for UST systems used to supply fuel to emergency engines installed before January 2, 2015 and airport hydrant systems.

Pursuant to 310 CMR 80.19(1), all UST systems must be equipped with leak detection equipment. 310 CMR 80.19(2) – (4) contain leak detection requirements for tanks and piping. UST systems used to supply fuel to emergency engines installed before January 2, 2015 must be upgraded to have compliance leak detection systems no later than October 13, 2022.

Pursuant to 310 CMR 80.64, MassDEP requires airport hydrant fuel distribution systems installed after October 1, 2021 comply with leak detection requirements upon installation. Those installed on or before October 1, 2021 must comply with leak detection requirements no later than October 13, 2022.

§ **281.33(c):** "All petroleum tanks must meet the following requirements: (1) All petroleum tanks must be sampled, tested, or checked for releases at least monthly except that tanks installed before October 13, 2015 or upgraded tanks (that is, tanks and piping protected from releases due to corrosion and equipped with both spill and overfill prevention devices) may temporarily use monthly inventory control (or its equivalent) conducted every five years for the first 10 years after the tank is installed; and (2) New or replaced petroleum tanks must use interstitial monitoring within secondary containment in accordance with section 9003(i)(1) of [SWDA] except when the state requires manufacturers and installer financial responsibility and installer certification in accordance with section 9003(i)(2) of [SWDA]."

State requirements: 310 CMR 80.19(1), (2) and (4), 80.26, 80.31, 80.64; M.G.L. c. 21O, § 5(1)

Pursuant to 310 CMR 80.19(1) and 80.26(1), all UST systems are required to be equipped with leak detection equipment. All UST systems installed after January 1, 1989 must have interstitial monitoring continuously monitors interstitial space in double-walled tanks (310 CMR 80.26(3)). UST systems installed before January 1, 1989 can have interstitial monitoring, a static in-tank monitoring system tests the UST once a month (310 CMR 80.26(4)), a continuous in-tank monitoring system tests the UST system throughout the month, when the operating conditions allow (310 CMR 80.26(5)), or Statistical Inventory Reconciliation is conducted once a month based on data received from the in-tank monitoring system (310 CMR 80.26(6)). Manual tank gauging may be conducted on UST systems used to supply fuel to emergency engines installed before January 2, 2015, until October 13, 2022, when those UST systems must be upgraded to a leak detection method listed above. (310 CMR 80.04(3): Table A, 80.19(3)(b), 80.26(7)) In addition, 310 CMR 80.64 provides alternative forms of leak detection for airport hydrant systems.

Pursuant to 310 CMR 80.31, daily inventory monitoring is required for tanks that are singled walled and do not have continuous monitoring.

Pursuant to 310 CMR 80.64, MassDEP requires airport hydrant fuel distribution systems installed after October 1, 2021 comply with leak detection requirements upon installation. Those installed on or before October 1, 2021 must comply with leak detection requirements no later than October 13, 2022.

The state program is more stringent or broader in scope than Federal Program as follows:

- Leak detection is required for all UST systems that hold regulated substance, not just petroleum tanks.

§ **281.33(d)(1):** "All underground piping attached to the tank that- conveys petroleum must conform to the following: if the petroleum is conveyed under greater than atmospheric pressure:

(i) the piping must be equipped with release detection that detects a release within an hour by restricting or shutting off flow or sounding an alarm; and
(ii) the piping must have monthly monitoring applied or annual tightness test conducted."

State requirements: 310 CMR 80.04(3), 80.19(4), 80.64; M.G.L. c. 21O, § 5(1)

Pursuant to 310 CMR 80.04(3), pressurized piping installed before May 28, 1999 that did not have an automatic line leak detector (ALLD) had to install an ALLD by January 2, 2016.

Pursuant to 80.19(4)(a)2., 80.19(4)(b)2., 80.19(4)(c)2., all pressurized piping systems installed on or after May 28, 1999 are required to have ALLD that can detect a release of three gallons per hour at ten p.s.i. in line pressure within one hour with a 95% probability of detection.

Pursuant to 310 CMR 80.19(4), piping installed on or after May 28, 1999, it must be equipped with interstitial monitoring For piping installed before May 28, 1999, piping must have interstitial monitoring, quarterly visual inspections and an annual tightness test, or statistical inventory reconciliation. In addition, all pressurized piping must have an automatic line leak detector. Pursuant to 310 CMR 80.64, MassDEP requires airport hydrant fuel distribution systems installed after October 1, 2021 comply with leak requirements of 310 CMR 80.19. Those installed on or before October 1, 2021 must comply with the requirements of 310 CMR 80.19 no later than October 1, 2022.

§ **281.33(d)(2):** "All underground piping attached to the tank that routinely conveys petroleum must conform to the following: (2) If suction lines are used:

(i) tightness tests must be conducted at least once every 3 years, unless a monthly method of detection is applied to this piping; or

(ii) the piping is designed to allow the contents of the pipe to drain back into the storage tank if the suction is released and is also designed to allow an inspector to immediately determine the integrity of the piping system."

State requirements: 310 CMR 80.03, 80.19, 80.26, 80.64; M.G.L. c. 210, § 5(1)

Pursuant to 310 CMR 80.03, "European Suction System" and "Non-European Suction System" are defined terms. By definition, a European Suction System is an underground suction piping system which is sloped back to the tank and is equipped with only one check valve that is installed immediately below the pump so that the contents of the piping will drain back into the tank if there is a breach in the piping and the suction is released. It would fall under (ii) above. In Non-European Suction Systems the product does not drain back to the so it falls under (i); monthly leak detection is required, unless it's pre-1989 piping, then it can do an annual tightness test which is more stringent than the federal standard. Pursuant to 310 CMR 80.19(4)(a)3., 80.19(4)(b)3. and 80.19(4)(c)3, European suction piping systems are not required to have leak detection.

Pursuant to 310 CMR 80.19(4)(a), Non-European suction piping installed on and after May 28, 1999 must continuously monitor the interstitial space of the piping.

Pursuant to 310 CMR 80.19(4)(b) and (c), Non-European suction piping installed before May 28, 1999 may have a system that continuously monitors interstitial space, conduct visual inspections of the secondary containment ports four times a year and conduct an annual tightness test, or use SIR.

Pursuant to 310 CMR 80.19(4)(c)1.e., Non-European suction piping systems without secondary containment installed before January 1, 1989 shall conduct annual tightness testing.

Pursuant to 310 CMR 80.26(9), for Non-European piping systems installed before May 28, 1999, the Owner or Operator may conduct quarterly visual inspections of secondary containment ports and conduct an annual tightness test of the piping in accordance with 310 CMR 80.32.

Pursuant to 310 CMR 80.26(10), for Non-European piping systems installed before January 1, 1989, without secondary containment and continuous monitoring shall comply with 310 CMR 80.19(4)(c)1. c. or e.

Pursuant to 310 CMR 80.64, piping leak detection systems at airport hydrant fuel distribution systems comply with either the monthly/continuous monitoring requirements at 310 CMR 80.19 and 80.26, or the tightness tests at 310 CMR 80.64(9) when installed or if installed prior to October 1, 2021, be upgraded no later than October 13, 2022.

§ **281.33(d)(3):** "Except as provided for in § 281.30(a)(1) new or replaced petroleum piping must use interstitial monitoring within secondary containment in accordance with section 9003(i)(1) of the Solid Waste Disposal Act except when the state requires evidence of financial responsibility and certification in accordance with section 9003(i)(2) of the [SWDA]."

State requirement: 310 CMR 80.19, 80.64

Pursuant to 310 CMR 80.19(4)(a), UST systems installed on or after May 28, 1999, shall have regulated substance piping equipped with a system that continuously monitors the interstitial space. European suction systems and single-walled siphon lines are exempt from having to have leak detection because if leakage occurs within these piping systems, all regulated substance(s), by design, will drain back into the USTs and will not drain into the sump. Pressurized piping systems shall be equipped with an automatic line leak detector that accurately detects a release or leakage as required.

Pursuant to 310 CMR 80.64, piping leak detection systems at airport hydrant fuel distribution systems comply with either the requirements of 310 CMR 80.19 and 80.26, or 310 CMR 80.64(9) when installed or if installed prior to October 1, 2021, be upgraded no later than October 13, 2022.

§ **281.33(e):** "All new hazardous substance UST systems must use interstitial monitoring within secondary containment of the tanks and the attached underground piping that conveys the regulated substance stored in the tank. For hazardous substance UST systems installed prior to October 13, 2015, owners and operators can use another form of release detection if the owner and operator can demonstrate to the state (or the state otherwise determines) that another method will detect a release of the regulated substance as effectively as other methods allowed under the state program for petroleum UST systems and that effective corrective action technology is available for the hazardous substance being stored that can be used to protect human health and the environment."

State requirements: 310 CMR 80.19, 80.64; M.G.L. c. 21O, § 5(1)

Pursuant to 310 CMR 80.19(3), tanks (except tanks used to supply regulated substance to emergency engines) installed on or after January 1, 1989, and tanks used to supply regulated substance to emergency engines installed on or after January 2, 2015, shall be equipped with a system that continuously monitors interstitial space.

Pursuant to 310 CMR 80.19(4)(a), UST systems installed on or after May 28, 1999, shall have regulated substance piping equipped with a system that continuously monitors the interstitial space (except European suction systems and single-walled siphon lines between tanks). Pressurized piping systems shall be equipped with an automatic line leak detector that accurately detects a release or leakage as required.

Pursuant to 310 CMR 80.64, MassDEP requires leak detection systems at airport hydrant fuel distribution systems comply with either the requirements of 310 CMR 80.19 and 80.26, or 310 CMR 80.64(9) when installed or if installed prior to October 1, 2021, be upgraded no later than October 13, 2022.

The state program is more stringent or broader in scope than Federal Program as follows:

The requirements for UST systems containing hazardous substances are the same as UST systems holding petroleum products.

It is the opinion of Commonwealth of Massachusetts Attorney General the state meets the no less stringent criterion for SPA Objective 40 CFR § 281.33.

SPA Objective 40 CFR § 281.34
Release Reporting, Investigation, and Confirmation

In order to be considered no less stringent than the corresponding federal requirements in 40 CFR part 280, the state must have release reporting, investigation, and confirmation requirements that conform with the following:	**Corresponding State Rule Citation**	**State Statutory Citation**	
(a) Ensure all owners and operators promptly investigate all suspected releases, including: (1) When unusual operating conditions, release detection signals and environmental conditions at the site suggest a release of regulated substances may have occurred or the interstitial space may have been compromised; and (2) When required by the implementing agency to determine the source of a release having an impact in the surrounding area.	310 CMR 80.26, 80.31 80.38, 80.39, 80.64; 310 CMR 40.0006 ("threat of release"), 40.0312, 40.0314, 40.0331(2), 40.0403(1), 40.0412(1) and (2), 40.0414, 40.0426(1) 310 CMR 40.0006 (definition of "threat of release"), 40.0331(2), 40.0336, 40.0412(1) and (2), 40.0426(1)	M.G.L. c. 21O, § § 5 (1), (3); M.G.L. c. 21E, §§ 3A, 8, 9	
(b) Ensure all owners and operators promptly report all confirmed underground releases and any spills and overfills that are not contained and cleaned up.	310 CMR 80.23, 80.32, 80.40, and 80.64; 310 CMR 40.0311, 40.0312, 40.0313, 40.0314, 40.0315, 40.0331, 40.0332, 40.1600	M.G.L. c. 21O, § 5(4); M.G.L. c.21E, § 7	

(c) Ensure all owners and operators contain and clean up unreported spills and overfills in a manner that will protect human health and the environment.	310 CMR 40.0100(3), 40.0317, 40.0318, 40.0370, 40.0900	M.G.L. c. 21E, §§ 3A, 8, 9	

Certification of SPA Objective 40 CFR § 281.34 Release Reporting, Investigation, and Confirmation:

§ 281.34(a)(1) and (2): (a) Ensure all owners and operators "promptly investigate all suspected releases, including: (1) when unusual operating conditions, release detection signals and environmental conditions at the site suggest a release of regulated substances may have occurred or the interstitial space may have been compromised; and (2) when required by the implementing agency to determine the source of a release having an impact in the surrounding area."

State requirements: 310 CMR 80.26(3) – (8), 80.31(1) – (3), 80.38, 80.39, 80.64; 310 CMR 40.0006 ("threat of release"), 40.0100(3), 40.0317, 40.0318, 40.0331, 40.0312, 40.0313, 40.0314, 40.0315, 40.0331(2), 40.0336, 40.0370, 40.0390, 40.0403(1), 40.0412(1) and (2), 40.0426(1); M.G.L. c. 21O, § 5(1), (3), (4); M.G.L. c. 21E, § 3A, 7 8, 9

Pursuant to 310 CMR 40.0000, the Massachusetts Contingency Plan (MCP) provides a comprehensive scheme whereby contaminated and threatened sites are fully assessed and remediated under the direction of Licensed Site Professionals (LSPs), who are licensed by MassDEP to oversee remedial actions, subject to audit and enforcement by MassDEP. The LSPs are hired by the persons legally required to conduct the remediation. The first step in this process is preliminary response actions and risk reduction measures. They include Imminent Hazard Evaluations, Immediate Response Actions, and Release Abatement Measures, and, if these preliminary remedial activities do not reduce the levels of contamination to background, a site-specific risk characterization is required to reach a condition of No Significant Risk. If continued remedial activities are required, the LSP will oversee Comprehensive Response Actions at the disposal site. These actions include a comprehensive site assessment, including a risk characterization, referred to as Phase Il; the identification, evaluation and selection of comprehensive remedial action alternatives (Phase Ill); and implementation of the selected comprehensive remedial alternatives (Phase IV). Phase IV can culminate in a series of status and remedial monitoring reports or a completion statement, if the site has achieved closure, or a Phase IV can culminate in Phase V, a plan for operation, maintenance and/or monitoring of a remedial solution until site closure is reached. Throughout this process, the ultimate standard that must be met is a condition of No Significant Risk. "No Significant Risk," is a defined term that means no substance of concern shall present a significant risk of harm to health, safety, public welfare, and the environment (310 CMR 40.0006.)

Pursuant to 310 CMR 80.26 (3)-(8), in the event that a leak detection system indicates there is leakage or a release in the UST system, the Owner or Operator shall investigate and if they cannot determine there is not a leak or release, shall tightness test the UST system. In the UST regulations, "leakage" is an escape of regulated substance within the system, into a part of the UST system or an UST component that is not meant to hold regulated substance, such as the interstitial space of double walled piping or a turbine sump. A "release" is when regulated substances leaves the UST system and enters the soil, ground water or surface water. The definition of "release" in

the MassDEP UST regulations is almost identical to the definition of ”release” in the federal UST regulations. If the UST system fails the tightness test, the certified UST system tightness tester must notify the Owner and Operator of the UST system and the local fire department. The Owner or Operator must also notify MassDEP of a failed tightness test within 72-hours of obtaining knowledge of the failed test, pursuant to MassDEP's Massachusetts Contingency Plan regulations (“MCP”), 310 CMR 40.0314, which are promulgated pursuant to M.G.L. c. 21E. This failure can be of a single-walled UST system, the inner wall of a double-walled UST system, or the outer wall of a double-walled UST system. A failed test is one that indicates a release to the environment or leakage equal to or greater than 0.05 gallons per hour. After the required notifications have been completed, the Owner and Operator must also comply with the UST regulations concerning repairs and replacements, responses to a release, and response to leakage as applicable. If there is a release from the tank, the Owner or Operator shall empty the tank within 24 hours and either permanently close the tank, or repair and re-certify the tank if the manufacturer does the repairs and re-warranties the tank and the tank passes a tightness test. If the tank has leakage, the Owner or Operator shall empty it within 72 hours and either permanently close it or repair and re-certify it, if the manufacturer conducts the repairs and re-warranties the tank, and the tank passes a tightness test. If there is a release or leakage from piping, the Owner or Operator shall immediately empty and isolate that portion of the piping, and either repair or replace that section of piping or permanently close the UST system. The federal regulations require that within 24 hours of a release from an UST system, the release is reported to the implementing agency, action is taken to prevent further release and fire, explosion and vapor hazards are identified and mitigated. The MassDEP regulations are a little more detailed, but are generally consistent with the federal regulations. The federal regulations do not have the concept of leakage.

Pursuant to 310 CMR 80.31(1) – (3), and Owner or Operators shall respond as required within 72 hours of discovery of/or gaining knowledge of a potential release or leakage.

Pursuant to 310 CMR 80.38(2), in the event of a release from a tank, the Owner or Operators shall empty the tank within 24 hours of obtaining knowledge of the release. Pursuant to 310 CMR 80.38(3), in the event of a release from piping, the Owner or Operator shall immediately empty and isolate that section of piping determined to be the source of the release.

Pursuant to 310 CMR 80.39, in the event of leakage, which is defined as the leaking of regulated substance within the UST system, the Owner or Operators shall, if the source of leakage is piping, isolate and empty that section of the piping, take the UST system temporarily out-of-service, or remove or permanently close-in-place the UST system. If the source of the leakage is the tank, the Owner or Operator shall empty the tank within 72 hour and either repair the tank, remove the tank or permanently close the tank in place, if allowed by MassDEP.

Pursuant to 310 CMR 80.64, MassDEP requires airport hydrant fuel distribution systems installed after October 1, 2021 comply with the leak detection and release response requirements of 310 CMR 80.00 upon installation. Those installed on or before October 1, 2021, must comply with release response requirements no later than October 1, 2021, and leak detection requirements no later than October 13, 2022. Release and threats of release from airport hydrant fuel distribution systems have been subject to M.G.L. c. 21E and 310 CMR 40.0000 such systems became effective.

The MCP, as described more fully above, requires owners and operators promptly to investigate all suspect releases, including when unusual operating conditions, release detection signals and environmental conditions at a site suggest a release of regulated substances may have occurred or the interstitial space may have been compromised. Specifically, pursuant to 310 CMR 40.0312 and 310 CMR 40.0314 Owners and Operators are required to report threats of release of oil or hazardous materials to the environment. A threat of release, as defined in 310

CMR 40.0006(12), includes such things as having knowledge that an UST system is corroded, damaged or malfunctioning such that a release from the UST system could occur. Pursuant to 310 CMR 40.0412, after notifying MassDEP of a threat of release, owners and operators are required to take immediate response actions. Pursuant to 310 CMR 40.0414, such immediate response actions shall include assessment of the threat of release. Pursuant to 310 CMR 40.0426(1), such immediate response actions must also include an imminent hazard evaluation where a threat of release could pose an imminent hazard.

§ **281.34(b):** Ensure all owners and operators "promptly report all confirmed underground releases and any spills and overfills that are not contained and cleaned up."

State requirements: 310 CMR 80.23(3)(c),80.32(3), and 80.40, 80.64; 310 CMR 40.311, 40.312, 40.0313, 40.314, 40.0315, 40.0331, 40.0332, 40.1600; M.G.L. c. 210, § 5(4); M.G.L. c. 21E, § 7

Pursuant to 310 CMR 80.23(3)(c), the Owner or Operator shall submit to MassDEP, the source and cause of reportable releases. Pursuant to 310 CMR 80.40, for each reportable release pursuant to 310 CMR 40.0000: *Massachusetts Contingency Plan*, the Owner or Operator shall provide the source of each reportable release from an UST system, *i.e.* the UST component or piece of equipment that failed, if known; and the cause of each reportable release from an UST system, *i.e.* the reason for the failure, if known.

Pursuant to 310 CMR 80.32(3)(b), if the tank or piping/line fails a tightness test, the certified UST system tightness tester shall immediately, but in no event later than 24 hours after obtaining knowledge of the failed test notify the Owner and Operator and the fire department in the city or town in which the UST system is located. The Owner or Operator is then required to comply with the release and threat of release requirements at 310 CMR 40.0300.

Pursuant to 310 CMR 80.40, for each reportable release pursuant to 310 CMR 40.0000: *Massachusetts Contingency Plan*, the Owner or Operator shall provide the source of each reportable release from an UST system, *i.e.* the UST component or piece of equipment that failed, if known; and the cause of each reportable release from an UST system, *i.e.* the reason for the failure, if known.

Pursuant to 310 CMR 40.0000, a reportable release of oil or hazardous substance to the environment is one that exceeds the reportable thresholds set forth at 310 CMR 40.1600, the Massachusetts Oil and Hazardous Materials List, and otherwise does not fall into a notification exemption. .Notification deadlines, per 310 CMR 40.0332, are 2 hours, 72 hours or 120 days, and are dependent on the type of material, the quantity/concentration, the location of the release, and what environmental media are affected. 310 CMR 40.0331(a) requires that owners and operators shall notify DEP of a release.

Pursuant to 310 CMR 80.64, MassDEP requires airport hydrant fuel distribution systems installed after October 1, 2021, comply with the release reporting requirements at 310 CMR 80.00 and 310 CMR 40.0000. Those installed on or before October 1, 2021, must comply with the release reporting requirements of 310 CMR 80.00 and 310 CMR 40.0000 as of October 1, 2021.

§ **281.34(c):** "Ensure all owners and operators contain and clean up unreported spills and overfills in a manner that will protect human health and the environment."

State requirements: 310 CMR 40.0317, 40.0318, 40.0370, and 40.0900; M.G.L. c. 21E, §§ 3, 3A, 5 and 9; 310 CMR 40.0317 and 310 CMR 40.0318 identify releases that do not require notification.

310 CMR 40.0318 and 310 CMR 40.0370 describe response actions that must be taken with respect to releases that do not require notification.310 CMR 40.0900 describes the procedures for evaluating the risks posed by oil and/or hazardous material at all disposal sites, including those that do not require notification.

Releases and threats of release of oil or hazardous substances that do not exceed the Reportable Concentrations and/or the Reportable Quantities set forth at 310 CMR 40.1600 and further explained in the body of the regulations, do not have to be reported to MassDEP, but they still have to follow certain regulatory requirements, including the remediation of releases that are not reportable but may still pose a significant risk to health, safety, public welfare or the environment. See 310 CMR 40.0370.Another example of an unreported spill involves a Limited Removal Actions (LRA). A LRA may be conducted for those releases that trigger a 120-day notification to the MassDEP, but before the notification is made. A LRA allows an impacted facility to remove not more than 100 cubic yards of soil contaminated by oil or oil blends or not more than 20 cubic yards of soil contaminated by hazardous materials prior to notification under 310 CMR 40.0000. If background levels can be achieved through the LRA, notification is not required. See 310 CMR 40.0318.

It is the opinion of Commonwealth of Massachusetts Attorney General the state meets the no less stringent criterion for SPA Objective 40 CFR § 281.34.

SPA Objective 40 CFR § 281.35
Release Reporting and Corrective Action

In order to be considered no less stringent than the corresponding federal requirements in 40 CFR part 280, the state must have release reporting and corrective action requirements that conform with the following:	**Corresponding State Rule Citation**	**State Statutory Citation**
(a) All releases from UST systems are promptly assessed and further releases are stopped.	310 CMR 80.38, 80.39, 80.40, 80.64; 310 CMR 40.0000	M.G.L. c. 21E, §§ 3A, 4, 5, 6, 8, 9 M.G.L c. 21O, § 5(4)
(b) Actions are taken to identify, contain and mitigate any immediate health and safety threats that are posed by a release (such activities include investigation and initiation of free product removal, if present).	310 CMR 80.33, 80.38, 80.40, 80.64 310 CMR 40.040, 40.0410	M.G.L. c. 21E, §§ 3A, 4, 5, 6, 8, 9
(c) All releases from UST systems are investigated to determine if there are impacts to soil and groundwater, and any nearby surface waters. The extent of soil and groundwater contamination must be delineated when a potential threat to human health and the environment exists.	310 CMR 40.0400, 40.0800, 40.0830, 40.0900	M.G.L. c. 21E, §§ 3A, 4
(d) All releases from UST systems are cleaned up through soil and groundwater remediation and any other steps are taken, as necessary to protect human health and the environment.	310 CMR 40.0006, 40.0800, 40.0870 40.0900, 40.1000	M.G.L. c. 21E §§ 3A, 4

In order to be considered no less stringent than the corresponding federal requirements in 40 CFR part 280, the state must have release reporting and corrective action requirements that conform with the following:	**Corresponding State Rule Citation**	**State Statutory Citation**
(e) Adequate information is made available to the state to demonstrate that corrective actions are taken in accordance with the requirements of paragraphs (a) through (d) of this section. This information must be submitted in a timely manner that demonstrates its technical adequacy to protect human health and the environment.	310 CMR 40.0900, 40.1003, 40.1056	M.G.L. c. 21E § 3A
(f) In accordance with § 280.67 (Public Participation), the state must notify the affected public of all confirmed releases requiring a plan for soil and groundwater remediation, and upon request provide or make available information to inform the interested public of the nature of the release and the corrective measures planned or taken.	310 CMR 3.00; 310 CMR 40.0015, 40.1400-40.1406	M.G.L. c. 21E, § 3A(b); M.G.L. c. 66

Certification of SPA Objective 40 CFR § 281.35 Release Reporting and Corrective Action:

§ **281.35(a):** The state must have requirements that ensure: "All releases from UST systems are promptly assessed and further releases are stopped."

State requirements: 310 CMR 80.38, 80.39, 80.40, 80.64; 310 CMR 40.0000; M.G.L. c. 21E, § 3A, 4, 5, 6, 8, 9; M.G.L c. 21O, § 5(4)

Pursuant to 310 CMR 80.38(1) and (2), in the event of a release from a tank, the Owner or Operator shall empty the tank immediately, but in no event later than 24 hours of obtaining knowledge of the release and comply with 310 CMR 80.33, 80.42 or 80.43, as applicable. In the event of a release from piping, the Owner or Operator shall immediately empty and isolate the section of pipe determined to have had the release and comply with 310 CMR 80.33, 80.42 or 80.43, as applicable.

Pursuant to 310 CMR 80.39, in the event of leakage from piping or tank, the Owner or Operator shall confirm by testing, visual inspection or otherwise, the source of the leakage and take applicable steps to repair, remove, or permanently close in-place the piping or tank in accordance with applicable requirements.

Pursuant to 310 CMR 80.40, for each reportable release pursuant to 310 CMR 40.0000: *Massachusetts Contingency Plan*, the Owner or Operator shall provide the source of each reportable release from an UST system, *i.e.* the UST component or piece of equipment that failed, if known; and the cause of each reportable release from an UST system, *i.e.* the reason for the failure, if known.

Pursuant to 310 CMR 80.64, MassDEP requires airport hydrant fuel distribution systems installed after October 1, 2021, comply with the release requirements of 310 CMR 80.00 at the time of installation. Those installed on or before October 1, 2021, must comply with the release requirements of 310 CMR 80.00 as of October 1, 2021. Airport hydrant fuel distribution systems have been required to comply with M.G.L. c. 21E and 310 CMR 40.0000 since they because effective.

Please see the description of 310 CMR 40.0000, the MCP, in response to § 281.34(a)(1) and (2) above. The Commonwealth of Massachusetts enforces compliance with the MCP pursuant to M.G.L. c. 21E, §§ 9-11, M.G.L. c. 21A, § 16, and 310 CMR 5.00.

§ 281.35(b): The state must have requirements that ensure: "Actions are taken to identify, contain and mitigate any immediate health and safety threats that are posed by a release (such activities include investigation and initiation of free product removal, if, present)."

State requirements: 310 CMR 80.33(1)-(3), 80.38(1) and (2), 80.39, 80.40, 80.64, 310 CMR 40.0400, 40.0410; M.G.L. c. 21E, § 3A, 4, 5, 6, 8,9

Pursuant to 310 CMR 80.33(1) – (3), in the event of a release or leakage from a tank or piping, the Owner and Operator shall comply with 310 CMR 40.0000: Massachusetts Contingency Plan, if applicable.

Pursuant to 310 CMR 80.38(1) and (2), in the event of a release from a tank, the Owner or Operator shall empty the tank immediately, but in no event later than 24 hours of obtaining knowledge of the release and comply with 310 CMR 80.33, 80.42 or 80.43, as applicable. In the event of a release from piping, the Owner or Operator shall immediately empty and isolate the section of pipe determined to have had the release and comply with 310 CMR 80.33, 80.42 or 80.43, as applicable.

Pursuant to 310 CMR 80.39, in the event of leakage from piping or tank, the Owner or Operator shall confirm by testing, visual inspection or otherwise, the source of the leakage and take applicable steps to repair, remove, or permanently close in-place the piping or tank in accordance with applicable requirements.

Pursuant to 310 CMR 80.40, for each reportable release pursuant to 310 CMR 40.0000: *Massachusetts Contingency Plan*, the Owner or Operator shall provide the source of each reportable release from an UST system, *i.e.* the UST component or piece of equipment that failed, if known; and the cause of each reportable release from an UST system, *i.e.* the reason for the failure, if known.

Pursuant to 310 CMR 80.64, MassDEP requires airport hydrant fuel distribution systems installed after October 1, 2021, comply with the release requirements of 310 CMR 80.00 when the UST system is installed. Those installed on or before October 1, 2021, must comply with the release requirements of 310 CMR 80.00 as of October 1, 2021.

Pursuant to 310 CMR 40.0400, the Massachusetts Contingency Plan (MCP) requires preliminary response actions conducted under the direction of LSPs, who are licensed by MassDEP to oversee remedial actions. The LSPs are

hired by the persons legally required to conduct the remediation. Pursuant to 310 CMR 40.0410, the MCP sets forth requirements and procedures for conducting Immediate Response Actions which assess and secure releases of hazardous material in order to abate, prevent or eliminate an Imminent Hazard to health and safety. Under 310 CMR 80.33(1)-(3), tanks and piping that have leaked or released regulated substance to the environment must be taken out-of-service until repairs are made. Please also note the general description of 310 CMR 40.0000, the MCP, in response to § 281.34(a)(1) and (2) above.

§ 281.35(c): The state must have requirements that ensure: "All releases from UST systems are investigated to determine if there are impacts on soil and groundwater, and any nearby surface waters. The extent of soil and groundwater contamination must be delineated when a potential threat to human health and the environment exists."

State requirements: 310 CMR 40.0400, 40.0800, 40.0830, 40.0900; M.G.L. c. 21E, § 3A, 4.

Please see the description of 310 CMR 40.0000, the MCP, in response to § 281.34(a)(1) and (2) above. Specifically, pursuant to 310 CMR 40.0830, the MCP sets forth requirements and procedures for conducting Phase II, Comprehensive Site Assessments at disposal sites, which includes reportable release from USTs. A Phase II assessment shall collect sufficient information to support conclusions regarding the source, nature, and extent of impacts of releases of hazardous materials. 310 CMR 40.0833.

§ 281.35(d): The state must have requirements that ensure: "All releases from UST systems are cleaned up through soil and groundwater remediation and any other steps, as necessary to protect human health and the environment."

State requirements: 310 CMR 40.0006, 40.0800, 40.0870, 40.0900, 40.1000; M.G.L. c. 21E, § 4

310 CMR 40.0870 contains the procedures for conducting Phase IV Comprehensive Remedial Response Actions at disposal sites. Phase IV includes the implementation and final inspection of the Comprehensive Remedial Alternative, which is defined in 310 CMR 40.0006 as, "a measure identified and evaluated . . . for its effectiveness in reducing, mitigating or eliminating risk posed by a disposal site." 310 CMR 40.0900 describes the procedures for evaluating the risks posed by hazardous materials and pursuant to 310 CMR 40.1003(1) all necessary and required response actions should be employed until a level of No Significant Risk exists. "No Significant Risk," is a defined term that means no substance of concern shall present a significant risk of harm to health, safety, public welfare, and the environment (310 CMR 40.0006.)

§ 281.35(e): The state must have requirements that ensure: "Adequate information is made available to the state to demonstrate that corrective actions are taken in accordance with the requirements of (a) through (d) of this section. This information must be submitted in a timely manner that demonstrates its technical adequacy to protect human health and the environment."

State requirements: 310 CMR 40.0900, 40.1003, 40.1056; M.G.L. c. 21A, § 19; M.G.L. c. 21E § 3A

Pursuant to 310 CMR 40.1003(1), all necessary and required response actions shall not have been conducted as a site, unless and until a level of No Significant Risk exists and a Permanent Solution has been achieved. Pursuant to 310 CMR 40.1056, a Permanent Solution Statement shall be submitted to MassDEP and shall include a complete summary of the issue including a demonstration that all sources of contamination have been eliminated or controlled,

40.1056(2)(c), and information supporting the conclusion that a level of No Significant Risk has been achieved, 40.1056(2)(f).

§ **281.35(f):** The state must have requirements that ensure: "In accordance with § 280.67 (Public Participation), the state must notify the affected public of all confirmed releases requiring a plan for soil and groundwater remediation, and upon request provide or make available information to inform the interested public of the nature of the release and the corrective measures planned or taken."

State requirements: 310 CMR 3.00; 310 CMR 40.1400-1406 , 40.0015; M.G.L. c. 21E, § 3A

MassDEP has an online searchable database of all sites that are confirmed sites of release or threats of release of oil or hazardous material or are locations that should be investigated as to whether they are confirmed sites. The database is located at: Energy & Environmental Affairs Data Portal (state.ma.us)

Pursuant to 310 CMR 40.1402, Public Involvement Activities shall be performed at all disposal sites. A "Public Involvement Activity" is defined in 310 CMR 40.0006 as those activities which a person undertaking a response action is required to perform to inform the public of decisions regarding response actions at disposal sites. Pursuant to 310 CMR 40.1403, Public Involvement Activities undertaken at all disposal sites are those designed primarily to provide the public with information regarding the risks posed by the disposal site, status of response actions, and opportunities for public involvement. In addition, records of all sites of release or threats of release of oil or hazardous material or locations to be investigated are available upon request, except those records that are exempt from disclosure by law.

It is the opinion of Commonwealth of Massachusetts Attorney General the state meets the no less stringent criterion for SPA Objective 40 CFR § 281.35.

SPA Objective 40 CFR § 281.36
Out of Service UST Systems and Closure

In order to be considered no less stringent than the corresponding federal requirements in 40 CFR part 280, the state must have requirements for out of service UST systems and closure that conform with the following:	**Corresponding State Rule Citation**	**State Statutory Citation**
(a) Removal from service. All new and existing UST systems temporarily closed must: (1) Continue to comply with general operating requirements, release reporting and investigation, and release response and corrective action; (2) Continue to comply with release detection requirements if regulated substances are stored in the tank; (3) Be closed off to outside access; and (4) Be permanently closed if the UST system has not been protected from corrosion and has not been used in one year, unless the state approves an extension after the owner and operator conducts a site assessment.	310 CMR 80.42, 80.64, 40.0000, 40.0332, 40.0410, 40.0870, 40.0900, 40.1003, 40.1600	M.G.L. c. 21O, § 5
(b) Permanent closure of UST systems. All tanks and piping must be cleaned and permanently closed in a manner that eliminates the potential for safety hazards and any future releases. The owner or operator must notify the state of permanent UST system closures. The site must also be assessed to determine if there are any present or were past releases, and if so, release response and corrective action requirements must be complied with.	310 CMR 80.43, 80.47, 80.64; 310 CMR 40.0000	M.G.L. c. 21O, § 5(5); M.G.L. c. 21E
(c) All UST systems taken out of service before the effective date of the federal regulations must permanently close in accordance with paragraph (b) of this section when directed by the implementing agency.	310 CMR 80.43, 80.46, 80.64	M.G.L. c. 21O, § 5(5)

Certification of SPA Objective 40 CFR § 281.36 Out of Service UST Systems and Closure:

§ **281.36(a):** The state must have requirements that ensure UST systems conform with the following: "Removal from service. All new and existing UST systems temporarily closed must:

(1) continue to comply with general operating requirements, release reporting and investigation, and release response and corrective action;

(2) continue to comply with release detection requirements if regulated substances are stored in the tank;

(3) be closed off to outside access; and

(4) be permanently closed if the UST system has not been protected from corrosion and has not been used in one year, unless the State approves an extension after the owner and operator conducts a site assessment."

State requirements: 310 CMR 80.42, 80.64, 40.0000, 40.0332, 40.0410, 40.0870, 40.0900, 40.1003, 40.1600; M.G.L. c. 21O, § 5

310 CMR 80.42 contains the applicable requirements by which an Owner or Operator shall take a UST system temporarily out of service including removal of all solid and liquid material and rendering the system inert, securing fill pipes, keeping vent lines open and operable, continued operation and maintenance of corrosion protection, if applicable, financial responsibility, and third-party inspection requirements. UST systems may be kept temporarily out-of-service for up to five years.

Pursuant to 310 CMR 80.64, airport hydrant fuel distribution systems installed after October 1, 2021, comply with the temporary closure in place requirements of 310 CMR 80.42 upon installation. Those installed on or before October 1, 2021, must comply with the temporary closure in place requirements of 310 CMR 80.42 as of October 1, 2021.

The requirements of 310 CMR 40.0000 apply regardless of a system's operating status. Pursuant to 310 CMR 40.0000, a reportable release of oil or hazardous substance to the environment is one that exceeds the reportable thresholds set forth at 310 CMR 40.1600, the Massachusetts Oil and Hazardous Materials List, and otherwise does not fall into a notification exemption. Notification deadlines, per 310 CMR 40.0332, are 2 hours, 72 hours or 120 days, and are dependent on the type of material, the quantity/concentration, the location of the release, and what environmental media are affected. 310 CMR 40.0331(a) requires that owners and operators shall notify DEP of a release.

Pursuant to 310 CMR 40.0410, the MCP sets forth requirements and procedures for conducting Immediate Response Actions which assess and secure releases of hazardous material in order to abate, prevent or eliminate an Imminent Hazard to health and safety.

310 CMR 40.0870 contains the procedures for conducting Phase IV Comprehensive Remedial Response Actions at disposal sites. Phase IV includes the implementation and final inspection of the Comprehensive Remedial Alternative, which is defined in 310 CMR 40.0006 as, "a measure identified and evaluated . . . for its effectiveness in reducing, mitigating or eliminating risk posed by a disposal site." 310 CMR 40.0900 describes the procedures for evaluating the risks posed by hazardous materials and pursuant to 310 CMR 40.1003(1) all necessary and required response actions should be employed until a level of No Significant Risk exists. "No Significant Risk," is a defined term that means no substance of concern shall present a significant risk of harm to health, safety, public welfare, and the environment (310 CMR 40.0006.)

§ **281.36(b):** The state must have requirements that ensure UST systems conform with the following: "All tanks and piping must be cleaned and permanently closed in a manner that eliminates the potential for safety hazards and any future releases. The owner or operator must notify the state of permanent UST system closures. Permanent closure of UST systems. The site must also be assessed to determine if there are any present or were past releases, and if so, release response and corrective action requirements must be complied with.

State requirements: 310 CMR 80.43, 80.47, 80.64; M.G.L. c. 21O, § 5(5); M.G.L. c. 21E; 310 CMR 40.0000.

310 CMR 80.43 (1), (2) and (3), when an UST system is permanently closed it must be removed from the ground, or in

certain circumstances, it may be closed-in-place. The Owner of the UST system must apply to MassDEP if it wants to close the UST system in-place. Under both options, the tank must be completely cleaned out. If the UST system is going to be removed, it must be rendered inert. If is going to be closed-in-place, it must be filled with an inert material.

Under both options, pursuant to 310 CMR 80.43(4), the Owner or Operator must conduct an assessment before permanent closure is complete. Under the provisions of M.G.L. c. 21E and 310 CMR 40.0300, The Owner or Operator must notify MassDEP if a release is found that exceeds the Reportable Concentrations or Reportable Quantities at 310 CMR 40.1600 and remediate the release according to the regulations found at 310 CMR 40.0000.

The Owner must notify MassDEP within 30 days of removal or within 30 days of being filled with an inert material, under 310 CMR 80.43(2)(c) and (3)(c) respectively.

Pursuant to 310 CMR 80.47, contains the standards by which an Owner or Operator shall correctly clean and close a UST system.

Pursuant to 310 CMR 80.64, airport hydrant fuel distribution systems installed after October 1, 2021 comply with the closure requirements of 310 CMR 80.00 upon installation. Those installed on or before October 1, 2021 must comply with the closure requirements of 310 CMR 80.00 as of October 1, 2021.

§ 281.36(c): The state must have requirements that ensure UST systems conform with the following: "All UST systems taken out of service before the effective date of the federal regulations must permanently close in accordance with paragraph (b) of this section when directed by the implementing agency."

State requirements: 310 CMR 80.43(5), 80.46. 80.64; M.G.L. c. 21O, § 5(5)

Pursuant to 310 CMR 80.43(5); MassDEP may require removal or permanent closure-in-place of an UST system at any time that it determines the UST system is abandoned or poses a threat to public health, safety, or the environment.

Pursuant to 310 CMR 80.46, MassDEP can require an Owner or Operator of a tank or UST system that was permanently closed-in-place before December 22, 1988, to conduct a site assessment at 310 CMR 80.43(4) if it determines the tank or UST system poses a current or potential threat to human health and the environment.

Pursuant to 310 CMR 80.64, airport hydrant fuel distribution systems installed after October 1, 2021, comply with the closure requirements at 310 CMR 80.43 and 80.46 upon installation. Those installed on or before October 1, 2021, must comply with the closure requirements at 310 CMR 80.43 and 80.47 as of October 1, 2021.

It is the opinion of Commonwealth of Massachusetts Attorney General the state meets the no less stringent criterion for SPA Objective 40 CFR § 281.36.

SPA Objective 40 CFR § 281.37
Financial Responsibility (FR) for UST Systems Containing Petroleum

In order to be considered no less stringent than the corresponding federal requirements in 40 CFR part 280, the state must have Financial Responsibility (FR) requirements that conform with the following:	**Corresponding State Rule Citation**	**State Statutory Citation**
(a) In order to be considered no less stringent than the federal requirements for financial responsibility for UST systems containing petroleum, the state requirements for FR for petroleum UST systems must ensure that: (1) Owners and operators have $1 million per occurrence for corrective action and third-party claims in a timely manner to protect human health and the environment; (2) Owners and operators not engaged in petroleum production, refining, and marketing and who handle a throughput of 10,000 gallons of petroleum per month or less have $500,000 per occurrence for corrective action and third-party claims in a timely manner to protect human health and the environment; (3) Owners and operators of 1 to 100 petroleum UST's must have an annual aggregate of $1 million; and (4) Owners and operators of 101 or more petroleum UST's must have an annual aggregate of $2 million.	310 CMR 80.52(2) & (3), 80.64	M.G.L. c. 21O, § 5(6)
(b) States may allow the use of a wide variety of financial assurance mechanisms to meet this requirement. Each financial mechanism must meet the following criteria in order to be no less stringent than the federal requirements. The mechanisms must: be valid and enforceable; be issued by a provider that is qualified or licensed in the state; not permit cancellation without allowing the state to draw funds; ensure that funds will only and directly be used for corrective action and third-party liability costs; and require that the provider notify the owner or operator of any circumstances that would impair or suspend coverage.	310 CMR 80.04, 80.52, 80.53, 80.54 80.64	M.G.L. c. 21O, § 5(6)
(c) States must require owners and operators maintain records that demonstrate compliance with Financial Responsibility requirements, and these records must be made readily available when requested by the implementing agency.	310 CMR 80.52, 80.53; 80.54, 80.55, 80.56, 80.57, 80.60, 80.64	M.G.L. c. 21O, §§ 5(6) and 6

Certification of SPA Objective 40 CFR § 281.37 Financial Responsibility (FR) for UST Systems Containing Petroleum:

§ **281.37(a):** "In order to be considered no less stringent than the federal requirements for FR for UST systems containing petroleum, the state requirements for financial responsibility must ensure that: (1) owners and operators have $1 million per occurrence for corrective action and third-party claims in a timely manner to protect human health and the environment; (2) owners and operators not engaged in petroleum production, refining, and marketing who handle a throughput of 10,000 gallons of petroleum per month or less have $500,000 per occurrence for corrective action and third-party claims in a timely manner to protect human health and the environment; (3) owners and operators of 1 to 100 petroleum USTs must have an annual aggregate of $1 million; and (4) owners and operators of 101 or more petroleum USTs must have an annual aggregate of $2 million."

State requirements: 80.52(2), 80.52(3), 80.64 M.G.L. c. 21O, § 5(6)

Under 310 CMR 80.52(2), an Owner or Operator of an UST system must maintain and demonstrate financial responsibility of $1,000,000 coverage per-occurrence, if the UST system has throughput of more than 10,000 gallons of regulated substance per month based on an annual throughput basis. All other Owners and Operators must maintain and demonstrate financial responsibility of $500,000 per occurrence.

Pursuant to 310 CMR 80.52(3), an Owner or Operator with 1 to 100 UST systems must maintain and demonstrate financial responsibility of $1,000,000 annual aggregate. An Owner or Operator with more than 100 UST systems must operate and maintain financial responsibility of $2,000,000 annual aggregate.

Pursuant to 310 CMR 80.64, airport hydrant fuel distribution systems installed after October 1, 2021, comply with financial responsibility requirements upon installation.

Pursuant to 310 CMR 80.64(3), those systems in use as of October 1, 2021, must comply with financial responsibility requirements at the time of submission of the registration.

§ **281.37(b):** "States may allow the use of a wide variety of financial assurance mechanisms to meet this requirement. Each financial mechanism must meet the following criteria in order to be no less stringent than the federal requirements. The mechanisms must: be valid and enforceable; be issued by a provider that is qualified or licensed in the state; not permit cancellation without allowing the state to draw funds; ensure that funds will only and directly be used for corrective action and third-party liability costs; and require that the provider notify the owner or operator of any circumstances that would impair or suspend coverage."

State requirements: 310 CMR 80.04(4), 80.53, 80.54(1) – (11), 80.64; M.G.L. c. 21O, § 5(6)

Pursuant to 310 CMR 80.04(4), the financial responsibility requirements at 310 CMR 80.51 through 80.63 apply to all Owners and Operators of UST systems except those as provided in 310 CMR 80.04(5) through (12); and State and Federal government entities whose debts and liabilities are the debts and liabilities of a state or the United States government.

310 CMR 80.53 sets forth the allowable mechanisms and combination of mechanisms to meet financial responsibility requirements.

310 CMR 80.54 (1) - (11), details the required terms and conditions applicable to each allowed financial responsibility mechanism.

Pursuant to 310 CMR 80.64, airport hydrant fuel distribution systems installed after October 1, 2021 comply with financial responsibility requirements upon installation. Pursuant to 310 CMR 80.64(3), those systems in use as of

October 1, 2021, must comply with financial responsibility requirements at the time of submission of the registration.

The state program is more stringent or broader in scope than Federal Program as follows:

- UST systems containing hazardous substances must maintain and demonstrate financial responsibility (310 CMR 80.04 and 80.52)

§ 281.37(c): "States must require owners and operators to maintain records that demonstrate compliance with the state financial responsibility requirements, and these records must be made readily available when requested by the implementing agency."

State requirements: 310 CMR 80.59; M.G.L. c. 21O, §§ 5(6) and 6

Under 310 CMR 80.59 requires that Owners and Operators maintain documentation of their financial assurance mechanisms. This sections specifies what type of documentation is required for each financial assurance mechanism. Owners and Operators are required to make the documentation available to MassDEP upon request, no more than seven business days after the request.

It is the opinion of Commonwealth of Massachusetts Attorney General the state meets the no less stringent criterion for SPA Objective 40 CFR § 281.37.

SPA Objective 40 CFR § 281.38 Lender Liability

In order to be considered no less stringent than the corresponding federal requirements in 40 CFR 280, the state must have lender liability requirements that conform with the following:	**Corresponding State Rule Citation**	**State Statutory Citation**
(a) A state program that contains a security interest exemption will be considered to be no less stringent than, and as broad in scope as, the federal program, provided that the state's exemption: (1) Mirrors the security interest exemption provided for in 40 CFR part 280, subpart I; or (2) Achieves the same effect as provided by the following key criteria: (i) A holder, meaning a person who maintains indicia of ownership primarily to protect a security interest in a petroleum UST or UST system or facility or property on which a petroleum UST or UST system is located, who does not participate in the management of the UST or UST system as defined under §280.10 of this chapter, and who does not engage in petroleum production, refining, and marketing as defined under §280.200(b) of this chapter is not: (A) An owner of a petroleum UST or UST system or facility or property on which a petroleum UST or UST system is located for purposes of compliance with the requirements of 40 CFR part 280; or (B) An operator of a petroleum UST or UST system for purposes of compliance with the requirements of 40 CFR part 280, provided the holder is not in control of or does not have responsibility for the daily operation of the UST or UST system.		

Certification of SPA Objective 40 CFR § 281.38 Lender Liability:
40 CFR § 281.38(a).

Massachusetts does not have a security interest exemption in its program.

It is the opinion of Commonwealth of Massachusetts Attorney General the state meets the no less stringent criterion for SPA Objective 40 CFR § 281.38.

SPA Objective 40 CFR § 281.39 Operator Training

In order to be considered no less stringent than the corresponding federal requirements in 40 CFR §280, the state must have operator training requirements that conform with the following:	**Corresponding State Rule Citation**	**State Statutory Citation**
The state must have an operator training program that meets the minimum requirements of section 9010 of SWDA.	310 CMR 80.37, 80.64	

Certification of SPA Objective 40 CFR § 281.39 Operator Training:

§ 281.39 – "In order to be considered no less stringent than the corresponding federal requirements for operator training, the state must have an operator training program that meets the minimum requirements of section 9010 of the Solid Waste Disposal Act."

State requirements: 310 CMR 80.37(2), (7) – (9), and 80.64

Pursuant to 310 CMR 80.37(2), Owners and Operators are required have a certified Class A, B, or C operator present when the UST system is in operation.

Pursuant to 310 CMR 80.37(7) - (9), Owners and Operators must ensure that Certified operators (Class A and B) take and pass an operator examination and are trained on the type(s) of UST system(s) for which they are designated. Owner/Operator shall document that all Class C operators are trained by a Class A or B operator.

Pursuant to 310 CMR 80.64, airport hydrant fuel distribution systems installed after October 1, 2021, comply with operator training requirements upon installation. Those installed on or before October 1, 2021, must comply with operator training requirements as of October 13, 2022.

It is the opinion of Commonwealth of Massachusetts Attorney General the state meets the no less stringent criterion for SPA Objective 40 CFR § 281.39.

SPA Objective 40 CFR § 281.40
Legal Authorities for Compliance Monitoring

The state must have the following specific compliance monitoring authorities:	**Corresponding State Rule Citation**	**State Statutory Citation**
(a) Any authorized representative of the state engaged in compliance inspections, monitoring, and testing must have authority to obtain by request any information from an owner or operator with respect to the UST system(s) that is necessary to determine compliance with the regulations.	310 CMR 80.10	M.G.L. c. 21O, § 6
(b) Any authorized representative of the state must have authority to require an owner or operator to conduct monitoring or testing.	310 CMR 80.10	M.G.L. c. 21O, § 6
(c) Authorized representatives must have the authority to enter any site or premises subject to UST system regulations or in which records relevant to the operation of the UST system(s) are kept, and to copy these records, obtain samples of regulated substances, and inspect or conduct the monitoring or testing of UST system(s).	310 CMR 80.13	M.G.L. c. 21O, § 6

Certification of SPA Objective 40 CFR § 281.40

§ **281.40(a):** "Any authorized representative of the state engaged in compliance inspections, monitoring and testing must have authority to obtain by request any information from and owner or operator with respect to the UST system(s) that is necessary to determine compliance with the regulations."

State requirements: 310 CMR 80.10, M.G.L. c. 21O, § 6

Pursuant to 310 CMR 80.10, upon reasonable request by MassDEP, the Owner or Operator of an UST system must provide MassDEP with information relating to the UST system or UST components and permit access to the records.

§ **281.40(b):** "Any authorized representative of the State must have the authority to require an owner or operator to conduct monitoring or testing."

State requirements: 310 CMR 80.10, M.G.L. c. 21O, § 6

Pursuant to 310 CMR 80.10, upon reasonable request by MassDEP, the Owner or Operator of an UST system must conduct monitoring or testing.

§ **281.40(c):** "Authorized representatives must have the authority to enter any site or premises subject to UST system regulations or in which records relevant to the operation of the UST system(s) are kept, and to copy these records, obtain samples of regulated substances, and inspect or conduct the monitoring or testing of the UST system(s)."

State requirements: 310 CMR 80.13(1), M.G.L. c. 21O, § 6(1) - (3)

Pursuant to 310 CMR 80.13(1), personnel or representatives of MassDEP, upon presentation of credentials, may enter a property containing an UST system, or suspected of containing and UST system to inspect or obtain samples, to conduct monitoring or testing, and to have access to and copy records.

It is the opinion of Commonwealth of Massachusetts Attorney General the state meets the no less stringent criterion for SPA Objective 40 CFR § 281.40.

SPA Objective 40 CFR § 281.41
Legal Authorities for Enforcement Response

The state must have the following specific enforcement response authorities for state program approval:	**Corresponding State Rule Citation**	**State Statutory Citation**
(a) Any state agency administering a program must have the authority to implement the following remedies for violations of state program requirements: (1) To restrain immediately and effectively any person by order or by suit in state court from engaging in any unauthorized activity that is endangering or causing damage to public health or the environment. (2) To sue in courts of competent jurisdiction to enjoin any threatened or continuing violation of any program requirement; (3) To assess or sue to recover in court civil penalties as follows: (i) Civil penalties for failure to notify or for submitting false information pursuant to tank notification requirements must be capable of being assessed up to $5,000 or more per violation. (ii) Civil penalties for failure to comply with any State requirements or standards for existing or new tank systems must be capable of being assessed for each instance of violation, up to $5,000 or more for each tank for each day of violation. If the violation is continuous, civil penalties shall be capable of being assessed up to $5,000 or more for each day of violation.	310 CMR 80.50 310 CMR 5.00	M.G.L. c. 21O, § 7 M.G.L. c. 21O, § 8 M.G.L. c. 21A, § 16 M.G.L. c. 111, §2C
(4) To prohibit the delivery, deposit, or acceptance of a regulated substance into an underground storage tank identified by the implementing agency to be ineligible for such delivery, deposit, or acceptance in accordance with section 9012 of the Solid Waste Disposal Act.	310 CMR 80.48	M.G.L. c. 21O, §§ 7 & 8
(b) The burden of proof and degree of knowledge or intent required under state law for establishing violations under paragraph (a)(3) of this section, must be no greater than the burden of proof or degree of knowledge or intent that EPA must	310 CMR 80.48 & 80.50 310 CMR 5.00	M.G.L. c. 21O, § 8 M.G.L. c. 21A, § 16 M.G.L. c. 111, §2C

provide when it brings an action under Subtitle I of the Solid Waste Disposal Act.		
(c) A civil penalty assessed, sought, or agreed upon by the implementing agency(ies) under paragraph (a)(3) of this section must be appropriate to the violation.	310 CMR 5.00	M.G.L. c. 21O, § 8 M.G.L. c. 21A, § 16

Certification of SPA Objective 40 CFR § 281.41 Legal Authorities for Enforcement Response

§ **281.41(a)(1):** Any state agency administering a program must have the authority to implement the following remedies for violations of state program requirements: "(1) To restrain immediately and effectively any person by order or by suit in State court by engaging in any unauthorized activity that is endangering or causing damage to public health or the environment."

State requirements: 310 CMR 80.50, M.G.L. c. 21O, §§ 7 & 8, M.G.L. c. 111, §2C.

Pursuant to M.G.L. c. 21O, § 7, and 310 CMR 80.50, MassDEP has the authority to seek a court order and to issue an Order to the Owner or Operator of an UST system directing them to cease immediately, or on a specified date, all illegal activity and to come back into compliance with 310 CMR 80.00 and M.G.L. c. 21O. Pursuant to M.G.L. c. 111, §2C, the Department also has general authority to issue an order relative to the violation of any law, regulation or rule under its jurisdiction relative to any type of pollution. Pursuant to M.G.L. c. 21O, § 8, MassDEP can seek relief as it deems necessary or appropriate to secure compliance with the statute or regulations in the courts.

§ **281.41(a)(2):** Any state agency administering a program must have the authority to implement the following remedies for violations of state program requirements: "(2) To sue in courts of competent jurisdiction to enjoin any threatened or continuing violation of any program requirement."

State authority: M.G.L. c. 21O, § 8

Upon petition of MassDEP to the Superior Court, the Court may enjoin any threatened or continuing violations of M.G.L. c. 210, 310 CMR 80.00 or any order, permit or approval granted thereunder. Under M.G.L. c. 21O, § 8, any violation of any provision of the statute, or of any regulation, rule, order, permit or approval adopted or issued pursuant to the statute, is presumed to constitute irreparable harm to public health, safety and welfare, and to the environment.

§ **281.41(a)(3):** Any State agency administering a program must have the authority to implement the following remedies for violations of State program requirements: (3) To assess or sue to recover in court civil penalties as follows:

> "(i) Civil penalties for failure to notify or for submitting false information pursuant to tank notification requirements must be capable of being assessed up to $5,000 or more per violation.
>
> (ii) Civil penalties for failure to comply with any State requirements or standards for existing or new tank systems must be capable of being assessed for each instance of violation, up to $5,000 or more for each tank for each day of violation. If the violation is continuous, civil penalties shall be capable of being assessed up to $5,000 or more for each day of violation."

State authority: M.G.L. c. 21O, § 8, M.G.L. c. 21A, § 16

Any person who violates any provision of M.G.L. c. 210, 310 CMR 80.00 (including failure to notify or submitted false information to MassDEP), or any order, permit or approval granted thereunder shall be subject to a civil penalty of up to $25,000 for each violation. M.G.L. c. 21A, 16, and the administrative penalty regulations promulgated thereunder, also provide for civil penalties up to $25,000 per day for violations of all statutes and regulations administered by the Department, as well as administrative penalties of up to $1,000 per day or $25,000 per day for other violations, depending upon the significance of the violation.

§ **281.41(a)(4):** The State must have the following specific enforcement response authorities for State program approval:

"(4) To prohibit the delivery, deposit, or acceptance of a regulated substance into an underground storage tank identified by the implementing agency to be ineligible for such delivery, deposit, or acceptance in accordance with section 9012 of the Solid Waste Disposal Act."

State authority: M.G.L. c. 21O, §§ 7 & 8, 310 CMR 80.48

Pursuant to M.G.L. c. 21O, § 7, and 310 CMR 80.50, MassDEP has the authority to seek a court order and to issue an Order to the Owner or Operator of an UST system directing them to cease immediately, or on a specified date, all illegal activity and to come back into compliance with 310 CMR 80.00 and M.G.L. c. 21O, and in M.G.L. c. 21O, § 8, any violation of any provision of the statute, or of any regulation, rule, order, permit or approval adopted or issued pursuant to the statute, is presumed to constitute irreparable harm to public health, safety and welfare, and to the environment. In 310 CMR 80.48, MassDEP has specific authority to issue orders to prohibit delivery into UST systems for the specified violations and under the specified procedures in that regulation.

§ **281.41(b):** The State must have the following specific enforcement response authorities for State program approval:

"(b) The burden of proof and degree of knowledge or intent required under state law for establishing violations under paragraph (a)(3) of this section, must be no greater than the burden of proof or degree of knowledge or intent that EPA must provide when it brings an action under Subtitle I of the Solid Waste Disposal Act."

State authority: M.G.L. c. 21O, §§ 7 & 8, M.G.L. c. 21A, § 16, M.G.L. c. 111, § 2C; 310 CMR 80.48 & 80.50, 310 CMR 5.00

In the cited State authorities, there is no specific burden of proof imposed in these laws, which would be interpreted by the Massachusetts courts as imposing no greater than a civil burden of proof upon MassDEP in any administrative or judicial enforcement action. In addition, because violations of M.G.L. c. 21O and 310 CMR 80.00 are presumed to cause irreparable harm pursuant to M.G.L. c. 21O, § 8, MassDEP has a lesser burden than in many of its other programs. Since the EPA burden of proof is a preponderance of the evidence under Subtitle I of the SWDA, the MassDEP burden is no greater than this burden. There is no requirement in these laws for MassDEP to prove intent or degree of knowledge of a violation. Therefore, MassDEP's burden is no greater than EPA's burden of proof.

§ **281.41(c):** The State must have the following specific enforcement response authorities for State program approval:

"(c) A civil penalty assessed, sought, or agreed upon by the State enforcement agency(ies) under paragraph (a)(3) of this section must be appropriate to the violation."

State authority: M.G.L. c. 21O, §8; M.G.L. c 21A, §16; 310 CMR 5.00

Any person who violates ay provision of M.G.L. c. 21O, 310 CMR 80.00 (including failure to notify or submitted false information to MassDEP), or any order, permit or approval granted thereunder shall be subject to a civil penalty of up to $25,000 for each violation.

Under M.G.L. c. 21A, §16 and the Department's administrative penalty regulations promulgated pursuant to that statute at 310 CMR 5.00, MassDEP has to consider 12 factors before assessing an administrative penalty. MassDEP also has an internal guidance document entitled *Enforcement Response Guidance*, which is structured to ensure consistency in enforcement and assessing penalties of similar significance.

It is the opinion of Commonwealth of Massachusetts Attorney General the state meets the no less stringent criterion for SPA Objective 40 CFR § 281.41.

Public Participation in Enforcement Proceedings
SPA Objective 40 CFR § 281.42

Any state administering a program must provide for public participation in the state enforcement process by providing any one of the following three options:	**State Rule Citation**	**State Statutory Citation**
(a) Authority that allows intervention analogous to Federal Rule 24(a)(2), and assurance by the appropriate state enforcement agency that it will not oppose intervention under the state analogue to Rule 24(a)(2) on the ground that the applicant's interest is adequately represented by the State.	Mass. R. Civ. P. 24	

Certification of SPA Objective 40 CFR § 281.42 Public Participation in Enforcement Proceedings

§ **281.42(a):**
"Any state administering a program must provide for public participation in the state enforcement process by providing any one of the following three options:

(a) Authority that allows intervention analogous to Federal Rule 24(a)(2) from Title IV of the Federal Rules of Civil Procedure, and assurance by the state that it will not oppose intervention under the state analogue to Rule 24(a)(2) on the ground that the applicant's interest is adequately represented by the state.

(b) Authority that allows intervention of right in any civil action to obtain the remedies specified in § 281.41 by any citizen having an interest that is or may be adversely affected; or

(c) Assurance by the appropriate state agency that:

(1) It will provide notice and opportunity for public comment on all proposed settlements of civil enforcement actions (except where immediate action is necessary to adequately protect human health and the environment);

(2) It will investigate and provide responses to citizen complaints about violations; and

(3) It will not oppose citizen intervention when permissive intervention is allowed by statute, rule, or regulation."

MassDEP can point to State authority that provides an option equivalent to § 281.42(a), namely Massachusetts Rule of Civil Procedure 24.State authority: Mass. R. Civ. P. 24

In a civil procedure, a party may intervene by right if there is a statutory right to intervene or "if the applicant claims an interest relating to the property or transaction which is the subject of the action" and the disposition may "impede his ability to protect that interest." Mass. R. Civ. P. 24(a). A party may also intervene if there is a conditional statutory right to intervene or if the party's "claim or defense and the main action have a question of law or fact in common." Mass. R. Civ. P. 24(b).

In the Memorandum of Agreement Between the Massachusetts Department of Environmental Protection and The United States Environmental Protection Agency, Region l, MassDEP agrees not to oppose intervention on the ground that the applicant's interest is adequately represented by the state. MassDEP has reserved its right to object to the intervention if it does not both add substantive value to the case and intervention will unnecessarily delay the case.

It is the opinion of Commonwealth of Massachusetts Attorney General the state meets the no less stringent criterion for SPA Objective 40 CFR § 281.42.

Underground Storage Tank Compliance Act from Energy Policy Act of 2005—Public Record

Objective: 9002(d) of the Solid Waste Disposal Act, Subtitle I (42 U.S.C. 6991a)

Section 1526 of the Energy Policy Act of 2005

Grant Guidelines to States for Implementing the Public Record Provisions of the Energy Policy Act of 2005

	Corresponding State Rule Citation	**State Statutory Citation**
(a) The public record of a state must include: • The number, sources, and causes of underground storage tank releases in the state. • The record of compliance by underground storage tanks in the state with Subtitle I or a state program approved under Section 9004 of Subtitle I. • Data on the number of underground storage tank equipment failures in the state.	EPA UST/LUST Grant Agreement	
(b) The State must update the public record at least annually	EPA UST/LUST Grant Agreement	
(c) Each state must develop a website that does one of the following: • The public record is posted on or downloadable from the internet. This option may be an interactive website that retrieves the information, a website that lists the information, or a file that is downloadable in electronic format. • The website describes how to receive an electronic copy of the public record (for example via e-mail).	EPA UST/LUST Grant Agreement	

Notes on Objective from the Underground Storage Tank Compliance Act from Energy Policy Act of 2005 for the Public Record Provisions, 9002(d) of the Solid Waste Disposal Act, Subtitle I (42 U.S.C. 6991a), Section 1526 of the Energy Policy Act of 2005

The UST/LUST grant agreement between EPA and MassDEP contains obligations pertaining to (a), (b), and (c). MassDEP fulfills these obligations as part of its obligations under the grant agreement and program authorization.

Underground Storage Tank Compliance Act from Energy Policy Act of 2005—Delivery Prohibition

Objective: 9012 of the Solid Waste Disposal Act, Subtitle I (42 U.S.C. 6991)
Section 1527 of the Energy Policy Act of 2005
Grant Guidelines to States for Implementing the Delivery Prohibition Provisions of the Energy Policy Act of 2005

	Corresponding State Rule Citation	**State Statutory Citation**
(a) The state must prohibit the delivery, deposit, or acceptance of product to an underground storage tank that has been determined to be ineligible by the state for such delivery, deposit, or acceptance	310 CMR 80.48	M.G.L. c. 21O, §§ 7 & 8
(b) The state must develop criteria for determining which underground storage tanks are ineligible for delivery, deposit, or acceptance of product;	310 CMR 80.48	M.G.L. c. 21O, §§ 7 & 8
(c) The state must develop a process for reclassifying ineligible underground storage tanks as eligible for delivery, deposit, or acceptance of product;	310 CMR 80.48	M.G.L. c. 21O, §§ 7 & 8
(d) The state must develop a process for providing adequate notice to underground storage tank owners and operators and product deliverers that an underground storage tank has been determined to be ineligible for delivery, deposit, or acceptance of product;	310 CMR 80.48	M.G.L. c. 21O, §§ 7 & 8
(e) The state must delineate a process for the application of delivery prohibition in rural and remote areas.	310 CMR 80.48	M.G.L. c. 21O, §§ 7 & 8

(f) A state must classify an underground storage tank as ineligible for delivery, deposit, or acceptance of product as soon as practicable after the state determines an underground storage tank meets one or more of the following conditions: • Required spill prevention equipment is not installed; • Required overfill protection equipment is not installed; • Required leak detection equipment is not installed; • Required corrosion protection equipment is not installed; or • Other conditions a state deems appropriate.	310 CMR 80.48	M.G.L. c. 21O, §§ 7 & 8
(g) A state should also classify an underground storage tank as ineligible for delivery, deposit, or acceptance of product if the owner or operator of that tank has been issued a written warning or citation (notice of violation or other form indicating a violation) under any of the following circumstances and the owner or operator has failed to take corrective action after a reasonable time frame that is determined by the state: • Failure to properly operate or maintain. or both, leak detection equipment; • Failure to properly operate or maintain, or both, spill, overfill, or corrosion protection equipment; • Failure to maintain financial responsibility; • Failure to protect a buried metal flexible connector from corrosion; or • Other conditions a state deems appropriate.	310 CMR 80.48	M.G.L. c. 21O, §§ 7 & 8

(h) The state, after notification by the owner or operator that the violation(s) has been corrected, must do the following as soon as practicable: • Confirm compliance. If any deficiencies that led to the delivery prohibition remain, the state must notify the owner or operator. • Return the underground storage tank to being eligible to receive product if the violation(s) has been corrected and confirmed by the state.	310 CMR 80.48	M.G.L. c. 21O, §§ 7 & 8
(i) The state must make a reasonable effort to notify tank owners or operators in writing (e.g., field notification, mail, e-mail, or fax) prior to prohibiting the delivery, deposit, or acceptance of product. If an owner or operator is not present at the facility at the time the underground storage tank is identified as ineligible, an employee at the facility at the time of identification (in lieu of the owner or operator) may be notified in writing prior to prohibiting delivery.	310 CMR 80.48	M.G.L. c. 21O, §§ 7 & 8
(j) The state must develop processes and procedures for notifying product deliverers when an underground storage tank is ineligible for delivery, deposit, or acceptance of product. The mechanism a state chooses for identifying eligible or ineligible underground storage tanks (e.g., green tags, red tags) may provide adequate notice to product deliverers.	310 CMR 80.48	M.G.L. c. 21O, §§ 7 & 8
(k) The state may only defer application of delivery prohibition for up to 180 days after determining an underground storage tank is ineligible for delivery, deposit, or acceptance of product.	NA	

Notes on Objective from the Underground Storage Tank Compliance Act from Energy Policy Act of 2005 for Delivery Prohibition, 9012 of the Solid Waste Disposal Act, Subtitle I (42 U.S.C. 6991), Section 1527 of the Energy Policy Act of 2005

State requirements: M.G.L. c. 21O, §§ 7 & 8; 310 CMR 80.48(1) – (12); NOTE: See detailed discussion above with respect to statutory authority for 310 CMR 48.00 regulation with respect to delivery prohibition in SPA provisions relative to § 281.41(a)(4).

(a) The state must prohibit the delivery, deposit, or acceptance of product to an underground storage tank that has been determined to be ineligible by the state for such delivery, deposit, or acceptance.

Pursuant to 310 CMR 80.48(1), MassDEP must prohibit the delivery, deposit, or acceptance of product to an underground storage tank that failed to install spill prevention equipment, overfill protection equipment, leak detection equipment or corrosion protection equipment.

(b) The state must develop criteria for determining which underground storage tanks are ineligible for delivery, deposit, or acceptance of product.

Pursuant to 310 CMR 80.48(1), (3), contains the requirements by which MassDEP "shall" issue a delivery prohibition order to an Owner/Operator of a UST system (310 CMR 80.48(1), or "may" issue a delivery prohibition order to an Owner/Operator of a UST system (310 CMR 80.48(3)).

(c) The state must develop a process for reclassifying ineligible underground storage tanks as eligible for delivery, deposit, or acceptance of product.

Pursuant to 310 CMR 80.48(8) – (10), states that upon notification from an Owner or Operator that the violation(s) that were the basis of a delivery prohibition order were corrected, MassDEP will seek confirmation and then terminate the delivery prohibition order and remove the red tag.

(d) The state must develop a process for providing adequate notice to underground storage tank owners and operators and product deliverers that an underground storage tank has been determined to be ineligible for delivery, deposit, or acceptance of product.

Pursuant to 310 CMR 80.48(4), MassDEP will provide written notice to the Owner or Operator that the UST system has violation(s) that could be the basis of a delivery prohibition order. The delivery prohibition order will be issued no sooner than 24 hours after the written notice is provided to the Owner or Operator. Product deliverers are provided notice by the red tag that is affixed to the fill port which contains language that the tank is ineligible to receive regulated substance.

(e) The state must delineate a process for the application of delivery prohibition in rural and remote areas.

MassDEP does not delineate a specific process under 310 CMR 80.00 for the application of delivery prohibition in rural and remote areas. However, 310 CMR 80.48(11) does allow MassDEP to authorize delivery to a UST system that is under a delivery prohibition order in an emergency or for compliance testing.

(f) A state must classify an underground storage tank as ineligible for delivery, deposit, or acceptance of product as soon as practicable after the state determines an underground storage tank meets one or more of the following conditions: (a) Required spill prevention equipment is not installed; (b) Required overfill protection equipment is not installed; (c) Required leak detection equipment is not installed; (d) Required corrosion protection equipment is not installed; or other conditions a state deems appropriate.

Pursuant to 310 CMR 80.48(1), contains the requirements by which MassDEP shall issue a delivery prohibition order to an Owner or Operator of an UST system after written notice to the Owner or Operator if one or more of the following conditions exist: (a) Failure to install spill prevention equipment in accordance with 310 CMR 80.21(1); (b) Failure to install overfill protection equipment in accordance with 310 CMR 80.21(2); (c) Failure to install leak detection equipment in accordance with 310 CMR 80.19; or (d) Failure to install corrosion protection equipment in accordance with 310 CMR 80.22.

(g) A state should also classify an underground storage tank as ineligible for delivery, deposit, or acceptance of product if the owner or operator of that tank has been issued a written warning or citation (notice of violation or other form indicating a violation) under any of the following circumstances and the owner or operator has failed to take corrective action after a reasonable time frame that is determined by the state: (a) Failure to properly operate or

maintain. or both, leak detection equipment; (b) Failure to properly operate or maintain, or both, spill, overfill, or corrosion protection equipment; (c) Failure to maintain financial responsibility; (d) Failure to protect a buried metal flexible connector from corrosion; or (e) Other conditions a state deems appropriate.

Pursuant to 310 CMR 80.48(3), contains the requirements by which MassDEP may issue a delivery prohibition order to an Owner or Operator of an UST system after written notice to the Owner or Operator if one or more of the following conditions exist: (a) Spill prevention is not operating in accordance with 310 CMR 80.28(1) and (2); (b)Overfill protection is not operating in accordance with 310 CMR 80.28(1) and (3); (c) Leak detection equipment is not operating in accordance with 310 CMR 80.26; (d) Corrosion protection equipment is not operating in accordance with 310 CMR 80.29; (e) The Owner or Operator fail to demonstrate or maintain financial responsibility in accordance with 310 CMR 80.51 through 80.63; or (f) Any other violation of 310 CMR 80.00 that poses a significant threat to public health, safety or the environment, as determined by the Department at its sole discretion. 310 CMR 80.48(4) requires that written notice be provided to the Owner or Operator at least 24 hours prior to issuing the delivery prohibition order and locking the tank.

(h) The state, after notification by the owner or operator that the violation(s) has been corrected, must do the following as soon as practicable: (a) Confirm compliance. If any deficiencies that led to the delivery prohibition remain, the state must notify the owner or operator. (b) Return the underground storage tank to being eligible to receive product if the violation(s) has been corrected and confirmed by the state.

Pursuant to 310 CMR 80.48(8) – (10), states that upon notification from an Owner or Operator that the violation(s) that were the basis of a delivery prohibition order were corrected, MassDEP will seek confirmation and then terminate the delivery prohibition order and remove the red tag.

(i) The state must make a reasonable effort to notify tank owners or operators in writing (e.g., field notification, mail, e-mail, or fax) prior to prohibiting the delivery, deposit, or acceptance of product. If an owner or operator is not present at the facility at the time the underground storage tank is identified as ineligible, an employee at the facility at the time of identification (in lieu of the owner or operator) may be notified in writing prior to prohibiting delivery.

Pursuant to 310 CMR 80.48 (4), MassDEP will provide written notice to the Owner or Operator that the UST system has violation(s) that could be the basis of a delivery prohibition order.

(j) The state must develop processes and procedures for notifying product deliverers when an underground storage tank is ineligible for delivery, deposit, or acceptance of product. The mechanism a state chooses for identifying eligible or ineligible underground storage tanks (e.g., green tags, red tags) may provide adequate notice to product deliverers.

310 CMR 80.48(5) gives MassDEP the authority to lock and affix a red tag to the fill pipe, after a delivery prohibition order is served, which will serve as notification to a product deliverer that the tank is ineligible to receive regulated substance.

(k) The state may only defer application of delivery prohibition for up to 180 days after determining an underground storage tank is ineligible for delivery, deposit, or acceptance of product.

310 CMR 80.00 does not contain language allowing the Department to defer application of delivery prohibition for up to 180 days after determining an underground storage tank is ineligible for delivery, deposit, or acceptance of product.

Underground Storage Tank Compliance Act from Energy Policy Act of 2005—Inspection Requirements

Objective: 9005(c)(1), 9005(c)(2) of the Solid Waste Disposal Act, Subtitle I (42 U.S.C. 6991d)
Section 1523 of the Energy Policy Act of 2005
Grant Guidelines to States for Implementing the Inspection Provisions of the Energy Policy Act of 2005

	Corresponding State Rule Citation	**State Statutory Citation**
(a) Underground storage tanks that have not been inspected since December 22, 1998, must have an on-site inspection conducted not later than August 8, 2007, to determine compliance with Subtitle I and 40 CFR part 280 requirements or requirements or standards of a state program developed under Section 9004.	310 CMR 80.49	M.G.L. c. 21O, § 6
(b) On-site inspections of each underground storage tank must be conducted at least once every three years to determine compliance with Subtitle I and 40 CFR part 280 requirements or requirements or standards of a state program developed under Section 9004.	310 CMR 80.49	M.G.L. c. 21O, § 6
(c) At a minimum, an on-site inspection must assess compliance with the following: • Notification (failure to notify) • Corrosion protection - tanks and piping have appropriate corrosion protection - documentation available including testing, inspections, and other records • Overfill prevention in place and operational • Spill prevention in place and operational • Tank and piping release detection - appropriate method and appropriate equipment or procedures in place - documentation of proper monitoring and testing • Reporting suspected releases • Records of tank and piping repairs	310 CMR 80.49	M.G.L. c. 21O, § 6

• Secondary containment where required • Financial responsibility • Temporary closure		

Notes on Objective from the Underground Storage Tank Compliance Act from Energy Policy Act of 2005 for Inspection Requirements, 9005(c)(1), 9005(c)(2) of the Solid Waste Disposal Act, Subtitle I (42 U.S.C. 6991d), Section 1523 of the Energy Policy Act of 2005

State requirements: M.G.L. c. 21O, § 6, 310 CMR 80.49(1) and (7)

M.G.L. c. 21O, § 6, provides broad authority to MassDEP to conduct inspections of UST systems and the properties and establishments where they are located, to obtain records and to take samples or conduct monitoring and testing.

(a) Underground storage tanks that have not been inspected since December 22, 1998 must have an on-site inspection conducted not later than August 8, 2007 to determine compliance with Subtitle I and 40 CFR part 280 requirements or requirements or standards of a state program developed under Section 9004.

Pursuant to 310 CMR 80.49(1) effective August 8, 2007, all UST systems are required to be inspected by a third-party inspector by August 8, 2010, and every three years thereafter. 310 CMR 80.49(7) identifies all the inspection elements a third-party inspector must determine UST System compliance for.

(b) On-site inspections of each underground storage tank must be conducted at least once every three years to determine compliance with Subtitle I and 40 CFR part 280 requirements or requirements or standards of a state program developed under Section 9004.

Pursuant to 310 CMR 80.49(1), effective August 8, 2007, all UST systems are required to be inspected by a third-party inspector by August 8, 2010, and every three years thereafter. 310 CMR 80.49(7) identifies all the inspection elements a third-party inspector must determine UST System compliance for.

(c) At a minimum, an on-site inspection must assess compliance with the following: Notification (failure to notify); Corrosion protection (tanks and piping have appropriate corrosion protection and documentation available including testing, inspections, and other records); Overfill prevention in place and operational; Spill prevention in place and operational; Tank and piping release detection (appropriate method and appropriate equipment or procedures in place and documentation of proper monitoring and testing}; Reporting suspected releases; Records of tank and piping repairs; Secondary containment where required; Financial responsibility; and Temporary closure

Pursuant to 310 CMR 80.49(7), identifies all the inspection elements a third-party inspector must determine compliance with, including all of the elements listed in (c).

SECTION 4

DEMONSTRATION OF PROCEDURES FOR ADEQUATE ENFORCEMENT

Compliance Monitoring

Purpose: The implementing agency must have compliance monitoring procedures for collecting and maintaining data on violators and monitoring the agency's and the rest of the regulated community's compliance status over time. Specifically, States must develop procedures in each of the following four areas: record review; inspections; public reporting; and data maintenance.

Explanation

Identifying the regulated community:

Every Owner of an UST system in Massachusetts, with the exception of consumptive use heating oil tanks as noted below, is required by statute (M.G.L. c. 21O, § 3) to register with MassDEP and provide it with basic information about the UST system. 310 CMR 80.23(1) requires that an Owner must register an UST system with MassDEP within 30 days of regulated substance being introduced into the UST system.

The registration includes: Information about the Owner, Operator and Contact Person, description of the UST system, description of the UST components, description of financial responsibility mechanism, and description of records received from the previous Owner and Operator. The Owner or Operator must update the information in the registration within 30 days of a change. The Owner or Operator must also inform MassDEP if there is a change in regulated substance stored within the tank or a change 'in status (temporarily out-of-service or permanent closure). Consumptive use tanks and farm or residential tanks that store 1100 gallons or less of motor fuel are partially regulated under 310 CMR 80.00, but they are exempt from registration under M.G.L. c. 21O, § 3.

Records Review:

Procedures to receive, evaluate, retain, and investigate records and reports that owners and operators are required to submit to the implementing agency, and procedures to enforce against failure to submit such mandatory reports (§ 281.40(d)). When MassDEP amended its regulations in 2015, it added a Compliance Certification requirement. All Owners and Operators of UST systems are required to complete and submit to MassDEP a Compliance Certification (CC) every three years (18 months after the third-party inspection). The Owner or Operator will certify whether the facility is in compliance with the following requirements:

- Financial responsibility obligations;
- Testing requirements for leak detection, sumps, spill buckets, overfill prevention equipment and corrosion protection; Registration, reporting and record-keeping requirements;
- Emergency procedure requirements;
- Cathodic protection readings;
- Class A, B and C operators are properly certified;
- Inspections of spill buckets, sumps and overfill prevention equipment;

- Repair and replacement requirements; and
- Updated registration if UST components or configuration of UST system or UST components has changed.

If at the time of submittal, the Owner and Operator are out of compliance with any of the requirements listed above, they must submit a return to compliance plan with the CC. They have 30 days to correct any deficiencies and notify MassDEP of the corrections.

There are significant penalties for knowingly submitting a false statement or false certification to MassDEP. M.G.L. c. 21A, § 16 provides that MassDEP may assess a penalty of up to $25,000 per day for "knowingly making, or causing any person to make, any false, inaccurate, incomplete or misleading statement in any document submitted to or required to be kept by the department."

When MassDEP's UST regulations were promulgated in January 2015, staff held training sessions for Owners and Operators and for third-party inspectors throughout the Commonwealth to familiarize the regulated community with the new regulations.

MassDEP has developed guidance documents to assist Owners and Operators with understanding and complying with the UST regulations. Those documents include Frequently Asked Questions (and answers) and a Compliance Deadline list which are posted on MassDEP's website. MassDEP also has installed a telephone hotline and a specific UST email address for those with questions relating to UST system regulations and obligations. MassDEP also has ongoing communications with the New England Convenience Store & Energy Marketers Association (NECSEMA) (formerly Independent Oil Marketers Association (IOMA)).

MassDEP Data Management Systems sends electronic notification to UST Owner and Operators 90-days and 30-days prior to their compliance due dates to remind them of the due dates for compliance certifications and third-party inspection reports.

MassDEP accepts reports such as registrations and third-party inspection reports through an online data management system (DMS). MassDEP has developed online instructions and videos for new filers to help them navigate the DMS, and have held instructional webinars for those in the regulated community. If filers are having problems, they can also contact MassDEP through the UST hotline or UST email address.

Inspections:
Systematic inspection procedures to determine compliance with program requirements, independent of information supplied by the regulated community, and to provide enforcement for failure to comply with program requirements (§ 281.40(e)). MassDEP and EPA agree on the number of inspections MassDEP will conduct each federal fiscal year. MassDEP's Regional Inspectors historically perform 60 random UST system inspections annually, plus an additional number of UST system inspections based on complaints received, as part of a multi-media inspection or based on the inspectors' professional judgment. When violations of UST regulations are observed during an inspection, Regional Inspectors take enforcement

actions in accordance with MassDEP's Enforcement Response Guidance and follow-up on whether violations are corrected.

MassDEP's Boston Office tracks UST System Owner and Operator compliance with reporting requirements — Registrations, Third-Party Inspection (including Return to Compliances Plans and Completion Reports) and Compliance Certifications (including Return to Compliances Plans) — in the UST DMS. MassDEP issues Notices of Noncompliance (NONs) to first time violators of a reporting requirement (third-party inspection or compliance certification) on a monthly basis. Owners or Operators who fail to respond to an NON or are second-time violators of a reporting requirement are issued a Reporting Penalty Assessment Notice (RPAN) that includes a penalty amount of $500 or $1000, depending on facility's compliance history. Enforcement and submittal of documents is tracked in the DMS.

Measures to ensure that samples and other evidence collected in the field is gathered in a manner that will ensure it is admissible in court or an administrative hearing, i.e. chain of custody. MassDEP uses the following guidance documents for sampling: Test Methods for Evaluating Solid Waste, Physical/Chemical Methods (SW[i]846); RCRA Waste Sampling Technical Guidance, USEPA EPA-530-D-02-002, 2002; and Compendium of Quality Control Requirements and Performance Standards for Selected Analytical Protocols, MassDEP WSC #10-320, 2010.

Public Reporting:
Programs to encourage public effort in reporting violations and to investigate information obtained from the public about suspected violations (§ 281.40(f))

MassDEP has a portal on its website that allows a citizen to file an environmental complaint: https://www.mass.gov/how-to/report-environmental-violations. MassDEP also lists numbers for all of its offices for citizens to call with any complaints and program contacts for each substantive area. For environmental emergencies including oil spills, leaks and the release of hazardous material, MassDEP has an Emergency Response Hotline: 1-888-304-1133, and reporters are also directed to call the local fire department: https://www.mass.gov/how-to/report-a-spill-or-environmental-emergency. Specific to UST system questions and issue, MassDEP has an UST hotline and email address: 617-556-1035, ext. 2 and DEP.UST@state.ma.us. MassDEP also posts on its website a list of third-party inspectors, the third-party inspection due date for each registered facility, and a copy of the UST regulations.

Data Maintenance:
Procedures for maintaining the data collected through inspections and record reviews so that the implementing agency can monitor over time the compliance status of the regulated community (§ 281.40(g))

All inspections and enforcement actions are input into the data management system (Facility Master File – FMF) that MassDEP uses to store and retrieve information on all regulated facilities within the Commonwealth, not just UST facilities. FMF is used to track inspections, the type of enforcement issued, as applicable, and the date when the violations noted in the enforcement were remedied. The 60 random UST inspections are entered into FMF and are also input into the UST DMS. The input into the DMS

includes inspector answers to approximately 50 questions about the inspection, including the Significant Operational Compliance (SOC) questions that are required by EPA.

MassDEP keeps the following reports submitted by the Owners and Operators of UST systems in the online DMS - Registrations, Third-Party Inspections (including Return to Compliances Plans and Completion Reports) and Compliance Certifications (including Return to Compliances Plans). Information can be extracted from the reports and the inspections entered into the DMS to analyze trends and compliance in the regulated community. This information can also be provided to EPA.

Enforcement Response

Purpose: The implementing agency must have procedures to exercise legal enforcement authorities against violators, bring them into compliance, and defer other potential violators.

Explanation

M.G.L. c. 21O, § 7, gives MassDEP the authority to issue orders "[whenever it appears that there is a violation of any provision of this chapter or any regulation, rule, order, permit or approval adopted or issued pursuant to this chapter..." MassDEP also has authority to issue orders "upon witnessing or being presented proof of the violation of any statute, rule, regulation or code which the said department [of environmental protection] is authorized to enforce relative to pollution." M.G.L. c. 111, § 2C.

M.G.L. c. 2 IA, § 16 is MassDEP's civil administrative penalty statute. It gives Mass DEP the authority to ”assess a civil administrative penalty on a person who fails to comply with any provision of any regulation, order, license or approval issued or adopted by the department, or of any law which the department has the authority or responsibility to enforce..." M.G.L. c. 21A, § 16. The statute lays out the prerequisites for assessing a penalty, rules for appealing a penalty and permissible penalty amounts. The regulations implementing this statute are at 310 CMR 5.00.

As a grant recipient from the United States Environmental Protection Agency (US EPA), MassDEP is required to implement and enforce a Delivery Prohibition Program pursuant to EPA-510-R-06-003 "Grant Guidelines to States for Implementing the Delivery Prohibition Provision of the Energy Policy Act of 2005," issued by US EPA under 42 U.S.C. 56991k, as amended by 42 USC 513201 et seq., the Energy Policy Act of 2005. MassDEP implements and enforces its UST delivery prohibition program under 310 CMR 80.48.

In addition to the statutes and regulations cited above, MassDEP staff follows the Enforcement Response Guidance (ERG) which is a set of guiding principles, policies and procedures that outline the framework for MassDEP's enforcement authority and discretion.

As noted above in "Inspections," in general, MassDEP issues enforcement from the regional offices (Springfield, Worcester, Wilmington and Lakeville) for operational, financial responsibility and recordkeeping violations and from the Boston office for reporting violations.

Regional Enforcement:
Most regional enforcement is based on inspections of UST facilities. If there are one or more violations at an UST facility that are not serious and the Owner or Operator does not have a history of noncompliance, the region will likely issue the violator a Notice of Noncompliance (NON). The NON will identify the violation, the date and place of the violation, the specific actions that must be taken to return to compliance and the deadline for such actions.

If the violator does not comply with the NON by the specified deadline, regional staff will present the case to the Regional Enforcement Review Committee (RERC) that will hear the facts of the case and advise staff on appropriate next steps. As a result, MassDEP may issue a Notice of Enforcement Conference (NOEC) to attempt to enter into settlement with the violator. This may consist of sending the violator a draft Administrative Consent Order with Penalty (ACOP) that outlines the violations and the terms of settlement. The ACOP may or may not include the penalty amount. In some instances, the penalty amount or maximum penalty exposure is not disclosed until the enforcement conference. A penalty is calculated using a MassDEP system called PenCalc which is an electronic tool that ensures consistent and equitable penalty assessment. It incorporates, pursuant to M.G.L. c. 21A, § 16, the "preconditions" which must exist prior to assessing a penalty and the twelve factors that must be considered by MassDEP prior to assessing a penalty. It also has base penalty amounts and maximum penalty amounts for each violation based on M.G.L. c. 21A, §16 and internal guidance.

If settlement is not reached by the parties, MassDEP may take unilateral action in the form of a Penalty Assessment Notice (PAN) and/or a Unilateral Administrative Order (UAO). A UAO may direct the Owner or Operator to take affirmative action, or it may direct them to refrain from engaging in a certain activity. Both a PAN and a UAO are appealable within 21 days of issuance. The penalty for the PAN is also calculated using PenCalc.

A PAN or UAO may be appealed to the Office of Appeals and Dispute Resolution (OADR) which receives all appeals from MassDEP's permitting and enforcement decisions. OADR administers an initial "prescreening" of the case in which the hearing officer reviews the procedural and substantive sufficiency of the case. The hearing officer will also discuss the possibility of settlement with the parties and the availability of alternative dispute resolution. MassDEP strives to resolve appeals within one year of filing.

If the violator does have a history of noncompliance or the violations are serious, the region will not likely issue an NON, but will opt for one of the other options — ACOP, PAN, UAO — depending on the nature of the case, the history of the violator-and the recommendation from the RERC. The region may also present the case to the Attorney General's Office which may decide to take the case either civilly or criminally.

MassDEP has the authority to issue delivery prohibition orders. In accordance with EPA Grant Guidelines, 310 CMR 80.48(1) states that MassDEP shall issue a delivery prohibition order if, after written notice to the Owner or Operator, an UST system does not have a spill bucket, overfill prevention device, leak detection or cathodic protection. MassDEP also has the authority to issue a delivery prohibition order if any of the aforementioned UST components is inoperable, if the Owner or Operator does not have

financial responsibility or there is a violation that is a significant threat-to public health, safety or the environment.

If a regional inspector observes a violation at a UST facility that rises to the level of a delivery prohibition order, s/he may issue a Field Notice of Intent to Prohibit Regulated Substance Delivery to an Underground Storage Tank to the Owner or Operator. After at least 24 hours has elapsed from when the Notice of Intent was issued, the inspector will return to the UST facility to determine whether the violation is outstanding. If it is, the inspector will deliver the Order to the Owner or Operator and then affix a red tag and lock on the fill pipe of the subject UST systems. The red tag and Order will remain in place until the violation is corrected.

The Owner or Operator has the right to appeal the Delivery Prohibition Order within 21 days of its issuance. The Order will remain in place during the pendency of the appeal. If the violation is corrected, MassDEP will terminate the Order, and remove the red tag and lock from the fill pipe.

Boston Enforcement:
All UST system reports are submitted to MassDEP's Boston office through the DMS.
Before the compliance deadline, MassDEP sends an email through the DMS (or a postcard by mail, if MassDEP does not have an email address) to the Owner or Operator reminding them of the deadline for the third-party inspection or compliance certification.

If documents are not submitted by the deadline, MassDEP will issue an NON to first time violators and those violators who have been cited for the same reporting violation in the past, but not within the last 5 years. An NON identifies the violation, the date and place of the violation, the specific actions that must be taken to return to compliance, and the deadline for such actions. The UST program does not provide informal notices to Owners and Operators after the compliance date has passed, except in very unusual circumstances.

If the violator fails to come into compliance with the NON within the required timeframe, MassDEP will issue a Reporting Penalty Assessment Notice (RPAN) for $500. The basis for issuing the RPAN is in the Policy Statement for the Use of the Reporting Penalty Assessment Notice for Certain Reporting Violations. The Policy explains that the Bureau of Air and Waste (BAW) will use a RPAN for certain specific reporting violations. Under this Policy the basis for the RPANs is failure to comply with a NON or a repeat violation in a subsequent reporting year of the reporting requirement previously cited in the NON. Attachment #9 of the policy addresses RPANs for failure to submit third-party inspection reports; Attachment #10 of the Policy addresses RPANs for failure to submit third-party inspection reports; Attachment #11 of the Policy addresses RPANs for failure to submit compliance certifications; Attachment 12 of the Policy addresses RPANs for failure to submit third-party inspection completion reports; and Attachment 13 of the Policy addresses RPANs for failure to submit compliance certification return to compliance completion reports. The attachments address the 12 factors that must be considered prior to assessing a penalty, pursuant to
M.G.L. c. 21A, § 16.

The RPAN will identify the violation and require that the violator pay a $500 penalty within a certain timeframe for not complying with the NON. The RPAN also states that payment of the penalty alone will not bring the violator back into compliance. The violator must still submit the outstanding report. The RPAN may be appealed to the OADR.

If the violator fails to submit the outstanding report, after receiving the RPAN for $500, MassDEP will do one of the following: inspect the facility, verify the facility is still operating, send the case to debt collection, forward the case to the appropriate regional office, issue an RPAN for $1000 or issue a Notice of Enforcement Conference to attempt to enter into settlement with the violator.

SECTION 5

PROGRAM DESCRIPTION

General

Type of approval requested: Final and Complete

The Massachusetts Department of Environmental Protection — UST Program does not have any existing agreements with Indian Tribes.

Program Scope

The Massachusetts Department of Environmental Protection (MassDEP or the Department) regulates UST systems that contain a "regulated substance" which includes petroleum, waste oil and any substance defined in §101(14) of CERCLA. The statutory and regulatory definition of "UST system" excludes septic tanks, pipeline facilities, surface impoundments, pits, ponds or lagoons, storm water and wastewater collection systems, flow through process tanks, liquid traps, and underground tanks that are accessible and visible on all sides.

The UST system regulations exempt the following tanks from all requirements of 310 CMR 80.00: UST systems that contain hazardous waste, hydraulic lift tanks, electrical equipment tanks, UST systems that contain a de minimus amount of regulated substance, UST systems with a capacity of 110 gallons or less, UST systems that are part of a storm water or wastewater system that is regulated by the Federal Clean Water Act or the State Clean Waters Act.

MassDEP adopted the deferrals in the federal UST regulations. UST systems containing radioactive material, UST systems that are part of an emergency generator system at a nuclear power generation facility, UST systems that contain low level radioactive waste, alone, or mixed with hazardous waste and UST systems that are part of a storm water or wastewater systems that is regulated by the Federal Clean Waters Act or the State Clean Water Act are only subject to the regulatory requirements at 310 CMR 80.04(7).

MassDEP does regulate consumptive use (CU) tanks which are defined as "used to store fuel oil used exclusively for area heating and/or the heating of domestic hot water on the premises where stored..." under 310 CMR 80.03. Owners and Operators of CU tanks that are 1100 gallons or less, if installed after March 21, 2008, only have to comply with tank specifications at 310 CMR 80.17(3). Owners and Operators of all CU tanks having a capacity of 1100 gallons or less must comply with release response requirements. Owners and Operators of CU tanks with a capacity of more than 1100 gallons have to comply with the majority of the regulatory requirements except financial responsibility and registration.

Owners and Operators of farm and residential tanks having a capacity of less than 1100 gallons only have to comply with tank specifications at 310 CMR 80.17(1) and release response requirements. Owners and operators of emergency spill or overflow UST systems only have to comply with tank specifications at 310 CMR 80.17(1), registration and release response requirements. These tanks must also be emptied within 72 hours of the introduction of regulated substance.

In Massachusetts, there are approximately 8280 petroleum UST systems and 66 hazardous substance UST systems. This does not include consumptive use tanks because they are not subject to the registration requirements.

Organization and Structure of State Program

1. MassDEP is the lead agency for facilitating communications between USEPA and Massachusetts.
2. See Attached organizational chart.
3. MassDEP is the lead agency for the UST program in Massachusetts. See M.G.L. c. 21O. When the majority of the UST program was transferred to MassDEP in 2009 (section 7 of chapter 4 of the acts of 2009), the Department of Fire Services (DFS) retained a role in permitting the closure of UST systems through the local fire departments. See M.G.L. c. 21O, §1. DFS also continues to regulate abandoned UST systems and temporarily out-of-service UST systems. See 527 CMR 1.00. MassDEP staff works with local fire departments on closure and abandonment issues.

The Department of Revenue (DOR) implements the Underground Storage Tank Petroleum Product Cleanup Fund at M.G.L. c. 21J (21J Fund). This is a financial assurance mechanism that is approved by the USEPA as an acceptable method for UST systems storing petroleum products for meeting financial responsibility requirements. DOR relies on MassDEP to determine if an UST system is in compliance with the UST regulations. If an UST system is not in compliance, it may jeopardize the Owner or Operator's standing with the 21J Fund.

Although DFS and DOR administer part of the state UST program, MassDEP's regulations at 310 CMR 80.00 and 310 CMR 40.0000 cover the federal UST program.

Release Response, Reporting and Corrective Action

The requirements for release response and reporting are found in 310 CMR 80.38 through 80.40. The Bureau of Waste Site Cleanup is responsible for the oversight of investigations of confirmed petroleum releases and any required site cleanup. The program is administered through Massachusetts General Law Chapter 21E (M.G.L. c.21E) and its corresponding regulations at 310 CMR 40.0000, referred to as the Massachusetts Contingency Plan (MCP). The MCP establishes risk-based requirements that an owner/operator must achieve to close out a release. MassDEP provides technical guidance, auditing, and direct oversight of response actions taken to address risks posed by LUSTs. MassDEP also investigates and initiates enforcement actions against LUST owners/operators who are out of compliance with the state cleanup regulations.

Resource Information

LUST Prevention Program Grant

1. Total dollar budget and number of staff assigned to the UST program FFY22:

- $950,000 - 6 full-time employees assigned to the UST program

2. Estimate of the administrative and implementation costs of the State's UST program on an annual basis:

Program Administration	$550,000
Inspections/Enforcement	$350,000
Regulation/Legal	$50,000

3. Current Federal, State, and local funding sources, with approximate amounts for each:

Federal UST Grant	$438,500

State Match Funding	$146,000
Other State Funding	$365,000

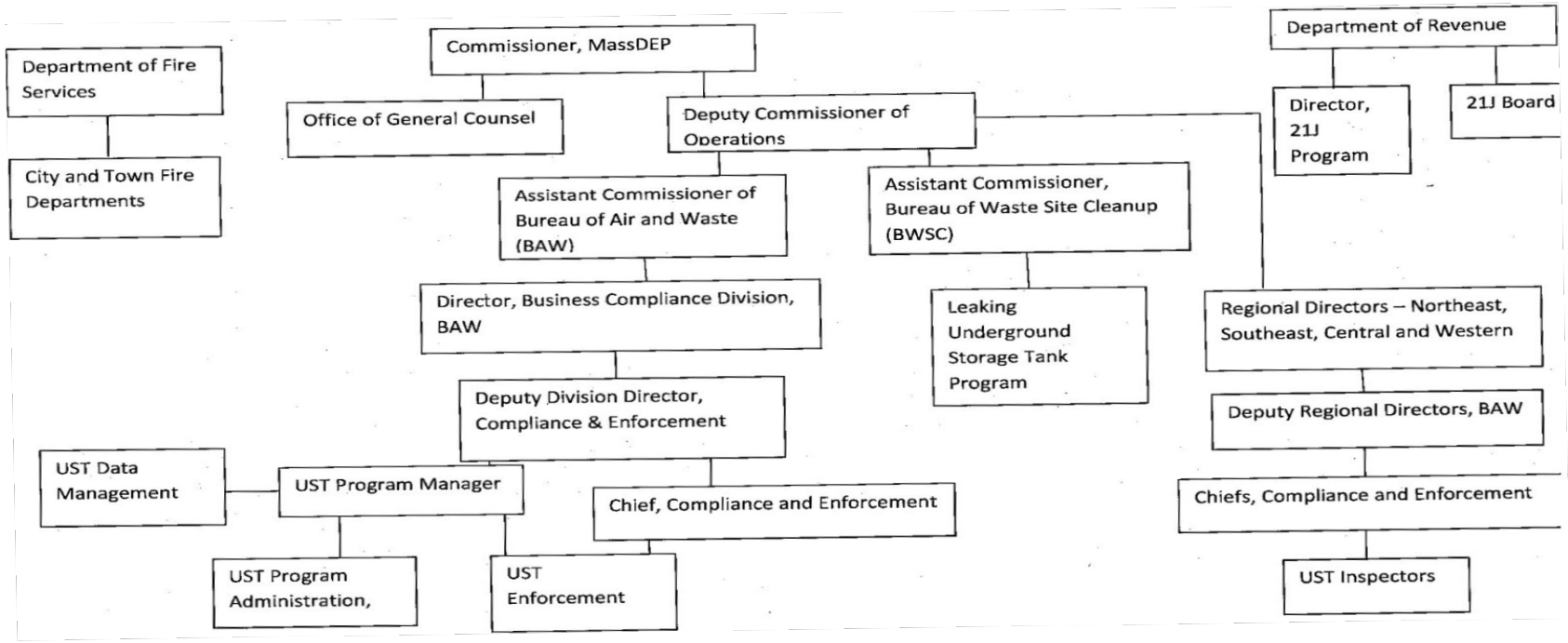
LUST Cleanup Program Grant (biennial)

1. Current Federal LUST funding (FY21) $663,511 (FY22 federal funding expected to be similar)
2. State Match Funding $147,446

Administrative costs account for the bulk of the total grant amount. The current grant supports 3.55 full-time engineers and scientists who, along with state-funded staff, provide oversight of risk reduction and enforcement activities at LUST releases.

Any restrictions or limitations regarding these funding sources

Federal — if MassDEP goes over budget by more than 10% in a category it must get permission from USEPA.


Department of Fire Services
City and Town Fire Departments
Commissioner, MassDEP
Office of General Counsel
Deputy Commissioner of Operations
Assistant Commissioner of Bureau of Air and Waste (BAW)
Director, Business Compliance Division, BAW
Deputy Division Director, Compliance & Enforcement
UST Data Management
UST Program Manager
UST Program Administration,
UST Enforcement
Chief, Compliance and Enforcement
Assistant Commissioner, Bureau of Waste Site Cleanup (BWSC)
Leaking Underground Storage Tank Program
Department of Revenue
Director, 21J Program
21J Board
Regional Directors – Northeast, Southeast, Central and Western
Deputy Regional Directors, BAW
Chiefs, Compliance and Enforcement
UST Inspectors

SECTION 6 – EPA MassDEP UST MOA – See Attached

SECTION 7

Chapter 21A (malegislature.gov)

Chapter 21O (malegislature.gov)

Chapter 21E (malegislature.gov)

Chapter 21J (malegislature.gov)

General Law - Part I, Title II, Chapter 21A, Section 16 (malegislature.gov)

Chapter 111 (malegislature.gov)

310 CMR 80.00 download (mass.gov)

310 CMR 40 (mass.gov)

310 CMR 5.00: Administrative penalty | Mass.gov