

**ATTORNEY GENERAL’S STATEMENT
CERTIFYING TO
APPLICABLE STATE AUTHORITIES**

I hereby certify, pursuant to my authority as Chief Deputy Attorney General OR Deputy General Counsel and in accordance with Section 9004 of Subtitle I of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, and 40 CFR Part 281 (relating to approval of state underground storage tank programs), that in my opinion the laws of the Commonwealth of Pennsylvania (Commonwealth or Pennsylvania) provide adequate powers and authority to carry out the program set forth in the “Program Description” submitted by the Pennsylvania Department of Environmental Protection (department or DEP). The authorities provided are primarily contained in the Pennsylvania Storage Tank and Spill Prevention Act (35 P.S. §§ 6021.101-6021.2104) (the Storage Tank Act) or the Pennsylvania Code, Title 25, Chapter 245 (relating to administration of the storage tank and spill prevention program, herein after referred to as regulations). The authorities provided in the statutes and regulations are lawfully adopted at the time this Statement is signed and are in effect.

Signature

Addie A. Abelson
Name (Type or Print)

Deputy General Counsel
Title

January 27, 2022
Date

Signature

Amy M. Elliott
Name (Type or Print)

Chief Deputy Attorney General
Title

2/14/22
Date

Preliminary Statement

Section 106 of the Storage Tank Act (relating to powers and duties of the Environmental Quality Board) states that “the Environmental Quality Board has general powers and authority to adopt rules and regulations of DEP governing aboveground and underground storage tanks to accomplish the purposes and carry out the provisions of the act.” 35 P.S. § 6021.106.

Section 501 of the Storage Tank Act (relating to underground storage tank requirements) requires DEP to adopt regulations and implement an underground storage tank (UST) program in the Commonwealth. 35 P.S. § 6021.501.

The Environmental Quality Board (Board) was created in 1970 as the rulemaking body for the new and then Department of Environmental Resources. 71 P.S. § 510-20. The 20 members of the Board include representatives from eleven state entities: DEP (Chair), Agriculture, Health, Community and Economic Development, the Public Utility Commission, the Fish and Boat Commission, the Game Commission, Labor and Industry, the Governor's Office of Policy, the Historical and Museum Commission, and Transportation; five members of DEP's Citizens Advisory Council; and four members of the Pennsylvania General Assembly. 71 P.S. § 180-1. Although nominally a part of DEP, the Board is independent of DEP control and is free to reject or modify any rulemaking DEP develops. Procedurally then, DEP develops proposed and final rulemakings under the authority of the Storage Tank Act and the Board must approve them for the regulations to be effective in Pennsylvania.

Section 109 of the Storage Tank Act (relating to construction) further states, “This act and the regulations promulgated under this act shall be liberally construed in order to fully protect the public health, welfare and safety of the residents of this Commonwealth.” 35 P.S. § 6021.109. Sections 106 and 109 of the Storage Tank Act therefore provide authority for all the provisions discussed below. For that reason, they are not cited in each objective section.

The following table contains references to Pennsylvania 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.

Copies of Commonwealth rules that correspond to the regulatory requirements in 40 CFR Part 280 and applicable Commonwealth statutes are provided in Section 6 of this application.

NEW UST SYSTEM DESIGN, CONSTRUCTION, INSTALLATION AND NOTIFICATION

Objective 40 CFR § 281.30

| The state has requirements that ensure that all new UST systems conform with the following: | Cite Regulation 25 Pa Code Chapter 245 | Cite Statute 35 P.S. § 6021.101 <i>et seq.</i> |
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| <p>35(a) 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 no less stringent in this area.] 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, then the state must meet the following:</p> <p>(1) New or replaced tanks and piping must use interstitial monitoring within secondary containment in accordance with section 9003(i)(1) of the Solid Waste Disposal Act except as follows:</p> <p>(i) Underground piping associated with: Airport hydrant systems or field-constructed tanks greater than 50,000 gallons or</p> <p>(ii) Underground suction piping that meets § 281.33(d)(2)(ii).</p> <p>(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 the Solid Waste Disposal Act.</p> | <p>245.2(c) 245.21(a) 245.403(b)-(d) 245.405 245.421</p> <p>245.442(a) 245.443(1)</p> <p>245.421(a)(1) 245.421(b)(4)(ii) 245.422(e)</p> | <p>6021.501(a)(7)-(8)</p> |
| <p>(b) 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.</p> | <p>245.421(b)(3) 245.421(b)(4)(ii)-(iii) 245.422(d)</p> | <p>6021.501(a)(7)-(8)</p> |
| <p>(c) All UST system owners and operators must notify the implementing State agency of the</p> | <p>245.41 245.421(a)(2)</p> | <p>6021.503(a)</p> |

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| 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. | 245.435(c)(1) | |
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Certification of Objective 40 CFR § 281.30:

40 CFR § 281.30(a). UST systems installed or replaced after November 10, 2007, must have total secondary containment, which consists of double-walled tanks, double-walled piping (for piping that routinely contains and conveys regulated substances (product)) and liquid-tight containment sumps. The sumps must be installed at piping connections that routinely contain and convey product from the tank, such as tank-top sumps and dispenser pan sumps, that allow for release detection monitoring of the system. Also, new or replacement tank systems installed with pressurized product piping systems must be equipped with automatic line leak detectors and automatic pump shutoff devices. Installation must be performed in accordance with codes and standards developed by nationally-recognized associations, in accordance with manufacturer’s specifications, and by a DEP-certified storage tank installer. The certified installer must perform the installation or provide direct onsite supervision and control of the installation. The certified installer must sign the storage tank registration form certifying that the installation meets the requirements of the regulations.

Owners and operators of UST systems installed after November 10, 2007, must perform interstitial monitoring within secondary containment as the method of release detection.

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

Under the Federal program, UST systems with field-constructed tanks and airport hydrant fuel distribution systems were deferred from subparts B, C, D, E and G of 40 CFR Part 280 until October 13, 2015. As of that date, UST systems with field-constructed tanks and airport hydrant fuel distribution systems are now fully regulated under the Federal program and subject to specific requirements under subpart K (relating to UST systems with field-constructed tanks and airport hydrant fuel distribution systems) of 40 CFR Part 280. However, Pennsylvania’s UST program is more stringent. For example, under § 280.252(a), “Owners and operators may use single walled piping when installing or replacing piping associated with UST systems with field-constructed tanks greater than 50,000 gallons and piping associated with airport hydrant systems.” Under Pennsylvania’s UST regulations, double-walled piping would be required unless the owner or operator requested and was granted a variance under § 245.404 (relating to variances). As such, § 245.442(a) does not exempt underground piping associated with airport hydrant systems or field-constructed tanks greater than 50,000 gallons from the requirement to conduct interstitial monitoring within secondary containment.

40 CFR § 281.30(b). UST systems installed or replaced after November 10, 2007, must have spill and overfill equipment to prevent spilling and overfilling associated with product transfer to the UST system. UST systems installed prior to that date had to be upgraded to meet this standard.

Ball float valves may not be used when overfill prevention is installed or replaced after December 22, 2018.

Owners and operators are not required to use the spill and overfill prevention equipment if the UST system is filled by transfers of no more than 25 gallons at one time.

40 CFR § 281.30(c). Storage tank owners must register each UST with DEP, on a form provided by DEP, within 30 days after installation or acquisition of an ownership interest in the UST. Owners must also submit a registration form to amend registration information previously submitted to DEP within 30 days of a change in the previously submitted information. In addition, at least 30 days prior to the installation of a tank, piping system, replacement or additional dispenser, or UST system, owners and operators must notify DEP of the proposed installation on a form provided by DEP.

It is the opinion of the Pennsylvania Attorney General the Commonwealth meets the no less stringent criterion for Objective 40 CFR § 281.30.

UPGRADING EXISTING UST SYSTEMS

Objective 40 CFR § 281.31

| | Cite Regulation 25 Pa Code Chapter 245 | Cite Statute 35 P.S. § 6021.101 et seq. |
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| The state has requirements that ensure existing UST systems meet the requirements of § 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: | 245.422 | 6021.501(a)(7)-(8) |
| (a) Previously deferred airport hydrant fuel distribution systems and UST systems with field-constructed tanks must within three years of the effective date of its state requirements meet the requirements of § 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. | 245.403(d)(1) | 6021.501(a)(7)-(8) |

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| (b) 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. | 245.422 | 6021.501(a)(7)-(8) |
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Certification of Objective 40 CFR § 281.31:

40 CFR § 281.31(a) and (b). Existing UST systems must meet performance standards for new UST systems, be upgraded as provided in § 245.422(b)-(d), or be permanently closed.

DEP did not defer airport hydrant fuel distribution systems from regulatory requirements. In general, UST systems with field-constructed tanks also were not deferred from regulatory requirements. However, field-constructed USTs installed on or before October 11, 1997, were exempt from regulation in accordance with DEP technical guidance document titled, “Policy for Existing Field-Constructed Hazardous Substance Underground Storage Tanks at Facilities Regulated under the Safe Drinking Water Act.” In section 103 of the Storage Tank Act (relating to definitions), the definition of “underground storage tank” states, “...The term shall not include: ... (13) Any other tank excluded by policy or regulations promulgated pursuant to this act.” 35 P.S. § 6021.103. This language in section 103 provides the authority for the development of the technical guidance document. This technical guidance document was rescinded effective December 22, 2018. Field-constructed UST systems previously exempt will be required to be registered with DEP by February 20, 2019. These tank systems are temporarily excluded from the requirements of §§ 245.421 (relating to performance standards for underground storage tank systems), 245.422 (relating to upgrading of existing underground storage tank systems), 245.431 (relating to spill and overflow control), 245.432 (relating to operation and maintenance including corrosion protection), 245.437 (relating to periodic testing), and 245.441—245.446 (relating to release detection), until December 22, 2019.

It is the opinion of the Pennsylvania Attorney General the Commonwealth meets the no less stringent criterion for Objective 40 CFR § 281.31.

GENERAL OPERATING REQUIREMENTS

Objective 40 CFR § 281.32

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| The state has requirements that ensure all new and existing UST systems conform to the following: | Cite Regulation 25 Pa Code Chapter 245 | Cite Statute 35 P.S.§ 6021.101 et seq. |
| (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. | 245.431 | 6021.501(a)(7)-(8) |
| (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: 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.] | 245.405 245.432(a) and (c) | 6021.501(a)(7)-(8) |
| (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. | 245.2(c)(3) 245.41 245.425(4) 245.433 | 6021.501(a)(7)-(8) |
| (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. | 245.422 245.434 | 6021.501(a)(7)-(8) |
| (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. | 245.437(a)(1)- (2), (b) and (c) | 6021.501(a)(7) and (a)(11) |
| (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. | 245.438 | 6021.501(a)(11) |

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| (g) Have records of monitoring, testing, repairs, and inspections. These records must be made readily available when requested by the implementing agency. | 245.435 | 6021.107(c)(1) 6021.501(a)(3) |
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Certification of Objective 40 CFR § 281.32:

40 CFR § 281.32(a). UST owners and operators must ensure that releases due to spilling or overfilling do not occur. While spill and overfill prevention equipment is required, UST owners and operators must ensure that the volume available in the UST is greater than the volume of product to be transferred to the UST before the transfer is made and that the transfer operation is monitored constantly to prevent overfilling and spilling. The owner and operator must report, investigate and clean up spills and overfills in accordance with Chapter 245, Subchapter D (relating to corrective action process for owners and operators of storage tanks and storage tank facilities and other responsible parties).

40 CFR § 281.32(b). UST systems equipped with cathodic protection systems must be tested for proper operation by a qualified cathodic protection tester within 6 months of installation and at least every 3 years thereafter. In addition, UST systems with impressed current cathodic protection systems must be checked every 60 days to ensure the equipment is functioning as designed.

40 CFR § 281.32(c). Upon DEP request, an owner and operator of a UST must submit, on a form provided by DEP, information verifying compatibility of the UST system with the substance stored prior to storing the substance in the UST. An owner and operator of a UST system must demonstrate compatibility of the UST system with the substance stored through certification or listing of the UST system equipment or component by a Nationally-recognized, independent testing laboratory for use with the substance stored, equipment or component manufacturer approval, verification by a Pennsylvania-licensed professional engineer who has knowledge, experience and training in materials science that the equipment or component is compatible with the substance stored, or another option that is determined by DEP to be at least as protective of human health and the environment.

40 CFR § 281.32(d). A UST could only be upgraded by internal lining for corrosion protection prior to November 10, 2007. Existing lined tanks, within 10 years after lining, and every 5 years thereafter, must be internally evaluated by, or under the direct onsite supervision of a DEP-certified tank liner or by a professional engineer adhering to the evaluation process developed by a National association and found to be structurally sound with the lining still performing in accordance with original design specifications. Lined tank systems that do not meet original design specifications or have not been evaluated as required must be emptied, removed from service, and permanently closed.

When an existing dispenser is replaced with another dispenser and equipment at or below the shear valve needed to connect the dispenser to the UST system is replaced, under-dispenser containment is required. This equipment may include check valves, shear valves, vertical risers,

flexible connectors or other transitional components. Under-dispenser containment must also be installed when a major modification is performed at the dispenser area involving excavation beneath the dispenser.

Repairs involving a tank handling activity must be performed by or under the direct, onsite supervision and control of a DEP-certified installer, and properly conducted in accordance with a code of practice developed by a Nationally recognized association or an independent testing laboratory.

Repairs to secondary containment areas of tanks and piping, containment sumps and spill prevention equipment must be tested for tightness according to the manufacturer's instructions, a code of practice developed by a Nationally recognized association or independent testing laboratory prior to returning the UST system to operating status. All other repairs to tanks, containment sumps and piping must be tightness tested in accordance with §§ 245.421(b)(4)(ii), 245.444(2) and 245.445(2), respectively, prior to placing the UST system back into service. Within 6 months following the repair of a cathodically protected UST system, the cathodic protection system must be tested to ensure that it is operating properly.

40 CFR § 281.32(e). Containment sumps used for interstitial monitoring of piping and spill prevention equipment must be tested at least once every 3 years to ensure the equipment is liquid-tight by using vacuum, pressure or liquid. However, when the containment sump or spill prevention equipment is double-walled, the integrity of both walls can be periodically monitored by maintenance walkthrough inspections, in lieu of the 3-year testing requirement. If walkthrough inspections are discontinued, the owner and operator must test the containment sumps and spill prevention equipment and conduct a test within 30 days of the last inspection.

Overfill prevention equipment must be evaluated at least once every 3 years. At a minimum, the evaluation must ensure that overfill prevention equipment is set to activate at the correct level and must activate when the regulated substance stored reaches that level.

For UST systems installed on or before December 22, 2018, owners and operators must ensure tests and inspections are performed prior to the next required UST inspection occurring after December 22, 2019, or not later than December 21, 2021, whichever occurs first. For UST systems installed after December 22, 2018, these requirements apply at installation.

40 CFR § 281.32(f). To properly operate and maintain spill prevention and release detection equipment part of UST systems, no later than December 22, 2019, owners and operators must conduct walkthrough inspections at a minimum of every 30 days, except for spill prevention equipment at UST systems receiving deliveries at intervals greater than every 30 days, which may be checked prior to each delivery.

To properly operate and maintain containment sumps and handheld release detection equipment part of UST systems, no later than December 22, 2019, owners and operators must conduct walkthrough inspections at a minimum of every 12 months.

40 CFR § 281.32(g). Owners and operators of UST systems must maintain records and provide records, as requested, and cooperate fully with inspections, monitoring and testing conducted by DEP, certified installers or certified inspectors. Owners and operators must maintain required records either onsite at the storage tank facility or at a readily available alternative site. Owners and operators must maintain the records for UST systems for the operational life of the system and retain the records for a minimum of 1 year after the UST system has been permanently closed.

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

RELEASE DETECTION

Objective 40 CFR § 281.33

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| <p>The state has requirements that at a minimum ensure all UST systems are provided with release detection that conforms to the following:</p> | <p>Cite Regulation 25 Pa Code Chapter 245</p> | <p>Cite Statute 35 P.S. § 6021.101 et seq.</p> |
| <p>(a) General Methods. Release detection requirements for owners and operators must consist of a method, or combination of methods, that is:</p> <p>(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 the 40 CFR Part 280 -- for as long as the UST system is in operation. In comparing methods, the implementing agency shall consider the size of release that the method can detect and the speed and reliability with which the release can be detected;</p> <p>(2) designed, installed, calibrated, operated and maintained so that releases will be detected in accordance with the capabilities of the method.</p> <p>(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.</p> | <p>245.437(a)(3) , (b) and (c) 245.441 245.444 245.445</p> | <p>6021.501(a)(2), (7), (11)</p> |

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| <p>(b) Phase-in of requirements. 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:</p> <p>(1) Immediately when a new previously deferred UST system is installed; and</p> <p>(2) For any previously deferred UST system within three years of the effective date of its state requirements. 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 release detection requirements with specified compliance periods for these types of UST systems.</p> | <p>245.403(b) and (d)(1)</p> | <p>6021.501(a)(2), (7), (11)</p> |
| <p>(c) Requirements for petroleum tanks. All petroleum tanks must meet the following requirements:</p> <p>(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) in combination with tightness testing (or its equivalent) conducted every five years for the first 10 years after the tank is installed; and</p> <p>(2) New or replaced petroleum tanks 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 manufacturer and installer financial responsibility and installer certification in accordance with section 9003(i)(2) of the Solid Waste Disposal Act.</p> | <p>245.442(a) and (b)(1), 245.444</p> | <p>6021.501(a)(2), (7), (11)</p> |

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| <p>(d) Requirements for petroleum piping. All underground piping attached to the tank that routinely conveys petroleum must conform to the following:</p> <p>(1) If the petroleum is conveyed under greater than atmospheric pressure:</p> <p>(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</p> <p>(ii) The piping must have monthly monitoring applied or annual tightness tests conducted.</p> <p>(2) If suction lines are used:</p> <p>(i) Tightness tests must be conducted at least once every three years, unless a monthly method of detection is applied to this piping; or</p> <p>(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.</p> <p>(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 Solid Waste Disposal Act.</p> | <p>245.442(a) and (b)(2), 245.445</p> | <p>6021.501(a)(2), (7), (11)</p> |
| <p>(e) Requirements for hazardous substance UST systems. 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.</p> | <p>245.443</p> | <p>6021.501(a)(2), (7), (11)</p> |

Certification of Objective 40 CFR § 281.33:

40 CFR § 281.33(a). Electronic and mechanical components of release detection equipment must be tested for proper operation at least annually. For UST systems installed on or before December 22, 2018, owners and operators must ensure tests are performed prior to the next required UST inspection occurring after December 22, 2019, or not later than December 21, 2021, whichever occurs first. For UST systems installed after December 22, 2018, these requirements apply at installation.

40 CFR § 281.33(b). DEP did not defer airport hydrant fuel distribution systems from regulatory requirements. In general, UST systems with field-constructed tanks also were not deferred from regulatory requirements. However, field-constructed USTs installed on or before October 11, 1997, were exempt from regulation in accordance with DEP technical guidance document titled, “Policy for Existing Field-Constructed Hazardous Substance Underground Storage Tanks at Facilities Regulated under the Safe Drinking Water Act.” In section 103 of the Storage Tank Act (relating to definitions), the definition of “underground storage tank” states that “... The term shall not include: (13) Any other tank excluded by policy or regulations promulgated pursuant to this act.” 35 P.S. § 6021.103. In addition, § 245.1 (relating to definitions), the definition of “underground storage tank” restates the exclusion. 25 Pa Code § 245.1(xvii). Thus, the authority for the development of the technical guidance document. With the adoption of this final rulemaking, this technical guidance document is rescinded. Field-constructed UST systems previously exempt are temporarily excluded from the requirements of §§ 245.441—245.446 (relating to release detection), until December 22, 2019. DEP acknowledges that EPA will exclude 35 P.S. § 6021.103(13) and 25 Pa Code § 245.1(xvii) from the State Program Approval.

40 CFR § 281.33(c). Owners and operators of USTs that store petroleum installed after November 10, 2007, must perform interstitial monitoring at least once every 30 days. Owners and operators of petroleum UST systems installed on or before November 10, 2007, may not use monthly inventory control in combination with tightness testing as a method of release detection.

40 CFR § 281.33(d). Owners and operators of underground piping installed after November 10, 2007, that routinely contains petroleum must perform interstitial monitoring at least once every 30 days. Underground piping installed after November 10, 2007, that conveys petroleum under pressure must be equipped and operated with an automatic line leak detector with an automatic pump shut off device. Release detection is not required for suction piping that meets the requirements in § 245.442(b)(2)(ii)(A)—(E).

40 CFR § 281.33(e). Hazardous substance UST systems installed after November 10, 2007, must perform interstitial monitoring in accordance with § 245.444(6).

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

RELEASE REPORTING, INVESTIGATION AND CONFIRMATION

Objective 40 CFR § 281.34

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| The state has requirements that ensure all owners and operators conform with the following: | Cite Regulation 25 Pa Code Chapter 245 | Cite Statute 35 P.S. § 6021.101 <i>et seq.</i> |
| (a) 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; and | 245.304(a) | 6021.501(a)(4)-(5) |
| (b) Promptly report all confirmed underground releases and any spills and overfills that are not contained and cleaned up. | 245.1 (definition of release) 245.304(c)(1) 245.305(a) | 6021.501(a)(4)-(5) |
| (c) Ensure that all owners and operators contain and clean up unreported spills and overfills in a manner that will protect human health and the environment. | 245.304(c)(3) 245.305(i) | 6021.501(a)(4)-(5) |

Certification of Objective 40 CFR § 281.34:

40 CFR § 281.34(a). Section 281.34(a) of the Federal regulation requires “prompt” investigation of a suspected release. Section 280.52 (relating to release investigation and confirmation steps) of the Federal regulation states “Unless corrective action is initiated in accordance with subpart F, owners and operators must immediately investigate and confirm all suspected releases of regulated substances requiring reporting under § 280.50 within 7 days, or another reasonable time period specified by the implementing agency,…” Section 245.304(a) (relating to investigation and reporting of suspected releases) requires a suspected release to be investigated as soon as practicable, and the investigation must be completed no later than 7 days after the indication of a release. Because § 245.304(a) does not allow an investigation to extend beyond 7 days, Pennsylvania meets the Federal objective of requiring “prompt” investigation of suspected releases.

40 CFR § 281.34(b). Section 281.34(b) requires “prompt” reporting of all confirmed underground releases and any spills and overfills that are not contained and cleaned up. Section 280.53(a) (relating to reporting and cleanup of spills and overfills) states “Owners and operators of UST systems must contain and immediately clean up a spill or overfill and report to the implementing agency within 24 hours, or another reasonable time period specified by the implementing agency,…” Section 280.61 (relating to initial response) states “Upon confirmation of a release in accordance with § 280.52 or after a release from the UST system is identified in

any other manner, owners and operators must perform the following initial response actions within 24 hours of a release or within another reasonable period of time determined by the implementing agency: (a) Report the release to the implementing agency (*e.g.*, by telephone or electronic mail);...” Section 245.305(a) (relating to reporting releases) requires a confirmed release to be reported as soon as practicable, but no later than 24 hours after confirmation of a release. Because § 245.305(a) does not allow reporting to extend beyond 24 hours, Pennsylvania meets the Federal objective of requiring “prompt” reporting of confirmed releases.

It is noted that Section 904(e) of the Storage Tank Act contains the following language, which is not repeated in the regulations:

(e) Releases from storage tanks.--***Upon the occurrence of a release from a storage tank, the owner or operator of the storage tank shall immediately notify the appropriate regional office of the department.*** The owner or operator shall notify the department, as soon as practicable, but no later than 24 hours after the confirmation of a reportable release.

35 P.S. § 6021.904(e) (emphasis added).

Clearly, there is a direct conflict between the first and second sentences of this section. The first requires all releases to be reported to DEP “immediately,” while the second only requires that “reportable releases” be reported to DEP, “no later than 24 hours after confirmation” that the release occurred.

The Statutory Construction Act of 1972 (1 Pa.C.S.A. §§ 1501-1991) (Statutory Construction Act) contains the rules governing the construction of statutes in Pennsylvania. Section 1921(a) of the Statutory Construction Act requires every statute to be construed, if possible, to give effect to all its provisions. Section 1922 of the Statutory Construction Act contains presumptions in ascertaining the intent of the legislature. The first of these presumptions is that the “General Assembly does not intend a result that is absurd, impossible of execution or unreasonable.” Here, the phrase “immediately” is ambiguous and subject to interpretation, while the 24-hour limit has no ambiguity and could reasonably be thought to include the term “immediately” given the construction of this statute. On this basis, Pennsylvania courts would uphold the release reporting process established in § 245.305 as acceptable to effectuate the intent of Section 904(e) of the Storage Tank Act.

40 CFR § 281.34(c). Section 103 of the Storage Tank Act (relating to definitions) and § 245.1 (relating to definitions) excludes from the definition of “release” a spill of hazardous substance to the environment less than the reportable quantity under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980. Section 280.12 (relating to definitions) defines “release” as any amount of hazardous substance to the environment. However, § 245.304(c)(3) (relating to investigation and reporting of suspected releases) requires a spill (while not a “release”) of hazardous substance to the environment in an amount less than the reportable quantity to still be cleaned up. If not cleaned up within 24 hours, it must be reported

to DEP. Therefore, Pennsylvania’s reporting and corrective action requirements for spills of hazardous substances to the environment in an amount less than the reportable quantity are equivalent to the Federal program.

It is noted that the following situations are confirmed releases under Pennsylvania’s UST program and are not viewed as such under the Federal program: 1) any amount of petroleum in the interstitial space of a double-walled UST, 2) an amount of hazardous substance that equals or exceeds the reportable quantity in the interstitial space of a double-walled UST, 3) an amount of petroleum to a liquid-tight containment sump that is less than 25 gallons as a result of a tank handling activity and not totally cleaned up prior to the certified installer leaving the facility, and 4) an amount of petroleum to a containment sump which is at or above the lowest sump penetration. For example, § 280.50(b) considers liquid in the interstitial space of secondarily contained systems to be a suspected release, not a confirmed release.

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

RELEASE RESPONSE AND CORRECTIVE ACTION

Objective 40 CFR § 281.35

| The state has requirements that ensure: | Cite Regulation 25 Pa Code Chapter 245 | Cite Statute 35 P.S. § 6021.101 <i>et seq.</i> |
|--|--|---|
| (a) All releases from UST systems are promptly assessed and further releases are stopped; | 245.305(i) 245.306(a) | 6021.501(a)(4)-(5) |
| (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); | 245.306 245.307 | 6021.501(a)(4)-(5) 6021.1303 |
| (c) All releases from UST systems are investigated to determine if there are impacts on soil and ground water, and any nearby surface waters. The extent of soil and ground water contamination must be delineated when a potential threat to human health and the environment exists; | 245.309 | 6021.501(a)(4)-(5) |
| (d) All releases from UST systems are cleaned up through soil and ground water remediation and any other steps, as necessary to protect human health and the environment; | 245.305(i) 245.306 245.307 245.308 245.312 | 6021.501(a)(4)-(5) 6021.1303 |

| | | |
|--|--|--------------------------------------|
| (e) 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; and | 245.306(e) 245.307(e) 245.309(c)(24) 245.310(a)-(b) 245.311(a) 245.312(b)-(d) 245.313(a)-(b) | 6021.107(c)(1) 6021.501(a)(4)-(5) |
| (f) In accordance with section § 280.67, the State must notify the affected public of all confirmed releases requiring a plan for soil and ground water 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. | 245.305(f) 245.311(b)-(c) | 6021.501(a)(4)-(5) |

Certification of Objective 40 CFR § 281.35:

40 CFR § 281.35(a). The owner or operator of a UST or UST facility must notify the appropriate regional office of DEP as soon as practicable, but no later than 24 hours, after the confirmation of a release. The notice must be by telephone and describe, to the extent of information available, the regulated substance involved, the quantity of the regulated substance involved, when the release occurred, where the release occurred, the cause of the release, the affected environmental media, information concerning impacts to water supplies, buildings or to sewer or other utility lines, and interim remedial actions planned, initiated or completed. The responsible party is required to remove the regulated substance from the storage tank system to prevent further release to the environment.

40 CFR § 281.35(b). A responsible party must immediately initiate the interim remedial actions necessary to prevent or address an immediate threat to human health or the environment from a release. These actions include identifying and mitigating fire, explosion and safety hazards posed by vapors and free product, excavating contaminated soil for treatment or disposal, recovering free product, and identifying and analyzing samples of affected water supplies and water supplies with the potential to be affected.

40 CFR § 281.35(c). Upon confirming that a release has occurred, the responsible party must perform a site characterization. Subsection 245.309(b) states the objectives of a site characterization, one of which is to determine the extent of migration of regulated substances in surface water, groundwater, soil or sediment. Subsection 245.309(c) states the site characterization activities that may be necessary to satisfy the objectives of the site characterization.

40 CFR § 281.35(d). A responsible party must address all releases whether the release affects environmental media or not. In some instances, release reporting and further corrective action is not required for releases that are completely contained and the total volume of the release is recovered and removed within 24 hours. In other instances, where soil is the only affected media

and interim remedial actions have remediated the site, further site characterization and corrective action would not be required. However, where interim remedial actions have not remediated the site, additional site characterization and development and implementation of a remedial action plan is required.

40 CFR § 281.35(e). The reporting requirements are found in Chapter 245, Subchapter D. Section 245.305 (relating to reporting releases) requires the owner or operator of a regulated UST or UST facility to notify the appropriate regional office of DEP as soon as practicable, but no later than 24 hours after the confirmation of a release. This notification is to be accomplished by telephone. The notice must describe, to the extent information is available: the regulated substance involved; the quantity of the regulated substance involved; when the release occurred; where the release occurred; the cause of the release; affected environmental media; information concerning impacts to water supplies, buildings or to sewer or other utility lines; and interim remedial actions planned, initiated, or completed.

Within 15 calendar days of the telephone notice, the owner or operator must follow up with a written notification to the appropriate regional office of DEP, to each municipality in which the release occurred, and to each municipality where that release has impacted environmental media or water supplies, buildings or sewer or other utility lines. This written notice must include the same information as provided in the telephone notification and any new information obtained within the 15 days since the release. Finally, the owner or operator must provide written notification to DEP and each impacted municipality of new impacts to environmental media or water supplies, buildings, or sewer or other utility lines discovered after the initial written notification within 15 days of the discovery of the new impact.

In accordance with § 245.306 (relating to interim remedial actions), a responsible party must immediately initiate interim remedial actions necessary to prevent or address an immediate threat to human health or the environment from a release. A responsible party must notify DEP by telephone or electronic mail as soon as practicable, but no later than 24 hours, after the initiation of interim remedial actions. If it is determined that a water supply has been affected or diminished, the responsible party must restore or replace the affected or diminished water supply in accordance with § 245.307 (relating to affected or diminished water supplies). The responsible party must provide a copy of the sample results to the water supply owner and DEP within 5 days of receipt of the sample results from the laboratory. In accordance with § 245.307, the responsible party must notify DEP, by telephone or electronic mail, within 24 hours of providing an alternate source of water to the owner of the affected or diminished water supply.

Depending on the severity and extent of the release, a responsible party may need to conduct further corrective action, notify DEP and submit additional corrective action reports. It may be necessary for a responsible party to perform a site characterization in accordance with § 245.309 (relating to site characterization). If this is the case, the responsible party must notify DEP by telephone or electronic mail as soon as practicable, but no later than 24 hours, after the initiation of site characterization activities. In accordance with § 245.310 (relating to site characterization report), a responsible party must prepare and submit to DEP within 180 days of

reporting a release, or within an alternative time frame as determined by DEP, a site characterization report which describes the activities undertaken in accordance with § 245.309.

A responsible party must prepare and submit to DEP a remedial action plan (§ 245.311 (relating to remedial action plan)) within 45 days of submission of a site characterization report selecting the background or statewide health standard, within 45 days of a deemed approval or receipt of a written approval of a site characterization report selecting the site-specific standard, or within an alternative time frame as determined by DEP.

Upon implementation of the remedial action plan, a responsible party must submit remedial action progress reports in accordance with § 245.312 (relating to remedial action) providing the data generated during the reporting period and showing the progress to date toward attainment of the selected remediation standard. The first remedial action progress report must be received by DEP 3 months following the date of remedial action plan implementation or at an alternative interval as determined by DEP. The final remedial action progress report must be submitted to DEP as part of the remedial action completion report.

When the selected remediation standard has been attained, the responsible party must submit a remedial action completion report (§ 245.313) to DEP.

40 CFR § 281.35(f). DEP will publish an acknowledgment of receipt of all remedial action plans in the *Pennsylvania Bulletin* in accordance with § 245.311(b)-(c). In addition, to promote public awareness of confirmed releases and cleanup activities at UST sites, DEP will do the following:

1. Maintain a web page with information, including the cleanup status, on all confirmed releases.
2. If DEP determines that a release poses an immediate threat to public health and safety, DEP may evaluate and implement reasonable procedures to provide the public with appropriate information about the situation which may, at a minimum, include a summary of the details surrounding the release and its impacts in a newspaper of general circulation serving the area in which the impacts are occurring. (§ 245.305(f))
3. Upon request, provide or make available information to inform the interested public of the nature of the releases and the corrective measures planned or taken.

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

OUT-OF-SERVICE UST SYSTEMS AND CLOSURE

Objective 40 CFR § 281.36

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| The state has requirements that ensure UST systems conform with the following: | Cite Regulation 25 Pa Code Chapter 245 | Cite Statute 35 P.S. § 6021.101 et seq. |
| (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. | 245.451 | 6021.501(a)(6), (8)-(10) |
| (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. | 245.452 245.453 | 6021.501(a)(6), (8)-(10) |
| (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. | 245.454 | 6021.501(a)(6), (8)-(10) |

Certification of Objective 40 CFR § 281.36:

40 CFR § 281.36(a). Owners and operators of UST systems temporarily removed from service must submit an amended registration form to DEP within 30 days; continue operation and maintenance of corrosion protection; empty the UST; comply with Chapter 245, Subchapter D if a release is suspected or confirmed; and perform inspection requirements at 3-year intervals.

When the UST system is temporarily removed from service for 3 months or more, the vent lines must be open and functioning, and all other lines, pumps, manways and ancillary equipment

must be capped and secure.

When a substandard UST system is temporarily removed from service for more than 12 months, owners and operators must permanently close the UST system unless DEP provides an extension of the 12-month temporary out-of-service period.

UST systems that meet performance standards must be permanently closed within 3 years of being placed temporarily out-of-service, unless DEP grants an extension to the temporary out-of-service period.

40 CFR § 281.36(b). At least 30 days before beginning either permanent closure or a change-in-service, UST owners and operators must notify DEP of their intent to permanently close or make the change-in-service. To permanently close a tank, owners and operators must ensure that the tank is empty and clean in accordance with a Nationally recognized code of practice by removing the liquids and accumulated sludges. Tanks being permanently closed must also be either removed from the ground or filled with a nonshrinking, inert solid material. An assessment of the excavation zone under § 245.453 (relating to assessing the site at closure or change-in-service) must be performed after notifying DEP but before completion of the permanent closure or a change-in-service. The assessment must measure for the presence of a release where contamination is most likely to be present, and if found, owners and operators must report the release and begin corrective action. This measurement is to be performed in a manner acceptable to DEP by following the technical guidance document titled “Closure Requirements for Underground Storage Tank Systems” (attached). This document establishes the minimum standards, as set forth in regulation, that UST owners must meet to comply with the closure requirements for regulated USTs. The UST owner must complete and submit an amended tank registration form, signed by the owner and the certified installer that provided direct onsite supervision of the permanent closure, to DEP within 30 days. A copy of the completed closure report must be submitted to DEP when requested.

40 CFR § 281.36(c). When directed by DEP, the owner and operator of a UST system permanently closed before December 22, 1988, must assess the excavation zone and permanently close the UST system if the UST system is, in the judgment of DEP, posing a current or potential threat to human health and the environment.

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

FINANCIAL RESPONSIBILITY FOR UST SYSTEMS CONTAINING PETROLEUM

Objective 40 CFR § 281.37

| | Cite Regulation 25 Pa Code Chapter 245; Chapter 977 | Cite Statute 35 P.S. § 6021.101 et seq. |
|--|--|---|
| (a) State requirements for financial responsibility 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 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. | 977.33(a) | 6021.704(b) |
| (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: 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. | 245.704(a)-(b) 977.31 | 6021.701(a)-(b) 6021.703 6021.704(a) |
| (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. | 245.435(a)-(b), (d) 245.704(c) 245.706 | 6021.107(c)(1) |

Certification of Objective 40 CFR § 281.37:

40 CFR § 281.37(a). The Storage Tank Act and regulations require owners and operators of USTs to maintain adequate financial responsibility for taking corrective action and compensating third parties in response to a release. All owners and operators of USTs must meet the financial responsibility requirements by participating in and maintaining eligibility for payment by the Underground Storage Tank Indemnification Fund (USTIF) (35 P.S. § 6021.704(a)(1)). Section 704(a) (relating to underground storage tank indemnification fund) of the Storage Tank Act established a special fund in the Commonwealth Treasury known as USTIF. Moneys in the fund are used to make payments to owners and operators of USTs who incur liability for taking corrective action or for bodily injury or property damage caused by a release from USTs. USTIF is administered by the Pennsylvania Insurance Department, Bureau of Special Funds. USTIF began operation in February 1994.

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

In accordance with § 977.12 (relating to owner and operator fees), UST owners and operators storing gasoline, new motor oil, hazardous substances, gasohol, aviation fuel, mixtures, farm diesel and other types of regulated substances based on the tank registration information maintained by DEP are assessed a gallon (throughput) fee entering a UST. A UST owner or operator which stores regulated substances including diesel, heating oil, used motor oil, kerosene and unknown substances based on the tank registration information maintained by DEP are assessed an annual per gallon capacity fee.

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

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

USTIF will indemnify an eligible owner or operator for up to the available coverage limit, for reasonable and necessary corrective action costs, and up to the available coverage limit, for

bodily injury and property damage. If, for some reason, a tank owner or operator is determined to be ineligible for payment of a claim by USTIF (e.g., failure to maintain proper registration of the USTs, 35 P.S. § 6021.706(3)), the tank owner or operator may be in violation of the Storage Tank Act and regulations (*see, e.g.*, § 245.704(a)) and the Department may pursue enforcement, such as suspension of operating permits and/or civil penalties, to ensure compliance.

In accordance with § 977.33(a) (relating to fund coverage and exclusions), payments to eligible UST owners or operators must be limited to the actual costs of corrective action and the amount of an award of damages by a court of competent jurisdiction for bodily injury, property damage or both, not to exceed a total of \$1,500,000 per tank per occurrence. In addition, payments must not exceed an annual aggregate of \$1,500,000 for each owner and operator of 100 or less USTs; or an annual aggregate of \$3,000,000 for each owner and operator of 101 or more USTs, up to the total of \$1,500,000 per tank per occurrence or the total eligible costs or damages.

40 CFR § 281.37(b). The Storage Tank Act requires owners or operators to pay a separate deductible for corrective action and third-party liability, if coverage is available from USTIF, up to the required amounts (35 P.S. § 6021.705(c)). The owner or operator is required to obtain coverage for liability not insured by USTIF (deductible) through any of the methods identified and in accordance with Section 245.704(b) (relating to general requirements). In accordance with § 977.33(a), payment of a claim for corrective action costs must be subject to a deductible in an amount not less than \$5,000 per tank per occurrence for each UST that contributed to the release. If an eligible claim for bodily injury or property damage results from the release, an additional deductible per tank per occurrence in an amount not less than \$5,000 applies to all claims in addition to the deductible for corrective action.

Section 245.704(b) (relating to general requirements) requires owners and operators to have sufficient financial resources to cover the deductible amount. The amount considered “sufficient” is established by § 245.707 (relating to coverage amounts for financial responsibility) and is dependent on the number of USTs owned or operated by that person. USTIF is a “first-dollar” fund; that is, it will cover eligible claims from the first dollar spent. Even if owners or operators fail to maintain the deductible, USTIF will still cover corrective action costs and third-party claims for the portion of the coverage above the deductible. For example, if an owner or operator submits an initial invoice to USTIF for cleanup on an eligible claim, USTIF will subtract the deductible and pay the balance of the invoice. The cleanup contractor is responsible for obtaining the deductible amount from the owner or operator. In addition to being wholly compliant with section 281.37(b), the deductible works; DEP is not aware of any situations where the lack of a deductible has prevented a UST cleanup from proceeding in the Commonwealth.

40 CFR § 281.37(c). Compliance with the financial responsibility requirements has two components in Pennsylvania – continuous participation in USTIF and maintenance of sufficient financial resources to cover USTIF deductible amounts. Records demonstrating compliance with the USTIF participation requirement are maintained by USTIF since payment of fees due to USTIF is a primary USTIF eligibility requirement. For the deductible amounts not covered by

USTIF, § 245.704(b) requires UST owners to have resources available to continuously meet the deductible amounts. Section 245.704(c) authorizes DEP to request this information at any time. Owners of USTs must continuously maintain records constituting proof of resources sufficient to cover the USTIF deductible amounts to be able to respond to such requests. In addition, § 245.435(d)(9) (relating to reporting and recordkeeping) requires owners and operators to maintain documentation showing the owner or operator of an UST system is continuously participating in USTIF.

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

LENDER LIABILITY

Objective 40 CFR § 281.38

| | Cite Regulation 25 Pa Code Chapter 245 | Cite Statute 35 P.S. § 6027.5 |
|---|--|----------------------------------|
| <p>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:</p> <p>(1) Mirrors the security interest exemption provided for in 40 CFR part 280, subpart I; or</p> <p>(2) Achieves the same effect as provided by the following key criteria:</p> <p>(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:</p> <p>(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</p> <p>(B) An "operator" of a petroleum UST or UST system for purposes of compliance with the</p> | 245.2(a) | 6027.5 |

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| 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. (ii) [Reserved] (b) [Reserved] | | |
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Certification of Objective 40 CFR § 281.38:

Objective 40 CFR § 281.38. Section 245.2(a) incorporates by reference the Federal regulations in 40 CFR Part 280, Subpart I (relating to lender liability).

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

OPERATOR TRAINING

Objective 40 CFR § 281.39

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| | Cite Regulation 25 Pa Code Chapter 245 | Cite Statute 35 P.S. § 6021.101 <i>et seq.</i> |
| The state must have an operator training program that meets the minimum requirements of section 9010 of the Solid Waste Disposal Act. | 245.436 245.411(d) | 6021.501(a)(2) |

Certification of Objective 40 CFR § 281.39:

Objective 40 CFR § 281.39. DEP established an operator training program in § 245.436 with an effective date of December 26, 2009. DEP’s operator training program meets the minimum requirements of section 9010 of the Solid Waste Disposal Act. DEP policy “Underground Storage Tank Class A and Class B Operator Training Courses (263-2300-001)” describes the circumstances under which Class A and Class B operators of USTs are required to be trained or retrained. This document is attached. In addition, Section 245.411(d) states that “Owners and operators of underground storage tanks found through inspection to have violations that result in failure to meet EPA guidelines for significant operational compliance, as determined by the Department, shall be retrained in a manner consistent with the Department’s technical document entitled “Underground Storage Tank Class A and Class B Operator Training Courses”.” DEP’s technical document further states, “When a UST facility is found through inspection to have violations that result in failure to meet EPA guidelines for significant operational compliance, as determined by DEP, operator retraining is mandatory.”

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

LEGAL AUTHORITIES FOR COMPLIANCE MONITORING

Objective 40 CFR § 281.40

| The state has the following compliance monitoring authorities: | Cite Regulation 25 Pa Code Chapter 245 | Cite Statute 35 P.S. § 6021.101 <i>et seq.</i> |
|--|--|--|
| (a) Any authorized representative of the state engaged in compliance inspections, monitoring, or 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 UST regulations. | 245.435(a) | 6021.107(c)(1) |
| (b) Any authorized representative of the state must have authority to require an owner or operator to conduct monitoring or testing. | 245.421(b)(4) 245.422(b)(1)(ii), (b)(2)(i) and (iii) 245.432(a)(2)(i), (a)(3), (d), (g) 245.434(4) and (5) 245.437(a) 245.438(a) 245.442 245.443 245.453 | 6021.1309 |
| (c) Authorized representatives must have the authority to enter any site or premises subject to UST 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). | 245.435(a) | 6021.107(c)(2)-(3) |

Certification of Objective 40 CFR § 281.40:

Objective 40 CFR § 281.40(a). DEP, its agents and employees are authorized to require any person regulated by the Storage Tank Act to establish and maintain records and reports and furnish information as DEP may prescribe regarding any matter regulated by the Storage Tank Act. 35 P.S. § 6021.107(c)(1).

In accordance with § 245.435(a) (relating to reporting and recordkeeping), owners and operators of UST systems must maintain records and provide records, as requested, and cooperate fully

with inspections, monitoring and testing conducted by DEP, certified installers or certified inspectors. Owners and operators must provide records and cooperate fully in response to requests for document submission, testing and monitoring by the owner or operator under Section 107(c) of the Storage Tank Act.

Objective 40 CFR § 281.40(b). DEP may issue orders as are necessary to aid in the enforcement of the provisions of the Storage Tank Act. Such orders include requiring the testing, sampling or monitoring of any UST system. 35 P.S. § 6021.1309.

In accordance with § 245.421(b)(4), UST systems must be properly installed and system integrity tested in accordance with a code of practice developed by a Nationally recognized association or independent testing laboratory and in accordance with the manufacturer's instructions. Spill prevention equipment and containment sumps must be constructed to be liquid-tight, and must be tested prior to use of the system to confirm liquid-tight construction using a hydrostatic test, vacuum test or other Nationally recognized liquid-tight testing procedure or method recommended by the containment equipment manufacturer. Overfill prevention equipment must be properly installed and tested in accordance with a code of practice developed by a Nationally recognized association, and in accordance with manufacturer's instructions.

Section 245.422(b)(1)(ii) requires USTs that have been upgraded by internal lining for corrosion protection to be periodically evaluated. Within 10 years after lining, and every 5 years thereafter, the lined tank must be internally evaluated by, or under the direct onsite supervision of a DEP-certified tank liner or by a professional engineer adhering to the evaluation process developed by a National association and found to be structurally sound with the lining still performing in accordance with original design specifications. Section 245.422(b)(2)(i) and (iii) requires a UST to be internally inspected and assessed to ensure that the tank is structurally sound and free of corrosion holes prior to installing a cathodic protection system, or assessed for corrosion holes by a method that is determined by DEP to prevent releases in a manner that is no less protective of human health and the environment.

In accordance with 245.432(a)(2)(i), cathodic protection systems must be tested within 6 months of installation and at least every 3 years thereafter. Section 245.432(a)(3) requires UST systems with impressed current cathodic protection systems to be checked every 60 days to ensure the equipment is functioning as designed. Section 245.432(d) requires USTs which have been lined and have not had corrosion protection added to have the lining evaluated by, or under the direct onsite supervision of, a DEP-certified tank liner or by a professional engineer. Section 245.432(g) requires a check for water in petroleum USTs to be performed monthly and excess water to be promptly removed.

Section 245.434(4) requires repairs to secondary containment areas of USTs and piping, containment sumps and spill prevention equipment to be tested for tightness according to the manufacturer's instructions, a code of practice developed by a Nationally recognized association or independent testing laboratory prior to returning the UST system to operating status. All other repairs to USTs, containment sumps and piping must be tightness tested in accordance with

§§ 245.421(b)(4)(ii), 245.444(2) and 245.445(2) (relating to performance standards for underground storage tank systems; methods of release detection for tanks; and methods of release detection for piping), respectively, prior to placing the UST system back into service unless the repaired tank is internally inspected in accordance with a code of practice developed by a Nationally recognized association or an independent testing laboratory or another test method is used that is determined by DEP to be at least as protective of human health and the environment. Section 245.434(5) requires that within 6 months following the repair of a cathodically protected UST system, the cathodic protection system be tested to ensure that it is operating properly.

In accordance with § 245.437(a), owners and operators of UST systems must ensure that installed equipment for release detection and prevention is operating properly and periodically tested.

Section 245.438(a) requires that to properly operate and maintain spill prevention and release detection equipment, owners and operators must conduct walkthrough inspections at a minimum of every 30 days, except for spill prevention equipment at UST systems receiving deliveries at intervals greater than every 30 days, which may be checked prior to each delivery.

Section 245.442 and § 245.443 provides the release detection monitoring requirements for petroleum UST systems and hazardous substance UST systems, respectively.

In accordance with § 245.453, before permanent closure or change-in-service is completed, owners and operators must measure for the presence of a release where contamination is most likely to be present at the UST site. Owners and operators must sample for releases. If contaminated soils, contaminated groundwater or free product is discovered, owners and operators must begin corrective action.

Objective 40 CFR § 281.40(c). DEP is authorized to make inspections, conduct tests or sampling, or examine or require production of books, papers and records, and physical evidence pertinent to any matter under investigation pursuant to the Storage Tank Act as it deems necessary to determine compliance with the Storage Tank Act. Duly authorized agents and employees of DEP are authorized to enter and examine any property, facility, operation or activity governed by the Storage Tank Act without prior notice. 35 P.S. § 6201.107(c)(2). The owner, operator or other person in charge of such property, facility, operation or activity, must give such agents and employees free and unrestricted entry and access and, upon refusal to grant such entry or access, the agent or employee may obtain a search warrant or other suitable order for the purposes of inspecting, examining and seizing any property, building, premises, place, book, record or other physical evidence, and for the purposes of conducting tests and taking samples. 35 P.S. § 6201.107(c)(3).

As stated above in conjunction with Objective 40 CFR § 281.40(a), and in accordance with § 245.435(a) (relating to reporting and recordkeeping), owners and operators of UST systems must maintain records and provide records, as requested, and cooperate fully with inspections,

monitoring and testing conducted by DEP, certified installers or certified inspectors. Owners and operators must provide records and cooperate fully in response to requests for document submission, testing and monitoring by the owner or operator under Section 107(c) of the Storage Tank Act.

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

LEGAL AUTHORITIES FOR ENFORCEMENT RESPONSE

Objective 40 CFR § 281.41

| The state has the following enforcement response authorities: | Cite Regulation 25 Pa Code Chapter 245 | Cite Statute 35 P.S. § 6021.101 <i>et seq.</i> |
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| (a) Any state 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; | 245.303(a) | 6021.107(f)-(g) 6021.1302(a) 6021.1303 6021.1304 6021.1305(a)-(b) 6021.1308 6021.1309 6021.1310 71 P.S. § 510-17 |
| (2) To sue in courts of competent jurisdiction to enjoin any threatened or continuing violation of any program requirement; | | 6021.1305(a)-(b) 71 P.S. § 510-17 |
| (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. | | 6021.1307 |

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| (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. | 245.41(b), (d) 245.203(f) | 6021.107(e)-(f) 6021.503(b) 6021.1301 6021.1309 |
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Certification of Objective 40 CFR § 281.41:

Objective 40 CFR § 281.41(a)(1)-(3). DEP is authorized to assess civil penalties up to \$10,000 per day per violation of the Storage Tank Act, the regulations or any order or permit issued pursuant to the Storage Tank Act. This amount is well above the civil penalty amounts required by § 281.41(a)(3) for state program approval. Section 1307(a) of the Storage Tank Act states, “Each violation of any provision of this act, rule, regulation, order of the department or condition of a permit, and each day of violation shall constitute a separate violation.” (35 P.S. § 6021.1307(a)). Subchapter E of Chapter 245 (relating to technical standards for underground storage tanks) sets forth the requirements which apply to each UST system individually. Each UST system that does not meet the applicable technical standards results in a separate violation that is “capable of being assessed” a civil penalty. Since each individual UST system that is in violation of the standards for existing or new tank systems may be assessed penalties above the amount required by this section, the Commonwealth has the necessary authority to meet the requirements of § 280.41(a)(3).

Objective 40 CFR § 281.41(a)(4). DEP policy “Storage Tank Product Delivery Prohibition (263-4000-001)” describes the circumstances under which DEP may impose storage tank product delivery prohibition in conjunction with suspension, revocation or denial of an operating permit, and the procedure it will follow to notify the tank owner/operator and product suppliers (distributors or deliverers). This document is attached.

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

LEGAL AUTHORITIES FOR PUBLIC PARTICIPATION IN ENFORCEMENT PROCEEDINGS

Objective 40 CFR § 281.42

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| Any state administering a program must provide for public participation in the state enforcement process by providing any one of the following three options: | Cite Regulation 25 Pa Code Chapter 1021 | Cite Statute 35 P.S. § 6021.101 <i>et seq.</i> ; 35 P.S. § 7514; Title 231, Chapter 2320 |
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| (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. | 1021.81 | 6021.1305(c) 35 P.S. § 7514(e) Pa.R.C.P. 2326 – 2330. |
| (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 | N/A (Pennsylvania employs option (a)) | |
| (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. | N/A (Pennsylvania employs option (a)) | |

Certification of Objective 40 CFR § 281.42:

40 CFR § 281.42(a). Subsection 281.42(a) first requires authority that allows intervention analogous to Federal Rule 24(a)(2) from Title IV of the Federal Rules of Civil Procedure (F.R.C.P.). Federal Rule 24(a)(2) provides:

On timely motion, the court must permit anyone to intervene who:

...

(2) claims an interest relating to the property or transaction that is the subject of the action, and is so situated that disposing of the action may as a practical matter impair or impede the movant's ability to protect its interest, unless existing parties adequately represent that interest.

F.R.C.P. 24(a)(2). Two Commonwealth authorities regarding intervention in civil actions are material here. First, subsection 1305(c) of the Storage Tank Act (35 P.S. § 6021.1305(c)) provides, as part of limits on citizen suits where DEP is “diligently prosecuting” a civil action to address a violation of the Storage Tank Act, that “...any person having or representing an interest which is or may be adversely affected may intervene [in that civil action] as a matter of right without posting bond.” This subsection alone covers the same ground as does Federal Rule 24(a)(2) regarding intervention, and therefore meets the initial requirement of § 281.42(a).

Second, the Pennsylvania Rules of Civil Procedure (Pa.R.C.P.), which apply to civil actions brought in a Pennsylvania court, at Rule 2327 provides:

At any time during the pendency of an action, a person not a party thereto shall be permitted to intervene therein, subject to these rules if:

- (1) the entry of a judgment in such action or the satisfaction of such judgment will impose any liability upon such person to indemnify in whole or in part the party against whom judgment may be entered; or
- (2) such person is so situated as to be adversely affected by a distribution or other disposition of property in the custody of the court or of an officer thereof; or
- (3) such person could have joined as an original party in the action or could have been joined therein; or
- (4) the determination of such action may affect any legally enforceable interest of such person whether or not such person may be bound by a judgment in the action.

Although this rule is not worded the same as Federal Rule 24(a)(2), Pa.R.C.P. 2327 is at least equivalent to the Federal Rule because it permits anyone to intervene who claims an interest related to the subject party or transaction, who would otherwise be impeded in protecting that movant's interest.

Two other Commonwealth authorities bear mention because they provide for citizen intervention in administrative proceedings before the Pennsylvania Environmental Hearing Board, the tribunal where many of DEP's enforcement actions begin. Subsection 7514(e) of the Environmental Hearing Board (EHB) Act provides, "Any interested party may intervene in any matter pending before the board." 35 P.S. § 7514(e). The EHB is an independent quasi-judicial agency authorized by the Environmental Hearing Board Act (Act of July 13, 1988, P.L. 530, No. 94, 35 P.S. §§ 7511-7516), that hears appeals from "actions" of DEP brought under the Storage Tank Act (35 P.S. § 6021.1313).

The Pennsylvania Commonwealth Court, upon overturning an EHB denial of a petition to intervene, affirmed the breadth of the EHB's intervention provision, holding:

the phrase "any interested party" means any person or entity interested, i.e., concerned, in the proceedings before the Board. The interest required, of course, must be more than a general interest in the proceedings; it must be such that the person or entity seeking intervention will either gain or lose by direct operation of the Board's ultimate determination.

Browning-Ferris, Inc. v. Commonwealth, Department of Environmental Resources, 598 A.2d 1057, 1060 (Pa. Commw. 1991).

The above authorities address the first condition of § 281.42(a) concerning analogous authority to Federal Rule 24(a)(2). The second condition of § 281.42(a) requires the state enforcement agency to agree “that it will not oppose intervention ... on the ground the applicant’s interest is adequately represented by the state.”

In section V.B. of the Memorandum of Agreement between EPA and the Commonwealth submitted with this authorization package, the Commonwealth agrees that it will not oppose citizen intervention in civil actions when permissive intervention is allowed by statute, rule or regulation. As noted above, permissive intervention in civil actions is provided for in the Storage Tank Act and the Pa.R.C.P. The Commonwealth will not oppose intervention in civil cases under the Commonwealth’s analogues to Federal Rule 24(a)(2) on the ground the Commonwealth adequately represents the applicant’s interest. By agreeing not to oppose citizen intervention in civil actions prosecuted under these authorities, the Commonwealth meets the requirements of § 281.42(a), and therefore the requirement for public participation in enforcement proceedings.

40 CFR § 281.42(b). N/A. Pennsylvania employs option (a).

40 CFR § 281.42(c). N/A. Pennsylvania employs option (a).

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