

Chapter 1 – SCOPE AND DEFINITIONS**001. APPLICABILITY**

These regulations shall apply to the operation, maintenance, installation, removal or use of underground tanks containing petroleum products and hazardous substances.

002. EXCLUSIONS

These regulations shall not apply to substances regulated as hazardous waste under subtitle C of the Federal Solid Waste Disposal Act.

002.01. The following UST systems are excluded from the requirements of this title:

002.01A. Any wastewater treatment tank system that is part of a wastewater treatment facility regulated under Section 402 or 307(b) of the Clean Water Act.

002.01B. Equipment or machinery that contains regulated substances for operational purposes such as hydraulic lift tanks and electrical equipment.

002.01C. Any UST system with a capacity of 110 gallons or less.

002.01D. Any UST system that contains a *de minimus* concentration of regulated substances.

002.01E. Any emergency spill or overflow containment UST system that is expeditiously emptied after use.

002.02. The following UST systems are classified as deferred tanks. These tanks are excluded at this time from all the requirements of this Title except 005 of Chapter 8:

002.02A. Wastewater treatment tank systems;

002.02B. Any UST systems containing radioactive material that are regulated under the Atomic Energy Act of 1954 (42 USC 2011 and following);

002.02C. Any UST system that is part of an emergency generator system at nuclear power generation facilities regulated by the Nuclear Regulatory Commission under 10 CFR 50 Appendix A;

002.02D. Airport hydrant fuel distribution systems; and

002.02E. UST systems with field-constructed tanks.

002.03. UST systems used to store fuel solely for use by emergency power generators are deferred for purposes of the release detection requirements in Chapter 7 except that they must perform the tank gauging procedures in 004.02A through 004.02D of that chapter on a monthly basis.

002.03A. UST systems used to store fuel for use by emergency power generators, and are located at remote, unmanned locations are deferred for purposes of the Operator Training requirements in Chapter 13.

002.04. UST systems larger than 1,100 gallons used to store heating oil are excluded for purposes of all release detection requirements in Chapter 7 except that they must perform the tank gauging procedures in 004.02A through 004.02D of that chapter on a monthly basis from April 1 to November 1.

003. DEFINITIONS

003.01. “Aboveground release” means any release to the surface of the land or to surface water. This includes, but is not limited to, releases from the aboveground portion of an UST system and aboveground releases associated with overfills and transfer operations as the regulated substance moves to or from an UST system.

003.02. “Ancillary equipment” means any devices including, but not limited to, such devices as piping, fittings, flanges, valves, and pumps used to distribute, meter, or control the flow of regulated substances to and from an UST.

003.03. “Belowground release” means any release to the subsurface of the land and to ground water. This includes, but is not limited to, releases from the belowground portions of an underground storage tank system and belowground releases associated with overfills and transfer operations as the regulated substance moves to or from an underground storage tank.

003.04. “Beneath the surface of the ground” means beneath the ground surface or otherwise covered with earthen materials.

003.05. “Cathodic protection” is a technique to prevent corrosion of a metal surface by making that surface the cathode of an electrochemical cell. For example, a tank system can be cathodically protected through the application of either galvanic anodes or impressed current.

003.06. “Cathodic protection tester” means a person who can demonstrate an understanding of the principles and measurements of all common types of cathodic protection systems as applied to buried or submerged metal piping and tank systems. At a minimum such persons must have education and experience in soil resistivity, stray current, structure-to-soil potential, and component electrical isolation measurements of buried metal piping and tank systems.

003.07. “CERCLA” means the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended.

003.08. “Class A Operator” means a person responsible for managing resources and personnel to achieve and maintain compliance with regulatory requirements.

003.09. “Class B Operator” means a person who implements applicable underground storage tank regulatory requirements and standards. This includes implementing the day-to-day aspects of operating, maintaining, and recordkeeping for underground storage tanks at one or more facilities.

003.10. “Class C Operator” means an on-site employee who monitors and controls the dispensing or sale of regulated substances and is the first-line of response to events indicating emergency conditions.

003.11. “Class I liquids” shall mean liquids having a flash point below 100 degrees Fahrenheit.

003.12. “Compatible” means the ability of two or more substances to maintain their respective physical and chemical properties upon contact with one another for the design life of the tank system under conditions likely to be encountered in the UST.

003.13. “Connected piping” means all underground piping including valves, elbows, joints, flanges, and flexible connectors attached to a tank system through which regulated substances flow. For the purpose of determining how much piping is connected to any individual UST system, the piping that joins two UST systems should be allocated equally between them.

003.14. “Consumptive use” with respect to heating oil means consumed on the premises.

003.15. “Corrosion expert” means a person who, by reason of thorough knowledge of the physical sciences and the principles of engineering and mathematics acquired by a professional education and related practical experience, is qualified to engage in the practice of corrosion control on buried or submerged metal piping systems and metal tanks. Such a person must be accredited or certified as being qualified by the National Associate of Corrosion Engineers or be a registered professional engineer who has certification or licensing that includes education and experience in corrosion control of buried or submerged metal piping systems and metal tanks.

003.15A. Corrosion Experts and Professional Engineers shall comply with all State of Nebraska licensure requirements pursuant to Title 110 Licensing for Architects and Engineers N.A.C.

003.16. “Delivery Prohibition” shall mean prohibiting the delivery, deposit or acceptance of any regulated substance to an UST system that the State Fire Marshal has declared ineligible for such delivery, deposit, or acceptance.

003.17. “Dielectric material” means a material that does not conduct direct electrical current. Dielectric coatings are used to electrically isolate UST systems from the surrounding soils. Dielectric bushings are used to electrically isolate portions of the UST system (e.g., tank from piping).

003.18. “Electrical equipment” means underground equipment that contains dielectric fluid that is necessary for the operation of equipment such as transformers and buried electrical cable.

003.19. “Electronic tank monitoring system” shall mean a tank monitoring system capable of accurately measuring inventory and water level, and warning of overfill during bulk deliveries. This system shall also be capable of detecting a leak of 0.2 gallon per hour.

003.20. “Excavation zone” means the volume containing the tank system and backfill material bounded by the ground surface, walls, and floor of the pit and trenches into which the UST system is placed at the time of installation.

003.21. “Existing tank system” means a tank system used to contain an accumulation of regulated substances or for which installation has commenced on or before January 1, 1989. Installation is considered to have commenced if:

003.21A. The owner or operator has obtained all federal, state, and local approvals or permits necessary to begin physical construction of the site or installation of the tank system; and if,

003.21B. either a continuous on-site physical construction or installation program has begun; or,

003.21C. the owner or operator has entered into contractual obligations - which cannot be canceled or modified without substantial loss - for physical construction at the site or installation of the tank system to be completed within a reasonable time.

003.22. “Farm tank” is a tank located on a tract of land devoted to the production of crops or raising animals, including fish, and associated residences and improvements. A farm tank must be located on the farm property. “Farm” includes fish hatcheries, rangeland and nurseries with growing operations.

003.23. “Flow-through process tank” is a tank that forms an integral part of a production process through which there is a steady, variable, recurring, or intermittent flow of materials during the operation of the process. Flow-through process tanks do not include tanks used for the storage of materials prior to their introduction into the production process or for the storage of finished products or by-products from the production process.

003.24. “Gathering lines” means any pipeline, equipment, facility, or building used in the transportation of oil or gas during oil or gas production or gathering operations.

003.25. “Hazardous substance UST system” means an underground storage tank system that contains a hazardous substance defined in section 101(14) of CERCLA (but not including any substance regulated as a hazardous waste under subtitle C) or any mixture of such substances and petroleum, and which is not a petroleum UST system.

003.26. “Heating oil” means petroleum that is No. 1, No. 2, No. 4 - light, No. 4 - heavy, No. 5 - light, No. 5 - heavy, and No. 6 technical grades of fuel oil; other residual fuel oils (including Navy Special Fuel Oil and Bunker C); and other fuels when used as substitutes for one of these fuel oils. Heating oil is typically used in the operation of heating equipment, boilers, or furnaces.

003.27. “Hydraulic lift tank” means a tank holding hydraulic fluid for a closed-loop mechanical system that uses compressed air or hydraulic fluid to operate lifts, elevators, and other similar devices.

003.28. “Installation permit” shall mean that permit required for the installation of any tank. Permit applications are obtained from and filed with the State Fire Marshal.

003.29. “Leak detector” shall mean a device which, when installed on a pressure system, will indicate the liquid tightness of the piping and dispenser and restrict flow to a maximum of (3) gallons per minute.

003.30. “Maintenance” means the normal operational upkeep to prevent an underground storage tank system from releasing product.

003.31. “Monitoring well” shall include observation well, vapor well, lysimeter, soil gas monitor and any device used to monitor vapor or product leakage.

003.32. “NACE” shall mean NACE International, 1440 South Creek Drive Houston TX 77084-4906, (281) 228-6223.

003.33. “New tank system” means a tank system that will be used to contain an accumulation of regulated substances and for which installation has commenced after January 1, 1989. (See also “Existing Tank System.”)

003.34. “Operating permit” shall mean that permit required to maintain or use any tank for the storage of regulated substances. Initial operating permits are obtained from the State Fire Marshal.

003.35. “Operational life” refers to the period beginning when installation of the tank system has commenced until the time the tank system is properly closed under Chapter 10.

003.36. “Operator” shall mean any person in control of, or having responsibility for, the daily operation of a tank but shall not include a person described in 003.038C below.

003.37. “Overfill release” is a release that occurs when a tank is filled beyond its capacity, resulting in a discharge of the regulated substance to the environment.

003.38. “Owner” shall mean:

003.38A. In the case of a tank in use on July 17, 1986, or brought into use after such date, any person who owns a tank used for the storage or dispensing of regulated substances.

003.38B. In the case of any tank in use before July 17, 1986, but no longer in use on such date, any person who owned such tank immediately before the discontinuation of its use.

003.38C. “Owner” shall not include a person who, without participating in the management of a tank and otherwise not engaged in petroleum production, refining and marketing:

003.38C1. Holds indicia of ownership primarily to protect his or her security interest in a tank or a lien hold interest in the property on or within which a tank is or was located; or

003.38C2. Acquires ownership of a tank or the property on or within which a tank is or was located:

003.38C2(a). Pursuant to a foreclosure of a security interest in the tank or of a lien hold interest in the property; or

003.38C2(b). If the tank or the property was security for an extension of credit previously contracted, pursuant to a sale under judgment or decree, pursuant to a conveyance under a power of sale contained within a trust deed or from a trustee, or pursuant to an assignment or deed in lieu of foreclosure.

003.38C2(c). Ownership of a tank or the property on or within which a tank is or was located shall not be acquired by a fraudulent transfer, as provided in the Uniform Fraudulent Transfer Act.

003.39. “Permanent closure” shall mean that a tank has been closed in place or removed from the ground in accordance with requirements of Chapter 10. Tanks shall not be classified by the State Fire Marshal as permanently closed until all closure and site assessment requirements are met.

003.40. “Permanently out-of-service tank” means a tank that has been taken out of service pending permanent closure. Tanks may remain out of service for one year and then must be permanently closed in accordance with the requirements of Chapter 10.

003.41. “Person” shall mean any individual, firm, joint venture, partnership, corporation, association, political subdivision, cooperative association, or joint-stock association, and includes any trustee, receiver, assignee, or personal representative thereof owning or operating a tank.

003.42. “Product Deliverer” shall mean any individual, firm, joint venture, partnership, limited-liability company, corporation, association, political subdivision, cooperative association, joint-stock association, or any other entity that is in the business of delivering or depositing regulated substances to UST systems.

003.43. “Red Tag” shall mean a tamper resistant device containing State Fire Marshal contact information affixed to the fill pipe of an UST system which clearly identifies the UST as ineligible for deliveries of a regulated substance.

003.44. “Registration permit” shall mean the annual permit owners of all tanks must secure by January 1 of each year.

003.45. “Regulated substance” shall mean:

003.45A. Any hazardous substance defined in section 101(14) of CERCLA, but not including any substance regulated as a hazardous waste under subtitle C of such act.

003.45B. Any petroleum product including, but not limited to, petroleum-based motor or vehicle fuels, gasoline, kerosene, and other products used for the purposes of generating power, lubrication, illumination, heating, or cleaning, but shall not include propane or liquefied natural gas.

003.46. “Release” means any spilling, leaking, emitting, discharging, escaping, leaching or disposing from a tank or any over-filling of a tank into ground water, surface water or subsurface soils.

003.47. “Release detection” is a determination that a release of a regulated substance has occurred from the UST system into the environment or into the interstitial space between the UST system and its secondary barrier or secondary containment around it.

003.48. “Repair” means to restore a tank or UST system component that has caused a release of product from the UST system.

003.49. “Residential tank” is a tank located on property used primarily for dwelling purposes.

003.50. “Secondary containment” shall mean either a single-walled tank and piping system with an excavation liner or a double-walled tank and piping system as specified in Chapter 4, 004.03 below and shall include underdispenser containment pans and tank containment sumps.

003.51. “Septic tank” is a water-tight covered receptacle designed to receive or process, through liquid separation or biological digestion, the sewage discharged from a building sewer. The effluent from such receptacle is distributed for disposal through the soil and settled solids and scum from the tank are pumped out periodically and hauled to a treatment facility.

003.52. “State Fire Marshal” shall include any Deputy State Fire Marshal and authorized personnel acting as a State Fire Marshal delegated authority.

003.53. “Storm-water or wastewater collection system” means piping, pumps, conduits, and any other equipment necessary to collect and transport the flow of surface water run-off resulting from precipitation, or domestic, commercial, or industrial wastewater to and from retention areas or any areas where treatment is designated to occur. The collection of storm water and wastewater does not include treatment except where incidental to conveyance.

003.54. “Surface impoundment” is a natural topographic depression, man-made excavation, or diked area formed primarily of earthen materials (although it may be lined with man-made materials) that is not an injection well.

003.55. “Tank” shall mean any tank or combination of tanks, including underground pipes connected to such tank or tanks, which is used to contain an accumulation of regulated substances and the volume of which is ten percent or more beneath the surface of the ground. Tank shall not include any:

003.55A. Farm or residential tank of one thousand one hundred gallons or less capacity used for storing motor fuel for consumptive use on the premises where stored, subject to a one-time fee.

003.55B. Tank with a storage capacity of one thousand one hundred gallons or less used for storing heating oil for consumptive use on the premises where stored, subject to a one-time fee.

003.55C. Septic Tank

003.55D. Tank situated in an underground area such as a basement, cellar, mineworking, drift, shaft, or tunnel if the tank is situated on or above the surface of the floor.

003.55E. Pipeline facility, including gathering lines:

003.55E1. Regulated under the Natural Gas Pipeline Safety Act of 1979, 49 U.S.C. App. 1671;

003.55E2. Regulated under the Hazardous Liquid Pipeline Safety Act of 1979, 49 U.S.C. App. 2001; or

003.55E3. Which is an intrastate pipeline regulated under state law comparable to the laws prescribed in 003.20E1 and 003.20E2 above.

003.55F. Surface impoundment, pit, pond, or lagoon.

003.55G. Flow-through process tank.

003.55H. Liquid trap or associated gathering lines directly related to oil or gas production and gathering operations.

003.55I. Storm water or wastewater collection system.

003.56. “Temporarily out-of-service tank” means a tank that has been taken out of service pending a return to active storage. Tanks may be temporarily taken out of service for a period of time determined by the requirements in Chapter 10.

003.57. “Upgrade” means the addition or retrofit of some systems such as cathodic protection, lining, or spill and overfill controls to improve the ability of an underground storage tank system to prevent the release of product.

003.58. “UST system” or “Tank System” means an underground storage tank, connected underground piping, underground ancillary equipment, and containment system, if any.

003.59. “Wastewater treatment tank” means a tank that is designed to receive and treat an influent wastewater through physical, chemical, or biological methods.

Legal Citation: Title 159, Chapter 1
Nebraska State Fire Marshal