



Deferred USTs:

RCRA Subtitle I Underground Storage Tanks

BACKGROUND: Underground tanks that contain petroleum or hazardous substances are subject to the Federal Underground Storage Tank (UST) regulations. These regulations, issued by the Environmental Protection Agency (EPA) under authority of Subtitle I of the Resource Conservation and Recovery Act (RCRA) [Section 9003 of the Hazardous and Solid Waste Amendments of 1984 (HSWA)], establish standards for installation, operation, release detection, corrective action, repair, and closure. The Department of Energy (DOE) is required by Section 9007 of RCRA to implement these regulations at DOE facilities with USTs.

Certain categories of USTs are not yet subject to the full Federal UST regulations. Tank systems in these categories are called *deferred USTs*. Although some requirements still apply to these USTs, others do not. Appropriate implementation of the UST regulations requires accurate identification and proper management of deferred USTs.

DOE prepared a guidance document, *Regulated Underground Storage Tanks* (DOE/EH-231/004/0191, June 1992), that describes the UST procedural requirements which regulate tanks and piping for both petroleum and hazardous substance USTs as well as USTs containing radioactive material regulated under the Atomic Energy Act of 1954 (42 U.S.C. 2011). This Information Brief supplements the UST guidance by responding to questions on how the regulations apply to deferred USTs. It is part of a series of Information Briefs which address issues pertinent to specific categories of USTs.

STATUTES: Resource Conservation and Recovery Act, Hazardous and Solid Waste Amendments of 1984, Subtitle I, Regulation of Underground Storage Tanks, Sects. 9001-9010, 42 U.S.C. 6991.

REGULATIONS: 40 CFR 280. *Final rule:* 53 FR 37082, September 23, 1988 (revision of the original final rule, 50 FR 28742, July 15, 1985). *Amendments:* 53 FR 43370, October 26, 1988; 54 FR 5452, February 3, 1989; 54 FR 47081, November 9, 1989; 55 FR 17753, April 27, 1990; 55 FR 18567, May 2, 1990; 55 FR 23738, June 12, 1990; 55 FR 46025, October 31, 1990; 56 FR 26, January 2, 1991; 56 FR 38344, August 13, 1991; 56 FR 66373, December 23, 1991. *Corrections:* 53 FR 51274, December 21, 1988.

REFERENCES: 1. *Regulated Underground Storage Tanks*, DOE/EH-231/004/0191, June 1992.
2. *Musts for USTs*, EPA/530/UST-88/008, September 1988.

What is a deferred UST?

A deferred UST is an underground tank system that fits into one of the following categories:

- a waste-water treatment tank;
- an UST containing radioactive materials regulated under the Atomic Energy Act of 1954 (42 U.S.C. 2011 and following);
- an UST that is part of an emergency generator system at a nuclear power generation facility regulated by the Nuclear Regulatory Commission under 10 CFR Part 50, Appendix A;
- an airport hydrant fuel distribution system; and
- a field-constructed bulk-storage tank.

EPA provides a more detailed description of each of these categories in the preamble to the final UST regulations (53 FR 37109, September 23, 1988) and in the preamble to the proposed UST regulations (52 FR 12687, April 17, 1987).

Also, EPA's release detection requirements (40 CFR 280, Subpart D) are deferred for USTs that store fuel for emergency power generation. However, all of the other UST regulations apply to

emergency power generation USTs. The questions and answers contained in this Information Brief apply to USTs listed in the previous paragraph, and not to emergency power generation USTs.

How are deferred USTs regulated?

Deferred USTs are only subject to the Interim Prohibition (Subpart A, 40 CFR 280.11) and release response and corrective action regulations (Subpart E, 40 CFR 280.60-280.67). EPA deferred regulations for design, construction, installation, and notification (Subpart B of 40 CFR 280); general operating requirements (Subpart C of 40 CFR 280); release detection (Subpart D of 40 CFR 280); release reporting, investigation, and confirmation (Subpart E of 40 CFR 280); and out-of-service and closure requirements. (Subpart G of 40 CFR 280, 52 FR 12758)

What installation requirements apply to deferred USTs?

Deferred USTs are not subject to the same installation requirements as non-deferred USTs. Rather, deferred USTs are subject to the Interim Prohibition. The Interim Prohibition applies to all

USTs installed between May 7, 1985, and December 22, 1988, and to all deferred USTs installed after May 7, 1985. The Interim Prohibition requires USTs to be corrosion protected, made of non-corrodible materials or otherwise designed and constructed to prevent releases resulting from corrosion or structural failure, or to be installed at a site that is determined by a corrosion expert not to be corrosive enough to cause the UST to have a release during its operating life. Also, the tank material(s) must be compatible with the substance(s) to be stored (see 40 CFR 280.11).

What release response requirements apply?

Deferred USTs are subject to the same release response requirements as any other UST. The release response steps are described below.

- ❑ **Initial Response.** Report to the implementing agency within 24 hours; prevent further release; mitigate fire, explosion, and vapor hazards.
- ❑ **Initial Abatement Measures and Site Check.** Remove as much regulated substances from the UST system as necessary to prevent further migration of released substance, monitor and mitigate all fire and safety hazards, remedy all hazards posed by excavated contaminated soils, investigate the possible presence of free product.
- ❑ **Initial Site Characterization.** Gather information about the nature and estimated quantity of the release and submit the information to the implementing agency.
- ❑ **Free Product Removal.** Remove free product from the site to the maximum extent practicable, minimize the spread of free product into previously uncontaminated zones, prevent migration of the product, handle flammable products safely, prepare and submit a free product removal report.
- ❑ **Investigations for Soil and Ground Water Cleanup.** Determine the full extent and location of the contamination, submit all information about the contamination to the implementing agency.
- ❑ **Corrective Action Plan/Public Participation.** Develop a corrective action plan and submit it to the implementing agency, obtain implementing agency approval for the plan, carry out the plan, report the results of carrying out the plan to the implementing agency, cooperate with the implementing agency's efforts to involve the public in the corrective action process.

Will more regulations for deferred USTs be issued in the future?

Yes. After EPA determines how best to regulate each category of deferred USTs, EPA will issue regulations specific to each deferred UST category. This Information Brief describes EPA's basic

requirements for deferred USTs, but the state regulatory authority should be contacted to determine if they have requirements that are different from or are more stringent than EPA's requirements.

What is the difference between a deferred UST and an excluded UST?

Deferred tanks are subject to interim UST requirements (i.e., the Interim Prohibition and release response and correction actions); excluded tanks are not.

RADIOACTIVE MATERIAL

Why did EPA defer regulations for USTs containing radioactive material?

Any radionuclide is a hazardous substance under CERCLA (40 CFR 302). RCRA Subtitle I is applicable to UST systems that contain radioactive wastes (except for radioactive mixed waste regulated under Subtitle C) or other radioactive materials (e.g., radioactive cooling waters). However, these tanks are already regulated by DOE Orders under the authority of the Atomic Energy Act of 1954 (42 U.S.C. 2011). Because these tanks could be subject to overlapping jurisdiction under Subtitle I and the Atomic Energy Act, EPA has deferred full regulation of these tanks pending further study. [see the "Excluded USTs," Information Brief (EH-231-012b/0593, May 1993), 52 *FR* 12688, 53 *FR* 37111, and 40 CFR 280.10 (c)(2)]

Will EPA be issuing regulations for USTs containing radioactive material in the future?

EPA is gathering more information on these tanks to determine if the Atomic Energy Act-authorized regulations and directives fully cover all appropriate areas addressed under Subtitle I. If EPA decides additional regulation for these tanks is necessary to protect human health and the environment, they may remove this deferral and issue more complete radioactive UST regulations. Currently these USTs are subject to the Interim Prohibition and the release response and corrective action provisions of Subtitle I. [53 *FR* 37111, 40 CFR 280.10 (c)(2)]

Questions of policy or questions requiring policy decisions will not be dealt with in EH-231 Information Briefs unless that policy has already been established through appropriate documentation. Please refer any questions concerning the subject material covered in this Information Brief to Jerry DiCerbo, EH-23, (202) 586-5047.

