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Fueling North Carolina's Future

NONREGULATED/NONCOMMERCIAL UNDERGROUND STORAGE TANK (UST) December 1, 2015

On Sept. 18, 2015, Governor McCrory signed Session Law (SL) 2015-241. This law alters the statutory and regulatory authority used by the Division of Waste Management's UST section in managing leaking noncommercial UST sites, as well as in the reimbursement of necessary costs to address those releases. The state of North Carolina began the process of sun-setting the Noncommercial Fund in Session Law 2015-241. No new release will be eligible for the Noncommercial fund after September 30, 2015.

Per SL 2015-241 Section 14.16B.(b), the Department of Environmental Quality (Department) shall not require that a responsible party take immediate action or initial abatement actions at a noncommercial site, with the exception of necessary emergency responses, until such time as the Department has classified the risk posed by the release. Where the release poses an unacceptable risk, additional work will be directed by the Department. Where the release does not pose an unacceptable risk, the responsible party will be notified that no cleanup, no further cleanup, or no further action is required for their release, unless additional information becomes available at a later date to warrant Department reclassification of the site's risk as unacceptable.

Although the Session Law references other dates within Section 14.16A on changes to the Noncommercial Leaking UST Trust Fund, (such as a requirement that releases be reported prior to October 1, 2015 in order to be potentially eligible to access that Fund), no alternate effective dates are defined within Section 14.16B with regard to the regulatory changes.

Please be aware that these regulatory changes apply to existing noncommercial sites and new noncommercial releases reported to the Department by September 30, 2015 which may potentially be eligible for reimbursement, as well as any noncommercial releases reported on or after October 1, 2015 which would be ineligible for Trust Fund reimbursement.

When do the new rules for reported releases on or after Oct. 1, 2015 go into effect?

The statutes in Session Law 2015-241 were signed into law on Friday, Sept. 18, 2015; the statute takes the place of rule until the Underground Storage Tank program staff can promulgate new rules as directed by the statute. This action is currently under review by the program staff. Please note that changes to risk classifications and initial abatement requirements also apply to existing sites that predate Oct. 1, 2015. All work must be directed by the Department based on site risk if the responsible party for an eligible site wants to seek reimbursement.

What are Noncommercial USTs:

- ◆ Farm or residential USTs of 1100 gallons or less which store motor fuel for noncommercial purposes; Tanks located on farm or residential property but used for fuel resale are not exempt from the regulations.
- ◆ USTs of 1100 gallons or less which contain heating oil for consumptive use on the premises where stored;
- ◆ USTs of more than 1100 gallons which contain heating oil for consumptive use by (4) four or fewer households.
- ◆ Commercial USTs where the UST was taken out of operation prior to January 1, 1974 -- but only if, at the time the release is discovered, neither the owner nor the operator owns the land upon which the UST is located.

- ◆ Commercial USTs where the owner of the UST is the owner only as a result of owning the land where the UST is located -- but only if the owner did not know or have reason to know that the UST was located on the property, and the land was not transferred to avoid liability for the UST.
- ◆ Heating oil is defined as: petroleum that is No. 1, No. 2, No. 4-light, No. 4-heavy, No. 5-light, No. 5-heavy, No. 6 technical grades of fuel, and other residential fuel oils (including Navy Special Fuel Oil and Bunker C). Heating oil is typically used in the operation of heating equipment, boilers, or furnaces.
- ◆ Kerosene can also be considered as heating oil. USTs containing kerosene are not regulated if used on the premises where stored for heating purposes and not used for resale.
- ◆ Heating oil tanks are considered commercial USTs if they are greater than 1,100 gallons in capacity (unless they serve four or fewer households). Commercial heating oil tanks must be registered, annual tanks fees must be paid, and an operating permit must be obtained in order to receive fuel.

A Noncommercial UST does not include:

- ◆ septic tanks;
- ◆ pipeline facility;
- ◆ surface impoundment, pit, pond, or lagoon;
- ◆ stormwater/waste water collection system;
- ◆ flow-through process tank;
- ◆ liquid trap and associated gathering lines;
- ◆ storage tank in a basement situated above the surface of the floor.

Procedure in the event of a leak from an Underground/Aboveground Storage Tank:

- ◆ Report leak to North Carolina Division of Waste Management (DWM) Regional Office within 24 hours;
- ◆ Under NC DWM guidance, proceed with cleanup;

Memo Dated: October 15, 2015

North Carolina Department of Environmental Quality (DEQ)

DWM UNDERGROUND STORAGE TANK (UST) SECTION

To: Responsible Parties, Environmental Service Providers, and Other Interested Parties

From: Art Barnhardt, Chief, UST

Subject: Frequently Asked Questions -October 2015 Update (FAQ Volume 2)

FREQUENTLY ASKED QUESTIONS:

1. Are noncommercial tank owners required to auger bore beside the tank to screen soils (and/or collect a soil sample) and report a suspected release to the Regional office?

There are no regulatory requirements for auger bore screening of non-regulated noncommercial USTs. Regardless of the method of discovery, the Regional Office must be notified within 24 hours of any evidence of a suspected or confirmed release.

2. Does a soil sample need to be analyzed by Total Petroleum Hydrocarbon or constituent-specific suites?

Voluntary sampling of soil or water may be done at the request of the tank or property owner, or an interested buyer, to obtain additional information about a potential release. The analytical results from this sampling should be provided to the Department for use in reevaluating risk and potential closure options, if applicable, but will not be directed by the Department at Low Risk sites.

3. Is there any requirement that a noncommercial tank be drained and flushed, then removed, filled in-place, or simply left empty in temporary closure?

The Department recommends that all underground storage tanks that are not in active use be cleaned and removed, where possible. Under Session Law 2015-241, the Department will not require a responsible party (RP) for a non-regulated noncommercial tank release to take any immediate actions (such as tank removal or flushing-and-filling, etc.) until such time as the risk from that discharge has

been evaluated. In a case where the tank is acting as a continuing source of product that is creating the emergency (fire/explosion/vapor, impacted drinking well, or exposed product on some surface, etc.) or where the release is otherwise classified as 'High Risk', the Department may direct some efforts to address the system as necessary to mitigate the emergency or contribute to overall site risk reduction.

4. *If tank removals are required by the lender or new property owner, what will be DEQ's position on the excavated soil? Will the heating oil affected soils excavated still be considered a "waste" and require disposal or can the soils removed associated with tank removal be used as backfill?*

The Department will no longer require any significant removal of soil as part of a noncommercial UST initial abatement action (except where necessary to protect against an emergency risk factor). De minimis overburden that is disturbed solely to provide access for tank removal will not need to be disposed of offsite.

5. *Will UST Section Incident Managers independently determine the risk of the site and either direct contamination cleanup or require a NPR to be filed?*

The Regional Office Incident Manager will screen the site risk based upon all available information (including extra information voluntarily provided by the tank owner) and may direct protection efforts to address any apparent risk factors. If no risk factors exist, but contamination remains in the soil or ground water above the unrestricted use closure standards (suspected or confirmed), then the site will be classified as Low Risk and the responsible party notified that a Notice of Residual Petroleum (NRP) must be filed on the property to receive a No Further Action (NFA) determination from the Department, or prior to completing a property transfer.

6. *Is the NRP only necessary to obtain a NFA letter?*

At a site with contamination remaining in excess of unrestricted use standards, a NRP is statutorily required for a Low Risk site to be closed via NFA, or for a property transfer at any site that is not eligible for unrestricted-use closure.

7. *If a site is low risk and the owner doesn't want an NFA letter, are any additional actions required?*

Session Law 2015-241 indicates that the Department will not require a noncommercial RP to take any immediate actions or perform any soil remediation to close a site determined to be Low Risk. If the RP for a Low Risk site does not wish to sell the property (i.e., no real estate transfer requiring a NRP), they will be informed of the potential exposure pathways for the petroleum contamination likely present within the soil and/or water. Any RP not selling their property may voluntarily conduct assessment or cleanup actions to reach NFA closure with unrestricted use, at their discretion.

8. *If free product is found in a voluntary well or excavation, what actions will be required?*

Measureable free product (i.e., greater than 1/8* of an inch), properly gauged with an oil-water interface probe within a well or basin, may pose an emergency risk factor depending on the fuel type and proximity to other properties or receptors. Certain actions may be directed to assess and abate the emergency risk based upon site-specific conditions. If the product is located in close proximity (less than 30 feet) to a neighboring property owned by someone other than the RP, then additional efforts may be needed to determine the potential risk to that third party's property. If the risk of free product migration or vapor/fire/explosion hazards offsite is low, and the site is screened to be Low Risk overall, then it may require no additional work. If the site is screened as High Risk, or if free product migration or fire/explosion/vapor hazards are found, then some limited work to address that specific risk may be directed.

There is no appreciable change in the definition or required reporting of a release. Determination of a release is made by visual, olfactory (odor) or measurement methods. Measurement in this case is considered to be screening methods such as photoionization detectors (PIDs). The UST program still requires that releases be reported with 24 hours of discovery.

Abandoned Non-Regulated USTs Closure: The State of North Carolina does not require that nonregulated USTs be removed from the ground once they are no longer in operation. Additionally, soil samples are not required unless it is obvious (discovery of evidence of a release (vapors, staining, free product sheen) sample soil to confirm release.) that a release has occurred. However, a tank owner is advised to empty a nonregulated tank once it is no longer being used to limit the chances of a release.

Nonregulated petroleum USTs (e.g., home heating oil USTs) are not required to be removed from the ground or closed by any specific procedure. However, potential buyers are sometimes reluctant to buy property with underground storage tanks. Therefore, although tank owners are not required to remove non-regulated tanks, it may be a good idea in the interests of resale.

Soil or groundwater samples are not required at the time of closure UNLESS a release is suspected or has been confirmed.

Who Is Responsible For Cleanup Of Contamination?

Primarily, the "statutory tank owner" is responsible for cleaning up the contamination. Who the "statutory tank owner" is depends upon when the tank was last used. If it was last used before November 8, 1984 then the last party who used that UST is considered the tank owner (even if that party no longer owns the property.) However, if that tank was used on or after November 8, 1984, anyone that owned the tank would be considered the tank owner even if that person never used it.

If I Am Responsible For Cleaning Up Contamination Caused By A Home Heating Oil Tank, What Do I Do After I Report The Contamination?

First of all, soil samples need to be taken to determine how much contamination is present. Groundwater samples may also need to be taken, especially if groundwater is close to the contaminated soil. A certified laboratory must analyze these samples. To ensure that the sampling is completed according to DWM guidelines, it is recommended that a professional consultant be retained. Depending upon the levels and extent of the contamination, as well as the geology of the site, further assessment may be necessary. The DWM regional staff can help you determine what further steps are needed (see map for addresses and telephone numbers). If further action is required, you will likely have to hire a professional to assess the site and clean up the contamination.

What Kinds Of Companies Do This Sort Of Work?

Many companies do environmental work. Typically, they can be found in the yellow pages of a telephone book under "Environmental Consultants." When choosing a company, we recommend getting several estimates and references. The DWM does require that site assessments and cleanup work be conducted under the responsible charge of a licensed geologist or professional engineer.

REMOVAL OR ABANDONMENT OF UNDERGROUND HOME HEATING OIL TANKS OR OTHER NONREGULATED UNDERGROUND STORAGE TANKS (UST)

- STEP 1. Contact the local Fire Chief or county Fire Marshall to determine if any local codes or ordinances apply to non-regulated underground tanks.
- STEP 2. Locate any buried utilities that could be disturbed during the removal process.
- STEP 3. Remove any remaining product from the tank.
- STEP 4. Remove any surface obstacles that may block access to the tank area.
- STEP 5. Excavate and remove the tank. The tank should be disposed of properly. The local landfill may accept the tank if cleaned of all sludge. A scrap yard may also take the tank.
- STEP 6. Inspect the tank excavation for oil. If oil is observed either visually or olfactory (smelled), soil sampling and notice to the appropriate regional office of the NC Division of Waste Management is required. Even if oil is not observed, a landowner may want to have samples taken to assure him/her or any subsequent owners.
- STEP 7. Backfill excavation. Gravel fill with approximately 1 foot of topsoil is recommended to prevent settlement and promote new grass growth.

NOTE: If the tank is located beneath the home, under a driveway or other location where removal of the tank is not an option, the tank can be abandoned in place by filling it with sand, concrete, or inert foam. Again, the tankowner may want to have soil samples taken to assure him/her or any subsequent landowners that the tank has not leaked.

Following these recommended steps should ensure a safe tank removal and also eliminate any fears about future environmental liabilities associated with tank ownership.

Where do I go if I have more questions?

Please refer to the regional office map (<http://portal.ncdenr.org/web/wq/home/ro>) or telephone numbers and addresses of the DWM regional offices. Ask to speak to someone in the UST Section. You may also contact the UST central office at:

NC DEQ-Division of Waste Management (DMW) UST Section

Physical Address:

Central Office (ENR Building)

217 West Jones Street

Raleigh, NC 27603

Phone: 919-707-8171

North Carolina Division of Waste Management (DWM) Mailing Address

1646 Mail Service Center

Raleigh, NC 27699-1646; Main Office Phone: 919-707-8171

Web site at: <http://portal.ncdenr.org/web/wm/ust>

Mr Art Barnhardt Director NC DWM UST Section at (919) 707-8263 and by email at art.barnhardt@ncdenr.gov .

More specific information can be found in 15A NCAC 2L, or G.S. 143-215.83-85.

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