

**DEPARTMENT OF ENVIRONMENTAL PROTECTION**  
**Bureau of Environmental Cleanup and Brownfields**

**DOCUMENT NUMBER:** 263-0900-014

**TITLE:** Applicability of Chapter 245.453 – Assessing the Site at Closure or Change-In-Service – To Underground Storage Tank (UST) Systems Closed Prior to the Effective Date of the Federal Regulations

**EFFECTIVE DATE:** September 8, 2012

**AUTHORITY:** The Storage Tank and Spill Prevention Act (the Act of July 6, 1989, as amended, 35 P.S. Section 6021.101 et seq.) and Chapter 245.454.

**POLICY:** The corrective action procedures and closure requirements in Chapter 245, Subchapters D and E do not apply to tank systems that were emptied and closed or emptied and abandoned before December 22, 1988 when there is no indication of a release from the system.

**PURPOSE:** To establish when the closure requirements of Subchapter E of Chapter 245 are applicable to tanks closed or abandoned prior to the effective date of the federal regulations.

**APPLICABILITY:** This guidance applies to owners and operators of USTs which were emptied and taken “out of operation” prior to the effective date of the federal closure regulations.

**DISCLAIMER:** The policies and procedures outlined in this guidance are intended to supplement existing requirements. Nothing in the policies or procedures shall affect regulatory requirements.

The policies and procedures herein are not an adjudication or a regulation. There is no intent on the part of the DEP to give the rules in these policies that weight or deference. This document establishes the framework within which DEP will exercise its administrative discretion in the future. DEP reserves the discretion to deviate from this policy statement if circumstances warrant.

**PAGE LENGTH:** 4 pages

## Applicability of Chapter 245, Subchapters D and E to Previously Closed UST Systems

**GUIDANCE: Tanks which meet all of the following requirements are non-regulated and do not have to follow the Department of Environmental Protection (Department or DEP) storage tank regulations (this includes the closure procedures in Chapter 245, Subchapters D and E for USTs):**

- The tank was emptied before December 22, 1988.
- The tank has remained out of operation since before December 22, 1988.
- The tank does not pose a current or potential threat to human health and the environment.

Included in this exempt category are “out of operation” USTs which are in compliance with the state fire marshal temporary closure regulations when placed in this condition prior to December 22, 1988. These provisions require that all flammable or combustible liquids be removed from the UST and the UST be completely filled with water.

If activities such as closure are to be performed on unregulated tank systems they must be conducted in a manner which complies with applicable laws such as the Clean Streams Law and Solid Waste Management Act, and their associated regulations. It should also be noted that exempt USTs may be required to follow the regulations of the state fire marshal and local ordinances. Situations not covered by laws, ordinances or government regulations, should be handled in accordance with applicable industry practices.

Reporting and cleanup of any contamination from unregulated tanks must be done in accordance with the Clean Streams Law, Act 2-1995 and regulations promulgated thereunder.

Tanks storing or having stored a regulated substance which do not meet all of the above requirements are regulated and must follow the normal Department closure procedures.

USTs storing regulated substances for which notification (registration) was received showing the tanks were in operation on or after December 22, 1988, or which pose a current or potential threat to human health and the environment are regulated and must follow Department regulations, including normal closure procedures found in *Closure Requirements for Underground Storage Tank Systems*.

### **DEFINITIONS:**

**Current or potential threat to human health and the environment** – an UST is considered to pose a current or potential threat to human health and the environment if, prior to commencing the closure activities, there is an indication of a release of regulated substance from the UST as a result of evidence of a regulated substance or vapors in soils, basements, sewer lines, utility lines, surface water or groundwater in the surrounding area or if the UST is not empty.

**Empty** – an UST system is empty when all materials have been removed using commonly employed practices so that no more than 2.5 centimeters (one inch) of residue, or 0.3 percent by weight of the total capacity of the UST system, remain in the UST system.

**Out of Operation** – an UST is considered out of operation if it has not had regulated substance deposited in it or dispensed from it on or after December 22, 1988.

## **DISCUSSION:**

On December 22, 1988, the federal requirements for the closure of USTs became effective. These regulations are found at 40 CFR Part 280, Subpart G – Out-of-Service UST Systems and Closure.

On August 5, 1989, the state Storage Tank and Spill Prevention Act became effective in Pennsylvania. This act provided authority for the Department to develop regulations establishing the: 1) standards, procedures and requirements for closure of tanks by owners and operators to prevent future releases of regulated substances into the environment, 2) methods and procedures for the removal of tanks from service by the owner and operator, and 3) requirements for reporting by the owner or operator of intended and completed closure of regulated tanks.

On September 21, 1991, the Department adopted 40 CFR Part 280, Subpart G as the closure regulations for all state and federally regulated USTs. On December 21, 1993, the Department issued a technical document titled, *Closure Requirements For Underground Storage Tank Systems* 263-4500-601 to help owners and operators comply with 40 CFR Part 280, Subpart G. A revision of this document became effective on August 1, 1996. On October 11, 1997, 40 CFR Part 280, Subpart G was codified into state regulations at Chapter 245 §§245.451 - 245.455.

The tanks specified as exempt in this guidance do not meet the definition of UST specified in the act and Chapter 245 in that they did not contain an accumulation of regulated substance as required by the definition. This part of the definition is the same as the federal definition of UST in Subtitle I of RCRA and 40 CFR 280.

Although authority was granted to the Department (now contained within Chapter 245.454) to revisit the exempt sites, the Department feels that this is not an effective use of resources. As discussed in the preamble to the federal rules (53 FR 37184 and 37185), “a broad brush approach [to revisiting previously closed tanks] would be very difficult, if not impossible, to enforce because of significant problems in locating the large number of tanks abandoned in the past, in identifying previous owners and operators, and in properly apportioning responsibility for the site assessment and closure activities.”

“[For] tanks closed or abandoned before December 22, 1988, the closure provisions should only be applied selectively under the discretionary authority of the implementing agency. This ... approach ... reduces the unnecessary burden upon owners and operators of the discovered abandoned tanks by eliminating the requirement for them to revisit and conduct a site assessment at all tanks that have been previously closed, and removes the uncertainty associated with the improper closure standard.”

“[The] final rule deletes the proposed requirement to conduct site assessments at all tanks improperly closed before December 22, 1988. The final rule, however, requires owners and operators of abandoned tanks to comply with the closure provisions if so directed by the implementing agency when it determines there is a reasonable probability that the tank poses a potential threat to human health and the environment either now or in the future.”

When does an UST pose a current or potential threat to human health and the environment? When there is an indication of a release of regulated substance from the tank or when the tank is not empty.

Indication of a release includes evidence of a regulated substance or vapors in soils, basements, sewer lines, utility lines, surface water or groundwater in the area surrounding the tank system.

The definition of the term “empty” is taken from the definition of “empty container” set forth in U.S. Environmental Protection Agency regulations under Subtitle C of RCRA. It is the same definition used in the UST regulations when discussing temporary closure. This definition requires all materials to be removed that can be removed using commonly employed practices. No more than 2.5 centimeters (one inch) of residue or 0.3 percent by weight of the total capacity of the tank can remain in the system.

The Department believes that an empty UST will not pose an unreasonable risk to human health and the environment if a release of residue occurs. This is the same logic used in not requiring maintenance of release detection during the temporary closure of “empty” USTs.

The Department believes that this policy is consistent with the language and intention of RCRA Subtitle I, the Storage Tank and Spill Prevention Act, as amended, and the regulations promulgated under these laws.