

(A) Applicants for Class A and B operator registration shall submit a registration application to the Executive Secretary, shall document proper training, and shall pay any applicable fees.

(B) Class C operators shall be designated by a Class B operator. The Class B operator shall maintain a list identifying the Class C operators for each UST facility. The list shall identify each Class C operator, the date of training, and the trainer. Identification on the list shall serve as the operator registration for Class C operators.

(C) A registered Class A or B operator may act as a Class C operator by meeting the training and registration requirements for a Class C operator.

(D) Class A and B registration shall be effective for a period of three years, and shall not lapse or expire if the registered operator leaves the employment of the company under which the registration was obtained.

(3) Renewal of registration.

(A) Class A and B operators shall apply for renewal of registration not more than six months prior to the expiration of the registration by:

- (i) submitting a completed application form;
- (ii) paying any applicable fees; and
- (iii) documenting successful completion of any re-training required by Subsection R311-201-12(k).

(B) If the Executive Secretary determines that the operator meets all the requirements for registration, the Executive Secretary shall renew the applicant's registration for a period equal to the initial registration.

(C) Any applicant for renewal who has a registration that has been expired for more than two years prior to submitting a renewal application shall successfully satisfy the training and examination requirements for initial registration under Subsection R311-201-12(j)(1) before receiving the renewal registration.

(k) Re-training.

(1) A Class A operator shall be subject to re-training requirements if any facility for which the Class A operator has oversight is found to be out of compliance due to:

- (A) lapsing of certificate of compliance;
- (B) failure to provide acceptable financial responsibility;

or

(C) failure to ensure that Class B and C operators are trained and registered.

(2) A Class B operator shall be subject to re-training requirements if a facility for which the Class B operator has oversight is found to be out of compliance due to:

(A) failure to document significant operational compliance, as determined by the EPA Release Prevention Compliance Measures Matrix and Release Detection Compliance Measures Matrix, both [dated September 30, 2003, and ] incorporated by reference in Subsection R311-206-10(b)(1);

(B) failure to perform UST operator inspections required by Subsection R311-201-12(h);

(C) failure to have the tag or other identifying method issued under Subsection 19-6-411(7) properly in place on each tank; or

(D) failure to ensure that Class C operators are trained and registered, and are on-site during operating hours.

(3) To be re-trained, Class A and Class B operators shall successfully complete the appropriate Class A or B operator training course and examination, or shall complete an equivalent re-training course and examination approved by the Executive Secretary.

(4) Class A and B operators shall be re-trained within 90 days of the date of the determination of non-compliance, and shall submit documentation showing successful completion of the re-training to the Executive Secretary within 30 days of the re-training. If the documentation is not received, the Executive Secretary may revoke the certificate of compliance for the facility for failure to demonstrate substantial compliance with all state and federal statutes, rules and regulations.

(5) If the documentation of re-training is not received by the Executive Secretary within six months of the date of determination of non-compliance, the Class A or B operator's registration will lapse. To re-register, the operator shall meet the requirements of Subsection R311-201-12(j)(1) and (2).

(6) If a facility for which a Class A or B operator has oversight is found to be out of compliance under Subsections R311-201-12(k)(1) or (2), re-training shall not be required if the Class A or B operator successfully completes and documents re-training under Subsections R311-201-12(k)(3) and (4) for a prior determination of non-compliance that occurred during the previous nine months.

(l) Reciprocity.

(1) If the Executive Secretary determines that another state's operator training program is equivalent to the operator training program provided in this rule, he may accept an applicant's Class A or Class B registration application, provided that the applicant:

- (A) submits a completed application form;
- (B) passes the Utah UST rules and regulations examination referenced in Subsection R311-201-12(j)(1)(D)(ii), and
- (C) submits payment of any applicable registration fees.

(2) The Class A or Class B registration shall be valid until the Utah registration expiration described in Subsection R311-201-12(j)(2)(D).

**KEY:** hazardous substances, petroleum, underground storage tanks

**Date of Enactment or Last Substantive Amendment:** ~~August 18, 2009~~ 2011

**Notice of Continuation:** April 18, 2007

**Authorizing, and Implemented or Interpreted Law:** 19-6-105; 19-6-402; 19-6-403

Environmental Quality, Environmental  
Response and Remediation  
**R311-203**  
Underground Storage Tanks: Technical  
Standards

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 34272

FILED: 12/01/2010

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The Division's yearly fee schedule established under Section 63J-1-504 contains a provision for assessing a higher underground storage tank (UST) registration fee for tanks that are significantly out of compliance. The rule change sets forth the criteria under which the higher fee will be assessed. Adding a requirement for a remote reading of galvanic cathodic protection systems allows for a more accurate determination of the level of protection provided by the system, and reflects current practice. The remote reading is generally taken and is recommended by industry standards.

**SUMMARY OF THE RULE OR CHANGE:** A tank will be assessed a higher registration fee for being significantly out of compliance if it is out of Significant Operational Compliance (SOC) for more than six months after being found not to meet any of the criteria for SOC in the EPA SOC matrices. The higher fee will be due on July 1 following the 6-month period of non-compliance. Adds a requirement for one remote reading for tests of galvanic cathodic protection systems.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 19-6-105 and Section 19-6-403 and Section 19-6-408

**ANTICIPATED COST OR SAVINGS TO:**

◆ **THE STATE BUDGET:** As an UST owner, the state could incur an additional cost of \$200 per non-compliant tank on which the higher registration fee is assessed. The aggregate cost would depend on the number of tanks that are out of compliance. As a tank owner, the state could also be subject to a slightly higher cost for cathodic protection tests if the remote reading requirement results in an increased cost for the tests. Most testers now take remote readings, so the rule generally reflects current practice and would not result in any additional cost to a tank owner. If the tester does not currently take remote readings, an additional cost of approximately \$25 to \$50 per test could result. The aggregate cost would depend on the number of tests performed.

◆ **LOCAL GOVERNMENTS:** As an UST owner, a local government could incur an additional cost of \$200 (or \$100 for tanks that do not participate in the Utah Petroleum Storage Tank Fund) per non-compliant tank on which the higher registration fee is assessed. The aggregate cost would depend on the number of tanks that are out of compliance. A local government that is a UST owner could also be subject to a slightly higher cost of approximately \$25

to \$50 per test for cathodic protection tests done by testers who do not currently take a remote reading. Aggregate costs would depend on the number of tests conducted.

◆ **SMALL BUSINESSES:** As an UST owner, a small business could incur an additional cost of \$200 (or \$100 for tanks that do not participate in the Utah Petroleum Storage Tank Fund) per non-compliant tank on which the higher registration fee is assessed. The aggregate cost would depend on the number of tanks that are out of compliance. According to current levels of compliance, and an assumption that the higher fee would be an incentive for some UST owners to resolve compliance issues quickly, an aggregate cost of up to approximately \$30,000 could be expected. A small business that is a UST owner could also be subject to a slightly higher cost of approximately \$25 to \$50 per test for cathodic protection tests requiring a remote reading, if not already being done by the tester. The aggregate cost would be approximately \$1,000 per year, based on the number of tests performed yearly and an estimated number of testers who do not currently take remote readings.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Other persons who are underground storage tank owners could incur an additional cost of \$200 (or \$100 for tanks that do not participate in the Utah Petroleum Storage Tank Fund) per non-compliant tank on which the higher registration fee is assessed. The aggregate cost would depend on the number of tanks that are out of compliance. According to current levels of compliance, and an assumption that the higher fee would be an incentive for some UST owners to resolve compliance issues quickly, an aggregate cost of up to approximately \$30,000 could be expected. An UST owner could also be subject to a slightly higher cost of approximately \$25 to \$50 per test for cathodic protection tests requiring a remote reading, if not already being done by the tester. The aggregate cost would be approximately \$1,000 per year, based on the number of tests performed yearly and an estimated number of testers who do not currently take remote readings.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** An additional cost of \$100 or \$200 per non-compliant tank if the higher UST registration fee is assessed. An additional cost of approximately \$25 to \$50 per cathodic protection test for tests conducted by testers who do not currently take the remote reading.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** UST owners who are significantly out of compliance should be able to come into compliance within six months of an inspection, thereby avoiding the higher registration fee. Almost all compliance issues relate to tests and monitoring deficiencies that can be corrected by better record keeping and performing required periodic testing and monitoring of the tank system. The cost of a remote reading for cathodic protection tests would be incurred only every three years and would not be a significant cost.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
 ENVIRONMENTAL QUALITY  
 ENVIRONMENTAL RESPONSE AND  
 REMEDIATION  
 ROOM FIRST FLOOR  
 195 N 1950 W  
 SALT LAKE CITY, UT 84116-3085  
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
 ♦ Gary Astin by phone at 801-536-4103, by FAX at 801-359-8853, or by Internet E-mail at [gastin@utah.gov](mailto:gastin@utah.gov)

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 01/14/2011

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:  
 ♦ 01/06/2011 02:00 PM, MASOB, 195 N 1950 W, Room 1015, Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 02/14/2011

AUTHORIZED BY: Brent Everett, Director

### **R311. Environmental Quality, Environmental Response and Remediation.**

#### **R311-203. Underground Storage Tanks: Technical Standards. R311-203-4. Underground Storage Tank Registration Fee.**

(a) Registration fees shall be assessed by the Department against all tanks which are not permanently closed for the entire fiscal year, and shall be billed per facility.

(b) Registration fees shall be due on July 1 of the fiscal year for which the assessment is made, or, for underground storage tanks brought into use after the beginning of the fiscal year, underground storage tank registration fees shall be due when the tanks are brought into use, as a requirement for receiving a certificate of compliance.

(c) The Executive Secretary may waive all or part of the penalty assessed under Subsection 19-6-408(5) if no fuel has been dispensed from the tank on or after July 1, 1991 and if the tank has been properly closed according to Sections R311-204 and R311-205, or in other circumstances as approved by the Executive Secretary.

(d) The Executive Secretary shall issue a certificate of registration to owners or operators for individual underground storage tanks at a facility if:

- (1) the tanks are in use or are temporarily closed according to 40 CFR Part 280 Subpart G; and,
- (2) the underground storage tank registration fee has been paid.

(e) Pursuant to 19-6-408(5)(c), all past due registration fees, late payment penalties and interest must be paid before the Executive Secretary may issue or re-issue a certificate of compliance regardless of whether there is a new owner or operator at the facility. However, the Executive Secretary may decline active

collection of past due registration fees, late payment penalties and interest if a certificate of compliance is not issued and the new owner or new operator properly closes the underground storage tanks within one year of becoming the new owner or operator of the facility.

(f) An underground storage tank will be assessed the higher registration fee established under Section 63J-1-504 if it is found to be out of significant operational compliance with leak prevention or leak detection requirements during an inspection, and remains out of compliance for six months or greater following the initial inspection. The higher registration fee shall be due July 1 following the documented six-month period of non-compliance. A tank will be out of significant operational compliance if it fails to meet any of the significant operational compliance measures stated in the EPA compliance measures matrices incorporated by Subsection R311-206-10(b)(1).

#### **R311-203-5. UST Testing Requirements.**

(a) Tank tightness testing. The testing method must be able to test the UST system at the maximum level that could contain regulated substances. Tanks with overflow prevention devices that prevent product from entering the upper portion of the tank may be tested at the maximum level allowed by the overflow device.

(b) Automatic line leak detector testing. Line leak detectors shall be tested annually for functionality according to 40 CFR 280.44(a) and R311-200-1(b)(4). An equivalent test may be approved by the Executive Secretary. The test shall simulate a leak and provide a determination based on the test whether the leak detector functions properly and meets the requirements of 40 CFR 280.44(a). If a sump sensor is used as an automatic line leak detector, the sensor shall be located as close as is practical to the lowest portion of the sump.

(c) Containment sump testing. When a sump sensor is used as a leak detector, the secondary containment sump shall be tested for tightness annually according to the manufacturer's guidelines or standards, or by another method approved by the Executive Secretary.

(d) Cathodic protection testing. Cathodic protection tests shall meet the inspection criteria outlined in 40 CFR 280.31(b)(2), or other criteria approved by the Executive Secretary. The tester who performs the test shall provide the following information: location of at least three test points per tank; location of one remote test point for galvanic systems; test results in volts or millivolts; pass/fail determination for each tank; line, flex connector, or other UST system component tested, the criteria by which the pass/fail determination is made, and a site plat showing locations of test points. A re-test of any cathodic protection system is required within six months of any below-grade work that may harm the integrity of the system.

(e) UST testers performing tank and line tightness testing shall include the following as part of the test report: pass/fail determination for each tank or line tested, the measured leak rate, the test duration, the product level for tank tests, the pressure used for pressure tests, the type of test, and the test equipment used.

**KEY: fees, hazardous substances, petroleum, underground storage tanks**  
**Date of Enactment or Last Substantive Amendment: ~~August 18, 2008~~ 2011**