

**Effective 7/1/2015**

**19-6-402 Definitions.**

As used in this part:

- (1) "Abatement action" means action taken to limit, reduce, mitigate, or eliminate:
  - (a) a release from an underground storage tank or petroleum storage tank; or
  - (b) the damage caused by that release.
- (2) "Board" means the Waste Management and Radiation Control Board created in Section 19-1-106.
- (3) "Bodily injury" means bodily harm, sickness, disease, or death sustained by a person.
- (4) "Certificate of compliance" means a certificate issued to a facility by the director:
  - (a) demonstrating that an owner or operator of a facility containing one or more petroleum storage tanks has met the requirements of this part; and
  - (b) listing all tanks at the facility, specifying:
    - (i) which tanks may receive petroleum; and
    - (ii) which tanks have not met the requirements for compliance.
- (5) "Certificate of registration" means a certificate issued to a facility by the director demonstrating that an owner or operator of a facility containing one or more underground storage tanks has:
  - (a) registered the tanks; and
  - (b) paid the annual underground storage tank fee.
- (6)
  - (a) "Certified underground storage tank consultant" means a person who:
    - (i) for a fee, or in connection with services for which a fee is charged, provides or contracts to provide information, opinions, or advice relating to underground storage tank release:
      - (A) management;
      - (B) abatement;
      - (C) investigation;
      - (D) corrective action; or
      - (E) evaluation;
    - (ii) has submitted an application to the director;
    - (iii) received a written statement of certification from the director; and
    - (iv) meets the education and experience standards established by the board under Subsection 19-6-403(1)(a)(vii).
  - (b) "Certified underground storage tank consultant" does not include:
    - (i)
      - (A) an employee of the owner or operator of the underground storage tank; or
      - (B) an employee of a business operation that has a business relationship with the owner or operator of the underground storage tank, and markets petroleum products or manages underground storage tanks; or
    - (ii) a person licensed to practice law in this state who offers only legal advice on underground storage tank release:
      - (A) management;
      - (B) abatement;
      - (C) investigation;
      - (D) corrective action; or
      - (E) evaluation.
- (7) "Closed" means an underground storage tank no longer in use that has been:
  - (a) emptied and cleaned to remove all liquids and accumulated sludges; and
  - (b)

- (i) removed from the ground; or
  - (ii) filled with an inert solid material.
- (8) "Corrective action plan" means a plan for correcting a release from a petroleum storage tank that includes provisions for any of the following:
- (a) cleanup or removal of the release;
  - (b) containment or isolation of the release;
  - (c) treatment of the release;
  - (d) correction of the cause of the release;
  - (e) monitoring and maintenance of the site of the release;
  - (f) provision of alternative water supplies to a person whose drinking water has become contaminated by the release; or
  - (g) temporary or permanent relocation, whichever is determined by the director to be more cost-effective, of a person whose dwelling has been determined by the director to be no longer habitable due to the release.
- (9) "Costs" means money expended for:
- (a) investigation;
  - (b) abatement action;
  - (c) corrective action;
  - (d) judgments, awards, and settlements for bodily injury or property damage to third parties;
  - (e) legal and claims adjusting costs incurred by the state in connection with judgments, awards, or settlements for bodily injury or property damage to third parties; or
  - (f) costs incurred by the state risk manager in determining the actuarial soundness of the fund.
- (10) "Covered by the fund" means the requirements of Section 19-6-424 have been met.
- (11) "Director" means the director of the Division of Environmental Response and Remediation.
- (12) "Division" means the Division of Environmental Response and Remediation, created in Subsection 19-1-105(1)(c).
- (13) "Dwelling" means a building that is usually occupied by a person lodging there at night.
- (14) "Enforcement proceedings" means a civil action or the procedures to enforce orders established by Section 19-6-425.
- (15) "Facility" means all underground storage tanks located on a single parcel of property or on any property adjacent or contiguous to that parcel.
- (16) "Fund" means the Petroleum Storage Tank Trust Fund created in Section 19-6-409.
- (17) "Operator" means a person in control of or who is responsible on a daily basis for the maintenance of an underground storage tank that is in use for the storage, use, or dispensing of a regulated substance.
- (18) "Owner" means:
- (a) in the case of an underground storage tank in use on or after November 8, 1984, a person who owns an underground storage tank used for the storage, use, or dispensing of a regulated substance; and
  - (b) in the case of an underground storage tank in use before November 8, 1984, but not in use on or after November 8, 1984, a person who owned the tank immediately before the discontinuance of its use for the storage, use, or dispensing of a regulated substance.
- (19) "Petroleum" includes crude oil or a fraction of crude oil that is liquid at:
- (a) 60 degrees Fahrenheit; and
  - (b) a pressure of 14.7 pounds per square inch absolute.
- (20) "Petroleum storage tank" means a tank that:
- (a)
    - (i) is underground;

- (ii) is regulated under Subtitle I of the Resource Conservation and Recovery Act, 42 U.S.C. Sec. 6991c, et seq.; and
  - (iii) contains petroleum; or
- (b) the owner or operator voluntarily submits for participation in the Petroleum Storage Tank Trust Fund under Section 19-6-415.
- (21) "Petroleum Storage Tank Restricted Account" means the account created in Section 19-6-405.5.
- (22) "Program" means the Environmental Assurance Program under Section 19-6-410.5.
- (23) "Property damage" means physical injury to, destruction of, or loss of use of tangible property.
- (24)
  - (a) "Regulated substance" means petroleum and petroleum-based substances comprised of a complex blend of hydrocarbons derived from crude oil through processes of separation, conversion, upgrading, and finishing.
  - (b) "Regulated substance" includes motor fuels, jet fuels, distillate fuel oils, residual fuel oils, lubricants, petroleum solvents, and used oils.
- (25)
  - (a) "Release" means spilling, leaking, emitting, discharging, escaping, leaching, or disposing a regulated substance from an underground storage tank or petroleum storage tank.
  - (b) A release of a regulated substance from an underground storage tank or petroleum storage tank is considered a single release from that tank system.
- (26)
  - (a) "Responsible party" means a person who:
    - (i) is the owner or operator of a facility;
    - (ii) owns or has legal or equitable title in a facility or an underground storage tank;
    - (iii) owned or had legal or equitable title in a facility at the time petroleum was received or contained at the facility;
    - (iv) operated or otherwise controlled activities at a facility at the time petroleum was received or contained at the facility; or
    - (v) is an underground storage tank installation company.
  - (b) "Responsible party" is as defined in Subsections (26)(a)(i), (ii), and (iii) does not include:
    - (i) a person who is not an operator and, without participating in the management of a facility and otherwise not engaged in petroleum production, refining, and marketing, holds indicia of ownership:
      - (A) primarily to protect the person's security interest in the facility; or
      - (B) as a fiduciary or custodian under Title 75, Utah Uniform Probate Code, or under an employee benefit plan; or
    - (ii) governmental ownership or control of property by involuntary transfers as provided in CERCLA Section 101(20)(D), 42 U.S.C. Sec. 9601(20)(D).
  - (c) The exemption created by Subsection (26)(b)(i)(B) does not apply to actions taken by the state or its officials or agencies under this part.
  - (d) The terms and activities "indicia of ownership," "primarily to protect a security interest," "participation in management," and "security interest" under this part are in accordance with 40 C.F.R. Part 280, Subpart I, as amended, and 42 U.S.C. Sec. 6991b(h)(9).
  - (e) The terms "participate in management" and "indicia of ownership" as defined in 40 C.F.R. Part 280, Subpart I, as amended, and 42 U.S.C. Sec. 6991b(h)(9) include and apply to the fiduciaries listed in Subsection (26)(b)(i)(B).
- (27) "Soil test" means a test, established or approved by board rule, to detect the presence of petroleum in soil.

- (28) "State cleanup appropriation" means money appropriated by the Legislature to the department to fund the investigation, abatement, and corrective action regarding releases not covered by the fund.
- (29) "Underground storage tank" means a tank regulated under Subtitle I, Resource Conservation and Recovery Act, 42 U.S.C. Sec. 6991c, et seq., including:
- (a) a petroleum storage tank;
  - (b) underground pipes and lines connected to a storage tank;
  - (c) underground ancillary equipment;
  - (d) a containment system; and
  - (e) each compartment of a multi-compartment storage tank.
- (30) "Underground storage tank installation company" means a person, firm, partnership, corporation, governmental entity, association, or other organization who installs underground storage tanks.
- (31) "Underground storage tank installation company permit" means a permit issued to an underground storage tank installation company by the director.
- (32) "Underground storage tank technician" means a person employed by and acting under the direct supervision of a certified underground storage tank consultant to assist in carrying out the functions described in Subsection (6)(a).

Amended by Chapter 451, 2015 General Session