

***Effective 5/5/2021***

***Superseded 5/4/2022***

**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 a petroleum storage tank; or
  - (b) the damage caused by that release.
- (2) "Aboveground petroleum storage tank" means a storage tank that is, by volume, less than 10% buried in the ground, including the pipes connected to the storage tank and:
  - (a)
    - (i) has attached underground piping; or
    - (ii) rests directly on the ground;
  - (b) contains regulated substances;
  - (c) has the capacity to hold 501 gallons or more; and
  - (d) is not:
    - (i) used in agricultural operations, as defined by the board by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;
    - (ii) used for heating oil for consumptive use on the premises where stored;
    - (iii) related to a petroleum facility under SIC Code 2911 or 5171 of the 1987 Standard Industrial Classification Manual of the federal Executive Office of the President, Office of Management and Budget;
    - (iv) directly related to oil or gas production and gathering operations; or
    - (v) used in the fueling of aircraft or ground service equipment at a commercial airport that serves passengers or cargo, with commercial airport defined in Section 72-10-102.
- (3) "Board" means the Waste Management and Radiation Control Board created in Section 19-1-106.
- (4) "Bodily injury" means bodily harm, sickness, disease, or death sustained by a person.
- (5) "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 petroleum storage tanks at the facility, specifying:
    - (i) which tanks may receive petroleum; and
    - (ii) which tanks have not met the requirements for compliance.
- (6) "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 petroleum storage tanks has:
  - (a) registered the tanks; and
  - (b) paid the annual tank fee.
- (7)
  - (a) "Certified petroleum 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 petroleum 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.
- (8) "Closed" means a petroleum storage tank that is no longer in use that has been:
  - (a) emptied and cleaned to remove the liquids and accumulated sludges; and
  - (b)
    - (i) removed along with all underground components; or
    - (ii) filled with an inert solid material, and in the case of piping, secured and capped.
- (9) "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.
- (10) "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.
- (11) "Covered by the fund" means the requirements of Section 19-6-424 have been met.
- (12) "Director" means the director of the Division of Environmental Response and Remediation.
- (13) "Division" means the Division of Environmental Response and Remediation, created in Subsection 19-1-105(1)(c).
- (14) "Dwelling" means a building that is usually occupied by a person lodging there at night.
- (15) "Enforcement proceedings" means a civil action or the procedures to enforce orders established by Section 19-6-425.

- (16) "Facility" means the petroleum storage tanks located on a single parcel of property or on any property adjacent or contiguous to that parcel.
- (17) "Fund" means the Petroleum Storage Tank Trust Fund created in Section 19-6-409.
- (18) "Operator" means a person in control of or who is responsible on a daily basis for the maintenance of a petroleum storage tank that is in use for the storage, use, or dispensing of a regulated substance.
- (19) "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;
  - (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; and
  - (c) in the case of an aboveground petroleum storage tank, a person who owns the aboveground petroleum storage tank.
- (20) "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.
- (21) "Petroleum storage tank" means a tank that:
  - (a) is an underground storage tank;
  - (b) is an aboveground petroleum storage tank; or
  - (c) is a tank containing regulated substances that is voluntarily submitted for participation in the Petroleum Storage Tank Trust Fund under Section 19-6-415.
- (22) "Petroleum Storage Tank Restricted Account" means the account created in Section 19-6-405.5.
- (23) "Program" means the Environmental Assurance Program under Section 19-6-410.5.
- (24) "Property damage" means physical injury to, destruction of, or loss of use of tangible property.
- (25)
  - (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.
- (26)
  - (a) "Release" means spilling, leaking, emitting, discharging, escaping, leaching, or disposing a regulated substance from a petroleum storage tank into ground water, surface water, or subsurface soils.
  - (b) A release of a regulated substance from a petroleum storage tank is considered a single release from that tank system.
- (27)
  - (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 a petroleum 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 (27)(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 (27)(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 (27)(b)(i)(B).
- (28) "Rests directly on the ground" means that at least some portion of a petroleum storage tank situated aboveground is in direct contact with soil.
- (29) "Soil test" means a test, established or approved by board rule, to detect the presence of petroleum in soil.
- (30) "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.
- (31) "Underground piping" means piping that is buried in the ground that is in direct contact with soil and connected to an aboveground petroleum storage tank.
- (32) "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) underground pipes and lines connected to a storage tank;
  - (b) underground ancillary equipment;
  - (c) a containment system; and
  - (d) each compartment of a multi-compartment storage tank.
- (33) "Underground storage tank installation company" means a person, firm, partnership, corporation, governmental entity, association, or other organization that installs underground storage tanks.
- (34) "Underground storage tank installation company permit" means a permit issued to an underground storage tank installation company by the director.
- (35) "Underground storage tank technician" means a person employed by and acting under the direct supervision of a certified petroleum storage tank consultant to assist in carrying out the functions described in Subsection (7)(a).