

**USTAC Advisory Committee**  
**Division of Waste & Hazardous Substance**  
**Tank Management Section**  
**391 Lukens Drive**  
**New Castle, Delaware**  
**November 14, 2018**

**AGENDA**


10:00-10:05	Welcome and Introductions	Alex Rittberg
10:05-10:15	Discussions with EPA/Compliance Dates	Alex Rittberg
10:15-10:30	Regulation Promulgation Schedule	Eileen Butler
10:30-11:45	Summary of Regulatory Changes	Alex Rittberg Barb Fawcett Lori Spagnolo Eileen Butler
11:45-11:55	Public Comments	General Public
11:55 - 12:00	Next Steps	Eileen Butler





November 14, 2018

# Delaware USTAC



## Purpose of USTAC

- The purpose of the Underground Storage Tank Advisory Committee is to provide feedback and assist the Department in developing changes to the Delaware Underground Storage Tank Regulations and improving Delaware's Underground Storage Tank Program.
- Members are expected to share their perspective and technical expertise to assist DNREC in these efforts.



## Meeting Governance

**Chair:** Alex Rittberg and Co-Chair Eileen Butler (Primary Facilitators)  
 Focuses on the process – the how of the session. Preserves the integrity and disciplined use of the process. Guides the process without directing it. Invites people to attend the meeting and designates them as committee members.

**Committee Members:** Share responsibility for a successful group session with the primary facilitator.

**Note Taker:** Melina Lounsbury Takes detailed notes of the meeting for distribution later.

**Timekeeper:** Sara Golladay Monitors how long the group is taking to accomplish its tasks. Provides regular updates to keep group members moving forward.



## Meeting Governance

### USTTAC Meeting Ground Rules

- Start and End on Time
- No side conversations
- Respect the agenda
- Keep an open mind
- Respect differences of opinion
- No personal attacks
- Be positive
- Speak one at a time and give everyone a chance to speak
- Be honest and have trust
- Ask questions
- Help facilitator, scribe and note taker capture ideas accurately.
- State a purpose when introducing each new topic.
- Decisions by consensus with motions and votes
- Share responsibility for team's progress



## Agenda

- Introductions 10:00 - 10:05
- Discussions with EPA/Compliance Dates 10:05 - 10:15
- Regulation Promulgation Schedule 10:15 - 10:30
- Summary of Regulatory Changes 10:30 - 11:45
- Public Comments 11:45 - 11:55
- Next Steps 11:55 - 12:00



## EPA-DNREC Schedule

- Non-SPA States and Territories vs SPA States  
 New UST requirements start:
  - October 13, 2018 for Non-SPA States and Territories
  - October 13, 2021 for SPA States
- Delaware's schedule  
 Promulgation:
  - October 2019
 Implementation:
  - October 13, 2021



## Promulgation Schedule

November 2018	Discuss draft of changes with USTAC
December 2018	Submit next draft to EPA
January 2019	EPA Review, Legal Review by DAG Begin revision of SPA document
February 2019	Resolve any outstanding issues with EPA Continue SPA document revision
March 2019	Additional legal review as needed

## Promulgation Schedule (Cont.)

March 2019	Continue SPA document revision Public workshops
April 2019	Final SPA document update
June 2019	Publication of Proposed Regulations in State Register
July 2019	Public hearing
September 2019	Secretary's Order Promulgating Regulations
October 2019	Submit SPA Package to EPA

## What has happened since May?

Regulatory changes

- Changes throughout regulations for clarity and consistency Sections A, B, C, D, E, G
- Operator Training
- Financial Responsibility and Insurance; changes to assist Owners/Operators
- Out of Service and Empty requirements
- Delivery and Dispensing Prohibition


## Operator Training

- Require passing grade of 80%
- Re-certification requirement – every three (3) years as per Part A Section 10.1.12
- 30 day inspection by Class A or Class B certified Operator




## Financial Responsibility

- Insurance policy exclusions – (EPA memo) Part F 2.2.4 and 2.2.5
  - Voluntary UST System removals
  - Self-insured retentions
- Termination or nonrenewal **notification** to the Department
  - By insured – Part F 2.14.1.1.4 (not a new requirement)
  - By insurer – Part F 2.14.1.1.5



## Financial Responsibility

- Installation requirements – Part A 4.6.11 – complete insurance policy required
- Record keeping Part A 5.1.4.14 – lifetime of Ownership
- Cause for Dispensing/Delivery Prohibition – Part A 9.2.1.4
- Financial Responsibility Requirements – Part F 1.1.8 annual submission



## Out of Service vs Empty

**Requirements for Out of Service:**


- Operation/Maintenance of corrosion protection
- Operation/Maintenance of Release Detection
- UST System testing
- Routine inspection
- Financial Responsibility

Site Assessment when UST System is Out Of Service for twelve (12) months, no longer required to render the UST System empty

**Requirements for Empty UST Systems:**

- Vent pipes open and functioning
- Cap and secure all other Pipes, pumps, manways, and Ancillary Equipment
- Continue corrosion protection until UST System is Removed or Closed In Place



Within three (3) months of rendering UST System Empty:  
Site Assessment, or Removal, or a Closure In Place is required



## Out Of Service vs Empty

**Definition of Out Of Service:**  
Is not in use – no Regulated Substance added or withdrawn from the UST System  
Is *intended* to be put back In Service



**Definition of Empty:**  
All Regulated Substances have been removed from the UST System using commonly employed practices so that no more than one inch (1) or 2.5 centimeters of residue, or three tenths of one percent (0.3%) by weight of the total capacity of the UST System, remains in the UST System.

## Delivery and Dispensing Prohibition

Part A Section 9  
Added dispensing prohibition to potential enforcement action when certain conditions exist:

1. Imminent threat
2. Lack of Spill/overflow prevention, Release Detection, Corrosion Protection
3. Owner/Operator out of compliance with Indicated Release investigation
4. Owner/Operator out of compliance with financial responsibility requirements

## Delivery and Dispensing Prohibition

**"Imminent Threat"** means an actual Release or a potential for a Release which requires action to prevent or mitigate damage to the environment or endangerment to public health or welfare.

Dispensing prohibition tag shall be affixed to the dispenser in conjunction with delivery prohibition tag affixed to the fill pipe







## SPA related changes


**Definitions:**  
Day  
Regulated Substance – 0.1% is not same as *de minimis* (so minor as to merit disregard)

Compatibility – new section Part A Section 13.0  
Alternative Approval Procedures – new section Part A Section 6.0  
Interstitial monitoring – required for new tanks and piping  
Annual Interstitial monitoring – if criteria are met  
Date for Overfill prevention – Oct. 13, 2021  
Overfill prevention – ball valve

## Day

means a **calendar Day**; however, when used to determine when a document is due and the Day falls on the weekend or a holiday, the document may be submitted on the first working Day after the weekend or holiday.



## Regulated Substance

means a liquid that contains:

- (a) Any substance defined in Section 101 (14) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) of 1980; but not including any substance regulated as a hazardous waste under RCRA subtitle C; or
- (b) Any volume of a carcinogen as defined by EPA in the Integrated Risk Information System (IRIS) April 2002 and as updated; or
- (c) A substance determined by the Secretary through regulation to present a risk to public health or welfare or the environment if released into the environment.



## Compatibility

Owners and Operators shall use an UST System made of or lined with materials that are Compatible with the Regulated Substance Containing Ethanol and Biodiesel stored in the UST System.

- Compatibility shall be demonstrated by one of the following:
- certification by a nationally recognized independent testing laboratory
  - equipment or component manufacturer's approval
  - other method no less protective of human health and the environment



## Alternative Approval

Alternative approvals will only be considered when they are consistent with the *no less stringent* requirements of Subtitle I, Section 9004, of the Resource Conservation and Recovery Act of 1976.

The alternative procedure or technology must meet or exceed the requirements found in these Regulations.



## Interstitial Monitoring

- Submersible turbine pump Containment Sumps annual inspection if:
  - Equipped with continuous interstitial monitoring
  - Vent and vapor return Piping slope back to Tank 1/8" per foot



## Overfill Prevention

- Vent line flow restrictors (ball float valves) shall **not** be installed for overfill prevention *after the Effective Date of these Regulations*.
- Existing vent line flow restrictors shall be removed not later than **three (3) years after the Effective Date of these Regulations** unless the following condition exists:  
the overfill prevention equipment automatically achieves partial shut off of flow into the UST when the UST is eighty five percent (85%) full and complete shut off of flow at eighty eight percent (88%) full.



## Overfill Prevention

Owners and Operators shall ensure that overfill prevention equipment is inspected a minimum of *once every three (3) years*. *The first inspection shall occur prior to October 13, 2021*. At a minimum, the inspection shall ensure that overfill prevention equipment is functioning in accordance with manufacturer's specifications and shall activate at the correct level.





Written Comments on the Draft  
Regulations Can be sent to

[DNREC\\_USTRegulations@state.de.us](mailto:DNREC_USTRegulations@state.de.us)



Public Comment







**UST Advisory Committee Meeting  
Tank Management Section  
Luken's Drive Office  
November 14, 2018  
Meeting Minutes**

**I. Call to order**

Alex Rittberg called to order the regular meeting of the UST Advisory Committee at 10:05 am on November 14, 2018 at 391 Lukens Drive, New Castle, Delaware.

**II. Attendees**

Annette Donnelly, Kathy McCaney, Fred Smith, Doyle Tiller, Bob Winterburn, Bill Logue, David Peterson, Sara Golladay, Eileen Butler, Alex Rittberg, William Kachel, Peter Rollo, Richard Negrete, Tom Ruszin, Mark Baker, Lori Spagnolo, Barbara Fawcett, Mike Moyer, Liz Wolfe, David Gilden, Amy Bryson, Ann Martin, Ross Elliott, Joesph Zay, Arron Siegel, Sandy Carl, David Lerner, Harry Johnson.

**III. Introduction**

Alex Rittberg gave introductory remarks, thanking the USTAC members for their participation, explaining the purpose of the USTAC, describing meeting governance and describing the updated promulgation schedule.

**IV. Discussion with EPA/Compliance Dates**

November 2018	Discuss draft of changes with USTAC
December 2018	Submit next draft to EPA
January 2019	EPA Review, Legal Review by DAG; Begin revision of SPA document
February 2019	Resolve any outstanding issues with EPA; Continue SPA document revision
March 2019	Additional legal review as needed
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The Delaware state program approval (SPA) was initiated in 1995 and has not been updated since then. Delaware is working to update the SPA in conjunction with updating regulations to either match

or exceed federal requirements. New federal regulations came into effect October 13, 2018 for those states that do not have state program approval. Delaware's target date for regulatory promulgation is set for October 2019.

## **V. Summary of Regulatory Changes**

### **a) Operator Training**

Operator training will now require a passing grade of 80%. Classes are now being conducted by DNREC staff. New re-certification requirements call for Class A and Class B Operators to be re-certified every 3 years. Thirty day routine inspections will now be required to be conducted by Class A or Class B certified operators.

**Discussion:** Mr. Baker raised the issue that for owners who hire a Delaware certified contractor to perform the 30-day routine inspection, it would mean that the contractor would be required to obtain Class A/B Operator certification via the State training classes.

Action Item: DNREC-TMS will give this matter further consideration.

### **b) Financial Responsibility**

Insurance policy exclusions- EPA has specified that if either voluntary UST System removals or self-insured retentions are used as financial responsibility mechanisms for the UST System, the mechanism will not be in compliance with the requirements of the law.

Additionally, if insurance is used, Delaware will:

- require an annual submission of the insurance policy by the Owner/Operator
- require notification by the insurer of termination or non-renewal

Lack of financial responsibility is also cause for dispensing/delivery prohibition.

### **c) Out of Service vs Empty**

Requirement for Out of Service will now require a site assessment when UST system is Out of Service for twelve (12) months however, there is no longer a requirement to render the UST System empty.

When a UST System is Empty a site assessment, removal or closure in place within three (3) months will now be required.

**Discussion:** This change in Empty status is to assist owners/operators in complying with insurance policies (should that be the financial mechanism used to comply with the law). The thought is that enough time should be given to ensure a site assessment can be completed and if necessary the owner/operator can apply for insurance coverage should a release have occurred.

Ms. McCaney asked if Delaware will follow the RP-1700 process of UST emptying and closure procedures?

Action Item: DNREC-TMS will review a draft of RP-1700 and then respond to the question.

**d) Delivery and Dispensing Prohibition**

TMS reviewed the specific criteria for when a delivery and dispensing prohibition is warranted: Only use prohibitions with imminent threat; lack of equipment; out of compliance with release investigation requirements; or out of compliance with financial responsibly.

**Discussion:** Current regulation described when inspection has authority to stop delivery but continue to dispense current product in tank. In certain instances the Department has authority to now stop dispensing until regulatory compliance is reached.

**e) SPA related changes**

TMS reviewed the areas of the regulations that were modified to ensure State Program Approval. They include a section on Compatibility, wording changes regarding alternative approval procedures, annual interstitial monitoring if criteria are met, and a date for overfill prevention inspections to start prior to October 13, 2021.

**Discussion:**

Ms. Carl: Is Delaware thinking of approving low level testing of sumps or dry sump testing?

Response Delaware does not support low level testing or dry testing for sump pumps. The concern is that if such testing occurs, there may be other mechanisms in the sump that may fail and will only be observed when the sump is full.

Mr. Logue: What happens when overfill prevention is over 95%? What if the manufacturer's recommendation is to be located at the 96% of tank?

Action item: DNREC-TMS will have internal discussion on this matter prior to issuing a response to this question.

Mr. Baker: Was it DNREC-TMS's intent with regards to the amendments to the alternative approval section to prohibit the installation of future loop systems?

Response: No. The intent of the amendment to the alternate approval section was to satisfy an EPA concern about Delaware's regulations being less stringent than the federal regulations, and not to prohibit additional installations of the Loop System.

Action Item: DNREC-TMS will give this matter more consideration.

Ms. Carl: Tank sumps and repair work with contractor- Is Delaware willing to work with the constraints associated with the 30 day repair timeframe.

Response: Yes, the owner/operator will need to show proof of a signed contract and will then be considered in compliance with the regulations.

Mr. Baker: I'm concerned that there is no more USTAC meetings and the abbreviated timeline to discuss updates/changes.

Response: Members of the USTAC will have opportunity to further comment and follow up discussions are likely, however, the Department is also constrained to comply with the federal timeline and the Department desires to provide as much lead time to owners/operators to ensure their compliance with the State regulations.

Written comments: Please send written comments to  
DNREC\_USTRegulations@state.de.us by November 30, 2018.



# CROMPCO

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November 28, 2018

Ms. Eileen M. Butler  
Planner IV  
Dept. of Natural Resources & Environmental Control  
Division of Waste and Hazardous Substances  
Tank Management Section  
391 Lukens Drive  
New Castle, DE 19720

**Re: Crompco, LLC Comments to Proposed UST Regulation Changes to Title 7 Part 1351  
Underground Storage Tank Systems**

Dear Ms. Butler,

Please accept Crompco's written comments to proposed DNREC UST changes as presented in USTAC Meeting of 11/14/18.

**Class A/Class B Operator Training:**

Comment: Crompco disagrees with the proposed requirement that a third-party contractor performing 30-day walkthrough inspections at a facility must be a trained Class A and/or Class B operator. Crompco disagrees with this proposal due to the fact that as a testing company, our technicians are trained through numerous UST equipment manufacturers including but not limited to Gilbarco Veeder Root, Franklin Fueling, API. In addition, Crompco's technicians attend UST continuing education seminars and take exams periodically to maintain their testing licenses. All technicians that perform any type of testing or inspection at an UST facility are trained extensively and are much more qualified to perform routine equipment inspections than most owner/operators. We agree that an Owner/Operator designating an individual to perform all the required duties of a Class A/Class B operator is necessary, however, those performing 30-day walkthrough equipment inspections under the direction of the Class A/Class B operator should not be required to also have gone through the Class A/Class B training course.

The definition for a Class A Operator is an individual that has primary responsibility for the facility along with managing resources and personnel of the facility and a Class B operator is defined as the individual that has day-to-day responsibility of the facility. As the definitions are written, Crompco or any third-party contractor

would not meet either one of these definitions, nor would Crompco or a third-party contractor have responsibility as defined.

The 30-Day inspections as written in Title 7; Part D; 1.29 state that the inspection is to include monitoring the condition of the UST system including all dispensers, dispenser sumps, access ports, spill containment, and containment sumps. The Routine Inspection shall at a minimum include removing all dispenser covers, sump covers, including spill buckets to visually inspect all fittings, couplings and filters; water intrusion and removal of water along with any debris. A third-party contractor would not be responsible for reviewing inventory; securing financial responsibility; emergency response procedures and maintaining the UST system. A contractor assigned to perform the 30-Day walkthrough inspection would only be on site to perform this specific function and to report the findings. Crompco would not be in a position to make any repairs or handle any day-to-day responsibilities of a Class A/Class B operator.

It is Crompco's belief, that by requiring a contractor to become a Class A/Class B Operator, they would also, by definition, be responsible for the duties as defined for each class and that just is not the case. Other states have regulations in place to state that an Owner/Operator or a Class A/Class B Operator can designate a contractor to perform the inspection, but the ultimate responsibility is still retained with the Class A/Class B Operator to assure that the third-party contractor is performing the inspection with integrity and with the knowledge of UST systems and how they operate.

#### **Industry Codes of Practice:**

Comment: In the current regulations, DNREC incorporates and requires that standard industry codes of practice be utilized when performing work on UST's. While DNREC currently recognizes and follows the use of PEI RP 100 for tank installations and PEI RP 300 for the installation and testing of vapor recovery systems, the Department should also strongly consider incorporating PEI RP 1200 into its referenced standards and allow for the use of this standard to perform the routine equipment testing and inspections that will be required under the revised regulations. Contractors and service providers will be looking for a single source and standard to perform this work to help owners comply with the new requirements and this PEI document makes it abundantly clear how this work should be performed. In addition, it has been developed by industry experts with many years of experience from all aspects of the industry from large owner/operators to large UST testing firms and licensed installers of UST systems. Crompco strongly recommends that referencing this document be included in the revised regulations and the use of this document as a standard be an option for complying with the routine equipment testing and inspections that come along with this revised regulation.

#### **Suggested Change to: 1.22.3 Owners and Operators shall install and maintain overflow prevention equipment that shall:**

Comment: DNREC should remove the following option for allowable overflow equipment in 1.22.3.3:

“Restrict flow 30 minutes prior to overflowing, alert the Operator with a high-level alarm one minute before overflowing, or automatically shut off flow into the UST so that none of the fittings located on top of the Tank are exposed to Regulated Substance due to overflowing;”

Rationale: When it comes to verifying that overflow equipment is properly positioned to activate at the proper point in the underground tank system, from a field perspective, it is not feasible to determine that an overflow

device is designed to restrict flow 30 minutes prior to overfilling or alerting the operator one minute before overfilling or automatically shutting off flow so that none of the fittings located on the top of the tank are exposed to a regulated substance. In addition, allowing such devices to function above the already mentioned 95% shutoff point or 90% alarm/restriction point which are already options is confusing and much less protective than the above-mentioned options. DNREC should consider completely striking this option from the regulations as ball floats have been an industry problem for quite some time and this would help eliminate them from continued use in UST systems.

Respectfully submitted,

Crompco, LLC Compliance Department

Edward S. Kubinsky Jr. & Sandra L. Carl





November 30, 2018

To: Eileen M. Butler  
Alex Rittberg

From: Ellen Valentino  
On behalf of Mid-Atlantic Petroleum Distributors Assn.  
3 Church Circle, #201  
Annapolis, MD 21401

Re: Comments Regarding Draft UST Regulations

Below are comments that outline our remaining concerns with the draft UST regulations as circulated and discussed at the November 14, 2019 stakeholders meeting.

**Part B, section 1.9.4.3** – We are deeply concerned that the current proposed regulations do not allow third-party reports to be the sole means for reporting release detection monitoring results. Remote storage and monitoring is the most modern, efficient, and safest way to store and maintain these records. These third-party companies are legitimate, approved companies and should be accepted as such. It is unrealistic to expect a local station to maintain these paper records and unnecessarily burdens tank owners with paperwork requirements. We urge the Department to accept third-party reports.

**Part B, 2.9.5.1.3** - The periodic validation of third-party test reports should be clearly defined or removed. The remote collection of data and records improves the storage and availability to the Department. A burden should not be put upon the UST Owner to “validate” these reports with no clarity on what the definition entails.

**Part B, 1.14.3** – We believe the 1/8” slope requirement for product piping is an obsolete requirement and ask that DNREC eliminate it from the proposed regulation. The UST is a pressurized system and slope is not needed, per the most recent PEI practices and major piping manufacturers, including the Loop system, made by OPW. Several regional and national station owners are using the Loop system as their preferred piping specification. The most recent PEI RP100 (2017 Edition), notes “As a general rule, carefully grade and compact bedding to ensure a minimum slope of 1/8 inch per foot toward the tank for vapor, vent gravity fill and suction supply lines. In pressure systems, slope may not be necessary on supply lines. Rather, communication between the interstitial space of secondarily contained pressure supply lines and collection sumps should be maintained so that released product can enter a sump and be visually observed or detected by sensors. For safe suction-piping configurations, the entire

“piping run must slope down to the tank, allowing product to drain safely if air should enter.” A pressurized piping system should not need to rely on gravity to transport product back to the STP sump. A failure in the primary piping would transfer that pressure into the secondary portion of the pipe.

Delaware is one of only a few states with this provision and the EPA does not require it. This provision is extremely costly to tank owners on both new and existing systems, requiring unnecessarily deep tank burials or costly installations of excessive monitoring equipment to meet the “alternative approval” requirements. There is just not enough evidence of potential environmental problems in modern UST systems for this provision to be required. We urge DNREC to eliminate the 1/8” slope requirement.

We also believe it is counter-productive to require an alternate approval process for existing systems that cannot meet slope requirements. This alternate process is not transparent and could impose additional burdens not mandated by regulation onto the UST owner. DNREC has traditionally granted waivers from this provision for years, with ever increasing requirements. We believe that conditions need to be outlined and detailed in the regulations to provide predictability and consistency to the regulated community if an alternate approval process is necessary.

**Part B, 1.31.1.6** – Our members appreciate the provisions for sump inspection frequency which allow UST owners to rely on properly installed sensors for monthly release detection and not put individuals at risk every month with confined space and traffic hazards. It also reduces the probability of water intrusion with the sump lid not being removed every 30 days. However, there is an opportunity to go even further. The EPA has recognized a low-level liquid alternative integrity test method for sumps used as secondary containment and interstitial monitoring for UST system piping as “equally protective of the environment”. This means that this testing method can be incorporated into the revised regulations. We urge consideration of this test method as the full sump testing method greatly increases the cost of compliance.

Additionally, we believe that pressurized product piping should not have to meet the slope requirement of 1/8” if the piping manufacturer certifies that interstitial monitoring will work properly without the piping being sloped. Again, as discussed earlier, this brings Delaware regulations to current industry standards.

**10.0 Training Requirements** – Our members understand the importance of training, but the requirements outlined in this section are onerous and costly. We have concerns and several questions that need answers or resolution. Specifically, 1) Has recertification been defined by the Department? Will Class A and Class B Operators have to complete the course again? 2) Is DNREC in development of an on-line training program, as allowed/provided for by the other states? 3) Why are Class C operators prohibited from performing the 30-day routine inspections? Rationale? 4) Has DNREC prepared a small business impact statement for this specific regulation?