

1 Proposed amendments to 7 DE Admin. Code 1351  
2 "Underground Storage Tank Systems"

3  
4 Docket #2023-R-WH-0006

5  
6  
7 Moderated by Theresa Smith

8 Wednesday, August 30, 2023

9 6:03 p.m.

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11  
12 DNREC Building

13 89 Kings Highway

14 Dover, DE 19901

15 (302) 739-9000

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20 Reported by: Andrew Weader

21 JOB NO.: 6053152

A P P E A R A N C E S

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- List of Attendees:
- Theresa Smith, Hearing Officer
  - Eileen Butler, Division of Waste and Hazardous Substances Planner
  - Tanesha Perry, Administrative Assistant for DNREC
  - Virginia Jackson, Additional Administrative Assistant for DNREC
  - Michael Moyer, DNREC
  - Sandra Carl, CROMPCO
  - Suzanne Halter, DNREC
  - Patrick McGovern, DNREC
  - Stephen Peterson, DNREC
  - Matthew Conner, DNREC
  - Alex Dyer, Public Attendee
  - Karl Brenton, Public Attendee
  - James Messick Jr., Public Attendee
  - Michael Seningen, DNREC
  - Richard N, Public Attendee
  - Wyatt Marek, DNREC
  - Carlos Gonzalez, DNREC
  - Sascha Mohammed, Public Attendee
  - Travis Walls, Public Attendee

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1 P R O C E E D I N G S

2 MS. SMITH: Okay. Good evening. I  
3 believe everyone is now connected and ready to go, so  
4 we will now begin the virtual public hearing. My name  
5 is Theresa Smith, and Secretary Garvin has appointed  
6 me to serve as the hearing officer for tonight's  
7 formal proceeding.

8 For ADA compliance tonight's formal  
9 proceeding offers closed captioning and a variation of  
10 languages. So before I begin the introductory remarks  
11 I will now hand it over to Tanesha Perry with the  
12 Department to provide further details on how to  
13 utilize the features available through the Zoom  
14 platform.

15 MS. PERRY: Hello. My name is Tanesha  
16 Perry. I am Administrative Specialist 3 with the  
17 Office of Secretary. I am here to assist the hearing  
18 officer tonight. I'd like to make sure everyone is  
19 aware that the Zoom platform we are using has the  
20 ability for closed captioning in multiple languages.

21 To start closed captioning if you are

1 using a computer at the bottom of your screen you  
2 should see a show captions button. If you do not see  
3 the show captions button you may have to select the  
4 three dots that say more. Once you find your show  
5 captions button you should click the carat pointing up  
6 which will bring up a translations options. You can  
7 select your preferred language from there. If your  
8 preferred language isn't listed you can select more,  
9 and all languages will be listed.

10 If you're on a smartphone at the bottom  
11 of your screen select the captions button indicated by  
12 CC. If your preferred language is not listed at the  
13 bottom you may have to select the three dots that say  
14 more. You should then select meeting settings with  
15 the gear icon next to it. Once the settings page  
16 comes up, located at the very bottom select  
17 translation language. From there you'll be able to  
18 select your preferred language, then select done at  
19 the top right corner and then done again.

20 If the captions are not automatically  
21 popping up yet you may need to select captions again

1 and select show captions. Now I'll turn it back over  
2 to the hearing officer, Theresa Smith.

3 MS. SMITH: Thank you, Ms. Perry.  
4 Again, my name is Theresa Smith. First I would like  
5 to thank you all for taking your time out of your busy  
6 schedules today to connect with us. The date is  
7 Wednesday, August 30, 2023, and the time is now 6:03  
8 p.m. We are here this evening to provide a virtual  
9 platform for the State of Delaware's Department of  
10 Natural Resources and Environmental Control to conduct  
11 its virtual hearing on Docket number 2023-R-WH-0006,  
12 the proposed revisions to 7 DE Admin Code 1352  
13 "Underground Storage Tank Systems."

14 Immediately upon the adjournment of  
15 this hearing we will conduct the same hearing platform  
16 for the proposed revisions to 7 DE Admin Code 1352,  
17 Aboveground Storage Tanks. Much of what will be said  
18 in this hearing, including my introductory remarks and  
19 some of the presentations by the department, will be  
20 given in the second hearing with respect to the two  
21 separate hearing records being generated for the

1 proposed regulatory amendments before us tonight.

2 First and foremost this hearing is  
3 being conducted virtually. No one is gathered in the  
4 same room. Everyone is participating independently at  
5 their own respective locations. While we are not  
6 physically gathered tonight Zoom does generate a list  
7 of those who are virtually present for the proceeding,  
8 so the department will have a record of those who have  
9 electronically joined this event.

10 At the conclusion of my introductory  
11 remarks I will be turning the hearing over to  
12 Department staff to provide their presentation for the  
13 record being generated in this matter. Whereas the  
14 department would then open the verbal comment portion  
15 of the hearing following the department's  
16 presentation, the department did not receive  
17 registration for verbal comment tonight. It is  
18 important to note that the department offered the  
19 opportunity to register to give verbal comment as  
20 noticed in the legal ads and online. Those who have  
21 wish to provide a verbal comment would have had to

1 register by 12 p.m. today to which there were no  
2 registrants by that time.

3           There is a court reporter virtually  
4 present who will prepare a verbatim transcript of this  
5 hearing pursuant to the statutory requirements for  
6 DNREC to have the same prepared, and as always that  
7 transcript will be posted on the hearing webpage  
8 dedicated to this matter as soon as it is received.

9           In addition I would encourage those who  
10 are attending the hearing to also visit the hearing  
11 webpage dedicated to this matter for additional  
12 details concerning the proposed regulations. The  
13 hearing webpage can be found under the administrative  
14 law section of DNREC's website and listed at the  
15 conclusion of tonight's hearing.

16           Before we begin the presentations  
17 please be advised that the following protocols remain  
18 in place for all DNREC public hearings. All comments  
19 received must be limited solely to the subject matter  
20 of tonight's hearing. All comments pertinent to the  
21 subject matter of the virtual hearing will be



1 incorporated into the record being generated in this  
2 matter. In order to ensure that everyone who wishes  
3 to offer comment for the secretary's consideration is  
4 accommodated the record in this matter will remain  
5 open for a minimum of 15 days following tonight's  
6 proceeding.

7           There is only one authentic record of  
8 this formal proceeding tonight, and it is the official  
9 court reporter's verbatim transcript. The statutory  
10 purpose of tonight's hearing is to get a record with  
11 regard to the department's proposed actions, a record  
12 consisting of the transcript of the hearing tonight,  
13 all written comments, all exhibits, and eventually the  
14 hearing officer's report will be reviewed by Secretary  
15 Garvin. The secretary will ultimately issue an order  
16 following that review process containing his decision  
17 on this matter and the reasons therefor.

18           Per DNREC standard hearing protocols  
19 there will be no Q and A or chat sessions permitted  
20 during the hearing. It is important to note no  
21 decision has already been made by the department, nor

1 will any decision be made tonight with regard to the  
2 proposed regulatory matter. As previously stated,  
3 DNREC wishes to ensure everyone is enabled to offer  
4 their comments for inclusion into the record being  
5 generated in this matter. In light of the  
6 Administrative Procedures Act the department is  
7 required to, at a minimum, provide a comment period of  
8 a minimum of 15 days after the hearing.

9 As noticed in the legal ads and online  
10 the department stated that the public comment period  
11 will be open through Thursday, September 14, 2023.  
12 Comments may be submitted through a comment form link  
13 on the hearing webpage via  
14 dnrechearingcomments@delaware.gov or via the US Postal  
15 Services at the physical address for DNREC indicated  
16 on the hearing webpage or the public notices  
17 previously issued in this matter. Written comments to  
18 DNREC may not be submitted using social media  
19 platforms such as Twitter, Facebook, YouTube, or text  
20 messaging.

21 Please remember that all comment

1 received either through USPS or via the electronic  
2 mechanisms just noted, as long as it is received by  
3 the department on or before September 14th, will bear  
4 the exact same weight and will be considered equally  
5 by the secretary prior to making a final decision in  
6 this matter. Lastly the ultimate decision regarding  
7 this matter is made by DNREC Secretary Garvin. This  
8 formal proceeding tonight acts as a mechanism to  
9 enable the department to thoroughly vet the regulatory  
10 matter to the public and to let the public know the  
11 various ways to which comment may be submitted to  
12 Secretary Garvin for his consideration if so desired.

13           Lastly the ultimate decision regarding  
14 this matter is made by DNREC Secretary Garvin. I will  
15 now hand it over to Eileen Butler with the Division of  
16 Waste and Hazardous Substances to provide the  
17 department's presentation.

18           MS. BUTLER: Thank you. Now welcome to  
19 the Division of Waste and Hazardous Substances virtual  
20 public hearing on the proposed changes to the  
21 underground storage tank systems regulations. My name

1 is Eileen Butler, and I will be presenting the  
2 proposed changes for you today.

3 The division has made a number of minor  
4 changes throughout the regulation to comply with  
5 Delaware's regulatory style manual, mostly having to  
6 do with numbering and clarifying statements. We also  
7 took this opportunity to consolidate and reorganize  
8 parts B, C, and D, to reduce the amount of duplicative  
9 language; and we updated RP-1637, the API Color Symbol  
10 System to identify equipment, vehicles, and transfer  
11 points to the fourth edition published in 2020.

12 The department recognized that there  
13 was a need to clarify the standards for identification  
14 and remediation of hydrocarbon releases from  
15 underground storage tanks. With that effort we are  
16 incorporating by reference the Delaware Risk-Based  
17 Corrective Action Protocol, otherwise known as  
18 DERBCAP, as well as the Hydrogeologic Investigation  
19 Guidance and Vapor Intrusion Guidance that are  
20 referenced in DERBCAP.

21 Minor changes include numbering

1 throughout the regulation and amended language to  
2 improve clarity. The definition of tank has been  
3 amended to make clear that each compartment in a  
4 compartmentalized tank will be considered a single  
5 tank as it pertains to compliance with the  
6 regulations. And finally we moved certain  
7 requirements associated with corrective action over to  
8 the DERBCAP document. Then lastly we took repetitive  
9 language in parts B, C, and D, and consolidated it  
10 into a new section in part A.

11 This slide highlights the new sections  
12 that now relate to repair, retrofits, upgrades, change  
13 in service, and empty requirements for UST systems.  
14 Okay. This slide highlights the new section 17 and 18  
15 in part A that describe the requirements for change in  
16 substance stored and removal or closure in place for  
17 UST systems. To be clear, no standards were changed,  
18 just moved to a new section for clarity and ease of  
19 reference for the regulated community.

20 We plan to do more of this type of  
21 consolidation in the next iteration of updates for the

1 UST regulations. After publication in the Delaware  
2 register I reviewed what was submitted by the division  
3 to the registrar's office and what was actually  
4 published in the register, and I noticed a small  
5 number of minor errors such as underlining words that  
6 should not be underlined or vice versa, missing a  
7 comma where one was inserted, striking a word that  
8 should not be struck out.

9 All are formatting errors, none were  
10 substantive errors, and all were identified in what is  
11 called an errata table. This example of the errata  
12 table identifies what was originally published in the  
13 register and what needs to be amended in the version  
14 published in the register. The table is two pages  
15 long and has been submitted as an exhibit which is  
16 available for your review.

17 Now I'd like to discuss the three  
18 standards that we are incorporating into regulation.  
19 Incorporation by reference is a method by which a  
20 document is made part of the regulation simply by  
21 referring to it. While the text of an incorporated

1 document does not appear in the regulation, the  
2 provisions of the incorporated document are as fully  
3 enforceable as any other regulation. Just like, for  
4 example, the other reference standards outlined in  
5 section 3 of part A in the UST regulations.

6           The Delaware Risk-Based Corrective  
7 Action Protocol is based on the national ASME standard  
8 for risk-based corrective action and is being  
9 incorporated by reference into the AST regulations.  
10 Some regulatory requirements associated with  
11 corrective action are outlined in this document and  
12 are directly tied to sampling and reporting  
13 requirements. DERBCAP provides a tiered approach to  
14 evaluate risk to human health and ecological  
15 receptors.

16           To remain consistent with other  
17 Delaware programs an excess cancer risk of 10 to the  
18 minus 5 is assumed in all calculations, and with  
19 regards to the toolkit when calculating risk-based  
20 screening levels you need to be using the most updated  
21 version of the toolkit, 2.53 DE Delaware specific

1 version which is available at the link provided on the  
2 screen.

3           The overall scope of the revisions,  
4 including the format of the document, is similar to  
5 the January 2000 version. We updated some definitions  
6 and references and revised the risk-based screening  
7 levels to current standards. As mentioned previously  
8 we incorporated tier zero sampling requirements for  
9 USTs in this document. Appendices 2 through 7 in the  
10 protocol detail the input to the toolkit model  
11 resulting in the updated action levels and RBSLs in  
12 the guide. Tier zero action levels and tier 1 risk-  
13 based screening levels are provided in tables 2 and 4  
14 in the guide respectively.

15           The fate and transport model used to  
16 calculate updated action levels and screening levels  
17 has been updated to the current version, version 2.53  
18 DE, of the risk-based corrective action toolkit for  
19 DERBCAP. There have been several changes to the risk  
20 calculations; parameters have been adjusted to  
21 calculate updated risk-based screening level numbers



1 that reflect current toxicity values.

2 This slide shows those parameters that  
3 have been updated. Risk is now age adjusted; body  
4 weight of adult increased to 80 kilograms; exposure  
5 duration is 26 years rather than 30 years; water  
6 ingestion rate for a child decreased while water  
7 ingestion rate for an adult increased; and  
8 noncarcinogenic risk is now based on child risk; and  
9 the cleanup levels are defaulting to MCLs set by  
10 drinking water standards supported by toxicology and  
11 scientific knowledge.

12 We wanted to show you in this table  
13 that there was a modification of the distance  
14 categories. We pinpoint risk-based screening levels  
15 based on distance to point of exposure as seen in the  
16 circle on the top of your screen. The Hydrogeologic  
17 Investigation Guidance document is referenced in  
18 DERBCAP, and as such is also considered a standard by  
19 incorporation into the regulations.

20 Definitions and standard references  
21 were updated, but the overall scope of the revisions

1 including the format of the document is similar to the  
2 2012 version. And lastly, similar to the HIG the  
3 Vapor Intrusion Guidance has also been included in  
4 this effort because it is referenced in DERBCAP. The  
5 Vapor Intrusion Guidance now includes the petroleum  
6 vapor intrusion pathway, and we revised risk  
7 assessments and updated definitions and standards of  
8 references.

9                   So in the next three slides I'm going  
10 to highlight the exhibits that the division has  
11 respectfully submitted to the hearing officer as  
12 evidence that the division complied with the 24-step  
13 regulatory development process to amend the  
14 underground storage tank system regulations. All  
15 exhibits are available for public review and are as  
16 follows.

17                   Exhibit 1, Proposed Underground Storage  
18 Tank Systems Regulations published in the August 1,  
19 2023, Register of Regulations.

20                   Exhibit 2, Summary of changes to  
21 proposed UST System Regulations.

1                   Exhibit 3, the signed Start Action  
2 Notice #2023-04.

3                   Exhibit 4, State of Delaware public  
4 meeting calendar announcing the Workshop on the  
5 proposed changes to regulations governing underground  
6 storage tank systems and aboveground storage tanks as  
7 published on the webpage on May 25, 2023.

8                   Exhibit 5, affidavit of publication,  
9 workshop on proposed regulations governing underground  
10 storage tank systems and aboveground storage tanks.  
11 It was in The News Journal published on May 21 and May  
12 24 of 2023 advertising the workshop.

13                   Exhibit Number 6, an Affidavit of  
14 Publication, the workshop on proposed regulations  
15 governing underground storage tank systems and  
16 aboveground storage tanks. It was in The Delaware  
17 State News published in the May 21st and May 24th  
18 edition advertising the workshop.

19                   Exhibit Number 7, the legal notice  
20 clipping of Public Workshop on 1351 underground  
21 storage tank system regulations dated May 21, and that

1 was in The News Journal.

2 Exhibit Number 8, legal notice, a  
3 clipping of Public Workshop on 1351 underground  
4 storage tank systems dated May 21, also in The News  
5 Journal. I'm sorry. May 24th in The News Journal.

6 Exhibit Number 9 was an email dated May  
7 30, 2023, informing interested parties list of June  
8 13, 2023, workshop on the proposed changes to the  
9 regulations governing underground storage tank systems  
10 and aboveground storage tanks.

11 Exhibit 10 were register notice of  
12 public hearing on 1351 underground storage tank  
13 systems regulations scheduled for August 30, 2023.

14 Exhibit 11 was an affidavit of  
15 publication, it was a legal notice of public hearing  
16 in the Delaware State News published August 6th  
17 advertising the August 30, 2023, Public Hearing on  
18 Regulations Governing Underground Storage Tank  
19 Systems.

20 Exhibit 12 was an affidavit of  
21 publication, the legal notice of public hearing, in

1 The News Journal, published August 6th advertising the  
2 August 30, 2023, Public Hearing on Regulations  
3 Governing Underground Storage Tank Systems.

4 Exhibit 13 was a legal notice clipping  
5 of Public Hearing on 1351 Underground Storage Tank  
6 Systems dated August 6th in The News Journal. It was  
7 the actual clipping.

8 Exhibit 14 is the State of Delaware  
9 public meeting calendar announcing the hearing on  
10 proposed changes to regulations governing underground  
11 storage tank systems and aboveground storage tanks as  
12 published on the webpage on August 9, 2023.

13 Exhibit 15 was an email dated August  
14 7th informing interested parties list of August 30,  
15 2023, public hearing on proposed changes to  
16 regulations governing underground storage tank systems  
17 and aboveground storage tanks.

18 Exhibit 16 is the errata for Admin Code  
19 1351.

20 Exhibit 17 is the Delaware Risk-Based  
21 Corrective Action Protocol, Volume 2, dated January of

1 2023.

2 Exhibit 18 is the Hydrogeologic  
3 Investigation Guidance, Volume 2, dated January 2023.

4 Exhibit 19 is the Vapor Intrusion  
5 Guidance dated January 2023.

6 And finally Exhibit 20 is the  
7 department PowerPoint presentation for the August 30,  
8 2023, public hearing on regulations governing  
9 underground storage tank systems.

10 That sums up the changes for this  
11 regulatory update. And as I indicated earlier in my  
12 presentation, once final changes are incorporated into  
13 the State's Administrative Code we plan to initiate a  
14 larger regulatory development update for the UST  
15 regulations that will incorporate further  
16 consolidation and reorganization to improve clarity  
17 and simplify the regulations.

18 Here is my contact information, and  
19 again the link to our new regulations under  
20 development tab on our website. This is the link to  
21 the page that will provide any information on future

1 workshops, documents to share, dates for the public  
2 hearing, but if you're not currently receiving  
3 information from the division directly through the  
4 interested parties email list please provide your  
5 contact information to me and I'd be glad to add your  
6 contact information to that list.

7 Thank you again for your interest and  
8 for attending today's hearing. Theresa?

9 MS. SMITH: Thank you, Ms. Butler.  
10 Going back to the department exhibits that you  
11 mentioned, we did receive those department's exhibits  
12 electronically, and I do hereby mark these exhibits as  
13 Department's Exhibits 1 through 20 into the record.  
14 As the department did not receive registration for  
15 public comment, as I mentioned before, by twelve  
16 o'clock today there will not be a verbal comment  
17 portion of the hearing.

18 Again, if you wish to submit a public  
19 comment in writing please follow the instructions that  
20 were given during my introductory remarks, and also  
21 it's available on this screen right now, those who are

1 virtually present. Again, the hearing record will  
2 remain open through Thursday, September 14, 2023.

3 I want to thank you all for attending  
4 the first part of the virtual hearing. The hearing is  
5 now concluded at 6:25 p.m.

6 (Whereupon, the meeting concluded at  
7 6:25 p.m.)

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CERTIFICATE OF DEPOSITION OFFICER

I, ANDREW WEADER, the officer before whom the foregoing proceedings were taken, do hereby certify that any witness(es) in the foregoing proceedings, prior to testifying, were duly sworn; that the proceedings were recorded by me and thereafter reduced to typewriting by a qualified transcriptionist; that said digital audio recording of said proceedings are a true and accurate record to the best of my knowledge, skills, and ability; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this was taken; and, further, that I am not a relative or employee of any counsel or attorney employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.

*Andrew Weader*

ANDREW WEADER

Notary Public in and for the  
State of Delaware

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CERTIFICATE OF TRANSCRIBER

I, JILLIAN PORTER, do hereby certify that this transcript was prepared from the digital audio recording of the foregoing proceeding, that said transcript is a true and accurate record of the proceedings to the best of my knowledge, skills, and ability; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this was taken; and, further, that I am not a relative or employee of any counsel or attorney employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.



JILLIAN PORTER

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