



STATE OF DELAWARE
**DEPARTMENT OF NATURAL RESOURCES AND
ENVIRONMENTAL CONTROL**

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OFFICE OF THE
SECRETARY

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Secretary's Order No.: 2021-WH-0001

**RE: Approving Final Regulatory Amendments to 7 DE Admin. Code 1351:
*Underground Storage Tank Systems***

Date of Issuance: January 04, 2021

Effective Date of the Amendment: February 21, 2021

Under the authority vested in the Secretary of the Department of Natural Resources and Environmental Control ("Department" or "DNREC"), pursuant to 7 *Del.C.* §§6006 and 6010, and all other relevant statutory authority, the following findings of fact based on the record, reasons and conclusions are entered as an Order of the Secretary in the above-referenced promulgation.

Background, Procedural History and Findings of Fact

This Order relates to the Department's proposed regulatory amendments to 7 DE Admin. Code 1351: *Underground Storage Tank Systems* ("Amendments" or "UST Regulations"). This action is being taken by the Department at this time to (1) clarify existing regulatory language; (2) provide additional clarifying language; (3) include a federally mandated compliance deadline; and (4) correct various typographical and grammatical errors in Delaware's current UST Regulations. It should be noted that Delaware's UST Regulations must be at least as stringent as the correlating federal regulations, pursuant to the requirements of 40 CFR 281, *State Program Approval*.

The following Parts of the existing UST Regulations are directly affected by the aforementioned proposed Amendments:

- Part A: Definitions and Notification
- Parts B/C/D: Installation, Operation and Maintenance
- Part E: Reporting, Release Investigation and Remedial Action
- Part F: Financial Responsibility

The Department is making numerous corrections to the existing UST Regulations to ensure that Delaware’s regulatory language mirrors the correlating federal requirements governing Underground Storage Tanks (“USTs”). Other corrections are being made to promote consistency in the regulatory language found throughout the existing UST Regulations. For example, in Part “B,” Sections 1.0 and 2.0, the Department is correcting the term “line leak detection” to “piping release detection.” This is a defined term correction for consistency in the regulatory language found throughout the existing UST Regulations. Additional cross-references to various Parts and Sections of the UST Regulations are now being included within the regulatory language itself to serve as further guidance for the regulated community. Still other numerous clerical and citation corrections have been made in the existing UST Regulations by the Department as well, in order to correct previous errors and omissions.

Of particular note, in Part “B,” Section 1.0, under *Marina Fueling Facility USTs*, “NFPA 30A Applicability,” the phrase “after January 11, 2020” is being changed to “installed on or after January 11, 2008.” This change serves not only as a correction, but also as a clarification for the benefit of the regulated community. NFPA 30 requirements were incorporated in Delaware as part of the Department’s January 11, 2008 UST regulatory promulgation. Thus, the NFPA 30 requirements only apply to marina UST systems installed on or after January 11, 2008. Also, in Part “B,” Sections 1.0 and 2.0, references are being added to the existing regulatory language to include the phrase “adherence to manufacturer’s specifications” to serve as additional guidance and clarification for the regulated community.

One of the more notable additions to Sections 1.0 and 2.0 of Parts “B/C/D”, specifically, under *Overfill Prevention Equipment*, is the following important Federal mandate (found at 40 CFR 280.35):

The first inspection shall occur prior to October 13, 2021.

The above deadline inclusion is applicable to all USTs regulated under Parts “B/C/D,” but was erroneously omitted from the Department’s most recent UST regulatory update. This particular change now corrects that omission.

The Department has the statutory basis and legal authority to act with regard to the above referenced proposed Amendments, pursuant to 7 *Del.C.* §§7405 - 7410. The Department published its initial proposed Amendments in the November 1, 2020 *Delaware Register of Regulations*. Thereafter, the virtual public hearing regarding this matter was held on December 9, 2020.

No members of the public attended the aforementioned public hearing held by the Department in this matter. Pursuant to 29 *Del.C.* §10118(a), the hearing record (“Record”) remained open for fifteen (15) additional days subsequent to the date of the virtual public hearing for receipt of public comment. The Record formally closed with regard to public comment at close of business on December 24, 2020, with only one written comment received by the Department during the post-hearing phase of this promulgation.

Subsequent to the close of the Record, the Department’s Division of Waste and Hazardous Substances staff prepared a Technical Response Memorandum (“TRM”), dated December 28, 2020. The TRM formally acknowledged and responded to the one supportive comment received from the public concerning the Department’s proposed Amendments, for the benefit of the Record.

It should be noted that all proper notification and noticing requirements concerning this matter were met by the Department. Proper notice of the hearing was provided as required by law.

The Department's presiding hearing officer, Lisa A. Vest, prepared a Hearing Officer's Report dated December 28, 2020 ("Report"), which expressly incorporated the Department's proposed Amendments, along with the aforementioned TRM, into the Record generated in this matter. The Report documents the proper completion of the required regulatory amendment process, establishes the Record, and recommends the adoption of the Department's proposed Amendments as attached to the Report as Appendix "A."

Reasons and Conclusions

Based on the Record developed by the Department's experts and established by the Hearing Officer's Report, I find that the proposed regulatory amendments to 7 DE Admin. Code 1351: *Underground Storage Tank Systems*, are well-supported. I further find that the Department's experts fully developed the Record to support adoption of these proposed Amendments. Therefore, the recommendations of the Hearing Officer are hereby adopted, and I direct that the proposed Amendments be promulgated as final.

In conclusion, the following reasons and conclusions are hereby entered:

1. The Department has the statutory basis and legal authority to act with regard to the proposed amendments to 7 DE Admin. Code 1351: *Underground Storage Tank Systems*, pursuant to 7 *Del.C.* §§7406 - 7408;
2. The Department has jurisdiction under its statutory authority, pursuant to 7 *Del.C.* Ch. 60, to issue an Order adopting these proposed Amendments as final;

3. The Department provided adequate public notice of the proposed Amendments, and all proceedings in a manner required by the law and regulations. The Department also provided the public with an adequate opportunity to comment on the proposed Amendments, including at the time of the virtual public hearing held on December 9, 2020, and during the 15 days subsequent to the hearing (through December 24, 2020), in order to consider all public comment on the same before making any final decision;

4. Promulgation of the proposed Amendments to 7 DE Admin. Code 1351: *Underground Storage Tank Systems* will enable Delaware's UST Regulations to (1) clarify existing regulatory language; (2) provide additional clarifying language; (3) include a federally mandated compliance deadline; and (4) correct various typographical and grammatical errors in the current UST Regulations;

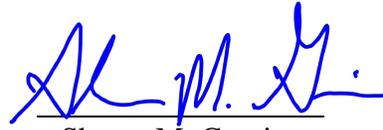
5. The Department has reviewed the proposed Amendments in the light of the Regulatory Flexibility Act, consistent with 29 *Del.C.* Ch. 104, and believes the same to be lawful, feasible, and desirable, and that the recommendations as proposed should be applicable to all Delaware citizens equally;

6. The Department's Hearing Officer's Report, including its established Record and the recommended proposed Amendments as set forth therein in Appendix "A," are hereby adopted to provide additional reasons and findings for this Order;

7. The Department's proposed Amendments, as published in the November 1, 2020 *Delaware Register of Regulations*, and as set forth in Appendix "A" as noted above, are adequately supported, are not arbitrary or capricious, and are consistent with the applicable laws and regulations. Consequently, they are approved as final regulatory Amendments, and shall go into effect ten days after their publication in the next available issue of the *Delaware Register of Regulations*;

8. The Department has an adequate Record for its decision, and no further public hearing is appropriate or necessary; and

9. The Department shall submit this Order approving as final the proposed Amendments to the *Delaware Register of Regulations* for publication in its next available issue and provide such other notice as the law and regulation require, as the Department determines is appropriate.



Shawn M. Garvin
Secretary