Office of the Registrar of Regulations,
Legislative Council,
State of Delaware

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

DIVISION OF AIR AND WASTE MANAGEMENT

TANK MANAGEMENT BRANCH

Statutory Authority: 7 Delaware Code, Chapters 60 and 74 (7 **Del.C.** Ch. 60 & 74)
7 **DE Admin. Code** 1351

PROPOSED

SAN # 2008-20 and 2008-23

1351 Regulations Governing Underground Storage Tank Systems

PART A: General Requirements for all Underground Storage Tank Systems

1.0 General Provisions

1.1 Statement of Authority and Purpose

1.1.1 These Regulations are enacted in accordance with ~~Title~~ 7 **Del.C.** Chapter 60, Environmental Control, and 7 **Del.C.** Chapter 74, Delaware Underground Storage Tank Act.

1.1.2 The Delaware Department of Natural Resources and Environmental Control (DNREC) is responsible for protecting, preserving and enhancing the environmental quality of the water, air, and land of the State. The Department recognizes that groundwater quality protection and improvement is an important goal. In addition, the General Assembly of the State of Delaware has found "that it is necessary to provide for more stringent control of the installation, operation, Retrofitting and abandonment of Underground Storage Tanks (USTs) to prevent leaks, and where leaks should occur, to detect them at the earliest possible stage and thus minimize further degradation of groundwater." The Delaware Regulations Governing Underground Storage Tank Systems are intended to address Releases from UST systems as well as prevent future Releases.

1.1.3 The intent of the Department with these Regulations is three fold. First, to ensure the detection of any Release. This will be achieved by ensuring an acceptable design and installation of new UST Systems and improvement of all UST Systems. Second, to prevent the Release of Regulated Substance to the environment by requiring UST Systems be designed to contain a Release. Finally, to assess and address potential risks of Releases to provide for the protection of human health, safety, and the environment.

1.2 Applicability

1.2.1 The requirements of these Regulations shall apply to any Person, including without limitation to all Owners and Operators of an UST System as defined in ~~Title~~ 7 **Del.C.** §7402 (20) herein unless specifically exempted. The following UST Systems shall only be subject to the requirements of Part A §4.10, and Part B §4.6, and Part C §4.5, and Part D §3.6, and Part E of these Regulations:

1.2.1.1 Agricultural/Farm and residential UST Systems of 1,100 gallons or less used for storing Motor Fuels for ~~n~~Non ~~c~~Commercial purposes.

1.2.1.2 UST Systems containing Heating Fuel of one thousand one hundred (1,100) gallons or less for Consumptive Use On The Premises Where Stored.

1.2.1.3 Any UST System holding hazardous wastes listed or identified under Subtitle C of the Solid Waste Disposal Act, or a mixture of such hazardous waste and other Regulated Substances.

1.2.1.4 Any wastewater treatment tank system that is part of a wastewater treatment facility regulated under §402 or 307(b) of the Clean Water Act.

1.2.1.5 Equipment and machinery that contains Regulated Substances for operational purposes such as Hydraulic Lift Tanks and electrical equipment tanks.

1.2.1.6 Any UST System whose capacity is 110 gallons or less.

1.2.1.7 Any emergency spill or overflow containment UST System that is expeditiously emptied after use.

1.2.2 The requirements contained in these Regulations with the exception of requirements in Part A, §1.3 and Part E of these Regulations do not apply to any of the following UST Systems:

1.2.2.1 Any UST System containing radioactive material that is regulated under the Atomic Energy Act of 1954 (42 U.S.C. 2011).

1.2.2.2 Any UST System that is part of an emergency generator system at nuclear power generation facilities regulated by the Nuclear Regulatory Commission in accordance with 10 CFR Part 50, Appendix A.

1.2.2.3 Airport Hydrant Fuel Systems.

1.2.2.4 UST Systems with field constructed tanks.

1.2.2.5 Wastewater treatment tank systems.

1.3 Prohibition for Deferred UST Systems

1.3.1 No Person may install an UST System as described under §1.2.2. of this Part for the purpose of storing Regulated Substances unless the UST System:

1.3.1.1 Will prevent Releases due to corrosion or structural failure for the Operational Life of the UST System; and

1.3.1.2 Is cathodically protected against corrosion, constructed of non corrodible material, steel clad with a non corrodible material, or designed in a manner to prevent the Release or threatened Release of any stored substance; and

1.3.1.3 Is constructed or lined with material that is Compatible with the stored substance.

1.4 Enforcement

1.4.1 Any Person who violates these Regulations shall be subject to all appropriate legal sanctions including but not limited to the provisions set forth in ~~Title~~ 7 **Del.C.** Chapter 74, §7411 or ~~Title~~ 7 **Del.C.** Chapter 60.

1.4.2 The Department reserves the right to order a hydrogeologic investigation in accordance with Part E of these Regulations or an UST System tightness test in accordance with Parts B, C and D of these Regulations when:

1.4.2.1 A Department representative cannot determine that an UST Facility is in compliance with these Regulations based upon the information made available by the Owner and Operator; or

1.4.2.2 A Department representative determines that a Facility is not in compliance with these Regulations; or

1.4.2.3 An imminent threat to human health, safety or the environment exists.

1.5 Severability

1.5.1 If any provisions of these regulations are adjudged to be unconstitutional or invalid by a court of competent jurisdiction, the remainder of these Regulations shall not be affected thereby.

1.6 Right of Appeals

1.6.1 Any Person or party whose interest is substantially affected by any action of the Secretary may appeal to the Environmental Appeals Board in accordance with 7 **Del.C.** Chapter 60, Environmental Controls, §6008.

1.6.2 Any Person or party to an appeal before the Environmental Appeals Board who is substantially affected by a decision of the Environmental Appeals Board may appeal to the Superior Court in accordance with 7 **Del.C.** Chapter 60, Environmental Controls, §6009.

1.7 Joint and Several Liability

1.7.1 Throughout these Regulations, Owners and Operators are jointly and severally liable for all duties and requirements. When used in these Regulations, "Owners or Operators" shall mean that the Owners and Operators are jointly and severally liable for the applicable duties and requirements.

2.0 Definitions

2.1 The following words, terms and phrases have the meaning ascribed to them in this Section, except where the context clearly indicates a different meaning.

"**Above Ground Release**" means any Release to the surface of the land or to surface water. This includes, but is not limited to, Releases from the above ground portion of an UST System and Above Ground Releases associated with overfills and transfer operations as the Regulated Substance moves to or from an UST System.

"**Accidental Release**" means any sudden or non-sudden release of Regulated Substance from an UST System that results in a need for corrective action and/or compensation for bodily injury or property damage neither expected nor intended by the tank Owner or Operator.

"**Agricultural/Farm Tank**" is a tank located on a tract of land devoted to the production of crops or raising animals, including fish, and associated residences and improvements. An agricultural/farm tank shall be located on the farm property. "Agricultural/Farm" includes fish hatcheries, rangeland and nurseries with growing operations.

"**Airport Hydrant Fuel System**" means a fuel distribution system utilizing underground ~~p~~Piping that supplies vertical Pipe dispensing points located in flush, surface mounted, below grade pits.

"**Ancillary Equipment**" means any devices including, but not limited to, such devices as ~~p~~Piping, fittings, flanges, valves, and pumps used to distribute, meter, or control the flow of Regulated Substances to and from an UST.

"**API**" means American Petroleum Institute.

"**ASTM**" means American Society for Testing and Materials.

"**Below Ground Release**" means any Release to the subsurface of the land and to groundwater. This includes, but is not limited to, Releases from the below ground portions of an UST System and below ground Releases associated with overfills and transfer operations as the Regulated Substance moves to or from an Underground Storage Tank System.

"**Beneath the Surface of the Ground**" means beneath the ground surface or otherwise covered with earthen materials.

"**Bodily Injury**" shall have the meaning given to this term by state law; however this term shall not include those liabilities which, consistent with standard insurance industry practices, are excluded from coverage in liability insurance policies for bodily injury.

"**Cathodic Protection**" means a technique to prevent the corrosion of a metal surface by making that surface the cathode of an electrochemical cell. Protection can be accomplished by means of an impressed current system or a Sacrificial Anode system.

"**CERCLA**" means the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986.

"**Change In Service**" means a change in status of the UST System from either In Service to Out Of Service or a change in status of the UST System from Out Of Service to In Service.

"**Change in Substance Stored**" means the exchange of one substance stored in an UST System for another.

"**Chief Financial Officer**" in the case of local government owners and operators, means the individual with the overall authority and responsibility for the collection, disbursement, and use of funds by the local government.

"**Class A Operator**" means an individual having primary responsibility for the overall operation and maintenance of an UST System.

"**Class B Operator**" means an individual having responsibility and direct control over daily on-site operation and maintenance of an UST System.

"**Class C Operator**" means an individual, on-site employee having primary responsibility for addressing emergencies presented by a Release from an UST System.

"**Closed In Place**" means the cleaning and filling of an UST System through the use of prescribed techniques to render it permanently unfit for service.

"**Compatible**" means the ability of two or more substances to maintain their respective physical and chemical properties upon contact with one another for the design life of the UST System under conditions likely to be encountered in the UST System.

"**Connected Piping**" means all ~~p~~Piping including valves, elbows, joints, flanges, and flexible connectors attached to an UST System through which Regulated Substances flow. For the purpose of determining how much ~~p~~Piping is connected to any individual UST System, the ~~p~~Piping that joins two UST Systems should be allocated equally between them.

"**Consumptive Use**" with respect to Heating Fuel means consumed On The Premises Where Stored for non commercial purposes.

"**Consumptive Use Heating Fuel UST System**" means an UST System that contains Heating Fuel that is used solely for the operation of equipment used for the generation of heat, is connected directly or via a day tank to the heat generating equipment, and is for Consumptive Use On The Premises Where Stored.

"**Containment Sump**" means Product Tight under dispenser, Piping and Underground Storage Tank top structures, enclosing equipment ~~and~~ or ~~p~~Piping or used for Release Detection, such that there are no pathways for Regulated Substances to enter the environment.

"**Controlling Interest**" means direct ownership of at least fifty (50) percent of the voting stock of another entity.

"**Corrective Action**" means the sequence of actions, or process, that includes confirming a release, site assessment, interim remedial action, remedial action, monitoring, and termination of the remedial action.

"**Department**" means the Department of Natural Resources and Environmental Control.

"**Dielectric Material**" means a material that does not conduct direct electrical current. Dielectric coatings are used to electrically isolate UST Systems from the surrounding soils. Dielectric bushings are used to electrically isolate portions of the UST System (e.g., ~~t~~Tank from ~~p~~Piping).

"**Domestic Well**" means a well primarily used for potable non-public water supply purposes and which may be used for non-potable purposes, excluding heat pump supply.

"**Effective Date**" means the most recent date of Promulgation of these Regulations.

"**Electrical Equipment**" means underground equipment that contains dielectric fluid that is necessary for the operation of equipment such as transformers and buried electrical cable.

"**Electrically Isolated**" means the electrical separation of the Underground Storage Tank from the ~~p~~Piping and from other metallic structures and the environment by means of a nonconductive fitting or bushing.

"**Excavation Zone**" means the volume containing the UST System and backfill material bounded by the ground surface, walls, and floor of the pit and trenches into which the UST System is placed at the time of installation.

"**Facility**" means any location or part thereof containing one or more Underground Storage Tank~~s~~ Systems.

"**Financial Reporting Year**" means the latest consecutive twelve month period for which any of the following reports used to support a financial test is prepared:

(1) A 10 K report submitted to the SEC; or

(2) An annual report of tangible net worth submitted to a recognized rating service such as Dun and Bradstreet; or

(3) Annual reports submitted to the Energy Information Administration or the Rural ~~Electrification Administration~~ Utilities Service. Financial Reporting Year may thus comprise a fiscal or a calendar year period; or

(4) Audited financial report; or

(5) Annual reports submitted to the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, or the Federal Deposit Insurance Corporation.

"**Flow-Through Process Tank**" is a tank that forms an integral part of a production process through which there is a steady, variable, recurring, or intermittent flow of materials during the operation of the process. Flow-Through Process Tanks do not include tanks used for the storage of materials prior to their introduction into the production process or for the storage of finished products or by products from the production process.

"**Gathering Lines**" means any pipeline, equipment, facility, or building used in the transportation of oil or gas during oil or gas production or gathering operations.

"**Hazardous Substance**" means a substance as defined in 101(14) of the CERCLA, or any mixture of such hazardous substance and petroleum, but not including any substance regulated as a hazardous waste under RCRA Subtitle C.

"**Hazardous Substance UST System**" means an UST System that contains a hazardous substance defined in 101(14) of the CERCLA, but not including any substance regulated as a hazardous waste under RCRA Subtitle C, or any mixture of such substances and petroleum, and which is not a Petroleum UST System.

"**Heating Fuel**" also known as heating oil, means petroleum that is one of eight technical grades. These grades are: No. 1; No. 2; No. 4 light; No. 4 heavy; No. 5 light; No. 5 heavy; No. 6 technical grade of fuel oil; other residual fuel oils (including Navy Special Fuel Oil and Bunker C); and other fuels used as substitutes for one of these fuels such as kerosene, Used Oil diesel or biodiesel when used for heating purposes. Heating oil is typically used in the operation of heating equipment, boilers, or furnaces.

~~"**Heating Fuel UST**" means an UST System containing Heating Fuel or Used Oil that is used solely for the operation of equipment used for the generation of heat.~~

"**Hydraulic Lift Tank**" means a tank holding hydraulic fluid for a closed loop mechanical system that uses compressed air or hydraulic fluid to operate lifts, elevators, and other similar devices.

"**Impervious Material**" means a material of sufficient thickness, density and composition that is impenetrable to the Regulated Substance, has a permeability of less than 1 X 10 7 cm/sec., and that will prevent the discharge to the lands, ground waters, or surface waters of the State of any Regulated Substance for a period of at least as long as the maximum anticipated time during which the Regulated Substance will be in contact with the material.

"**Industrial Well**" means a well which is used in the processing, washing, packaging, or manufacturing of a product excluding food and beverages.

"**In Service**" means an UST System which is not abandoned, contains Regulated Substances and/or has Regulated Substances regularly added or withdrawn.

"**Legal Defense Cost**" means any expense that an Owner or Operator or provider of financial assurance incurs in defending against claims or actions brought by:

(1) EPA or Department to require investigations and/or corrective action or to recover the costs of investigations and/or corrective action; or

(2) On behalf of a third party for bodily injury or property damage caused by an accidental release; or

(3) Any person to enforce the terms of a financial assurance mechanism.

"**Liquid Trap**" means sumps, well cellars, and other traps used in association with oil and gas production, gathering, and extraction operations (including gas production plants), for the purpose of collecting oil, water, and other liquids. These Liquid Traps may temporarily collect liquids for subsequent disposition or reinjection into a production or pipeline stream, or may collect and separate liquids from a gas stream.

"**LNAPL**" means a Light Non-Aqueous Phase Liquid having a specific gravity less than one (1) and composed of one or more organic compounds that are immiscible or sparingly soluble in water. The term encompasses all potential occurrences of LNAPL including free, mobile, and residual.

"**Free LNAPL**" means LNAPL that is hydraulically connected in the pore space and has the potential to be mobile in the environment.

"**LNAPL Body**" means the 3-dimensional form and distribution of LNAPL in the subsurface existing in any phase.

"**LNAPL Conceptual Site Model (LCSM)**" means a model describing the physical properties, chemical composition, occurrence and geologic setting of the LNAPL body from which estimates of flux, risk and potential remedial action can be generated. The LCSM may be a dynamic, living model that changes through time as a function of natural attenuation or engineered remedial action processes, or additional site knowledge.

"**Mobile LNAPL**" means free LNAPL that is moving laterally or vertically in the environment under prevailing hydraulic conditions. The result of the LNAPL movement is a net mass flux from one point to another. Not all free LNAPL is mobile, but all mobile LNAPL must be free LNAPL.

"**Residual LNAPL**" means LNAPL that is hydraulically discontinuous and immobile under prevailing conditions. Residual LNAPL cannot move, but is a source for chemicals of concern dissolved in groundwater or in the vapor phase in soil gas. The residual LNAPL saturation is a function of the initial or maximum LNAPL saturation and the porous medium.

"**Local Government**" shall have the meaning given this term by applicable state law and includes Indian tribes. The term is generally intended to include:

(1) Counties, municipalities, townships, separately chartered and operated special districts (including local government public transit systems and redevelopment authorities), and independent school districts authorized as governmental bodies by state charter or constitution; and

(2) Special districts and independent school districts established by counties, municipalities, townships, and other general purpose governments to provide essential services.

"**Maintenance**" means the operational upkeep as described by manufacturer's recommendations or the Department requirements to prevent an UST System from releasing product.

"**Monitor Well**" means a well installed in accordance with Delaware's Regulations Governing the Construction of Water Wells that will be used for the monitoring of ground water quality.

"**Motor Fuel**" means petroleum or other substance that includes motor gasoline, aviation gasoline, No. 1 or No. 2 diesel fuel, alternative fuels including but not limited to ethanol, methanol or biodiesel and is typically used in the operation of a motor engine.

"**Motor Oil**" means a petroleum product used to lubricate the internal parts of an engine. The term includes lubricating and operational fluids for the mechanical components associated with the engine, including any hydraulic, transmission, gear or braking systems.

"**NACE**" means National Association of Corrosion Engineers.

"**NFPA**" means National Fire Protection Association, Inc.

"**Non Commercial Purposes**" ~~with respect to Motor Fuel, Heating Fuel, or Hazardous Substance~~ means the product in the UST System is not used for any activities that result in monetary gain.

"**Non-Consumptive Use Heating Fuel UST System**" means an UST System that contains Heating Fuel that is not solely for Consumptive Use On The Premises Where Stored.

"**Observation Tube**" means a leak detection device placed within the Excavation Zone which reaches the water table and can be inspected periodically to determine whether contamination of the aquifer by a Regulated Substance has occurred.

"**Occurrence**" means an accident, including continuous or repeated exposure to conditions, which results in a release from an UST System. This definition is not intended either to limit the meaning of "occurrence" in a way that conflicts with standard insurance usage or to prevent the use of other standard insurance terms in place of "occurrence."

"**On The Premises Where Stored**" with respect to Heating Fuel means UST Systems located on the same property where the stored Heating Fuel is used.

"**Operational Life**" refers to the period beginning when installation of the UST System has commenced until the time the UST System is properly Removed or Closed In Place in accordance with the requirements of these Regulations.

"**Operator**" means any Person who has responsibility for the care, custody, and control of the daily operation of an UST System, including but not limited to responsibility conferred by lease, contract or other form of authorization agreement. An Operator's duties and responsibilities under 7 **Del.C.** Chapter 74 and these Regulations continue regardless of whether the UST System is in fact operational.

"**Out Of Service**" means an UST System which:

(a) Is not in use; that is, which does not have Regulated Substances added to or withdrawn from the UST System, and

(b) Is intended to be placed back In Service.

"**Overfill Release**" is a Release that occurs when an Underground Storage Tank is filled beyond its capacity, resulting in a discharge of the Regulated Substance to the environment.

"**Owner**" means a Person who has or has had a legal interest in a Facility or UST System, or who has or has had an equitable interest in a Facility or UST System, except when a Person holds an interest in an UST System as a security interest unless through foreclosure or other such action the holder has taken possession of or operated the UST System; and in the case of an UST System in use on November 8, 1984, or brought into use after that date, any Person who owns an UST System used for storage, use, or dispensing of Regulated Substances; and in the case of any UST System in use before November 8, 1984 but no longer in use on that date, any Person who owned such UST System immediately before the discontinuation of its use.

"**Person**" means any individual, entity, trust, firm, joint stock company, federal agency, corporation (including a government corporation), partnership, association, state, municipality, commission, political subdivision of a state, or any interstate body, a consortium, a joint venture, a commercial organization, and the United States Government.

"**Person in Charge**" means the UST Owner or Person designated by the UST Owner, an UST Operator, or any Person delivering Regulated Substance to an UST, as the one with direct supervisory responsibility for an activity or operation at a Facility, such as the transfer of a Regulated Substance to or from any point in the Facility.

"**PEI**" means Petroleum Equipment Institute.

"**Petroleum Marketing Facility**" means all facilities at which petroleum is produced or refined and all facilities from which petroleum is sold or transferred to other petroleum marketers or to the public.

"**Petroleum Marketing Firm**" means all firms owning petroleum marketing facilities. Firms owning other types of facilities with USTs as well as petroleum marketing facilities are considered to be Petroleum Marketing Firms.

"**Pipe**" or "**Piping**" or "**Line**" means an impermeable hollow cylinder or tubular conduit that conveys or transports Regulated Substances, or is used for venting, filling, or vapor recovery ~~or removing~~ of Regulated Substances.

"**Pipeline Facilities**" are new and existing Pipe right-of-ways and any associated equipment including Gathering Lines, facilities, or buildings.

"**Positive Pressurized Delivery System**" means a Regulated Substance delivery system in which part or all of the system is continuously under pressure greater than the atmospheric pressure.

"**Precision Test**" means a test capable of detecting a Release and that is approved by the EPA and meets or exceeds NFPA 329, Underground Leakage of Flammable and Combustible Liquids.

"**Product Tight**" means under dispenser containment and UST top sumps that are impervious to the substance contained, or to be contained, so as to prevent seepage of Regulated Substance from the containment into the environment.

"**Property Damage**" shall have the meaning given this term by applicable state law. This term shall not include those liabilities which, consistent with standard insurance industry practices, are excluded from coverage in liability insurance policies for property damage. However, such exclusions for property damage shall not include corrective action associated with releases from tanks which are covered by the policy.

"**Provider of Financial Assurance**" means an entity that provides financial assurance to an Owner or Operator of an underground storage tank through one of the mechanisms listed in these Regulations, including a guarantor, insurer, risk retention group, surety, issuer of a letter of credit, issuer of a state required mechanism, or a state.

"**Public Well**" means a well which is used to supply water to more than three (3) dwelling units; twenty-five (25) or more employees; in the manufacture of ice, foods, or beverages; to the public in food washing, processing, or preparation in a plant, restaurant, or other facility.

"**RCRA**" means the Resource Conservation and Recovery Act of 1976 as amended.

"**Registration Certificate**" means a document issued by the Department to implement the registration and notification requirements of these Regulations.

"**Regulated Substance**" means a liquid that contains:

(a) One percent (1%) or more by volume of a hazardous substance as defined in ~~101(14) of~~ the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) of 1980 (42 U.S.C. 9601(14)) and any amendments thereto; but not including any substance regulated as a hazardous waste under RCRA Subtitle C; ~~and~~ or

(b) One tenth percent (.1%) or more by volume of a carcinogen as defined by EPA in the Integrated Risk Information System (IRIS) April 2002 and as updated; ~~and~~ or

(c) Petroleum, including crude oil or any fraction thereof, which is liquid at standard conditions of temperature (60 degrees Fahrenheit) and pressure (14.7 pounds per square inch absolute), including without limitation petroleum and substances containing petroleum comprised of a complex blend of hydrocarbons derived from crude oil through processes of separation, conversion, upgrading and finishing, such as Motor Fuels, Motor Oil, Heating Fuel, residual fuel oils, lubricants, petroleum solvents, Used Oils, and biodiesel; ~~and~~ or

(d) Alternative fuels including but not limited to ethanol and methanol in concentrations up to one hundred percent (100%); ~~and~~ or

(e) Any mixture of the foregoing ~~A~~a through ~~D~~d.

"**Release**" means any spilling, overfilling, leaking, emitting, discharging, escaping, leaching or disposing of a Regulated Substance into groundwater, surface water, air or soils that is not permitted by law, regulation or permit.

"**Release Detection**" means a method or process of determining whether a Release of a Regulated Substance has occurred from the UST System into the environment or into the interstitial space between the UST System and its secondary barrier or Secondary Containment around it.

"**Remedial Action**" means activities conducted to protect human health, safety, and the environment. These activities include evaluating risk, making no further action determinations, monitoring institutional and engineering controls, and designing and operating cleanup equipment.

"**Removal**" or "Removed" means the process of removing and disposing of an UST System, through the use of prescribed techniques for the purging of residues and vapors and removal of the vessel from the ground.

"**Repair"** means to restore or replace an UST System component that is not functioning per manufacturer's specifications or Department requirements.

"**Residential Tank**" is a tank located on a single family property used primarily for dwelling purposes.

"**Responsible Party**" means any Person who:

(a) Owns or has a legal or equitable interest in a Facility or an UST;

(b) Operates or otherwise controls activities at a Facility;

(c) At the time of storage of Regulated Substances in an UST System, operated or otherwise controlled activities at the Facility or UST System, or owned or held a legal or equitable interest therein;

(d) Arranged for or agreed to the placement of an UST System by contract, agreement or otherwise;

(e) Caused or contributed to a Release from an UST System; or

(f) Caused a Release as a result of transfer of a Regulated Substance to or from an UST System.

"**Retrofit**" means to modify an UST System to meet standards contained in these Regulations.

"**Sacrificial Anode**" means a device to reduce or prevent corrosion of a metal in an electrolyte by galvanic coupling to a more anodic metal.

"**Secondary Containment**" means a system installed to prevent any volume of Regulated Substance Released from the ~~primary containment t~~Tank and Piping system from reaching the soils or water outside the system for the anticipated period of time necessary to detect and recover the Released substance.

"**Secretary**" means the Secretary of the Department of Natural Resources and Environmental Control or a duly authorized designee.

"**Septic Tank**" is a water tight covered receptacle designed to receive or process, through liquid separation or biological digestion, the sewage discharged from a building sewer. The effluent from such receptacle is distributed for disposal through the soil and settled solids and scum from the tank are pumped out periodically and hauled to a treatment facility.

"**Site Assessment**" means to measure for the presence of a Release where contamination is most likely to be present at an UST site. Selection of sample types, sample locations and measurement methods shall be based on the nature of the stored substance, the type of backfill, the depth to groundwater, and other factors appropriate for identifying the presence of a Release. A Site Assessment is not restricted to the property containing the UST System.

"**State**" means the State of Delaware.

"**Storm Water**" or "Wastewater Collection System" means piping, pumps, conduits, and any other equipment necessary to collect and transport the flow of surface water run off resulting from precipitation, or domestic, commercial, or industrial wastewater to and from retention areas or any areas where treatment is designated to occur. The collection of storm water and wastewater does not include treatment except where incidental to conveyance.

"**Substantial Business Relationship**" means the extent of a business relationship necessary under applicable state law to make a guarantee contract issued incident to that relationship valid and

enforceable. A guarantee contract is issued "incident to that relationship" if it arises from and depends on existing economic transactions between the guarantor and the owner or operator.

"**Substantial Governmental Relationship**" means the extent of a governmental relationship necessary under applicable state law to make an added guarantee contract issued incident to that relationship valid and enforceable. A guarantee contract is issued "incident to that relationship" if it arises from a clear commonality of interest in the event of an UST Release such as coterminous boundaries, overlapping constituencies, common ground water aquifer, or other relationship other than monetary compensation that provides a motivation for the guarantor to provide a guarantee.

"**Surface Impoundment**" means a natural topographic depression, man made excavation, or diked area formed primarily of earthen materials (although it may be lined with man made materials), that is not an injection well.

"**Tangible Net Worth**" means the tangible assets that remain after deducting liabilities; such assets do not include intangibles such as goodwill and rights to patents or royalties. For purposes of this definition, "assets" means all existing and all probable future economic benefits obtained or controlled by a particular entity as a result of past transactions.

"**Tank**" means ~~a~~ that portion of an Underground Storage Tank System that consists of the stationary containment vessel ~~or stationary device~~ designed to contain an accumulation of Regulated Substances ~~and constructed of non-earthen materials (e.g., concrete, steel, plastic) that provides structural support~~ and does not include any connected Piping Ancillary Equipment.

"**Termination**" in ~~Appendix~~ §3.3, Form C and §3.4, Form D of Part F means only those changes that could result in a gap in coverage as where the insured has not obtained substitute coverage or has obtained substitute coverage with a different retroactive date of the original policy.

"**UL**" means Underwriters Laboratories.

"**Underground Area**" means an underground room, such as a basement, cellar, shaft or vault, providing enough space to permit physical inspection of the entire exterior UST situated on or above the surface of the floor.

"**Underground Release**" means any below ground Release.

"**Underground Storage Tank**" or "UST" means any one or combination of Tanks including underground Pipes connected thereto, which is used to contain an accumulation of Regulated Substances, and the volume of which, including the volume of underground Pipes connected thereto, is 10 percent or more beneath the surface of the ground. Such term does not include any:

(a) Septic Tank;

(b) Pipeline facility (including Gathering Lines) regulated under:

(1) The Natural Gas Pipeline Safety Act of 1968 (49 U.S.C. App. 1671, et seq.), or

(2) The Hazardous Liquid Pipeline Safety Act of 1979 (49 U.S.C. App. 2001, et seq.), or

(3) Which is an intrastate pipeline facility regulated under state laws comparable to the provisions of the law referred to in paragraph B (1) or (2) of this definition;

(c) Surface Impoundment, pit, pond, or lagoon;

(d) Storm Water or Wastewater Collection System;

(e) Flow-Through Process Tank;

(f) Liquid Trap or associated Gathering Lines directly related to oil or gas production and gathering operations; or

(g) Storage ~~T~~tank situated in an underground area (such as a basement, cellar, mineworking, drift, shaft, or tunnel) if the storage Tank is situated upon or above the surface of the floor.

(h) The term "Underground Storage Tank" or "UST" does not include any Pipes connected to any ~~T~~tank which is described in Subsections A through G of this definition.

"**Underground Storage Tank System**" or "UST System" means an Underground Storage Tank, connected underground product, vent, and vapor recovery Piping and its associated Ancillary Equipment, ~~and~~ containment systems, and all appurtenances including but not limited to spill containment systems, overfill prevention systems, and Release detection systems~~, if any~~.

"**Used Oil**" means a petroleum based or synthetic oil used as an engine lubricant, engine oil, Motor Oil or lubricating oil for use in an internal combustion engine, or a lubricant for motor vehicle transmissions, gears or axles which through use, storage or handling has become unsuitable for its original purpose due to the presence of impurities or loss of original properties.

"**Used Oil UST System**" means an UST System used for storing Used Oil and its associated Ancillary Equipment and containment system.

"**Upgrade**" means the addition of a component to improve the ability of an UST System to prevent or detect the Release of Regulated Substances from the UST System.

"**U-Tube**" means a Release Detection device placed under the longitudinal axis of an UST in an excavation which is always above the water table, and that can collect Regulated Substances released from an UST and can be inspected periodically to determine if a Release of a Regulated Substance has occurred.

"**Vadose Zone Vapor Detection Tube**" means a Release Detection device placed within the tank field which does not reach the water table and can be continuously monitored by electronic means or periodically inspected for vapors emanating from released Regulated Substances.

"**Wastewater Treatment Tank**" means a ~~T~~tank that is designed to receive and treat an influent wastewater through physical, chemical, or biological methods.

3.0 Referenced Standards

3.1 Referenced Standards Organizations

3.1.1 The referenced standards listed in this Section have served in part as the basis for the standards enacted under these Regulations. The most recent editions of the referenced standards are available for review and inspection with prior notification at the Department of Natural Resources and Environmental Control, Tank Management Branch and from the following sources (addresses of the cited organizations are subject to change):

3.1.2 American Petroleum Institute (API), 1220 L Street, N.W., Washington, D.C. 20005, (202) 682-8375. http://www.api.org

3.1.3 ASTM International, 100 Barr Harbor Drive, West Conshohocken, Pennsylvania 19429-2959, (610) 832-9585. http://www.astm.org

3.1.4 National Association of Corrosion Engineers (NACE), P. O. Box 218340, Houston, Texas 77218, (713) 492-0535. http://www.nace.org

3.1.5 National Fire Protection Association (NFPA), Batterymarch Park, Quincy, MA 02269, (800) 344-3555. http://www.nfpa.org

3.1.6 National Leak Prevention Association (NLPA), 75-4 Main Street, Suite 300, Plymouth, NH 03264, (815) 301-2785. http://www.nlpa-online.org/index.html

3.1.7 Petroleum Equipment Institute (PEI), P. O. Box 2380, Tulsa, OK 74101, (918) 494-9696. http://www.pei.org

3.1.8 Steel Tank Institute (STI), 570 Oakwood Road, Lake Zurich, Illinois 60047, (847) 438-8265. http://www.steeltank.com

3.1.9 Underwriters Laboratories (UL), 333 Pfingsten Road, Northbrook, Illinois 60062, (847) 272-8800. http://www.ul.com

3.1.10 U.S. Department of Labor, Occupational Safety and Health Administration, (OSHA), Frances Perkins Building, 200 Constitution Avenue, NW, Washington, DC 20210, (866)-487-2365. http://www.osha.gov

3.2 Applicability

3.2.1 In these Regulations, all referenced standards mean the most recent edition or version in effect ~~at the time of the effective date of these Regulations~~ on January 11, 2008. Where there is an irreconcilable conflict between a standard or recommendation published by an industry or professional organization and referenced by these Regulations, and a requirement in these Regulations, the most stringent shall apply and control. Where there is an irreconcilable conflict between standards or recommendations published by industry or professional organizations and referenced by these Regulations, the most stringent shall apply and control.

3.3 Titles of Documents

3.3.1 American Petroleum Institute (API)

3.3.1.1 Specification Number 12F, Shop Welded Tanks for Storage of Production Liquids

3.3.1.2 RP 1604, Closure of Underground Petroleum Storage Tanks

3.3.1.3 RP 1615, Installation of Underground Petroleum Storage Systems

3.3.1.4 RP 1621, Bulk Liquid Stock Control at Retail Outlets

3.3.1.5 RP 1631, Interior Lining and Periodic Inspection of Underground Storage Tanks

3.3.1.6 RP 1632, Cathodic Protection of Underground Petroleum Storage Tanks

3.3.1.7 RP 1635, Management of Underground Petroleum Storage Systems at Marketing and Distribution Facilities [final edition, now out of print]

3.3.1.8 RP 1637, Using the API Color-Symbol System to Mark Equipment and Vehicles for Product Identification at Service Stations and Distribution Terminals

3.3.1.9 RP 1646, Safe Work Practices for Contractors Working at Retail Petroleum/Convenience Facilities

3.3.1.10 IP 1542, Identification Markings for Dedicated Aviation Fuel Manufacturing and Distribution Facilities, Airport Storage and Mobile Fueling Equipment

3.3.1.11 RP 1626, Storing and Handling Ethanol and Gasoline-ethanol Blends at Distribution Terminals and Service Stations

3.3.1.12 Standard 2015, Safe Entry and Cleaning of Petroleum Storage Tanks

3.3.1.13 RP 2016, Guidelines and Procedures for Entering and Cleaning Petroleum Storage Tanks

3.3.2 National Association of Corrosion Engineers (NACE)

3.3.2.1 RP 0285, Corrosion Control of Underground Storage Tank Systems by Cathodic Protection

3.3.2.2 TM0101, Measurement Techniques Related to Criteria for Cathodic Protection on Underground or Submerged Metallic Tank Systems

3.3.2.3 RP 0169, Control of External Corrosion on Underground or Submerged Metallic Piping Systems

3.3.3 National Fire Protection Association (NFPA)

3.3.3.1 NFPA 30, Flammable and Combustible Liquids Code

3.3.3.2 NFPA 30A, Motor Fuel Dispensing Facilities and Repair Garages

3.3.3.3 NFPA 31, Standard for the Installation of Oil Burning Equipment

3.3.3.4 NFPA 329, Recommended Practice for Handling Releases of Flammable and Combustible Liquids and Gases

3.3.3.5 NFPA 385, Standard for Tank Vehicles for Flammable and Combustible Liquids

3.3.4 National Leak Prevention Association (NLPA)

3.3.4.1 NLPA Standard 631, Chapter A, Entry, Cleaning, Interior Inspection, Repair, and Lining of Underground Storage Tanks and Chapter B, Future Internal Inspection Requirements for Lined Tanks

3.3.5 Petroleum Equipment Institute (PEI)

3.3.5.1 RP100, Recommended Practices for Installation of Underground Liquid Storage Systems

3.3.5.2 RP300, Recommended Practices for Installation and Testing of Vapor Recovery Systems at Vehicle Fueling Sites

3.3.6 Steel Tank Institute (STI)

3.3.6.1 STI P3, Specification for sti P3® System for External Corrosion Protection of Underground Steel Storage Tanks

3.3.6.2 F-841, Standard for Dual Wall Underground Steel Storage Tanks

3.3.6.3 F-894, ACT-100® Specification for External Corrosion Protection of FRP Composite Steel Underground Storage Tanks

3.3.6.4 F-961, ACT-100U® Specification for External Corrosion Protection of Composite Steel Underground Storage Tanks

3.3.6.5 R-972, Recommended Practice for the Addition of Supplemental Anodes to sti-P3® USTs

3.3.6.6 F-922, Specification for Permatank®

3.3.7 Underwriters Laboratories Standards (UL)

3.3.7.1 UL 58, Standard for Steel Underground Tanks for Flammable and Combustible Liquids

3.3.7.2 UL 1316, Standard for Glass-Fiber Reinforced Plastic Underground Storage Tanks for Petroleum Products, Alcohols and Alcohol Gasoline Mixtures

3.3.7.3 UL 1746, Standard for Safety: External Corrosion Protection Systems For Steel Underground Storage Tanks

3.3.7.4 UL 971, Standard for Nonmetallic Underground Piping for Flammable Liquids

3.3.7.5 UL 567, Standard for Emergency Breakaway Fittings, Swivel Connectors and Pipe-Connection Fittings for Petroleum Products and LP-Gas

3.3.8 U.S. Department of Labor, Occupational Safety and Health Administration (OSHA)

3.3.8.1 OSHA, 29 CFR, 1910.146, Permit Required Confined Spaces

3.3.8.2 OSHA, 29 CFR, 1926 Subpart P, Excavations

11 DE Reg. 922 (01/01/08)

4.0 Registration and Notification Requirements

4.1 General Requirements

4.1.1 No Person shall own or operate an UST System unless the UST is registered with the Department utilizing a form provided by the Department, unless specifically exempted in this Part. At a minimum, the notice must specify to the extent known, the location, size, type of UST System, type of Release ~~protection~~ Detection, age of the UST, and the type of Regulated Substance(s) stored.

~~4.1.2 Beginning May 14, 1993, any Person who owns or operates an UST System containing Heating Fuel with a storage capacity of greater than 1,100 gallons must register each Underground Storage Tank with the Department utilizing a form provided by the Department.~~

4.1.~~3~~2 All UST Systems, unless specifically exempted, that were in the ground on or after July 12, 1985, unless taken out of operation and Closed In Place on or before January 1, 1974, are required to be

registered with the Department in accordance with 7 **Del.C.** Chapter 74 ~~on~~ utilizing a form provided by the Department. Owners and Operators who have not complied with the registration requirements may obtain a notification form from the Department which must be accurately completed, signed, dated and returned to the Department.

4.1.~~4~~3 Owners and Operators must provide notification for each UST. Owners and Operators may provide notice for multiple USTs at a single Facility using one notification form. Owners with USTs located at more than one Facility must file a separate notification form for each Facility.

4.1.~~5~~4 Registration of UST Facilities must be renewed on or before February 1 of every year from the date of the last valid Registration Certificate and until the Department receives a formal notice that the UST Facility has been permanently Removed or Closed In Place or that the ownership of the Facility has been transferred. Registration shall be automatically renewed by the Department upon receipt of the annual Tank registration fee. Nonpayment of fees shall render the Registration Certificate invalid.

4.1.~~6~~5 The Owner shall sign and date all UST registration submittals.

4.1.~~7~~6 The Owner shall notify the Department in writing of any significant change in the information presented on the original registration form including but not limited to change of address, change in UST System status including Removal, Closure in Place, ~~and~~ Change in Service, or ~~change in product stored~~ Change in Substance Stored, Retrofit, or Upgrade at least ten (10) calendar days prior to the change.

4.1.~~8~~7 No Person shall order or accept delivery of a Regulated Substance into an UST System unless the UST Facility has a valid Registration Certificate issued by the Department.

4.1.~~9~~8 No Person shall deposit a Regulated Substance into an UST System unless the UST Facility has a valid Registration Certificate issued by the Department.

4.1.~~10~~9 Any Person who sells an UST System must notify the new Owner and Operator of the UST System registration requirements of this Part.

4.2 Registration Fees

4.2.1 On or before February 1 of each calendar year, Owners and Operators of UST Systems must pay an annual per Underground Storage Tank registration fee in accordance with 7 **Del.C.** §7418.

4.2.2 Consumptive Use Heating Fuel UST Systems are subject to the tank registration fee in 7 **Del.C.** §7418 as follows:

4.2.2.1 Consumptive Use Heating Fuel UST Systems with a storage capacity greater than one thousand one hundred (1,100) gallons and less than or equal to two thousand (2,000) gallons are subject to the annual tank registration fee beginning January 1, 1989 and ending May 14, 1993.

4.2.~~2~~3 ~~Beginning May 14, 1993, on or before February 1 of each calendar year thereafter, Owners and Operators of UST Systems containing Heating Fuel with a storage capacity greater than 2,000 gallons must pay an annual per tank registration fee in accordance with 7 **Del.C.** §7418.~~ Consumptive Use Heating Fuel UST Systems with a storage capacity greater than two thousand (2,000) gallons are subject to the annual tank registration fee beginning January 1, 1989.

4.2.~~3~~4 No annual registration fee will be required if an UST System is Removed or Closed In Place prior to the February 1 deadline for payment of the UST fee. To qualify for this exemption, the Owner

and Operator of the UST System must comply with the notification and Removal or Closure In Place requirements of these Regulations.

4.3 Registration Certificate

4.3.1 The Department shall issue a validated Registration Certificate for each UST Facility upon initial registration or notification of Change In Service or change in ownership. The Owner and Operator of the UST Facility must display a current and valid Registration Certificate on the premises of the UST Facility at all times. The Registration Certificate shall be made available for inspection upon request by any authorized local, state or federal representative.

4.4 Transfer of Ownership of UST Systems Notification Requirements

4.4.1 Any Person who sells a UST System intended to be used as an UST System shall notify the purchaser of such UST System of the new Owner's notification obligations under these Regulations.

4.4.2 Any Person who assumes ownership of an UST System from a previous registrant shall complete and return to the Department a new notification form and a transfer of ownership form with documentation of compliance with the Financial Responsibility requirements of Part F of these Regulations and a copy of the bill of sale for the property no later than thirty (30) days after the transfer.

4.4.3 The new Owner and Operator may operate the UST System for no more than 72 hours after assuming ownership without the Department having received the new notification form and a transfer of ownership form with documentation of compliance with the Financial Responsibility requirements of Part F of these Regulations and a copy of the bill of sale.

4.4.4 The seller or former Owner shall, at the time of transfer of ownership, deliver to the new Owner all available documents and information relevant to the UST System, including but not limited to the following:

4.4.4.1 Regulated Substance storage records; and

4.4.4.2 Any approved plans for new installations; and

4.4.4.3 Copies of Registration forms and certificate; and

4.4.4.4 Testing data and reports; and

4.4.4.5 Reports documenting UST System Closure In Place and Removal; and

4.4.4.6 UST lining specifications used, if applicable; and

4.4.4.7 Monitoring reports; and

4.4.4.8 Soil and groundwater sampling and laboratory chemical analyses reports; and

4.4.4.9 Site Assessment reports; and

4.4.4.10 Equipment Maintenance schedules and logs; and

4.4.4.11 Repair, Upgrade and Retrofit records.

4.4.5 Any change in the structure of the UST Owner, including but not limited to any change in the corporate form and any change in the form of the business entity, shall constitute a transfer of ownership.

4.5 Multiple Use USTs Notification Requirements

4.5.1 Owners and Operators shall provide written notification to the Department when UST Systems are to be used for multiple purposes.

4.5.2 UST Systems storing one Regulated Substance utilized for multiple purposes including but not limited to petroleum used for heating buildings and fueling emergency generators and diesel fuel used for fueling vehicles and heating buildings, shall meet the more stringent requirements for installation, leak detection, spill and overfill protection, corrosion protection and financial responsibility requirements in Parts A, B, C, D and F of these Regulations.

4.6 Installation Notification Requirements

4.6.1 No Person shall install an UST System used for storing Regulated Substances without prior written approval from the Department.

4.6.2 UST System Owners and Operators must notify the Department of the planned installation of all UST Systems used for storing Regulated Substances, at least thirty (30) days prior to installation. Notice must include information as required in Parts B, C or D of these Regulations.

4.6.3 Upon notification by the Owner and Operator, a review by the Department of the notification and accompanying documents shall be made for compliance with these Regulations.

4.6.4 A formal letter of approval or denial of the installation shall be issued by the Department to the Owner ~~and Operator~~.

4.6.5 The Owner and Operator shall comply with all requirements stated by the Department in the installation approval letter.

4.6.6 If within the thirty (30) day notification period, the Department or its designee issues a formal letter of approval, the installation of the UST System may begin.

4.6.7 If a denial is issued, the Plan may be re-submitted provided all corrections required by the Department have been made.

4.6.8 During construction, an Owner ~~and~~ or Operator shall not cause or allow a design change which is not in accordance with the approved plans and all terms and conditions of the Department's approval.

4.6.9 A formal approval of installation shall be valid for one year from the date of approval. If installation of the UST System is not completed within one year of issuance of the Department's letter of approval, the approval shall lapse.

4.6.10 Department approval for installation of an UST System shall not eliminate the need to obtain applicable approvals and permits from the authority(ies) enforcing the ~~State~~ Delaware Fire Prevention Commission Regulations, local building codes or other State or Federal or Local rules or regulations.

4.6.11 Owners and Operators must certify that they are in compliance with the financial responsibility requirements in Part F of these Regulations prior to a Regulated Substance being placed in the UST system.

4.6.12 At the completion of the UST ~~s~~System installation the Owner and Operator shall not commence operation of the ~~tank~~ UST System without written approval from the Department.

4.7 Retrofit or Upgrade Notification Requirements

4.7.1 UST Systems Owners and Operators shall notify the Department of all scheduled Retrofits or Upgrades of UST Systems, on a form provided by the Department, at least ten (10) days prior to the proposed date of construction.

4.7.2 The Department shall approve or deny the Retrofit or Upgrade construction work plans within ten (10) days of receipt of the notification form and construction plans.

4.7.3 The Retrofit or Upgrade construction may proceed after the Department has acknowledged receipt of the notification form and has approved the Retrofit or Upgrade construction plans.

4.7.4 UST System Owners and Operators must notify the Department within 48 hours of the commencement of Retrofit or Upgrade construction work after receipt of the Department's approval of the Retrofit or Upgrade construction plans.

4.7.5 If the Retrofit or Upgrade construction work has not begun within sixty (60) days of receipt of the Department's approval, a new notification form must be submitted to the Department.

4.8 Removal, Closure In Place and Change In Service Notification Requirements

4.8.1 UST System Owners and Operators shall notify the Department of all scheduled UST System Removals, UST System Closures In Place, or UST System Changes In Service, on a form provided by the Department. The notification form shall be completed and signed by the Owner ~~and Operator~~ and must be received by the Department at least ten (10) days prior to beginning the Removal, Closure In Place or Change In Service of the UST System, unless such action is in response to an imminent threat to human health, safety or the environment.

4.8.2 Removal, Closure In Place or Change In Service of an UST System without required notification to the Department is prohibited.

4.9 Posting of Approval Letters and Change in Schedule of Construction

4.9.1 A copy of all Department approvals and permits must be kept at the UST site and be available to Department representatives upon request. UST installation, Retrofit or Upgrade work may be halted for failure to maintain a copy of approvals and permits at the construction site.

4.9.2 Any change in the schedule of work must be communicated to the Department a minimum of forty-eight (48) hours prior to the new scheduled date of work. All schedule changes must be approved by the Department.

4.10 UST Tightness Test Failure Reporting Requirements

4.10.1 Results of any UST System which fails an UST System tightness test must be reported to the Department within 24 hours by the Owner and Operator and the UST System test contractor. A paper copy of the test result(s) shall be sent to the Department within seven (7) days of the test failure.

4.10.2 The Department reserves the right to request confirmatory system tightness tests to verify any test results submitted by an Owner, Operator, or contractor.

5.0 Recordkeeping

5.1 General Requirements

5.1.1 Owners and Operators of UST System Facilities shall maintain records in an orderly permanent form. To demonstrate recent UST Facility compliance status, Owners and Operators must maintain records of monitoring, testing, Repairs, Retrofits, Upgrades, Removal or Closure In Place.

5.1.2 Owners and Operators of UST System Facilities shall make all records available for inspection upon request by the Department within ten (10) days of the request.

5.1.3 Records of any of the following shall be maintained by the Owner and Operator throughout the lifetime of the UST Facility:

5.1.3.1 Dates and details of the UST System installation, including an as built plan drawn to a specified scale of the UST and Piping Systems, and photos taken during the installation; and

5.1.3.2 Documentation of operation and Maintenance of corrosion protection equipment; and

5.1.3.3 Records and dates of Retrofit~~ting~~, Repair or Upgrad~~ing~~e of UST Systems; and

5.1.3.4 Dates and results of all tests of UST Systems; and

5.1.3.5 Dates, descriptions, and written documentation of Repairs, Retrofits or Upgrades of the UST Systems and associated Ancillary Equipment; and

5.1.3.6 Results of the Site Assessment conducted at each site for the purpose of demonstrating compliance with investigation requirements of Part E of these Regulations; and

5.1.3.7 Dates and details of installation of Release Detection systems and records of monitoring or inspections of Release Detection systems conducted at the Facility. These records shall include the following:

5.1.3.7.1 All written performance claims pertaining to any Release Detection system used, and the manner in which these claims have been justified or tested by the equipment manufacturer or installer.

5.1.3.7.2 The records and results of any sampling, testing, monitoring or inspections.

5.1.3.7.3 Written documentation of all calibration, Maintenance, and repair of Release Detection equipment located on site.

5.1.4 Records relating to the permanent Removal or Closure In Place of an UST System shall be retained for a minimum of three (3) years by the UST Owner.

5.1.5 Inventory control records shall be maintained by the Owner and Operator for a period of not less than three (3) years and shall be made available for Department inspection within ten (10) days upon request.

6.0 Alternative Procedures Approval Requirements

6.1 General Requirements

6.1.1 The Owner and Operator of an UST subject to the provisions of these Regulations may request in writing a determination from the Department that any requirement of these Regulations shall not apply to such UST, and shall request approval of an alternative procedure as required.

6.1.2 The Department in its discretion may approve alternative procedures or technology or a combination of alternative procedures or technologies not specified in the Regulations if the following requirements are met. The requirements shall be submitted in writing and shall set forth as a minimum the following information:

6.1.2.1 Name and location of the Facility and the specific UST(s) for which an alternative procedure is sought; and

6.1.2.2 The specific provision of the Regulations for which an alternative procedure is sought; and

6.1.2.3 The contents of the UST; and

6.1.2.4 The basis for the alternative procedure, including but not limited to the technical difficulties that would result from compliance with the established provision; and

6.1.2.5 The alternative procedure or technology for which approval is sought; and

6.1.2.6 Documentation that demonstrates that the alternative procedure or technology meets or exceeds the performance standard for approved technologies and that the alternative procedure or technology offers a no less stringent degree of protection for human health, safety or the environment as would the requirements specifically established in these Regulations.

6.1.3 The Department will provide a written response to all requests for alternative technology approvals. The request may be denied, approved or approved with conditions. If the technology or procedure or a combination of technologies or procedures is approved, the Owner and Operator shall comply with any conditions imposed by the Department on its use to ensure the protection of human health, safety or the environment.

6.1.4 In the case of a denial of a request under this Section the Department will respond to the request stating the justification for the denial.

7.0 Information Access

7.1 General Requirements

7.1.1 For the purpose of developing or assisting in the development of a standard regulation or enforcement of these Regulations, an Owner ~~and~~ or Operator shall, upon the request of a duly designated officer or employee of the State designated by the Secretary of the Department, furnish information relating to the UST System and its contents and shall permit the designated officer or employee at all reasonable times to have access to and to copy all records relating to the UST System or its contents and to conduct monitoring or require remediation activities, pursuant to ~~Title~~ 7 **Del.C.** Chapter 74, The Delaware Underground Storage Tank Act, which the designated officer or employee deems necessary. For the purpose of developing or assisting in the development of a standard or regulation or enforcement of these Regulations, the designated officer or employee is authorized to:

7.1.1.1 Enter at reasonable times the Facility or other place where an UST or its records are located. The Owner and Operator shall permit unannounced inspections of UST Systems pursuant to these Regulations; and

7.1.1.2 Inspect and obtain samples of Regulated Substances from any Person and to conduct monitoring of the UST System, contents, or surrounding soils, water, and air. An inspection shall be commenced and completed with reasonable promptness.

7.1.2 In submitting data under ~~Title~~ 7 **Del.C.** Chapter 74, The Delaware Underground Storage Tank Act, and these Regulations, a Person required to provide such data may:

7.1.2.1 Designate the data which the Person believes is entitled to protection as business or corporate property; and

7.1.2.2 Submit such designated data separately from other data submitted under these Regulations.

7.1.3 Any such records, reports or information obtained shall be entitled to protection under United States Code Title 18 §1905, Disclosure of ~~c~~Confidential ~~i~~Information ~~g~~Generally.

7.1.4 Any information submitted to the Department in which a confidential business information designation is requested shall be subject to Part A §8 of these Regulations and the Freedom of Information Act Regulations adopted pursuant to 29 **Del.C.** Chapter 100 as amended.

8.0 Submittal of Confidential Information

8.1 General Requirements

8.1.1 Any claim of confidentiality as to the name and address of applicants on any registration or notification forms will be denied.

8.1.2 A business confidentiality claim shall be asserted at the time of submission of the information or at the first opportunity provided, and shall be asserted by a Person claiming confidentiality, or the Department may release the information without further notice to the Person. Business information is entitled to confidential treatment if:

8.1.2.1 The business has asserted a business confidentiality claim which has not expired by its terms, nor been waived nor withdrawn; and

8.1.2.2 The business has satisfactorily shown that it has taken reasonable measures to protect the confidentiality of the information and that it intends to continue to take such measures; and

8.1.2.3 The information is not, nor has been, reasonably obtainable without the business' consent by other Persons (other than governmental bodies) by the use of legitimate means (other than discovery based on a showing of special need in a judicial or quasi-judicial proceeding); and

8.1.2.4 No statute specifically requires disclosure of the information; and

8.1.2.5 The business has satisfactorily shown that disclosure is likely to cause substantial harm to its competitive position or the information is voluntarily submitted and its disclosure would likely impair the Department's ability to obtain necessary information in the future.

8.1.3 Any information to which this Section applies, which may be entitled to confidential treatment as determined by the Department, may be released upon request to the United States Environmental Protection Agency (EPA).

8.1.4 Any information submitted to the Department in which a confidential business information designation is requested shall be subject to the Freedom of Information Act Regulations adopted Pursuant to 29 **Del.C.,** Chapter 100 as amended.

9.0 Delivery Prohibition

9.1 Requirements for Delivery Prohibition

9.1.1 "Delivery Prohibition Tag" shall mean a tamper resistant tag, approximately 4.5 inches x 7.5 inches, colored red, which shall include without limitation the following wording, printed in white, in all capital letters, in at least 36 point bold-faced type:

9.1.1.1 "PETROLEM DELIVERY PROHIBITED"; and

9.1.1.2 "No person shall remove, deface, alter or otherwise tamper with this Delivery Prohibition Tag. This Delivery Prohibition Tag is affixed by the Tank Management Branch, Delaware Department of Natural Resources and Environmental Control, pursuant to Part A, §§9.1.1. through 9.1.15. of the Regulations Governing Underground Storage Tank Systems, as amended. Violators are subject to civil and criminal penalties pursuant to 7 **Del.C.** §§6005, 6013 and 7411." Contact information for the Tank Management Branch shall be included on the Delivery Prohibition Tag.

9.1.2 "Violation that poses an imminent threat" means a violation of the Regulations Governing Underground Storage Tank Systems, or 7 **Del.C.** Ch. 60 or 74, that poses an imminent threat to human health or safety or the environment, or that creates a substantial probability of harm when the probability and potential extent of harm make it reasonably necessary to take immediate action to prevent, reduce, or mitigate the actual or potential damages to human health or safety or the environment.

9.1.3 No Person shall order, deliver or accept delivery of a Regulated Substance into an UST System that has a Delivery Prohibition Tag affixed to the UST System.

9.1.4 No Person shall remove, deface, alter or otherwise tamper with a Delivery Prohibition Tag so that any information contained on it becomes illegible or otherwise is rendered unavailable to any person considering or commencing delivery of Regulated Substance into the UST System.

9.1.5 At any time information becomes available to the Tank Management Branch, that causes it to conclude that the violation(s) upon which a Delivery Prohibition Tag is based no longer exists, the Tank Management Branch shall cause the Delivery Prohibition Tag to be removed as soon as practical by DNREC personnel or by other persons so authorized in writing by the Tank Management Branch.

9.1.6 The Tank Management Branch and the Department shall retain all other legal rights and remedies for violations upon which a Delivery Prohibition Tag is based, including without limitation all civil and administrative, daily monetary penalties. Affixing of the Delivery Prohibition Tag shall not be construed to preclude, estop or otherwise limit the exercise at any time of any right or remedy by the Tank Management Branch and the Department, including without limitation all civil and administrative, daily penalties. Due to the nature of the Delivery Prohibition Tag, an Owner and Operator should expect that additional enforcement action may be taken.

9.1.7 Any failure of the Tank Management Branch to take any action specified in §§9.1.1 through 9.1.15. of this Part shall not be a condition on the effectiveness of the Delivery Prohibition Tag to prevent deliveries under penalty of law, and shall not constitute a defense to any violations under the Regulations Governing Underground Storage Tank Systems or 7 **Del.C.** Ch. 60 and 74.

9.1.8 There are two procedures for affixing a Delivery Prohibition Tag with separate tracks to an Expedited Evidentiary Hearing. Sections 9.1.9., 9.1.10. and 9.1.11. of this Part apply to a violation that poses an imminent threat. Section 9.1.12. of this Part applies to all other violations.

9.1.9 Upon a determination of a violation that poses an imminent threat, Tank Management Branch staff may immediately affix the Delivery Prohibition Tag to the fill pipe of the UST System(s) involved, so that it is immediately noticeable and available to any person considering or commencing delivery of Regulated Substances in to the UST System(s).

9.1.10 The Tank Management Branch shall contact the Owner and Operator, as soon as practical subsequent to the affixing of the Delivery Prohibition Tag pursuant to §9.1.9. of this Part, and inform the Owner and Operator of the affixing of the Delivery Prohibition Tag, the violation(s) that pose an imminent threat upon which it is based, and procedures for filing a Notice of Appeal. An Owner or Operator may at any time submit a written Notice of Appeal, disputing the underlying violation(s) that pose an imminent threat, to the Tank Management Branch. The Notice of Appeal shall provide all information, substantiation, and documentation to allow an informed decision on the appeal, and contact information. A Manager of the Tank Management Branch shall issue a written response to the Notice of Appeal within five (5) business days of receipt, and shall arrange for it to be delivered to the Owner or Operator submitting the Notice of Appeal as soon as practical. An Owner or Operator may submit more than one written Notice of Appeal.

9.1.11 Within seven (7) business days of receipt by an Owner or Operator of the Manager's written response, as provided in §9.1.10., the Owner or Operator may submit a Request for an Expedited Evidentiary Hearing to the Tank Management Branch. Within seven (7) business days of receipt of the Request, the Tank Management Branch shall schedule an Expedited Evidentiary Hearing, with written notice to the Owner or Operator. This notice shall be received by the Owner and Operator at least thirty (30) days before the date of the Expedited Evidentiary Hearing.

9.1.12 Upon determination by the Tank Management Branch of a violation of the Regulations Governing Underground Storage Tank Systems or 7 **Del.C.** Ch. 60 or 74, other than a violation that poses an imminent threat, the Branch may give written notice to the Owner or Operator of the following: The violation(s), the scheduling of an Expedited Evidentiary Hearing, and the preliminary intention to affix a Delivery Prohibition Tag at the conclusion of the Expedited Evidentiary Hearing, subject to consideration of the evidence submitted and any other pertinent considerations. This notice shall be received by the Owner and Operator at least thirty (30) days before the date of the Expedited Evidentiary Hearing.

9.1.13 The Program Manager II, as administrative head of the Tank Management Branch, or his or her designee, shall preside at the Expedited Evidentiary Hearing, and shall make a written ruling within five (5) business days after the Expedited Evidentiary Hearing is concluded. The Owner or Operator may appear at the Expedited Evidentiary Hearing and submit evidence. For a violation other than one that poses an imminent threat, the written ruling may direct Tank Management Branch staff to affix a Delivery Prohibition Tag.

9.1.14 The Owner or Operator may appeal an adverse determination from the Expedited Evidentiary Hearing by requesting a public hearing pursuant to the procedural provisions for a public hearing found in 7 **Del.C.** Ch. 60 and 74. The request for a public hearing shall be made by the Owner or Operator to the Secretary's Office in writing within thirty (30) days of receipt of an adverse determination of the Expedited Evidentiary Hearing. The public hearing may be consolidated with

any public hearing requested of Release Prevention Regulations underlying the Delivery Prohibition Tag.

9.1.15 The focus of the appeal process shall be the existence of the violation(s) underlying the affixing of the Delivery Prohibition Tag, and, by extension, whether the Tank Management Branch should remove the Delivery Prohibition Tag or forbear from affixing it. If at any time during the appeal process, the Tank Management Branch removes the Delivery Prohibition Tag, the appeal process shall be ceased, no further actions need be taken by the Tank Management Branch, and no further proceedings shall be available or provided to the Owner or Operator concerning the Delivery Prohibition Tag. The appeal process shall not act as a stay of the effect of the Delivery Prohibition Tag or any other legal requirements.

10.0 Requirements for Operator Training

10.1 Requirements for Class A, Class B and Class C Operators

10.1.1 Owners and Operators shall submit to the Department on a form provided by the Department a list of the individuals designated as the Class A and Class B and Class C Operator for each UST System that is subject to the requirements of Part B, or Part C with the exception of Heating Fuels UST Systems used for single family residential heating purposes, or Part D of these Regulations, and that is In Service, Out of Service and is not empty, or has not been Removed or Permanently Closed in Place in accordance with these Regulations. The list shall include the name of the operator(s), classification of the operator(s), date each operator assumed the responsibility for their classification and date the operator training or written assessment was successfully completed.

10.1.2 A list in accordance with the requirements of §10.1.1 shall be received by the Department no later than August 8, 2012 for UST Systems in existence on that date.

10.1.3 A list in accordance with the requirements of §10.1.1 shall be submitted to the Department a minimum of ten (10) days prior to the operation of an UST System installed after August 8, 2012.

10.1.4 Owners and Operators shall notify the Department in writing within ten (10) days of any change in the information provided in §10.1.1 of this Part.

10.1.5 An individual may be designated as a Class A, Class B, or Class C Operator or any combination of the three (3) classes at a single Facility.

10.1.6 An individual may be designated as a Class A, Class B, or Class C Operator at more than one Facility.

10.1.7 A Facility shall not operate after August 8, 2012 unless a Class A, Class B, and Class C Operator has been designated for each UST System and Class A & Class B Operators have successfully completed a Department approved training program and Class C Operators have been trained in accordance with §10.1.12 of this Part.

10.1.8 Individuals designated as a Class A or Class B Operator in another state may comply with the training requirements of §10.1.7 of this Part by successfully completing a written assessment approved by the Department.

10.1.9 In addition to successful completion of an initial training program as required in §10.1.7 of this Part, upon notification from the Department that an UST System is not in compliance with these Regulations, Owners and Operators shall ensure that the Class A and Class B Operators at the

Facility successfully complete additional training as required in a written notice issued by the Department.

10.1.10 Individuals assuming responsibility for the duties of a Class A or Class B Operator after August 8, 2012 must successfully complete Department approved training in the areatopics listed in §10.1.11 of this Part within forty-five (45) days of being designated as the Class A or Class B Operator.

10.1.11 Training for Class A and Class B Operators shall be provided to ensure that the UST System is operated in compliance with these Regulations and shall include but is not limited to the following topics as applicable:

10.1.11.1 Registration and Notification Requirements; and

10.1.11.2 Operation and maintenance of UST System components; and

10.1.11.3 Operation and maintenance of spill prevention systems; and

10.1.11.4 Operation and maintenance of overfill prevention systems; and

10.1.11.5 Operation and maintenance of Release Detection systems; and

10.1.11.6 Operation and maintenance of corrosion protection systems; and

10.1.11.7 Emergency response procedures; and

10.1.11.8 Compatibility of Regulated Substances and UST Systems; and

10.1.11.9 Financial responsibility requirements; and

10.1.11.10 Routine inspection requirements; and

10.1.11.11 Release and indicated Release reporting requirements; and

10.1.11.12 Operator training requirements; and

10.1.11.13 Operation and maintenance of vapor recovery systems; and

10.1.11.14 Change in Service, Removal, Retrofit, Closure in Place requirements; and

10.1.11.15 Materials of Underground Storage Tank Systems.

10.1.12 Owners and Operators shall ensure that Aall Class C Operators shall be are trained in emergency response procedures specific to the Facility prior to assuming Class C Operator responsibilities.