



1 of 1



Excluded USTs

RCRA Subtitle I Underground Storage Tanks

BACKGROUND: Underground tanks that contain either petroleum or hazardous substances are subject to the Federal Underground Storage Tank (UST) regulations. These regulations, issued by the Environmental Protection Agency (EPA) under authority of Subtitle I of the Resource Conservation and Recovery Act (RCRA) [Section 9003 of the Hazardous and Solid Waste Amendments of 1984 (HSWA)], establish standards for installation, operation, release detection, corrective action, repair, and closure. The Department of Energy (DOE) is required by Section 9007 of RCRA to implement these regulations at DOE facilities with USTs.

Certain USTs have been excluded from the Federal UST regulations. These excluded USTs have been determined by either Congress or EPA to pose an insignificant risk to human health and the environment. By excluding these USTs from regulation, EPA is focusing resources on the USTs that pose substantially greater risk to human health and the environment.

DOE prepared a guidance document, *Regulated Underground Storage Tanks* (DOE/EH-231/004/0191, June 1992), that describes the UST procedural requirements which regulate tanks and piping for both petroleum and hazardous substance USTs as well as USTs containing radioactive material regulated under the Atomic Energy Act of 1954 (42 U.S.C. 2011). This Information Brief supplements the UST guidance by responding to critical questions concerning how the regulations apply to excluded USTs. It is part of a series of Information Briefs which address issues pertinent to specific categories of USTs.

STATUTES: Resource Conservation and Recovery Act, Hazardous and Solid Waste Amendments of 1984, Subtitle I, Regulation of Underground Storage Tanks, Sects. 9001-9010, 42 U.S.C. 6991.

REGULATIONS: 40 CFR 280. *Final rule:* 53 FR 37082, September 23, 1988 (revision of the original final rule, 50 FR 28742, July 15, 1985). *Amendments:* 53 FR 43370, October 26, 1988; 54 FR 5452, February 3, 1989; 54 FR 47081, November 9, 1989; 55 FR 17753, April 27, 1990; 55 FR 18567, May 2, 1990; 55 FR 23738, June 12, 1990; 55 FR 46025, October 31, 1990; 56 FR 26, January 2, 1991; 56 FR 38344, August 13, 1991; 56 FR 66373, December 23, 1991. *Corrections:* 53 FR 51274, December 21, 1988.

REFERENCES: 1. *Regulated Underground Storage Tanks*, DOE/EH-231/004/0191, June 1992.

2. *Musts for USTs*, EPA/530/UST-88/008, September 1988.

3. "Final EPA Underground Storage Tank Regulations, Subtitle I, Solid Waste Disposal Act (RCRA)," EH-231 memorandum, October 28, 1988.

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What are excluded USTs?

Certain types of USTs were exempted from the regulations by Congress when Subtitle I was written. Others were excluded from the scope of the Federal UST regulations by EPA, even though they contain regulated substances.

Why were certain tanks excluded from the Federal UST regulations?

Some tanks were excluded because they pose a negligible risk to human health and the environment. These USTs were excluded to allow Federal, state, and local agencies as well as UST owners and operators to focus their limited resources on those USTs that pose a greater risk. Other tanks were excluded because they were sufficiently regulated under other statutes.

Are excluded Subtitle I underground tanks regulated?

Excluded USTs are not regulated by the Federal UST regulations, but they may be subject to state laws, other Federal laws, or industry codes or practices. States may write regulations for tanks that have been excluded from the Federal UST regulations. This has been the case in some states that have regulated tanks containing heating oil. Federal laws, other than RCRA Subtitle I, may apply to excluded tanks depending on their function. For example, any UST system holding hazardous wastes listed or identified under Subtitle C of the Solid Waste Disposal Act is exempt from Subtitle I but regulated by RCRA Subtitle C.

What is the difference between an excluded UST and a deferred UST?

Deferred tanks are subject to *interim* UST requirements; excluded tanks are not.

How do the regulations apply to an excluded tank that is connected by piping to a regulated tank?

If an excluded tank is connected by piping to a regulated tank, half of the piping is allocated to

each tank system. This allocation of connected piping is an attempt by EPA to reconcile two conflicting statutory provisions in RCRA Section 9001(1). This section states that an UST system (even excluded systems) includes the tank and *all* underground pipes connected to it. (53 FR 37114)

TANKS NOT COVERED

What types of tanks are not covered because they are excluded from the statutory definition of an UST?

The following categories of tanks have been excluded from the definition of an UST:

- ☐ farm or residential tanks of 1,100 gallons or less capacity used for storing motor fuel for noncommercial purposes;
- ☐ tanks used for storing heating oil for consumptive use on the premises where stored;
- ☐ septic tanks;
- ☐ pipeline facilities (including gathering lines) regulated under the Natural Gas Pipeline Safety Act of 1968 (NGPSA) (49 U.S.C. App. 1671, *et seq.*), or the Hazardous Liquid Pipeline Safety Act of 1979 (HLPESA) (49 U.S.C. App. 2001, *et seq.*), or that are intrastate pipeline facilities regulated under state laws comparable to the provisions of NGPSA or HLPESA;
- ☐ surface impoundments, pits, ponds, or lagoons;
- ☐ storm-water or waste-water collection systems;
- ☐ flow-through process tanks;
- ☐ liquid traps or associated gathering lines directly related to oil or gas production and gathering operations; and
- ☐ storage tanks situated in an underground area (such as a basement, cellar, mineworking,

drift, shaft, or tunnel) if such tanks are situated upon or above the surface of the floor.

The term underground storage tank does not include any pipes connected to any tank that is described above.

What types of tanks are not covered by the UST regulations because EPA excluded them from the regulations?

In addition to the statutory exclusions, EPA excluded the following tanks from the RCRA Subtitle I regulations:

- ☐ 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,
- ☐ any wastewater treatment tank system that is part of a wastewater treatment facility regulated under Section 402 or 307(b) of the Clean Water Act (CWA),
- ☐ equipment or machinery that contains regulated substances for operational purposes such as hydraulic lift tanks and electrical equipment tanks,
- ☐ any UST system whose capacity is 110 gallons or less,
- ☐ any UST system that contains a *de minimis* concentration of regulated substances, and
- ☐ any emergency spill or overflow containment UST system that is expeditiously emptied after use.

What types of tanks are excluded because they are considered equipment or machinery that contains regulated substances for operational purposes?

This category of excluded USTs includes any tank that is part of a piece of equipment or machinery (e.g., hydraulic lifts and electrical equipment) and that meets two criteria:

- ☐ the equipment or machinery contains small amounts of regulated substances solely for operational purposes and
- ☐ faulty operation of the equipment or machinery will cause a loss of regulated substance. [53 FR 37108, 40 CFR 280.10 (b)(3)]

How soon after use must an emergency spill or overflow containment UST system be emptied to qualify as an exempt tank?

EPA does not specify a maximum time a tank may hold material, but intends this exclusion to apply to many types of sumps and secondary barrier tanks that are rarely used and are emptied shortly after use. The purpose of this exemption is to allow immediate response to emergency situations. It is analogous to the exclusion for emergency response treatment and containment under RCRA Subtitle C (see 40 CFR 264.1 and 265.1). The exclusion does not include sumps designed to store petroleum or hazardous substances during periodic cleaning or maintenance of machinery or equipment (e.g., turbine oil sumps that are used during maintenance of electric power generation turbines). [53 FR 3210, 40 CFR 280.10 (b)(6)]

HAZARDOUS SUBSTANCES

Is a tank that contains a hazardous waste mixed with petroleum covered by the UST regulations?

No. Any UST system holding a mixture of hazardous wastes identified under Subtitle C of the Solid Waste Disposal Act and petroleum or non-petroleum substances regulated by Subtitle I is *excluded* from the Federal UST regulations. EPA excluded these tanks from Subtitle I regulation because USTs containing this kind of mixture would be subject to dual jurisdiction from Subtitle C and Subtitle I. [53 FR 37107 and 40 CFR 280.10 (b)(1)]

What is considered by EPA to be a *de minimis* concentration for purposes of exempting USTs?

Very small, *de minimis*, concentrations can occur in an UST accidentally (through contamination) or by design (for example, underground tanks storing potable water that has been treated with chlorine). EPA has not defined a specific percentage as the *de minimis* cutoff because of the many difficulties with measuring tank contents for low concentrations of regulated substances. Instead, implementing agencies will determine on a case-by-case basis if tanks that hold very low concentrations of regulated substances are excluded via *de minimis* amounts. [53 FR 37108, 40 CFR 280.10 (b)(5)]

RADIOACTIVE MIXED WASTES

What is the status of USTs containing radioactive mixed waste?

Radioactive mixed waste (RMW) contains both a hazardous component regulated under RCRA and radioactive material regulated under the Atomic Energy Act. The applicability of Subtitle I to RMW depends on whether those USTs are regulated under RCRA Subtitle C. If an UST containing RMW is regulated under Subtitle C, it is exempt from Subtitle I in accordance with 40 CFR 280.10(b)(1).

To determine if an UST is subject to Subtitle C regulation, it is necessary to know the authorization status of a particular state's hazardous waste program. In most states, RMW is regulated as hazardous waste under RCRA Subtitle C either because the state has an authorized RCRA program and has received a modification of their authorization to cover RMW, or because the state does not have RCRA authorization and therefore the hazardous waste component of the mixed waste is subject to the Federal RCRA Subtitle C program. If an UST located in one of these states contains RMW, it is excluded from the Subtitle I regulations.

On the other hand, if the UST is located in a state that has an authorized RCRA program but has not yet received a modified authorization to cover RMW, then the RMW is not recognized or regulated as a hazardous waste under Subtitle C. In these circumstances, the UST is regulated under Subtitle I.

Also, states without mixed waste authorization may regulate underground storage tanks containing RMW pursuant to their state regulations. In these cases the wastes may be regulated by both EPA and the state as discussed in the EH-231 memorandum of October 28, 1988. (see reference 3)

Tanks containing radioactive and other materials (not hazardous wastes) fall under the deferred tank classification (see the Information Brief, "Deferred USTs," EH-231-012c/0593).

WASTE WATER

Are tanks that treat waste water or storm water, but that are not covered by Section 402 or 307(b) of the Clean Water Act (CWA) (33 U.S.C. 1151 et seq.) exempt from Subtitle I?

No. These tanks are *deferred* under 40 CFR 280.10 (c); they are not exempt. The exclusion for waste-water treatment tanks that are currently regulated under Section 402 or 307(b) of the CWA only applies to tanks that otherwise would be subject to dual regulation under Subtitle I and the CWA. There is, however, a *deferral* from the UST regulations for waste-water treatment tank systems (see the Information Brief, "Deferred USTs," EH-231-012c/0593). [53 FR 37108, 40 CFR 280.10 (b)(2)]

Questions of policy or questions requiring policy decisions will not be dealt with in EH-231 Information Briefs unless that policy has already been established through appropriate documentation. Please refer any questions concerning the subject material covered in this Information Brief to Jerry DiCerbo, RCRA/CERCLA Division, EH-231, (202) 586-5047.



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