

TITLE: VAP Eligibility of Properties with Petroleum UST Systems Removed or Properly Closed-In-Place Prior to December 22, 1988

DATE EFFECTIVE: July 2000

HISTORY: Update of VA30002.09.010 - Revision was necessary for clarification.

KEYWORDS: UST, eligibility, State Fire Marshal, BUSTR, VAP, petroleum, removal, closure, corrective action

AUTHORITY: ORC Chapter 3737, ORC Chapter 3746, OAC 1301:7-7-34; OAC 1301:7-9-01; OAC 1301:7-9-02; OAC 1301:7-9-12; OAC 1301:7-9-13; OAC 3745-300-02

QUESTION: Are properties where regulated petroleum underground storage tank systems ("USTs") were removed or properly closed-in-place prior to December 22, 1988, eligible for the Voluntary Action Program ("VAP")? (December 22, 1988 is the effective date of the federal regulations governing petroleum and hazardous substance UST systems, which are codified in 40 CFR Parts 280 and 281.)

SHORT ANSWER: A petroleum UST removed or properly closed-in-place before December 22, 1988, is subject to the requirements for site assessment, and/or remediation pursuant to ORC Chapter 3737 and OAC Chapters 1301:7-7 and 1301:7-9 if sample results indicate the UST area exceeds the appropriate BUSTR action levels set forth in OAC 1301:7-9-13. A Volunteer must designate a former UST location as an identified area.

If sample results indicate the UST area exceeds BUSTR action levels, the Volunteer must conduct BUSTR corrective actions pursuant to OAC 1301:7-9-13(H), and any other corrective actions necessary to demonstrate that the concentrations of chemicals of concern no longer exceed BUSTR action levels or site-specific target levels. The volunteer must receive an NFA letter from BUSTR to become eligible for the VAP.

If sample results do not exceed the appropriate BUSTR action levels set forth in OAC 1301:7-9-13(J), the property is eligible for the VAP. However, it is strongly recommended that the Volunteer submit a copy of its investigation and sample results to BUSTR, and request BUSTR to review the data and confirm the investigation does not reveal any petroleum contamination that would require BUSTR corrective action.

For a UST to be regulated by BUSTR it must meet BUSTR's definition of an UST (OAC 1301:7-9-02) and not be considered exempt in

accordance with the applicability section of OAC 1301:7-9-01. For example, a home heating oil UST used for storing heating fuel for consumptive use on the premises where stored would not be regulated by BUSTR (OAC 1301:7-9-02(B)(66)); however, a gasoline UST at a service station would be regulated by BUSTR.

BACKGROUND:

In order to participate in the VAP, a property must meet the eligibility requirements. ORC 3746.02 and OAC 3745-300-02 set forth the conditions that make a property or portions of a property ineligible for participation in the VAP. A property or portion of a property is ineligible for participation in the VAP if it is subject to site assessment, removal or remediation under Ohio UST laws. An ineligible property may become eligible if it demonstrates that it satisfied all the requirements of and is no longer subject to the laws or regulations that made the property ineligible.

The State Fire Marshal's Bureau of Underground Storage Tank Regulations ("BUSTR") is responsible for regulating USTs, owners and operators of USTs, and petroleum releases from USTs in accordance with ORC 3737.87, et seq., and OAC Chapter 1301:7-9. The State Fire Marshal also regulates non-owner/operators under the Fire Code, OAC 1301:7-7-34, based on fire safety concerns. BUSTR has the authority to require site assessment and/or remediation of an UST removed or properly closed-in-place prior to December 22, 1988 pursuant to OAC **1301:7-9-12 and 13**.

OAC **1301:7-7-34** (the fire code) states: "underground tanks that have been out of service for a period of one year shall be removed from the ground in accordance with paragraph (D)(2)(n)(3404.2.14) of this rule."

OAC **1301:7-9-12(K)** (the "closure" rule) authorizes BUSTR to direct owners and operators to assess an UST, in compliance with OAC 1301:7-9-12, and determine whether any releases from the UST may pose a current or potential threat to human health and the environment.

Finally, OAC **1301:7-9-13** (the "corrective action" rule) requires owners and operators of petroleum USTs to conduct corrective actions in accordance with OAC 1301:7-9-13 to address "releases" and "suspected releases" from USTs. Corrective action includes, but is not limited to, an investigation to confirm or disprove the occurrence of a release and any action taken to monitor, assess, evaluate and remediate a release. The petroleum UST and the areas affected by the release or suspected release from the UST would not be eligible for participation in the VAP until the owner and operator of the UST or the volunteer demonstrate pursuant to OAC 1301:7-9-13 that contaminants of concern do not exceed or no longer exceed the appropriate BUSTR

action levels set forth in OAC 1301:7-9-13(J) or site-specific target levels developed through OAC 1301:7-9-13(L) & (M).

APPLICATION:

If a Phase I Property Assessment indicates that an UST was formerly located on the property and the UST system was removed or properly closed-in-place prior to December 22, 1988, the Volunteer must designate the location as an identified area, conduct an investigation and take samples in accordance with OAC 3745-300-06 and 3745-300-07. If the sample results exceed the appropriate BUSTR action levels set forth in OAC 1301:7-9-13(J), the Volunteer must conduct corrective actions in accordance with OAC 1301:7-9-13(H), demonstrate that concentrations of chemicals of concern no longer exceed BUSTR action levels and receive a No Further Action letter from BUSTR before the property will be eligible for the VAP. If sample results do not exceed the appropriate BUSTR action levels set forth in OAC 1301:7-9-13(J), the property is eligible for the VAP. However, it is strongly recommended that the Volunteer submit a copy of its investigation and sample results to BUSTR, and request BUSTR to review the data and confirm the investigation does not reveal any petroleum contamination that would require BUSTR corrective action.

For the situation where a BUSTR regulated UST is discovered on the property and the UST has been out-of-service for more than twelve months, owners and operators and any person who holds a legal, possessory, or equitable interest in a parcel of real property on which an UST system is located, regardless of that person's status as an "owner" or "operator" as those terms are defined in section 3737.87 of the Revised Code, shall conduct one of the following

- (a) Immediately place the UST system back into service pursuant to paragraph (E)(6) of OAC 1301:7-9-12;
- (b) Permanently remove, close-in-place, or perform a change-in-service of the UST system and perform a closure assessment in accordance with OAC 1301:7-9-12; or
- (c) Request an extension of the twelve-month out-of-service period.

In addition, OAC 1301:7-9-12(I) states that the owner and/or operator are responsible for conducting a closure assessment if the UST is out-of-service for more than twelve months. A BUSTR corrective action file will be created for all UST removals even without the submission of a closure report. So if a closure report is not submitted, the BUSTR release file would be unresolved and open, thus making the property ineligible for VAP. A NFA from BUSTR must be received before the

property is eligible for VAP.

OHIO EPA
CONTACT:

For any questions concerning this issue, please contact the VAP central office at (614) 644-2924.