

ARCHIVE: Archived because the 2002 rule changes to OAC 3745-300-02 have rendered this decision unnecessary. However, this decision still applies to the 1996 rules.

TITLE: VAP Eligibility Regarding Hazardous Substance Underground Storage Tank Systems (USTs) taken out of service prior to December 22, 1988

DATE EFFECTIVE: August, 1999

KEYWORDS: underground storage tank systems, UST, eligibility, hazardous substance tanks

RULES: Rule citation relating to this issue: OAC 3745-300-02 (C)(3)

QUESTION: Is a U.S. EPA no further action determination required for USTs containing hazardous substances which were taken out of service prior to December 22, 1988, in order to consider the tank area eligible to enter the VAP?

ANSWER: Areas which contain hazardous substance USTs permanently taken out of service prior to December 22, 1988, (pre-1988 USTs) are eligible to enter the VAP **unless** they have received a directive from Region V to perform assessment and/or remediation and have not yet complied with the directive to U.S. EPA's satisfaction. This position, supported by the Voluntary Action Program, has also been accepted by the Underground Storage Tank Section of U.S. EPA, Region V.

Note: to determine if a directive has been issued for a pre-1988 UST, files from U.S. EPA should be reviewed as part of the Phase I activities. If, after file reviews are conducted, you still have questions concerning whether or not a directive has been issued, contact Gilberto Alvarez at 312-886-6143 (U.S. EPA, Region V).

Although pre-1988 hazardous substances USTs are eligible for inclusion in the VAP, documentation demonstrating the removal of the tanks before December 22, 1988, should be provided as part of the NFA documentation for any NFA issued under the VAP. An appropriate way to document this circumstance in the NFA Form is to reference the supporting documentation under Section C, question 3c for pre-1988 hazardous substance USTs. Acceptable supporting documentation includes documentation, recorded at the time of the

UST removals, evidencing the UST removal(s). When such documentation is not available, an affidavit from a person with knowledge of the UST removal(s) may be acceptable provided the person supplies sufficient factual detail to reliably demonstrate that the tank(s) was not used to store regulated substances after December 22, 1988.

In situations where a UST is no longer used but has not been removed, it may be more difficult to demonstrate exactly when the UST was permanently taken out of service. Contemporaneous documentation showing the UST was filled with inert material would be considered appropriate. An affidavit from the appropriate person(s) providing sufficient factual details to reliably demonstrate that the UST was taken out of service prior to December 22, 1988, may be acceptable in lieu of or in addition to documentation.

It is important to note that even though a UST(s) is determined to be eligible for inclusion in the VAP, such a decision does not exempt the volunteer or certified professional from investigating, and possibly sampling, the UST area as part of the voluntary action. If, as a result of the Phase I investigation of the UST area, the volunteer or CP has **any reason** to believe a release has occurred from the USTs, the UST area should be considered an identified area and sampling should be conducted following the directives of the Phase II rule.

Summary:

Areas which contain hazardous substance USTs permanently taken out of service prior to December 22, 1988 (pre-1988 USTs) are eligible to enter the VAP **unless** they have received a directive from U.S. EPA, Region V to perform assessment and/or remediation. Appropriate documentation evidencing that the USTs were taken out of service should be provided with any NFA issued for the property. Any hazardous substance UST area that is considered eligible for the VAP should be investigated pursuant to Phase I requirements and considered an identified area if there is **any reason** to believe a release has occurred from the UST.

Contact:

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