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TITLE: VAP Eligibility of Properties with Petroleum UST Systems Permanently Closed Prior to December 22, 1988

DATE EFFECTIVE: July 2000

KEYWORDS: UST, eligibility, state fire marshal, BUSTR, VAP, petroleum, removal, closure, corrective action

AUTHORITY: ORC Chapter 3737, ORC Chapter 3746, OAC 1301:7-7-28; OAC 1301:7-9-12; OAC 1301:7-9-13; OAC 3745-300-02

QUESTION: Are properties where permanent closure was performed on petroleum underground storage tank systems ("UST") 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 permanently closed before December 22, 1988, is subject to the requirements for site assessment, removal and/or remediation pursuant to ORC Chapter 3737 and OAC Chapters 1301:7-7 and 1301:7-9 if the UST is still in the ground or if sample results indicate the UST area exceeds the appropriate BUSTR action levels set forth in OAC 1301:7-9-13. If the UST is still in the ground, the Volunteer must remove the UST and restore the site. 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 action pursuant OAC 1301:7-9-13(H), demonstrate that the concentrations of chemicals of concern no longer exceed BUSTR action levels and receive an NFA letter from BUSTR to become eligible for the VAP.

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 1301:7-7-28, based on fire safety concerns. BUSTR has the authority to require site assessment, removal and/or remediation of an UST permanently closed prior to December 22, 1988 pursuant to OAC **1301:7-7-28(H)(11)(c)**, **1301:7-9-12(N)** and **1301:7-9-13**.

OAC **1301:7-7-28(H)(11)(c)** (the fire code) states:

"Any underground tank out of service for a period of one year or determined to be leaking shall be removed from the premises in an approved manner, and the site restored in the appropriate manner."

Accordingly, if an UST is currently located on the property, but the UST was permanently closed prior to December 22, 1988, OAC 1301:7-7-28(H)(11)(c) requires the responsible person to remove the UST. The Volunteer must therefore remove the UST and restore the site for the property to be considered for eligibility for participation in the VAP.

OAC **1301:7-9-12(N)** (the "closure" rule) authorizes BUSTR to direct owners and operators to assess and close an UST, in compliance with OAC 1301:7-9-12, if BUSTR determines 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 action 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 clean up a release. The petroleum UST and the areas affected by the release or suspected release from the UST would not be eligible for the VAP until the owner and operator of the UST demonstrate pursuant to OAC 1301:7-9-13 that contaminants of concern do not or no longer exceed the appropriate BUSTR action levels set forth in OAC 1301:7-9-13(I).

APPLICATION:

If a Phase I Property Assessment indicates that an UST is currently located on the property, but the UST was permanently closed prior to

December 22, 1988, the Volunteer must remove an UST that contains or contained flammable or combustible liquids pursuant to OAC 1301:7-7-28(H)(11)(c) unless a fire code official determines that the removal of the UST is not necessary and the UST is abandoned in place in accordance with OAC 1301:7-7-44 (API 1604). Removal or abandonment in place must be performed under the supervision of a certified UST installer pursuant to ORC 3737.881. If the Volunteer is an "owner" or "operator" of the UST, as those terms are defined in ORC 3737.87, the work performed by the certified UST installer must also be inspected by a certified UST inspector pursuant to OAC 1301:7-9-12(C) and a permit must be obtained from the local fire department (if it has been delegated authority pursuant OAC 1301:7-9-15) or BUSTR (if the local fire department has not been delegated authority to inspect and issue UST permits) pursuant to OAC 1301:7-9-12(D)(2). Contact BUSTR at (614) 752-7938 to determine if the local fire department has delegated authority. All Volunteers must also contact the local fire department to determine if any local permitting and inspection requirements exist.

After the removal of an UST, or if a Phase I Property Assessment indicates that an UST was formerly located on the property and the UST system was permanently closed and removed 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(I), the Volunteer must conduct corrective action in accordance with OAC 1301:7-9-13(H), demonstrate that concentrations of chemicals of concern no longer exceed BUSTR action levels and receive an NFA 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(I), 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.

OHIO EPA
CONTACT:

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