

NOTICE OF INTENT

Department of Environmental Quality
Office of the Secretary
Legal Affairs Division

Aligning UST Regulations with Statute Changes (LAC 33:XI.301, 403, 509, and 1121) (UT021)

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary gives notice that rulemaking procedures have been initiated to amend the Underground Storage Tanks (UST) regulations, LAC 33:XI.301, 403, 509, and 1121 (UT021).

This proposed Rule makes changes to LAC 33:XI.Underground Storage Tanks in order to align the UST regulations with the statutory changes made in Act 167 of the 2024 Regular Legislative Session. Specifically, the proposed Rule deletes the requirement for underground storage tank owners to have a current registration certificate in order to receive fuel deliveries. It will also delete the requirement mandating the Louisiana Department of Environmental Quality automatically prohibits delivery to underground storage tanks that do not have a current registration certificate. The proposed Rule updates the definition of "eligible participant" in order to add temporarily closed tanks and remove the deductibles in order to make the fund a first-dollar coverage fund. The proposed Rule raises the per release maximum amount of expenditures from \$1,500,000 to \$2,000,000, and allows the MFTF Advisory Board, with secretary approval, to reduce the noncompliance deductible below the previous \$10,000 limit. The basis and rationale for this proposed Rule are to align LAC 33:XI.301, 403, 509, and 1121 with La. R.S. 2194.B.(4), 2194.1, and 2195.2.A.(1)(c)(ii). This Rule meets an exception listed in R.S. 30:2019(D)(2) and R.S. 49:963.B(3); therefore, no report regarding environmental/health benefits and social/economic costs is required.

Title 33

ENVIRONMENTAL QUALITY

Part XI. Underground Storage Tanks

Chapter 3. Registration Requirements, Standards, and Fee Schedule

§301. Registration Requirements

A. — C.7. ...

8. No owner or operator shall allow a regulated substance to be placed into a UST system that has not been registered with the department.

9. No person shall place a regulated substance into a UST system that has not been registered with the department.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Underground Storage Tank Division, LR 11:1139 (December 1985), amended LR 16:614 (July 1990), LR 17:658 (July 1991), LR 18:727 (July 1992), LR 20:294 (March 1994), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2558 (November 2000), LR 28:475 (March 2002), amended by the Office of Environmental Assessment, LR 31:1066 (May 2005), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2520 (October 2005), repromulgated LR 32:393 (March 2006), amended LR 32:1852 (October 2006), LR 33:2171 (October 2007), LR 34:2116 (October 2008), amended by the Office of the Secretary, Legal Division, LR 38:2760 (November 2012), amended by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 43:2143 (November 2017), LR 44:1593 (September 2018), amended by the Office of the Secretary, Legal Affairs Division, LR 52:0000

Chapter 4. Delivery Prohibition

§403. Delivery Prohibition of Regulated Substances to Underground Storage Tank

Systems

A. — A.4. ...

5. allowing a regulated substance to be placed into an unregistered UST in accordance with LAC 33:XI.301.C. 8 or 9;

6. upon evidence of a below-surface release from an UST system, failure to conduct a system test within the time frame established in LAC 33:XI.711.A.1, failure to take initial response actions required by LAC 33:XI.715.B.2 and 3, or failure to conduct the initial abatement measures required by LAC 33:XI.715.C.1.a-d and g; or

7. whenever failed tank or failed piping has not been repaired, replaced, upgraded, or permanently closed, or temporarily closed in accordance with LAC 33:XI.711.A.1.

B. — E. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 33:1867 (September 2007), amended LR 34:2119 (October 2008), amended by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 44:1598 (September 2018), amended by the Office of the Secretary, Legal Affairs Division, LR 52:0000

Chapter 5. General Operating Requirements

§509. Reporting and Recordkeeping

A. — B.5.a. ...

b. a copy of the current registration certificate (LAC 33:XI.301.C.7 and 1133.B.5);

B.6. — C. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Underground Storage Tank Division, LR 16:614 (July 1990), amended LR 18:728 (July 1992), amended by the Office of Environmental Assessment, LR 31:1070 (May 2005), repromulgated by the Office of the Secretary, Legal Affairs Division, LR 32:393 (March 2006), amended LR 34:2119 (October 2008), amended by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 44:1600 (September 2018), amended by the Office of the Secretary, Legal Affairs Division, LR 52:0000

Chapter 11. Financial Responsibility

§1121. Use of the Motor Fuels Underground Storage Tank Trust Fund

The administrative authority was authorized by R.S. 30:2194-2195.10 to receive and administer the motor fuels underground storage tank trust fund (MFUSTTF) to provide financial responsibility for owners and/or operators of underground motor fuel storage tanks. Under the conditions described in this Section, an owner and/or operator who is eligible for participation in the MFUSTTF may use this mechanism to fulfill the financial responsibility requirements for eligible USTs. To use the MFUSTTF as a mechanism for meeting the requirements of LAC 33:XI.1107, the owner and/or operator shall be an eligible participant as defined in Subsection A of this Section.

A. Definitions. The following terms shall have the meanings ascribed to them as used in this Section.

* * *

Eligible Participant—any owner of an underground storage tank who has registered a newly installed or operating or temporarily closed tank with the department prior to the date of a release, has paid the annual tank registration fees along with any late payment fees, and has not been excluded from coverage as provided in R.S. 30:2195.10.

* * *

Third-Party Claim—any civil action brought or asserted by any person against the secretary of the department and any owner of any underground storage tank for damages to person or property when damages are the direct result of the contamination of surface water, groundwater or soils by motor fuels released during operation of storage tanks as provided in R.S. 30:2194-2195.11. The term *damages to person* shall be limited to damages arising directly out of the ingestion or inhalation of petroleum constituents from water well contamination or inhalation of petroleum constituents seeping into homes or buildings, and the term *damages to property* shall be limited to the unreimbursed costs of a response action and the amount by which property is proven to be permanently devalued as a result of the release.

B. Financial Responsibility Requirements for MFUSTTF Participants

1. Unless revised by the administrative authority in accordance with R.S. 30:2195.9(A)(5) and 10(D), MFUSTTF participants taking response actions shall pay the amounts required by R.S. 30:2195.9(A)(1)-(5) and 10(B).

2. The advisory board shall review the financial responsibility requirements on an annual basis and may recommend adjustments to the requirements to the secretary. The secretary shall

determine and set the financial responsibility requirements annually [as provided in R.S. 30:2195.9(A)(5) and 10(D).

B.3. — C.1.c.i. ...

ii. The monies expended from the MFUSTTF for any of the above approved costs shall be spent only up to such sum as that which is necessary to satisfy petroleum or motor fuel UST financial responsibility requirements specified in LAC 33:XI.1107 or \$2,000,000 per occurrence, whichever is greater. This amount shall include any third-party claim arising from the release of motor fuels from a motor fuel underground storage tank. However, if the secretary determines that further action is needed to address a condition that constitutes a danger or potential danger to the public health or the environment, monies from the MFUSTTF may be expended above the aggregate financial responsibility requirements of LAC 33:XI.1107.

2. — 3. ...

4. The MFUSTTF may be used for reimbursement of any costs associated with the review of applications for reimbursement from the MFUSTTF, legal fees associated with the collection of costs from parties who are not eligible participants, audits of the MFUSTTF, and accounting and reporting regarding the uses of the MFUSTTF.

C.5. — D.1. ...

a. Notwithstanding any provision of R.S.2194-2195.11 to the contrary, any remediation work contracted for on or after August 1, 1995, shall be paid by the department to the response action contractor who performed the department-approved assessment or remediation work upon the presentation of proper invoices for the response actions taken when authorized by the secretary or his designee.

b. ...

2. Payments are made to third parties who bring suit against the administrative authority in his or her official capacity as representative of the MFUSTTF and the owner or operator of an underground motor fuel storage tank who is an eligible participant as defined in Subsection A of this Section and such third party obtains a final judgment in that action enforceable in Louisiana. The owner or operator stated above shall pay the amount required by Subsection B of this Section toward the satisfaction of said judgment and the MFUSTTF will pay the remainder of said judgment. The attorney general of the state of Louisiana is responsible for appearing in said suit for and on behalf of the administrative authority as representative of the MFUSTTF. The administrative authority as representative of the MFUSTTF is a necessary party in any suit brought by any third party that would allow that third party to collect from the MFUSTTF, and the administrative authority shall be made a party to the initial proceedings. Payment shall be made to the third-party claimant only if the judgment is against an owner or operator who was an eligible participant on the date that the incident that gave rise to the claim occurred. The costs to the attorney general of defending these suits, or to those assistants that the administrative authority employs or the attorney general appoints to assist, shall be recovered from the MFUSTTF. If the MFUSTTF is insufficient to make payments when the claims are filed, such claims shall be paid in the order of filing when monies are paid into the MFUSTTF. Neither the amount of money in the MFUSTTF, the method of collecting it, nor any of the particulars involved in setting up the MFUSTTF shall be admissible as evidence in any trial in which suit is brought when the judgment rendered could affect the MFUSTTF.

3. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq. and specifically 2195-2195.10.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Underground Storage Tank Division, LR 16:614 (July 1990),

amended LR 17:658 (July 1991), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2561 (November 2000), LR 27:521 (April 2001), amended by the Office of Environmental Assessment, LR 31:1577 (July 2005), amended by the Office of the Secretary, Legal Affairs Division, LR 34:864 (May 2008), LR 35:1881 (September 2009), amended by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 44:1625 (September 2018), amended by the Office of the Secretary, Legal Affairs Division, LR 52:0000

Family Impact Statement

This Rule has no known impact on family formation, stability, and autonomy as described in R.S. 49:972.

Poverty Impact Statement

This Rule has no known impact on poverty as described in R.S. 49:973.

Small Business Analysis

This Rule will result in no negative effects on impacted small businesses. Any business that has an eligible release will be eligible for an additional \$500,000.00 in clean up and third party damage coverage from the Louisiana Motor Fuels Underground Storage Tank Trust Dedicated Fund Account. In addition to the higher amount of coverage, the noncompliance deductible can now be set by the department below the current \$10,000, which would result in additional savings to small businesses.

Provider Impact Statement

This Rule has no known impact on providers as described in HCR 170 of 2014.

Public Comments

All interested persons are invited to submit written comments on the proposed regulation. Persons commenting should reference this proposed regulation by UT021. Such comments must be received no later than May 6, 2025, at 4:30 p.m., and should be sent to William Little, Attorney Supervisor, Office of the Secretary, Legal Affairs Division, P.O. Box 4302, Baton Rouge, LA 70821-4302, by fax (225) 219-4068, or by E-mail to DEQ.Reg.Dev.Comments@la.gov. Copies of the proposed regulation can be purchased by contacting the LDEQ Public Records Center at (225) 219-3168. Check or money order is required in advance for each copy of UT021. The proposed regulation is available on the Internet at <https://deq.louisiana.gov/page/rules-regulations>.

Public Hearing

A public hearing will be held on April 29, 2025, at 1:30 p.m. in the Galvez Building, Oliver Pollock Conference Room, 602 N. Fifth Street, Baton Rouge, LA 70802. Interested persons are invited to attend in person or via Zoom at <https://deqlouisiana.zoom.us/j/6836133613?omn=99170103838>, or by phone (646) 255-1997 Meeting ID: 683 613 3613. Should individuals with a disability need an accommodation in order to participate, contact Doug Bordelon at the address given below or at (225) 219-1325.

The proposed regulation is available for inspection at the following LDEQ office locations from 8 a.m. until 4:30 p.m.: 602 N. Fifth Street, Baton Rouge, LA 70802; 508

Downing Pines Road, West Monroe, LA 71292; State Office Building, 1525 Fairfield Avenue, Shreveport, LA 71101; 1301 Gadwall Street, Lake Charles, LA 70615; 111 New Center Drive, Lafayette, LA 70508; 110 Barataria Street, Lockport, LA 70374; 201 Evans Road, Bldg. 4, Suite 420, New Orleans, LA 70123.

Aurelia S. Giacometto
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES**

Person Preparing Statement:	<u>Samuel Broussard</u>	Dept.:	<u>Environmental Quality</u>
Phone:	<u>(337) 262-5744</u>	Office:	<u>Environmental Assessment</u>
Return Address:	<u>602 North Fifth Street</u> <u>Baton Rouge, LA 70802</u>	Rule Title:	<u>Aligning UST Regulations with Statute Changes (LAC 33:XI.301, 403, 509, and 1121)</u>
		Date Rule Takes Effect:	<u>Upon Promulgation</u>

SUMMARY
(Use complete sentences)

In accordance with Section 961 of Title 49 of the Louisiana Revised Statutes, there is hereby submitted a fiscal and economic impact statement on the rule proposed for adoption, repeal or amendment. THE FOLLOWING STATEMENTS SUMMARIZE ATTACHED WORKSHEETS, I THROUGH IV AND WILL BE PUBLISHED IN THE LOUISIANA REGISTER WITH THE PROPOSED AGENCY RULE.

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The proposed rule will increase SGR expenditures out of the Motor Fuels Underground Storage Tank Trust Dedicated Fund Account. The proposed rule makes changes to LAC 33:XI. Underground Storage Tanks (UST) to align the UST regulations with the changes made in Act 167 of the 2024 RS. The proposed rule does the following:

- a) Deletes the regulation that requires a current registration certificate to allow or place fuel into an underground storage tank.
- b) Deletes automatic red tag provision for no current registration certificate.
- c) Changes registration certificate recordkeeping requirement from 301.C.8 to 1133.B.5.
- d) Revises the *eligible participant* definition in LAC 33:XI.1121.A to align with the statute definition change.
- e) Revise *third-party claim* definition in LAC 33:XI.1121.A to align with the statute change.
- f) Revise LAC 33:XI.1121.B.1 and B.2 to align with the statute change.
- g) Revise LAC 33:XI.1121.C.1.c.ii to align with the statute amount of coverage change to \$2 million per occurrence.

- h) Revise LAC 33:XI.1121.C.4, D.1.a, and D.2 to align with the first dollar coverage change made by the eligible participant definition.

DEQ estimates that over the next five fiscal years, 19 sites are currently projected to reach the maximum reimbursement. Without the maximum increase, these sites may not be fully remediated. The fund account had a balance of \$145 M as of 2/28/25, of which \$129 M is not restricted for specific purposes and should be appropriated towards the assessment and remediation of releases from eligible UST tank sites. If all 19 sites utilize the added \$500,000 it could cost as much as \$9.5 M; however, DEQ is unable to estimate the timing or actual amount needed beyond the \$1.5 M limit for these sites. Any increase in expenditure out of the fund will require a legislative appropriation.

Local governmental units that have an eligible release will be eligible for an additional \$500,000 in clean-up and third-party damage coverage from the Louisiana Motor Fuels Underground Storage Tank Trust Dedicated Fund Account. In addition to the higher amount of coverage, the noncompliance deductible can now be set by the department below the current \$10,000, which would result in additional savings to local governmental units.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There will be no effect on revenue collections of state and local governmental units as a result of this proposed rule.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS, SMALL BUSINESSES, OR NON-GOVERNMENTAL GROUPS (Summary)

There are no costs to directly affected persons, small businesses, or non-governmental groups as a result of this proposed rule.

Affected persons, small businesses, and non-governmental groups that have an eligible release will be eligible for an additional \$500,000 in clean-up and third-party damage coverage from the Louisiana Motor Fuels Underground Storage Tank Trust Dedicated Fund Account. In addition to the higher amount of coverage, the noncompliance deductible can now be set by the department below the current \$10,000, which could result in additional savings to affected persons, small businesses, and non-governmental groups.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There will be no effect on competition and employment as a result of this proposed rule.

Signature of Head or Designee

Aurelia S. Giacometto, Secretary

Typed Name & Title of Agency Head or Designee

Date of Signature

Legislative Fiscal Officer or Designee

Date of Signature