

Subchapter 3: REGISTRATION (NOTIFICATION), PERMITS, AND OPERATOR TRAINING

§ 8-301 APPLICABILITY

(a) Category one underground storage tank systems.

(1) The owner or operator (whichever is or intends to become the permittee) of any category one system that is either proposed or in-service shall comply with:

(A) The municipal land recording requirements of § 8-303;

(B) The permit requirements of § 8-304;

(C) The financial responsibility requirements of § 8-305; and

(D) If applicable, the change-in-service requirements of § 8-306;

(2) The owner of any category one system that is out-of-service shall comply with:

(A) The registration requirements of § 8-302;

(B) The municipal land recording requirements of § 8-303;

(C) The financial responsibility requirements of § 8-305; and

(D) If applicable, the change-in-service requirements of § 8-306.

(b) Category two underground storage tank systems. The owner of any category two underground storage tank system shall comply with:

(1) The registration requirements of § 8-302;

(2) The municipal land recording requirements of § 8-303;

(3) The financial responsibility requirements of § 8-305; and

Note: Pursuant to **10 V.S.A. §1941**, category two underground storage tank systems are eligible for reimbursement under the Vermont Petroleum Cleanup Fund and this may be used as a means of demonstrating financial responsibility.

(4) If applicable, the change-in-service requirements of § 8-306.

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- (c) Category three underground storage tank systems. The owner of any category three underground storage tank system shall comply with:
- (1) The registration requirements of § 8-302;
 - (2) The municipal land recording requirements of § 8-303; and
 - (3) If applicable, the change-in-service requirements of § 8-306.

§ 8-302 REGISTRATION (NOTIFICATION)

Note: Under Vermont law (10 VSA § 1923), owners of underground storage tanks are required to “notify” the Secretary of the existence of those underground tanks. Because the term “notification” has caused some confusion, the term “registration” is used throughout these rules. Tank owners should be aware that by following the registration requirements contained in this section, they are fulfilling the notification requirement contained in state law.

- (a) The owner of any category one underground storage tank system that is out of service, or any category two or category three underground storage tank system shall register that tank system with the Secretary.
- (b) Registration shall be made submitting a **Vermont Underground Storage Tank Form** (provided by the Secretary) completed in accordance with the form’s instructions, and signed in accordance with § 8-104. Owners of underground storage tank systems at more than one facility location shall file a separate form for each location.
- Note:** An owner may register several underground storage tank systems at one location using one form.
- (c) If ownership of an underground storage tank changes, upon transfer of ownership, the seller shall provide written notification to the new owner of the existence of these rules.
- (d) No later than 30 days after the transfer of ownership of any category two or category three underground storage tank system, the new owner shall comply with the requirements of this section, whether or not the seller has notified the new owner of the requirements of these rules.
- (e) Any person who knowingly owned or operated an underground storage tank after January 1, 1974, and who does not have knowledge that the tank has been closed in accordance with tank closure requirements of § 8-604, shall make a one-time registration of that tank.

§ 8-303 RECORDING UNDERGROUND STORAGE TANK SYSTEMS IN MUNICIPAL LAND RECORDS

- (a) The owner or operator (whoever is or intends to become the permittee) of any category one underground storage tank system shall submit to the Secretary, along with the underground storage tank system permit application required under **§ 8-304(b)**, the municipal recording fee required by **32 V.S.A. § 1671**.
- (b) The owner of any category two or category three underground storage tank system shall submit to the Secretary, along with the **Vermont Underground Storage Tank Form** required under **§ 8-302**, the municipal recording fee required by **32 V.S.A. § 1671**.
- (c) Payment of the recording fee required in **subsections (a) and (b) of this section** shall be made by check payable to the municipality in which the underground storage tank system is located.

Note: For category one tank systems, the Secretary will forward the recording fee to the appropriate town or city clerk upon receipt of the installation checklist required under **§ 8-304(b)(5)**. For category two and three tank systems, the Secretary will forward the recording fee to the appropriate town or city clerk upon entering information from the **Vermont Underground Storage Tank Form** about the tank system into the Secretary's records.

- (d) No later than 30 days after the transfer of ownership of any category two or category three underground storage tank system, the new owner shall comply with the requirements of this section.

§ 8-304 PERMITS FOR CATEGORY ONE UNDERGROUND STORAGE TANK SYSTEMS

(a) General requirements

- (1) No person shall commence construction, installation, substantial alteration or replacement of a category one underground storage tank system without first obtaining a construction permit from the Secretary. A construction permit is valid for a period not to exceed one year from the date of issuance, and allows the permittee to operate an underground storage tank system for up to 30 days immediately following installation of the system.
- (2) Except as allowed under **subsection (a)(1) of this section**, no person shall operate a category one underground storage tank system without first obtaining an operating permit from the Secretary, and displaying the permit or a copy of the permit in a prominent location at the facility. An operating permit shall be valid for a period not to exceed five years from the date of issuance.
- (3) Any person applying for a category one underground storage tank system permit shall comply with the recording fee requirements of **§§ 8-303 (a) and (c)**.

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Note: If a person applies for both a construction permit and an operating permit, that person must comply with the recording fee requirement only once.

- (4) With the exception of municipalities, any person applying for a construction/operating permit, renewing an existing operating permit, or applying for a new operating permit upon transfer of ownership shall pay the annual permit fee required pursuant to **3 V.S.A. § 2822**, for as long as the tank remains in service. The permit fee is not required when applying for a construction permit for a substantial alteration under **subsection (d)(6)(A)(ii) of this section**.

Note: Municipalities are exempt from the permit fee pursuant to **3 V.S.A. § 2822**.

- (5) If a permittee has applied for a renewed operating permit in accordance with **subsection (c)(2) of this section**, the existing permit shall not expire until the application has been either approved or denied by the Secretary.
- (6) If ownership of a category one underground storage tank changes, upon transfer of ownership, the seller shall provide written notification to the new owner of the existence of these rules.
- (7) Underground storage tank permits are not transferable, assignable, and do not run with the land. If at any time the permittee no longer has control of the facility or underground storage tanks, a new owner or operator shall apply for an operating permit by completing a **Vermont Underground Storage Tank Form** in accordance with **subsections (b)(1), (b)(2) and (b)(7) of this section**.

(b) Permit application procedure

- (1) Application for a permit to install, substantially alter or replace a category one underground storage tank system, and to operate that category one tank system, shall be made using the **Vermont Underground Storage Tank Form** completed in accordance with the form's instructions, and the signature requirements of **§ 8-104**.

Note: One **Vermont Underground Storage Tank Form** may be used to apply for a permit to construct and operate one or more category one underground storage tank systems at a single facility. Any permittee operating category one underground storage tank systems at more than one facility must possess a separate permit for each location.

- (2) Any **Vermont Underground Storage Tank Form** submitted to the Secretary shall be accompanied by the annual permit fee specified in **subsection (a)(4) of this section**.
- (3) The applicant shall ensure that a copy of the application for a new facility has been sent to the municipality in which the facility is proposed to be located.

- (4) Upon completing review of an application for a construction permit, and any other relevant information necessary to ensure that the proposed category one tank system meets the requirements of these rules, and the applicable requirements of the Vermont Air Pollution Control regulations relating to Stage I and Stage II gasoline vapor recovery controls, the Secretary will either issue or deny the permit
- (5) Upon completing the installation, the permittee shall notify the Secretary in writing that the installation is complete. Only after notifying the Secretary in writing may the underground storage tank system be brought into service.
- (6) Within 14 days of completing the installation, substantial alteration or replacement of a category one underground storage tank system, the permittee shall complete an Installation Checklist and submit the completed checklist signed in accordance with § 8-104, along with all required attachments, to the Secretary.

Note: An **Installation Checklist** is provided to the permittee along with the construction permit issued by the Secretary.

- (7) Upon completing review of an **Installation Checklist**, the Secretary shall either issue or deny an operating permit.
- (8) If the Secretary learns that the underground storage tank system that was installed is significantly different from the specifications indicated on the **Vermont Underground Storage Tank Form**, the Secretary may deny an operating permit, and require the filing of an amended **Vermont Underground Storage Tank Form**.
- (9) Permittees shall maintain records of all information used to complete a permit application and any supplemental information submitted to the Secretary in accordance with the recordkeeping requirements of §8-502(c) and (d).

(c) Permit renewal

- (1) Not less than 60 days prior to the expiration date of a category one underground storage tank system operating permit, the permittee shall request a copy of the **Vermont Underground Storage Tank System Permit Renewal** form from the Secretary if the permittee has not already been sent a copy by the Secretary.

Note: The permit renewal form sent by the Secretary contains the information on file with the Secretary about the permittee, the underground storage tank system, and the facility where the system is located.

- (2) The permittee shall review the information provided on the permit renewal form for accuracy, correct any information that is not accurate, and submit the form signed in accordance with § 8-104 to the Secretary at least 30 days prior to expiration of the existing permit.

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- (3) Any **Vermont Underground Storage Tank System Permit Renewal** form submitted to the Secretary shall include the permit fee specified in **subsection (a)(4) of this section**.
- (4) Upon completing review of each permit renewal application and any other relevant information necessary to ensure that the category one tank system continues to meet the requirements of these rules, and the applicable requirements of the Vermont Air Pollution Control regulations relating to Stage I and Stage II gasoline vapor recovery controls, the Secretary will either issue or deny the permit

(d) Modification of permits

- (1) Based upon information received (e.g., findings of a facility inspection, or information submitted by the permittee), the Secretary may determine whether one or more of the causes to modify a permit, listed in **subsection (d)(5) of this section**, exist. If cause exists, the Secretary may modify the permit accordingly, and if necessary request an updated **Vermont Underground Storage Tank Form**.
- (2) When a permit is modified, only the conditions subject to modification are reopened.
- (3) Suitability of the facility location shall not be considered at the time of modification unless new information or standards indicate that a threat to human health or the environment exists.
- (4) If cause does not exist under this section, the Secretary shall not modify the permit, unless the modification is at the request of the permittee.
- (5) The following are causes for modification of a permit:

- (A) Any minor alteration to a category one underground storage tank system.

Note: a substantial alteration requires a new permit pursuant to **subsection (e) of this section**.

- (B) Removal of a category one underground tank system at a facility with multiple category one systems.
- (C) A change in the type of mechanism used to meet the financial responsibility requirements of **§ 8-305**.
- (D) Information received by the Secretary that was not available when the permit was first issued (other than revised regulations, guidance, or test methods) and which justifies the addition of new conditions to the permit or changes to existing permit conditions.

(E) The standards or regulations on which the permit was based have been changed by statute, through promulgation of new or amended standards or regulations, or by judicial decision, after the permit was issued.

(F) An error in the permit.

(6) Modification procedure

(A) Modifications for cause shall be treated in the same manner as revocations under **subsection (f) of this section.**

(B) A permittee shall notify the Secretary in writing of any minor change to a category one underground storage tank system, or implemented at the facility where the system is located, that effects the information contained in the permit. Such notice shall be provided within 10 business days after making the change.

Note: Examples of minor changes include changes to operator of the category one underground storage tank system; facility contact person; method of release detection; regulated substance(s) being stored provided the change is from one type of motor fuel to another type of motor fuel (e.g., a change from gasoline to diesel fuel); and spill protection or overfill prevention devices.

(e) Termination and reissuance of permits

(1) The secretary may terminate a permit upon learning that an underground storage tank system is out of service.

(2) The secretary may terminate and reissue a permit for any of the following causes:

(A) Any substantial alteration to a category one underground storage tank system;

(B) Any significant change to a permitted facility which justifies the addition of new conditions to the permit or changes to existing permit conditions.

(C) A change in the type of regulated substance stored, if that change is found to be a significant change by the Secretary.

(3) Termination and reissuance procedure

(A) Prior to any substantial alteration of a category one underground storage tank system, the permittee shall:

(i) Obtain a construction permit in accordance with subsection **(a)(1) of this section;**

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- (ii) With the exception of submitting a permit fee, comply with the permit application procedure specified in **subsection (b) of this section**;
 - (iii) Provide the Secretary at least five business days advance notice of the anticipated date and time of commencement of construction; and
 - (iv) If required by the Secretary, perform a site assessment (refer to the document titled: “UST Closure and Site Assessment Requirements” which is available from the Secretary either on-line or upon request).
 - (B) For any substantial alteration of a category one underground storage tank system, the operating permit in effect prior to construction shall be terminated upon commencement of construction.
- (f) Revocation of permits
- (1) The Secretary may revoke a permit during its term, in whole or in part, for cause.
 - (2) The permittee shall be given written notice of the revocation at least 14 days before it takes effect unless the Secretary determines that the revocation meets the requirements of **subsection (f)(5) of this section**, in which case the revocation shall be effective on the date received by the permittee.
 - (3) Written notice shall include a statement of the reasons for revocation and notice of the permittee’s right to request a hearing.
 - (4) If the permittee submits a written request for a hearing within 14 days of the date such notice is received, the Secretary shall provide for an opportunity to meet with the Secretary.
 - (5) In cases where the Secretary has determined that revocation can alleviate an imminent and substantial hazard to human health or the environment, the revocation will take effect on the date the permittee receives notice of the revocation. The revocation will remain in effect during a hearing which the permittee may request, and until a final agency decision or any appeal of the revocation has been completed.
 - (6) Cause for revocation of a permit includes, but is not limited to:
 - (A) Non-compliance with the requirements of **10 V.S.A. Chapter 59 or 159**, these rules, or any permit condition;
 - (B) Failure to disclose any relevant fact during the permitting process that was known at that time;
 - (C) Misrepresentation of any relevant fact related to the underground storage tank or permit application;

- (D) Falsification of any record required to be maintained or submitted to the Secretary under these rules;
- (E) Default by the tank owner on a loan made from the Secretary in accordance with **10 VSA § 1944**.

§ 8-305 FINANCIAL RESPONSIBILITY REQUIREMENTS

- (a) The permittee of a category one underground storage tank system, or the owner of a category two underground storage tank system shall demonstrate financial responsibility for taking corrective action and for compensating third parties for bodily injury and property damage caused by sudden and nonsudden accidental releases from an underground storage tank in a timely manner and in the following amounts:
 - (1) For category one and category two underground storage tanks containing regulated substances derived from petroleum:
 - (A) \$1 million per occurrence except that it is \$500,000 per occurrence for tanks not used in the production, refining or marketing of petroleum to other marketers or to the public which have an average monthly throughput of 10,000 gallons or less;
 - (B) \$1 million annual aggregate for permittees of 100 or fewer tanks; and
 - (C) \$2 million annual aggregate for permittees of more than 100 tanks.
 - (2) For hazardous substance tanks, per occurrence and annual aggregate amounts as determined by the Secretary to bear a reasonable relation to the risk associated with a release.
 - (3) The amounts of financial assurance required in **subsections (a)(1) and (2) of this section** exclude legal defense costs.
- (b) Financial responsibility shall be established by any one or a combination of the following mechanisms:
 - (1) Qualification as a self-insurer, in accordance with **40 CFR § 280.95**;
 - (2) Guarantee, in accordance with **40 CFR § 280.96**;
 - (3) Surety bond, in accordance with **40 CFR § 280.98**;
 - (4) Letter of credit, in accordance with **40 CFR § 280.99**;
 - (5) Insurance, in accordance with **40 CFR § 280.97**;

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- (6) Risk retention pool pursuant to **10 V.S.A. § 1939**, and in accordance with **40 CFR § 280.97**;
 - (7) Payments to the State Petroleum Cleanup Fund pursuant to **10 V.S.A. § 1941** and in accordance with the fee schedule established in **10 V.S.A. § 1943**; or
 - (8) Another mechanism approved by the Secretary.
- (c) If separate mechanisms or a combination of mechanisms are used to demonstrate financial responsibility, the aggregate amount of assurance provided by each mechanism or combination of mechanisms shall be for the full amount as specified in **§8-305(a)**.
- (d) A permittee shall notify the Secretary in writing of any anticipated change in the mechanism used to demonstrate financial responsibility at least 60 days prior to the date of the anticipated change or, if the financial responsibility mechanism is terminated by the provider, in accordance with the timeframes specified in § 8-305(f). Upon receiving verification that the new mechanism is in place, the Secretary may modify the operating permit accordingly.
- (e) Any mechanism or combination of mechanisms used under this subsection shall:
- (1) Be valid and enforceable under Vermont law;
 - (2) Be issued by a provider that is qualified or licensed in Vermont;
 - (3) Not allow cancellation without allowing the Secretary to draw funds;
 - (4) Be used only and directly for corrective action and third party liability costs; and
 - (5) Be in accordance with Secretary policy and **40 CFR § 280, Subpart H**.
- (f) A provider of financial assurance may cancel or fail to renew an assurance mechanism by sending a notice of termination by certified mail to both the Secretary and the owner or operator subject to the following:
- (1) The termination of a guarantee, surety bond or letter of credit may not occur until 120 days after the owner or operator receives such notice.
 - (2) The termination of insurance, risk retention group coverage or state-funded assurance may not occur until 60 days after the owner or operator receives such notice.
 - (3) The notice of cancellation or any other suspension of financial assurance for any reason shall be made by the provider to the Secretary at least 30 days prior to the date termination becomes effective.

- (g) An owner or operator shall maintain evidence of all financial assurance mechanisms used to demonstrate financial responsibility under this section. Such evidence shall be maintained within the state and shall be made available within 24 hours of a request by the Secretary.
- (h) An owner or operator is not required to maintain financial responsibility under this section after the tank has been closed in accordance with **§8-604 and 605** of these rules, unless corrective action is required, in which case financial responsibility may be terminated after corrective action has been completed.

§ 8-306 CHANGE-IN-SERVICE

For any change-in-service, the owner or permittee shall:

- (1) Notify the Secretary of the anticipated change at least 14 days prior to making the change;
- (2) Empty the tank by removing all liquid and accumulated sludge;
- (3) Manage all waste material in accordance with the **Vermont Hazardous Waste Management Regulations** and any other applicable state and federal requirements; and

Note: The owner or permittee shall manage all wastes from an underground storage tank system in accordance with the **Vermont Hazardous Waste Management Regulations**.

- (4) Comply with the site assessment requirements of **§ 8-605**.

§ 8-307. OPERATOR TRAINING REQUIRED

- (a) Effective August 1, 2012, the permittee of a category one system shall ensure that at least one person designated as the following class of operator is trained and either employed at or under contract with the facility:
 - (1) The facility has one individual designated as a Class A, one individual designated as a Class B, and at least one individual designated as a Class C operator for the facility.
 - (2) The permittee shall ensure that any time a staffed facility is open for business, either a Class C operator is present or at least one person is present at the facility who has knowledge of, and can respond to, the following:
 - A. Appropriate emergency actions to be taken in response to a spill or overflow of regulated substance;
 - B. The locations and proper use of emergency shut-off switches;
 - C. Appropriate response to automatic tank gauge system alarms; and

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- D. Appropriate phone numbers to call to report spills, overfills, or other emergencies.
- (b) Effective August 1, 2012, the permittee shall, on a form provided by the secretary, submit to the Secretary the names of a person or persons designated as the Class A and Class B operators for the facility, the name of the operator training program that certified their operator classification, and the expiration of their operator classification certification. If the facility changes person designated as the Class A or B operator the permittee shall resubmit this notification within 45 days of that change.
 - (c) Effective August 1, 2012, the permittee shall maintain a list of Class C operators assigned to that facility and revise the list whenever a change occurs. The listing shall include the following information for each class C operator: the date when the operator passed an approved test or was trained, the expiration date with respect to that training, and the name of the approved test or person that certified that the person met the requirements for their operator classification.
 - (d) Effective August 1, 2012, a person designated as a Class A or B operator shall have their operator classification certified by passing an approved operator test not later than 30 days after their designation.
 - (e) A person designated as a Class C operator shall have their operator classification certified either by passing an approved operator test or by being trained by an approved person prior to assuming the responsibilities of a Class C operator.
 - (f) Effective August 1, 2012, Class A, B, and C operator certifications shall be valid for two years.
 - (g) Retraining requirements. If a facility is found to be significantly out of compliance with these rules, the Class A or Class B operator for that facility shall complete a retraining and re-take an approved test. Such retraining and testing shall be initiated not more than 45 days, and shall be completed not more than 60 days, after the Secretary has issued notice to the permittee.
 - (h) The Class A or Class B operator, or an employee working under the direction of the Class A or B operator, shall conduct monthly inspections of the underground storage tank system in accordance with **§8-509(a)**.

§ 8-308. APPROVAL OF AN OPERATOR TRAINING TEST.

- (a) An operator training test must be approved, in writing, by the Secretary as satisfying the minimum criteria to certify an operator classification. The following are the minimum required areas of competence for operator classifications:
 - (1) For Class A Operators:

- (A) An understanding of the statutory and regulatory requirements that relate to the permitting of the facility; financial responsibility; spill prevention; overfill protection; release detection; corrosion protection; emergency response; product compatibility; notification requirements; release and suspected release reporting; temporary and permanent closure requirements; reporting and recordkeeping requirements; and training requirements for Class B and C operators.
 - (B) Demonstration of the items discussed in subdivision 8-308(a)(1)(A) through an appropriately administered and evaluated test.
- (2) For Class B operators:
- (A) A practical and regulatory understanding of the components of an underground storage tank system and its proper operation, including: spill prevention; overfill protection; release detection; corrosion protection; emergency response; product compatibility; release and suspected release reporting; reporting and recordkeeping requirements; and training requirements for Class C operators.
 - (B) Demonstration of the items discussed in subdivision 8-308(a)(2)(A) through an appropriately administered and evaluated test.
- (3) For Class C operators:
- (A) An understanding of appropriate actions by the operator to respond to emergencies and alarms.
 - (B) An understanding of facility layout, or in the case of a generally administered evaluation, the typical layout of a facility.
 - (C) An understanding of how to read alarm enunciation panels.
 - (D) Demonstration of the items discussed in subdivisions 8-308(a)(3)(A), (B), and (C) through either an appropriately administered and evaluated test or the evaluation and personal certification of a Class A or B operator.
- (b) The Secretary may approve an operator training test and associated curriculum conducted or approved by another state as meeting the requirements of these rules.
- (c) Any operator training test that has been approved by the Secretary may be decertified for any of the following:

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- (1) the performance of three or more operators who have passed the test in question indicates a gross failure of understanding of the elements required for their operator classification; or
 - (2) there are significant operational compliance issues at three or more facilities with operators who have passed that test.
- (d) The Secretary may reject the certification of any operator for any of the following:
- (1) the operator's performance indicates a gross failure of understanding of the elements required for their operator classification;
 - (2) there are significant operational compliance issues at one or more facilities for which the operator is responsible; or
 - (3) the operator is unable to document that he or she was trained by an appropriate person or passed an approved operator test.

END OF SUBCHAPTER THREE