

Chapter 12

§ 12.01. Scope

Regulatory framework applicable to Ohio's storage tanks [12.02]▲ Ohio and federal law governing installation, operation and removal of USTs & BUSTER [12.03]▲ Ohio's enforcement procedures [12.04]▲ Overview of recent federal legislation altering the underground storage tank regulatory landscape[12.05]▲ Ohio and federal law governing the operation of aboveground storage tanks [12.06]

§ 12.02. Storage Tank Regulation in Ohio

- This chapter provides an overview of the regulations that govern the installation, operation, and closure of storage tanks, both underground and aboveground.
- The State Fire Marshal estimates that over 7,500 facilities are registered as operators of UST systems in Ohio. Those facilities, which operate a total of 21,585 registered USTs, reported 360 releases in 2016.
- The number of unregistered USTs and undocumented releases is unknown, but it is safe to say the numbers are significant.
- Contamination associated with USTs typically is the result of faulty equipment, poor construction, or sub-par maintenance. Create heavy financial burden for o/o.
- ASTs failures impact soil, groundwater and surface waters.
- ASTs are under the jurisdiction of Ohio EPA, the State Fire Marshal, and delegated local fire departments. COMPARE: USTs are primarily regulated by the Bureau of Underground Storage Tank Regulations (BUSTR), with additional regulatory oversight by Ohio EPA and the State Fire Marshal.

Strategic Point: USTs are regulated more extensively than ASTs because:

- Significant historical contamination from hazardous materials stored in USTs;
- USTs a greater threat due to the proximity of UST equipment to the soil and groundwater; and
- UST subterranean ∴ potential for higher environmental contaminant exposure because out of sight, thus leak detection is more .

§ 12.03. Underground Storage Tanks

[1] UST Regulation Sources

There are four sources of UST regulation in Ohio:

- a. The federal RCRA & regs;
- b. The Ohio Fire Code, OAC 1301:7-7-34, for flammable and combustible liquids;
- c. R.C. 3737.87–3737.99– and the BUSTR regulations, OAC 1301:7-9-01 to -20, for “regulated substances”; and
- d. R.C. Chapter 3734 and the regulations promulgated at OAC 3745-50 to 3745-69 apply to tanks storing hazardous wastes (12.03[3]).

[2] Ohio Fire Code Regulations

[a] Applicability

- The Ohio Fire Code is dedicated to the “[p]revention, control and mitigation of dangerous conditions related to storage, use, dispensing, mixing and handling of flammable and combustible liquids.”
 - A “combustible liquid” is defined as a liquid having a closed cup flash point at or above 100°F.
 - A “flammable liquid” is a liquid having a closed cup flash point below 100°F

[b] Permit Requirements

The Fire Code requires that a permit be obtained for the:

installation; alterations to tanks, piping, or appurtenances; abandonment; and removal or temporary removal of tanks from service.

[c] Fire Safety Requirements

Fire protection is required under the Fire Code for the “storage, use, dispensing, mixing, handling and on-site transportation of flammable and combustible liquids.

- The Fire Code requires that every regulated facility:
 - (1) provide portable fire extinguishers and hose line;
 - (2) conduct a site assessment to determine the threat of fire or explosion from a potential spill;
 - (3) provide spill control and secondary containment where the “maximum allowable quantity per control area is exceeded;” and
 - (4) post warning signs to identify the hazards of storing or using flammable liquids.

[d] Aboveground Storage Tanks

ASTs receive slightly more stringent treatment under the Fire Code than do their underground counterparts.

- For example, the ASTs of flammable and combustible liquids is prohibited by the Fire Code on premises to which the public has access, with limited exceptions.
 - Also must have foam fire protection and fire protection for supports.
- ASTs located inside buildings must be equipped with a device to prevent overflow of the tank contents into the surrounding building.
- ASTs have different operating pressure limits and some types of aboveground tanks also have distinct location requirements.
- ASTs may not be filled to more than 95 percent of their capacity and overfill prevention systems must be in place.
- Spill containers with a capacity of at least five gallons must be provided for each fill pipe connection for fuel deliveries.

[e] UST Installation

USTs & ASTs regulated

- USTs must be installed in accordance with the following guidelines:
 - (1) Tanks must be located with respect to existing foundations and supports such that the loads carried by those supports cannot be transmitted to the tank;
 - (2) The distance bw a tank storing liquids to nearest basement wall, pit lot line must be >3';
 - (3) At least 1' bw USTs;
 - (4) The tank must be placed on a foundation and surrounded with at least six inches of non-corrosive, inert material; and
 - (5) Tanks must be equipped with a spill container and overfill prevention system.

[f] Tank Closure and Abandonment

The Fire Code provides specific procedures for the treatment of USTs that are abandoned or temporarily taken out of service.

- All tanks temporarily taken out of service must have the fill line, gauge opening, vapor return, and pump connection secured against tampering. Vent lines must remain open in accordance with the general provisions governing tank safety and operation.
 - ASTs must also have all connecting lines isolated from the tank and be secured against tampering. And, if out of service for 90 days must be closed pursuant to the general procedures for tank removal.
 - Most USTs taken out of service for one year or more must either be removed or abandoned in place.
- Abandoned USTs must be abandoned according to the following requirements:
 - (1) Flammable and combustible liquids must be removed from tank and piping;
 - (2) The suction, inlet, gauge, vapor return, and vapor lines must be disconnected;
 - (3) The tank must be filled completely with an approved inert solid material;
 - (4) Remaining underground piping must be capped or plugged;
 - (5) Record of tank size, location, and date of abandonment must be maintained; and
 - (6) All exterior above-grade fill and vent piping must be permanently removed.

[g] Removal

Fire Code Rules for ASTs & USTs:

- (1) Flammable and combustible liquids must be removed from tank & connecting piping;
- (2) Piping at the tank openings that is no longer in use must be disconnected;
- (3) Piping must be removed from the ground, except where a fire code official determines that removal is not practical;
- (4) Tank openings must be capped or plugged, leaving a 0.125 inch to 0.25 inch diameter opening for pressure equalization;
- (5) Tanks must be purged of vapor and inverted before removal; and
- (6) All exterior above-grade fill and vent piping must be permanently removed.

Once removed, tank must then be disposed of in accordance w federal, state, and local regs.

[h] Leak Detection

- Fire Code requires the maintenance of daily inventory records for USTs and mandates that each UST be equipped with a method of leak detection that is designed and installed in accordance with NFPA, as listed in OAC 1301:7-7-47.20
- Leaking tanks must be promptly emptied, repaired, and returned to service, abandoned, or removed.

[3] Bureau of Underground Storage Tank Regulations

[a] Jurisdiction

- BUSTR, a bureau of the Ohio Department of Commerce, Office of the State Fire Marshal, has primary authority in Ohio for the regulation of most underground storage tanks containing petroleum or hazardous substances.
 - “Hazardous substances” are those materials listed in OAC 1301:7-9-03, excluding materials regulated by Ohio EPA as “hazardous wastes.”

[b] Applicability

R.C. Chapter 3737 and the BUSTR regulations apply to “owners” and “operators” of USTs or UST systems.

- “underground storage tank,” for purposes of R.C. Chapter 3737, means tanks and associated piping used to contain “regulated substances” (defined as petroleum or hazardous substances), provided that at least ten percent of the volume of the tanks and associated piping is beneath the surface of the ground.
 - **BUT** excludes these:
 - a. Pipeline facilities and gathering lines regulated under the Natural Gas Pipeline Safety Act;
 - b. Farm or residential tanks with a maximum capacity of 1,100 gallons, which are used for storing motor fuel for noncommercial purposes (i.e., not for resale);
 - c. Tanks used for storing heating fuel for consumptive purposes on the premises where stored;
 - d. Surface impoundments, pits, ponds, or lagoons;
 - e. Storm water or waste water collection systems;
 - f. Flow-through process tanks;
 - g. Storage tanks located in underground areas such as basements or mines, where the tanks are located on or above the surface of the floor;
 - h. Septic tanks; and
 - i. Liquid traps or associated gathering lines directly related to oil or gas production and gathering operations.
- An “operator” of an UST is the person in daily control of, or having responsibility for the daily operation of, the UST.
- Determining who is the “owner” of an UST requires a determination of when the tank was last in use.
 - If the tank was last in use on or after November 8, 1984, the “owner” is the person who currently owns the tank.
 - If the tank was last in use before November 8, 1984, the “owner” is the person who owned the tank immediately before the discontinuation of its use.

- In either case, the term “owner” also includes any person holding a legal, equitable, or possessory interest of any kind in the underground storage tank or the property where it is located, including a trust, vendor, vendee, lessor, or lessee.
 - Thus, a person may be liable for failure of a tank to meet applicable regulatory requirements solely by virtue of one’s ownership (or lease) of property where an UST is located.
 - However, the term “owner” does not include any person who, without participating in the management of an UST and without otherwise being engaged in petroleum production, refining, or marketing, holds indicia of ownership primarily to protect the person’s security interest in the tank.

[c] Permit Requirements

The installation, repair, and removal of USTs must be supervised by personnel certified by the Fire Marshal. Must have a permit from Fire Marshal or local fire department.

- permit application must be submitted to the Fire Marshal, accompanied by drawings and related information. If, after review, the permitting authority determines that the proposed activity complies with BUSTR regulations, and the appropriate fee is paid, a permit will be issued.
 - Once issued, a permit may be revoked upon discovery of any violations of the BUSTR regulations, for violations of permit-specific conditions, or for any false statement or misrepresentation as to a material fact on the permit application.

[d] Registration Requirement

UST owners must register new and existing USTs by submitting an annual registration application and fee to the Fire Marshal.

- For new tanks, the application and fee are due within 30 days of bringing the tanks into service. For existing tanks, the application and fees must be submitted on or before July 1 of each year. The registration requirements do not apply to the following classes of tanks:
 - a. USTs holding hazardous wastes listed or identified under Chapter 3745-51 of the Ohio Administrative Code;
 - b. A wastewater treatment tank system that is part of a wastewater treatment facility regulated under §§ 307(b) or 402 of the federal Clean Water Act;
 - c. Equipment or machinery containing regulated substances for operational purposes, such as hydraulic lift tanks and electrical equipment tanks;
 - d. USTs with capacity of 110 gallons or less;
 - e. USTs containing a de minimis concentration of regulated substances; and
 - f. Emergency spill or overflow containment USTs that are expeditiously emptied after use.

[e] Standards and Operating Requirements for UST Systems

BUSTR’s regulations governing operating requirements for UST systems are located in OAC 1301:7-9-06.

- All owners and operators must maintain and operate spill and overflow prevention equipment.
 - Ensure you have enough volume capacity for your liquids
 - owners and operators must report, investigate and clean up any spills and overfills, inspect all spill prevention equipment after each delivery, dispose of any substances or debris from the equipment, and ensure all spill prevention equipment is in good operating condition.

- As discussed in more detail below, UST owners and operators are required to operate and maintain release detection equipment, including daily product inventory control, and inspect the equipment on a monthly basis to ensure its integrity.
 - A reporting duty is triggered if a release detection method fails to achieve a passing result or goes into alarm.
 - Proper leak detection methods for piping and containment systems include automatic leak detectors (tested annually) and underground piping subject to an annual precision test conducted by an independent inspector, and a monthly on-site test. Release detection methods for hazardous substance USTs in sensitive areas also are subject to annual testing requirements.

[f] Release Detection and Reporting Requirements

[i] USTs

USTs containing one or more listed hazardous substance are subject to release reporting requirements under OAC 1301:7-9-03.

- As defined in the regulations, a release of a hazardous substance means “any spilling, leaking, emitting, discharging, escaping, leaching, or disposing of a hazardous substance(s) into ground water, a surface water body, subsurface soils or otherwise into the environment,” including releases occurring while transferring or attempting to transfer hazardous substances into an UST.
- A “suspected release” means evidence that a release of a hazardous substance exists. Such evidence may be obtained through:
 - (1) monitoring results from a release detection method, unless contradicted by further data or by a monitoring device found to be defective;
 - (2) Unusual operating conditions observed by the owner or operator, unless immediately repaired;
 - (3) the presence of free hazardous substances discovered during removal of an UST system;
 - (4) discovery of hazardous substance vapors within or along building foundations or other subsurface manmade structures;
 - (5) the presence of free hazardous substances in a monitoring or observation well on UST property;
 - (6) the presence of hazardous substances observed on a water body on UST property; or
 - (7) the presence of hazardous substances in an UST secondary containment system on the UST site.
- Owners and operators of USTs must report a release of hazardous substances or suspected release to the Fire Marshal and local fire department within 24 hours of discovery,
 - exception that spills or overfills of \leq twenty-five gallons that do not reach a surface water body and are cleaned up within 24 hours.
- BUSTR regulations require the owner or operator to monitor all USTs at least every 30 days for releases, with certain exceptions. Underground piping and containments must also be equipped and monitored for releases at least every 30 days, with a few exceptions.

[ii] Underground Piping Requirements

Underground piping that contains a regulated substance must be monitored for releases by the owner or operator as follows:

- (1) underground piping that conveys regulated substances under pressure must be equipped with an automatic line leak detector attached to the piping;
- (2) underground piping that conveys regulated substances under suction must have a line tightness test conducted at least once every 36 month period, unless that owner or operator can demonstrate:
 - (a) the underground piping operates at less than atmospheric pressure;
 - (b) the piping is sloped so that its contents will drain back into the tank if suction is released;
 - (c) only one check valve is included in each suction line; and
 - (d) the check valve is located directly below and as close as practical to the suction pump.

[iii] USTs Containing Hazardous Substances in “Sensitive Areas”

- The BUSTR regulations contain special provisions for release detection requirements for UST systems located “sensitive areas” above and beyond those applicable to other USTs.

[iv] Release Detection Methods

BUSTR’s regulations prescribe particular methods of release detection.

- Specific tests & timing like NPDES sampling at WWTP

[v] Release-Related Recordkeeping Requirements

All UST system owners and operators are required to maintain the following records:

- (1) all written performance claims pertaining to any release detection system used, and the manner in which these claims have been justified or tested by the equipment manufacturer or installer, must be maintained for the life of the UST and for five years after closure of the system;
- (2) the results of any sampling, testing, or monitoring must be maintained for at least two years, with the results of tank tightness testing retained until the next test is conducted; and
- (3) written documentation of all calibration, maintenance, and repair of release detection equipment permanently located at the facility must be maintained for the life of the equipment and for two years thereafter.

[g] Release Response and Corrective Action

- Owners and operators of USTs must report a release of hazardous substances or suspected release to the Fire Marshal and local fire department within 24 hours of discovery,
 - exception that spills or overfills of \leq twenty-five gallons that do not reach a surface water body and are cleaned up within 24 hours.
 - If a spill or overfill occurs during transfer of petroleum product into an UST and the spill results in a release to a nearby surface water body or a release of more than twenty-five gallons, the owner or operator must immediately contain the release to the extent practicable.

- Inspection process:
 - 1. UST system evaluation, which includes both aboveground and below ground inspection for releases.
 - 2. The second step is a tightness test, which must be conducted within seven days of the discovery of a suspected release, and the results of the test reported to the Fire Marshal within 24 hours.
 - If free product is discovered in an UST and leads to suspicion of a release, the owner or operator must demonstrate, within seven days of discovery, that the secondary containment system is tight and has not released petroleum into the environment.
 - 3. “site check,” which requires that within 90 days of: (1) a failed tightness test for secondary containment; (2) discovery of a suspected spill; or (3) an observed release, the owner or operator must “determine whether subsurface soil or ground water on an UST site have concentrations of chemicals of concern above the action levels” set forth under the Code.
 - A site check must include: (1) a “Tier 1” Source Investigation ([g]below); (2) closure of an UST system or portion of an UST that is the potential source of the release; or (3) collection of a minimum of three samples from soil immediately below the source of the suspected release.
- Once a release has been confirmed, the owner or operator of an UST system has an obligation to mitigate the release. The following actions must be taken within 24 hours of the release to mitigate the harm: (1) all immediate action necessary to prevent further petroleum release; (2) inspection for aboveground releases or exposed below ground releases and necessary steps to prevent migration of releases; (3) continued monitoring and mitigation of additional fire and safety hazards posed by vapors or free product that have migrated to subsurface structures; (4) management of excavated soil containing contaminants; (5) identification and mitigation of fire, explosion, vapor and safety hazards where a receptor is known to have been affected; and (6) testing of drinking water wells within three days of discovery of the release. In addition to mitigation duties, owners and operators must submit a written report to the Fire Marshal within 20 days of beginning immediate corrective actions, which must specify the date and time the release was discovered, the address and location of affected property, an overview of activities leading to the discovery, the type and amount of product released, a description of the UST system and its operation status, a description of the amount and disposition of any materials generated, and copies of the site maps, plans, and related photographs.
- Where an owner or operator discovers the presence of free product in an UST system, he must immediately implement a free product recovery program and remove free product in a manner that minimizes the spread of contaminants to previously unaffected areas.

[h] The Tier System for Corrective Action

BUSTR has devised a Tier System for corrective action, designed to address cleanup through a multi-step approach.

- 1. “Tier 1 Source Investigation,” which is designed to determine the concentrations of chemicals of concern in the source area. A Tier 1 Source Investigation includes the following components:
 - (1) a Source Investigation to identify potential sources of a release, chemicals of concern, and a

subsurface investigation to determine the presence and concentrations of chemicals of concern and geologic characteristics of the UST site;
 (2) an Action Level Determination; and
 (3) preparation of a Tier 1 Source Investigation Report, which must be submitted to the Fire Marshal.

- If the Source Investigation Report indicates the presence of contaminants in concentrations above acceptable levels, the owner or operator must submit a Tier 1 Delineation Notification to define the extent of the contamination and its potential effect on groundwater, and in particular on drinking water use.
 - In connection with the Tier 1 Delineation Notification, testing on groundwater and drinking water in the vicinity of the release is required, and a summary of the results must be submitted.
 - The Fire Marshal will determine the appropriate course of subsequent action. If the concentrations of contaminants exceed applicable action levels, which are set forth at OAC 1301:7-9-13(J), the owner or operator may be required to conduct an Interim Response Action, a Tier 2 Evaluation, a Tier 3 Evaluation, or to submit a Remedial Action Plan.⁹⁵ Each of these options is designed to provide a detailed remediation plan of action, and must be tailored to the circumstances at individual release sites.

- Once the Fire Marshal determines the appropriate course of remediation action, a monitoring plan typically is required to demonstrate that all appropriate remediation activity has been completed and that no further action is required.

Note: For smooth compliance with the Tier System for Corrective Action select a solid, well-experienced environmental professional—not just a contractor—who has substantial experience with the BUSTR Tier System. A specialist!

[i] Voluntary Corrective Action

BUSTR oversees mandatory correction but also voluntary corrective action program.

- “any and all corrective action undertaken by a person who is not an owner or operator ... or otherwise potentially liable for the costs of corrective action in ... response to a release or suspected release from a petroleum UST system”
 - Any person having legal, equitable, or possessory interest in a parcel of property may undertake a voluntary corrective action in response to a release or suspected release from a petroleum UST system.
 - Once the person who undertook the voluntary corrective action demonstrates that remediation standards have been met, the Fire Marshal will issue a notice that no further corrective action is required. In undertaking the voluntary corrective action, the party has not thereby assumed any liability or responsibility for the release.

[j] Tank Closure

BUSTR regulations impose tank closure obligations upon owners, operators, and in some cases, those who simply own the land where an UST is located.

- Closure regulations cover cases in which USTs have been out of use for under 90 days (“temporarily out of service”), over 90 days (“temporary closure”), over twelve months, and when an UST has been abandoned. UST systems that have been temporarily taken out of service must have the fill line, gauge opening, and dispensing unit secured against tampering, but the vent lines are to remain open and functioning. If an UST system is out of service for more than 90 days, the vent lines are to be left open and functioning, all other lines, pumps, manways, and ancillary equipment must be capped and secured, the UST system must be emptied such that all regulated substances have been removed to the point that no more than one inch of residue remains, and the owner or operator must secure an out-of-service permit.
- If an UST system is out of service for more than 12 months, the owner, operator, or anyone with a legal possessory interest in the land where the UST is located is obligated to:
 - (1) within 30 days, place the UST system back into service;
 - (2) within 30 days, permanently remove, close-in-place, or perform a change-in-service of the system; or
 - (3) request an extension of the twelve month out-of-service period, which must be submitted in writing to the Fire Marshal. Extensions are granted at the discretion of the Fire Marshal.
- BUSTR also provides requirements for the closure in place of UST systems (as opposed to physical removal of the UST).
 - Must have fire safety inspector written approval to close in place. Approval will be granted for the following reasons:
 - (1) the system is located near or under equipment that will likely be damaged or weakened if the UST system is removed;
 - (2) the system is situated in a location where the removal is physically impossible; or
 - (3) removal of the UST system may expose people or the environment to unreasonable hazards.
- Permanent removal requirements for UST systems are found in OAC 1301:7-9-12(G), (1) all UST systems or any part of an UST system permanently removed must be removed from the ground, unless a certified safety inspection authorizes closure-in-place;
 - (2) all UST systems being permanently removed must comply with the cleaning, removal, and safety requirements of the API Recommended Practice;
 - (3) the UST must be maintained in a safe condition by regularly monitoring to ensure that explosive vapors do not accumulate;
 - (4) all liquid and residue must be removed from the UST before it leaves the site;
 - (5) the UST must be rendered unusable and free of explosive vapors by crushing or cutting up the UST, or by perforating the UST before the UST leaves the site;
 - (6) all backfill from tank activity excavation, piping trenches, dispensing unit areas, and remote fill pipe trenches must be removed;
 - (7) no more than twelve inches of native soils may be removed from the side walls and bottom of the tank cavity excavation, piping trenches, dispensing unit areas, and remote fill pipe trenches; and

(8) backfill and native soils removed from the tank cavity excavation, piping trenches, dispensing unit areas and remote fill pipe trenches may be stored on site for up to 120 days with proper containment.

- Before closure, a change in storage of materials from regulated to nonregulated substances, or a period in which an UST system is out of service, BUSTR requires that the owner or operator conduct a Closure Assessment.
 - A Closure Assessment must include: (1) a visual evaluation of the UST site to identify evidence of past or present operation problems; (2) soil samples for permanent removal of UST systems or modification of piping and dispensers are to be taken from each UST cavity excavation, piping run excavation, remote fill area, and dispenser island; and (3) water samples for permanent removal.
 - Once the Closure Assessment is complete, the owner or operator must submit a Closure Assessment Report summarizing pertinent information for the facility and the results of the Closure Assessment, including UST system data, waste disposal data, sampling data, and laboratory data. Once a Closure Assessment has been performed that indicates the site meets applicable action levels, a No Further Action letter (NFA) may be obtained from BUSTR

[k] Financial Responsibility

BUSTR regulations create a two-part program to ensure that each UST owner or operator maintains sufficient financial reserves or insurance to address certain contingencies relating to the ownership or operation of USTs.

- First, all petroleum UST owners and operators must participate annually in the Petroleum Underground Storage Tank Financial Assurance Fund (the "Fund") to obtain coverage for corrective actions and third-party liability resulting from UST spills, releases or leaks. The annual fee is \$400 per tank for a \$55,000 deductible or \$600 per tank for an \$11,000 deductible. The annual fee must be submitted to the Petroleum Underground Storage Tank Release Compensation Board (PUSTRCB) by July 1 of each year.
- Second, all petroleum UST owners and operators must annually demonstrate financial responsibility for the applicable deductible referenced above.
 - There are seven mechanisms available under the rule to demonstrate financial responsibility: (1) financial test of self-insurance; (2) guarantee; (3) insurance or risk retention group coverage; (4) surety bond; (5) letter of credit; (6) trust fund; or (7) any combination of the foregoing mechanisms.
- Owners and operators who satisfy the following requirements are eligible for reimbursement of corrective action costs from the Fund: (1) submit an application for reimbursement within one year from the date of the release or suspected release; (2) possess a valid certificate of coverage; (3) obtain authorization from the Fire Marshal to perform the corrective action; (4) demonstrate that the corrective action costs are necessary; (5) establish that the UST from which the suspected release or release occurred was properly registered or good cause existed for the failure to register it; (6) comply with orders issued under RC Sections 3737.88 and 3737.882; (7) demonstrate financial responsibility for the deductible amount; (8) submit registration applications without any false attestations; (9) satisfy the suspected release and release reporting requirements in OAC 1301:7-9-13; and (10) comply with applicable regulations, other than those regarding registration.

[I] Operator Training

Three levels of UST operators - Class A, Class B, and Class C operators

§ 12.04. Enforcement

The Fire Marshal may assess a civil penalty of up to \$10,000 for each day that the violation continues.

§ 12.05. Federal Changes to UST Laws (skip)

§ 12.06. Aboveground Storage Tanks

ASTs are defined as tanks or other containers that are aboveground, partially buried, bunkered, or in a subterranean vault.

- A permit is required to install, alter, place temporarily out of service, remove, abandon, or otherwise dispose of a flammable or combustible liquid AST or any line or dispensing device connected thereto.
- Spills or leaks from ASTs may result in contamination of soils, groundwater, or runoff to surface waters.
 - U.S. EPA adopted Spill Prevention Control and Countermeasures (SPCC) regulations, which require owners and operators of ASTs to prepare and comply with written, site-specific plans for spill prevention.
- Federal regulations have several preventive measures designed to reduce the threat of contamination from unintended releases.
 - All ASTs must have secondary containment to contain spills and allow for easier leak detection.
 - The owner or operator of an AST is required to routinely monitor the equipment to ensure that it does not leak. Registration programs for exempt tanks to expand the state's oversight role during the construction and operation of ASTs.
- Section 311(b)(5) of the federal Clean Water Act requires persons in charge of facilities (which would include ASTs) to immediately notify the National Response Center of discharges of "harmful quantities" of oil or a hazardous substance to navigable waters or adjoining shorelines.

INTRODUCTION**§ 14.01. Scope**

This chapter covers:

Federal and State Overview [14.02]▲ State and Local Agencies [14.03]▲ Extremely Hazardous Substance Reporting [14.04[1]]▲ Community Right-To-Know Reporting [14.04[2]]▲ Toxic Release Inventory Reporting [14.04[3]]▲ Emergency Release Notification [14.04[4]]▲ Accidental Release Prevention [14.04[5]]▲ Enforcement [14.05]

II. CHEMICAL RELEASE AND EMERGENCY PREPAREDNESS REGULATORY MANDATES**§ 14.02. Overview of Federal Authorities and State Programs**

Ohio has established and implements a number of related but distinct regulatory programs to address risks posed by the use and storage of certain chemicals, chemical releases, and chemical emergencies. Came from Fed: Emergency Planning and Community Right-To-Know Act of 1986 (EPCRA).

- Beyond requiring states to establish State Emergency Response Commissions (SERCs) and a network of local planning entities, EPCRA imposes four primary emergency planning and reporting mandates:
 - 1. Under EPCRA - certain facilities are required to make one-time reports to specific state and local government entities where quantities of certain chemicals designated as either Extremely Hazardous Substances or Hazardous Chemicals at the facility exceed specified Threshold Planning Quantities (TPQs) at any time.
 - one-time reports are generally met via MSDS for each Extremely Hazardous Chemical and/or Hazardous Chemical exceeding the applicable TPQ to the state and local entities.
 - 2. Facilities subject to the one-time MSDS reporting requirement under EPCRA are also subject to annual chemical inventory reporting obligations under EPCRA
 - 3. EPCRA established the Toxic Release Inventory reporting requirements, which requires certain, specified industries (mostly manufacturing sectors) to report annually if any individual facility manufactures, processes, or uses in specified ways quantities of Toxic Chemicals that exceed certain Toxic Chemical-specific regulatory thresholds.
 - 4. EPCRA imposes emergency notification requirements on any facility owner or operator where any release of more than a specified Reportable Quantity of any hazardous chemical has occurred.

§ 14.03. State and Local Agencies

The State Emergency Response Commission (SERC) is how Ohio implements EPCRA. SERC also established Local Emergency Planning Committees (LEPC) throughout the state.

- The ERC has a variety of mandates, including promulgating rules that establish state regulatory requirements equivalent to EPCRA, creating the state's LEPCs, and working with Ohio EPA, the State Fire Marshal, and other state and local agencies in implementing and enforcing the regulatory programs.

§ 14.04. Notification, Reporting, Planning and Recordkeeping Requirements

[1] Extremely Hazardous Substances Reporting

As outlined in § 14.02 above, federal EPCRA Section 302 requires facilities with any one or more Extremely Hazardous Substances in amounts exceeding Threshold Planning Quantities to notify state and local officials.

- Facilities have 60 days after accumulating on site a TPQ of any EHS to provide notification to the ERC and the LEPC.

[2] Community Right-To-Know Reporting

[a] Material Safety Data Sheet Reporting

Community Right-To-Know reporting requirements, including MSDS reporting and annual inventory reporting, apply to all facilities that are required under the Occupational Safety and Health Administration's Hazard Communication Standard to have an MSDS available on site for each Hazardous Chemical present above certain thresholds.

- KEY Reporting Requirement: Facilities covered by the Right-To-Know reporting mandates must submit—one time only—an MSDS (or a list with equivalent hazard information) for each Hazardous Chemical produced, used or stored at the facility in an amount equal to or greater than a TPQ to the LEPC and their local fire department.
 - TPQs are generally 10,000 pounds for OSHA Hazardous Chemicals and range from 1 to 500 pounds for Extremely Hazardous Substances.

[b] Annual Inventory Reporting

- In addition to MSDS reporting, facilities covered by Community Right-To-Know reporting requirements must also do annual inventory reporting.
 - Covered facilities must submit annual inventory reports to the SERC, LEPC, and local fire department by March 1 each year covering activity at the facility during the preceding year.
 - Compared to initial MSDS reporting, annual inventory reporting gives the public and first responders more detailed information about Hazardous Chemicals, including additional data on the identity, quantity, location, and potential health and environmental risks posed by such chemicals.

[3] Toxic Release Inventory Reporting

Releases of "Toxic Chemicals" from a facility that occur in the ordinary course of business over a calendar year are potentially subject to annual Toxic Release Inventory (TRI) reporting under EPCRA Section 313 and corresponding Ohio law.

- Generally, a facility is obligated to make a chemical-specific TRI report for any calendar year where the facility:
 - (1) has ten or more full-time employees;
 - (2) falls within Standard Industrial Classification Codes 20–39, 5169, 5171, or a few others that are subject to certain exceptions and/or limitations; and
 - (3) manufactures, processes, or otherwise uses any regulated toxic chemical in excess of the applicable threshold quantity.
- Toxic Chemicals that are "manufactured" or "processed" are generally subject to 25,000 pound annual reporting thresholds, whereas Toxic Chemicals "otherwise used" are typically subject to 10,000 pound annual thresholds.

- Where a reporting obligation is triggered by exceeding an annual threshold at a covered facility in a given year, the facility must prepare, certify, and submit TRI reporting forms to Ohio EPA electronically, using the TRI online-reporting software provided by U.S. EPA by July 1 of the following year.

[4] Emergency Release Notification

Facility owners or operators may be required to notify federal, state and local authorities immediately upon the sudden release of specified reportable quantities of certain substances to the environment from any facility (including certain vehicles and vessels) at which the regulated substances are produced, used, or stored.

- A “release,” for purposes of this reporting mandate, includes “spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing of into the environment...”
 - Releases to the environment of “Extremely Hazardous Substances,” “Hazardous Substances” or oil in amounts equal to or exceeding the reportable quantity⁶³ applicable to the released substance trigger the reporting obligations. Reportable quantities for “Extremely Hazardous Substances” and “Hazardous Substances” generally range from one to 500 pounds and are in substance-specific federal regulatory lists that Ohio authorities adopt by reference.
- Duties when there is a reportable release - the owner or operator of the facility has several obligations. First, an immediate verbal notification must be made to state and local officials within 30 minutes after a person at the facility (or aboard the vessel) has knowledge of the release, unless notification within that time is impracticable under the circumstances.
- To the extent known at the time verbal notification is given and that response to the release or discharge will not be delayed, the verbal notice must include the following:
 - (1) location and source(s) of release;
 - (2) identity of released substance and whether it is an extremely hazardous substance;
 - (3) estimated quantity of substance released;
 - (4) time and duration of release;
 - (5) environmental medium/media into which release occurred;
 - (6) known or anticipated health risks and known advice regarding medical attention for exposed persons;
 - (7) proper precautions to take in response to release; and
 - (8) name and phone number of a facility contact person.
- Subsequent to the immediate verbal notification, owners or operators of a facility where a reportable release has occurred must also, as soon as practicable but no later than 30 days after the release, submit a written, follow-up notice of the release to designated state and local officials.