

Part 2A. Leaking Petroleum Underground Storage Tank Cleanup.

§ 143-215.94A. Definitions.

Unless a different meaning is required by the context, the following definitions shall apply throughout this Part and Part 2B of this Article:

- (1a) "Affiliate" has the same meaning as in 17 Code of Federal Regulations § 240.12(b)-2 (1 April 1994 Edition), which defines "affiliate" as a person that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control of another person.
- (1b) "Commercial Fund" means the Commercial Leaking Petroleum Underground Storage Tank Cleanup Fund established pursuant to this Part.
- (2) "Commercial underground storage tank" means any one or combination of tanks (including underground pipes connected thereto) used to contain an accumulation of petroleum products, the volume of which (including the volume of the underground pipes connected thereto) is ten percent (10%) or more beneath the surface of the ground. The term "commercial underground storage tank" does not include any:
 - a. Farm or residential underground storage tank of 1,100 gallons or less capacity used for storing motor fuel for noncommercial purposes;
 - b. Underground storage tank of 1,100 gallons or less capacity used for storing heating oil for consumptive use on the premises where stored;
 - c. Underground storage tank of more than 1,100 gallon capacity used for storing heating oil for consumptive use on the premises where stored by four or fewer households;
 - d. Septic tank;
 - e. Pipeline facility (including gathering lines) regulated under:
 1. The Natural Gas Pipeline Safety Act of 1968 (49 U.S.C. § 1671 et seq.);
 2. The Hazardous Liquid Pipeline Safety Act of 1979 (49 U.S.C. § 2001 et seq.); or
 3. Any intrastate pipeline facility regulated under State laws comparable to the provisions of the Natural Gas Pipeline Safety Act of 1968 or the Hazardous Liquid Pipeline Safety Act of 1979;
 - f. Surface impoundment, pit, pond, or lagoon;
 - g. Storm water or waste water collection system;
 - h. Flow-through process tank;
 - i. Liquid trap or associated gathering lines directly related to oil or gas production and gathering operations; or
 - j. Storage tank situated in an underground area (such as a basement, cellar, mineworking, drift, shaft, or tunnel) if the storage tank is situated upon or above the surface of the floor.
- (2a) "Cost-effective cleanup" means the cleanup method that meets all of the following criteria:
 - a. Addresses imminent threats to human health or the environment.
 - b. Provides for the cleanup or removal of all contaminated soil except in circumstances where it is impractical to remove contaminated soil.
 - c. Is approved by the Commission for remediation of the site.
 - d. Is the least expensive cleanup based on total cost, including costs not eligible for reimbursement from the Commercial Fund or the Noncommercial Fund.

- (3) Repealed by Session Laws 2011-266, s. 1.20(b), effective July 1, 2011.
- (3a) "Facility" means an underground storage tank, or two or more underground storage tanks located in close proximity to each other and having the same owner or operator, that are located on a single tract of land or on contiguous tracts of land that are owned or controlled by the same person. As used in this subdivision, the terms "owner", "operator", and "person" include any affiliate, parent, and subsidiary of the owner, operator, or person, respectively. The owner or person having control of the land on which an underground storage tank is located, or on which two or more underground storage tanks are located, need not be the owner or operator of the underground storage tank or underground storage tanks. The term "facility", as defined in this subdivision, does not apply to a "pipeline facility", as that phrase is used in subdivisions (2) and (7) of this section.
- (4) "Heating oil" means petroleum that is No. 1, No. 2, No. 4-light, No. 4-heavy, No. 5-light, No. 5-heavy, or No. 6 technical grades of fuel oil; other residual fuel oils, including Navy Special Fuel Oil and Bunker C; and other fuels when used as substitutes for one of these fuel oils for the purpose of heating.
- (5) "Loan Fund" means the Groundwater Protection Loan Fund.
- (6) Repealed by Session Laws 2015-241, s. 14.16A(d), effective December 31, 2016.
- (7) "Noncommercial underground storage tank" means any one or combination of tanks (including underground pipes connected thereto) used to contain an accumulation of petroleum products, the volume of which (including the volume of the underground pipes connected thereto) is ten percent (10%) or more beneath the surface of the ground. The term "noncommercial storage tank" does not include any:
 - a. Commercial underground storage tanks;
 - b. Septic tank;
 - c. Pipeline facility (including gathering lines) regulated under:
 - 1. The Natural Gas Pipeline Safety Act of 1968 (49 U.S.C. § 1671 et seq.);
 - 2. The Hazardous Liquid Pipeline Safety Act of 1979 (49 U.S.C. § 2001 et seq.); or
 - 3. Any intrastate pipeline facility regulated under State laws comparable to the provisions of the Natural Gas Pipeline Safety Act of 1968 or the Hazardous Liquid Pipeline Safety Act of 1979;
 - d. Surface impoundment, pit, pond, or lagoon;
 - e. Storm water or waste water collection system;
 - f. Flow-through process tank;
 - g. Liquid trap or associated gathering lines directly related to oil or gas production and gathering operations; or
 - h. Storage tank situated in an underground area (such as a basement, cellar, mineworking, drift, shaft, or tunnel) if the storage tank is situated upon or above the surface of the floor.
- (8) "Operator" means any person in control of, or having responsibility for, the operation of an underground storage tank.
- (9) "Owner" means:
 - a. In the case of an underground storage tank in use on 8 November 1984, or brought into use after that date, any person who owns an

- underground storage tank used for the storage, use, or dispensing of petroleum products; and
- b. In the case of an underground storage tank in use before 8 November 1984, but no longer in use on or after that date, any person who owned such tank immediately before the discontinuation of its use.
- (9a) "Parent" has the same meaning as in 17 Code of Federal Regulations § 240.12(b)-2 (1 April 1994 Edition), which defines "parent" as an affiliate that directly, or indirectly through one or more intermediaries, controls another person.
- (10) "Petroleum" or "petroleum product" means crude oil or any fraction thereof which is a liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute), including any such liquid which consists of a blend of petroleum and alcohol and which is intended for use as a motor fuel. The terms "petroleum" and "petroleum product" do not include any hazardous substance as defined in Section 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, Pub. L. No. 96-510, 94 Stat. 2767, 42 U.S.C. § 9601(14) as amended; any substance regulated as a hazardous waste under Subtitle C of Title II of the Resource Conservation and Recovery Act of 1976, Pub. L. 94-580, 90 Stat. 2806, 42 U.S.C. § 6921 et seq., as amended; or any mixture of petroleum or a petroleum product containing any such hazardous substance or hazardous waste in greater than de minimis quantities.
- (11) "Subsidiary" has the same meaning as in 17 Code of Federal Regulations § 240.12(b)-2 (1 April 1994 Edition), which defines "subsidiary" as an affiliate that is directly, or indirectly through one or more intermediaries, controlled by another person.
- (12) "Third party" means a person other than the owner or operator of an underground storage tank from which a release has occurred or employees or agents of an owner or operator. A property owner shall not be considered a third party if the property was transferred by the owner or operator of an underground storage tank in anticipation of damage due to a release.
- (13) "Third-party bodily injury" or "bodily injury" when used in connection with "third-party" means specific physical bodily injury proximately resulting from exposure, explosion, or fire caused by the presence of a petroleum release and that is incurred by a person other than the owner or operator of an underground storage tank from which a release has occurred or employees or agents of an owner or operator.
- (14) "Third-party property damage" or "property damage" when used in connection with "third-party" means actual physical damage or damage due to specific loss of normal use that proximately resulted from exposure, explosion, or fire caused by the presence of a petroleum release and that is incurred to property owned by a person other than the owner or operator of an underground storage tank from which a release has occurred or employees or agents of an owner or operator. (1987 (Reg. Sess., 1988), c. 1035, s. 1; 1989, c. 652, s. 3; 1991, c. 538, s. 1; 1995, c. 377, s. 4; 1997-456, s. 27; 2003-352, s. 1; 2011-266, s. 1.20(b); 2015-241, s. 14.16A(d); 2015-263, s. 20(b).)