

USEPA Region 8 UST, Solid Waste and PCB Unit

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**EPA Comments on Wyoming Draft Regulations for State Program Approval  
February 28, 2018**

**I. SPA Issues**

Regulatory or Statutory sections for which EPA has concern:

280 Requirement	Description Of Topic	Concern
280.32	Requires owners and operators must use an UST System made of or lined with materials that are compatible with the substance stored in the UST system. Owners and operators must notify the implementing agency when switching to a regulated substance containing greater than 10% ethanol, greater than 20 percent biodiesel, or any regulated substance identified by the implementing agency. Owners and operators must demonstrate compatibility and provide certification or listing of UST system components by independent testing laboratory for use with the regulated substance.	<p>MAJOR SPA ISSUE</p> <p><b>Part C General Operating Requirements, Section 12 Compatibility</b></p> <p>Wyoming needs to add all compatibility requirements for any substances identified by the agency (and not just for fuels above E10 and B20). Section 12 (b) and (c)(i)(b) refers to “biofuel blends” to be stored. This must include other substances as identified by the implementing agency.</p> <p>Wyoming should consider listing a specific set of components that compatibility must be demonstrated instead of stating “all” in Section (c)(i) unless “all” refers to the items spelled out on the checklist and then they need to at least reference the checklist. “All” may be difficult to accomplish.</p>
280.44	ALLD methods which alert the operator of the presence of a leak by restricting or shutting off the flow of regulated substances through piping or triggering an audible or visual alarm may only be used if they detect leaks of	<p>MAJOR SPA ISSUE</p> <p><b>Part D UST Systems: Release Detection, Section 14(g)(i)(B)</b></p> <p>Wyoming categorically allows sump sensors in lieu of conventional ALLD if sensors can detect 3 gallons of liquid in the sump regardless of sump size or shape. This does not meet the requirements for detecting a release within an hour. Unless a site specific analysis of sump sensors as stand-alone methods is completed it cannot be proven to meet requirements in all cases. Recommend addressing this on a site by site basis.</p>

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280 Requirement	Description Of Topic	Concern
	3 gallons per hour at 10 psi line pressure within an hour.	
General Areas	Wyoming Statute excludes Storm water or wastewater collection systems including oil/water separators used to separate oil and water at oil production sites, gas processing plants and refineries from the definition of an UST.	<p>MAJOR SPA ISSUE</p> <p><b>Article 14, Storage Tank Act of 2007</b>, 35-11-1415. Definitions. (a)(ix)(F)</p> <p>Federal regulations do not exclude oil/water separators from the definition of an UST. Wyoming must regulate the same universe as the federal regulations to obtain SPA.</p>

**II. Recommendations**

281 Requirement	280 Requirement	State Requirement Differences
<b>§ 281.30 New UST system design, construction, installation, and notification</b>		
§ 281.30(a) USTs and piping in contact with the ground must be designed, constructed, and installed in a manner that will prevent releases for their operating life due to manufacturing defects, structural failure, or corrosion. Unless the state requires manufacturer and installer financial responsibility and installer certification in accordance with section 9003(i)(2) of the Solid Waste Disposal Act, then the state must meet the	<b>§ 280.11</b> – Installation requirements for partially excluded UST systems	Does Wyoming require all tanks to have Cathodic Protection(CP)? If not, we suggest adding language at 280.11(3)(b) that requires a determination by a CP expert for USTs installed without CP.

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<p>following:  (1) New or replaced tanks and piping must use interstitial monitoring within secondary containment in accordance with section 9003(i)(1) of the SWDA except as follows:  (i) Underground piping associated with: AHS or FCTs tanks greater than 50,000 gallons or  (ii) Underground suction piping that meets § 281.33(d)(2)(ii).  (2) New motor fuel dispenser systems installed and connected to an UST system must be equipped with under-dispenser containment in accordance with section 9003(i)(1) of SWDA.</p>		
<p><b>§ 281.31 Upgrading existing UST systems.</b></p>		
<p>§ 281.31 The state must have requirements that ensure existing UST systems meet the requirements of 281.30; are upgraded to prevent releases for their operating life due to corrosion, spills, or overfills; or are permanently closed with the following exceptions:  (a) Upgrade requirements for previously deferred UST systems.  Previously deferred AHS and FCT systems must within three years of the effective date of its state requirements meet the requirements of 281.30 or be permanently closed. This provision would not apply, however, to states that did not defer these UST systems and already had, prior to the effective date of this provision, existing requirements with specified compliance periods for these types of UST systems.</p>	<p><b>§ 280.251(a)(1) –</b>  Implementation of FCT and AHS requirements installed before October 13, 2015</p>	<p>Part M, Section 50 (a)(i)  Wyoming is using the federal dates which is acceptable. Wyoming may wish to ensure this is what they want to do.</p>

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<p>(b) Upgrade requirements for other UST systems. States may allow UST systems to be upgraded if the state determines that the upgrade is appropriate to prevent releases for the operating life of the UST system due to corrosion and spills or overfills.</p>		
<p><b>281.32 General Operating: Must have all sections, (a) through (g) below to be considered no less stringent.</b></p>		
<p>281.32(f) Have operation and maintenance walkthrough inspections periodically conducted in a manner and frequency that ensures proper operation and maintenance for the operating life of the UST system</p>	<p><b>280.36</b> - Periodic operation and maintenance walkthrough inspections.</p>	<p>13(d) Implementation dates for both 30 day and annual inspections don't seem to be included. These requirements appear to be immediate as written. This is fine, however Wyoming may want to consider other dates.</p>
<p>281.32(g) Have records of monitoring, testing, repairs, and inspections. These records must be made readily available when requested by the implementing agency.</p>	<p><b>280.34(b)(2), and (4) through (7)</b> – Recordkeeping</p> <p><b>280.34(c)</b> – Available and maintenance of records</p> <p><b>280.36(b)</b> – walkthrough inspections</p>	<p>Section 13 (c ) (viii) requires documentation of Class C operator training</p> <p>We suggest adding language here that requires owners and operators to maintain documentation of Class A/B/C operator training. Add reference to sections 46(h) at a minimum. This needs to be referenced here and not just in the operator training section</p> <p>Section 13 (c) - Does not specify how records are to be kept.</p> <p>We suggest adding where records are to be maintained.</p> <p>Section 10(d)(iii) – Is Section 18 the correct reference here?</p> <p>13(c) (iii) - Should this be Section 13?</p> <p>13(c) &amp; 10 – Add how long records of walkthrough inspections must be maintained.</p>
<p><b>§ 281.33 Release detection</b></p>		
<p>§ 281.33(a) Ensure all UST system owners and operators have a method, or combination of release detection methods, that is:</p>	<p><b>280.40</b> – General requirements for all UST systems</p>	<p>Wyoming allows petroleum UST systems with a throughput less than 15k gallons per month to use inventory control as the sole leak detection method and restricts the use of SIR on UST systems greater than 500k</p>

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<p>(1) Capable of detecting a release of the regulated substance from any portion of the UST system that routinely contains regulated substances—as effectively as any of the methods allowed under this part—for as long as the UST system is in operation. In comparing methods, the implementing agency shall consider the size of release that the method can detect and the speed and reliability with which the release can be detected.</p> <p>(2) Designed, installed, calibrated, operated and maintained so that releases will be detected in accordance with the capabilities of the method;</p> <p>(3) Operated and maintained, and electronic and mechanical components and other equipment are tested or inspected periodically, in a manner and frequency that ensures proper operation to detect releases for the operating life of the release detection equipment.</p>	<p><b>280.41</b> - Requirements for petroleum UST systems</p> <p><b>280.42</b> - Requirements for hazardous substance UST systems</p> <p><b>280.43</b> - Methods of release detection for tanks</p> <p><b>280.44</b> - Methods of release detection for piping</p>	<p>gals. Additional methods like tracers and passive acoustic methods are considered equivalent to inventory control for monthly monitoring.</p> <p>In addition to allowing inventory control for 15k gallons per month UST systems, we suggest requiring a tightness test.</p>
<p><b>§ 281.34 Release reporting, investigation, and confirmation</b></p>		
<p>§ 281.34(a) Ensure all owners and operators promptly investigate all suspected releases, including:</p> <p>(1) When unusual operating conditions, release detection signals and environmental conditions at the site suggest a release of regulated substances may have occurred or the interstitial space may have been compromised; and</p> <p>(2) When required by the implementing agency to determine the source of a release having an impact in the surrounding area.</p>	<p><b>280.52</b> – Release investigation and confirmation steps</p>	<p>Sections 20 and 21. Splits the requirements into those with and without fund coverage</p> <p>Wording issue: What is Wyoming’s definition for “leak”? Action required only if tests results show a “leak” exists. Ensure this action is required in the case of a release to the environment. Ensure a release is a leak.</p> <p>20 and 21 differ in that site check and further action in 20 is required by the state. 21 directs owner to follow corrective action; 20 leaves it to the state. We cannot determine if this is acceptable under 281 – need additional information on how the state runs the corrective action sites where state is the lead.</p>
<p><b>281.35 Release Reporting and Corrective Action</b></p>		<p>Section 25 – Owners and Operators (O/O) are eligible for State Corrective Action Account– regulations are very broad and not as detailed as federal</p>

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		<p>regulations – How does Wyoming ensure they meet all of 281 for fund led sites</p> <p>Overarching issue on cleanup program - State does not write regulations for themselves on the sites they are the lead on. This may be ok under 281 but we cannot determine if it is based on the regulations. We need additional information on the state’s policies and procedures for the state lead sites to determine if they meet the requirements of 281.</p>
<p>281.35(b) Actions are taken to identify, contain and mitigate any immediate health and safety threats that are posed by a release (such activities include investigation and initiation of free product removal, if present</p>	<p><b>280.63</b> – Initial site characterization</p> <p><b>280.64</b> – Free product removal</p>	<p>Section 24 and 25 - If a site is eligible for a release, the state will take on the investigation and mitigation of any immediate threats. The O/O is responsible for system repairs and stopping any further release. State will conduct the site check and then the state will prioritize the site for cleanup after initial abatement procedures. The ranking system for prioritization considers free product (present or likelihood).</p> <p>Part J lists Environmental remediation standards for leaking storage tanks. It has a section for free product stating that for free product more than 0.05 thick, restoration should begin as soon as possible.</p> <p>Section 24 is similar to federal requirements and is not similar or missing for Sections 25 for state led sites.</p> <p>Section 25 - O/O Eligible for State Corrective Action Account - says “<i>Site Characterization and Corrective Action</i>. The department will prioritize the site pursuant to Section 27 after completion of initial abatement measures. No other details are provided such as free product removal requirements for state as required for non-fund eligible sites.</p> <p>O/Os outside the state corrective action program are required to investigate and begin free product removal as soon as practicable.</p> <p>Policy question for the state: What is the state timing requirement for sites under the state corrective action program with free product?</p>
<p>281.35(c) All releases from UST systems are investigated to determine if there are impacts on soil and groundwater, and any nearby surface waters. The extent of soil and groundwater contamination must be</p>	<p><b>280.65</b> – Investigations for soil and groundwater cleanup</p>	<p>The Fund cleanup regulations only say: The department will prioritize the site pursuant to Section 27 after completion of initial abatement measures. The department will also collect sufficient data for classification of the affected groundwater under Chapter 8, Wyoming Water Quality Rules and Regulations.</p>

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<p>delineated when a potential threat to human health and the environment exists.</p>		<p>Part E Section 25 (fund cleanups) does not reference the standards found in Part J?</p> <p>Section 27 – This appears to determine priority order for cleanups for sites the state is the lead on. For sites where the O/O is the lead the cleanups must all move forward no matter what the priority order. What happens to low priority sites where the state is the lead? If these sites are not addressed in a timely manner that is not consistent with 281 and the state cannot receive SPA.</p>
<p>281.35(d) All releases from UST systems are cleaned up through soil and groundwater remediation and any other steps are taken, as necessary to protect human health and the environment</p>	<p><b>280.66(a) through (d) – Corrective action plan</b></p>	<p>Section 24(f) - Part J lists standards required for remediation of soil and groundwater.</p> <p>Section 24 is similar to federal requirements and is not similar or missing for Sections 25 for state led sites.</p> <p>In Part J, there is a reference to eligible tank systems and eligible constituents. What does the term eligible refer to? How does the state ensure there is a corrective action plan for fund led sites?</p>
<p><b>281.36 Out-of-service UST systems and closure.</b></p>		
<p>281.36(a) <i>Removal from service.</i> All new and existing UST systems temporarily closed must:</p> <ol style="list-style-type: none"> <li>(1) Continue to comply with general operating requirements, release reporting and investigation, and release response and corrective action;</li> <li>(2) Continue to comply with release detection requirements if regulated substances are stored in the tank;</li> <li>(3) Be closed off to outside access; and</li> <li>(4) Be permanently closed if the UST system has not been protected from corrosion and has not been used in one year, unless the state approves an extension after the owner and operator conducts a site assessment.</li> </ol>	<p><b>280.72 – Assessing the site at closure or change-in-service</b></p>	<p>Section 31(b) states that owners must perform site assessment as defined in section 29. Does this mean that 20(a) is not considered here because you already know a site assessment is required? To make this clear we suggest you reference exactly which part of 29 you are referring to.</p>
<p><b>281.37 Financial Responsibility (FR) for UST Systems Containing Petroleum</b></p>		





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	<p><b>WY UST Regulation</b>  <u><b>Definitions not in 280.12:</b></u>  A4A  ALLD  API  AST  AST system  ASTM  Biodiesel  Biofuel blend  CAP  Contaminated site  Drinking water equivalent level (DWEL)  Emergency  Ethanol  Fiberglass Tank and Pipe  Institute  Licensed operator  MCL  MSA  NACE  National Leak Prevention Association  NFPA  Operating facility  PEI  RCRA  SIR  STI</p> <p><b>Storage tank.</b> Either a regulated AST or an UST.</p> <p>Substantial modification  UL  UL of Canada  US Department of Defense</p>	<p>clear that definitions in 40 CFR Part 280.12 apply for those terms not defined in the State’s regulations. At Sec. 2(c)(iv)(G), the State specifies July 1, 2016, as the incorporation by reference date of provisions from 40 CFR Part 280.</p> <p><u>280.12 definitions not in Wyoming regulations but covered under Incorporated By Reference (IBR) at Sec. 2(c)(iv)(G) and Sec. 5 intro.:</u>  Beneath the surface of the ground, Cathodic protection, Cathodic protection tester, Consumptive use, Dielectric material, Dispenser, Dispenser system, Electrical equipment, Excavation zone, Existing tank system, Farm tank, Flow-through process tank, Free product, Gathering lines, Liquid trap, Motor fuel, New tank system, Noncommercial purposes, On the premises where stored, Person, Petroleum UST system, Pipe or piping, Pipeline facilities (including gathering lines), Release detection, Residential tank, SARA, Secondary containment or secondarily contained, Septic tank, Storm water or wastewater collection system, Surface impoundment, Tank, Under-dispenser containment or UDC, Underground area, Underground release</p>
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	<p><b>280.32(b)</b> – Notification prior to switching to store biofuels</p> <p><b>280.32 (c)</b> – maintain records of meeting compatibility requirement in accordance with 280.34(b)</p> <p><b>280.34 (a)(2)</b> – Notification prior to switching to store biofuels</p> <p><b>280.34(a)(5)</b> – notification before closure</p> <p><b>280.34(b)(1)</b> – Record of corrosion expert’s analysis</p> <p><b>280.34 (b)(3)</b> – documentation of compatibility</p> <p><b>280.34(b)(8)</b> – results of site investigation at closure</p> <p><b>280.74</b> – Closure records</p> <p><b>280.110</b> – Reporting by owner or operator</p> <p><b>280.112</b> – Drawing on financial assurance mechanisms</p> <p><b>280.113</b> – Release from the requirements</p> <p><b>280.114</b> – Bankruptcy or other incapacity of owner or operator</p>	<p>If possible, please add the language found in 280.34(b)(1).</p> <p>Section 61. Release from the Requirements. Section 61. In 2015, EPA replaced “properly closed” with “permanently closed or undergoes a change-in-service.” Recommend Wyoming match federal revision.</p>
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	<p>or provider of financial assurance</p> <p><b>280.251(b)</b> – one-time notification for AHS and FCT</p>	<p>Section 62. Bankruptcy or other incapacity of owner and/or operator or FA guarantor. This section only discusses what guarantor needs to do if guarantor is named in a Title 11 proceeding.</p> <p>Section 62. The title of this section might be inaccurate. The section seems to only deal with the bankruptcy of the FA guarantor. The rest of the title isn't addressed (i.e., there is no other incapacity and doesn't talk about bankruptcy or other incapacity of O/O). Wyoming may wish to consider revising.</p>
	<b>280.52 Release Investigation and Confirmation Steps</b>	Wyoming does not require facilities that are ineligible for the CAA to immediately investigate and confirm releases onsite.
	<b>280.110 (a)(1) Reporting by Owner or Operator</b>	Wyoming does not have an analog to this federal provision requiring notification of current evidence of financial responsibility within 30 days after identification of a reportable release from a UST.
	<b>280.243 Timing of Operator Training</b>	The state provision indicates Class A and Class B operator operators must obtain a license (the state's corollary for the federal training requirements) within 90 days of employment with a UST company. The federal requirement is limited to "within 30 days of assuming duties."
	<b>280.244 Retraining</b>	<p>The federal retraining provision at 280.244 requires Class A and B operators at facilities out of compliance to be retrained within 30 days of the determination of non-compliance. While the state has the leeway to waive the retraining under 280.244(a) where annual refresher training is demonstrated, or 280.244(b) at the agency's discretion, the program must make these requirements and exceptions explicit.</p> <p>The Wyoming regulations with respect to Class A operators do not require retraining for this class of operators at all. The state's retraining with respect to Class B operators allows the retraining to be completed within 90 days of the notice of violation, instead of the federal 30-day limit. This may be acceptable if the state intends for the Class B operators to have annual refresher training. The state may wish to consider demonstrating their intent with respect to this aspect of the retraining provisions.</p>
	<b>280.245 Documentation</b>	Wyoming does not have analogs to 40 CFR 280.245(b)(1) – (3) requiring certain types of records be kept with respect to the training of facility operators of all classes. The state may wish to incorporate these provisions regarding training documentation.

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