

**SOLID AND HAZARDOUS WASTE DIVISION
STORAGE TANK PROGRAM
CHAPTER 1 – STORAGE TANKS**

**TAKINGS ANALYSIS
JANUARY 2, 2018**

Attached is the Takings Checklist. A “yes” is indicated for the first three items on the Checklist. This memo provides rationale for our opinion that this rulemaking does not constitute a “taking.” James LaRock, Attorney General’s Office agrees with this determination via email dated September 14, 2017.

These regulations protect public health and safety by regulating some underground and aboveground storage tanks (USTs and ASTs, respectively). Specifically, USTs regulated by the Storage Tank Program (STP) are those that are regulated by the Environmental Protection Agency (EPA) under the Code of Federal Regulations (CFR) Part 280 and the Wyoming Environmental Quality Act, Article 14. The ASTs regulated by the STP are those regulated under the Wyoming Environmental Quality Act, Article 14. The EPA does not regulate ASTs.

Checklist Item 1. Does the action affect private property? Tanks regulated by the STP are owned and operated by private parties on private property. The STP conducts tank inspections to ensure the tanks are installed and operated in accordance with federal and state regulations. These regulations minimize the chance of a release from a tank system. Releases can negatively impact groundwater and/or soil and may create an explosion hazard.

The STP conducts cleanups at sites where releases have occurred. The cleanup efforts include: 1) investigation of the release (drilling and installing monitoring wells); 2) remediation (e.g., installation of remediation systems, excavation and disposal of contaminated soil, injection programs to introduce oxygenates into the subsurface to enhance cleanup efforts); 3) operation, maintenance, and monitoring of remedial alternatives implemented; and 4) decommissioning of remediation equipment when cleanup is complete. Remediation equipment, wells, etc. placed on private property during remediation efforts are removed when cleanup is complete. The surface is restored to pre-existing conditions.

Checklist Item 2. Is the action mandated by state or federal law? The STP does not have program primacy from EPA. Therefore, all regulated Wyoming UST facilities are under federal law (CFR 280) and this proposed Chapter revision. Tanks regulated by federal law and regulated ASTs are under state law (Wyoming Environmental Quality Act, Article 14, and this proposed Chapter revision).

Checklist Item 3. Does the proposed action advance a statutory purpose? Yes; Wyoming Environmental Quality Act, Article 14.

In no case does the STP: 1) permanently occupy a private property, 2) require permanent grants or easements, 3) interfere with the owner’s use of the property, 4) impact the owner’s economic interest, 5) prohibit the owner’s use of the property, or 6) deny the owner ownership of the property.