Agency Name: Department of Health and Environmental Control

Statutory Authority: 44-2-10 et seq.

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Subject: Underground Storage Tank Control Regulations

History: 4565

By Date Action Description Jt. Res. No. Expiration Date

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- 05/20/2015 Received by Lt. Gov & Speaker 04/25/2016

H 05/20/2015 Referred to Committee

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 provided for in the Regulation

Document No. 4565

**DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL**

CHAPTER 61

Statutory Authority: 1976 Code Sections 44-2-10 et seq.

61-92. Underground Storage Tank Control Regulations

**Synopsis:**

This amendment revises Section 280.25 of R.61-92, *Underground Storage Tank Control Regulations.* In the interest of supporting the Department’s goal of protecting the health of the public and the environment, this amendment establishes new conditional requirements for existing facilities to remain in compliance with the provisions of the regulation. Statutory authority for the regulation was also added.

A Notice of Drafting for these proposed amendments was published in the *State Register* on December 26, 2014.

Section-by-Section Discussion of Amendments:

SECTION CITATION/EXPLANATION OF CHANGE:

Statutory Authority.

The statutory authority for this regulation was added in the regulation text under the title and before the table of contents for consistency with other Department regulations.

R.61-92, Section 280.25 Secondary Containment Requirements.

This section was revised to ensure that secondary containment requirements apply to those existing single walled underground storage tank systems that are located within 100 feet of an existing water supply well, a coastal zone critical area, or state navigable waters and meet one of the following conditions: the underground storage tank system has not been upgraded to meet the performance standards as required in Section 280.21 of the regulations or the underground storage tank system has failed to remain in substantial compliance based on the last three consecutive annual inspections. UST systems described in this Section shall meet the secondary containment requirements of Section 280.20(g) or the closure requirements under Subpart G of this Part (including applicable requirements for corrective action under Subpart F), no later than December 22, 2018. The requirements of Section 280.20 (g) shall also apply to any UST system determined to be described by Section 280.25 (a) after December 22, 2018.

**Instructions:** Amend R.61-92 pursuant to each individual instruction provided with the text of the amendments below.

**Text:**

**Add statutory authority for the regulation under the title and before the table of contents to read:**

**61-92. Underground Storage Tank Control Regulations.**

Statutory Authority: 1976 Code Section 44-2-10 et seq.

**Amend R.61-92.280.25 to read:**

SECTION 280.25. SECONDARY CONTAINMENT REQUIRED.

 (a) Secondary containment requirements contained in Section 280.20(g) of this regulation shall apply to those UST systems located within 100 feet of an existing water supply well, a coastal zone critical area, or state navigable waters that also meet one of the following conditions:

 1. The UST system fails to meet the Section 280.21 upgrading provisions; or

 2. The UST system fails to meet the Substantial Compliance criteria found in SC Code Sections 44-2-40(A) and 44-2-50(A) of the SUPERB Act and evaluated in the Department Form (# 1556) based on the last three (3) consecutive annual inspections conducted by the Department.

 (b) UST systems described in this Section shall meet the secondary containment requirements of Section 280.20(g) or the closure requirements under Subpart G of this Part (including applicable requirements for corrective action under Subpart F), no later than December 22, 2018. The requirements of Section 280.20(g) shall also apply to any UST system determined to be described by Section 280.25(a) after December 22, 2018.

**Fiscal Impact Statement:**

The regulations will have no substantial fiscal or economic impact on the State or its political subdivisions. Implementation of these regulations will not require additional resources beyond those allowed. There is no anticipated additional cost by the Department or State Government due to any inherent requirements of these regulations.

**Statement of Need and Reasonableness:**

This Statement of Need and Reasonableness and Rationale was determined by staff analysis pursuant to S.C. Code Section 1-23-115(C)(1)-(3) and (9)-(11).

DESCRIPTION OF REGULATION:

Purpose: The primary goal of R.61-92, Section 280.25 is to ensure that releases from underground storage tanks are minimized, protecting the human health and environment, especially near environmentally sensitive and critical areas, and to reduce the financial liability on the State Underground Petroleum Environmental Response Bank (SUPERB) Account and the SUPERB Financial Responsibility Fund as it pertains to assessment, corrective action, and third party liability claims for petroleum releases from UST systems. Statutory authority for R.61-92 was added for consistency with other Department regulations.

Legal Authority: The legal authority for R.61-92 is 1976 Code Section 44-2-10 et seq.

Plan for Implementation: The amendments will take effect upon approval by the S.C. General Assembly and publication in the *State Register*. An electronic copy of R.61-92, which includes these latest amendments, will be published on the Department’s Regulation Development website at: <http://www.scdhec.gov/Agency/RegulationsAndUpdates/LawsAndRegulations>. At this site, click on the Land & Waste Management category and scroll down to R.61-92. Subsequently, this regulation will be published on the S.C. Legislature website in the S.C. Code of Regulations. Printed copies will be made available at cost by request through the DHEC Freedom of Information Office.

DETERMINATION OF NEED AND REASONABLENESS OF THE REGULATION BASED ON ALL FACTORS HEREIN AND EXPECTED BENEFITS:

This amendment of R.61-92, Section 280.25 is needed to realize the following anticipated benefits:

This amendment of R.61-92, Section 280.25, *Secondary Containment Requirement,* will ensure that releases from underground storage tanks are minimized, protect the human health and environment, especially near environmentally sensitive and critical areas, and will reduce the financial liability on the State Underground Petroleum Environmental Response Bank (SUPERB) Account and the SUPERB Financial Responsibility Fund as it pertains to assessment, corrective action, and third party liability claims for petroleum releases from UST systems.

The above amendment is reasonable to realize the above benefits because it provides an efficient procedure without any anticipated cost increase, provide clear standards and criteria for the regulated community, and support Department goals.

DETERMINATION OF COSTS AND BENEFITS:

There are no anticipated cost increases to the State or its political subdivisions in complying with amendments. The amendment to R.61-92, Section 280.25 will benefit the regulated community by ensuring that releases from underground storage tanks are minimized, protecting the human health and environment, especially near environmentally sensitive and critical areas, and reducing the financial liability on the State Underground Petroleum Environmental Response Bank (SUPERB) Account and the SUPERB Financial Responsibility Fund as it pertains to assessment, corrective action, and third party liability claims for petroleum releases from UST systems.

UNCERTAINTIES OF ESTIMATES:

There are no uncertainties of estimates relative to the costs to the State or its political subdivisions.

EFFECT ON ENVIRONMENT AND PUBLIC HEALTH:

The proposed amendment to R.61-92, Section 280.25 will have no anticipated effect on the environment.

DETRIMENTAL EFFECT ON THE ENVIRONMENT AND PUBLIC HEALTH IF THE REGULATION IS NOT IMPLEMENTED:

There is no anticipated detrimental effect on the environment associated with this amendment.

**Statement of Rationale:**

The Department has amended R.61-92, Section 280.25, *Secondary Containment Requirement,* to ensure that releases from underground storage tanks are minimized, protect the human health and environment, especially near environmentally sensitive and critical areas, and to reduce the financial liability on the State Underground Petroleum Environmental Response Bank (SUPERB) Account and the SUPERB Financial Responsibility Fund as it pertains to assessment, corrective action, and third party liability claims for petroleum releases from UST systems.