

NOTICE OF INTENT

Department of Environmental Quality
Office of the Secretary
Legal Affairs Division

Motor Fuels UST Trust Fund Procedures
(LAC 33:XI.1121) (UT012)

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary gives notice that rulemaking procedures have been initiated to amend the Underground Storage Tanks regulations, LAC 33:XI.1121 (Log #UT012).

This rule provides for the use of a lien in substitute for the owner's financial responsibility required by law for an underground storage tank owner who has established inability to pay and who has ceased operations. In addition, the rule provides that the use of the lien be limited to 20 percent of the amount collected in the previous fiscal year. The rule also defines, from the requirements of R.S. 30:2195.2 and 2194.4(A)(1), that reimbursement from the Motor Fuels Underground Storage Tank Trust Fund (MFUSTTF) for "all necessary and appropriate expenditures" to owners for response actions taken "when authorized by the secretary" shall be made, in cases with multiple releases from, and multiple owners of, one or more UST systems, for work done in compliance with a single corrective action plan approved by the department. The rule allows the department to choose a response action contractor (RAC) should the owners, within 90 days of the most recent release, be unable to agree on a single RAC to submit work plans and applications to investigate and perform the cleanup. This rule revision implements Act 447 of the 2006 Regular Session of the Louisiana Legislature, provides guidance for the regulated community, and eliminates the recurring problem concerning multiple RACs when a site has more than one release and more than one owner. These changes are necessary to ensure the fiscal stability of the MFUSTTF. The basis and rationale for this proposed rule are to implement Act 447 and to ensure the continuing financial viability of the Motor Fuels Underground Storage Tank Trust Fund.

This proposed rule meets an exception listed in R.S. 30:2019(D)(2) and R.S. 49:953(G)(3); therefore, no report regarding environmental/health benefits and social/economic costs is required. This proposed rule has no known impact on family formation, stability, and autonomy as described in R.S. 49:972.

A public hearing will be held on November 28, 2007, at 1:30 p.m. in the Galvez Building, Oliver Pollock Conference Room, 602 N. Fifth Street, Baton Rouge, LA 70802. Interested persons are invited to attend and submit oral comments on the proposed amendments. Should individuals with a disability need an accommodation in order to participate, contact Judith A. Schuerman, Ph.D., at the address given below or at (225) 219-3550. Parking in the Galvez Garage is free with a validated parking ticket.

All interested persons are invited to submit written comments on the proposed regulation. Persons commenting should reference this proposed regulation by UT012. Such comments must be received no later than December 5, 2007, at 4:30 p.m., and should be sent to Judith A. Schuerman, Ph.D., Office of the Secretary, Legal Affairs Division, Box 4302, Baton Rouge, LA 70821-4302 or to FAX (225) 219-3582 or by e-mail to judith.schuerman@la.gov. Copies of this proposed regulation can be purchased by contacting the DEQ Public Records Center at (225) 219-3168. Check or money order is required in advance for each copy of UT012. This regulation is available on the Internet at www.deq.louisiana.gov/portal/tabid/1669/default.aspx.

This proposed regulation is available for inspection at the following DEQ office locations from 8 a.m. until 4:30 p.m.: 602 N. Fifth Street, Baton Rouge, LA 70802; 1823 Highway 546, West Monroe, LA 71292; State Office Building, 1525 Fairfield Avenue, Shreveport, LA 71101; 1301 Gadwall Street, Lake Charles, LA 70615; 111 New Center Drive, Lafayette, LA 70508; 110 Barataria Street, Lockport, LA 70374; 645 N. Lotus Drive, Suite C, Mandeville, LA 70471.

Herman Robinson, CPM
Executive Counsel

Title 33
ENVIRONMENTAL QUALITY
Part XI. Underground Storage Tanks
Chapter 11. Financial Responsibility

§1121. Use of the Motor Fuels Underground Storage Tank Trust Fund

The administrative authority was authorized by R.S. 30:2194-2195.10 to receive and administer the Motor Fuels Underground Storage Tank Trust Fund (MFUSTTF) to provide financial responsibility for owners and/or operators of underground motor fuel storage tanks. Under the conditions described in this Section, an owner and/or operator who is eligible for participation in the MFUSTTF may use this mechanism to partially fulfill the financial responsibility requirements for eligible USTs. To use the MFUSTTF as a mechanism for meeting the requirements of LAC 33:XI.1107, the owner and/or operator must be an *eligible participant* as defined in Subsection A of this Section. In addition, the owner and/or operator must use one of the other mechanisms described in LAC 33:XI.1111-1119 or 1123-1125 to demonstrate financial responsibility for the amounts specified in Subsection C of this Section, which are the responsibility of the participant and not covered by the MFUSTTF.

A. Definitions. The following terms shall have the meanings ascribed to them as used in this Section.

* * *

Eligible Participant—any owner of an operating or newly-installed underground storage tank who has registered ~~said~~ the tank with the department prior to the date of a release, has paid the annual tank registration fees along with any late payment fees, ~~and~~ has met the financial responsibility requirements imposed by Subsection B of this Section-, and, if applicable, has met the noncompliance financial responsibility amounts provided in R.S. 30:2195.10.

* * *

B. Financial Responsibility Requirements for MFUSTTF Participants

1. Unless revised by the administrative authority in accordance with R.S. 30:2195.9(A)(3), MFUSTTF participants taking response actions must pay the following amounts before any disbursements are made from the fund:

a. ~~\$15,000~~ 10,000 per occurrence for cleanup and an additional \$10,000 per occurrence for third-party judgments, for the period from July 15, 1988 through December 31, 1989; and

b. \$15,000 per occurrence for cleanup and an additional \$15,000 per occurrence for third-party judgments, for the period from January 1, 1990 through July 14, 1992;

c. for the period from July 15, 1992 through June 15, 1995:

i. \$5,000 per occurrence for cleanup and an additional \$5,000 for third-party judgments for owners with 1 to 12 tanks in Louisiana;

ii. \$10,000 per occurrence for cleanup and an additional \$10,000 for third-party judgments for owners with 13 to 99 tanks in Louisiana; and

iii. \$15,000 per occurrence for cleanup and an additional \$15,000 for third-party judgments for owners with 100 or more tanks in Louisiana; and

d. \$5,000 per occurrence for cleanup and an additional \$5,000 per occurrence for third-party judgments, for the period from June 16, 1995 through December 31, 2001.

2. Thereafter, the advisory board shall review the financial responsibility requirements on an ~~these amounts~~ annually basis and may recommend adjustments to the requirements to the administrative authority.

3. ~~The administrative authority shall determine and set these financial responsibility requirements amounts~~ annually [as provided in R.S. 30:2195.9(A)(3)].

34. Eligible participants must demonstrate financial responsibility for the established amounts by the allowable mechanisms described in LAC 33:XI.1111-1119 and LAC 33:XI.1123-1125.

4. Substitution of a Departmental Lien

a. A lien filed by the department with the same ranking and privilege as that authorized by R.S. 30:2195(F)(2) may be substituted for the financial responsibility requirement of this Section, but in no case shall the lien be substituted on behalf of an owner and/or operator who continues to operate the system. The use of the funds in the MFUSTTF during any fiscal year on a site for which the lien, as authorized by this Section, has been used to substitute for the financial responsibility amount shall not exceed 20 percent of the amount collected in the previous fiscal year. The administrative authority is authorized to exceed the 20 percent limitation contained in this Paragraph upon recommendation by the advisory board.

b. Upon recommendation by the advisory board to exceed the 20 percent limitation as provided in Subparagraph B.4.a of this Section, the administrative authority shall provide written notification to the Senate Committee on Environmental Quality and the House Committee on the Environment listing the project name, the project location, and the amount of the project that exceeds the 20 percent limitation.

C. - D.2. ...

3. For sites with more than one eligible release and with multiple owners and/or operators wishing to use MFUSTTF monies, cost effective procedures shall require that the multiple owners and/or operators provide to the administrative authority a single investigation and corrective action plan that complies with the requirements of LAC 33:XI.709, 711, and 715. The MFUSTTF shall reimburse the owners and/or operators only after the submittal of one certified request for reimbursement for work that has been completed according to the administrative authority's approved investigation and corrective action plan.

4. For sites with more than one eligible release and with multiple owners and/or operators wishing to use MFUSTTF monies who cannot agree on the selection of a single qualified response action contractor (RAC) for the purpose of complying with Paragraph D.3 of this Section, or who have failed to begin investigation or corrective action within the time required by the administrative authority, the administrative authority shall select a RAC to carry out the investigation and/or corrective action or order the respective owners and/or operators to

begin investigation or corrective action without MFUSTTF monies. The administrative authority, in choosing a RAC, shall solicit notices of interest in the project from all approved RACs and select a RAC randomly through a public drawing from all RACs expressing an interest in the project. The RAC selected shall not be one currently under contract to any one of the multiple owners and/or operators of the site. Owners and/or operators shall continue to monitor site cleanup and shall sign and submit a sworn application requesting reimbursement. Thereafter, the administrative authority shall determine all reasonable costs and shall pay the RAC directly.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq. and specifically 2195-2195.10.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Underground Storage Tank Division, LR 16:614 (July 1990), amended LR 17:658 (July 1991), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2561 (November 2000), LR 27:521 (April 2001), amended by the Office of Environmental Assessment, LR 31:1577 (July 2005), amended by the Office of the Secretary, Legal Affairs Division, LR 34:**.

FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES

LOG #: UT012

Person

Preparing

Statement: Don Haydel
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Dept.: Environmental Quality

Phone: 219-3863

Office: Environmental Assessment

Return

Address: 602 N. Fifth Street
Baton Rouge, LA 70802

Rule

Title: Motor Fuels Underground Storage Tank
Trust Fund Procedures (LAC 33:XI.1121)

Date Rule

Takes Effect Upon promulgation

SUMMARY

(Use complete sentences)

In accordance with Section 953 of Title 49 of the Louisiana Revised Statutes, there is hereby submitted a fiscal and economic impact statement on the rule proposed for adoption, repeal or amendment. THE FOLLOWING STATEMENTS SUMMARIZE ATTACHED WORKSHEETS, I THROUGH IV AND WILL BE PUBLISHED IN THE LOUISIANA REGISTER WITH THE PROPOSED AGENCY RULE.

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

New costs to the state are expected to be minimal, consisting of fees paid by the department to file liens with the clerks of court. The rule implements the provisions of Act 447 of the 2006 legislature, which provides that the state may substitute a lien for the financial responsibility amounts found in R.S. 30:2195.9. The use of the lien is limited and the department does not anticipate that the Motor Fuels Underground Storage Tank Trust Fund (MFUSTTF) will be adversely impacted. There are no additional costs to local government.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The rule should have minimal effects on the revenue collections of state and local governmental units. A small increase in local revenues will result from filing fees for the new liens with the clerks of court. These types of cases will be very limited in number.

The rule should result in additional cleanups of contaminated underground storage tank (UST) sites, placing them back into commerce, with resulting benefits to state and local governments.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NON-GOVERNMENTAL GROUPS (Summary)

There will be no additional costs to directly affected persons or non-governmental groups. There will be a benefit, in that owners/operators of UST systems who do not have the financial means to meet the financial responsibility amounts provided in R.S. 30:2195.9 will still be able to qualify for reimbursement of cleanup costs from the MFUSTTF.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There will be no effect on competition or employment.

Signature of Agency Head or Designee

Legislative Fiscal Officer or Designee

Herman Robinson, CPM, Executive Counsel
Typed Name and Title of Agency Head or Designee

Date of Signature

Date of Signature

FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES

The following information is requested in order to assist the Legislative Fiscal Office in its review of the fiscal and economic impact statement and to assist the appropriate legislative oversight subcommittee in its deliberation on the proposed rule.

- A. Provide a brief summary of the content of the rule (if proposed for adoption, or repeal) or a brief summary of the change in the rule (if proposed for amendment). Attach a copy of the notice of intent and a copy of the rule proposed for initial adoption or repeal (or, in the case of a rule change, copies of both the current and proposed rules with amended portions indicated).

This rule provides for the use of a lien in substitute for the owner's financial responsibility required by law for an underground storage tank owner who has established inability to pay and who has ceased operations. In addition, the rule provides that the use of the lien be limited to 20 percent of the amount collected in the previous fiscal year. The rule also defines, from the requirements of R.S. 30:2195.2 and 2194.4(A)(1), that reimbursement from the MFUSTTF for "all necessary and appropriate expenditures" to owners for response actions taken "when authorized by the secretary" shall be made, in cases with multiple releases from, and/or multiple owners of, one or more UST systems, for work done in compliance with a single corrective action plan approved by the department. The rule allows the department to choose a response action contractor (RAC) should the owners, within 90 days of the most recent release, be unable to agree on a single RAC to submit work plans and applications to investigate and perform the cleanup.

- B. Summarize the circumstances which require this action. If the Action is required by federal regulation, attach a copy of the applicable regulation.

This rule revision implements Act 447 of the 2006 Regular Session of the Louisiana Legislature, provides guidance for the regulated community, and eliminates the recurring problem concerning multiple RACs when a site has more than one release and/or more than one owner. These changes are necessary to ensure the fiscal stability of the MFUSTTF. The basis and rationale for this proposed rule are to implement Act 447 and to ensure the continuing financial viability of the Motor Fuels Underground Storage Tank Trust Fund.

- C. Compliance with Act 11 of the 1986 First Extraordinary Session

(1) Will the proposed rule change result in any increase in the expenditure of funds? If so, specify amount and source of funding.

Only a very minimal increase in expenditure of funds is expected to result from the proposed rule, consisting of the cost of filing liens with the clerks of court.

(2) If the answer to (1) above is yes, has the Legislature specifically appropriated the funds necessary for the associated expenditure increase?

(a) _____ Yes. If yes, attach documentation.

(b) X No. If no, provide justification as to why this rule change should be published at this time.

No, but the agency will defray the minimal costs of implementing the proposed rule with current funding.

FISCAL AND ECONOMIC IMPACT STATEMENT
WORKSHEET

I. A. COSTS OR SAVINGS TO STATE AGENCIES RESULTING FROM THE ACTION PROPOSED

1. What is the anticipated increase (decrease) in costs to implement the proposed action?

COSTS	FY 07-08	FY 08-09	FY 09-10
PERSONAL SERVICES	-0-	-0-	-0-
OPERATING EXPENSES	minimal	minimal	minimal
PROFESSIONAL SERVICES	-0-	-0-	-0-
OTHER CHARGES	-0-	-0-	-0-
EQUIPMENT	-0-	-0-	-0-
TOTAL	minimal	minimal	minimal
MAJOR REPAIR & CONSTR	-0-	-0-	-0-
POSITIONS (#)	-0-	-0-	-0-

2. Provide a narrative explanation of the costs or savings shown in "A.1.", including the increase or reduction in workload or additional paperwork (number of new forms, additional documentation, etc.) anticipated as a result of the implementation of the proposed action. Describe all data, assumptions, and methods used in calculating these costs.

The costs to the state are expected to be minimal, consisting only of the administrative and monetary costs of filing liens. The rule implements the provisions of Act 447 of the 2006 legislature, which provides that the state may substitute a lien for the financial responsibility amounts found in R.S. 30:2195.9. The use of the lien is limited and the department does not anticipate that the MFUSTTF will be adversely impacted. In addition, provisions in the rule provide for speedy cleanups of certain sites, with a reduction in expenditures from the MFUSTTF, by allowing the department to assign a cleanup contractor for sites with multiple owners and/or multiple releases where the owners are unable to reach a timely agreement.

3. Sources of funding for implementing the proposed rule or rule change.

SOURCE	FY 07-08	FY 08-09	FY09-10
STATE GENERAL FUND	-0-	-0-	-0-
AGENCY SELF-GENERATED	-0-	-0-	-0-
DEDICATED	-0-	-0-	-0-
FEDERAL FUNDS	-0-	-0-	-0-
OTHER (Specify) MFUSTTF	minimal	minimal	minimal
TOTAL	minimal	minimal	minimal

4. Does your agency currently have sufficient funds to implement the proposed action? If not, how and when do you anticipate obtaining such funds?

The agency will implement the proposed rule with current funding.

B. COST OR SAVINGS TO LOCAL GOVERNMENTAL UNITS RESULTING FROM THE ACTION PROPOSED.

1. Provide an estimate of the anticipated impact of the proposed action on local governmental units, including adjustments in workload and paperwork requirements. Describe all data, assumptions and methods used in calculating this impact.

There will be no additional costs to local government, and the rule should result in additional cleanups of local properties, placing them back into commerce. This should be a benefit to state and local governmental units.

2. Indicate the sources of funding of the local governmental unit which will be affected by these costs or savings.

This question is not applicable.

FISCAL AND ECONOMIC IMPACT STATEMENT
WORKSHEET

II. EFFECT ON REVENUE COLLECTIONS OF STATE AND LOCAL GOVERNMENTAL UNITS

A. What increase (decrease) in revenues can be anticipated from the proposed action?

REVENUE INCREASE/DECREASE	FY 07-08	FY 08-09	FY09-10
STATE GENERAL FUND	-0-	-0-	-0-
AGENCY SELF-GENERATED	-0-	-0-	-0-
RESTRICTED FUNDS*	-0-	-0-	-0-
FEDERAL FUNDS	-0-	-0-	-0-
LOCAL FUNDS	minimal	minimal	minimal
TOTAL	minimal	minimal	minimal

*Specify the particular fund being impacted.

B. Provide a narrative explanation of each increase or decrease in revenues shown in "A." Describe all data, assumptions, and methods used in calculating these increases or decreases.

The rule should have minimal effects on the revenue collections of state and local governmental units. A small increase in local revenues will result from filing fees for the new liens with the clerks of court. These types of cases will be very limited in number.

The rule should result in additional cleanups of contaminated UST sites, placing them back into commerce, with resulting benefits to state and local governments.

III. COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS

A. What persons or non-governmental groups would be directly affected by the proposed action? For each, provide an estimate and a narrative description of any effect on costs, including workload adjustments and additional paperwork (number of new forms, additional documentation, etc.), they may have to incur as a result of the proposed action.

Owners/operators of UST systems that do not have the financial means to meet the financial responsibility amounts provided in R.S. 30:2195.9 will benefit from this rule.

B. Also provide an estimate and a narrative description of any impact on receipts and/or income resulting from this rule or rule change to these groups.

Owners/operators of UST systems that do not have the financial means to meet the financial responsibility amounts provided in R.S. 30:2195.9 will be able to qualify for reimbursement of cleanup costs from the MFUSTTF, due to the availability of the lien mechanism.

IV. EFFECTS ON COMPETITION AND EMPLOYMENT

Identify and provide estimates of the impact of the proposed action on competition and employment in the public and private sectors. Include a summary of any data, assumptions and methods used in making these estimates.

There will be no effect on competition or employment.