NOTICE OF INTENT

Department of Environmental Quality

Office of the Secretary

Legal Affairs Division

UST Grant Program

(LAC 33:XI.Chapter 14) (UT20)

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.Chapter 14 (UT20).

This Rule provides financial assistance in the form of reimbursement grants to eligible private persons or entities with the costs necessary in upgrading and/or improving single wall underground storage tank systems to the standards outlined in LAC 33:XI.303. These proposed regulations establish requirements, procedures, and processes for owners of single wall underground storage tank systems registered with the department to be eligible for the grants. The adoption of the proposed regulations would assist in upgrading and/or improving single wall underground storage tank systems to a system that is more protective of the state’s environment.

During the 2022 Regular Session, House Bill 1035 was introducted to require the Louisiana Department of Environmental Quality to establish procedures to provide for reimbursement grants for upgrades and/or improvements to single wall underground storage tank (UST) systems. The department has documented numerous releases from single wall UST and upgrading these type of systems to the standards outlined in LAC 33:XI.303 will likely result in fewer releases and be more protective of the state’s environment. House Bill 1035 was signed into law as Act No. 277. The basis and rationale for this Rule are to protect the waters and land of the state from petroleum releases occurring from single wall UST systems. This Rule meets an exception listed in R.S. 30:2019(D)(2) and R.S. 49:963.B(3); therefore, no report regarding environmental/health benefits and social/economic costs is required.

**Family Impact Statement**

This Rule has no known impact on family formation, stability, and autonomy as described in R.S. 49:972.

**Poverty Impact Statement**

This Rule has no known impact on poverty as described in R.S. 49:973.

**Small Business Analysis**

This Rule has no known impact on small business as described in R.S. 49:974.1 - 974.8.

**Provider Impact Statement**

This Rule has no known impact on providers as described in HCR 170 of 2014.

**Public Comments**

All interested persons are invited to submit written comments on the proposed regulation. Persons commenting should reference this proposed regulation by UT20. Such comments must be received no later than November 2, 2023, at 4:30 p.m., and should be sent to William Little, Attorney Supervisor, Office of the Secretary, Legal Affairs Division, P.O. Box 4302, Baton Rouge, LA 70821-4302, fax (225) 219-4068, or by E-mail to DEQ.Reg.Dev.Comments@la.gov. Copies of the proposed regulation can be purchased by contacting the LDEQ Public Records Center at (225) 219-3168. Check or money order is required in advance for each copy of UT20. The proposed regulation is available on the internet at www.deq.louisiana.gov/portal/tabid/1669/default.aspx.

**Public Hearing**

A public hearing will be held via Zoom on October 26, 2023, at 1:30 p.m. Interested persons are invited to attend and submit oral comments via PC, Mac, Linux, iOS or Android at https://deqlouisiana.zoom.us/j/89059890189?pwd=T0pGeGFjV3lZM0JYOGVPaUVQS2x0UT09, password 545561 or by telephone (636) 651-3182 using the conference code 725573. Should individuals with a disability need an accommodation in order to participate, contact William Little at the address given below or at (225) 219-3985.

The proposed regulation is available for inspection at the following LDEQ office locations from 8 a.m. until 4:30 p.m.: 602 N. Fifth Street, Baton Rouge, LA 70802; 508 Downing Pines Road, 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; 201 Evans Road, Bldg. 4, Suite 420, New Orleans, LA 70123.

Courtney J. Burdette

Executive Counsel

**Title 33**

**Environmental Quality**

**Part XI. Underground Storage Tanks**

**Chapter 14. Grant Program**

**§1401. Purpose**

A. The purpose of this Chapter is to establish procedures to provide for grants for upgrades and/or improvements to single wall underground storage tank systems.

B. The Motor Fuels Underground Storage Tank Trust Fund Advisory Board shall advise the secretary with regard to implementation of the tank trust account including investment of the trust and issuance of grants.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2195.2.A(6)(e).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 49:

**§1403. Applicability**

A. This Chapter applies to providing financial assistance to private persons, or entities, in financing the costs necessary for upgrading and/or improving single wall underground storage tank systems to the standards outlined in LAC 33:XI.303.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2195.2.A(6)(e).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 49:

**§1405. Effective Date**

A. These regulations are effective January 1, 2024. These regulations are only applicable to grant applications that occur on or after January 1, 2024.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2195.2.A(6)(e).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 49:

**§1407. Definitions**

A. The following terms used in this Chapter shall have the meanings listed below and shall only apply to this Chapter, unless the context otherwise requires, or unless specifically redefined in a particular Section.

*Applicant*—the legal underground storage tank (UST) owner (i.e., private person or private entity) at the project facility.

*Domiciled*—the place of a private person’s habitual residence; a private person may reside in several places, but may not have more than one domicile. The domicile of a private entity may be either the state of its formation or the state of its principal place of business.

*Improvement*—to replace existing single wall underground storage tanks (USTs) with double wall USTs and/or replace existing single wall product piping with double wall product piping. Containment and ancillary equipment such as submersible turbine pumps (STP), STP sumps, under dispenser containment (UDC) sumps, UST monitors and sensors, fill ports, shear valves, flex lines, and spill/overfill prevention equipment may be included for reimbursement only when upgrading and/or improving existing single wall USTs and/or single wall product piping.

*Private Entity*—a nonpublic juridical entity to which the law attributes personality, e.g., a corporation or a partnership. The personality of an entity is distinct from that of its members.

*Private Person*—a natural person or human being.

*Project Facility*—a single, specific facility where the grant will be applied for the approved upgrades and/or improvements to single wall underground storage tank systems.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2195.2.A(6)(e).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 49:

**§1409. Grant Program Funding and Requirements**

A. This grant program is funded by the cost recovery efforts and interest earned on the tank trust account (interest account) in accordance with R.S. 30:2195.2.

B. A grant may only be made pursuant to this Chapter if all of the following apply:

1. the applicant is domiciled in Louisiana;

2. the site is registered with the department as a single wall underground storage tank system; and

3. the applicant is in compliance with and has paid all fees assessed by the Environmental Quality Act, La. R.S. 30:2001, et Seq., and LAC 33:XI.

C. Grants provided pursuant to this Chapter shall only be made in the form of reimbursement for completed upgrades and/or improvements after inspection and approval by the department.

D. No grant shall exceed $150,000. The total amount of grants issued per state fiscal year (July 1 – June 30) shall be determined by the beginning balance in the interest account as indicated below:

1. If the interest account has a beginning balance of greater than $5,000,000 on July 1, then then total amount of grants per year shall not exceed $3,000,000.

2. If the interest account has a beginning balance of less than $5,000,000 on July 1, then the total amount of grants per year shall not exceed $1,500,000.

E. Eligible applicants may apply for only one grant each state fiscal year.

F. The applicant shall apply the grant only at the project facility.

G. Applicants shall complete the upgrade and/or improvement as soon as possible but no later than two fiscal years (July 1 – June 30) beyond the fiscal year of approval for participation in the grant program. Failure to complete the upgrade and/or improvement within two fiscal years will result in the applicant being ineligible for reimbursement from the grant program.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2195.2.A(6)(e).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 49:

**§1411. Application Process**

A. An application for funding shall be on a department provided form and shall include information regarding:

1. the applicant, including location of domicile;

2. the project facility, including information about the single wall underground storage tank system; and

3. the proposed upgrade and/or improvements to the single wall underground storage tank system.

B. The application period for participation in the grant program shall be from January 1 to March 31. Applications received after March 31 will be rejected for participation in the grant program for the upcoming state fiscal year and the applicants must reapply for participation in the grant program for the forthcoming state fiscal year.

C. The department may perform a compliance evaluation inspection of the project facility prior to any upgrades and/or improvements.

D. The department shall notify the applicant in writing if the application has been approved or rejected with an explanation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2195.2.A(6)(e).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 49:

**§1413. Procedures Prior to Making Upgrades or Improvements**

A. Applicants may be approved for the grant program upon the condition they meet the requirements for participation and are in compliance with the Environmental Quality Act, R.S. 30:2001, et seq., and LAC 33:XI.

B. Applicants must have written approval from the department for participation in the grant program prior to implementing any eligible upgrades and/or improvements.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2195.2.A(6)(e).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 49:

**§1415. Department Inspections and Notifications**

A. The department may perform periodic inspections during the upgrade and/or improvement and may be present for all installation-critical junctures.

B. If the Environmental Quality Act, R.S. 30:2001, et seq., and LAC 33:XI are not followed by the UST owner, operator, or certified worker prior to and during the upgrade and/or improvement, the applicant may not be awarded the grant reimbursement.

1. The department shall notify the applicant in writing as soon as any violation is determined that disqualifies the applicant from receiving the grant reimbursement.

C. The applicant shall notify the department upon completion of the upgrade and/or improvement.

D. The department shall perform a final inspection of the upgrade and/or improvement and prepare a final inspection report documenting the work has been completed in accordance with the scope of work.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2195.2.A(6)(e).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 49:

**§1417. Grant Reimbursement Procedures**

A. The grant reimbursement shall be on a department provided form and shall include the following.

1. An affidavit signed by the applicant that all upgrades and/or improvements have been completed in accordance with the scope of work and in accordance with the Environmental Quality Act, R.S. 30:2001, et seq., and LAC 33:XI.

2. Copies of all paid invoices for the upgrade and/or improvement.

B. The applicant shall not request reimbursement until after the project facility is placed into service from the upgrade and/or improvement.

C. The grant program reimbursement form shall be submitted to the department within 90 days of the project facility being placed into service.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2195.2.A(6)(e).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 49:

**FISCAL AND ECONOMIC IMPACT STATEMENT**

**FOR ADMINISTRATIVE RULES**

Person

Preparing

Statement: Theresa Delafosse Dept.: Department of Environmental Quality

Phone: 225-219-3322 Office: Management and Finance

Return Rule

Address: 602 N. 5th Street Title: UST Grant Program

Baton Rouge, LA 70802

Date Rule

Room 946 Takes Effect: Upon Promulgation

SUMMARY

In accordance with Section 961 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)

The proposed rule will increase costs to the department by providing financial assistance in the form of reimbursement grants to eligible private persons or entities in the costs necessary in upgrading and/or improving single wall underground storage tank systems to the standards outlined in LAC 33:XI.303. These proposed regulations establish requirements, procedures, and processes for owners of single wall underground storage tank systems registered with the department to be eligible for the grants. The adoption of these regulations would assist in upgrading and/or improving single wall underground storage tank systems to a system that is more protective of the state’s environment.

The proposed rule to establish the Underground Storage Tank (UST) Grant Program will be funded by the cost recovery efforts and interest earned on the Tank Trust Account (Interest Account) in accordance with R.S. 30:2195.2. No single grant shall exceed $150,000 and the total amount of grants per year shall not exceed $3,000,000. The department plans to implement this program initially with current staff and resources. Should the additional work for continued implementation be overly onerous, additional staff and resources may be necessary. The increased workload is indeterminable at this time.

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

There is no anticipated effect on revenue collections of state and local governmental units from this proposed rule.

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

The proposed rule will establish procedures for each eligible applicant to apply for a reimbursement grant to provide financial assistance in upgrading and/or improving single wall underground storage tanks (USTs). No single grant shall exceed $150,000. While the costs to upgrade and/or improve single wall USTs will likely exceed $150,000, the proposed rule will provide a financial incentive for applicants to install a UST system that is more protective of the state's environment. Due to the anticipated participation, the proposed rule may increase demand for persons or small business that provide services to USTs.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed rule is anticipated to increase demand for persons or small business that provide services to USTs therefore resulting in increased competition and employment opportunities within the state.

Signature of Agency Head or Designee Legislative Fiscal Officer or Designee

Courtney J. Burdette, Executive Counsel

Typed Name & Title of Agency Head or Designee

Date of Signature Date of Signature

**FISCAL AND ECONOMIC IMPACT STATEMENT**

**FOR ADMINISTRATIVE RULES**

The following information is required 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.

1. 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 proposed rule provides financial assistance in the form of reimbursement grants to eligible private persons or entities in the costs necessary in upgrading and/or improving single wall underground storage tank systems to the standards outlined in LAC 33:XI.303. These proposed regulations establish requirements, procedures, and processes for owners of single wall underground storage tank systems registered with the department to be eligible for the grants. The adoption of these regulations would assist in upgrading and/or improving single wall underground storage tank systems to a system that is more protective of the state’s environment.

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

Act 277 of the 2022 Regular Legislative Session requires the department to establish procedures to provide for reimbursement grants for upgrades and/or improvements to single wall underground storage tank (UST) systems. These types of UST systems have been identified as being the most problematic source of petroleum releases to the state’s environment. Replacement of the single wall UST systems will likely reduce the number of releases and be more protective of the state’s environment.

1. 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.

The proposed rule will be funded by the cost recovery efforts and interest earned on the Tank Trust Account (Interest Account) in accordance with R.S. 30:2195.2. No single grant shall exceed $150,000 and the total amount of grants per year shall not exceed $3,000,000. Therefore, the implementation of the proposed rule will likely result in an increase in the expenditure of approximately $3,000,000 per year from the Interest Account. When the program is in its initial years, the expenditures may not reach the annual cap of $3,000,000, as the department will still be essentially in a pilot phase and may not be able to award the maximum number of grants. DEQ will request an appropriation for the expenditures related to this program in its fiscal year 2025 budget request.

(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

The rule will likely be published in the second half of fiscal year 2024, so an appropriation for July 1, 2024 (beginning of fiscal year 2025) is appropriate.

**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?

The department plans to implement this program initially with current staff and resources. It is unknown at this time how many employees will be required to administer the program. Therefore, a separate accounting of implementation costs is not currently available. Should the additional work for continued implementation be overly onerous, additional staff and resources may be necessary. The increased workload is indeterminable at this time.

# **COSTS FY 24 FY 25 FY 26**

PERSONAL SERVICES 0 0 0

OPERATING EXPENSES 0 0 0

PROFESSIONAL SERVICES 0 0 0

OTHER CHARGES 0 INCREASE INCREASE

EQUIPMENT 0 0 0

**TOTAL**  0 **INCREASE INCREASE**

MAJOR REPAIRS & CONSTR. 0 0 0

POSITIONS (#) -0- -0- -0-

1. 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 rule allows for up to 20 awards annually ($150,000 per award with an annual maximum of $3,000,000). The universe of eligible awardees is large, so there is the potential that applications and accompanying documentation will be voluminous. Currently, the department anticipates at least three new forms with associated response letters for the program.

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

**SOURCE FY 24 FY 25 FY 26**

State General Fund 0 0 0

Agency Self-Generated **0**  **INCREASE** **INCREASE**

Dedicated 0 0 0

Federal Funds 0 0 0

Other (Specify) 0 0 0

TOTAL 0 **INCREASE** **INCREASE**

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

Yes, the department's Motor Fuels Underground Storage Tank Dedicated Fund Account has sufficient funds to implement the proposed action.

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 is no anticipated impact of the proposed action on local governmental units, including adjustments in workload and paperwork requirements.

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

There is no anticipated impact of the proposed action that will affect sources of funding of the local governmental units.

**FISCAL AND ECONOMIC IMPACT STATEMENT**

**WORKSHEET**

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

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

There is no anticipated change in state or local government revenues as the result of the proposed action.

**REVENUE INCREASE/DECREASE FY 24 FY 25 FY 26**

State General Fund 0 0 0

Agency Self-Generated 0 0 0

Dedicated Funds\* 0 0 0

Federal Funds 0 0 0

Local Funds 0 0 0

**TOTAL 0 0 0**

\*Specify the particular fund being impacted.

1. 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.

There is no anticipated change in state or local government revenues as the result of the proposed action.

**FISCAL AND ECONOMIC IMPACT STATEMENT**

**WORKSHEET**

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

A. What persons, small businesses, 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.

The proposed rule will establish procedures for each eligible applicant to apply for a reimbursement grant to provide financial assistance in upgrading and/or improving single wall underground storage tanks (USTs). No single grant shall exceed $150,000. While the costs to upgrade and/or improve single wall USTs will likely exceed $150,000, the proposed rule will provide a financial incentive for applicants to install a UST system that is more protective of the state's environment. Due to the anticipated participation, the proposed rule is likely to increase demand for persons or small business that provide services to USTs.

1. 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.

The proposed rule may increase receipts and/or income for persons or small business that provide services to USTs to the extent there is an increase in demand.

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.

The proposed rule is anticipated to increase demand for persons or small business that provide services to USTs therefore resulting in increased competition and employment opportunities within the state.