

**RULES  
OF  
GEORGIA DEPARTMENT OF NATURAL RESOURCES  
ENVIRONMENTAL PROTECTION DIVISION**

**CHAPTER 391-3-15  
UNDERGROUND STORAGE TANK MANAGEMENT**

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Effective 10/29/01

391-3-15-.01 General Provisions. Amended.

**(1) Purpose.** These Rules and Regulations (Rules) are promulgated for the purpose of protecting and enhancing the quality of Georgia's environment and of protecting the public health, safety, and well-being of its citizens, and of instituting and maintaining a comprehensive Statewide program for the management of regulated substances stored in underground tanks.

**(2) Authority.**

(a) These Rules are issued under the authority of the Georgia Underground Storage Tank Act (GUSTA), Official Code of Georgia Annotated (O.C.G.A.) §12-13-1 et seq. (1988), as amended.

(b) The Director of the Environmental Protection Division (Director) or his authorized representative or an authorized contractor or agent of the Department upon presentation of his credentials, shall have a right to enter upon, into or through premises of persons subject to GUSTA, or premises whereon a violation of GUSTA or these Rules is reasonably believed to be occurring or causing impact or is reasonably believed to be about to occur or cause impact. The Director or his authorized representative shall have the right to investigate, take samples, copy all records relating to underground storage tanks, and inspect in accordance with the following purposes:

1. to determine whether any person subject to the requirements of GUSTA is in compliance with these Rules;

2. to investigate conditions relating to underground storage tanks (UST) or UST management practices where the Director is in possession of information sufficient to form a reasonable belief that a violation of GUSTA or these Rules is occurring or is about to occur; or

3. to determine whether there has been a violation of any of the provisions of GUSTA or these Rules, or any permit or order issued pursuant to GUSTA and these Rules.

(c) In the event any person does not consent to an inspection or investigation, the Director or his authorized representative may seek to obtain a warrant authorizing the inspection or investigation pursuant to O.C.G.A. §12-13-8(b) and §12-2-2(d).

(d) EPD or its contractors may enter upon the property of the owner or operator, at such time and in such manner as deemed necessary, to effectuate the necessary corrective action to protect health and the environment.

(e) The Director, an authorized employee of the Department, or an authorized contractor or agent of the Department, upon presentation of his or her credentials, shall have a right to enter upon, to, or through premises of persons subject to GUSTA or premises whereon a release of a regulated substance in violation of GUSTA or the rules and regulations

adopted pursuant to GUSTA is reasonably believed to be occurring or is reasonably believed to have previously occurred to investigate, take samples, copy all records relating to storage of regulated substances in underground storage tanks, and inspect for compliance with the requirements imposed under GUSTA or these Rules, or any permit or order issued pursuant to GUSTA or these Rules in order to determine whether such a current release or past release exists and to conduct appropriate corrective action for any release which may currently exist or may have existed.

### **(3) Reference**

(a) Any reference in these Rules to standards, procedures, and requirements of Title 40 of the Code of Federal Regulations (40 CFR) Part 280 (2000) shall constitute the full adoption by reference of the Part, Subpart, and Paragraph so referenced including any notes and appendices as may be associated, unless otherwise stated.

(b) When used in any such provisions as may be adopted from 40 CFR Part 280 (2000): implementing agency or state implementing agency shall mean Environmental Protection Division (EPD); and Regional Administrator or Director of the implementing agency shall mean Director of the Environmental Protection Division. Unless specifically indicated otherwise, any reference to implementation by, submissions to, or inspections, investigations or enforcement by the EPA in such Regulations as may be adopted by reference by these Rules shall be construed to mean EPD unless such interpretation would be inconsistent with the intent of the Georgia Underground Storage Tank Act (GUSTA).

(c) Any reference in 40 CFR Part 280 (2000), or in any provisions adopted by reference from 40 CFR Part 280 (2000), to EPA forms or reports shall mean EPD forms and reports as may be provided by the Director.

Authority O.C.G.A. Section 12-13-1 et seq., as amended.

### **391-3-15-.02 Definitions, UST Exclusions, and UST Deferrals. Amended.**

**(1) Definitions.** 40 CFR §§280.12 and 280.92 (2000) are hereby incorporated by reference. The following words or terms shall have the meanings set forth herein when used in these Rules:

(a) "Board" means the Board of Natural Resources of the State of Georgia.

(b) "Control of" means either the right or authority to govern receipt or removal from an underground storage tank any regulated substances.

(c) "Controlling interest" means direct or indirect ownership of at least 50 percent of the voting stock of another entity.

(d) "Corrective action" means those activities required for response to and cleanup of releases of regulated substances from underground storage tanks, including, but not limited

to, initial response, initial abatement measures and site check, initial site characterization, free product removal, investigations for soil and groundwater cleanup, and preparation and implementation of a corrective action plan.

(e) "Department" means the Department of Natural Resources of the State of Georgia.

(f) "Director" means the Director of the Environmental Protection Division of the Department of Natural Resources.

(g) "EPD" means the Environmental Protection Division of the Department of Natural Resources of the State of Georgia.

(h) "Federal Act" means the Solid Waste Disposal Act, 42 U.S.C., §3152 et seq., as amended, particularly by the Hazardous and Solid Waste Amendments of 1984, Public Law 98-616, 42 USC, §6991 et seq., as amended by Public Law 99-499, 1986.

(i) "Guarantor" means any person, other than the owner or operator, who provides evidence of financial responsibility for an owner or operator.

(j) "Jobber" means anyone who distributes petroleum product from a bulk storage plant to an UST owner or operator, or purchases petroleum product from a terminal for distribution to an UST owner or operator.

(k) "Nonoperational storage tank" means any UST in which regulated substances were not deposited or from which regulated substances were not dispensed after November 8, 1984.

(l) "Operator" means any person in control of, or having responsibility for, the daily operation of an UST.

(m) "Owner" means, in the case of an UST system in use on November 8, 1984, or brought into use or capable of being used after that date, any person who owns an UST system used for or capable of being used for the storage or dispensing of regulated substances and, in the case of any UST system in use before November 8, 1984, but no longer in use or capable of being used on or after November 8, 1984, any person who owned such UST immediately before the discontinuation of its use; provided, however, such term shall not include any person who, without participating in the management of an underground storage tank and otherwise not engaged in petroleum production, refining, and marketing, holds indicia of ownership primarily to protect that person's security interest in the underground storage tank.

(n) "Participating owner or operator" means an owner or operator of an UST who participates in the GUST Trust Fund as a financial assurance mechanism.

(o) "Person" means an individual, trust, firm, joint-stock company, joint-venture, corporation, including a government corporation, partnership, association, municipality,

commission, political subdivision, or any agency, board, department, or bureau of this State or of any other state or of the Federal government.

(p) "Petroleum" means petroleum, including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute).

(q) "Petroleum product" means petroleum, including gasoline, gasohol, diesel fuel, fuel oils including #2 fuel oil, kerosene, and jet turbine fuel.

(r) "Plume" means the area of groundwater containing concentrations of petroleum constituents or other regulated substances above Estimated Quantitation Limits as established in Test Methods for Evaluating Solid Waste (United States Environmental Protection Agency, Office of Solid Waste and Emergency Response, SW-846, Third Edition, as revised) or in an alternate method approved by EPD.

(s) "Regulated substance" means any substance defined in §101(14) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C., §9601, as amended by P.L. 99-499, 1986, et seq., and petroleum, including crude oil or any fraction thereof which is liquid at the standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute), but not including any substance regulated as a hazardous waste under the Georgia Hazardous Waste Management Act, O.C.G.A. 12-8-60, as amended.

(t) "Release" means any spilling, leaking, emitting, discharging, escaping, leaching, or disposing from an UST into groundwater, surface water, or subsurface soils.

(u) "Release Response" means, in addition to certain corrective action activities, those actions taken as initial response, initial abatement measures and site check, initial site characterization, and free product removal.

(v) "Responsibility for" means either the right or authority to close an UST or maintain and repair an UST or take action for compliance with all or part of the requirements of GUSTA and these Rules.

(w) "Terminal" means a bulk storage facility for storing petroleum products supplied by pipeline or marine vessel.

(x) "Third party liability" insofar as GUST Trust Fund usage is concerned means liability for bodily injury or property damage caused directly by a release of petroleum products from an underground storage tank; however, it does not include or mean any liability for bodily injury or property damage to the person or property of the owner of the real property on which the USTs are located.

1. As to bodily injury, specific physical bodily injury proximately resulting from exposure, explosion, or fire caused by the presence of a release from a regulated underground

storage tank and which is incurred by a person other than the owner or operator, the landlord of the owner or operator, employees or agent of an owner or operator, or employees or agents of the landlord of an owner or operator; and

2. As to property damage, actual physical damage or damage due to specific loss of normal use of property owned by a person other than either the owner or operator of an underground storage tank from which a release has occurred or the landlord of an owner or operator of the underground storage tank from which a release has occurred.

(y) "Trustee" means the Director of the Environmental Protection Division of the Department of Natural Resources.

(z) "Underground storage tank" or "UST" means any one or combination of tanks, including underground pipes connected thereto, which is used to contain an accumulation of regulated substances and the volume of which, including the volume of the underground pipes connected thereto, is 10 percent or more beneath the surface of the ground.

(aa) "UST system" or "Tank System" means an underground storage tank and its associated ancillary equipment and containment system, if any.

**(2) UST Exclusions.** The term "underground storage tank" or "UST" does not include any:

(a) Farm or residential tank of 1,100 gallons or less capacity used for storing motor fuel for noncommercial purposes;

(b) Tank used for storing heating oil for consumptive use on the premises where stored;

(c) Septic tank;

(d) Pipeline facility (including gathering lines) which is regulated under:

1. the Natural Gas Pipeline Safety Act of 1968 (49 U.S.C. App. 1671 et seq.), or

2. the Hazardous Liquid Pipeline Safety Act of 1979 (49 U.S.C. App. 2001 et seq.), or

3. which is an intrastate pipeline facility regulated under State laws comparable to the provisions of the law referred to in subparagraph (d)1. or (d)2. of this definition;

(e) Surface impoundment, pit, pond, or lagoon;

(f) Storm water or wastewater collection system;

(g) Flow-through process tank;

(h) Liquid trap or associated gathering lines directly related to oil or gas production and gathering operations;

(i) Storage tank situated in an underground area (such as a basement, cellar, mineworking, drift, shaft, or tunnel) if the storage tank is situated upon or above the surface of the floor;

(j) UST system holding hazardous wastes listed or identified under Subtitle C of the Solid Waste Disposal Act, or a mixture of such hazardous waste and other regulated substances;

(k) Wastewater treatment tank system that is part of a wastewater treatment facility regulated under section 402 or 307 (b) of the Clean Water Act;

(l) Equipment or machinery that contains regulated substances for operational purposes such as hydraulic lift tank and electrical equipment tank;

(m) UST system whose capacity is 110 gallons or less;

(n) UST system that contains a "de minimis" concentration of regulated substances;

(o) Emergency spill or overflow containment UST system that is expeditiously emptied after use; or

(p) Pipes connected to any tank which is described in subparagraphs (a) through (o) of this definition.

**(3) UST Deferrals.** 40 CFR §280.10 (c) and (d) (2000) are hereby incorporated by reference.

**(4) Lender Liability.** 40 CFR Part 280, Subpart I (2000), as added by 60 Fed. Reg. 173 (September 7, 1995), is hereby incorporated by reference.

Authority O.C.G.A. Section 12-13-1 et seq., as amended.

**391-3-15-.03 Confidentiality of Information.** Amended.

(1) Any records, reports, or information obtained from any person by the Director under these Rules shall be available to the public for inspection and copying at the expense of the person requesting copies, except that upon a showing satisfactory to the Director by any person that any records, reports, or information or any particular part thereof, to which the Director has access under these rules would, if made public, divulge information entitled to protection or confidentiality under GUSTA, the Director shall consider confidential such information or any particular portion thereof in accordance with the purposes of GUSTA. However, such records, reports, documents, or information may be disclosed to officers, employees or authorized representatives of the United States government or the State of

Georgia concerned with carrying out the terms of the Federal Act, or when required by any court in any proceedings under the Federal Act or under GUSTA.

(2) Any claim of confidentiality filed pursuant to this section must be asserted at the time of initial submission of the record, report, or information in question, or it shall be deemed waived.

(3) Any claim of confidentiality filed pursuant to this section must be accompanied by a statement of the legal basis supporting the claim of confidentiality.

Authority O.C.G.A. Section 12-13-1 et seq., as amended.

**391-3-15-.04 Interim Prohibition for Deferred UST Systems.** Amended. 40 CFR §280.11 (2000) is hereby incorporated by reference.

Authority O.C.G.A. Section 12-13-1 et seq., as amended.

**391-3-15-.05 UST Systems: Design, Construction, Installation and Notification.** Amended.

(1) 40 CFR Part 280, Subpart B (2000) is hereby incorporated by reference.

(2) For purposes of performance standards for new UST systems, as required in 40 CFR §280.20(d) (2000), any tank previously installed and subsequently removed must be re-certified by the manufacturer or by an authorized representative of the manufacturer or by a Georgia-registered Professional Engineer prior to installation as an UST.

(3) For purposes of notification of USTs, as required in 40 CFR §280.22 (2000), owners shall use forms as prescribed by the Director.

**(4) Annual Registration of USTs.**

(a) Initially on or before May 1, 1995, and annually thereafter on or before September 1, beginning September 1, 1996, the owner or operator of an UST for which notification should have previously been submitted pursuant to O.C.G.A. 12-13-13 and which has not been properly closed in accordance with 391-3-15-.11, but is in use or capable of being used, shall submit to EPD an annual UST notification.

(b) The annual UST notification shall be submitted by the UST owner for all USTs at all UST facilities on forms furnished by EPD and shall provide such information as may reasonably be required by EPD which, at a minimum, shall include:

1. Name and address of facility at which USTs are located;
2. Name and address of owner and current operator of USTs at the facility location in 1. above;

3. Size and identification of USTs at the facility location indicated in 1. above;

4. (i) Certification that the financial responsibility requirements of Rule 391-3-15-.12 have been met and the mechanism utilized to provide such financial responsibility; and

(ii) If the mechanism is the Georgia Underground Storage Tank Trust Fund, the financial assurance mechanism used for the \$10,000 deductible.

5. Changes in owners, operators, upgrades, replacement of UST systems and changes in service from either the initial notification form filed or from the last annual notification filed, whichever is later; and

6. Method of annual leak detection for lines and USTs.

(c) If an UST is brought into service during the year, a confirmation of annual UST notification for the facility for the year in which the UST was brought into service shall be issued by EPD after the receipt of the initial notification of USTs, as required under paragraph 391-3-15-.05(1).

(d) The confirmation of annual UST notification form, as provided by EPD, for each underground storage tank facility shall be conspicuously posted and displayed at each UST facility, an alternate location approved by EPD or a copy of such form shall be provided by the facility to each person placing regulated substances into the UST. It shall be a violation of O.C.G.A. 12-13-5 and these Rules to either fail to file an annual UST notification or to fail to conspicuously post and display the confirmation of the annual UST notification at an UST facility or provide a copy such that any person placing regulated substances in an UST can determine that the confirmation of annual UST notification is current.

(e) Beginning 180 days from the effective date of these Rules, no person may place a regulated substance in a regulated UST unless they have verified that the facility has a valid confirmation of annual UST notification form. Such verification shall be performed on or after September 1, 1995, and annually thereafter beginning on January 1 of each year.

Authority O.C.G.A. Section 12-13-1 et seq., as amended.

**391-3-15-.06 General Operating Requirements.** Amended. 40 CFR Part 280, Subpart C (2000) is hereby incorporated by reference.

Authority O.C.G.A. Section 12-13-1 et seq., as amended.

**391-3-15-.07 Release Detection.** Amended.

(1) 40 CFR Part 280, Subpart D (2000), is hereby incorporated by reference.

(2) Any owner or operator shall, upon request from EPD, certify on forms prescribed by the Director that the UST facility of the owner or operator is in compliance with release

detection requirements as promulgated in 40 CFR Part 280, Subpart D (2000).

Authority O.C.G.A. Section 12-13-1 et seq., as amended.

**391-3-15-.08 Release Reporting, Investigation, and Confirmation.** Amended. 40 CFR Part 280, Subpart E (2000) is hereby incorporated by reference.

Authority O.C.G.A. Section 12-13-1 et seq., as amended.

**391-3-15-.09 Release Response and Corrective Action for UST Systems Containing Petroleum.** Amended.

(1) 40 CFR Part 280, Subpart F (2000) is hereby incorporated by reference.

(2) Corrective action plans (CAPs), Part A for reporting completed release response activities and for summarizing the proposed site investigation, including a schedule for submittal of a CAP - Part B, and Part B for reporting the results of the site investigation and for summarizing the proposed soil and groundwater corrective action objectives and the activities required to meet those objectives, shall be submitted to the Division on such forms as provided by the Environmental Protection Division, Georgia Department of Natural Resources. The plans must include certifications by the UST owner or operator, in the format specified, that the plans are factual and meet all the criteria and requirements of these Rules and other environmental laws and regulations of the State of Georgia. The plans must also be stamped or sealed by a Georgia-registered Professional Engineer or Professional Geologist. The Corrective Action Plan - Part A shall be submitted in lieu of the initial abatement report, the initial site characterization report, and the free product removal report, as referenced by 40 CFR §§280.62(b), 280.63(b), and 280.64(d) (2000), respectively, and must be submitted to EPD within 60 days after release confirmation.

(3) A Corrective Action Plan - Part B must be submitted when one or more of the conditions listed in subparagraphs (a) through (e) below are encountered:

(a) Free product exceeds one-eighth inch (1/8") thickness or an alternate thickness, as required by EPD;

(b) Groundwater or surface water contamination exceeds federal and state in-stream water quality standards, as established by the Georgia Rules for Water Quality Control (Chapter 391-3-6, as amended);

(c) Groundwater contamination exceeds federal and state Maximum Contaminant Levels for Safe Drinking Water, and either;

(i) The plume is located in an area of average or higher groundwater pollution susceptibility, as defined by the Ground-Water Pollution Susceptibility Map of Georgia (Georgia Department of Natural Resources, Environmental Protection Division, Georgia Geologic Survey, 1992), within two (2) miles of a point of withdrawal for a public water

system, as defined in the Georgia Rules for Safe Drinking Water (Chapter 391-3-5, as amended), and/or within one-half (½) mile of a point of withdrawal for a non-public water system; or

(ii) The plume is located in an area of lower groundwater pollution susceptibility within one (1) mile of a point of withdrawal for a public water system and/or within one-quarter (¼) mile of a point of withdrawal for a non-public water system.

(d) Concentrations of volatile organic compounds and/or polynuclear aromatic hydrocarbons, as appropriate, in soil exceed:

(i) Threshold levels listed in Table A; or

(ii) Threshold levels listed in Table B; or

(iii) Alternate threshold levels, as approved by EPD.

**Table A  
Petroleum Constituents and Soil Threshold Levels<sup>a</sup>**

At UST corrective action sites where withdrawal points for public and non-public water supplies exist within distances defined in GUST Rule 391-3-15-.09(3):

CONSTITUENT	AVERAGE OR HIGHER GROUNDWATER POLLUTION SUSCEPTIBILITY AREA <sup>b</sup> (Where public water supplies exist within 2.0 miles and/or non-public supplies exist within 0.5 miles)		LOWER GROUNDWATER POLLUTION SUSCEPTIBILITY AREA <sup>c</sup> (Where public water supplies exist within 1.0 mile and/or non-public supplies exist within 0.25 mile)	
	.500 feet to withdrawal point	>500 feet to withdrawal point	.500 feet to withdrawal point	>500 feet to withdrawal point
VOLATILE ORGANIC COMPOUNDS				
Benzene <sup>g</sup>	0.005 mg/kg <sup>d</sup>	0.008 mg/kg	0.005 mg/kg <sup>d</sup>	0.71 mg/kg
Toluene	0.400 mg/kg	6.00 mg/kg	0.400 mg/kg	500.00 mg/kg
Ethylbenzene	0.370 mg/kg	10.00 mg/kg	0.500 mg/kg	140.00 mg/kg
Xylenes (total)	20.00 mg/kg	700.00 mg/kg	27.00 mg/kg	700.00 mg/kg
POLYNUCLEAR AROMATIC HYDROCARBONS				
Acenaphthene	N/A <sup>e</sup>	N/A <sup>e</sup>	N/A <sup>e</sup>	N/A <sup>e</sup>
Anthracene	N/A <sup>e</sup>	N/A <sup>e</sup>	N/A <sup>e</sup>	N/A <sup>e</sup>
Benz(a)anthracene	N/A <sup>e</sup>	N/A <sup>e</sup>	N/A <sup>e</sup>	N/A <sup>e</sup>
Benzo(a)pyrene	0.660 mg/kg <sup>d</sup>	N/A <sup>e</sup>	N/A <sup>e</sup>	N/A <sup>e</sup>
Benzo(b)fluoranthene	0.820 mg/kg <sup>d,f</sup>	N/A <sup>e</sup>	N/A <sup>e</sup>	N/A <sup>e</sup>
Benzo(g,h,i)perylene	N/A <sup>e</sup>	N/A <sup>e</sup>	N/A <sup>e</sup>	N/A <sup>e</sup>
Benzo(k)fluoranthene	1.60 mg/kg <sup>d,f</sup>	N/A <sup>e</sup>	N/A <sup>e</sup>	N/A <sup>e</sup>

Chrysene	0.660 mg/kg <sup>d</sup>	N/A <sup>e</sup>	N/A <sup>e</sup>	N/A <sup>e</sup>
Dibenz(a,h)anthracene	1.50 mg/kg <sup>d,f</sup>	N/A <sup>e</sup>	N/A <sup>e</sup>	N/A <sup>e</sup>
Fluoranthene	N/A <sup>e</sup>	N/A <sup>e</sup>	N/A <sup>e</sup>	N/A <sup>e</sup>
Fluorene	N/A <sup>e</sup>	N/A <sup>e</sup>	N/A <sup>e</sup>	N/A <sup>e</sup>
Indeno(1,2,3-c,d)pyrene	0.660 mg/kg <sup>d</sup>	N/A <sup>e</sup>	0.660 mg/kg <sup>d</sup>	N/A <sup>e</sup>
Naphthalene	N/A <sup>e</sup>	N/A <sup>e</sup>	N/A <sup>e</sup>	N/A <sup>e</sup>
Phenanthrene	N/A <sup>e</sup>	N/A <sup>e</sup>	N/A <sup>e</sup>	N/A <sup>e</sup>
Pyrene	N/A <sup>e</sup>	N/A <sup>e</sup>	N/A <sup>e</sup>	N/A <sup>e</sup>

- Based on worst-case assumptions for one-dimensional vadose zone and groundwater contaminant fate and transport models.
- Based on an assumed distance of 0.5 feet between contaminated soils and the water table.
- Based on an assumed distance of 5.0 feet between contaminated soils and the water table.
- Estimated Quantitation Limit. The health-based threshold level is less than the laboratory method limit of detection.
- Not applicable. The health-based threshold level exceeds the expected soil concentration under free product condition.
- In order to protect surface waters, the soil threshold level in Table B may supersede that found in Table A.
- In the presence of other petroleum contaminants in concentrations exceeding 1.0 mg/kg, the Estimated Quantitation Limit, and hence the soil threshold level, may be substantially greater, as approved by EPD.

**Table B  
Petroleum Constituents and Soil Threshold<sup>a</sup> Levels**

At other UST corrective action sites where withdrawal points for public and non-public water supplies do not exist within distances defined in GUST Rule 391-3-15-.09(3):

CONSTITUENT	AVERAGE OR HIGHER GROUNDWATER POLLUTION SUSCEPTIBILITY AREA <sup>b</sup>		LOWER GROUNDWATER POLLUTION SUSCEPTIBILITY AREA <sup>c</sup>	
	500 feet to sur- face water body	>500 feet to sur- face water body	500 feet to sur- face water body	>500 feet to sur- face water body
VOLATILE ORGANIC COMPOUNDS				
Benzene <sup>f</sup>	0.017 mg/kg	0.120 mg/kg	0.020 mg/kg	11.30 mg/kg
Toluene	115.00 mg/kg	500.00 mg/kg	135.00 mg/kg	500.00 mg/kg
Ethylbenzene	18.00 mg/kg	140.00 mg/kg	28.00 mg/kg	140.00 mg/kg
Xylenes (total)	700.00 mg/kg	700.00 mg/kg	700.00 mg/kg	700.00 mg/kg
POLYNUCLEAR AROMATIC HYDROCARBONS				
Acenaphthene	N/A <sup>e</sup>	N/A <sup>e</sup>	N/A <sup>e</sup>	N/A <sup>e</sup>
Anthracene	N/A <sup>e</sup>	N/A <sup>e</sup>	N/A <sup>e</sup>	N/A <sup>e</sup>
Benz(a)anthracene	0.660 mg/kg <sup>d</sup>	N/A <sup>e</sup>	N/A <sup>e</sup>	N/A <sup>e</sup>
Benzo(a)pyrene	0.660 mg/kg <sup>d</sup>	N/A <sup>e</sup>	N/A <sup>e</sup>	N/A <sup>e</sup>
Benzo(b)fluoranthene	0.660 mg/kg <sup>d</sup>	N/A <sup>e</sup>	N/A <sup>e</sup>	N/A <sup>e</sup>
Benzo(g,h,i)perylene	N/A <sup>e</sup>	N/A <sup>e</sup>	N/A <sup>e</sup>	N/A <sup>e</sup>

Benzo(k)fluoranthene	0.660 mg/kg <sup>d</sup>	N/A <sup>e</sup>	N/A <sup>e</sup>	N/A <sup>e</sup>
Chrysene	0.660 mg/kg <sup>d</sup>	N/A <sup>e</sup>	N/A <sup>e</sup>	N/A <sup>e</sup>
Dibenz(a,h)anthracene	0.660 mg/kg <sup>d</sup>	N/A <sup>e</sup>	N/A <sup>e</sup>	N/A <sup>e</sup>
Fluoranthene	N/A <sup>e</sup>	N/A <sup>e</sup>	N/A <sup>e</sup>	N/A <sup>e</sup>
Fluorene	N/A <sup>e</sup>	N/A <sup>e</sup>	N/A <sup>e</sup>	N/A <sup>e</sup>
Indeno(1,2,3-c,d)pyrene	0.660 mg/kg <sup>d</sup>	N/A <sup>e</sup>	0.660 mg/kg <sup>d</sup>	N/A <sup>e</sup>
Naphthalene	N/A <sup>e</sup>	N/A <sup>e</sup>	N/A <sup>e</sup>	N/A <sup>e</sup>
Phenanthrene	N/A <sup>e</sup>	N/A <sup>e</sup>	N/A <sup>e</sup>	N/A <sup>e</sup>
Pyrene	N/A <sup>e</sup>	N/A <sup>e</sup>	N/A <sup>e</sup>	N/A <sup>e</sup>

- a. Based on worst-case assumptions for one-dimensional vadose zone and groundwater contaminant fate and transport models.
- b. Based on an assumed distance of 0.5 feet between contaminated soils and the water table.
- c. Based on an assumed distance of 5.0 feet between contaminated soils and the water table.
- d. Estimated Quantitation Limit. The health-based threshold level is less than the laboratory method limit of detection.
- e. Not applicable. The health-based threshold level exceeds the expected soil concentration under free product condition.
- f. In the presence of other petroleum contaminants in concentrations exceeding 1.0 mg/kg, the Estimated Quantitation Limit, and hence the soil threshold level, may be substantially greater, as approved by EPD.

(e) EPD has determined that, because of unique geologic, hydrologic or other site-specific conditions, a Corrective Action Plan - Part B is necessary to adequately protect human health and the environment.

(4) If a Corrective Action Plan - Part B must be proposed in compliance with paragraph 391-3-15-.09(3) above, the full extent of groundwater and surface water contamination must be delineated and one or more of the following corrective action objectives for contaminated soil, surface water, and groundwater, as applicable, in subparagraphs (a) through (d) below must be proposed and implemented upon approval by EPD:

(a) Remediate soil contamination that exceeds the threshold levels listed in Table A or Table B or exceeds alternate threshold levels approved by EPD, as applicable;

(b) Remediate free product that exceeds one-eighth inch (1/8") thickness or an alternate thickness, as approved by EPD;

(c) Remediate groundwater contamination that exceeds federal and state Maximum Contaminant Levels where drinking water supplies exist within the distances defined in subparagraph (3)(c)(i) or (ii) above, as applicable, or that exceeds in-stream water quality standards, as applicable, or alternate concentration limits as required by EPD;

(d) Determine alternate concentration limits for soil and groundwater corrective action through the use of an appropriate risk assessment, as determined by EPD, that demonstrates that the objectives in (a) and (c) above are not necessary to protect human health and the environment. The request for alternate concentration limits must explain clearly and concisely how these alternate concentration limits will adequately protect

human health, safety, and the environment and shall not be utilized unless approved by EPD. Upon approval of proposed alternate concentration limits by EPD, the owner or operator must either:

1. Remediate contaminated soils and/or groundwater to approved alternate concentration limits and monitor the soils and/or the plume to validate and verify predictions of the risk assessment, including the natural degradation of petroleum contaminants, unless such monitoring is deemed unnecessary by EPD; or

2. If remediation of contaminated soils and/or groundwater is not necessary, monitor the soils and/or the plume to validate and verify predictions of the risk assessment, including the natural degradation of petroleum contaminants, unless such monitoring is deemed unnecessary by EPD;

(5) An owner or operator may transport or provide for transportation of petroleum contaminated soil only to storage, treatment or disposal facilities which have all applicable local, state and federal permits and such facility or facilities shall be designated in the applicable corrective action plan.

(6) Upon completion of corrective action, the UST owner or operator must certify in the completion report, in the format specified, that the CAP was implemented completely and correctly and that the objectives of the corrective action have been achieved.

(7) An owner or operator conducting a corrective action with funds from a source other than the Georgia Underground Storage Tank Trust Fund, may remediate contaminated soil or groundwater to more stringent objectives than those of paragraph 391-3-15-.09 (4) at the owner or operator's discretion.

(8) All determinations of petroleum contaminants in soil or groundwater must be performed in conformity with Test Methods for Evaluating Solid Waste (United States Environmental Protection Agency, Office of Solid Waste and Emergency Response, SW-846, Third Edition, as revised) or with an alternate method, as approved by EPD.

Authority O.C.G.A. Section 12-13-1 et seq., as amended.

**391-3-15-10 Release Response and Corrective Action for UST Systems Containing Hazardous Substances.** Amended.

The provisions of Rule 391-3-15-.09 shall apply, except that cleanup concentrations for leaked hazardous substances shall be equal to or less than the background level of that constituent in the soil or water immediately prior to the release of that constituent, as measured immediately upgradient of the UST and unaffected by the release, or an alternate concentration limit as established by EPD, or if a hazardous waste when leaked, in accordance with O.C.G.A. 12-8-60, the Georgia Hazardous Waste Management Act, as amended.

Authority O.C.G.A. Section 12-13-1 et seq., as amended.

**391-3-15-.11 Out-of-Service UST Systems and Closure.** Amended.

(1) 40 CFR Part 280, Subpart G (2000) is hereby incorporated by reference.

(2) The owner or operator, or past owner or operator, of an UST system, in service on or after January 1, 1974, but taken out of service or abandoned before December 22, 1988, must close the UST system, as required by EPD, in accordance with 40 CFR Part 280, Subpart G (2000).

(3) For all UST systems permanently closed after the effective date of these rules, a closure report, prepared on such forms as provided by EPD, must be submitted to EPD by the owner within 45 days of completion of closure.

Authority O.C.G.A. Section 12-13-1 et seq., as amended.

**391-3-15-.12 Underground Storage Tanks Containing Petroleum; Financial Responsibility Requirements.** Amended.

(1) 40 CFR §§280.90 - 280.99 and 280.102 - 280.111 (2000) are hereby incorporated by reference.

(2) An owner or operator may satisfy the requirements of financial responsibility, as described in 40 CFR §280.93 (2000), for underground storage tanks located in Georgia by participating in the liability limitations and reimbursement benefits of the Georgia Underground Storage Tank (GUST) Trust Fund, in accordance with Rule 391-3-15-.13.

Authority O.C.G.A. Section 12-13-1 et seq., as amended.

**391-3-15-.13 Georgia Underground Storage Tank (GUST) Trust Fund.** Amended.

**(1) Administration.**

**(a) Funding the GUST Trust Fund.**

**1. Environmental Assurance Fee (EAF).** In order to participate in the liability limitations and reimbursement benefits of the GUST Trust Fund, commencing on July 1, 1988, an UST owner or operator shall pay to EPD an EAF on each gallon of petroleum products imported into Georgia. The EAF was 0.1¢ per gallon from July 1, 1988, through September 30, 1991, and the EAF is 0.2¢ per gallon from October 1, 1991, through September 30, 1996, and the EAF is 0.5¢ per gallon effective October 1, 1996. This fee is established to assure the funding of emergency, preventive, or corrective actions necessary when public health or safety is, or potentially may be, threatened from a release of regulated substances from an UST and to provide compensation for third-party liability.

**(i) Point of EAF Collection.** This fee shall be collected by the terminal operator or jobber upon request of the UST owner or operator when the petroleum product is removed from a terminal, or if the petroleum product will never be stored in a terminal in Georgia, then by the importer thereof and paid to EPD. Proof of such payment shall be provided the UST owner or operator by the terminal operator or jobber. Exchanges of petroleum products on a gallon-for-gallon basis within a terminal shall be exempt from this fee. Petroleum product which is subsequently exported from Georgia is exempt from this fee. An UST owner or operator purchasing petroleum products from an out-of-state terminal operator or jobber must remit the EAF directly to EPD, unless the terminal operator or jobber agrees to remit the EAF for the owner or operator.

**(ii) Timetable for Remittance.** EAFs shall be remitted to EPD quarterly. Terminal operators remitting collected EAFs may be required to provide EPD with a list(s) of owners or operators who elected or declined payment of EAFs. Fees are due to EPD on the 20th day of each October, January, April, and July for the previous three-month period. The EAF payment shall be accompanied by such forms as may be prescribed by the Director. If a terminal operator, direct importer or direct pay owner or operator has good cause for an extension of time, he may apply to the Director for additional time to file his EAF payment. Such application must be made to the Director before the payment becomes delinquent and must state all facts giving rise to the necessity for additional time. If the Director grants an extension, such extension may not exceed 30 days.

**2. Civil Penalties.** All civil penalties recovered by the Director as provided in O.C.G.A. §12-13-19 shall be paid into the GUST Trust Fund.

**(b) Establishing GUST Trust Fund Eligibility.**

**1. Notification Requirements for UST Systems.** In order to participate in the GUST Trust Fund as a financial assurance mechanism, each owner or operator of an UST currently in use must have submitted notification forms as required in Rule 391-3-15-.05(3).

**2. Eligibility For Existing UST Systems.**

**(i) Initial Election.** All owners or operators of existing USTs who elect to participate in the GUST Trust Fund as a financial assurance mechanism under Rule 391-3-15-.12, as of July 1, 1988, must:

(I) pay the EAF on each gallon of petroleum product purchased after July 1, 1988; or

(II) the owner or operator purchasing petroleum product from an out-of-state terminal operator or jobber must remit the EAF for each gallon thus purchased after July 1, 1988 directly to EPD unless the terminal operator or jobber agrees to remit the EAF to EPD for the owner or operator; and

(III) report any known or suspected leaks from an existing UST.

Meeting these conditions automatically makes a tank owner or operator a participant in the GUST Trust Fund, and no specific notice to EPD is required to confirm such participation. Any tank owner or operator who elects not to participate in the GUST Trust Fund must make a written declaration of that election to the Director and to the terminal operator or jobber.

**(ii) Subsequent Election.** All owners or operators of existing USTs who elect to participate in the GUST Trust Fund as a financial assurance mechanism under Rule 391-3-15-.12, ninety (90) or more days after July 1, 1988, or who elect to participate in the GUST Trust Fund as a financial assurance mechanism under Rule 391-3-15-.12 after there has been an interruption in GUST Trust Fund participation subsequent to the initial or subsequent election to participate either by the current owner or operator or the current owner or operator's predecessor in title, must:

(I) perform and pass a tank system precision tightness test, the results of which must be acceptable to EPD;

(II) perform a site check of the UST site in accordance with 40 CFR §280.52(b) (2000), the results of which must be acceptable to EPD;

(III) remit to EPD all EAFs which would have been collected under the provisions of Rule 391-3-15-.13 (1)(b)2.(i), including an amount equal to any interest which would have accrued to those monies had they been remitted from July 1, 1988, or from the date of the interruption of participation in the GUST Trust Fund, as determined by EPD, provided there has not been a release of petroleum that has not been remediated in accordance with these Rules; and

(IV) comply with (b)2.(i) of this paragraph.

**(iii) Subsequent Election for New Owners or Operators.** Notwithstanding the foregoing, in subsection (ii) above, all owners or operators who acquire a new interest or ownership in existing USTs through purchase or other transfer of title which are not covered by the GUST Trust Fund as a financial assurance mechanism as provided under Rule 391-3-15-.12 at the time of the acquisition may elect to participate in the GUST Trust Fund as a financial assurance mechanism under Rule 391-3-15-.12 for those USTs so acquired. The new owner or operator, in order to participate in the GUST Trust Fund as a financial assurance mechanism under Rule 391-3-15-.12, must, within one (1) year from the date of acquisition:

(I) perform and pass a tank system precision tightness test, the results of which must be acceptable to EPD;

(II) perform a site check of the UST site in accordance with 40 CFR §280.52(b) (2000), the results of which must be acceptable to EPD;

(III) remit to EPD all EAFs from the date of the acquisition of the USTs by the new owner or operator under the provision of Rule 391-3-15-.13(1)(b)2.(i), provided that prior to the initial EAF payment herein there has not been a release of petroleum that has not been remediated in accordance with these Rules;

(IV) submit a sworn statement by the new owner that the owner from whom the USTs are being or were acquired has no controlling interest in the new owner; and

(V) comply with (b)2.(i) of this paragraph.

**3. Eligibility For New USTs Installed After July 1, 1988.** All owners or operators of new USTs who elect to participate in the GUST Trust Fund as a financial assurance mechanism under Rule 391-3-15-.12 must:

(i) comply with all requirements of Rule 391-3-15-.05; and

(ii) comply with all requirements under the provision of Rule 391-3-15-.13 (1)(b)2.(i).

**(c) Maintaining GUST Trust Fund Eligibility.** In order to maintain eligibility for GUST Trust Fund disbursements, all participating owners or operators of UST systems must satisfy the following requirements:

**1. Reporting Changes in UST Status.** The participating owner or operator shall notify EPD in writing of any of the following changes in UST status:

(i) change in ownership; or

(ii) closure.

**2. Payment of EAF.** Payment of EAFs must be made for each UST until such time as closure requirements are satisfied.

**3. Recordkeeping.** The participating owner or operator shall maintain the following records for each UST and make them available to EPD:

(i) records of any tank system tightness tests as required in 391-3-15-.13 (1)(b);

(ii) receipts for any and all EAF payments, whether remitted directly or indirectly to EPD;

(iii) records of compliance with release detection requirements per Rule 391-3-15-.07; and

(iv) proof of payment of EAFs as required by O.C.G.A. §12-13-18(a) for the time period prior to September, 2000, is presumed from the filing of the Annual Tank Registration form for 2001, in accordance with Rule 391-3-15-.05(4), indicating that the method of Financial Responsibility for the USTs at the time of filing was participation in the GUST Trust Fund as

provided in Rule 391-3-15-.12, if payment of the most recent EAF for the registered tank has been made. This presumption shall be overcome and no longer effective if payment of such fees cannot be verified by records of EPD, the station owner, the UST owner or operator, or the terminal operator, maintained in accordance with Rule 391-3-15-.13(1)(c)4.(i) or any other relevant provision of law.

(v) any records as may be required by EPD.

#### **4. Retention of Records.**

(i) All records identified in (c)3. above shall be retained for a period of thirty-six (36) months or until one of the following is accomplished, whichever comes first:

(I) ownership of an UST, and all records pertaining thereto, are transferred to a new owner for retention; or

(II) owner or operator is instructed otherwise by EPD.

**5. Reporting of Suspected Leaks or Spills.** The participating owner or operator shall report to EPD any suspected leak or spill of petroleum product.

**6. Loss of GUST Trust Fund Coverage.** Whenever the Director has reason to believe that a participating owner or operator has failed to maintain GUST Trust Fund eligibility pursuant to these Rules, the Director shall issue a notice of violation. The participating owner or operator shall have 30 days from receipt of such notice to provide evidence of compliance with all GUST Trust Fund eligibility requirements or take all necessary steps to correct such violation. If, after 30 days, the participating owner or operator fails to resolve the notice of violation, the Director shall issue a notice of termination of GUST Trust Fund eligibility. Within 60 days of such notice of termination, the owner or operator must provide an alternate financial assurance mechanism.

#### **(d) Amount and Scope of GUST Trust Fund Coverage.**

1. The GUST Trust Fund will provide, to participating owners or operators, coverage for release response and corrective action, as identified in 40 CFR Part 280, Subpart F (2000), and for compensation of third parties for bodily injury and property damage caused by accidental releases arising from operating regulated petroleum product USTs not to exceed \$1 million per occurrence cumulatively. For purposes of Rule 391-3-15-.13, the term "occurrence" shall mean any unexpected or unintended sudden or nonsudden release of petroleum product arising from operating an UST that results in a need for corrective action, bodily injury, or property damage.

(i) Any property owner shall not be considered a third-party claimant if the property was transferred to that property owner by the owner or operator of an underground storage tank after a release where damages could be reasonably anticipated;

(ii) Third-party liability property damage shall be reimbursed from the GUST Trust Fund based on the rental costs of comparable property during the period of loss of use up to a maximum amount equal to the fair market value. In the case of property that is actually destroyed as a result of a petroleum release, reimbursement shall be an amount necessary to replace or repair the destroyed property, whichever is less; and

(iii) Payments for third-party liability damages, as defined in these Rules, shall never exceed the amount of the GUST Trust Fund coverage as provided in these Rules for any owner or operator and shall not include payments for any claims for attorney's fees for third-party claimants or claims for punitive damages or mental anguish.

2. The GUST Trust Fund will provide, to participating owners or operators, annual aggregate coverage for release response and corrective action and for compensation of third parties for bodily injury and property damage caused by accidental releases arising from operating petroleum product USTs not to exceed cumulatively the following amounts:

(i) for participating owners or operators of one to 100 petroleum product USTs, \$1 million; and

(ii) for participating owners or operators of 101 or more petroleum product USTs, \$2 million.

3. The participating owner or operator shall be liable for the first \$10,000 of release response and corrective action costs and third party liability claims per occurrence and be totally responsible for any replacement or retrofitting or both of affected tanks and associated piping. The participating owner or operator must demonstrate financial responsibility for the first \$10,000 of release response and corrective action costs and third party liability claims per occurrence by an allowable financial assurance mechanism as described in 40 CFR §§280.95 - 280.99, 280.102, and 280.103 (2000).

4. The State of Georgia and the GUST Trust Fund shall have no liability for loss of business, damages, or taking of property associated with any release response or corrective action.

5. Whenever the trustee of the GUST Trust Fund determines that all costs eligible for payment, both release response and corrective action costs and third-party liability claims, may exceed the per-occurrence or aggregate coverages, the first priority for payment shall be the corrective action costs necessary to protect human health and the environment. The trustee shall pay third-party liability claims in the order in which the trustee received valid court orders under Rule 391-3-15-.13 (1)(h)2.

6. If a corrective action is to be conducted using funds from the Georgia Underground Storage Tank Trust Fund, the corrective action will not extend substantially beyond the target objectives of Rule 391-3-15-.09(4). If a participating owner or operator desires to have the corrective action scope go beyond these objectives, the owner or operator must

pay the difference in cost between those objectives and the owner or operator's alternative objectives.

**(e) Principal Disbursements.**

1. The principal of the monies deposited in such fund pursuant to O.C.G.A. §12-13-10 may be expended by the Director for the following purposes:

(i) to take whatever emergency action is necessary or appropriate to assure that the public health or safety is not threatened whenever there is a release or substantial threat of a release of regulated substances from an UST;

(ii) to take preventive or corrective actions where the release of the regulated substances presents an actual or potential threat to human health or the environment where the owner or operator has not been identified or where the owner or operator is unable, as determined by the Director, to perform corrective action, including, but not limited to, provisions for providing alternative water supplies;

(iii) to provide compensation for third-party liability;

(iv) to pay for any portion of the administrative cost of administering the GUST Trust Fund which exceeds the amount of interest earned on the corpus of such fund; provided, however, that no more than 10 percent of the fees collected annually pursuant to Subsection (a) of O.C.G.A. 12-13-10 shall be used for such purpose;

(v) to provide reimbursement to eligible, participating owners and operators who have conducted release response and corrective action; and

(vi) to provide payments to state contractors for eligible, participating owners and operators who are unable, as determined by the Director, to conduct corrective action for petroleum releases from USTs.

2. To encourage voluntary release response and corrective action, a participating owner or operator conducting such activities under these regulations, either through his own personnel or through response action contractors or subcontractors, is entitled to reimbursement of reasonable costs from the GUST Trust Fund, subject to the following provisions:

(i) subsequent to release response and prior to initiating additional corrective action, the participating owner or operator must submit to EPD a proposed Corrective Action Plan - Part A for release response activities completed and for proposal of site investigation activities, together with incurred and projected costs of the activities completed and proposed, respectively, and upon receipt of approval by EPD, shall promptly continue corrective action. Upon implementation and completion of the approved Corrective Action Plan - Part A and prior to initiating additional corrective action for soil and groundwater, the participating owner or operator must submit to EPD a proposed Corrective Action Plan -

Part B for site investigation reporting and for proposal of additional site activities, together with projected costs of those activities, and upon receipt of approval by EPD, shall promptly continue corrective action;

(ii) the participating owner or operator or his agents shall keep and preserve detailed records demonstrating compliance with the approved corrective action plans and all invoices and financial records associated with costs for which reimbursement will be requested;

(iii) upon receipt of a complete Corrective Action Plan - Part A, EPD shall make a determination and provide written notice as to whether the participating owner or operator responsible for corrective action is eligible or ineligible for reimbursement of costs. Should EPD determine the participating owner or operator is ineligible, it shall include in its written notice an explanation setting forth in detail the reasons for the determination;

(iv) the participating owner or operator shall submit to the Director, within 30 days of completing all corrective action, a completion report that corrective action has been completed;

(v) no later than 30 days from the submission of the completion report, the participating owner or operator must submit an application for reimbursement of costs in accordance with criteria established by EPD. The application for reimbursement must include the total cost of the corrective action and the amount of reimbursement sought;

(vi) the first \$10,000 of approved corrective action costs incurred by the participating owner or operator are not eligible for reimbursement from the GUST Trust Fund nor are costs for replacement or retrofitting of affected tanks and associated piping;

(vii) no costs may be reimbursed to the participating owner or operator until such time as corrective action has been completed in accordance with a plan approved by EPD. However, provisions for interim payments may be made if the corrective action is being conducted in accordance with a plan approved by EPD which allows interim payments; and

(viii) reimbursement of reasonable costs from the GUST Trust Fund shall be limited as provided in Rule 391-3-15-.13 (1)(d).

**(f) Cost Recovery.**

1. The participating owner or operator of an UST shall be liable for all costs of preventive, corrective, and enforcement actions incurred by the State of Georgia as a result of a release or a substantial threat of release of a petroleum product from an UST unless the participating owner or operator enters into a consent agreement as directed in O.C.G.A. §12-13-11(c). The provisions for cost recovery from owners or operators participating in the GUST Trust Fund are as follows:

(i) whenever costs have been incurred by EPD pursuant to Subsection (f) of O.C.G.A.

§12-13-9 or Subsection (b) of O.C.G.A. §12-13-11, for corrective action, the participating owner or operator shall be liable for the first \$10,000 per occurrence for corrective action; such funds to be paid into the GUST Trust Fund within 90 days of notice by the Director;

(ii) notwithstanding the provisions of Subsections (b) and (c) of O.C.G.A. §12-13-11, the participating owner or operator shall be liable for 100 percent of costs associated with preventive, corrective or enforcement actions necessary to protect human health or the environment, or for compensation of third-party liability claims, should EPD find that any of the following situations exist:

(I) the release was due to willful or negligent actions by the participating owner or operator;

(II) the participating owner or operator is in arrears for monies owed to the GUST Trust Fund;

(III) the participating owner or operator moves in any way to obstruct the efforts of EPD or its contractors to effectuate corrective action;

(IV) the participating owner or operator of a petroleum product UST has stored any petroleum product in such UST which has not been subjected to, nor paid any, EAF imposed in Subsection (a) of O.C.G.A. §12-13-10.

(iii) notwithstanding the provisions of Subsections (b) and (c) of O.C.G.A. §12-13-11, the participating owner or operator may be liable for up to 100 percent of costs associated with preventive, corrective or enforcement actions necessary to protect human health or the environment, or for compensation of third-party liability claims, should EPD find that any of the following situations exist:

(I) the release is from an UST not registered in accordance with O.C.G.A. §12-13-13;

(II) the participating owner or operator fails to comply with any provision of the consent agreement required by Subsection (c) of O.C.G.A. §12-13-11;

(III) the participating owner or operator has failed to comply with any provisions of GUSTA or these Rules and such failure has caused, contributed to or otherwise adversely affected the release, or when non-compliance has not directly contributed to or otherwise adversely affected a release and such non-compliance was not or has not been corrected in a timely fashion when directed to do so by the Director.

(iv) notwithstanding subparagraph (ii) or (iii) above, the participating owner or operator may not be liable for costs associated with preventive, corrective, or enforcement actions necessary to protect human health or the environment, or for compensation of third-party liability claims, should EPD find that the following exist:

(I) the source of the release is an UST system that was removed or abandoned prior to July 1, 1988, and is within close proximity, but not more than 200 feet, of an existing UST system owned or operated by a participant in the GUST Trust Fund, and the existing UST system is a replacement for the removed or abandoned UST system; or

(II) the current contamination from an existing UST system owned and operated by a participant in the GUST Trust Fund and another source cannot be differentiated, as determined by the Director.

2. Except as otherwise provided for in Subsection (c) of O.C.G.A. §12-13-11, in the event of any discharge or threatened discharge of a regulated substance, the State or any of its agencies may recover in a civil action from any owner, operator, or other responsible person all costs incurred by the State or any of its agencies or monies from the Federal Leaking Underground Storage Tank (LUST) Trust Fund in the assessment and the cleanup of any release of a regulated substance and all costs incurred in the prevention, abatement, or removal of any threatened discharge of a regulated substance, including reasonable attorney's fees and any other necessary costs of response incurred by the State or any of its agencies. All such monies recovered shall be deposited into the GUST Trust Fund. The State shall have a lien on the property of owners or operators until funds are paid.

**(g) Bankruptcy of GUST Trust Fund Participant.** Following the commencement of a voluntary or involuntary proceeding under the U. S. Bankruptcy Code, 11 U.S.C. §101 et seq., naming a participating owner or operator as debtor, EPD may file a claim against the participating owner or operator for the following, as necessary:

1. satisfaction of closure requirements; or
2. corrective action.

**(h) Third-Party Compensation Claims.** Subject to all other provisions of these Rules, the trustee of the GUST Trust Fund shall provide compensation for third-party liability claims only when:

1. the trustee has received notice of potential third-party liability from the participating owner or operator within sixty (60) days of the date the participating owner or operator is made aware of a claim or claimant, which notice shall contain particulars sufficient to identify the UST covered by the GUST Trust Fund financial assurance mechanism and other information with respect to the time, place and circumstances of the occurrence, as well as the names and addresses of the persons alleged to be injured and all available witnesses. Failure to timely give a notice in compliance herewith shall forfeit all rights of a participating owner or operator to have third-party compensation claims paid from the GUST Trust Fund; and

2. the trustee has received a valid final court order establishing a judgment against the participating owner or operator for bodily injury or property damage caused by an accidental release of petroleum products from an underground storage tank covered by the

GUST Trust Fund financial assurance mechanism and the trustee of the GUST Trust Fund determines that the participating owner or operator has not satisfied the judgment. However, there shall be no liability on the part of the GUST Trust Fund and the trustee thereof unless the trustee shall have been given timely notice by a participating owner or operator of any lawsuit filed by a potential third-party liability claimant, and the trustee has an opportunity to intervene in said lawsuit and defend on behalf of the participating owner or operator with the full cooperation and assistance of the participating owner or operator against any claim which might be asserted by a potential third-party liability claimant for bodily injury or property damage allegedly caused by an accidental release of petroleum products from an underground storage tank covered by the GUST Trust Fund financial assurance mechanism. There shall be no liability for the GUST Trust Fund under this provision should the participating owner or operator fail to provide notice to the trustee within fifteen (15) days of the service of a law suit against the participating owner or operator or fail to cooperate with the trustee in the defense against the claim or should the final judgment presented to the trustee be a default judgment.

**(2) Corrective Action.**

**(a) GUST Trust Fund Corrective Action for Participating Owners or Operators.**

**1. Reporting.** The participating owner or operator shall report to EPD any suspected leak or spill of petroleum product as required in 40 CFR §280.50 (2000), and the participating owner or operator must inform EPD in writing within sixty (60) days of the date of the confirmation of the release of an intent to file a claim for reimbursement against the GUST Trust Fund or an intent to obtain corrective action through the State contractor.

**2. Corrective Action by Participating Owner or Operator.**

**(i) Corrective Action Plan - Part A.** Subsequent to release response and prior to initiating additional corrective action, the participating owner or operator must submit to and receive approval from EPD for the proposed Corrective Action Plan - Part A, in accordance with the provisions of Rules 391-3-15-.09(2) and 391-3-15-.13(1)(e)2. Such corrective action plan shall, at a minimum:

(I) provide documentation of participation in the GUST Trust Fund, if not submitted previously;

(II) report completed release response activities;

(III) summarize the proposed site investigation including a projected schedule for submittal of a Corrective Action Plan - Part B; and

(IV) provide cost projections and a schedule of reimbursements for the proposed site investigation activities.

**(ii) Corrective Action Agreement.** Following approval by EPD of the Corrective Action Plan - Part A, the participating owner or operator will enter into a corrective action agreement with EPD, which shall, at a minimum:

(I) provide approval, if not granted previously to protect human health and the environment, for continuation of corrective action;

(II) confirm eligibility under the GUST Trust Fund;

(III) approve an estimated schedule of reimbursement; and

(IV) require submittal of a Corrective Action Plan - Part B, unless directed by EPD not to submit such plan.

**(iii) Corrective Action Plan - Part B.** Subsequent to completion of the site investigation proposed in the Corrective Action Plan - Part A and prior to initiating additional corrective action, the participating owner or operator must submit to and receive approval from EPD for the proposed Corrective Action Plan - Part B, in accordance with the provisions of Rules 391-3-15-.09(2) and 391-3-15-.13(1)(e)2. Such corrective action plan shall, at a minimum:

(I) report the results of the site investigation;

(II) summarize the proposed corrective action including projected schedules and corrective action objectives; and

(III) provide cost projections and a schedule of reimbursement for proposed corrective action activities.

(iv) The proposed scopes of work, schedules and cost projections submitted under the Corrective Action Plan - Part A and the Corrective Action Plan - Part B may be modified, and, if approved by EPD in writing, said approval shall amend the Corrective Action Agreement.

**3. Corrective Action by State.** If the participating owner or operator is unable, as determined by EPD, to perform corrective action, the participating owner or operator of an UST shall be liable for all costs incurred by the State of Georgia as a result of a release of a petroleum product from an UST unless the participating owner or operator enters into a consent agreement with the State as provided for in O.C.G.A. §12-13-11(c).

**(b) Other GUST Trust Fund Corrective Action.** Whenever the Director has reason to believe that there is or has been a release of a regulated substance into the environment from an UST, regardless of the time at which storage of such material occurred, and has reason to believe that such release poses a danger to human health or the environment, the Director may obtain corrective action for such release, utilizing funds from the GUST

Trust Fund, provided however, that corrective action for regulated substances other than petroleum products shall not be obtained by utilizing funds generated from EAFs.

Authority O.C.G.A. Section 12-13-1 et seq., as amended.

**391-3-15-14 Enforcement.** The enforcement of these Rules and Regulations shall be in accordance with the Georgia Underground Storage Tank Act and the Georgia Administrative Procedure Act. Such enforcement measures include, but are not limited to, administrative orders, court orders, injunctive relief, and civil penalties pursuant to these Acts.

Authority O.C.G.A. Section 12-13-1 et seq., as amended.

**391-3-15-15 Variances.** A variance may be granted by the Director only if it is consistent with the requirements of GUSTA and these Rules and consistent with the Federal Act and Regulations promulgated thereunder.

Authority O.C.G.A. Section 12-13-1 et seq., as amended.