

PROPOSED AMENDMENTS TO THE RULES OF THE
DEPARTMENT OF NATURAL RESOURCES
ENVIRONMENTAL PROTECTION DIVISION
RELATING TO UNDERGROUND STORAGE TANK MANAGEMENT,
CHAPTER 391-3-15

The Rules of the Department of natural Resources, Chapter 391-3-15, Underground Storage Tank Management are hereby amended, added to, repealed, repealed in part, revised, as hereinafter explicitly set for in the attached amendments, additions, partial repeals and revisions for specific Rules, or such subdivisions thereof as may be indicated.

[Note: Underlined text is proposed to be added. Lined-through text is proposed to be deleted.]

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

(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, as further amended by Public Law 109-58, 2005.

(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. The category of "Operator" is further classified and defined as either Operator A; Operator B; or Operator C, depending upon the level of control and training as required by section 9010(a) of the Solid Waste Disposal Act as amended by the Energy Policy Act of 2005 and the "Grant Guidelines To States For Implementing The Operator Training Provision of the Energy Policy Act of 2005" published by the federal Environmental Protection Agency in August 2007. Any reference in these Rules that does not designate a specific category of operator shall be deemed to include the persons defined as a "Class A Operator" and a "Class B Operator" unless specifically excluded. The specific criteria for classification of the Class A, B or C Operator are as follow:

- 1.) Class A Operator- An individual who has primary responsibility to operate and maintain the underground storage tank system. The Class A operator's responsibilities include managing resources and personnel to achieve and maintain compliance with UST regulatory requirements as required under these Rules or GUSTA.
- 2.) Class B Operator- An individual who has responsibility for implementing daily operations, maintenance and record keeping for one or more UST facilities. The Class B Operator's responsibilities include knowledge of release detection methods; release prevention equipment; all relevant equipment for compliance standards, record keeping; reporting requirements and training personnel for appropriate response to UST emergencies as required under these Rules or GUSTA.
- 3.) Class C Operator – An individual who is the first line of response to events indicating UST emergency conditions, including but not limited to, taking appropriate action in response to emergencies or alarms caused by spills or releases from an UST system.

(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. Sec. 12-13-1 et seq. **History.** Original Rule entitled “Definitions and Exclusions” adopted as ER. 391-3-15-0.14-.02. F. July 7, 1988; eff. July 1, 1988. **Amended:** Permanent Rule of same title adopted. F. Nov. 4, 1988; eff. Nov. 24, 1988. **Amended:** Rule retitled “Definitions, UST Exclusions, and UST Deferrals”. F. Jan. 29, 1990; eff. Feb. 18, 1990. **Amended:** F. Aug. 8, 1991; eff. Aug. 28, 1991. **Amended:** F. Dec. 17, 1992; eff. Jan. 6, 1993. **Amended:** F. Feb. 3, 1995; eff. Feb. 23, 1995. **Amended:** F. June 6, 1996; eff. June 26, 1996. **Amended:** F. Oct. 9, 2001; eff. Oct. 29, 2001. **Amended:** F. Mar. 18, 2008; eff. Apr. 7, 2008.

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

(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 recertified by the manufacturer or by an authorized representative of the manufacturer or by a Georgia-registered Professional Engineer and shall comply with the secondary containment requirements in accordance with 391-3-15-.07 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 Class A and Class B operators of USTs at the facility location in 1., immediately 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.

7. Verification that spill and overfill devices and, if applicable, corrosion protection mechanisms are properly installed and operationally functional.

8. Verification that all new or replaced USTs, piping or motor fuel dispensers have been properly installed and meet the secondary containment and interstitial monitoring requirements set forth in 391-3-15-.07.

(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. Sec. 12-13-1 et seq. **History.** Original Rule entitled "UST Systems: Design, Construction, Installation and Notification" adopted. F. Jan. 29, 1990; eff. Feb. 18, 1990. **Amended:** F. Aug. 8, 1991; eff. Aug. 28, 1991. **Amended:** F. Dec. 17, 1992; eff. Jan. 6, 1993. **Amended:** F. Feb. 3, 1995; eff. Feb. 23, 1995. **Amended:** F. June 6, 1996; eff. June 26, 1996. **Amended:** F. Oct. 9, 2001; eff. Oct. 29, 2001. **Amended:** F. Mar. 18, 2008; eff. Apr. 7, 2008.

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

(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 provisions 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; Rule 391-3-15-.06 and Rule 391-3-15-.07; 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 operator training and examination, release detection, secondary containment, interstitial monitoring and under dispenser containment requirements per Rule 391-3-15-.07 and 391-3-15-.16; 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 Funds;

(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 thirdparty 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 thirdparty 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. Sec. 12-13-1 et seq. **History.** Original Rule entitled "Georgia Underground Storage Tank (GUST) Trust Fund." adopted as ER. 391-3-15-0.14-.13. F. July 7, 1988; eff. July 1, 1988. **Amended:** Permanent Rule of same title adopted. F. Nov. 4, 1988; eff. Nov. 24, 1988. **Amended:** F. Jan. 29, 1990; eff. Feb. 18, 1990. **Amended:** F. Aug. 8, 1991; eff. Aug. 28, 1991. **Amended:** F. Dec. 17, 1992; eff. Jan. 6, 1993. **Amended:** F. Feb. 3, 1995; eff. Feb. 23, 1995. **Amended:** F. June 6, 1996; eff. June 26, 1996. **Amended:** F. Sept. 3, 1996; eff. Sept. 23, 1996. **Amended:** F. Oct. 9, 2001; eff. Oct. 29, 2001. **Amended:** F. Mar. 18, 2008; eff. Apr. 7, 2008

391-3-15-.16 Operator Responsibilities, Training and Examination.

(1) Responsibilities

(a) Each UST facility must have a Class A, Class B and Class C Operator designated for each UST system or group of UST systems and shall not operate without a designated operator for each class as herein defined. Should an operator in any class as herein defined either resign or be terminated for any reason, the UST facility must replace the vacated operator with another one in the same class within sixty (60) days or cease operations until such a replacement is designated. The Class A, Class B and Class C Operator may be the same person or multiple persons, provided the person designated to more than one operator class must be trained or meet the responsibilities for each operator class for which that person is designated. The Class A or B Operator does not have to be present at each UST facility at all times. For unmanned UST locations not open to the public where no attendant is present and each dispenser is either key or card controlled, each key or card holder shall be trained to the standards of a Class C Operator; provided however, the operators and owners of that facility are still responsible for the compliance requirements of the UST facility.

(b) In addition to those responsibilities for Class A Operators required by these Rules, the Class A Operator must ensure that appropriately trained individuals operate and maintain the UST systems; maintain appropriate records; conduct required emergency response activities and provide required financial responsibility documentation to EPD as required under these Rules. A Class A Operator must demonstrate to the satisfaction of the Director by passing an EPD authorized test that he or she has sufficient general knowledge of UST system requirements to be able to make informed decisions regarding UST compliance and be able to recognize if Class B or C operators are fulfilling the UST operation, maintenance, notification and record keeping requirements of these Rules and GUSTA, including, but not limited to, spill prevention, overfill prevention, release detection, corrosion protection, emergency response, product compatibility, release and suspected release reporting, temporary and permanent closure requirements, financial responsibility requirements, notification requirements and operator training requirements, for UST facilities as required by these Rules.

(c) In addition to those responsibilities for Class B Operators required by these Rules, the Class B Operator must demonstrate to the satisfaction of the Director through passing an appropriate test as established by EPD a sufficient knowledge of all UST system requirements indicating that he or she can make informed decisions and implement the UST operational, maintenance, notification and reporting requirements of these Rules and GUSTA, including, but not limited to UST system components, UST system component construction, methods of release detection and prevention, corrosion protection, emergency response requirements, product compatibility, reporting and record keeping requirements, delivery prohibition

requirements and Class C Operator training requirements, as required by these Rules.

(d) In addition to those responsibilities for Class C Operators as are required by these Rules, the Class C Operator must demonstrate to the satisfaction of the Director, through passing appropriate examination as established by EPD, a sufficient knowledge of all UST system requirements indicating that he or she can make informed decisions and take appropriate actions in response to emergencies or alarms caused by spills or releases from an UST system.

(2) Training

(a) No later than August 8, 2012, all Class A and Class B Operators of all UST systems regulated under these Rules are required to pass a written examination corresponding to their respective operator classification known as the Georgia UST Operator Examination, as authorized and amended periodically by the Director, which shall determine that the person being tested has the knowledge and skills necessary to be considered as competent to operate UST systems at the operator level for which they have been designated and tested. The Director shall periodically publish the name of the test administrator, contact information, testing locations, testing frequency and a list of the guidance documents and training materials on which the test will be based. The Director shall approve the content of any tests administered by the approved test administrator and the curriculum of any UST operator training courses. This testing of Class A and B Operators must be accomplished for all Class A and B Operators for any UST facility as identified on the Annual Tank Registration as required under Rule 391-3-15-.05 (4) (b) 2.

(b) Should any Class A or Class B Operator take the Georgia UST Operator Examination and fail to pass the same as certified to the EPD by the test administrator, the operator shall attend and successfully complete an UST Operator training course of the operator's choice; provided, the curriculum of which is based on the list of the guidance documents and training materials as periodically identified by the Director. After successful completion of an UST operator training course, evidenced by appropriate documentation presented to the Georgia UST Operator Test administrator, the operator will be required to retake and pass the Georgia UST Operator Examination.

(c) Fees for the initial and retake of the Georgia UST Operator Examination shall be as set by the test administrator and shall be payable to the test administrator. Fees for training courses shall be set by the training course providers and shall be payable to the training provider.

(d) After August 8, 2012, all new Class A and Class B operators, if not already certified as trained, or subject to the reciprocity provisions hereof, shall be required to pass the Georgia UST Operators Examination within 30 days of taking responsibility of a UST system. After satisfactorily passing the Georgia

Underground Storage Tank Operators Exam, the Class A or Class B Operator shall be issued a Certificate from the approved test administrator indicating the name of the test applicant, operator category of the test and the date of the test, which certificate shall expire seven (7) years from the date of issue.

(e) By no later than August 8, 2012, Class C Operators shall receive training in the responsibilities of that class prior to assuming responsibilities of that position. Class C operators shall be trained in the responsibilities of that class by either the Class A or Class B Operators for that facility. The method and curriculum used to train the Class C operator shall be kept onsite at the UST facility and shall specifically identify which employees are considered Class C operators and which have received the Class C operator training. After August 8, 2012 any Class C operator if not already certified as trained shall be trained as required herein before taking responsibility for a UST system.

(3) Retraining

(a) All Class (A) and Class (B) operators shall be required to retake and pass the Georgia UST Operator Examination once every seven (7) years.

(b) Should EPD determine that a UST facility is out of compliance with significant operational compliance requirements for release detection and release prevention requirements, or financial assurance responsibility requirements as provide in these Rules, the EPD shall require the Class A or Class B operator be trained and re-tested at a minimum for the criteria in which the UST facility was determined to be out of significant operational compliance.

(c) A Certificate of Training may be granted at the discretion of the Director to operators who have received certification from other States whose UST rules are compatible with these Rules and have an approved EPA operator training program and provide reciprocity to Georgia operators in that State .

(4) Revocation of Certification

The Director may investigate the actions of any operator and may revoke or suspend the certificate of an operator when it is found by the Director that in obtaining such certificate the operator has practiced fraud or deception; or that reasonable care, judgment, or the application of knowledge or ability was not used in the performance of the operator's duties; or that the operator is incompetent or unable to perform his duties properly.

(5) Violations

It shall be a violation of these Rules for any UST owner to operate or allow to be operated any UST facility owned by that owner without a Class A, Class B or Class C operator being designated and existing for said UST facility as prescribed by these Rules. If any UST owner operates or allows to be operated any UST facility in violation of this Rule, 391-3-15-.16, the current Annual Tank Registration Certificate issued by EPD as required by Rule 391-3-15-.05 may be revoked by the Director.