

CHAPTER 23.1-04.1

ABOVEGROUND STORAGE TANK REGULATIONS

23.1-04.1-01. Definitions.

For purposes of this chapter:

1. "Aboveground storage tank" means any one or a combination of aboveground containers, vessels, or enclosures, including associated piping or appurtenances used to store an accumulation of refined petroleum products that is not an underground storage tank as defined in chapter 23.1-04. The term does not include a:
 - a. Farm or residential tank 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 and breakout tanks, regulated under:
 - (1) The Natural Gas Pipeline Safety Act of 1968 [Pub. L. 90-481].
 - (2) The Hazardous Liquid Pipeline Safety Act of 1979 [Pub. L. 96-129, 49 U.S.C. 60101 et seq.].
 - (3) An interstate pipeline facility regulated under state laws comparable to the provisions of law in paragraph 1 or 2.
 - (4) Title 49, Code of Federal Regulations, part 195.
 - e. Surface impoundment, pit, pond, lagoon, storm water collection system, or wastewater collection system.
 - f. Flow-through process tank or vapor recovery unit tank.
 - g. Liquid trap or associated gathering lines directly related to oil or gas production and gathering operations.
 - h. Tank owned by the federal government.
 - i. Tank used for the transportation of petroleum.
 - j. Tank with a capacity under one thousand three hundred twenty gallons [4996.73 liters] used to store lubricating oil.
 - k. Tank used to store ethanol or biodiesel for wholesale purposes with a capacity greater than twenty thousand gallons [75708.24 liters].
 - l. Tank that is located at or is part of a terminal, midstream facility, petrochemical plant, syngas plant, fertilizer plant, petroleum or renewable fuels refinery, electric energy conversion facility, electric transmission related facility, and associated transloading facility.
 - m. Tank, liquid trap, gathering line, or other facility associated with exploration, development, or production of oil, gas, or geothermal resources controlled under title 38.
 - n. Asphalt tank.
 - o. Storage tank situated in an underground area, including a basement, cellar, mine, mine drift, mine shaft, or mine tunnel, if the storage tank is situated upon or above the surface of the floor.
 - p. Propane storage tank.
 - q. Tank used to fuel or service rail locomotives, rail equipment, or coal mining equipment.
 - r. Portable tank.
 - s. Tank under subdivision d or l of subsection 13 of section 23.1-12-02, unless the owner or operator registers the tank and is eligible for reimbursement under the petroleum release compensation fund.
2. "Department" means the department of environmental quality.
3. "Disposal" means the discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste or hazardous waste into or on any land or water so the solid waste or hazardous waste or any hazardous constituent of the waste may enter the environment or be emitted into the air or discharged into any waters, including ground water.

4. "Electric energy conversion facility" means a plant, addition, or combination of a plant and addition, designed for or capable of wind energy generation, or any means of energy generation, and the plant associated facilities.
5. "Electric transmission related facility" means an electric transmission line and associated facilities designed for transmission of generated electricity, or a facility used for utility-scale storage of electricity and connected or adjacent to an electric transmission facility or facility controlled by or serving a utility with electric energy transmission, and distribution equipment and materials.
6. "Facility" means all contiguous land and structures, other appurtenances, and improvements on the land used for storing a regulated substance. A facility may consist of several contiguous storage or operational units.
7. "Midstream facility" means a facility that receives petroleum products by pipeline or by truck. The term does not include a retailer or end user.
8. "Operator" means a person in control of, or having responsibility for, the daily operation of an aboveground storage tank.
9. "Owner" means a person who holds title to, controls, or possesses an interest in the aboveground storage tank.
10. "Petroleum" means:
 - a. Gasoline or petroleum products as defined in chapter 23.1-13;
 - b. Constituents of gasoline or fuel oil under subdivision a; and
 - c. Oil sludge and oil refuse.
11. "Portable tank" means a storage tank and storage tank piping or wiring that is not stationary or affixed, including a tank on skids.
12. "Refined petroleum products" means gasoline, kerosene, heating oils, diesel fuels, and other compounds as defined by the department.
13. "Release" means any spilling, leaking, emitting, discharging, escaping, leaching, or disposing from an aboveground storage tank into the environment, including ground water, surface water, or subsurface soils.
14. "Terminal" means a refined petroleum product storage and distribution facility that is supplied directly by pipeline and from which the refined petroleum product may be removed from the rack.
15. "Utility" means a person engaged in and controlling electric generation, transmission of electric energy, or the transmission of water from or to any electric energy conversion facility.

23.1-04.1-02. Powers and duties of the department.

The department shall:

1. Administer and enforce this chapter.
2. Administer aboveground storage tank programs under this chapter.
3. Adopt, modify, repeal, and enforce rules governing the aboveground storage tanks.
4. Enter agreements with other local, state, or federal agencies regarding responsibilities for regulating aboveground storage tanks to promote consistency in enforcement and avoid duplication in regulation.

23.1-04.1-03. Aboveground storage tank regulations.

The department shall adopt rules:

1. For maintaining a leak detection method or combination of methods designed to identify releases in a manner consistent with the protection of human health and the environment.
2. For maintaining records of any monitoring of a leak detection system, inventory control system, or tank testing system.
3. For reporting of any releases and corrective action taken in response to a release from an aboveground storage tank.
4. For taking corrective action in response to a release from an aboveground storage tank.

5. For the closure of an aboveground storage tank to prevent a release of regulated substances into the environment.
6. For designation of an aboveground tank as ineligible for delivery.
7. For maintaining evidence of financial responsibility for taking corrective action and compensating third parties for bodily injury and property damage caused by sudden and nonsudden accidental releases arising from operating an aboveground storage tank.
8. Establishing standards for construction and performance of new aboveground storage tanks.
9. For notifying the department or designated local agency of the existence of any operational or nonoperational aboveground storage tank.
10. For a permit fee system to own, install, or operate an aboveground storage tank.

23.1-04.1-04. Fees - Deposit in operating fund.

The department by rule may provide for the payment and collection of reasonable fees for the issuance of permits for registering, licensing, or permitting aboveground storage tanks. The permit fees must be based on the anticipated cost of filing and processing the application, taking action on the requested permit, and conducting a monitoring and inspection program to determine compliance or noncompliance with the permit. Any moneys collected for permit licensing fees must be deposited in the department operating fund in the state treasury and any expenditure from the fund is subject to appropriation by the legislative assembly.

23.1-04.1-05. Inspections - Right of entry.

To develop or enforce any rule authorized by this chapter or enforce a requirement of this chapter, any duly authorized representative or employee of the department may, upon presentation of appropriate credentials, at any reasonable time:

1. Enter any place, facility, or site at which an aboveground storage tank is located.
2. Inspect and obtain samples of any substance the department has reason to believe may be regulated by this chapter.
3. Inspect and copy any records, reports, information, or test results relating to the purposes of this chapter.

23.1-04.1-06. Imminent hazard.

Upon receipt of information that a release from an aboveground storage tank may present an imminent and substantial endangerment to health or the environment, the department may take emergency action as necessary to protect health or the environment.

23.1-04.1-07. Enforcement penalties.

1. If the department finds a person is in violation of a permit, rule, standard, or requirement of this chapter, the department may issue an order requiring the person to comply with the permit, rule, standard, or requirement, and the department may bring an action for a civil penalty, including an action for injunctive relief. An action under this chapter must be brought in the district court for the county in which the violation occurred or in which the party in violation has the party's residence or principal office.
2. A person that violates a provision of this chapter or any rule, standard, or permit condition adopted under this chapter is subject to a civil penalty not to exceed twelve thousand five hundred dollars per day of violation. Each day of noncompliance constitutes a separate violation for purposes of penalty assessments.
3. A person that knowingly makes a false statement or representation in documentation required by this chapter is subject to a civil penalty not to exceed twelve thousand five hundred dollars per violation.
4. An administrative action brought under this chapter must be conducted in accordance with chapter 28-32.