

## § 680 REGULATION OF UNDERGROUND STORAGE TANKS

### § 680.1 Purpose.

**The purpose of the Underground Storage Tank (UST) Component of the Apache Tribe of Oklahoma is to develop and implement a tribal UST release detection, prevention, and corrective action mechanism under Subtitle I of the Resource Conservation and Recovery Act (RCRA).**

### § 680.11 Responsible Agency/Program.

**The Apache Tribe Environmental Program shall have the authority to develop a UST component as part of the environmental program.**

### § 680.12 Definitions.

*Underground Storage Tank* 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 per cent or more beneath the surface of the ground.

*Regulated substance* means:

(a) any substance defined in section 101(14) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) of 1980 (but not including any substance regulated as a hazardous waste under subtitle C), and

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

*Owner* means:—

(a) in the case of an UST system in use on November 8, 1984, or brought in after that date, any person who owns an UST system used for storage, use, or dispensing of regulated substances; and

(b) in the case of any underground storage tank in use before November 8, 1984, but no longer in use on that date, any person who owned such tank immediately before the discontinuation of its use.

*Operator* means any person in control of, or having responsibility for, the daily operation of the UST system.

*Release* means any spilling, leaking, emitting, discharging, escaping, leaching, or disposing from an UST into ground water, surface water or subsurface soils.

*Non-operational storage tank* means any underground storage tank in which regulated substances will not be deposited or from which regulated substances will not be dispensed after November 8, 1984.

*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).

**Comment § 680**

Legislative history

Federal

analog: 42 USC Sec. 6991

**§ 680.22 Notification.**

(a) Within 18 months after October 1, 1994, each owner of an underground storage tank shall notify the ATEP of the existence of such tank, specifying the age, size, type, location, and uses of such tank.

(b)(1) For each underground storage tank taken out of operation after October 1, 1994, the owner of such tank shall, within 18 months after October 1, 1994, notify the ATEP of the existence of such tanks (unless the owner knows the tank subsequently was removed from the ground). The owner of a tank taken out of operation on or before January 1, 1994, shall not be required to notify the state or local agency under this subsection.

(b)(2) Notice under subparagraph (a) shall specify, to the extent known to the owner -

- (i) the date the tank was taken out of operation,
- (ii) the age of the tank on the date taken out of operation,
- (iii) the size, type and location of the tank, and
- (iv) the type and quantity of substances left stored in such tank on the date taken out of operation.

(1) Any owner which brings into use an underground storage tank after the initial notification period specified under paragraph (1), shall notify the ATEP within 30 days of the existence of such tank, specifying the age, size, type, location and uses of such tank.

(c) Notification storage shall be with the ATEP, who shall make two separate inventories of all UST on the lands of the Apache Tribe containing regulated substances. One inventory shall be made with respect to petroleum and one with respect to other regulated substances. In making such inventories, the ATEP may utilize and aggregate the data in the notification forms submitted pursuant to subsections (a) and (b) of this section.

**Comment § 680.22**

Legislative history

Federal analog: 42 USC Sec. 6991b

**§ 680.4 RELEASE DETECTION, PREVENTION, AND CORRECTION REGULATIONS.**

**(a) Regulations.**

The ATEP, after notice and opportunity for public comment, and at least three months before the effective dates specified in subsection (f) of this section, shall promulgate release detection, prevention, and correction regulations applicable to all owners and operators of underground storage tanks, as may be necessary to protect human health and the environment. These regulations shall be at least as stringent as the federal regulations in this area.

**(b) Distinctions in regulations.**

In promulgating regulations under this section, the ATEP may distinguish between types, classes, and ages of underground storage tanks. In making such distinctions, the ATEP may take into consideration factors, including, but not limited to: Location of the tanks, soil and climate conditions, uses of the tanks, history of maintenance, age of the tanks, current industry recommended practices, national consensus codes, hydrogeology, water table, size of the tanks, quantity of regulated substances periodically deposited in or dispensed from the tank, the technical capability of the owners and operators, and the compatibility of the regulated substance and the materials of which the tank is fabricated.

**(c) Requirements.**

The regulations promulgated pursuant to this section shall include, but need not be limited to, the following requirements respecting all UST:

- (1) requirements for maintaining a leak detection system, an inventory control system together with tank testing, or a comparable system or method designed to identify releases in a manner consistent with the protection of human health and the environment;
- (2) requirements for maintaining records of any monitoring or leak detection system or inventory control system or tank testing or comparable system;
- (3) requirements for reporting of releases and corrective action taken in response to a release from an underground storage tank;
- (4) requirements for taking corrective action in response to a release from an underground storage tank;
- (5) requirements for the closure of tanks to prevent future releases of regulated substances into the environment; and
- (6) requirements for maintaining evidence of financial responsibility for taking corrective action and compensating third parties for bodily injury and property damage caused by sudden and non-sudden accidental releases arising from operating an underground storage tank.

**(d) Financial Responsibility.**

- (1) Financial responsibility required by this subsection may be established in

accordance with regulations promulgated by the ATEP by any one, or any combination, of the following: insurance, guarantee, surety bond, letter of credit, qualification as a self-insurer or any other method satisfactory to the ATEP. In promulgating requirements under this subsection, the ATEP is authorized to specify policy or other contractual terms, conditions, or defenses which are necessary or are unacceptable in establishing such evidence of financial responsibility in order to effectuate the purposes of this subchapter.

(2) In any case where the owner or operator is in bankruptcy or reorganization, or other arrangement pursuant to the Federal Bankruptcy Code or where with reasonable diligence jurisdiction in any state court or the federal courts cannot be obtained over an owner or operator likely to be insolvent at the time of judgment, any claim arising from conduct for which evidence of financial responsibility must be provided under this subsection may be asserted directly against the guarantor or surety providing such evidence of financial responsibility. In the case of any action pursuant to this paragraph such guarantor shall be entitled to invoke all rights and defenses which would have been available to the owner or operator if any action had been brought against the owner or operator by the claimant and which would have been available to the guarantor if an action had been brought against the guarantor by the owner or operator.

(3) The total liability of any guarantor shall be limited to the aggregate amount which the guarantor has provided as evidence of financial responsibility to the owner or operator under this section. Nothing in this subsection shall be construed to limit any other state, federal or Apache Tribe statutory, contractual or common law liability of a guarantor to its owner or operator including, but not limited to, the liability of such guarantor for bad faith either in negotiating or in failing to negotiate the settlement of any claim. Nothing in this subsection shall be construed to diminish the liability of any person under other sections of Apache Tribe law.

(4) For the purpose of this subsection, the term 'guarantor' means any person, other than the owner or operator, who provides evidence of financial responsibility for an owner or operator under this subsection.

(5)(A) The ATEP, in promulgating financial responsibility regulations under this section, may establish an amount of coverage for particular classes or categories of underground storage tanks containing petroleum which shall satisfy such regulations and which shall not be less than the current federal guidelines for each occurrence with an appropriate aggregate requirement.

(5)(B) The ATEP may set amounts lower than the amounts required by subparagraph (a) of this paragraph for underground storage tanks containing petroleum which are at facilities not engaged in petroleum production, refining, or marketing and which are not used to handle substantial quantities of petroleum.

(5)(C) In establishing classes and categories for purposes of this paragraph, the ATEP may consider the following factors:

(i) The size, type, location, storage, and handling capacity of underground storage tanks in the class or category and the volume of petroleum handled by such tanks.

- (ii) The likelihood of release and the potential extent of damage from any release from underground storage tanks in the class or category.
- (iii) The economic impact of the limits on the owners and operators of each such class or category, particularly relating to the small business segment of the petroleum marketing industry.
- (iv) The availability of methods of financial responsibility in amounts greater than the amount established by this paragraph.
- (v) Such other factors as the ATEP deems pertinent.

**(e) New tank performance standards.**

The ATEP may, not later than three months prior to the effective date, specified in subsection (f) of this section, issue performance standards for underground storage tanks brought into use on or after the effective date of such standards. The performance standards for new underground storage tanks shall include, but need not be limited to, design, construction, installation, release detection, and compatibility standards. These standards shall be at least as stringent as their federal counterparts.

**(f) Effective dates.**

All regulations, rules and standards issued pursuant to this section shall be effective October 1, 1994.

**(g) Interim prohibition.**

(1) Until the effective date of the standards promulgated by the ATEP no person may install an underground storage tank for the purpose of storing regulated substances unless such tank (whether of single or double wall construction):

(1)(A) will prevent releases due to corrosion or structural failure for the operational life of the tank;

(1)(B) is cathodically protected against corrosion, constructed of non-corrodible material, steel clad with a non-corrodible material, or designed in a manner to prevent the release or threatened release of any stored substance; and

(1)(C) the material used in the construction or lining of the tank is compatible with the substance to be stored.

(2) Notwithstanding paragraph (1), if soil tests conducted in accordance with ASTM Standard G57-78, or another standard approved by the ATEP, show that soil resistivity in an installation location is 12,000 ohm/cm or more (unless a more stringent standard is prescribed by the ATEP by rule), a storage tank without corrosion protection may be installed in that location during the period referred to in paragraph (1).

**(h) Apache Tribe Environmental Program response measures for petroleum.**

(1) Before regulations - Before the effective date of regulations under subsection (c) of this section, the ATEP is authorized to:

(1)(A) require the owner or operator of an underground storage tank to undertake corrective action with respect to any release of petroleum when the AT EPC determines that such corrective action will be done properly and promptly by the owner or operator of the underground storage tank from which the release occurs; or

(1)(B) undertake corrective action with respect to any release of petroleum into the environment from an underground storage tank if such action is necessary, in the judgment of the ATEP to protect human health and the environment.

The corrective action undertaken or required under this paragraph shall be such as may be necessary to protect human health and the environment. The ATEP shall request funds from the Leaking Underground Storage Tank Trust Fund for payment of costs incurred for corrective action under subparagraph (b), enforcement action under subparagraph (a), and cost recovery under paragraph (6) of this subsection.

(2) After regulations

Following the effective date of regulations under subsection(c) of this section, all actions or orders of the ATEP described in paragraph (1) of this subsection shall be in conformity with such regulations. Following such effective date, the ATEP may undertake corrective action with respect to any release of petroleum into the environment from an underground storage tank only if such action is necessary, in the judgment of the ATEP to protect human health and the environment and one or more of the following situations exists:

(2)(A) No Person can be found, within 90 days or such shorter period as may be necessary to protect human health and the environment, who is -

- (i) an owner or operator of the tank concerned,
- (ii) subject to such corrective action regulations, and
- (iii) capable of carrying out such corrective action properly.

(2)(B) A situation exists which requires prompt action by the ATEP under this paragraph to protect human health and the environment.

(2)(C) Corrective action costs at a facility exceed the amount of coverage required by the ATEP pursuant to the provisions of subsections (c) and (d) (5) of this section and, considering the class or category of underground storage tank from which the release occurred, expenditures from the Leaking Underground Storage Tank Trust Fund or other Apache Tribe funds are necessary to assure an effective corrective action.

(2)(D) The owner or operator of the tank has failed or refused to comply with an order of the ATEP under this subsection.

(3) Priority of Corrective actions

The ATEP shall give priority in undertaking corrective actions under this subsection, and in issuing orders requiring owners or operators to undertake such actions, to releases of petroleum from underground storage tanks which pose the greatest threat to human health and the environment.

(4) Corrective action orders

The ATEP is authorized to issue orders to the owner or operator of an underground storage tank to carry out subparagraph (A) of paragraph (1) or to carry out regulations issued under subsection (c)(4) of this section.

(5) Allowable Corrective Actions.

The corrective actions undertaken by the ATEP under paragraph (1) or (2) may include recommendation of temporary or permanent relocation of residents and alternative household water supplies. In connection with the performance of any corrective action under paragraph (1) or (2), the Administrator may undertake an exposure assessment as defined in paragraph (10) of this subsection or provide for such an assessment in a cooperative agreement with a state pursuant to paragraph (7) of this subsection. The costs of any such assessment may be treated as corrective action for purposes of paragraph (6), relating to cost recovery.

(6) Recovery of costs.

Whenever costs have been incurred by the ATEP for undertaking corrective action or enforcement action with respect to the release of petroleum from an underground storage tank, the owner or operator of such tank shall be liable to the AT EPC.

**(I) Effect on liability.**

(1) No transfers of liability.

No indemnification, hold harmless, or similar agreement or conveyance shall be effective to transfer from the owner or operator of any underground storage tank or from any person who may be liable for a release or threat of release under this subsection, to any other person the liability imposed under this subsection. Nothing in this subsection shall bar any agreement to insure, hold harmless, or indemnify a party in such agreement for any liability under this section.

(2) No bar to cause of action.

Nothing in this subsection, including the provisions of clause (I) of this subparagraph, shall bar a cause of action than an owner or operator or any other person subject to liability under this section, or a guarantor, has or would have, by reason of subrogation or otherwise against any person.

Facility

For purposes of this paragraph, the term 'facility' means, with respect to any owner or operator, all underground storage tanks used for the storage of petroleum which are

owned or operated by such owner or operator and located on a single parcel of property (or on any contiguous or adjacent property).

**Comment § 680.4**  
history  
USC Sec. 6991b

Legislative  
Federal analog: 42

## **§ 680.5 INSPECTIONS, MONITORING, TESTING AND CORRECTIVE ACTION.**

### **(a) Furnishing information.**

For the purposes of developing or assisting in the development of any regulation, conducting any study taking any corrective action, or enforcing the provisions of this subchapter, any owner or operator of an underground storage tank shall, upon request of the Lead Department, furnish information relating to such tanks, their associated equipment, their contents, conduct monitoring or testing, permit such officer at all reasonable times to have access to, and to copy all records relating to such tanks and permit such officer to have access for corrective Action. For the purposes of developing or assisting in the development of any regulation, conducting any study, taking corrective action, or enforcing the provisions of this section, the Lead Department is authorized.

- (1) to enter at reasonable times any establishment or other place where an underground storage tank is located;
- (2) to inspect and obtain samples from any person of any regulated substances contained in such tank;
- (3) to conduct monitoring or testing of the tanks, associated equipment, contents, or surrounding soils, air, surface water or ground water; and
- (4) to take corrective action.

Each such inspection shall be commenced and completed with reasonable promptness.

### **(A) Confidentiality**

- (1) Any records, reports, or information obtained from any persons under this section shall be available to the public, except that upon a showing satisfactory to the AT EPC by any person that records, reports, or information, or a particular part thereof, is information entitled to protection under 18 USC § 1905.
- (2) In submitting data under this subchapter, a person required to provide such data may -
  - (2)(a) designate the data which such person believes is entitled to protection under this subsection, and
  - (2)(b) submit such designated data separately from other data submitted under this subchapter.

A designation under this paragraph shall be made in writing and in such manner as the



Administrator may prescribe.

**Comment  
615d**

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Legislative  
Federal

history

analog: 42 USC Sec. 6991d

**§ 615c ENFORCEMENT**

**(A) Compliance orders**

(1) Except as provided in paragraph (2), whenever on the basis of any information, the AT EPC determines that any person is in violation of any requirement of this subchapter, the AT EPC may issue an order requiring compliance within a reasonable specified time period or the AT EPC may commence a civil action in the District Court of the Apache Tribe in which the violation occurred relief, including a temporary or permanent injunction.

(2) The AT EPC shall cooperate with the Federal EPA to ensure enforcement of federal standards.

(3) If a violator fails to comply with an order under this subsection within the time specified in the order, he shall be liable for a civil penalty of not more than \$25,000 for each day of continued noncompliance.

**(B) Procedure**

Any order issued under this section shall become final unless, not later than 30 days after the order is served the person or persons named therein request a public hearing. Upon such request the AT EPC shall promptly conduct a public hearing. In connection with any proceeding under this section the AT EPC may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books, and documents, and may promulgate rules for discovery procedures.

**(C) Contents of order**

Any order issued under this section shall state with reasonable specificity the nature of the violation, specify a reasonable time for compliance, and assess a penalty, if any, which the Administrator determines is reasonable taking into account the seriousness of the violation and any good faith efforts to comply with the applicable requirements.

**(D) Civil penalties**

(1) Any owner who knowingly fails to notify or submits false information pursuant to this section shall be subject to a civil penalty not to exceed \$5,000 for each tank for which notification is not given or false information is submitted.

(2) Any owner or operator of an underground storage tank who fails to comply with

(a) any requirement or standard promulgated by the AT EPC under section 615c of this title;

**Comment §  
615e**

Legislative

history

Federal analog: 42 USC Sec. 6991e

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