

North Carolina Department of Environmental Quality

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UNDERGROUND STORAGE TANK (UST) SECTION

October 15, 2015

To: Responsible Parties, Environmental Service Providers, and Other Interested Parties

From: Art Barnhardt, Chief, UST Section 

Subject: Frequently Asked Questions – October 2015 Update (FAQ Volume 2)

Following the Sept. 24, 2015, publishing of a memo and FAQ related to the UST program changes resulting from Session Law 2015-241, additional questions have been raised by the regulated community. The UST Section will endeavor to provide updated information via additional FAQ documents as the need arises.

Frequently Asked Questions

- 1. Are noncommercial tank owners required to auger bore beside the tank to screen soils (and/or collect a soil sample) and report a suspected release to the Regional office?**

There are no regulatory requirements for auger bore screening of non-regulated noncommercial USTs. Regardless of the method of discovery, the Regional Office must be notified within 24 hours of any evidence of a suspected or confirmed release.

- 2. Does a soil sample need to be analyzed by Total Petroleum Hydrocarbon or constituent-specific suites?**

Voluntary sampling of soil or water may be done at the request of the tank or property owner, or an interested buyer, to obtain additional information about a potential release. The analytical results from this sampling should be provided to the Department for use in reevaluating risk and potential closure options, if applicable, but will not be directed by the Department at Low Risk sites.

- 3. Is there any requirement that a noncommercial tank be drained and flushed, then removed, filled in-place, or simply left empty in temporary closure?**

The Department recommends that all underground storage tanks that are not in active use be cleaned and removed, where possible. Under Session Law 2015-241, the Department will not require a responsible party (RP) for a non-regulated noncommercial tank release to take any immediate actions (such as tank removal or flushing-and-filling, etc.) until such time as the risk from that discharge has been evaluated. In a case where the tank is acting as a continuing source of product that is creating the emergency (fire/explosion/vapor, impacted drinking well, or exposed product on some surface, etc.) or where the release is otherwise classified as 'High Risk', the Department may direct some efforts to address the system as necessary to mitigate the emergency or contribute to overall site risk reduction.

- 4. If tank removals are required by the lender or new property owner, what will be DEQ's position on the excavated soil? Will the heating oil affected soils excavated still be considered a "waste" and require disposal or can the soils removed associated with tank removal be used as backfill?**

The Department will no longer require any significant removal of soil as part of a noncommercial UST initial abatement action (except where necessary to protect against an emergency risk factor). De minimis overburden that is disturbed solely to provide access for tank removal will not need to be disposed of offsite.

- 5. Will UST Section Incident Managers independently determine the risk of the site and either direct contamination cleanup or require a NPR to be filed?**

The Regional Office Incident Manager will screen the site risk based upon all available information (including extra information voluntarily provided by the tank owner) and may direct protection efforts to address any apparent risk factors. If no risk factors exist, but contamination remains in the soil or ground water above the unrestricted use closure standards (suspected or confirmed), then the site will be classified as Low Risk and the responsible party notified that a Notice of Residual Petroleum (NRP) must be filed on the property to receive a No Further Action (NFA) determination from the Department, or prior to completing a property transfer.

- 6. Is the NRP only necessary to obtain a NFA letter?**

At a site with contamination remaining in excess of unrestricted use standards, a NRP is statutorily required for a Low Risk site to be closed via NFA, or for a property transfer at any site that is not eligible for unrestricted-use closure.

- 7. If a site is low risk and the owner doesn't want an NFA letter, are any additional actions required?**

Session Law 2015-241 indicates that the Department will not require a noncommercial RP to take any immediate actions or perform any soil remediation to close a site determined to be Low Risk. If the RP for a Low Risk site does not wish to sell the property (i.e., no real estate transfer requiring a NRP), they will be informed of the potential exposure pathways for the petroleum contamination likely present within the soil and/or water. Any RP not selling their property may voluntarily conduct assessment or cleanup actions to reach NFA closure with unrestricted use, at their discretion.

- 8. If free product is found in a voluntary well or excavation, what actions will be required?**

Measureable free product (i.e., greater than 1/8th of an inch), properly gauged with an oil-water interface probe within a well or basin, may pose an emergency risk factor depending on the fuel type and proximity to other properties or receptors. Certain actions may be directed to assess and abate the emergency risk based upon site-specific conditions. If the product is located in close proximity (less than 30 feet) to a neighboring property owned by someone other than the RP, then additional efforts may be needed to determine the potential risk to that third party's property. If the risk of free product migration or vapor/fire/explosion hazards offsite is low, and the site is screened to be Low Risk overall, then it may require no additional work. If the site is screened as High Risk, or if free product migration or fire/explosion/vapor hazards are found, then some limited work to address that specific risk may be directed.