

# RULES AND REGULATIONS

## Title 25—ENVIRONMENTAL PROTECTION

### UNDERGROUND STORAGE TANK INDEMNIFICATION BOARD

[25 PA. CODE CH. 975]

#### Commercial Heating Oil Tank Optional Program

The Underground Storage Tank Indemnification Board (Board) adopts Chapter 975 (relating to heating oil tank optional program) to read as set forth in Annex A. These regulations are promulgated under sections 701—709 of the Storage Tank and Spill Prevention Act (act) (35 P. S. §§ 6021.103, 6021.105, 6021.306, 6021.501—6021.503, 6021.507 and 6021.701—6021.709).

#### *Purpose*

These regulations establish the Heating Oil Tank Optional Program (Program) and thereby implement the amendments to the Storage Tank and Spill Prevention Act created by the act of June 26, 1995 (P. L. 79, No. 16) (Act 16). Act 16 eliminated the mandate that owners or operators of certain heating oil underground storage tanks participate in the Underground Storage Indemnification Fund (Fund), but established a process for elective participation in the Fund. Act 16 requires the Board to establish regulations, procedures and criteria for allowing these tanks to opt into the Fund.

Effective August 25, 1995, Act 16 exempts heating oil tank owners or operators from mandatory coverage by the Fund retroactive to January 1, 1995. In place of mandatory coverage, Act 16 provides for optional coverage. The purpose of these regulations is to set forth criteria and procedures for opting-in to coverage. If no opt-in criteria are in place, the regulated community will not have clear rules for ensuring that a leak from a heating oil tank is covered, thereby potentially exposing the owner or operator and any impacted third parties to adverse financial and safety consequences. Tank owners or operators who had been covered by the Fund until August 25, 1995, may believe they have coverage; as a result of Act 16, they will not have that coverage unless they affirmatively opt-in.

The Board finds that, under sections 201 and 202 the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202) (CDL) proposed rulemaking procedures have been omitted under section 204(3) of the CDL (45 P. S. § 1204(3)) because, under the current circumstances, these procedures would be unnecessary, impracticable and contrary to the public interest. The Board finds that public notice is not required because the affected parties have been notified of the changes in law and the procedure in section 204(2) of the CDL. Heating oil tank owners or operators were sent actual notice of the opt-in procedures and provided with the opt-in forms described in these regulations by first-class mail during August 1995. Heating oil tank owners and operators were also given notice by virtue of the Board's discussion of the opt-in criteria and procedures at a public meeting held July 18, 1995. No concerns about the opt-in procedures have been voiced to the Board since the process was first announced. Finally, the Board finds that public comments are not necessary under section 204(1)(iii) of the CDL (45 P. S. § 1204(1)(iii)) because the regulations relate to a change in agency procedure.

#### *Explanation of Regulatory Requirements*

The regulations establish the procedure for owners or operators of heating oil tanks to obtain coverage by the Fund. The following is a brief description of the most significant sections:

Section 975.1 (relating to definitions) sets forth the operative terminology for the program by defining heating oil tank terms.

Section 975.2 (relating to scope) articulates the scope of the regulations, namely, the establishment of the optional heating oil tank program.

Section 975.3 (relating to opt-in requirements) outlines the steps owners or operators of existing heating oil tanks and newly installed heating oil tanks must take in order to obtain coverage from the Fund. The steps include completing an application provided by the Fund, providing a successful tank tightness test result and submitting a \$100 deposit to the Fund.

Section 975.4 (relating to coverage period) provides that compliance with the opt-in requirements of § 975.3 entitles the heating oil tank owner or operator to Fund coverage effective as of the date the application is received by the Fund. Coverage is continuous if all fees are paid within 30 days of the due date on the Fund invoice.

Section 975.5 (relating to cancellation of coverage) provides for two means of cancellation. First, a heating oil tank owner or operator may voluntarily terminate coverage by providing advance written notice to the Fund. Second, heating oil tank coverage will be terminated by the Fund as of the due date on the invoice for failure to remit fees. Heating oil tank owners or operators, like other underground storage tank owners or operators, may reinstate coverage under section 706(e) of the act (35 P. S. § 6021.706(e)) by paying a 5% late charge.

Section 975.6 (relating to dispute procedures) sets forth the manner of reviewing disputed Fund staff decisions by the Fund Executive Director. Appeals from the Executive Director's decision can be made to the Board within 10 days and are governed by 1 Pa. Code Part II (relating to the General Rules of Administrative Practice and Procedure).

#### *Fiscal Impact*

##### *Regulated Community*

New heating oil tank owners or operators opting into the program will bear the cost of tank tightness tests and the \$100 deposit to the Fund.

##### *Fund*

Under applicable law, the fee to be charged to heating oil tank owners who choose to participate in the Fund is required to be actuarially sound. Permitting additional participants on a voluntary basis will not have an adverse fiscal impact on the Fund.

##### *Commonwealth*

The acceptance of applications from participants on a voluntary basis will not have an adverse fiscal impact on the Insurance Department, which administers the Fund. Finally, because the Fund receives no General Fund revenues, there is no fiscal impact on the Commonwealth.

*Paperwork**Regulated Community*

There will be minimal additional paperwork for those tanks owners who choose to opt-into Fund coverage. An application form will be required for those tank owners who choose to apply for coverage, and tank tightness test results must be submitted. To discontinue coverage, owners must submit a letter.

*Fund*

The paperwork impact on the Fund will be reduced, because fewer than all heating oil tank owners or operators will now be covered by the Fund.

*Commonwealth*

There is no paperwork impact on the Commonwealth.

*Persons Affected*

The regulations apply to owners or operators of heating oil tanks who want to participate in the Fund on or after the effective date of these regulations.

*Effectiveness/Sunset Date*

The regulations are effective upon final publication in the *Pennsylvania Bulletin*. The regulations will be monitored periodically. No sunset date has been assigned.

*Contact Person*

Questions or comments concerning this issue should be addressed in writing to Ronald A. Gallagher, Jr., P.E., Executive Director, Underground Storage Tank Indemnification Fund, 901 North 7th Street, Harrisburg, PA 17102.

*Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), the Board submitted copies of the regulations on September 18, 1996, to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the Senate Environmental Resources and Energy Committee and the House Environmental Resources and Energy Committee. On the same date, the regulations were submitted to the Office of Attorney General for review and approval under the Commonwealth Attorneys Act (71 P. S. §§ 732-101—732-506). In accordance with section 5(c) of the Regulatory Review Act, the regulations were deemed approved by the House Committee on October 8, 1996, and deemed approved by the Senate Committee on October 8, 1996. IRRC met on October 17, 1996, and deemed approved the regulations.

*Findings*

The Board finds that there is good cause to forego public notice of the intention to adopt Chapter 975 because notice of the change would be unnecessary, impractical, and contrary to the public interest. Submitting notice for public comment is found to be unnecessary under section 204 of the CDL for the following reasons:

(1) Affected owners or operators who had mandatory coverage prior to August 25, 1995, the effective date of Act 16, have been notified of the change from a mandatory to voluntary program by the public meeting of the Board and by first class mail.

(2) Adopting the regulations merely clarifies the procedures and qualifying requirements for owners or operators of commercial heating oil tanks to voluntarily participate in the Fund.

*Order*

The Board acting under the act, orders that:

(a) The regulations of the Board, 25 Pa. Code, are amended by adding §§ 975.1—975.6 to read as set forth in Annex A.

(b) The Board shall submit this order to the Office of Attorney General and Office of General Counsel for approval as to form and legality as required by law.

(c) The Board shall certify this order and Annex A and deposit them with the Legislative Reference Bureau as required by law.

(d) This order shall take effect upon its publication in the *Pennsylvania Bulletin*.

RONALD A. GALLAGHER, Jr., P.E.,  
*Executive Director*

(*Editor's Note:* For the text of the order of the Independent Regulatory Review Commission relating to this document, see 26 Pa.B. 5289 (November 2, 1996).)

**Fiscal Note:** 11-128. No fiscal impact; (8) recommends adoption. The fee charged to heating oil tank owners who choose to participate in the Underground Storage Tank Indemnification Fund will be actuarially sound. There will be no adverse fiscal impact to the Fund or to the Commonwealth.

**Annex A****TITLE 25. ENVIRONMENTAL PROTECTION****PART VIII. UNDERGROUND STORAGE TANK INDEMNIFICATION BOARD****CHAPTER 975. HEATING OIL TANK OPTIONAL PROGRAM**

Sec.	
975.1.	Definitions.
975.2.	Scope.
975.3.	Opt-in-requirements.
975.4.	Coverage period.
975.5.	Cancellation of coverage.
975.6.	Dispute procedures.

**§ 975.1. Definitions.**

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

*Act*—The Storage Tank and Spill Prevention Act (35 P. S. §§ 6021.101—6021.2104).

*Board*—The Underground Storage Tank Indemnification Board.

*Fees*—The fees paid by owners or operators of heating oil product USTs, calculated in accordance with section 705(d) of the act (35 P. S. § 6021.705(d)) and found at § 971.2(3) (relating to fees).

*Fund*—The Underground Storage Tank Indemnification Fund.

*Heating oil products*—Regulated substances as defined in section 103 of the act (35 P. S. § 6021.103) including, but not limited to, the following substances: Heating oil No. 1, Heating oil No. 2, Heating oil No. 4, Heating oil No. 6, bunker fuels, residuals, waste oils and kerosene.

*Heating oil tank*—An underground heating oil tank with a capacity of 3,000 gallons or greater used for storing heating oil products for use on the premises.

*UST*—An underground storage tank.

**§ 975.2. Scope.**

This chapter sets forth the requirements and procedures for heating oil tank owners or operators to participate in the Fund.

§ 975.3. Opt-in requirements.

To obtain coverage from the Fund on or after November 2, 1996, owners or operators of existing heating oil tanks and owners or operators of newly-installed heating oil tanks shall comply with the following requirements:

- (1) Complete and submit an application form supplied by the Fund.
(2) Provide the Fund with a copy of a successful tank tightness test result utilizing an Environmental Protection Agency (EPA) approved testing system.
(3) Submit a \$100 fee deposit. The fee deposit will be credited to the owner's or operator's account if the application is approved or returned to the owner or operator if the application is rejected.

§ 975.4. Coverage period.

If the Fund determines that the requirements in § 975.3 (relating to opt-in requirements) have been satisfied, coverage by the Fund will be effective from the date the application is received. Heating oil tanks in the program will have continuous coverage if all fees are paid within 30 days of the due date indicated on the fee invoices provided by the Fund.

§ 975.5. Cancellation of coverage.

- (a) The owner or operator of a heating oil tank may cancel coverage by providing advance written notice to the Fund.
(b) An owner's or operator's failure to remit fees within 30 days of the fee due date as indicated on the fee invoice provided by the Fund will cause coverage to be cancelled effective the due date on that invoice.

§ 975.6. Dispute procedures.

- (a) Appeals of denials of applications by Fund staff shall be made in writing by heating oil tank owners or operators to the Executive Director of the Fund.
(b) Appeals of the decisions of the Executive Director shall be made to the Board within 10 days under 1 Pa.

Code § 35.20 (relating to appeals from actions of the staff). Appeals shall be conducted in accordance with 1 Pa. Code Part II (relating to the General Rules of Administrative Practice and Procedure).

[Pa.B. Doc. No. 96-1835. Filed for public inspection November 1, 1996, 9:00 a.m.]

Title 49—PROFESSIONAL AND VOCATIONAL STANDARDS

STATE ARCHITECTS LICENSURE BOARD [49 PA. CODE CH. 9]

[Correction]

General Provisions

An error appeared in the document amending 49 Pa. Code § 9.3 at 26 Pa.B. 5101, 5102 (October 26, 1996). The correct version of § 9.3 is as follows:

§ 9.3. Fees.

(a) The cost of the ARE is \$980. The fee for each portion is:

Table with 2 columns: Service Category and Fee Amount. Includes items like Predesign (\$92), Site Planning (\$129), Building Planning (\$155), Building Technology (\$145), General Structures (\$108), Lateral Forces (\$79), Mechanical and Electrical (\$83), Material and Methods (\$90), Construction Documents and Services (\$99), Initial license (\$30), Reciprocal license (\$20), Certification of licensure (\$15), Biennial renewal of license (\$50), and Reactivation of lapsed or expired license (\$5).

[Pa.B. Doc. No. 96-1788. Filed for public inspection October 25, 1996, 9:00 a.m.]