

§ 280.92

40 CFR Ch. I (7-1-04 Edition)

Administration; January 24, 1989, except that compliance with § 280.94(b) is required by: July 24, 1989.

(b) All petroleum marketing firms owning 100-999 USTs; October 26, 1989.

(c) All petroleum marketing firms owning 13-99 USTs at more than one facility; April 26, 1991.

(d) All petroleum UST owners not described in paragraphs (a), (b), or (c) of this section, excluding local government entities; December 31, 1993.

(e) All local government entities (including Indian tribes) not included in paragraph (f) of this section; February 18, 1994.

(f) Indian tribes that own USTs on Indian lands which meet the applicable technical requirements of this part; December 31, 1998.

[53 FR 43370, Oct. 26, 1988, as amended at 54 FR 5452, Feb. 3, 1989; 55 FR 18567, May 2, 1990; 55 FR 46025, Oct. 31, 1990; 56 FR 66373, Dec. 23, 1991; 59 FR 9607, Feb. 28, 1994]

§ 280.92 Definition of terms.

When used in this subpart, the following terms shall have the meanings given below:

*Accidental release* means any sudden or nonsudden release of petroleum from an underground storage tank that results in a need for corrective action and/or compensation for bodily injury or property damage neither expected nor intended by the tank owner or operator.

*Bodily injury* shall have the meaning given to this term by applicable state law; however, this term shall not include those liabilities which, consistent with standard insurance industry practices, are excluded from coverage in liability insurance policies for bodily injury.

*Chief Financial Officer*, in the case of local government owners and operators, means the individual with the overall authority and responsibility for the collection, disbursement, and use of funds by the local government.

*Controlling interest* means direct ownership of at least 50 percent of the voting stock of another entity.

*Director of the Implementing Agency* means the EPA Regional Administrator, or, in the case of a state with a program approved under section 9004, the Director of the designated state or

local agency responsible for carrying out an approved UST program.

*Financial reporting year* means the latest consecutive twelve-month period for which any of the following reports used to support a financial test is prepared:

(1) a 10-K report submitted to the SEC;

(2) an annual report of tangible net worth submitted to Dun and Bradstreet; or

(3) annual reports submitted to the Energy Information Administration or the Rural Electrification Administration.

“Financial reporting year” may thus comprise a fiscal or a calendar year period.

*Legal defense cost* is any expense that an owner or operator or provider of financial assurance incurs in defending against claims or actions brought,

(1) By EPA or a state to require corrective action or to recover the costs of corrective action;

(2) By or on behalf of a third party for bodily injury or property damage caused by an accidental release; or

(3) By any person to enforce the terms of a financial assurance mechanism.

*Local government* shall have the meaning given this term by applicable state law and includes Indian tribes. The term is generally intended to include: (1) Counties, municipalities, townships, separately chartered and operated special districts (including local government public transit systems and redevelopment authorities), and independent school districts authorized as governmental bodies by state charter or constitution; and (2) Special districts and independent school districts established by counties, municipalities, townships, and other general purpose governments to provide essential services.

*Occurrence* means an accident, including continuous or repeated exposure to conditions, which results in a release from an underground storage tank.

NOTE: This definition is intended to assist in the understanding of these regulations and is not intended either to limit the meaning of “occurrence” in a way that conflicts with standard insurance usage or to prevent

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the use of other standard insurance terms in place of "occurrence."

*Owner or operator*, when the owner or operator are separate parties, refers to the party that is obtaining or has obtained financial assurances.

*Petroleum marketing facilities* include all facilities at which petroleum is produced or refined and all facilities from which petroleum is sold or transferred to other petroleum marketers or to the public.

*Petroleum marketing firms* are all firms owning petroleum marketing facilities. Firms owning other types of facilities with USTs as well as petroleum marketing facilities are considered to be petroleum marketing firms.

*Property damage* shall have the meaning given this term by applicable state law. This term shall not include those liabilities which, consistent with standard insurance industry practices, are excluded from coverage in liability insurance policies for property damage. However, such exclusions for property damage shall not include corrective action associated with releases from tanks which are covered by the policy.

*Provider of financial assurance* means an entity that provides financial assurance to an owner or operator of an underground storage tank through one of the mechanisms listed in §§ 280.95-280.103, including a guarantor, insurer, risk retention group, surety, issuer of a letter of credit, issuer of a state-required mechanism, or a state.

*Substantial business relationship* means the extent of a business relationship necessary under applicable state law to make a guarantee contract issued incident to that relationship valid and enforceable. A guarantee contract is issued "incident to that relationship" if it arises from and depends on existing economic transactions between the guarantor and the owner or operator.

*Substantial governmental relationship* means the extent of a governmental relationship necessary under applicable state law to make an added guarantee contract issued incident to that relationship valid and enforceable. A guarantee contract is issued "incident to that relationship" if it arises from a clear commonality of interest in the event of an UST release such as coterminous boundaries, overlapping con-

stituencies, common ground-water aquifer, or other relationship other than monetary compensation that provides a motivation for the guarantor to provide a guarantee.

*Tangible net worth* means the tangible assets that remain after deducting liabilities; such assets do not include intangibles such as goodwill and rights to patents or royalties. For purposes of this definition, "assets" means all existing and all probable future economic benefits obtained or controlled by a particular entity as a result of past transactions.

*Termination* under § 280.97(b)(1) and § 280.97(b)(2) means only those changes that could result in a gap in coverage as where the insured has not obtained substitute coverage or has obtained substitute coverage with a different retroactive date than the retroactive date of the original policy.

[53 FR 43370, Oct. 26, 1988, as amended at 54 FR 47081, Nov. 9, 1989; 58 FR 9050, Feb. 18, 1993]

### § 280.93 Amount and scope of required financial responsibility.

(a) Owners or operators of petroleum underground storage tanks must demonstrate financial responsibility for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum underground storage tanks in at least the following per-occurrence amounts:

(1) For owners or operators of petroleum underground storage tanks that are located at petroleum marketing facilities, or that handle an average of more than 10,000 gallons of petroleum per month based on annual throughput for the previous calendar year; \$1 million.

(2) For all other owners or operators of petroleum underground storage tanks; \$500,000.

(b) Owners or operators of petroleum underground storage tanks must demonstrate financial responsibility for taking corrective action and for compensating third parties for bodily injury and property damage caused by