RESPONSE TO COMMENT

Amendments to:

310 CMR 80.00

Underground Storage Tank Systems

Statutory Authority:

M.G.L. c. 21O, § 5, c. 21C, c. 21E, § 6 and c. 21A, § 16

September 7, 2021

The Massachusetts Department of Environmental Protection (MassDEP) held two public hearings on June 22, 2021 at 10am and 5pm on proposed amendments to 310 CMR 80.00. Underground Storage Tank Systems.

MassDEP received comments from Speedway, LLC, ATC Eclipse, Crompco, NECSEMA, and Epsilon. Responses to those comments are summarized below, including revisions made to final regulation in response to those comments.

1. 30 day submittal of closure assessment requirements.

A. Comment: 310 CMR 80.43(2)(c). Requires an owner to notify the Department that a UST system was removed within 30 days of removal and to provide a copy of the assessment with said notification. We are concerned that the 30-day timeframe will be too severe for owners to comply, that it is often closer to 90 days for a closure assessment to be completed. (ATC Eclipse)

We recommend this be revised to submit any closure assessments on the same deadline for which closure assessments are required to be completed, which is typically 90 days, not 30 days. (NECSEMA)

Response:
MassDEP understands the timing concerns expressed in the comment. In order to facilitate the completion and submission of the Environmental Site Assessment, MassDEP has amended the time period for submission of both the notification and the Environmental Site Assessment to 90 days versus 30 days in the final regulation. Please note that any reportable conditions found during removal or closure-in-place must be reported to BWSC in accordance with the applicable provisions of the Massachusetts Contingency Plan at 310 CMR 40.0000.

MassDEP has revised 310 CMR 80.43(2)(c) in the final regulation from 30 to 90 days, as follows:

(c) The Owner shall notify the Department, in a format specified by the Department, that the UST system was removed, within ~~30~~ 90 days of removal in accordance with 310 CMR 80.23(2)(d). A copy of the assessment in 310 CMR 80.43(4) shall be submitted with said form.

MassDEP also amended 310 CMR 80.43(3)(c) for tanks that are closed-in-place to include this change from 30 to 90 days in the final regulation, as follows:

> (c) The Owner shall notify the Department in accordance with 310 CMR 80.23(2)(e), in a format specified by the Department that the UST system was closed-in-place, within ~~30~~ 90 days of the UST system being filled. ~~-~~A copy of the assessment in 310 CMR 80.43(4) shall be submitted with said form.

B. Comment: 310 CMR 80.43(3)(b). We recommend this be revised to submit any closure assessments on the same deadline for which closure assessments are required to be completed, which is typically 90 days, not 30 days. (NECSEMA)

Response:
MassDEP did not revise 310 CMR 80.43(3)(b), but MassDEP did revise 310 CMR 80.43(3)(c) to allow 90 days to submit the assessment (see response to 1.A.). 310 CMR 80.43(3)(b) is applicable to facility Owner/Operators seeking to permanently close a UST system in place, not routine UST removals. To protect public health and water supplies, such Owner/Operators must conduct an assessment prior to filing a permanent Closure In-Place Request to determine if there has been a release to the environment associated with the UST, thereby protecting public health and water supplies.

If the assessment determines a reportable release has occurred and requires notification pursuant to 310 CMR 40.0000, it is appropriate that any remediation of the identified release occur prior to the tank being permanently closed in-place.

2. Timing of notification of transfer of ownership

Comments: MassDEP received several comments related to 310 CMR 80.23 regarding records transfer upon sale of a facility and notification to MassDEP.
A. 310 CMR 80.23(5) We believe it would be beneficial to change this requirement to a notification to the Department after the closing of sale of a UST facility (ATC Eclipse)
B. 310 CMR 80.23(5) Does not specify how far in advance of the sale. (NECSEMA)
C. 310 CMR 80.23(5) We request that this notification occur after the sale (30 days is typical in other states). (NECSEMA)
D. 310 CMR 80.23(4) - The prior owner should be explicitly required to transfer to the new owner any and all records the department will require the new owner to maintain. (NECSEMA)

Response:
MassDEP revised 310 CMR 80.23(5) as suggested in the final regulation:

A UST facility Owner, upon the sale or transfer of a UST facility ~~Prior to the transfer of ownership of an UST facility~~ shall provide the Department with the following information in a format specified by the Department:

(a) Facility identification number;
(b) New Owner entity name and address; and
(c) New Owner entity contact's name, phone number and email address.

By adopting this revision, the former Owner does not have to submit information about the new Owner until the date of the UST facility sale or transfer, as suggested by received comments. The sale or transfer will be completed before the required transfer of ownership is recorded in the UST Data Management System, thereby assuring MassDEP has contact information for the new Owner for purposes of compliance assistance and outreach.

MassDEP did not revise 310 CMR 80.23(4) as suggested in the final regulation because 310 CMR 80.23(4) identifies the key UST System records that, at the time of UST Facility sale, are to be exchanged between the current Owner (the seller) and the new Owner (the buyer). These are documents that cannot be replicated and must be kept for the life of the UST system.

3. 10/13/2021 Compliance deadline

Comments: MassDEP received several comments regarding the October 13, 2021 compliance deadline for sump and spill bucket testing.

A. 310 CMR 80.27(7): The deadline to test all the sumps that need to be tested by the deadline is not a realistic deadline. (Crompco)

B. 310 CMR 80.27(7): The requirement to test containment sumps and UDC's should align with EPA's requirement that only containment sumps used for interstitial monitoring shall be tested. (Crompco)

C. 310 CMR 80.27(7) and 80.28(2): The Department should move the October 13 date to a later date to assure that all the Owners/Operators in the state have the ability to timely complete such work. (Speedway)

1. The Department should consider revising this language to only require testing of containment sumps that are utilized for interstitial monitoring. (Speedway)
2. It is unreasonable and burdensome to require testing of spill buckets and UST sumps used to support interstitial monitoring before October 13, 2021, given the lack of time and contractors to complete the work. (NECSEMA)

Response:

The October 13, 2021 compliance deadline and issues raised by commenters also apply to upgrades of emergency engine fuel tanks installed before January 2, 2015 and airport hydrant systems installed on or before the effective date of the final regulations.

In response to comments received, MassDEP revised the October 13, 2021 compliance date for sumps (310 CMR 80.27(7)) and spill buckets (310 CMR 80.28(2), and also for emergency engine fuel tanks (310 CMR 80.19(3)(b) and (c) and 310 CMR 80.26(7) and (8)), and Airport hydrant tanks (310 CMR 80.64(1)(a) and (9)(a)1.) from October 13, 2021 to October 13, 2022.

By providing UST facility owners and operators one additional year to comply with applicable testing and upgrade requirements, MassDEP is ensuring facility owners and operators have sufficient time and contractors available to perform required upgrades and tests and make any repairs as needed.

In addition, MassDEP did not revise the regulation so that only sumps that support interstitial monitoring be tested. It is important that all sumps that may hold regulated substance be tested to ensure that the sump is liquid tight to prevent a leak or release of regulated substance to the environment.

4. Requirements for Spill Buckets and Overfill Prevention Equipment

Comments: MassDEP received comments related to 310 CMR 80.21(2) regarding UST overfill prevention devices.

A. 310 CMR 80.21(2). The Department should consider removing the "Owners and Operators may continue to use ball float valves as a secondary overfill prevention device, unless the ball float valve interferes with the operation of the primary overfill prevention device." (Crompco)

B. [310 CMR 80.21(2)(b)3.] should be removed as an option to comply with overfill requirements because it is not practical to verify, not possible to verify and subjective if a ball float restricts flow into the tank 30 minutes prior to overfilling (when is the tank considered to be "overfilling"?). (Crompco)

Response:
MassDEP did not amended nor seek comment on 310 CMR 80.21(2). This is an issue that MassDEP is interested in discussing with stakeholders in the future, but it is not prepared to make any revisions to 310 CMR 80.21(2) at this time.

C. Comment: 310 CMR 80.21(2)(b)2 a. All high-level alarms installed on and after January 2, 2015 shall be visible and audible to the regulated substance deliverer.

Is MA DEP tracking when high level alarms were installed so that vendors can determine if it is a new (installed on or after 01/02/2015) high level alarm or old (installed prior to 01/02/2015) high level alarm that is only audible? If MA DEP has no way of tracking, all high-level alarms should be either:

- audible AND visible; or

audible OR visible (Crompco)

Response:
MassDEP did not revise 310 CMR 80.21(2)(b)2. as suggested. Instead, in response, MassDEP will revise the pulldown list of "Primary Overfill Prevention Device Type" options in the UST Data Management System (UST DMS) to include "Audible and Visible High-Level Alarm" and "Audible or Visible High-Level Alarm."

While MassDEP's UST DMS "Overfill Prevention Device Installation Date" is not a required field, vendors can also cross-check the required "Tank Install Date" field in the DMS against the "Primary Overfill Prevention Device Type" field, which is also a required field in the DMS. If the tank install date is after January 1, 2015, and a high level overfill alarm is installed, the high-level alarm is required to be "audible and visible."

D. Comment: 310 CMR 80.28(2)(b) Spill Buckets and covers can have surface rust/corrosion and can still operate correctly. The terms corrosion and deterioration should be removed. (NECSEMA)

Response:
310 CMR 80.28(2)(b) has been revised as follows in the final regulation:

> (b) The Owner or Operator shall maintain the spill bucket and cover so that they are free of ~~corrosion, deterioration,~~ cracks and holes at all times.

By deleting "corrosion, deterioration", MassDEP removes two subjective compliance and enforcement standards that could result in unnecessary spill bucket and cover repairs and replacement.

E. Comment: 310 CMR 80.28(2)(e): The Owner or Operator shall inspect spill buckets no less frequently than once every 30 days in accordance with 310 CMR 80.35. (NECSEMA).

Response:
It appears the commentor is requesting new language to add "no less frequently than once" to this section.

MassDEP revised 310 CMR 80.28(2)(e) in in the final regulations as follows:

> (e) The Owner or Operator shall inspect spill buckets no less frequently than once every 30 days in accordance with 310 CMR 80.35.

By revising 310 CMR 80.28(2)(e) as suggested, MassDEP is clarifying that it will not be a violation of 310 CMR 80.28(2)(e) for a UST System Owner/Operator to inspect spill buckets more frequently than every 30 days.

F. Comment: 310 CMR 80.28(2)(g): Repairs which do not affect the integrity of the bucket to retain liquid or disturb the seal between the bucket and the riser do not require an integrity test. (NECSEMA)

Response:
MassDEP revised 310 CMR 80.28(2)(g) as suggested by adding 80.28(2)(g)3.:

> (g) The Owner or Operator shall conduct an integrity test on spill buckets in accordance with the schedule at 310 CMR 80.28(2)(f) and after repairs, in accordance with the following requirements:
>
> 1. Spill buckets shall pass an integrity test to ensure the spill bucket is liquid tight by using vacuum or hydrostatic test in accordance with PEI RP1200-19.
>
> 2. If the spill bucket fails the test, the Owner or Operator shall repair or replace the spill bucket in accordance with 310 CMR 80.33. Prior to commencing operation, the repaired spill bucket shall be retested in accordance with 310 CMR 80.28(2)(g)1.
>
> 3. Repairs which do not affect the integrity of a spill bucket to retain liquid or disturb the seal between the spill bucket and the riser do not require an integrity test prior to commencing operation.

By revising 310 CMR 80.28(2)(f) as suggested, MassDEP is clarifying that repairs to a spill bucket that do not affect a spill bucket being liquid tight or the seal between the spill bucket and riser being liquid tight, do not require an integrity test to be performed prior to being returned to service because those repairs would have no bearing on the results of an integrity test.

5. General Requirements

A. Comment: Why is the Department referencing an outdated version of this document (3rd Edition, 2006, *Using the API Color-Symbol System to Mark Equipment and Vehicles for Product Identification at Gasoline Dispensing Facilities and Distribution Terminals)* in 310 CMR 80.24(4) when a 2020 version exists? (Crompco, Speedway, NECSEMA)

Response:
MassDEP revised 310 CMR 80.24(4) as follows:

> (4) The Owner or Operator shall ensure that fill pipe covers of tanks are painted and maintained in accordance API Recommended Practice 1637, 4th Edition, 2020, Using the API Color-Symbol System to Identify Equipment, Vehicles, and Transfer Points for Petroleum Fuels and Related Products at Dispensing and Storage Facilities and Distribution Terminals, ~~3rd Edition, 2006,~~

~~Using the API Color-Symbol System to Mark Equipment and Vehicles for Product Identification at Gasoline Dispensing Facilities and Distribution Terminals)~~ if applicable.

By revising 310 CMR 80.24(4) as suggested, the most recent version of the referenced document will be used.

6. 80.35 Requirements for Periodic Inspections

A. Comment: In order to keep the inspection process simple for everyone in the regulated community, Crompco would like to propose combining the 90-day inspection items (310 CMR 80.35(3)) into the 30-day Inspection checklist (310 CMR 80.35(2)). (Crompco)

Response:
MassDEP did not consolidate the 90-day inspection into the 30-day inspection. MassDEP has determined visual inspection of sumps without continuous monitoring sensors every 90 days is appropriate to ensure sump integrity and the protection of public health and water supplies. UST System Owner/Operators may conduct periodic inspections more frequently than required if they choose.

B. Comment: 310 CMR 80.35(4)(a)4 -Suggest change to read: For double-walled sumps *with interstitial monitoring*, check for leakage in the interstitial area. For many double-walled sumps currently installed that do not have interstitial monitoring, this requirement would equate to an annual test in addition to the triennial testing requirement previously established in the Regulations. (NECSEMA)

Response:
MassDEP revised 310 CMR 80.35(4)(a)4., as suggested, to align with the federal UST regulations.

For double-walled sumps, with interstitial monitoring, check for leakage in the interstitial area.

7. **Definitions and Terms**

A. Comment: "Spill bucket." It is requested that this [the definition of "spill bucket"] be modified to state: "a containment device at *a grade-level* fill port used to

catch, accumulate and prevent the release of regulated substance to the environment." (Epsilon Associates)

Response:
MassDEP did not revise the definition of "spill bucket" as suggested. Spill buckets installed on USTs are routinely installed above grade. To limit the definition of a "spill bucket" and thereby the applicability of 310 CMR 80.00 to "grade-level" spill buckets would compromise the purpose of 310 CMR 80.00 to protect the environment, public health and water supplies.

B. Comment: "Abandoned." [In the proposed definition of "Abandoned"] How does MassDEP specifically define "in operation?" NECSEMA is uncertain of this definition's operational intent? (NECSEMA)

Response:
MassDEP amended the definition of "abandoned" as follows in the final regulation:

> Abandoned means an UST system that is not in operation for a continuous period of at least one year, is not temporarily out-of-service in accordance with 310 CMR 80.42 and is not in full compliance with the applicable requirements of 310 CMR 80.00.

A UST system is "not in operation" if the UST is not performing its intended purpose (dispensing, storing, etc.). This standard is consistent with the Department of Fire Safety definition of "abandoned" (527 CMR 1.12.8.40.2.2). To be clear that even if a facility is "not in operation," it is not abandoned if it is in compliance with 310 CMR 80.00, MassDEP is adding the phrase "and is not in full compliance with the applicable requirements of 310 CMR 80.00" to the definition of "Abandoned."

The "operational intent" of the term "abandoned" is for MassDEP to be able to require the removal or closure in-place of an UST system that has been "abandoned."

C. Comment: "Intermediate Sump." Suggest change in definition to "Intermediate Sumps do not include sumps where the only regulated substance piping connection that exists is between a siphon bar or other European Suction piping system and an underground storage tank." Also add to the definition "Intermediate Sumps shall not include any sump which is not intended or required to maintain release detection for a regulated tank or piping system." (NECSEMA)

Response:
MassDEP amended the definition for "Intermediate Sump" in the final regulation as follows:

Intermediate Sump means an impermeable, liquid-tight basin, installed below grade to allow access to fittings and regulated substance piping or that is used to allow piping declines to tanks or to provide access at key points in the piping system. Intermediate sumps shall be designed to contain leakage of regulated substance and fluids and prevent a release into the environment. Intermediate sumps do not include sumps that have only a single-walled siphon bars with no connections within the sump or only contain a European suction system, or sumps that do not contain any regulated substance piping connections.

By revising the definition of "Intermediate Sump" as suggested, MassDEP is clarifying the type of sump configurations that are exempt from the definition of an Intermediate Sump.

MassDEP did not to revise the definition of "Intermediate Sump" to include "Intermediate Sumps shall not include any sump which is not intended or required to maintain release detection for a regulated tank or piping system," as doing so would exempt certain sumps that may, in fact, be configured in such a way as they may contain leakage.

D. Comment: There is no definition for the term "Out-of-Use." NECSEMA suggests that a tank should be considered "In-Use" as long as it contains regulated product and applicable release detection equipment is being monitored. (NECSEMA)

Response:
MassDEP did not adopt a definition of "out-of-use" or "in-use" as suggested because those terms are not used in 310 CMR 80.00. MassDEP did strike the term "out-of-use" from the Table of Contents to be consistent with the amended title of 310 CMR 80.45.

Under 310 CMR 80.24(5) if there is any regulated product in the UST system, the Owner and Operator have to comply with all applicable requirements of 310 CMR 80.00.

E. Comment: MassDEP received comments pertaining to the use and definition of the term "Prior to Commencing Operation".

A. The term "prior to commencing operation" is used to refer to when a UST Component is repaired or replaced, and the component must be retested prior to being returned to service to ensure the component is correctly installed and operating. This infers that failed components such as spill buckets, containment sumps and overfill equipment shall not be used until they are repaired/replaced and retested. (Crompco, Speedway)
B. Greater clarity on the use of this term ["Prior to Commencing Operation"] is needed. How does DEP specifically define "used for its intended purpose"?

Application of this term may have unintended consequences and potentially contradict existing flexibility currently provided. (NECSEMA)

C. "Prior to commencing operation" should be changed to "Prior to delivering product to the effected tank. (NECSEMA)

Response:
MassDEP did not revise "prior to commencing operation" or change the phase to "Prior to delivering product to the effected tank" as suggested. Commenters incorrectly interpreted "prior to commencing operation," to mean UST components in need of repair or replacement must not be used until the component is repaired or replaced. The final regulation will retain the definition proposed in the draft amendments:

> Prior to Commencing Operation means before the UST system or UST component is used for its intended purpose after installation or repair, or after being temporarily out-of-service.

Under 310 CMR 80.33(4), UST Owner/Operator has 30 days from the date of the failed inspection, failed test, or discovering the need to repair or replace, to repair or replace the applicable component. The new language requires that after completing the component repair, the repaired component must be tested to verify the component is correctly installed and operating, prior to being returned to service. It is only if additional time, beyond 30 days, is needed to complete component repair or replacement that a component is required to be taken out of service.

Similarly, a tank that is repaired after release or leakage must be tightness tested before being returned to service to ensure that the repairs were successful, and the tank is no longer compromised.

For purposes of implementation, "used for its intended purpose" means when the component is returned to service. For example, a repaired or replaced spill bucket is returned to service when product is delivered. At that time, the spill bucket is being "used for its intended purpose." Therefore, if the UST facility is a gas station, it can continue to dispense gas even if the spill bucket has not been tested after repair because a spill bucket is not used in the dispensing process.

F. Comment: "In a format specified by the Department." In all instances where the regulations use the phrase "in a format specified by the Department", NECSEMA requests citations authorizing the content of the submittal also be included following the use of this phrase. (NECSEMA)

Response:
MassDEP did not revise 310 CMR 80.00, as suggested. The phrase "in a format specified by the Department" gives MassDEP the flexibility to implement required forms in the

most efficient format for both the regulated community and MassDEP. MassDEP understands its obligation to only require information pertaining to 310 CMR 80.00.

8. **Installation Requirements**

Comment: 310 CMR 80.16(1) establishes a new requirement that UST Owner/Operators submit installation contractors' manufacturer's training certifications and manufacturers' installation checklists to MassDEP at the time of new tank registration.

NECSEMA is concerned that this additional paperwork requirement to be submitted within 30 days of product introduction into the UST will be burdensome to owners. Recommend extending this timeframe to be within 90 days of product introduction. (NECSEMA)

Response:
MassDEP did not revise 80.16(1) as suggested. The requirement for UST Owner/Operator to have a copy of the installer's manufacturer certification and installation checklist are not new requirements, nor is the requirement for updating a facility's registration in the UST Data Management System (DMS) within 30 days of initial introduction of regulated substance into the UST system. MassDEP does not believe including the installer's certification and installation checklist at the time of system registration in the DMS to be burdensome and verifies installer competency, and that systems are installed in accordance with manufacturer's guidance.

9. Massachusetts Licensed Professional Engineer.

A. Comment: 310 CMR 80.16(6) and (7). MassDEP should allow [out of state] licensed or registered PEs (depending upon the state reciprocity agreements) to perform this work and not limit to only MA Licensed PEs. (NECSEMA)

B. Comment: 310 CMR 80.16(7): NECSEMA suggests adding in addition to a MA and other state Licensed PE's that the agency consider adding a MassDEP Certified Third Party Inspector who also holds an ICC Certification (or similar equivalent certification or experience) in the installation of Underground Storage Tank Systems and applicable manufacturer's certifications for the installation of the UST and Piping system to be inspected. (NECSEMA)

Response:

MassDEP is finalizing the regulation without the proposed amendments to 310 CMR 80.16(6). The current requirements remain in effect, the proposed amendments shall be taken up in a subsequent rulemaking.

10. Requirements for Piping

Comment: 310 CMR 80.16(14). ADD: Piping systems may be installed level and without a decline if this installation method is specified by the manufacturer. There are currently DW Fiberglass piping systems which the manufacturer's recommended practice is to install the piping level rather than sloped. (NECSEMA)

Response:
MassDEP did not propose amendments to nor seek comment on 310 CMR 80.16(14). This is an issue that MassDEP is interested in discussing with stakeholders in the future, but it is not prepared to make any revisions to 310 CMR 80.16(14) at this time.

11. Requirements for Turbine, Intermediate and Dispenser Sumps

A. Comment: 310 CMR 80.19(4)(sic). For sumps which do not have a flat bottom but conform the shape of the tank top, or other configuration necessary for installation, sensors shall be positioned within 1" of the lowest point [add] *where the mounting bracket can be reasonably secured but not at or above the level of the tank's manway*. (NECSEMA)

Response:
MassDEP believes the Commenter meant to reference 310 CMR 80.27(3). MassDEP did not revise 310 CMR 80.19(4), but did revise 310 CMR 80.27(3) to reflect this comment. To ensure the effectiveness of installed sump leak detection sensors, they must be installed in accordance with manufacturer's guidance, or if there is no guidance, the sensors must be placed at the lowest point in the sump where it can feasibly be installed.

> All sump sensors shall be placed in accordance with the manufacturer's specifications, or, if no such specifications exist, the sensors shall be placed at the lowest possible location in the sump, where it can feasibly be installed.

Installing a required sump sensor "where the mounting bracket can be reasonably secured but not at or above the level of the tank's manway" is subjective and compromises following manufacturers' guidance or, if there is no manufacturer's guidance, installing the sensor at the lowest point in the sump. MassDEP believes the

added language ensures installation at the lowest point when there is no manufacturer guidance.

B. Comment: 310 CMR 80.20(1)(a). This regulation as written will require the installation of a dispenser sump if a dispenser is repaired or replaced. Even if replaced because of damage. This is unreasonable and burdensome. A simple repair to a card reader or meter would trigger a sump installation. The rule should be revised to align with EPA 40 CFR 280.20(f). (NECSEMA)

Response:
MassDEP revised 310 CMR 80.20(1)(a) as suggested in the final regulation:

> (a) Regulated substance dispensers installed, repaired or replaced on and after [EFFECTIVE DATE OF REGULATIONS], shall be equipped with a dispenser sump that shall be continuously monitored for liquids utilizing a dispenser sump sensor(s). 310 CMR 80.20(1)(a) shall not apply in situations where only the product dispenser is repaired or replaced due to damage or malfunction, but shall apply to any replacement of both the product dispenser and dispenser components attaching the dispenser to the UST piping system at the dispenser.

By revising 310 CMR 80.20(1)(a) in accordance with EPA guidance (40 CFR 280.20(f)), MassDEP has clarified dispenser and piping component replacements that trigger the installation of a dispenser sump where one is not currently installed.

C. Comment: 310 CMR 80.20(3). "with no connections" should be removed as siphon lines have connections to the tanks. "Single-walled" should be removed as many siphon lines are contained within chase pipes and that should not trigger a requirement for a sensor. The suggested language also specifies piping connections to clarify those other connections - probes, sensors, etc. - do not require a sensor. Replace with - except sumps that only contain European suction systems or siphon lines and no other regulated substance piping connections. (NECSEMA)

Response:
MassDEP did revise 310 CMR 80.20(3) as suggested. The phrase “no connections” was amended to “no connections within the sump” in the definition of “Intermediate sump”, 310 CMR 80.20(3), 80.27(6), 80.27(8), 80.35(3) and 80.35(4)(a), to be consistent throughout the regulation .

The term “single-walled” was not removed as “chase pipes” are a source of potential leakage between sumps when liquid reaches the chase pipe and drains across to a second sump.

The phrase “or sumps that do not contain any regulated substance piping connections” was adopted to further clarify those exempt connections , Again, this change was made to the definition of “Intermediate sump”, 310 CMR 80.20(3), 80.27(6), 80.27(8), 80.35(3) and 80.35(4)(a), to be consistent throughout the regulation.

D. Comment: 310 CMR 80.20(6). It is unreasonable to require owners to upgrade sump manhole covers installed after January 2, 2015, but prior to the new regulations, to meet new grading requirements. (NECSEMA)

Response:
MassDEP revised 310 CMR 80.20(6) as suggested in the final regulation:

> (6) Turbine sump manhole covers installed on and after the January 2, 2015 shall be designed and installed with a final grade that channels storm water away from the turbine sump cover and turbine sump manhole covers installed on and after [THE EFFECTIVE DATE OF THE REGULATION] shall also be installed so that the paved surface is crowned as to protect the sump and equipment within from damage due to traffic.

By revising 310 CMR 80.20(6) as suggested, MassDEP has clarified that sumps installed after January 2, 2015 and before the effective date of the regulations will not be required to upgrade installed turbine sump manhole covers.

E. Comment: 310 CMR 80.27(4). The terms “Good Condition” & “Tight Fitting” are subjective terms. These terms should be removed. The language "to impede water infiltration to the sump" should be removed as not all manhole covers are over sumps (e.g., interstitial and probe risers). (NECSEMA)

Response:
MassDEP revised 310 CMR 80.27(4) as suggested in the final regulation:

> (4) All manhole covers shall ~~be in good condition and tight fitting to~~ impede water infiltration to the sump. All sump covers shall be free of cracks and holes.

By revising 310 CMR 80.27(4) as suggested, MassDEP has removed subjective language and thereby clarified program applicability and the compliance standard UST System that Owner/Operators will be held to.

F. Comment: 310 CMR 80.27(7)(a) +(b) +(c). Most piping and dispenser sump sensors require a minimum depth of liquid to activate which can be as much as 1" to 4". NECSEMA suggests clarifying this circumstance in the regulation to “The sump passes the integrity test if the sensors are activated when they come in contact with the liquid, or the liquid reaches the minimum height specified by the manufacturer”. (NECSEMA)

Response:
MassDEP did not revise 310 CMR 80.27(7)(a), (b), and (c) as suggested. Per 310 CMR 80.19(4)(a)1. a., sump sensors shall be installed in the sump in accordance with manufacturer's specification. It is unnecessary to add the suggested text to 310 CMR 80.27(7)(a), (b), and (c) as its effect is redundant with 310 CMR 80.19(4)(a)1. a., and as worded, could cause unnecessary confusion for UST facility Owner/Operators and compliance testing companies.

G. Comment: 310 CMR 80.27(9)(b). Section should specify that repairs that do not include seams, seals, penetration fittings, etc., and repair to a sump lid, gasket, etc. do not require testing. (NECSEMA)

Response:
MassDEP revised 310 CMR 80.27(9) as suggested in the final regulation:

(9) If the sump fails a test, the Owner or Operator shall investigate the failure and shall make any necessary repairs in accordance with 310 CMR 80.33.

(a) The Owner or Operator shall keep records of the test and any repairs to demonstrate compliance with 310 CMR 80.27(7) and 80.33, including but not limited to the date of the test and the results, in accordance with 310 CMR 80.36.

(b) Turbine, intermediate and dispenser sumps that are repaired, except sumps listed in 310 CMR 80.27(8), shall pass an integrity test in accordance with 310 CMR 80.27(7) prior to commencing operation. The Owner or Operator shall keep records of such tests in accordance with 310 CMR 80.36.

(c) Repairs which do not affect the integrity of a sump to retain liquid, including but not limited to a sump lid and gasket, do not require an integrity test prior to commencing service.

MassDEP agrees that repairs to parts of a sump that do not affect a sump being liquid tight do not require an integrity test to be performed prior to being returned to service.

12. Requirements for Registration and Reporting

Comment: 310 CMR 80.23(1). Does this only apply to new facilities, or does it apply for piping replacements, or if a tank is replaced or an additional tank installed? Does it only apply to that portion of the system which is newly installed or is an as-built required that incorporates any previously installed tanks or piping? (NECSEMA)

Response:
MassDEP revised 310 CMR 80.23(1)(b) to specify the installation of a new or replacement UST system in the final regulation:

(b) The Owner shall submit with the ~~initial~~ registration for the installation of a new or replacement UST System, the following, in a format specified by the Department:

1. A copy of the certification from the UST system installer that:
   a. S/he was certified by the manufacturer of the UST system that was installed;
   b. The UST system was installed in accordance with the manufacture's specifications; and
   c. The installer complied with all items on the manufacturer's installation checklist(s).
   d. A copy of the as-built plans pursuant to 310 CMR 80.16(7).

This change clarifies that the referenced documents are required to be submitted only at the time of a new or replacement UST System installation.

13. Requirements for Corrosion Protection

Comment: 310 CMR 80.29(5). NECSEMA request that the 5-day repair rule for a cathodic system be extended to 10-business days. NECSEMA members have found it challenging to arrange for cathodic system testing and to effectuate repairs, within this timeframe, and have had to unnecessarily engage a cathodic protection specialist. (NECSEMA)

Response:
MassDEP revised 310 CMR 80.29(5) in the final regulation to read as follows:

(5) The Owner or Operator shall determine the cause of the failed cathodic protection test by retaining a corrosion expert within ten~~five~~ business days of obtaining knowledge of the failed test. If within ten~~five~~ business days of the failed test, the cathodic protection tester can make repairs, re-test and the result is a passing test, the Owner or Operator is not required to retain a corrosion expert.

(a) If necessary, the Owner or Operator shall repair or replace the cathodic protection system within 120 days of the date of the failed test.
(b) The Owner or Operator shall document the results of the corrosion expert's determination, including, but not limited to, the date of the investigation and the results.
(c) If repairs to the cathodic protection system are not completed within 120 days of the date of the failed test, the Owner or Operator shall either take the UST system temporarily out-of-service in accordance 310 CMR 80.42 or remove or permanently close in-place the UST system in accordance with 310 CMR 80.43.

By extending the repair and retest period from five to ten days, MassDEP provides cathodic protection testers more time to obtain parts, schedule repairs, and retest, thereby reducing compliance costs, while still ensuring protection of public health and water supplies.

14. Requirements for Replacements and Repairs

Comment: 310 CMR 80.33(3)(a): Suggest changing language to read - Metal piping, portions of metal piping, and fittings that have had leakage or a release as a result of corrosion or other damage shall be *repaired or* replaced. (NECSEMA)

Response:
MassDEP did not revise 310 CMR 80.33(3)(a) as suggested. To most efficiently and cost effectively protect public health and water supplies, metal pipes and fittings that are a source of leakage or a release, must be replaced. To allow such pipes and fittings to be repaired and put back into service does not address the corrosion that is a source of leakage or a release, but rather allows that corrosion to continue and remain a likely source of leakage or a release in the future.

15. Requirements for General Permit

Comment: 310 CMR 80.34. MassDEP may rescind or suspend a General Permit if the Department determines that the Owner has not complied with the conditions of the General Permit.

- What are grounds for rescinding or suspending a General Permit? The current process allows for a return to compliance plan and work to be completed within 30 days.
- There isn't any return to compliance process listed in the proposed regulation under the General Permit. This process is a fundamental element of the program.
- What information will the manner/form prescribed by MassDEP require?
- Will the agency impose an annual compliance fee this general permit?

NECSEMA is extremely concerned with the potential for regional inconsistency. Currently the only provision to shut-down a facility are the delivery prohibitions. This provision greatly expands those circumstances. (NECSEMA)

Response:
MassDEP has removed the proposed regulatory language found at 80.34. MassDEP has replaced this language with the previous regulatory language requiring that a Compliance Certification be completed and submitted to MassDEP

once every three years. Since no regulatory changes will be made to 310 CMR 80.34, the form for the Compliance Certification will remain the same and the form will be submitted through the Data Management System as is the current procedure.

By retaining the current Compliance Certification MassDEP is ensuring UST facility Owners continue to understand and acknowledge applicable program requirements and certify they are in compliance with such requirements.

16. Class A, B and C Operator Requirements

Comment: 310 CMR 80.37(11): This rule should be re-written to only require that records for Class A, B and C Operators be maintained but not specify that all classes of operators must maintain all applicable records in a single list or form. (NECSEMA)

Response:
MassDEP did not revise 310 CMR 80.37(11) as suggested. The proposed amendments to 310 CMR 80.37(11) do not propose a new requirement to maintain a List of Designated Class A, B, and C Operators, the requirement to maintain such a list per 310 CMR 80.37(11), was adopted, effective January 2, 2015.

The proposed amendments to 310 CMR 80.37(11) revise the fields required to be maintained on the List of Designated Class A, B, and C Operators. The new amended fields include: the name of the designated operator, operator classification, operator certification number as applicable, and date of designation. The deleted fields include: operator hiring or contract date, date of "most recent" training date, and for Class A and B operators, the date of their most recent operator examination certification.

By retaining the proposed amendments to 310 CMR 80.37(11) MassDEP is simplifying the fields required to be maintained on the required List of Designated Class A, B, and C Operators and removing fields that are unnecessary and do not support effective program compliance and enforcement.

17. Response to a Release/Leakage/Reportable Releases

A. Comment: In all cases where 310 CMR 80.00 requires notification for an alarm, condition, etc. that does not have a corresponding notification requirement under 310 CMR 40.0000, the Department should specify to whom these notifications within the Bureau of Air & Waste UST Program should be made and do so clearly in each program's Regulations. (NECSEMA)

Comment: For Required Notifications related to reportable release and threats of releases: If the Department requires Owners and Operators to make notifications to the Department in addition to or duplicative of those required under 310 CMR 40.0000, the Department should specify clearly within the regulations to whom notification must be made and by what means. (NECSEMA)

Response:
MassDEP did not revise 310 CMR 80.00 as suggested. The regulated community has a variety of ways to notify MassDEP including: a dedicated UST Hotline number (781-556-1035 #2), a dedicated Email address (DEP.UST@mass.gov), the online UST Data Management System (See: MassDEP Underground Storage Tank (UST) Program | Mass.gov), as well as a mailing address.

To revise 310 CMR 80.00 to reference all the options available to UST facility Owner/Operators each time the regulations require notifying MassDEP is unnecessary, and would be out of date in the regulations if contact information were to change and could result in a required regulation amendment to update such information.

18. Third Party Inspections

Comment: 310 CMR 80.49(4). In light of the Department's stated goal of having more individuals certified as third-party inspectors, the Department should establish an opportunity for professionals working within the industry but directly for a UST Owner or Operator to become and remain certified. Currently a certified TPI in the State who then works for a UST Owner or Operator has limited or no opportunity to sustain their certification through such employment in large part due to the requirement to perform a minimum number of inspections during the certification period. (NECSEMA)

Response:
MassDEP did not revise 80.49(4) as suggested.

Under 310 CMR 80.00 a person that works directly for a UST Owner or Operator can be a certified Third-Party Inspector but must comply with the Third-Party Inspection Prohibition (conflict of interest) requirements found at 310 CMR 80.49(6) when performing third-party inspections.

In addition, due to the variety of installed system configuration seen in the field and applicability of requirements under 310 CMR 80.00, MassDEP has proposed Third-Party Inspectors complete a minimum of six third-party inspections over three years in order to be eligible to renew their Third-Party Inspector certification (80.494)(d)). In this way MassDEP ensures Third-Party Inspectors maintain their knowledge of UST Systems and applicable requirements under 310 CMR 80.00 over time.

Because of the importance of maintaining Third Party Inspector integrity and skills for ensuring program effectiveness, MassDEP will not revise the Third-Party Inspector Prohibition requirements at 310 CMR 80.49(6) or the six inspections in a three-year period requirement at 310 CMR 80.49(4)(d), for Third Party Inspectors renewing their Third inspector certification.

A Third-Party Inspector who does not maintain their certification can reapply by meeting the requisites of 310 CMR 80.49(4)(b) to be reinstated.

19. Other Changes

A. MassDEP amended the title of 310 CMR 80.45 in the Table of Contents to be consistent with the new title of 310 CMR 80.45.

80.45 ~~Requirements for Bringing Out-of-Service UST Systems Back Into Service~~ UST Systems Temporarily Out-of-service for Over Five Years