

503 CMR: UNDERGROUND STORAGE TANK PETROLEUM PRODUCT CLEANUP
FUND ADMINISTRATIVE REVIEW BOARD

503 CMR 4.00: IMPLEMENTATION OF UNDERGROUND STORAGE TANK CLEANUP FEES

Section

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4.01: Purpose and Scope

503 CMR 4.00 shall apply to the collection of fees for the implementation of M.G.L. c. 21J, § 2(A).

4.02: Definitions

Bulk Facility. A facility including pipeline terminals, refinery terminals, rails and barge terminals, and associated underground and above ground storage tanks, connected or separate, from which Petroleum Products are withdrawn from the bulk quantities and delivered into a cargo tank or a barge used to transport these products, including all licensed distributors and unclassified importers of Petroleum Products.

Commissioner. The Commissioner of the Massachusetts Department of Revenue, or the Commissioner's duly authorized representative.

Commonwealth Transportation Fund. The fund established under M.G.L. c. 29, § 2.

Delivery Load or Load. Shall consist of 10,000 US gallons of Petroleum Product.

Department. The Massachusetts Department of Revenue.

Dispensing Facility. Any facility qualified to do business in the Commonwealth under the provisions of M.G.L. chs. 64A, 64E and 64F, and dispensing Petroleum Products after April 2, 1991, at which Underground Storage Tanks located in Massachusetts are used to store Petroleum Products and from which Petroleum Products are dispensed directly to a Motor Vehicle or boat as motor fuel; except an Underground Storage Tank that is 1,100 gallons or less capacity and is located on a farm or a residence and is used for storing Petroleum Product for noncommercial purposes; or is an Underground Storage Tank that is owned by the Federal government or the Commonwealth or any of its Political Subdivisions.

Fund. The Underground Storage Tank Petroleum Product Cleanup Fund Program or Underground Storage Tank Program established pursuant to M.G.L. c. 21J.

Motor Vehicle. Any on- or off-road motorized wheeled vehicle that is capable of self-propulsion, does not run on rails and is not considered aircraft.

Person Delivering Petroleum Product. The titleholder of the Petroleum Product delivered or transferred to a Dispensing Facility including, licensed Massachusetts Distributors, Unclassified Importers and Special Fuel Suppliers. A common carrier simply delivering or transferring a load of Petroleum Product to a Dispensing Facility shall not be considered a Person Delivering Petroleum Product.

Petroleum Product. A product, or fraction of a product, that is obtained from distilling and processing crude oil and that is capable of being used as a motor fuel for the propulsion of a Motor Vehicle or Boat and was delivered to the Facility for such purpose. Petroleum Product includes fuels of which a portion may be petroleum-based, which may be blended with ethanol, biofuels, and similar products that are used as a motor fuel for the propulsion of a Motor Vehicle or Boat. Petroleum Product does not include naphtha-type jet fuel, kerosene-type jet fuel, a product destined for use in chemical manufacturing or feedstock of that manufacturing, waste oil, fuel oil or any fuel used for heating purposes.

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4.02: continued

Underground Storage Tank. Any one or combination of tanks, including underground pipes connected thereto, at a Facility, used to contain an accumulation of Petroleum Product and the volume of which, including the volume of underground pipes connected thereto, is 10% or more beneath the surface of the ground. Underground Storage Tank shall not include a freestanding container within a building.

UST Board. The Massachusetts Underground Storage Tank Petroleum Cleanup Fund Administrative Review Board.

4.03: Delivery Fee

(1) Effective January 1, 2016, a fee of \$253.95 shall be paid to the Department for the benefit of the Commonwealth Transportation Fund for each Delivery Load delivered to a Dispensing Facility. The fee for deliveries of Petroleum Product in quantities greater or less than a Delivery Load shall be calculated using a pro-rated per gallon rate equal to the Delivery Fee divided by 10,000. Pursuant to the St. 2013, c. 46, § 20, the fee imposed under 503 CMR 4.03(1) shall be adjusted at the beginning of each calendar year by the percentage, if any, by which the consumer price index, as defined in 26 U.S.C. § 1, for the preceding year exceeds the consumer price index for the calendar year that ends before such preceding year.

(2) Delivery Fees will be collected on each Delivery Load sold by the Person Delivering Petroleum Product to any customer who is not a valid Massachusetts Distributor as defined in M.G.L. c. 64A, § 1, Unclassified Importer as defined in M.G.L. c. 64A, § 1, or does not hold a Special Fuel Supplier license, as used in M.G.L. c. 64E. The fee is remitted to the Department under the following schedule:

(a) The remittance of the Delivery Fee shall be made to the Department on or before the last day of the month immediately following the reporting period. The reporting period shall consist of a calendar month.

Example:

Fees Collected in	Paid by
November	December 31 st
December	January 31 st
January	February 28 th or 29 th

(b) A completed UST Form 500, as amended including electronic filing requirements, shall accompany this return and payment. See www.mass.gov/ust for current filing requirements.

(c) As required, the Person Delivering Petroleum Product shall attach a copy of the Massachusetts Gasoline Tax Return and the Massachusetts Supplier's Tax Return for Special Fuels for the corresponding reporting period.

(3) The fees established in 503 CMR 4.03 shall not apply to a delivery of a Petroleum Product destined for export from this State that is delivered by a bulk facility owner or operator to a common or contract carrier or an oceangoing vessel including a ship, barge or tanker, if the Petroleum Product is in continuous movement to a destination outside this State.

4.04: Annual Tank Fee

(1) Each owner of an Underground Storage Tank used to store Petroleum Products or any fraction thereof, except waste oil, at a Dispensing Facility shall annually pay to the Department for the benefit of the Fund a fee of \$250.00 per tank. The Annual Tank Fee will not be pro-rated if at any time during the year the facility ceases to be a Dispensing Facility during the year. The tank owner shall not pass on the Annual Tank Fee to the lessee of a Dispensing Facility.

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- (2) The Department shall mail invoices for the Annual Tank Fee at the beginning of each fiscal year, payable within one month of issuance.
- (3) The Annual Tank Fee is not collected by the Person Delivering Petroleum Product to a Dispensing Facility.

4.05: General Provisions for Enforcement and Appeals

- (1) Any owner or operator or Person Delivering Petroleum Product to a Dispensing Facility who violates any provision of 503 CMR 4.00 shall be subject to penalties specified in M.G.L. c. 21J, §§ 12 and 13.
- (2) The Commissioner may vary the application of any provision of 503 CMR 4.00, unless otherwise required by law, when in the Commissioner's opinion the applicant has demonstrated a reasonable and prudent action that complies with M.G.L. c. 21J. Any grant or denial shall be in writing and shall contain a brief statement of the reason(s) for the grant or denial.
- (3) The Commissioner and/or any other individual granted authority by the UST Board will have the authority to abate of the Delivery Fee or Annual Tank Fee upon receipt of a properly completed and timely filed Underground Petroleum Cleanup Fund Application for Abatement of the Delivery Fee or request for abatement of the Annual Tank Fee, as directed on www.mass.gov/ust. Applicants shall file the Underground Petroleum Cleanup Fund Application for Abatement of the Delivery Fee or request for abatement of the Annual Tank Fee within 730 days of the date the fee was due the Department. Failure to file for abatement within 730 days of the due date shall result in the denial of the application for abatement. The grounds for abatement include but are not limited to the following:
 - (a) The Delivery Fee was charged and collected on the delivery of Petroleum Product to a facility that was not a Dispensing Facility; or
 - (b) The Delivery Fee was charged for Petroleum Product that was delivered to a facility located outside the Commonwealth.
 - (c) The Annual Tank Fee was charged for a UST that was not in use for the entire year. The Annual Tank Fee will not be prorated.
- (4) Non-payment of the fee may subject the owner or operator to the penalties specified in M.G.L. c. 21J, §§ 12 and 13. *See also*, 503 CMR 2.07(10) and 503 CMR 2.08(2).

REGULATORY AUTHORITY

503 CMR 4.00: M.G.L. c. 21J.