

Secretary's Order No.: **2007-A-0056**

RE: Proposed Amendments to the  
*Delaware Regulations Governing Underground Storage Tank Systems*

Date of Issuance: December 17, 2007

Effective Date of the Amendment: January 11, 2008

**I. Background:**

A public hearing was held on Tuesday, October 30, 2007, at 6:00 p.m. at the DNREC offices located at 391 Lukens Drive in New Castle, Delaware to receive comment on proposed amendments to the *Delaware Regulations Governing Underground Storage Tank Systems* (hereinafter referred to as the "UST Regulations"). Delaware is proposing these amendments to reflect advances in underground storage tank system technology that have occurred since the most recent version of these regulations in 1995. The proposed UST Regulation amendments will impact owners and operators of underground storage tanks greater than 110 gallons containing a regulated substance, with the exception of certain classes of heating fuel USTs. Adoption of these proposed revisions will keep Delaware's UST Regulations current with existing technology, so that compliance with the same will ensure continued

protection of our State's natural resources, and will keep Delaware's regulations consistent with the federal requirements as set forth in the Energy Policy Act of 2005.

These proposed amendments to Delaware's UST Regulations were initially presented to the general public by the Department in a series of three public workshops held in September of 2006. Based upon comments received from the regulated community as a result of these workshops, the Department made revisions to their draft amendments, and an additional public workshop was held in May of 2007 to receive public comment on those changes. Subsequently, minor revisions were made to the Department's draft amendments based upon the public comment received in May 2007. In July 2007, the third draft of these proposed regulation amendments was presented to the Delaware Leaking Underground Storage Tank Committee (hereinafter referred to as the "LUST" Committee), which is an advisory committee required by the Delaware UST Act as set forth in 7 Del.C., Chapter 74. No comments were received at that time from the LUST committee.

Some members of the regulated community offered their comments for the record at the time of the public hearing on October 30, 2007, and those concerns were fully and thoroughly addressed by the Department during the post-hearing phase of this matter. Proper notice of the hearing was provided as required by law.

## **II. Findings:**

The Department has provided a balanced and reasoned analysis with regard to the responses given to public comment, as reflected in the Hearing Officer's Report of December 12, 2007, which is attached hereto and expressly incorporated into this Order. Moreover, the following findings and conclusions are entered at this time:

1. The Department has jurisdiction under its statutory authority, 7 Del.C. Chapters 60 and 74, to make a determination in this proceeding;
2. The Department provided adequate public notice of the proceeding and the public hearing in a manner required by the law and regulations;
3. The Department held a public hearing in a manner required by the law and regulations;
4. The Department considered all timely and relevant public comments in making its determination;
5. The Department has reviewed this proposed amendment in the light of the Regulatory Flexibility Act, and believes the same to be lawful, feasible and desirable, and that the recommendations as proposed should be applicable to all Delaware citizens equally;

6. Promulgation of these proposed amendments will keep Delaware's UST Regulations current with existing technology, so that compliance with the same will ensure continued protection of our State's natural resources, and will keep Delaware's regulations consistent with the federal requirements as set forth in the Energy Policy Act of 2005;
7. The Department has an adequate record for its decision, and no further public hearing is appropriate or necessary;
8. The Department's proposed regulation, as published in the October 1, 2007 *Delaware Register of Regulations*, is adequately supported, is not arbitrary or capricious, and is consistent with the applicable laws and regulations. Consequently, it should be approved as a final regulation, which shall go into effect ten days after its publication in the next available issue of the *Delaware Register of Regulations*;
9. The Department shall submit the proposed regulation as a final regulation to the Delaware Register of Regulation for publication in its next available issue, and shall provide written notice to the persons affected by the Order.

**III. Order:**

Based on the record developed, as reviewed in the Hearing Officer's Report dated December 12, 2007 and expressly incorporated herein, it is hereby ordered that the proposed amendments to State of Delaware Regulations Governing Underground Storage Tank Systems be promulgated in final form in the customary manner and established rule-making procedure required by law.

**IV. Reasons:**

The promulgation of the amendments to the State of Delaware Regulations Governing Underground Storage Tank Systems will keep Delaware's UST Regulations current with existing technology, and will keep Delaware's regulations consistent with the federal requirements as set forth in the Energy Policy Act of 2005.

In developing this regulation, the Department has balanced the absolute environmental need for the State of Delaware to promulgate regulations concerning this matter with the important interests and public concerns surrounding the same, in furtherance of the policy and purposes of 7 Del. C., Chapters 60 and 74.

/s/ John A. Hughes  
John A. Hughes  
Secretary