

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

503 CMR 3.00: UNDERGROUND STORAGE TANK PETROLEUM PRODUCT CLEANUP
FUND: GRANT PROGRAM FOR CITIES AND TOWNS M.G.L. C. 21J AND C.
148, S. 37A

Section

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3.01: Purpose and Scope

503 CMR 3.00 establishes the qualifications, priorities, and administration of the Underground Storage Tank Petroleum Product Cleanup Fund grant program for cities, towns, districts, and other Bodies Politic. The purpose of the program is to provide financial assistance to encourage these entities to remove and close, or remove and replace, petroleum product storage tank(s) that have leaked or before leaks or leakage develops. THE PROGRAM DOES NOT PROVIDE FUNDS FOR RESPONSE ACTIONS.

3.02: Definitions

Under 503 CMR 3.00, the following terms shall have the following meanings:

Aboveground Storage Tank or AST: a horizontal or vertical double walled tank, that is listed and intended for fixed installation, without backfill above or below grade, and is within the scope of its approval or listing.

Agencies of the Commonwealth: any department, agency, board or commission of the Commonwealth.

Applicant: cities, towns, districts, and other Bodies Politic which file an application for a grant under this program.

Board: the Underground Storage Tank Petroleum Product Cleanup Fund Administrative Review Board.

Bodies Politic: any department, agency, board or commission of any city, town, or county of the Commonwealth. But does not include agencies or authorities of the Commonwealth.

Certification: a written statement signed by an Applicant or potential Applicant attesting to the accuracy and completeness of the facts contained in a submission to the Board.

Closure or Closed: the permanent removal from beneath the surface of the ground or abandoned in place in accordance with 527 CMR 9.07(I).

Consumptive Use: use of fuel oil exclusively for area heating and/or the heating of domestic water on the premises where stored.

Department of Environmental Protection or DEP: the Department of Environmental Protection of the Commonwealth of Massachusetts.

Department of Fire Services or DFS: the Department of Fire Services of the Commonwealth of Massachusetts.

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Designated Representative of the State Fire Marshal: a person under the control of, and designated in writing by, the State Fire Marshal to act on his behalf to ensure compliance with construction, installation, maintenance and operation regulations applicable to an UST System. The State Fire Marshal shall maintain a list of the Designated representatives.

District: a separate fire, water, sewer, water pollution abatement, refuse disposal, light or improvement district, or any other district, however named, of the Commonwealth established under general law or special act.

Eligible Parties: cities, towns, districts, and other Bodies Politic which own one or more Facilities.

Facility: a real property address in Massachusetts at which one or more Underground Storage Tanks are located and used to store gasoline or other fractions of Petroleum Products.

Fuel Storage Tank: an Underground Storage Tank, used or designed to be used for the storage of petroleum products, provided the tank does not have an acceptable form of leak detection and does not have a spill containment manhole and overflow prevention device.

Fund: the Underground Storage Tank Petroleum Product Cleanup Fund, established pursuant to M.G.L. c. 29, § 2S.

Grant: any monies allocated to an Eligible Party within the purpose and scope of this regulation.

Head of the Fire Department: the top ranking official of the local fire department or his designee.

Interim Welled Protection Area: the interim radius of one-half mile (2640') surrounding a public water supply well or wellfield for which DEP has not approved a hydrologically delineated Zone II.

Leak or Leakage: any uncontrolled movement, measurable by a final or precision test, as described in the 527 CMR 9.00.

Monitoring System: a full-time approved system installed for the purpose of early detection of leaks. Minimum standards of in-tank monitoring systems shall consist of in-tank equipment which provides continuous monitoring of any uncontrolled movement of liquid from the tank as described in 527 CMR 9.00.

Operator: any person in control of, or having responsibility for, the daily operations of the UST System.

Owner: any person having legal ownership of the UST System.

Person: any agency or political subdivision of the Commonwealth, public or private corporation or authority, partnership, association, or other entity, and any officer, employee, or agent of such person, and any group of persons or a natural person.

Petroleum Product: 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, boat or aircraft. The term includes fuel oil used for consumptive heating purposes. The term does not include naphtha-type jet fuel, kerosene-type jet fuel, a petroleum product destined for use in chemical manufacturing or feedstock of that manufacturing, or waste oil.

Petroleum Product Movement: the movement of petroleum product through the ground.

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Registration of UST System: notification to the DFS of the existence of an UST, regardless of whether or not such UST previously was Closed. Such notification, as a minimum, shall include, to the extent known, the size, type, location of the UST; and the type and quantity of substances stored in such UST and, if applicable, the date the UST was Closed. Such notification is to be made on a form F.P. 290 as amended.

Replacement or Substantial Modification: the construction of or any additions to, an existing storage Facility, or any restoration, refurbishment, or renovation which significantly affects the physical integrity of the storage Facility or its monitoring system.

Response Action: a cost effective, reasonable and necessary action performed after the release notification made to the DEP pursuant to M.G.L. c. 21E, § 7 and 310 CMR 40.0000 with regard to the existence or extent of contamination of groundwater, surface water or soils on or from a site by Petroleum Products.

Revenue, Department of or DOR: the Department of Revenue for the Commonwealth of Massachusetts.

Tank: any structure used or designed to be used for the storage of any petroleum product within the scope of 503 CMR 3.00.

Underground Storage Tank or UST: any tank or combination of tanks, including underground pipes connected thereto, 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. For the purposes of 503 CMR 3.00, the terms Underground Storage Tank and Underground Storage Tank System shall have the same meaning.

Underground Storage Tank System or UST System: an Underground Storage Tank and its associated ancillary equipment and containment system at a Facility. Associated ancillary equipment includes all piping and equipment connected to the UST or its containment system, including, without limitation, nozzles, hoses, pumps, piping, vents, transport fittings at the point of connection and vapor recovery piping and equipment. For the purposes of 503 CMR 3.00, the terms Underground Storage Tank and Underground Storage Tank System shall have the same meaning.

Water Supply: any raw or finished source that is presently used, reserved for future use, or under investigation for future use as a public water supply as defined in 310 CMR 22.02, or used as a source of private drinking water by one or more persons. This shall include all land and/or waters used as a tributary to a public water system except those under 310 CMR 22.22.

Zone A: the area within 400 feet of the 100 year flood plain elevation of a Class A surface water as delineated on maps prepared by the Federal Emergency Management Agency and the area either within ½ mile upgradient of a Class A surface water or within the contributing surface watershed boundary of a Class A surface water where the slope of such areas equals or exceeds 15%, whichever is less.

Zone B: the area either within one-half mile upgradient of Zone A boundary or the watershed boundary of a Class A surface water supply well or wellfield.

Zone I: the area within the required protective radius approved by DEP's Division of Water Supply surrounding a public water supply well or wellfield.

Zone II: the area of an aquifer which contributes water to a well under the most severe pumping and recharge conditions that can be realistically anticipated as approved by DEP's Division of Water Supply.

Water System: a system for the provision to the public of piped water for human consumption, if such system has at least 15 service connections or regularly serves an average of at least 25 individuals daily at least 60 days of the year.

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3.03: General Provisions

(1) Authority. 503 CMR 3.00 is promulgated by the Board pursuant to the authority granted by M.G.L. c. 21J, as amended, and c. 148. 503 CMR 3.00 should be read together with M.G.L. c. 21J § 4, as amended, and M.G.L. c. 148, § 37A through 38I, which contain important substantive requirements which may not be repeated in 503 CMR 3.00.

The Board shall implement a grant program for cities, towns, districts, and other Bodies Politic as set forth in 503 CMR 3.00. Two types of activities will qualify for grants under this program:

- (a) removal or closure of Fuel Storage Tank(s); and
- (b) removal and replacement of Fuel Storage Tank(s) either with new USTs or with ASTs.

(2) Severability. The provisions of 503 CMR 3.00 are severable, and if any provision hereof or the application thereof to any Person or circumstance is held invalid, such a determination shall not affect other provisions hereof or applications thereof which can be given effect without the invalid provision or application.

(3) Effective Date. 503 CMR 3.00 shall take effect on February 20, 1998.

(4) Computation of Time. For the purpose of administering 503 CMR 3.00, any time period prescribed or referred to in 503 CMR 3.00, or in any determination issued pursuant to 503 CMR 3.00, shall begin with the first day following the act which initiates the running of the time period, and shall include every calendar day, including the last day of the time period so computed. If the last day is a Saturday, Sunday, legal holiday, or any other day in which the offices of the Board are closed, the deadline shall run until the end of the next business day. If the time period prescribed or referred to is less than seven days, only days when the offices of the Board are open shall be included in the computation.

(5) Accurate and Timely Submittals to the Board.

- (a) No Person shall make any false, inaccurate, or misleading oral or written statement in any certification, application, record, report, plan, or statement which that Person submits, or is required to submit, to the Board pursuant to 503 CMR 3.00 or to any order issued by the Board.
- (b) Any certification, application, record, report, plan, or statement which any Person is required to submit to the Board shall be submitted within the time period prescribed in M.G.L. c. 21J, 503 CMR 3.00, or any order issued by the Board, unless otherwise specified by the Board.
- (c) Documentation of timely submittals shall include, but not be limited to, time stamp of the UST Board, return receipt of a recognized overnight carrier or postmark.
- (d) References to Annual Program or Yearly Program shall be consistent with the Commonwealth's Fiscal Year.

(6) Accurate and Complete Record Keeping.

- (a) An Applicant shall keep all records relating to any grant application for reimbursement for at least four years from the date on which the grant was awarded or otherwise disposed of by the Board. Upon the written request of the Board, these records will be made available to the Board, or a designated agent of the Board, at any reasonable place within the state designated by the Board.
- (b) No Person shall make any false or misleading statement in any record, report, plan, file, log, or register which that person keeps, or is required to keep, pursuant to these regulations or to any order of the Board. Any application, record, report, plan, file, log, or register which any person is required to keep shall be filled out completely and otherwise kept in compliance with 503 CMR 3.00 and/or with any order issued by the Board.

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(7) Certification. Any applicant submitting a Grant Application, pursuant to 503 CMR 3.06, or when specifically required by the Board, shall make the following certification: I certify under the penalty of perjury that to the best of my knowledge and belief the statements made and information given herein are true as of the date hereof. I further certify that this submission is in compliance with M.G.L. c. 21J and 503 CMR 3.00. I hereby consent to all audits of payment and necessary inspections made to verify the accuracy of any submission to the Board and made pursuant to law and incidental to the issuance of licenses, registrations, permits, certificates and the operation of an UST System. I am aware that there are significant penalties for submitting false information, including possible fines, civil penalties and imprisonment. I further certify that I am authorized to execute this form. I agree to return any erroneous payment to the Board via the Department of Revenue within ten days of either the receipt of the erroneous payment or the receipt of written notice from the Board or the Department of Revenue that an erroneous payment was made.

(8) Reproduction of Forms. All applications and other forms may be reproduced or computer generated provided that copies are reproduced identically.

3.04: Eligibility

(1) Only those applicants defined as Eligible Parties in 503 CMR 3.02 are eligible for a grant under 503 CMR 3.00.

(2) Double Walled Underground Storage Tank(s) that have been installed with leak detection and spill containment and overflow protection in accordance with 527 CMR 9.05(G) are not eligible for a grant.

(3) Underground Storage Tank systems installed prior to April 1, 1991, that have been closed, removed, or removed and replaced between April 1, 1991, and May 19, 1995 are eligible if a grant application is filed by November 20, 1995.

(4) Underground Storage Tank systems installed prior to April 1, 1991, that have been closed, removed, or removed and replaced after May 19, 1995 are eligible for a grant in any given year if a grant application is filed prior to the application deadline set by the Board for that year and satisfies 503 CMR 3.05(1).

(5) The application described in 503 CMR 3.04(3) and (4) shall be in the form prescribed by the Board.

(6) Underground fuel storage tanks located at marine facilities must have a permit from the State Fire Marshal in accordance with 527 CMR 15.00. Consumptive use heating oil tanks must have a permit from the local fire department in accordance with 527 CMR 4.00.

(7) Applicants removing or closing a UST must file an amended FP-290 with the Department of Fire Services.

(8) Grants awarded under this program shall not exceed 50% of eligible costs.

(9) After the effective date of 503 CMR 3.00, applicants removing a fuel storage tank and replacing it with an above-ground storage tank must provide documentation demonstrating that the selected replacement is equal to or less costly than replacement with a new underground fuel storage tank exclusive of environmental concerns. Documentation will not be required for UST systems removed and replaced with above ground storage tank systems prior to the effective date of 503 CMR 3.00. The maximum amount of eligible costs will be the cost of removal and replacement with an underground fuel storage tank.

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(10) Only eligible costs, as defined by the Board, will be reimbursed. To be eligible, costs must be directly related to the Closure, removal and/or replacement of the Fuel Storage Tank(s) System. Applicants applying for a grant to cover projects with some eligible and some ineligible costs must provide an estimate of eligible costs based on a methodology acceptable to the Board. Acceptable methodologies for determining eligible costs may include: a detailed breakdown of cost elements on the contractor's invoice; an independent estimate of the cost for the eligible portions of the project; or the cost of a similar, fully eligible project.

(11) Only costs directly associated with the UST/AST Installation and/or Removal will be eligible for a grant. Such costs shall not include dispensers, dispenser islands, monitoring systems, engineering, environmental remediation, lighting, canopies, fire suppression systems, heat exchangers, suction pumps, oil/water separators, inspection tanks and any other costs the Board determines to be ineligible.

3.05: Implementation

(1) Annual Grant Program. The Board will fund grants under 503 CMR 3.00 in a separate grant program each year. For each annual grant program, the Board will establish a deadline for grant application receipt; applications failing to meet this deadline will be considered in the next annual grant program. Except as provided in 503 CMR 3.04(3) and 3.06(1), applications must be received within 12 months of completion of the work for which a grant is being sought. Applications for work completed more than 12 months prior to application receipt will not be accepted.

(2) Availability of Funds. In accordance with M.G.L. c. 21J, § 4(c) and subject to appropriation, the Board shall dispense from the fund for grants not more than two million dollars per year.

3.06: Procedures

(1) Application Process. Eligible parties shall make application to the Board for a grant using the form supplied by the Board for this purpose. The application shall include a detail of either the actual costs incurred for the Closure, removal and/or replacement of the Fuel Storage Tank(s) System or an estimate of expected costs. Both actual and expected costs shall be documented with invoices from contractors qualified to do the work and/or cost estimates from at least two contractors qualified to do the work. Applicants shall refer to 527 CMR 9.00 for the definition of qualified contractor, which states that no new or replacement tank shall be installed except by a contractor who has been certified in writing by the manufacturer or a petroleum equipment association as qualified for the purpose. Where cost estimates are submitted, the UST Board will pay up to 50% of the amount of the lowest cost estimate. Additional information may be required to enable classification and priority point scoring. Such information may include a description of the work intended or completed and for which reimbursement is being requested, along with documented costs or cost estimates. In no event will costs in excess of the maximums stated in 503 CMR 3.04 and 3.08 be reimbursed. Documentation that the work has been completed must be submitted to the Board. Work must be completed prior to application to the Board or must be completed and all documentation submitted to the Board within a 12-month period from the date of application filing. An application for work not completed and all documentation submitted within a 12-month period from the date of application filing will lose its classification and priority ranking.

(2) Payment Procedure. Grants shall be awarded after the work has been completed through the annual local aid distribution to cities and towns and through other appropriate mechanisms for other eligible recipients.

3.07: Ranking of Applications and Grant Funding Levels

(1) Classification. The Board shall place each application in one of the following four classifications based on the activities for which the applicant is seeking reimbursement:

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- One: Removal of leaking fuel storage tank(s) systems pursuant to 527 CMR 9.00.
- Two: Closure of fuel storage tank(s) systems.
- Three: Removal and Replacement of fuel storage tank(s) systems used for public safety vehicles, emergency generators, hospitals, and schools.
- Four: Removal and replacement of other fuel storage tank(s) systems (e.g., heating oil, waste oil, etc.).

(2) Priority. Applications within each classification will be ranked according to the following point scoring system, with the highest point score equal to the highest rank.

<u>Category 1 - Construction</u>	<u>Points</u>
Lined tank	5
Bare steel	4
Concrete	3
Protected	2
Composite	2
Fiberglass	1
 <u>Category 2 - Age of Tank Points</u>	
Over 31 years	6
26-30 years	5
21-25 years	4
16-20 years	3
11-15 years	2
5-10 years	1
 <u>Category 3 - Proximity to Public Water Supply System Points</u>	
Zone I or Zone A	10
Zone II or Interim Wellhead Protection Area	8
Zone B	6
Sole Source Aquifer	4
Within 100' of Wetland	4
Within 100' of Stream	4
Within 100' of Brook	4
Within 100' of Area of Critical Environmental Concern	4
Agricultural Land	4
Any other Area	0
* Applicants may choose more than one selection from category	3
 <u>Category 4 - Speed of Petroleum Product Movement Points</u>	
Gasoline	5
Aviation fuel	4
Diesel	3
#2 fuel	3
#4 fuel	2
#6 fuel	2
Other mid-range weight fuels	3

(3) Applications. Applications will be reviewed by the Board for accuracy and for registration and permitting. Applications found to be eligible will then receive a reimbursement priority ranking based on point scores. The Board will notify applicants of their ranking and the number of grants that will be awarded based on fund availability; this information will be summarized in a Preliminary Priority List which shall be available to the public by the Board. Notwithstanding the provisions of 503 CMR 3.04(3), the Board reserves the right, which it may or may not exercise, during FY 95 to award grants prior to the full receipt of all grant applications for work performed during the period covering April 1, 1991 to May 19, 1995.

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(4) Order of Grant Funding.

(a) Funding for grants will be distributed based upon the Classification and Priority System described in 503 CMR 3.07(1) and (2).

(b) If adequate funds are available to fund each qualifying grant request, all grants will be fully funded to the level of 50% of eligible costs. Unless fundable amounts in all grant applications do not total the amount of funds available, all grant funds will be distributed each year. If in any given year total qualifying, fundable grant requests exceed available grant funds, funds will be distributed using the following methodology:

1. Grant funds will be distributed so that 40% of funds will fund Classification One activities, 30% will fund Classification Two activities, 15% will fund Classification Three activities, and 15% will fund Classification Four activities.

2. Within each Classification, grants will be funded fully (to the level of 50% of eligible costs) according to their priority ranking using the system described in 503 CMR 3.07(2). Grants will be funded in descending order of priority, with the highest-scoring grant receiving funding first and progressively lower-scoring grants receiving funding until all monies allocated to that Classification are expended. In the event of a tie score, grant applications will be ranked in order of receipt.

3. Some lower-priority grants within some or all Classifications may receive no funding. Eligible grants that receive no funding will be retained in the program and automatically entered into the following year's pool for ranking along with newly-filed grant applications.

3.08: Limitations on Grants

(1) In no case will monies awarded for an eligible grant exceed the maximum limits described in 503 CMR 3.04(8).

(2) No one eligible applicant shall submit more than one application for each annual grant program. If an applicant has filed an eligible application that was not funded and was automatically entered into the following year's pool according to 503 CMR 3.07(5)(c)3., that application will constitute the applicant's one grant application for that year's pool. If the applicant wishes to substitute a different application, the applicant shall notify the Board that it is withdrawing the earlier application prior to or at the time it submits a new application.

(3) Only one grant per city, town, district or other body politic will be accepted for each annual grant program. Grant applications shall represent one facility only.

REGULATORY AUTHORITY

503 CMR 3.00: M.G.L. c. 21J; c. 148, § 37(A) and (B).