RESPONSE TO COMMENTS
ABOVEGROUND STORAGE TANK RULES
(Proposed Rule 24P012)

The Vermont Agency of Natural Resources (Agency) proposed for public comment revised Aboveground Storage Tank (AST) Rules on March 8, 2024. The comment period remained open through April 24, 2024, and a public hearing was held in Berlin, Vermont, on April 16, 2024.

During the public comment period, the Agency received written comments from 4 (four) interested parties; complete comments are attached for review as an Appendix to this response. No oral comments on the proposed rule were made at the April 16, 2024, public hearing.

Martin Dole submitted the following comment on March 21, 2024:

> I am emailing about the new storage tank rules. I do not feel it is fair to not grand father existing structures. I had an issue when selling my first house years ago because the state did not grandfather the contractor signing off on waste water permits. I feel these rules should be for any new construction or replacements moving forward. As home owners replace existing tanks then the new rules should take affect. The system for red tagging oil tanks I feel is flawed. There is no standards to say how a tank is red flagged that I am aware of. I believe this needs to be addressed also. I appreciate your time with this email.

Agency Response to Martin Dole comment: The purpose of the AST Rules is to protect the environment and public health from petroleum releases from ASTs. The majority of petroleum releases reported to the Agency are from existing tanks, not from new installations. Older tanks are especially prone to rusting, which increases the likelihood of a petroleum release due to pinhole leaks in the body of the tank. Required periodic tank inspections serve to identify compromised tanks, prohibit the delivery of fuel, and eliminate the risk of a release. Exempting existing tanks from the AST rules, especially the inspection standards, will significantly increase the prevalence and severity of petroleum releases in the state. This will significantly increase cleanup costs to the state's Petroleum Cleanup Fund (PCF), and it will negatively impact private residents, as releases in the home can be disruptive to everyday life and harmful to human health. When comparing the six years since the implementation of tank inspection standards in August 2017 to the six years preceding these standards, there has been a significant decrease in both releases from ASTs (30%) and state expenditures for petroleum cleanup due to AST releases (46%) (Legislative Report, 36th Annual Petroleum Cleanup Fund (PCF) Report, January 15, 2024). Therefore, the Agency is not modifying the proposed rules to exempt existing AST systems from the requirements of the AST Rules.

The current (2017) AST rules provide clear standards for red tagging ASTs in section **§ 9-306;** the proposed rules include red tag standards in section **§ 9-305.** Additionally, tank inspectors are required to provide each tank owner with a completed tank inspection checklist following each tank inspection, regardless of whether the tank passed or failed the inspection. Each checklist identifies the areas of tank noncompliance resulting in the red tag. Inspectors are required to use a checklist form developed and issued by the Agency and report all noncompliance to a public

database. Examples of inspection forms may be accessed on the Agency website: https://dec.vermont.gov/waste-management/storage-tanks/aboveground-storage-tanks-asts/asts-heating.

Additionally, the Agency recognizes that tanks installed prior to the development of these Rules may not be equipped with all of the components that are required by current tank installation standards. Therefore, the Rules already make clear distinctions between requirements applicable to existing installations versus new installations, and many of the tank installation standards for new tank systems are not applicable for existing tanks. For the purposes of tank inspections, under current AST (2017) rules the only items for which an existing tank can be designated as noncompliant and red tagged include: excessive rust or pitting/leaking/dripping; lack of a stable foundation; unprotected (not coated to prevent corrosion/damage) buried fuel lines; lack of functional overfill alarm; and improperly sized vent/fill lines. By comparison, new tank installations are currently subject to 12 individual installation requirements.

Matt Cota on behalf of Vermont Fuel Dealers Association (VFDA) submitted the following comment on April 10, 2024:

> We've paid multiple claims where a tank was filled when the tank was offline for maintenance or replacement and the fill-pipe wasn't tagged/blocked. It should be a rule that if you disconnect the tank from the fill pipe or are maintaining the furnace in such a way that oil could flow through the tank and into an open system, the fill pipe be blocked.

Agency Response to VFDA comment: In response to the comment, the Agency is amending **§ 9-303(c)(6)** to add the following language (underlined): Unused openings in all aboveground storage tank systems shall be fully and permanently closed or plugged. Threaded pipe plugs may be used to close openings to comply with this provision. <u>Openings in aboveground storage tank systems that are temporarily taken out of service for maintenance or any other reason shall be plugged or tagged out to indicate the tank is out of service and the fuel carrier shall be notified that the tank cannot receive deliveries.</u>

Vermont Fuel Dealers Association (VFDA) submitted the following comment on April 10, 2024:

> One of the proposed regulations requires the fuel dealer to know if a tank is in a flood zone or flood-prone area. Finding the flood zone for a property is possible using the FEMA website. But all properties are found on the flood map, and I believe all properties are designated a flood zone. It's what those zones mean that matters. You cannot leave it at "flood zone". However, flood-prone, is not, to my knowledge, an accepted definition with criteria that would allow a dealer to know if they should, or should not, install a tank at that location. You can't use a term that has no actual meaning to hold someone accountable.

Alyssa Sabetto, Senior Planner at the Windham Regional Commission, submitted the following comment on April 16, 2024:

Installation contractors/firms should be required to review mapping or have a system in place to know ahead of time what locations/job sites are in the floodplain. These contractors need training and/or a tool developed for their specific use to be able to make that determination. Perhaps using flood hazard mapping on the ANR Atlas, or perhaps there can be a simplified tool developed for them to cross check addresses for floodplain overlap. The contractors themselves, and property owners, generally do not have the expertise to determine if a property is in the floodplain/river corridor. Contractors should *not* be relying on home/business owners to be aware of this, or even be honest about it necessarily. There should be a standardized way for contractors/companies to be able to make this check before going to job sites, so that going into a job they are aware that they do or do not need to abide by the flood installation standards. I think that this check should be required for any site visit, whether it's an installation or an inspection – that would enable retrofit for existing tanks in addition to when new tanks are set.

Agency Response to VFDA and Windham Regional Commission comments: To determine whether an AST installation location falls within or outside a flood prone area, the Agency uses the definition of "**flood hazard area**" under **10 V.S.A. § 752.** Section **§ 9-304(a)** of the revised AST rules states: "In addition to meeting the requirements of **§§ 9-302 and 9-303**, all new tanks located in a flood hazard area as defined in **10 V.S.A. § 752** shall meet the following to prevent tank floating and to prevent releases in high water or flooding conditions:…" **10 V.S.A. § 752** defines "flood hazard area" as having the same meaning as "areas of special flood hazard" under **44 Code of Federal Regulations** (C.F.R.) **§ 59.1; C.F.R. § 59.1** defines "area of special flood hazard" as "the land in the flood plain within a community subject to a 1 percent or greater chance of flooding in any given year. The area may be designated as Zone A on the FHBM. After detailed ratemaking has been completed in preparation for publication of the flood insurance rate map, Zone A usually is refined into Zones A, AO, AH, A1–30, AE, A99, AR, AR/A1–30, AR/AE, AR/AO, AR/AH, AR/A, VO, or V1–30, VE, or V."

To further clarify the flood-prone area requirements, the Agency has added a new definition of "flood prone area" to subchapter 2 of the proposed rules to clarify that for the purpose of these Rules, the meaning of flood prone area is synonymous with the state's definition of flood hazard area. The new definition is as follows: "**Flood prone area"** means any area that is susceptible to flooding by any source and is adjacent to lakes, streams and rivers that are prone to recurring flooding. For the purposes of this Rule, flood prone area shall have the same meaning as "flood hazard area" under **10 V.S.A. § 752."**

FEMA Map Service Center (MSC) (https://msc.fema.gov/) and the ANR Natural Resources Atlas (http://anrmaps.vermont.gov/websites/anra5/) provide maps of areas that fall within the special flood hazard area designations. FEMA MSC and/or ANR Atlas should be used for making accurate flood hazard zone determinations; the responsibility of making this determination will fall on the individual/company that is installing the AST. Agency installation checklists (required for each new installation) have been revised to include the required information regarding tank installation requirements in flood prone areas. The routine checklist used at periodic inspections of existing ASTs (required every 4 years) has also been revised to include questions related to flood prone areas. Tank installers will be required to certify that each new installation is

compliant with all tank installation standards, including installation standards for flood prone areas.

Agency staff are developing written guidance for tank installers to aide them in making determinations of whether installation locations fall within flood hazard areas; all guidance will be available on the Agency website and will be provided to the Vermont Fuel Dealers Association for distribution to individual fuel companies. The Agency is also looking into opportunities to develop training videos on how to use mapping resources that are publicly available. Agency staff will be available to assist individual installers with making these determinations on an as-needed basis.

Additionally, any residential dwellings that are approved for the Petroleum Cleanup Fund (PCF) Financial Assistance Program for tank replacement will be screened using FEMA Map Service Center or ANR Atlas by Agency staff at the time of application review; applications from residencies that fall within the federal flood hazard areas will be identified and communicated to the tank installers, and installation per flood prone area standards will be required prior to release of state funds.

Elise Shanbacker, Addison Housing Works submitted the following comment on April 12, 2024:

> The health and safety of our economically disadvantaged communities as well as our waterways is of paramount importance to all Vermonters. Fuel oil spills and leaks from above-ground storage tanks (ASTs) is a source of contamination the state is committed to addressing, and a health hazard for those who live near leaking ASTs.
> It is admirable that the Agency of Natural Resources provides financial assistance for those who need to replace ASTs that do not meet safety standards for preventing leaks. However, the current system for accessing this assistance unintentionally excludes many residents of Manufactured Housing Communities (MHCs).
>
> Under current rules, the system is designed so that fuel dealers are the primary mechanism for identifying noncompliant ASTs via "red-tagging", and owners are incentivized to addressed such ASTs because dealers will not fill their tanks if they don't.
>
> This makes sense in theory; however, in practice, this system does not work for most low-income residents of MHCs. Residents whose ASTs do not pass inspection simply resort to filling their tanks themselves from five-gallon containers, bypassing the rules and resulting in potentially more spillage and leaks. Even though they may be eligible for financial assistance to replace their tanks, they may not be aware of the program, or they may not be able to provide the cost estimate and income verification that the program requires.
>
> This can be a major problem for MHCs, their residents, and the state's waterways. Addison Housing Works (AHW) conducts lot inspections annually and since 2022 has identified approximately 75 resident-owned ASTs that need to be replaced due to red tagging, evidence of significant rust, or other failure. This represents about 20% of the

ASTs in our MHCs. In that same time period, we have identified three with active leaks or spillage. One has cost the Petroleum Cleanup Fund (PCF) over $30,000 to remediate to date an amount that would have covered at least 10 replacements that could have prevented the issue from happening in the first place.

We recommend that ANR consider streamlining the AST replacement process for residents of MHCs by making them categorically eligible for financial assistance. Furthermore, a process whereby ANR contracts directly with trusted vendors to replace ASTs (including slabs and roofs) would have the greatest impact on eradicating this problem.

Categorical eligibility for MHC residents makes sense, especially for nonprofit and cooperatively owned parks, because:

- **The vast majority of MHC residents are low-income**, especially those who do not access fuel through a dealer. In nonprofit parks, most residents income qualify at the time they move into the park. Income studies show that median income in parks is about half of area median income.
- State investment in replacing tanks for higher income residents still has **benefits to the entire low-income community** by preventing environmental hazards and supporting environmental justice.
- **Income verification is a significant barrier** and may not be any more accurate than a self-certification given the unreported nature of much low-wage work. Even if the state were to coordinate with the Department of Taxes, while this would be an improvement, it might still be a deterrent to residents who have a low degree of trust in the system and may be unwilling to release their tax information.

ANR contracting directly for replacement also makes sense and has promising precedent within the Agency:

- **Finding a contractor to provide an estimate is a significant barrier**. Many residents drop out at this stage in the process, as many contractors are unwilling to do work in MHCs.
- **ANR has used this model very successfully in the Healthy Homes program,** which contracts directly with engineering firms to provide Preliminary Engineering Reports so that low-capacity nonprofits and coops don't have to navigate the complex world of civil engineering RFPs and RFQs.

Updating the Financial Assistance for Tank Removal Program will help hundreds more low-income residents of environmentally vulnerable communities replace risky ASTs that threaten to impact the quality of our groundwater, rivers, and lakes. It may also save money from the Petroleum Cleanup Fund in the long run.

Agency Response to Addison Housing Works: The AST Rules do not address Agency funding opportunities for replacement of noncompliant tanks. The funding for such replacements is through the state's Petroleum Cleanup Fund (PCF). Therefore, the Agency is not making any changes to the regulatory text of the proposed AST Rules.

The Agency has considered the comments and will explore making internal improvements to the current financial assistance process to better serve Vermont's economically disadvantaged communities.

Finally, the Agency made the following technical clarifications and corrections in the final proposed rule.

- ***§ 9-303(c)(2)*** has been modified to include the following underlined language: *Overfill alarm. Any aboveground storage tank system that receives pressurized deliveries shall be equipped with an operational overfill vent alarm or "whistle" with a vent pipe that terminates near the fill pipe. Vent pipes shall terminate not more than 12 feet from the fill pipe and at a point visible from the fill port.*

- The following language: "Visit the Agency website for guidance on making flood hazard area determinations" and the URL for the for the ANR Natural Resource Atlas has been added to the Note section proceeding **§ 9-304(a)(2)**.

- **§ 9-305(e)(1)** has been modified to include the following underlined language: *Inspectors shall utilize an inspection checklist for performing each aboveground storage tank system inspection. The checklist shall be on the current form provided by the Secretary with the form effective date of July 2024 or later, or pre-approved by the Secretary and shall be used by the inspector to document the age and condition of the aboveground storage tank system as of the time of the inspection. The checklist shall document any issues identified in the inspection which indicate an actual or suspected release of fuel and any noncompliance with the requirements and standards of **§ 9-305(c)** and shall include measures recommended by the inspector that are necessary to return the aboveground storage tank system to compliance.*

  The modification to the language was made to clarify that an updated checklist consistent with the requirements in the revised rules must be used; previously issued Agency checklists will no longer be accepted as an official inspection record as they will contain incomplete regulatory requirements.

- A new definition of "Flood Prone Area" has been added to Subchapter 2 of the Rules.

- A correction to the definition of "Secondary Containment System" has been made in Subchapter 2 of the Rules.

- A correction has been made to the citation listed in **§ 9-307(b);** the correct citation should have referenced **Subchapter 3** of the Vermont Investigation and Remediation of Contaminated Properties Rule (IRule), and not **§ 9-301(c)** of the AST Rules.

- A clarification has been made to the citation listed in **§ 9-307(c)**; the citation has been modified to state that only bulk storage tank facilities sited after 2011 are subject to the requirements of **§ 9-307(c)**.

- Technical changes and minor corrections to improve readability and grammar.