

Dear Applicant:

As you may know, during the past legislative session revisions were made to the Underground Storage Tank Petroleum Clean-Up Program ("the Program"). These revisions include authorizing the State Bond Commission to make \$36 million available over the next four years for payment of applications approved under the Program, a significant increase in funding for the Program. The revisions also require that the funds available for payment of approved applications be distributed across different categories of applicants. The end result will be prompter payment of approved applications.

Applicants should also note that the revisions will ultimately result in the phasing out of the Program and will require those subject to the UST financial responsibility requirements to satisfy those requirements through mechanisms other than the Program.

Pursuant to section 261 of Public Act 12-1 ("the Act"), the Commissioner of Energy and Environmental Protection ("the Commissioner") is required to determine whether an applicant to the Program is a municipal applicant, a small, mid-size or large station applicant or an other applicant. The Act provides that the Commissioner may prescribe a form to be used in making this determination. This form is enclosed. In addition to the information on the enclosed form, this letter provides information about the applicant category determination.

A. Categories of Applicants:

Section 251 of the Act defines different categories of applicants as follows:

"Municipal applicant" means an applicant that is a town, city or borough, whether consolidated or unconsolidated;

"Small station applicant" means an applicant who owned, operated, leased, used, or had an interest in, at the time such applicant's first application was received by the underground storage tank petroleum clean-up program, five or fewer separate parcels of real property, within or outside of the state, on which an underground storage tank system was or had been previously located;

"Mid-size station applicant" means an applicant who owned, operated, leased, used, or had an interest in, at the time such applicant's first application was received by the underground storage tank petroleum clean-up program, six to ninety-nine separate

parcels of real property, within or outside of the state, on which an underground storage tank system was or had been previously located;

"Large station applicant" means an applicant who owned, operated, leased, used, or had an interest in, at the time such applicant's first application was received by the underground storage tank petroleum clean-up program, one hundred or more separate parcels of real property, within or outside of the state, on which an underground storage tank system was or had been previously located; and

"Other applicant" means an applicant who is not a municipal applicant or a small, mid-size or large station applicant.

B. How an Applicant's Category Will Be Determined:

Section 261 of the Act provides that the Commissioner's determination of an applicant's category shall:

1. be based on an applicant's status at the time an applicant's first application was received by the Program; and
 2. include all affiliates of an applicant at the time an applicant's first application was received by the Program.
- a. Determining When An Applicant's First Application Was Received By The Program

Under section 261, the determination of an applicant's category will be based on the number of separate parcels an applicant and its affiliates owned, operated, leased, used or had an interest in, on which an underground storage tank system was or had been previously located, *at the time an applicant's first application was received by the Program*. Using its records, the Department has pre-filled this date and certain information about the site of the first application on the attached form. (See Part II, Section A). If an applicant believes the pre-filled information is incorrect, the applicant should not fill out the enclosed form. Rather, the applicant should contact the Department's Underground Storage Tank Petroleum Clean-Up Program at (860) 424-3370 and resolve this matter before completing the enclosed form. The form cannot be completed until the date an applicant's first application was received by the Program has been determined.

In addition, under section 261 of the Act the Commissioner shall make one category determination per applicant. This one determination, based upon the time an applicant's first application was received by the Program, shall be used, even for an applicant that has submitted multiple applications to the Program for multiple sites at different times. In short, regardless of how many different applications for different sites at different times an applicant has submitted to the Program, the Commissioner

shall make only one category determination for an applicant based upon the status of the applicant and its affiliates at the time the applicant's first application was received by the Program.

b. Inclusion Of Parcels From An Applicant and Its Affiliates

Section 261 requires that the Commissioner determine an applicant's category based upon the number of separate parcels an applicant *and its affiliates* owned, operated, leased, used or had an interest in, on which an underground storage tank system was or had been previously located, at the time an applicant's first application was received by the Program. All parcels, regardless of whether such parcels are located within or outside of Connecticut, must be included in this determination.

Information concerning the applicant is sought in Part II Section B of the enclosed form. Information concerning an applicant's affiliates is sought in Part II Section C of the enclosed form. The statute defines "affiliate" or "a person affiliated" with an applicant as "a person that directly or indirectly through one or more intermediaries owns or controls, is owned or controlled by, or is under common control with an applicant."¹ This includes, but is not limited to, parent companies, sister companies and companies owned or controlled by a family member that controls an applicant.

C. Completion and Return of the Form:

The enclosed form should be completed by the applicant, signed and returned to the:

UST Petroleum Clean-Up Program
Department of Energy and Environmental Protection
79 Elm Street
Hartford, Connecticut 06106-5127

Failure to complete the enclosed form and return it to the Department at the mailing address noted above will prevent the Department from being able to order or make payment for any of an applicant's applications, including, but not limited to, applications that have already been approved, but for which payment has not been made.

¹ Under the Act "control", "controlling", "controlled by" or "under common control with" means the possession, directly or indirectly, of the power to direct or cause the direction of the management or the policies of a person, whether through the ownership of voting securities, by contract or otherwise. For the purposes of this definition, the beneficial ownership of ten per cent or more of the voting stock of a corporation creates a presumption of control.

D. How Will An Applicant's Category Determinations Be Used²

Under sections 261 and 263 of the Act, the applicant categories will be used to distribute funds made available for payment or reimbursement of approved applications, making payment and determining the deadline for submission of applications. Each is briefly discussed.

1. Distribution of Funds: Under section 261 of the Act, the funds made available for making payment or reimbursement to applicants shall be distributed as follows:

- One quarter to municipal applicants and other applicants;
- One quarter to small station applicants;
- One quarter to mid-size station applicants; and
- One quarter to large station applicants³

2. Making Payment: Under section 261 of the Act, payments to municipal, small station and other applicants will be prioritized beginning from the earliest date payment or reimbursement was ordered. If payment or reimbursement was ordered on the same day, priority for payment shall be given to those applications received by the Commissioner earliest.

Payment to mid-size and large station applicants will be prioritized on the basis of the results of a reverse auction with payment priority given to those who agree to accept the greatest reduction in the amount ordered for payment or reimbursement.⁴ If two mid-size or large station applicants agree to the same reduction in payment, priority shall be given to those applicants beginning from the earliest date payment or reimbursement was ordered. In the event two mid-size or large station applicants agree to accept the same reduction in payment and payment or reimbursement was ordered on the same day, priority for payment shall be given to those applicants whose applications were received by the Commissioner earliest.

² While the different applicant categories will be used as discussed above, applicants should note that under section 262 of the Act, these categories are *not* used in determining when an applicant can no longer rely on the Program to demonstrate financial responsibility requirements.

³ If there are no applicants in any particular category the funds distributed to one category can be redistributed to another category in the order of priority specified in section 261 of the Act.

⁴ Section 261 of the Act specifies how this reverse auction will operate. The Department will soon be providing mid-size and large station applicants with additional information about this reverse auction.

In addition, under section 261 of the Act, in the fiscal year beginning July 1, 2012, no payment shall be made to mid-size station applicants in excess of thirty-five cents on each dollar ordered to be paid or reimbursed from the Program. In each subsequent fiscal year, this amount shall increase by ten cents and in these subsequent years no payment or reimbursement shall be made in excess of the amount in effect for that fiscal year. Once the amount payable in a fiscal year reaches one dollar it shall no longer increase. Mid-size station applicants can also receive an additional ten cents on each dollar ordered to be paid or reimbursed if such applicant agrees that it will not submit any applications seeking payment or reimbursement from the Program on or after October 1, 2012.

Under section 261 of the Act, in the fiscal year beginning July 1, 2012, no payment or reimbursement shall be made to large station applicants in excess of twenty cents on each dollar ordered to be paid or reimbursed from the Program. In each subsequent fiscal year this amount shall increase by five cents and in subsequent fiscal years no payment or reimbursement shall be made in excess of the amount in effect for that fiscal year. Once the amount payable in the fiscal year reaches one dollar it shall no longer increase.

3. Deadline for Submission of Applications: Section 263 of the Act specifies deadlines after which applications can no longer be submitted to the Program. For a large station applicant, including a first time applicant that would constitute a large station applicant, the deadline is October 1, 2012. For a mid-size station applicant, including a first-time applicant that would constitute a mid-size station applicant, the deadline is October 1, 2013, provided that the release was reported to the Commissioner before October 1, 2012; mid-size station applicants cannot submit applications regarding a release reported to the Commissioner on or after October 1, 2012. For a small station, municipal and other applicant, including a first-time applicant that would constitute one of these applicants, the deadline is October 1, 2014, provided that the release was reported to the Commissioner before October 1, 2013; small station, municipal and other applicants cannot submit applications regarding a release reported to the Commissioner on or after October 1, 2013.

For further information about the Act or the enclosed form call the UST Petroleum Clean-Up Program at (860) 424-3370. In addition, while the Department is still in the process of making necessary revisions, applicants may also seek information about the Act or the enclosed form on the Department's website at www.ct.gov/deep/ustcleanup.