

PROPOSED RULEMAKING

ENVIRONMENTAL QUALITY BOARD

[25 PA. CODE CH. 245]

Administration of the Storage Tank and Spill Prevention Program

The Environmental Quality Board (Board) proposes to amend Chapter 245 (relating to administration of the storage tank and spill prevention program). The proposal includes comprehensive underground storage tank operator training requirements. The proposed operator training provisions are consistent with Federal requirements for underground storage tank operators contained in the Federal Energy Policy Act of 2005, August 8, 2005, Pub. L. No. 109-58, 119 Stat. 594 (EPAct) and related United States Environmental Protection Agency (EPA) guidelines to states for implementing operator training requirements. The proposal also includes corrections and clarifications to existing regulations.

This proposal was adopted by the Board at its meeting of December 16, 2008.

A. *Effective Date*

These proposed amendments will go into effect upon publication in the *Pennsylvania Bulletin* as final-form rulemaking.

B. *Contact Persons*

For further information, contact Charles M. Swokel, Chief, Division of Storage Tanks, P. O. Box 8763, Rachel Carson State Office Building, Harrisburg, PA 17105-8763, (717) 772-5806 or Kurt Klappkowski, Assistant Counsel, Bureau of Regulatory Counsel, P. O. Box 8464, Rachel Carson State Office Building, Harrisburg, PA 17105-8464, (717) 787-7060. Information regarding submitting comments on this proposal appears in Section J of this preamble. Persons with a disability may use the Pennsylvania AT&T Relay Service by calling (800) 654-5984 (TDD users) or (800) 654-5988 (voice users). This proposal is available electronically through the Department of Environmental Protection's web site, www.depweb.state.pa.us.

C. *Statutory Authority*

The proposed rulemaking is being made under the authority of section 106 of the Storage Tank and Spill Prevention Act (Storage Tank Act) (35 P. S. § 6021.106), which authorizes the Board to adopt rules and regulations governing aboveground and underground storage tanks to accomplish the purposes and carry out the provisions of the Storage Tank Act; section 501 of the Storage Tank Act (35 P. S. § 6021.501), which authorizes the Department to establish program requirements for underground storage tanks; and section 1920-A of The Administrative Code of 1929 (71 P. S. § 510-20), which authorizes the Board to formulate, adopt and promulgate rules and regulations that are necessary for the proper work of the Department.

D. *Background and Purpose*

The Board established the initial rulemaking governing administration of the storage tank and spill prevention program with its final-form publication of Chapter 245, Subchapters A and B (relating to general provisions; and certification program for installers and inspectors of

storage tanks and storage tank facilities), which was published at 21 Pa.B. 4345 (September 21, 1991). In that initial rulemaking, Federal requirements in 40 CFR Part 280 (relating to technical standards and corrective action requirements for owners and operators of underground storage tanks (UST)) were adopted by reference in Subchapter A. Comprehensive UST regulations were established in Chapter 245 when the Board adopted Subchapter E (relating to technical standards for underground storage tanks), in 1997 (27 Pa.B. 5341 (October 11, 1997)). The Board last amended Subchapter E in 2007, when several UST provisions contained in the EPAct were adopted (37 Pa.B. 5965 (November 10, 2007)). The current proposed rulemaking addresses UST operator training requirements and represents the last provision of the EPAct relating to USTs that needs to be addressed by the Department. Provisions for training course and trainer approvals, along with provisions for mandatory training or retraining of UST owners and operators whose tank systems are determined to be out of compliance as a result of an inspection, are already contained in current Chapter 245 regulations.

The proper conduct of operations, maintenance and related recordkeeping for USTs has been a problem in this Commonwealth and Nationally. The Department has noted particular compliance concerns relating to routine leak detection monitoring, periodic testing of monitoring equipment and corrosion protection systems and maintenance. The operator training provisions proposed in this rulemaking should help to significantly improve UST operations, maintenance, recordkeeping and related compliance with the Commonwealth and Federal UST regulatory requirements, which will protect the citizens and the environment of this Commonwealth.

The Department worked with the Storage Tank Advisory Committee (STAC) during development of this proposed rulemaking. The Department also met with UST owners, operators and manufacturers; associations and groups, such as the Pennsylvania Petroleum Marketers and Convenience Store Association; the Tank Installers of Pennsylvania; and the Agricultural Advisory Board. The STAC, which was established by section 105 of the Storage Tank Act (35 P. S. § 6021.105), consists of persons representing a cross-section of organizations having a direct interest in the regulation of storage tanks in this Commonwealth. As required by section 105 of the Storage Tank Act, the STAC has been given the opportunity to review and comment on the proposed rulemaking. On June 10, 2008, the STAC voted to support the proposal and recommended that the Board consider the amendments for publication as proposed rulemaking.

E. *Summary of Regulatory Requirements*

The proposal to amend § 245.422(e) (relating to upgrading of existing underground storage tank systems) is intended to clarify that containment is required when replacing an existing product dispenser that involves a major modification.

The proposal to amend § 245.435(b) (relating to reporting and recordkeeping) is intended to clarify the time frame for retention of temporary records and to correct errors on the retention of cathodic protection documents. The proposal also adds operator training documents to the temporary recordkeeping requirements.

The proposal to add a new § 245.436 (relating to operator training) is intended to establish three distinct

classes of UST operators and related training requirements. The proposal includes the general requirements for trained operators (subsection (a)), descriptions of the classes of storage tank operators to be trained (subsection (b)), required and acceptable forms of training for each class of operator (subsection (c)), deadlines for new and existing operators to meet the training requirements (subsection (d)) and documentation requirements (subsection (e)).

Comprehensive operator training requirements are not included in companion Federal regulations in 40 CFR Part 280. However, the establishment of an operator training program is necessary to comply with Federal operator training grant guidelines issued by the EPA on August 8, 2007. Section 9010 of Subtitle I of the Solid Waste Disposal Act (Subtitle I), as amended by section 1524 of the EPAct, required EPA to develop and publish guidelines for states to establish training requirements for UST operators. This section also requires that states receiving Federal funds under Subtitle I develop state-specific regulatory training requirements consistent with the EPA guidelines by August 8, 2009. The Commonwealth receives Federal funding under Subtitle I in the form of the Underground Storage Tank and Leaking Underground Storage Tank Trust Fund grants. Additionally, the guidelines require states to ensure that all three classes of operators are trained according to state-specific training requirements by August 8, 2012, which is 3 years after the date states are required to develop state-specific training requirements. Failure to establish an effective operator training program in this Commonwealth would jeopardize current EPA state program approval and substantial funding provided to the Department under Subtitle I. For Federal Fiscal Year 2008, the Department received \$2.623 million in Federal funds from the EPA for the Underground Storage Tank and Leaking Underground Storage Tank (cleanup) programs. Further, the Board believes it is in the Commonwealth's best interest to have a viable UST operator training program. Lastly, the United States General Accounting Office (GAO) report to Congress in May 2001, entitled "Environmental Protection-Improved Inspections and Enforcement Would Better Ensure the Safety of Underground Storage Tanks," addressed the effectiveness of the Federal UST program and state agencies' implementation of the program. The GAO report indicated that operator error and noncompliance was one of the greatest remaining problems for the UST program.

F. Benefits, Costs and Compliance

Benefits

The proposed changes are expected to result in significant improvements in the routine operation, maintenance and monitoring of USTs. This will help to further reduce the number of releases from USTs and in turn protect public health and the environment. These regulatory changes will provide economic opportunities for third-party trainers. By recognizing a wide array of training options, it is expected that costs to storage tank owners and operators will be minimized.

By establishing a viable operator training program, the Commonwealth will retain UST state program approval and will remain eligible for continued substantial Federal funding for the program under Subtitle I.

Compliance Costs

There are approximately 3,500 tank owners and their operators with nearly 8,700 UST facilities regulated by the Department in this Commonwealth. More than half of

the owners are major corporations, while the remaining owners are mostly small businesses and various government entities. Many of the small businesses and corporations belong to organizations and associations that have shown an interest in helping with the required training for operators. The number of operators at any particular facility range from one to several, depending on the size of the facility and hours of operation. Generally, retail sales facilities have more operators than government entities or nonretail facilities.

The current National availability of UST training vendors for operators is somewhat limited, but is expected to expand significantly as all states implement mandatory operator training requirements. Many states have indicated that they will rely on third-party or industry trainers. The current cost of National training vendors ranges from \$200 to \$500 per training course. However, several organizations and associations in this Commonwealth, as well as Department-certified tank installers, inspectors and companies have indicated an interest in becoming approved trainers or in some cases providing services as qualified operators. It is anticipated with in-State and National trainers expanding into the underground storage tank program, the cost of operator training courses will be minimized through these market forces.

Compliance Assistance Plan

It is not anticipated that the Commonwealth will provide sources of financial assistance to aid in compliance with this proposed rulemaking.

As for technical and educational assistance, the Department currently operates a fairly extensive program of outreach activities designed to assist owners and operators of storage tanks as well as individuals. This program includes a series of fact sheets that focus on single issues in the storage tank program (for example, Leak Detection: Meeting the Requirements); periodic seminars and conferences focusing on storage tank technical and administrative issues; training sessions presented by regional and central office training teams on a variety of issues; numerous guidance documents addressing technical and policy issues; and a great deal of information available on the Department's web site. The Department will work with organizations, associations, companies and individuals to establish a base of industry trainers to provide the necessary training, testing and related documentation for owners and operators of UST's.

Paperwork Requirements

There are very few new paperwork requirements proposed in this rulemaking and no new reporting requirements. The proposal addresses requirements to maintain a list of designated operators, certificates or documentation of training, and facility contacts and written emergency procedures. The list of operators, training records and contact information is new; emergency procedures should already be available at most facilities. These records will be checked during the periodic inspections currently required at UST facilities and will not be routinely required to be submitted to the Department.

G. Pollution Prevention

The programs set out in this proposed rulemaking package and in the current regulations are designed to prevent the release and spread of regulated substances from storage tanks located in this Commonwealth. They create a program similar to the cradle-to-grave process with the goal of making sure that the storage tank is installed, maintained, operated, closed and removed in a

manner that will minimize the likelihood of a release occurring. If a release does occur, these amendments and regulations that currently exist in Chapter 245 are designed to detect and contain the release quickly, and make sure that corrective action is carried out expeditiously, minimizing exposure to the public and the environment.

In this proposed rulemaking, the Department is attempting to reach or improve upon these goals through a combination of performance standards and training of storage tank operators. The proposal has built-in flexibility as to how the regulated community achieves the goals, and reliance on industry standards and trained industry professionals. By taking this approach, the Department hopes to improve routine storage tank operation and maintenance, reduce pollution, lower the number of corrective actions that must eventually be performed, decrease the amount of contaminated soil and groundwater that must be dealt with, and do so in a manner that is flexible, reasonable and cost effective.

H. *Sunset Review*

These regulations will be reviewed in accordance with the sunset review schedule published by the Department to determine whether the regulations effectively fulfill the goals for which they were intended.

I. *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on February 27, 2009, the Department submitted a copy of the proposed amendments to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the House and Senate Environmental Resources and Energy Committees (Committees). In addition to submitting the proposed amendments, the Department has provided IRRC and the Committees with a copy of a detailed Regulatory Analysis Form prepared by the Department. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey any comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections shall specify the regulatory review criteria that have not been met. The Regulatory Review Act specifies detailed procedures for review of these issues by the Department, the General Assembly and the Governor prior to final publication of the regulations.

J. *Public Comments*

Written Comments. Interested persons are invited to submit comments, suggestions or objections regarding the proposed rulemaking to the Environmental Quality Board, P. O. Box 8477, Harrisburg, PA 17105-8477 (express mail: Rachel Carson State Office Building, 16th Floor, 400 Market Street, Harrisburg, PA 17101-2301). Comments submitted by facsimile will not be accepted. Comments, suggestions or objections must be received by the Board by April 13, 2009. Interested persons may also submit a summary of their comments to the Board. The summary may not exceed one page in length and must also be received by April 13, 2009. The one-page summary will be provided to each member of the Board in the agenda packet distributed prior to the meeting at which the final-form rulemaking will be considered.

Electronic Comments. Comments may be submitted electronically to the Board at RegComments@state.pa.us and must also be received by the Board by April 13, 2009.

A subject heading of the proposal and a return name and address must be included in each transmission. If an acknowledgement of electronic comments is not received by the sender within 2 working days, the comments should be retransmitted to ensure receipt.

JOHN HANGER,
Chairperson
Environmental Quality Board

Fiscal Note: 7-432. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 25. ENVIRONMENTAL PROTECTION
PART I. DEPARTMENT OF ENVIRONMENTAL PROTECTION

Subpart D. ENVIRONMENTAL HEALTH AND SAFETY

ARTICLE VI. GENERAL HEALTH AND SAFETY

CHAPTER 245. ADMINISTRATION OF THE STORAGE TANK AND SPILL PREVENTION PROGRAM

Subchapter E. TECHNICAL STANDARDS FOR UNDERGROUND STORAGE TANKS

UNDERGROUND STORAGE TANK SYSTEMS: DESIGN, CONSTRUCTION, INSTALLATION AND NOTIFICATION

§ 245.422. Upgrading of existing underground storage tank systems.

* * * * *

(e) *Under dispenser containment.* When a vertical riser, dispenser and interconnected piping and fittings are added to a storage tank system or a **dispenser is replaced involving major modification**, the dispenser must have containment (liquid-tight dispenser pan) meeting requirements in § 245.421(b)(4)(ii).

GENERAL OPERATING REQUIREMENTS

§ 245.435. Reporting and recordkeeping.

* * * * *

(b) Owners and operators shall maintain required records either onsite at the underground storage tank facility or at a readily available alternative site. Records maintained at the underground storage tank facility shall be immediately available for inspection by the Department and certified inspectors. If records are maintained offsite, the records shall be easily obtained and provided for inspection or for review by the Department upon request.

* * * * *

(3) **Temporary recordkeeping. Owners and operators shall retain current temporary records for a minimum of 1 year after the tank system has been removed.** Temporary records shall be maintained as follows:

* * * * *

(iv) Documentation of the last [**two**] **three** impressed current cathodic protection system inspection checks for each 60-day test period **in accordance with [(§ 245.432)]**.

(v) The last **two** cathodic protection [**survey**] **surveys**, done at 3-year intervals, on impressed current and galvanic cathodic protection systems in accordance with [(§ 245.432)] .

* * * * *

(ix) Documentation of operator training, including verification of training for current Class A, Class B and Class C operators, current list of operators and written instructions or procedures for Class C operators in accordance with § 245.436 (relating to operator training).

(Editor's Note: The following section is new and has been printed in regular print to enhance readability.)

§ 245.436. Operator training.

(a) Requirement for trained operators.

(1) An owner shall designate Class A, Class B and Class C operators for each underground storage tank system or facility that has underground storage tanks permitted to operate by the Department.

(2) A facility may not operate after August 8, 2012, unless operators have been designated and trained as required in this section, unless otherwise agreed upon by the Department.

(3) Trained operators shall be readily available to respond to suspected/confirmed releases, other unusual operating conditions and equipment shut-offs or failures.

(i) The Class A or Class B operator shall be available for immediate telephone consultation when a facility is in operation. A Class A or Class B operator shall be able to be onsite at the storage tank facility within 24 hours.

(ii) For manned facilities, a Class C operator shall be onsite whenever the facility is in operation, such as when dispensing a regulated substance at a retail sales facility.

(iii) For unmanned facilities, a Class C operator shall be available for immediate telephone consultation and shall be able to be onsite within 2 hours of being contacted. Emergency contact information shall be prominently displayed at the site. Emergency procedures for users of unmanned facilities shall also be prominently posted at the site.

(4) Designated operators shall successfully complete required training under subsection (c) not later than August 8, 2012.

(5) A person may be designated for more than one class of operator.

(b) Operator classes.

(1) *Class A operator.* A Class A operator has primary responsibility to operate and maintain the underground storage tank system and facility. The Class A operator's responsibilities routinely include managing resources and personnel, such as establishing work assignments, to achieve and maintain compliance with regulatory requirements. In general, this person focuses on the broader aspects of the statutory and regulatory requirements and standards necessary to properly operate and maintain the underground storage tank system and facility.

(i) A Class A operator assists the owner by ensuring that underground tank systems are properly installed and expeditiously repaired, and records of system installation, modification and repair are retained and made available to the Department and certified IUM inspectors.

(ii) A Class A operator shall be familiar with training requirements for each class of operator and may provide required training for Class C operators.

(iii) A Class A operator may prepare site drawings that indicate equipment locations for Class C operators and routine maintenance checklists for Class B operators.

(See PEI RP 900—"Recommended Practices for the Inspection and Maintenance of UST Systems").

(iv) Department-certified companies, installers and inspectors with underground storage tank UMX or IUM certification categories may perform Class A operator duties when employed or contracted by the tank owner to perform these functions.

(A) Department-certified installers, inspectors and companies identified in this subparagraph are excluded from required training under subsection (c), unless required by the Department to successfully complete mandatory operator training under § 245.411(d) (relating to inspection frequency).

(B) A certified IUM inspector may not perform a facility operation inspection for a facility where the inspector is also the designated Class A operator. (See § 245.106 (relating to conflict of interest).)

(2) *Class B operator.* A Class B operator implements applicable underground storage tank regulatory requirements and standards in the field or at the storage tank facility. This person oversees and implements the day-to-day aspects of operations, maintenance and recordkeeping for the underground storage tanks at one or more facilities. For example, the operator ensures that release detection methods, release prevention equipment and related recordkeeping and reporting requirements are met, relevant equipment manufacturer's or third-party performance standards are available and followed, and appropriate persons are trained to properly respond to potential emergencies caused by releases or spills from underground storage tank systems at the facility.

(i) A Class B operator checks spill prevention and overflow control equipment and corrosion protection equipment to ensure that they are functioning properly and that any required system tests are performed at required intervals.

(ii) A Class B operator assists the owner by ensuring that release detection equipment is operational, release detection is performed at the proper intervals and release detection records are retained and made available to the Department and certified IUM inspectors.

(iii) A Class B operator shall be totally familiar with Class B and Class C operator responsibilities, and may provide required training for Class C operators.

(iv) Department-certified companies, installers and inspectors with underground storage tank UMX or IUM certification categories may perform Class B operator duties when employed or contracted by the tank owner to perform these functions.

(A) Department-certified installers, inspectors and companies identified in this subparagraph are excluded from required training under subsection (c), unless required by the Department to successfully complete mandatory operator training under § 245.411(d).

(B) A certified IUM inspector may not perform a facility operation inspection for a facility where the inspector is also the designated Class B operator. (See § 245.106.)

(3) *Class C operator.* A Class C operator is the first line of response to events indicating emergency conditions. This person is responsible for responding to alarms or other indications of emergencies caused by spills or releases from underground storage tank systems and equipment failures. The Class C operator shall notify the Class A or Class B operator and appropriate emergency responders when necessary.

(i) A Class C operator may control or monitor the dispensing or sale of regulated substances.

(ii) After _____, (*Editors Note:* The blank refers to a date 6 months after the effective date of adoption of this proposed rulemaking.) written instructions or procedures shall be provided and visible at manned storage tank facilities, and be readily available for unmanned facilities for persons performing duties of the Class C operator to follow and to provide notification necessary in the event of emergency conditions.

(iii) There may be more than one Class C operator at a storage tank facility, but not all employees of a facility are necessarily Class C operators.

(c) *Required training.*

(1) *Class A operators.* A Class A operator shall successfully complete a training course approved under § 245.141 (relating to training approval) or recognized by the Department under paragraph (5) that includes a general knowledge of underground storage tank system requirements. Training must provide information that should enable the operator to make informed decisions regarding compliance and to ensure that appropriate persons are fulfilling operation, maintenance and recordkeeping requirements and standards of this chapter or Federal underground storage tank requirements in 40 CFR Part 280 (relating to technical standards and corrective action requirements for owners and operators of underground storage tanks (UST)), or both, including the following:

- (i) Spill and overfill prevention.
- (ii) Release detection and related reporting requirements.
- (iii) Corrosion protection.
- (iv) Emergency response.
- (v) Product and equipment compatibility.
- (vi) Financial responsibility.
- (vii) Notification and storage tank registration requirements.
- (viii) Temporary and permanent closure requirements.
- (ix) Operator training requirements.

(2) *Class B operators.* A Class B operator shall successfully complete a training course approved under § 245.141 or recognized by the Department under paragraph (5) that includes an in-depth understanding of operation and maintenance aspects of underground storage tank systems and related regulatory requirements. Training must provide specific information on the components of underground storage tank systems, materials of construction, methods of release detection and release prevention applied to underground storage tank systems and components. Training must address operation and maintenance requirements of this chapter or Federal underground storage tank requirements in 40 CFR Part 280, or both, including the following:

- (i) Spill and overfill prevention.
- (ii) Release detection and related reporting requirements.
- (iii) Corrosion protection and related testing.
- (iv) Emergency response.

(v) Product and equipment compatibility.

(vi) Reporting and recordkeeping requirements.

(vii) Class C operator training requirements.

(3) *Class C operators.* At a minimum, training provided by the tank owner or Class A or Class B operator must enable the Class C operator to take action in response to emergencies, such as situations posing an immediate danger or threat to the public or to the environment and that require immediate action, caused by spills or releases and alarms from an underground storage tank system. Training must include written instructions or procedures for the Class C operator to follow and to provide notification necessary in the event of emergency conditions.

(4) *Class A and Class B operators.* Successful completion for Class A and Class B operators means attendance for the entire training course and demonstration of knowledge of the course material as follows:

(i) Receipt of a passing grade under § 245.141(b)(4), on an examination of material presented in the training course, or demonstration through practical (hands-on) application to the trainer, operation and maintenance checks of underground storage tank equipment, including performance of release detection at the underground storage tank facility, at the conclusion of onsite training.

(ii) Receipt of a training certificate by an approved trainer upon verification of successful completion of training under this paragraph.

(5) *Reciprocity.* The Department may also recognize successful completion of Class A and Class B operator training on regulatory standards consistent with 40 CFR Part 280, which is recognized by other state or implementing agencies and which is approved by the EPA as meeting operator training grant guidelines published by the EPA.

(6) *Costs of training.* The tank owner or operator shall incur the costs of the training.

(d) *Timing of training.*

(1) An owner shall ensure that Class A, Class B and Class C operators are trained as soon as practicable after _____, (*Editor's Note:* The blank refers to the effective date of adoption of this proposed rulemaking.) contingent upon availability of approved training providers, but not later than August 8, 2012.

(2) When a Class A or Class B operator is replaced, after August 8, 2012, a new operator shall be trained within 30 days of assuming duties for that class of operator.

(3) Class C operators shall be trained before assuming duties of a Class C operator. After _____, (*Editor's Note:* The blank refers to a date 6 months after the effective date of adoption of this proposed rulemaking.) written instructions or procedures shall be provided to Class C operators to follow and to provide notification necessary in the event of emergency conditions. Class C operators shall be briefed on these instructions or procedures at least annually (every 12 months), which may be concurrent with annual safety training required under Occupational Safety and Health Administration, 29 CFR Part 1910 (relating to Occupational Safety and Health Standards).

(e) *Documentation.*

(1) The owner of an underground storage tank facility shall prepare a list of designated operators. The list must represent the current Class A, Class B and Class C operators for the underground storage tank facility and include:

(i) The name of each operator, class of operation trained for and the date each operator successfully completed initial training and refresher training, if any.

(ii) For Class A and Class B operators that are not permanently onsite or assigned to more than one facility, telephone numbers to contact the operators.

(2) A copy of the certificates of training for Class A and Class B operators shall be on file and readily available

and a copy of the facility list of Class A, Class B and Class C operators and Class C operator instructions or procedures shall be kept onsite and immediately available for manned storage tank facilities and readily available for unmanned facilities. (See § 245.435(b)(3)(ix) (relating to reporting and recordkeeping).)

(3) Class C operator and owner contact information, including names and telephone numbers, and emergency information, shall be conspicuously posted at unmanned facilities.

[Pa.B. Doc. No. 09-466. Filed for public inspection March 13, 2009, 9:00 a.m.]
