

**EXECUTIVE SUMMARY**  
**Amendments to 25 Pa. Code Chapter 245**  
**Administration of the Storage Tank and Spill Prevention Program**

The Department of Environmental Protection (Department) recommends the Environmental Quality Board (Board) propose amendments to 25 Pa. Code Chapter 245 (relating to Administration of the Storage Tank and Spill Prevention Program). The amendments strengthen the underground storage tank (UST) requirements by increasing the emphasis on properly operating and maintaining equipment. Currently, UST owners and operators are required to have spill prevention, overflow prevention, and release detection equipment in place but are not required to periodically verify the functionality of some of that equipment. This proposal also adds a new certification category that is to be limited to the performance of minor modifications of UST systems. Due to a history of non-compliance, these amendments propose to shorten the in-service inspection cycle for aboveground storage tanks (ASTs) in underground vaults and small ASTs. With the last comprehensive rulemaking occurring nearly 10 years ago, the program will also look to address a number of areas of Chapter 245 that have been problematic, have lacked clarity, or simply need correction.

**Purpose of the Proposed Rulemaking**

Comprehensive federal regulations for USTs exist at 40 CFR Part 280. These regulations were initially promulgated in 1988. On July 15, 2015, the first revisions to 40 CFR Part 280 were published in the *Federal Register* as final. These changes include: adding secondary containment requirements for new and replaced tanks and piping; adding operator training requirements; adding periodic operation and maintenance requirements for UST systems; removing certain deferrals; adding new release prevention and detection technologies; updating codes of practice; and making editorial and technical corrections. Secondary containment and operator training requirements that meet the federal requirements have already been incorporated into Chapter 245. Secondary containment reduces releases to the environment by containing them within a secondary area and detecting them before they reach the environment. Operator training educates UST system operators and provides information to help them prevent releases by complying with the regulations and performing better operation and maintenance of their UST systems.

On July 15, 2015, the U. S. Environmental Protection Agency (EPA) also updated the state program approval requirements in 40 CFR Part 281. Under these changes, EPA is requiring that states revise their UST regulations and apply for initial or revised state program approval within three years of the effective date of the final EPA rule. The effective date of the final EPA rule was October 13, 2015 (90 days after publication in the *Federal Register*). Currently, Pennsylvania has state program approval. Therefore, the Department will need to revise Chapter 245 to be no less stringent than the federal requirements and apply for revised state program approval by October 13, 2018. For states and tribes that do not have program approval, the EPA regulations took effect on October 13, 2015. EPA does not have companion federal AST regulations.

Pennsylvania receives federal funding under Subtitle I of the Resource Conservation and Recovery Act in the form of a Leaking Underground Storage Tank Prevention and Leaking

Underground Storage Tank Cleanup grant. Since Pennsylvania receives funding under Subtitle I, failure to revise Chapter 245 and apply for revised state program approval could jeopardize receipt of future federal funding and result in the rescission of state program approval. Under both grants, Pennsylvania currently receives approximately \$2.3 million annually from EPA.

The primary purpose of these revisions is to strengthen the UST regulations by increasing the emphasis on properly operating and maintaining equipment. Since the beginning of the UST program, preventing petroleum and hazardous substance releases from UST systems into the environment has been one of the primary goals of the program. Although EPA and our state partners have made significant progress in reducing the number of new releases, approximately 5,600 releases were discovered nationwide for the federal fiscal year that ended September 30, 2016. In comparison, using the same parameters (underground storage tank system releases only and October 1, 2015 through September 30, 2016), Pennsylvania had 209 confirmed releases. Lack of proper operation and maintenance of UST systems is the main cause of new releases. Information on sources and causes of releases shows that releases from tanks are less common than in prior years. However, releases from piping and spills and overfills associated with deliveries have emerged as more common problems. In addition, releases at the dispenser are one of the leading sources of contamination at UST facilities. Finally, data show that release detection equipment is only detecting approximately 50 percent of releases it is designed to detect. These problems are partly due to improper operation and maintenance.

The Department will also look to address a number of areas of Chapter 245 that have been problematic, have lacked clarity, or simply need correction.

### **Summary of the Proposed Rulemaking**

As stated earlier, the primary purpose of these revisions is to strengthen the UST regulations by increasing the emphasis on properly operating and maintaining equipment. While the current UST regulations require owners and operators to have spill, overfill, and release detection equipment in place for their UST systems, the regulations do not require proper operation and maintenance for some of that equipment. For example, spill prevention equipment to capture drips and spills when the delivery hose is disconnected from the fill pipe does not require periodic testing of that equipment. These revisions require that UST equipment be operated and maintained properly, which will improve environmental protection.

The new operation and maintenance requirements will include:

- A visual inspection of spill prevention equipment and release detection every 30 days.
- A visual inspection of containment sumps and handheld release detection devices annually.
- Testing of spill prevention equipment every three years.
- Inspection of overfill prevention equipment every three years.
- Testing of containment sumps used for interstitial monitoring every three years.
- Annual release detection equipment testing.

In addition to the new operation and maintenance requirements, two other important provisions are included in this proposed rulemaking:

- Require release detection for emergency generator USTs. Previously, emergency generator USTs were deferred from having to meet release detection requirements.
- Prohibit flow restrictors (ball float valves) as an option for overfill prevention in new UST systems and when these devices need to be replaced.

Some of the more significant issues that this proposed rulemaking will also attempt to remedy are:

- Revise current definitions such as “Aboveground storage tank,” “Containment structure or facility,” “Hazardous substance storage tank system,” “Release,” “Removal-from-service,” “Storage tank system,” and “Tank handling activities” to provide clarity, ensure consistent implementation, and to correct errors in the existing definitions. For example, the current definition of “Removal from service” implies that such activities only apply to UST systems. The proposed amendment clarifies that the term applies to Aboveground Storage Tank (AST) systems, as well.
- Revise the definition of “Certification categories” to include a new certification category called “Underground storage tank system minor modification.”
- Revise the definitions of “Motor fuel,” “Pipeline facilities (including gathering lines),” and “Underground storage tank” to be consistent with the federal definitions contained in 40 CFR § 280.12. In revising the definition of “Underground storage tank,” the exclusion for “Tanks containing radioactive materials or coolants that are regulated under The Atomic Energy Act of 1954 (42 U.S.C.A. §§ 2011—2297)” and “An underground storage tank system that is part of an emergency generator system at nuclear power generation facilities regulated by the Nuclear Regulatory Commission under 10 CFR Part 50, Appendix A (relating to general design criteria for nuclear power plants)” will be deleted. The exclusion for “A wastewater treatment tank system” is proposed to be revised to read “A wastewater treatment tank system that is part of a wastewater treatment facility regulated under Section 402 or 307(b) of the Clean Water Act.”
- Add definitions for “Aboveground storage tank system,” “Containment sump,” “Environmental covenant,” “Repair,” and “Spill prevention equipment.”
- Delete the definitions “Actively involved,” “Interim certification,” and “Reportable release” as they are no longer needed.
- Add a new certification category for minor modifications to allow individuals to perform tank handling activities such as repairs that do not involve excavation without having to obtain the (full) certification to install and modify storage tank systems, and to perform tests of UST systems required by this proposed rulemaking.
- Require storage tank modification inspection reports to be submitted within 30 days from completion of the inspection.
- Require overfill prevention for USTs to be permanently installed.
- Exclude USTs used solely for emergency generator purposes from the automatic pump shut-off requirement.
- Require all ASTs in underground vaults that require an in-service inspection to be inspected within 6 and 12 months of installation and at least every 3 years thereafter due to their history of non-compliance. This mirrors the inspection requirement for USTs.
- Shorten the initial inspection requirement and in-service inspection cycle for small ASTs from 10 years to five years. Based on current in-service inspections, the compliance rate

with regulatory requirements is less than 50 percent. Shortening the facility operations inspection cycle for USTs from five years to three years has resulted in increased regulatory compliance.

- Add that all owners of facilities that are required to have a Spill Prevention Response Plan under current regulation must maintain a log book.
- Remove the requirement for a 10-year lining inspection for small ASTs.

### **Affected Parties**

The proposed rulemaking will affect approximately 7,100 storage tank owners at over 12,600 storage tank facilities. Industry sectors potentially affected by the proposed rulemaking include retail motor fuel sales, commercial, institutional, manufacturing, transportation, communications and utilities, and agriculture. Federal, state and local government operations will also be affected.

Department-certified storage tank installers, inspectors and companies will also be required to comply with this proposed rulemaking. At the current time, nearly 900 individuals and approximately 350 companies have been certified.

Owners of existing storage tank systems will be provided with timeframes in which to comply with certain requirements. Owners of new storage tank systems must comply with the requirements upon the effective date of the final rulemaking.

### **Advisory Groups**

The Department worked with the Storage Tank Advisory Committee (STAC) during development of this proposed rulemaking. The STAC, which was established by section 105 of the Storage Tank and Spill Prevention Act (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 act, the STAC has been given the opportunity to review and comment on the draft proposed annex. Initially, STAC members were provided with the opportunity to review Department concepts and present concepts that they would like to see incorporated into Chapter 245. This occurred at the December 8, 2015, and June 7, 2016, meetings. The STAC was also afforded the opportunity to review and discuss draft proposed regulatory language at the December 6, 2016, and March 7, 2017, meetings. On March 7, 2017, the STAC voted to unanimously support the amendments and recommended that the Board consider the amendments for publication as proposed rulemaking. A listing of STAC members and minutes of STAC meetings are available on the Department's website at <http://www.dep.pa.gov/> under "Public Participation" and may also be obtained from Kris A. Shiffer, whose contact information appears in Section B of the preamble accompanying this proposed regulation. The Citizens Advisory Council was kept apprised of developments in the regulatory process on a monthly basis.

### **Public Comment**

The Department recommends that these revisions be adopted by the Board and published in the *Pennsylvania Bulletin* as a proposed rulemaking with a 30-day public comment period.