

**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 25 Pa. Code Chapter 245 (relating to Administration of the Storage Tank and Spill Prevention Program). The proposed amendments strengthen the requirements for operation and maintenance of underground storage tank (UST) 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 proposed rulemaking would also add a new certification category for persons that only perform minor modifications of UST systems. The proposed rulemaking also shortens the in-service inspection cycle for aboveground storage tanks (ASTs) in underground vaults and small ASTs and clarifies or corrects a number of other provisions in Chapter 245 based on the Department's experience in implementing this chapter since it was updated in 2007.

This proposed rulemaking was adopted by the Board at its meeting on _____.

A. Effective Date

These proposed amendments will go into effect when the final-form regulations are published in the *Pennsylvania Bulletin*.

B. Contact Persons

For further information contact Kris A. Shiffer, Chief, Division of Storage Tanks, P.O. Box 8762, Rachel Carson State Office Building, Harrisburg, PA 17105-8762, (717) 772-5809, or Keith J. Salador, Assistant Counsel, Bureau of Regulatory Counsel, P.O. Box 8464, Rachel Carson State Office Building, Harrisburg, PA 17105-8464, (717) 783-8075. Information regarding submitting comments on this proposal appears in Section J of this preamble. Persons with a disability may use the AT&T Relay Service by calling 1-800-654-5984 (TDD users) or 1-800-654-5988 (voice users). This proposed rulemaking is available on the Department of Environmental Protection's (Department) web site at www.dep.pa.gov (select "Public Participation," then "Environmental Quality Board (EQB)").

C. Statutory Authority

The proposed rulemaking has been developed under the authority of section 106 of the Storage Tank and Spill Prevention Act (act) (35 P.S. § 6021.106), which authorizes the Board to adopt rules and regulations governing ASTs and USTs to accomplish the purposes and carry out the provisions of the act; section 301 of the act (35 P.S. § 6021.301), which authorizes the Department to establish program requirements for ASTs; section 501 of the act (35 P.S. § 6021.501), which authorizes the Department to establish program requirements for USTs; 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

Comprehensive Federal regulations for USTs have been codified by the United States Environmental Protection Agency (EPA) at 40 CFR Part 280. EPA initially promulgated these regulations in 1988. On July 15, 2015, EPA published final revisions to 40 CFR Part 280 in the *Federal Register* (80 FR 41566). These revisions, among other things, added secondary containment requirements for new and replaced tanks and piping; added operator training requirements; added periodic operation and maintenance requirements for UST systems; removed certain deferrals; added new release prevention and detection technologies; updated codes of practice; and made editorial and technical corrections. Secondary containment and operator training requirements that meet the Federal requirements were incorporated into Chapter 245 through a prior rulemaking. Secondary containment reduces releases to the environment by containing releases from the primary containment area in a second containment area to ensure detection before the contaminants reach the environment. Operator training educates UST system operators on the regulations and proper operation and maintenance of their UST systems to prevent releases of contaminants.

These proposed revisions to Chapter 245 are necessary to further prevent releases of contaminants from USTs into the environment. Pennsylvania had 209 confirmed releases from USTs from October 1, 2015 through September 30, 2016. Lack of proper operation and maintenance of UST systems is the main cause of new releases. While releases from USTs themselves are less common than in the past, releases from piping and spills and overfills associated with deliveries, and releases at the dispenser have emerged as more common problems. In addition, release detection equipment is only detecting approximately 50 percent of releases it is designed to detect.

On July 15, 2015, 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, which was October 13, 2015 (80 FR 41566). Currently, Pennsylvania has state program approval. Therefore, Chapter 245 must be updated to be no less stringent than the Federal requirements so the Department can apply for revised state program approval by October 13, 2018. States and Tribal lands that do not have state program approval were required to comply with the EPA final regulations on October 13, 2015. EPA has not codified companion AST regulations.

Pennsylvania receives approximately \$2.3 million annually in Federal grant funding from EPA under section 9014 of the Solid Waste Disposal Act (42 U.S.C. § 6991m) to aid in administering the UST program. This proposed rulemaking is necessary to ensure continued receipt of Federal grant funds.

- A comprehensive summary of the amendments to Chapter 245 proposed in this rulemaking is provided in Section E of this preamble. Key amendments recommended to improve proper

operation and maintenance of USTs to prevent the release of contaminants into the environment 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, the proposed rulemaking recommends two other key provisions to prevent releases of contaminants into the environment:

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

In addition to the above proposed changes, this rulemaking proposes clarifications and corrections to various provisions of Chapter 245 identified as necessary through implementation of this chapter since its last comprehensive update 10 years ago.

The proposed rulemaking would 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 would also be affected.

Tank installers and inspectors certified by the Department would likely have the capacity to provide the increased testing and inspections that would be required by the proposed rulemaking. Owners of existing storage tank systems would be provided with timeframes in which to comply with certain requirements. Owners of new storage tank systems would need to comply with the requirements upon the effective date of the final rulemaking.

The Department worked with the Storage Tank Advisory Committee (STAC) during development of this proposed rulemaking. STAC, which was established by section 105 of the 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, 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. 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, 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 www.dep.pa.gov under “Public Participation”, then “Advisory Committees”, and may also be obtained from Kris Shiffer, whose contact information appears in Section B of this preamble. The Citizens Advisory Council was kept apprised of developments in the regulatory process on a monthly basis.

E. Summary of Regulatory Requirements

A brief description of the proposed amendments to Chapter 245 follows:

Subchapter A. General Provisions

General

§ 245.1. Definitions.

Revisions to the definitions of the following terms are proposed to provide clarity and to correct errors: “aboveground storage tank,” “cathodic protection tester,” “certified inspector,” “certified installer,” “containment structure or facility,” “de minimis,” “existing underground storage tank system,” “hazardous substance storage tank system,” “minor modification,” “reconstruction,” “regulated substance,” “release detection,” “removal from service,” “storage tank system,” “survey,” and “tank handling activities”. 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 AST systems, as well.

Revision to the definition of “certification categories” is proposed to include a new certification category called “underground storage tank system minor modification,” which is discussed later in this section.

The definitions of “motor fuel,” “pipeline facilities (including gathering lines),” and “underground storage tank” are proposed for revision to be consistent with the Federal definitions contained in 40 CFR § 280.12 (relating to definitions).

The definition of “underground storage tank” is proposed to be revised by deleting two exclusions and modifying several other exclusions. The exclusions proposed for deletion relate to 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). The exclusion for a wastewater treatment tank system is proposed to clarify that the exclusion only applies to systems regulated under section 307(b) or 402 of the Clean Water Act (33 U.S.C. §§ 1317(b) or 1342) (relating to pretreatment standards and national pollutant discharge elimination system (NPDES) permits) to be consistent with the Federal regulations at 40 CFR § 280.10(b)(2). USTs that would be regulated as a result of these proposed revisions would need to meet the same requirements that all other regulated UST systems must meet. However, with regards to Subchapter E (relating to technical standards for underground storage tanks), certain requirements would not apply as later discussed under § 245.403 (relating to applicability).

Revision to the definition of “release” is being proposed to clarify that all releases into a containment structure or facility pose an immediate threat of contamination of soils, subsurface soils, surface water or groundwater. The only exception would be a release of a regulated substance into a liquid-tight containment sump or emergency containment structure as a result of a tank handling activity, if the certified installer providing direct onsite supervision has control over the regulated substance, the regulated substance is completely contained, and prior to the certified installer leaving the storage tank facility, the total volume of the regulated substance is recovered and removed. Examples include gasoline released as a result of the replacement, removal or disconnection of a piping fitting or section of piping, such as a flexible connector, or replacement or removal of a submersible pump manifold assembly.

The term “aboveground storage tank system” is proposed to be added to be consistent with the fact that a definition of “underground storage tank system” already exists and the term “tank system” as it pertains to AST system requirements currently exists in the regulation.

The term “containment sump” is proposed to be defined as certain containment sumps subject to the periodic testing requirements contained in § 245.437 (relating to periodic testing). The definition is consistent with the Federal definition contained in 40 CFR § 280.12.

The term “environmental covenant” is proposed to be added because the term is used in § 245.311(a)(12) (relating to remedial action plan). This proposed definition is the same as the definition in section 6502 of the Uniform Environmental Covenants Act (UECA) (27 Pa.C.S. §§ 6502) and Chapter 253 (relating to administration of the UECA.)

The term “repair” is proposed to be added to clarify that a repair means to restore a storage tank system component, which has failed to function properly, to its original operating condition. The Federal definition contained in 40 CFR § 280.12 limits repairs to UST system components that have caused a release of product from the UST system. The definition proposed in this chapter does not limit defining repairs in terms of only releases.

The term “spill prevention equipment” is proposed to be defined as spill prevention equipment subject to the periodic testing requirements contained in proposed § 245.437.

The definition “actively involved” is proposed to be deleted as the term is no longer used in §§ 245.111 and 245.113 (relating to certified installer experience and qualifications; and certified inspector experience and qualifications).

The definition “interim certification” is proposed to be deleted as the Department no longer grants interim certification to installers and inspectors of storage tank systems.

The definition “reportable release” is proposed to be deleted as all releases must be reported to Department with the exception of those releases described in proposed § 245.305(i) (relating to reporting releases).

Tank Handling Activities

§ 245.21. Tank handling and inspection requirements

Minor changes have been proposed to this section to clarify the requirements.

Tightness Testing Activities

§ 245.31. Underground storage tank system tightness testing requirements.

This section is proposed to be renamed to address general UST system testing requirements. Subsection (b) is proposed to be deleted. The circumstances as to when tightness testing is required to be conducted would be addressed in Subchapter E (relating to technical standards for underground storage tanks). Subsection (b)(2) would no longer be applicable as installation of single wall USTs are no longer permitted. New subsection (f) is proposed to state that tests or evaluations of spill prevention and overfill prevention equipment, containment sumps, and release detection equipment required under this chapter would be performed by a Department-certified individual holding the appropriate certification and documented on a form provided by the Department. Subsection (f) further proposes to state that the test or evaluation results would be maintained onsite at the storage tank facility or at a readily available alternative site and would be provided to the Department upon request.

Tank Registration and Fees

§ 245.41. Tank registration requirements.

Revisions to subsection (a) are proposed to clarify that storage tank owners would be required to pay the appropriate storage tank registration fee prior to expiration of the current storage tank certificate. Proposed revisions to subsection (c)(8) would require that UST operator training information be provided with the storage tank registration form in order for the Department to consider the registration form to be complete. This is current Department policy that is proposed to be incorporated into regulation. The new subsection (h) being proposed is not a new requirement. This requirement is proposed to be moved from current § 245.423(e) (relating to registration requirements) so that all storage tank registration requirements are contained in one section.

§ 245.42. Tank registration fees.

Revisions to subsection (d) are proposed to clarify that the Department will prorate the registration fee to reflect the percentage of time remaining in the registration year when ownership of a storage tank changes. Also, the proposed revision would clarify that the Department will not refund registration fees due to a change of ownership. This has been long-standing Department policy.

Subchapter B. Certification Program for Installers and Inspectors of Storage Tanks and Storage Tank Facilities

General Certification Requirements

§ 245.102. Requirement for certification.

The date is proposed to be removed from subsection (d) as it has passed and is no longer relevant.

§ 245.105. Certification examinations.

Subsection (d) is proposed to be revised to clarify that the technical and administrative examinations are separate examinations. Subsection (f) is proposed to be added to clarify that passing examination scores are valid for a period of 2 years from the date of the examination.

§ 245.106. Conflict of interest.

This section is proposed to be revised to clarify when activities of a certified installer can result in a conflict of interest. Subsection (c) is proposed to be added to this section and would prohibit a certified inspector from performing an inspection as required in § 245.411 (relating to inspection frequency) for a facility where the inspector is also the designated Class A or Class B operator as defined in § 245.436 (relating to operator training).

§ 245.107. Reciprocity.

This entire section is proposed to be deleted and reserved. Since incorporation of this section into Chapter 245, no installer or inspector in the Commonwealth has been certified utilizing reciprocity because examinations conducted in other states do not test on the requirements in Chapter 245, which is a requirement for reciprocity.

§ 245.108. Suspension of certification.

Subsection (a)(4)(iii) is proposed to be revised to add that certification may be suspended for failure to submit reports of modification inspection activities to the Department within 30 days of conducting a modification inspection activity. Revisions are also proposed to subsection (a)(6) to clarify that a suspension can result from failing to maintain certification, and to subsection (a)(9) to clarify when violation of certain environmental laws and regulations can result in suspension.

§ 245.110. Certification of installers.

Subsection (b)(1) is proposed to be amended to add overfill prevention equipment evaluations, containment sump and spill prevention equipment testing, and release detection equipment testing to the list of activities that may be conducted by an installer certified to install and modify UST systems (UMX certification). These new periodic testing requirements would need to be conducted by UST owners under new § 245.437.

Subsection (b)(2) is proposed to be revised to add a new certification category (UMI) for installers only certified to make minor modifications to UST systems. Installers certified under this category could also conduct overfill prevention equipment evaluations, containment sump and spill prevention equipment testing, and release detection equipment testing. Creation of this new certification category will afford UST owners with the opportunity to employ individuals who specialize in minor modifications only. In addition, these new installers will be available to assist UST owners in complying with the new periodic testing requirements being proposed under § 245.437.

Certification for UST tightness testing (UTT certification), which is now proposed to be subsection (b)(4), would be amended to add containment sump and spill prevention equipment testing, and release detection equipment testing, to the list of activities that may be conducted with this certification. These new periodic testing requirements would need to be conducted by UST owners under new § 245.437.

Other minor clarifications are proposed throughout this section.

§ 245.111. Certified installer experience and qualifications.

Subsection (a) establishes the minimum experience, education, training or certification requirements and the required number of activities in the appropriate category for an initial installer category certification.

This subsection is proposed to be amended to add the requirements for the new UMI certification proposed in § 245.110. To qualify for this certification, a person would need to have 2 years experience, or a college degree and 1 year experience; successful completion of technical training; and documentation of the performance of 10 minor modifications.

Certified installers with the UMX certification have expressed difficulty in achieving the requirement to conduct 9 installations in the 3-year period immediately prior to submitting an application for certification because of the decline in the number of USTs systems being installed. As a result, this subsection is proposed to be amended to allow UMX certification after 10 installations or major modifications, provided the installer has a minimum of 5 installations. Also proposed is that UMX certification can be obtained by having obtained UMI certification together with the proposed activity requirements.

In order to be consistent, the proposed changes for the UMX certification are also being proposed for certification to install and modify aboveground manufactured metallic storage tanks (AMMX certifications) and to install and modify aboveground nonmetallic storage tanks (AMNX certifications).

The types of bachelor's degrees that can be substituted for experience in subsection (c) is proposed to be expanded to include hydrology, geology, or the equivalent of the degrees listed; and the effective date in subsection (g) is proposed to be deleted as the date has passed and is no longer relevant.

§ 245.112. Certification of inspectors.

Subsection (b)(1) is proposed to be amended to add containment sump and spill prevention equipment testing, and release detection equipment testing to the activities that may be conducted by a person certified to inspect UST systems and facilities (an IUM certified inspector). These new periodic testing requirements would need to be conducted by UST owners under new § 245.437.

§ 245.113. Certified inspector experience and qualifications.

A new subsection (f) is proposed to be added to clarify that corrosion protection training required for IUM certification would need to be documented by completion of a Nationally recognized training course in the area of cathodic protection or corrosion protection, or other training as approved by the Department.

Subsection (j) is proposed to be added to require certified inspectors of field constructed and manufactured ASTs (IAF certified inspectors) and certified inspectors of manufactured ASTs (IAM certified inspectors) to complete Department-provided inspector training prior to conducting AST installation, modification, in-service and out-of-service inspections. This would be similar to the current requirement for certified inspectors of USTs contained in existing subsection (h), which is proposed to be relettered to subsection (i).

Other minor revisions are proposed to this section to clarify the requirements.

§ 245.114. Renewal and amendment of certification.

Subsection (c) is proposed to be revised to provide the minimum training requirements for renewal of the new UMI certification category proposed in this rulemaking. In addition, all of the activities requirements that would no longer be applicable to renewal of installer certification are proposed to be deleted.

Subsection (e) is proposed to be deleted because the deadline established has passed and the provision is no longer relevant.

The existing subsection (f), which is proposed to be relettered as subsection (e), would be revised to clarify that inspector training is to be obtained within the 2 years prior to submission of an application for certification, and that inspector training would be provided by the Department. The compliance date in subsection (e)(1) is proposed to be deleted as it has passed and is no longer relevant.

Company Certification

§ 245.121 Certification of companies.

A revision is proposed to this section to clarify a company would not be allowed to perform the listed activities unless it holds a valid certification from the Department.

§ 245.123. Suspension of company certification.

A revision is proposed to subsection (a)(4) to clarify when a violation of certain environmental laws and regulations could result in suspension of a company's certification.

Standards for Performance

§ 245.132. Standards of performance.

Subsection (a)(2) is proposed to be amended to require that modification inspection reports be submitted to the Department within 30 days of the inspection activity. The current requirement is to submit the report within 60 days from completion of the inspection. This amendment is being proposed in order to shorten the length of time between submittal of the modification report (required within 30 days of completion of the modification) and the modification inspection report.

Subsection (a)(4) is proposed to be revised to clarify that certified companies, certified installers and certified inspectors would need to report to the Department a release of a regulated substance observed in a containment structure or facility while performing services as a certified installer or certified inspector. The details in subsection (a)(4) related to the method and timing of reporting to the Department are proposed to be clarified in a new subsection (a)(6), discussed below. The last two sentences of the existing subsection (a)(4) are proposed for deletion, as they pertain to notification of reportable releases in accordance with § 245.305 (relating to reporting releases). The definition of "reportable release" is proposed for deletion and the revisions to § 245.305 discussed below render these sentences unnecessary.

A new subsection (a)(5) is proposed to be added to require certified companies, certified installers and certified inspectors to report to the Department failed tests of spill prevention equipment, containment sumps, and overfill prevention equipment as required in Chapter 245. Such reports would allow the Department to follow up with facility owners to make sure that faulty equipment and tank components are repaired or replaced.

The new subsection (a)(6) being proposed would require that written notification to the Department be provided upon performing a failed test of spill prevention equipment, containment sumps, and overfill prevention equipment; observing a release of a regulated substance; or observing a regulated substance in a containment structure or facility. This subsection also proposes to require that copies of failed spill prevention equipment tests, containment sump tests, and overfill prevention evaluations be provided to the Department with the notification report.

Existing subsections (a)(6) and (a)(7) are proposed for deletion and restated in new subsection (c) as activities that certified companies and individuals are prohibited from performing.

A new subsection (b) is being proposed to clarify that a company that employs any individual certified in certain categories under this chapter or an individual certified in the same categories would need to participate in the Tank Installer Indemnification Program (TIIP) as required by section 704(a)(1) of the act (35 P.S. § 6021.704(a)(1)), and would need to provide timely payment of TIIP fees as required by section 705(d)(1) and 705(e) of the act (35 P.S. §§

6021.705(d)(1) and 6021.705(e)) and § 977.19(b) (relating to certified company fees for the Underground Storage Tank Indemnification Fund).

Training Approval

§ 245.141. Training approval.

A new subsection (b)(5) is being proposed that would require an application for training approval to include other information such as copies of any presentations, presenter notes, training handouts, or references necessary for a determination that the training program conforms to the act and Chapter 245.

Subchapter C. Permitting of Underground and Aboveground Storage Tank Systems and Facilities

General

§ 245.203. General requirements for permits.

Subsections (c) and (d) are proposed for deletion as they refer to activities that have already occurred and are no longer applicable. The Department has taken final action on the permit applications that were requested in subsection (c) or the Department has notified the persons that the tank systems are deemed permitted or that the permits were withheld or denied.

A new subsection (f) is proposed to clarify the various permit actions or non-actions by the Department that would prohibit a person from delivering or placing a regulated substance in a storage tank.

A new subsection (g) is proposed to clarify that the owner and operator of a storage tank system who causes or allows a violation of the act, Chapter 245, an order of the Department, a condition of a permit issued under the act, or any other applicable law would be subject to enforcement action including suspension, modification or revocation of the permit.

Permits-By-Rule

245.211. Scope.

This section is proposed to be deleted and reserved because permits-by-rule are no longer necessary.

245.212. Minimum requirements for obtaining a permit-by-rule.

This section is proposed to be deleted and reserved. The Department has issued operating permits for registered storage tanks and does not consider any storage tanks to be permitted by rule, so this provision is no longer necessary.

General Operating Permits

245.221. Scope.

This section is proposed to be deleted and reserved as it refers to § 245.211 (relating to the scope of the permit-by-rule provision), which is also proposed for deletion.

§ 245.222. Application requirements.

The word “general” in the term “general operating permit” is proposed for deletion in this section and in the overall title for this section. The term “operating permit” has been used by the Department when referring to the permit that must be obtained prior to placing a storage tank in operation.

Subsection (3) is proposed to be amended to clarify that the owners of large ASTs and large AST tank facilities are required to file Spill Prevention Response Plans with the Department. Subsection (3)(ii) is proposed to be deleted as tightness testing is not required for new AST systems in order to receive an operating permit.

Site-Specific Installation Permits

§ 245.231. Scope.

Subsection (a)(4) is proposed to be amended to clarify that new, field-constructed UST systems installed within a previously registered UST system do not require a site-specific installation permit.

A new subsection (d) is proposed to clarify that site-specific installation permits expire five years from the date of issuance unless the Department receives a written extension request from the owner prior to the expiration date and the Department grants an extension. Five years provides adequate time to complete construction or installation of the storage tanks and register and receive operating permits for the storage tanks.

§ 245.232. General requirements.

Subsection (b)(1) is proposed to be amended to clarify that the Spill Prevention Response Plan would need to include the proposed storage tank systems for the facility.

§ 245.233. Mapping requirements.

A new subsection (a)(2) is proposed and would require that the site-specific installation permit application contain maps and plans showing the location of the proposed storage tanks.

§ 245.234. Siting requirements.

Subsection (a)(1) is proposed to be amended to clarify that the proposed installation of storage tank systems and facilities on 100-year floodplains or a larger area that the flood of record has inundated would be prohibited unless an industrial use on the proposed site was in existence as

of August 5, 1989. Any industrial use would qualify and such use is not limited to that associated with the prior existence of regulated storage tanks.

Several revisions in this section are proposed to be amended simply to clarify that the requirements apply to storage tank systems rather than tank systems. § 245.236. *Public notice.*

This section is being amended to assist owners of certain ASTs and facilities to identify the information that would need to be provided in the written notice to the local municipality and county in which the proposed AST or facility is to be located prior to submitting a site-specific permit application.

Subchapter D. Corrective Action Process for Owners and Operators of Storage Tanks and Storage Tank Facilities and Other Responsible Parties

§ 245.301. Purpose.

This section is proposed to be amended to clarify that Subchapter D establishes suspected release investigation requirements as opposed to release confirmation requirements for owners and operators of storage tank systems and storage tank facilities and other responsible parties.

§ 245.303. General requirements.

Subsection (e)(1) is proposed to be revised to clarify that the Department may waive or combine one or more of the requirements of Subchapter D in the case of a release to a containment structure or facility that is shown to be liquid-tight.

§ 245.304. Investigation of suspected releases.

Subsection (a)(1) is proposed to be amended to clarify that the presence of a regulated substance or an unusual level of vapors from a regulated substance outside of storage tank system components designed to routinely contain or convey product, at or near a storage tank facility, would be a suspected release that would need to be investigated.

Subsection (a)(5) is proposed to be amended to clarify that the sounding of an alarm from a release detection method would be a suspected release that would need to be investigated.

Subsection (a)(6) is proposed to be amended to clarify that damage to a storage tank system which occurs during activities such as inspection, repair or removal from service would be a suspected release that would need to be investigated.

Subsection (b)(6) is being amended to clarify that the sampling and analysis conducted in response to a suspected release may need to include subsurface soil and backfill, vapor, and water, in addition to soil and groundwater. In addition, samples would need to be taken from locations where contamination from a release would most likely be present.

Subsection (c) is being amended to remove reference to the term “reportable release” as the use and definition of that term is proposed to be deleted. All releases would need to be reported to

the Department with the exception of those releases described in proposed § 245.305(i) (relating to reporting releases).

Subsection (d) is proposed for deletion as releases that do not have to be reported to the Department are addressed in proposed § 245.305(i).

§ 245.305. Reporting releases.

Existing subsection (b) is proposed for deletion as releases that do not have to be reported to the Department would be addressed in proposed § 245.305(i).

Subsection (c), which would be relettered to (b), would be amended to clarify that the notice required of the owner to report releases would also need to include the cause of the release.

Subsection (f), which would be relettered to (e), would be amended to clarify that the written notice required of the owner to report releases must be provided on a Department-provided form.

Subsection (h), which would be relettered to (g), would be amended to clarify that the owner or operator of an AST facility would be subject to the notification requirements of this subsection only if the aggregate aboveground storage capacity is greater than 21,000 gallons.

New subsection (i) is being proposed to specifically identify those releases that do not require reporting to the Department and further corrective action, provided certain criteria are met. Those criteria would be:

- 1) the owner or operator has control over the release,
- 2) the release is completely contained,
- 3) the total volume of the release is recovered and removed within 24 hours of the release, and
- 4) any defective storage tank system component that caused or contributed to the release is properly repaired or replaced.

Provided all four of the above criteria would be met, the following release situations would not be required to be reported to the Department:

- 1) A release of petroleum to an aboveground surface, including within an emergency containment structure, that is less than 25 gallons.
- 2) A release of a hazardous substance to an aboveground surface, including within an emergency containment structure, that is less than its reportable quantity under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. §§ 9601—9675) and 40 CFR Part 302 (relating to designation, reportable quantities, and notification).
- 3) A release to a liquid-tight containment sump used for interstitial monitoring of piping in accordance with § 245.444(6) (relating to methods of release detection for tanks).

If any other release situation occurs, or if one of the three release situations above occurs, but all four of the above criteria are not met, the release would need to be reported. Some examples of

release situations that would need to be reported to the Department and that would require further corrective action are:

- 1) An accidental release of 5 gallons of gasoline from a dispenser nozzle at a retail service station to a highly weathered and cracked asphalt or concrete surface that prohibits total recovery of the released product.
- 2) An overfill of 20 gallons of diesel fuel during delivery that results in some product reaching a nearby storm sewer; therefore, the release has not been controlled, contained and cannot be completely recovered.
- 3) A release to a liquid-tight containment sump that is not used for interstitial monitoring of piping.
- 4) A release to the interstitial space of a double-walled aboveground or underground storage tank.

§ 245.306. Interim remedial actions.

Subsection (e) is proposed to be added to this section that would require a responsible party to notify the Department by telephone or electronic mail as soon as practicable, but no later than 24 hours, after the initiation of interim remedial actions. For releases associated with USTs, the Federal regulations at 40 CFR § 280.62 (relating to initial abatement measures and site check) do not require the initiation of initial abatement measures to be reported, but do require a report to be submitted within 20 days after release confirmation summarizing the initial abatement steps taken. The proposed requirements in subsection (e) differ from the Federal regulations by proposing to require notification when an interim remedial action is initiated. Such notice will allow the Department to monitor early actions taken to clean up a release of contaminants. These initial corrective actions are extremely important in limiting the complexity of the release, the amount of corrective action that must be undertaken, and the ultimate cost of the corrective action.

§ 245.307. Affected or diminished water supplies.

Subsection (a) is proposed to be amended to add that a responsible party who affects or diminishes a water supply as a result of a corrective action would be required to restore or replace the affected or diminished supply. Water supplies not immediately affected or diminished by a release can later become affected or diminished should the plume of groundwater contamination advance, but water supplies can also become affected or diminished as a result of the groundwater remediation technology employed.

Subsection (e) is proposed to be added to require that a responsible party notify the Department within 24 hours of providing an alternate source of water to the owner of the affected or diminished water supply. This provision would allow the Department to monitor corrective actions involving affected or diminished water supplies and to assure that responsible parties are complying with the requirements to provide temporary and permanent water supplies. The Federal requirements at 40 CFR Part 280 do not address providing alternate water supplies to affected water supply owners. However, section 1303 of the act (35 P.S. § 6021.1303) specifically authorizes the Department to adopt regulations for the protection of any source of water for present or future supply to the public or other legitimate use.

245.309. Site characterization.

This section is proposed to be amended to clarify the site characterization requirements, although the substantive requirements remain the same.

Subsection (c)(22), which allows for recommendation for further site characterization work, is proposed for deletion. As stated in proposed subsection (c)(23), any additional tasks necessary to meet the objectives of the site characterization should be performed in order to complete the site characterization process. The site characterization process is to result in the submission of a complete site characterization report that addresses all necessary tasks performed during the site characterization and should not need to discuss further site characterization work.

Subsection (c)(24) is proposed to be added and would require the responsible party to notify the Department by telephone or electronic mail as soon as practicable, but no later than 24 hours, after the initiation of site characterization activities. Such activities should be initiated concurrent with the implementation of interim remedial actions. This provision would assure the Department that responsible parties are proceeding with the required site characterization tasks. Too often, responsible parties delay the implementation of site characterization activities and find themselves requesting an extension to submit the site characterization report. The proposed changes should encourage responsible parties to initiate site characterization earlier and significantly reduce the site characterization report extension requests submitted to the Department. The Federal requirements at 40 CFR Part 280 do not include such a notification provision. However, §§ 280.63(b) (relating to initial site characterization) and 280.64(d) (relating to free product removal) do require that owners and operators submit an initial site characterization report and a free product removal report within 45 days of release confirmation, respectively. The Department is not proposing incorporation of these Federal regulatory provisions.

§ 245.310. Site characterization report.

The section is proposed to be amended to clarify the requirements, but does not propose substantive changes. The proposed amendments in this section correspond to similar proposed amendments made in § 245.309, as the site characterization report describes the activities undertaken during the site characterization.

Subsection (c)(6), which provides for Department review of the site characterization report without further action, is proposed to be deleted. The Department expects to take action upon review of all site characterization reports submitted under subsection (c).

§ 245.311. Remedial action plan.

Subsection (a)(2), which requires submission of a copy of the plan relating to worker health and safety is proposed to be deleted because the Department does not need to review the worker health and safety plan.

Subsection (a)(12) is proposed to be amended to clarify that the description of the proposed postremediation care requirements should include the proposed activity and use limitations to be implemented under an environmental covenant. As discussed above, the term “environmental

covenant” is proposed to be defined in § 245.1 consistent with the Uniform Environmental Covenants Act and Chapter 253 (relating to administration of the uniform environmental covenants act.)

A new subsection (a)(14) is proposed which would require the responsible party to provide a description of any water supply that remains affected or diminished, the replacement system that was provided, the analytical results of samples taken, and any maintenance or monitoring that would be required to ensure its functionality until the supply is no longer affected or diminished.

Under subsections (b) and (c), the Department would publish an acknowledgment of receipt of the remedial action plan in the *Pennsylvania Bulletin*. Federal regulations at 40 CFR § 280.67(a) (relating to public participation) also require that notice to the public be provided for each confirmed release requiring a corrective action plan.

Subsections (b)(6) and (c)(6), which provide for Department review of the remedial action plan without further action, are proposed to be deleted. The Department expects to take action upon review of all remedial action plans submitted under subsections (b) and (c). New subsections (b)(6) and (c)(6) are proposed to provide the Department with the option to publish a notice of its final action on the remedial action plan in the *Pennsylvania Bulletin*.

§ 245.312. Remedial action.

Subsection (c)(4) is proposed to be amended to add that the quantitative analytical results from a replacement water supply system would also to be provided with each remedial action progress report.

A new subsection (c)(10) is proposed that would require each remedial action progress report to include a summary of data collected from any water supply that remains affected or diminished, and any maintenance performed.

Subsection (d) currently provides that the first remedial action progress report shall be received by the Department three months following the date of remedial action plan implementation. This subsection is proposed to be amended to allow the first remedial action progress report to be received by the Department at an alternative interval. In determining this interval, the Department would consider the nature, extent, type, volume or complexity of the release.

Existing subsection (f) provides the responsible party with the ability to suspend implementation of the current remedial action plan should continued implementation of the plan cause additional environmental harm. A new subsection (g) is proposed to be added that would provide the Department with the authority to require suspension of the remedial action, if during implementation of the remedial action plan the Department determines that the remedial action plan will not attain the selected remediation standard or will cause additional environmental harm.

§ 245.313. *Remedial action completion report.*

A new subsection (b)(1) is proposed which would require the remedial action completion report to contain data demonstrating that the remedial action(s) has attained the selected standard(s) for the site in accordance with Chapter 250, Subchapter G (relating to demonstration of attainment).

Proposed subsections (b)(3) and (b)(4) would correct citations pertaining to Chapter 250 (administration of the land recycling program).

Subsection (c) is proposed to be amended to provide that the Department would publish an acknowledgment of receipt of the remedial action completion report in the *Pennsylvania Bulletin*.

Subsection (c)(6), which provides for Department review of the remedial action completion report without further action, is proposed to be deleted. The Department will take action upon review of all remedial action completion reports submitted under subsection (c). A new subsection (c)(6) is proposed that would allow the Department to publish a notice of its final action on the remedial action completion report in the *Pennsylvania Bulletin*.

Subchapter E. Technical Standards for Underground Storage Tanks

General

§ 245.402. *Scope*

This section is proposed to be amended to clarify that this subchapter applies to storage tank systems.

§ 245.403. *Applicability.*

Previously, UST systems that stored fuel solely for use by emergency power generators were deferred from complying with the release detection requirements of §§ 245.441—245.446. The Federal regulations at 40 CFR § 280.10(a)(1)(ii)-(iii) that became effective on October 13, 2015, removed the release detection deferral. Therefore, existing subsection (b) is proposed to be deleted and a new subsection (b) is proposed that would require UST systems installed after the date of adoption of the final-form rulemaking to meet the release detection requirements at installation. Existing UST systems are afforded one or two years to meet the release detection requirements depending on the date of installation. This will provide UST owners with the necessary time to decide which release detection method they wish to utilize, or if they wish to permanently close the UST and possibly replace it with an AST.

The Department has not required, as a matter of policy, that existing underground field-constructed storage tanks installed on or before October 11, 1997, comply with the requirements in Chapter 245 (*Policy for Existing Field-Constructed Hazardous Substance Underground Storage Tanks at Facilities Regulated under the Safe Drinking Water Act*, DEP 263-2320-001). The Department intends to rescind this policy. Underground field-constructed storage tanks were previously deferred from Federal regulation. However, as of October 13, 2015, underground field-constructed storage tanks are now regulated in accordance with 40 CFR § 280.10(a)(1)(i).

Therefore, existing subsection (c), now proposed subsection (d), has been amended to state that underground field-constructed storage tanks will now be regulated under Chapter 245, but subject to some temporary exclusions. Under proposed subsection (d), owners of existing and previously exempt underground field-constructed storage tanks will have 30 days to register their storage tanks and one year to meet the requirements of §§ 245.421, 245.422, 245.431, 245.432, 245.437, and 245.441—245.446, from the effective date of the final-form regulations, which will be published in the *Pennsylvania Bulletin* when promulgated. In addition, owners of existing underground storage tanks that meet the requirements of proposed subsection (c), discussed in the next paragraph, will have 30 days to register their storage tanks.

As discussed above, the definition of “underground storage tank” is proposed to be revised to delete the exclusions 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 underground storage tank systems that are part of emergency generator systems at nuclear power generation facilities regulated by the Nuclear Regulatory Commission (NRC) under 10 CFR Part 50, Appendix A (relating to general design criteria for nuclear power plants). In addition, the exclusion for a wastewater treatment tank system is proposed to be revised consistent with the Federal regulations to apply only to a wastewater treatment tank system that is part of a wastewater treatment facility regulated under sections 402 or 307(b) of the Clean Water Act. USTs that become regulated as a result of these proposed revisions would need to meet the same requirements that all other regulated UST systems must meet. However, with regard to Subchapter E (relating to technical standards for underground storage tanks), UST owners will not need to comply with §§ 245.411, 245.421(b)(3), 245.421(b)(4)(ii)-(iii), 245.422(d), 245.432(g), and 245.436 – 245.446.

USTs containing radioactive material and emergency generator UST systems at nuclear power generation facilities regulated by the NRC are subject to U. S. Department of Energy Orders and NRC regulations that are comparable to the Chapter 245 requirements for new and existing USTs regarding spill and overflow control and operation and maintenance of corrosion protection. Since owners and operators of these UST systems had to meet Federal UST regulations dating back to 1988 that require systems to be designed and constructed to prevent releases during the operating life of the facility due to corrosion or structural failure, these systems should already be in compliance with most of the Chapter 245 requirements.

Facility Inspections

§ 245.411. Inspection frequency.

Subsections (b)(1), (b)(3) and (c)(2) are proposed for deletion as the deadlines for these requirements have passed and they are no longer applicable. The title of subsection (c) is proposed to be amended from “Subsequent routine facility inspections” to “Subsequent inspections.” The title of subsection (d) is proposed to be amended from “Additional inspections and mandatory training” to simply “Training” and clarifies that UST owners and operators found through inspection to have violations that result in failure to meet EPA guidelines for significant operational compliance, as determined by the Department, shall be retrained in a manner consistent with the Department’s technical document entitled “Underground Storage Tank Class A and Class B Operator Training Courses.”

Underground Storage Tank Systems: Design, Construction, Installation and Notification

§ 245.421. Performance standards for underground storage tank systems.

Subsection (a)(2) is proposed to be amended to clarify that owners and operators would be required to notify the Department of the proposed installation of specific storage tank system components such as the piping system and dispenser, and not just when a tank or storage tank system is being installed.

Subsection (a)(3) has been amended to clarify that a Department-certified installer, not an inspector, would need to certify that underground storage tank systems changing from unregulated to regulated service meet new underground storage tank system requirements.

Subsection (b)(1)(iii) is proposed to be amended to be consistent with the Federal regulations at 40 CFR § 280.20(a)(3) (pertaining to performance standards for new UST systems).

Subsection (b)(2) is proposed to be amended to be consistent with the Federal regulatory definition of “replaced” at 40 CFR § 280.12, but is not expected to result in a substantive change.

Subsection (b)(3)(i) is proposed to be amended to require that spill and overfill prevention equipment be permanently installed to facilitate the periodic testing that would be required under the new § 245.437, which is discussed below.

Subsection (b)(3)(i)(B)(III) is proposed for deletion because equipment to prevent tank overfilling meeting these requirements is not available and no facilities are currently known to be using this option. In 1991, EPA finalized a minor technical amendment to the Federal UST regulations (40 CFR § 280.20(c)(1)(ii)(C)) allowing overfill prevention equipment to be used closer to the tops of larger tanks when certain minimum levels of performance can be achieved. The Board is interested in comments from any facilities that have installed equipment that meets the requirements of subsection (b)(3)(i)(B)(III) and the testing procedures used to evaluate the effectiveness of the equipment.

The existing subsection (b)(3)(iii) is proposed to be relettered to (b)(3)(iv) and revised to clarify that the prohibition applies to existing ball float valves. A new subsection (b)(3)(iii) is proposed that would prohibit the use of ball float valves when overfill prevention equipment is installed or replaced after the effective date of the final-form rulemaking. This proposed revision is consistent with the Federal regulations at 40 CFR § 280.20(c)(3). This proposed revision is being made to reduce the frequency of UST releases due to operability issues, address system safety concerns, and address personnel safety concerns.

A new subsection (b)(3)(v) is being added to require that the newly proposed spill and overfill prevention equipment tests would need to be documented on a form provided by the Department and would need to be maintained onsite at the storage tank facility or at a readily available alternative site. This proposal is consistent with the Federal requirement at 40 CFR § 280.34 (relating to reporting and recordkeeping).

The language pertaining to ball float valves in subsection (b)(4)(iii) is proposed for deletion as ball float valves would be prohibited from being installed after the date of adoption of the final-form rulemaking.

Subsection (c) is proposed for deletion as duplicative because owners and operators are required provide the certification of installation by a certified installer under the tank registration requirements in § 245.41.

Other minor revisions are proposed to this section to clarify the requirements.

§ 245.422. Upgrading of existing underground storage tank systems.

Subsections (b)(2)(ii) and (b)(2)(iii) are proposed for deletion as the timeframes associated with these provisions have passed and they are no longer applicable to cathodic protection upgrades.

Subsection (e) is proposed to be amended to clarify that when an existing dispenser is replaced with another dispenser, and equipment at or below the shear valve needed to connect the dispenser to the UST system is replaced, under-dispenser containment is required. Equipment is clarified to mean check valves, shear valves, vertical risers, flexible connectors, or other transitional components. This is consistent with federal regulatory requirements found at 40 CFR § 280.20(f).

Other minor revisions are proposed to this section to clarify the requirements.

§ 245.423. Registration requirements.

This section is proposed to be deleted and reserved because it is duplicative of storage tank registration requirements in § 245.41 (relating to tank registration requirements).

General Operating Requirements

§ 245.432. Operation and maintenance including corrosion protection.

Subsection (a) is proposed to be amended to clarify that corrosion protection requirements would apply until the UST system is permanently closed or undergoes a change-in-service.

Subsection (a)(2)(iii) is proposed for addition to require owners and operators to document surveys of cathodic protection systems on a form provided by the Department and provide the forms to the Department upon request. This proposal is consistent with the Federal requirement at 40 CFR § 280.34 (relating to reporting and recordkeeping).

Subsection (f) is proposed to be amended to clarify that, in addition to primary and secondary containment structures, containment sumps and spill prevention equipment would need to be maintained in a leak-free condition. This subsection is also proposed to be amended to clarify that if any liquid (e.g., water) or regulated substance is detected, the liquid or regulated substance would need to be immediately removed.

Other minor revisions are proposed to this section to clarify the requirements.

§ 245.433. Compatibility.

Subsection (a) is proposed to be amended to delete the language that references specific codes of practice related to material compatibility as this language is duplicative of § 245.405 (relating to codes and standards).

Subsection (b) is proposed to be added to this section to require an owner and operator of a UST storing alternative fuel blends or biodiesel or biodiesel blended fuel to provide information to the Department, on a form provided by the Department, verifying compatibility with all UST system components. This amendment would codify the Department's current practice.

Subsection (c) is proposed to be added to require an owner and operator of a UST system to demonstrate, upon Department request, the compatibility of the UST system with the material being stored by using one or more of the options listed. This proposal is consistent with the Federal requirement at 40 CFR § 280.32(b)(1) (relating to compatibility).

§ 245.434. Repairs allowed.

The requirement under item (3) is proposed to be deleted because it could be interpreted to mean that repairs made to underground fiberglass reinforced plastic tanks by a manufacturer's authorized representative do not require direct, onsite supervision and control of a certified installer. Such supervision and control is required, as stated in the requirement under item (1) and this proposed deletion will eliminate confusion.

The requirement currently in item (5), which is proposed to be renumbered as (4), is proposed to be amended to specifically address how repairs to secondary containment areas of tanks and piping, containment sumps, and spill prevention equipment would be tested. This proposal is consistent with the Federal requirement at 40 CFR § 280.33(d) (relating to repairs allowed). The exception to tightness testing in (ii) when the repaired portion of the UST system can be monitored monthly for releases is proposed to be deleted. The Federal regulations at 40 CFR § 280.33(d)(2) allows this option. However, most manufacturer's specifications and Nationally recognized codes of practice recommend tightness testing of the UST system to determine competency prior to placing product in the UST system.

§ 245.435. Reporting and recordkeeping.

Revisions to this section are proposed to clarify the requirements and remove the distinction between permanent and temporary records, as that distinction is no longer relevant. The reporting requirements in subsection (b)(1) are proposed to be moved to a new subsection (c) and the recordkeeping requirements in (b)(2) are proposed to be moved to a new subsection (d). The list of records to be maintained are proposed to be consolidated into one list and several records are proposed to be added to the list.

Subsection (d)(9) is proposed to be added to require that owners and operators maintain documentation showing that their UST systems are continuously participating in the Underground Storage Tank Indemnification Fund (USTIF). In the event of a release at the facility, this information will be necessary to prove eligibility for payment of a USTIF claim.

As will be discussed in more detail below, new requirements are being proposed relating to periodic testing (§ 245.437) and periodic operation and maintenance walkthrough inspections (§ 245.438). New reporting and recordkeeping requirements are proposed to be added to § 245.435 related to these proposed periodic testing and inspection requirements.

New subsection (d)(19) is proposed to require that documentation of the last test of spill prevention equipment and containment sumps and evaluations of overfill prevention equipment conducted to meet the periodic testing requirements in proposed § 245.437 be maintained. This proposal is consistent with the Federal requirement at 40 CFR § 280.34(b)(5).

New subsection (d)(20) is proposed to require that documentation of periodic testing conducted under proposed § 245.437(a)(1)(i) be maintained. This documentation would need to show that the containment sump and spill prevention equipment are double-walled and that the integrity of both walls is periodically monitored in accordance with § 245.438(a)(1)(i) (relating to periodic operation and maintenance walkthrough inspections). This proposal is consistent with the Federal requirement at 40 CFR § 280.34(b)(5).

New subsection (d)(21) is proposed to require that records of maintenance walkthrough inspections as required in proposed § 245.438 be maintained for the past 12 months. Records would need to include a list of each area checked, whether each area checked was acceptable or needed action taken, a description of actions taken to correct an issue, and delivery records if spill prevention equipment is checked less frequently than every 30 days due to infrequent deliveries. This proposal is consistent with the Federal requirement at 40 CFR § 280.34(b)(6).

New subsection (d)(22) is proposed to clarify that documentation of investigations of suspected releases in accordance with § 245.304 (relating to investigation of suspected releases) be maintained. This documentation must be maintained for the operational life of the storage tank system and retained for a minimum of 1 year after the storage tank system has been permanently closed.

Other minor revisions are proposed to this section to clarify the requirements.

§ 245.436. Operator training.

Subsection (a)(2) is proposed to be amended by deleting the date as it has passed and as it is no longer relevant.

Subsection (a)(3)(ii) is proposed to be amended to clarify that storage tank facilities required to have an onsite Class C operator must have emergency contact information and written instructions and procedures in the event of an emergency immediately available upon request.

Subsection (a)(3)(iii) is proposed to be revised to clarify that, for storage tank facilities that do not dispense motor fuel for retail sales to the general public, emergency contact information and written instructions and procedures in the event of an emergency would need to be prominently displayed at the site and visible to the storage tank user.

Subsection (a)(4) is proposed for deletion as the date for compliance has passed and it is no longer applicable.

Subsection (b)(1)(iv) is proposed to be amended to add that Department-certified installers and inspectors with a current UMI certification may perform Class A operator duties when employed or contracted by the tank owner to perform these functions.

Subsection (b)(2)(iv) is proposed to be amended to add that Department-certified installers and inspectors with a current UMI certification may perform Class B operator duties when employed or contracted by the tank owner to perform these functions.

Subsection (b)(3) is proposed to be amended by deleting its subsections (i), (ii) and (iii). The provision in (i) authorizing a Class C operator to control or monitor the dispensing or sale of regulated substances is proposed to be incorporated into (b)(3). The provision in (ii) pertaining to written instructions and procedures is proposed to be incorporated into subsections (a)(3)(ii) and (a)(3)(iii) as discussed above. The provision in subsection (b)(3)(iii) is proposed to be deleted because the requirements related to Class C operator availability at a storage tank facility are addressed in subsection (a)(3) and this provision is unnecessary.

Subsection (c)(3) is proposed to be revised to clarify that training provided by the tank owner or Class A or Class B operator to the Class C operator would need to be specific to the facility and enable the Class C operator to take action in response to emergencies.

Subsection (c)(5) related to reciprocity of training is proposed for deletion. While other states may provide training consistent with the Federal regulations, the Department has determined that training specifically pertaining to Chapter 245 is necessary for Class A and Class B operators in the Commonwealth, and other state training courses do not provide such training.

Subsection (d)(1) is proposed to be amended to require the owner to identify Class A, Class B and Class C operators on a form provided by the Department prior to placing the UST system into use, which is the Department's current practice.

Subsection (e)(2) and (3) are proposed to be amended to remove the terms "manned" and "unmanned" in describing a facility and instead referring to a facility that does or does not dispense motor fuel for retail sales to the general public.

§ 245.437 Periodic testing.

This section is proposed to be added to be consistent with the Federal requirement at 40 CFR § 280.35 (relating to periodic testing of spill prevention equipment and containment sumps used for interstitial monitoring of piping and periodic inspection of overfill equipment).

Subsection (a)(1) is proposed to require owners and operators to ensure that containment sumps used for interstitial monitoring of piping and spill prevention equipment are tested once every three years to ensure they are liquid-tight. If the containment sump and spill prevention equipment are double-walled, the integrity of both walls must be periodically monitored consistent with the maintenance walkthrough inspections proposed in § 245.438 in lieu of testing the equipment once every three years.

Subsection (a)(2) would require owners and operators to ensure that overfill prevention equipment would be evaluated at least once every three years to ensure that the equipment is set to activate at the correct level and would activate when the regulated substance stored reaches that level.

Subsection (a)(3) would require owners and operators to ensure that electronic and mechanical components of release detection equipment be tested for proper operation at least annually. The required tests would apply to automatic tank gauges and other controllers, probes and sensors, automatic line leak detectors, vacuum pumps and pressure gauges, and hand-held electronic sampling equipment associated with groundwater and vapor monitoring.

Subsection (b) sets forth the criteria under which the required tests and evaluations would to be performed.

Subsection (c) proposes the dates by which owners and operators would need to ensure that the periodic testing requirements are met.

Subsection (c)(1) proposes that, for UST systems installed on or before the effective date of the final-form regulations, the tests and inspections would need to be conducted prior to the next required UST inspection due date occurring after one year from the effective date of the final-form regulations or not later than three years after the effective date of the final-form regulations, whichever occurs first. So, if the effective date of the final-form regulations would be January 1, 2019, the first facility tests and inspections would need to occur prior to the next required UST facility inspection occurring between January 1, 2020, and January 1, 2022. Subsection (c)(2) would establish that for UST systems installed after the effective date of the final-form regulations, the periodic testing requirements of this section would apply at installation.

Subsection (d) would require that the liquids used to perform the periodic tests would need to be reused, treated or disposed of in accordance with applicable requirement in Chapter 91 (relating to water resources general provisions), Chapter 92a (relating to national pollutant discharge elimination system permitting, monitoring and compliance), Chapters 260—270a (relating to hazardous waste management), and Chapters 287—299 (relating to residual waste management). In addition, the Department plans to develop technical guidance for owners and operators of storage tank facilities to follow to ensure test liquids are reused, treated, or disposed of properly.

§ 245.438 Periodic operation and maintenance walkthrough inspections.

This section is proposed to be added and is consistent with the Federal requirement at 40 CFR § 280.36 (relating to periodic operation and maintenance walkthrough inspections).

Subsection (a) would require owners and operators to conduct maintenance walkthrough inspections of spill prevention and release detection equipment for UST systems a minimum of every 30 days beginning not later than one year after the effective date of the final-form regulations. For spill prevention equipment associated with UST systems receiving deliveries at intervals greater than every 30 days, the owners and operators could conduct maintenance walkthrough inspections prior to each delivery.

Subsection (b) would require owners and operators to conduct maintenance walkthrough inspections of containment sumps and handheld release detection equipment for UST systems a minimum of every 12 months beginning not later than one year after the effective date of the final-form regulations.

Subsection (c) would set forth the criteria under which the operation and maintenance walkthrough inspections would need to be performed.

Release Detection

§ 245.441. General requirements for underground storage tank systems.

The table of release detection methods shown in subsection (a)(3) is proposed for deletion as the dates for compliance have passed and it is no longer applicable.

With the proposed periodic testing and operation and maintenance walkthrough inspection requirements proposed in § 245.437 and § 245.438, respectively, the current requirement to monitor containment sumps and dispenser pan sumps on a monthly basis contained in subsection (e) are proposed to be deleted as unnecessary.

§ 245.442. Periodic monitoring requirements for petroleum underground storage tank systems.

The title of this section is proposed to be amended to clarify this section is related to monitoring for releases of petroleum underground storage tank systems.

Subsection (a) is proposed to be amended to clarify the existing requirements related to the methods and frequency of release detection monitoring for petroleum systems with USTs and underground piping.

Subsection (b)(1) is proposed to be amended to allow the use of any of the release detection methods in § 245.444 (relating to methods of release detection for tanks), as proposed to be amended, when monitoring for release detection in tanks every 30 days as currently required. Subsections (b)(1)(i)-(iv) are proposed for deletion because the established timeframes have passed or these requirements are no longer necessary since the release detection methods available for use have been expanded.

§ 245.443. Requirements for hazardous substance underground storage tank systems.

This section is proposed to be revised to set forth and distinguish between the release detection requirements for hazardous substance underground storage tank systems installed on or before November 10, 2007, and those hazardous substance storage tank systems installed after November 10, 2007.

§ 245.444. Methods of release detection for tanks.

This section is proposed to be amended to clarify that the release detection methods provided for tanks would meet the requirements of both §§ 245.441 and 245.442 (relating to general requirements for UST systems and periodic monitoring requirements for petroleum UST

systems). The inventory control method of release detection for tanks in subsection (1) is proposed to be deleted because the timeframe for this method's continued use has passed. An end date for this method's continued use was established in a prior rulemaking (37 Pa.B. 5979 (November 10, 2007)).

The manual tank gauging method of release detection in subsection (2), which is proposed to be renumbered as (1), is proposed to be revised to clarify in subsection (1)(v) that this method would no longer be available for USTs of greater than 1,000 gallons nominal capacity. Tanks for this size would need to use another method because of the potential for a substantial release using the manual tank gauging method. The requirements pertaining to tank capacities of 1,001 to 2,000 gallons is also proposed for deletion from the table in subsection (1)(iv).

The automatic tank gauging method in subsection (4), which is proposed to be renumbered as (3), is proposed to be revised to remove the reference to the inventory control method currently in subsection (1) as that method is proposed to be deleted and the timeframe for use of this method has passed.

The statistical inventory reconciliation (SIR) method for release detection in subsection (8), which is proposed to be renumbered as (7), is proposed to be amended by deleting subsection (7)(ii)(A), which requires that reports be available within 20 days of the end of the monitored period. Owners and operators of underground storage tanks using SIR to meet the tank release detection requirement must determine the leak status of their underground storage tanks within the 30-day monitoring period. EPA established the 30-day monitoring period in the 1988 federal UST regulations and re-confirmed it in the 2015 federal UST regulations. UST system owners and operators may use SIR or another method to meet the tank release detection requirement, as long as the method meets specified performance standards. One performance standard that applies to all release detection methods is the need to determine the tank's leak status in a 30-day monitoring period. That means owners and operators using SIR or another release detection method must determine the leak status of their USTs within the 30-day monitoring period. This amendment is being proposed to be consistent with the Federal regulations.

§ 245.445. Methods of release detection for piping.

The automatic line leak detector method for release detection of piping in subsection (1) is proposed to be revised and adds subsection (1)(ii), which would require owners and operators of UST systems that store fuel solely for use by emergency power generators to install methods that trigger an audible or visual alarm to meet the release detection requirement. Automatic line leak detectors that either restrict or shut off the flow of regulated substances would not be required to avoid the potential for facilities such as hospitals and nursing homes to be without power at any time.

Subsection (1)(iii) is proposed to be added to require pressurized piping installed on or before November 10, 2007, that conveys a regulated substance, except piping used in UST systems that store fuel for emergency power under (1)(ii), to be equipped with a release detection method that restricts or automatically shuts off the flow of regulated substances in the event of a 3-gallon-per-hour leak rate, if the storage tank facility is unattended while open for business.

Out-of-Service Underground Storage Tank Systems and Closure

§ 245.451. Temporary removal from service (out-of-service).

In this section, the word “closure” is proposed to be replaced with the term “removed from service,” “removal from service,” or “out-of-service.” The word “closure” would only be used when permanent closure occurs.

Subsection (b) is proposed to be amended to delete the requirement that release detection be performed until the tank is empty. A tank temporarily removed from service must be empty.

Subsection (c) is proposed to be revised to require owners and operators to empty the tank being placed temporarily in out-of-service status prior to submission of the registration form to the Department.

Subsection (e) is proposed to be amended to require inspections to be conducted at 3-year intervals on UST systems in temporary out-of-service status. Inspections could not be delayed for underground storage tank systems in temporarily removed from service status. This revision is consistent with Federal regulations, which do not defer the 3-year inspection requirement for tank systems in temporary removal from service status.

A new subsection (i) is proposed to provide the Department with the ability to require tests to be performed of the UST system in temporary out-of-service status when returning the storage tank system to currently-in-use status. Storage tanks that are temporarily out-of-service status are often in this status for a number of years. The results of this testing will determine if the storage tank may be brought back into operation.

§ 245.452. Permanent closure and changes-in-service.

In subsection (b), the words “Tanks taken out of service permanently” are proposed to be replaced with “Tanks being permanently closed.” Taken “out of service” implies a temporary condition and is proposed to be reserved for use with the term “temporary out-of-service.”

Subsection (c) is proposed to be amended to clarify that removal or closure-in-place of underground piping, in addition to replacement of underground piping, is considered a permanent closure. Underground piping includes remote fill lines connected to a storage tank. In addition, proposed revisions to subsection (c) clarify that excavation beneath the dispenser and removal of the dispenser would be permanent closure of that part of the UST system. The requirements applicable to permanent closure of a UST system would apply to the permanent closure of system piping, remote fill lines, and dispensers.

Subsection (e) is proposed to be amended to clarify that the owner would need to complete and submit an amended storage tank registration form, signed by the owner and the certified installer that provided direct onsite supervision of the tank handling activity, to the Department within 30 days of the completion of permanent closure or change-in-service of the storage tank.

Subchapter F. Technical Standards for Aboveground Storage Tanks and Facilities

Several sections in this subchapter are proposed to be amended simply to clarify that the requirements apply to aboveground storage tanks and facilities. If no other revisions are proposed, those sections are not discussed further in this preamble.

General

§ 245.501. Purpose.

The purpose of this subchapter is proposed to be amended to clarify that the technical standards and requirements established by this subchapter also apply to ASTs in underground vaults. Specific requirements applicable to ASTs in underground vaults are established in current § 245.523 (relating to aboveground storage tanks in underground vaults).

§ 245.503. Variances.

Subsection (6) is proposed to be added to clarify that the Department will publish approved variances in the *Pennsylvania Bulletin*.

§ 245.505. Applicability.

Subsections (1), (2) and (3) are proposed for deletion as the ASTs regulated under this chapter are no longer excluded from the monitoring, in-service inspection and out-of-service inspection requirements outlined in these subsections.

Operations and Maintenance

§ 245.512. Facility operations and spill response plan.

This section is proposed to be amended to require that Spill Prevention Response Plan revisions be submitted to the Department within 120 days of any necessary updates to the plan. The current regulation is silent as to when an updated plan needs to be submitted to the Department.

§ 245.513. Preventive maintenance and housekeeping requirements.

This section is proposed to be amended throughout to clarify that storage tank facility owners and operators are responsible for compliance. Subsection (b)(1)(iii) is proposed to be added to clarify that the continuous leak detection system required by § 245.523(7) for an AST with an underground vault would need to be checked as part of the visual inspection conducted every 72 hours.

Subsection (b)(2) is proposed to be amended to clarify that the monthly maintenance inspection would need to be performed for each AST system.

Subsection (b)(2)(v) is proposed to be added to require that the monthly maintenance inspection include a check of the cathodic protection system, if installed, to ensure the equipment is functioning as designed.

Subsection (c) is proposed to be revised to replace the general requirement for good housekeeping practice to reduce spills and safety hazards with a specific requirement that would require storage tank facility owners and operators to immediately initiate the actions necessary to correct deficiencies noted during the 72-hour visual and monthly maintenance inspections required by this section.

Subsection (d) is proposed to be added to set forth the requirements for repairing AST systems. All repairs to aboveground storage tank systems shall be properly conducted in accordance with the manufacturer's instructions, a code of practice developed by a Nationally recognized association, or an independent testing laboratory.

§ 245.514. Security.

Subsection (b) is proposed to be added as an additional level of security. This subsection would require owners and operators of AST facilities with an aggregate aboveground storage capacity greater than 21,000 gallons to maintain a written log book. Each log book entry would need to identify the name of the individual performing tank handling and inspection activities, the individual's signature, the company name, the date of work, start and end times, and a brief description of work performed, including tank identification. Department experience has shown that log books either do not exist at facilities or, where they do exist, the information being maintained is often vague or incomplete. The use of a log book containing the proposed information is a best management practice for storage tank owners and operators.

§ 245.516. Recordkeeping requirements.

Subsection (a) is proposed to be amended to require owners and operators of AST systems to provide records required by Chapter 245 and to cooperate fully when inspections, monitoring and testing are being conducted by the Department, certified installers or certified inspectors, and when requests for document submission, testing and monitoring by the owner or operator are made under section 107(c) of the act (35 P. S. § 6021.107(c)). The provisions in subsection (a) relating to the location of records are proposed to be moved to a new subsection (b) and are proposed to be revised to clarify the requirements.

The recordkeeping requirements in subsection (b) are proposed to be relettered as subsection (c). The distinction between permanent and temporary records is no longer relevant and this subsection is proposed to be amended to identify all records that are to be maintained for the operational life of the aboveground storage tank system and retained for 1 year after the system has been permanently closed. Records previously identified under subsection (c) as temporary records are proposed to be included in this subsection. In addition, written log books required under proposed § 245.514(b), records of 72-hour visual inspections for the last 12 months, and documentation of investigations of suspected releases are proposed to be added to the list of records to be maintained.

Design, Construction and Installation

§ 245.522. New aboveground storage tank installations and reconstructions.

Revisions are proposed to this section to clarify its requirements and to propose a new subsection (g) to clarify that ASTs previously regulated by the Department would need to meet performance requirements for new AST systems prior to returning to regulated tank status. This provision would codify the Department's current policy.

§ 245.523. Aboveground storage tanks in underground vaults.

In addition to revisions proposed in this section to clarify that the requirements apply to aboveground storage tanks, revisions are also proposed to clarify that the vault leak detection system in (7) must activate an alarm that automatically shuts down the dispensing system if vapors or liquids are detected, not if releases occur; and to clarify that the leak detection monitoring records in (11) must be retained for 12 months as required under § 245.516.

§ 245.526. Piping for aboveground storage tanks.

Subsection (c) is proposed to be amended to clarify that all piping in contact with the soil or an electrolyte would need to be adequately protected from corrosion in accordance with current codes of practice, not only piping installed after October 11, 1997. Current codes of practice do not differentiate corrosion protection requirements based on installation date.

Corrosion and Deterioration Prevention

§ 245.531. General corrosion and deterioration requirements.

This section is proposed to be amended to clarify its requirements. Specifically, proposed revisions to subsection (a) clarify that the tank system shall be continuously protected from corrosion and deterioration. Proposed revisions to subsection (b) clarify that metallic tank bottoms, not metallic tank systems, need to be evaluated by a corrosion expert. Proposed revisions to subsection (c) clarify that any tank bottom not adequately protected from corrosion and deterioration would need to be upgraded immediately, not when the tank bottom is replaced.

§ 245.532. Cathodic protection systems.

Revisions are proposed to this section to remove the reference to corrosion protection on new, reconstructed or relocated tanks or the replacement of the tank bottom, as corrosion protection requirements are not limited to these tanks or tank bottoms. The reference to API 651 or associations such as NACE as an example of another method that can be used is proposed to be deleted as this language is duplicative of § 245.504 (relating to referenced organizations).

§ 245.534. Interior linings and coatings.

Revisions are proposed to this section to clarify the requirements in subsection (a) and to remove the reference to API 652 or associations such as NACE examples of current nationally

recognized design coded for interior linings and coatings, and to require Department approval of an alternate inspection schedule in subsection (c).

Release Prevention and Leak Detection

§ 245.541. Overfill prevention requirements.

Revisions are proposed to this section to clarify the requirements. Proposed revisions to subsection (a) clarify that owners and operators must ensure that spills do not occur during filling of the storage tank; must ensure the tank volume is greater than the volume of product to be delivered prior to the transfer; and must ensure that the transfer operation is monitored constantly to prevent overfilling and spilling.

Subsection (b)(2) is proposed to be amended to add that manned operator shutdown procedures be in writing and provided to the Department upon request.

Subsection (e) is proposed to be amended to remove the examples of national industry standards for overfill protection and to remove the compliance date that has already passed.

§ 245.542. Containment requirements for aboveground storage tank systems.

This section is proposed to be revised to clarify the requirements. The references in subsection (d) and (d)(2) to a compliance date that has passed are proposed to be deleted.

Subsection (f) is proposed to be amended to require that any water, not only stormwater, be removed from the emergency containment area as soon as possible and to clarify that the water is to be removed from the containment before it comes in contact with the AST or piping, or before it reduces the capacity of the containment by 10% or more.

§ 245.543. Leak detection requirements.

Subsection (d) is proposed to be amended to remove the examples of national industry standards.

Aboveground Storage Tank Inspections

§ 245.551. General requirements for third party inspections.

Subsection (b) is proposed to be amended to clarify that Department-certified inspectors must be certified for the applicable inspector certification category in order to conduct the inspections required by this section.

§ 245.552. In-service inspections.

Revisions are proposed to this section to clarify the requirements. The date referenced in subsection (d)(1) is no longer relevant and is proposed to be deleted. All of existing subsection (d)(2) is also proposed to be deleted because it relates to timeframes for initial tank inspections that have already passed and are no longer relevant.

Subsection (d)(5), which is proposed to be renumbered as (d)(4) is proposed to be amended to clarify that an in-service inspection interval for an AST that is temporarily removed from service may only be delayed if agreed upon by the Department.

A new subsection (d)(5) is proposed to be added to address all ASTs in underground vaults that require an in-service inspection. Subsections (d)(5)(i) and (ii) propose that vaulted ASTs with a capacity greater than 5,000 gallons, and vaulted ASTs storing highly hazardous substances with a capacity greater than 1,100 gallons, would need to have in-service inspections conducted within 6 and 12 months of installation and at least every three years thereafter. Subsection (d)(5)(iii) proposes to allow the Department to require more frequent in-service inspections when a prior inspection identifies corrosion, deterioration or other violations.

Subsection (d)(5) proposes to increase the frequency of in-service inspections on large ASTs in underground vaults from once every five years to once every three years. The in-service inspection frequency on small ASTs in underground vaults is proposed to increase from once every 10 years to once every three years. The Department has discovered numerous issues with vaulted ASTs including corrosion, improper installation, and water infiltration. A shortened inspection cycle is proposed to help improve compliance. Currently, the inspection cycle for USTs is once every three years. The Department has seen a marked improvement in UST facility compliance rates since implementation of the three-year inspection cycle. Some vaulted AST systems are required to conduct line leak detection similar to UST systems.

A new subsection (d)(6) is proposed to be added to require that existing ASTs in underground vaults with scheduled in-service inspections greater than three years from the effective date of the final-form regulation be inspected by the next currently scheduled in-service inspection date, unless notified otherwise by the Department.

§ 245.553. Out-of-service inspections.

Revisions are proposed to this section to clarify the requirements. The date referenced in subsection (e)(1) is no longer relevant and is proposed to be deleted. All of existing subsection (e)(2) is also proposed to be deleted because it relates to timeframes for initial tank inspections that have already passed and are no longer relevant.

Proposed subsection (e)(3) is proposed to be amended to clarify that an out-of-service inspection interval for an AST that is temporarily removed from service may only be delayed if agreed upon by the Department.

§ 245.554. Installation and modification inspections.

Revisions in this section are proposed to clarify the requirements. The requirement to keep inspection reports for the operational life of the storage tank are proposed to be deleted and a new subsection (d) is proposed to be added to clarify that completed inspection reports for installation and modification inspections would need to be retained with the facility records in accordance with § 245.516 (relating to recordkeeping requirements).

Closure and Removal from service Requirements

§ 245.561. Permanent closure or change-in-service.

Subsection (1) is proposed to be amended to delete references to an unregulated tank as these references are no longer necessary based on the definition of “change-in-service” in § 245.1 (relating to definitions).

Subsection (2) is proposed to be amended to clarify the amended registration form requirements of owners completing a permanent closure or change-in-service.

§ 245.562. Temporary removal from service (out-of-service).

Subsection (f) is proposed to be revised to clarify that ASTs would need to be permanently closed within 5 years of being placed temporarily out-of-service unless the owner requests in writing an extension to the temporary out-of-service period and the Department approves the request. This proposal would eliminate the need to extend the temporary out-of-service period under the variance process in accordance with § 245.503 (relating to variances).

Subsection (g) is proposed to be added to allow the Department to impose conditions and require the submission of documentation when reviewing and approving a request for an extension of the temporary out-of-service period.

Subchapter G. Simplified Program for Small Aboveground Storage Tanks

General

§ 245.603. General storage tank facility requirements.

Subsection (a) is proposed to be amended to require that Spill Prevention Response Plan revisions be submitted to the Department within 120 days of any necessary updates to the plan. The current regulation is silent as to when an updated plan needs to be submitted to the Department.

Subsection (c) is proposed to be added as an additional level of security. This subsection requires owners and operators of AST facilities with an aggregate aboveground storage capacity greater than 21,000 gallons to maintain a written log book. Each log book entry is to identify the name of the individual performing tank handling and inspection activities, the individual’s signature, the company name, the date of work, start and end times, and a brief description of work performed, including tank identification. Department experience has shown that log books either do not exist at facilities or, where they do exist, the information being maintained is vague and incomplete. The use of a log book with the proposed information is a best management practice for the storage tank owner and operator.

§ 245.605. Applicability.

This section is proposed to be amended to delete the date for registration as it has passed and is no longer relevant, and to delete the temporary exclusions of certain technical requirements as the timeframes for these exclusions have also passed.

§ 245.606. Variances.

This new section is being proposed to extend the use of the variance process to owners of small ASTs, as it is currently afforded to owners of large ASTs. The language in this proposed section mirrors the language in § 245.503 (relating to variances).

Technical Requirements

§ 245.612. Performance and design standards.

Subsection (d)(1) is proposed to be revised to clarify that spill and overfill protection controls operated with double-walled ASTs to meet both emergency and secondary containment requirements must be permanently installed. Subsection (d)(2) is proposed to be amended to clarify that the shutdown procedure for the overfill alarm or prevention device or monitoring gauge must be in writing.

Existing subsections (e) and (f) are proposed to be deleted as compliance timeframes have passed or other requirements have made them obsolete, so they are no longer applicable.

Existing subsection (h), which is proposed to be relettered as subsection (f), would eliminate the need for ASTs that are internally lined to comply with § 245.534(c) (relating to interior linings and coatings). Therefore, the interior linings or coatings would not have to be inspected by a Department-certified, AST inspector at installation, when undergoing a major modification, or at least every 10 years.

A new subsection (h) is proposed to be added that would require AST systems and storage tank system components whose failure could contribute to a release of product to be maintained in a good state of repair to ensure they function as designed.

§ 245.613. Monitoring standards.

Subsection (b)(1) is proposed to be amended to clarify that monthly operation and maintenance checks would need to include a visual examination of the containment structure or facility for deterioration. Subsection (b)(4) is proposed to be revised to clarify the functionality of the leak detection system must be checked. Subsection (b)(5) is proposed to be added to provide for a check of the cathodic protection system, if installed, to ensure the equipment is functioning as designed.

§ 245.614. Requirements for closure.

This entire section is proposed to be deleted and reserved. The requirements for temporary removal from service (out-of-service) and permanent closure or change-in-service are proposed

to be set forth in proposed §§ 245.617 (relating to temporary removal from service (out-of-service) and 245.618 (relating to permanent closure or change-in-service), respectively. The requirements for closure are proposed to be placed at the end of the subchapter as they are in Subchapters E and F.

§ 245.615. Recordkeeping requirements.

Subsection (b) establishes the records to be maintained for the operational life of the AST system. A new subsection (b)(7) is proposed to add documentation of investigations of suspected releases to the list of records that must be maintained. A new subsection (b)(8) is proposed to add that written log book information be maintained as required under § 245.603(c).

§ 245.616. Inspection requirements.

In general, subsection (c) currently requires the owner and operator of small ASTs storing regulated substances with a capacity greater than 5,000 gallons and the owner and operator of small ASTs storing highly hazardous substances with a capacity greater than 1,100 gallons to have in-service inspections conducted every 10 years. Subsection (c) is proposed to be revised to increase the frequency of in-service inspections on these small ASTs from once every 10 years to once every 5 years. Department inspection records show that less than 50% of ASTs inspected meet current requirements. A shortened inspection cycle is being proposed to improve compliance. Currently, the inspection cycle for USTs is once every three years. The Department has seen a marked improvement in UST facility compliance rates since implementation of the three-year inspection cycle.

Subsection (c)(1) is proposed to be amended to require that ASTs installed after the effective date of the final-form regulations be initially inspected within five years of installation, as opposed to the current 10 years.

New subsection (c)(2) is being proposed to allow existing AST systems with scheduled in-service inspections more than five years from the effective date of the final-form regulations to be inspected by that next currently scheduled in-service inspection date, unless notified otherwise by the Department. Subsequent in-service inspections would need to be conducted once every 5 years.

Existing subsections (c)(2)-(3) are proposed to be deleted as the timeframes for compliance have passed and they are no longer applicable.

Subsection (c)(4) is proposed to be deleted and addressed in proposed subsection (e). Subsection (e) is proposed to be added to sets forth the requirements to delay an in-service inspection interval for ASTs that are temporarily removed-from-service. Prior to placing product in the AST, the delayed inspection would need to be conducted, deficiencies noted during inspection would need to be addressed and remedied, and an amended registration form would need to be completed and submitted to the Department.

§ 245.617. *Temporary removal from service (out-of-service).*
§ 245.618. *Permanent closure or change-in-service.*

These sections are proposed to be added. Section 245.617 would establish the temporary removal from service requirements that currently exist in § 245.614 (relating to requirements for closure) and are proposed for deletion. The only revised language in this section pertains to temporary removal from service in subsection (f). Subsection (f) would provide the Department with the ability to impose conditions and require submission of documentation when reviewing and approving a request for an extension of the temporary removal from service period.

Section 245.618 would establish the permanent closure and change-in-service requirements that currently exist in § 245.614 (relating to requirements for closure). This new section does not propose any revisions to the requirement that currently exist.

Subchapter H. Financial Responsibility Requirements for Owners and Operators of Underground Storage Tanks and Storage Tank Facilities

§ 245.704. *General requirements.*

Subsection (a) is proposed to be amended to clarify that continuously participating in the Underground Storage Tank Indemnification Fund administered by the Pennsylvania Department of Insurance would mean paying all applicable fees in a timely fashion and conforming with all other requirements of Chapter 245 and the act. All UST owners are required by the act to participate in the USTIF.

F. Benefits, Costs, and Compliance

Benefits

When enacting the Storage Tank and Spill Prevention Act, the General Assembly of the Commonwealth found and declared the following:

- (1) The lands and waters of this Commonwealth constitute a unique and irreplaceable resource from which the well-being of the public health and economic vitality of this Commonwealth is assured.
- (2) These resources have been contaminated by releases and ruptures of regulated substances from both active and abandoned storage tanks.
- (3) Once contaminated, the quality of the affected resources may not be completely restored to their original state.
- (4) When remedial action is required or undertaken, the cost is extremely high.
- (5) Contamination of groundwater supplies caused by releases from storage tanks constitutes a grave threat to the health of affected residents.
- (6) Contamination of these resources must be prevented through improved safeguards on the installation and construction of storage tanks.

35 P.S. § 6021.102. The regulatory scheme established by the act to prevent releases of contaminants from storage tanks, as implemented through Chapter 245, provide the important benefits articulated in the General Assembly's findings.

The primary purpose of these proposed amendments to Chapter 245 is to further reduce the potential for releases of contaminants from underground and aboveground storage tanks by strengthening the requirements related to properly operating and maintaining release detection equipment. These proposed revisions would require that UST equipment to be inspected and tested regularly, which will help to further reduce the number of releases from USTs and in turn protect public health and the environment. Incorporation of these UST revisions into Chapter 245 will enable Pennsylvania to retain approval of its UST program from EPA and remain eligible for continued substantial Federal funding for the UST program.

A substantial portion of the beneficial impacts associated with this proposed rulemaking are avoided cleanup costs as a result of preventing releases and reducing the severity of releases from USTs. EPA, in the analysis of the potential benefits associated with its final UST regulation which became effective on October 13, 2015, estimated the typical cost of a small-extent, soil-only remediation to be \$25,300, and the typical cost of a large-extent, groundwater-contamination remediation to be \$428,200. These costs are in 2008 dollars. During calendar year 2016, the average cost per closed claim paid by the USTIF was \$360,807, and the total paid for all claims was \$31,672,157.

While the reduced cleanup costs associated with the proposed rulemaking cannot be accurately quantified, a decrease in release frequency and severity is expected to result in both a reduction of the average cost per closed claim and the total annual claim payments made by the USTIF. Groundwater contamination incidents and vapor intrusion remediation costs are expected to be reduced or avoided, which would reduce the need for USTIF claims and payments and potentially reduce fees paid by UST owners to fund USTIF. These fees are typically passed on to the public at motor fuel retail locations. Thus, any decrease in release frequency achieved by the proposed rulemaking would benefit the public and the environment by protecting soil and water resources, and reducing costs associated with necessary corrective action.

Other benefits of decreasing the frequency of releases from storage tanks that cannot be quantified or monetized include the avoidance of human health risks, protection of ecological receptors, protection of gallons of groundwater each year, and avoided property devaluation.

The proposed rulemaking would also benefit storage tank owners and operators and the Department by reducing the staff time and cost associated with releases from storage tanks and through proposed provisions that would reduce administrative costs. For example, this rulemaking proposes to add a new UST certification category 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 recommended by this proposed rulemaking. Creation of this new certification category would afford UST owners with the opportunity to employ individuals who specialize in modifications only, which could save UST owners some of the costs associated with minor modification work and system testing. This proposed "minor modification" certification

category would also provide opportunities for existing certified companies to employ individuals who specialize in minor modification work. In addition, it may create an incentive for persons interested in only performing “minor modification” work to become certified and establish their own companies. In either case, the establishment of this new certification category is expected to result in the creation of a significant number of jobs within the certified installer community, which may reduce the cost of UST system testing over time.

The increase in proposed inspections and testing by storage tank owners is expected to reduce Department costs. For example, these proposed amendments will require all ASTs in underground vaults that require an in-service inspection to be inspected within six and 12 months of installation and at least every three years thereafter due to their history of non-compliance. This mirrors the inspection requirement for USTs. Also, the initial inspection requirement and in-service inspection cycle for small ASTs will be shortened from 10 years to five years. Based on current in-service inspections, the compliance rate with regulatory requirements is less than 50 percent. When the facility operations inspection cycle for USTs was shortened from five years to three years in a prior rulemaking, the Department observed increased regulatory compliance, fewer releases and a reduction in the severity of releases from USTs, which reduced Department staff time needed to follow-up on non-compliant facilities.

Compliance costs

In general, the proposed rulemaking recommends additional storage tank testing and inspection of existing release detection equipment for UST, small ASTs and ASTs in vaults, and does not propose changes that would require large-scale investments in equipment or significant changes to operations at the facility level. The only exception are the one-time costs to replace ball float valves following failure of the overfill prevention evaluation with alternate overfill prevention equipment and to add release detection to those emergency generator USTs that were previously deferred from regulation. These one-time costs apply to a limited number of UST systems. Of the 22,456 existing UST systems regulated in the Commonwealth, 3,588 have ball float valves for overfill prevention and 629 are emergency generator UST systems without a form of release detection.

The increased cost of compliance associated with this proposed rulemaking is less than the costs that would be imposed on storage tank facility owners and operators without the proposed changes. Most of the proposed changes are necessary for Pennsylvania’s regulations in Chapter 245 to be consistent with Federal requirements for USTs and retain EPA approval of State program. Without these revisions, EPA could not continue to approve the State program and would then be required to implement the UST program in the Commonwealth. Therefore, UST owners would incur the increased costs for their UST facilities detailed below to comply with the Federal requirements at 40 CFR Part 280 even if Chapter 245 was not revised due to EPA’s revised regulations for USTs.

Analysis of UST compliance costs

Within the Commonwealth, 7,772 UST facilities are regulated consisting of 22,456 UST systems, for an average of 2.89 UST systems per facility. Compliance costs for the proposed

UST regulatory requirements are estimated in this analysis based on a UST facility with 3 UST systems that have the following features:

- Three 10,000-gallon UST systems with two storing gasoline and one storing diesel;
- 100 feet of piping per UST system;
- One fill port per UST system;
- Spill prevention equipment at each UST system;
- Two drop tube shut-off devices and one ball float valve for overfill prevention equipment;
- Four dispensers each with an under-dispenser containment sump;
- One submersible turbine pump sump/tank top sump per UST system; and
- One automatic tank gauge (ATG) with a ATG probe per UST system.

Costs presented on a facility basis were adjusted for the fact that each UST facility has on average 2.89 UST systems. The Department contacted five Department-certified companies from various regions of the Commonwealth to estimate cost for the various requirements of this proposed rulemaking for the UST facility described above.

The maintenance walkthrough inspection requirement proposed for UST facilities involves a visual inspection of spill prevention equipment and release detection every 30 days and a visual inspection of containment sumps and handheld release detection devices annually. All 7,772 UST facilities would be required to conduct 30-day maintenance walkthrough inspections. The 5,817 UST facilities with containment sumps would be required to conduct the annual visual inspection. These inspections can be performed by the UST owner, operator, or other employee of the UST owner resulting in no cost other than the necessary time to conduct the inspections. However, some UST owners may choose to utilize third-party companies to conduct the maintenance walkthrough inspections. If a UST owner chose to hire a third party company, the owner would incur costs. However, this action would be voluntary and is not required by the proposed regulations.

Testing of spill prevention equipment and containment sumps and evaluation of overfill prevention equipment at UST facilities would be required every 3 years. All 22,456 UST systems have overfill prevention equipment and would be required to conduct evaluations. Likewise, all UST systems would require spill prevention equipment tests. Thirty-nine percent, or 8,835 UST systems at 3,245 UST facilities, have containment sumps used for interstitial monitoring of piping that would need to be tested. These tests and evaluations would need to be conducted by appropriate certified individuals.

Although the cost for testing and evaluation would only be incurred every 3 years, the costs are estimated on an annualized basis for purposes of this analysis (i.e., the testing and evaluation costs are divided by three to estimate the cost per year). The estimated annual cost range and average annual cost for each evaluation or test per facility on an annual basis are summarized in the table below:

Evaluation or Test	Estimated Range of Annual Costs	Estimated Average Annual Cost
Overfill Prevention Equipment	\$96 - \$161	\$112
Spill Prevention Equipment	\$88 - \$209	\$127
Containment Sump	\$257 - \$899	\$546

Based on the estimated average cost, the total annualized cost to a UST facility owner for equipment testing and evaluation every 3 years is estimated to range from \$239 - \$785. The lower cost would apply to a facility that does not have containment sumps used for interstitial monitoring of piping. Based on these per facility costs, the annualized cost to evaluate and test equipment at all UST facilities is estimated to be \$3,629,278.

This proposed rulemaking would prohibit continued use of flow restrictors (ball float valves) as an option for overfill prevention when these devices need to be replaced. A total of 3,588 UST systems are reported to have ball float valves as the form of overfill prevention. The increased cost to repair a ball float valve or replace a ball float valve with another ball float valve versus providing another form of overfill prevention (e.g., shut-off device or alarm) is estimated to range from \$975 - \$1,100 with the average cost to be \$1,038. The average cost represents the one-time increased cost to a UST owner for this overfill prevention equipment replacement. Replacement of a ball float valve would only be necessary when the equipment no longer functions as originally designed and fails the 3-year overfill evaluation requirement. Based on the average cost, the total one-time increased cost to replace ball float valves with another form of overfill prevention for all UST systems is estimated to be \$3,724,344.

Annual release detection equipment testing would be required by this proposed rulemaking for all 22,456 UST systems. Operability tests would need to be conducted of the electronic and mechanical components of release detection equipment. The annualized cost to a UST facility owner for this release detection testing requirement is estimated to range from \$337 - \$1,036, with the average cost to be \$592. Based on the average cost, the annual cost to test release detection equipment at all UST facilities is estimated to be \$4,601,024. These costs are based on an average underground storage tank facility consisting of three UST systems and four dispensers. Facilities that have fewer UST systems are expected to have lower costs.

This proposed rulemaking would require release detection for emergency generator USTs. An estimated 629 UST systems are reported as not having any form of release detection. For this analysis, an automatic tank gauge is used as the form of release detection for these systems and would need to be tested annually for operability, however, other lower cost methods of tank release detection could be chosen by the UST owner depending on type and location of UST system. The cost for the operability tests for these systems were included in the cost for release detection equipment testing described above. The cost for the addition of an ATG ranges from \$4,000 - \$30,000 with the average estimated cost to be \$16,875. Cost estimates are dependent on several factors including amount of excavation required to install wiring and conduit, access to the UST system and location of the UST system to utilities and buildings. The average cost represents the one-time cost to a UST owner to add an ATG for release detection. Based on the average cost, the total one-time cost to add release detection to emergency generator USTs is estimated to be \$10,614,375.

The following discussion and tables summarize the total estimated annualized cost that UST facilities could incur for the testing and inspections proposed in this rulemaking when UST owners, operators, or other employees of the UST owner conduct all maintenance walkthrough inspections:

	Annualized O&M ¹ Costs ²	One-Time Costs ³	Number of Potentially Affected Facilities/Systems	Total Annualized O&M ¹ Costs ⁴	Total One-Time Costs ⁵
Maintenance walkthrough inspections	\$0	\$0	7,772 facilities	\$0	\$0
Periodic testing/inspection of: overfill prevention equipment, spill prevention equipment, and containment sumps ⁶	\$239 - \$785	\$0	7,772 facilities	\$3,629,278	\$0
Eliminate ball float valves when overfill prevention equipment is replaced	\$0	\$1,038	3,588 UST systems	\$0	\$3,724,344
Operability tests for release detection	\$592	\$0	7,772 facilities	\$4,601,024	\$0
Remove release detection deferral for emergency generator USTs	\$0	\$16,875	629 UST systems	\$0	\$10,614,375
	\$831 - \$1,377			\$8,230,302	\$14,338,719

¹ Operation and Maintenance.

² Per UST facility.

³ Per UST system. One-time costs do not apply to all UST systems.

⁴ For all UST facilities.

⁵ For all UST systems. One-time costs do not apply to all UST systems.

⁶ The lower range of the annualized O&M costs is for facilities that do not have containment sumps used for interstitial monitoring of piping.

The annualized increased operation and maintenance (O&M) costs to conduct maintenance walkthrough inspections, inspect overfill prevention equipment, test spill prevention equipment and containment sumps, and test release detection equipment per UST facility is estimated to range from \$831 - \$1,377. The total annualized increased costs for these inspections and tests at all UST facilities are estimated to be \$8,230,302.

The total one-time costs to replace all ball float valves with alternate overfill prevention equipment and to add release detection to those emergency generator USTs is estimated to be \$14,338,719. These one-time costs apply to a limited number of UST systems. Currently, 3,588 UST systems (<16%) have ball float valves for overfill prevention and 629 UST systems (<3%) are emergency generator USTs that would need to add release detection equipment. Owners of emergency generator UST systems will be afforded one to two years under this proposed

rulemaking to make an informed decision to either add the necessary release detection, close the UST system, or close the UST system and install a new AST.

Analysis of AST compliance costs

As with UST systems, the primary focus of the proposed rulemaking for AST systems is on an increased inspection frequency for small ASTs and ASTs in vaults. The Department again contacted five Department-certified companies from various regions of the Commonwealth to estimate the increased cost to AST owners for the proposed inspection requirements.

This proposed rulemaking would require all ASTs in underground vaults that require an in-service inspection to be inspected within six to 12 months of installation and at least every three years thereafter. ASTs with a capacity greater than 5,000 gallons, and ASTs storing highly hazardous substances with a capacity greater than 1,100 gallons, would be subject to these inspection requirements.

At the current time, no large ASTs in underground vaults are registered with the Department and 31 small AST systems in underground vaults would need to increase inspections from once every 10 years to once every 3 years. These small ASTs have an average size of approximately 9,800 gallons.

The reported annualized cost range for an in-service inspection of a vaulted AST every 10 years, as currently required, is \$78 to \$315, and the average annualized cost is \$179. The estimated annualized cost range for an in-service inspection of a vaulted AST every 3 years is \$260 to \$1,050, and the estimated average annualized cost is \$595. Thus, the annualized increased cost to an AST owner of a vaulted AST for an in-service inspection every 3 years is estimated to be \$416. The total annualized increased cost to all AST owners who would be subject to the proposed 3-year inspection requirement is estimated to be \$12,896.

The proposed rulemaking would also shorten the initial inspection requirement and in-service inspection cycle for small ASTs (other than small ASTs in underground vaults) from 10 years to 5 years. This requirement would apply to small ASTs with a capacity greater than 5,000 gallons, and small ASTs with a capacity greater than 1,100 gallons that store highly hazardous substances. An estimated 6,847 small ASTs with an average size of 11,500 gallons would need to increase their inspections to every 5 years under the proposed rulemaking.

The reported annualized cost range for an in-service inspection of a small AST every 10 years, as currently required, is \$44 to \$200, and annualized average cost is \$98. The estimated annualized cost range for an in-service inspection of a small AST every 5 years, as being proposed, is \$88 to \$400, and the estimated average annualized cost is \$196. Thus, the annualized increased cost to an AST owner of a small AST for the proposed 5 year inspection period is estimated to be \$98. The total annualized increased cost to all AST owners who would be subject to the proposed 5 year inspection period is estimated to be \$671,006.

The table below summarizes the estimated increased annualized costs discussed above that could be incurred by AST system owners under the proposed rulemaking:

	Annualized O&M Costs	One-Time Costs	Number of Potentially Affected Systems	Total Annualized O&M Costs	Total One-Time Costs
Increased inspection frequency for vaulted ASTs	\$416	\$0	31 AST systems	\$12,896	\$0
Increased inspection frequency for small ASTs	\$98	\$0	6,847 AST systems	\$671,006	\$0
		\$0		\$683,902	\$0

Additional compliance costs associated with this proposed rulemaking that cannot be estimated are the costs to UST systems that were previously excluded from the definition of an underground storage tank, but would be subject to Chapter 245 under the proposed rulemaking (e.g., tanks containing radioactive materials or coolants that are regulated under The Atomic Energy Act of 1954 (42 U.S.C.A. §§ 2011—2297), wastewater treatment tank systems that are not part of a wastewater treatment facility regulated under Sections 307(b) or 402 of the Clean Water Act and underground storage tank systems that are 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). In addition, existing field-constructed USTs installed on or before October 11, 1997, would be regulated under Chapter 245 under the proposed rulemaking.

The number of USTs in these categories that would be subject to Chapter 245 under the proposed rulemaking is unknown because they are not currently required to be registered with the Department. Registration would be required within 30 days after the effective date of the final-form regulation. Field-constructed USTs installed on or before October 11, 1997, are temporarily excluded from other regulatory requirements of Chapter 245 until one year after the effective date of the final-form regulation. Upon registration of a UST that was previously excluded from regulation, the Department would work with the tank owner to bring the UST into regulatory compliance. Due to the unique nature of these USTs, the steps that would be necessary to bring the USTs into compliance are expected to vary widely. Thus, compliance costs associated with the regulation of this universe of USTs cannot be estimated.

USTs containing radioactive material and emergency generator UST systems at nuclear power generation facilities regulated by the Nuclear Regulatory Commission (NRC) are subject to U. S. Department of Energy Orders and NRC regulations that are comparable to the Chapter 245 requirements for new and existing USTs regarding spill and overflow control, operation and maintenance of corrosion protection, and release detection. Since owners and operators of these UST systems had to meet Federal UST regulations dating back to 1988 that require systems to be designed and constructed to prevent releases during the operating life of the facility due to corrosion or structural failure, these systems may already be in compliance and therefore incur no additional costs.

Analysis of Department costs

Under this proposed rulemaking, the Department would incur minimal additional costs to publish notices in the *Pennsylvania Bulletin* for the following:

- Acknowledgment of receipt of the remedial action plan.
- Notice of the Department's final action on the remedial action plan.
- Acknowledgment of receipt of the remedial action completion report.
- Notice of the Department's final action on the remedial action completion report.
- Notice of variances approved by the Department.

Compliance assistance plan

As previously noted, the proposed rulemaking would 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 would also need to comply with this proposed rulemaking. At the current time, nearly 900 individuals and approximately 350 companies have certifications from the Department under Chapter 245. Currently certified tank installers and inspectors will likely have the capacity to provide the increased testing and inspections that will be required by the proposed rulemaking. In addition, the addition of a new certification category for minor modifications would 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. With this new certification, individuals will also be able to perform tests of UST systems required by this proposed rulemaking.

The visual inspection of spill prevention and release detection equipment, containment sumps, and handheld release detection devices could be performed by the UST owner, operator, or other employee of the UST owner. However, UST owners can choose to utilize a third-party company to conduct the maintenance walkthrough inspections. In all cases, owners of existing storage tank systems would be provided with timeframes in which to comply with the new requirements. Owners of new storage tank systems would need to comply with the requirements upon the effective date of the final-form regulations.

Financial assistance is not anticipated or planned. The Department would provide technical and compliance assistance outreach through its web site, publications, forms and presentations to various industry groups and organizations. Webinars explaining the regulatory revisions are also planned.

Paperwork requirements

The proposed rulemaking includes the following new notification, reporting and other paperwork requirements:

- Certified installers and inspectors would need to report regulated substance observed in a containment structure or facility within 48 hours on a form provided by the Department.

- Certified installers or inspectors would need to report failed tests of UST spill prevention equipment, containment sumps, and overfill prevention equipment within 48 hours on a form provided by the Department. A copy of the test results would also need to be provided to the Department with the notification report.
- Responsible parties would need to notify the Department by telephone or electronic mail as soon as practicable, but no later than 24 hours, after the initiation of interim remedial actions in response to a release.
- Responsible parties would need to notify the Department, by telephone or electronic mail, within 24 hours of providing an alternate source of water to the owner of an affected or diminished water supply in response to a release.
- Responsible parties would need to notify the Department by telephone or electronic mail as soon as practicable, but no later than 24 hours after the initiation of site characterization activities in response to a release.
- The Department would need to publish an acknowledgment of receipt of the remedial action plan and notice of its final action on the plan in the *Pennsylvania Bulletin*.
- The Department would need to publish an acknowledgment of receipt of the remedial action completion report and notice of its final action on the report in the *Pennsylvania Bulletin*.
- Owners and operators would need to notify the Department of the proposed installation of specific UST system components such as the piping system and dispenser, and not just when a tank or tank system is being installed, on a form provided by the Department.
- Certified installers and inspectors would need to document tests or evaluations of UST spill prevention and overfill prevention equipment, containment sumps, and release detection equipment on a form provided by the Department. Owners and operators would need to maintain test or evaluation results onsite at the storage tank facility or at a readily available alternative site and shall provide the forms to the Department upon request.
- Surveys of UST cathodic protection systems would need to be documented on a form provided by the Department and would need to be provided to the Department upon request.
- Owners and operators of USTs storing alternative fuel blends or biodiesel or biodiesel blended fuel would need to submit, on a form provided by the Department, information verifying that all system components are compatible with the proposed substance to be stored, prior to storing the substance in the UST.
- Owners and operators would need to maintain documentation showing that their UST systems are continuously participating in the USTIF.
- Owners and operators would need to maintain documentation of the last test of UST spill prevention equipment and containment sumps used for interstitial monitoring of piping and evaluation of overfill prevention equipment.
- For containment sumps used for interstitial monitoring of piping and spill prevention equipment not required to be tested, UST owners and operators would need to maintain documentation showing that the equipment is double-walled and the integrity of both walls is periodically monitored.
- UST owners and operators would need to maintain records of maintenance walkthrough inspections for the past 12 months.
- Owners would need to ensure that Class A, Class B and Class C operators are identified on a form provided by the Department prior to placing the UST system into use.

- Owners and operators of AST facilities with an aggregate aboveground storage capacity greater than 21,000 gallons would need to maintain a written log book. Each log book entry would need to identify the name of the individual performing tank handling and inspection activities, the individual's signature, the company name, the date of work, start and end times, and a brief description of work performed, including tank identification.
- In addition to routine monthly inspections, AST owners and operators would need to maintain 72-hour maintenance inspections for the past 12 months.
- AST owners and operators would need to maintain documentation of investigations of suspected releases.
- When a high-level alarm with a manned operator shutdown procedure is used, owners and operators of ASTs would need to document the shutdown procedure and provide it to the Department upon request.
- When an overflow alarm or prevention device or monitoring gauge is utilized, owners and operators of ASTs would need to document the shutdown procedure.

The following new forms would be used to implement this rulemaking:

- Underground Storage Tank Groundwater/Vapor Monitoring System Functionality Testing Form
- Underground Storage Tank Sensor Functionality Testing Form
- Underground Storage Tank Automatic Line Leak Detector Functionality Testing Form
- Underground Storage Tank Pressure/Vacuum Monitoring Functionality Testing Form
- Underground Storage Tank Spill Prevention Equipment/Containment Sump Integrity Testing Form
- Underground Storage Tank Automatic Tank Gauge Functionality Testing Form
- Underground Storage Tank Overflow Prevention Evaluation Form
- Aboveground Storage Tank Lining Inspection Summary and Instructions

The following existing forms would be revised to implement this rulemaking:

- Underground Storage Tank Facility Operations Inspection Report Form Instructions (2630-FM-BECB0501)
- Underground Storage Tank Facility Operations Inspection (2630-FM-BECB0501a)
- Underground Storage Tank System Installation/Closure Notification Form (2630-FM-BECB0127)
- Planning for Permanent Closure Checklist - Underground Storage Tank Systems (2630-FM-BECB0126)
- Underground Storage Tank Modification Report (2630-FM-BECB0575)
- Underground Storage Tank System Closure Report Form (2630-FM-BECB0159)
- Aboveground Storage Tank Integrity Inspection Summary and Instructions (2630-FM-BECB0150)
- Aboveground Storage Tank System Closure Report Form (2630-FM-BECB0514)
- Planning for Permanent Closure Checklist - Aboveground Storage Tank Systems (2630-FM-BECB0512)
- Aboveground Storage Tank System Closure Notification Form (2630-FM-BECB0513)

- Notification of Release/Notification of Contamination (2620-FM-BECB0082)
- Storage Tanks Registration/Permitting Application Form and Instructions (2630-PM-BECB0514)
- Storage Tank Installer/Inspector Certification Application Form and Instructions (2630-PM-BECB0506)
- Storage Tank Training Course Approval Application and Instructions (2630-PM-BECB0402)
- Storage Tank Site-Specific Installation Permit Application Instructions (2630-PM-BECB0002)
- Initial Qualifications – Storage Tank Installer and Inspector Certification (2630-PM-BECB0506b)
- Renewal Qualifications – Storage Tank Installer and Inspector Certification (2630-PM-BECB0506b2)
- Instructions – Storage Tank Installer and Inspector Certification – Attachment A (2630-PM-BECB0506c)

The following form could be deleted under the proposed rulemaking:

- Aboveground Storage Tank Installation Inspection Summary (2630-FM-BECB0602). This form is being incorporated into the Aboveground Storage Tank Integrity Inspection Summary and Instructions (2630-FM-BECB0150).

G. Pollution Prevention

The Federal Pollution Prevention Act of 1990 established a national policy that promotes pollution prevention as the preferred means for achieving state environmental protection goals. The Department encourages pollution prevention, which is the reduction or elimination of pollution at its source, through the substitution of environmentally friendly materials, more efficient use of raw materials, and the incorporation of energy efficiency strategies. Pollution prevention practices can provide greater environmental protection with greater efficiency because they can result in significant cost savings to facilities that permanently achieve or move beyond compliance.

The primary purpose of the proposed rulemaking is to strengthen the UST requirements by increasing the emphasis on properly operating and maintaining equipment. The proposed revisions would require that UST equipment be operated and maintained properly, which would help to further reduce the number of releases from USTs and in turn protect public health and the environment.

The proposed rulemaking also would require all ASTs in underground vaults that require an in-service inspection to be inspected within six 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. Also, the initial inspection requirement and in-service inspection cycle for small ASTs would be shortened from 10 years to five years. Based on current in-service inspections, the compliance rate with regulatory requirements is less than 50 percent. The facility operations inspection cycle for USTs was shortened from five years to three years in a prior rulemaking, which has resulted in increased regulatory compliance. Increased compliance with the proposed

regulatory requirements would mean fewer releases and a reduction in the severity of releases from ASTs.

H. *Sunset Review*

The Board is not proposing a sunset date for these regulations, since they are needed for the Department to carry out its statutory authority. The Department would continue to closely monitor these regulations for their effectiveness and recommend updates to the Board as necessary.

I. *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on **DATE**, the Department submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House and Senate Environmental Resources and Energy Committees. 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 must specify the regulatory review criteria in section 5.2 of the Regulatory Review Act (71 P.S. § 745.5b) which have not been met. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the rulemaking, by the Department, the General Assembly and the Governor.

J. *Public Comments*

Interested persons are invited to submit to the Board written comments, suggestions, support or objections regarding the proposed rulemaking. Comments, suggestions, support or objections must be received by the Board by DATE. Comments may be submitted to the Board online, by e-mail, by mail or express mail as follows.

Comments may be submitted to the Board by accessing eComment at <http://www.ahs.dep.pa.gov/eComment>.

Comments may be submitted to the Board by e-mail at RegComments@pa.gov. A subject heading of the proposed rulemaking and a return name and address must be included in each transmission.

If an acknowledgement of comments submitted online or by e-mail is not received by the sender within 2 working days, the comments should be retransmitted to the Board to ensure receipt. Comments submitted by facsimile will not be accepted.

Written comments should be mailed to the Environmental Quality Board, P.O. Box 8477, Harrisburg, PA 17105-8477. Express mail should be sent to the Environmental Quality Board,

Rachel Carson State Office Building, 16th Floor, 400 Market Street, Harrisburg, PA 17101-2301.

K. *Public Hearings*

If sufficient interest is generated as a result of this publication, a public hearing will be scheduled at an appropriate location to receive additional comments.

PATRICK MCDONNELL,
Chairperson