



pennsylvania
DEPARTMENT OF ENVIRONMENTAL
PROTECTION

Bureau of Environmental Cleanup and Brownfields

COMMENT AND RESPONSE DOCUMENT

ADMINISTRATION OF THE STORAGE TANK AND SPILL PREVENTION PROGRAM

25 Pa. Code Chapter 245

48 Pa.B. 1101 (February 24, 2018)

Environmental Quality Board Regulation #7-530
(Independent Regulatory Review Commission #3199)

Introduction

Administration of the Storage Tank and Spill Prevention Program

On October 17, 2017, the Environmental Quality Board (Board, EQB) published a notice of public comment period for a proposed rulemaking concerning revisions to 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, overfill 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 of Environmental Protection's (Department) experience in implementing this chapter since the last comprehensive Department rulemaking, which occurred over 10 years ago.

The proposed rulemaking will be effective upon publication in the *Pennsylvania Bulletin* as a final-form regulation.

Public Comment Period

Notice of the public comment period on the proposed Chapter 245 amendments was published in the *Pennsylvania Bulletin* on February 24, 2018 (48 Pa. B. 1101). The EQB's public comment period opened on February 24, 2018, and closed on March 26, 2018.

This document summarizes the comments received during the Board's public comment period. Each public comment is listed with an identifying commentator number for each commentator that made the comment. A list of the commentators, including name and affiliation, may be found on pages 3 - 5 of this document. The House and Senate Environmental Resources and Energy Committees did not submit comments on the proposal.

Copies of all comments received by the Board are posted on the website of the Independent Regulatory Review Commission (IRRC) at <http://www.irrc.state.pa.us> (search by Regulation #7-530 or IRRC #3199) and on the e-Comment page of the Department's website at <http://www.dep.pa.gov>.

Table of Commentators for the Environmental Quality Board
Proposed Rulemaking for
Administration of the Storage Tank and Spill Prevention Program
Environmental Quality Board #7-530
(IRRC #3199)

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17.	Grant R. Gulibon Director, Regulatory Affairs Pennsylvania Farm Bureau 510 S. 31 st Street P.O. Box 8736 Camp Hill, PA 17001-8736
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20.	David Sumner, Executive Director Independent Regulatory Review Commission 333 Market St., 14th Floor Harrisburg, PA 17101

Acronyms used in this Comment and Response Document

ACVL – Aboveground Storage Tank – Civil, Installer Certification
AFMX – Aboveground Field Constructed Metallic Storage Tank – Installation, Modification and Removal, Installer Certification
API – American Petroleum Institute
AST – Aboveground Storage Tank
CERCLA - Comprehensive Environmental Response, Compensation, and Liability Act
CFR – Code of Federal Regulations
CP – Cathodic Protection
DEP or PADEP - Pennsylvania Department of Environmental Protection
DOE – Department of Energy
EDG – Emergency Diesel Generator
EHB – Environmental Hearing Board
EPA – U.S. Environmental Protection Agency
EQB – Environmental Quality Board
FR – Federal Register
IRRC – Independent Regulatory Review Commission
IUM – Underground Storage Tank Systems and Storage Tank Facilities, Inspector Certification
NACE – National Association of Corrosion Engineers
NPDES – National Pollutant Discharge Elimination System
NRC – Nuclear Regulatory Commission
PEI – Petroleum Equipment Institute
POTW – Publicly Owned Treatment Work
RAF – Regulatory Analysis Form
RCRA – Resource Conservation and Recovery Act
RP – Recommended Practice
SPRP – Spill Prevention Response Plan
SPCC – Spill Prevention Control and Countermeasures
SSIP – Site-Specific Installation Permit
STI – Steel Tank Institute
TC – Toxicity Characteristic
TL – Storage Tank – Liner, Installer Certification
UDC – Under Dispenser Containment
UL – Underwriters Laboratory
UMI – Underground Storage Tank System Minor Modification
UMX – Underground Storage Tank System – Installation and Modification, Installer Certification
UST – Underground Storage Tank
USTIF – Underground Storage Tank Indemnification Fund
UTT – Underground Storage Tank System – Tightness Tester, Installer Certification

COMMENTS AND RESPONSES

General Comments

- 1. Comment:** We support the comments on the proposed regulations that were provided by the Pennsylvania Chamber of Business and Industry, especially related to the definition of releases. (12)

Response: The Department acknowledges the comment.

- 2. Comment:** From a general perspective, we support Pennsylvania's efforts to retain primacy over the federal requirements relating to the UST program contained in 40 CFR Part 280. Satisfying one set of regulatory requirements rather than potentially confronting dueling federal and state requirements is generally beneficial to the regulated community and helps streamline the administration and enforcement of such requirements. We concur that a significant number of the proposed changes to Chapter 245 appear to be designed to update Chapter 245 in light of the recent changes to 40 CFR Part 280. (11), (18)

Response: The Department appreciates the supportive comment.

- 3. Comment:** Throughout the proposed regulations, the PADEP requires specified forms. The regulated community understands the PADEP's intent to have uniform data, however many operators and service providers have moved beyond manual form completion and instead rely upon computer applications for tasks such as inspections, testing, etc. It is respectfully requested the PADEP explicitly state that form completion by electronic means including digital signatures be acceptable under the regulations. Moreover, it is also recommended the PADEP revise the regulations to allow for flexibility in form type completion. For example, if a UST operator had a preexisting inspection form that met the PADEP information requirements they could present that to PADEP for review and approval rather than have to revamp a preexisting program at great expense. (19)

Response: The Department currently accepts several forms through electronic submission. These include third-party inspection reports, modification reports and testing forms. However, the Department requires the use of "a form provided by the Department." A common complaint of third-party inspectors has been the lack of standardized forms. When standardized forms do not exist, a wide array of forms are created and used, causing confusion among the regulated community as to the appropriate form to submit to the Department. The Department believes that standard forms provided at no cost by the Department eliminates confusion among the regulated community and facilitates review by Department staff. Electronic signatures are generally accepted by the Department if appropriate safeguards and protocols are in place to show that the electronic signature is that of the individual(s) required to sign the form.

4. **Comment:** We support the provisions of the proposed rulemaking that will minimize the frequency of releases from storage tank systems that may adversely impact the environment, including those amendments designed to ensure that equipment functions properly and that tank systems are timely inspected. (13)

Response: The Department appreciates the supportive comment.

5. **Comment:** The preamble to the proposed changes to Chapter 245 contains an extensive list of new notification, reporting and paperwork requirements that will be triggered by the proposed changes to Chapter 245 along with a long list of new forms and revisions to existing forms that will need to be prepared and implemented. It is unclear from the cost-benefit analysis that has been provided whether the additional regulatory burdens that Chapter 245 will impose on the regulated community have been properly and fully evaluated and whether many of the changes will actually produce meaningful environmental benefits. Long experience with multiple environmental regulatory programs amply demonstrates that merely adding additional layers of paperwork and recordkeeping requirements does not necessarily translate into greater environmental protection. We strongly recommend that PADEP together with the EQB identify the specific environmental protection objectives that are to be achieved through each of the new or added paperwork, reporting or notification requirements contained in Chapter 245 and objectively assess whether such requirements meaningfully contribute to achieving those environmental protection objectives. (11), (18)

As EQB moves forward with this regulatory proposal, we ask that it work with the regulated community to gain an understanding of the potential costs associated with the new notification, reporting and paperwork requirements that are being imposed. When the final-form regulation is submitted, we request that EQB include an explanation of how the additional regulatory requirements will assist DEP with its mission of protecting the environment. We also ask EQB to quantify the costs associated with complying with the new or revised requirements. (20)

Response: While this rulemaking adds additional notification, reporting and recordkeeping requirements, some of the notification is simply verbal or electronic notification. Where information is required to be documented, the Department is providing a significant number of forms to facilitate compliance with the various requirements. Most of the forms will be completed by DEP-certified installers and inspectors who will be instructed by Department staff on how to complete them. DEP-certified installers and inspectors often request standardized forms from the Department so that they are fully aware of what the Department expects to be reported pertaining to a specific requirement. Having standardized forms, completed by certified installers and inspectors, should limit the time and expense required to fill them out.

Regarding verbal or electronic notification requirements, a responsible party will need to notify the Department either verbally or electronically (such as by telephone or email) upon initiation of an interim remedial action, within 24 hours of providing an alternate source of water to an affected water supply owner, and within 24 hours of initiation of

site characterization activities in response to a release of a regulated substance from a storage tank. (See §§ 245.306(e), 245.307(e) and 245.309(c)(24)). The first corrective action report required to be submitted in writing by the responsible party is the site characterization report, required under § 245.310. It is to be submitted to the Department after the responsible party takes an interim remedial action, provides an alternate source of water (if necessary) and completes site characterization activities. Therefore, it is important for the Department to know in a timely manner that these required corrective action activities are taking place. An interim remedial action, when conducted properly and promptly, limits the extent and severity of contamination, thereby limiting the amount of site characterization that needs to be performed and further remedial action that needs to be conducted. The result is protection of the public and the environment, and a reduction in the cost of corrective action to storage tank owners and operators. While the Department cannot quantify the costs associated with these additional verbal or electronic notification requirements, any costs associated with them should be minimal because the owner, operator or consultant is typically communicating with the Department at this point and informing the Department when actions that have been proposed are initiated.

The majority of the reporting requirements will be handled by DEP-certified installers and inspectors, as well as by consultants. The Department is providing the necessary forms to facilitate compliance with the various requirements. DEP-certified installers and inspectors, as well as consultants, welcome these forms and will be instructed by Department staff as to how to complete them. The majority of reporting forms associated with this final-form rulemaking are existing forms that have undergone minor revisions. Completion of these existing, revised forms will result in no additional cost to the regulated community. The few new forms that have been developed are testing and evaluation forms that are necessary to record the results of the new periodic UST testing requirements established in § 245.437 to meet the Federal requirements of ensuring that installed equipment for release detection and prevention is operating properly. In developing the proposed rulemaking, the Department contacted five Department-certified companies from various regions of the Commonwealth to provide cost estimates for the various testing requirements. The Department requested the companies to provide cost estimates to include mobilization fees, paperwork fees, labor costs and any necessary waste disposal costs. Cost information collected for the proposed rulemaking remains relevant today. Therefore, the costs presented in Section F of the Preamble and in response to Question 19 of the Regulatory Analysis Form to this final-form rulemaking for the new UST testing requirements are inclusive of the reporting requirements. Going forward, the Department will continue outreach and communication with the regulated community.

Regarding the new recordkeeping requirements, the majority of the documentation that owners and operators will need to maintain is necessary to comply with the new Federal UST requirements. However, in general, the records are important because review of storage tank system records is necessary for DEP-certified inspectors to determine compliance with regulatory requirements. DEP-certified inspectors are required to periodically inspect ASTs and UST facilities, under §§ 245.411, 245.551-245.554, and

245.616. Record review is an integral part of the inspection. Without the records, inspectors would not be able to determine regulatory compliance. In fact, the absence of required records means that a storage tank system is in non-compliance with regulatory requirements. A storage tank system that is non-compliant is at risk for releases which may impact the public and the environment. While the Department cannot quantify the costs associated with the maintenance of additional records, any costs should be minimal.

6. **Comment:** All on-farm fuel tanks of 3,000 gallons or less used to store motor fuel should be exempt from DEP regulations. (17)

Response: The definition of “aboveground storage tank” in § 245.1 (relating to definitions) exempts from regulation an aboveground storage tank of 1,100 gallons or less capacity located on a farm used solely to store or contain substances that are used to facilitate the production of crops, livestock and livestock products on the farm. Also exempt from regulation under the definition of “underground storage tank” in § 245.1 is a farm or residential underground storage tank of 1,100 gallons or less capacity used for storing motor fuel for noncommercial purposes. These exemptions are taken directly from the definition of aboveground storage tank and underground storage tank, respectively, in the Storage Tank and Spill Prevention Act (Storage Tank Act), 35 P.S. §§ 6021.101 – 6021.2104.

7. **Comment:** We question the need for the “owner’s representative” signature on each of the draft “new” test reports. Currently, there is no requirement to obtain a signature on line tightness test reports, leak detector test reports, cathodic protection test reports, or tank tightness test reports. Testers sign and attest to the accuracy of the information on their test reports, but in many cases, there will be no one at the site that is familiar with the applicable testing or having the knowledge needed to review the report with any accuracy, and asking them to sign these forms makes no sense. (15), (17)

If anyone should sign one of these forms, it should be a Class A or Class B operator. However, the Class A or Class B would rarely be on site to witness the testing and sign the form. If the signature of a responsible individual is needed, PADEP is going to need to allow for ample time for the reports to be completed by the technician doing the work, submitted to the Class A or Class B operator for review and signature, be returned to the tester doing the work and then documented. (15)

Response: The Department acknowledges this comment. The Department has taken the comments under advisement when developing the draft final forms relating to this rulemaking.

8. **Comment:** We have the following specific comments on the forms to be utilized to implement this proposed rulemaking. (15)

1. Overfill Prevention Evaluation Form:
 - a. Under section A drop tube shutoff device question #4, instead of asking “Tank capacity when flow is stopped(%)”, the question should read “Complete

shutoff occurs at or below 95% tank capacity? Yes/No”. As long as shutoff occurs no higher than 95% tank capacity, the equipment meets the regulatory requirements. There is no value in knowing if it shuts off at 92%, 86% or 75% in the tank. As long as it is no higher than 95%, it meets the criteria.

b. Same comment as (a. above) for section B question 5 except the question should read “Alarm is triggered at or below 90% tank capacity? Yes/No”.

c. Same comment as (a. above) for section C question 5 except the question should read “Flow is restricted at or below 90% tank capacity? Yes/No.”

d. 2 questions should be added in section C for ball floats:

i. Is the vent hole open and not corroded? Yes/No (because these vent holes can become corroded and completely blocked which could cause over-pressurization if the tank).

ii. Upon visual inspection, tank top fittings are vapor-tight and leak free? Yes/No (because if tank top is not vapor-tight, ball float will not work).

e. In section C on page 2, it appears that if a “standard drop tube” is not installed, the ball float fails the inspection. A couple comments on this:

i. If by “standard”, PADEP means a “straight” drop tube, we would suggest changing the term to “straight” which indicates that no automatic shutoff exists in the drop tube.

ii. The question implies that if a drop tube with a shutoff valve is installed, then the ball float fails the inspection. We’re not certain that the evaluation should fail if there is an automatic shutoff device installed in the fill. Ball floats and automatic shutoff devices installed in the same tank poses a problem and maybe DEP should take a position that if one is installed, the other must not be installed. This is a tough one.

2. Spill Prevention Equipment/Containment Sump Integrity Testing Form:

a. Under section IV. Visual Inspection Information – eliminate the row asking “containment capacity”. There is no way for testing technicians to accurately determine the capacity of containment sumps due to all the different sizes, shapes and dimensions, especially for UDC’s.

b. Under section VI. Testing Information – eliminate the 4th row asking for “portion tested”. This data will be documented under “start level”.

c. Provide multiple pages for section IV and section V. We suggest that 2 additional pages be added for each of these sections.

3. UST Facility Operations Inspection Form:

a. Page 2, section I question 3 should say “Tank installation date”.

b. Page 2, section I question 3a should be added for “Piping installation date”

c. Page 6 for overfill, spill containment, containment sump and release detection equipment testing should identify what method was used (PEI RP 1200 or manufacturer).

- d. DEP should consider a yes/no check box for each testing section including the cathodic protection survey section that asks whether or not the PADEP forms were used to document testing.
4. Sensor Functionality Testing Form:
 - a. Please copy section IV. and provide at least 4 additional pages for testing sensors. There will be many sites with more than 5 sensors that will require annual testing. We suggest that 25 should cover a majority of sites.

Response: The Department acknowledges this comment. The comment does not address the proposed regulatory amendments, but rather the draft forms provided as supplementary documentation to the regulation. The Department has taken the comments under advisement when developing the draft final forms relating to this rulemaking.

9. **Comment:** The Regulatory Analysis Form contained in the EQB’s proposed rulemaking, as published for its October 2017 meeting, did not contain any estimates of cost to the private sector. Further, Section F of the proposed rulemaking (as published in 48 Pa.B. 1101) which describes costs, benefits and compliance, does not provide a proper accounting (or even an attempt to estimate the costs) for the significant increase in labor that will be necessary to satisfy the various proposed increased inspection, monitoring, supervising and recordkeeping requirements. DEP notes in the RAF two key reasons it is proposing this rulemaking is “releases from piping and spills and overflows associated with deliveries” and “release detection equipment is only detecting approximately 50 percent of the releases it is designed to detect.” In response to these concerns, DEP is proposing substantial additional regulatory criteria on the public sector, including obligating the company receiving delivery to monitor the offtake of fuels into the tank. It is not clear from the Department’s documents or the minutes from the Storage Tank Advisory Committee if the Department has determined if many companies currently have dedicated personnel to observe the delivery of fuels as part of their standard operating procedure. DEP’s cost discussion in the RAF does not estimate what it would cost the companies who do not currently monitor delivery, or if this monitoring would yield improved performance on the part of the delivery companies. Further, the cost discussions in the RAF and Section F do not estimate, to the degree necessary to satisfy the Regulatory Review Act, what additional DEP staffing and resources will be needed to implement this substantially more stringent regulatory program, nor do the cost discussions estimate or attempt to estimate the cost to the private sector for the significant amount of increased inspections, monitoring and record-keeping being proposed.

As such, DEP should revise Subchapter F and the RAF to better account for the costs to the Department and the private sector to implement the proposed provisions of Subchapter 245, republish the documents, and offer another comment period with a notice to the public and stakeholders asking specifically for cost estimates for the various proposed additional regulatory obligations. The lack of a good faith effort to document estimated costs to the Commonwealth and private sector, as obligated by the

Regulatory Review Act, will constitute a substantial defect to any final rulemaking.
(18)

Response: The proposed UST and AST regulatory requirements largely focus on additional testing and inspection of existing equipment. The costs to the regulated community associated with the increased testing and inspection were presented and detailed in item 19 of the RAF and Section F of the Preamble to the proposed rulemaking. Further, Section F of the proposed Preamble stated, “Most of the proposed amendments are necessary for the Commonwealth’s regulations in Chapter 245 to be consistent with Federal requirements for USTs and retain EPA approval of the State program. Without these proposed amendments, the EPA could not continue to approve the State program and would then be required to implement the UST program in this Commonwealth. Therefore, UST owners would incur the increased costs for their UST facilities to comply with 40 CFR Part 280 even if Chapter 245 was not amended due to the EPA’s revised regulations for USTs.” (48 Pa.B. 1101).

Please also see the response to Comment 5.

With regard to Department costs, Section F of the Preamble for the proposed rulemaking states, “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.”

No additional Department program staff will be needed to implement the proposed or final-form regulatory requirements. No new data system requirements are anticipated.

Further, Section F of the Preamble states, “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 6 and 12 months of installation and at least every 3 years thereafter due to their history of non-compliance. This mirrors the inspection requirement for USTs. Also, the initial inspection requirement and in-service inspection cycle for small ASTs will be shortened from 10 years to 5 years. Based on existing in-service inspections, the compliance rate with regulatory requirements is less than 50%. When the facility operations inspection cycle for USTs was shortened from 5 years to 3 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.” Based on realized benefits, the increased frequency of inspections and testing is unchanged in the final-form rulemaking.

In response to the concern that DEP proposed substantial additional regulatory criteria on the public sector, including obligating the company receiving delivery to monitor the offtake of fuels into the tank, many of the proposed amendments only clarify existing regulatory requirements and do not create new requirements. For example, with the requirement to monitor the offtake of fuel into the tank that the commentator cited, existing regulatory requirements require transfers of fuel to a tank within the emergency containment to be monitored for the duration of the transfer (See § 245.542 (d)(4)). In addition, under § 245.541(a), the tank owner and operator are required to ensure the transfer of fuel to the tank is adequately monitored and to take immediate action to stop the flow of fuel in the event that an equipment failure occurs. In proposed amendments in § 245.541(a), the Department is clarifying what it means to have adequate monitoring and continues the requirement that transfers of fuel to the tank be monitored during the transfer. The proposed amendments are retained in the final-form rulemaking.

Subchapters A and D – Definition of Release and Reportable Release, and Release Reporting

- 10. Comment:** The proposed revision to the definition of “release” is too confusing. We suggest deleting the proposed language and adding the following: “If the total volume of the released regulated substance as described above into liquid-tight containment sump or emergency containment structure is recovered and removed, reporting is not required.”
(6)

Response: The Department respectfully disagrees that any spill¹ that is completely recovered, irrespective of quantity, is not a “release.” The commentator’s revision would allow potentially hundreds or thousands of gallons of a regulated substance to be released to an emergency containment structure without any reporting of the release to the Department.

To clarify a facility owner and operator’s reporting requirements, the Department has added a definition for “immediate threat of contamination” in the final-form rulemaking, under which spills from a storage tank into a containment structure that equal or exceed applicable CERCLA reportable quantity thresholds or are an amount equal to or greater than a “discharge” under § 311 of the Federal Water Pollution Control Act (Clean Water Act) (33 U.S.C. § 1321) pose an immediate threat of contamination to soils, subsurface soils, surface water or groundwater, and are therefore “releases.” The only exception to what constitutes a “release” under this new definition is a petroleum spill less than 25 gallons into a liquid-tight containment sump or emergency containment structure that results from a tank handling activity if the certified installer providing direct onsite supervision has control over it, if it is completely contained and if, prior to the certified installer leaving the storage tank facility, the total volume is recovered and removed.

¹ Throughout this Comment Response document, unless made clear by the context, the Department uses the word “spill” or “spilling” broadly to mean spilling, leaking, emitting, discharging, escaping, leaching or disposing from a storage tank.

Consistent with the description above, the first step in the spill reporting requirements in the final-form rulemaking is to determine if the spill is a “release,” as defined. If a petroleum spill is a “release,” the next step is to determine if that “release” needs to be reported under § 245.305(i). Under § 245.305(i), the release will need to be reported unless the following three criteria, in the two situations described below, are met:

- i. the owner or operator has control over the release,
- ii. the release is completely contained, and
- iii. the total volume of the release is recovered and removed within 24 hours of the release.

Provided all three of the above criteria are met, the following release situations will 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 petroleum to a containment sump if the total volume of the release is contained below the lowest sump penetration.

See § 245.305(i)(1) and (2). If a petroleum “release” occurs and the requirements of § 245.305(i) are not met, the “release” would need to be reported. The § 245.305(i) petroleum exemptions are similar to the exemptions under the existing definition of “reportable release,” which is deleted in the final-form rulemaking as it was in the proposed rulemaking.

In the final-form rulemaking, the Department deleted the CERCLA Reportable Quantity exemption in § 245.305(i) and included it in the definition of “immediate threat of contamination.”

11. Comment: § 245.1 Definitions – The proposed amendments delete the definition of a “reportable release” and redefine a “release” to include all spills, leaks, emissions, discharges, escapes, leaching or disposals of a regulated substance into a containment. The definition further states that releases into a containment structure poses an immediate threat of contamination of the soils, subsurface soils, surface water or groundwater, except when a regulated substance is present in a liquid-tight containment sump or emergency containment structure as a result of a tank handling activity, if the certified installer providing direct oversight supervision has control. We strongly disagree with the amended definition of a release and the deletion of the definition of a reportable release. Containment structures, emergency containments, containment sumps, and double-walled tanks are designed to contain spills, leaks, emissions, discharges, escapes, and leaching to prevent contamination to the environment. For example, by definitions a containment sump is a liquid-tight container and emergency containment serves to convey, capture and contain the total volume of an anticipated release of regulated substances from a tank system. Therefore, a release, spill, etc. into these containments does not pose an immediate threat to the environment. Also, it is

contradictory to state that a release into these structures poses an immediate threat and then state that it isn't an immediate threat if the certified installer is providing direct oversight. No changes should be made to the definitions in the current rule for "release" and "reportable release." (9)

Response: The Department agrees that containment structures that comply with § 245.542 (relating to containment requirements for aboveground storage tank systems) requirements help prevent contamination to environmental media. Containment systems, alone, do not eliminate the risk of contamination. Containment systems may malfunction, may require maintenance, or may be unsupervised for prolonged periods. The Department's proposed revisions reflect the Department's position that, in the context of reporting a spill, preventing contamination includes addressing the quantity of the spill as well determining whether the containment structure contained the spill and whether the owner of the facility removed the spill within 24 hours. If the system is damaged – if the integrity of the system is not satisfactory – it is not containing the spill, thus potentially triggering reporting requirements. This is important information, without which the Department cannot perform its oversight duties. While changes from the proposed rulemaking are made in the final-form rulemaking, the essential approach taken in the proposed rulemaking remains the same.

12. Comment: § 245.304 Investigation of Suspected Releases & § 245.305 Reporting Releases – § 245.304(c) states that except as provided in § 245.305(i), if a release has occurred, the owner or operator shall report it within 24 hours and initiate corrective action. Section 245.305(i) states that under certain criteria a release does not require reporting if removed within 24 hours, including releases within an emergency containment. Since the proposed amendment definition of a release include discharges into containment sumps and emergency containments and some containment areas are not required to be inspected daily, virtually every discharge no matter how minor into these containments designed to prevent releases into the environment could result into reporting and potential corrective action. Again, no changes should be made to the current definitions in § 245.1 for a release and reportable release, § 245.305(a) should state that reportable releases are required to be reported within 24 hours and proposed amendment § 245.305(i) should be deleted. (9)

Response: The final-form amendments only consider a spill that equals or exceeds CERCLA thresholds, or a spill that is an amount equal to or greater than a discharge as defined in § 311 of the Federal Water Pollution Control Act (Clean Water Act) to be a "release." The final-form rulemaking retains the existing definition of "release" in § 245.1. The Department has added a definition of "immediate threat of contamination" to § 245.1 to clarify that a spill of a CERCLA hazardous substance directly to either environmental media or into a containment structure or facility will not be a "release" and will not trigger reporting requirements if the spill is less than the respective reporting requirements in CERCLA. Similarly, § 245.305(i) has been amended to exclude releases of petroleum less than 25 gallons into emergency containment and a release of petroleum to a containment sump where the total volume released is below the lowest sump penetration from reporting requirements if the facility owner or operator

contains it, controls it, and promptly removes it. In the final-form rulemaking, no change from the proposed language is made to § 245.305(a).

- 13. Comment:** § 245.1 (Definitions) & § 245.305 - By removing the term “reportable release” and re-defining “release” the Department is essentially stating the case that tank owners and operators are not capable of determining what releases constitutes an immediate threat to surface water, groundwater, bedrock, soil or sediment.” Small leaks within a secondary containment structure (e.g. inside a building) and are cleaned up within a short period of time do not pose an immediate threat of contamination to soils, subsurface soils, surface water, or groundwater and should not be deemed a release subject to reporting, site characterization or remedial actions. We recommend retaining the current definitions or to ensure the language properly differentiates between the requirements for large and small releases. (10)

Response: Tank owners and operators play an integral role in the prevention of contamination by maintaining storage tank facilities and by addressing spills. The amendments in the final-form rulemaking properly balance the capabilities of those facilities that have efficient containment and response capabilities with the Department’s need and ability to effectively implement mandates of the Storage Tank Act, and protect the environment. (35 P.S. §§ 6021.101 – 6021.2104.) The final-form amendments only require a spill that is equal to or exceeds CERCLA thresholds or is an amount equal to or greater than a discharge as defined in § 311 of the Federal Water Pollution Control Act (Clean Water Act), to be a “release.” The Department added a definition of “immediate threat of contamination” to § 245.1 to clarify a spill of a CERCLA hazardous substance directly to either environmental media or into a containment structure or facility will not be a “release” and will not trigger reporting requirements if that spill is less than the respective reporting requirements in CERCLA. Similarly, a spill of petroleum into emergency containment will not need to be reported if the spill is less than 25 gallons and if the facility owner or operator contains it, controls it, and promptly removes it.

- 14. Comment:** Chapter 245 contains multiple changes that implicate reporting obligations with respect to ASTs and USTs. Under the proposed changes to Chapter 245, the definition of a “reportable release” has been eliminated and supplemental language has been added to the definition of a “release.” In addition, 25 Pa. Code § 245.305 has been revised in connection with release reporting obligations. The upshot of these changes is to significantly expand the scope of release reporting requirements.

A key element of the requirements that apply to regulated ASTs and USTs is that they employ secondary containment. Secondary containment serves as an additional layer of protection to prevent regulated substances being held in regulated tanks from reaching the environment (e.g., soils, groundwater or surface water). By design, secondary containment keeps regulated substances out of the environment.

Both federal and state release reporting requirements are generally predicated on the concept that for a release to be reportable, it needs to reach the environment. The

proposed changes to Chapter 245 largely eviscerate this concept. 25 Pa. Code § 245.1 currently defines a “release” as follows:

Spilling, leaking, emitting, discharging, escaping, leaching or disposing from a storage tank into surface waters and groundwaters of this Commonwealth or soils or subsurface soils in an amount equal to or greater than the reportable released quantity determined under section 102 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C.A. § 9602), and regulations promulgated thereunder, or an amount equal to or greater than a discharge as defined in section 311 of the Federal Water Pollution Control Act (33 U.S.C.A. § 1321), and regulations promulgated thereunder. The term also includes spilling, leaking, emitting, discharging, escaping, leaching or disposing from a storage tank into a containment structure or facility that poses an immediate threat of contamination of the soils, subsurface soils, surface water or groundwater.

This provision already “pushes the envelope” in that it treats as a release a situation where regulated substances enter a containment structure in a manner such that the regulated substances pose an immediate threat of contamination of soils, subsurface soils, surface water or groundwater. The rationale for this element of the definition of a release is grounded in the perspective that reporting an incident as a release may be appropriate where the secondary containment system is in imminent danger of failure such that regulated substances are posing an immediate threat of entering the environment. The “immediate threat” standard is not met, however, where secondary containment is functioning as it should (in other words, it is keeping the release from a tank system from entering the environment).

In the proposed changes to Chapter 245, the EQB largely ignores the functionality of secondary containment. The proposed changes to the definition of a “release” automatically classify entry of a regulated substance into a containment structure or a facility as an “immediate threat” thereby meeting the definition of a release except in very narrowly circumscribed circumstances. Specifically, the amended definition of a “release” includes the following language:

All spills, leaks, emissions, discharges, escapes, leaching or disposals of a regulated substance into a containment structure or facility pose an immediate threat of contamination of the soils, subsurface soils, surface water or groundwater, except when a regulated substance is present in 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.

This language is overly broad. Rather than creating a presumption that any escape of a regulated substance into secondary containment constitutes a release, it would be far more helpful to identify by way of example those limited circumstances where the

presence of a regulated substance in secondary containment actually poses an “immediate threat” to environmental media.

Proposed changes to 25 Pa. Code § 245.305 compound the problems noted above. While the definition of a “reportable release” and its important exceptions have been eliminated from Chapter 245, some of the concepts from the definition of a reportable release have reappeared in 25 Pa. Code § 245.305(i). However, the proposed language is overly restrictive. For example, it appears that PADEP and the EQB contemplate as a predicate to being insulated from release reporting requirements that “any defective storage tank system component that caused or contributed to the release is properly repaired or replaced” within 24 hours. Such repairs may take far longer to accomplish than 24 hours but may pose no additional risks to the environment because other measures are occurring. Similarly, the volumetric exceptions that were contained in the definition of a reportable release (25 gallons for petroleum and reportable quantities for hazardous substances) were based on quantities of regulated substances reaching “an aboveground surface.” The proposed language in 25 Pa. Code § 245.305(i) requires that the amounts of petroleum and regulated substances reaching secondary containment be counted for purposes of determining whether the foregoing quantity thresholds have been met. This twist in the proposed regulatory language will effectively eliminate the exceptions to release reporting where secondary containment is functioning as it is supposed to.

We believe that the proposed changes to release reporting obligations under Chapter 245 go well beyond current requirements and are inconsistent with the basic framework of release reporting requirements under federal and state law. We respectfully request that the proposed changes be withdrawn. (11), (18)

Response: The Department agrees that containment structures that comply with the § 245.542 requirements help prevent contamination to environmental media. The Department’s proposed addition of a description of “immediate threat of contamination” does not ignore the important role that these systems play in protecting the environment. Containment systems alone, however, do not eliminate the risk of contamination. Containment systems may malfunction or require maintenance, or may be unsupervised for prolonged periods. The Department’s proposed and final-form amendments reflect the Department’s position that, in the context of reporting a spill, preventing contamination includes addressing the quantity of the spill, as well ensuring that the containment structure contains a spill and that the facility timely responds. Implicit in any “release” determination is an evaluation of the containment system and whether it is accomplishing its task. If the system is damaged – if the integrity of the system is not satisfactory – it is not containing the spill, thus potentially triggering reporting requirements. This is important information, without which the Department cannot perform its oversight duties.

In addition, in response to this comment and others, the Department has removed from § 245.305(i) in the final-form rulemaking the requirement that a facility repair any

defective component as part of the release reporting decision process, to clarify any potential confusion. Please also see the responses to Comments 12 and 13.

15. Comment: Spills that pose no threat of contamination are not releases. The General Assembly enacted the Storage Tank Act to prevent storage tank releases from contaminating the Commonwealth's lands and waters. 35 P.S. § 6021.102 (relating to legislative findings). Declaring these releases to threaten public health and safety, the General Assembly sought to prevent their occurrence, provide liability for damages resulting from any releases and require prompt cleanup. 35 P.S. § 6021.102(b). Consistent with its goal of protecting the environment, the General Assembly focused on preventing and cleaning up those spills that cause contamination, not spills that pose no risk of degrading the environment.

To effectuate these goals, the Storage Tank Act distinguishes between spills to the environment and spills captured by a containment structure. This distinction recognizes that a spill to the environment has a direct impact, while a spill to a containment structure may never reach the environment and cause pollution.

Spills to the environment are "releases" if they reach a reportable quantity threshold. 35 P.S. § 6021.103 (relating to definitions). But spills into a containment structure are releases only if they pose an immediate threat of contamination of the environment. The Storage Tank Act provides that the term "release" "shall also include spilling, leaking, emitting, discharging, escaping, leaching or disposing from a storage tank into a containment structure or facility that poses an immediate threat of contamination of the soils, subsurface soils, surface water or groundwater." 35 P.S. § 6021.103 (emphasis added). In the ordinary situation at our facilities and those of other companies deploying containment structures that satisfy Chapter 245 requirements, a spill to a containment structure poses no such threat.

Existing regulations properly classify spills to a containment structure as releases only when they pose an immediate threat of contamination. The current definition of the term "release" in Chapter 245 is consistent with the Act as it distinguishes releases from a storage tank into the environment from releases "from a storage tank into a containment structure or facility that poses an immediate threat of contamination of the soils, subsurface soils, surface water or groundwater." 25 Pa. Code § 245.1 (release). A spill to the environment constitutes a "release" only if it is in an amount equal to or greater than either the reportable released quantity under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA") or sufficient to constitute a discharge as defined in the Federal Water Pollution Control Act ("Clean Water Act"). In contrast, a spill to a containment structure constitutes a release only if it poses an immediate threat of contamination of the environment. With respect to spills to containment structures, an evaluation of whether and when the spill may reach the environment as well as its potential environmental impact determines whether a release has occurred.

The Environmental Hearing Board ("EHB") held this regulatory language to be clear. In *Merck Sharp & Dohme Corp. ("Merck") v. DEP*, 2016 EHB 411, the EHB considered

whether Merck's SPRP submitted in connection with a tank permit application conforms to the release reporting regulations. The SPRP provided that Merck personnel will determine whether a spill to an intact containment structure poses an immediate threat of contamination to environmental media, and report the spill to the Department only if the spill poses such a risk. The Department denied Merck's permit application based on its position that only the Department, and not Merck, can determine whether spills that are completely contained in a containment structure and not released to the environment pose "an immediate threat of contamination." The Department contended that spills to a containment structure must be reported to the same extent as releases directly to the environment. In rejecting the Department's position and granting Merck's motion for summary judgment, the EHB stated:

The definition of "release" is clear and unambiguous. There is no "release" (and therefore, no reportable release) unless the spill is from a storage tank into environmental media or "into a containment structure or facility that poses an immediate threat of contamination of" environmental media. Under the definitions of both "release" and "reportable release," it is clear that fully contained spills that pose no immediate threat need not be reported.

Id. at 421. Because the existing regulations and the Storage Tank Act define "release" in the virtually identical language, the EHB's holding that the regulatory language is clear also signifies that the statutory language is clear. Any amendment to the regulations must not contravene this clear statutory language. (13)

Response: As an initial matter, the Merck case involved the legal interpretation of the terms "release" and "reportable release," as those terms are currently defined in Chapter 245. The EHB held that Merck correctly interpreted the regulatory requirements of Chapter 245 within its spill prevention response plan (SPRP) for Merck's West Point facility. The EHB did not comment on whether any type or amount of spill might constitute an "immediate threat of contamination," nor did it review or endorse Merck's West Point facility's SPRP or containment structure as an effective means of containing spills or dealing with an "immediate threat of contamination." Instead, the EHB commented that the Department should propose its policy preference – that spills to a containment structure should be reported – to the EQB. (2016 EHB at 420).

The Department's amendment of the "release" definition in the proposed rulemaking, and its addition of a definition of "immediate threat of contamination" in the final-form rulemaking, are consistent with that directive and do not contravene the Storage Tank Act's definition of "release." Under Section 103 of the Storage Tank Act, 35 P.S. § 6021.103, and existing 25 Pa. Code § 245.1, a "release" is defined to include spilling "from a storage tank into a containment structure or facility that *poses an immediate threat of contamination* of soils, subsurface soils, surface water or groundwater." (Emphasis added.) Neither the Storage Tank Act nor existing Chapter 245 defines "immediate threat of contamination," which has confused the analysis and reporting of spills within a containment structure. The Department clarifies what constitutes an

“immediate threat of contamination” and resolves these issues in the final-form rulemaking.

In response to Merck’s comments, as well as those from other commentators, the Department deleted the language it proposed to add to the definition of “release” and replaced it with a definition of “immediate threat of contamination” to clarify that spills from a storage tank into a containment structure that equal or exceed applicable CERCLA reportable quantity thresholds or are an amount equal to or greater than a “discharge” under § 311 of the Federal Water Pollution Control Act (Clean Water Act) (33 U.S.C. § 1321) pose an immediate threat of contamination to soils, subsurface soils, surface water or groundwater, and are therefore “releases.” As a result, the Department does not believe that there will be a scenario, like the one proposed by the commentator, in which a spill that is less than CERCLA-reportable quantities and is otherwise not a “release” qualifies as an “immediate threat of contamination” because it is in a containment structure.

In addition, the Department has defined “immediate threat of contamination” to exclude spills of petroleum less than 25 gallons that are a result of a tank handling activity if a certified installer responds to them promptly. The Department believes that this revision streamlines analysis of whether a spill is a “release” and, if so, whether the “release” needs to be reported. In addition, the proposed revision avoids burdening facilities that have efficient containment and response capabilities while preserving the Department’s need and ability to implement the Storage Tank Act effectively.

Please also see the responses to Comments 12-14.

- 16. Comment:** The definition of “release” in the proposed regulations improperly stands the statutory definition on its head. The proposed rulemaking seeks to modify the definition of “release” to “clarify” that the verbiage “that poses an immediate threat of contamination” in the Storage Tank Act and existing regulations refers to all spills of a regulated substance into a containment structure or facility. According to the proposed rulemaking, the draft regulations would revise the regulatory definition of “release” to “clarify” that in all but one limited set of circumstances, “all releases into a containment structure or facility pose an immediate threat of contamination of soils, subsurface soils, surface water or groundwater.” Proposed rulemaking Section E, paragraph 5.

This is no mere “clarification.” It seeks to reverse the EHB’s holding that a spill to a containment structure is not a release, and need not be reported, when the tank owner or operator determines that the spill does not pose an immediate threat of contamination of environmental media. Notably absent from the proposed amendment is any consideration of facts specific to the spill and containment structure at issue, such as whether the containment structure will prevent the spill from reaching the environment and, if not, whether the spill will cause environmental harm.

Plainly some spills do not cause or threaten harm. The statutory and regulatory definitions of release encompass spills directly to the environment only in amounts equal to or exceeding the specified reportable quantities. 35 P.S. § 6021.103 (release) and

25 Pa. Code § 245.1 (release). Yet the proposed revision to Section 245.1 would classify even spills less than reportable quantities as releases if made to a containment structure. This is plainly flawed. If a spill directly to the environment below a reportable quantity causes no harm and is not a release, then clearly the same spill to a containment structure, whether or not captured by that structure, likewise does not immediately threaten or cause contamination. And if a spill is fully captured, it would not pose a threat of contamination, yet alone an "immediate" threat, even if it exceeded the reportable quantity. The Storage Tank Act establishes a fact-specific standard - poses an immediate threat of contamination - but the proposed rule disregards the facts.

The Storage Tank Act's mandate to consider whether a spill to a containment structure poses an immediate threat of contamination of the environment is soundly based on the function of containment structures. These structures are designed to accomplish a goal of the Storage Tank Act, preventing releases to the environment. Chapter 245 recognizes their effectiveness. Indeed, the proposed rulemaking states: "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." Proposed rulemaking at D.

More particularly, Section 245.542 imposes stringent requirements applicable to secondary and emergency containment structures. They must be of very low permeability, Section 245.542(c) and (d), and of sufficient capacity to contain a spill. Section 245.542(e). A spill to a low permeability structure does not pose an "immediate" threat to the environment. In addition, stringent standards for new containment structures must be met or a professional engineer must verify "that the emergency containment structure, coupled with the tank monitoring program and response plan, is capable of detecting and recovering a release and is designed to prevent contamination of the waters of this Commonwealth." Section 245.542(d)(2)(ii). Based upon these and Chapter 245's inspection and repair requirements (let alone more stringent requirements in Merck's Engineering Design Standard), the proposal to declare that every spill to a containment structure poses an immediate threat of contamination is contrary to fact.

When the General Assembly defined "release" to include all spills to the environment in reportable quantities, but only those spills to containment structures that pose an immediate threat of release, it clearly considered containment structures to reduce environmental risk. As the quote from the proposed rulemaking set forth above illustrates, Chapter 245 acknowledges the protective value of these structures. The proposed amendment classifying all spills to containment structures as releases encompasses a broader range of spills when made to a containment structure than when made directly to the environment, and thereby turns the statutory definition on its head.

The exemptions under proposed Section 245.305(i) are unreasonable narrow as applied to releases to containment structures. Assuming *arguendo* that the Board decides to deem all spills to a containment structure to be "releases," an amendment that would contravene the Storage Tank Act and fact-specific evaluations of whether an immediate threat of contamination exists, the maximum volume of a release that the proposed

rulemaking would exempt from reporting is the same for a release directly to the environment as for a release occurring and remaining completely within an emergency containment structure. This improperly disregards the lower risk to the environment when a spill is contained.

For example, if a spill of 25 gallons of petroleum from our 400,000 gallon storage tank entered the containment structure, it would occupy less than .006% of secondary containment capacity. Except under extraordinary circumstances, this spill would not present an immediate threat of contamination of the environment; the containment structure, carefully designed, constructed and maintained by our company at considerable cost, would eliminate any such threat.

The proposed rulemaking recognizes elsewhere that certain spills to containment structures or facilities, such as those shown to be liquid tight, are unlikely to result in environmental harm. See, e.g., proposed § 245.303(e)(1) (regarding waiver of corrective action requirements). Actual threat of contamination of the environment may depend on, among other factors, the integrity of the containment structure, its design and construction (see § 542), the quantity, toxicity and other characteristics of the substance spilled, and the location and nature of the environmental media or resources that may be impacted.

By relying solely on reportable quantity thresholds with regard to spills to containment structures, the proposed rulemaking does not properly consider the actual immediate threat posed by a spill, as the definition of "release" in the Storage Tank Act requires it to do. (13)

Response: The Department incorporates its discussion in the response to Comment 15 regarding the EHB's Opinion in *Merck Sharpe & Dohme Corp v. DEP*, 2016 EHB 411 into this response. As discussed above, in *Merck*, the EHB did not consider what type or quantity of a spill poses an immediate threat of contamination. Rather, it considered the interpretations of "release" and "reportable release" and which party is entitled to determine whether a spill constitutes an "immediate threat of contamination." See *Merck* at 413-14.

The commentator bases concerns with the proposed amendments, in part, on the notion that all containment structures constructed to satisfy the requirements of § 245.542 categorically eliminate any "immediate threat of contamination." In further support of these concerns, the commentator cites to § 245.542(d)(2)(ii), which requires "[v]erification by a professional engineer that the emergency containment structure, coupled with the tank monitoring program and response plan, is capable of detecting and recovering a release." The commentator also asserts that the size of its storage tank and its containment structure will mitigate against the risk of an immediate threat of contamination.

The Department agrees that compliance with § 245.542 will mitigate against potential contamination. The Department's proposed and final-form amendments are consistent

with that perspective. Based on 29 years of facility inspections and enforcement experience, the Department respectfully disagrees, however, that containment structures, alone, are a fail-safe plan to prevent contamination. Section 245.542 is not a self-verifying provision of the Storage Tank regulations—the Department must inspect facilities on a regular basis to determine if a facility, including its containment structure, is in compliance with regulatory requirements. See, for instance, 35 P.S. § 6021.107; §§ 245.551-245.554.

Section 245.542 only requires verification that the containment structure is *capable* of detecting and recovering a release. A permittee's success in operating and maintaining the containment structure, however, is dependent on ongoing compliance and regular inspections. While the size of the commentator's storage tank and containment structure may mitigate the risk of contamination, a storage tank facility's integrity is only one of a number of factors to be considered when addressing a spill. The commentator acknowledges this by stating that the “[a]ctual threat of contamination of the environment may depend on, among other factors, the integrity of the containment structure, its design and construction (see § 542), the quantity, toxicity and other characteristics of the substance spilled, and the location and the nature of the environmental media or resources that may be impacted.”

Considering all the factors, the Department believes that determining whether a spill is an “immediate threat of contamination” involves a contemporary, fact-specific determination of the quantity of the spilled regulated substance, and, in the case of a petroleum “release,” whether the containment structure has contained the release and whether the facility has responded to it in a timely manner. The amendments in the final-form rulemaking accomplish this goal.

Please also see the responses to Comments 12-15.

- 17. Comment:** The proposed misclassification of releases harms the regulated community by triggering unnecessary reporting, corrective action and other obligations. Classifying all spills to containment structures as “releases” adversely affects our company and other tank owners and operators. Under the proposed rulemaking, any release must be reported to the Department as soon as practicable, but no later than 24 hours after the confirmation of a release. 25 Pa. Code § 245.305. Because the proposed regulations classify any spill of any quantity to a containment structure as a release, absent an exemption even a single drop of a substance spilled from a tank system into a containment structure must be reported. The reporting exemptions in proposed Section 245.305(i) in effect apply the same quantity thresholds to spills directly to the environment and spills to containment structures, provided that the release is “completely contained” and remediated within 24 hours. But a completely contained spill that is promptly remediated does not pose an immediate threat of contamination and, under the Storage Tank Act, is not a release in the first instance. The proposed regulations improperly classify these spills as releases and then exempt them from reporting. But because this exemption applies only to spills below their reportable

quantities, the exemption does not apply to spills to containment structures in greater amounts that nonetheless pose no immediate threat of contamination.

Requiring tank owners and operators to report spills that are captured in a containment structure and promptly remediated, including those exceeding the reportable quantities, imposes unnecessary (and unauthorized) burden. Reporting requires more than the mere submission of a form. At our company, it involves internal processes to ensure that submissions are accurate and complete. Heightened reporting likewise places a burden on the Department to review the submission. The proposed rulemaking asserts that the amendments will reduce the administrative burden on the Department, see proposed rulemaking at F, yet requiring review of reports of spills to intact containment structures produces the opposite result.

Unnecessary spill reporting creates a record susceptible to misinterpretation by other government agencies or the public. The proposed rulemaking declares that every spill to containment poses an immediate threat of contamination of the environment. Other agencies or the public may review spill report records and conclude that the tank owner endangered the public, when in fact the tank owner can demonstrate that any risk to the public or environment was negligible. This misunderstanding may result in citizen suits or enforcement actions for spills that did not actually pose any threat.

In addition to causing needless reporting, misclassifying spills fully captured by containment structures as releases posing an immediate threat of contamination triggers unnecessary corrective action obligations (unless exempt under § 245.305(i)). These involve a time-consuming site characterization and preparation of a site characterization report, even when no cleanup is needed. See proposed Sections 245.309 and 245.310. For example, if a reportable quantity of material, 25 gallons of petroleum, were to spill to a large secondary containment structure during transfer to a storage tank and be immediately recovered, the proposed regulations would require performance of a site characterization and interim remedial action although no benefit to the environment would ensue. *Id.*; see also § 245.306. These obligations would apply regardless of the absence of any actual threat of contamination posed by the spill. A storage tank owner would be relegated to seeking a waiver of corrective action from the Department, a time-consuming endeavor for both the regulator and the owner. See proposed rulemaking § 245.303(e)(1) (authorizing the Department to waive corrective action requirements when the release is to a "liquid-tight" containment structure). All of these burdens and other adverse consequences to tank owners occur because the proposed rulemaking would amend the definition of "release" in a manner which contravenes the Act. (13)

Response: The Department respectfully disagrees that reporting releases under the proposed revisions will result in unnecessary reporting, burdening tank owners, operators and the Department. As articulated above in the response to Comment 15, the Department has added a definition for "immediate threat of contamination" in the final-form rulemaking to clarify which spills constitute a "release" within containment.

Further, in recognition of the commentator's comments regarding needless reporting, the Department believes that the definition of "immediate threat of contamination" in the final-form rulemaking and the proposed and final-form rulemaking reporting requirements in § 245.305(i) properly exempt small spills from reporting and corrective action. The Department believes that these amendments properly balance the capabilities of those facilities that have efficient containment and response capabilities with the Department's need to effectively implement the Storage Tank Act and protect the environment.

Further, under the commentator's proposed scenario regarding a 25-gallon spill of petroleum that occurs during transfer to a storage tank, while it may be considered a release, the Department has also further clarified in § 245.303(e)(1) that the Department may waive the need for further corrective action based on the nature of the release, including a release into a containment structure or facility that is shown to be liquid-tight. Regardless of the scenario, the Department respectfully disagrees that requesting a waiver under § 245.303(e)(1) constitutes a "time consuming endeavor for both the regulator and the owner." The Department encourages frequent communications between the Department and the regulated community to foster efficiency and compliance.

Please also see the responses to Comments 12-16.

- 18. Comment:** The Board should follow existing Federal and neighboring states' release reporting regulations that focus on actual risk. The regulations of other environmental agencies and neighboring states recognize that spills to a containment structure pose less risk than spills directly to the environment. Minimizing risk is the reason for constructing an emergency or secondary containment system, and supports a less stringent reporting requirement for these spills.

The spill reporting requirements under several federal programs recognize that no environmental benefit exists to warrant burdening tank owners with reporting each and every spill to secondary containment, but rather regulations should consider the actual threat of environmental harm. For example, under the Clean Water Act, discharges of oil into or upon navigable waters of the United States must be reported only when the quantity of the spill may be harmful to public health or the environment. 33 U.S.C. § 1321(b)(4). The regulations implementing this requirement, 40 CFR § 110.3, establish that the quantities of oil discharges that "may be harmful" are those that cause a violation of applicable water quality standards or a film or sheen on the surface of the water, among other similar observable conditions.

Apart from oil, notice of a discharge of a hazardous substance must be reported under the Clean Water Act if the discharge is in an amount equal to or exceeding such substance's reportable quantity. 40 C.F.R. § 117.21. But unless and until a hazardous substance reaches the waters of the United States, no notification requirement is triggered. 40 C.F.R. § 117.11. If a spill to a containment structure does not reach or threaten to

reach the environment, notification to the Department of the spill will not further the objective of protecting the environment.

The spill reporting requirements of the federal UST regulations are consistent with our position. Implementation of the federal underground storage tank program may be delegated to the states. 40 C.F.R. Part 281 (Approval of State Underground Storage Tank Programs). To obtain delegation, a state must require reporting of "underground releases and any spills and overfills that are not contained and cleaned up." 40 C.F.R. § 281.34(b) (emphasis added). Neither a "release" nor an "underground release" occurs unless environmental media are impacted. 40 C.F.R. § 280.12. Under this standard, Pennsylvania is not obligated to require reporting of a spill contained by secondary containment and cleaned up. Similarly, absent delegation, EPA does not require reporting of spills to secondary containment so long as there is no release to the environment, any defective equipment is repaired or replaced, and the liquid in the interstitial space of secondarily contained systems is removed. 40 C.F.R. § 280.50(b).

The leak and spill response regulatory requirements for tank systems at hazardous waste treatment, storage and disposal facilities regulated under the Resource Conservation and Recovery Act ("RCRA") require the owner or operator to remove materials released to a secondary containment system within 24 hours, or as soon as possible, to "prevent harm to human health and the environment." 40 C.F.R. § 264.196(b)(2). A spill to secondary containment that does not reach the environment does not trigger the RCRA notification requirement. 40 C.F.R. § 264.196(d).

At the state level, New York's release reporting regulations exempt from reporting all spills to secondary containment, regardless of quantity, as long as the following conditions are met: (i) the secondary containment system meets certain design requirements; (ii) the spill or overfill is controlled and completely contained within 24 hours; (iii) the total volume of the spill or overfill is recovered or accounted for; and (iv) the spill will not result in certain conditions including fire, explosion, contravention of air quality standards, harmful vapors, or runoff from fire control or dilution waters contributing to a contravention of water quality standards. 6 CRR·NY 598.14(a)(4).

In Delaware, the aboveground storage tank regulations require reporting of a leak (defined as a failure of an aboveground storage tank to contain a regulated substance) of a regulated substance inside secondary containment in any quantity only if the regulated substance cannot be cleaned up within 7 days.
7 DE Regs 1352 Part E 1.1.2.

Finally, New Jersey's aboveground storage tank regulations require notification to the New Jersey Department of Environmental Protection "immediately after a discharge commences." N.J.A.C 7:1E-5.3(a). Notably, the definition of "discharge" involves a release into waters or onto land. The definition expressly states that the term does not include "leak," which is defined as "any escape of a hazardous substance from the

ordinary containers employed in the normal course of storage, transfer, processing or use into a secondary containment or diversion system or onto a surface which is cleaned up and removed prior to its escape into the waters or onto the lands of the State." N.J.A.C 7:1E-1.6 (emphasis added). New Jersey also exempts from reporting any discharge that is not otherwise required to be reported under any other state or federal rule so long as the discharge occurs at a facility that has a discharge prevention and discharge removal plan, or another related approved plan, if the discharge "[h]as not entered any waters of the State or migrated off-site" and within 24 hours the discharge is stopped and contained in accordance with such plan and is cleaned up and removed. N.J.A.C 7:1E-5.3(e)(1).

The federal government and each of these neighboring states exhibit a common-sense approach to release reporting. Pennsylvania's current Storage Tank regulations do the same, and no change to the release reporting requirements is needed to protect human health or the environment. (13)

Response: The commentator cites to various State and Federal spill reporting requirements and asserts that they more appropriately consider storage tank containment structures and the risk of each spill.

The Department notes that the regulatory authorities to which the commentator cites contain reportable quantity limits and a consideration of the potential risk of each spill contaminating environmental media. In particular, the commentator cites to New York's release reporting regulations, which require analysis of the design of a containment system, whether the facility capably responded to a spill within a timely manner, the quantity of the spill, and whether the spill will potentially result in additional hazards. Similarly, both Delaware and New Jersey require responses to spills within a timely period.

The reporting requirements in § 245.305(i) in the final-form rulemaking are consistent with those cited by the commentator. To be excluded from reporting requirements under the Department's final-form rulemaking, a spill must not exceed reportable quantity limits, and, in the case of a petroleum release less than 25 gallons, the facility owner or operator must contain and remove the entire volume of the release within 24 hours. In addition, if the petroleum spill is the result of a tank handling activity, the spill must be within a liquid-tight containment sump or an emergency containment structure, and the certified installer must have control over and contain the regulated substance before he or she leaves the facility. As with the sources cited by the commentator, the Department's final-form rulemaking requires consideration of the quantity and location of the spill, and the facility's timeliness responding to it.

Please also see the responses to Comments 12-17.

- 19. Comment:** DEP in the proposed revised language in 245.1 and 245.305 proposes to declare that "all releases into a containment structure or facility pose an immediate threat of contamination of soils, subsurface soils, surface water or groundwater."

245.1 notes that there is only one exception to this blanket declaration – “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.” Section 245.305(i) then specifically identifies the four criteria that must be met to not constitute a reportable release: “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.” These two sections are inconsistent with one another. The definitional language in 245.1 does not contain the 24-hour time limit for removal or the requirement to repair or replace defective system components. If a release is completely contained and under control by the operator (and has not escaped from the containment system - in other words, items #1 and 2 above are met), then it stands to reason the release does in fact not pose a threat to soil or water. Further, it may not be possible given logistics involved to have the material in containment removed within 24 hours. DEP does not identify how soon the defective component must be replaced in order for the release to not be reported. (18)

Response: The Department has added a definition for “immediate threat of contamination” in the final-form rulemaking to clarify the meaning of that term as used in the definition of a “release.” As defined, a spill into a containment structure or facility is an “immediate threat of contamination” if it exceeds its respective CERCLA reportable quantity or is an amount equal to or greater than a “discharge” under § 311 of the Federal Water Pollution Control Act (Clean Water Act), and is therefore a release. Similarly, a spill of petroleum into emergency containment will not need to be reported if the spill is less than 25 gallons and if the facility owner or operator contains it, controls it, and promptly removes it.

In addition, the Department has removed the proposed language in § 245.305(i) that would have required repairs of defective system components in relation to release reporting.

Please also see the responses to Comments 12-18.

- 20. Comment:** EQB proposes to amend the definition of “release” and to delete the definition of “reportable release.” These amendments have generated interest from the regulated community. They believe the changes will require the reporting of every spill into emergency and secondary containment structures as a “release” and argue that a spill into a secure containment area is not necessarily a threat to the environment. They contend that the revisions would trigger new reporting, corrective action and other obligations that are not necessary for the protection of human health and the environment. In addition, commentators contend that these amendments conflict with the statutory definition of “release” found in Section 103 of the Storage

Tank and Spill Prevention Act (35 P.S. § 6021.103) and the intention of the General Assembly.

We have several questions about these amendments and the issues raised by commentators. First, are these amendments needed to align Chapter 245 with EPA amendments to its UST regulations? Second, why does EQB believe the amendments being proposed are consistent with the statutory definition of “release” and the intention of the General Assembly? Third, what is the need for the changes? Are the existing requirements allowing spills to reach the environment and causing harm? Finally, will the amendments require additional reporting and corrective action for spills into emergency and secondary containment structures? If yes, what are the differences between existing requirements and the new requirements? (20)

Response: The amendments are not needed to align Chapter 245 with EPA amendments to its UST regulations. Rather, the amendments are needed to ensure protection of the environment in a streamlined fashion.

The definition in the final-form rulemaking of “immediate threat of contamination” in regard to USTs is only slightly more stringent than Federal regulations, which require that state programs, at a minimum, require prompt reporting of all confirmed underground releases and any spills and overfills that are not contained and cleaned up. (40 CFR 281.34(b) (relating to release reporting, investigation, and confirmation)). State programs must be no less stringent than EPA requirements but may be more stringent. (40 CFR 281.11(b) (relating to general requirements [for approval of state program])).

Under the final-form regulations, the Department will require a report of a release of hazardous substances within containment if the release exceeds applicable reportable quantities established by CERCLA. The Department will also require a report of a petroleum release within containment if the release equals or exceeds 25 gallons or, if less than 25 gallons, the release is not cleaned within 24 hours.

With regard to the amendments being consistent with the statutory definition of “release” in the Storage Tank Act, please see the response to Comment 19, above. With regard to the amendments being consistent with the General Assembly’s intentions, the amendments in the final-form rulemaking meet the expressed intentions of the General Assembly for the Department to prevent releases from storage tanks, to establish with the Board a regulatory scheme to prevent releases and require prompt cleanup and removal of pollution, and through the Board to adopt regulations that cover release reporting and remediation of releases from storage tanks. (35 P.S. §§ 6021.102, 6021.106(a) and 6021.301(a)(6) (relating to legislative findings; powers and duties of Environmental Quality Board; and aboveground storage tank requirements)).

The addition of the definition of “immediate threat of contamination” and the amendment in § 245.305(i) relating to releases and reportable releases are needed to

produce increased compliance and more efficient oversight to ensure protection of the environment. As set forth in Section D of the Preamble to this final-form rulemaking, *Background and Purpose*, there were 210 confirmed releases from USTs in this Commonwealth from October 1, 2016, through September 30, 2017, which were the result of improper operation and maintenance of UST systems. Releases from piping and spills and overfills associated with deliveries, and releases at the dispenser, have emerged as common issues. In addition, as noted by EPA in the preamble to its final rulemaking promulgated on July 15, 2015 at 80 FR 41566 (July 15, 2015 Final Rule), release detection equipment is only successfully detecting approximately 50% of releases it is designed to detect. (80 FR at 41567).

This is occurring under the existing regulations, which define “reportable release” in § 245.1 to require a storage tank owner or operator to report a release of a regulated substance that “poses an immediate threat” to environmental media, unless the owner or operator has control over the release, completely contains it and, within 24 hours of the release, removes the total volume of the release. This definition requires an owner or operator first to determine if the spill “poses an immediate threat,” and then, if it does, to report it to the Department. Section 245.1 defines a “release” to include, “... spilling, leaking, emitting, discharging, escaping, leaching or disposing from a storage tank into a containment structure or facility that poses an immediate threat of contamination...”

The phrase “immediate threat” in the existing regulations requires an undefined, qualitative analysis by a facility owner or operator. As a result, the Department’s ability to oversee and enforce relies in large part on the discretion of owners and operators to report spilling, leaking, emitting, discharging, escaping, leaching or disposing from a storage tank. The Department’s addition of the definition of “immediate threat of contamination” and deletion of the definition of “reportable release” in the final-form rulemaking provide a simple quantitative approach that streamlines the analysis of spills, balances the facility owner and operator’s desire to exclude certain small spills from reporting, and ensures the Department’s ability to adequately oversee the program. These clarified reporting requirements will enable the Department to confirm that facilities are reporting spills and to determine whether those spills impact the environment.

The Department does not agree that this new reporting structure will result in new reporting or corrective action obligations for spills into emergency and secondary containment structures. Facility owners and operators have always been required to report releases that pose an immediate threat to the environment. Rather, this clarification may result in more frequent reports to the Department, though the Department also believes that the definition of “immediate threat of contamination” in the final-form rulemaking will result in increased compliance and more efficient oversight because it is quantitatively based, rather than left entirely to the discretion of the facility owners and operators. Other than clarifying reporting obligations, the Department is not amending the corrective action requirements in Chapter 245 to a significant degree.

21. Comment: Section 245.305 specifies procedures to be followed after the confirmation of a release. New Subsection (i) identifies types of releases that do not need to be reported to DEP. Commentators believe the exemptions are narrow and do not properly consider the actual threat to the environment. Why did EQB adopt this approach which relies on reportable quantities compared to an approach that would allow the owner or operator of a storage tank system or storage tank facility to evaluate the actual threat to the environment? EQB should explain the reasonableness of this approach in the Preamble to the final-form regulation. (20)

Response: The Department has altered its approach in the final-form rulemaking to require reporting of releases into containment in fewer situations. In the final-form rulemaking, the Department added a definition in § 245.1 for the phrase “immediate threat of contamination” because the term is used in the existing and final-form definition of “release” with regard to spills into containment. The new definition of “immediate threat of contamination” excludes most spills into a containment structure or facility below the applicable Federal reportable quantity limits. Though different in respect to the location of the spill, this language mirrors language in existing statutory and regulatory definitions of “release,” which exclude spills into environmental media below Federal reportable quantity limits. 35 P.S. § 6021.103; 25 Pa. Code § 245.1.

With this new definition of “immediate threat of contamination,” most spills below the applicable Federal reportable quantity limits will not be subject to the reporting requirements of § 245.305.

Regarding spills of petroleum, while any spill of petroleum from a storage tank absent a certified installer’s onsite involvement will be a “release” under the definitions of “immediate threat of contamination” and “release,” under § 245.305(i) of the final-form rulemaking an owner or operator will not need to report a spill of less than 25 gallons to an aboveground surface or a spill that is below the lowest containment sump penetration, if the owner or operator contains and controls the spill, and removes the total volume of the spill within 24 hours. In addition, the definition of “immediate threat of contamination” does not include spills of petroleum that are less than 25 gallons into either a liquid-tight containment sump or emergency containment structure that occur as a result of “tank handling activity,” as that term is defined in § 245.1. Consequently, reporting would not be required.

The addition of a definition of “immediate threat of contamination” and the amendments in the final-form rulemaking to the reporting exemptions under § 245.305(i) create a broad exemption for small spills that do not need to be reported while balancing the Department’s need to effectively oversee the threat to the environment and to protect against pollution. The Department believes that defining “immediate threat of contamination” is a reasonable approach because a quantitative review of a spill, rather than a qualitative analysis of a spill and its possible effects, significantly simplifies release reporting analysis and clarifies the roles of owners, operators and the Department in the process. Note that while containment structures

help to prevent contamination, they do not alone completely mitigate the risk of contamination to the environment. Containment structures help to prevent contamination to environmental media. Containment structures, however, may malfunction, may require maintenance, or may be unsupervised for prolonged periods. The Department's added definition of "immediate threat of contamination" and the amendments in the final-form rulemaking to the reporting exemptions under § 245.305(i) reflect the Department's position that, in the context of reporting a spill, preventing contamination includes addressing the quantity of the spill as well determining whether the containment structure contained the spill and whether the owner of the facility removed the spill within 24 hours. If the system is damaged – if the integrity of the system is not satisfactory – it is not containing the spill, thus potentially triggering reporting requirements. This is important information, without which the Department cannot perform its oversight duties

Finally, this simplification will benefit the Department, the regulated community and, most importantly, the environment and public health. Among its various duties, the Department is also responsible for determining when a release poses an immediate threat to public health and safety. 25 Pa. Code 245.305(g). The Department cannot promptly respond to this duty if facilities spend valuable time determining if a spill poses a threat.

Subchapter A – General Provisions

22. Comment: DEP should define "liquid-tight," a descriptor in 245.303 of what type of a structure or system may be eligible for DEP to waive or combine certain regulatory requirements. (18)

Response: The term "liquid-tight" is used in three definitions in the final-form rulemaking ("containment sump," "immediate threat of contamination" and "spill prevention equipment"), in the corrective action provisions of § 245.303 and throughout the technical standards for underground storage tanks in Subchapter E of Chapter 245. The term is also used in 40 CFR Part 280 without being defined. In addition, the term is commonly used throughout the storage tank industry. Therefore, the Department does not believe a definition is warranted.

23. Comment: Under definitions, "used oil/waste oil" needs to be defined. It is important to clarify that used oil is not the waste being generated from the cleaning of motor fuel tanks such as gasoline, aviation gas, diesel, jet fuel, etc. In addition, it is not the recovered product and wastewaters collected as a result of releases from these tanks. Far too often, to avoid the added reporting and handling requirements associated with the removal of motor fuel tanks, contractors identify the wastes as used oil/waste oil. In reality, the waste is a hazardous waste that should require manifests, generator ID's, licensed transporters, and licensed disposal facilities. (4)

Response: The Department has not amended the final-form rulemaking to include the requested definition, because the Department's residual and hazardous waste regulations define "waste oil."

The term “waste oil” is defined in § 287.1 (relating to definitions) of the Department’s “Residual Waste Management – General Provisions” regulations as follows:

Waste oil—One of the following:

- (i) Oil refined from crude oil or synthetically produced, used and, as a result of the use, contaminated by physical or chemical impurities.
- (ii) A liquid, petroleum-based or synthetic oil, refined from petroleum stocks or synthetically produced which is used in an internal combustion engine as an engine lubricant, or as a product used for lubricating motor vehicle transmissions, gears or axles which, through use, storage or handling, has become unsuitable for its original purpose due to the presence of chemical or physical impurities or loss of original properties.

The term “used oil” is defined in 40 CFR Part 260.10 (relating to definitions) of the Federal “Hazardous Waste Management: General” regulations as follows:

Used oil means any oil that has been refined from crude oil, or any synthetic oil, that has been used and as a result of such use is contaminated by physical or chemical impurities.

The Department has incorporated the Federal Hazardous Waste Management regulations in Chapter 260 by reference. In doing so, the Department substituted “waste oil” for “used oil” (25 Pa. Code § 260a.3, relating to terminology and citations related to federal regulations).

The Department agrees that waste generated from the cleaning of motor fuel tanks and recovered product and wastewaters collected as a result of releases from motor fuel tanks is not “waste oil.” The wastes associated with the permanent closure of storage tank systems will likely include residual and hazardous wastes. Wastes may include the tank itself, along with any associated piping, unusable product, sludges and sediments, condensation water, wastewater associated with cleaning the tank, and contaminated soil or earthen materials removed or excavated. The tank handling, waste management and disposal activities are discussed in detail in the “Closure Requirements for Underground Storage Tank Systems (DEP ID Number 263-4500-601)” and “Closure Requirements for Aboveground Storage Tank Systems (DEP ID Number 263-4200-001)” Technical Guidance Documents. These guidelines are for DEP-certified installers and consultants to follow who are involved in closure activities.

24. Comment: Wastewater tank systems have been excluded from the universe of USTs that are regulated under Chapter 245. The proposed changes to Chapter 245 include limiting language that provides that to be excluded, wastewater tank systems must be part of a water treatment facility that is either regulated under the national pollutant discharge elimination system (“NPDES”) permitting program or the industrial

wastewater pretreatment program pursuant to the federal Clean Water Act. These limitations will leave certain wastewater tank systems subject to regulation under Chapter 245 for the first time. For example, wastewater systems may discharge to publicly-owned treatment works (“POTWs”) that do not have pretreatment programs in place. Wastewater systems discharging to POTWs may also not be covered by pretreatment programs. In circumstances that do not involve discharges to POTWs, wastewater systems may be operated in ways that do not trigger the NPDES permitting program (such as discharges utilizing spray irrigation systems).

The consequences from the proposed change identified above are large. There does not appear to be any demonstration that wastewater tank systems have posed significant problems in a manner that would justify pulling such tank systems within the regulatory ambit of the storage tank program. We note that such tanks may be subject to other regulatory requirements even if not subject to the NPDES permitting program or the industrial wastewater pretreatment program. Moreover, the proposed changes are not consistent with the requirements under the federal UST program. While wastewater tank systems that are part of a wastewater treatment facility discharging pursuant to an NPDES permit or a pretreatment program are fully excluded from the federal UST program, other types of wastewater tank systems enjoy a partial exclusion that insulates such tanks from the vast majority of the requirements under the federal UST program. The proposed changes to Chapter 245, by contrast, leave wastewater tank systems not subject to the NPDES program or pretreatment requirements much more highly regulated than would occur under the federal UST program. We suggest that the proposed changes to Chapter 245 relating to wastewater tank systems be harmonized with federal requirements or eliminated. (11), (18)

Another concern relates to the amended exclusion for wastewater treatment tanks found under renumbered Paragraph (xiii). The new language being added will limit exclusions to wastewater tank systems that are part of a water treatment facility under certain sections of the Clean Water Act. We ask EQB why the changes to this paragraph are needed and how they are consistent with federal regulations. (20)

Response: The proposed amendment to the definition of “underground storage tank” to modify the exclusion for a wastewater treatment tank system has been retained in the final-form rulemaking. The amended definition clarifies 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). This existing exclusion has been amended to be consistent with the Federal regulations at 40 CFR 280.10(b)(2). Modification of this existing exclusion is necessary for Pennsylvania to receive revised State Program Approval from EPA.

EPA has always regulated these UST systems, and owners and operators have been required to comply with “interim prohibition” requirements pertaining to corrosion protection and compatibility with the regulated substance stored since May 7, 1985. The “interim prohibition” requirements were established in 1984 when Subtitle I was added to

the Solid Waste Disposal Act, 42 U.S.C.A. §§ 6921—6939g, through the Hazardous and Solid Waste Amendments which authorized the Federal program to regulate USTs. On December 22, 1988, the same “interim prohibition” requirements, along with release response and corrective action requirements, were promulgated in 40 CFR Part 280, Subparts A and F. At that time, these UST systems were deferred from Federal regulation with the exception of Subparts A and F. In its July 15, 2015 Final Rule, EPA maintained its position that these regulated USTs only need to comply with Subparts A and F. To summarize the Federal requirements, these UST systems installed on or after May 7, 1985, need to be protected against corrosion and be compatible with the substance stored. Further, these UST systems regulated as of December 22, 1988, need to comply with the release response and corrective action requirements in 40 CFR Part 280.

The Department currently excludes these UST systems from regulation but will now regulate them. The proposed amendment to § 245.403(a), which states that these USTs must meet the same requirements that all other regulated UST systems must meet, has been retained in the final-form rulemaking. Similarly, the proposed amendments to § 245.403(c) have been retained, with an amendment added in the final-form rulemaking for these UST systems installed on or after May 7, 1985, to provide that UST owners and operators 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. UST owners will not be required to conduct facility inspections, install spill and overfill prevention equipment, check for water in petroleum storage tanks, implement operator training, conduct periodic operation and maintenance walkthrough inspections, or perform release detection.

Although these USTs will be exempt from certain requirements, the Department believes that it is important for owners of these USTs to register the USTs, use Department-certified installers and inspectors, and maintain financial responsibility. These USTs are now regulated and all regulated USTs need to be registered with the Department, under existing § 245.41. If the USTs are not registered with the Department, the Department will not know where these USTs are, the number of these newly regulated USTs, and whether the USTs are in compliance with applicable regulations.

In addition, all regulated USTs in the Commonwealth need to be installed, modified and removed by Department-certified installers. Since UST owners and operators will need to meet the corrective action process requirements of Chapter 245, Subchapter D, it follows that the financial responsibility requirements of Chapter 245, under existing Subchapter H apply. Financial responsibility is met by participating in the USTIF, which provides coverage for corrective action and third-party damages should a release occur. In addition, specifically with regard to Subchapter E, provisions concerning variances, applicable codes and standards, performance standards for new UST systems, upgrade requirements for existing UST systems, reuse of removed USTs, spill and overfill control, operation and maintenance including corrosion protection, compatibility, repairs allowed, reporting and recordkeeping, and closure, have been retained in the final-form rulemaking and will apply to these UST systems. New § 245.403(c)(4) has been added to the final-form rulemaking to clarify that UST systems installed before May 7, 1985, are

not required to comply with §§ 245.411—245.422, 245.424, 245.432, 245.433, and 245.436—245.446.

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

25. Comment: Section 245.105(f) proposes that passing certification examination scores be valid for 2 years from the date of the examination. This seems like a very burdensome frequency for recertifying inspectors and may cause work delays and unnecessary costs. Can this be extended to 3 years? (6)

Response: The addition of § 245.105(f) only serves to cap the amount of time that a passing examination score is valid. Section 245.114(b) states that an issued certification will be valid for 3 years. Thus, there is no change to the 3-year recertification requirement for inspectors.

26. Comment: With regard to § 245.106 (relating to conflict of interest), can an employee of the tank owner, the owner or operator be a certified inspector if he or she is a PA Professional Engineer and trained to be an inspector? (6)

Response: Section 245.106(a)(1) explicitly prohibits an employee of the tank owner, the tank owner or the tank operator from being a certified inspector, regardless of their experience or qualifications.

27. Comment: With regard to § 245.108(a)(4)(iii) (relating to suspension of certification), suggestion is to keep the 60-day submittal deadline for all inspection reports (including modification inspection reports) as report preparation takes up time. This would include submittal by the inspector to the owner or operator. (6)

Response: The proposed requirement in § 245.108(a)(4)(iii) that modification inspection reports be submitted to the Department within 30 days of conducting the inspection activity has been retained in the final-form rulemaking. The existing requirement is to submit the report within 60 days of conducting the inspection. This amendment shortens the length of time between submittal of the modification report (required within 30 days of completion of the modification) and the modification inspection report, allowing the Department to review the inspection report of the modification activity in a timely manner. The Department believes that 30 days is adequate time to prepare and submit the modification inspection report. However, language has been added to § 245.108(a)(4)(iii) in the final-form rulemaking to address submission of modification reports for inspection activities involving multiple certified individuals and certification categories. If a project involves multiple certified individuals and certification categories, modification reports need to be submitted within 30 days of the completion of all project tank handling and inspection activities. Subsection 245.108(a)(4)(iii) of the final-form rulemaking reads:

“Submit a report of an inspection activity to the Department within 60 days of conducting an inspection activity, except for reports of modification inspection activities, which must be reported to the Department within 30 days of conducting a modification inspection activity. For inspection activities involving multiple certified individuals and certification categories, reports of modification inspection activities shall be submitted within 30 days of the completion of all project tank handling and inspection activities.”

28. Comment: The modification inspection report submittal being changed from 60 days to 30 days is of concern. The problem is that the various trades complete their tasks at different times. For instance, an ACVL could be done their work long before a TL. Likewise, an AFMX will complete their tasks long before a TL. The time to complete all tasks could well exceed 45 days. So, unless an inspection modification report is required for each trade, the proposed 30 days will not be enough time to submit the report. (2), (17)

Response: If a project involves multiple certified individuals and certification categories, modification reports need to be submitted within 30 days of the completion of all project tank handling and inspection activities. Section 245.108(a)(4)(iii) has been amended in the final-form rulemaking to include this clarifying language. Please also see the response to Comment 27.

29. Comment: The new UMI certification category is not necessary with the proposed decrease in activity requirements for UMX certification. Having only minor modification activity requirement is not nearly adequate. For example, a concrete finisher performing only concrete repairs on tank or island pads would qualify for activity as UMI certification without having any underground piping or equipment experience. (14), (17)

Response: The new UST certification category (Underground storage tank system minor modification (UMI)) allows individuals to perform tank handling activities such as repairs that do not involve excavation without having to obtain the (full) certification (Underground storage tank system installation and modification (UMX)) to install and modify storage tank systems, and to perform tests of UST systems required by this proposed rulemaking. Creation of this new certification category will afford UST owners the opportunity to employ individuals who specialize in modifications only. Hiring UMI-certified individuals as opposed to UMX-certified individuals could potentially save UST owners some of the costs associated with minor modification and system testing work. The UMI certification category will also provide opportunities for existing certified companies to employ individuals who specialize in minor modification work. In addition, persons interested in only performing “minor modification” work can become certified and establish their own company.

30. Comment: Having UMI qualify for IUM certification should not be permitted. It is extremely important that inspectors have installation knowledge and experience. (14)

Response: Under existing § 245.113(a), for an individual with UMI certification to qualify for IUM certification, they must show that they have:

- completed 10 installations or major modifications (at least 5 installations) which will provide them with UMX certification;
- 4 years of experience, or an appropriate college degree and 2 years of experience;
- taken a Department-approved tank tightness testing familiarization course or UTT certification; and
- received corrosion protection training.

31. Comment: The list of college degrees for certified inspector qualification in § 245.113(c) seems restrictive. Corrosion engineering should be added to the list of acceptable college degrees. Also, individuals who have the proper work experience with degrees not enumerated should be able to apply. (6)

Response: The Department has added corrosion engineering to the college degrees listed in § 245.113(c) in the final-form rulemaking. An individual who has work experience only may apply if they meet the requirements of § 245.113(a). An appropriate college degree is only to be used as a substitute for work experience.

32. Comment: With regard to § 245.132(a)(2) (relating to standards of performance), it is difficult to get all appropriate information for submittal to PADEP after a tank handling activity. All the information needed for submittal needs to be analyzed and gathered from various installers and contractors. Requesting that the submittal deadline be 60 days from both inspection and tank handling activities for the owner and operator to gather the information needed. (6)

Response: Subsection 245.132(a)(2) has been amended in the final-form rulemaking to require that modification inspection reports be submitted to the Department within 30 days of conducting the inspection activity. The existing requirement is to submit the report within 60 days of conducting the inspection. This amendment shortens the length of time between submittal of the modification report (required within 30 days of completion of the modification) and the modification inspection report, allowing the Department to review the inspection report of the modification activity in a timely manner. The Department believes that 30 days is adequate time to prepare and submit the modification inspection report. However, language has been added to § 245.132(a)(2) to address submission of modification reports for inspection activities involving multiple certified individuals and certification categories. If a project involves multiple certified individuals and certification categories, modification reports need to be submitted within 30 days of the completion of all project tank handling and inspection activities. Subsection 245.132(a)(2) of the final-form rulemaking provides clarifying language with regard to all reporting requirements pertaining to tank handling and inspection activities conducted by certified installers and certified inspectors.

33. Comment: § 245.132: Reporting of spill bucket, containment sump and overflow test failures to the department is going to cause a huge influx of paperwork to the department

for follow up and a burden to the certified installers/inspectors and companies to get this paperwork submitted in a timely manner to PADEP. Suggest that failure reporting for new testing be eliminated from the proposed regulations. If not, then provide a 14 day window for reporting these types of failures, not 48 hours. The turnaround time of 48 hours to get the forms filled out and submitted to DEP is too quick and not necessary. These test failures are not equivalent to tank and piping tightness test failures or confirmed releases to the environment. (15)

Response: Proposed § 245.132(a)(5)-(6) has been retained in the final-form rulemaking. Reports of failed tests of spill prevention equipment, containment sumps, and overflow prevention equipment are necessary to allow the Department to follow up with facility owners to make sure that faulty equipment and tank components are repaired or replaced. Some facilities have deliveries every day, and many facilities have deliveries at least once a week. Delaying reporting beyond 48 hours will not provide the Department with enough time to follow up with noncompliant facilities. Faulty spill prevention and overflow prevention equipment may result in a release during the next delivery. Containment sumps that are determined not to be liquid-tight and that are used for interstitial monitoring of piping may release regulated substance if there is a piping failure.

34. Comment: Proposed changes to 25 Pa. Code § 245.132 mandate that certified companies, certified installers and certified inspectors report to PADEP in circumstances where a regulated substance is observed in a containment structure or facility. This type of requirement extends well beyond existing reporting requirements and is divorced from any analysis of whether the presence of a regulated substance in a containment structure is posing any significant threat to the environment. (11), (18)

The requirements in proposed Sections 245.132(a)(4)(iii) and 245.132(a)(6) that certified companies, certified installers, and certified inspectors report all releases and the observation of a regulated substance in a containment structure are overly broad. Requiring a report of the presence of a regulated substance in a containment structure or facility, regardless of quantity and potential for harm to human health or the environment, disregards the preventive function of the containment structure. Spills that the certified installer or inspector concludes do not pose an immediate threat of contamination of environmental media are not "releases" as defined by the Storage Tank Act and no reporting should be required.

In addition, the proposed rulemaking would require certified installers and inspectors to report to the Department releases below the reportable quantity threshold, even though pursuant to § 245.305(i) the owner or operator would have no reporting obligation. If the injury or threat posed by a spill is insufficient to require reporting by the storage tank owner, the spill likewise should not trigger reporting obligations by any other person. (19)

Amendments to Subsections (a)(4) and (6) would require certified companies, certified installers and certified inspectors to report to DEP the observance of a regulated

substance in a containment structure or facility. A commentator states that such a release is not necessarily a threat to the environment. We ask EQB to explain the need for and reasonableness of the new language being added to these subsections. (20)

Response: The Department does not believe that the reporting requirements in final-form § 245.132 are overly broad. Existing storage tank regulations require Department-certified individuals to report a release of a regulated substance or suspected or confirmed contamination while performing services as a certified installer or certified inspector. In addition, facility owners and operators are required under § 245.304(a)(1) to perform a suspected release investigation where, for instance, there is a regulated substance of unknown origin at a facility, even if the facility later determines that spill is ultimately not a reportable release.

In regard to the role of containment structures, please see the Department's response to Comment 11. While containment structures help to prevent contamination, they do not alone completely mitigate the risk of contamination to the environment.

As noted above, reporting requirements for Department-certified individuals to report a release of a regulated substance or suspected or confirmed contamination are listed in § 245.132 and are separate from reporting requirements for storage tank owners and operators contained in Subchapter D. The Department retained in the final-form rulemaking the proposed requirement that Department-certified individuals report regulated substances observed in a containment structure or facility. Regulated substances present in a containment structure may or may not be a "release" and may or may not have to be reported to the Department by the storage tank owner or operator. However, for a storage tank owner or operator the presence of any amount of regulated substance in a containment structure or facility would at the very minimum be a suspected release and would require a suspected release investigation under § 245.304. Department-certified individuals provide assurance that owners and operators are complying with regulatory requirements. These Department-certified individuals install, modify, remove and inspect storage tanks and must meet standards of performance in the conduct of their work. As part of their standards of performance, the certified individuals are to report information to the Department that a storage tank owner or operator would not need to report. This allows the Department to follow up with a storage tank facility owner or operator to assure the required corrective actions are being taken to protect the public and the environment.

35. Comment: Hyphenate the word "nontank" in proposed § 245.132(c)(2). (6)

Response: Regulatory protocol under the "Pennsylvania Code & Bulletin Style Manual," p. 25, available at <https://www.pabulletin.com/index.asp>, calls for not hyphenating the word "nontank."

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

36. Comment: With regard to § 245.236 (relating to public notice), currently, owners of proposed new large aboveground storage tank facilities or proposed aboveground storage tank systems with greater than 21,000 gallons capacity or highly hazardous substance tanks must provide written notice to the local municipality and the county in which the proposed aboveground system or facility is to be located prior to submitting a permit application. The proposed regulation requires that the notice shall also inform the local municipality and county of the location, capacity and projected installation date of the proposed storage tank system and the substance to be stored in the tank.

We request that water suppliers downstream of the proposed and existing storage tank systems also be provided with the same information afforded to the local municipality and the county. Access to this information will better help water utilities prepare and respond to a spill that contaminates drinking water.

Additionally, we suggest that the public notice provision apply to all tanks within 20 upstream miles of a water system that could be contaminated by a release. A 2014 chemical spill in West Virginia that left about 300,000 people without water came from a 10,000 gallon tank. We recommend that the proposed revisions adjust the threshold for notification accordingly. (8)

Response: The Department appreciates the comment. However, the public notice requirements of § 245.236 are based on and limited by Section 1101(a) of the Storage Tank Act, 35 P.S. § 6021.1101(a). This section of the act, pertaining to the siting of new AST facilities, only requires notification to the local municipality and county of ASTs greater than 21,000 gallons capacity. In addition, following the 2014 spill in West Virginia, a report issued by the United States Chemical Safety and Hazard Safety Board (CSB) found that 10,000 gallons of product was released from a AST with a capacity of 46,000 gallons. One of the contributing factors of the release discovered by the CSB was West Virginia did not have a comprehensive AST law at the time of the release. In Pennsylvania, an owner of a 46,000-gallon regulated AST would be required to serve public notice to the local municipality and county in which it was located upon installation. In addition, the Department's storage tank regulations cover ASTs and require periodic inspection and emergency and secondary containment, in addition to release notification requirements (See Chapter 245, Subchapter F).

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

37. Comment: Subchapter D Corrective Action Process – The term suspected release was added to various items in this subchapter. The term is not defined and is subject to interpretation. (9)

Response: The Department has not provided a definition of suspected release. Similar to the Federal UST regulations at 40 CFR § 280.50, the Department has provided a list of conditions in § 245.304(a) that indicate a release may have occurred and must be investigated. A storage tank owner or operator is required to promptly investigate any

event, condition or result which may indicate a suspected release in accordance with § 245.304(a).

- 38. Comment:** EQB is adding the phrase "suspected release investigation" to § 245.301, relating to purpose. For consistency we suggest the term "suspected release" be added to § 245.302 (relating to scope) of the regulation. (20)

Response: The Department agrees and has added the suggested language to § 245.302 in the final-form rulemaking.

- 39. Comment:** Under the proposed version of 25 Pa. Code § 245.303(e), PADEP is granted authority to waive or combine requirements relating to the corrective action process for storage tank systems based on the nature, extent, type, volume or complexity of the release, "including a release to a containment structure or a facility that is shown to be liquid-tight." We are puzzled by the premise that the corrective action process would apply in circumstances where regulated substances have reached a liquid-tight secondary containment system and therefore presumably have not entered the environment. The corrective action process focuses on how to respond to regulated substances that make their way from a regulated storage tank system into the environment. Further clarification of the proposed language referenced above would be helpful in delineating how the foregoing provision is to be interpreted. (11)

Response: The presence of regulated substance in a containment structure or facility that is shown to be liquid-tight, whether considered a "release" or not, must still be addressed. The regulated substance cannot remain in the containment structure or facility. However, the extent of the corrective action may be limited to the complete removal and proper disposal of the regulated substance, and repair or replacement of the defective storage tank component. In this instance, § 245.303(e) provides for a waiver of further corrective action requirements, such as a site characterization and a remedial action plan. The Department has retained the proposed amendments to § 245.303(e) in the final-form rulemaking.

- 40. Comment:** With regard to § 245.304 (relating to investigation of suspected releases), we would like clarification on (a)(1) regarding '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.

The commentator operates 18 wastewater plants. While controlling the plants' odors is of paramount importance, it is one of the most challenging aspects of wastewater treatment. Although many naturally occurring odors are contained within the proximity of the plant, some odors drift to surrounding areas. Common odors lingering in and around treatment plants smell like rotten eggs, ammonia or garlic while others are described as earthy or organic. These odors originate from the decomposition of organic compounds and can vary in intensity depending upon factors such as the weather (e.g. wind, temperature, humidity) and even plant maintenance.

We recommend that the proposed regulations take into account the unique 'vapor' qualities associated with wastewater plants. Naturally occurring 'vapors' or 'odors' do not indicate a 'suspected release' as vapors are part of the normal operation of the plant. However, because not all odors or 'vapors' are created equally and factors outside of human control can influence the intensity of those odors, the commentator requests further clarification and consideration for the unique odor qualities associated with wastewater treatment plants. (8)

Response: Subsection 245.304(a)(1) requires an owner or operator to investigate a suspected release if the owner or operator detects an unusual level of vapors from a regulated substance at or near the storage tank facility. For this requirement to apply, the vapor would have to be of a regulated substance stored in a regulated storage tank at the facility. Odors that originate from the decomposition of organic compounds at wastewater treatment plants are not vapors from a regulated substance. Therefore, these vapors are not an indication of a suspected release and do not have to be investigated. The Department has not made the requested amendments in the final-form rulemaking.

- 41. Comment:** If the regulation is changing from addressing “indications of a release” to “suspected releases”, then, consistent with the rest of the paragraph, the last sentence of § 245.304(a) should read, “An indication of a suspected release...” (10)

Response: The Department agrees and has amended § 245.304(a) in the final-form rulemaking to read: “The owner or operator of a storage tank system or storage tank facility shall initiate and complete an investigation of a suspected release of a regulated substance as soon as practicable, but no later than 7 days after the indication of a suspected release. An indication of a suspected release includes one or more of the following conditions...”

- 42. Comment:** Proposed Section 245.304(a)(6) would classify the discovery of any damage to a storage tank system as an "indication of release." We have two concerns with this amendment. First, it is unclear whether every "indication of release" is a "suspected release" and therefore triggers the obligation to investigate. This ambiguity is created by the proposal to change "investigation of an indication of a release" to "investigation of a suspected release" where it first appears in Section 245.304(a), while continuing to list conditions that constitute an "indication of release." We recommend clarifying this ambiguity.

Second, classifying any "damage to a storage tank system" as an indication of release is overly broad. Certain types of damage such as peeling paint, dents or surficial rust are not signs of a release. They should not trigger investigation and recordkeeping requirements that would impose burdens on storage tank owners and other members of the regulated community. If the Board concludes that the existing language in Section 245.304(6), "the discovery of holes in a storage tank," is inadequate to cover conditions presenting a risk of release, then "damage" should be qualified by additional language, such as "damage creating a pathway for a regulated substance from a storage tank system to be released." (13)

Subsection 245.304(a)(6) is being amended to include the discovery of "damage" to a storage tank system. A commentator believes this addition is vague and as an example asks if chipped paint would be considered damage. We ask EQB to explain how it will implement this provision in the Preamble to the final-form regulation and clarify § 245.304(a)(6) accordingly in the final-form regulation. (20)

Response: The Department has clarified § 245.304(a) in the final-form rulemaking to avoid ambiguity. The proposed addition in § 245.304(a) of the word "suspected" in the phrase "investigation of a suspected release" has been carried over into the phrase "indication of a suspected release" in this subsection in the final-form rulemaking. The discovery of damage to a storage tank system is an indication of a suspected release and requires the owner or operator to investigate the suspected release to confirm whether a release of a regulated substance has occurred. The investigation must include a sufficient number of procedures as outlined in § 245.304(b).

The addition in § 245.304(a)(6) of "damage to a" storage tank system as an indication of a release is not overly broad and will not result in unnecessary investigations or recordkeeping requirements. The Department notes that § 245.304(b) requires an investigation of an indication of a release, including damage to a storage tank system, by one of a number of means, such as checks of equipment, monitoring devices and visual inspections (§ 245.304(b)(1)-(7)). An investigation does not require every listed analysis. Instead, it requires enough to confirm whether a release occurred. This is important to protect the environment. For instance, if a storage tank owner or operator discovers that damage such as dents or paint peeling has occurred, the owner may perform a visual inspection of the storage tank system and need not pursue further corrective action if the visual inspection confirms that no release has occurred. This approach was included in proposed § 245.304(d), which is deleted in the final-form rulemaking. Subsection 245.304(c) has been amended in the final-form rulemaking to incorporate proposed § 245.304(d). Subsection 245.304(c) is also amended in the final-form rulemaking to incorporate language from existing § 245.304(d) to clarify the actions an owner or operator needs to take upon completion of a suspected release investigation, to include when the investigation cannot determine whether a release of a regulated substance occurred.

43. Comment: Section 245.305(b) proposes that operators report to DEP "the cause of the release." In many cases, an investigation is necessary to determine the cause of the release; as such, § 245.305(b) should be written such that reported release notifications should include the "reasonably suspected cause of the release." (18)

Response: Language in existing § 245.305(b) states that "The notice ... shall be by telephone and describe, to the extent of information available..." (emphasis added). As such, the Department does not believe the suggested language is needed. If the owner or operator does not know the cause of the release at the time of the verbal notification, it may be reported as unknown.

44. Comment: The proposed version of Chapter 245 includes various new reporting requirements that mandate that the owner or operator of a regulated storage tank notify PADEP by telephone or electronic mail “as soon as practicable, but no later than 24 hours” after the following events:

- initiation of “interim remedial actions;”
- provision of an alternate source of water to the owner of the affected or diminished water supply; and
- initiation of site characterization activities.

Chapter 245 already includes provisions establishing timeline for activities relating to the corrective action process. The additional notification requirements simply add further layers of procedural requirements without serving any beneficial purposes. PADEP can certainly establish expectations regarding communications concerning an incident once the initial release report has been made. The type of immediate reporting regarding the kind of activities described above is unlikely to change in any material manner the way in which response actions are being conducted. We respectfully request that these additional notification requirements be eliminated. (11), (18)

Response: Subsection 245.306(e) was proposed to 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. This requirement remains in the final-form rulemaking. 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 they do require a report to be submitted within 20 days after release confirmation summarizing the initial abatement steps taken. The proposed requirements in § 245.306(e) differ from the Federal regulations by requiring notification when an interim remedial action is initiated. Such notice is less onerous than requiring a report of initial abatement steps and 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.

Subsection 245.307(e) was proposed 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 is not onerous but necessary to 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. Section 1303 of the Storage Tank 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. This requirement remains in the final-form rulemaking.

Subsection 245.309(c)(24) was proposed to 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. Therefore, one notification may be made to comply with §§ 245.306(e) and 245.309(c)(24). This provision is necessary to 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 should 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) require that owners and operators submit an initial site characterization report and a free product removal report, respectively, within 45 days of release confirmation. The Department is not proposing incorporation of the Federal regulatory provisions. This proposed notification requirement in § 245.309(c)(24) remains in the final-form rulemaking.

- 45. Comment:** With regard to § 245.307 (relating to affected or diminished water supplies), we would like further clarification on the alternate source of water to be provided to the owner of the affected or diminished water supply. When water supplies of public water utilities are contaminated, the burden falls on the public water supplier to find replacement water supplies as quickly as possible. Temporary water supplies may include emergency connections to other public water supply utilities or bottled water. Temporary measures must be accomplished by the public water supplier immediately and should not be delayed with notifications to the responsible party. The public water supplier is responsible for the provision of a permanent replacement water supply. The water supplier must be able to recover costs associated with these temporary and permanent water supply replacements from the responsible party. (8)

Response: Existing § 245.307(c) and (d) establish the timeframes and circumstances under which a responsible party shall provide a temporary or permanent water supply, respectively. These subsections are not amended in this rulemaking. A temporary water supply typically involves providing bottled water. A permanent water supply may include the connection to an existing public water supply or a treatment system. The responsibility for providing an alternate source of water lies solely on the responsible party. The addition of subsection (e) in the final-form regulation requires the responsible party to notify the Department within 24 hours of providing an alternate source of water to the owner of the affected or diminished water supply. Section 245.307 does not require a public water supplier to make any notifications to the Department or to the responsible party.

- 46. Comment:** Amendments are proposed to 25 Pa. Code § 245.311 that mandate that a remedial action plan must be submitted “prior to its implementation.” This new requirement may create problems for both PADEP and remediators. Interim response actions may blend smoothly into remedial actions making it difficult to distinguish precise lines of demarcation where one begins and the other ends. Moreover, PADEP and the person conducting remediation may decide that it makes sense to move ahead

with remedial actions even while a remedial action plan is being prepared. For example, it may make little sense to delay remedial actions to reduce the further spread of regulated substances while a formal remedial action plan is prepared. We suggest that this provision be removed. (11), (18)

Response: Submission of the remedial action plan prior to its implementation is not a new requirement, but rather a clarification of the existing requirement. Remedial action plans have always been subject to review by the Department prior to implementation under existing § 245.311(b) and (c). Further, existing § 245.312(a) states: “Upon reasonable notice by the Department to the responsible party, or upon approval of the remedial action plan by the Department, the responsible party shall implement the remedial action plan, or portion of the remedial action plan, according to the schedule contained therein.” It is important to note that the Department may allow a responsible party to implement the remedial action plan or portion of the remedial action plan prior to formal approval of the plan under this provision. The amendments requested in the comment have not been made in the final-form rulemaking.

Subchapter E – Technical Standards for Underground Storage Tanks

47. Comment: We respectfully suggest that DEP consider a retroactive mandate that would require all single wall USTs be either replaced or upgraded with double wall systems. (3)

Response: A requirement that would mandate all single-wall USTs to be replaced or upgraded to double-walled systems by a certain date is more stringent than the Federal requirements. Therefore, to consider such a provision, the Department would need to justify the compelling Pennsylvania interest that demands stronger regulations. At the current time, the Department does not possess the necessary data to consider incorporating such a provision in Chapter 245.

48. Comment: Section 245.402 should be amended to clarify that it applies to underground storage tanks systems; the adjective “underground” was not included in the proposed language. (18)

Response: Proposed § 245.402 states, “This subchapter applies to underground storage tank systems regulated under the act and this chapter.” The term “underground” is in the existing and proposed section; therefore, no revision is needed.

49. Comment: We are concerned about how the EQB plans to revise its regulation of UST systems that are part of emergency generators at nuclear power facilities regulated by the Nuclear Regulatory Commission (NRC). In the 1988 federal UST program, EPA provided a deferral for “[a]ny UST system that is part of an emergency generator system at nuclear power generation facilities licensed by the Nuclear Regulatory Commission under 10 CFR part 50, appendix A.” As a result, the only provisions that these tank systems were subject to were § 280.11, the only section of Subpart A with substantive requirements, and Subpart F, the release response and corrective action provisions. In the final rule, all EPA did was replace the term “deferral” with the term “partial exclusion” and exempt these tank systems from the newly promulgated requirements. The EPA did

not impose any new obligations on these tank systems in the 2015 UST final rule. We strongly urge the Pennsylvania EQB to follow EPA's lead and retain the Agency's partial exclusion for these tank systems. (5)

We oppose the deletion of the following two exemptions from the definition of underground storage tank contained in 25 PA Code § 245.1...

(xiii) Tanks containing radioactive materials or coolants that are regulated under The Atomic Energy Act of 1954 (42 U.S.C.A. §§ 2011—2297).

(xviii) 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).

...and their replacement with partial exclusions in new Subchapter E §§ 245.403(c)(2) and 245.403(c)(3) as follows:

(c) Partial exclusions. The following underground storage tanks systems are not required to comply with §§ 245.411, 245.421(b)(3) and (4)(ii) and (iii), 245.422(d), 245.432(g) and 245.436 – 245.446:

(2) An underground storage tank system containing radioactive material that is regulated under the Atomic Energy Act of 1954 (42 U.S.C.A. §§ 2011—2296b-7).

(3) An underground storage tank system that is part of an emergency generator system at a nuclear power generation facility licensed by the United States Nuclear Regulatory Commission and subject to United States Nuclear Regulatory Commission requirements regarding design and quality criteria, including 10 CFR Part 50 (relating to domestic licensing of production and utilization facilities).

The proposed changes would unnecessarily create an inconsistency in the degree of regulation between 40 CFR 280 and 25 PA 245 for nuclear-related storage tanks, with the inconsistency imposing more stringent than federal requirements on affected USTs at nuclear-related facilities in Pennsylvania.

In order to retain consistency between federal and state regulations for these two categories of nuclear-related tanks, we propose that PA DEP replace the proposed changes to 25 PA 245 with the following revisions:

1. Revise the definition of *Underground Storage Tank* under 245.1 Definitions, so that these two categories of nuclear-related tanks be subject only to the portions of 25 PA 245 that are equivalent to 40 CFR 280 Subpart A (Program Scope and Installation Requirements for Partially Excluded UST Systems) and Subpart F (Release Response and Corrective Actions for UST Systems containing Petroleum or Hazardous Substances); and,

2. Explicitly exclude these two categories of tanks from those portions of 25 PA 245 that are equivalent to 40 CFR 280 Subparts B, C, D, E, G, J, and H.

Additionally, we request that PADEP clarify that the Part 280 Subpart A installation requirements apply to the installation of new tanks, which we believe is the intent of the Part 280 regulation. This would not impose any new requirements for existing tanks within these two categories of nuclear-related tanks. (7)

The regulation of Underground Storage Tank (UST) systems containing radioactive materials or coolants that are regulated under The Atomic Energy Act of 1954 and UST 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, should be consistent with the requirements and exclusions in 40 CFR § 280. Therefore, the proposed rule should be revised to be consistent with, and no more stringent than, EPA's 2015 final rule.

In the 1988 Federal UST program, EPA provided deferral for these UST systems. These USTs were deferred from Subparts B, C, D, E, and G of the UST regulations and exempted from Subpart H financial responsibility requirements. The only provisions that these UST were subject to were Subpart A, § 280.11 and Subpart F, release response and corrective action provisions. Note that section § 280.11 was an interim prohibition on installing UST systems unless the UST system would prevent releases due to corrosion or structural failure, was cathodically protected or designed to prevent releases, and compatible with the stored substance. The prohibitions at §280.11 were for new installations of UST systems, while the upgrading requirements for existing UST systems were located at § 280.21 (Subpart B). These UST systems were deferred from the requirements of Subpart B.

In the 2015 revisions, EPA examined the Department of Energy and the NRC regulations under 10 CFR 50 and determined that the requirements are comparable to EPA requirements. Based on this analysis, EPA decided to replace the deferral for these tank systems with a partial exclusion from most requirements, but explained that "the regulatory requirements in Subparts A and F remain the same". EPA changed the wording of the title of Subpart A § 280.11 and changed the provision to clarify that this requirement is an installation requirement. All EPA did in the final rule was replace the term "deferral" with the term "partial exclusion" and exempted these UST systems from the newly promulgated requirements. EPA did not impose any new obligations on these UST systems in the 2015 final rule. EPA originally adopted the 1988 deferrals for these UST systems because it was concerned about the possibility of dual regulation with NRC requirements. In 2015 the Agency reconfirmed that the NRC requirements were comparable to the UST regulations and decided to continue to provide the exemptions for these USTs. We strongly urge the Pennsylvania EQB to follow EPA's lead and retain the Agency's partial exclusion for these existing UST systems that are already regulated by the NRC. Specifically, the existing UST should only be subject to PA 245, Subchapter D, pertaining to corrective actions. (9)

Because Existing Emergency Diesel Generator (EDG) UST systems subject to Nuclear Regulatory Commission (NRC) regulations are NOT exempt from the appropriate and pertinent federal UST regulations, PADEP should continue the policy of exempting these tanks from State regulations that would be redundant with NRC requirements. We have reviewed the 2015 federal changes to the Underground Storage Tank Program under 40 CFR Part 280 and the PADEP Proposed Rulemaking change to 25 PA Code 245. The 2015 revised Federal requirements, for existing nuclear EDG UST regulated by the NRC under 10 CFR50, are only required to comply with Subpart F of the rule. Essentially, all EPA did in the final rule was replace the term “deferral” with the term “partial exclusion” and exempt these tank systems from the newly promulgated requirements. The Agency did not impose any new obligations on these tank systems in the 2015 UST final rule. This should correlate to the EDG UST systems at nuclear facilities being subjected to only Subchapter of the PA Code 245 regulations. The PADEP appears to have misinterpreted the newly revised Federal Rule to include the existing EDG USTs in additional subparts. Talen proposes that the Proposed Rulemaking clearly distinguish the existing EDG USTs at nuclear generating facilities be subject to only PA 245 Subchapter D. If the proposed rules were applied as currently written in the Proposed Rulemaking, the nuclear stations will be dually-regulated by two separate agencies (NRC and the PADEP) under separate regulatory programs. This proposed dual regulation would put an unnecessary and financial burden on the nuclear generation sites.

If NRC regulated EDG USTs are not exempted from State regulation, the requirements for existing facilities should not go beyond the NRC requirements. We specifically have concerns with proposed changes in § 245.422, if they were subject to the Proposed Rulemaking as currently drafted. We note that the regulations under § 245.422 would require Cathodic Protection (CP) upgrades of their EDG USTs to meet the National Association of Corrosion Engineers (NACE) CP performance criteria or other industry standard. While our CP systems for EDG USTs are currently installed and maintained, meeting the protection requirements in 10 CFR50, it would require a significant investment to upgrade the systems to be in compliance with the proposed regulations, regardless of its current site-specific design, testing practices, maintenance records, or past performance. We recommend that the State clarify that existing EDG USTs at nuclear generating facilities remain excluded from existing EDG USTs requirements, and if not, then the requirements should not require more than the existing NRC or EPA requirements. (10)

In 2015, the federal Environmental Protection Agency finalized a rulemaking (80 Fed. Reg. 41566) updating federal requirements for underground storage tanks. In its rulemaking proceeding, EPA determined that existing Department of Energy and Nuclear Regulatory Commission requirements (10 CFR 50) for nuclear power generation facilities were comparable in scope, intent and effectiveness to the EPA’s desired outcomes, and, out of concern for duplicative regulation, provided a partial exclusion for UST systems at nuclear facilities (specifically for Subparts B, C, D, E and G). The 2015 federal rule also retained applicability of Subpart F (regarding release response and corrective action), expanded exclusion for such UST systems for newly adopted Subparts J and K, and retained a provision of Subpart H regarding financial responsibility

requirements. We encourage DEP in its final rulemaking in this matter to retain the partial exclusion for these systems, as they are already effectively regulated by federal DOE and NRC requirements, and to make clear that it is interpreting 40 CFR 80 to only apply to the installation of new tanks. To wit, DEP should make clear that only PA Code 245 Subchapter D applies to nuclear facilities' tanks and emergency diesel generator USTs. (18)

EQB is proposing to amend this definition by deleting two exclusions and modifying other exclusions. Commentators are concerned that the deletion of existing Paragraphs (xiii) and (xviii) and the replacement of those exclusions with partial exclusions in § 245.302(c)(2) and (3) would create inconsistencies between Chapter 245 and federal regulations for nuclear-related storage tanks. We ask EQB to explain why the changes being proposed are needed and how they are consistent with and not more stringent than the federal regulation on this subject matter. (20)

Response: The definition of “underground storage tank” in § 245.1 of the final-form rulemaking retains the proposed deletion in Subparagraphs (xiii) and (xviii) of the two exceptions mentioned in the comments, to be consistent with the Federal definition of “underground storage tank” in 40 CFR § 280.12. Specifically, the definition of “underground storage tank” in the final-form rulemaking deletes 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 “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).” Deletion of these existing exclusions is consistent with the Federal definition of “underground storage tank” in 40 CFR § 280.12 (relating to definitions) and necessary for Pennsylvania to re-apply for State Program Approval from EPA.

Please also see the response to Comment 24.

EPA has long regulated these UST systems, and owners and operators have been required to comply with “interim prohibition” requirements pertaining to corrosion protection and compatibility with the regulated substance stored since May 7, 1985. The “interim prohibition” requirements were established in 1984 when Subtitle I was added to the Solid Waste Disposal Act through the Hazardous and Solid Waste Amendments which authorized the Federal program to regulate USTs. On December 22, 1988, the same “interim prohibition” requirements, along with release response and corrective action requirements, were promulgated in 40 CFR Part 280, Subparts A and F. At that time, these UST systems were deferred from Federal regulation with the exception of Subparts A and F. In its July 15, 2015 Final Rule, EPA maintained its position that these regulated USTs only need to comply with Subparts A and F. In summary, nuclear-related UST systems installed on or after May 7, 1985, need to be protected against corrosion and be compatible with the substance stored. Further, all nuclear-related UST systems regulated as of December 22, 1988, need to comply with the release response and corrective action requirements in 40 CFR Part 280.

The Department currently excludes these UST systems from regulation but will now regulate these USTs. In doing so, § 245.403(a) states that these USTs 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), and as stated in § 245.403(c), 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. UST owners will not be required to conduct facility inspections, install spill and overfill prevention equipment, check for water in petroleum storage tanks, implement operator training, conduct periodic operation and maintenance walkthrough inspections, and perform release detection. It has been clarified in § 245.403(c)(2)-(3) of the final-form rulemaking that the requirements do not apply to UST systems installed on or after May 7, 1985. However, the Department believes that it is important for owners of these USTs to register the USTs, utilize DEP-certified installers and inspectors, and maintain financial responsibility. These USTs are now regulated and all regulated USTs need to be registered with the Department. If the USTs are not registered with the Department, then the Department will not know where these USTs are, the number of these newly regulated USTs, and if the USTs are in compliance with applicable regulations.

All regulated USTs in the Commonwealth need to be installed, modified and removed by Department-certified installers. Since UST owners and operators will need to meet the corrective action process requirements of Chapter 245, Subchapter D, it only follows that the financial responsibility requirements of Chapter 245, Subchapter H apply. Financial responsibility is met by participating in the USTIF, which provides coverage for corrective action and third-party damages should a release occur. In addition, specifically with regard to Subchapter E, provisions concerning variances, applicable codes and standards, performance standards for new UST systems, upgrade requirements for existing UST systems, reuse of removed USTs, spill and overfill control, operation and maintenance including corrosion protection, compatibility, repairs allowed, reporting and recordkeeping, and closure, will apply to these UST systems. New § 245.403(c)(4) has been added to the final-form rulemaking to clarify that UST systems installed before May 7, 1985, are not required to comply with §§ 245.411—245.422, 245.424, 245.432, 245.433, and 245.436—245.446.

50. Comment: § 245.403(d)(2) Registration of previously deferred USTs – Thirty days to register USTs that were previously not required to be registered may not be an adequate amount of time. The UST may have been installed many years ago and installation records will need to be retrieved and reviewed. We propose that 60 days be provided to submit the registrations to DEP. (9)

Under § 245.403(d), EQB is adding a requirement that UST systems that were previously excluded from registration with DEP be registered within 30 days of the effective date of this rulemaking. A commentator has stated that it may be difficult to obtain the necessary information to register a tank in that time period and has suggested 60 days as an alternative. We ask EQB to address the reasonableness of the proposed 30-day time period compared to the 60-day time period suggested by the commentator. (20)

Response: The Department has amended the proposed 30-day timeframe in § 245.403(d) in the final-form rulemaking to provide owners of previously excluded USTs 60 days to register the USTs.

51. Comment: We request that DEP consider adopting the UL1856 Standard into their regulations. A step that many other States have already taken. The UL1856 Standard gives Pennsylvania Fuel Marketers UST upgrade options which will mitigate their environmental risk by upgrading to an in-situ double wall tank system without the costly necessity of tank removal. (3)

Response: This final-form rulemaking removes all remaining citations to specific codes and standards since codes and standards are subject to revision. Instead, with respect to UST systems, existing § 245.405 (relating to codes and standards) identifies the nationally recognized associations and states that the most current or latest edition of the codes and standards must be used in conjunction with the manufacturer's specifications to comply with the regulatory requirements of Subchapter E (relating to technical standards for underground storage tanks).

52. Comment: Section 245.411(c)(2) allows the PADEP to request a third party inspection for any reason. Third party inspections are an expense to the tank owner and should be limited to circumstances where there is true justification such as a compliance due date or to verify resolution of a previously non-compliant inspection. It is proposed the language of 245.411(c)(2) be amended as follows: "An inspection in addition to those required in (b) and (c)(1) may be required by the Department when the prior inspection determined release detection, corrosion protection or operational violations occurred." (19)

Response: The Department respectfully disagrees with the commentator that § 245.411(c)(2) "allows the PADEP to request a third party inspection for any reason." Subsection 245.411(c)(2) specifically states that the Department may only request a subsequent inspection other than routine "when the prior inspection determined release detection, corrosion protection or operational violations occurred, or when the Department determines the inspection is necessary to verify compliance..." The amendment requested in the comment has not been made in the final-form rulemaking.

53. Comment: Suggest to eliminate a 30-minute ball float as an acceptable method of overfill protection for tanks. Options should be 90% ball float for restriction (not an option for new), high level alarm set at 90% or automatic shutoff set at 95%. (15)

Response: The Department agrees. In the proposed rulemaking, the Department deleted overfill prevention methods (§ 245.421(b)(3)(i)(B)(III)) that "Restrict flow 30 minutes prior to overfilling, alert the operator with a high-level alarm 1 minute before overfilling, or automatically shut off flow into the tank so that none of the fittings located on top of the tank are exposed to product due to overfilling." The 30-minute ball float is specifically designed to meet the 30-minute warning requirement for product flow restriction in a UST and is being deleted as an available option. Under the proposed

rulemaking, overfill prevention equipment must either automatically shut off flow into the UST when the UST is no more than 95% full or alert the transfer operator when the UST is no more than 90% full by restricting the flow into the UST or triggering a high-level alarm. The Department retained the proposed amendments in the final-form rulemaking.

- 54. Comment:** § 245.433 Compatibility, Subsections b & c – The proposed amendments require owners and operators to demonstrate UST system compatibility when storing alternative fuel blends, biodiesel or biodiesel blended fuel. The term “alternative fuel blend” is not defined in the proposed amended rule and therefore, would be subject to interpretation. In addition, all diesel fuel may contain some quantity of biodiesel. Therefore, potentially all diesel fuel would be a biodiesel blended fuel. The proposed rule should be limited to diesel fuel containing greater than 2 percent biodiesel. Otherwise, owners/operations will incur a significant paperwork burden with no added benefit in protecting the environment. (9)

Section § 245.433 requires owners or operators to use USTs that are made or lined with material that is compatible with the substance being stored. New Subsection (b) will require an owner or operator of a UST storing alternative fuel blends or biodiesel or biodiesel blended fuel to provide certain information to DEP. A commentator notes that the term “alternative fuel blends” is not defined and also asks if DEP will consider all diesel fuel to be biodiesel fuel. To improve the clarity of the regulation, we ask EQB to define the term “alternative fuel blends.” We also ask EQB to clarify whether all diesel fuel would be considered biodiesel fuel. (20)

Response: The Department has deleted in the final-form rulemaking the terms “alternative fuel blends,” “biodiesel,” and “biodiesel blended fuels” from the amendments that were proposed to § 245.433. Certain proposed reporting requirements remain.

Subsection 245.433(a) (relating to compatibility) in both the proposed and final-form rulemaking mirrors the requirements of Federal regulations at 40 CFR § 280.32(a) and states, “Owners and operators shall use an underground storage tank system made of or lined with materials that are compatible with the substance stored in the underground storage tank system.” Subsection 280.32(b)(1) of the Federal regulations requires owners and operators to notify the implementing agency (in this case, DEP) and demonstrate compatibility for any regulated substance. As such, compatibility documentation is to be maintained for all regulated UST systems. The Department notes that § 245.435 (relating to reporting and recordkeeping) requires regulated UST owners and operators to cooperate fully with Department requests for documentation and retain UST installation documentation for the life of the UST system.

In recognition of the concern that the requirement to submit compatibility information for “alternative fuel blends or biodiesel or biodiesel blended fuel” is subject to interpretation and lacks clarity, and due to the fact that the Department may request an owner or

operator to provide compatibility documentation for any regulated substance under § 245.435, the Department amended § 245.433(b) in the final-form rulemaking to read: “Upon Department request, an owner and operator of an underground storage tank shall submit on a form provided by the Department information verifying compatibility of the underground storage tank system with the substance stored prior to storing the substance in the underground storage tank.”

Subsection 245.433(c) of the final-form rulemaking provides four ways for UST owners and owners to document compatibility. These are modified slightly from the proposed rulemaking to account for removing the terms “alternative fuel blends” and “biodiesel blended fuels.” Subsection 245.433(c)(2) in the final-form rulemaking reads: “The manufacturer's approval must be in writing, indicate an affirmative statement of compatibility with the substance stored, and be from the equipment or component manufacturer.”

By providing several means for a UST owner and operator to provide compatibility documentation for a regulated UST system, the Department is balancing the need to protect the environment with a UST owner and operator's ability to show compatibility of the UST system with the substance stored. Since compatibility documentation is to be maintained for all regulated UST systems, the proposed wording “Upon Department request,” has been deleted in the final-form § 245.433(c), and the provision has been amended to read: “An owner and operator of an underground storage tank system shall demonstrate compatibility of the underground storage tank system with the substance stored by using one or more of the following:”

55. Comment: The PADEP states the goal of revising § 245.433(c) is to be consistent with 40 CFR 280.32(b)(1). It should be noted that the intent of 40 CFR 280.32(b) is to require the UST owner/operator to demonstrate compatibility documentation only for those tanks containing greater than 10% ethanol and 20% biodiesel. The PADEP's proposed language in § 245.433(c) is overly broad and goes beyond EPA's intent. EPA's intent is clearly demonstrated in document EPA 510-K-15-002 dated November 2015 "UST System Compatibility with Biofuels".

Specifically, the PADEP proposes an owner to produce compatibility documentation as follows:

"(c) Upon Department request, an owner and operator of an underground storage tank system shall demonstrate compatibility of the underground storage tank system by using one or more of the following:"

Many of the UST systems date back over 30 years and have changed ownership on more than one occasion. Additionally, these UST systems have contained low levels of ethanol for more than 13 years with few adverse consequences. Retroactively requiring documentation on these very old systems may be impossible in some instances. The PADEP will have little recourse but to require UST system decommissioning or other invasive and costly investigation to demonstrate compatibility.

It is recommended the PADEP revise the proposed language of § 245.433 to limit the documentation requirement to petroleum fuel blends containing greater than 10% ethanol and 20% biodiesel and other non-petroleum regulated materials, as required by federal regulations. (19)

A commentator believes the new requirements found in § 245.433(c) are more stringent than the Federal requirements found at 40 CFR § 280.32(b) because the Federal requirements only apply to USTs containing greater than 10% ethanol and 20% biodiesel fuel. They note it will be difficult to produce the required documentation for older UST systems, and this could lead to the decommissioning of tanks. We note that Subsection (c) only requires the submittal of the information to demonstrate compatibility upon the request of DEP. How will DEP implement this provision? Under what circumstance would DEP require the information? Would it apply to all USTs? If Subsection (c) is more stringent than the federal requirement, what is the need for it? (20)

Response: The Department respectfully disagrees that only USTs storing greater than 10% ethanol and 20% biodiesel are required to demonstrate compatibility. In both the proposed and final-form rulemakings, § 245.433(a) mirrors the requirements of Federal regulations at 40 CFR § 280.32(a) and states, “Owners and operators shall use an underground storage tank system made of or lined with materials that are compatible with the substance stored in the underground storage tank system.” Subsection 280.32(b)(1) of the Federal regulations requires owners and operators to notify the implementing agency (in this case, DEP) and demonstrate compatibility for any regulated substance. As such, the final-form § 245.433(c) is not overly broad or more stringent than Federal requirements. Compatibility documentation should be maintained for all regulated UST systems, regardless of a UST system’s age or installation date. The Department notes that § 245.435 (relating to reporting and recordkeeping) requires regulated UST owners and operators to cooperate fully with Department requests for documentation and retain UST installation documentation for the life of the UST system.

The Department acknowledges the commentator’s concern over situations in which compatibility documentation may be difficult to provide. However, § 245.433(c) (both proposed and final-form) provides four ways for UST owners and operators to document compatibility. By providing several means for a UST owner and operator to provide compatibility documentation for a regulated UST system, the Department is balancing the need to protect the environment with a UST owner and operator’s ability to show compatibility of the UST system with the substance stored.

In recognition of another commentator’s concern that the requirement to submit compatibility information for “alternative fuel blends or biodiesel or biodiesel blended fuel” is subject to interpretation and lacks clarity (please see Comment 54), and due to the fact that the Department may request an owner or operator to provide compatibility documentation for any regulated substance under § 245.435, the Department amended § 245.433(b) in the final-form rulemaking to read: “Upon Department request, an owner and operator of an underground storage tank shall submit on a form provided by the

Department information verifying compatibility of the underground storage tank system with the substance stored prior to storing the substance in the underground storage tank.”

56. Comment: Many UST owners and operators have modernized many aspects of UST compliance to electronic applications and dispatch systems. As a result, physical paper documentation may not exist. This modernization simplifies archiving, accountability and distribution of information. Additionally, these systems are a benefit to the environment as less paper is consumed. Section 245.435 should be revised to explicitly state that wherever recordkeeping is required in the regulations, electronic records and documentation are permitted. (19)

Response: The Department acknowledges the statement regarding the increased use of electronic means for storing and transmitting data. Section 245.435 states what records are required and is for the most part silent on how those records must be stored or submitted to the Department. The Department has added language to the Preamble of the final-form rulemaking to clarify that electronic records and documentation are permitted as long as the submission meets the requirements of the regulations.

57. Comment: Due to the significant changes in the regulations, mandatory retraining of current Class A and Class B operators is necessary. However, the regulations do not need to include a recertification requirement. (1)

Given the significant changes in the regulations, how is the Department going to ensure that current Class A/B operators are trained on those changes. It is likely, at least in the short term, that many owners/operators will not be aware of the new requirements. The Department needs to consider how it will address this issue. (17)

Response: The Department believes that all affected parties need to be informed about these regulatory amendments. This includes all AST and UST owners and operators, and all Department-certified companies and individuals. Therefore, instead of requiring mandatory retraining of current Class A and Class B operators, which would not come without cost, the Department will implement an aggressive outreach program to inform all affected parties of the regulatory amendments through targeted mailings, email alerts and webinars. The Department believes that these are the most effective methods to reach all affected parties with regard to the regulation changes and can be implemented immediately upon the effective date of the final-form rulemaking. The Department agrees that a recertification requirement is not necessary.

58. Comment: The proposed regulations should be amended to allow UST owners and service providers to request alternate sump testing methods other than those presently prescribed. The alternate method would be subject to PADEP or EPA approval. As the sump testing requirements continue to evolve, limitations to codes of practice such as RP 1200 are being realized as these standards cannot contemplate all sump designs, UST system layouts or alternative technologies.

Both the PADEP and the regulated community could realize great benefit if some flexibility is built into this regulatory requirement. If included this provision should include a defined application and review process as follows:

- 1) Include a defined protocol for alternate method proposal
- 2) Mandate a timeline that the PADEP has to approve or deny the alternate method
- 3) If denied, require the PADEP to provide a technical argument for its denial
- 4) Provide for an appeal program if the proposer of the alternate method would like to challenge the PADEP's decision. (19)

Response: The Department respectfully disagrees with the suggestion to include additional language in proposed § 245.437 (relating to periodic testing) in the final-form rulemaking. The language in proposed § 245.437 requires owners and operators to test containment sumps in accordance with requirements developed by the sump manufacturer or a code of practice developed by a Nationally recognized association or independent testing laboratory. The Department allows alternative methods if the other method of testing is no less protective of human health and the environment than the two previously mentioned requirements. The Department believes sump manufacturers and industry standards or independent testing laboratories are reliable sources to provide safe and effective sump testing methods.

59. Comment: We understand that many of the new inspection and testing requirements are being promulgated because of the 2015 revisions to 40 C.F.R. §§ 280.35 and 280.36. However, it appears that the requirement at 25 Pa. Code § 245.437(a)(3) to test the electronic and mechanical components of release detection equipment at least annually goes beyond the corresponding federal requirements. Furthermore, because the new requirements at 25 Pa. Code § 245.438(a)(1)(ii) require an inspection of release detection equipment to ensure proper operation at least every 30 days, as well as a review of test records for release detection equipment at least every 30 days, we believe that the proposed annual testing requirement for the same equipment is redundant and unnecessary. Because of the substantial additional financial, recordkeeping, and reporting burdens that are being imposed on the regulated community as a result of the proposed changes to Chapter 245, we believe that including additional, unnecessary requirements is ill-advised. (11), (18)

Response: The Department respectfully disagrees. The requirement in § 245.437(a)(3) to test the electronic and mechanical components of release detection equipment for proper operation at least annually was added to be consistent with the Federal requirement at 40 CFR § 280.40(a)(3) (relating to general requirements for all UST systems).

Further, the requirement to conduct a walkthrough inspection at a minimum of every 30 days to check release detection equipment under § 245.438 was included in the proposed rulemaking to be consistent with the Federal requirement at 40 CFR § 280.36 (relating to periodic operation and maintenance walkthrough inspections).

During the 30-day walkthrough inspection, UST owners and operators will be required to check to make sure the release detection equipment is operating with no alarms or other unusual operating conditions present and to ensure records of release detection testing are reviewed and current. These actions differ from annual testing requirements, under which a Department-certified individual will be required to follow manufacturers' instructions to adequately determine if the installed equipment is functioning as originally installed. For example, the Department has encountered situations in the past where no alarms existed on the release detection equipment; however, during annual testing, it was discovered the release detection equipment had not been installed correctly. In requiring 30-day walkthrough inspections and annual testing of the release detection equipment, additional protections for reducing releases to the environment will be required and will not be redundant.

No changes made to proposed §§ 245.437 and 245.438 in the final-form rulemaking.

60. Comment: The inclusion of language in § 245.444(9) to allow for "other methods" of leak detection allows flexibility for future technology to be implemented. It is recommended the section be revised to define structure as follows:

- 1) Include a defined protocol for alternate method proposal.
- 2) Mandate a timeline that the PADEP has to approve or deny the alternate method.
- 3) If denied, require the PADEP to provide a technical argument for its denial.
- 4) Provide for an appeal program if the proposer of the alternate method would like to challenge the PADEP's decision. (19)

Response: The Department respectfully disagrees with the need to add additional language in § 245.444(8). The comment suggests the existing provision for "Other methods" is vague and does not provide a UST owner or operator with adequate information to determine whether an alternative method of release detection is appropriate to achieve compliance. This regulation mirrors EPA regulations and is an alternative to the other specific methods in § 245.444(1)-(7); it allows greater flexibility for owners and operators to comply with release detection requirements. Paragraph 245.444(8) as proposed states:

Other types of release detection methods, or a combination of methods, may be used if the owner or operator can demonstrate to the Department that one of the following exists:

- (i) It can detect a 0.2 gallon per hour leak rate or a release of 150 gallons within a month with a probability of detection of 0.95 and a probability of false alarm of 0.05.
- (ii) It can detect a release as effectively as any of the methods allowed in paragraphs (2)-(7). In comparing methods, the Department will consider the size of release that the method can detect and the frequency and reliability with which

it can be detected. If the method is approved, the owner and operator shall comply with conditions imposed by the Department on its use to ensure the protection of human health and the environment.

The Department could have limited UST owners and operators to only those methods listed in § 245.444(1)-(7). However, the Department continues to provide flexibility.

61. Comment: § 245.445 Methods of Release Detection for Piping, Subsection (iii) – The proposed amendment requires unattended UST systems utilizing pressurized piping installed on or before November 10, 2007, to be equipped with a method that restricts or automatically shuts off the flow of regulated substances and meets the requirements in this section. We agree that such UST systems should be equipped in this manner. However, existing UST systems should be afforded a 1 or 2-year period to meet this requirement. (9)

How will DEP implement this provision? Would a one or two-year grace period pose an immediate harm or threat to the environment? (20)

Response: The Department does not believe that a one-year or two-year timeframe to comply with § 245.445(1)(iii) is warranted. Thus, the Department is not amending the proposed rulemaking language.

On December 20, 2007, the Department issued a Technical Bulletin titled “Important Notice Regarding Interstitial Monitoring for Piping Release Detection.” The Technical Bulletin was based on existing § 245.445(1) and targeted DEP-certified companies and individuals who perform underground facility operations inspections. The Technical Bulletin is on the Department’s Division of Storage Tanks website under DEP Technical Guidance Documents, at <http://www.dep.pa.gov/Business/Land/Tanks/Pages/DEP-Technical-Guidance-Documents.aspx>

The second paragraph of the Technical Bulletin states: “In addition, if the regulated facility is a remote site and considered ‘unmanned,’ a method of piping release detection that restricts or shuts off the flow of product should be in place. Simply having an audible alarm at this type of facility is not acceptable as a compliant method of piping release detection.” The Department discussed this Technical Bulletin with DEP-certified individuals and has kept it readily available on the storage tank program’s website since February 2016. Therefore, all “unmanned” facilities have had at least one facility operations inspection since issuance and discussion of the Technical Bulletin. As a result, all facilities of this type should already be in compliance.

Subchapter F – Technical Standards for Aboveground Storage Tanks and Facilities

62. Comment: § 245.511 General operations and maintenance, § 245.513 preventive maintenance and housekeeping requirements, as well as multiple sections propose changing the phrase “an aboveground storage tank facility owner/operator” to “a storage

tank facility owner and operator.” Because there are multiple plants in Pennsylvania that have a different owner than operator, we believe that leaving the owner/operator terminology intact or even changing it to either the “owner or operator” avoids this confusion. (9)

Response: The phrase “storage tank facility owner/operator” has been amended throughout the final-form rulemaking to read “storage tank facility owner and operator” to clarify that the applicable requirement applies to both the owner and operator.

63. Comment: § 245.512 – the requirement to submit spill plan revisions within 120 days should allow the option for just submitting the changed sections of the plan. For large facilities with many tanks, revisions occur frequently and resubmitting an entire plan would be a waste of paper. Also, the option for electronic submittals should be allowed. (12)

Section 245.512 is being amended to require Spill Prevention Response Plan revisions to be submitted to DEP within 120 days of any necessary updates to the plan. Would the owner or operator of an AST facility have to submit the entire plan or just revisions to DEP? This should be clarified in the final-form regulation. (20)

Response: The Department has amended § 245.512 in the final-form rulemaking to clarify the intent of the proposed rulemaking, namely that the owner or operator of an AST facility would only need to submit changes to the current plan. In addition, language has been added to allow revisions of the plan to be submitted in writing or electronically. The language in the final-form rulemaking reads: “Plan revisions or any addendum to the initial plan shall be submitted to the Department in writing or electronically...” This change has also been made in § 245.603(a) of the final-form regulation. However, under §§ 245.512 and 245.603(a), a current copy of the entire plan must be readily available at the facility at all times.

64. Comment: § 245.512 & § 245.603 Facility operations and spill response plan – An initial Spill Prevention Response Plan shall be submitted to the Department for a storage tank facility with an aggregate aboveground storage capacity greater than 21,000 gallons. The proposed subsection change includes that “Plan revisions shall be submitted to the Department within 120 days of any occurrences as described in section 901(b) of the act.” We believe the proposed 120 days should be extended to 180 days (6 months) to correspond with the SPCC requirements that require that SPCC Plan amendments be prepared within 6 months of the change and implemented immediately, or within 6 months after preparation of the amendment. (9)

A commentator has requested that the 120-day mandate be extended to 180 days. This requirement also appears in § 245.603, relating to general storage tank facility requirements. If extending the time frame from 120 days to 180 days for submitted

revisions would not pose a harm or threat to the environment, we ask DEP to provide the regulated community this additional time for compliance. (20)

Response: The Department has amended §§ 245.512 and 245.603(a) in the final-form rulemaking to allow 180 days to prepare and submit revisions to the Spill Prevention Response Plan. However, the Department believes it is important to revise and implement the revisions as soon as possible.

65. Comment: Section 245.513(b)(2)(v) proposes monthly inspection of cathodic protection systems. We believe this is an unduly burdensome requirement, with costs likely to exceed benefits. We propose DEP move to a quarterly or semi-annual inspection requirement. (18)

Response: The proposed language in § 245.513(b)(2)(v) would have required the owner and operator of aAST to verify that cathodic protection systems are functioning as designed as part of the required monthly maintenance inspection. This monthly inspection would have included inspection of junction boxes, test stations, and other equipment to ensure all connections are secure and unaffected by corrosion and any installed rectifier is providing appropriate output.

In consideration of the comment received, proposed § 245.513(b)(2)(v) has been deleted and cathodic protection system testing requirements have been added in § 245.532(c) (relating to cathodic protection systems) in the final-form rulemaking. Also, for consistency, proposed § 245.613(b)(5) (relating to monitoring standards) has been deleted and cathodic protection system testing requirements have been added in new § 245.613(c) in the final-form rulemaking. These amendments will require testing of galvanic cathodic protection systems at least every 3 years and annual testing for impressed current systems. Impressed current systems will also be required to have current output recorded every 60 days. Both types of cathodic protection systems will be required to be tested within 6 months following installation and repair. The recordkeeping sections for both Subchapters F (See § 245.516) and G (See § 245.615) have been amended to include language regarding retention of cathodic protection system testing.

These cathodic protection inspection and testing requirements are no more stringent than the inspection and testing requirements established in nationally recognized codes and standards established by such organizations as the American Petroleum Institute and NACE International – The Corrosion Society. These specific requirements added in the final-form rulemaking provide owners and operators with the necessary information they need to properly monitor the cathodic protection systems.

66. Comment: Proposed Section 245.513(c) would require an owner and operator to "immediately initiate" the actions necessary to correct deficiencies noted during the 72-hour visual and monthly maintenance inspections. The words "immediately initiate" are not defined. This proposed Section should be clarified or revised so as to place clear and reasonable obligations on the storage tank facility owner and operator.

In the context of the immediate reporting obligation contained in 25 Pa. Code § 91.33(a), the Department at times has interpreted "immediate" to mean within 15 minutes of discovery. In many instances, it would be impractical for an owner or operator to undertake corrective actions of storage tank deficiencies within this or any similar time period. For example, many storage tank repairs require contracting with third parties for professional design or other services and cannot be performed "immediately."

In addition, it is unclear what activities "initiate" the corrective action. For example, would a report sent to management notifying management of the need for a repair "initiate" the necessary actions, or would the Department require more to be done "immediately" to "initiate" the repair? As drafted, the proposed amendment does not inform tank owners and operators of what actions comply with this requirement or how much time is afforded. We suggest that the proposed requirement be phrased in more practical terms, such as requiring diligent, commercially reasonable actions to correct any deficiencies noted during inspections. (13)

Response: The Department respectfully disagrees with the need to define "immediately initiate." This term is widely used and commonly understood as beginning a process without delay. During the required 72-hour and monthly inspections in §§ 245.513(b)(1) and 245.513(b)(2), respectively, if deficiencies are observed, the Department expects owners and operators to take actions to prevent, abate, mitigate, or respond to those deficiencies. In the example provided in the comment, the action taken by the tank owner to contact a third-party individual to correct the deficiency is an immediate action that may be taken.

67. Comment: Subsection 245.514(b) (relating to security) is a new requirement. Can the written log book be in electronic form that can be printed upon request during an inspection? Also, hyphenate the second occurrence of the word "aboveground" in the first sentence of this proposed subsection. (6)

Section 245.514(b) requires the maintenance of a "written log book." Merck currently maintains a similar record and has no objection to the substance of this amendment. Merck suggests that the final language expressly allow log books to be maintained in electronic format. As electronic recording devices such as iPads come into greater use during inspections, and records are maintained on servers or other electronic storage equipment, a hard copy of a log book may become obsolete. Merck suggests that the language be clarified to allow an electronic option. For example, the language "a written log book in hard copy or electronic format" would improve the proposal. (19)

EQB is codifying a best management practice that requires owners and operators of certain AST facilities to maintain a written log book. Commentators have asked if the log book can be in an electronic format and then printed as needed. Similar concerns have been expressed with § 245.603. We ask EQB to explain how this provision will be implemented and to implement the least burdensome alternative for the regulated community while ensuring the proper protection of the environment. (20)

Response: The log may be maintained in written or electronic form. Subsection 245.514(b) has been amended in the final-form rulemaking to read:

“The owner and operator of an aboveground storage tank facility with an aggregate aboveground storage capacity greater than 21,000 gallons shall maintain a written or electronic log. At a minimum, each log entry must identify the name of the individual performing tank handling and inspection activities, the individual’s signature or equivalent verification of presence onsite, the company name, the date of work, start and end times, and a brief description of work performed, including tank identification.”

The second occurrence of the word “aboveground” in the first sentence of § 245.514(b) was mistakenly hyphenated in the proposed rulemaking. All occurrences of “above-ground” in the proposed rulemaking have been amended to “aboveground” in the final-form rulemaking.

68. Comment: § 245.514 Security - Proposed subsection (b) and § 245.603 proposed subsection (c), (Proposed subsection (b) in § 245.514 & proposed subsection (c) in § 245.603), suggests that an additional level of security would be provided. These subsections 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. The use of a log book containing the proposed information is a best management practice for storage tank owners and operators. Most facilities already have a procedure for the type of documentation they use for the above activities. Using these defined “log books” would provide little additional benefit and would be burdensome and time-consuming resulting in additional labor costs. In addition, the Department could issue violations if one on the entries was not entered appropriately into the log book although all tank handling and inspections were appropriately conducted and documented. If this becomes part of 25 PA Code, then it is *no longer* a Best Management Practice, but a regulation. (9)

The requirement to keep a detailed logbook is burdensome for large facilities with many tanks, especially for the detail required by a logbook. A consideration to shift this responsibility to the inspector or installer should be considered. (12)

EQB is codifying a best management practice that requires owners and operators of certain AST facilities to maintain a written log book. Commentators have asked if the log book they currently maintain as part of their existing best management practice would satisfy the requirement. Similar concerns have been expressed with § 245.603. We ask EQB to explain how this provision will be implemented and to implement the least burdensome alternative for the regulated community while ensuring the proper protection of the environment. (20)

Response: The Department does not believe that the maintenance of a written log will be burdensome or time-consuming, or will result in additional labor costs. The Department agrees that maintenance of a log is a best management practice; however, the Department does not agree that most facilities already have a procedure in place to document the required information being requested. It has been the Department's experience that facilities do not have such logs as documented in several enforcement cases. To facilitate compliance with this requirement to maintain a written log, the Department has amended §§ 245.514(b) and 245.603(c) in the final-form rulemaking to allow the log to be maintained in written or electronic form. The Department does not agree that maintenance of the log is the responsibility of the installer or inspector.

69. Comment: After reviewing our security needs, we have employed the security measures that we feel are appropriate for our facility, including the implementation of a robust system to control facility access. Requiring that a written log book be maintained on top of an already strong access control system is overly burdensome, impractical, unnecessary, and would not serve to improve site security.

As such, we propose that the proposed conditions in 25 PAC 245.514(b), 245.516(c)(8), 245.603(c), and 245.615(b)(8) be removed and that the Department continue its existing practice of allowing the storage tank facility to select and implement the security measures that are most appropriate for the facility and are sufficient to protect the environment and public. (16)

EQB is codifying a best management practice that requires owners and operators of certain AST facilities to maintain a written log book. Commentators have asked if the log book they currently maintain as part of their existing best management practice would satisfy the requirement of this section. They also ask if the log book can be in an electronic format and then printed as needed. Similar concerns have been expressed with § 245.603. We ask EQB to explain how this provision will be implemented and to implement the least burdensome alternative for the regulated community while ensuring the proper protection of the environment. (20)

Response: The Department does not believe that the maintenance of a written log is overly burdensome, impractical or unnecessary, or that it would not serve to improve site security. The use of a log containing the proposed information is a best management practice for storage tank owners and operators. However, it has been the Department's experience that facilities do not have such logs as documented in several enforcement cases. The commentator states that they already implement a robust system to control facility access. Upon further review, they may find that the system already meets the written log requirements. To facilitate compliance with this requirement to maintain a written log, the Department has amended §§ 245.514(b), 245.516(c)(8), 245.603(c) and 245.615(b)(8) in the final-form rulemaking to allow the log to be maintained in written or electronic form.

70. Comment: Proposed Section 245.516(c)(15) would require documentation of investigations of suspected releases to be maintained for the operational life of the tank

system and retained for a minimum of 1 year after the tank system has been permanently closed. Proposed Sections 245.435(d)(22) and 245.615(b)(7) would impose similar requirements. But if the investigation of a suspected release reveals that no release occurred, the records are of limited value. They are not relevant to any corrective action mandated by the regulation or to any damages to third persons.

Requiring maintenance of these records for more than a few months is unnecessary and burdensome. It would also serve to discourage investigations that a company may voluntarily undertake as a precaution when the likelihood of a release is very low. The number of records may give a misimpression of multiple problems at a facility when the operator was merely being diligent. To best encourage investigations, a recordkeeping requirement limited to confirmed releases would be most protective of the environment without imposing undue burden on regulated entities.

If proposed Section 245.516(c)(15) were withdrawn, records necessary for Department oversight would still be preserved. When investigation of a suspected release shows that a non-exempt release occurred, the release must be reported to the Department, see § 245.305(a), and the records must be maintained. See § 245.516(c)(5). We recommend that the proposed amendment adding Section 245.516(c)(15) and the similar sections identified above be withdrawn, or the retention period be limited to no more than 6 months. (13)

Under Subsection (c)(15) owners and operators of ASTs will be required to keep documentation of investigations of suspected releases. A commentator has asked what the rationale for this new requirement is if the investigation finds that no release occurred. Similar language can be found under § 245.615(b)(7). In the Preamble to the final-form regulation, we ask EQB explain why it needs this information. (20)

Response: The Department currently requires regulated storage tank owners and operators to investigate an indication of a suspected release. Indications of a suspected release include: presence of a regulated substance or an unusual level of vapors from a regulated substance; unusual operating conditions; and test, sampling or monitoring results, including the sounding of an alarm, from a release detection method which indicate a release. These records are important in understanding the storage tank's operational history when performing required inspections and site assessments and responding to inquiries or complaints from the public. By retaining these records, a regulated storage tank owner may be able to overcome by clear and convincing evidence that he did not contribute to the damage, contamination or pollution of the environment discovered (35 P.S. § 6021.1311). The Department believes requiring maintenance of records associated with investigating suspected releases is imperative in providing protection for the environment and public health.

71. Comment: § 245.522(g) – this new section requires previously regulated tanks being activated to meet new storage tank system requirements which is consistent with existing regulations. However, clarity needs to be added for tanks in shared existing emergency containment areas. Those containment areas do not and should not be

required to be upgraded as a result of activating (or adding) a tank into that emergency existing containment area. (12)

Response: The Department respectfully disagrees that emergency containment areas should not be required to be upgraded when aAST returns to regulated status. In the final-form rulemaking, the Department has deleted § 245.522(g) and amended § 245.542(d)(1)-(2) (relating to containment requirements for aboveground storage tank systems) to clarify the emergency containment requirements based on installation date of the AST.

Currently, § 245.542(d) states:

Aboveground tanks must have emergency containment structures, such as dike fields, curbing and containment collection systems, which contain releases from overfills, leaks and spills, when a new tank system is installed or at the next out-of-service inspection for existing tank systems as established in § 245.553(d) (relating to out-of-service inspections) or by November 10, 2010, whichever occurs first.

Further, §§ 245.542(d)(1) and (2) currently state:

(1) Permeability of newly installed or replacement emergency containment structures must be less than 1×10^{-6} cm/sec at anticipated hydrostatic head and be of sufficient thickness to prevent the released substance from penetrating the containment structure for a minimum of 72 hours, and until the release can be detected and recovered.

(2) Emergency containment structures for existing aboveground storage tanks must meet one of the following standards by November 10, 2010, or at the next out-of-service inspection, prior to the tank being placed back into service, whichever occurs first:

* * *

The intent of § 245.542(d)(1) is to apply to new tank systems, a position the Department has maintained since the provisions were initially promulgated on October 11, 1997. A new tank system includes a tank being reactivated in a shared, existing emergency containment area. In this instance, the emergency containment area must be upgraded to meet the requirements of § 245.542(d)(1).

To provide clarity, the Department has amended § 245.542(d)(1) and (2) in the final-form rulemaking to clarify that large ASTs installed after October 11, 1997, must be installed within emergency containment having permeability less than 1×10^{-6} cm/sec. They now read as follows:

(1) Permeability of newly installed or replacement emergency containment structures or emergency containment structures for aboveground storage tanks installed after October 11, 1997, must be less than 1×10^{-6} cm/sec at anticipated hydrostatic head and be of sufficient thickness to prevent the released substance from penetrating the containment structure for a minimum of 72 hours, and until the release can be detected and recovered.

(2) Emergency containment structures for aboveground storage tanks installed on or before October 11, 1997, must meet one of the following standards:

Subsections 245.542(d)(1) and (2) were initially promulgated on October 11, 1997. Therefore, the provisions that are applicable to new and existing storage tanks are applicable as of that date.

72. Comment: § 245.531 General corrosion and deterioration requirements – § 245.531 subsection (c) currently states that “Existing tank bottoms that do not meet the standards in subsection (b) shall be upgraded when the tank bottom is replaced.” The proposed subsection (c) states that tank bottoms that are not adequately protected from corrosion and deterioration shall be upgraded to meet § 245.532 and § 245.534 (relating to cathodic protection systems; and interior linings and coatings). We propose to keep the same requirement in place that is already there or at the very least allow the upgrade to take place at the next “Out of Service” inspection. The proposed requirement presents a significant burden and potential shutdown of plant operations by requiring immediate upgrades unless this work is performed either when the tank bottom is replaced or scheduled during an “Out of Service” inspection. (9)

We ask EQB to explain if the amendments to § 245.531 being proposed are new requirements, and if so, to explain the need for the revisions. If the requirements are new, we ask EQB to quantify the costs associated with the amendments. (20)

Response: The Department does not agree that final-form § 245.531(a)-(c) adds new requirements. Instead, subsections (a)-(c) clarify existing requirements. When interpreted together, existing subsections (a)-(c) require aAST system to be maintained with corrosion and deterioration prevention measures. Tank bottoms must be continuously protected from corrosion and deterioration. Tank bottoms installed on or before October 11, 1997, which is the effective date of the existing § 245.531, must be upgraded when a lack of corrosion and deterioration prevention is discovered. By now, all such “existing” tank bottoms should have had an out-of-service inspection performed, which would have evaluated the tank bottom protection. If cathodic protection or a liner was required, then either of these items should have been added at this point. Tank bottoms installed after October 11, 1997 must have been protected at installation. Failure to continuously maintain these preventative measures may result in premature tank failure and subsequent release of regulated product.

Subsection 245.531(a), as proposed, clarifies that AST systems are to be continuously protected from corrosion and deterioration. Subsection 245.531(b), as proposed, clarifies that tank bottoms in direct contact with the soil are to be evaluated by a corrosion expert to determine if cathodic protection is necessary. Subsection 245.531(c), as proposed, clarifies that, “Tank bottoms that are not adequately protected from corrosion and deterioration [which is to be determined by the corrosion expert under § 245.531(b)] shall be upgraded to meet §§ 245.532 and 245.534 (relating to cathodic protection systems; and interior linings and coatings).” These regulatory amendments do not modify existing requirements. Rather the regulatory amendments included in this final-form rulemaking clarify existing requirements, found in § 245.531. Therefore, no additional costs will be incurred in complying with these amendments. The final-form rulemaking retains these proposed amendments.

The Department does not believe it to be prudent or appropriate to allow a large AST to continue to operate knowing that the tank bottom is not protected from corrosion and deterioration. The final-form regulation in § 245.531 allows large ASTs that have tank bottoms that need corrosion protection to be upgraded through tank bottom replacement, cathodic protection being installed, or with a tank liner. Allowing upgrades to be performed only when the tank bottom is scheduled to be replaced or allowing upgrades to wait until the next out-of-service inspection (which could be up to 20 years) is not acceptable, is not in the best interest of the tank owner, and may result in a release of regulated substance to the environment.

73. Comment: The proposed amendment to Section 245.531 may pose a significant, expensive obligation on our company. In accordance with existing regulations and a SSIP permit from the Department, we recently installed and registered a 400,000 gallon aboveground storage tank to store fuel oil. While the outside of the tank is painted for corrosion prevention, the tank bottom is not. Corrosion protection of the bottom is not legally required, and is unnecessary because the tank sits on a concrete pad, not on soil.

More specifically, under current regulations, the corrosion evaluation provisions of Section 245.531(b) do not apply to this tank because the tank bottom is not in direct contact with the soil or other electrolyte. Existing Section 245.531(c) requiring upgrade is likewise inapplicable because that section applies only when the standards in Section 245.531(b) are not met, and even then only when the tank bottom is replaced. Neither of these conditions exists. In addition, because the tank stores petroleum, potential interior corrosion is not at issue.

The proposed amendment to Section 245.531 may be interpreted to require our company to upgrade its existing tanks to add corrosion protection for the tank bottom. Under the proposed amendment, we may also need to meet the requirements of §§ 245.532 and 245.534 (relating to cathodic protection systems; and interior linings and coatings) for existing tank bottoms not equipped with corrosion protection, such as the bottom of the 400,000 fuel oil tank. But when a tank bottom sits on a concrete pad, no valid reason for corrosion protection exists.

If the regulations are amended to require corrosion protection for tank bottoms on concrete pads, then the contents of existing tanks must be emptied and significant alterations made. Even the new 400,000 gallon tank, recently approved by the Department and shown during inspection to be fully compliant with existing regulations, would need to be taken out of service and modified at very major cost and expense. No environmental risk exists to warrant this onerous result.

We suggest that the proposed regulation be modified to allow for tank bottoms without corrosion protection when the bottoms are not in direct contact with soil or other electrolyte, such as when they are located on concrete pads. This result would be consistent with Section 245.531(b) which requires evaluation by a corrosion expert only if the tank bottom is in direct contact with soil or other electrolyte. Alternatively, we request that any new requirement applying to tank bottoms not in direct contact with soils or other electrolyte apply only to storage tanks constructed after the effective date of the regulation or when tank bottoms are replaced. (13)

Response: Subsection 245.531(a), as proposed, clarifies that AST systems are to be continuously protected from corrosion and deterioration. Subsection 245.531(b), as proposed, clarifies that tank bottoms in direct contact with the soil are to be evaluated by a corrosion expert to determine if cathodic protection is necessary. Subsection 245.531(c), as proposed, states “Tank bottoms that are not adequately protected from corrosion and deterioration shall be upgraded to meet §§ 245.532 and 245.534 (relating to cathodic protection systems; and interior linings and coatings).” In the commentator’s example, if a corrosion expert were to determine that no cathodic protection is necessary on the tank bottom, the storage tank system would satisfy § 245.531(a). No additional amendments have been made to § 245.531 in the final-form rulemaking.

74. Comment: For § 245.534(c) (relating to interior linings and coatings), is it possible to have the inspection interval coincide with the API 653 internal inspection interval? (6)

Response: The Department currently requires out-of-service inspections to be conducted based on the API 653 calculated service life method or half of the corrosion rate life, with a maximum of 20 years between inspections, under § 245.553. Internal linings and coatings, if installed, are currently required to be evaluated during the out-of-service inspection under § 245.553. A storage tank owner may have the lining inspection interval coincide with the out-of-service inspection if agreeable to the Department and if the lining manufacturer or design engineer recommends the inspection interval. No amendments to the proposed rulemaking have been made in the final-form rulemaking in response to this comment.

75. Comment: § 245.534(c) – the new requirement to get agency agreement seems unnecessary and adds additional PADEP involvement. The PADEP does not always have personnel knowledgeable to make these decisions which could lead to unnecessary

delays awaiting agency review and approval. This language should be changed to a registered professional engineer. (12)

Response: The Department does not foresee delays in the review of such submissions. This subsection, as proposed, requires interior linings or coatings to be inspected by a DEP-certified AST inspector at least every 10 years or as warranted or recommended by the manufacturer or design engineer and agreed upon by the Department. Where an inspection interval is warranted or recommended by the manufacturer or design engineer, in the vast majority of cases, the Department will agree with the manufacturer or design engineer provided the appropriate information is submitted for the storage tank lining or coating in question. The Department has retained the proposed language in § 245.534(c) in the final-form rulemaking.

76. Comment: Section 245.541 should place the burden for the prevention of spills and overflows during delivery of fuels on the delivering company, not the operator of the receiving tank. (18)

Response: The Department has not made the requested amendment. Section 245.541 establishes the requirements to ensure that releases from overfills do not occur. Subsection 245.541(b) requires that the storage tanks be equipped with a gauge or monitoring device which accurately indicates the level or volume in the tank and is visible to the individual responsible for the transfer of product. In addition, a high-level alarm with an automatic high-level cut-off device or a high-level alarm with a manned operator shutdown procedure in operation must also be installed. It is the responsibility of the owner or operator to ensure that these requirements are met. Provided these requirements are met, the equipment is operating as intended, and the transfer is adequately monitored, overfills should not occur.

77. Comment: § 245.542 Containment requirements for aboveground storage tank systems – In the Preamble 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. However, in the actual proposed regulations it is written as water is to be removed from the containment before it comes in contact with the AST or piping and before it reduces the capacity of the containment by 10% or more. This requirement has a much different meaning. We propose that the verbiage in the Preamble should be used (or before it reduces the capacity of the containment by 10% or more). (9)

Response: The language in proposed § 245.542(f) is correct and has been retained in the final-form rulemaking. The language in the Preamble to the proposed rulemaking pertaining to this amendment was incorrectly stated and has been clarified in the final-form rulemaking. It is important to remove water from the containment before it comes in contact with the AST or piping and before it reduces the capacity of containment by

10% or more, to assure that water does not come into contact with the tanks or piping which would be a corrosion issue.

78. Comment: § 245.542 - 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. The regulation should be amended to refer to liquid water. Snow, which does not take up the same equivalent volume as liquid water, is not easily removed. (10)

Response: The suggestion of clarifying water as liquid water would be redundant. The Department is not requiring snow to be removed from the emergency containment area. However, snow melt is water and is required to be removed as soon as possible under § 245.542(f). The proposed amendments have been retained in the final-form rulemaking.

79. Comment: § 245.552(d)(4) – this section has been revised to require PADEP approval to delay an in-service inspection for tanks that are temporarily removed from service. This requirement to obtain agency approval is unnecessarily burdensome for the tank owner and the PADEP. These tanks must be emptied and are checked monthly. If a tank owner wants to delay the inspection, they should be able to do that without seeking agency agreement. (12)

Response: The Department respectfully disagrees. The Department requires AST system integrity to be maintained throughout the temporary removal from service time and requires the tank to be protected against flotation, under § 245.562. Based on the tank's compliance history, information necessary to determine the tank's integrity may be unknown. In-service inspections, as required in § 245.552, provide the Department with this information. The proposed amendments to § 245.552(d)(4) have been retained in the final-form rulemaking.

80. Comment: With regard to § 245.561(2) (relating to permanent closure or change-in-service), the owner or operator oversees the operation of the closure activities by hiring a certified installer. The owner and operator is charged with submitting the notification and registration modification to the PADEP. There is no need for the signature of the certified installer. This will cause delays in the notification process. (6)

Response: The Department respectfully disagrees that the signature of the certified installer is not necessary. The certified tank handler is responsible for the removal from service of the AST system and is certifying that all tank handling activities were conducted in compliance with the Storage Tank Act and all applicable regulations. The proposed amendments to § 245.561(2) have been retained in the final-form rulemaking.

Subchapter G – Simplified Program for Small Aboveground Storage Tanks

81. Comment: Subsection 245.603(c) (relating to general storage tank facilities requirements) is a new requirement. Would computer based task management and electronic inspection management systems meet this requirement? (6)

Response: To facilitate compliance with this requirement to maintain a log, the Department has amended § 245.603(c) in the final-form rulemaking to allow the log to be maintained in written or electronic form.

82. Comment: Currently, Section 245.612(d)(1) permits use of a spill containment bucket when filling a double walled aboveground storage tank. The proposed amendment to this section would require permanently installed spill prevention equipment.

We own and operate numerous double walled tanks, many of which store diesel fuel for emergency generators. Except for some newer tanks, these double walled tanks do not have permanently installed spill prevention equipment. When the tanks are being filled, a bucket is placed under the fill point and an operator continuously monitors the filling activity. In our experience, this method is effective in preventing releases to the environment.

Altering numerous existing tanks to install permanent spill prevention equipment would be expensive, time-consuming and unnecessary to prevent releases. We suggest that use of a spill containment bucket remain a permissible option for existing tanks. A requirement that an operator continuously monitor the filling activity would be consistent with our practice. We have no objection to requiring permanently installed spill prevention equipment on new aboveground double walled storage tanks.

In the event the Board rejects our suggestion and requires us to install spill prevention equipment on existing tanks, we request a period of three years to fully implement this requirement. It would be unrealistic to expect storage tank owners to modify numerous tanks in a short period of time. Altering the numerous tanks at our facilities is a significant undertaking that will require considerable planning, construction and expense. (13)

Subsection 245.612(d)(1) is being amended to require permanently installed spill protection equipment at the tank fill point. The commentator notes that they use temporary spill buckets and believe the amendment is a new requirement that would be costly and provide little environmental benefit. We ask EQB to explain how DEP administers the existing regulation and if the proposed amendment will require the regulated community to change their procedures related to spill buckets. If the requirements are new, we ask EQB to quantify the costs and to consider a window of time for the regulated community to come into compliance with the new standard. (20)

Response: The proposed amendments to § 245.612(d)(1) are retained in the final-form rulemaking. They clarify the existing requirement and do not create a new requirement. Existing § 245.612(d)(1) states that double walled tanks may meet both emergency and secondary containment requirements when the tank system is operated with spill and overflow protection controls including a spill containment bucket at the tank fill point or containment at the remote fill point. A storage tank owner may currently meet this

requirement by having permanently installed spill prevention equipment such as a spill bucket or containment underneath the tank fill point. Third-party inspectors and Department staff routinely inspect regulated storage tanks to determine compliance with storage tank regulations. Without permanent installation of spill prevention equipment, it is impossible to verify regulatory compliance. Adding the words “Permanently installed” to § 245.612(d)(1) simply clarifies that permanently installed spill prevention equipment is necessary to meet both the emergency and secondary containment requirements for double walled tanks.

83. Comment: With regard to § 245.615(b)(8) (relating to recordkeeping requirements), add a statement that would allow computer-based systems and electronic management systems to be acceptable to meet this requirement. (6)

Response: Proposed § 245.615(b)(8) has been amended in the final-form rulemaking to read as follows:

(8) Written or electronic log entry information as required under § 245.603(c) (relating to general storage tank facility requirements).

84. Comment: § 245.616 Inspection Requirements – Subsection (c) proposes to have small aboveground storage tanks storing regulated substances with a capacity of greater than 5,000 gallons and small aboveground storage tanks storing highly hazardous substances with a capacity greater than 1,100 gallons to conduct in-service inspections every 5 years (previously 10 years) or more often when corrosion, deterioration or other specific conditions necessitate. Increasing the frequency of small AST inspections is unnecessary when industry tank standards already provide a sound scientific and engineering basis for tank inspection schedules. (9)

Inspection frequencies for small AST under § 245.616 should remain as they are under the current regulation. Increasing the frequency of small AST inspections is arbitrary and unnecessary when industry tank standards (e.g., STI or API) already provide a sound scientific and engineering basis for tank inspection schedules under the existing regulation. (10)

§ 245.616(c) – the proposed change to inspect every 5 years instead of every 10 years is unnecessarily burdensome and unjustified. These small tanks offer minimal potential environmental harm and requiring more frequent inspections because people are failing to meet the current regulatory obligation to complete every 10 years is a flawed justification. (12)

The rule as published proposes changes to 25 PAC 245.616(c), (c)(1), and (c)(2) that would shorten the frequency of required in-service inspections for small aboveground storage tanks from every ten (10) years to every five (5) years. The Department believes that this change is necessary to improve facility compliance. However, the mechanisms to drive compliance improvement already exist within the current

regulatory framework. We believe that this change, which essentially doubles the costs for in-service inspections, does little but penalizes facilities that appropriately manage their ASTs for the actions of facilities that do not and imposes an unnecessary financial burden on the tank owner with little environmental benefit. Therefore, we propose that the proposed conditions in 25 PAC 245.616(c), (c)(1), and (c)(2) be removed and that the Department continue its existing practice of allowing Department certified inspectors to manage in-service inspection frequencies on a case-by-case and site-specific basis. (16)

Response: The existing inspection frequency for USTs is once every 3 years, under § 245.411. The Department saw a marked improvement in UST facility compliance rates when the UST inspection frequency changed from 5 or 10 years to the existing 3-year inspection cycle. Department inspection records show that less than 50% of ASTs inspected meet existing requirements. The Department believes that a mandated shortened inspection frequency is needed to help improve compliance with these systems. Therefore, the proposed amendments to § 245.616(c) have been retained in the final-form rulemaking.