

**Notice of Proposed Rulemaking**  
**Department of Environmental Protection**  
**Environmental Quality Board**  
**25 Pa. Code Ch. 245**  
**Administration of the Storage Tank and Spill Prevention Program**

**Preamble**

The Environmental Quality Board (Board) proposes to amend *25 Pa. Code*, Chapter 245 (relating to Administration of the Storage Tank and Spill Prevention Program). The proposal includes comprehensive underground storage tank operator training requirements. The proposed operator training provisions are consistent with federal requirements for underground storage tank operators contained in the Energy Policy Act of 2005 (EPAct) and related U.S. Environmental Protection Agency (EPA) guidelines to states for implementing operator training requirements. The proposal also includes corrections and clarifications to existing regulations.

This proposal was adopted by the Board at its meeting of \_\_\_\_\_.

**A. Effective Date**

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

**B. Contact Persons**

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

**C. Statutory Authority**

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

#### **D. Background and Purpose**

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

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

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

#### **E. Summary of Regulatory Requirements**

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

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

The proposal to add a new § 245.436 (relating to operator training) is intended to establish three distinct classes of underground storage tank operators and related training requirements. The proposal includes the general requirements for trained operators (subsection (a)), descriptions of the classes of storage tank operators to be trained (subsection (b)), required and acceptable forms of training for each class of operator (subsection (c)), deadlines for new and existing operators to meet the training requirements (subsection (d)), and documentation requirements (subsection (e)).

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

## **F. Benefits, Costs and Compliance**

### **Benefits**

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

By establishing a viable operator training program, Pennsylvania will retain underground storage tank state program approval and will remain eligible for continued substantial federal funding for the program under Subtitle I.

### **Compliance Costs**

There are approximately 3,500 tank owners and their operators with nearly 8,700 underground storage tank facilities regulated by the Department in the Commonwealth. More than half of the owners are major corporations, while the remaining owners are mostly small businesses and various government entities. Many of the small businesses and corporations belong to organizations and associations that have shown an interest in helping with the required training for operators. The number of operators at any particular facility range from one to several, depending on the size of the facility and hours of operation. Generally, retail sales facilities have more operators than government entities or non-retail facilities.

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

### **Compliance Assistance Plan**

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

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

### **Paperwork Requirements**

There are very few new paperwork requirements proposed in this rulemaking and no new reporting requirements. The proposal addresses requirements to maintain a list of designated operators, certificates or documentation of training, and facility contacts and written emergency procedures. The list of operators, training records and contact information is new; emergency

procedures should already be available at most facilities. These records will be checked during the periodic inspections currently required at underground storage tank facilities and will not be routinely required to be submitted to the Department.

### **G. Pollution Prevention**

The programs set out in this proposed rulemaking package and in the current regulations are designed to prevent the release and spread of regulated substances from storage tanks located in this Commonwealth. They create a program similar to the cradle-to-grave process with the goal of making sure that the storage tank is installed, maintained, operated, closed and removed in a manner that will minimize the likelihood of a release occurring. If a release does occur, these amendments and regulations that currently exist in Chapter 245 are designed to detect and contain the release quickly, and make sure that corrective action is carried out expeditiously, minimizing exposure to the public and the environment.

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

### **H. Sunset Review**

This regulation will be reviewed in accordance with the sunset review schedule published by the Department to determine whether the regulation effectively fulfills the goals for which it was intended.

### **I. Regulatory Review**

In accordance with Section 5(a) and (f) of the Regulatory Review Act (71 P.S. §§ 745.1—745.15), the Department submitted a copy of the proposed amendments, on \_\_\_\_\_, to the Legislative Reference Bureau for publication of notice of proposed rulemaking in the *Pennsylvania Bulletin*, and to the Independent Regulatory Review Commission (Commission). In accordance with Section 5(f) of the Act (71 P. S. § 745.5(f)), the Department will submit the proposed regulations and the required material to the Chairpersons of the House Environmental Resources and Energy Committee and the Senate Environmental Resources and Energy Committee (Committees) no later than the second Monday after the date by which both Committees designations have been published in the *Pennsylvania Bulletin*. In addition to submitting the proposed amendments, the Department has provided the Commission and will provide the Committees with a copy of a detailed Regulatory Analysis Form. A copy of this material is available to the public upon request.)

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

## **J. Public Comments**

**Written Comments** – Interested persons are invited to submit comments, suggestions, or objections regarding the proposed regulation to the Environmental Quality Board, P.O. Box 8477, Harrisburg, PA 17105-8477 (express mail: Rachel Carson State Office Building, 16<sup>th</sup> Floor, 400 Market Street, Harrisburg, PA 17101-2301). Comments submitted by facsimile will not be accepted. Comments, suggestions or objections must be received by the Board by \_\_\_\_\_ (within 30 days of publication in the *Pennsylvania Bulletin*). Interested persons may also submit a summary of their comments to the Board. The summary may not exceed one page in length and must also be received by \_\_\_\_\_ (within 30 days following publication in the *Pennsylvania Bulletin*). The one-page summary will be provided to each member of the Board in the agenda packet distributed prior to the meeting at which the final-form regulation will be considered.

**Electronic Comments** – Comments may be submitted electronically to the Board at [RegComments@state.pa.us](mailto:RegComments@state.pa.us) and must also be received by the Board by \_\_\_\_\_ (within 30 days of publication in the *Pennsylvania Bulletin*). A subject heading of the proposal and a return name and address must be included in each transmission. If an acknowledgement of electronic comments is not received by the sender within two (2) working days, the comments should be retransmitted to ensure receipt.

BY:

John Hanger  
Acting Chairperson  
Environmental Quality Board