

FINAL RULEMAKING

CHAPTER 245

**ADMINISTRATION OF THE STORAGE TANK AND
SPILL PREVENTION PROGRAM**

COMMENT AND RESPONSE DOCUMENT

Proposed Rulemaking #7-432: Underground Storage Tank Operators Training Requirements

COMMENTATOR LIST

ID	Name/Address	Submitted one page Summary for distribution to EQB	Provided Testimony	Requested Final Rulemaking following EQB Action
1.	Jo Ellen Litz 2501 Cumberland Street, Suite 4 Lebanon, PA 17042 www.JoEllenLitz.com (717) 644-4698			
2.	Jason A. Speicher Adv. Environmental Scientist FirstEnergy Corp. P.O. Box 16001 Reading, PA 19612			
3.	Rick Rogers Associate Director U.S. Environmental Protection Agency Region III Office of State Programs 1650 Arch Street Philadelphia, PA 19103-2029			
4.	Bob May rjmay@aol.com 3531 Jacksonwald Ave Reading, PA 19606	X		
5.	Jennifer Celeste Supervisor, Environmental Compliance Sunoco Inc. 1735 Market Street / 12 th Floor Philadelphia, PA 19103 JLCELESTE@sunocoinc.com	X		
6.	Independent Regulatory Review Commission Harrisburg, PA 17101			

COMMENT AND RESPONSE DOCUMENT

1. **Comment:** Both of my adjoining neighbors have had contamination, and my cooperation with their cleanups resulted in the placement of a deed restriction on my property in January 2000 prohibiting wells for drinking water on my property. It is my understanding that such deed restrictions will need to be converted to environmental covenants after the passage of the Uniform Environmental Covenants Act (“UECA”). This case is closed and the environment does not benefit from this conversion requirement. This is an undue burden and financial hardship on small businesses. (1)

Response: This comment addresses issues beyond the scope of the Underground Storage Tank (UST) Operator Training proposed rulemaking. The Department is developing a proposed rulemaking to implement the provisions of the UECA, and this comment has been forwarded to the Department’s program that is working on that proposed rulemaking.

2. **Comment:** The U.S. Environmental Protection Agency’s (“EPA”) document titled “Grant Guidelines To States Implementing the Operator Training Provision Of The Energy Policy Act Of 2005” (“Grant Guidelines”) states:

If a state determines an underground storage tank system is out of compliance, appropriate operator(s) must be retrained. States may determine whether both Class A and Class B operators are retrained or if only one class of operator (Class A or Class B) is retrained.

The proposed rulemaking does not require retraining of operators if an underground storage tank (“UST”) system is determined to be out of compliance. This requirement should be added to the regulations. A second commentator recommended that the Board should amend the regulation to be consistent with EPA guidelines or explain the reason for deviating from the EPA guidelines. (3) (6)

Response: The Department does not agree that the Commonwealth's UST program does not require retraining of operators if an underground storage tank (“UST”) system is determined to be out of compliance. Although there is no specific mention of "retraining" in proposed § 245.436, § 245.411(d) of the existing regulation states:

COMMENT AND RESPONSE DOCUMENT

(d) Additional inspections and *mandatory training*. Inspections in addition to those in subsections (b) and (c) may be required by the Department when the prior inspection determined release detection, corrosion protection or operational violations occurred, or when the Department determines the inspections are necessary to verify compliance with this subchapter. *The Department may require facility owners and operators to successfully complete a release detection or operator training course, such as those offered by PEI or professional industry trainers approved under § 245.141 (relating to training approval), when related violations are documented through an inspection. The owner or operator shall incur the costs of the training.*

(Emphasis added.) Therefore, the existing regulations already contain authority for the Department to require operators to successfully complete an appropriate training course when related violations are documented.

The commentator appears to take issue that under § 245.411(d), the Department has discretion to require or not require retraining approved under § 245.141. First, the Department notes that the document cited by the commentator is merely a set of Grant Guidelines, and not regulations, and so are not binding norms for the Commonwealth or UST operators. The Grant Guidelines provide direction and a certain amount of flexibility to the states when setting up their UST programs and to EPA when making decisions on grant applications from the states.

More importantly, however, the Grant Guidelines cited by the commentator do not appear to hold a state to arbitrarily require formal retraining for all operators in every instance of non-compliance. The Grant Guidelines state:

“If a state determines an underground storage tank system is out of compliance, appropriate operator(s) must be retrained. States may determine whether both Class A and Class B operators are retrained, or if only one class of operator (either Class A or Class B) is retrained. At a minimum, an underground storage tank system is out of compliance if the system:

COMMENT AND RESPONSE DOCUMENT

- Does not meet EPA's Significant Operational Compliance requirements for release prevention and release detection measures identified at:
<http://www.epa.gov/oust/cmplastc/soc.htm>; or
- Is not in significant compliance with other requirements, such as financial responsibility, as determined by the state.

Operators must be retrained within a reasonable time frame established by the state. At a minimum, retraining must include training of the areas determined not in significant compliance. States requiring at least annual operator training that covers all operator class requirements would meet retraining requirements.”

(Grant Guidelines, pages 7-8.) Clearly, the Grant Guidelines acknowledge that states wield a great deal of discretion over the retraining "requirement." States have the discretion to determine if:

- a) a non-compliance situation reaches "Significant Operational Compliance" (if not, then retraining is not required);
- b) the system is not in "significant compliance" with other requirements established by the states (if no, then retraining is not required);
- c) whether both the Class A and Class B operators must be retrained when significant noncompliance is found or if only one class of operator must be retrained; and,
- d) the scope of any retraining required and the timeframe in which the retraining must be completed.

The Department will also rely on less formal retraining through instructions given to owners and operators by Department-certified (third-party) inspectors or Department staff for minor deficiencies that can be corrected on the spot or through submission of records to the inspector, as long as there is a way for the inspector to measure the operator's

COMMENT AND RESPONSE DOCUMENT

understanding of regulatory requirements related to the deficiencies or violations and the training is documented. The Department believes that such practices can be accomplished through guidance or instructions provided to inspectors and less formal training documented on the inspection report form or enforcement records. These less formal retraining practices do not need to be addressed in the rulemaking.

The Department's authority to require retraining is no less stringent than that required by the Grant Guidelines, and is arguably broader in scope as the limitations listed here do not exist in § 245.411. In short, the Department believes that the existing retraining requirements contained in § 245.411(d) address the concerns raised by the commentator and are no less stringent than the federal requirements.

3. **Comment:** We compliment the Department on moving forward with proposed rules to provide a regulatory framework for implementing UST Operator Training in accordance with the Operator Training Provision included in the federal Energy Policy Act of 2005. The release of these proposed rules prior to the August 8, 2009 deadline provided by the EPA will allow our company added time to plan and budget for meeting the applicable training requirements for our employees involved in the operation of our UST systems. (2)
Response: The Department appreciates the commentator's support for the proposed rulemaking and is working diligently to get the rulemaking finalized in a timely manner.
4. **Comment:** The "Costs" section of the Preamble only discusses the potential costs that will be incurred by the applicable regulated community for the anticipated administrative cost of attending an operator training course. At a minimum, the Department should state that additional labor and travel costs will be incurred by the regulated community for sending employees to the required training for Class A and B operators. In addition, the Department has not taken into account the costs that will be incurred by the regulated community to train Class C operators. In the case of our company, we have over 30 locations across the State of Pennsylvania that have regulated underground storage tanks. Each location will have one or more employees that will require Class C operator training. Therefore, we will incur additional labor and travel costs to provide on-site training at each location, or if we choose to utilize a computer based training program, we will incur the

COMMENT AND RESPONSE DOCUMENT

costs to develop and maintain the program. The cost to develop similar types of computer based training programs has been several thousand to tens of thousands of dollars.

Therefore, we recommend that the Department more appropriately address the likely costs that will be incurred by the regulated community by the implementation of these rules. (2)

Response: The Department agrees that additional labor and travel costs could be incurred for meeting the Class A or Class B operator training requirements. The Department's cost projections were based on available information from national trainers at the time that the proposed rulemaking was prepared for publication. However, the higher cost estimates in the accompanying preamble were for trainers that would provide onsite training. Also, some national trainers are now providing operator training courses at lower rates than those that we projected. Further, the Department believes that the commentator's position on Class C operators is overstated. Class C operator training should be site specific and can be provided with routine onsite safety training currently necessary to satisfy closely related OSHA requirements, which are referenced in the proposed rulemaking. Therefore, no increases have been calculated to the estimated costs of the rulemaking.

5. **Comment:** The rules would be greatly improved by providing additional definitions in § 245.2. For example, providing more specific definitions of "manned facilities" and "unmanned facilities" would provide companies with fleet operations better clarity in understanding how these rules apply or do not apply to them. (2)

Response: The Department acknowledges the commentator's concerns, but does not agree that additional definitions are necessary. Rather, the Department has revised subsection 245.436(a)(3)(ii) to more clearly reflect when a facility is required to be manned by a Class C operator. The revision references existing requirements at 37 Pa. Code Chapter 13, which, among other things, establishes rules regarding when a facility storing flammable and combustible liquids must be manned. Further, the Department believes that requirements for unmanned facilities are clearly stated in the proposed rulemaking. Also, see response to Comment 7.

6. **Comment:** Subsection 245.436(a)(3)(i). We support the inclusion of an option for either a Class A or a Class B operator to be available on-site within 24 hours. This provision should be maintained in the final rulemaking. (5)

COMMENT AND RESPONSE DOCUMENT

Response: The Department acknowledges the commentator's support and has retained the provision on availability of Class A and Class B operators in the final-form rulemaking.

7. **Comment:** Subsection 245.436(a)(3)(ii). The Department should clarify what it means for a facility to be "in operation." We would recommend the Department carefully consider restating this wording to indicate that "in operation" is considered "in operation during normal operating business hours." As currently written, the regulated community could interpret that a manned facility means if anyone, including janitorial or security staff, is at a facility outside of normal business hours, that a Class C operator shall be onsite. In addition, companies could have intermittent or emergency operations (e.g., response to electrical outages) outside of normal business hours that could be considered to require that a Class C operator be onsite. Having a Class C operator onsite during these unscheduled and unplanned operations is overly burdensome, would delay our response to electrical outages and negatively affect customer reliability. (2)

Response: The Department acknowledges the commentator's concerns and has revised this subsection in the final-form rulemaking. The revision requires that a Class C operator be present only at facilities that dispense motor fuel to the general public when open for business with the public in accordance with 37 Pa. Code Chapter 13. Further, facilities that do not dispense motor fuel to the general public may be manned based on the facility owner's requirements and routine operational needs. Because it references existing Department of Labor and Industry requirements, this revision should address any concerns regarding the need for a Class C operator to be onsite at a facility that operates other than for retail sale of motor fuel to the general public and allows facility owners of the non-retail facilities to determine their own needs for onsite operators.

8. **Comment:** Subsection 245.436(a)(3)(iii). Please clarify if a company has an established 24-hour emergency contact number (e.g., Environmental Hotline) as part of normal business activities, if posting a visible sign with this number will meet the requirement? (2) (6)

Response: Emergency procedures are required to be posted, which may include an environmental hotline or other emergency contact information. The final-form rulemaking

COMMENT AND RESPONSE DOCUMENT

has been revised to provide additional clarification on documentation and emergency procedures in subsection 245.436(e)(3). Also see response to Comment 13.

9. **Comment:** Subsection 245.436(b)(1), 2nd sentence. Because a Class A operator’s designated job duties may not include the management of resources and personnel, especially the daily management of Class A operators, it is recommended that the language be broadened in this sentence to indicate that the Class A operator can advise appropriate management on procedures “...to achieve and maintain compliance with regulatory requirements.” (2)

Response: The Department acknowledges that the Class A operator may advise management on procedures, resources and the like necessary to maintain compliance with regulatory requirements. The final-form rulemaking is revised to reflect that a Class A operator’s responsibilities “typically” include managing resources, personnel, work assignments and so on, thus implying that other means of overseeing these responsibilities may be unusual, but are acceptable. The Department and EPA currently use the term “typically” in a similar way in existing underground storage tank regulations (Chapter 245 and 40 CFR 280). The Class A operator must, however, have some oversight or input with the storage tank owner or management regarding the responsibilities listed in this subsection.

10. **Comment:** Subsection 245.436(b)(1)(iii). We recommend that the Department consider revising this description of a Class A operator to state, “A Class A operator may prepare *or review* site drawings that indicate equipment locations....” (2)

Response: The preparation of site drawings and routine maintenance checklists are not mandatory. Therefore, the Department believes that the proposed language in this subsection allows the Class A operator to prepare or review such documents (or not). No change is needed in the final-form rulemaking.

11. **Comment:** Subsection 245.436(b)(1)(iv). Public safety is potentially compromised having tank installers or inspectors acting as the educated tank operator. Having the tank installer and inspectors assuming the responsibilities of the onsite operator leads to a variety of issues where the public is not protected as compared to the operator onsite. Tank

COMMENT AND RESPONSE DOCUMENT

installers and inspectors acting as the educated tank operator instead of the tank operator erodes the benefits that the public was awarded with increased education. The public has the perception that the best control and release protection occurs at the tank location, not at the remote tank installer or inspector office or truck. One commentator stated the Board should explain how safety is protected by these provisions. (4) (6)

Response: The Department appreciates the commentator's concerns, but does not agree that certified installers or inspectors serving as the designated Class A or Class B operator decrease the effectiveness of the program or public safety in any way. The Department-certified persons are well versed in the operation and maintenance of storage tank facilities and equipment. In fact, they are the experts on storage tank equipment - compatibility, installation, repair, maintenance and operations. Department-certified entities are currently serving as operators at several facilities and have corrected prior operator's deficiencies and maintain current operations quite well. We believe that the use of Department-certified entities will provide a high level of technical and operational compliance that some facility owners and operators would otherwise find very difficult to achieve on their own.

However, the Department believes that these entities should be required to maintain current Department certification or complete the same training that is required for other Class A or Class B operators. Most UST technical and operational requirements are the responsibility of both the owner and the operator. By agreeing to serve as the UST facility operator, the Department-certified entity would share liability for non-compliance with the UST owner. Department-certified entities would be especially sensitive to the consequences of non-compliance, as non-compliance at the UST facility could potentially put their Department certification at risk (see, 25 Pa. Code Section 245.108(a)(1), relating to suspension of certification). Thus, Department-certified entities are likely to be extremely cautious in avoiding problems or violations, including those that might jeopardize public safety.

Therefore, the final-form rulemaking is amended to reflect that Department-certification must be current.

12. **Comment:** Under section 245.436(b)(2)(i), a Class B operator is not qualified to confirm if certain corrosion protection equipment is functioning properly; however, a Class B operator can assure that the proper corrosion protection equipment inspections occur and

COMMENT AND RESPONSE DOCUMENT

appropriate maintenance on such systems is completed. Please amend the proposed rulemaking to reflect this. (5)

Response: The Department believes that assuring the proper corrosion protection equipment testing and any maintenance, when required, is performed by a qualified technician, and maintaining necessary records of such constitutes confirmation that the equipment is functional. Further, Class B operators should be able to routinely check impressed current corrosion protection systems to ensure that electric power to the system is turned on and the power function light is lit. Additionally, Class B operators should be able to read voltage meters displayed on these systems and record the voltage reading during the routine required system check, every 60 days, regardless of whether the facility owner has a separate maintenance technician perform these tasks or not.

13. **Comment:** Section 245.436(b)(3) requires the Class C operator to “notify the Class A or Class B operator and appropriate emergency responders when necessary” in the event of a release or other emergency. We have formal emergency response procedures to notify and respond to various incidents or emergencies. Depending on the incident or emergency the procedures may or may not include immediate notification to the Class A operator. We are interpreting this requirement of notification of a Class A or Class B operator not to be mandatory, but as appropriate or necessary depending on the type of incident or emergency. One commentator indicated that the regulation is vague on instances when notification must be made, and asked the Board to amend the regulation to clarify circumstances that require mandatory notification. (5) (6)

Response: The Department agrees that notification may not be required in all cases, but should be based on the nature and the type of emergency. The final-form rulemaking is revised to reflect this additional condition. Also, current regulations require that records of any release investigation or related equipment repairs be retained; the Class A or Class B operator would need to be apprised of incidents resulting in such records in order to have the available records. Further, the owner’s written instructions or procedures required under paragraph (ii) should also reflect what steps are taken in the event of specific emergency conditions, which may include the owner’s emergency response hot-line, rather than calling the Class C operator. The owner also has the option of designating the person or persons at the emergency response hot-line as additional or alternate Class C operators,

COMMENT AND RESPONSE DOCUMENT

provided that person receives Class C operator training and relevant written instructions or procedures required in this subsection.

14. **Comment:** Under § 245.436(c)(1)-(2), Class A and Class B operators shall successfully complete a training course approved by the Department under § 245.141. We are developing our own in-house training programs to fulfill these requirements and assume that such in-house programs may also be submitted for approval under § 245.141? (5)

Response: The Department agrees - the proposed rulemaking and existing provisions in § 245.141 do not preclude an owner from developing in-house operator training courses and submitting the courses for approval by the Department for training the owner's operators. Existing regulations do require that the course instructor have the professional background and knowledge necessary for the technical material covered and that the training course meet the regulatory requirements, including testing and certification of the operators.

15. **Comment:** Subsection 245.436(d)(2). The requirement to train a new operator within 30 days of replacing a Class A or B operator should be waived if a company, or its subsidiaries, have more than one designated Class A or B operator (i.e., a backup operator) as the UST facility would still maintain a Class A and B operator as required. We agree that a new person should be trained within 30 days after assuming the responsibilities of a Class A or B operator. (2)

Response: The Department agrees that if an owner has more than one person designated for a certain class of operator at a facility and one person leaves, another properly trained and designated operator for the class could potentially continue to perform required operator duties for that class of operator. The hiring and/or designation of a new, replacement or additional "untrained" operator mandates the training within the timeframes included in the rulemaking for the untrained operator.

16. **Comment:** Subsection 245.436(e)(1) and (3). The Department should recognize the potential difficulty in keeping a consistently current list of trained Class A, B, and C operators for a large company with many facilities containing regulated USTs across the State. While it could be more reasonable to keep a sustained list of Class A and B

COMMENT AND RESPONSE DOCUMENT

operators, or operators designated for all three categories, keeping a list of all the designated Class C operators current will be difficult with potential worker turnover. We recommend that the Department consider that if a company or entity has instituted and posted a 24-hr environmental emergency contact number, that this can be used in lieu of a posted contact list at each facility. Another commentator stated that if the posting of a 24-hour emergency contact number would sufficiently address public safety and environmental concerns, the Board should include this option in the final-form regulation.

(2) (6)

Response: The Department believes that maintaining current lists of designated and trained operators is appropriate and necessary to satisfy EPA Grant Guidelines. Flexibility is provided for offsite retention of these documents for unmanned facilities. The final-form rulemaking is revised to allow for Class C operator or owner contact information and emergency procedures posting for unmanned facilities. This may include the use of a 24-hour emergency hotline. Also, see responses to Comments 8 and 13.

17. **Comment:** Subsection 245.436(e)(2). It is recommended that this language be changed to indicate that copies of operator training certificates or the facility list of Class A, Class B, and Class C operators shall be maintained “either onsite at the underground storage tank facility or at a readily available alternative site... If records are maintained offsite, the records shall be easily obtained and provided for inspection or for review by the Department upon request.” A second commentator asked for clarification in the final-form regulation as to what is considered “readily available”. (2) (6)

Response: Proposed subsection 245.436(e) references existing regulations at subsection 245.435(b), which currently states:

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

COMMENT AND RESPONSE DOCUMENT

This language is taken nearly verbatim from Federal underground storage tank regulations on availability and maintenance of records at 40 CFR Part 280, section 280.34(c)(1) and (2) and is codified by EPA as part of our state program approval. The Department includes a timeframe for providing records, when requesting any records that are maintained offsite or otherwise not immediately available during inspection of a facility. The Department believes no further clarification in the rulemaking is necessary.