

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

This is a list of corporations, organizations and interested individuals from whom the Environmental Quality Board has received comments regarding the above referenced regulation.

<b>ID</b>	<b>Name and Address</b>
1.	Jo Ellen Litz Lebanon, PA
2.	Jason A. Speicher Adv. Environmental Scientist FirstEnergy Corp. Reading, PA
3.	Rick Rogers Associate Director U.S. Environmental Protection Agency Region III Office of State Programs Philadelphia, PA
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5.	Jennifer Celeste Supervisor, Environmental Compliance Sunoco Inc. Philadelphia, PA
6.	Independent Regulatory Review Commission Harrisburg, PA

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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)
  
2. **Comment:** The U.S. Environmental Protection Agency’s (“EPA”) document titled “Grant Guidelines To States For 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 stated 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)
  
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

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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)

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 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)
5. **Comment:** The rules would be greatly improved by providing additional definitions in section 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)

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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)
  
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 that 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)
  
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)
  
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

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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)

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)
  
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 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 public safety is protected by these provisions. (4) (6)
  
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 appropriate maintenance on such systems is completed. Please amend the proposed rulemaking to reflect this. (5)

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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 as to instances when notification must be made, and asked the Board to amend the regulation to clarify the circumstances which require mandatory notification. (5) (6)
14. **Comment:** Under sections 245.436(c)(1)-(2), Class A and Class B operators shall successfully complete a training course approved by the Department under section 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 section 245.141? (5)
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)

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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 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)
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 “readily available”? (2) (6)