FINAL RULEMAKING - EXECUTIVE SUMMARY
Amendments to 25 Pa. Code Chapter 245
Administration of the Storage Tank and Spill Prevention Program

The Department of Environmental Protection (Department) recommends final-form amendments to 25 Pa. Code, Chapter 245 (relating to administration of the storage tank and spill prevention program). The Department's prior comprehensive Chapter 245 rulemaking last occurred over 10 years ago. Thus, this update addresses issues that the Department has observed as a result of its inspections, enforcement and oversight of Chapter 245. In particular, the final-form amendments update the Department's Chapter 245 Underground Storage Tank (UST) regulations to be consistent with the United States Environmental Protection Agency's (EPA) revised State Program Approval regulations at 40 CFR Part 281.

The updates in this final-form rulemaking strengthen the UST regulations by increasing the emphasis on properly operating and maintaining 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. Further, this final-form rulemaking also adds a new certification category for persons that only perform minor modifications of UST systems. Due to a history of non-compliance, the final-form rulemaking shortens the in-service inspection cycle for aboveground storage tanks (AST) in underground vaults and small ASTs.

Purpose of the Final Rulemaking

EPA has codified comprehensive Federal regulations for USTs at 40 CFR Part 280 (relating to technical standards and corrective action requirements for owners and operators of USTs). EPA initially promulgated these regulations in 1988. EPA published final revisions to 40 CFR Part 280 at 80 FR 41566 (July 15, 2015 Final Rule). The revisions in the July 15, 2015 Final Rule, among other things, added secondary containment requirements for new and replaced tanks and piping, added operator training requirements, added periodic operation and maintenance requirements for UST systems, removed certain deferrals, added new release prevention and detection technologies, updated codes of practice, and made editorial and technical corrections. The Department incorporated secondary containment (November 10, 2007) and operator training (December 26, 2009) requirements that meet the Federal requirements into Chapter 245 through prior rulemakings.

In its July 15, 2015 Final Rule, the EPA also updated the State Program Approval requirements in 40 CFR Part 281 (relating to approval of state underground storage tank programs). Under these revisions, the EPA requires that states amend their UST regulations and apply for initial or revised State Program Approval within three years of the effective date of the final EPA rule published at 80 FR 41566.

Currently, the Commonwealth has State Program Approval. The Commonwealth receives approximately $2.3 million annually in Federal grant funding from the EPA under section 9014 of the Federal Solid Waste Disposal Act (42 U.S.C.A. § 6991m) to aid in administering the UST program. This final-form rulemaking is necessary to ensure continued receipt of Federal grant funds. To comply, the Department must update Chapter 245 to be no less stringent than the

Federal requirements so the Department may re-apply for State Program Approval. The EPA has not codified companion AST regulations.

The Department's goal through these revisions is to strengthen the Department UST regulations by increasing the emphasis on properly operating and maintaining equipment. Since the beginning of the UST program, preventing petroleum and hazardous substance releases from UST systems into the environment has been one of the primary goals of the program. Although EPA and other states have made significant progress in reducing the number of new releases, approximately 5,700 releases were discovered nationwide for the Federal fiscal year that ended September 30, 2017. In comparison, using the same parameters (underground storage tank system releases only and October 1, 2016 through September 30, 2017), Pennsylvania had 210 confirmed releases.

Lack of proper operation and maintenance of UST systems is the main cause of new releases. Information on sources and causes of releases shows that in addition to releases from tanks, releases from piping and spills and overfills associated with deliveries have emerged as common problems. In addition, releases at the dispenser are one of the leading sources of contamination at UST facilities. According to EPA, data shows that release detection equipment at all UST facilities is only successfully detecting approximately 50 percent of releases it is designed to detect. These release detection problems are similarly due in part to improper operation and maintenance.

Finally, as noted above, the Department is updating Chapter 245 in the final-form rulemaking to address a number of issues, especially those pertaining to ASTs, that it has observed and experienced while implementing and enforcing the regulations since the Department's last comprehensive update.

Summary of the Final Rulemaking

As stated earlier, the primary purpose of these amendments is to strengthen the UST regulations by increasing the emphasis on properly operating and maintaining equipment. While the current UST regulations require owners and operators to have spill, overfill and release detection equipment in place for their UST systems, the final-form rulemaking strengthens operation and maintenance requirements for some of that equipment. For example, new § 245.437 (relating to periodic testing) requires periodic testing of spill prevention equipment that captures drips and spills when a delivery hose is disconnected from the fill pipe. The final-form rulemaking requires that UST equipment be operated and maintained properly, which will in turn improve protection of the environment.

The new operation and maintenance requirements include:

- A visual inspection of spill prevention equipment and release detection every 30 days.
- A visual inspection of containment sumps and handheld release detection devices annually.
- Testing of spill prevention equipment every three years.
- Inspection of overfill prevention equipment every three years.
- Testing of containment sumps used for interstitial monitoring every three years.
- Annual release detection equipment testing.

In addition to the new operation and maintenance requirements, two other important provisions are included in this final-form rulemaking:

- Requiring release detection for emergency generator USTs. Previously, emergency generator USTs were deferred from having to meet release detection requirements.
- Prohibiting ball float valves as an option for overfill prevention in new UST systems and when these devices need to be replaced.

This final-form rulemaking addresses some of the more significant issues that the Department has observed in its inspections, oversight and enforcement of Chapter 245 in the following manner:

- Revises current definitions such as "aboveground storage tank," "containment structure or facility," "hazardous substance storage tank system," "removal-from-service," "storage tank system," and "tank handling activities" to provide clarity, ensure consistent implementation, and correct errors. For example, the current definition of "removal from service" implies that such activities only apply to UST systems. The final-form amendment clarifies that the term also applies to Aboveground Storage Tank (AST) systems.
- Revises the definition of "certification categories" to include a new certification category called "underground storage tank system minor modification."
- Revises the definitions of "motor fuel," "pipeline facilities (including gathering lines)," and "underground storage tank" to be consistent with the Federal definitions at 40 CFR § 280.12. The Department is revising the definition of "underground storage tank" to delete the exclusion 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)." The exclusion for "A wastewater treatment tank system" is revised to read "A wastewater treatment tank system that is part of a wastewater treatment facility regulated under Section 402 or 307(b) of the Clean Water Act."
- Adds definitions for "aboveground storage tank system," "containment sump," "environmental covenant," "repair," and "spill prevention equipment."
- Adds a definition for "immediate threat of contamination" to clarify which spills from a storage tank into a containment structure or facility are "releases" that potentially require corrective action.
- Deletes the definitions "actively involved," "interim certification," and "reportable release" as they are no longer needed.
- Adds a new certification category for minor modifications to allow individuals to perform tank handling activities such as repairs that do not involve excavation without having to obtain the (full) certification to install and modify storage tank systems, and to perform tests of UST systems required by this final-form rulemaking.
- Requires storage tank modification inspection reports to be submitted within 30 days from completion of the inspection activity.
- Requires overfill prevention for USTs to be permanently installed.

- Excludes USTs used solely for emergency generator purposes from the automatic pump shut-off requirement.
- Requires all ASTs in underground vaults that require an in-service inspection to be inspected within six and 12 months of installation and at least every three years thereafter due to their history of non-compliance. This mirrors the inspection requirement for USTs.
- Shortens the initial inspection requirement and in-service inspection cycle for small ASTs from 10 years to five years. Based on current in-service inspections, the compliance rate with regulatory requirements is less than 50 percent. Shortening the facility operations inspection cycle for USTs from five years to three years has resulted in increased regulatory compliance.
- Adds that all owners of facilities that are required to have a Spill Prevention Response Plan under current regulation must maintain a written or electronic log. Each log entry is to 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.
- Clarifies that metallic aboveground storage tank bottoms must be continuously protected from corrosion and deterioration. Tank bottoms that are not adequately protected from corrosion and deterioration must be upgraded immediately, not when the tank bottom is replaced. The amendments do not modify the requirements; rather, they clarify the requirements.
- Removes the requirement for a 10-year lining inspection for small ASTs.

Affected Parties

This final-form rulemaking will affect approximately 7,000 storage tank owners at nearly 12,600 storage tank facilities. Industry sectors potentially affected by the final-form rulemaking include retail motor fuel sales, commercial, institutional, manufacturing, transportation, communications and utilities, and agriculture. Federal, state and local government owners of regulated storage tanks will also be affected.

Department-certified storage tank installers, inspectors and companies will also be required to comply with this final-form rulemaking. There are nearly 875 certified individuals and approximately 350 certified companies.

Owners of existing storage tank systems will be provided with adequate timeframes to adjust and comply with the new requirements. Owners of storage tank systems installed on or after the effective date of the final-form rulemaking shall comply with the requirements immediately.

Advisory Groups

The Department worked with the Storage Tank Advisory Committee (STAC) during development of this rulemaking. STAC, which was established by section 105 of the Storage Tank and Spill Prevention Act (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 under section 105 of the act, STAC was given the opportunity to review and comment on both the draft proposed and draft final-form annex. At December 8, 2015 and June 7, 2016 STAC meetings, individual STAC members were provided with the

opportunity to review Department concepts and present concepts that they would like to see incorporated into Chapter 245. STAC was also afforded the opportunity to review and discuss draft proposed regulatory language at its December 6, 2016, and March 7, 2017, meetings. On March 7, 2017, STAC voted unanimously to support the amendments and recommended that the Board consider the amendments for publication as a proposed rulemaking. On May 17, 2018, STAC reviewed the draft final-form regulatory language. At that meeting, STAC voted unanimously to support the amendments and recommended that the Board consider the amendments for publication as a final-form rulemaking. A listing of STAC members and minutes of STAC meetings are available on the Department's website at www.dep.pa.gov (select "Public Participation," then "Advisory Committees"). The Citizens Advisory Council received monthly updates on the status of this rulemaking.

Public Comments and Board Hearings

The proposed rulemaking was approved by the Board on October 17, 2017, and published at 48 Pa.B. 1101 (February 24, 2018). Public comments on the proposed rulemaking were accepted through March 26, 2018. The Board received comments from 19 commentators during the public comment period and the Independent Regulatory Review Commission. All comments were considered and are addressed in the comment and response document that accompanies this final-form rulemaking. No public meetings or hearings were held.

The primary concern raised during the public comment period was the Department's proposal to revise the definition of "release," delete the definition of "reportable release," and list three specific "releases" in the proposed § 245.305(i) that would not require reporting to the Department or further corrective action if certain criteria were met. Commentators contended that the amendments conflicted with the statutory definition of "release." Commentators also believed that the amendments would require the reporting of all spills into emergency containment structures which are designed to contain spills and therefore should not be a threat to the environment.

A second issue raised by several commentators during the public comment period concerned the regulation of UST systems containing radioactive materials or coolants that are regulated under The Atomic Energy Act of 1954, 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 and wastewater UST systems not part of a water treatment facility that is regulated under the national pollutant discharge elimination system ("NPDES") permitting program or the industrial wastewater pretreatment program under the Federal Clean Water Act.

Commentators stated that the proposed rule should be revised to be consistent with, and no more stringent than, the requirements and exclusions in EPA's July 15, 2015 Final Rule. Additionally, they requested that the Department clarify that the Federal Part 280, Subpart A installation requirements apply to the installation of new tanks, which the commentators believed to be the intent of the Part 280 Subpart A requirement.