

EXECUTIVE SUMMARY

DEPARTMENT OF ENVIRONMENTAL PROTECTION

Final Rulemaking

25 Pa. Code Chapter 245

(Administration of the Storage Tank and Spill Prevention Program)

The Pennsylvania Storage Tank and Spill Prevention Act, 35 P.S. § 6021.101–2104 (Storage Tank Act) provides for the regulation of storage tanks and facilities, and confers responsibility to the Environmental Quality Board (Board) to adopt rules and regulations of the Department to accomplish the purposes of this act. The Board established storage tank program regulations at Chapter 245, Subchapters A–H. The Board last amended Subchapter D on December 1, 2002. With the exception of Subchapter D, these regulations have been in use without any significant changes since Subchapters A, C, E, F and G became final in 1997 and since the last substantial amendments to Subchapter B in 1996.

This final rulemaking represents both comprehensive and minor editorial changes to the Department's existing storage tank program regulations. These changes include new and revised definitional terms, new comprehensive tank registration provisions, re-regulation of previously de-regulated large aboveground storage tanks (ASTs) storing heating oil for on-site consumptive-use, and additional training/qualifications/standards of performance provisions for certified tank installers, inspectors and their companies. Several changes are also included for storage tank permitting and technical requirements. These include simplified permit applications for most tanks, routine withdrawal of operating permits for tanks in temporary closure, phase-in provisions for newly regulated (or re-regulated) tanks, additional leak detection provisions, and requirements for new or replacement underground storage tanks (USTs) to have total secondary containment (double-wall) systems. Record keeping and inspection provisions are also amended with third-party UST facility inspection intervals increasing from every 5 or 10 years to once every 3 years, with delayed inspections for ASTs and USTs in temporary closure, and additional emphasis on resolving deficiencies noted during inspections. The total secondary containment and 3-year inspection interval, for USTs, correlate with UST compliance provisions in the Federal Energy Policy Act of 2005 (Energy Act).

There are approximately 7,900 tank owners or operators of nearly 43,000 currently regulated storage tanks who may be affected by this rulemaking. These include convenience store and retail service station owners, heating oil distributors, commercial businesses, utility industries, refineries, petro-chemical manufacturers, distributors and users, federal, state, and local governments, volunteer fire companies, hospitals and emergency medical services organizations, and some farmers. The UST inspection frequencies, release detection and total secondary containment provisions will be controversial to some UST owners who will incur additional costs associated with this rulemaking. When new or replacement USTs are installed, total secondary containment (double-wall) systems could cost 15 to 30 percent more than single-wall UST systems. It is very difficult to project precise costs because of the various types and combinations of tank systems and materials that may be used to meet this requirement. However, since the December 22, 1998 federal upgrade deadline, over 2,700 USTs have been installed and owners of 60 percent of these have chosen total secondary containment systems. Department records indicate about 150 USTs were installed annually during each of the past 5 years. UST facility operations inspections (every 3 years) cost on average \$350 per facility inspection.

Owners may also incur a one-time cost of \$500 or more on new and replacement UST systems for line-leak-detectors that automatically shut-off the pump when triggered by a piping release of regulated substance, as opposed to the costs for line-leak-detectors that only slow the flow of product or alert the operator through an alarm, as allowed in the existing regulations.

There are companion federal UST requirements at 40 CFR Part 280. UST facility inspection frequencies at § 245.411 are not addressed in the federal UST requirements at 40 CFR Part 280, but reflect minimum inspection frequencies in the Energy Act and will be imposed on each state through Federal UST Grant Agreements with EPA. The Storage Tank Act also mandates a certified third-party inspection program established by regulation for both AST and UST facilities. Requirements for total secondary containment (double-wall) systems at § 245.421 for all new or replacement UST installs are more stringent than federal requirements at 40 CFR 280.20, which allows for single-wall UST systems for petroleum. However, the Energy Act has provisions for total secondary containment for new and replacement USTs located within 1,000 feet of any water supply system or drinking water well. Also, regulated substance releases continue to occur annually from USTs and federal studies show that double-wall systems fail less and help to retain and identify leaks and spills before they enter the environment. Requirements at §§ 245.421 and 245.445 for line-leak-detectors that shut-off the pump when triggered by a release of product in distribution piping for new and replacement UST systems are more stringent than federal requirements at 40 CFR 280.44, which allows alternate methods. The Department has found that the alternate line-leak detector methods often fail to prevent significant releases of regulated substances from distribution piping that have contaminated hundreds of groundwater resources throughout the Commonwealth. The citizens of the Commonwealth deserve state-of-the art UST systems that better protect their drinking water resources and the environment.

Over the past several years, shortcomings and needed clarifications in current regulations were identified and are addressed in this rulemaking. Most significant concerns are the failed release detection and inadequate operational practices noted during third-party UST inspections, and ongoing releases of regulated substances. This rulemaking will improve storage tank facility operations and help to further reduce substantial releases of regulated substances.

The Storage Tank Advisory Committee (STAC) was involved in the development and review of this rulemaking. On February 20, 2007, the STAC voted unanimously to approve Chapter 245 as written. However, some members of the STAC believe that EPA may provide additional flexibility to the states to carry out the provisions of the Federal Energy Policy Act of 2005 given the fact that Congress has provided no additional funding to the states to carry out the mandates. The concern is the impact that this flexibility will have on this rulemaking. A letter from the STAC chairperson is attached.

The Energy Act establishes February 8, 2007, as a deadline for implementing UST secondary containment provisions and August 8, 2007, to begin implementing inspection requirements in order to continue receiving Federal UST Grant funds from EPA. Therefore, it is important that the rulemaking is adopted as final as early as possible in 2007.

The proposed rulemaking was published in the *Pennsylvania Bulletin* on April 22, 2006, with a comment period of 60 days. No public meetings or hearings were held. Public comments were discussed with the STAC and acted on as appropriate, with several changes made to the rulemaking.