

PADEP Adopts Revised Storage Tank Regulations

By **Mark L. Greenfogel** | *The Legal Intelligencer*

On Dec. 22, 2018, the Pennsylvania Department of Environmental Protection (PADEP) adopted amendments to regulations codified in 25 Pa. Code Ch. 245, relating to Administration of the Storage Tank and Spill Prevention Program. Pennsylvania operates the underground storage tank (UST) portion of its regulatory program pursuant to a state program approval from the U.S. Environmental Protection Agency (EPA), 40 C.F.R. Part 281. The EPA first promulgated UST regulations in 1988, and the commonwealth then passed the Storage Tank and Spill Prevention Act (Tank Act) in 1989 to provide for the regulation of USTs and aboveground storage tanks, see 35 P.S. Sections 6021.101-6021.2104.

In July 2015, the EPA published revisions to the federal storage tank regulations, which became effective on Oct. 13, 2015. The recent Pennsylvania rulemaking was required to conform Pennsylvania's UST regulations to the federal amendments, and to ensure Pennsylvania's continued receipt of approximately \$2.3 million of federal funds to administer the UST program. The Environmental Quality Board (EQB), the 20-member board that adopts Pennsylvania's environmental regulations, also concluded that the regulations are necessary to "further prevent releases of regulated substances from USTs into the environment." It noted that in a one-year period from October 2016 through September 2017, PADEP cited 210 releases from USTs "which were the result of improper operation and maintenance."

The discussion that follows is intended to identify some of the more significant obligations for the approximately 7,000 storage tank owners and operators in Pennsylvania, and is not intended to be a comprehensive review of all amendments to the storage tank regulations.

Newly Regulated USTs

The amendments to the definition of "underground storage tank" in Section 245.1 subject certain USTs to Chapter 245 for the first time. These revisions have removed from the definition the previous exclusion of "tanks containing radioactive materials or coolants that are regulated under The Atomic Energy Act of 1954 (42 U.S.C.A. Sections 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)." Further, the revision limits the exclusion of wastewater treatment tank systems to only those that are part of a wastewater treatment facility regulated under either the National Pollutant Discharge Elimination System permitting program or the industrial wastewater pre-treatment program under the Federal Clean Water Act.

EQB states that these modifications are required for Pennsylvania to receive State Program Approval from the EPA, although owners of these newly covered USTs will not be required to comply with certain provisions including those pertaining to facility inspections, installation of spill and overflow prevention equipment, monthly checks for the presence of water in petroleum tanks, operator training, periodic walk-through inspections, and release detection. These previously excluded USTs do, however, need to be registered with PADEP by Feb. 20, 2019, see 25 Pa. Code Section 245.403.

Revised Requirements for Periodic Testing

In addition to conforming with the EPA's revisions to 40 C.F.R. Part 280, PADEP's rulemaking "strengthens the requirements for operation and maintenance of [UST] equipment." The EPA noted in the preamble to its 2015 Final Rule that "release detection equipment is only successfully detecting approximately 50 percent of releases it is designed to detect." Accordingly, the EQB adopted Section 245.437 to establish timeframes and other requirements for testing spill prevention equipment, containment sumps and overfill prevention equipment.

More specifically, this provision now requires owners and operators to test containment sumps used for interstitial monitoring of piping and spill prevention equipment once every three years to ensure they are liquid-tight. If, however, the containment sump and spill prevention equipment are double-walled, the integrity of both walls must instead be periodically monitored during maintenance walk-through inspections every 30 days.

Overfill prevention equipment must be evaluated every three years, and electronic and mechanical components of release detection equipment—including automatic tank gauges, probes and sensors, automatic line leak detectors, vacuum pumps and pressure gauges and handheld electronic sampling equipment associated with groundwater and vapor monitoring—must be tested for proper operation annually.

In addition, the EQB adopted Section 245.438 which requires periodic operation and maintenance walk-through inspections of spill prevention (checking for damage and removal of liquid and debris) and release detection equipment (checking for no alarms or other unusual conditions) every 30 days. This provision further requires annual maintenance walk-through inspection of containment sumps (checking for damage, liquid or debris, or a leak in the interstitial area if applicable) and handheld release detection equipment (checking for operability and serviceability).

Investigating Suspected Releases and Reporting Releases

The obligation to investigate suspected releases in accordance with Sections 245.304 remains largely unchanged with a few revisions to provide clarification. Subsection (c) clarifies the actions an owner or operator must take upon completion of a suspected release investigation. If the investigation confirms a release (as that term is defined in the regulations) has occurred, the owner or operator must report the release and take corrective action.

If the investigation is inconclusive whether a release has occurred, the owner or operator must report the suspected release to PADEP within 15 days of the indication of the suspected release. If no release has occurred, as would be the case upon discovery of a spill of a regulated substance to a containment structure in an amount less than its reportable quantity, the owner or operator must recover and remove any such regulated substance within 24 hours, or, if such removal cannot be accomplished, must notify PADEP immediately.

If a release is discovered, an owner or operator must notify PADEP as soon as practicable and within 24 hours. Although this obligation is not new, the EQB has expanded what constitutes a "release," the definition on which the reporting obligation depends. The definition of "release" includes a spill or other discharge to the environment or "into a containment structure or facility that poses an immediate threat of contamination of the soils, subsurface soils, surface water or

groundwater.” EQB’s final rule defines “immediate threat of contamination” as a spill of a regulated substance to a containment structure or facility in an amount equal to or greater than the reportable release quantity under the Comprehensive Environmental Response, Compensation, and Liability Act or equal to or greater than a discharge as defined in the Federal Water Pollution Control Act.

This new definition eliminates the sensible distinction found in the Tank Act between a spill to containment, which is defined as a release only if it “poses an immediate threat of contamination,” and a spill directly to the environment, 35 P.S. Section 6021.103. The amended regulation disregards the protective function of containment structures which the General Assembly recognized. As such, EQB’s authority to require reporting to PADEP of spills to intact containment structures that pose no appreciable risk of reaching the environment, let alone adversely impacting it, is uncertain.

Other notable revisions in the amendments include removing the distinction between permanent and temporary records (Sections 245.435 and 245.516), and modifications to the process for temporarily removing a storage tank from service (Sections 245.451 and 245.561). In light of these, and other, revisions to 25 Pa. Code Ch. 245, owners and operators of storage tanks, and their legal and technical advisers, are advised to review these new storage tank regulations in detail and update any site or facility protocols to ensure compliance.

—Warren Environmental Counsel submitted comments on behalf of a client during the rulemaking to amend 25 Pa. Code Ch. 245.

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