

FILED
OCT 31 2016

COURT CLERK'S OFFICE - OKC
CORPORATION COMMISSION
OF OKLAHOMA



Mary Fallin
Governor

RM 201600006
CH 25, Underground Storage Tanks
Emergency Rule Document
Accepted Copy

**NOTIFICATION FROM GOVERNOR MARY FALLIN
REGARDING SUBMITTED AGENCY RULES**

On September 8, 2016, the Oklahoma Corporation Commission, pursuant to its legal authority to adopt rules found at Section 18 of Article 9 of the Oklahoma Constitution and Section 304.1 of Title 17 of the Oklahoma Statutes, adopted rules through emergency rulemaking.

On September 12, 2016, the rules and all necessary documentation required by Section 253 of Title 75 of the Oklahoma Statutes were submitted to the Office of the Governor for approval or disapproval.

On October 24, 2016, I hereby approve the following rules submitted:


165:25-1-11

165-25-3-6.28.

Mary Fallin

Mary Fallin, Governor of the State of Oklahoma

Attest:


Chris Bonge, Secretary of State

ACCEPTED 10 / 28 / 16

Office of Administrative Rules

Oklahoma Secretary of State

Docket # 16 - 777

OAR/cert CN

**TITLE 165. CORPORATION COMMISSION
CHAPTER 25. UNDERGROUND STORAGE TANKS**

RULEMAKING ACTION:

EMERGENCY adoption

RULES:

Subchapter 1. General Provisions

Part 3. Definitions

165:25-1-11. Definitions [AMENDED]

Subchapter 3. Release Prevention and Detection Requirements

Part 2. Release Detection Requirements and Methods

165:25-3-6.28. Statistical Inventory Reconciliation (SIR) [AMENDED]

AUTHORITY: Corporation Commission; OKLA. CONST. art. IX § 18, 17 O.S. §§ 301 et seq., 75 O.S. §§ 250 et seq., and OAPA.

COMMENT PERIOD:

July 12, 2016 through August 19, 2016

PUBLIC HEARING:

July 28, 2016, September 1, 2016 and September 8, 2016

ADOPTION:

September 8, 2016

EFFECTIVE:

Immediately upon Governor's approval.

EXPIRATION:

Effective through September 14, 2017, unless superseded by another rule or disapproved by the Legislature.

SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

n/a

FINDING OF EMERGENCY:

Upon the facts presented to the Commission sitting en banc, the Commissioners acknowledged that an immediate need to satisfy EPA requirements for a rule change existed. The Commissioners further determined that an emergency situation existed. The Commissioners noted that the proposed emergency rules (vetted by and approved by EPA), would remedy the existing State Program Approval deficiency. The emergency rules were unanimously adopted by the Commissioners.

ANALYSIS:

A brief history is in order to fully appreciate the necessity for this emergency rulemaking. The federal government pre-empted all underground storage tank ("UST") regulation throughout the country. The EPA immediately realized it did not have the staff to regulate all 50 states and promulgated rules that allowed states the opportunity to regulate in lieu of the EPA. The states had to establish to EPA's satisfaction that enacted statutes and promulgated rules were sufficient to effectively regulate USTs. The state submission is called State Program Approval ("SPA"). Oklahoma promptly enacted statutes to regulate USTs, establishing the Corporation Commission ("Commission") as the lead agency to regulate USTs. The Commission immediately

promulgated rules and put together the SPA package for EPA. Subsequently, EPA approved Oklahoma's SPA. EPA requires each state program to submit a new SPA after EPA promulgates new UST rules. EPA promulgated new rules in 2015, giving state programs until October 18, 2018 to promulgate new rules and submit the same to EPA. Prior to last year's initiation of permanent rules, the Commission submitted the proposed rules to EPA and solicited comments from EPA regarding the proposed rules. EPA responded back that the proposed rules were acceptable. The Commission initiated a permanent rulemaking based upon the Commission's reliance on EPA's "Blessing" of the proposed rules. The Commission adopted the rules as presented. Before gubernatorial approval, EPA contacted the Commission and advised that it had an issue with two of the adopted rules. Absent revision by the Commission of the two suspect rules, an SPA package could not be submitted to EPA for approval. Admittedly, a long route to explain a mere two rules, but advises the reader of the necessity of performing an emergency rulemaking. In addition, the EPA has reviewed the two proposed rules and given its blessing.

CONTACT PERSON:

Jeffrey P. Southwick, Deputy General Counsel, Oklahoma Corporation Commission, 2101 North Lincoln Boulevard, PO Box 52000, Oklahoma City, OK 73105, telephone (405) 522-4457, j.southwick@occcemail.com.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING EMERGENCY RULES ARE CONSIDERED PROMULGATED AND EFFECTIVE UPON APPROVAL BY THE GOVERNOR AS SET FORTH IN 75 O.S., SECTION 253(F):

SUBCHAPTER 1. GENERAL PROVISIONS

PART 3. DEFINITIONS

165:25-1-11. Definitions

In addition to the terms defined in 17 O.S. § 303, the following words or terms, when used in this Chapter, shall have the following meaning unless the context clearly indicates otherwise:

"Agent" means a person authorized by another to act on their behalf, either out of employment or contract.

"Airport" means landing facility for aircraft that are routinely available for public use (whether routinely used or not). Airports as used in this Chapter do not include private airstrips or private airports.

"Airport hydrant system" means an underground storage tank system which fuels aircraft and operates under high pressure with large diameter piping that typically terminates into one (1) or more hydrants (fill stands). The airport hydrant system begins where fuel enters one or more tanks from an external source, such as a pipeline, barge, rail car, or other motor fuel carrier.

"ATG" means automatic tank gauge.

"Ball float functionality" means the ball float is operational as designed.

"BTEX" means benzene, toluene, ethylbenzene and xylene.

"Bulk plant" means a petroleum storage tank facility where gasoline, aviation fuel, diesel and/or volatile blending materials used in motor fuels, like kerosene and ethanol, are received by tank vessels, tank cars or tank vehicles and are stored or blended in mass quantities or bulk for the purpose of distribution by a tank vessel, tank car, tank vehicle, portable tank or other container, for wholesale or retail sale.

"Cathodic protection" means a technique designed to prevent the corrosion of a metal surface by making that surface the cathode of an electrochemical cell.

"Commission" means the Oklahoma Corporation Commission (OCC) and includes its designated agents or representatives.

"Construction tank" means a fuel tank used for twelve months or less at a construction site.

"Division" means the Petroleum Storage Tank Division (PSTD) of the Corporation Commission.

"EPA" means the United States Environmental Protection Agency.

"Farm tank" is a tank located on a tract of land devoted to the production of crops or raising animals, including fish, and associated residences and improvements. A farm tank must be located on the farm property. "Farm" includes but is not limited to fish hatcheries, rangeland, and nurseries with growing operations.

"Field constructed tank" means a tank constructed in the field such as a tank constructed of concrete that is poured in the field, or a steel or fiberglass tank primarily fabricated in the field.

"Financial responsibility" shall have the same meaning in this Chapter as in 40 CFR 280 Subpart H.

"Financial security" means holding financial security in a tank system or facility site and is not considered ownership of a tank system unless certain criteria of 40 CFR 280 Subpart H is met.

"Fleet and Commercial" means any facility as defined in this Chapter that uses underground storage tanks to store regulated substances for use in its own vehicles or equipment.

"Flow-through process tank" means a tank that forms an integral part of a production process through which there is a steady, variable, recurring or intermittent flow of material during the operation of the process. Flow-through process tanks do not include tanks used for the storage of materials prior to their introduction to the process or for the storage of finished products or by-products from the production process.

"Lender liability" shall have the same meaning in this Chapter as in 40 CFR 280 Subpart I.

"Licensed Environmental Consultant" means an individual who has a current license issued by PSTD to perform corrective action.

"Marina" means any fuel storage tank system located on or by the water for the purpose of fueling watercraft.

"Out of Order tag" means tag, device or mechanism on the tank fill pipe that clearly identifies an underground storage tank as ineligible for delivery of product.

"Permanent out of use" or "POU" means a petroleum storage tank system that is not in service/use, does not contain regulated substances, and is not intended to be placed back in service/use.

"Private airport" means an airport used only by its owner and regulated as a fleet and commercial facility.

"Private airstrip" means a personal residential takeoff and landing facility part of the airstrip owner's residential property.

"PST" means petroleum storage tank.

"PSTD" means Petroleum Storage Tank Division.

"Public Utility" means any entity providing gas, electricity, water, or telecommunications services for public use.

"Regulated substance" means antifreeze, motor oil, motor fuel, gasoline, kerosene, diesel or aviation fuel. It does not include compressed natural gas, liquid natural gas and propane.

"Release detection" means determining whether a release of regulated substances has occurred from a petroleum storage tank or system into the environment or into the interstitial area between the underground storage tank system and its secondary barrier.

"Residential tank" is a tank located on property used primarily for dwelling purposes.

"Retail facility" means a service station, convenience store or any other facility selling motor fuel that is open to the general public.

"Secondary containment" means an underground storage tank and/or piping with inner and outer barriers which provide a space for interstitial (the space between the inner and outer walls of a double walled tank or piping) monitoring.

"Tampering" means willful intention which makes an attempt to deceive, cheat or misrepresent the facts to the public. It also presents a risk to environmental welfare as well as public health, safety and welfare.

"Tank tightness testing" or "precision testing" means a procedure for testing an underground storage tank system's integrity.

"Temporary out of use" or "TOU" means the status of an underground storage tank system that has been taken out of service/use but not removed with the intent to return to service.

"TPH" means total petroleum hydrocarbons.

"Underground storage tank" or "UST" or "tank" means a regulated storage tank, including underground piping, that has ten percent or more of its volume beneath the surface of the ground. ~~Piping is also included in this definition when referring to an airport hydrant system tank.~~

"Underground storage tank system" means an underground storage tank and any connected aboveground or underground piping, dispensers, containment sump, if any, and ancillary equipment or transport truck connected to the storage tank system.

"Used Motor Oil" is any spent oil removed from a motor vehicle.

SUBCHAPTER 3. RELEASE PREVENTION AND DETECTION REQUIREMENTS

PART 2. RELEASE DETECTION REQUIREMENTS AND METHODS

165:25-3-6.28. Statistical Inventory Reconciliation (SIR)

(a) Deliveries, withdrawals and balance remaining must be recorded each operating day on the PSTD Monthly Inventory Reconciliation Form or an electronic equivalent and data must be reconciled monthly every thirty (30) days.

(b) SIR records must demonstrate the following:

(1) Report a quantitative result with a calculated leak rate;

(2) Be capable of detecting a leak rate of 0.2 gallon per hour or a release of one hundred fifty (150) gallons within thirty (30) days, with a probability of detection of 0.95 and a probability of false alarm of 0.05; and

(3) Use a threshold that does not exceed one-half (1/2) the minimum detectible leak rate.

(b)(c) The tank must be equipped with a drop tube and measured for water at least monthly every thirty (30) days.

(e)(d) The equipment used is capable of measuring the level of product over the full range of the tank's height to the nearest one-eighth inch (1/8").

(d)(e) The regulated substance inputs are reconciled with delivery receipts by measurement of the tank inventory volume before and after delivery.

(e)(f) Records must be submitted to a certified SIR vendor for ~~monthly~~ evaluation. Only third party certifications that have been reviewed and approved by the National Work Group on Leak Detection Evaluations (NWGLDE), found at the NWGLDE Web Site, will be accepted (nwgldc.org).

(f)(g) SIR analysis reports may must include a summary report of the quantitative results and ~~must include~~ copies of all ~~Monthly~~ Inventory Reconciliation Forms.

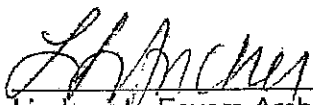
(g)(h) Results of monthly SIR analysis must be on premises no later than the end of the following month. Beginning March 1, 2017, or six (6) months after the effective date of this rule, whichever is later, results of SIR analysis must be on premises for inspector review every thirty (30) days.

(h)(i) This method is approved as release detection for tanks only.

ATTESTATION

I, the undersigned, do hereby attest that the copy enclosed herewith is a true and correct copy of amendments to OAC 165:25, Underground Storage Tanks, which was adopted by the Oklahoma Corporation Commission on September 8, 2016, under emergency rulemaking provisions of the Administrative Procedures Act, 75 O.S., Sections 250 et seq.

I, the undersigned do hereby attest that such rules were adopted in substantial compliance with the Administrative Procedures Act.



Lindsay LaFevers Archer
Rulemaking Liaison
Oklahoma Corporation Commission
September 12, 2016