TITLE 165. CORPORATION COMMISSION
CHAPTER 29. CORRECTIVE ACTION OF PETROLEUM STORAGE TANK RELEASES

RULEMAKING ACTION:
PERMANENT final adoption

RULES:
Part 1. Purpose and Statutory Authority
165:29-1-1. Purpose [AMENDED]
165:29-1-3. Authority [AMENDED]
Part 7. National Industry Codes
165:29-1-32. Incorporated codes and standards [AMENDED]
Subchapter 3. Release Prevention, Detection and Correction
Part 5. Corrective Action Requirements
165:29-3-71. General applicability; exception [AMENDED]
Part 7. Licensing Procedures for Environmental Consultants
165:29-3-90. Licensing for Environmental Consultants involved with closures and/or corrective action of releases from underground or aboveground storage tanks [AMENDED]
165:29-3-91. Licensee disciplinary action procedure [NEW]
165:29-3-92. License penalties [NEW]

AUTHORITY:
The Commission's statutory authority is found in 17 O.S. §§ 306(12), 307, 322; and 17 O.S. § 342 (Please note that this citation changed November 1, 2018, from 52 O.S. § 325)

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:
Although the Oklahoma Corporation Commission is not subject to the requirements of Executive Order No. 2019-11, the proposed rules were submitted to the Governor and Cabinet Secretary on October 17, 2019.

COMMENT PERIOD:
October 16, 2018 to December 28, 2018

PUBLIC HEARING:
January 30, 2019

ADOPTION:
January 30, 2019

SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:
February 8, 2019

LEGISLATIVE APPROVAL:
Approved May 28, 2019 by HJR 1022

FINAL ADOPTION:
May 28, 2019

EFFECTIVE:
August 1, 2019

SUPERSEDED EMERGENCY ACTIONS:
n/a

ACCEPTED 6/5/19
Office of Administrative Rules
Oklahoma Secretary of State
Docket # 19-425 OAR/cert C.C.
INCORPORATIONS BY REFERENCE:
165:29-1-32. Incorporated codes and standards (various codes and standards updated to most current version)

Incorporated standards:
(1) National Fire Protection Association Standards:
Standard Number 30, 2018, "Flammable and Combustible Liquids Code."
Standard Number 329, 2018, "Handling Releases of Flammable and Combustible Liquids and Gases."
(2) American Petroleum Institute Standards:
Publication 2015, 2018, "Requirements for Safe Entry and Cleaning of Petroleum Storage Tanks."
(3) Underwriter's Laboratory Standards:
Standard UL58, 2018, "Steel Underground Tanks for Flammable and Combustible Liquids."

Incorporating rules:
165:29-1-32

Availability:
8:00 am to 4:30 pm, Monday through Friday at Oklahoma Corporation Commission, Office of Petroleum Storage Tank Division, 4th Floor, Jim Thorpe Office Building, 2101 N Lincoln Blvd., Oklahoma City, OK 73152-2000, 405-521-4683.

GIST/ANALYSIS:
The adopted rules update terminology consistent with statute; clarify the authority and approval of Oklahoma's storage tank program; correct the name of the Oklahoma Petroleum Storage Tank Consolidation Act; update standards to current edition; correct rule citations; add a method to report a release; to move language regarding penalties for licensee violations to a new rule to be consistent with other rule chapters; establish a disciplinary policy; establish penalties for licensees; and make grammatical corrections.

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF AUGUST 1, 2019;
SUBCHAPTER 1. GENERAL PROVISIONS

PART 1. PURPOSE AND STATUTORY AUTHORITY

165:29-1-1. Purpose
The purpose of this Chapter is to provide a comprehensive program for the regulation of petroleum storage tank systems in Oklahoma to prevent, contain, abate, and remove pollution contamination harmful to the public health, safety, welfare and the environment.

165:29-1-3. Authority
(a) 42 U.S.C.A. § 6991 et seq., permits the State to submit a petroleum storage tank regulatory program for review and approval by the Administrator of allows Oklahoma to apply for state program approval by the United States Environmental Protection Agency ("EPA"). EPA initially approved Oklahoma’s petroleum storage tank program on 8/12/92 August 12, 1992 and again on March 12, 2018.
(b) 17 O.S. § 305 authorizes the Oklahoma Corporation Commission to administer Subtitle I of Title VI of the Solid Waste Disposal Act (42 U.S.C.A. § 6901 et seq.).
(c) 17 O.S. § 306 requires the Oklahoma Corporation Commission to promulgate and enforce rules to carry out the provisions of the Oklahoma Petroleum Storage Tank Regulation Consolidation Act (17 O.S. § 301 et seq.).
(d) The Oklahoma Corporation Commission has jurisdiction over storage tanks that contain antifreeze, motor oil, motor fuel, gasoline, kerosene, diesel, or aviation fuel.

PART 7. NATIONAL INDUSTRY CODES

165:29-1-32. Incorporated codes and standards
Specific references to documents listed in (1) through (13) below are made throughout this Chapter. Each of these documents or parts thereof are adopted and incorporated by reference as standards, but only to the extent that they are specifically referenced in this Chapter. These rules will supersede in any conflict between these rules and any standard. These codes and standards will be updated periodically through a formal rulemaking procedure initiated by PSTD to reflect any substantive or relevant changes.

(1) National Fire Protection Association Standards:
   (A) Standard Number 30, 2015 2018, "Flammable and Combustible Liquids Code."
   (B) Standard Number 329, 2014 2018, "Handling Releases of Flammable and Combustible Liquids and Gases."
   (C) Standard Number 385, 2012, "Tank Vehicles for Flammable and Combustible Liquids."
   (D) Standard Number 326, 2015, "Safeguarding of Tanks and Containers for Entry, Cleaning or Repair."
   (E) Standard Number 30A, 2015, "Motor Fuel Dispensing Facilities and Repair Garages."

(2) American Petroleum Institute Standards:
   (A) Recommended Practice 1615, 2011, "Installation of Underground Hazardous Substances or Petroleum Storage Systems."
   (B) Recommended Practice 1632, 2002, "Cathodic Protection of Underground Storage Tank and Piping Systems."
(C) Recommended Practice 1604, R2010, "Closure of Underground Petroleum Storage Tanks, 3rd Edition."
(D) Recommended Practice 1631, 2001, "Interior Lining and Periodic Inspection of Underground Storage Tanks."
(E) Recommended Practice 1621, 2012, "Bulk Liquid Stock Control at Retail Outlets."
(F) Recommended Practice 1626, 2010, "Storing and Handling Ethanol and Gasoline - Ethanol Blends at Distribution Terminals and Service Stations."
(G) Recommended Practice 1627, 1993, "Storing and Handling of Gasoline - Methanol/Cosolvent Blends at Distribution Terminals and Service Stations."

(3) National Association of Corrosion Engineers:
(A) Standard Number SP0169-2013, "Control of External Corrosion on Underground or Submerged Metallic Piping Systems."
(B) Standard Number SP0285-2011, "External Corrosion Control of Underground Storage Tank Systems by Cathodic Protection."
(C) Standard Number SP-0286-2007, "Electrical Isolation of Cathodically Protected Pipelines."

(4) Underwriter's Laboratory Standards:


(6) Steel Tank Institute F894, ACT-100, "Specification for External Corrosion Protection of FRP Composite Underground Steel Storage Tanks 2006."


(8) National Leak Prevention Association Standard 631, "Spill Prevention, Minimum 10 Year Life Extension, Existing Steel UST by Lining Without Additional Cathodic Protection."


SUBCHAPTER 3. RELEASE PREVENTION, DETECTION AND CORRECTION

PART 5. CORRECTIVE ACTION REQUIREMENTS

165:29-3-71. General applicability; exception
(a) Every owner or operator of a petroleum storage tank system must, in response to a confirmed release from a petroleum storage tank system, comply with the requirements of this Part, with the exception of those systems excluded from regulation in Chapter 25 and Chapter 26 of Commission rules OAC 165:25 and 165:26.
(b) All work associated with the assessment, characterization, investigation, remedial action, and closure from a release or suspected release of a regulated substance should be pre-approved by PSTD.
(c) Upon confirmation of a release, or after a release from the petroleum storage tank system is identified, the owner or operator must perform the following initial response actions:
   (1) Report the release to PSTD either using the link provided on the release reporting tab located on PSTD's webpage at the OCC website (PSTReleaseReporting@occemail.com); by telephone at 405-521-4683 or 1-888-621-5878, electronic mail or fax to 405-521-4945. If after hours, contact or on weekends or holidays call the PSTD emergency number at 405-823-0994.
   (2) Take immediate action to prevent any further release of the regulated substance into the environment, and prove that any system still containing fuel is tight by having a system tightness test performed.
   (3) Identify and mitigate any fire, explosion, and vapor hazards.
   (4) Remove free product to the extent practicable as determined by PSTD while continuing, as necessary, any actions required by this Subchapter.
(d) Any corrective action work performed at a release site must have prior documented verbal or written approval by a member of PSTD staff to be considered reimbursable by the Indemnity Fund. This requirement for pre-approval excludes required emergency spill mitigation measures. Additionally, field work associated with all corrective actions requires 48-hour (two working days excluding holidays and weekends) written notice to PSTD of scheduled field activities. Notice must be made to the PSTD staff member assigned to the case, his/her Supervisor and the PSTD Technical Manager.

PART 7. LICENSING PROCEDURES FOR ENVIRONMENTAL CONSULTANTS

165:29-3-90. Licensing for Environmental Consultants involved with closures and/or corrective action of releases from underground or aboveground storage tanks
(a) Any individual seeking a license as an Environmental Consultant involved with closures, and/or corrective action of releases from either underground or aboveground storage tank sites must complete an application form prepared by PSTD. The application form requires information regarding education, experience, knowledge of applicable state and federal regulations, industry standards and practices and references.
(b) All applicants must qualify in the following manner:
   (1) Satisfy requirements of the Occupational Safety and Health Administration (OSHA) 29 CFR 1910.120 (HAZWOPER) forty (40) hour course with eight (8) hour annual updates and the eight (8) hour supervisor course; must provide evidence of the successful completion of a PSTD approved Risk-Based Corrective Action course, seminar or school. At a minimum this course must include sixteen (16) hours of risk assessment/risk analysis and fate and transport
of chemicals in the environment; eight (8) hours of which must be hands-on computer training with appropriate software; and

(2) Have seven (7) years' environmental experience with at least two (2) years' experience at regulated petroleum storage tank facilities and pass an examination, which must be taken no more frequently than once every six (6) months, authorized by the State of Oklahoma, which demonstrates knowledge of reference materials published by EPA:NWWA (Technical Enforcement Guidance Document-TEGD) and all applicable federal, state, and local regulations;

(3) Have a four- (4-) year degree from an accredited college or university recognized by the state in Geology, Hydrology, Environmental Science, Environmental Engineering, Petroleum Engineering, Civil Engineering, Geologic Engineering or an equivalent engineering degree and at least four (4) or more years of environmental experience with at least two (2) years' experience at regulated petroleum storage tank facilities, and pass an examination approved by the PSTD. The examination will test an applicant's knowledge of industry standards, reference materials, laws and regulations, and may be taken no more frequently than once every six (6) months.

(c) Licensed Environmental Consultants are required to pay fees for applications, examinations, and certifications prior to examination and license issuance as set forth in Chapter 5 of Commission rules OAC 165:5.

(d) Licensed Environmental Consultants must provide proof of attending (online or in-class) eight (8) hours of PSTD approved continuing professional education courses, classes, seminars or conferences to PSTD every year. Licensees may request to rollover a maximum of eight (8) credit hours from the current year to satisfy the following year's continuing education requirements. Approval of any rollover hours will be at the discretion of PSTD after evaluating the class, conference, course, or seminar. Licensees must also provide proof of attending eight (8) hours of HAZWOPER Refresher class updates every year.

(e) Sampling, sampling at tank closures, investigations, and remediation or any other activities directed by PSTD must be under the supervision of a Licensed Environmental Consultant. All work requiring supervision by Licensed Environmental Consultants must contain a verification statement signed by the consultant in supervisory control.

(f) Licensed Environmental Consultants must supervise and/or perform work only in the areas in which they are educated and/or experienced.

(g) PSTD has the responsibility and for good cause shown, to deny, suspend, refuse to renew or revoke the license, or reprimand any Licensed Environmental Consultant who is found guilty of:

(1) The practice of any fraud or deceit in obtaining a license or in performing work pursuant to this Chapter.

(2) Any gross negligence, incompetence or misconduct in work performed pursuant to this Chapter.

(3) Knowingly making false statements or signing false statements, certificates or affidavits to the PSTD or to clients with the intention to induce payment.

(4) Aiding or assisting another person in violating any provision of this Chapter.

(5) Signing a verification statement for work performed pursuant to this Chapter that was not performed by the licensee.

(6) Engaging in dishonorable, unethical or unprofessional conduct of a character likely to deceive, defraud or harm a customer or the public.

(7) Failure to comply with this Chapter, Chapters 25, 26, or 27, the Oklahoma Petroleum Storage-Tank Regulation Act (17 O.S. § 301 et seq.), and the Oklahoma Petroleum Storage
Tank Release Indemnity Program will result in PSTD seeking a suspension and/or revocation of the license.

(8) Being under indictment or convicted of a felony for any criminal offense that impacts their obligation to PSTD.

(9) Failure to submit required PSTD required paperwork, test results, and/or reports in the format established by PSTD within the time allowed shall result in enforcement action.

(h) Disciplinary action levels against PSTD licensees including but not limited to private reprimand, public reprimand, license suspension, license revocation and refusal to renew.

(i) Prior to any license suspension, revocation, or refusal to renew, the Director of PSTD will have the matter investigated and a report prepared for his or her consideration. If the Director elects to proceed with suspension, revocation, or refusal to renew, PSTD will schedule a hearing before an Administrative Law Judge and the licensee will be officially notified. The burden of proof of clear and convincing violations of this Chapter, applicable State law, or other rules, regulations or Commission orders rests upon PSTD.

(j) This Section in no way exempts the Licensed Environmental Consultant from having to meet other applicable requirements as set by state and federal statutes and regulations from other state and federal agencies.

(k) Any licensee in violation of state law, enabling statute, PSTD rules, requirements and/or Commission orders may be subject to fines assessed by the Commission after notice and hearing.

165:29-3-91. Licensee disciplinary action procedure

A license issued by PSTD is a designation of competence to the public in the area of licensee expertise. PSTD is not limited to, but may use the following disciplinary action for PSTD licensees:

(1) Informal reprimand. The Manager of the appropriate PSTD department will call offending licensee for an informal discussion addressing the recent infraction and place a memo in the licensee's file documenting the discussion and nature of the violation.

(2) Formal reprimand. The Manager of the appropriate PSTD department will prepare a letter of reprimand to the licensee addressing the offense. The letter of reprimand will provide the licensee an opportunity to formally dispute alleged violation(s). The reprimand letter, licensee's response, all recourse actions following licensee rebuttal, if any, and the Manager's final decision(s) will be placed in the licensee's file and maintained by PSTD.

(3) License suspension, revocation and/or refusal to renew a license. If the Director elects to pursue suspension, revocation, or refusal to renew, a notice of such action will be sent to the licensee by certified mail/return receipt requested. The notice will state the date and time of the hearing scheduled before an Administrative Law Judge.

165:29-3-92. License penalties

(a) PSTD has the responsibility to deny, suspend, refuse to renew or revoke the license, or reprimand any Licensed Environmental Consultant who is found guilty of:

(1) The practice of any fraud or deceit in obtaining a license or in performing work pursuant to this Chapter.

(2) Reckless or willful disregard, incompetence or misconduct in work performed pursuant to this Chapter.

(3) Knowingly making false statements or signing false statements, certificates or affidavits to the PSTD or to clients.

(4) Aiding or assisting another person in violating any provision of this Chapter.
(5) Signing a verification statement for work performed pursuant to this Chapter that was not performed by the licensee.

(6) Engaging in dishonorable, unethical or unprofessional conduct of a character likely to deceive, defraud or harm a customer or the public.

(7) Failure to comply with this Chapter, OAC 165:25, 165:26, 165:27, and/or the Oklahoma Petroleum Storage Tank Consolidation Act (17 O.S. §§ 301 et seq.).

(8) Being under indictment or convicted of a felony for any criminal offense that impacts their obligation to PSTD.

(9) Failure to submit PSTD required paperwork, test results, and/or reports in the format established by PSTD within the time allowed may result in enforcement action.

(b) Disciplinary action levels against PSTD licensees include but are not limited to informal reprimand, formal reprimand, license suspension, license revocation and refusal to renew.

(c) Any licensee in violation of Commission enabling statutes, PSTD rules, requirements and/or Commission orders may be subject to disciplinary action levels mentioned above and/or fines assessed by the Commission after notice and hearing.