

FILED
SEP 20 2016

COURT CLERK'S OFFICE - OKC
CORPORATION COMMISSION
OF OKLAHOMA

BEFORE THE CORPORATION COMMISSION OF OKLAHOMA

IN THE MATTER OF A PERMANENT
RULEMAKING OF THE
OKLAHOMA CORPORATION
COMMISSION AMENDING
**OAC 165:25, UNDERGROUND
STORAGE TANKS**

CAUSE NO. RM 201600011

NOTICE OF PROPOSED RULEMAKING

NOTICE IS HEREBY GIVEN that the Petroleum Storage Tank Division ("PSTD") of the Oklahoma Corporation Commission ("Commission") recommends that the Commission amend the Underground Storage Tank ("UST") rules that are set forth in the Oklahoma Administrative Code ("OAC") 165:25. The proposed rules are amended to: define changes and inclusions; require owner/operator address change; require notification to the Commission on transfer of ownership; require notification to the Commission when changing the percentage of additive to fuel in excess of 10% ethanol, and 20% biodiesel; require retention of release detection records for three (3) years instead of one (1) year; mandate current map depicting the tank system layout; require walkthrough inspections to be performed in accordance with Environmental Protection Agency ("EPA") rules; allow system shutdown if Commission requirements aren't met; make certain grammatical and punctuation changes; update applicable codes and standards to the most current versions; require evidence of financial responsibility in line with EPA requirements; alert holders of financial security interest in tank systems that they are subject to EPA requirements; expand to include specific tank standards; require certain tank pit preparation; establish when a Commission Licensed UST

Installer/Remover must be onsite; require that person making a fuel drop ascertain tank capacity in relationship to fuel being dropped; require persons to establish overfill prevention equipment functions properly; expand spill bucket testing; expand methodology for corrosion protection; clarify that the Commission only regulates storage tank systems that contain regulated substances; clarify frequency of inspections and tests; clarify when pipes can be repaired or must be removed; expand when a tank system can be properly identified as temporarily out of use ("TOU") and the requirements for establishing TOU status; require notification of return to service of TOU tank systems; clarify what must be removed at tank closure and PSTD approval of fill material if closed in place; provide reference for removal/closure sampling; require monitoring in a partial use compartmentalized tank; adopt EPA updated measures for release detection methods; specify that inventory control must be performed every thirty (30) days instead of monthly; require a Commission Licensed Environmental Consultant to perform site assessments with vapor and groundwater monitoring wells checked every thirty (30) days and a copy of the results of such check kept onsite; require interstitial monitoring results to be performed every thirty (30) days; expand automatic tank gauging requirements and specify leak status of tanks to be determined every thirty (30) days; require Statistical Inventory Reconciliation ("SIR") to be performed every thirty (30) days, and adopt EPA updated measures for SIR use; establish monitoring requirements for piping as every thirty (30) days; expand system tests and further clarify interstitial monitoring; expand inspection compliance and documents to be presented at facility inspections; provide for electronic fine payment when available; and update Appendix S. to correlate to EPA requirements.

The proposed amended rules for OAC 165: 25 are as follows:

OAC 165:25-1-11. is amended to expand and clarify definitions; to better match definitions found in the federal regulations, Chapters 15 and 26; and to define what constitutes an "inert material" used when filling a tank in place. The definition of "underground storage tank" supersedes the definition in the emergency rule.

OAC 165:25-1-41. is amended to require notification within 30 days when a mailing address changes (already required in 165:25-1-53).

OAC 165:25-1-51. is amended to require 30 day notification when a mailing address changes (already required in 165:25-1-53).

OAC 165:25-1-53. is amended to move the recordkeeping requirements to the specific SIR rule in Chapter 25 (165:25-3-6.28) where it is detailed in greater depth; and to clarify notification before switching to regulated substances greater than E10 or B20 as required in the federal rules (40 CFR 280.32).

OAC 165:25-1-56. is amended to match release detection recordkeeping requirements to the federal regulations found in 40 CFR 280.45(b)(1), and to correct punctuation. Release detection records for the previous 12 months must be available for inspector review at the facility.

OAC 165:25-1-58. is amended to minimize ambiguity on records for piping.

OAC 165:25-1-60. is amended to match the federal regulations and details the walkthrough inspection records that must be available at the facility for inspector review (40 CFR 280.36). An editor's note will be added directing the regulated public to PSTD's website for sample forms they can use for walkthrough inspections

OAC 165-25-1-67. is amended to include all PSTD requirements for when an inspector may shutdown a UST system.

OAC 165:25-1-107. is amended for a grammatical correction.

OAC 165:25-2-2. is amended to update codes and standards to current editions as provided in 75 O.S. § 251; and adds new standards recommended by the federal regulations to allow owners and operators more options for compliance.

OAC 165:25-2-4. is amended to incorporate the federal regulations for financial responsibility (40 CFR Subpart H).

OAC 165:25-2-6. is added to incorporate the federal regulations for lender liability (40 CFR Subpart I).

OAC 165:25-2-33. is amended to incorporate recommended standards in the federal regulations to allow owners and operators more options for compliance (40 CFR 280.20).

OAC 165:25-2-36. is amended for grammatical corrections; to clarify procedures for installation of an underground storage tank system; and require UST Installers be on site during all installation activities.

OAC 165:25-2-39. is amended to incorporate the federal regulations regarding overfilling (40 CFR 280.30); and clarification on the 3-year inspection of overfill prevention equipment (40 CFR 280.35).

OAC 165:25-2-40. is amended to incorporate the federal regulations for testing spill prevention equipment after installation (40 CFR 280.35).

OAC 165:25-2-51. is amended to incorporate additional standards referenced in the federal regulations to allow owners and operators more options for compliance (see 40 CFR 280.31).

OAC 165:25-2-52. is amended to match language in the federal regulations for corrosion protection (40 CFR 280.31).

OAC 165:25-2-53. is amended to serve as a reminder to stakeholders that CP testing, repair and recertification is a scheduled activity (already in 165:25-1-41).

OAC 165:25-2-55-1. is amended to incorporate the federal regulations for replacing piping (40 CFR 280.12).

OAC 165:25-2-131. is amended to correct a grammatical error and to require UST Removers be on site when concrete over any part of the tank system is removed.

OAC 165:25-2-133. is amended to clarify requirements for tanks temporarily out of use up to three (3) months; to clarify the requirements for tanks temporarily out of use 3-12 months (moved from 165:25-2-134); and to clarify and detail the federal requirements for temporarily out of use tanks (40 CFR 280.70).

OAC 165:25-2-134. is amended to move language regarding temporary closure to 165:25-2-133 leaving this rule as the requirement for returning a tank back into service; and is clarified regarding the requirements for returning a tank to service.

OAC 165:25-2-135. is amended to clarify that the tank system includes the associated piping; and to require a PSTD-approved inert material must be used to fill a tank that is closed in place. As did EPA in the Preamble to 40 CFR Part 280, PSTD is not going to detail in the rules the materials which can be used for filling a tank in place because there are several choices currently available and the special considerations and problems inherent in each must be considered on a case by case basis. The inert fill material must be adequate to prevent the tank from surfacing after closure; must support the structural integrity of the tank as it deteriorates over time to avoid cave-ins;

must completely seal the tank and associated piping to prevent future use of the tank system; and must be approved by PSTD prior to closure in place.

OAC 165:25-2-136. is amended to identify the document on PSTD's website that indicates sampling locations that must be used for tank removal, closure, and change of service.

OAC 165:25-3-6.20 is amended to clarify that a tank with individual compartments is still considered to be one tank so all compartments within that tank must be monitored at all times.

OAC 165:25-3-6.21. is amended to clarify and detail the recordkeeping requirements for release detection (already in 165:25-1-53).

OAC 165:25-3-6.22. is amended to match recordkeeping requirements with the current language in found in 165:25-3-6.20.

OAC 165:25-3-6.23. is amended to make grammatical corrections; incorporates the federal regulations for release detection (40 CFR 280.41); corrects the title for a consultant; and requires a copy of all site assessments performed be available at the facility for inspector review (currently required in 165:25-1-53).

OAC 165:25-3-6.24. is amended to make grammatical corrections; incorporates the federal regulations for release detection (40 CFR 280.41); corrects the title for a consultant; and requires a copy of all site assessments performed be available at the facility for inspector review (currently required in 165:25-1-53).

OAC 165:25-3-6.25. is amended to incorporate the federal regulations for release detection requirements (40 CFR 280.41).

OAC 165:25-3-6.26. is amended to incorporate the federal requirements for release detection (40 CFR 280.43).

OAC 165:25-3-6.28. is amended to incorporate the federal requirements for release detection (40 CFR 280.43).

OAC 165:25-3-6.29. is amended to clarify a date and to incorporate the federal release detection requirements (40 CFR 280.44). The stricken language was specifically requested by EPA to avoid any issue of a manufacturer saying a leak does not have to be simulated to test their equipment. EPA requires a simulated leak in all instances.

OAC 165:25-3-8. is amended to clarify a date and to incorporate the federal release detection requirements (40 CFR 280.44). The stricken language was specifically requested by EPA to avoid any issue of a manufacturer saying a leak does not have to be simulated to test their equipment. EPA requires a simulated leak in all instances.

OAC 165:25-18-4. is amended to incorporate the new federal requirements for recordkeeping that must be maintained at the facility for inspector review (40 CFR 280.34).

OAC 165:25-18-13. is amended to incorporate electronic funds transfers (EFT's) for payment of fines.

Appendix S. is amended to correct rule numbers; revise the requirement for SIR records to be on site for inspector review required in the federal regulations (40 CFR 280.43); and adds PSTD requirements for when administrative penalties can be applied.

NOTICE IS FURTHER GIVEN that the Commission has jurisdiction to initiate this permanent rulemaking pursuant to the Oklahoma Administrative Procedures Act, 75

O.S. 2011, 17 Okla. Stat. §306(12), 52 Okla. Stat. §§325, 347, and Article IX, Section 18 of the Oklahoma Constitution.

NOTICE IS FURTHER GIVEN that it is necessary to adopt permanent rules regarding USTs. Upon adoption of the permanent rules proposed herein, by the Commission, the proposed rules shall be submitted to the Governor and the Oklahoma Legislature for approval as permanent rules.

NOTICE IS FURTHER GIVEN that the proposed rules will be made available for public inspection at the Commission's Oklahoma City Court Clerk's Office. A copy of the proposed rules may be requested by phone at (405) 521-2352, e-mail at courtclerk@occemail.com, or by visit to the Commission's Oklahoma City Court Clerk's Office. The proposed rules are also accessible on the Commission's website at <http://www.occeweb.com> and may be downloaded at no cost to the end user.

NOTICE IS FURTHER GIVEN that the Rule Impact Statement pursuant to 75 O.S. §303(D) and the Economic Impact - Environmental Benefit Statement pursuant to 27A O.S. §1-1-206 will be timely prepared and made available for public inspection in the Commission's Court Clerk's Office, First Floor, Jim Thorpe Office Building, 2101 North Lincoln Boulevard, Oklahoma City, Oklahoma, 73105 no later than fifteen (15) days after the date of publication of this Notice of Proposed Rulemaking.

NOTICE IS FURTHER GIVEN that the Commission invites all interested persons to **submit comments regarding the proposed changes to the Rules on or before December 23, 2016**. Those persons interested in submitting comments should file one (1) copy of their comments, referring to Cause No. RM 201600011, with the Commission's Court Clerk's Office. The comments will be made available for public inspection by telephone, e-mail, or in-person request during regular business hours of the Court Clerk's Office, 8:00 a.m. to 4:30 p.m.

NOTICE IS FURTHER GIVEN that the Petroleum Storage Tank Division will have **technical conferences on October 25 and November 22, 2016, at 10:30 a.m.** in Courtroom 301, Third Floor, Jim Thorpe Office Building, 2101 North Lincoln Boulevard, Oklahoma City, Oklahoma 73105. All parties interested in the proposed rules are urged and welcome to attend. One or more of the Commissioners may be present at the

technical conferences and may participate in the dialogue with the rulemaking participants regarding the issues of the proposed rulemaking.

Pursuant to 75 O.S. §303 and §504, business entities are requested, if the proposed rules adversely affect such entities, to provide to the Commission in writing, a description of the probable quantitative (costs) and qualitative impact of the proposed rule, economic or otherwise, and use quantifiable data to the extent possible, taking into account both short-term and long-term consequences.

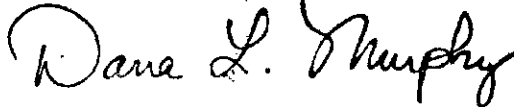
NOTICE IS FURTHER GIVEN that at **9:30 a.m., January 24, 2017, in Room 301** of the Jim Thorpe Office Building, 2101 North Lincoln Blvd., Oklahoma City, Oklahoma, the Commission shall meet, hold a public hearing on, and consider adoption of the proposed permanent rule(s).

NOTICE IS FURTHER GIVEN that further information and inquiries regarding this proposed rulemaking should be directed to Jeff Southwick, Deputy General Counsel, by telephone (405) 522-4457, e-mail j.southwick@occemail.com, facsimile (405) 521-4150, or at Room 400, Jim Thorpe Office Building, 2101 North Lincoln Boulevard, or Post Office Box 52000, Oklahoma City, Oklahoma 73152-2000.

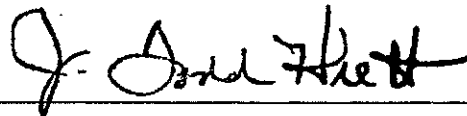
CORPORATION COMMISSION OF OKLAHOMA



BOB ANTHONY, Chairman

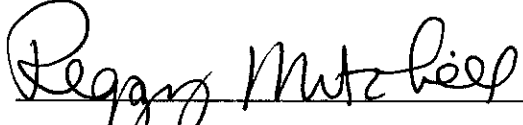


DANA L. MURPHY, Vice-Chairman



J. TODD HIETT, Commissioner

DONE and PERFORMED this 20th day of September, 2016 BY ORDER OF THE
COMMISSION:



PEGGY MITCHELL, Commission Secretary