

TNW

**BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA**

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

**CAUSE NO. RM 201700011**

**FILED**  
DEC 19 2017

**NOTICE OF PROPOSED RULEMAKING**

**COURT CLERK'S OFFICE - OKC  
CORPORATION COMMISSION  
OF OKLAHOMA**

**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 include establishing procedures for order issuance, encouraging public participation in Commission hearings, streamlining the variance request process, establishing a designated format for notifying, reporting and scheduling activities and establishing enforcement for non-compliance, broadening responsibility for submittal of installation documentation, allowing for individual compartments within a compartmentalized tank to be permitted, changing professional storage tank licensing to an annual basis, establishing disciplinary action levels for license penalties, requiring notification at critical junctures during the installation process and prior to completion of work so Commission staff may perform an inspection, updating "monthly" release detection terminology to "every 30 days" already established in other rules within Chapter 25, ensuring that uncertified storage tanks are not reused, requiring closure or upgrade of a storage tank that fails a tightness test, and requiring a licensed remover on site when removing concrete over a storage tank system, requiring specific labeling of a monitor well so it can be easily identified, expanding the responsibility for reporting a release, adding electronic means for reporting a release, establishing enforcement for failure to submit required reports, adding applicability of the Chapter to include the transport truck attached to the storage tank at airports, and establishing how correspondence will be sent.

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

OAC 165:25-1-11 is amended to revise definitions for consistency with the same definitions in Chapter 15 and Chapter 26, to clarify the operator of a storage tank, identify ownership of a storage tank system, define an owner who is uncooperative and/or unwilling to follow Commission requirements, clarify substances that the Commission regulates at retail facilities, to further clarify the status of a Temporary Out of Use ("TOU") storage tank, to expand the definition of an underground storage tank for clarification, and make grammatical corrections for clarification.

OAC 165:25-1-24 is amended to specify excluded substances, and removes language regarding storage tanks that are excluded from regulation already in 17 Okla. Stat. § 304.

OAC 165:25-1-24.1 is amended to add a rule citation.

OAC 165:25-1-26.1 is amended to establish procedures for order issuance and applicable regulations.

OAC 165:25-1-26.2 is amended to encourage public participation in Commission hearings.

OAC 165:25-1-28 is amended to streamline the variance process for staff to administratively review a variance application and, if staff has no objection to the request, it will not be necessary to conduct a hearing before an Administrative Law Judge (ALJ).

OAC 165:25-1-41 is amended to establish a designated format within a required timeframe to notify, report, and/or schedule PSTD reports, forms and activities, and establishes enforcement for non-compliance.

OAC 165:25-1-42 is amended to clarify and broaden the responsibility for submission of installation documentation to PSTD.

OAC 165:25-1-48 is amended to require testing be performed by certified testers, if applicable, and the work performed according to the manufacturer's instructions.

OAC 165:25-1-53 is amended to update release detection terminology for consistency with other rules within Chapter 25, and correct a rule citation.

OAC 165:25-1-54 is amended to establish a timeframe to submit records for repair.

OAC 165:25-1-64 is amended to allow for individual compartments within a compartmentalized storage tank to be permitted individually, exclude permitting for Permanently

Out of Use ("POU") storage tanks, and change storage tank professionals' license renewal to an annual basis.

OAC 165:25-1-67 is amended to correct grammar, to clarify the current process for when inspectors issue a Notice of Violation ("NOV"), and amend language for locking a fuel dispenser to be consistent with Chapter 15 and Chapter 26.

OAC 165:25-1-101 and OAC 165:25-1-102 are amended to clarify work experience from another state, and change the licensing period for tank installers to every year.

OAC 165:25-1-103 is amended to change the term "monthly" to "30 days" previously established in the Chapter, change license renewal for monitor well technicians to annual, and require monitor well readings that exceed established levels be reported to the Commission.

OAC 165:25-1-107 is amended to clarify grounds for license penalties and establish disciplinary action levels.

OAC 165:25-1-126 is amended to correct grammar for clarification.

OAC 165:25-2-24 is amended to strike outdated language for financial responsibility, make grammatical corrections and add language for the co-pay in the Indemnity Fund.

OAC 165:25-2-31 is amended to add certification requirements for tank installations, and require notification prior to completing work so an inspector may inspect and/or observe.

OAC 165:25-2-32 is amended to make grammatical corrections.

OAC 165:25-2-36 is amended to expand monitoring of critical junctures during the tank installation process, and require notification prior to work completion so an inspector may inspect and/or observe.

OAC 165-25-2-39 is amended to make the rule consistent with statutory language regarding responsibility for ensuring a release of fuel does not occur.

OAC 165:25-2-41 is amended to require associated tank system equipment be included in as-built drawings that are submitted to the Commission.

OAC 165:25-2-55.2 is amended to clarify vent piping requirements.

OAC 165:25-2-71 is amended to update terminology and make grammatical corrections for clarification.

OAC 165:25-2-72 and OAC 165:25-2-73 are amended to make grammatical corrections for clarification.

OAC 165:25-2-75 is amended to update terminology and make grammatical corrections for clarification.

OAC 165:25-2-91 is amended to make grammatical corrections for clarification.

OAC 165:25-2-131 is amended to ensure that uncertified tanks removed from the ground will not be re-used by having holes put in them at an acceptable facility, to clarify that cutting and removing concrete over a tank system requires a licensed remover on site.

OAC 165:25-2-134 is amended to require a tank that fails a tightness test must be closed or upgraded before it can be used again.

OAC 165:25-2-135 is amended to strike outdated language and adds the process for submitting a variance request.

OAC 165:25-3-1 is amended to make the language consistent with statutory language for responsibility to ensure a release of fuel does not occur.

OAC 165:25-3-6.22 is amended to change the term "monthly" to "every 30 days" for consistency with other release detection rules within Chapter 25.

OAC 165:25-3-6.23 is amended to change the term "monthly" to "every 30 days" for consistency with other release detection rules within Chapter 25 and expand responsibility for notification when a vapor monitoring report exceeds Commission established levels.

OAC 165:25-3-6.24 is amended to change the term "monthly" to "every 30 days" for consistency with other release detection rules within Chapter 25 and expand responsibility for notification when a groundwater monitoring report exceeds Commission established levels.

OAC 165:25-3-6.25 is amended to make a grammatical correction for clarification.

OAC 165:25-3-6.27 is amended to change the term "monthly" to "every 30 days" for consistency with other release detection rules within Chapter 25.

OAC 165:25-3-6.28 is amended to remove the requirement for an inventory reconciliation form.

OAC 165:25-3-6.29 is amended to change the term "monthly" to "every 30 days" for consistency with other release detection rules within Chapter 25.

OAC 165:25-3-7.1 is amended to expand the areas for release discovery, add electronic means of reporting fuel releases, change "monthly" to "every 30 days" terminology for consistency with other rules within Chapter 25, expand release reporting responsibility

requirements for consistency with Chapter 29 rules, and make grammatical corrections for clarification.

OAC 165:25-3-8 is amended to make grammatical corrections for clarification and establish enforcement action for reporting violations.

OAC 165:25-6-1 is amended to correct the application of this section to include the transport truck that is attached to an underground storage tank as defined in statute.

OAC 165:25-6-15 is amended to identify Underwriter's Laboratory ("UL") as the approved standard.

OAC 165:25-8-1 is amended to make grammatical corrections for clarification.

OAC 165:25-8-35 is amended to update terminology.

OAC 165:25-18-11 is amended to make grammatical corrections for clarification and establish how correspondence will be sent.

OAC 165:25-18-13 is amended to make grammatical corrections for clarification.

OAC 165:25-18-19 is amended to correct a statute citation.

Appendix Q is amended to change the term "monthly" to "every 30 days" for consistency with other release detection rules within Chapter 25.

Appendix S is added to correct rule numbers, change the number of times the Commission requests documentation from three to two times, add formal enforcement to the violation table and replace "administrative penalty" terminology to "fine."

**NOTICE IS FURTHER GIVEN** that the Commission has jurisdiction to initiate this permanent rulemaking pursuant to the Oklahoma Administrative Procedures Act, 75 O.S. §§ 250 *et seq.*, 17 O.S. §§ 306(12), 307, 52 O.S. §§ 325, 347 and Article IX, Section 18 of the Oklahoma Constitution.

**NOTICE IS FURTHER GIVEN** that it is necessary to adopt permanent rules regarding Underground Storage Tanks. 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, First Floor, Jim Thorpe Office Building, 2101 North Lincoln Boulevard, Oklahoma City, OK 73105. A copy of the proposed rules may be requested by phone at (405) 521-2352, email 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 Petroleum Storage Tank Division will have **technical conferences on January 11, 2018 at 10:00 a.m.** in Courtroom 105 **and January 25, 2018 at 1:30 p.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.

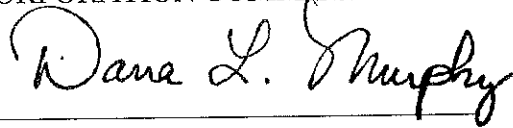
**NOTICE IS FURTHER GIVEN** that the Commission invites all interested persons to **submit comments regarding the proposed changes to the Rules on or before February 1, 2018.** Those persons interested in submitting comments should file one (1) copy of their comments, referring to Cause No. RM 201700011, with the Commission's Court Clerk's Office. The comments will be made available for public inspection by telephone, email, or in-person request during regular business hours of the Court Clerk's Office, 8:00 a.m. to 4:30 p.m.

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.

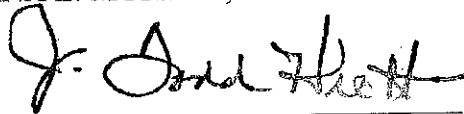
**NOTICE IS FURTHER GIVEN** that at **9:30 a.m., February 15, 2018 in Courtroom 301** of the Jim Thorpe Office Building, 2101 North Lincoln Boulevard, Oklahoma City, Oklahoma, the Commission shall meet, hold a public hearing on, and consider adoption of the proposed permanent rule(s).

**NOTICE IS FURTHER GIVEN** that further information and inquiries regarding this proposed rulemaking should be directed to Travis N. Weedn, Senior Attorney, by telephone (405) 521-4137, e-mail T.Weedn@occcemail.com, facsimile (405) 521-4150, or at Room 400, Jim Thorpe Office Building, 2101 North Lincoln Boulevard, Oklahoma City, Oklahoma 73105, or Post Office Box 52000, Oklahoma City, Oklahoma 73152-2000.

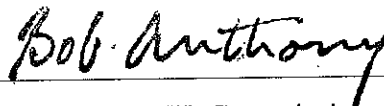
CORPORATION COMMISSION OF OKLAHOMA



DANA L. MURPHY, Chairman



J. TODD HIETT, Vice-Chairman

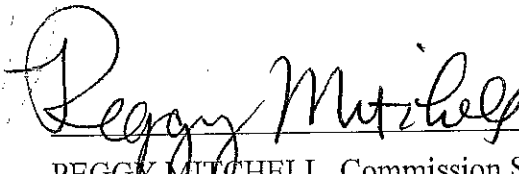


BOB ANTHONY, Commissioner

**CERTIFICATION**

DONE and PERFORMED this 19th day of December, 2017 BY ORDER OF THE  
COMMISSION:

[Seal]



PEGGY MITCHELL, Commission Secretary