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JAN 04 2018

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CORPORATION COMMISSION
OF OKLAHOMA

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

RULE IMPACT STATEMENT

This Rule Impact Statement addresses proposed amendments to the Oklahoma Corporation Commission's ("Commission") proposed rules to amend OAC 165:25 *et seq.*, Underground Storage Tank rules for Petroleum Storage Tanks. This Rule Impact Statement has been prepared in substantial compliance to 75 O.S. 2013, Section 303 (D).

I. PURPOSE OF RULE PROPOSALS

The proposed changes, amendments, additions and revocations include: providing definitions to clarify operators of a storage tank systems; identifying ownership of storage tank systems and owners who are uncooperative and/or unwilling to follow Commission requirements; clarifying substances that the PSTD regulates at retail facilities; further clarifying the status of temporarily out of use tanks; making definitional changes and inclusions; specifying excluded substances regulated by the PSTD; correcting a rule citation; establishing procedures for orders issued by the Commission; encouraging public participation in Commission hearings; streamlining the process for administrative review of an application for a variance; establishing a designated format within a required timeframe to notify, report and/or schedule required reports, forms, and activities, and establish enforcement for non-compliance; clarifying and broadening the responsibility for submission of installation paperwork; requiring that testing be performed by certified testers according to manufacturer's instructions; updating "monthly" to "thirty (30) day" terminology for release detection already required in the rules; establishing a timeframe to submit repair records; allowing for individual compartments within a storage tank to be permitted; excluding permits for tanks permanently out of use; changing license renewal from every two (2) years to annual; clarifying the current process for when inspectors issue a Notice of Violation to make it consistent with other Chapters; requiring that monitor well readings exceeding established levels be reported to the PSTD; clarifying grounds for license penalties and disciplinary action for storage tank licensees; striking old, redundant language; adding certification requirements for individuals installing storage tanks and lines; requiring notification prior to completion of installation work; expanding the list of critical junctures in the installation process; adding responsibility for ensuring releases of fuel do not occur; requiring associated tank system equipment to be included in as-built drawings submitted to the PSTD; clarifying vent piping requirements; ensuring uncertified storage tanks removed from the ground will not be re-used by requiring that holes be put in them at an accepted disposal facility; requiring a licensed remover be on site when cutting and removing concrete over a tank system; requiring that a tank that fails a tightness test must be closed or upgraded before it can be used again; setting out in the rules the process currently in place for an application for a variance to close a storage tank in place; ensuring releases of fuel do not occur; expanding responsibility for

notifying the PSTD when a monitoring report exceeds established levels; removing the requirement to have an inventory reconciliation form along with the statistical inventory reconciliation analysis report; expanding the areas for fuel release discovery; adding electronic means of reporting a release of fuel; expanding the responsibility for reporting a release of fuel; establishing enforcement action for release reporting violations; correcting the application of a Section to include the transport truck that is attached to an underground storage tank; establishing how the PSTD will send correspondence; and correcting a statute citation.

II. CLASSES OF PERSONS WHO WILL MOST LIKELY BE AFFECTED BY THE PROPOSED RULES, INCLUDING CLASSES WHICH WILL BEAR THE COST OF THE PROPOSED RULES, AND INFORMATION ON COST IMPACTS RECEIVED BY THE AGENCY FROM ANY PRIVATE OR PUBLIC ENTITIES

The classes of those affected include owners and operators of underground storage tanks doing business within the state. The classes affected will bear the cost, if any, of these proposed rules. The proposed rules change operating procedures, practices and requirements.

The Commission in its Notice of Proposed Rulemaking has requested that business entities that are expected to incur an increase in the level of costs as a result of compliance with the proposed rulemaking provide written comments stating cost impact information to the Commission. All registered underground storage tank owners were mailed a postcard advising of the Notice of Proposed Rulemaking. However, as of the date of preparation of this Rule Impact Statement, the Commission has received no cost impact statements from any private or public entity. If any such comments are received by the Commission, they will be considered by Staff at the technical conferences on January 11, 2018, and January 25, 2018, and by the Commission *en banc* at the public hearing on February 15, 2018.

III. CLASSES OF PERSONS BENEFITING FROM THE PROPOSED RULES

The classes benefiting from the amendments include regulated entities and owners and operators of underground storage tanks doing business within the state.

IV. PROBABLE ECONOMIC IMPACT ON AFFECTED CLASSES OF PERSONS, INCLUDING ALL FEE CHANGES WITH JUSTIFICATION

It is anticipated that there will be minimal adverse economic impact upon the majority of affected parties. The proposed amendments will not adversely impact other political subdivisions of the state.

The Commission does not consider the proposed rules ultimately having a material adverse effect on small business; (staff estimates a small incremental cost annually for some storage tank owners with compartmentalized tanks or temporarily out of use tanks) and as such, the rulemaking will comply with the requirements of the Oklahoma Small Business Regulatory Flexibility Act of 2002, 75 O.S. 2002 Supp., Section 501 *et seq.*

V. IMPACT ON SMALL BUSINESS

Pursuant to 75 O.S. 2002 Supp., Section 303(D)(2)(g), the Commission has reviewed the possible and potential economic impact of the proposed rule amendments according to the requirements of the Oklahoma Small Business Regulatory Flexibility Act of 2002, 75 O.S. 2002 Supp., Section 501 *et seq.* The classes potentially impacted are:

1. Underground storage tank owners and operators: The proposed rules will have a minimal impact on the class of small business underground storage tank owners and operators who operate compartmentalized storage tank systems and/or who have temporarily out of use storage tanks in the state. It is estimated that of the total group of owners and operators of storage tanks that might be impacted by these rule amendments, 20% will be classified as small businesses with fifty (50) or fewer full or part-time employees. This estimate is based on statistics informally compiled by Commission Staff of the Petroleum Storage Tank Division.

VI. PROBABLE COSTS AND BENEFITS TO THE AGENCY AND TO ANY OTHER AGENCY TO IMPLEMENT AND ENFORCE THE PROPOSED RULES, THE SOURCE OF REVENUE TO BE USED FOR IMPLEMENTATION AND ENFORCEMENT OF THE PROPOSED RULES, AND ANY ANTICIPATED EFFECT ON STATE REVENUES, INCLUDING A NET LOSS OR GAIN IN SUCH REVENUES IF IT CAN BE PROJECTED BY THE AGENCY

The Commission anticipates that its current staff is adequate in both number and training to implement the proposed rules, and that there will be no immediate increase in agency expenses as a result of the amendments.

Federal, state or local agencies or jurisdictions that by law enforce their own regulatory authority over petroleum storage tanks concurrently with the Commission, including but not limited to municipalities, the Environmental Protection Agency, rural fire districts or the Fire Marshal, will not in any way enforce or implement the proposed amendments. Accordingly, there will be no cost to them.

VII. ECONOMIC IMPACT ON ANY POLITICAL SUBDIVISIONS OR COOPERATION OF ANY POLITICAL SUBDIVISIONS REQUIRED TO IMPLEMENT OR ENFORCE THE RULES

Political subdivisions (as defined in 75 O.S. 1998 Supp., Section 250.3) that maintain regulated underground petroleum storage tanks will have to comply with the proposed rules.

No cooperation of any political subdivision is required to enforce or implement the proposed rules.

VIII. MEASURES THE AGENCY HAS TAKEN TO MINIMIZE COMPLIANCE AND LESS COSTLY OR LESS INTRUSIVE METHODS FOR ACHIEVING THE PURPOSES OF THE PROPOSED RULES

Due to the federal mandate, there are no less costly or less intrusive methods for achieving the purpose of the proposed rules.

IX. EFFECT OF THE PROPOSED RULES ON THE PUBLIC HEALTH AND SAFETY AND THE ENVIRONMENT AND, IF THE PROPOSED RULES ARE DESIGNED TO REDUCE SIGNIFICANT RISKS TO THE PUBLIC HEALTH AND SAFETY AND THE ENVIRONMENT, AN EXPLANATION OF THE NATURE OF THE RISK AND TO WHAT EXTENT THE PROPOSED RULES WILL REDUCE THE RISK

The proposed rules embody the statutory charge of the Petroleum Storage Tank Division to protect human health, safety and the environment and in the proposed form, do so without burden or with only a slight burden to those regulated.

X. CONFORMANCE WITH FEDERAL STANDARDS

These proposed rules conform to U.S. Department of Commerce standards set forth in the National Institute of Standards and Technology, and recently promulgated rules by the Environmental Protection Agency, and are thus no more stringent than federal requirements.

XI. RISK IF NOT IMPLEMENTED

If the proposed rules are not implemented, the Petroleum Storage Tank Division would operate less efficiently. Regulating the public is an ever changing process. Moreover, certain aspects of regulation require meeting the minimum of EPA requirements. Staff contends the proposed rules do so in the least intrusive manner possible. The proposed rules streamline the regulatory process. To do otherwise, would be unwieldy and could make certain rules subject to multiple interpretations or in conflict with existing EPA rules.

XII. DATE

This Rule Impact Statement was prepared on the 4th day of January, 2018.

Prepared By:
Travis N. Weedn
Senior Attorney
Oklahoma Corporation Commission
P.O. Box 52000
Oklahoma City, OK 73152-2000
Ph.: 405/521-4137
Fax: 405/521-4150
Email: t.weedn@occcemail.com