

BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

OKLAHOMA - OKC
CORPORATION COMMISSION
OF OKLAHOMA

IN THE MATTER OF A PERMANENT)
RULEMAKING OF THE OKLAHOMA)
CORPORATION COMMISSION AMENDING) **CAUSE NO. RM 201800005**
OAC 165:25, UNDERGROUND)
STORAGE TANKS)

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: clarify the rule and update terminology; add a statute citation; add definitions for corrosion expert, formal enforcement action, and important building; clarify the effective date of a variance and add the rule citation for the variance application process; revoke an outdated rule; clarify who is responsible for reporting requirements and require a registration form be submitted within thirty (30) days when the status of a tank changes; require a fourteen (14) day notification for permanent tank removal or replacement; emphasize that temporary authorization to receive fuel into an unpermitted tank is for installation testing and is not an authorization to dispense fuel; add that specific forms must be used for release detection operation and maintenance reporting; require records be maintained for tank closure and removal at operating facilities; require licensee hired by an owner and/or operator to submit tank closure report; clarify specific forms must be used for walkthrough inspections; clarify record-keeping timeframes; clarify that owners will receive written explanation for tank system shutdown; clarify that anyone who removes a lock or seal is subject to enforcement; clarify that the tank owner must be in compliance with rules before a lock or seal may be removed; require tank installers and removers to certify compliance with applicable Occupational Safety and Health Administration Hazardous Waste Operations and Emergency Response (OSHA HAZWOPER) standards; clarify licensing procedures for vapor monitor well technicians; add licensing procedures for groundwater monitor well technicians; establish a disciplinary procedure for licensees; correct the name of the Oklahoma Petroleum Storage Tank Consolidation Act; strike redundant language; clarify the violations subject to disciplinary action and/or fines; require Class A and B operator training certifications for temporary out of use (TOU) tanks; add the distance required between a storage tank and a building; add the rule number pertaining to color coding of tank fill riser lids; require certification from a recognized program for corrosion protection testers; require replacement of all underground metallic lines when a line fails due to structural failure; require prior approval for dispenser modifications; require that both tanks and lines must be removed unless an order specifically allows them to be closed in place; clarify temporary removal from service to make the rule easier to understand; require notifying the Petroleum Storage Tank Division (PSTD) within thirty (30) days when the status of a tank becomes TOU; require facilities no longer in

business but have tank(s) currently in use register as TOU and remain compliant with TOU rules; determine when a tank is deemed TOU; transfer the process for a variance to close a tank in place to OAC 165:5; clarify the effective date of a variance; require a primary method of release detection be designated when more than one (1) method is used and notification when changing the primary method; strike a method of release detection that is no longer allowed after June 30, 2018; require PSTD approval to install new vapor monitor wells for release detection at locations that have previously had a confirmed release and clarify requirements; correct a Oklahoma Water Resources Board rule citation; add spacing requirements for installation of new groundwater monitoring wells; establish requirements for low liquid level tests for three (3) year containment sump testing; clarify requirements for automatic tank gauging systems; strike a temporary method of release detection for tanks 1,001 to 2,000 gallons that is no longer allowed; clarify that an interstitial monitoring form can be used for tanks that do not have an automatic tank gauge (ATG) with report printing capability; add the specific Uniform Resource Locator (URL) for reporting a release; establish enforcement actions when releases are not reported; strike an outdated reference to lube centers and service stations; clarify procedures for when a violation occurs; clarify that a Notice of Violation (NOV) can be issued for any PSTD rule and that enforcement may occur if a violation is not corrected and provided to whom notification is sent; clarify the re-inspection, Field Citation and formal enforcement action procedures; clarify when additional enforcement action may occur; clarify liability for penalties when violations occur and administrative costs; revoke and reenact Appendix Q to establish that manual tank gauging with periodic tank testing is no longer allowed after June 30, 2018 for tanks 1,000 to 2,000 gallons, revoke and reenact Appendix S to establish fine amounts for Field Citations and clarify that the fine amounts established for Field Citations may be used as a suggested fine amount in a formal enforcement action, but that PSTD staff are not bound by these amounts; update standards to the current edition; correct statutory citations; strike outdated language; correct rule citations; clarify requirements, strike repetitive and redundant language; correct terminology; and make grammatical corrections.

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 a cost increase 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 who subscribed to the Commission's GovDelivery email distribution service were advised of the Notice of Proposed Rulemaking. 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 November 7, 2018,

and December 5, 2018, and by the Commission *en banc* at the public hearing on January 15, 2019.

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 affected parties. The proposed rules will not adversely impact other political subdivisions of the state. 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 small business owners and operators registered with the Commission likely will experience some savings in the cost of doing business through the continued effectiveness and efficiency of rule implementation.

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 (EPA), 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 EPA, 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. Moreover, certain aspects of regulation require meeting 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 29th day of October, 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