

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: 26, ABOVEGROUND
STORAGE TANKS

CAUSE NO. RM 201700012

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 Aboveground Storage Tanks ("AST") rules that are set forth in the Oklahoma Administrative Code ("OAC") 165:26. The proposed rules include establishing procedures for order issuance, encouraging public participation in Commission hearings, streamlining the variance request process, establishing a designated format within a required timeframe for notifying, reporting, and scheduling activities and establishing enforcement for non-compliance, broadening the responsibility for submittal of installation documentation, requiring a certificate of destruction when an underground storage tank that is being used aboveground is closed to prevent it from being used again, requiring records be transferred at no charge to a new owner, requiring certification of testers and testing be performed according to manufacturer's instructions, allowing individual compartments within a compartmentalized tank to be permitted, changing professional storage tank licensing to an annual basis, clarifying grounds for license penalties, establishing disciplinary action levels for licensees, requiring notification prior to certain installation activities, requiring product lines be installed above a maximum liquid level within the tank, clarifying when fuel dispensers must have containment, allowing a longer dispenser hose at certain facilities, requiring the emergency switch be installed at a certain distance from a tank, requiring a tank that fails a tightness test must be upgraded or closed, expanding the area for release discovery, adding electronic means for release reporting, expanding release reporting responsibility, and establishing enforcement for release reporting violations.

The proposed amended rules for OAC 165:26 are as follows:

OAC 165:26-1-2 is amended to revise definitions for consistency with the same definitions in Chapter 15 and Chapter 25, 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, and make grammatical corrections for clarification.

OAC 165:26-1-26 is amended to establish procedures for order issuance and applicable regulations.

OAC 165:26-1-26.1 is amended to encourage public participation in Commission hearings.

OAC 165:26-1-28 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 165:26-1-41 is amended to change "monthly" release detection terminology to "every 30 days" already established in the Chapter, establish a designated format within a required timeframe to notify, report, and/or schedule reports, forms, and activities, and establish enforcement for non-compliance.

OAC 165:26-1-42 is amended to make grammatical corrections for clarification, and to broaden the responsibility for submittal of documents to the Commission.

OAC 165:26-1-44 is amended to require a certificate of destruction for underground storage tanks that are currently being used as an aboveground storage tank when it is closed to prevent the tank from being used again.

OAC 165:26-1-47 is amended to require transfer of all tank system records to a new owner at no charge and that the PSTD be notified when a mailing address changes.

OAC 165:26-1-48 is amended to require testing be performed by certified testers, if applicable, and testing be performed according to manufacturer's instructions.

OAC 165:26-1-56 is amended to establish a timeframe to submit records for repair.

OAC 165:26-1-70 is amended to allow for individual compartments within a compartmentalized storage tank be permitted individually, exclude permitting of Permanently Out of Use ("POU") storage tanks, and change storage tank professional licensing to an annual basis.

OAC 165:26-1-90 is amended to correct grammar for clarification, to clarify the process for when inspectors issue a Notice of Violation ("NOV") for consistency with language in Chapter 15.

OAC 165:26-1-110 is amended to change the aboveground storage tank professional license to an annual basis.

OAC 165:26-1-113 is amended to clarify grounds for license penalties and add disciplinary action levels.

OAC 165:26-2-1.1 is amended to add certification requirements and require notification prior to work completion so staff may observe and/or inspect.

OAC 165:26-2-1.3 is amended to require installation of product lines be consistent with National Fire Protection Association ("NFPA") 30A standard 4.3.6.1.

OAC 165:26-2-5.1 is amended to be consistent with statutory language for responsibility to ensure a release of fuel does not occur.

OAC 165:26-2-55 is amended for consistency with the language for the same rule in Chapter 25.

OAC 165:26-2-91 is amended to make grammatical corrections and clarify when dispensers must have containment.

OAC 165:26-2-92 is amended to change "monthly" release detection terminology to "every 30 days" already established within the Chapter, to prohibit two hoses from being coupled together to form one hose, to allow the use of a longer hose at certain facilities, and make grammatical corrections for clarification.

OAC 165:26-2-132 is amended to make grammatical corrections for clarification.

OAC 165:26-2-151 is amended to require the location of switches or circuit breakers be consistent with National Fire Protection Association ("NFPA") and Petroleum Equipment Institute ("PEI") standards.

OAC 165:26-2-212.1 is amended to require a storage tank that fails a tightness test must be closed or upgraded before it can be used again.

OAC 165:26-2-213 is amended to require a certificate of destruction when an underground storage tank currently being used as an aboveground storage tank is closed so it cannot be used as an aboveground tank again.

OAC 165:26-3-20.1 and OAC 165:26-3-20.2 are amended to change "monthly" release detection terminology to "every 30 days" already established within the Chapter.

OAC 165:26-3-77 is amended to expand areas for release discovery, change "monthly" release detection terminology to "every 30 days" already established within the Chapter, add electronic means for release reporting, expand release reporting responsibility for consistency with Chapter 29, and make grammatical corrections for clarification.

OAC 165:26-3-171 is amended to establish enforcement action for release reporting violations and makes grammatical corrections for clarification.

OAC 165:26-4-15 is amended for consistency with the same rule in Chapter 25.

OAC 165:26-4-16 is amended for consistency with the same rule in Chapter 25, establishes how correspondence will be sent and make grammatical corrections for clarification.

OAC 165:26-4-18 is amended to make grammatical corrections for clarification.

OAC 165:26-4-21 is amended to correct the statute citation and make a grammatical correction for clarification.

Appendix G is added to correct rule numbers and change "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 Aboveground 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 201700012, 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.

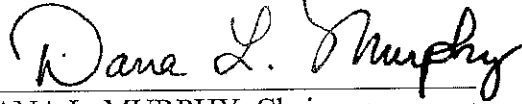
Pursuant to 75 O.S. §§ 303 and 504, business entities are requested, if the proposed rules adversely affect such entities, to provide to the Commission in writing, a description of the probable quantitative (costs) and qualitative impact of the proposed rule, economic or otherwise, and use quantifiable 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).

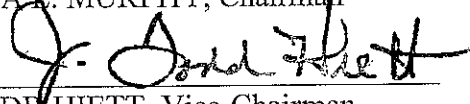
NOTICE IS FURTHER GIVEN that further information and inquiries regarding this proposed rulemaking should be directed to Travis N. Weedn, Senior Attorney, by telephone (405) 521-4137, e-mail T.Weedn@occemail.com, facsimile (405) 521-4150, or at Room 400,

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