

BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

STATE OF OKLAHOMA - OKC
CORPORATION COMMISSION
OF OKLAHOMA

IN THE MATTER OF A PERMANENT)
RULEMAKING OF THE OKLAHOMA)
CORPORATION COMMISSION AMENDING) **CAUSE NO. RM 201800006**
OAC 165:26, ABOVEGROUND STORAGE)
TANKS)

RULE IMPACT STATEMENT

This Rule Impact Statement addresses proposed amendments to the Oklahoma Corporation Commission's ("Commission") proposed rules to amend OAC 165:26 *et seq.*, Aboveground 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: add definitions for corrosion expert, formal enforcement action and important building; add the transport truck as being part of the tank system when connected to the tank; exclude Aboveground Storage Tanks (ASTs) containing motor oil or antifreeze located at retail lube centers as a class of tanks regulated by these rules; clarify the effective date of a variance; update standards to current edition; correct the name of the Indemnity Fund; require a registration form be submitted when the status of a tank changes; require a fourteen (14) day notification for permanent tank removal or replacement; require licensee hired by an owner and/or operator to submit tank closure report; 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 tank owner must be in compliance with rules before a lock or seal may be removed; require AST licensees to certify compliance with applicable Occupational Safety and Health Administration Hazardous Waste Operations and Emergency Response (OSHA HAZWOPER) standards; add a discipline policy for Commission licensees; correct the name of the Oklahoma Petroleum Storage Tank Consolidation Act; clarify violations subject to disciplinary action and/or fines; clarify distance requirements; require certification from a recognized program for corrosion protection testers; clarify shutoff and check valve requirements; require replacement of underground metallic product lines when a line fails due to structural failure; require prior approval for dispenser modifications; add distance requirements between a dispenser and a building for new installs; require removal of tanks; lines and ancillary equipment unless a variance is granted; establish the requirements for ASTs temporarily removed from service; require evidence of tank system integrity before returning a tank to service and submitting the test results to the Petroleum Storage Tank Division (PSTD); require that an underground storage tank (UST) being used as an AST that is out of service for more than twelve (12) months cannot be returned to service; require removal of underground piping and ancillary equipment unless a variance is granted; add the specific Uniform Resource Locator (URL) for reporting a release; clarify release reporting requirements; establish enforcement actions may be taken when releases are not reported; clarify procedures for when a violation is found and that a Notice of Violation (NOV) can be issued for any PSTD rule; clarify liability for penalties when violations occur and administrative cost; make grammatical

corrections; correct statute and rule citations; update terminology; strike outdated and redundant procedures; revoke and reenact Appendix G 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 the PSTD staff are not bound by these amounts.

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 aboveground 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 cost increase as a result of compliance with the proposed rulemaking provide written comments stating cost impact information to the Commission. All registered aboveground storage tank owners and Commission licensed aboveground storage tank licensees 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 hearing on January 15, 2019.

III. CLASSES OF PERSONS BENEFITING FROM THE PROPOSED RULES

The classes benefiting from the amendments include regulated entities, owners and operators of aboveground 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 aboveground 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

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 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 to the extent regulated, rules of the EPA, and are thus no more stringent than federal requirements.

XI. RISK IF NOT IMPLEMENTED

If the proposed rules are not implemented, a risk of harm (both financial and physical harm) may be present to regulated entities.

XII. DATE

This Rule Impact Statement was prepared on the 29th day of October, 2018.

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