

# PROPOSED RULEMAKING

## ENVIRONMENTAL QUALITY BOARD

[ 25 PA. CODE CH. 245 ]

### Administration of the Storage Tank and Spill Prevention Program

The Environmental Quality Board (Board) proposes to amend Chapter 245 (relating to administration of the Storage Tank and Spill Prevention Program). This proposed rulemaking will strengthen the requirements for operation and maintenance of underground storage tank (UST) equipment. Currently, UST owners and operators are required to have spill prevention, overflow prevention and release detection equipment in place, but are not required to periodically verify the functionality of some of that equipment. This proposed rulemaking also adds a new certification category for persons that only perform minor modifications of UST systems. This proposed rulemaking shortens the in-service inspection cycle for aboveground storage tanks (AST) in underground vaults and small ASTs. This proposed rulemaking clarifies or corrects a number of other provisions in Chapter 245 based on the Department's experience in implementing this chapter since it was updated in 2007.

This proposed rulemaking was adopted by the Board at its meeting on October 17, 2017.

#### A. Effective Date

This proposed rulemaking will go into effect upon final-form publication in the *Pennsylvania Bulletin*.

#### B. Contact Persons

For further information contact Kris A. Shiffer, Chief, Division of Storage Tanks, P.O. Box 8762, Rachel Carson State Office Building, Harrisburg, PA 17105-8762, (717) 772-5809; or Keith J. Salador, Assistant Counsel, Bureau of Regulatory Counsel, P.O. Box 8464, Rachel Carson State Office Building, Harrisburg, PA 17105-8464, (717) 783-8075. Information regarding submitting comments on this proposed rulemaking appears in Section J of this preamble. Persons with a disability may use the AT&T Relay Service, (800) 654-5984 (TDD users) or (800) 654-5988 (voice users). This proposed rulemaking is available on the Department of Environmental Protection's (Department) web site at [www.dep.pa.gov](http://www.dep.pa.gov) (select "Public Participation," then "Environmental Quality Board (EQB)").

#### C. Statutory Authority

This proposed rulemaking has been developed under the authority of section 106 of the Storage Tank and Spill Prevention Act (act) (35 P.S. § 6021.106), which authorizes the Board to adopt rules and regulations governing ASTs and USTs to accomplish the purposes and carry out the provisions of the act; section 301 of the act (35 P.S. § 6021.301), which authorizes the Department to establish program requirements for ASTs; section 501 of the act (35 P.S. § 6021.501), which authorizes the Department to establish program requirements for USTs; and section 1920-A of The Administrative Code of 1929 (71 P.S. § 510-20), which authorizes the Board to formulate, adopt and promulgate rules and regulations that are necessary for the proper work of the Department.

#### D. Background and Purpose

Comprehensive Federal regulations for USTs have been codified by the United States Environmental Protection Agency (EPA) in 40 CFR Part 280 (relating to technical standards and corrective action requirements for owners and operators of underground storage tanks (UST)). The EPA initially promulgated these regulations in 1988. The EPA published final revisions to 40 CFR Part 280 at 80 FR 41566 (July 15, 2015). These revisions, among other things: added secondary containment requirements for new and replaced tanks and piping; added operator training requirements; added periodic operation and maintenance requirements for UST systems; removed certain deferrals; added new release prevention and detection technologies; updated codes of practice; and made editorial and technical corrections. Secondary containment and operator training requirements that meet the Federal requirements were incorporated into Chapter 245 through a prior final-form rulemaking. Secondary containment reduces releases to the environment by containing releases from the primary containment area in a second containment area to ensure detection before the contaminants reach the environment. Operator training educates UST system operators on the regulations and proper operation and maintenance of their UST systems to prevent releases of contaminants.

This proposed rulemaking is necessary to further prevent releases of contaminants from USTs into the environment. There were 209 confirmed releases from USTs in this Commonwealth from October 1, 2015, through September 30, 2016. Lack of proper operation and maintenance of UST systems is the main cause of new releases. While releases from USTs themselves are less common than in the past, releases from piping and spills and overfills associated with deliveries, and releases at the dispenser have emerged as more common problems. In addition, release detection equipment is only detecting approximately 50% of releases it is designed to detect.

On July 15, 2015, the EPA also revised the state program approval requirements in 40 CFR Part 281 (relating to approval of state underground storage tank programs). Under these revisions, the EPA is requiring that states amend their UST regulations and apply for initial or revised state program approval within 3 years of the effective date of the final EPA rule published at 80 FR 41566. Currently, the Commonwealth has state program approval. Therefore, Chapter 245 must be updated to be no less stringent than the Federal requirements so the Department can apply for revised state program approval by October 13, 2018. States and Tribal lands that do not have state program approval were required to comply with the EPA final regulations on October 13, 2015. The EPA has not codified companion AST regulations.

The Commonwealth receives approximately \$2.3 million annually in Federal grant funding from the EPA under section 9014 of the Solid Waste Disposal Act (42 U.S.C.A. § 6991m) to aid in administering the UST program. This proposed rulemaking is necessary to ensure continued receipt of Federal grant funds.

A comprehensive summary of the proposed amendments to Chapter 245 is provided in Section E of this preamble. Key amendments recommended to improve proper operation and maintenance of USTs to prevent the release of contaminants into the environment include: a visual inspection of spill prevention equipment and re-

lease detection every 30 days; a visual inspection of containment sumps and handheld release detection devices annually; testing of spill prevention equipment every 3 years; inspection of overfill prevention equipment every 3 years; testing of containment sumps used for interstitial monitoring every 3 years; and annual release detection equipment testing.

In addition to the new operation and maintenance requirements, this proposed rulemaking recommends two other key provisions to prevent releases of contaminants into the environment:

- Release detection requirements are proposed for emergency generator USTs. Previously, emergency generator USTs were deferred from having to meet release detection requirements.
- Flow restrictors (ball float valves) are proposed to be prohibited as an option for overfill prevention in new UST systems and when these devices need to be replaced.

In addition, this proposed rulemaking clarifies and corrects various provisions of Chapter 245 identified as necessary through implementation of this chapter since the last comprehensive update 10 years ago.

This proposed rulemaking would affect approximately 7,100 storage tank owners at over 12,600 storage tank facilities. Industry sectors potentially affected by this proposed rulemaking include retail motor fuel sales, commercial, institutional, manufacturing, transportation, communications and utilities, and agriculture. Federal, State and local government operations would also be affected.

Tank installers and inspectors certified by the Department would likely have the capacity to provide the increased testing and inspections that would be required by this proposed rulemaking. Owners of existing storage tank systems would be provided with time frames in which to comply with certain requirements. Owners of new storage tank systems would need to comply with the requirements upon the effective date of adoption of this proposed rulemaking.

The Department worked with the Storage Tank Advisory Committee (STAC) during development of this proposed rulemaking. The STAC, which was established by section 105 of the act (35 P.S. § 6021.105), consists of persons representing a cross-section of organizations having a direct interest in the regulation of storage tanks in this Commonwealth. As required under section 105 of the act, the STAC has been given the opportunity to review and comment on the draft proposed annex. Initially, STAC members were provided with the opportunity to review Department concepts and present concepts that they would like to see incorporated into Chapter 245. This occurred at the December 8, 2015, and June 7, 2016, meetings. The STAC was also afforded the opportunity to review and discuss draft proposed regulatory language at the December 6, 2016, and March 7, 2017, meetings. On March 7, 2017, the STAC voted to unanimously support the amendments and recommended that the Board consider the amendments for publication as a proposed rulemaking. A listing of STAC members and minutes of STAC meetings are available on the Department's web site at [www.dep.pa.gov](http://www.dep.pa.gov) (select "Public Participation," then "Advisory Committees") and may also be obtained from Kris Shiffer, whose contact information appears in Section B of this preamble. The Citizens Advisory Council was kept apprised of developments in the regulatory process on a monthly basis.

## E. Summary of Regulatory Requirements

### Subchapter A. General provisions

#### General

##### § 245.1. Definitions

Definitions of the following terms are proposed to be amended to provide clarity and to correct errors: "aboveground storage tank," "cathodic protection tester," "certified inspector," "certified installer," "containment structure or facility," "de minimis," "existing underground storage tank system," "hazardous substance storage tank system," "minor modification," "reconstruction," "regulated substance," "release detection," "removal from service," "storage tank system" and "tank handling activities." For example, the current definition of "removal from service" implies that these activities only apply to UST systems. The proposed amendment clarifies that the term applies to AST systems as well.

Proposed amendments to the definition of "certification categories" include the new certification category "underground storage tank system minor modification."

The definitions of "motor fuel," "pipeline facilities (including gathering lines)" and "underground storage tank" are proposed to be amended to be consistent with the Federal definitions in 40 CFR 280.12 (relating to definitions).

The definition of "underground storage tank" is proposed to be amended by deleting two exclusions and modifying several other exclusions. The exclusions proposed to be deleted relate to tanks containing radioactive materials or coolants that are regulated under the Atomic Energy Act of 1954 (42 U.S.C.A. §§ 2011—2266) and a UST system that is part of an emergency generator system at nuclear power generation facilities regulated by the United States Nuclear Regulatory Commission (NRC) under 10 CFR Part 50, Appendix A (relating to general design criteria for nuclear power plants). The exclusion for a wastewater treatment tank system is proposed to clarify that the exclusion only applies to systems regulated under section 307(b) or 402 of the Clean Water Act (33 U.S.C.A. §§ 1317(b) and 1342) to be consistent with 40 CFR 280.10(b)(2) (relating to applicability). USTs that would be regulated as a result of these proposed amendments would need to meet the same requirements that all other regulated UST systems must meet. However, with regard to Subchapter E (relating to technical standards for underground storage tanks), certain requirements would not apply.

Proposed amendments to the definition of "release" clarify that all releases into a containment structure or facility pose an immediate threat of contamination of soils, subsurface soils, surface water or groundwater. The only exception would be a release of a regulated substance into a liquid-tight containment sump or emergency containment structure as a result of a tank handling activity, if the certified installer providing direct onsite supervision has control over the regulated substance, the regulated substance is completely contained and, prior to the certified installer leaving the storage tank facility, the total volume of the regulated substance is recovered and removed. Examples include gasoline released as a result of the replacement, removal or disconnection of a piping fitting or section of piping, such as a flexible connector, or replacement or removal of a submersible pump manifold assembly.

The definition of "aboveground storage tank system" is proposed to be added to be consistent with the fact that

the definition of “underground storage tank system” already exists and the definition of “tank system” as it pertains to AST system requirements currently exists.

The definition of “containment sump” is proposed to be added as certain containment sumps are subject to the periodic testing requirements in proposed § 245.437 (relating to periodic testing). The proposed definition is consistent with the Federal definition in 40 CFR 280.12.

The definition of “environmental covenant” is proposed to be added because the term is used in § 245.311(a)(12) (relating to remedial action plan). This proposed definition is the same as the definition in 27 Pa.C.S. § 6502 (relating to definitions) and Chapter 253 (relating to administration of the Uniform Environmental Covenants Act).

The definition of “repair” is proposed to be added to clarify that a repair means to restore a storage tank system component, which has failed to function properly, to its original operating condition. The proposed definition is consistent with the Federal definitions in 40 CFR 280.12.

The definition of “spill prevention equipment” is proposed to be added as spill prevention equipment is subject to the periodic testing requirements in proposed § 245.437.

The definition of “actively involved” is proposed to be deleted as the term is no longer used in §§ 245.111 and 245.113 (relating to certified installer experience and qualifications; and certified inspector experience and qualifications).

The definition “interim certification” is proposed to be deleted as the Department no longer grants interim certification to installers and inspectors of storage tank systems.

The definition “reportable release” is proposed to be deleted as all releases shall be reported to the Department with the exception of those releases described in proposed § 245.305(i) (relating to reporting releases).

#### *Tank handling and inspection activities*

##### *§ 245.21. Tank handling and inspection requirements*

Proposed minor amendments clarify the requirements in this section.

#### *Testing activities*

##### *§ 245.31. Underground storage tank system testing requirements*

The heading of this section is proposed to be amended to address general UST system testing requirements. Current subsection (b) is proposed to be deleted. The circumstances as to when tightness testing is required to be conducted are addressed in Subchapter E. Current subsection (b)(2) is no longer applicable as installation of single wall USTs are no longer permitted. Proposed subsection (f) states that tests or evaluations of spill prevention and overfill prevention equipment, containment sumps and release detection equipment required under this chapter would be performed by a Department-certified individual holding the appropriate certification and documented on a form provided by the Department. Proposed subsection (f) further states that the test or evaluation results would be maintained onsite at the storage tank facility or at a readily available alternative site and would be provided to the Department upon request.

#### *Tank registration and fees*

##### *§ 245.41. Tank registration requirements*

Proposed amendments to subsection (a) clarify that storage tank owners would be required to pay the appropriate storage tank registration fee prior to expiration of the current storage tank certificate. Proposed subsection (c)(8) would require that UST operator training information be provided with the storage tank registration form for the Department to consider the registration form to be complete. This is current Department policy that is proposed to be incorporated into regulation. Proposed subsection (h) is not a new requirement. This requirement is proposed to be moved from current § 245.423(e) (relating to registration requirements) so that all storage tank registration requirements are in one section.

##### *§ 245.42. Tank registration fees*

Proposed amendments to subsection (d) clarify that the Department will prorate the registration fee to reflect the percentage of time remaining in the registration year when ownership of a storage tank changes. Also, a proposed addition clarifies that the Department will not refund registration fees due to a change of ownership. This has been long-standing Department policy.

#### *Subchapter B. Certification program for installers and inspectors of storage tanks and storage tank facilities*

##### *General certification requirements*

##### *§ 245.102. Requirement for certification*

The date is proposed to be deleted from subsection (d) as it has passed and is no longer relevant.

##### *§ 245.105. Certification examinations*

Subsection (d) is proposed to be amended to clarify that the technical and administrative examinations are separate examinations. Proposed subsection (f) clarifies that passing examination scores are valid for 2 years from the date of the examination.

##### *§ 245.106. Conflict of interest*

This section is proposed to be amended to clarify when activities of a certified installer can result in a conflict of interest. Proposed subsection (c) would prohibit a certified inspector from performing an inspection as required under § 245.411 (relating to inspection frequency) for a facility where the inspector is also the designated Class A or Class B operator as defined in § 245.436 (relating to operator training).

##### *§ 245.107. Reciprocity*

This section is proposed to be rescinded. Since incorporation of this section into Chapter 245, no installer or inspector in this Commonwealth has been certified utilizing reciprocity because examinations conducted in other states do not test on the requirements in Chapter 245, which is a requirement for reciprocity.

##### *§ 245.108. Suspension of certification*

Subsection (a)(4)(iii) is proposed to be amended to add that certification may be suspended for failure to submit reports of modification inspection activities to the Department within 30 days of conducting a modification inspection activity. Proposed amendments to subsection (a)(6) clarify that a suspension can result from failing to maintain certification. Proposed amendments to subsection (a)(9) clarify when violation of certain environmental laws and regulations can result in suspension.

§ 245.110. *Certification of installers*

Subsection (b)(1) is proposed to be amended to add overfill prevention equipment evaluations, containment sump and spill prevention equipment testing, and release detection equipment testing to the list of activities that may be conducted by an installer certified to install and modify UST systems (UMX certification). These new periodic testing requirements would need to be conducted by UST owners under proposed § 245.437.

Proposed subsection (b)(2) adds a new certification category (UMI) for installers only certified to make minor modifications to UST systems. Installers certified under this category could also conduct overfill prevention equipment evaluations, containment sump and spill prevention equipment testing, and release detection equipment testing. Creation of this new certification category will afford UST owners with the opportunity to employ individuals who specialize in minor modifications only. In addition, these new installers will be available to assist UST owners in complying with the new periodic testing requirements under proposed § 245.437.

Certification for UST tightness testing (UTT certification) in proposed subsection (b)(4) (current subsection (c)) is proposed to be amended to add containment sump and spill prevention equipment testing, and release detection equipment testing, to the list of activities that may be conducted with this certification. These new periodic testing requirements would need to be conducted by UST owners under proposed § 245.437.

Other minor clarifications are proposed throughout this section.

§ 245.111. *Certified installer experience and qualifications*

Subsection (a) establishes the minimum experience, education, training or certification requirements and the required number of activities in the appropriate category for an initial installer category certification.

This subsection is proposed to be amended to add the requirements for the new UMI certification proposed in § 245.110 (relating to certification of installers). To qualify for this certification, a person would need to have: 2 years of experience or a college degree and 1 year of experience; successful completion of technical training; and documentation of the performance of ten minor modifications.

Certified installers with the UMX certification have expressed difficulty in achieving the requirement to conduct nine installations in the 3-year period immediately prior to submitting an application for certification because of the decline in the number of UST systems being installed. As a result, this subsection is proposed to be amended to allow UMX certification after ten installations or major modifications, provided the installer has a minimum of five installations. It is proposed that UMX certification can be obtained by having obtained UMI certification together with the proposed activity requirements.

To be consistent, the proposed amendments for UMX certification are also proposed for certification to install and modify aboveground manufactured metallic storage tanks (AMMX certification) and to install and modify aboveground nonmetallic storage tanks (AMNX certification).

The types of bachelor's degrees that can be substituted for experience in subsection (c) are proposed to be expanded to include hydrology, geology or the equivalent of

the degrees listed. The effective date in subsection (g) is proposed to be deleted as the date has passed and is no longer relevant.

§ 245.112. *Certification of inspectors*

Subsection (b)(1) is proposed to be amended to add containment sump and spill prevention equipment testing, and release detection equipment testing to the activities that may be conducted by a person certified to inspect UST systems and facilities (an IUM certified inspector). These new periodic testing requirements would need to be conducted by UST owners under proposed § 245.437.

§ 245.113. *Certified inspector experience and qualifications*

Proposed subsection (f) clarifies that corrosion protection training required for IUM certification would need to be documented by completion of a Nationally recognized training course in the area of cathodic protection or corrosion protection, or other training as approved by the Department.

Proposed subsection (j) requires certified inspectors of field constructed and manufactured ASTs (IAF certified inspectors) and certified inspectors of manufactured ASTs (IAM certified inspectors) to complete Department-provided inspector training prior to conducting AST installation, modification, in-service and out-of-service inspections. This would be similar to the current requirement for certified inspectors of USTs in proposed subsection (i) (current subsection (h)).

Other minor amendments are proposed to this section to clarify the requirements.

§ 245.114. *Renewal and amendment of certification*

Subsection (c) is proposed to be amended to provide the minimum training requirements for renewal of the new UMI certification category in this proposed rulemaking. In addition, all of the activity requirements that would no longer be applicable to renewal of installer certification are proposed to be deleted.

Current subsection (e) is proposed to be deleted because the deadline established has passed and the provision is no longer relevant.

Proposed subsection (e) (current subsection (f)) is proposed to be amended to clarify that inspector training is to be obtained within the 2 years prior to submission of an application for certification, and that inspector training would be provided by the Department. The compliance date in subsection (e)(1) is proposed to be deleted as it has passed and is no longer relevant.

*Company certification*

§ 245.121. *Certification of companies*

Proposed amendments to this section clarify that a company would not be allowed to perform the listed activities unless it holds a valid certification from the Department.

§ 245.123. *Suspension of company certification*

Proposed amendments to subsection (a)(4) clarify when a violation of certain environmental laws and regulations could result in suspension of a company's certification.

*Standards of performance*

§ 245.132. *Standards of performance*

Subsection (a)(2) is proposed to be amended to require that modification inspection reports be submitted to the

Department within 30 days of the inspection activity. The current requirement is to submit the report within 60 days from completion of the inspection. This proposed amendment shortens the length of time between submittal of the modification report (required within 30 days of completion of the modification) and the modification inspection report.

Subsection (a)(4) is proposed to be amended to clarify that certified companies, certified installers and certified inspectors would need to report to the Department a release of a regulated substance observed in a containment structure or facility while performing services as a certified installer or certified inspector. The details in subsection (a)(4) regarding the method and timing of reporting to the Department are clarified in proposed subsection (a)(6). The last two sentences of subsection (a)(4) are proposed to be deleted, as they pertain to notification of reportable releases in accordance with § 245.305. The definition of “reportable release” is proposed to be deleted and the proposed amendments to § 245.305 render these sentences unnecessary.

Proposed subsection (a)(5) requires certified companies, certified installers and certified inspectors to report to the Department failed tests of spill prevention equipment, containment sumps and overflow prevention equipment as required under Chapter 245. These reports would allow the Department to follow up with facility owners to make sure that faulty equipment and tank components are repaired or replaced.

Proposed subsection (a)(6) requires that written notification to the Department be provided upon: performing a failed test of spill prevention equipment, containment sumps and overflow prevention equipment; observing a release of a regulated substance; or observing a regulated substance in a containment structure or facility. This subsection also requires that copies of failed spill prevention equipment tests, containment sump tests and overflow prevention evaluations be provided to the Department with the notification report.

Current subsection (a)(6) and (7) is proposed to be deleted and restated in proposed subsection (c) as activities that certified companies and individuals are prohibited from performing.

Proposed subsection (b) clarifies that a company that employs an individual certified in certain categories under this chapter or an individual certified in the same categories would need to participate in the Tank Installer Indemnification Program (TIIP) as required under section 704(a)(1) of the act (35 P.S. § 6021.704(a)(1)), and need to provide timely payment of TIIP fees as required under section 705(d)(1) and (e) of the act (35 P.S. § 6021.705(d)(1) and (e)) and § 977.19(b) (relating to certified company fees).

#### *Training approval*

##### *§ 245.141. Training approval*

Proposed subsection (b)(5) would require an application for training approval to include other information such as copies of presentations, presenter notes, training handouts or references necessary for a determination that the training program conforms to the act and Chapter 245.

#### *Subchapter C. Permitting of underground and above-ground storage tank systems and facilities*

#### *General*

##### *§ 245.203. General requirements for permits*

Current subsections (c) and (d) are proposed to be deleted as they refer to activities that have already

occurred and are no longer applicable. The Department has taken final action on the permit applications that were requested in current subsection (c) or the Department has notified the persons that the tank systems are deemed permitted or that the permits were withheld or denied.

Proposed subsection (f) clarifies the various permit actions or nonactions by the Department that would prohibit a person from delivering or placing a regulated substance in a storage tank.

Proposed subsection (g) clarifies that the owner and operator of a storage tank system who causes or allows a violation of the act, Chapter 245, an order of the Department, a condition of a permit issued under the act or any other applicable law would be subject to enforcement action including suspension, modification or revocation of the permit.

#### *Permits-by-rule*

##### *§ 245.211. Scope*

This section is proposed to be rescinded because permits-by-rule are no longer necessary.

##### *§ 245.212. Minimum requirements for obtaining a permit-by-rule*

This section is proposed to be rescinded. The Department has issued operating permits for registered storage tanks and does not consider any storage tanks to be permitted by rule, so this provision is no longer necessary.

#### *Operating permits*

##### *§ 245.221. Scope*

This section is proposed to be rescinded as it refers to § 245.211 (relating to scope), which is also proposed to be rescinded.

##### *§ 245.222. Application requirements*

“General” in the term “general operating permit” is proposed to be deleted. “Operating permit” has been used by the Department when referring to the permit that shall be obtained prior to placing a storage tank in operation.

Paragraph (3) is proposed to be amended to clarify that the owners of large ASTs and large AST facilities are required to file Spill Prevention Response Plans with the Department. Subsection (3)(ii) is proposed to be deleted as tightness testing is not required for new AST systems to receive an operating permit.

#### *Site-specific installation permits*

##### *§ 245.231. Scope*

Subsection (a)(4) is proposed to be amended to clarify that new, field-constructed UST systems installed within a previously registered UST system do not require a site-specific installation permit.

Proposed subsection (d) clarifies that site-specific installation permits expire 5 years from the date of issuance unless the Department receives a written extension request from the owner prior to the expiration date and the Department grants an extension. Five years provides adequate time to complete construction or installation of

the storage tanks and register and receive operating permits for the storage tanks.

§ 245.232. *General requirements*

Subsection (b)(1) is proposed to be amended to clarify that the Spill Prevention Response Plan would need to include the proposed storage tank systems for the facility.

§ 245.233. *Mapping requirements*

Proposed subsection (a)(2) requires that the site-specific installation permit application contains maps and plans showing the location of the proposed storage tanks.

§ 245.234. *Siting requirements*

Subsection (a)(1) is proposed to be amended to clarify that the proposed installation of storage tank systems and facilities on 100-year floodplains or a larger area that the flood of record has inundated would be prohibited unless an industrial use on the proposed site was in existence as of August 5, 1989. Any industrial use would qualify and this use is not limited to that associated with the prior existence of regulated storage tanks.

Several proposed amendments clarify that the requirements apply to storage tank systems rather than tank systems.

§ 245.236. *Public notice*

Proposed amendments to this section assist owners of certain ASTs and facilities to identify the information that would need to be provided in the written notice to the local municipality and county in which the proposed AST or facility is to be located prior to submitting a site-specific permit application.

*Subchapter D. Corrective action process for owners and operators of storage tanks and storage tank facilities and other responsible parties*

§ 245.301. *Purpose*

This section is proposed to be amended to clarify that Subchapter D (relating to corrective action process for owners and operators of storage tanks and storage tank facilities and other responsible parties) establishes suspected release investigation requirements as opposed to release confirmation requirements for owners and operators of storage tank systems and storage tank facilities and other responsible parties.

§ 245.303. *General requirements*

Subsection (e)(1) is proposed to be amended to clarify that the Department may waive or combine one or more of the requirements in Subchapter D in the case of a release to a containment structure or facility that is shown to be liquid-tight.

§ 245.304. *Investigation of suspected releases*

Subsection (a)(1) is proposed to be amended to clarify that the presence of a regulated substance or an unusual level of vapors from a regulated substance outside of storage tank system components designed to routinely contain or convey product, at or near a storage tank facility, would be a suspected release that would need to be investigated.

Subsection (a)(5) is proposed to be amended to clarify that the sounding of an alarm from a release detection method would be a suspected release that would need to be investigated.

Subsection (a)(6) is proposed to be amended to clarify that damage to a storage tank system which occurs

during activities such as inspection, repair or removal from service would be a suspected release that would need to be investigated.

Subsection (b)(6) is proposed to be amended to clarify that the sampling and analysis conducted in response to a suspected release may need to include subsurface soil and backfill, vapor and water, in addition to soil and groundwater. In addition, samples would need to be taken from locations where contamination from a release would most likely be present.

Subsection (c) is proposed to be amended to delete references to "reportable release" as the use and definition of this term is proposed to be deleted. All releases would need to be reported to the Department with the exception of those releases described in proposed § 245.305(i).

Current subsection (d) is proposed to be deleted as releases that do not have to be reported to the Department are addressed in proposed § 245.305(i).

§ 245.305. *Reporting releases*

Current subsection (b) is proposed to be deleted as releases that do not have to be reported to the Department are addressed in proposed § 245.305(i).

Proposed subsection (b) (current subsection (c)) is proposed to be amended to clarify that the notice required of the owner to report releases would also need to include the cause of the release.

Proposed subsection (e) (current subsection (f)) is proposed to be amended to clarify that the written notice required of the owner to report releases shall be provided on a Department-provided form.

Proposed subsection (g) (current subsection (h)) is proposed to be amended to clarify that the owner or operator of an AST facility would be subject to the notification requirements in this subsection only if the aggregate aboveground storage capacity is greater than 21,000 gallons.

Proposed subsection (i) specifically identifies those releases that do not require reporting to the Department and further corrective action, provided certain criteria are met. The criteria are as follows: 1) the owner or operator has control over the release; 2) the release is completely contained; 3) the total volume of the release is recovered and removed within 24 hours of the release; and 4) any defective storage tank system component that caused or contributed to the release is properly repaired or replaced.

Provided all four of these criteria would be met, the following release situations would not be required to be reported to the Department: 1) a release of petroleum to an aboveground surface, including within an emergency containment structure, that is less than 25 gallons; 2) a release of a hazardous substance to an aboveground surface, including within an emergency containment structure, that is less than its reportable quantity under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C.A. §§ 9601—9675) and 40 CFR Part 302 (relating to designation, reportable quantities, and notification); and 3) a release to a liquid-tight containment sump used for interstitial monitoring of piping in accordance with § 245.444(6) (relating to methods of release detection for tanks).

If any other release situation occurs, or if one of the previous three release situations occurs, but all four of the previous criteria are not met, the release would need

to be reported. Some examples of release situations that would need to be reported to the Department and that would require further corrective action include: 1) an accidental release of 5 gallons of gasoline from a dispenser nozzle at a retail service station to a highly weathered and cracked asphalt or concrete surface that prohibits total recovery of the released product; 2) an overflow of 20 gallons of diesel fuel during delivery that results in some product reaching a nearby storm sewer—therefore, the release has not been controlled, contained and cannot be completely recovered; 3) a release to a liquid-tight containment sump that is not used for interstitial monitoring of piping; and 4) a release to the interstitial space of a double-walled AST or UST.

§ 245.306. *Interim remedial actions*

Proposed subsection (e) would require a responsible party to notify the Department by telephone or e-mail as soon as practicable, but no later than 24 hours, after the initiation of interim remedial actions. For releases associated with USTs, 40 CFR 280.62 (relating to initial abatement measures and site check) does not require the initiation of initial abatement measures to be reported, but does require a report to be submitted within 20 days after release confirmation summarizing the initial abatement steps taken. Proposed subsection (e) differs from the Federal regulation by proposing to require notification when an interim remedial action is initiated. The notice will allow the Department to monitor early actions taken to clean up a release of contaminants. These initial corrective actions are extremely important in limiting the complexity of the release, the amount of corrective action that shall be undertaken and the ultimate cost of the corrective action.

§ 245.307. *Affected or diminished water supplies*

Proposed subsection (e) requires that a responsible party notify the Department within 24 hours of providing an alternate source of water to the owner of the affected or diminished water supply. This subsection will allow the Department to monitor corrective actions involving affected or diminished water supplies and to assure that responsible parties are complying with the requirements to provide temporary and permanent water supplies. Part 280 of 40 CFR does not address providing alternate water supplies to affected water supply owners. However, section 1303 of the act (35 P.S. § 6021.1303) specifically authorizes the Department to adopt regulations for the protection of any source of water for present or future supply to the public or other legitimate use.

§ 245.309. *Site characterization*

This section is proposed to be amended to clarify the site characterization requirements. The substantive requirements remain the same.

Current subsection (c)(22), which allows for recommendation for further site characterization work, is proposed to be deleted. As stated in proposed subsection (c)(23), any additional tasks necessary to meet the objectives of the site characterization should be performed to complete the site characterization process. The site characterization process is to result in the submission of a complete site characterization report that addresses all necessary tasks performed during the site characterization and should not need to discuss further site characterization work.

Proposed subsection (c)(24) requires the responsible party to notify the Department by telephone or e-mail as soon as practicable, but no later than 24 hours, after the initiation of site characterization activities. These activi-

ties should be initiated concurrent with the implementation of interim remedial actions. This paragraph would assure the Department that responsible parties are proceeding with the required site characterization tasks. Too often responsible parties delay the implementation of site characterization activities and find themselves requesting an extension to submit the site characterization report. The proposed amendments should encourage responsible parties to initiate site characterization earlier and significantly reduce the site characterization report extension requests submitted to the Department. Part 280 of 40 CFR does not include a notification provision. However, 40 CFR 280.63(b) and 280.64(d) (relating to initial site characterization; and free product removal) require that owners and operators submit an initial site characterization report and a free product removal report within 45 days of release confirmation, respectively. The Department is not proposing incorporation of these Federal regulatory provisions.

§ 245.310. *Site characterization report*

The section is proposed to be amended to clarify the requirements. The proposed amendments are not substantive changes. The proposed amendments correspond to similar proposed amendments to § 245.309 (relating to site characterization), as the site characterization report describes the activities undertaken during the site characterization.

Subsection (c)(6), which provides for Department review of the site characterization report without further action, is proposed to be deleted. The Department expects to take action upon review of all site characterization reports submitted under subsection (c).

§ 245.311. *Remedial action plan*

The requirement in subsection (a)(2) which requires submission of a copy of the plan relating to worker health and safety is proposed to be deleted because the Department does not need to review the worker health and safety plan.

Subsection (a)(12) is proposed to be amended to clarify that the description of the proposed postremediation care requirements should include the proposed activity and use limitations to be implemented under an environmental covenant. “Environmental covenant” is proposed to be defined in § 245.1 (relating to definitions) consistent with 27 Pa.C.S. Chapter 65 (relating to Uniform Environmental Covenants Act) and Chapter 253.

Proposed subsection (a)(14) would require the responsible party to provide a description of any water supply that remains affected or diminished, the replacement system that was provided, the analytical results of samples taken and any maintenance or monitoring that would be required to ensure its functionality until the supply is no longer affected or diminished.

Under proposed amendments to subsections (b) and (c), the Department would publish an acknowledgment of receipt of the remedial action plan in the *Pennsylvania Bulletin*. Section 280.67(a) of 40 CFR (relating to public participation) also requires that notice to the public be provided for each confirmed release requiring a corrective action plan.

Existing subsections (b)(6) and (c)(6), which provide for Department review of the remedial action plan without further action, are proposed to be deleted. The Department expects to take action upon review of all remedial action plans submitted under subsections (b) and (c). Proposed subsections (b)(6) and (c)(6) provide the Depart-

ment with the option to publish a notice of its final action on the remedial action plan in the *Pennsylvania Bulletin*.

§ 245.312. *Remedial action*

Proposed amendments to subsection (c)(4) add that the quantitative analytical results from a replacement water supply system would also be provided with each remedial action progress report.

Proposed subsection (c)(10) would require each remedial action progress report to include a summary of data collected from any water supply that remains affected or diminished, and any maintenance performed.

Subsection (d) currently provides that the first remedial action progress report shall be received by the Department 3 months following the date of remedial action plan implementation. This subsection is proposed to be amended to allow the first remedial action progress report to be received by the Department at an alternative interval. In determining this interval, the Department would consider the nature, extent, type, volume or complexity of the release.

Subsection (f) provides the responsible party with the ability to suspend implementation of the current remedial action plan should continued implementation of the plan cause additional environmental harm. Proposed subsection (g) would provide the Department with the authority to require suspension of the remedial action, if during implementation of the remedial action plan the Department determines that the remedial action plan will not attain the selected remediation standard or will cause additional environmental harm.

§ 245.313. *Remedial action completion report*

Proposed subsection (b)(1) would require the remedial action completion report to contain data demonstrating that the remedial actions have attained the selected standard for the site in accordance with Chapter 250, Subchapter G (relating to demonstration of attainment).

Proposed amendments to proposed subsection (b)(3) and (4) (current subsection (b)(2) and (3)) correct citations to Chapter 250 (relating to administration of land recycling program).

Proposed amendments to subsection (c) provide that the Department would publish an acknowledgment of receipt of the remedial action completion report in the *Pennsylvania Bulletin*.

Current subsection (c)(6), which provides for Department review of the remedial action completion report without further action, is proposed to be deleted. The Department will take action upon review of all remedial action completion reports submitted under subsection (c). Proposed subsection (c)(6) would allow the Department to publish a notice of its final action on the remedial action completion report in the *Pennsylvania Bulletin*.

*Subchapter E. Technical standards for underground storage tanks*

*General*

§ 245.402. *Scope*

This section is proposed to be amended to clarify that this subchapter applies to storage tank systems.

§ 245.403. *Applicability*

Previously, UST systems that stored fuel solely for use by emergency power generators were deferred from complying with the release detection requirements in §§ 245.441—245.446 (relating to release detection). Sec-

tion 280.10(a)(1)(ii) and (iii) of 40 CFR, which became effective on October 13, 2015, removed the release detection deferral. Therefore, current subsection (b) is proposed to be deleted. Proposed subsection (b) would require UST systems installed after the effective date of adoption of this proposed rulemaking to meet the release detection requirements at installation. Existing UST systems are afforded 1 year or 2 years to meet the release detection requirements depending on the date of installation. This will provide UST owners with the necessary time to decide which release detection method they wish to utilize, or if they wish to permanently close the UST and possibly replace it with an AST.

The Department has not required, as a matter of policy, that existing underground field-constructed storage tanks installed on or before October 11, 1997, comply with Chapter 245. See Policy for Existing Field-Constructed Hazardous Substance Underground Storage Tanks at Facilities Regulated under the Safe Drinking Water Act, DEP 263-2320-001. The Department intends to rescind this policy. Underground field-constructed storage tanks were previously deferred from Federal regulation. However, as of October 13, 2015, underground field-constructed storage tanks are now regulated in accordance with 40 CFR 280.10(a)(1)(i). Therefore, proposed subsection (d) (current subsection (c)), states that underground field-constructed storage tanks will now be regulated under Chapter 245, but subject to some temporary exclusions. Under proposed subsection (d), owners of existing and previously exempt underground field-constructed storage tanks will have 30 days to register their storage tanks and 1 year from the effective date of adoption of this proposed rulemaking to meet the requirements in §§ 245.421, 245.422, 245.431, 245.432, 245.437 and 245.441—245.446. In addition, owners of existing USTs that meet the requirements in proposed subsection (c) will have 30 days to register their storage tanks.

The definition of “underground storage tank” is proposed to be amended to delete the exclusions for tanks containing radioactive materials or coolants that are regulated under The Atomic Energy Act of 1954 and UST systems that are part of emergency generator systems at nuclear power generation facilities regulated by the NRC under 10 CFR Part 50, Appendix A. In addition, the exclusion for a wastewater treatment tank system is proposed to be amended consistent with the Federal regulations to apply only to a wastewater treatment tank system that is part of a wastewater treatment facility regulated under section 307(b) or 402 of the Clean Water Act. USTs that become regulated as a result of these proposed amendments would need to meet the same requirements that all other regulated UST systems must meet. However, with regard to Subchapter E, UST owners will not need to comply with §§ 245.411, 245.421(b)(3), 245.421(b)(4)(ii) and (iii), 245.422(d), 245.432(g) and 245.436—245.446.

USTs containing radioactive material and emergency generator UST systems at nuclear power generation facilities regulated by the NRC are subject to United States Department of Energy orders and NRC regulations that are comparable to the Chapter 245 requirements for new and existing USTs regarding spill and overflow control and operation and maintenance of corrosion protection. Since owners and operators of these UST systems had to meet Federal UST regulations dating back to 1988 that require systems to be designed and constructed to prevent releases during the operating life of the facility due to

corrosion or structural failure, these systems should already be in compliance with most of the Chapter 245 requirements.

#### *Inspections*

##### *§ 245.411. Inspection frequency*

Current subsections (b)(1) and (3) and (c)(2) are proposed to be deleted as the deadlines for these requirements have passed and they are no longer applicable. The heading of subsection (c) is proposed to be amended from “subsequent routine facility inspections” to “subsequent inspections.” The heading of subsection (d) is proposed to be amended from “additional inspections and mandatory training” to “training” and clarify that UST owners and operators found through inspection to have violations that result in failure to meet EPA guidelines for significant operational compliance, as determined by the Department, shall be retrained in a manner consistent with the Department’s technical document “Underground Storage Tank Class A and Class B Operator Training Courses.”

#### *Underground storage tank systems: design, construction, installation and notification*

##### *§ 245.421. Performance standards for underground storage tank systems*

Subsection (a)(2) is proposed to be amended to clarify that owners and operators would be required to notify the Department of the proposed installation of specific storage tank system components such as the piping system and dispenser, and not just when a storage tank or storage tank system is being installed.

Subsection (a)(3) is proposed to be amended to clarify that a Department-certified installer, not an inspector, would need to certify that UST systems changing from unregulated to regulated service meet new UST system requirements.

Subsection (b)(1)(iii) is proposed to be amended to be consistent with 40 CFR 280.20(a)(3) (relating to performance standards for new UST systems).

Subsection (b)(2) is proposed to be amended to be consistent with the Federal definition of “replaced” in 40 CFR 280.12, but is not expected to result in a substantive change.

Subsection (b)(3)(i) is proposed to be amended to require that spill and overfill prevention equipment be permanently installed to facilitate the periodic testing that would be required under proposed § 245.437.

Subsection (b)(3)(i)(B)(III) is proposed to be deleted because equipment to prevent tank overfilling meeting these requirements is not able to be routinely verified in a practical manner and no facilities are currently known to be using this option. In 1991, the EPA finalized a minor technical amendment to the Federal UST regulation in 40 CFR 280.20(c)(1)(ii)(C) allowing overfill prevention equipment to be used closer to the tops of larger tanks when certain minimum levels of performance can be achieved. The Board is interested in comments from any facilities that have installed equipment that meets the requirements in subsection (b)(3)(i)(B)(III) and the testing procedures used to evaluate the effectiveness of the equipment.

Current subsection (b)(3)(iii) is proposed to be renumbered as subsection (b)(3)(iv) and amended to clarify that the prohibition applies to existing ball float valves. Proposed subsection (b)(3)(iii) would prohibit the use of ball float valves when overfill prevention equipment is installed or replaced after the effective date of adoption of

this proposed rulemaking. This proposed amendment is consistent with 40 CFR 280.20(c)(3). This proposed amendment reduces the frequency of UST releases due to operability issues, addresses system safety concerns and addresses personnel safety concerns.

Proposed subsection (b)(3)(v) requires that the newly proposed spill and overfill prevention equipment tests would need to be documented on a form provided by the Department and would need to be maintained onsite at the storage tank facility or at a readily available alternative site. This proposed amendment is consistent with 40 CFR 280.34 (relating to reporting and recordkeeping).

The language pertaining to ball float valves in subsection (b)(4)(iii) is proposed to be deleted as ball float valves would be prohibited from being installed after the effective date of adoption of this proposed rulemaking.

Subsection (c) is proposed to be deleted as duplicative because owners and operators are required to provide the certification of installation by a certified installer under the tank registration requirements in § 245.41 (relating to tank registration requirements).

Other minor amendments are proposed to this section to clarify the requirements.

##### *§ 245.422. Upgrading of existing underground storage tank systems*

Existing subsection (b)(2)(ii) and (iii) is proposed to be deleted as the time frames associated with these provisions have passed and they are no longer applicable to cathodic protection upgrades.

Subsection (e) is proposed to be amended to clarify that when an existing dispenser is replaced with another dispenser, and equipment at or below the shear valve needed to connect the dispenser to the UST system is replaced, under-dispenser containment is required. Equipment is clarified to mean check valves, shear valves, vertical risers, flexible connectors or other transitional components. This is consistent with 40 CFR 280.20(f).

Other minor amendments are proposed to this section to clarify the requirements.

##### *§ 245.423. Registration requirements*

This section is proposed to be rescinded because it is duplicative of storage tank registration requirements in § 245.41.

#### *General operating requirements*

##### *§ 245.432. Operation and maintenance including corrosion protection*

Subsection (a) is proposed to be amended to clarify that corrosion protection requirements would apply until the UST system is permanently closed or undergoes a change-in-service.

Proposed subsection (a)(2)(iii) requires owners and operators to document surveys of cathodic protection systems on a form provided by the Department and provide the forms to the Department upon request. This proposal is consistent with 40 CFR 280.34.

Subsection (f) is proposed to be amended to clarify that, in addition to primary and secondary containment structures, containment sumps and spill prevention equipment would need to be maintained in a leak-free condition. This subsection is also proposed to be amended to clarify that if any liquid (for example, water) or regulated substance is detected, the liquid or regulated substance would need to be immediately removed.

Other minor amendments are proposed to this section to clarify the requirements.

§ 245.433. *Compatibility*

Subsection (a) is proposed to be amended to delete language that references specific codes of practice regarding material compatibility as this language is duplicative of § 245.405 (relating to codes and standards).

Proposed subsection (b) requires an owner and operator of a UST storing alternative fuel blends or biodiesel or biodiesel blended fuel to provide information to the Department, on a form provided by the Department, verifying compatibility with all UST system components. This proposed amendment would codify the Department's current practice.

Proposed subsection (c) requires an owner and operator of a UST system to demonstrate, upon Department request, the compatibility of the UST system with the material being stored by using one or more of the options listed. This proposed amendment is consistent with 40 CFR 280.32(b)(1) (relating to compatibility).

§ 245.434. *Repairs allowed*

Current paragraph (3) is proposed to be deleted because it could be interpreted to mean that repairs made to underground fiberglass reinforced plastic tanks by a manufacturer's authorized representative do not require direct, onsite supervision and control of a certified installer. Supervision and control is required, as stated in paragraph (1). This proposed deletion will eliminate confusion.

Proposed paragraph (4) (current paragraph (5)) is proposed to be amended to specifically address how repairs to secondary containment areas of tanks and piping, containment sumps and spill prevention equipment would be tested. This proposed amendment is consistent with 40 CFR 280.33(d) (relating to repairs allowed). The exception to tightness testing in current paragraph (5)(ii) when the repaired portion of the UST system can be monitored monthly for releases is proposed to be deleted. This option is allowed under 40 CFR 280.33(d)(2). However, most manufacturer's specifications and Nationally recognized codes of practice recommend tightness testing of the UST system to determine competency prior to placing product in the UST system.

§ 245.435. *Reporting and recordkeeping*

Proposed amendments to this section clarify the requirements and delete the distinction between permanent and temporary records, as that distinction is no longer relevant. The reporting requirements in existing subsection (b)(1) are proposed to be moved to proposed subsection (c) and the recordkeeping requirements in existing subsection (b)(2) are proposed to be moved to proposed subsection (d). The list of records to be maintained are proposed to be consolidated into one list and several records are proposed to be added to the list.

Proposed subsection (d)(9) requires that owners and operators maintain documentation showing that their UST systems are continuously participating in the Underground Storage Tank Indemnification Fund (USTIF). In the event of a release at the facility, this information will be necessary to prove eligibility for payment of a USTIF claim.

New requirements are being proposed relating to periodic testing (proposed § 245.437) and periodic operation and maintenance walkthrough inspections (§ 245.438 (relating to periodic operation and maintenance walkthrough

inspections)). New reporting and recordkeeping requirements are proposed to be added to § 245.435 (relating to reporting and recordkeeping) regarding the proposed periodic testing and inspection requirements.

Proposed subsection (d)(19) requires that documentation of the last test of spill prevention equipment and containment sumps and evaluations of overflow prevention equipment conducted to meet the periodic testing requirements in proposed § 245.437 be maintained. This proposed amendment is consistent with 40 CFR 280.34(b)(5).

Proposed subsection (d)(20) requires that documentation of periodic testing conducted under proposed § 245.437(a)(1)(i) be maintained. This documentation would need to show that the containment sump and spill prevention equipment are double-walled and that the integrity of both walls is periodically monitored in accordance with proposed § 245.438(a)(1)(i). This proposed amendment is consistent with 40 CFR 280.34(b)(5).

Proposed subsection (d)(21) requires that records of maintenance walkthrough inspections as required under proposed § 245.438 be maintained for the past 12 months. Records would need to include a list of each area checked, whether each area checked was acceptable or needed action taken, a description of actions taken to correct an issue and delivery records if spill prevention equipment is checked less frequently than every 30 days due to infrequent deliveries. This proposed amendment is consistent with 40 CFR 280.34(b)(6).

Proposed subsection (d)(22) clarifies that documentation of investigations of suspected releases in accordance with § 245.304 (relating to investigation of suspected releases) be maintained. This documentation shall be maintained for the operational life of the storage tank system and retained for a minimum of 1 year after the storage tank system has been permanently closed.

Other minor amendments are proposed to this section to clarify the requirements.

§ 245.436. *Operator training*

Subsection (a)(2) is proposed to be amended by deleting the date as it has passed and as it is no longer relevant.

Subsection (a)(3)(ii) is proposed to be amended to clarify that storage tank facilities required to have an onsite Class C operator must have emergency contact information and written instructions and procedures in the event of an emergency immediately available upon request.

Subsection (a)(3)(iii) is proposed to be amended to clarify that, for storage tank facilities that do not dispense motor fuel for retail sales to the general public, emergency contact information and written instructions and procedures in the event of an emergency would need to be prominently displayed at the site and visible to the storage tank user.

Current subsection (a)(4) is proposed to be deleted as the date for compliance has passed and it is no longer applicable.

Subsection (b)(1)(iv) is proposed to be amended to add that Department-certified installers and inspectors with a current UMI certification may perform Class A operator duties when employed or contracted by the tank owner to perform these functions.

Subsection (b)(2)(iv) is proposed to be amended to add that Department-certified installers and inspectors with a current UMI certification may perform Class B operator duties when employed or contracted by the tank owner to perform these functions.

Subsection (b)(3)(i)—(iii) is proposed to be deleted. The provision in subparagraph (i) authorizing a Class C operator to control or monitor the dispensing or sale of regulated substances is proposed to be incorporated into subsection (b)(3). The provision in subparagraph (ii) pertaining to written instructions and procedures is proposed to be incorporated into subsection (a)(3)(ii) and (iii). Subsection (b)(3)(iii) is proposed to be deleted because the requirements regarding Class C operator availability at a storage tank facility are addressed in subsection (a)(3) and this provision is unnecessary.

Subsection (c)(3) is proposed to be amended to clarify that training provided by the tank owner or Class A or Class B operator to the Class C operator would need to be specific to the facility and enable the Class C operator to take action in response to emergencies.

Subsection (c)(5), regarding reciprocity of training, is proposed to be deleted. While other states may provide training consistent with the Federal regulations, the Department has determined that training specifically pertaining to Chapter 245 is necessary for Class A and Class B operators in this Commonwealth, and other state training courses do not provide this training.

Subsection (d)(1) is proposed to be amended to require the owner to identify Class A, Class B and Class C operators on a form provided by the Department prior to placing the UST system into use, which is the Department's current practice.

Subsection (e)(2) and (3) is proposed to be amended to delete "manned" and "unmanned" in describing a facility and instead referring to a facility that does or does not dispense motor fuel for retail sales to the general public.

#### § 245.437. Periodic testing

This section is proposed to be added to be consistent with 40 CFR 280.35 (relating to periodic testing of spill prevention equipment and containment sumps used for interstitial monitoring of piping and periodic inspection of overfill prevention equipment).

Subsection (a)(1) is proposed to require owners and operators to ensure that containment sumps used for interstitial monitoring of piping and spill prevention equipment are tested once every 3 years to ensure they are liquid-tight. If the containment sump and spill prevention equipment are double-walled, the integrity of both walls shall be periodically monitored consistent with the maintenance walkthrough inspections proposed in § 245.438 instead of testing the equipment once every 3 years.

Subsection (a)(2) would require owners and operators to ensure that overfill prevention equipment would be evaluated at least once every 3 years to ensure that the equipment is set to activate at the correct level and would activate when the regulated substance stored reaches that level.

Subsection (a)(3) would require owners and operators to ensure that electronic and mechanical components of release detection equipment be tested for proper operation at least annually. The required tests would apply to automatic tank gauges (ATG) and other controllers, probes and sensors, automatic line leak detectors, vacuum pumps and pressure gauges, and hand-held electronic sampling equipment associated with groundwater and vapor monitoring.

Subsection (b) sets forth the criteria under which the required tests and evaluations would be performed.

Subsection (c) proposes the dates by which owners and operators would need to ensure that the periodic testing requirements are met.

Subsection (c)(1) proposes that, for UST systems installed on or before the effective date of adoption of this proposed rulemaking, the tests and inspections would need to be conducted prior to the next required UST inspection due date occurring after 1 year from the effective date of adoption of this proposed rulemaking or not later than 3 years after the effective date of adoption of this proposed rulemaking, whichever occurs first. So, if the effective date of adoption of this proposed rulemaking would be January 1, 2019, the first facility tests and inspections would need to occur prior to the next required UST facility inspection occurring between January 1, 2020, and January 1, 2022. Subsection (c)(2) would establish that for UST systems installed after the effective date of adoption of this proposed rulemaking, the periodic testing requirements in this section would apply at installation.

Subsection (d) would require that the liquids used to perform the periodic tests be reused, treated or disposed of in accordance with applicable requirements in Chapters 91, 92a, 260a—270a and 287—299. In addition, the Department plans to develop technical guidance for owners and operators of storage tank facilities to follow to ensure test liquids are reused, treated or disposed of properly.

#### § 245.438. Periodic operation and maintenance walkthrough inspections

This section is proposed to be added and is consistent with 40 CFR 280.36 (relating to periodic operation and maintenance walkthrough inspections).

Subsection (a) would require owners and operators to conduct maintenance walkthrough inspections of spill prevention and release detection equipment for UST systems a minimum of every 30 days beginning not later than 1 year after the effective date of adoption of this proposed rulemaking. For spill prevention equipment associated with UST systems receiving deliveries at intervals greater than every 30 days, the owners and operators could conduct maintenance walkthrough inspections prior to each delivery.

Subsection (b) would require owners and operators to conduct maintenance walkthrough inspections of containment sumps and handheld release detection equipment for UST systems a minimum of every 12 months beginning not later than 1 year after the effective date of adoption of this proposed rulemaking.

Subsection (c) would set forth the criteria under which the operation and maintenance walkthrough inspections would need to be performed.

#### Release detection

##### § 245.441. General requirements for underground storage tank systems

The table of release detection methods in subsection (a)(3) is proposed to be deleted as the dates for compliance have passed and it is no longer applicable.

With the proposed periodic testing and operation and maintenance walkthrough inspection requirements in proposed §§ 245.437 and 245.438, respectively, the current requirement to monitor containment sumps and dispenser pan sumps on a monthly basis in subsection (e) is proposed to be deleted as unnecessary.

§ 245.442. *Periodic monitoring requirements for petroleum underground storage tank systems*

The heading of this section is proposed to be amended to clarify this section is related to monitoring for releases of petroleum UST systems.

Subsection (a) is proposed to be amended to clarify the existing requirements regarding the methods and frequency of release detection monitoring for petroleum UST systems and underground piping.

Subsection (b)(1) is proposed to be amended to allow the use of any of the release detection methods in § 245.444, as proposed to be amended, when monitoring for release detection in tanks every 30 days as currently required. Subsection (b)(1)(i)—(iv) is proposed to be deleted because the established time frames have passed or these requirements are no longer necessary since the release detection methods available for use have been expanded.

§ 245.443. *Requirements for hazardous substance underground storage tank systems*

This section is proposed to be amended to set forth and distinguish between the release detection requirements for hazardous substance UST systems installed on or before November 10, 2007, and those hazardous substance storage tank systems installed after November 10, 2007.

§ 245.444. *Methods of release detection for tanks*

This section is proposed to be amended to clarify that the release detection methods provided for tanks would meet the requirements in §§ 245.441 and 245.442 (relating to general requirements for underground storage tank systems; and periodic monitoring requirements for petroleum underground storage tank systems). The inventory control method of release detection for tanks in paragraph (1) is proposed to be deleted because the time frame for this method's continued use has passed. An end date for this method's continued use was established at 37 Pa.B. 5979 (November 10, 2007).

The manual tank gauging method of release detection in proposed paragraph (1) (current paragraph (2)) is proposed to be amended to clarify in paragraph (1)(v) that this method would no longer be available for USTs of greater than 1,000 gallons nominal capacity. Tanks of this size would need to use another method because of the potential for a substantial release using the manual tank gauging method. The requirements pertaining to tank capacities of 1,001 to 2,000 gallons is also proposed to be deleted from the table in paragraph (1)(iv).

The automatic tank gauging method in proposed paragraph (3) (current paragraph (4)) is proposed to be amended to delete the reference to the inventory control method currently in paragraph (1) as that method is proposed to be deleted and the time frame for use of this method has passed.

The statistical inventory reconciliation (SIR) method for release detection in proposed paragraph (7) (current paragraph (8)) is proposed to be amended by deleting subparagraph (ii)(A), which requires that reports be available within 20 days of the end of the monitored period. Owners and operators of USTs using SIR to meet the tank release detection requirement shall determine the leak status of their USTs within the 30-day monitoring period. The EPA established the 30-day monitoring period in the 1988 Federal UST regulations and reconfirmed it in the 2015 Federal UST regulations. UST system owners and operators may use SIR or another method to meet

the tank release detection requirement, as long as the method meets specified performance standards. One performance standard that applies to all release detection methods is the need to determine the tank's leak status in a 30-day monitoring period. That means owners and operators using SIR or another release detection method shall determine the leak status of their USTs within the 30-day monitoring period. This amendment is being proposed to be consistent with the Federal regulations.

§ 245.445. *Methods of release detection for piping*

The automatic line leak detector method for release detection of piping in paragraph (1) is proposed to be amended and paragraph (1)(ii) is proposed to be added, which would require owners and operators of UST systems that store fuel solely for use by emergency power generators to install methods that trigger an audible or visual alarm to meet the release detection requirement. Automatic line leak detectors that either restrict or shut off the flow of regulated substances would not be required to avoid the potential for facilities such as hospitals and nursing homes to be without power at any time.

Paragraph (1)(iii) is proposed to be added to require pressurized piping installed on or before November 10, 2007, that conveys a regulated substance, except piping used in UST systems that store fuel for emergency power under proposed paragraph (1)(ii), to be equipped with a release detection method that restricts or automatically shuts off the flow of regulated substances in the event of a 3-gallon-per-hour leak rate, if the storage tank facility is unattended while open for business.

*Out-of-service underground storage tank systems and closure*

§ 245.451. *Temporary removal from service (out-of-service)*

"Closure" is proposed to be replaced with "removed from service," "removal from service" or "out-of-service." "Closure" would only be used when permanent closure occurs.

Subsection (b) is proposed to be amended to delete the requirement that release detection be performed until the tank is empty. A tank temporarily removed from service must be empty.

Subsection (c) is proposed to be amended to require owners and operators to empty the tank being placed in temporarily out-of-service status prior to submission of the registration form to the Department.

Subsection (e) is proposed to be amended to require inspections to be conducted at 3-year intervals on UST systems in temporary out-of-service status. Inspections could not be delayed for UST systems in temporarily removed from service status. This proposed amendment is consistent with Federal regulations, which do not defer the 3-year inspection requirement for tank systems in temporary removal from service status.

Proposed subsection (i) provides the Department with the ability to require tests to be performed of the UST system in temporary out-of-service status when returning the storage tank system to currently-in-use status. Storage tanks that are in temporarily out-of-service status are often in this status for a number of years. The results of this testing will determine if the storage tank may be brought back into operation.

§ 245.452. *Permanent closure and changes-in-service*

In subsection (b), "[t]anks taken out of service permanently" is proposed to be amended to "[t]anks being permanently closed." Taken "out of service" implies a

temporary condition and is proposed to be reserved for use with the term “temporary out-of-service.”

Subsection (c) is proposed to be amended to clarify that removal or closure-in-place of underground piping, in addition to replacement of underground piping, is considered a permanent closure. Underground piping includes remote fill lines connected to a storage tank. In addition, proposed amendments to subsection (c) clarify that excavation beneath the dispenser and removal of the dispenser would be permanent closure of that part of the UST system. The requirements applicable to permanent closure of a UST system would apply to the permanent closure of underground product piping, remote fill lines and dispensers.

Subsection (e) is proposed to be amended to clarify that the owner would need to complete and submit an amended storage tank registration form, signed by the owner and the certified installer that provided direct onsite supervision of the tank handling activity, to the Department within 30 days of the completion of permanent closure or change-in-service of the storage tank.

#### *Subchapter F. Technical standards for aboveground storage tanks and facilities*

Several sections in this subchapter are proposed to be amended to clarify that the requirements apply to ASTs and facilities.

##### *General*

##### *§ 245.501. Purpose*

This section is proposed to be amended to clarify that the technical standards and requirements established by this subchapter also apply to ASTs in underground vaults. Specific requirements applicable to ASTs in underground vaults are established in § 245.523 (relating to aboveground storage tanks in underground vaults).

##### *§ 245.503. Variances*

Paragraph (6) is proposed to be added to clarify that the Department will publish approved variances in the *Pennsylvania Bulletin*.

##### *§ 245.505. Applicability*

Paragraphs (1)—(3) are proposed to be deleted as the ASTs regulated under this chapter are no longer excluded from the monitoring, in-service inspection and out-of-service inspection requirements outlined in these paragraphs.

##### *Operations and maintenance*

##### *§ 245.512. Facility operations and spill response plan*

This section is proposed to be amended to require that Spill Prevention Response Plan amendments be submitted to the Department within 120 days of any necessary updates to the plan. The current regulation is silent as to when an updated plan needs to be submitted to the Department.

##### *§ 245.513. Preventive maintenance and housekeeping requirements*

This section is proposed to be amended to clarify that storage tank facility owners and operators are responsible for compliance. Subsection (b)(1)(iii) is proposed to be added to clarify that the continuous leak detection system required under § 245.523(7) for an AST in an underground vault would need to be checked as part of the visual inspection conducted every 72 hours.

Subsection (b)(2) is proposed to be amended to clarify that the monthly maintenance inspection would need to be performed for each AST system.

Proposed subsection (b)(2)(v) requires that the monthly maintenance inspection include a check of the cathodic protection system, if installed, to ensure the equipment is functioning as designed.

Subsection (c) is proposed to be amended to replace the general requirement for good housekeeping practice to reduce spills and safety hazards with a specific requirement that would require storage tank facility owners and operators to immediately initiate the actions necessary to correct deficiencies noted during the 72-hour visual and monthly maintenance inspections required under this section.

Proposed subsection (d) sets forth the requirements for repairing AST systems. All repairs to AST systems shall be properly conducted in accordance with the manufacturer’s instructions, a code of practice developed by a Nationally recognized association or an independent testing laboratory.

##### *§ 245.514. Security*

Proposed subsection (b) provides an additional level of security. This subsection would require owners and operators of AST facilities with an aggregate aboveground storage capacity greater than 21,000 gallons to maintain a written log book. Each log book entry would need to identify the name of the individual performing tank handling and inspection activities, the individual’s signature, the company name, the date of work, start and end times, and a brief description of work performed, including tank identification. Department experience has shown that log books either do not exist at facilities or, when they do exist, the information being maintained is often vague or incomplete. The use of a log book containing the proposed information is a best management practice for storage tank owners and operators.

##### *§ 245.516. Recordkeeping requirements*

Subsection (a) is proposed to be amended to require owners and operators of AST systems to provide records required under Chapter 245 and to cooperate fully when inspections, monitoring and testing are being conducted by the Department, certified installers or certified inspectors, and when requests for document submission, testing and monitoring by the owner or operator are made under section 107(c) of the act (35 P.S. § 6021.107(c)). The provisions in subsection (a) regarding the location of records are proposed to be moved to proposed subsection (b) and amended to clarify the requirements.

The recordkeeping requirements in subsection (b) are proposed to be renumbered as subsection (c). The distinction between permanent and temporary records is no longer relevant and this subsection is proposed to be amended to identify all records that are to be maintained for the operational life of the AST system and retained for 1 year after the system has been permanently closed. Records previously identified under subsection (c) as temporary records are proposed to be included in this subsection. In addition, written log books required under proposed § 245.514(b) (relating to security), records of 72-hour visual inspections for the last 12 months, and documentation of investigations of suspected releases are proposed to be added to the list of records to be maintained.

*Design, construction and installation**§ 245.522. New aboveground storage tank installations and reconstructions*

Proposed amendments to this section clarify its requirements. Proposed subsection (g) clarifies that ASTs previously regulated by the Department would need to meet performance requirements for new AST systems prior to returning to regulated tank status. This provision would codify the Department's current policy.

*§ 245.523. Aboveground storage tanks in underground vaults*

In addition to proposed amendments in this section to clarify that the requirements apply to ASTs, amendments are also proposed to clarify that the vault leak detection system in paragraph (7) must activate an alarm that automatically shuts down the dispensing system if vapors or liquids are detected, not if releases occur. Proposed amendments clarify that the leak detection monitoring records in paragraph (11) shall be retained for 12 months as required under § 245.516 (relating to recordkeeping requirements).

*§ 245.526. Piping for aboveground storage tanks*

Subsection (c) is proposed to be amended to clarify that all piping in contact with the soil or an electrolyte would need to be adequately protected from corrosion in accordance with current codes of practice, not only piping installed after October 11, 1997. Current codes of practice do not differentiate corrosion protection requirements based on installation date.

*Corrosion and deterioration prevention**§ 245.531. General corrosion and deterioration requirements*

This section is proposed to be amended to clarify its requirements. Specifically, proposed amendments to subsection (a) clarify that the tank system shall be continuously protected from corrosion and deterioration. Proposed amendments to subsection (b) clarify that metallic tank bottoms, not metallic tank systems, need to be evaluated by a corrosion expert. Proposed amendments to subsection (c) clarify that any tank bottom not adequately protected from corrosion and deterioration would need to be upgraded immediately, not when the tank bottom is replaced.

*§ 245.532. Cathodic protection systems*

Proposed amendments to this section delete the reference to corrosion protection on new, reconstructed or relocated tanks or the replacement of the tank bottom, as corrosion protection requirements are not limited to these tanks or tank bottoms. The reference to API 651 or associations such as NACE as an example of another method that can be used is proposed to be deleted as this language is duplicative of § 245.504 (relating to referenced organizations).

*§ 245.534. Interior linings and coatings*

Proposed amendments to this section clarify the requirements in subsection (a), delete the reference to API 652 or associations such as NACE examples of current Nationally recognized design codes for interior linings and coatings and require Department approval of an alternate inspection schedule in subsection (c).

*Release prevention and leak detection**§ 245.541. Overfill prevention requirements*

Proposed amendments to this section clarify the requirements. Proposed amendments to subsection (a)

clarify that owners and operators shall ensure: that spills do not occur during filling of the storage tank; the tank volume is greater than the volume of product to be delivered prior to the transfer; and that the transfer operation is monitored constantly to prevent overfilling and spilling.

Subsection (b)(2) is proposed to be amended to add that manned operator shutdown procedures be in writing and provided to the Department upon request.

Subsection (e) is proposed to be amended to delete the examples of National industry standards for overfill protection and to delete the compliance date that has already passed.

*§ 245.542. Containment requirements for aboveground storage tank systems*

This section is proposed to be amended to clarify the requirements. The references in subsection (d) and subsection (d)(2) to a compliance date that has passed are proposed to be deleted.

Subsection (f) is proposed to be amended to require that any water, not only stormwater, be removed from the emergency containment area as soon as possible and to clarify that the water is to be removed from the containment before it comes in contact with the AST or piping, or before it reduces the capacity of the containment by 10% or more.

*§ 245.543. Leak detection requirements*

Subsection (d) is proposed to be amended to delete the examples of National industry standards.

*Aboveground storage tank inspections**§ 245.551. General requirements for third-party inspections*

Subsection (b) is proposed to be amended to clarify that Department-certified inspectors shall be certified for the applicable inspector certification category to conduct the inspections required under this section.

*§ 245.552. In-service inspections*

Proposed amendments to this section clarify the requirements. The date referenced in subsection (d)(1) is no longer relevant and is proposed to be deleted. Current subsection (d)(2) is proposed to be deleted because it relates to time frames for initial tank inspections that have already passed and are no longer relevant.

Proposed subsection (d)(4) (current subsection (d)(5)) is proposed to be amended to clarify that an in-service inspection interval for an AST that is temporarily removed from service may only be delayed if agreed upon by the Department.

Proposed subsection (d)(5) addresses all ASTs in underground vaults that require an in-service inspection. Proposed subsection (d)(5)(i) and (ii) states that vaulted ASTs with a capacity greater than 5,000 gallons, and vaulted ASTs storing highly hazardous substances with a capacity greater than 1,100 gallons would need to have in-service inspections conducted within 6 and 12 months of installation and at least every 3 years thereafter. Proposed subsection (d)(5)(iii) allows the Department to require more frequent in-service inspections when a prior inspection identifies corrosion, deterioration or other violations.

Proposed subsection (d)(5) increases the frequency of in-service inspections on large ASTs in underground vaults from once every 5 years to once every 3 years. The in-service inspection frequency on small ASTs in underground vaults is proposed to increase from once every 10

years to once every 3 years. The Department has discovered numerous issues with vaulted ASTs including corrosion, improper installation and water infiltration. A shortened inspection cycle is proposed to help improve compliance. Currently, the inspection cycle for USTs is once every 3 years. The Department has seen a marked improvement in UST facility compliance rates since implementation of the 3-year inspection cycle. Some vaulted AST systems are required to conduct line leak detection similar to UST systems.

Proposed subsection (d)(6) requires that existing ASTs in underground vaults with scheduled in-service inspections greater than 3 years from the effective date of adoption of this proposed rulemaking be inspected by the next currently scheduled in-service inspection date, unless notified otherwise by the Department.

§ 245.553. *Out-of-service inspections*

Proposed amendments to this section clarify the requirements. The date referenced in subsection (e)(1) is no longer relevant and is proposed to be deleted. Current subsection (e)(2) is proposed to be deleted because it relates to time frames for initial tank inspections that have already passed and are no longer relevant.

Proposed subsection (e)(3) (current subsection (e)(4)) is proposed to be amended to clarify that an out-of-service inspection interval for an AST that is temporarily removed from service may only be delayed if agreed upon by the Department.

§ 245.554. *Installation and modification inspections*

Amendments to this section are proposed to clarify the requirements. The requirement to keep inspection reports for the operational life of the storage tank is proposed to be deleted. Proposed subsection (d) clarifies that completed inspection reports for installation and modification inspections would need to be retained with the facility records in accordance with § 245.516.

*Closure and removal from service requirements*

§ 245.561. *Permanent closure or change-in-service*

Paragraph (1) is proposed to be amended to delete references to an unregulated tank as these references are no longer necessary based on the definition of "change-in-service" in § 245.1.

Paragraph (2) is proposed to be amended to clarify the amended registration form requirements of owners completing a permanent closure or change-in-service.

§ 245.562. *Temporary removal from service (out-of-service)*

Subsection (f) is proposed to be amended to clarify that ASTs would need to be permanently closed within 5 years of being placed temporarily out-of-service unless the owner requests in writing an extension to the temporary out-of-service period and the Department approves the request. The proposed amendment would eliminate the need to extend the temporary out-of-service period under the variance process in accordance with § 245.503 (relating to variances).

Proposed subsection (g) will allow the Department to impose conditions and require the submission of documentation when reviewing and approving a request for an extension of the temporary out-of-service period.

*Subchapter G. Simplified program for small aboveground storage tanks*

*General*

§ 245.603. *General storage tank facility requirements*

Subsection (a) is proposed to be amended to require that Spill Prevention Response Plan amendments be

submitted to the Department within 120 days of any necessary updates to the plan. The current regulation is silent as to when an updated plan needs to be submitted to the Department.

Proposed subsection (c) provides an additional level of security. This subsection requires owners and operators of storage tank facilities with an aggregate aboveground storage capacity greater than 21,000 gallons to maintain a written log book. Each log book entry must identify the name of the individual performing tank handling and inspection activities, the individual's signature, the company name, the date of work, start and end times, and a brief description of work performed, including tank identification. Department experience has shown that log books either do not exist at facilities or, where they do exist, the information being maintained is vague and incomplete. The use of a log book with the proposed information is a best management practice for the storage tank owner and operator.

§ 245.605. *Applicability*

This section is proposed to be amended to delete the date for registration as it has passed and is no longer relevant, and to delete the temporary exclusions of certain technical requirements as the time frames for these exclusions have also passed.

§ 245.606. *Variances*

This proposed section extends the use of the variance process to owners of small ASTs, as it is currently afforded to owners of large ASTs. This section mirrors § 245.503.

*Technical requirements*

§ 245.612. *Performance and design standards*

Subsection (d)(1) is proposed to be amended to clarify that spill and overfill protection controls operated with double-walled ASTs to meet both emergency and secondary containment requirements must be permanently installed. Subsection (d)(2) is proposed to be amended to clarify that the shutdown procedure for the overfill alarm or prevention device or monitoring gauge must be in writing.

Existing subsections (e) and (f) are proposed to be deleted as compliance time frames have passed or other requirements have made them obsolete, so they are no longer applicable.

Proposed subsection (f) (current subsection (h)) would eliminate the need for ASTs that are internally lined to comply with § 245.534(c) (relating to interior linings and coatings). Therefore, the interior linings or coatings would not have to be inspected by a Department-certified AST inspector at installation, when undergoing a major modification or at least every 10 years.

Proposed subsection (h) would require AST systems and storage tank system components whose failure could contribute to a release of product to be maintained in a good state of repair to ensure they function as designed.

§ 245.613. *Monitoring standards*

Subsection (b)(1) is proposed to be amended to clarify that monthly operation and maintenance checks would need to include a visual examination of the containment structure or facility for deterioration. Subsection (b)(4) is proposed to be amended to clarify the functionality of the leak detection system shall be checked. Proposed subsection (b)(5) provides for a check of the cathodic protection system, if installed, to ensure the equipment is functioning as designed.

§ 245.614. *Requirements for closure*

This section is proposed to be rescinded. The requirements for temporary removal from service (out-of-service) and permanent closure or change-in-service are in proposed §§ 245.617 and 245.618 (relating to temporary removal from service (out-of-service); and permanent closure or change-in-service), respectively. The requirements for closure are proposed to be placed at the end of the subchapter as they are in Subchapter E and Subchapter F (relating to technical standards for aboveground storage tanks and facilities).

§ 245.615. *Recordkeeping requirements*

Subsection (b) establishes the records to be maintained for the operational life of the AST system. Proposed subsection (b)(7) adds documentation of investigations of suspected releases to the list of records that shall be maintained. Proposed subsection (b)(8) adds that written log book information be maintained as required under § 245.603(c) (relating to general storage tank facility requirements).

§ 245.616. *Inspection requirements*

In general, subsection (c) currently requires the owner and operator of small ASTs storing regulated substances with a capacity greater than 5,000 gallons and the owner and operator of small ASTs storing highly hazardous substances with a capacity greater than 1,100 gallons to have in-service inspections conducted every 10 years. Subsection (c) is proposed to be amended to increase the frequency of in-service inspections on these small ASTs from once every 10 years to once every 5 years. Department inspection records show that less than 50% of ASTs inspected meet current requirements. A shortened inspection cycle is being proposed to improve compliance. Currently, the inspection cycle for USTs is once every 3 years. The Department has seen a marked improvement in UST facility compliance rates since implementation of the 3-year inspection cycle.

Subsection (c)(1) is proposed to be amended to require that ASTs installed after the effective date of adoption of this proposed rulemaking be initially inspected within 5 years of installation, as opposed to the current 10 years.

Proposed subsection (c)(2) allows existing AST systems with scheduled in-service inspections more than 5 years from the effective date of adoption of this proposed rulemaking to be inspected by that next currently scheduled in-service inspection date, unless notified otherwise by the Department. Subsequent in-service inspections would need to be conducted once every 5 years.

Existing subsection (c)(2) and (3) is proposed to be deleted as the time frames for compliance have passed and they are no longer applicable.

Subsection (c)(4) is proposed to be deleted and addressed in proposed subsection (e). Proposed subsection (e) sets forth the requirements to delay an in-service inspection interval for ASTs that are temporarily removed-from-service. Prior to placing product in the AST, the delayed inspection would need to be conducted, deficiencies noted during inspection would need to be addressed and remedied, and an amended registration form would need to be completed and submitted to the Department.

§ 245.617. *Temporary removal from service (out-of-service)*

§ 245.618. *Permanent closure or change-in-service*

Proposed § 245.617 would establish the temporary removal from service requirements that currently exist in

§ 245.614 (relating to requirements for closure), which is proposed to be deleted. The only revised language in this section pertains to temporary removal from service in subsection (f). Subsection (f) would provide the Department with the ability to impose conditions and require submission of documentation when reviewing and approving a request for an extension of the temporary removal from service period.

Proposed § 245.618 would establish the permanent closure and change-in-service requirements that currently exist in § 245.614, which is proposed to be deleted. Proposed § 245.618 does not include any amendments to the requirements that currently exist.

*Subchapter H. Financial responsibility requirements for owners and operators of underground storage tanks and storage tank facilities*

§ 245.704. *General requirements*

Subsection (a) is proposed to be amended to clarify that continuously participating in the USTIF administered by the Insurance Department would mean paying all applicable fees in a timely fashion and conforming with all other requirements in Chapter 245 and the act. All UST owners are required under the act to participate in the USTIF.

*F. Benefits, Costs, and Compliance*

*Benefits*

When enacting the act, the General Assembly found and declared the following: 1) the lands and waters of this Commonwealth constitute a unique and irreplaceable resource from which the well-being of the public health and economic vitality of this Commonwealth is assured; 2) these resources have been contaminated by releases and ruptures of regulated substances from both active and abandoned storage tanks; 3) once contaminated, the quality of the affected resources may not be completely restored to their original state; 4) when remedial action is required or undertaken, the cost is extremely high; 5) contamination of groundwater supplies caused by releases from storage tanks constitutes a grave threat to the health of affected residents; and 6) contamination of these resources shall be prevented through improved safeguards on the installation and construction of storage tanks. See section 102 of the act (35 P.S. § 6021.102).

The regulatory scheme established by the act to prevent releases of contaminants from storage tanks, as implemented through Chapter 245, provides the important benefits articulated in the General Assembly's findings.

The primary purpose of the proposed amendments to Chapter 245 is to further reduce the potential for releases of contaminants from USTs and ASTs by strengthening the requirements regarding properly operating and maintaining release detection equipment. These proposed amendments would require UST equipment to be inspected and tested regularly, which will help to further reduce the number of releases from USTs and in turn protect public health and the environment. Incorporation of these UST amendments into Chapter 245 will enable the Commonwealth to retain approval of its UST program from the EPA and remain eligible for continued substantial Federal funding for the UST program.

A substantial portion of the beneficial impacts associated with this proposed rulemaking are avoided cleanup costs as a result of preventing releases and reducing the severity of releases from USTs. The EPA, in the analysis of the potential benefits associated with its final UST

regulation which became effective on October 13, 2015, estimated the typical cost of a small-extent, soil-only remediation to be \$25,300, and the typical cost of a large-extent, groundwater-contamination remediation to be \$428,200. These costs are in 2008 dollars. During calendar year 2016, the average cost per closed claim paid by the USTIF was \$360,807, and the total paid for all claims was \$31,672,157.

While the reduced cleanup costs associated with this proposed rulemaking cannot be accurately quantified, a decrease in release frequency and severity is expected to result in both a reduction of the average cost per closed claim and the total annual claim payments made by the USTIF. Groundwater contamination incidents and vapor intrusion remediation costs are expected to be reduced or avoided, which would reduce the need for USTIF claims and payments and potentially reduce fees paid by UST owners to fund USTIF. These fees are typically passed on to the public at motor fuel retail locations. Thus, any decrease in release frequency achieved by this proposed rulemaking would benefit the public and the environment by protecting soil and water resources, and reducing costs associated with necessary corrective action.

Other benefits of decreasing the frequency of releases from storage tanks that cannot be quantified or monetized include the avoidance of human health risks, protection of ecological receptors, protection of gallons of groundwater each year and avoided property devaluation.

This proposed rulemaking would also benefit storage tank owners and operators and the Department by reducing the staff time and cost associated with releases from storage tanks and through proposed provisions that would reduce administrative costs. For example, this rulemaking proposes to add a new UST certification category to allow individuals to perform tank handling activities such as repairs that do not involve excavation without having to obtain the (full) certification to install and modify storage tank systems, and to perform tests of UST systems recommended by this proposed rulemaking. Creation of this new certification category would afford UST owners with the opportunity to employ individuals who specialize in modifications only, which could save UST owners some of the costs associated with minor modification work and system testing. This proposed "minor modification" certification category would also provide opportunities for existing certified companies to employ individuals who specialize in minor modification work. In addition, it may create an incentive for persons interested in only performing "minor modification" work to become certified and establish their own companies. In either case, the establishment of this new certification category is expected to result in the creation of a significant number of jobs within the certified installer community, which may reduce the cost of UST system testing over time.

The increase in proposed inspections and testing by storage tank owners is expected to reduce Department costs. For example, these proposed amendments will require all ASTs in underground vaults that require an in-service inspection to be inspected within 6 and 12 months of installation and at least every 3 years thereafter due to their history of noncompliance. This mirrors the inspection requirement for USTs. Also, the initial inspection requirement and in-service inspection cycle for small ASTs will be shortened from 10 years to 5 years. Based on current in-service inspections, the compliance rate with regulatory requirements is less than 50%. When the facility operations inspection cycle for USTs was

shortened from 5 years to 3 years in a prior final-form rulemaking, the Department observed increased regulatory compliance, fewer releases and a reduction in the severity of releases from USTs, which reduced Department staff time needed to follow-up on noncompliant facilities.

#### *Compliance costs*

In general, this proposed rulemaking recommends additional storage tank testing and inspection of existing release detection equipment for USTs, small ASTs and ASTs in vaults, and does not propose changes that would require large-scale investments in equipment or significant changes to operations at the facility level. The only exceptions are the one-time costs to replace ball float valves following failure of the overfill prevention evaluation with alternate overfill prevention equipment and to add release detection to those emergency generator USTs that were previously deferred from regulation. These one-time costs apply to a limited number of UST systems. Of the 22,456 existing UST systems regulated in this Commonwealth, 3,588 have ball float valves for overfill prevention and 629 are emergency generator UST systems without a form of release detection.

The increased cost of compliance associated with this proposed rulemaking is less than the costs that would be imposed on storage tank facility owners and operators without the proposed amendments. Most of the proposed amendments are necessary for the Commonwealth's regulations in Chapter 245 to be consistent with Federal requirements for USTs and retain EPA approval of the State program. Without these proposed amendments, the EPA could not continue to approve the State program and would then be required to implement the UST program in this Commonwealth. Therefore, UST owners would incur the increased costs for their UST facilities to comply with 40 CFR Part 280 even if Chapter 245 was not amended due to the EPA's revised regulations for USTs.

#### *Analysis of UST compliance costs*

Within this Commonwealth, 7,772 UST facilities are regulated consisting of 22,456 UST systems, for an average of 2.89 UST systems per facility. Compliance costs for the proposed UST regulatory requirements are estimated in this analysis based on a UST facility with three UST systems that have the following features: three 10,000-gallon UST systems with two storing gasoline and one storing diesel; 100 feet of piping per UST system; one fill port per UST system; spill prevention equipment at each UST system; two drop tube shut-off devices and one ball float valve for overfill prevention equipment; four dispensers each with an under-dispenser containment sump; one submersible turbine pump sump/tank top sump per UST system; and one ATG with an ATG probe per UST system.

Costs presented on a facility basis were adjusted for the fact that each UST facility has on average 2.89 UST systems. The Department contacted five Department-certified companies from various regions of this Commonwealth to estimate cost for the various requirements in this proposed rulemaking for the UST facility previously described.

The maintenance walkthrough inspection requirement proposed for UST facilities involves a visual inspection of spill prevention equipment and release detection every 30 days and a visual inspection of containment sumps and handheld release detection devices annually. All 7,772 UST facilities would be required to conduct 30-day maintenance walkthrough inspections. The 5,817 UST facilities with containment sumps would be required to conduct the annual visual inspection. These inspections

can be performed by the UST owner, operator or other employee of the UST owner resulting in no cost other than the necessary time to conduct the inspections. However, some UST owners may choose to utilize third-party companies to conduct the maintenance walkthrough inspections. If a UST owner chose to hire a third-party company, the owner would incur costs. However, this action would be voluntary and is not required by this proposed rulemaking.

Testing of spill prevention equipment and containment sumps and evaluation of overfill prevention equipment at UST facilities would be required every 3 years. All 22,456 UST systems have overfill prevention equipment and would be required to conduct evaluations. Likewise, all

UST systems would require spill prevention equipment tests. Thirty-nine percent, or 8,835 UST systems at 3,245 UST facilities, have containment sumps used for interstitial monitoring of piping that would need to be tested. These tests and evaluations would need to be conducted by appropriate certified individuals.

Although the cost for testing and evaluation would only be incurred every 3 years, the costs are estimated on an annualized basis for purposes of this analysis (that is, the testing and evaluation costs are divided by three to estimate the cost per year). The estimated annual cost range and average annual cost for each evaluation or test per facility on an annual basis are summarized as follows:

| <i>Evaluation or Test</i>     | <i>Estimated Range of Annual Costs</i> | <i>Estimated Average Annual Cost</i> |
|-------------------------------|--|--------------------------------------|
| Overfill prevention equipment | \$96—\$161                             | \$112                                |
| Spill prevention equipment    | \$88—\$209                             | \$127                                |
| Containment sump              | \$257—\$899                            | \$546                                |

Based on the estimated average cost, the total annualized cost to a UST facility owner for equipment testing and evaluation every 3 years is estimated to range from \$239—\$785. The lower cost would apply to a facility that does not have containment sumps used for interstitial monitoring of piping. Based on these per facility costs, the annualized cost to evaluate and test equipment at all UST facilities is estimated to be \$3,629,278.

This proposed rulemaking would prohibit continued use of flow restrictors (ball float valves) as an option for overfill prevention when these devices need to be replaced. A total of 3,588 UST systems are reported to have ball float valves as the form of overfill prevention. The increased cost to repair a ball float valve or replace a ball float valve with another ball float valve versus providing another form of overfill prevention (for example, shut-off device or alarm) is estimated to range from \$975—\$1,100 with the average cost to be \$1,038. The average cost represents the one-time increased cost to a UST owner for this overfill prevention equipment replacement. Replacement of a ball float valve would only be necessary when the equipment no longer functions as originally designed and fails the 3-year overfill evaluation requirement. Based on the average cost, the total one-time increased cost to replace ball float valves with another form of overfill prevention for all UST systems is estimated to be \$3,724,344.

Annual release detection equipment testing would be required by this proposed rulemaking for all 22,456 UST systems. Operability tests would need to be conducted of the electronic and mechanical components of release detection equipment. The annualized cost to a UST facility owner for this release detection testing requirement is estimated to range from \$337—\$1,036, with the

average cost to be \$592. Based on the average cost, the annual cost to test release detection equipment at all UST facilities is estimated to be \$4,601,024. These costs are based on an average UST facility consisting of three UST systems and four dispensers. Facilities that have fewer UST systems are expected to have lower costs.

This proposed rulemaking would require release detection for emergency generator USTs. An estimated 629 UST systems are reported as not having any form of release detection. For this analysis, an ATG is used as the form of release detection for these systems and would need to be tested annually for operability. However, other lower cost methods of tank release detection could be chosen by the UST owner depending on type and location of the UST system. The cost for the operability tests for these systems were included in the cost for release detection equipment testing previously described. The cost for the addition of an ATG ranges from \$4,000—\$30,000 with the average estimated cost to be \$16,875. Cost estimates are dependent on several factors including amount of excavation required to install wiring and conduit, access to the UST system and location of the UST system to utilities and buildings. The average cost represents the one-time cost to a UST owner to add an ATG for release detection. Based on the average cost, the total one-time cost to add release detection to emergency generator USTs is estimated to be \$10,614,375.

The following table and discussion summarizes the total estimated annualized cost that UST facilities could incur for the testing and inspections in this proposed rulemaking when UST owners, operators or other employees of the UST owner conduct all maintenance walkthrough inspections:

|                                     | <i>Annualized Operation and Maintenance<sup>1</sup> Costs<sup>2</sup></i> | <i>One-Time Costs<sup>3</sup></i> | <i>Number of Potentially Affected Facilities / Systems</i> | <i>Total Annualized Operation and Maintenance<sup>1</sup> Costs<sup>4</sup></i> | <i>Total One-Time Costs<sup>5</sup></i> |
|-------------------------------------|---|-----------------------------------|--|---|---|
| Maintenance walkthrough inspections | \$0   | \$0                               | 7,772 facilities   | \$0   | \$0                                     |

|   | <i>Annualized Operation and Maintenance Costs<sup>1</sup></i> | <i>One-Time Costs<sup>3</sup></i> | <i>Number of Potentially Affected Facilities / Systems</i> | <i>Total Annualized Operation and Maintenance Costs<sup>4</sup></i> | <i>Total One-Time Costs<sup>5</sup></i> |
|---|---|-----------------------------------|--|---|---|
| Periodic testing/inspection of overfill prevention equipment, spill prevention equipment and containment sumps <sup>6</sup> | \$239—\$785   | \$0                               | 7,772 facilities   | \$3,629,278   | \$0                                     |
| Eliminate ball float valves when overfill prevention equipment is replaced  | \$0   | \$1,038                           | 3,588 UST systems  | \$0   | \$3,724,344                             |
| Operability tests for release detection   | \$592   | \$0                               | 7,772 facilities   | \$4,601,024   | \$0                                     |
| Remove release detection deferral for emergency generator USTs  | \$0   | \$16,875                          | 629 UST systems  | \$0   | \$10,614,375                            |
|   | \$831—\$1,377   |                                   |  | \$8,230,302   | \$14,338,719                            |

<sup>1</sup> Operation and maintenance.

<sup>2</sup> Per UST facility.

<sup>3</sup> Per UST system. One-time costs do not apply to all UST systems.

<sup>4</sup> For all UST facilities.

<sup>5</sup> For all UST systems. One-time costs do not apply to all UST systems.

<sup>6</sup> The lower range of the annualized operation and maintenance costs is for facilities that do not have containment sumps used for interstitial monitoring of piping.

The annualized increased operation and maintenance costs to conduct maintenance walkthrough inspections, inspect overfill prevention equipment, test spill prevention equipment and containment sumps, and test release detection equipment per UST facility is estimated to range from \$831—\$1,377. The total annualized increased costs for these inspections and tests at all UST facilities are estimated to be \$8,230,302.

The total one-time costs to replace all ball float valves with alternate overfill prevention equipment and to add release detection to emergency generator USTs is estimated to be \$14,338,719. These one-time costs apply to a limited number of UST systems. Currently, 3,588 UST systems (less than 16%) have ball float valves for overfill prevention and 629 UST systems (less than 3%) are emergency generator USTs that would need to add release detection equipment. Owners of emergency generator UST systems will be afforded 1 year to 2 years under this proposed rulemaking to make an informed decision to either add the necessary release detection, close the UST system or close the UST system and install a new AST.

*Analysis of AST compliance costs*

As with UST systems, the primary focus of this proposed rulemaking for AST systems is on an increased inspection frequency for small ASTs and ASTs in vaults. The Department contacted five Department-certified companies from various regions of this Commonwealth to estimate the increased cost to AST owners for the proposed inspection requirements.

This proposed rulemaking would require all ASTs in underground vaults that require an in-service inspection to be inspected within 6 to 12 months of installation and at least every 3 years thereafter. ASTs with a capacity greater than 5,000 gallons, and ASTs storing highly hazardous substances with a capacity greater than 1,100 gallons, would be subject to these inspection requirements.

Currently, no large ASTs in underground vaults are registered with the Department and 31 small AST systems in underground vaults would need to increase inspections from once every 10 years to once every 3 years. These small ASTs have an average size of approximately 9,800 gallons.

The reported annualized cost range for an in-service inspection of a vaulted AST every 10 years, as currently required, is \$78 to \$315, and the average annualized cost is \$179. The estimated annualized cost range for an in-service inspection of a vaulted AST every 3 years is \$260 to \$1,050, and the estimated average annualized cost is \$595. Thus, the annualized increased cost to an AST owner of a vaulted AST for an in-service inspection every 3 years is estimated to be \$416. The total annualized increased cost to all AST owners who would be subject to the proposed 3-year inspection requirement is estimated to be \$12,896.

This proposed rulemaking would also shorten the initial inspection requirement and in-service inspection cycle for small ASTs (other than small ASTs in underground vaults) from 10 years to 5 years. This requirement would apply to small ASTs with a capacity greater than 5,000 gallons, and small ASTs with a capacity greater than 1,100 gallons that store highly hazardous substances. An estimated 6,847 small ASTs with an average size of 11,500 gallons would need to increase their inspections to every 5 years under this proposed rulemaking.

The reported annualized cost range for an in-service inspection of a small AST every 10 years, as currently required, is \$44 to \$200, and the average annualized cost is \$98. The estimated annualized cost range for an in-service inspection of a small AST every 5 years, as being proposed, is \$88 to \$400, and the estimated average

annualized cost is \$196. Thus, the annualized increased cost to an AST owner of a small AST for the proposed 5-year inspection period is estimated to be \$98. The total annualized increased cost to all AST owners who would be subject to the proposed 5-year inspection period is estimated to be \$671,006.

The following table summarizes the estimated increased annualized costs discussed above that could be incurred by AST system owners under this proposed rulemaking:

|   | <i>Annualized<br/>Operation and<br/>Maintenance<br/>Costs</i> | <i>One-Time<br/>Costs</i> | <i>Number of<br/>Potentially<br/>Affected Systems</i> | <i>Total<br/>Annualized<br/>Operation and<br/>Maintenance<br/>Costs</i> | <i>Total<br/>One-Time<br/>Costs</i> |
|---|---|---------------------------|---|---|-------------------------------------|
| Increased inspection frequency for vaulted ASTs | \$416   | \$0                       | 31 AST systems  | \$12,896  | \$0                                 |
| Increased inspection frequency for small ASTs   | \$98  | \$0                       | 6,847 AST systems                                     | \$671,006   | \$0                                 |
|   |   | \$0                       |   | \$683,902   | \$0                                 |

Additional compliance costs associated with this proposed rulemaking that cannot be estimated are the costs to UST systems that were previously excluded from the definition of a UST, but would be subject to Chapter 245 under this proposed rulemaking (for example, tanks containing radioactive materials or coolants that are regulated under The Atomic Energy Act of 1954, wastewater treatment tank systems that are not part of a wastewater treatment facility regulated under section 307(b) or 402 of the Clean Water Act, and UST systems that are part of an emergency generator system at nuclear power generation facilities regulated by the NRC under 10 CFR Part 50, Appendix A). In addition, existing field-constructed USTs installed on or before October 11, 1997, would be regulated under Chapter 245 under this proposed rulemaking.

The number of USTs in these categories that would be subject to Chapter 245 under this proposed rulemaking is unknown because they are not currently required to be registered with the Department. Registration would be required within 30 days after the effective date of adoption of this proposed rulemaking. Field-constructed USTs installed on or before October 11, 1997, are temporarily excluded from other regulatory requirements in Chapter 245 until 1 year after the effective date of adoption of this proposed rulemaking. Upon registration of a UST that was previously excluded from regulation, the Department would work with the tank owner to bring the UST into regulatory compliance. Due to the unique nature of these USTs, the steps that would be necessary to bring the USTs into compliance are expected to vary widely. Thus, compliance costs associated with the regulation of this universe of USTs cannot be estimated.

USTs containing radioactive material and emergency generator UST systems at nuclear power generation facilities regulated by the NRC are subject to United States Department of Energy Orders and NRC regulations that are comparable to the Chapter 245 requirements for new and existing USTs regarding spill and overflow control, operation and maintenance of corrosion protection, and release detection. Since owners and operators of these UST systems had to meet Federal UST regulations dating back to 1988 that require systems to be designed and constructed to prevent releases during the operating life of the facility due to corrosion or structural failure, these systems may already be in compliance and therefore incur no additional costs.

#### *Analysis of Department costs*

Under this proposed rulemaking, the Department would incur minimal additional costs to publish notices in the *Pennsylvania Bulletin* for the following: acknowledgment of receipt of the remedial action plan; notice of the Department's final action on the remedial action plan; acknowledgment of receipt of the remedial action completion report; notice of the Department's final action on the remedial action completion report; and notice of variances approved by the Department.

#### *Compliance assistance plan*

As previously noted, this proposed rulemaking would affect approximately 7,100 storage tank owners at over 12,600 storage tank facilities. Industry sectors potentially affected by this proposed rulemaking include retail motor fuel sales, commercial, institutional, manufacturing, transportation, communications and utilities, and agriculture. Federal, State and local government operations will also be affected.

Department-certified storage tank installers, inspectors and companies would also need to comply with this proposed rulemaking. At the current time, nearly 900 individuals and approximately 350 companies have certifications from the Department under Chapter 245. Currently certified tank installers and inspectors will likely have the capacity to provide the increased testing and inspections that will be required by this proposed rulemaking. In addition, the addition of a new certification category for minor modifications would allow individuals to perform tank handling activities such as repairs that do not involve excavation without having to obtain the (full) certification to install and modify storage tank systems. With this new certification, individuals will also be able to perform tests of UST systems required by this proposed rulemaking.

The visual inspection of spill prevention and release detection equipment, containment sumps and handheld release detection devices could be performed by the UST owner, operator or other employee of the UST owner. However, UST owners can choose to utilize a third-party company to conduct the maintenance walkthrough inspections. In all cases, owners of existing storage tank systems would be provided with time frames in which to comply with the new requirements. Owners of new

storage tank systems would need to comply with the requirements upon the effective date of adoption of this proposed rulemaking.

Financial assistance is not anticipated or planned. The Department would provide technical and compliance assistance outreach through its web site, publications, forms, and presentations to various industry groups and organizations. Webinars explaining the regulatory amendments are also planned.

#### *Paperwork requirements*

This proposed rulemaking includes the following new notification, reporting and other paperwork requirements:

Certified installers and inspectors would need to report regulated substance observed in a containment structure or facility within 48 hours on a form provided by the Department.

Certified installers or inspectors would need to report failed tests of UST spill prevention equipment, containment sumps and overfill prevention equipment within 48 hours on a form provided by the Department. A copy of the test results would also need to be provided to the Department with the notification report.

Responsible parties would need to notify the Department by telephone or e-mail as soon as practicable, but no later than 24 hours, after the initiation of interim remedial actions in response to a release.

Responsible parties would need to notify the Department, by telephone or e-mail, within 24 hours of providing an alternate source of water to the owner of an affected or diminished water supply in response to a release.

Responsible parties would need to notify the Department by telephone or e-mail as soon as practicable, but no later than 24 hours, after the initiation of site characterization activities in response to a release.

The Department would need to publish an acknowledgment of receipt of the remedial action plan and notice of its final action on the plan in the *Pennsylvania Bulletin*.

The Department would need to publish an acknowledgment of receipt of the remedial action completion report and notice of its final action on the report in the *Pennsylvania Bulletin*.

Owners and operators would need to notify the Department of the proposed installation of specific UST system components such as the piping system and dispenser, and not just when a tank or tank system is being installed, on a form provided by the Department.

Certified installers and inspectors would need to document tests or evaluations of UST spill prevention and overfill prevention equipment, containment sumps and release detection equipment on a form provided by the Department. Owners and operators would need to maintain test or evaluation results onsite at the storage tank facility or at a readily available alternative site and shall provide the forms to the Department upon request.

Surveys of UST cathodic protection systems would need to be documented on a form provided by the Department and would need to be provided to the Department upon request.

Owners and operators of USTs storing alternative fuel blends or biodiesel or biodiesel blended fuel would need to submit, on a form provided by the Department, informa-

tion verifying that all system components are compatible with the proposed substance to be stored, prior to storing the substance in the UST.

Owners and operators would need to maintain documentation showing that their UST systems are continuously participating in the USTIF.

Owners and operators would need to maintain documentation of the last test of UST spill prevention equipment and containment sumps used for interstitial monitoring of piping and evaluation of overfill prevention equipment.

For containment sumps used for interstitial monitoring of piping and spill prevention equipment not required to be tested, UST owners and operators would need to maintain documentation showing that the equipment is double-walled and the integrity of both walls is periodically monitored.

UST owners and operators would need to maintain records of maintenance walkthrough inspections for the past 12 months.

Owners would need to ensure that Class A, Class B and Class C operators are identified on a form provided by the Department prior to placing the UST system into use.

Owners and operators of AST facilities with an aggregate aboveground storage capacity greater than 21,000 gallons would need to maintain a written log book. Each log book entry would need to identify the name of the individual performing tank handling and inspection activities, the individual's signature, the company name, the date of work, start and end times, and a brief description of work performed, including tank identification.

In addition to routine monthly inspections, AST owners and operators would need to maintain 72-hour maintenance inspections for the past 12 months.

AST owners and operators would need to maintain documentation of investigations of suspected releases.

When a high-level alarm with a manned operator shutdown procedure is used, owners and operators of ASTs would need to document the shutdown procedure and provide it to the Department upon request.

When an overfill alarm or prevention device or monitoring gauge is utilized, owners and operators of ASTs would need to document the shutdown procedure.

The following new forms would be used to implement this proposed rulemaking:

- Underground Storage Tank Groundwater/Vapor Monitoring System Functionality Testing Form
- Underground Storage Tank Sensor Functionality Testing Form
- Underground Storage Tank Automatic Line Leak Detector Functionality Testing Form
- Underground Storage Tank Pressure/Vacuum Monitoring Functionality Testing Form
- Underground Storage Tank Spill Prevention Equipment/Containment Sump Integrity Testing Form
- Underground Storage Tank Automatic Tank Gauge Functionality Testing Form
- Underground Storage Tank Overfill Prevention Evaluation Form
- Aboveground Storage Tank Lining Inspection Summary and Instructions

The following existing forms would be revised to implement this proposed rulemaking:

- Underground Storage Tank Facility Operations Inspection Report Form Instructions (2630-FM-BECB0501)
- Underground Storage Tank Facility Operations Inspection (2630-FM-BECB0501a)
- Underground Storage Tank System Installation/Closure Notification Form (2630-FM-BECB0127)
- Planning for Permanent Closure Checklist—Underground Storage Tank Systems (2630-FM-BECB0126)
- Underground Storage Tank Modification Report (2630-FM-BECB0575)
- Underground Storage Tank System Closure Report Form (2630-FM-BECB0159)
- Aboveground Storage Tank Integrity Inspection Summary and Instructions (2630-FM-BECB0150)
- Aboveground Storage Tank System Closure Report Form (2630-FM-BECB0514)
- Planning for Permanent Closure Checklist—Aboveground Storage Tank Systems (2630-FM-BECB0512)
- Aboveground Storage Tank System Closure Notification Form (2630-FM-BECB0513)
- Notification of Release/Notification of Contamination (2620-FM-BECB0082)
- Storage Tanks Registration/Permitting Application Form and Instructions (2630-PM-BECB0514)
- Storage Tank Installer/Inspector Certification Application Form and Instructions (2630-PM-BECB0506)
- Storage Tank Training Course Approval Application and Instructions (2630-PM-BECB0402)
- Storage Tank Site-Specific Installation Permit Application Instructions (2630-PM-BECB0002)
- Initial Qualifications—Storage Tank Installer and Inspector Certification (2630-PM-BECB0506b)
- Renewal Qualifications—Storage Tank Installer and Inspector Certification (2630-PM-BECB0506b2)
- Instructions—Storage Tank Installer and Inspector Certification—Attachment A (2630-PM-BECB0506c)

The following form could be deleted under this proposed rulemaking:

- Aboveground Storage Tank Installation Inspection Summary (2630-FM-BECB0602). This form is being incorporated into the Aboveground Storage Tank Integrity Inspection Summary and Instructions (2630-FM-BECB0150).

#### G. Pollution Prevention

The Federal Pollution Prevention Act of 1990 (42 U.S.C.A. §§ 13101—13109) established a National policy that promotes pollution prevention as the preferred means for achieving state environmental protection goals. The Department encourages pollution prevention, which is the reduction or elimination of pollution at its source, through the substitution of environmentally friendly materials, more efficient use of raw materials and the incorporation of energy efficiency strategies. Pollution prevention practices can provide greater environmental protection with greater efficiency because they can result in significant cost savings to facilities that permanently achieve or move beyond compliance.

The primary purpose of this proposed rulemaking is to strengthen the UST requirements by increasing the emphasis on properly operating and maintaining equipment. The proposed amendments would require that UST equip-

ment be operated and maintained properly, which would help to further reduce the number of releases from USTs and in turn protect public health and the environment.

This proposed rulemaking also would require all ASTs in underground vaults that require an in-service inspection to be inspected within 6 and 12 months of installation and at least every 3 years thereafter due to their history of noncompliance. This mirrors the inspection requirement for USTs. Also, the initial inspection requirement and in-service inspection cycle for small ASTs would be shortened from 10 years to 5 years. Based on current in-service inspections, the compliance rate with regulatory requirements is less than 50%. The facility operations inspection cycle for USTs was shortened from 5 years to 3 years in a prior rulemaking, which has resulted in increased regulatory compliance. Increased compliance with the proposed regulatory requirements would mean fewer releases and a reduction in the severity of releases from ASTs.

#### H. Sunset Review

The Board is not proposing a sunset date for these regulations, since they are needed for the Department to carry out its statutory authority. The Department would continue to closely monitor these regulations for their effectiveness and recommend updates to the Board as necessary.

#### I. Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on February 13, 2018, the Department submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House and Senate Environmental Resources and Energy Committees. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey any comments, recommendations or objections to this proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections must specify the regulatory review criteria in section 5.2 of the Regulatory Review Act (71 P.S. § 745.5b) which have not been met. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the rulemaking, by the Department, the General Assembly and the Governor.

#### J. Public Comments

Interested persons are invited to submit to the Board written comments, suggestions, support or objections regarding this proposed rulemaking. Comments, suggestions, support or objections must be received by the Board by March 26, 2018. Comments may be submitted to the Board online, by e-mail, by mail or express mail as follows.

Comments may be submitted to the Board by accessing eComment at <http://www.ahs.dep.pa.gov/eComment>.

Comments may be submitted to the Board by e-mail to [RegComments@pa.gov](mailto:RegComments@pa.gov). A subject heading of this proposed rulemaking and a return name and address must be included in each transmission.

If an acknowledgement of comments submitted online or by e-mail is not received by the sender within 2 working days, the comments should be retransmitted to the Board to ensure receipt. Comments submitted by facsimile will not be accepted.

Written comments should be mailed to the Environmental Quality Board, P.O. Box 8477, Harrisburg, PA 17105-8477. Express mail should be sent to the Environmental Quality Board, Rachel Carson State Office Building, 16th Floor, 400 Market Street, Harrisburg, PA 17101-2301.

K. Public Hearings

If sufficient interest is generated as a result of this publication, a public hearing will be scheduled at an appropriate location to receive additional comments.

PATRICK McDONNELL, Chairperson

Fiscal Note: 7-530. (1) General Fund; (2) Implementing Year 2017-18 is \$0; (3) 1st Succeeding Year 2018-19 is \$0; 2nd Succeeding Year 2019-20 is \$132,000; 3rd Succeeding Year 2020-21 is \$1,862,000; 4th Succeeding Year 2021-22 is \$259,000; 5th Succeeding Year 2022-23 is \$260,000; (4) 2017-18 Program—\$8,372,000; 2016-17 Program—\$8,622,000; 2015-16 Program—\$9,026,000; (7) General Operations—various State agencies; (8) recommends adoption. There is no fiscal impact to the Department, but because State agencies own and operate ASTs and USTs, there will be increased costs spread through various agencies from the estimated totals in this fiscal note.

Annex A

TITLE 25. ENVIRONMENTAL PROTECTION
PART I. DEPARTMENT OF ENVIRONMENTAL PROTECTION

Subpart D. ENVIRONMENTAL HEALTH AND SAFETY

ARTICLE VI. GENERAL HEALTH AND SAFETY

CHAPTER 245. ADMINISTRATION OF THE STORAGE TANK AND SPILL PREVENTION PROGRAM

Subchapter A. GENERAL PROVISIONS
GENERAL

§ 245.1. Definitions.

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

\* \* \* \* \*

Aboveground storage tank—One or a combination of stationary tanks with a capacity in excess of 250 gallons, including the underground pipes and dispensing systems connected thereto within the emergency containment area, which is used, will be used or was used to contain an accumulation of regulated substances, and the volume of which, including the volume of piping within the storage tank facility, is greater than 90% above the surface of the ground. The term includes tanks which can be visually inspected, from the exterior, in an underground area and tanks being constructed or installed for regulated use. The term does not include the following, or pipes connected thereto:

\* \* \* \* \*

(viii) Tanks [ which are ] regulated under 58 Pa.C.S. Chapter 32 (relating to development) used to store brines, crude oil, drilling or frac fluids and similar substances or materials and are directly related to the exploration, development or production of crude oil or natural gas [ regulated under the Oil and Gas Act (58 P.S. §§ 601.101—601.605) ].

\* \* \* \* \*

(xix) Other tanks excluded by regulations promulgated under the act.

Aboveground storage tank system—An aboveground storage tank, connected piping and ancillary equipment within the emergency containment area, and emergency and secondary containment.

Act—The Storage Tank and Spill Prevention Act (35 P.S. §§ 6021.101—6021.2104).

[ Actively involved—To perform or to conduct direct onsite supervision or oversight of the minimum number of qualifying activities in § 245.111 or § 245.113 (relating to certified installer experience and qualifications; and certified inspector experience and qualifications) for renewal of installer or inspector certification in each applicable category, within the period in § 245.114(a)(3) (relating to renewal and amendment of certification). ]

Adjacent—Next to or contiguous with.

\* \* \* \* \*

Cathodic protection tester—A person who can demonstrate an understanding of the principles and measurements of common [ type ] types of cathodic protection systems as applied to buried or submerged metal piping and tank systems. At a minimum, the person shall have documented education and experience in soil resistivity, stray current, structure to soil potential and component electrical isolation measurements of buried metal piping and tank systems.

Certification categories—

(i) Individual certification categories issued to certified installers or certified inspectors to perform tank handling, tightness testing or inspection activities on aboveground or underground storage tank systems and facilities.

(ii) The term includes category specific certifications in one or more of the following:

\* \* \* \* \*

(B) Storage tank installer certification categories:

\* \* \* \* \*

(IX) UMX—Underground storage tank system installation and modification.

(X) UMI—Underground storage tank system minor modification.

[ (X) ] (XI) UTT—Underground storage tank system tightness tester.

[ (XI) ] (XII) UMR—Underground storage tank system removal.

Certified company—An entity, including[, but not limited to,] a sole proprietorship, a partnership or a corporation, which is certified by the Department and employs certified installers or certified inspectors to conduct tank handling activities, tightness testing activities or inspection activities.

Certified inspector—A person certified by the Department to conduct inspections of tanks or storage tank facilities and who may conduct environmental audits. A certified inspector may not be an [ employe ] employee of a tank owner.

*Certified installer*—A person certified by the Department to install, modify or remove storage tanks. A certified installer may be an [ **employe** ] **employee** of a tank owner.

\* \* \* \* \*

*Containment structure or facility*—Anything built, installed or established which comes in contact with regulated substances that are spilled, leaked, emitted, discharged, escaped, leached or disposed from a storage tank or storage tank system[ . **The term includes, but is not limited to** ], **including** a vault, dike, wall, building or secondary containment structure around an underground or [ **above-ground** ] **aboveground** storage tank, or any rock or other fill material placed around an underground storage tank.

**Containment sump—A liquid-tight container designed to protect the environment by containing leaks and spills of regulated substances from piping, dispensers, pumps and related components in the containment area. Containment sumps may be single-walled or secondarily contained and located at the top of the tank (tank top or submersible turbine pump sump), underneath the dispenser (under-dispenser containment sump) or at other points in the piping run (transition or intermediate sump).**

*Corrective action*—

\* \* \* \* \*

*De minimis*—With regard to products containing regulated substances, the term applies when the regulated substance is of insufficient concentration to be required to appear on a [ **Material Safety Data Sheet (MSDS)** ] **Safety Data Sheet (SDS)**. The term does not apply to section 507 of the act (35 P.S. § 6021.507) as it pertains to site contamination.

\* \* \* \* \*

*Environmental audit*—Activities which may be conducted by a certified inspector to evaluate the storage tank system or storage tank facility site, equipment and records to determine evidence of an actual or possible release of regulated substance.

**Environmental covenant—A servitude arising under an environmental response project which imposes activity and use limitations under 27 Pa.C.S. §§ 6501—6517 (relating to Uniform Environmental Covenants Act).**

*Environmental media*—Soil, sediment, surface water, groundwater, bedrock and air.

*Excavation zone*—The volume containing the tank system and backfill material bounded by the ground surface, walls and floor of the pit and trenches into which the underground storage tank system is placed at the time of installation.

*Exempt underground storage tank*—An underground storage tank which has been exempted by regulation from participation in USTIF.

**Existing underground storage tank system**—An underground storage tank system used to contain an accumulation of regulated substances [ **or for which installation has commenced on or before December 22, 1988** ] **for which installation has either started or been**

**completed in accordance with this chapter.** Installation is considered to have [ **commenced** ] **started** if the following apply:

\* \* \* \* \*

*Hazardous substance storage tank system*—

(i) A storage tank system that contains a hazardous substance defined in section 101(14) of CERCLA (42 U.S.C.A. § 9601(14)).

(ii) The term does not include a storage tank system that contains a substance regulated as a hazardous waste under [ **Subtitle C of CERCLA** ] **sections 3001—3024 of the Solid Waste Disposal Act (42 U.S.C.A. §§ 6921—6939g)**, or mixture of the substances and petroleum, and which is not a petroleum system.

\* \* \* \* \*

*Install*—Activities to construct, reconstruct or erect to put into service a storage tank, a storage tank system or storage tank facility.

[ **Interim certification—Certification granted by the Department on an interim basis under section 108 of the act (35 P.S. § 6021.108) to installers and inspectors of storage tank systems or storage tank facilities.** ]

*Intrafacility piping*—A common piping system serving more than one storage tank system within a storage tank facility.

\* \* \* \* \*

*Minor modification*—

(i) An activity to upgrade, repair, refurbish or restore all or part of an existing storage tank system or storage tank facility which does not alter the design of that storage tank system or storage tank facility, but[ , **which may effect** ] **which may affect** the integrity of that storage tank system or storage tank facility.

(ii) The term does not include an activity directly affecting the tank portion of the storage tank system or an activity directly affecting an underground component of the storage tank system.

*Modify*—To conduct an activity that constitutes a major modification or a minor modification.

*Monitoring system*—A system capable of detecting releases in connection with an aboveground or underground storage tank.

**Motor fuel—[ Petroleum or a petroleum-based substance that is motor gasoline, aviation gasoline, No. 1 or No. 2 diesel fuel or any grade of gasohol, and is typically used in the operation of an internal combustion engine. ] A complex blend of hydrocarbons typically used in the operation of a motor engine, such as motor gasoline, aviation gasoline, No. 1 or No. 2 diesel fuel, or any blend containing one or more of these substances such as motor gasoline blended with alcohol.**

\* \* \* \* \*

*Pipeline facilities (including gathering lines)*—New and existing pipe rights-of-way and associated equipment, facilities or buildings [ **regulated under the Hazardous Liquid Pipeline Safety Act of 1979 or the Natural Gas Pipeline Safety Act of 1968, codified without substantive change in 1994 by Pub.L. No. 103-272,**

108 Stat. 1371 (49 U.S.C.A. §§ 60101—60125) which may include coastal, interstate or intrastate pipelines ].

\* \* \* \* \*

*Reconstruction*—The work necessary to reassemble a storage tank that has been dismantled and relocated to a new [ site ] location.

*Regulated substance*—

[ (i) ] An element, compound, mixture, solution or substance that, when released into the environment, may present substantial danger to the public health, welfare or the environment which is one of the following:

[ (A) ] (i) A substance defined as a hazardous substance in section 101(14) of CERCLA, including hazardous substances that are liquid or gaseous, or suspended therein regardless of holding temperature, but not including a substance regulated as a hazardous waste under Subtitle C of the Resource Conservation and Recovery Act of 1976 (42 U.S.C.A. §§ 6921—6931).

[ (B) ] (ii) Petroleum, including crude oil or a fraction thereof and petroleum hydrocarbons which are liquid at standard conditions of temperature and pressure (60° F and 14.7 pounds per square inch absolute), including [ , but not limited to, ] oil, petroleum, petroleum mixed with ethanol, fuel oil, oil sludge, oil refuse, oil mixed with other nonhazardous wastes and crude oils, gasoline and kerosene.

[ (C) ] (iii) Other substances determined by the Department by regulation whose containment, storage, use or dispensing may present a hazard to the public health and safety or the environment, but not including gaseous substances used exclusively for the administration of medical care. This includes the following other regulated substances:

[ (I) ] (A) Nonpetroleum oils including biodiesel; synthetic fuels and oils, such as silicone fluids; tung oils and wood-derivative oils, such as resin/rosin oils; and inedible seed oils from plants, which are liquid at standard conditions of temperature and pressure. The requirements in this chapter for petroleum tanks in [ clause (B) ] subparagraph (ii) apply for this group of substances.

[ (II) ] (B) Pure ethanol intended for blending with motor fuel. The requirements in this chapter for petroleum tanks in [ clause (B) ] subparagraph (ii) apply.

*Release*—Spilling, leaking, emitting, discharging, escaping, leaching or disposing from a storage tank into surface waters and groundwaters of this Commonwealth or soils or subsurface soils in an amount equal to or greater than the reportable released quantity determined under section 102 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C.A. § 9602), and regulations promulgated thereunder, or an amount equal to or greater than a discharge as defined in section 311 of the Federal Water Pollution Control Act (33 U.S.C.A. § 1321) and regulations promulgated thereunder. The term also includes spilling, leaking, emitting, discharging, escaping, leaching or disposing from a storage tank into a containment structure or facility that poses an immediate threat of contamination of the soils, subsurface soils, surface water or groundwater. All spills, leaks, emissions, discharges, escapes, leaching or disposals of a regulated substance into

a containment structure or facility pose an immediate threat of contamination of the soils, subsurface soils, surface water or groundwater, except when a regulated substance is present in a liquid-tight containment sump or emergency containment structure as a result of a tank handling activity, if the certified installer providing direct onsite supervision has control over the regulated substance, the regulated substance is completely contained and, prior to the certified installer leaving the storage tank facility, the total volume of the regulated substance is recovered and removed.

*Release detection*—The determination, through a method or combination of methods, whether a release of a regulated substance has occurred from a storage tank system into the environment or into the interstitial space between the storage tank system and its secondary containment around it.

*Remediation standard*—The background, Statewide health or site-specific standard, or any combination thereof, as provided for in the Land Recycling and Environmental Remediation Standards Act (35 P.S. §§ 6026.101—[ 6026.909 ] 6026.208).

*Removal*—Activities involving removal of storage tank system components, ancillary equipment and appurtenances. The term includes removal from service activities when a storage tank or storage tank system is removed, but excludes site assessment activities.

*Removal from service*—The term includes the following:

(i) Activities related to rendering [ **an underground** ] a storage tank system permanently unserviceable. Activities include the oversight of the proper draining and cleaning of the storage tank system of product liquids, vapors, accumulated sludges or solids, and completing one of the following:

(A) Leaving the storage tank system in the ground and filling the tank with inert, solid material.

(B) Dismantling or removing the storage tank system from the tank site.

(ii) [ **Discontinued use, abandonment, closure in place and permanent closure but does not include temporary closure as those terms are used in the act.** ] Closure-in-place and permanent closure.

(iii) Site assessment activities required under Subchapter E (relating to technical standards for underground storage tanks) and applicable State law, which are the responsibility of owners and operators, but are not conducted by certified installers or inspectors.

[ **Reportable release**—A quantity or an unknown quantity of regulated substance released to or posing an immediate threat to surface water, groundwater, bedrock, soil or sediment. The term does not include the following, if the owner or operator has control over the release, the release is completely contained and, within 24 hours of the release, the total volume of the release is recovered or removed in the corrective action:

(i) A release to the interstitial space of a double-walled aboveground or underground storage tank.

(ii) A release of petroleum to an aboveground surface that is less than 25 gallons.

(iii) A release of a hazardous substance to an aboveground surface that is less than its reportable quantity under the Comprehensive Environmental

**Response, Compensation, and Liability Act of 1980 (42 U.S.C.A. §§ 9601—9675) and 40 CFR Part 302 (relating to designation, reportable quantities, and notification). ]**

**Repair—An activity that restores to original operating condition a tank, piping, spill prevention equipment, overfill prevention equipment, corrosion protection equipment, release detection equipment or other storage tank system component that has failed to function properly.**

*Residential tank*—A tank located on property used primarily for dwelling purposes.

\* \* \* \* \*

*Solid Waste Management Act*—The Solid Waste Management Act (35 P.S. §§ 6018.101—6018.1003).

**Spill prevention equipment—A liquid-tight container placed around the fill pipe or fill port riser of a storage tank designed to capture any product that may spill when the delivery hose is disconnected including a catchment basin, spill containment bucket or spill containment box.**

*Spill prevention response plan*—Emergency plans and procedures developed by an aboveground storage tank or tank facility owner, operator, or both, for response to an accident or spill on the facility by facility personnel or contractors.

*Stationary tank*—An aboveground storage tank that is permanently affixed to the real property on which the tank is located.

*Storage tank*—An aboveground or underground storage tank which is used for the storage of a regulated substance.

*Storage tank facility*—One or more stationary tanks, including associated intrafacility pipelines, fixtures, monitoring devices and other equipment. A facility may include aboveground tanks, underground tanks or a combination of both. For the purposes of the act and this part, the associated intrafacility pipelines, fixtures, monitoring devices and other equipment for an aboveground storage tank shall be that which lies within the emergency containment area. The term storage tank facility does not encompass portions of a facility that do not contain storage tank systems.

*Storage tank system*—[ **An** ] **All or part of an** underground or aboveground storage tank, associated underground or aboveground piping directly serving that storage tank, and one or more of the following which are directly associated with that storage tank:

\* \* \* \* \*

*Tank handling activities*—Activities to install, modify [ **or remove** ], **perform change-in-service or close** all or part of a storage tank system or storage tank facility. The term does not include maintenance activities.

\* \* \* \* \*

*Underground storage tank*—One or a combination of tanks (including underground pipes connected thereto) which are used, were used or will be used to contain an accumulation of regulated substances, and the volume of which (including the volume of underground pipes connected thereto) is 10% or more beneath the surface of the ground. The term includes tanks being constructed or installed for regulated use. The term does not include:

(i) Farm or residential tanks of 1,100 gallons or less capacity used for storing motor fuel for noncommercial purposes.

(ii) Tanks used for storing heating oil for consumptive use on the premises where stored unless they are specifically required to be regulated by Federal law.

(iii) A septic or other subsurface sewage treatment tank.

(iv) A pipeline facility (including gathering lines) [ **regulated under** ] **which is one of the following:**

(A) [ **The Natural Gas Pipeline Safety Act of 1968.** ] **Regulated under 49 U.S.C.A. §§ 60101—60141.**

(B) [ **The Hazardous Liquid Pipeline Safety Act of 1979.** ] **An intrastate pipeline facility regulated under state laws as provided in 49 U.S.C.A. §§ 60101—60141 and which is determined by the Secretary of the United States Department of Transportation to be connected to a pipeline or to be operated or intended to be capable of operating at pipeline pressure or as an integral part of a pipeline.**

(v) An interstate [ **or intrastate** ] pipeline facility regulated under State laws comparable to the provisions of law in subparagraph (iv).

\* \* \* \* \*

(xii) An underground storage tank system with capacity of 110 gallons or less.

[ **(xiii) Tanks containing radioactive materials or coolants that are regulated under The Atomic Energy Act of 1954 (42 U.S.C.A. §§ 2011—2297).**

**(xiv) A wastewater treatment tank system. ]**

**(xiii) A wastewater treatment tank system that is part of a wastewater treatment facility regulated under section 307(b) or 402 of the Clean Water Act (33 U.S.C.A. §§ 1317(b) and 1342).**

[ **(xv)** ] **(xiv)** Equipment or machinery that contains regulated substances for operational purposes such as hydraulic lift tanks and electrical equipment tanks.

[ **(xvi)** ] **(xv)** An underground storage tank system that contains a de minimis concentration of regulated substances.

[ **(xvii)** ] **(xvi)** An emergency spill or overflow containment underground storage tank system that is expeditiously emptied after use.

[ **(xviii) An underground storage tank system that is part of an emergency generator system at nuclear power generation facilities regulated by the Nuclear Regulatory Commission under 10 CFR Part 50, Appendix A (relating to general design criteria for nuclear power plants).**

**(xix)** ] **(xvii)** Other tanks excluded by policy or regulations promulgated under the act.

\* \* \* \* \*

**TANK HANDLING AND INSPECTION ACTIVITIES**

**§ 245.21. Tank handling and inspection requirements.**

(a) Tank handling activities shall be conducted by a certified installer except in the case of modification to an aboveground nonmetallic storage tank, which may be

modified by the tank manufacturer. Storage tank facility owners and operators **[ may not use persons who are not Department certified ] shall use persons who are Department-certified** to conduct tank handling activities except as noted in this subsection. The certified installer shall perform the tank handling activity or provide direct onsite supervision and control of the activity.

(b) Tank handling activities conducted on all **aboveground** field constructed storage **[ tanks ] tank systems** and tank handling activities conducted on all aboveground storage **[ tanks ] tank systems** having a capacity greater than 21,000 gallons shall be inspected by a certified inspector, except in the case of a minor modification or removal from service.

\* \* \* \* \*

**[ TIGHTNESS ] TESTING ACTIVITIES**

§ 245.31. Underground storage tank **[ tightness ] system** testing requirements.

(a) Tightness testing activities shall be conducted by a Department-certified underground storage tank system tightness tester (UTT), except when performed by an owner or operator using installed automatic tank gauging or monitoring equipment meeting requirements **[ of § 245.444(3) and (4) ] in § 245.444(2) and (3)** (relating to methods of release detection for tanks).

**[ (b) Tightness testing is required to be conducted when it is:**

**(1) Used as a method of release (leak) detection as prescribed in §§ 245.442(b)(1), 245.443(1), 245.444(3) and 245.445(2).**

**(2) Used to complete the installation of a new single wall constructed underground storage tank. The testing is an integral part of the installation process.**

**(3) Used in conjunction with cathodic protection upgrading as prescribed in § 245.422(b)(2)(iii) or (v) (relating to upgrading of existing underground storage tank systems).**

**(4) Used to test tanks repaired in response to a release as prescribed in § 245.434(5) (relating to repairs allowed).**

**(5) Otherwise required by the Department.**

(c) **[ (b) ]** Tightness testing shall be conducted in accordance with equipment manufacturer's written instructions and using the recommended written practices, procedures and established test method protocols developed by the sources in § 245.132(a)(1) (relating to standards of performance).

**[ (d) ] (e)** A failed valid tightness test will, regardless of the test method, constitute a suspected release, except as provided in § 245.304(b) (relating to investigation of suspected releases). A failed valid tightness test conducted as part of an investigation of a suspected release constitutes a confirmed release.

**[ (e) ] (d)** A complete written test report shall be provided to the tank owner as documentation of test results within 20 days of the test. The test methodology, a certification that the test meets the requirements **[ of § 245.444(3) ] in § 245.444(2)** or § 245.445(2) (relating to methods of release detection for piping), and sufficient

test data, which were used to conclude that the **[ tank ] underground storage tank system** passed or failed the tightness test, shall be included in the test report.

**[ (f) ] (e)** Certified underground storage tank system tightness testers (UTT) shall maintain complete records of tightness testing activities for a minimum of 10 years as provided in § 245.132(a)(3) (relating to standards of performance).

**[ (g) Tightness testing of the underground storage tank system's piping shall be conducted by a Department-certified underground storage tank system tightness tester (UTT) after November 10, 2008. ]**

**(f) Tests or evaluations of spill prevention and overflow prevention equipment, containment sumps and release detection equipment required under this chapter shall be performed by a Department-certified individual holding the appropriate certification category and documented on a form provided by the Department. Results shall be maintained onsite at the storage tank facility or at a readily available alternative site and shall be provided to the Department upon request.**

**TANK REGISTRATION AND FEES**

§ 245.41. Tank registration requirements.

(a) Tank owners shall properly register each storage tank by meeting the requirements **[ of ] in** this section and paying the registration fee **prior to registration certificate expiration as** required by § 245.42 (relating to tank registration fees).

(b) Tank owners shall register each aboveground storage tank and each underground storage tank with the Department, except as specifically excluded by Department policy or this chapter, on a form provided by the Department, within 30 days after installation or acquisition of an ownership interest in the storage tank. Unless otherwise approved by the Department, a regulated substance may not be placed in the tank and the tank may not be operated until the tank is properly registered and the Department approves an operating permit for the tank.

(c) A form for registration of a storage tank must be complete upon submission to the Department and provide the following:

(1) Tank owner, operator, **property owner** and contact information.

(2) General facility, site and location information.

(3) Specific tank description and usage information, including regulated substance or substances that will be stored in each tank.

(4) Specific tank construction, system components and installation information.

(5) **[ Owner or owner's representative ] Owner's** certification validating the registration information and operating permit application.

(6) Certified tank installer information and signature (when required).

(7) Certified tank inspector information and signature for certain classes of tanks addressed in § 245.21 (relating to tank handling and inspection requirements).

**(8) Trained underground storage tank operator information, as required under § 245.436 (relating to operator training).**

[ (8) ] (9) Other applicable information that may be required by the Department.

(d) The owner's registration form shall also serve as an operating permit application. The Department may register a tank and not approve an operating permit for the tank if the application, tank system or the storage tank facility does not meet the requirements [ of ] in this chapter or the permit applicant is in violation of the act. The Department will automatically withhold or withdraw the operating permit for a storage tank that is reported on the registration form in [ temporary closure or ] temporary removal from service (out-of-service) status. Tank owners may not store, dispense from or place a regulated substance in a storage tank that does not have an operating permit unless otherwise agreed upon by the Department. Additionally, certain classes of tanks require a site-specific installation permit prior to beginning construction of a new or replacement storage tank in accordance with Subchapter C (relating to permitting of underground and aboveground storage tank systems and facilities). Submission of a site-specific installation permit application is a separate requirement for these tanks that is not satisfied by the registration form submission.

(e) A combination of tanks that operate as a single unit require registration of each tank unless otherwise agreed upon by the Department. A tank that has separate compartments within the tank shall be registered separately and charged a separate tank fee for each compartment unless the compartments are connected in a manner that fills, dispenses and operates as a single unit maintaining the same regulated substance at the same operating level in each compartment.

(f) Tank owners shall submit a registration form to amend registration information previously submitted to the Department within 30 days of a change in the previously submitted information. These changes include the following:

- (1) Removal or relocation of a storage tank to a new facility.
- (2) Temporary or permanent closure or removal from service of a storage tank.
- (3) Change in use of a storage tank to or from regulated or nonregulated status, for example, changing a storage tank to use as a process vessel.
- (4) Change in substance or substances stored in the tank, unless otherwise agreed upon by the Department.
- (5) Change of ownership or change of operator [ —new and previous owner ].
- (6) Change of contact, mailing address or telephone number.
- (7) Installation of a new or replacement storage tank at an existing facility.

(g) The Department may require submission of supporting documentation and process information for exemption or exclusion from regulation for a tank change in status or use from a regulated to a nonregulated status.

**(h) Beginning October 24, 1988, a person who sells a tank intended to be used as a regulated storage tank or a property containing an existing**

**regulated storage tank shall notify the purchaser, in writing, of an owner's obligations under this section.**

**§ 245.42. Tank registration fees.**

\* \* \* \* \*

(c) The Department will issue an invoice to the tank owner after receipt of a complete registration form under § 245.41(c) (relating to tank registration requirements). **[ A tank owner filing a registration ] The tank owner** shall remit the appropriate fee upon receipt of the invoice.

(d) Registration expiration dates are established for storage tanks according to facility location. The Department will prorate the registration fee [ established by ] in this section to reflect the percentage of time remaining in the registration year from the date of initial registration or change of ownership of a storage tank. The Department will not refund registration fees if an owner permanently closes a storage tank or exempts a storage tank through a change-in-service to store a nonregulated substance or change to nonregulated use (such as a process vessel) prior to the expiration of the storage tank's registration. **The Department will not refund registration fees due to a change of ownership.**

\* \* \* \* \*

**Subchapter B. CERTIFICATION PROGRAM FOR INSTALLERS AND INSPECTORS OF STORAGE TANKS AND STORAGE TANK FACILITIES**

**GENERAL CERTIFICATION REQUIREMENTS**

**§ 245.102. Requirement for certification.**

(a) A person may not conduct tank handling or tightness testing activities unless that person holds a current installer certification issued by the Department for the applicable certification category as indicated in § 245.110 (relating to certification of installers), except as provided in § 245.31 (relating to underground storage tank [ tightness ] system testing requirements). Installer certification will only be issued by the Department to a person who:

\* \* \* \* \*

(d) [ After March 23, 1992, a ] A certified installer or certified inspector may not perform tank handling or inspection activities as an employee of a company unless the company holds a valid certification issued by the Department under this chapter.

\* \* \* \* \*

**§ 245.105. Certification examinations.**

\* \* \* \* \*

(d) To receive a passing grade on the examinations, the applicant for certification shall achieve a minimum score of 80% on each technical [ section ] examination and a minimum score of 80% on the administrative [ section of the ] examination.

(e) An applicant who fails an examination is eligible to retake the examination for up to 1 year from the failed examination test date, but no later than 18 months from date of authorization.

**(f) Passing examination scores are valid for 2 years from the date of the examination.**

§ 245.106. Conflict of interest.

(a) Except as provided in subsection (b), a certified inspector may not be one or more of the following:

(1) An employee of the tank owner, the tank owner or operator.

(2) A certified installer on the same tank handling activity **[ for which he is a ] on an aboveground storage tank system for which the installer is the certified inspector.**

(3) An employee of a company that employs a certified installer on the same tank handling activity for which **[ he is a ] the employee is the certified inspector,** when the tank handling activity is performed on a **[ field constructed ] field-constructed** storage tank. This prohibition extends to a company that owns, or is owned by, the employer, in whole or in part.

(b) A certified inspector who is a certified installer may conduct a tank handling activity to correct a deficiency identified by the same certified individual or company during an inspection of the operation of **[ a storage tank facility ] an underground storage tank system or the inspection of the integrity, installation or modification of an aboveground storage tank system.** Notwithstanding this exception, subsection (a)(2) still prohibits a certified inspector from subsequently inspecting a tank handling activity which the certified inspector conducted to correct a deficiency noted **[ in an inspection of the operation of a storage tank facility ] during an integrity, installation or modification inspection of an aboveground storage tank system.**

**(c) A certified inspector may not perform an inspection as required under § 245.411 (relating to inspection frequency) for a facility where the inspector is also the designated Class A or Class B operator as defined in § 245.436 (relating to operator training).**

§ 245.107. **[ Reciprocity. ] (Reserved).**

**[ (a) A person holding a valid certification issued under the law of another state, territory or the District of Columbia may be issued a certificate in a classification equivalent to the classification of the certification issued by the other state, territory or District of Columbia, if the person proves to the satisfaction of the Department that he is competent to conduct activities in the classification for which certification is being requested. In making its determination, the Department will consider the following:**

**(1) That the other certification was issued as a result of the passing of an examination equivalent in technical content to that given by the Department for that classification.**

**(2) That the applicant can be shown to have complied with the laws and requirements of the state, territory or District of Columbia, issuing the other certification in conducting activities for which the other certification was issued.**

**(3) That the applicant meets the experience and qualification requirements of this chapter for the category of certification being requested.**

**(4) The applicant achieves a passing grade on all administrative sections of the certification exami-**

**nation required by this chapter for the category of certification being requested.**

**(b) The applicant shall submit an application for certification to the Department in accordance with § 245.104 (relating to application for installer or inspector certification). ]**

§ 245.108. Suspension of certification.

(a) The Department may suspend the certification of a certified installer or certified inspector for good cause which includes **[ , but is not limited to ]:**

(1) A violation of the act or this chapter.

(2) Incompetency on the part of the certified installer or certified inspector as evidenced by errors in conducting duties and activities for which the certification in question was issued.

(3) Failure to successfully complete a training program required by the Department.

(4) In the case of a certified inspector's failure to:

(i) Inform the owner or operator and the Department of conditions or procedures that are not in accordance with the manufacturer's technical and procedural specifications for installation, construction, modification or operation of the storage tank system or storage tank facility and not in compliance with the act or this chapter.

(ii) Conduct, review or observe a test or inspection activity required by the act or this chapter.

(iii) Submit reports of inspection activities to the Department within 60 days of conducting **[ the inspection activities ] an inspection activity, except for reports of modification inspection activities, which shall be reported to the Department within 30 days of conducting a modification inspection activity.**

(5) In the case of a certified installer's failure to:

(i) Be present during tank handling activities at the storage tank system or storage tank facility as required by the act or this chapter.

(ii) Conduct tank handling activities in accordance with the requirements **[ of ] in** the act or this chapter.

(iii) Submit tank handling reports and activities to the Department within 30 days of conducting the tank handling activities. For tank handling activities involving multiple certified individuals and certification categories, the tank handling report shall be submitted within 30 days of the completion of all project tank handling and inspection activities.

(6) Working as a certified installer or certified inspector in a certification category for which the person has failed to obtain **or maintain** certification.

(7) Failure to meet one or more of the standards for performance in § 245.132 (relating to standards of performance).

(8) Submission of false information to the Department.

(9) A violation of The Clean Streams Law, the Air Pollution Control Act or the Solid Waste Management Act or regulations promulgated under those statutes by the certified individual which **[ results in the following: ] causes pollution, causes a threat of pollution, or causes harm to the public health, safety or welfare.**

**[ (i) Causes pollution, causes a threat of pollution or causes harm to the public health, safety or welfare.**

(ii) Occurs as a result of the certified individual conducting activities related to the installation, modification, removal or inspection of storage tank systems. ]

(10) Failure to perform underground tightness testing activities and documentation in accordance with § 245.31 (relating to underground storage tank [ **tightness** ] **system** testing requirements).

\* \* \* \* \*

#### § 245.110. Certification of installers.

(a) An installer certification authorizes the person to whom it is issued to conduct tank handling activities or tightness testing activities pertaining to storage tank systems or storage tank facilities in one or more of the categories in subsection (b).

(b) Installer certifications may be issued for the following categories:

(1) Underground storage tank [ **system-installation** ] **system installation** and modification {UMX}. Installation and modification of underground [ **storage tanks and** ] storage tank systems including[ , **but not limited to,** ] the tank and all associated ancillary equipment, appurtenances, corrosion protection systems, structural components and foundations. This category also includes conducting preinstallation air pressure tests for underground storage tank systems, **overflow prevention equipment evaluations, containment sump and spill prevention equipment testing, and release detection equipment testing.**

(2) Underground storage tank system minor modification {UMRI}. Limited to the performance of **minor modifications of underground storage tank systems. This category also includes conducting overflow prevention equipment evaluations, containment sump and spill prevention equipment testing, and release detection equipment testing.**

[ (2) ] (3) Underground storage [ **tank-removal** ] **tank system removal** {UMR}. Removal from service of underground storage tank systems [ **or storage tank facilities** ].

[ (3) ] (4) Underground storage tank [ **system-tightness** ] **system tightness tester** {UTT}. Tightness testing activities involved in conducting and interpreting results of volumetric and nonvolumetric tests on underground storage tank systems [ **or storage tank facilities** ]. **This category also includes containment sump and spill prevention equipment testing and release detection equipment testing.**

[ (4) ] (5) Aboveground manufactured metallic storage [ **tank-installation** ] **tank system installation** and modification {AMMX}. Installation and modification of aboveground manufactured metallic storage tank systems, including[ , **but not limited to,** ] the tank and all associated ancillary equipment, appurtenances and corrosion protection systems. This category also covers foundations, **containment structures** and structural components when they are designed by an engineer qualified in civil construction or when installing small aboveground UL-labeled tanks with manufacturer's installed self-containment or diking systems.

[ (5) ] (6) Aboveground nonmetallic storage [ **tank-installation** ] **tank system installation** and modification {AMNX}. Installation and modification of aboveground nonmetallic [ **storage tanks or** ] storage tank systems, including[ , **but not limited to,** ] the tank and all associated ancillary equipment and appurtenances. This category also covers foundations and structural components when they are designed by an engineer qualified in civil construction or as specified by the tank manufacturer.

[ (6) ] (7) Aboveground manufactured storage [ **tank-removal** ] **tank system removal** {AMR}. Removal from service of aboveground manufactured storage tank systems [ **or storage tank facilities** ].

[ (7) ] (8) Aboveground field constructed metallic storage [ **tank-installation** ] **tank installation, modification and removal** {AFMX}. Installation, modification and removal of aboveground field constructed metallic storage tanks and corrosion protection systems. This category also covers the modification of tank **shell** components of an aboveground manufactured **metallic** storage tank [ **system** ].

[ (8) ] (9) Aboveground field constructed storage [ **tank-removal** ] **tank system removal** {AFR}. Removal from service of aboveground field constructed and manufactured aboveground storage tank systems [ **or storage tank facilities** ].

[ (9) ] (10) Aboveground storage tank [ **mechanical-installation** ] **system mechanical installation, modification and removal** {AMEX}. Installation, modification and removal of tank related mechanical appurtenances, including[ , **but not limited to,** ] valves, fill piping, suction piping, foam system piping, pumps, corrosion protection systems, release detection systems, and spill and overflow prevention systems that are components of an aboveground storage tank system [ **or storage tank facility** ].

[ (10) ] (11) Aboveground storage [ **tank-civil** ] **tank system civil** {ACVL}. Installation and modification of tank related structural components, including[ , **but not limited to,** ] foundations, dike walls, field grading, above and below grade vaults, pump supports, pipe supports, corrosion protection systems and drainage systems associated with an aboveground storage tank system [ **or storage tank facility** ].

[ (11) ] (12) Storage tank-liner [ **Storage tank liner** ] {TL}. Activities involved in installation or modification of internal linings for underground and aboveground storage tank systems [ **or storage tank facilities** ] and the evaluation of underground storage tank linings as required in § 245.422(b)(1)(ii) (relating to upgrading of existing underground **storage tank** systems).

#### § 245.111. Certified installer experience and qualifications.

(a) An applicant shall meet the following minimum experience, education, training or certification requirements and have completed the required number of activities in the appropriate category for an initial installer category certification:

| Category   | Experience, Education, Training or Certification   | Total Number of Activities Completed   |
|------------|--|--|
| UMX        | 2 years, or college degree and 1 year Technical training<br><b>or</b><br><b>UMI certification</b>  | <b>[ 9 installations ] 10 installations or major modifications (at least 5 installations)</b><br><b>10 installations or major modifications (at least 5 installations)</b> |
| <b>UMI</b> | <b>2 years, or college degree and 1 year Technical training</b>                                    | <b>10 minor modifications</b>  |
| UMR        | 2 years, or college degree and 1 year Technical training   | 6 removals   |
| UTT        | Department-approved training with testing equipment manufacturer's certification                   | None   |
| AMMX       | 2 years, or college degree and 1 year Technical training   | <b>[ 9 installations ] 10 installations or major modifications (at least 5 installations)</b>  |
|            | or<br>UMX certification<br>Technical training  | None   |
|            | or<br>AFMX certification   | None   |
| AMNX       | 2 years, or college degree and 1 year Technical training<br><b>or</b><br><b>AMMX certification</b> | <b>[ 9 which may be installations or major modifications ] 10 installations or major modifications (at least 5 installations)</b><br>6 AST installations                   |
| AMR        | 2 years, or college degree and 1 year Technical training   | 6 removals   |
|            | or<br>UMR certification  | None   |
|            | or<br>AFR certification  | None   |
| AFMX       | 3 years, or college degree and 2 years Technical training  | 12 which may be installations or major modifications   |
| AFR        | 2 years, or college degree and 1 year Technical training   | 6 removals   |
| AMEX       | 3 years, or college degree and 2 years Technical training  | 12 installations or modifications (at least 6 installations)   |
| ACVL       | 3 years, or college degree and 2 years Technical training  | 12 installations or modifications (at least 6 installations)   |
| TL         | 2 years [ / ]<br>Manufacturer's certification  | 9 tank linings   |

\* \* \* \* \*

(c) A college degree being substituted for experience shall be, **at a minimum, a bachelor's degree** in civil engineering, mechanical engineering, environmental engineering, petroleum engineering, chemical engineering, structural engineering [ **or** ], geotechnical engineering, **hydrology, geology or an equivalent degree as determined by the Department.**

\* \* \* \* \*

(g) The technical training required by subsection (a) shall be completed during the experience interval and shall be demonstrated through the submission of proof of successful completion of a category-specific training course approved by the Department in accordance with § 245.141. Successful completion means attendance at all sessions of the training and attainment of the minimum passing grade for the approved course. **[ The requirement for category-specific technical training is effective November 10, 2008. ]**

\* \* \* \* \*

**§ 245.112. Certification of inspectors.**

(a) An inspector certification authorizes the person to whom it is issued to conduct inspection activities for storage tank systems and storage tank facilities in one or more of the categories in subsection (b).

(b) Inspector certifications may be issued for the following categories:

(1) IUM underground storage tank systems and storage tank facilities. **This category also includes containment sump and spill prevention equipment testing and release detection equipment testing.**

(2) IAM aboveground manufactured storage tank systems and storage tank facilities.

(3) IAF aboveground field constructed and aboveground manufactured storage tank systems and storage tank facilities.

**§ 245.113. Certified inspector experience and qualifications.**

(a) An applicant shall meet the following minimum experience, education, training or certification requirements, and have completed the required number of activities in the appropriate category for an initial inspector category certification:

| <i>Category</i> | <i>Experience, Education, Training or Certification</i>   | <i>Total Number of Activities Completed</i> |
|-----------------|---|---|
| IUM             | 4 years, or college degree and 2 years<br><b>and</b><br>Department-approved tank tightness testing familiarization course or UTT certification<br><b>and</b>                              | None  |
|                 | UMX certification<br><b>and</b><br>Corrosion protection training  |   |
| IAM             | 4 years, or college degree and 2 years<br>API 653 certification<br>or<br>STI inspector certification<br>or<br>Department-approved aboveground <b>storage</b> tank inspector certification | None  |
| IAF             | 4 years, or college degree and 2 years<br>API 653 certification<br>or<br>Department-approved aboveground <b>storage</b> tank inspector certification                                      | 12 integrity or construction inspections    |

(b) The total number of activities completed required by subsection (a) shall have been completed within the 3-year period immediately prior to submitting the application for certification. The activities shall have been completed in compliance with Federal and State requirements and the applicant shall have had substantial personal involvement at the storage tank site in the activities.

(c) A college degree being substituted for experience shall be, **at a minimum, a bachelor's degree** in civil engineering, mechanical engineering, environmental engineering, petroleum engineering, chemical engineering, structural engineering, geotechnical engineering, hydrology, geology or [ **environmental studies** ] **an equivalent degree as determined by the Department.**

(d) The total number of activities completed required by subsection (a) may be met through the conducting of inspection activities. Noncertified individuals may work at the site but the certified inspector is directly responsible to assure that the activities are conducted properly. This work qualifies toward the total number of activities completed requirements.

(e) The total experience requirement is experience gained working at a storage tank site while working towards the total number of activities completed requirement.

**(f) Corrosion protection training required for IUM certification shall be documented by completion of a Nationally recognized training course in the area of cathodic protection or corrosion protection, or other training as approved by the Department.**

[ (f) ] (g) When conducting an aboveground storage tank structural integrity inspection on an aboveground field constructed metallic storage tank, the Department certified inspector shall also possess API Standard 653 (Tank Inspection, Repair, Alteration and Reconstruction Certification).

[ (g) ] (h) The applicant shall certify completion of safety training which is appropriate for the certification category. Training must be in accordance with regulatory requirements and industry standards and procedures such as Occupational Safety and Health Administration requirements in 29 CFR **Part** 1910 (relating to occupational **safety** and health standards [ **for industry** ]).

[ (h) ] (i) Certified inspectors of underground storage tanks (IUM) shall complete Department-provided inspector training prior to conducting [ **UST facility operation** ] inspections **on underground storage tank systems as required in § 245.411** (relating to inspection frequency).

**(j) Certified inspectors of aboveground storage tanks (IAF and IAM) shall complete Department-provided inspector training prior to conducting installation, modification, in-service and out-of-service inspections on aboveground storage tank systems as required under §§ 245.551—245.554 and 245.616.**

**§ 245.114. Renewal and amendment of certification.**

(a) Certification categories [ **renewed after January 9, 2008,** ] will have a uniform expiration date of 3 years from the issuance date of the first category **obtained or renewed** after January 9, 2008.

(b) [ **After the conversion to a uniform expiration date as provided in subsection (a), the** ] **The** issued certification will be valid for 3 years from the previous expiration date, unless suspended or revoked before that date.

(c) An applicant shall meet the following [ **minimum** ] training requirements [ **or number of activities** ] in the appropriate category for renewal of installer certification:

| <i>Category</i> | [ <i>training</i> ] <b>Training</b>                                       | [ <i>Total Number of Activities Completed (Renewal by activities to be phased out November 10, 2009)</i> ] |
|-----------------|---|--|
| UMR             | Examination or Technical training<br>Administrative training              | [ <b>6 removals</b> ]  |
| UMX             | Examination or Technical training<br>Administrative training              | [ <b>9 installations or major modifications</b> ]  |
| <b>UMI</b>      | <b>Examination or Technical training<br/>Administrative training</b>      |  |
| UTT             | Testing equipment manufacturer's certification<br>Administrative training | [ <b>None</b> ]  |
| AMMX            | Examination or Technical training<br>Administrative training              | [ <b>9 installations or major modifications</b> ]  |
| AMNX            | Examination or Technical training<br>Administrative training              | [ <b>9 installations or major modifications</b> ]  |
| AFMX            | Examination or Technical training<br>Administrative training              | [ <b>12 installations or major modifications</b> ]   |
| AFR             | Examination or Technical training<br>Administrative training              | [ <b>6 removals</b> ]  |
| AMR             | Examination or Technical training<br>Administrative training              | [ <b>6 removals</b> ]  |
| AMEX            | Examination or Technical training<br>Administrative training              | [ <b>12 installations or major modifications</b> ]   |
| ACVL            | Examination or Technical training<br>Administrative training              | [ <b>12 installations or major modifications</b> ]   |
| TL              | Manufacturer's certification<br>Administrative training                   | [ <b>9 tank linings</b> ]  |

(d) An applicant shall meet the following requirements in the appropriate category for renewal of inspector certification:

| <i>Category</i> | <i>Qualifications and Training</i>  |
|-----------------|---|
| IUM             | Department inspector training   |
| IAM             | API 653 certification<br>or<br>STI Inspector certification<br>or<br>Department approved inspector certification<br>and<br>Department inspector training |
| IAF             | API 653 certification<br>or<br>Department-approved inspector certification<br>and<br>Department inspector training                                      |

[ (e) **Renewal of categories based on number of activities completed without technical training or examination as provided in subsection (c) will be a method of renewal until November 10, 2009.**

(f) **Technical and administrative training shall be obtained within 2 years prior to application submission. ]**

**(e) Technical, administrative and inspector training shall be obtained within 2 years prior to application submission.**

(1) Administrative **and inspector** training will be provided by the Department. [ **Administrative training in subsection (c) is required after November 10, 2009. ]**

(2) Technical training is category-specific and must be approved by the Department in accordance with § 245.141 (relating to training approval).

[ (g) ] (f) An applicant for renewal shall:

(1) Submit a completed application for renewal to the Department 60 to 120 days prior to the expiration date or examination test date. Applicants who fail to submit a renewal application within 60 days following the expiration date shall meet the experience, qualifications and examination requirements for initial certification as required in § 245.111 or § 245.113 (relating to certified installer experience and qualifications; **and** certified inspector experience and qualifications) and the requirements in § 245.105 (relating to certification examinations).

(2) The applicant shall certify completion of safety training which is appropriate for the certification category. Training must be in accordance with regulatory requirements and industry standards and procedures such as Occupational Safety and Health Administration requirements in 29 CFR **Part** 1910 [ **(relating to occupational and health standards for industry)** ].

(3) Successfully complete training programs which may be required by the Department. Successful completion means attendance at all sessions of training and attainment of the minimum passing grade established by the

Department in the approval of the training course under § 245.141 for all sections of all qualifying tests given as part of the training course.

**[(h)] (g)** A certified installer or certified inspector shall notify the Department and seek amendment of the certification from the Department whenever:

(1) There is a change in the information provided in the application for the certification. This request shall be made within 14 days from the date of a change in information.

(2) The certified installer or certified inspector wishes to conduct tank handling or inspection activities in installer or inspector certification categories other than those approved by the Department as set forth on the certification.

(3) The certified installer or certified inspector wishes to eliminate installer or inspector certification categories from the certification.

(4) The EQB amends certification categories or qualification requirements and establishes a phase-in period for the new requirements.

**[(i)] (h)** Certified installers or certified inspectors required to amend their certifications in accordance with paragraph (1) or (3) shall apply for amendment on a form provided by the Department.

**[(j)] (i)** Certified installers or certified inspectors required to amend their certifications in accordance with subsection **[(h)(2)] (g)(2)** shall comply with the applicable requirements **[of] in** this chapter related to application, experience, qualifications and examination.

**COMPANY CERTIFICATION**

**§ 245.121. Certification of companies.**

A company may not **perform or** employ a certified installer or certified inspector to perform tank handling, tightness testing or inspection activities unless the company holds a valid certification issued by the Department under this chapter and the company verifies that the certified installer or certified inspector holds a valid certification issued under this chapter for the appropriate category.

**§ 245.123. Suspension of company certification.**

(a) The Department may suspend the certification of a certified company for good cause, which includes, but is not limited to:

\* \* \* \* \*

(4) A violation of The Clean Streams Law, the Air Pollution Control Act or the Solid Waste Management Act or regulations promulgated thereunder by the company or a certified installer or a certified inspector employed by the company which **[results in the following:] causes pollution, causes a threat of pollution or causes harm to the public health, safety or welfare.**

**[(i) Causes pollution, causes a threat of pollution or causes harm to the public health, safety or welfare.**

**[(ii) Occurs while conducting activities related to the installation, modification, removal from service or inspection of storage tank systems.]**

(5) Withholding from a certified installer or certified inspector, individual correspondence or certification documents issued by the Department.

\* \* \* \* \*

**STANDARDS [ FOR ] OF PERFORMANCE**

**§ 245.132. Standards of performance.**

(a) Certified companies, certified installers and certified inspectors shall:

(1) Maintain current technical and administrative specifications and manuals, **[Nationally-recognized] Nationally recognized** codes and standards, and State and Federal regulations which pertain to the categories for which certification was issued. **[Nationally-recognized] Nationally recognized** organizations are identified in §§ 245.405, 245.504 and 245.604 (relating to codes and standards; **referenced organizations**; and referenced organizations).

(2) Complete and submit to the Department, within 60 days of **[the inspection activity] an inspection activity, except for a modification inspection, which shall be submitted within 30 days of the inspection activity**, or 30 days of a tank handling activity, a Department-approved form certifying that the tank handling activity or inspection activity conducted by the certified installer or certified inspector meets the requirements **[of] in** the act and this chapter and accurately describes the conditions of the storage tank system and facility. For tank handling activities involving multiple certified individuals and certification categories, the tank handling report shall be submitted within 30 days of the completion of all project tank handling and inspection activities.

(3) Maintain complete records of tank handling and inspection activities, nondestructive examination and testing results and tightness testing records for a minimum of 10 years.

**[(4) Report to the Department a release of a regulated substance or confirmed or suspected contamination of soil, surface or groundwater from regulated substances observed while performing services as a certified installer or certified inspector. This notification shall be submitted to the Department in writing within 48 hours of observing suspected or confirmed contamination on a form provided by the Department. If the notification is being submitted because of a failed valid tightness test, a copy of the test results shall also be provided to the Department with the notification report. When there is a reportable release, the notification may be submitted jointly by the owner, operator, certified installer and certified inspector. In this instance, the written notification report shall be submitted to the Department, at the appropriate regional office, in accordance with § 245.305 (relating to reporting releases).]**

**[(4) Report any of the following to the Department while performing services as a certified installer or certified inspector:**

**[(i) A release of a regulated substance.**

**[(ii) Suspected or confirmed contamination of soil, surface or groundwater from regulated substances.**

**[(iii) A regulated substance observed in a containment structure or facility.**

**[(5) Report to the Department failed tests of spill prevention equipment, containment sumps and overflow prevention equipment conducted as required in this chapter.**

(6) As required under paragraphs (4) and (5), notify the Department in writing within 48 hours of performing the failed test or observing a release of a regulated substance, suspected or confirmed contamination, or a regulated substance in a containment structure or facility on a form provided by the Department. If the notification is being submitted because of a failed valid tightness test, spill prevention equipment test, containment sump test or overfill prevention evaluation, a copy of the test results shall also be provided to the Department with the notification report.

[ (5) ] (7) Perform certified installer or certified inspector activities so that there is no release of regulated substances or contamination of soil, surface or groundwater caused by regulated substances from a storage tank system or storage tank facility.

[ (6) Not affix the certified installer’s or certified inspector’s signature or certification number to documentation concerning the installation or inspection of a component of a storage tank system project or to documentation concerning tank handling or inspection activity, unless:

(i) The storage tank system project was accomplished by the certified installer or under the installer’s direct, onsite supervision and control.

(ii) Inspection activities were conducted on the storage tank system project by the certified inspector, or under the inspector’s direct, onsite supervision and control and as required by the act and this chapter and the certified inspector was present at the site during the conducting of inspection activities on the storage tank system project and as required by the act and this chapter.

(iii) Installation or modification inspection activities were conducted on a large or field constructed aboveground storage tank and the certified inspector was involved prior to the initiation of the project and was present at critical times, so that the inspector can reliably determine that the following requirements were met:

(A) Industry standards and project specifications were followed throughout the tank handling activity.

(B) Appropriate testing and nondestructive examinations were properly conducted.

(C) The tank is suitable for operational service.

(7) Not certify to an owner or operator or the Department that a storage tank system project or component thereof is complete unless it complies with the act or this chapter. Project certification applies to both certified activities and nontank handling activities that may have been performed as part of the project. ]

(8) Adhere to equipment manufacturer’s instructions, accepted industry standards and applicable industry codes of practice when performing tank handling, tightness testing or inspection activities or other nontank handling activities on the project.

(9) Provide requested records and documentation to the Department under section 107(c) of the act [ (35 P.S. § 6201.107(c)) ] (35 P.S. § 6021.107(c)).

(b) A company that employs an individual certified in the UMX, UMR, UMI or UTT category or an

individual certified in the UMX, UMR, UMI or UTT category who is not employed by a certified company shall participate in the Tank Installer Indemnification Program (TIIP) as required under section 704(a)(1) of the act (35 P.S. § 6021.704(a)(1)) and shall provide timely payment of TIIP fees as required under section 705(d)(1) and (e) of the act (35 P.S. § 6021.705(d)(1) and (e)) and § 977.19(b) (relating to certified company fees for the Underground Tank Storage Tank Indemnification Fund).

(c) Certified companies, certified installers and certified inspectors may not:

(1) Affix the certified installer’s or certified inspector’s signature or certification number to documentation concerning the installation or inspection of a component of a storage tank system project or to documentation concerning tank handling or inspection activity as required under the act and this chapter unless:

(i) The storage tank system project was performed by the certified installer or under the installer’s direct, onsite supervision and control.

(ii) Inspection activities were conducted on the storage tank system project by the certified inspector, or under the inspector’s direct, onsite supervision and control.

(iii) Installation or modification inspection activities were conducted on a large or field-constructed aboveground storage tank and the certified inspector was involved prior to the initiation of the project and was present at critical times so that the inspector can reliably determine that all of the following requirements were met:

(A) Industry standards and project specifications were followed throughout the tank handling activity.

(B) Appropriate testing and nondestructive examinations were properly conducted.

(C) The tank is suitable for operational service.

(2) Certify to an owner or operator or the Department that a storage tank system project or component thereof is complete unless it complies with the act and this chapter. Project certification applies to certified activities and nontank handling activities that may have been performed as part of the project.

[ (b) ] (d) A certified installer or certified inspector shall display [ a ] his Department-issued certification identification card or certificate upon request.

[ (c) ] (e) A certified company is responsible for employees having appropriate safety and technical training. Certified companies, certified installers and certified inspectors shall adhere to health and safety procedures, such as those required by the Federal Occupational Safety and Health Administration (OSHA) and the National Institute for Occupational Safety and Health (NIOSH).

**TRAINING APPROVAL**

**§ 245.141. Training approval.**

\* \* \* \* \*

(b) An application for approval must include the following information:

\* \* \* \* \*

(4) A narrative describing the preparation and administration of a test to be given at the conclusion of the course. This test must test the participant's knowledge of the technical, administrative and legal requirements related to the subject matter of the course. The narrative must also describe a procedure for conducting and grading of the test that assures careful monitoring and expeditious transmission of test results to the applicant and the Department.

**(5) Other information necessary for a determination that the training program conforms to the act and this chapter such as copies of presentations, presenter notes, training handouts or references.**

(c) Training approval shall be for 3 years from the date of issuance. An applicant for renewal shall submit a completed application for renewal to the Department 60 to 120 days prior to the expiration date.

(d) The Department may approve industry recognized training without the submission of an application as provided in subsection (a).

**Subchapter C. PERMITTING OF UNDERGROUND AND ABOVEGROUND STORAGE TANK SYSTEMS AND FACILITIES**

**GENERAL**

**§ 245.203. General requirements for permits.**

(a) **[ Except as provided in subsections (b)—(d), a ]** A person may not operate an aboveground or underground storage tank system or storage tank facility, or install a storage tank system or facility covered by § 245.231 (relating to scope), unless the person has first applied for and obtained a permit for the activity from the Department under this subchapter.

(b) **[ A person is not required to submit a separate application for a permit if the storage tank system is subject to a permit-by-rule. ]** The storage tank system must be registered with the Department in accordance with Subchapter A (relating to general provisions) and be maintained and operated in compliance with the standards and requirements of the Department under the act and this chapter. Failure to comply with standards could result in administrative or other Departmental actions against the storage tank **[ owner/operator ] owner and operator.**

**[ (c) A person may continue to operate an existing storage tank system, registered with the Department on or before October 11, 1997, when the tank system is operated for its intended use, until the Department notifies the person to submit a permit application under this subchapter or the Department notifies the person the tank system is deemed permitted, if the person maintains and operates the storage tank system in compliance with the act and this chapter.**

(d) Operation of existing storage tank systems will be allowed to continue until the Department takes final action on the permit application requested in subsection (c) or the Department notifies the person that the tank system is deemed permitted or that the permit is withheld or denied.

(e) **[ (c) Operating permits will be renewed automatically on an annual basis concurrent with registration. There will be no additional fee or paperwork required beyond the registration requirements.**

**[ (f) ] (d)** The Department will automatically withhold or withdraw the operating permit for a storage tank that is reported under § 245.41 (relating to tank registration requirements) in **[ temporary closure or ]** temporary removal from service (out-of-service) status. The Department may renew the permit when an amended registration form is received showing the tank returning from **[ temporary closure or ]** temporary removal from service status to an operating status.

**[ (g) ] (e)** A storage tank system may not be operated if the Department suspends, revokes or denies the tank operating permit. **[ A person may not deliver or place a regulated substance in a storage tank if the Department suspends, revokes or denies the tank operating permit. ]**

**(f) A person may not deliver or place a regulated substance in a storage tank if the Department suspends, revokes or denies the tank operating permit, if the tank operating permit is in a withheld or withdrawn status, or if the tank operating permit has not been issued.**

**(g) The owner and operator of a storage tank system who causes or allows a violation of the act, this chapter, an order of the Department, a condition of a permit issued under the act or any other applicable law is subject to enforcement action including suspension, modification or revocation of the permit.**

**[ PERMITS-BY-RULE ]**

**§ 245.211. [ Scope. ] (Reserved).**

**[ The following storage tank systems are subject to permit-by-rule for operation:**

(1) Aboveground storage tank systems with a capacity less than or equal to 21,000 gallons, except highly hazardous substance storage tank systems.

(2) Underground manufactured storage tank systems storing petroleum. ]

**§ 245.212. [ Minimum requirements for obtaining a permit-by-rule. ] (Reserved).**

**[ (a) A storage tank system listed in § 245.211 (relating to scope) shall be deemed to have a permit-by-rule for operation if the following conditions are met:**

(1) The storage tank system is properly registered.

(2) Tank handling and inspection activities are performed by Department certified individuals, as specified in Subchapter B (relating to certification program for installers and inspectors of storage tanks and storage tank facilities).

(3) If necessary, the corrective action process regulations in Subchapter D (relating to corrective action process for owners and operators of storage tanks and storage tank facilities and other responsible parties) are followed.

(4) The storage tank system meets the applicable technical, administrative and operational requirements for underground tank systems specified in Subchapter E (relating to technical standards for underground storage tanks) or for aboveground tank systems specified in Subchapter G (relating to simplified program for small aboveground storage tanks).

(5) The owner of an underground storage tank system has met the applicable financial responsibility requirements of Subchapter H (relating to financial responsibility requirements for owners and operators of underground storage tanks and storage tank facilities).

(6) If required, the owner submits a current Spill Prevention and Response Plan that meets the Department's requirement under Chapter 9 of the act (35 P.S. §§ 6021.901—6021.904).

(b) The owner/operator of a storage tank system who causes or allows violations of the act, regulations thereunder, an order of the Department, or a condition of a permit issued under the act is subject to administrative or other actions including suspension, modification or revocation of the permit. ]

[ GENERAL ] OPERATING PERMITS

§ 245.221. [ Scope. ] (Reserved).

[ Storage tank systems not covered by § 245.211 (relating to scope) are subject to general operating permits. ]

§ 245.222. Application requirements.

Applications for [ a general ] an operating permit shall be submitted on a [ Department ] form provided by the Department. The application must certify the following:

\* \* \* \* \*

(3) In addition to the requirements [ of ] in paragraph (1), an owner of [ an aboveground storage tank system shall meet the following requirements: ] a large aboveground storage tank or large aboveground storage tank facility shall file a current Spill Prevention Response Plan that is in compliance with sections 901—904 of the act (35 P.S. §§ 6021.901—6021.904) with the Department.

[ (i) A current Spill Prevention Response Plan, that is in compliance with Chapter 9 of the act (35 P.S. §§ 6021.901—6021.904), is filed with the Department.

(ii) For new tanks, proof that an appropriate tightness test of the aboveground tank system has been completed. ]

SITE-SPECIFIC INSTALLATION PERMITS

§ 245.231. Scope.

(a) Site-specific installation permits are required prior to the construction, reconstruction or installation of one or more of the following:

(1) New aboveground storage tank systems with a capacity greater than 21,000 gallons at an existing large aboveground storage tank facility.

(2) New large aboveground storage tank facilities.

(3) New highly hazardous substance tank systems.

(4) New underground field constructed storage tank systems not installed within a previously registered underground storage tank system.

(b) Site-specific installation permit applications meeting the requirements in §§ 245.232(a)(1) and (2) and 245.236 (relating to general requirements; and public

notice) are required to be approved prior to construction, reconstruction or installation. Additional application requirements include the following:

(1) Large aboveground storage tank system at a new facility or existing small aboveground storage tank facility requires compliance with § 245.232(a)(3) and (4) and (b).

(2) Large aboveground storage tank system at an existing large aboveground storage tank facility on new location requires compliance with § 245.232(a)(3) and (b).

(3) Large aboveground storage tank system at an existing large aboveground storage tank facility on the footprint of previous aboveground storage tank system requires compliance with § 245.232(b) and § 245.234(b) (relating to siting requirements).

(4) Small aboveground storage tank systems at a new large aboveground storage tank facility require compliance with § 245.232(a)(3) and (b).

(c) If the facility owner or operator can demonstrate that, on or before November 10, 2007, construction has commenced on an aboveground storage tank with a capacity greater than 30,000 gallons used or to be used for storing heating oil for consumptive use on the premises or on a tank regulated due to the addition of new regulated substances defined in § 245.1 (relating to definitions) [ (See “regulated substance” (i)(C)(I) and (II) ] (see subparagraphs (i)(C)(I) and (II)), the requirements of this section will not apply.

(d) Site-specific installation permits will expire 5 years from the date of issuance unless the Department receives a written extension request from the owner prior to the expiration date and grants an extension.

§ 245.232. General requirements.

(a) Applicants for site-specific installation permits shall provide the following:

\* \* \* \* \*

(b) In addition to the items required by subsection (a), owners of aboveground storage tank systems or facilities required to apply for a site-specific installation permit shall include:

(1) [ A current Spill Prevention Response Plan that is in compliance with Chapter 9 of the act (35 P.S. §§ 6021.901—6021.904). ] A Spill Prevention Response Plan for the facility that includes the proposed storage tank systems demonstrating compliance with sections 901—904 of the act (35 P.S. §§ 6021.901—6021.904).

(2) Proof of notification to the municipality and county prior to submitting the application for a site-specific installation permit under section 1101(a) of the act [ (35 P.S. §§ 621.1101(a)) ] 35 P.S. § 6021.1101(a) and § 245.236 (relating to public notice). Acceptable proof of notification includes, but is not limited to, copies of letters sent to the affected municipality and county and legal notices published in a newspaper of general circulation in the area where the project is proposed.

(c) Applications for site-specific installation permits shall be accompanied by the proper fee required by section 304(c) of the act (35 P.S. § 6021.304(c)) for aboveground storage tanks and section 504(c) of the act (35 P.S. § 6021.504(c)) for underground storage tanks.

§ 245.233. Mapping requirements.

(a) A site-specific **installation** permit application [ shall ] **must** contain maps and plans of the proposed storage tank system or facility site showing **all of** the following:

- (1) The boundaries for the proposed facility site.
- (2) The location of the proposed storage tanks.**  
 [ (2) ] (3) The location and names of public roads within or adjacent to the proposed facility site.
- [ (3) ] (4) The location of proposed monitoring wells.
- [ (4) ] (5) The municipality and county.
- [ (5) ] (6) The elevation and location of test borings and core samples.
- [ (6) ] (7) The ownership, if known, location and extent of known workings of active, inactive and abandoned underground mines including mine openings within the proposed permit site.
- [ (7) ] (8) Streams, lakes or surface watercourses located on or adjacent to the proposed permit site.
- [ (8) ] (9) The location and ownership of public or private groundwater supplies within 2,500 feet of the proposed permit site.
- [ (9) ] (10) Sufficient slope measurements to adequately represent the existing land surface configuration of the proposed permit site.

(b) Maps, plans and cross sections required by this section shall be accurately surveyed and on a scale satisfactory to the Department, not less than 1 inch to 400 feet and in a manner satisfactory to the Department. The maps, plans and cross sections shall be prepared by a Pennsylvania registered professional engineer, Pennsylvania registered land surveyor or Pennsylvania registered professional geologist with assistance from experts in related fields.

§ 245.234. Siting requirements.

(a) The Department will not issue a site-specific storage tank system or facility installation permit if:

- (1) The installation of **storage** tank systems and facilities is proposed on 100-year floodplains or a larger area that the flood of record has inundated unless [ the ] **an** industrial use on the proposed site was in existence as of August 5, 1989.
- (2) The installation of **storage** tank systems and facilities is proposed in wetlands in a manner inconsistent with Chapter 105 (relating to dam safety and waterway management).
- (3) The Department determines that construction design criteria or engineering specifications submitted by a professional engineer are not in accordance with generally accepted sound engineering practices or existing conditions at the site require mitigation to properly support the tank systems and the applicant's proposed mitigation actions are not deemed adequate.

(b) The applicant shall provide the following additional information if appropriate:

- (1) Over areas underlain by carbonate bedrock, the applicant shall provide information and analysis to the Department which assesses the prevalence of solution channels and the potential for sinkholes at the facility site.

(2) If any part of a proposed facility has been previously mined by deep mining methods, the applicant shall provide the results of an engineering study of the proposed site by a Pennsylvania-registered professional engineer or Pennsylvania-registered professional geologist. The study must be detailed enough to assess the potential for and degree of surface subsidence. The study must also include methods which have been used or will be used to stabilize the surface. The applicant shall provide assurance that minerals providing surface support will not be mined as long as the facility stores regulated substances.

(3) A professional engineer's construction design criteria and engineering specifications necessary to mitigate surface or subsurface conditions which may result in excessive **storage** tank system settlement or unstable support of the applicant's proposed **storage** tank systems.

§ 245.235. Environmental assessment.

(a) An application for a site-specific **installation** permit must include an environmental assessment on a form prescribed by the Department.

\* \* \* \* \*

§ 245.236. Public notice.

The owner of a proposed new large aboveground storage tank facility or proposed aboveground storage tank system with greater than 21,000 gallons capacity or proposed new highly hazardous substance tank shall provide written notice to the local municipality and county in which the proposed aboveground system or facility is to be located prior to submitting a permit application. **The notice must inform the local municipality and county of the location, capacity and projected installation date of the proposed storage tank system and the substance to be stored in the tank.**

**Subchapter D. CORRECTIVE ACTION PROCESS FOR OWNERS AND OPERATORS OF STORAGE TANKS AND STORAGE TANK FACILITIES AND OTHER RESPONSIBLE PARTIES**

§ 245.301. Purpose.

This subchapter establishes **suspected release investigation**, release reporting[, **release confirmation**] and corrective action requirements for owners and operators of storage [ tanks ] **tank systems** and storage tank facilities and other responsible parties.

§ 245.302. Scope.

This subchapter applies to releases of regulated substances from storage [ tanks ] **tank systems** regulated under the act.

§ 245.303. General requirements.

\* \* \* \* \*

(c) For corrective actions required by this subchapter, it will be presumed as a rebuttable presumption of law in civil and administrative proceedings that a person who owns or operates an aboveground or underground storage tank **system** is liable, without proof of fault, negligence or causation, for damage, contamination or pollution within 2,500 feet of the perimeter of the site of a storage tank **system** containing or which contained a regulated substance of the type which caused the damage, contamination or pollution. The presumption may be overcome by clear and convincing evidence that the person so charged did not contribute to the damage, contamination or pollution.

(d) To overcome the presumption of liability established in subsection (c), the owner or operator shall affirmatively prove, by clear and convincing evidence, one of the following:

(1) The damage, contamination or pollution existed prior to the use of a storage tank **system** at the facility to contain an accumulation of regulated substances, as determined by surveys of the site and within 2,500 feet of the perimeter of the storage tank **system** or facility.

(2) An adjacent landowner refused to allow the owner or operator of a storage tank **system** at a new facility access to property within 2,500 feet of the perimeter of a storage tank facility to conduct a survey.

(3) The damage, contamination or pollution was not within 2,500 feet of the perimeter of a storage tank **system**.

(4) The owner or operator did not contribute to the damage, contamination or pollution.

(e) The Department may waive or combine one or more of the requirements [ of ] **in** this subchapter based on:

(1) The nature, extent, type, volume or complexity of the release, **including a release to a containment structure or facility that is shown to be liquid-tight**.

(2) The general characteristics of the site and the regulated substances which were released.

(3) The corrective action which occurred subsequent to the release.

(f) The Department's acceptance or approval of an interim remedial action, site characterization, site characterization report, remedial action plan, remedial action or remedial action completion report, does not constitute and may not be construed as a release from civil or criminal liability in an administrative, civil or criminal proceeding.

**§ 245.304. Investigation of suspected releases.**

(a) The owner or operator of [ **storage tanks and storage tank facilities** ] **a storage tank system or storage tank facility** shall initiate and complete an investigation of [ **an indication of a release** ] **a suspected release** of a regulated substance as soon as practicable, but no later than 7 days after the indication of a release. An indication of a release includes one or more of the following conditions:

(1) The presence of a regulated substance or an unusual level of vapors from a regulated substance [ **of unknown origin, at** ] **outside of storage tank system components designed to routinely contain or convey product, at or near** a storage tank facility.

(2) Evidence of a regulated substance or vapors in soils, basements, sewer lines, utility lines, surface water or groundwater in the surrounding area.

(3) Unusual operating conditions, indicative of a release, such as the erratic behavior of product dispensing equipment.

(4) The sudden or unexpected loss of a regulated substance from a storage tank[ , ] **system** or the unexplained presence of water in a storage tank **system**.

(5) Test, sampling or monitoring results, **including the sounding of an alarm**, from a release detection method which indicate a release.

(6) The discovery of holes in **or damage to** a storage tank **system** during activities such as inspection, repair or removal from service.

(7) Other events, conditions or results which may indicate a release.

(b) The investigation required by subsection (a) shall include a sufficient number of the procedures outlined in this subsection and be sufficiently detailed to confirm whether a release of a regulated substance has occurred. The owner or operator shall investigate the indication of a release by one or more of the following procedures:

(1) A check of product dispensing or other similar equipment.

(2) A check of release detection monitoring devices.

(3) A check of inventory records to detect discrepancies.

(4) A visual inspection of the storage tank **system** or the area immediately surrounding the storage tank **system**.

(5) Testing of the storage tank **system** for tightness or structural soundness.

(6) [ **Sampling and analysis of soil or groundwater.** ] **Sampling and analysis of soil, subsurface soil and backfill, vapor, water or groundwater at a location where contamination from a release would most likely be present.**

(7) Other investigation procedures which may be necessary to determine whether a release of a regulated substance has occurred.

(c) [ **If the investigation confirms that a reportable release has occurred, the owner or operator shall report the release in accordance with § 245.305 (relating to reporting releases) and initiate corrective action.** ] **Except as provided in § 245.305(i) (relating to reporting releases), if the investigation confirms that a release has occurred, the owner or operator shall report the release in accordance with § 245.305 and initiate corrective action.**

[ (d) **If the investigation confirms that a nonreportable release has occurred, the owner or operator shall take necessary corrective actions to completely recover or remove the regulated substance which was released.**

(e) ] (d) **If the investigation confirms that a release has not occurred, further [ investigation ] corrective action** by the owner or operator is not required.

**§ 245.305. Reporting releases.**

(a) The owner or operator of [ **storage tanks and storage tank facilities** ] **a storage tank system or storage tank facility** shall notify the appropriate regional office of the Department as soon as practicable, but no later than 24 hours, after the confirmation of a [ **reportable** ] release.

[ (b) **Upon the occurrence of a confirmed, nonreportable release, the owner or operator shall take necessary corrective actions to completely recover or remove the regulated substance which was released.**

(c) ] (b) The notice required by subsection (a) shall be by telephone and describe, to the extent of information available, the regulated substance involved, the quantity

of the regulated substance involved, when the release occurred, where the release occurred, **the cause of the release**, the affected environmental media, **[ relevant, available ]** information concerning impacts to water supplies, buildings or to sewer or other utility lines, and interim remedial actions planned, initiated or completed.

**[ (d) ] (c)** Within 15 days of the notice required by subsection (a), the owner or operator shall provide written notification to the Department and to each municipality in which the **[ reportable ]** release occurred, and each municipality where that release has impacted environmental media or water supplies, buildings or sewer or other utility lines.

**[ (e) ] (d)** The owner or operator shall provide written notification to the Department and each impacted municipality of new impacts to environmental media or water supplies, buildings, or sewer or other utility lines discovered after the initial written notification required by subsection **[ (d) ] (c)**. Written notification under this subsection shall be made within 15 days of the discovery of the new impact.

**[ (f) ] (e)** Written notification required by this section **[ shall ] must** contain the same information as required by subsection **[ (e) ] (b) and must be on a form provided by the Department**.

**[ (g) ] (f)** If the Department determines that a release poses an immediate threat to public health and safety, the Department may evaluate and implement reasonable procedures to provide the public with appropriate information about the situation which may, at a minimum, include a summary of the details surrounding the release and its impacts in a newspaper of general circulation serving the area in which the impacts are occurring.

**[ (h) Upon the occurrence of a reportable release at the aboveground storage tank, the owner or operator of aboveground storage tank facilities with a ] (g) Upon the occurrence of a release at the aboveground storage tank, the owner or operator of a storage tank facility with an aggregate aboveground storage** capacity greater than 21,000 gallons shall immediately notify the county emergency management agency, the Pennsylvania Emergency Management Agency and the Department. Downstream water companies, downstream municipalities and downstream industrial users within 20 miles of an aboveground storage tank facility located adjacent to surface waters shall be notified on a priority basis based on the proximity of the release by the owner or operator or the agent of the owner or operator within 2 hours of a release which enters a water supply or which threatens the water supply of downstream users. If the owner or operator or an agent fails to notify or is incapable of notifying downstream water users, the county emergency management agency shall make the required notification. This notification shall be done in accordance with section 904 of the act (35 P.S. § 6021.904).

**[ (i) The owner or operator of storage tanks and storage tank facilities shall immediately notify the local fire authority where fire, explosion or safety hazards exist at the site. ]**

**(h) The owner or operator of a storage tank system or storage tank facility shall immediately notify the local fire authority where fire, explosion or safety hazards exist as a result of a release.**

**(i) Release reporting under this section and further corrective action under this subchapter are not required for the following releases if the owner or operator has control over the release, the release is completely contained, the total volume of the release is recovered and removed within 24 hours of the release, and any defective storage tank system component that caused or contributed to the release is properly repaired or replaced:**

**(1) A release of petroleum to an aboveground surface, including within an emergency containment structure, that is less than 25 gallons.**

**(2) A release of a hazardous substance to an aboveground surface, including within an emergency containment structure, that is less than its reportable quantity under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C.A. §§ 9601—9675) and 40 CFR Part 302 (relating to designation, reportable quantities, and notification).**

**(3) A release to a liquid-tight containment sump used for interstitial monitoring of piping in accordance with § 245.444(6) (relating to methods of release detection for tanks).**

#### **§ 245.306. Interim remedial actions.**

**(a) [ Upon confirming that a release has occurred in accordance with § 245.304 (relating to investigation of suspected releases) or after a release from a storage tank is identified in another manner, the ]** **A** responsible party shall immediately initiate the following interim remedial actions necessary to prevent or address an immediate threat to human health or the environment **from a release** while initiating, as necessary, one or more of the tasks identified in § 245.309(c) (relating to site characterization):

(1) Remove the regulated substance from the storage tank **system** to prevent further release to the environment.

(2) Identify, mitigate and continue to monitor and mitigate, fire, explosion and safety hazards posed by vapors and free product.

(3) Prevent further migration of the regulated substance released from the storage tank **system** into the environment as follows:

(i) If contaminated soil exists at the site, the interim remedial action may include excavation of the soils for treatment or disposal.

(ii) If free product is present, free product recovery shall be initiated immediately.

(4) Identify and **[ sample ] analyze samples of** affected water supplies and water supplies with the potential to be affected in a reasonable and systematic manner consistent with § 245.309(b)(1) and (4) and (c)(4), (6) **[ and (13) ], (12) and (16)**. The responsible party shall restore or replace an affected or diminished water supply in accordance with § 245.307 (relating to affected or diminished water supplies). The responsible party shall provide a copy of the sample results to the water supply owner and the Department within 5 days of receipt of the sample results from the laboratory.

(b) At sites where free product recovery, regulated substance removal or contaminated soil excavation is performed, the responsible party shall:

(1) Conduct recovery, removal, storage, treatment and disposal activities in a manner that prevents the spread of contamination into previously uncontaminated areas.

(2) Handle flammable products in a safe and competent manner to prevent fires or explosions.

(3) Obtain required State and local permits or approvals for treatment and disposal activities.

(4) Minimize the amount of soil and subsurface material affected by a release of a regulated substance by segregating the unaffected soil and subsurface material from the material affected by a release of a regulated substance.

(c) **[ If free product recovery affects or diminishes ] If interim remedial actions such as free product recovery affect or diminish** the quality or quantity of a water supply, the responsible party shall restore or replace the water supply in accordance with § 245.307.

(d) Where soil and subsurface material affected by a release is removed from the site, the person removing the material shall provide to the owner, operator, landowner or other responsible party a receipt documenting acceptance of the material at a permitted treatment or disposal facility.

**(e) A responsible party shall notify the Department by telephone or e-mail as soon as practicable, but no later than 24 hours, after the initiation of interim remedial actions.**

**§ 245.307. Affected or diminished water supplies.**

\* \* \* \* \*

(d) A permanent water supply shall be provided within 90 days, or within an alternative time frame as determined by the Department, after one of the following:

(1) The responsible party receives information which establishes that the responsible party has affected or diminished the water supply.

(2) The responsible party is notified by the Department that the responsible party has affected or diminished the water supply.

**(e) A responsible party shall notify the Department, by telephone or e-mail, within 24 hours of providing an alternate source of water to the owner of the affected or diminished water supply.**

**§ 245.309. Site characterization.**

(a) Upon confirming that a **[ reportable ]** release has occurred in accordance with § 245.304 (relating to investigation of suspected releases) or after a **[ reportable ]** release from a storage tank **system** is identified in another manner, the responsible party shall perform a site characterization.

(b) The objectives of a site characterization are to accomplish the following:

(1) Determine whether additional interim remedial actions are necessary to abate an imminent hazard to human health or the environment.

(2) Determine whether additional site characterization work is required upon completion of an interim remedial action.

(3) Determine or confirm the sources of contamination.

(4) Provide sufficient physical data, through field investigations, to determine the regulated substances involved,

and the extent of migration of those regulated substances in surface water, groundwater, soil or sediment.

(5) Determine, from measurements at the site, values **[ for input parameters ] necessary for fate and transport analysis** including hydraulic conductivity, source dimensions, hydraulic gradient, water table fluctuation and fraction organic carbon **[ necessary for fate and transport analysis ]**.

(6) Provide sufficient information to select a remediation standard.

(7) Provide sufficient information to allow for completion of a remedial action plan or a design for remedial action.

(c) The responsible party shall conduct the site characterization activities necessary to satisfy the objectives **[ established ]** in subsection (b). The site characterization shall include the following tasks, as necessary, based on the nature, extent, type, volume or complexity of the release:

(1) Identifying the need for and initiating additional interim remedial actions.

(2) Opening **[ and sampling ] storage tanks and analyzing samples of the contents** to determine the regulated substances stored in the tanks.

(3) **[ Tightness ] Performing tightness** testing or other release detection testing and monitoring to determine the structural integrity of the storage tank **system**.

(4) **[ Identify and sample ] Identifying and analyzing samples of** affected water supplies and water supplies with the potential to be affected **which were** not previously identified or sampled under § 245.306(a)(4) (relating to interim remedial actions). The responsible party shall restore or replace an affected or diminished water supply in accordance with § 245.307 (relating to affected or diminished water supplies). The responsible party shall provide a copy of the sample results to the water supply owner and the Department within 5 days of receipt of the sample results from the laboratory.

(5) Determining the location of the ecological receptors identified in § 250.311(a) (relating to evaluation of ecological receptors).

**[ (6) A review of the site history.**

**(7) A review and analysis of data from removal from service and interim remedial action activities.**

**(8) Using geophysical survey techniques to locate storage tanks and to determine geologic and hydrogeologic characteristics of affected hydrogeologic zones and hydrogeologic zones with the potential to be affected.**

**(9) Drilling soil borings, conducting soil gas surveys and collecting soil samples to determine soil characteristics and the horizontal and vertical extent of soil contamination.**

**(10) Using piezometers, well points, monitoring wells and public and private wells to:**

**(i) Determine the direction of groundwater flow.**

**(ii) Determine soil, geologic, hydrogeologic and aquifer characteristics.**

**(iii) Measure the horizontal extent and thickness of free product.**

(iv) Sample groundwater to determine the horizontal and vertical extent of groundwater contamination.

(11) A demonstration that groundwater is not used or currently planned to be used.

(12) Sampling surface water and sediments to determine the extent of surface water and sediment contamination.

(13) Assessing potential migration pathways, including sewer lines, utility lines, wells, geologic structures and hydrogeologic conditions.

(14) Performing site surveying and topographic mapping.

(15) Developing a conceptual site model that describes the sources of contamination, fate and transport of contaminants and potential receptors.

(16) Handling and disposing of site characterization wastes.

(17) Preparing and implementing a site-specific plan for the provision of the following:

(i) Worker health and safety in accordance with OSHA requirements established at 29 CFR 1910.120 (relating to hazardous waste operations and emergency response), including health and safety policies, medical monitoring, training and refresher courses, emergency and decontamination procedures, personal protective equipment and standard work practices.

(ii) The identification, management and disposition of solid, hazardous, residual and other wastes generated as part of the site characterization.

(iii) A quality assurance/quality control program for the performance of site characterization field activities and for the accurate collection, storage, retrieval, reduction, analysis and interpretation of site characterization data.

(18) An analysis of the data collected as a result of the site characterization.

(19) Selection of a remediation standard.

(20) If the site-specific standard is selected, performance of a risk assessment in accordance with Chapter 250, Subchapter F (relating to exposure and risk determinations).

(21) Recommendation of preferred remedial action options.

(22) Recommendation for further site characterization work.

(23) Developing a conceptual design of the selected remedial action options and identifying additional investigations or pilot studies needed to design and implement a detailed remedial action plan.

(24) Additional tasks necessary to characterize the site. ]

(6) Reviewing the history of operations, releases and corrective actions at the site.

(7) Reviewing and analyzing data collected during removal from service and interim remedial action activities.

(8) Using geophysical survey techniques to locate storage tanks and to determine geologic and hydro-

geologic characteristics of affected hydrogeologic zones and hydrogeologic zones with the potential to be affected.

(9) Using soil survey techniques which include drilling soil borings and analyzing soil samples to determine soil characteristics and the horizontal and vertical extent of soil contamination.

(10) Using direct push probes, piezometers, well points, monitoring wells, public and private wells, and other resources to:

(i) Determine the direction of groundwater flow.

(ii) Determine soil, geologic, hydrogeologic and aquifer characteristics, including parameters necessary for fate and transport analysis.

(iii) Determine the horizontal and vertical extent and evaluate the properties of free product in the subsurface.

(iv) Analyze groundwater samples to determine the horizontal and vertical extent of groundwater contamination.

(11) Analyzing surface water and sediment samples to determine the extent of surface water and sediment contamination.

(12) Assessing potential migration pathways, including sewer lines, utility lines, wells, geologic structures, hydrogeologic conditions and vapor intrusion into structures.

(13) Performing site surveying and topographic mapping.

(14) Developing a conceptual site model that describes the sources of contamination, fate and transport of contaminants, actual and potential receptors, and an evaluation of the vapor intrusion pathway.

(15) Handling and disposing of site characterization wastes.

(16) Preparing and implementing a site-specific plan for the provision of the following:

(i) Worker health and safety in accordance with OSHA requirements in 29 CFR 1910.120 (relating to hazardous waste operations and emergency response), including health and safety policies, medical monitoring, training and refresher courses, emergency and decontamination procedures, personal protective equipment and standard work practices.

(ii) The identification, management and disposition of solid, hazardous, residual and other wastes generated as part of the site characterization.

(iii) Establishment of data quality objectives and a quality assurance/quality control program for the performance of site characterization field activities and for the accurate collection, storage, retrieval, reduction, analysis and interpretation of all data that will be collected during the corrective action, according to appropriate standards and guidelines for environmental remediation.

(17) Analyzing the data collected as a result of the site characterization.

(18) Selecting a remediation standard.

**(19) Demonstrating that groundwater is not used or currently planned to be used in accordance with the selected remediation standard.**

**(20) If the site-specific standard is selected, performing a risk assessment in accordance with Chapter 250, Subchapter F (relating to exposure and risk determinations).**

**(21) Developing preferred remedial action options to attain the selected remediation standard.**

**(22) Identifying additional investigations or pilot studies needed to design and implement the preferred remedial action options.**

**(23) Performing additional tasks necessary to meet the objectives in subsection (b).**

**(24) Notifying the Department by telephone or e-mail as soon as practicable, but no later than 24 hours, after the initiation of site characterization activities.**

**§ 245.310. Site characterization report.**

(a) [ **The** ] **A** responsible party shall prepare and submit to the Department within 180 days of reporting a [ **reportable** ] release under § 245.305(a) (relating to reporting releases), or within an alternative time frame as determined by the Department, [ **two copies of** ] a site characterization report which describes the activities undertaken in accordance with § 245.309 (relating to site characterization). **The responsible party shall submit two copies of the site characterization report to the Department unless directed otherwise.** The site characterization report shall be complete and concisely organized and shall contain the following elements, as necessary, based on the nature, extent, type, volume or complexity of the release:

(1) A narrative description of the site and the historical and current operations conducted at the site.

(2) A site map showing location of buildings, roads, storage tanks, including those removed from service or closed in place, utilities, property boundaries, topographic contours, potential receptors and other information pertinent to the site characterization.

(3) A description of natural and manmade features pertinent to the site characterization.

(4) Details of interim remedial actions conducted at the site in accordance with § 245.306 (relating to interim remedial actions). These details [ **shall** ] **must** include the following, as necessary:

(i) A description of the type and volume of the regulated substance removed from the storage tank.

(ii) A discussion of fire, explosion and safety hazards which have been identified, mitigated and monitored.

(iii) A discussion of necessary relocation of affected residents.

(iv) Where free product recovery is performed, **a description of:**

(A) The regulated substance released [ **and** ], the thickness of free product in wells, boreholes or excavations, **and the properties and vertical and horizontal distribution of any free product remaining in the subsurface.**

(B) The type of free product recovery system used.

(C) Whether a discharge has or will take place during the recovery operation, and where this discharge is or will be located.

(D) The type of treatment applied to, and the effluent quality expected from, a discharge.

(E) The steps that have been or are being taken to obtain necessary permits or approvals for a discharge.

(F) The volume and disposition of the recovered free product.

(G) The date free product recovery was initiated.

(H) The date free product recovery was completed.

(v) Where excavation of contaminated soil is performed, **a description of:**

(A) The regulated substance released and actual volume of soil excavated.

(B) The method used to determine the existence and extent of contaminated soil.

(C) The treatment method or disposition of the excavated soil, including receipts documenting acceptance of the material at a permitted treatment or disposal facility.

(D) The date excavation was initiated.

(E) The date excavation was completed.

(F) The rationale for terminating soil excavation where the contaminated soil has not been excavated, including the volume of contaminated soil remaining in place, and a description of what steps will be taken to address the soils that remain unexcavated.

(5) [ **The** ] **Details of actions conducted at the site in accordance with § 245.307 (relating to affected or diminished water supplies). These details must include the steps that have been or are being taken to restore or replace affected or diminished water supplies.**

(6) A description of the type and characteristics of regulated substances involved, including quantities, physical state, concentrations, toxicity, propensity to bioaccumulate, persistence and mobility.

(7) The results of tightness testing or other release detection method used or conducted to determine the structural integrity of the storage [ **tanks** ] **tank systems.**

(8) The details of removal from service activities conducted at the site.

(9) The identification of the sources of contamination, including the actual or estimated date and quantity of release from each source.

(10) The location and description of affected water supplies and water supplies with the potential to be affected.

(11) [ **A description of further site characterization work needed.** ] **A statement certifying that the site-specific plan, prepared for worker health and safety in accordance with OSHA requirements in 29 CFR 1910.120 (relating to hazardous waste operations and emergency response), including health and safety policies, medical monitoring, training and refresher courses, emergency and decontamination procedures, personal protective equipment and standard work practices, was implemented.**

(12) A discussion and **[ conclusions that demonstrate ] analysis to demonstrate that** the site characterization objectives **[ outlined ]** in § 245.309(b) have been satisfied.

(13) The rationale, equipment, methodology and results of geophysical surveys.

(14) The location, rationale and logs of soil borings.

(15) The location, rationale, construction details, including methods and materials, and depth to groundwater of piezometers, well points and monitoring wells.

(16) Groundwater contour maps depicting groundwater flow direction at the site.

(17) A description of methods and equipment used to determine site-specific soil, geologic, hydrogeologic and aquifer properties.

(18) Sampling locations and rationale for selection of these locations.

(19) The results of a survey used to identify and sample public and private wells.

(20) Parameters analyzed for, analytical methods used and detection limits of these methods.

(21) Field and laboratory analytical results and interpretations.

(22) Contaminant distribution maps in the media and contaminant phases.

(23) A conceptual site model **[ describing ] which describes** the sources of contamination, **the** fate and transport of contaminants, **actual** and potential receptors, **and evaluates the vapor intrusion pathway.**

(24) The disposition of site characterization wastes.

(25) A copy of site-specific plans prepared and implemented for the provision of the following:

**[ (i) Worker health and safety in accordance with OSHA requirements established at 29 CFR 1910.120 (relating to hazardous waste operations and emergency response), including health and safety policies, medical monitoring, training and refresher courses, emergency and decontamination procedures, personal protective equipment and standard work practices.**

**(ii) ] (i)** The identification, management and disposition of solid, hazardous, residual and other wastes generated as part of the site characterization.

**[ (iii) A ] (ii) The data quality objectives and** quality assurance/quality control program for the performance of site characterization field activities and for the accurate collection, storage, retrieval, reduction, analysis and interpretation of site characterization data.

(26) The identification of the remediation standard which has or will be attained at the site.

(27) The Department's written determination that groundwater is not used or currently planned to be used, **if needed to attain the remediation standard selected or to be selected.**

(28) The impacts to ecological receptors as a result of the evaluation conducted in accordance with § 250.311 or § 250.402(d) (relating to evaluation of ecological receptors; and human health and environmental protection goals).

(29) The impacts to surface water as a result of the evaluation conducted in accordance with § 250.309 or § 250.406 (relating to MSCs for surface water; and relationship to surface water quality requirements).

**(30) [ A discussion of the remedial action options selected to remediate the site. ] A summary of the remedial action option that will be used at the site to attain the selected remediation standard. The summary must include a description of the components of each option, a conceptual design and a description of any additional investigation needed to complete the design of each option.**

(31) A risk assessment report in accordance with § 250.409 (relating to risk assessment report).

(32) A demonstration that no current or future exposure pathways exist following the procedures described in § 250.404 (relating to pathway identification and elimination).

**[ (33) A conceptual design of the remedial action options selected.**

**(34) A report of additional tasks performed to characterize the site. ]**

**(33) A report of additional tasks performed to meet the objectives in § 245.309(b).**

(b) If the responsible party determines, after completion of interim remedial actions, that further site characterization is not required, that soil is the only media of concern, and that interim remedial actions have remediated the site, the responsible party may submit a site characterization report to the Department, in lieu of the report required in subsection (a), which contains the following:

(1) A concise statement that describes the release, including information such as the amount of regulated substance that was released, the extent of contamination and interim remedial actions taken under § 245.306.

(2) Data demonstrating that the interim remedial actions have attained the Statewide health standard for the site in accordance with Chapter 250, Subchapter G (relating to demonstration of attainment).

(3) The basis for selection of the residential or nonresidential Statewide health standard.

(4) The results of the evaluation of ecological receptors conducted in accordance with § 250.311.

(5) Additional information as identified in subsection (a) necessary to fully describe the release, the extent of contamination and the interim remedial actions taken to address the release.

(c) Following submission of a complete site characterization report prepared under subsection (a), selecting the site-specific standard, or subsection (b), the Department will do one or more of the following:

(1) Review and approve the site characterization report as submitted.

(2) Review and approve the site characterization report with modifications made by the Department.

(3) Review and disapprove the site characterization report, citing deficiencies.

(4) Review and disapprove the site characterization report and direct, require or order the responsible party to perform other tasks or make modifications as prescribed by the Department.

(5) Review and disapprove the site characterization report, perform the site characterization in whole or in part and recover, in accordance with § 245.303(b) (relating to general requirements), the Department's costs and expenses involved in performing the site characterization.

**[ (6) Review the site characterization report without further action. ]**

(d) The Department will take one or more of the actions listed in subsection (c) within 60 days of receipt of a site characterization report meeting the requirements [ of ] in subsection (b) or within 90 days of receipt of a site characterization report selecting the site-specific standard. If the Department does not respond, in writing, within the allotted time, the report shall be deemed approved, unless the responsible party and the Department agree, in writing, to an alternative time frame.

**§ 245.311. Remedial action plan.**

(a) Unless a site characterization report is submitted in accordance with § 245.310(b) (relating to site characterization report), the responsible party shall prepare and submit to the Department **two copies of the remedial action plan, unless directed otherwise. The remedial action plan shall be submitted** within 45 days of submission of a site characterization report required by § 245.310(a) selecting the background or Statewide health standard, within 45 days of deemed approval or receipt of a written approval of a site characterization report selecting the site-specific standard, or within an alternative time frame as determined by the Department [ , **two copies of a remedial action plan prior to implementation of the remedial action plan** ]. The remedial action plan [ **must** ] **shall be submitted prior to its implementation**, be complete and concisely organized and contain **all** of the following elements, as necessary, based on the nature, extent, type, volume or complexity of the release:

(1) A brief summary of the site characterization report conclusions.

(2) A copy of the plans relating to [ **worker health and safety,** ] management of wastes generated and quality assurance/quality control procedures, as they relate to the remedial action, if different from the plans submitted in accordance with § 245.310(a)(25).

\* \* \* \* \*

(12) A description of proposed postremediation care requirements, **including proposed activity and use limitations to be implemented under an environmental covenant.**

(13) A description of additional items necessary to develop the remedial action plan.

**(14) A description of any water supply that remains affected or diminished, the replacement system that was provided, the analytical results of samples taken, and any maintenance or monitoring required to ensure its functionality until the supply is no longer affected or diminished.**

(b) Following submission of a complete remedial action plan selecting the background or Statewide health standard, the Department will **publish an acknowledgment of receipt of the remedial action plan in the Pennsylvania Bulletin and** do one or more of the following:

(1) Review and approve the site characterization report and remedial action plan as submitted.

(2) Review and approve the site characterization report and remedial action plan with modifications made by the Department.

(3) Review and disapprove the site characterization report and remedial action plan, citing deficiencies.

(4) Review and disapprove the site characterization report and remedial action plan and direct, require or order the responsible party to perform other tasks or make modifications as prescribed by the Department.

(5) Review and disapprove the site characterization report and remedial action plan, prepare a remedial action plan or perform the remedial action in whole or in part, and recover, in accordance with § 245.303(b) (relating to general requirements), the Department's costs and expenses involved in preparing the remedial action plan or performing the remedial action.

**(6) [ Review the site characterization report and remedial action plan without further action. ] Publish a notice of its final action in the Pennsylvania Bulletin.**

(c) Following submission of a complete remedial action plan selecting the site-specific standard, the Department will **publish an acknowledgment of receipt of the remedial action plan in the Pennsylvania Bulletin and** do one or more of the following:

(1) Review and approve the remedial action plan as submitted.

(2) Review and approve the remedial action plan with modifications made by the Department.

(3) Review and disapprove the remedial action plan, citing deficiencies.

(4) Review and disapprove the remedial action plan and direct, require or order the responsible party to perform other tasks or make modifications as prescribed by the Department.

(5) Review and disapprove the remedial action plan, prepare a remedial action plan or perform the remedial action in whole or in part, and recover, in accordance with § 245.303(b), the Department's costs and expenses involved in preparing or performing the remedial action plan.

**(6) [ Review the remedial action plan without further action. ] Publish a notice of its final action in the Pennsylvania Bulletin.**

\* \* \* \* \*

**§ 245.312. Remedial action.**

\* \* \* \* \*

(c) Each remedial action progress report shall provide the data generated during the reporting period and shall show the progress to date toward attainment of the selected remediation standard. Each report shall be complete and concisely organized and shall contain the following elements, as necessary, based on the nature, extent, type, volume or complexity of the release:

\* \* \* \* \*

(4) Quantitative analytical results from **replacement water supply system**, groundwater, surface water, soil and sediment sampling.

\* \* \* \* \*

(9) Demonstration that required Federal, State and local permits and approvals are being complied with.

**(10) A summary of data collected from any water supply that remains affected or diminished, and any maintenance performed.**

[ (10) ] (11) A report of additional items necessary to describe the progress of the remedial action.

(d) The first remedial action progress report shall be received by the Department 3 months following the date of remedial action plan implementation **or at an alternative interval as determined by the Department.** The final remedial action progress report shall be submitted to the Department as part of the remedial action completion report.

(e) If during implementation of the remedial action plan the responsible party decides to change the remedial action plan, the responsible party shall prepare and submit, to the Department, a new or modified remedial action plan, to include selection of the new remediation standard, if applicable, in accordance with § 245.311 (relating to remedial action plan).

(f) If during implementation of the remedial action plan the responsible party determines that continued implementation of the remedial action plan will cause additional environmental harm, the responsible party shall suspend remedial action and notify the Department, by telephone, within 24 hours of suspension. The responsible party shall prepare and submit a new or modified remedial action plan, to include selection of the new remediation standard, if applicable, to the Department in accordance with § 245.311.

**(g) If during implementation of the remedial action plan the Department determines that the remedial action plan will not attain the selected remediation standard or will cause additional environmental harm, the Department may require the responsible party to suspend remedial action and notify the Department, by telephone or e-mail, within 24 hours of suspension. The Department may require the responsible party to prepare and submit a new or modified remedial action plan, to include selection of the new remediation standard, if applicable, to the Department in accordance with § 245.311.**

**§ 245.313. Remedial action completion report.**

(a) When the selected remediation standard has been attained, the responsible party shall submit a remedial action completion report to the Department.

(b) The remedial action completion report [ shall ] **must** be complete and concisely organized and [ shall ] **must** contain the following elements, as necessary, based on the remediation standard attained:

**(1) Data demonstrating that the remedial actions have attained the selected standard for the site in accordance with Chapter 250, Subchapter G (relating to demonstration of attainment).**

[ (1) ] (2) When the background standard has been attained, the remedial action completion report shall include the requirements [ of ] **in** § 250.204(f) and (g) (relating to final report).

[ (2) ] (3) When the Statewide health standard has been attained, the remedial action completion report shall

include the requirements [ of § 250.312(b)—(h) ] **in** § 250.312(a)—(h) (relating to final report).

[ (3) ] (4) When the site-specific standard is attained, the remedial action completion report shall include the requirements [ of § 250.411(c)—(f) ] **in** § 250.411(c), (d) and (f) (relating to final report).

[ (4) ] (5) For fate and transport analyses, the following information, in addition to that required by § 250.204(f)(5):

(i) An isoconcentration map showing the configuration and concentrations of contaminants within the plume being analyzed.

(ii) Sufficient information from monitoring data to establish whether the plume is stable, shrinking or expanding.

(iii) Input parameters for the analysis and the rationale for their selection.

(iv) Figures showing the orientation of the model or analysis to the field data.

(v) Comparison and analysis of the model or mathematical output to the actual field data.

(c) Following submission of the remedial action completion report, the Department will **publish an acknowledgment of receipt of the remedial action completion report in the Pennsylvania Bulletin and** do one or more of the following:

(1) Review and approve the remedial action completion report as submitted.

(2) Review and approve the remedial action completion report with modifications made by the Department.

(3) Review and disapprove the remedial action completion report, citing deficiencies.

(4) Review and disapprove the remedial action completion report and direct, require or order the responsible party to perform other tasks or make modifications as prescribed by the Department.

(5) Review and disapprove the remedial action completion report, perform the site characterization or remedial action and recover, in accordance with § 245.303(b) (relating to general requirements), the Department's costs and expenses involved in preparing the remedial action completion report.

(6) [ **Review the remedial action completion report without further action.** ] **Publish a notice of its final action in the Pennsylvania Bulletin.**

(d) The Department will take one or more of the actions listed in subsection (c) within 60 days of receipt of the remedial action completion report demonstrating attainment of the background or Statewide health standard, or within 90 days of receipt of a remedial action completion report demonstrating attainment of the site-specific standard. If the Department does not respond, in writing, within the allotted time, the report shall be deemed approved, unless the responsible party and the Department agree, in writing, to an alternative time frame.

**Subchapter E. TECHNICAL STANDARDS FOR UNDERGROUND STORAGE TANKS**  
**GENERAL**

**§ 245.402. Scope.**

This subchapter applies to underground storage [ tanks ] **tank systems** regulated under the act and this chapter.

§ 245.403. Applicability.

(a) *General.* The requirements [ of ] in this subchapter apply to owners and operators, as well as installers and inspectors of underground storage tank systems as defined in § 245.1 (relating to definitions), except as otherwise provided in [ subsection (b) ] subsections (c) and (d).

[ (b) *Deferrals.* Sections 245.441—245.446 (relating to release detection) do not apply to an underground storage tank system that stores fuel solely for use by emergency power generators.

(c) *Temporary exclusions.* Existing tanks that become regulated due to the addition of new regulated substances in § 245.1 ((relating to definitions) (See the definition of “regulated substance” (i)(C)(I) and (II))) are subject to this chapter and shall be registered with the Department by January 9, 2008. In addition, these tanks are temporarily excluded from the requirements of §§ 245.421, 245.422, 245.431, 245.432 and 245.441—245.446, until November 10, 2010. ]

(b) *Emergency power generator fuel tanks.* Underground storage tank systems that store fuel solely for use by emergency power generators must meet the requirements in §§ 245.441—245.446 (relating to release detection) as follows:

(1) Underground storage tank systems installed on or before November 10, 2007, must meet the requirements in §§ 245.441—245.446 on or before \_\_\_\_\_ (Editor’s Note: The blank refers to 730 days after the effective date of adoption of this proposed rulemaking).

(2) Underground storage tank systems installed after November 10, 2007, must meet the requirements in §§ 245.441—245.446 on or before \_\_\_\_\_ (Editor’s Note: The blank refers to 365 days after the effective date of adoption of this proposed rulemaking).

(3) Underground storage tank systems installed after \_\_\_\_\_ (Editor’s Note: The blank refers to the effective date of adoption of this proposed rulemaking.), must meet the requirements in §§ 245.441—245.446 at installation.

(c) *Partial exclusions.* The following underground storage tanks systems are not required to comply with §§ 245.411, 245.421(b)(3) and (4)(ii) and (iii), 245.422(d), 245.432(g) and 245.436—245.446:

(1) A wastewater treatment tank system that is not part of a wastewater treatment facility regulated under section 307(b) or 402 of the Clean Water Act (33 U.S.C.A. §§ 1317(b) and 1342).

(2) An underground storage tank system containing radioactive material that is regulated under the Atomic Energy Act of 1954 (42 U.S.C.A. §§ 2011—2296b-7).

(3) An underground storage tank system that is part of an emergency generator system at a nuclear power generation facility licensed by the United States Nuclear Regulatory Commission and subject to United States Nuclear Regulatory Commission requirements regarding design and quality criteria, including 10 CFR Part 50 (relating to domestic licensing of production and utilization facilities).

(d) *Previously excluded underground storage tanks.* Underground storage tank systems that were not required to be registered with the Department prior to \_\_\_\_\_ (Editor’s Note: The blank refers to the effective date of adoption of this proposed rulemaking.), shall be registered with the Department by \_\_\_\_\_ (Editor’s Note: The blank refers to 30 days after the effective date of adoption of this proposed rulemaking.). Underground storage tanks include all of the following:

(1) Field-constructed underground storage installed on or before October 11, 1997, that the Department previously did not require to be registered as a matter of policy. These tanks are temporarily excluded from §§ 245.421, 245.422, 245.431, 245.432, 245.437 and 245.441—245.446, until \_\_\_\_\_ (Editor’s Note: The blank refers to 365 days after the effective date of adoption of this proposed rulemaking).

(2) Underground storage tank systems referenced in subsection (c)(1)—(3) installed on or before \_\_\_\_\_ (Editor’s Note: The blank refers to the effective date of adoption of this proposed rulemaking).

§ 245.404. Variances.

When unique or peculiar circumstances make compliance with this subchapter technically impractical, infeasible or unsafe, the Department may, upon written application from the [ owner/operator ] owner of a storage tank system subject to this subchapter, grant a variance from one or more specific provisions of this subchapter:

\* \* \* \* \*

[ FACILITY ] INSPECTIONS

§ 245.411. Inspection frequency.

(a) *Inspection of [ tanks ] underground storage tank systems.* Underground storage tank owners or operators shall have their underground storage tank [ facility ] systems inspected by a certified inspector at the frequency [ established in subsections (b)—(d) ] in subsections (b) and (c). The inspection [ must include, but not be limited to, ] shall include release detection, assessment of the underground storage tank system and ancillary equipment, operation of overfill and spill prevention equipment where practicable, corrosion protection testing, or verification that corrosion protection is functional, and release prevention measures.

[ (b) *Initial inspections.*

(1) Storage tank facilities with tank systems installed prior to December 1989, shall be inspected prior to October 11, 1999.

(2) Newly installed storage tank systems shall be inspected between 6 to 12 months after installation. If the facility ownership changes, an inspection of the facility shall be completed between the first 6 to 12 months of operation unless another time frame is agreed to by the Department.

(3) Storage tank facilities not inspected in accordance with paragraph (1) or (2) shall have an initial inspection by October 11, 2002.

(c) *Subsequent routine facility inspections.*

(1) The interval between subsequent routine facility inspections may not exceed 3 years (36

months) commencing after the last inspection, except as provided in the phase-in periods in paragraph (2).

(2) On November 10, 2007, existing facilities with routine inspections scheduled more than 3 years from this date shall be inspected by the following dates, unless notified otherwise by the Department:

(i) Before August 8, 2008, if currently scheduled for inspection between November 10, 2010, and August 7, 2011, inclusive.

(ii) Before August 8, 2009, if currently scheduled for inspection between August 8, 2011, and August 7, 2013, inclusive.

(iii) Before August 8, 2010, if currently scheduled for inspection after August 7, 2013.

(d) *Additional inspections and mandatory training.* Inspections in addition to those in subsections (b) and (c) may be required by the Department when the prior inspection determined release detection, corrosion protection or operational violations occurred, or when the Department determines the inspections are necessary to verify compliance with this subchapter. The Department may require facility owners and operators to successfully complete a release detection or operator training course, such as those offered by PEI or professional industry trainers approved under § 245.141 (relating to training approval), when related violations are documented through an inspection. The owner or operator shall incur the costs of the training. ]

(b) Initial inspections. Newly installed underground storage tank systems shall be inspected between 6 to 12 months after installation. If the tank ownership changes, an inspection of the underground storage tank system shall be completed between the first 6 to 12 months of operation unless another time frame is agreed to by the Department.

(c) Subsequent inspections.

(1) The interval between subsequent inspections may not exceed 3 years (36 months) beginning after the last inspection, except as provided in paragraph (2).

(2) An inspection in addition to those required in subsection (b) and paragraph (1) may be required by the Department when the prior inspection determined release detection, corrosion protection or operational violations occurred, or when the Department determines the inspection is necessary to verify compliance with this subchapter.

(d) Training. The Department may require facility owners and operators to successfully complete a release detection, release prevention or operator training course, such as those offered by Nationally recognized associations or professional industry trainers approved under § 245.141 (relating to training approval), when related violations are documented through an inspection. Owners and operators of underground storage tanks that the Department determines through inspection are failing to meet EPA guidelines for significant operational compliance shall be retrained in a manner consistent with the training recommended in Department guidance entitled "Underground Storage Tank Class A and Class B Operator Training Courses." The owner or operator shall incur the costs of the training.

## UNDERGROUND STORAGE TANK SYSTEMS: DESIGN, CONSTRUCTION, INSTALLATION AND NOTIFICATION

§ 245.421. Performance standards for underground storage tank systems.

(a) *New underground storage tank systems.*

(1) Underground storage tank systems installed or replaced after November 10, 2007, must have total secondary containment, which consists of double-walled tanks, double-walled piping (for piping that routinely contains and conveys regulated substances (product)) and liquid-tight containment sumps. The sumps must be installed at piping connections that routinely contain and convey product from the tank, such as tank-top sumps and dispenser pan sumps, that allow for release detection monitoring of the system (See PEI RP 100). Also, new or replacement tank systems installed with pressurized product piping systems must be equipped with automatic line leak detectors and automatic pump shutoff devices that meet the requirements of § 245.445(1) (relating to methods of release detection for piping).

(2) At least 30 days prior to the installation of a [ **new or replacement tank or underground storage tank system installed after January 9, 2008, ] tank, piping system, replacement or additional dispenser, or underground storage tank system, or within another reasonable time frame** agreed upon by the Department, owners and operators shall notify the Department of the proposed installation on a form provided by the Department.

(3) [ **An owner or operator of a tank system changing from unregulated to regulated service shall provide certification by a Department-certified installer or inspector that the tank system meets new tank system requirements, using the registration form (See § 245.41 (relating to tank registration requirements)) prior to placing product into the tank and operating the storage tank system. ] An owner or operator of an underground storage tank changing from unregulated to regulated service shall provide certification by a Department-certified installer that the underground storage tank system meets new underground storage tank system requirements, on a form provided by the Department, prior to placing product into the tank and operating the storage tank system.**

(b) To prevent releases due to structural failure, corrosion or spills and overfills for as long as the underground storage tank system is used to store regulated substances, owners and operators of new and existing underground storage tank systems shall ensure that the system meets the following requirements:

(1) *Tanks.* A tank must be properly designed and constructed. A tank or portion of a tank including the outer metallic wall of a double-walled tank that is underground and routinely contains product shall be protected from corrosion in accordance with a code of practice developed by a [ **Nationally-recognized** ] **Nationally recognized** association or independent testing laboratory, using one of the following methods:

(i) The tank is constructed of fiberglass-reinforced plastic.

(ii) The tank is constructed of steel and cathodically protected in the following manner:

(A) The tank is coated with a suitable dielectric material.

(B) Field-installed cathodic protection systems are designed by a corrosion expert.

(C) Impressed current systems are designed by a corrosion expert and allow determination of current operating status as required in § 245.432(a)(3) (relating to operation and maintenance including corrosion protection).

(D) Cathodic protection systems are operated and maintained in accordance with § 245.432.

(iii) **[ The tank is constructed of a steel-fiberglass-reinforced-plastic composite. ] The tank is constructed of steel and clad or jacketed with a non-corrodible material.**

(iv) The tank is constructed of metal without additional corrosion protection measures if:

(A) The tank is installed at a site that is determined by a corrosion expert not to be corrosive enough to cause it to have a release due to corrosion during its operating life.

(B) Owners and operators maintain records that demonstrate compliance with clause (A) for the remaining life of the tank.

(2) *Piping.* The piping and ancillary equipment that routinely contain regulated substances shall be protected from corrosion and deterioration. New piping systems that routinely contain and convey regulated substances from the tank must be double-walled with liquid-tight containment sumps **[ and dispenser pan sumps ]** installed in accordance with paragraph (4)(ii). Whenever **50% or more [ than 50% ]** of the existing piping that routinely contains and conveys product from the tank is replaced, the entire piping system that routinely contains and conveys product from the tank shall be replaced meeting the requirements for new piping systems in this **[ subsection ] section**. The portions of the product piping system, including joints, flexible connectors and ancillary equipment that are in contact with the ground must be properly designed, constructed and protected from corrosion in accordance with a code of practice developed by a **[ Nationally-recognized ] Nationally recognized** association or independent testing laboratory using one of the following methods:

(i) The piping or component is constructed of nonmetallic material such as fiberglass reinforced plastic or other noncorrodible and UL listed material.

(ii) The piping or component is constructed of metal and cathodically protected in the following manner:

(A) The piping is coated with a suitable dielectric material. The wrapping of piping with tape or similar material alone does not meet this requirement.

(B) Field-installed cathodic protection systems are designed by a corrosion expert.

(C) Impressed current systems are designed by a corrosion expert and allow determination of current operating status as required in § 245.432(a)(3).

(D) Cathodic protection systems are operated and maintained in accordance with § 245.432.

(iii) The piping is constructed of metal without additional corrosion protection measures if:

(A) The piping is installed at a site that is determined by a corrosion expert to not be corrosive enough to cause it to have a release due to corrosion during its operating life.

(B) Owners and operators maintain records that demonstrate compliance with clause (A) for the remaining life of the piping.

(3) *Spill and overflow prevention equipment.*

(i) Except as provided in subparagraph **[ (iv) ] (vi)**, to prevent spilling and overflowing associated with product transfer to the underground storage tank system, owners and operators shall ensure that their systems have the following spill and overflow prevention equipment **permanently installed**:

(A) Spill prevention equipment that will prevent release of product to the environment when the transfer hose is detached from the fill pipe—for example, a spill catchment basin or spill containment bucket.

(B) Overflow prevention equipment that will do one or more of the following:

(I) Automatically shut off flow into the tank when the tank is no more than 95% full.

(II) Alert the transfer operator when the tank is no more than 90% full by restricting the flow into the tank or triggering a high-level alarm.

**[ (III) Restrict flow 30 minutes prior to overflowing, alert the operator with a high level alarm 1 minute before overflowing, or automatically shut off flow into the tank so that none of the fittings located on top of the tank are exposed to product due to overflowing. ]**

(ii) **[ Bypassing overflow protection is prohibited for example, bypassing the flow vent valve with coax vapor recovery or a spill bucket drain valve is prohibited. ] Bypassing overflow protection is prohibited. For example, bypassing the ball float valve with coaxial stage-1 vapor recovery systems or a spill containment bucket drain valve is prohibited.**

(iii) **Ball float valves may not be used to comply with this subsection when overflow prevention is installed or replaced after \_\_\_\_\_ (Editor's Note: The blank refers to the effective date of adoption of this proposed rulemaking).**

**[ (iii) Ball ] (iv) Existing ball** float valves may not be used on suction pump systems having an air eliminator, or on any system having coaxial stage-1 vapor recovery systems or receiving pressurized pump deliveries.

**(v) Spill and overflow prevention equipment must be periodically tested or evaluated in accordance with § 245.437 (relating to periodic testing). Required tests shall be documented on a form provided by the Department and shall be maintained onsite at the storage tank facility or at a readily available alternative site.**

**[ (iv) ] (vi)** Owners and operators are not required to use the spill and overflow prevention equipment specified in subparagraph (i) if the underground storage tank system is filled by transfers of no more than 25 gallons at one time.

(4) *Installation.*

(i) **[ Tanks and piping ] Underground storage tank systems** shall be properly installed and system

integrity tested in accordance with a code of practice developed by a [ **Nationally-recognized** ] **Nationally recognized** association or independent testing laboratory [ **such as API 1615 and PEI RP100,** ] and in accordance with the manufacturer's instructions.

(ii) [ **Newly installed spill containment buckets, tank-top sumps, dispenser pans** ] **Spill prevention equipment** and containment sumps must be constructed to be liquid-tight, and shall be tested prior to use of the system to confirm liquid-tight construction using a hydrostatic test, vacuum test or other [ **Nationally-recognized** ] **Nationally recognized** liquid-tight testing procedure or method recommended by the containment equipment manufacturer.

(iii) Overfill prevention equipment shall be properly installed and tested in accordance with a code of practice developed by a [ **Nationally-recognized** ] **Nationally recognized** association, and in accordance with manufacturer's instructions. [ **When ball float valves are used, the valve shall be installed with extractor fitting and ball floats must be readily accessible (not requiring excavation) for removal and operational verification.** ]

(c) **Certification of installation.** Owners and operators shall ensure that a certified installer has installed the tank system by providing a certification of compliance on an appropriate form provided by the Department. ]

**§ 245.422. Upgrading of existing underground storage tank systems.**

(a) *Alternatives allowed.* By December 22, 1998, existing underground storage tank systems shall comply with one of the following requirements:

(1) Underground storage tank system performance standards under § 245.421(b) (relating to performance standards for underground storage tank systems).

(2) The upgrading requirements in subsections (b)—(d).

(3) Closure requirements under §§ 245.451—245.455 (relating to out-of-service underground storage tank systems and closure), including applicable requirements for corrective action under Subchapter D (relating to corrective action process for owners and operators of storage tanks and storage tank facilities and other responsible parties).

(b) *Tank upgrading requirements.* Steel tanks shall be upgraded to meet one of the following requirements in accordance with a code of practice developed by a [ **Nationally-recognized** ] **Nationally recognized** association or independent testing laboratory:

(1) *Interior lining.* [ **A tank may only be upgraded by internal lining prior to November 10, 2007. The following conditions of existing lined tanks shall be met:** ] **A tank may only be upgraded by internal lining for corrosion protection prior to November 10, 2007. Existing lined tanks must meet the following conditions:**

(i) The lining was installed in accordance with § 245.434 (relating to repairs allowed).

(ii) Within 10 years after lining, and every 5 years thereafter, the lined tank is internally evaluated by, or under the direct onsite supervision of a certified tank liner (TL) or by a professional engineer adhering to the

evaluation process developed by a National association (See API 1631 and NLP 631) and found to be structurally sound with the lining still performing in accordance with original design specifications. The evaluation findings shall be documented on a form approved by the Department and shall be maintained at the facility for the duration of the tank's operating life.

(iii) Lined tank systems that do not meet original design specifications or have not been evaluated as required in subparagraph (ii) shall be emptied, removed from service, and permanently closed in accordance with §§ 245.451 and 245.452 (relating to temporary [ **closure** ] **removal from service (out-of-service)**; and permanent closure and changes-in-service).

(2) *Cathodic protection.* A tank may be upgraded by cathodic protection if the cathodic protection system meets the requirements [ **of § 245.421(1)(ii)(B)—(D)** ] **in § 245.421(b)(1)(ii)(B)—(D)** and the integrity of the tank is ensured using one or more of the following methods:

(i) The tank is internally inspected and assessed to ensure that the tank is structurally sound and free of corrosion holes prior to installing the cathodic protection system.

[ (ii) **The tank has been installed for less than 10 years and is monitored monthly for releases in accordance with § 245.444(4)—(9) (relating to methods of release detection for tanks).** ]

(iii) **The tank has been installed for less than 10 years and is assessed for corrosion holes by conducting two tightness tests that meet the requirements of § 245.444(3). The first tightness test shall be conducted prior to installing the cathodic protection system. The second tightness test shall be conducted between 3 and 6 months following the first operation of the cathodic protection system.**

(iv) [ (ii) ] **The tank is installed at a site that is determined by a corrosion expert not to be corrosive enough to cause it to have a release due to corrosion during its operating life. Owners and operators shall maintain records that demonstrate compliance with this requirement for the remaining life of the tank.**

[ (v) ] (iii) **The tank is assessed for corrosion holes by a method that is determined by the Department to prevent releases in a manner that is no less protective of human health and the environment than [ subparagraphs (i)—(iii) ] subparagraph (i).**

(3) *Internal lining combined with cathodic protection.* A tank upgraded prior to November 10, 2007, having both internal lining and cathodic protection must meet the following:

(i) The lining was installed in accordance with the requirements [ **of** ] **in § 245.434.**

(ii) The cathodic protection system meets § 245.421(b)(1)(ii)(B)—(D).

(c) *Piping upgrading requirements.* Metal piping and fittings that routinely contain regulated substances and are in contact with the ground must be one or more of the following: [ (1) ]

(1) Replaced with piping meeting the requirements of new piping in § 245.421(b)(2)(i) and (ii).

(2) Cathodically protected in accordance with a code of practice developed by a [ **Nationally-recognized** ] **Nationally recognized** association or independent testing laboratory and meets the requirements [ of ] in § 245.421(b)(2)(ii)(B)—(D).

(3) Installed at a site that is determined to not be corrosive enough to cause a release due to corrosion for the remaining operating life of the piping under § 245.421(b)(2)(iii).

(d) *Spill and overflow prevention equipment.* To prevent spilling and overflowing associated with product transfer to the underground storage tank system, [ **existing** ] underground storage tank systems must comply with [ **new** ] underground storage tank system spill and overflow prevention equipment requirements in § 245.421(b)(3) and (4).

(e) [ *Under dispenser containment.* When a vertical riser, dispenser and interconnected piping and fittings are added to a storage tank system or a dispenser is replaced, involving major modification, the dispenser must have containment (liquid-tight dispenser pan) meeting requirements in § 245.421(b)(4)(ii). ] *Under-dispenser containment.* When an existing dispenser is replaced with another dispenser and equipment at or below the shear valve needed to connect the dispenser to the underground storage tank system is replaced, under-dispenser containment meeting the requirements in § 245.421(b)(4)(ii) is required. This equipment may include check valves, shear valves, vertical risers, flexible connectors or other transitional components. Under-dispenser containment shall also be installed when a major modification as defined in § 245.1 (relating to definitions) is performed at the dispenser area involving excavation beneath the dispenser.

§ 245.423. [ **Registration requirements.** ] (Reserved).

[ (a) An underground storage tank shall be registered with the Department prior to adding a regulated substance. The owner of a tank that was in use after May 8, 1986, shall have notified the Department of the system's existence.

(b) Owners required to submit notices under subsection (a) shall provide notices to the Department for each tank they own. Owners may provide notice for several tanks using one registration form, but owners who own tanks located at more than one facility shall file a separate registration form for each separate facility.

(c) Notices required to be submitted under subsection (a) shall provide all of the requested information on the registration form for each tank for which notice is required to be given.

(d) Owners and operators of new underground storage tank systems shall certify compliance with the following requirements in the registration form provided by the Department:

(1) Installation of tanks and piping under § 245.421(c) (relating to performance standards for new underground storage tank systems).

(2) Cathodic protection of steel tanks and piping under § 245.421(b)(1) and (2).

(3) Financial responsibility under Subchapter H (relating to financial responsibility requirements for owners and operators of underground storage tanks and storage tank facilities).

(4) Release detection under §§ 245.442 and 245.443 (relating to requirements for petroleum underground storage tank systems; and requirements for hazardous substance underground storage tank systems).

(5) Use of a Department-certified installer under § 245.21 (relating to tank handling and inspection requirements).

(e) Beginning October 24, 1988, a person who sells a tank intended to be used as an underground storage tank or a property containing an existing tank system shall notify the purchaser, in writing, of an owner's obligations under subsection (a). The following form may be used to comply with this requirement:

Federal law (the Resource Conservation and Recovery Act) and Commonwealth law (the Storage Tank and Spill Prevention Act) require that the owner of a regulated underground storage tank notify the Pennsylvania Department of Environmental Protection of the existence of its tank.

Notification for tanks brought into service after August 5, 1989, must be made prior to placing the tank system into service. Consult EPA 40 CFR Part 280 and PA Code Title 25 Chapter 245 to determine if you are affected by these laws.

(f) Every owner, including a new owner of an existing tank system, shall comply with tank registration requirements in Subchapter A (relating to general provisions). ]

#### GENERAL OPERATING REQUIREMENTS

§ 245.432. Operation and maintenance including corrosion protection.

(a) [ Owners and operators of steel underground storage tank systems with corrosion protection shall comply with the following requirements to ensure that releases due to corrosion are prevented for as long as the underground storage tank system is used to store regulated substances: ] Owners and operators of metal underground storage tank systems with corrosion protection shall comply with all of the following requirements to ensure that releases due to corrosion are prevented until the underground storage tank system is permanently closed or undergoes a change-in-service in accordance with § 245.452 (relating to permanent closure and changes-in-service).

(1) Corrosion protection systems shall be operated and maintained to continuously provide corrosion protection to the metal components of that portion of the tank and piping that routinely contain regulated substances.

(2) Underground storage tank systems equipped with cathodic protection systems shall be inspected for proper operation by a qualified cathodic protection tester in accordance with the following requirements:

(i) *Frequency.* Cathodic protection systems shall be tested within 6 months of installation and at least every 3 years thereafter.

(ii) *Inspection criteria.* The criteria that are used to determine that cathodic protection is adequate as re-

quired by this section shall be in accordance with a code of practice developed by a [ **Nationally-recognized** ] **Nationally recognized** association.

**(iii) Documentation. Surveys of cathodic protection systems required under this chapter shall be documented on a form provided by the Department and shall be provided to the Department upon request.**

(3) Underground storage tank systems with impressed current cathodic protection systems shall be inspected or checked every 60 days to ensure the equipment is [ **running properly** ] **functioning as designed**. At a minimum, the operator or person conducting the 60-day check shall document the date checked, annotate the system's functioning status, and for systems equipped with a direct current readout meter, record the amount of current indicated on the meter.

(4) For underground storage tank systems using cathodic protection, records of the operation of the cathodic protection shall be maintained, in accordance with § 245.435 (relating to reporting and recordkeeping) to demonstrate compliance with the performance standards in this section. These records must provide the following:

(i) The results of the last three inspections required in paragraph (3).

(ii) The results of testing from the last two inspections required in paragraph (2).

(b) Monitoring and observation wells shall be clearly identified using industry codes and standards, and caps shall be secured to prevent unauthorized or accidental access.

**(c) [ Required equipment, including line leak detectors, product sensors and probes, dispenser pans ] Underground storage tank systems and storage tank system components, including tanks, piping, line leak detectors, product sensors and probes,** containment sumps, measuring devices (including gauge sticks), gauges, corrosion protection, spill prevention, overflow prevention and other appurtenances whose failure could contribute to a release of product, shall be maintained in a good state of repair to ensure they function as designed.

(d) Tanks which have been lined and have not had corrosion protection added in accordance with § 245.422(b)(2) (relating to upgrading of existing underground storage tank systems) shall have the lining evaluated by, or under the direct onsite supervision of, a TL certified tank installer or by a professional engineer.

(1) Evaluations must adhere to an evaluation process developed by a National association identified in § 245.405 (relating to codes and standards) (See API 1631 and NLP 631) as follows:

(i) Ten years after lining installation.

(ii) Every 5 years after the preceding evaluation.

(2) Each evaluation finding shall be documented on a form approved by the Department and shall be maintained at the facility for the duration of the tank's operating life.

(e) Lined tank systems that do not meet original design specifications or have not been evaluated as required in subsection (d)(1) and (2) shall be emptied, removed from service and permanently closed in accordance with [ §§ 245.451 and 245.452 (relating to temporary closure; and permanent closure and changes-in-service) ] § 245.451 (relating to temporary removal from service (out-of-service)) and § 245.452.

**(f) [ Primary and secondary containment structure must be maintained in a leak free condition. If infiltration or a release is detected within the secondary containment, the defective component shall be repaired in accordance with § 245.434 (relating to repairs allowed). Repairs, including those performed to stop infiltration, shall be tested in accordance with § 245.434(5). ] Primary and secondary containment structures, containment sumps and spill prevention equipment must be maintained in a leak-free condition. If any liquid or regulated substance is detected, the liquid or regulated substance shall be immediately removed and the defective component, if applicable, shall be repaired in accordance with § 245.434 (relating to repairs allowed). Repairs, including those performed to stop infiltration, shall be tested in accordance with § 245.434(4).**

(g) A check for water in petroleum tanks shall be performed monthly and excess water shall be promptly removed as necessary. Water may not exceed the tank manufacturer's recommendations, product supplier's guidelines, or 2 inches of accumulation in the bottom of the tank, whichever is less. No amount of water is desirable in gasoline containing ethanol. Therefore, water should not be allowed to accumulate in tanks containing ethanol. Excess water shall be properly managed in accordance with applicable State and Federal requirements, such as Chapter 299 (relating to storage and transportation of residual waste), 40 CFR **Part** 261, Subpart B (relating to [ **hazardous waste identification** ] **criteria for identifying the characteristics of hazardous waste and for listing hazardous waste**) and 29 CFR **Part** 1910 (relating to occupational safety and health standards).

#### § 245.433. Compatibility.

**(a)** Owners and operators shall use an underground storage tank system[ , ] made of or lined with materials[ , that is ] **that are** compatible with the substance stored in the underground storage tank system. [ **Owners and operators storing alcohol blends may use the following codes to comply with the requirements of this section:**

**(1) American Petroleum Institute Publication 1626, "Storing and Handling Ethanol and Gasoline-Ethanol Blends at Distribution Terminals and Service Stations."**

**(2) American Petroleum Institute Publication 1627, "Storage and Handling of Gasoline-Methanol/Cosolvent Blends at Distribution Terminals and Service Stations." ]**

**(b) An owner and operator of an underground storage tank storing alternative fuel blends or biodiesel or biodiesel blended fuel shall submit on a form provided by the Department information verifying compatibility of the underground storage tank system with the substance stored prior to storing the substance in the underground storage tank.**

**(c) Upon Department request, an owner and operator of an underground storage tank system shall demonstrate compatibility of the underground storage tank system with the substance stored by using one or more of the following:**

(1) Certification or listing of the underground storage tank system equipment or component by a Nationally recognized, independent testing laboratory for use with the substance stored.

(2) Equipment or component manufacturer approval. The manufacturer's approval must be in writing, indicate an affirmative statement of compatibility, specify the range of alternative fuel blend or biodiesel blend with which the equipment or component is compatible, and be from the equipment or component manufacturer.

(3) Verification by a Pennsylvania-licensed professional engineer who has knowledge, experience and training in materials science that the equipment or component is compatible with the substance stored. The Department may request documentation supporting the professional engineer's verification.

(4) Another option that is determined by the Department to be at least as protective of human health and the environment as those in paragraphs (1)—(3).

#### § 245.434. Repairs allowed.

Owners and operators of underground storage tank systems shall ensure that repairs will prevent releases due to structural failure or corrosion as long as the underground storage tank system is used to store regulated substances. The repairs must meet the following requirements:

(1) Repairs involving a tank handling activity shall be performed by or under the direct, onsite supervision and control of a certified installer.

(2) Repairs to underground storage tank systems shall be properly conducted in accordance with a code of practice developed by a [ **Nationally-recognized** ] **Nationally recognized** association or an independent testing laboratory.

[ (3) Repairs to fiberglass reinforced plastic tanks may be made by the manufacturer's authorized representatives, and shall be made in accordance with a code of practice developed by a **Nationally-recognized association or an independent testing laboratory.**

(4) [ (3) Metal pipe sections and fittings that have released product as a result of corrosion or other damage shall be replaced. [ **Fiberglass** ] **Noncorrodible** pipes and fittings may be repaired; repairs shall be made in accordance with the manufacturer's specifications.

[ (5) Tanks, containment sumps, and piping repaired in response to a release shall be tightness tested in accordance with §§ 245.421(b)(4)(ii), 245.444(3) and 245.445(2) (relating to performance standards for underground storage tank systems; methods of release detection for tanks; and methods of release detection for piping), respectively, prior to placing the system back into service except as provided as follows:

(i) The repaired tank is internally inspected in accordance with a code of practice developed by a **Nationally-recognized association or an independent testing laboratory.**

(ii) The repaired portion of the underground storage tank system is monitored monthly for releases in accordance with a method specified in § 245.444(4)—(9).

(iii) Another test method is used that is determined by the Department to be at least as protective of human health and the environment as those listed in subparagraphs (i) and (ii). ]

(4) Repairs to secondary containment areas of tanks and piping, containment sumps and spill prevention equipment shall be tested for tightness according to the manufacturer's instructions, a code of practice developed by a Nationally recognized association or independent testing laboratory prior to returning the underground storage tank system to operating status. All other repairs to tanks, containment sumps and piping shall be tightness tested in accordance with §§ 245.421(b)(4)(ii), 245.444(2) and 245.445(2) (relating to performance standards for underground storage tank systems; methods of release detection for tanks; and methods of release detection for piping), respectively, prior to placing the underground storage tank system back into service except as provided as follows:

(i) The repaired tank is internally inspected in accordance with a code of practice developed by a **Nationally recognized association or an independent testing laboratory.**

(ii) Another test method is used that is determined by the Department to be at least as protective of human health and the environment as listed in subparagraph (i).

[ (6) ] (5) Within 6 months following the repair of a cathodically protected underground storage tank system, the cathodic protection system shall be tested in accordance with § 245.432(a)(2) and (3) (relating to operation and maintenance including corrosion protection) to ensure that it is operating properly.

[ (7) ] (6) Underground storage tank system owners and operators shall maintain records of each repair, including those in response to a release, for the remaining operating life of the underground storage tank system.

#### § 245.435. Reporting and recordkeeping.

(a) Owners and operators of underground storage tank systems shall **maintain records as required under this chapter and provide records, as requested, and cooperate fully with inspections, monitoring and testing conducted by the Department, certified installers or certified inspectors[ , as well as ]. Owners and operators shall provide records and cooperate fully in response to** requests for document submission, testing and monitoring by the owner or operator under section 107(c) of the act [ (35 P.S. § 6201.107(c)) ] (35 P.S. § 6021.107(c)).

(b) Owners and operators shall maintain required records either onsite at the [ **underground** ] storage tank facility or at a readily available alternative site. Records maintained at the [ **underground** ] storage tank facility shall be immediately available for inspection by the Department and certified inspectors. If records are maintained offsite, the records shall be easily obtained and provided for inspection or for review by the Department upon request.

[ (1) ] (c) *Reporting.* Owners and operators shall submit the following applicable information to the Department:

[ (i) ] (1) Notification in accordance with § 245.41 (relating to tank registration requirements) for under-

ground storage tank systems, including change of ownership, closure of [ a ] **an underground storage tank system**, change of substance stored and change of tank status, and certification of installation for new underground storage tank systems (§ 245.421(c) (relating to performance standards for underground storage tank systems)).

[ (ii) **Reports of confirmed, reportable releases (§ 245.305(d) (relating to reporting releases)).** ]

**(2) Reports of confirmed, releases (§ 245.305(c) (relating to reporting releases)).**

[ (iii) ] **(3)** A site characterization report (§ 245.310 (relating to site characterization report)).

[ (iv) ] **(4)** Remedial action plans (§ 245.311 (relating to remedial action plan)), remedial action progress reports (§ 245.312 (relating to remedial action)) and remedial action completion reports (§ 245.313 (relating to remedial action completion report)).

[ (v) ] **(5)** A notification before installation, permanent closure or change-in-service of a storage tank or storage tank system (§ 245.421(a)(2) and § 245.452(a) (relating to permanent closure and changes-in-service)).

[ (vi) ] **(6)** In the case of permanent closure, closure records to the Department when requested.

[ **(2) Permanent recordkeeping. Owners and operators shall maintain records for new systems and available records for existing systems for the operational life of the tank system and retain the records for a minimum of 1 year after the tank system has been removed. Permanent records include the following:** ]

**(d) Recordkeeping. Owners and operators shall maintain all of the following records for underground storage tank systems for the operational life of the system and retain the records for a minimum of 1 year after the underground storage tank system has been permanently closed:**

[ (i) ] **(1)** A corrosion expert's analysis of site corrosion potential if corrosion protection equipment is not used (§ 245.421(b)(1)(iv) and (2)(iii) and § 245.422(b)(2)(iv) and (c)(3) (relating to upgrading of existing underground storage tank systems)).

[ (ii) ] **(2)** The corrosion expert's design of an impressed current system or field-installed cathodic protection system or similar information that demonstrates compliance with §§ 245.421(b)(2)(ii)(B) and 245.422(b)(2) and (c)(2).

[ (iii) **Documentation of tank system installation, system modification and tank upgrade activities.** ]

**(3) Documentation of underground storage tank system installation, modification and upgrade activities.**

[ (iv) **Tank** ] **(4) Underground storage tank** system assessment records prior to upgrading in accordance with § 245.422(b).

[ (v) ] **(5)** Documentation of the installation testing and commissioning reports required for corrosion protection systems by manufacturers and National standards in accordance with § 245.432 (relating to operation and maintenance including corrosion protection).

[ (vi) **Documentation of underground storage tank system repairs, including those in response to a release (§ 245.434(6) (relating to repairs allowed)).** ]

**(6) Documentation of underground storage tank system repairs.**

[ (vii) ] **(7)** Tank lining evaluation reports (§ 245.432(d)).

[ (viii) ] **(8)** Documentation showing Department approval for a variance or alternate leak detection method (§§ 245.404 and 245.443 (relating to variances; and requirements for hazardous substance underground storage tank systems)).

[ **(3) Temporary recordkeeping. Owners and operators shall retain current temporary records for a minimum of 1 year after the tank system has been removed. Temporary records shall be maintained as follows:**

(i) **The current Storage Tank Registration/Permit Certificate.**

(ii) **Tank and pipe release detection records for the past 12 months, including written certifications or performance claims for the release detection methods in use and documentation of investigations of suspected releases (§§ 245.304 and 245.446 (relating to investigation of suspected releases; and release detection recordkeeping)).** ]

**(9) Documentation showing the owner or operator of an underground storage tank system is continuously participating in the USTIF.**

**(10) The current Storage Tank Registration/Permit Certificate.**

**(11) Tank and piping release detection records for the past 12 months, including written certifications or performance claims for the release detection methods in use (§ 245.446 (relating to release detection recordkeeping)).**

[ (iii) ] **(12)** The last annual check/testing, and maintenance records of leak detection equipment including probes, monitors, line leak detectors and automatic tank gauges that verify they are working properly and tested as required by the equipment manufacturers **and this chapter.**

[ (iv) ] **(13)** Documentation of the last three impressed current cathodic protection system inspection checks for each 60-day test period in accordance with § 245.432.

[ (v) ] **(14)** The last two cathodic protection surveys, done at 3-year intervals, on impressed current and galvanic cathodic protection systems in accordance with § 245.432.

[ (vi) ] **(15)** Results of the site investigation conducted at permanent closure or change-in-service (§ 245.455 (relating to closure records)).

[ (vii) ] **(16)** A properly completed closure report required under § 245.452(f).

[ (viii) ] **(17)** Documentation of the last test that demonstrates each containment sump[ , **dispenser pan and spill containment bucket** ] **and spill prevention equipment** installed or repaired after November 10, 2007, were tested and verified to be liquid-tight in accordance with [ §§ ] **§ 245.421(b)(4) and § 245.434(5) (relating to repairs allowed).**

[ (ix) ] (18) Documentation of operator training, including verification of training for current Class A, Class B and Class C operators, current list of operators and written instructions or procedures for Class C operators in accordance with § 245.436 (relating to operator training).

(19) For owners and operators conducting periodic testing of containment sumps and spill prevention equipment and evaluations of overfill prevention under § 245.437 (relating to periodic testing), documentation of the last test for the containment sump and spill prevention equipment and evaluation of the overfill prevention equipment.

(20) For owners and operators conducting periodic testing of containment sumps and spill prevention equipment under § 245.437(a)(1)(i), documentation showing that the equipment is double-walled and the integrity of both walls is periodically monitored in accordance with § 245.438(a)(1)(i) (relating to periodic operation and maintenance walkthrough inspections) for as long as the equipment is monitored by walkthrough inspection.

(21) Records of walkthrough inspections as required under § 245.438 for the past 12 months. Records must include a list of each area checked, whether each area checked was acceptable or needed action taken, a description of actions taken to correct an issue and delivery records if spill prevention equipment is checked less frequently than every 30 days due to infrequent deliveries.

(22) Documentation of investigations of suspected releases in accordance with § 245.304 (relating to investigation of suspected releases).

#### § 245.436. Operator training.

(a) *Requirement for trained operators.*

(1) An owner shall designate Class A, Class B and Class C operators for each underground storage tank system or **storage tank** facility that has underground storage tanks permitted to operate by the Department.

(2) A **storage tank** facility may not operate [ **after August 8, 2012,** ] unless operators have been designated and trained as required in this section, unless otherwise agreed upon by the Department.

(3) Trained operators shall be readily available to respond to suspected/confirmed releases, other unusual operating conditions and equipment shut-offs or failures.

(i) The Class A or Class B operator shall be available for immediate telephone consultation when a **storage tank** facility is in operation. A Class A or Class B operator must be able to be onsite at the storage tank facility within 24 hours.

(ii) [ **Facilities** ] **Storage tank facilities** that dispense motor fuel for retail sales to the general public shall be manned by an onsite Class C operator when open for business with the public in accordance with [ **37 Pa. Code §§ 13.115 and 13.117** ] **34 Pa. Code §§ 14a.115 and 14a.117** (relating to attended self-service stations; and supervision of dispensing). During an unexpected absence of a Class C operator, such as employee no-shows or call-offs, an onsite Class A or Class B operator may fill-in or temporarily substitute for the Class C operator. [ **Facilities** ] **Storage tank facilities** that do not dispense motor fuel to the general public may be manned based on the facility owner's requirements

and routine operational needs. **Emergency contact information and written instructions and procedures in the event of an emergency shall be immediately available upon request.**

(iii) [ **For unmanned facilities, a Class C operator shall be available for immediate telephone consultation and shall be able to be onsite within 2 hours of being contacted. Emergency contact information shall be prominently displayed at the site. Emergency procedures for users of unmanned facilities shall also be prominently posted at the site.** ] **For storage tank facilities that do not dispense motor fuel for retail sales to the general public, a Class C operator shall be available for immediate telephone consultation and shall be able to be onsite within 2 hours of being contacted. Emergency contact information and written instructions and procedures in the event of an emergency must be prominently displayed at the site and visible to the storage tank user.**

[ (4) Designated operators shall successfully complete required training under subsection (c) by **August 8, 2012.**

(5) ] (4) A person may be designated for more than one class of operator.

(b) *Operator classes.*

(1) *Class A operator.* A Class A operator has primary responsibility to operate and maintain the underground storage tank system and facility. The Class A operator's responsibilities typically include managing resources and personnel, such as establishing work assignments, to achieve and maintain compliance with regulatory requirements. In general, this person focuses on the broader aspects of the statutory and regulatory requirements and standards necessary to properly operate and maintain the underground storage tank system and facility.

(i) A Class A operator assists the owner by ensuring that underground **storage** tank systems are properly installed and expeditiously repaired, and records of system installation, modification and repair are retained and made available to the Department and certified IUM inspectors.

(ii) A Class A operator shall be familiar with training requirements for each class of operator and may provide required training for Class C operators.

(iii) A Class A operator may prepare site drawings that indicate equipment locations for Class C operators and routine maintenance checklists for Class B operators. [ **(See PEI RP 900—"Recommended Practices for the Inspection and Maintenance of UST Systems.")** ]

(iv) Department-certified [ **companies,** ] installers and inspectors with current underground storage tank UMX, **UMI** or IUM certification categories may perform Class A operator duties when employed or contracted by the tank owner to perform these functions.

(A) Department-certified installers [ **, inspectors and companies** ] **and inspectors** identified in this subparagraph are excluded from required training under subsection (c), unless required by the Department to successfully complete mandatory operator training under § 245.411(d) (relating to inspection frequency).

(B) A certified IUM inspector may not perform [ **a facility operation inspection** ] **an inspection as re-**

**quired in § 245.411** for a facility where the inspector is also the designated Class A operator. (See § 245.106 (relating to conflict of interest).)

(2) *Class B operator.* A Class B operator implements applicable underground storage tank regulatory requirements and standards in the field or at the storage tank facility. This person oversees and implements the day-to-day aspects of operations, maintenance and recordkeeping for the underground storage [ **tanks** ] **tank systems** at one or more facilities. For example, the **Class B** operator ensures that release detection methods, release prevention equipment and related recordkeeping and reporting requirements are met, relevant equipment manufacturer's or third-party performance standards are available and followed, and appropriate persons are trained to properly respond to potential emergencies caused by releases or spills from underground storage tank systems at the facility.

(i) A Class B operator checks spill [ **prevention and overfill control** ] **and overfill prevention** equipment and corrosion protection equipment to ensure that they are functioning properly and that any required system tests are performed at required intervals.

(ii) A Class B operator assists the owner by ensuring that release detection equipment is operational, release detection is performed at the proper intervals and release detection records are retained and made available to the Department and certified IUM inspectors.

(iii) A Class B operator shall be totally familiar with Class B and Class C operator responsibilities, and may provide required training for Class C operators.

(iv) Department-certified [ **companies,** ] installers and inspectors with current underground storage tank UMX, UMI or IUM certification categories may perform Class B operator duties when employed or contracted by the tank owner to perform these functions.

(A) Department-certified installers[ , **inspectors and companies** ] **and inspectors** identified in this subparagraph are excluded from required training under subsection (c), unless required by the Department to successfully complete mandatory operator training under § 245.411(d).

(B) A certified IUM inspector may not perform [ **a facility operation inspection** ] **an inspection as required in § 245.411** for a facility where the inspector is also the designated Class B operator. (See § 245.106.)

(3) *Class C operator.* A Class C operator is the first line of response to events indicating emergency conditions **and may control or monitor the dispensing or sale of regulated substances.** This person is responsible for responding to alarms or other indications of emergencies caused by spills or releases from underground storage tank systems and **associated** equipment failures. The Class C operator shall notify the Class A or Class B operator and appropriate emergency responders when necessary, based on the nature or type of emergency.

[ (i) **A Class C operator may control or monitor the dispensing or sale of regulated substances.**

(ii) **After June 28, 2010, written instructions or procedures shall be provided and visible at manned storage tank facilities, and be readily available for unmanned facilities for persons performing duties of the Class C operator to follow and to provide notification necessary in the event of emergency conditions.**

**(iii) There may be more than one Class C operator at a storage tank facility, but not all employees of a facility are necessarily Class C operators. ]**

(c) *Required training.*

(1) *Class A operators.* A Class A operator shall successfully complete a training course approved under § 245.141 (relating to training approval) [ **or recognized by the Department under paragraph (5)** ] that includes a general knowledge of underground storage tank system requirements. Training must provide information that should enable the operator to make informed decisions regarding compliance and to ensure that appropriate persons are fulfilling operation, maintenance and recordkeeping requirements and standards of this chapter or Federal underground storage tank requirements in 40 CFR Part 280 (relating to technical standards and corrective action requirements for owners and operators of underground storage tanks (UST)), or both, including the following:

(i) Spill and overfill prevention.

(ii) Release detection and related reporting requirements.

(iii) Corrosion protection.

(iv) Emergency response.

(v) Product and equipment compatibility.

(vi) Financial responsibility.

(vii) Notification and storage tank registration requirements.

(viii) Temporary and permanent closure requirements.

(ix) Operator training requirements.

(2) *Class B operators.* A Class B operator shall successfully complete a training course approved under § 245.141 [ **or recognized by the Department under paragraph (5)** ] that includes an in-depth understanding of operation and maintenance aspects of underground storage tank systems and related regulatory requirements. Training must provide specific information on the components of underground storage tank systems, materials of construction, methods of release detection and release prevention applied to underground storage tank systems and components. Training must address operation and maintenance requirements [ **of** ] **in** this chapter or Federal underground storage tank requirements in 40 CFR Part 280, or both, including the following:

(i) Spill and overfill prevention.

(ii) Release detection and related reporting requirements.

(iii) Corrosion protection and related testing.

(iv) Emergency response.

(v) Product and equipment compatibility.

(vi) Reporting and recordkeeping requirements.

(vii) Class C operator training requirements.

(3) *Class C operators.* At a minimum, training provided by the tank owner or Class A or Class B operator must **be site-specific and** enable the Class C operator to take action in response to emergencies, such as situations posing an immediate danger or threat to the public or to the environment and that require immediate action, caused by spills or releases and alarms from an underground storage tank system. Training must include writ-

ten instructions or procedures for the Class C operator to follow and to provide notification necessary in the event of emergency conditions.

(4) *Class A and Class B operators.* Successful completion for Class A and Class B operators means attendance for the entire training course and demonstration of knowledge of the course material as follows:

(i) Receipt of a passing grade under § 245.141(b)(4), on an examination of material presented in the training course, or demonstration through practical (hands-on) application to the trainer, operation and maintenance checks of underground storage tank equipment, including performance of release detection at the [ **underground** ] storage tank facility, at the conclusion of onsite training.

(ii) Receipt of a training certificate by an approved trainer upon verification of successful completion of training under this paragraph.

[ (5) *Reciprocity.* The Department may also recognize successful completion of Class A and Class B operator training on regulatory standards consistent with 40 CFR Part 280, which is recognized by other states or implementing agencies and which is approved by the EPA as meeting operator training grant guidelines published by the EPA.

(6) ] (5) *Costs of training.* The tank owner or operator shall incur the costs of the training.

(d) *Timing of training.*

(1) An owner shall ensure that Class A, Class B and Class C operators are trained [ **as soon as practicable after December 26, 2009, contingent upon availability of approved training providers, but by August 8, 2012** ] and identified on a form provided by the Department prior to placing the underground storage tank system into use.

(2) When a Class A or Class B operator is replaced [ , **after August 8, 2012** ], a new operator shall be trained within 30 days of assuming duties for that class of operator.

(3) Class C operators shall be trained before assuming duties of a Class C operator. [ **After June 28, 2010, written** ] **Written** instructions or procedures shall be provided to Class C operators to follow and to provide notification necessary in the event of emergency conditions. Class C operators shall be briefed on these instructions or procedures at least annually (every 12 months), which may be concurrent with annual safety training required by the Occupational Safety and Health Administration, under 29 CFR Part 1910 (relating to Occupational Safety and Health Standards).

(e) *Documentation.*

(1) The owner of [ **an underground** ] a storage tank facility shall prepare a list of designated operators. The list must represent the current Class A, Class B and Class C operators for the [ **underground** ] storage tank facility and include:

(i) The name of each operator, class of operation trained for and the date each operator successfully completed initial training and refresher training, if any.

(ii) For Class A and Class B operators that are not permanently onsite or assigned to more than one facility, telephone numbers to contact the operators.

(2) A copy of the certificates of training for Class A and Class B operators shall be on file and readily available and a copy of the facility list of Class A, Class B and Class C operators and Class C operator instructions or procedures shall be kept onsite and immediately available for [ **manned storage tank facilities and readily available for unmanned facilities.** See § 245.435(b)(3)(ix) (relating to reporting and record-keeping). ] **storage tank facilities that dispense motor fuel for retail sales to the general public. Storage tank facilities that do not dispense motor fuel for retail sales to the general public shall have this information readily available.** (See § 245.435(d)(18) (relating to reporting and recordkeeping).)

(3) Class C operator or owner contact information, including names and telephone numbers, and emergency procedures[ , ] shall be conspicuously posted at [ **unmanned facilities** ] **storage tank facilities that do not dispense motor fuel for retail sales to the general public.**

(*Editor's Note:* Sections 245.437 and 245.438 are proposed to be added and printed in regular type to enhance readability.)

#### § 245.437. Periodic testing.

(a) Owners and operators of underground storage tank systems shall ensure installed equipment for release detection and prevention is operating properly by meeting all of the following requirements:

(1) Containment sumps used for interstitial monitoring of piping in accordance with § 245.444(6) (relating to methods of release detection for tanks) and spill prevention equipment must meet one of the following:

(i) When the containment sump or spill prevention equipment is double-walled, the integrity of both walls shall be periodically monitored by maintenance walk-through inspections as required under § 245.438 (relating to periodic operation and maintenance walkthrough inspections). If walkthrough inspections are discontinued, the owner and operator shall comply with subparagraph (ii) and conduct a test within 30 days of the last inspection.

(ii) Containment sumps and spill prevention equipment shall be tested at least once every 3 years to ensure the equipment is liquid-tight by using vacuum, pressure or liquid.

(2) Overfill prevention equipment shall be evaluated at least once every 3 years. At a minimum, the evaluation shall ensure that overfill prevention equipment is set to activate at the correct level specified in § 245.421(b)(3) (relating to performance standards for underground storage tank systems) and must activate when the regulated substance stored reaches that level.

(3) Electronic and mechanical components of release detection equipment shall be tested for proper operation at least annually. At a minimum, required tests, as applicable to the facility, shall cover all of the following components and criteria:

(i) Automatic tank gauges and other controllers must be tested by:

- (A) Testing alarm.
- (B) Verifying system configuration.
- (C) Testing battery backup.

(ii) Probes and sensors shall be tested:

- (A) Inspecting for residual buildup.

- (B) Ensuring that floats move freely.
- (C) Ensuring the shaft is not damaged.
- (D) Ensuring cables are free of kinks and breaks.
- (E) Testing alarm operability or running condition and communication with controller.

(iii) Automatic line leak detectors shall be tested to meet criteria in § 245.445 (relating to methods of release detection for piping) by simulating a leak.

(iv) Vacuum pumps and pressure gauges shall be tested to ensure proper communication with sensors and controller.

(v) Handheld electronic sampling equipment associated with groundwater and vapor monitoring shall be tested to ensure proper operation.

(b) Owners and operators of underground storage tank systems shall ensure tests and evaluations required under this section are performed in accordance with one of the following criteria:

- (1) Requirements developed by the manufacturer.
- (2) Code of practice developed by a Nationally recognized association or independent testing laboratory.
- (3) Requirements determined by the Department to be no less protective of human health and the environment than the requirements in paragraphs (1) and (2).

(c) Owners and operators shall comply with the periodic testing requirements in this section as follows:

(1) For underground storage tank systems installed on or before \_\_\_\_\_ (*Editor's Note:* The blank refers to the effective date of adoption of this proposed rulemaking.), owners and operators shall ensure tests and inspections as required under this section are performed prior to the next required underground storage tank inspection occurring after \_\_\_\_\_ (*Editor's Note:* The blank refers to 365 days after the effective date of adoption of this proposed rulemaking.), or not later than \_\_\_\_\_ (*Editor's Note:* The blank refers to 1,095 days after the effective date of adoption of this proposed rulemaking.), whichever occurs first.

(2) For underground storage tank systems installed after \_\_\_\_\_ (*Editor's Note:* The blank refers to the effective date of adoption of this proposed rulemaking.), these requirements apply at installation.

(d) Test liquids used to perform tests as required in this chapter shall be reused, treated or disposed in accordance with applicable requirements in Chapters 91, 92a, 260a—270a and 287—299.

**§ 245.438 Periodic operation and maintenance walkthrough inspections.**

(a) To properly operate and maintain spill prevention and release detection equipment part of underground storage tank systems, no later than \_\_\_\_\_ (*Editor's Note:* The blank refers to 365 days after the effective date of adoption of this proposed rulemaking.), owners and operators shall conduct walkthrough inspections at a minimum of every 30 days, with the exception of spill prevention equipment at underground storage tank systems receiving deliveries at intervals greater than every 30 days, which may be checked prior to each delivery. The walkthrough inspection shall include, at a minimum, all of the following:

- (1) For spill prevention equipment:
  - (i) Visually check for damage.

- (ii) Remove liquid or debris.
- (iii) Check for and remove obstructions in the fill pipe.
- (iv) Check the fill cap to make sure it is securely on the fill pipe.

(v) For double-walled spill prevention equipment with interstitial monitoring, check for a leak in the interstitial area.

(2) For release detection equipment:

(i) Check to make sure the release detection equipment is operating with no alarms or other unusual operating conditions present.

(ii) Ensure records of release detection testing are reviewed and current.

(b) To properly operate and maintain containment sumps and handheld release detection equipment part of underground storage tank systems, no later than \_\_\_\_\_ (*Editor's Note:* The blank refers to 365 days after the effective date of adoption of this proposed rulemaking.), owners and operators shall conduct walk-through inspections at a minimum of every 12 months that include, at a minimum, all of the following:

- (1) For containment sumps:
  - (i) Visually check for damage and the presence of liquid or debris.
  - (ii) Remove liquid or debris.
  - (iii) For double-walled sumps with interstitial monitoring, check for a leak in the interstitial area.

(2) For handheld release detection equipment, check devices such as tank gauge sticks or groundwater bailers for operability and serviceability.

(c) Owners and operators of underground storage tank systems shall ensure operation and maintenance walk-through inspections required under this section are performed in accordance with one of the following criteria, unless the Department determines that a more stringent requirement is necessary to avoid releases of regulated substances from underground storage tank systems:

- (1) Requirements developed by the manufacturer.
- (2) Code of practice developed by a Nationally recognized association or independent testing laboratory.
- (3) Requirements determined by the Department to be no less protective of human health and the environment than the requirements in paragraphs (1) and (2).

**RELEASE DETECTION**

**§ 245.441. General requirements for underground storage tank systems.**

(a) Owners and operators of new and existing underground storage tank systems shall provide a method, or combination of methods, of release detection that:

(1) Can detect a release from any portion of the tank and the connected underground piping that routinely contains product.

(2) Is installed, calibrated, operated and maintained in accordance with the manufacturer's instructions, including routine maintenance and service checks for operability or running condition.

(3) Meets the performance requirements in § 245.444 or § 245.445 (relating to methods of release detection for tanks; and methods of release detection for piping), with any performance claims and their manner of determina-

tion described in writing by the equipment manufacturer or installer. In addition, methods [ **used after the date shown in the following table corresponding with the specified method except for methods permanently installed prior to that date, shall** ] in

**§§ 245.444 and 245.445 must** be capable of detecting the leak rate or quantity specified for that method in the corresponding section of this subchapter[ , **also shown in the table, ]** with a probability of detection (Pd) of 0.95 and a probability of false alarm (Pfa) of 0.05.

| <i>[ Method</i>                             | <i>Section</i>    | <i>Date After Which Pd/Pfa Must be Characterized</i> |
|---|-------------------|--|
| <b>Manual Tank Gauging</b>                  | <b>245.444(2)</b> | <b>December 22, 1990</b>                             |
| <b>Tank Tightness Testing</b>               | <b>245.444(3)</b> | <b>December 22, 1990</b>                             |
| <b>Automatic Tank Gauging</b>               | <b>245.444(4)</b> | <b>December 22, 1990</b>                             |
| <b>Statistical Inventory Reconciliation</b> | <b>245.444(8)</b> | <b>December 22, 1990</b>                             |
| <b>Automatic Line Leak Detectors</b>        | <b>245.445(1)</b> | <b>September 22, 1991</b>                            |
| <b>Line Tightness Testing</b>               | <b>245.445(2)</b> | <b>December 22, 1990 ]</b>                           |

(i) Test method performance claims shall be verified by an independent third party using leak rates that are unknown to the tester.

(ii) When the EPA evaluation protocol for a method changes, the manufacturer shall reevaluate the method within 24 months of the new protocol's effective date for its continued use in this Commonwealth.

(b) When a release detection method operated in accordance with the performance standards in §§ 245.444 and [ § ] 245.445 indicates a release may have occurred, owners and operators shall investigate the suspected release in accordance with Subchapter D (relating to corrective action process for owners and operators of storage tanks and storage tank facilities and other responsible parties).

(c) Owners and operators of underground storage tank systems shall comply with the release detection requirements [ **of** ] in this subchapter.

(d) An existing tank system that cannot apply a method of release detection that complies with this subchapter must immediately empty the tank and complete the closure procedures in §§ 245.451—245.455 (relating to out-of-service underground storage tank systems and closure).

[ **(e) For existing tank systems equipped with double-walled pressurized piping that routinely contains regulated substance, and containment sumps at the piping junctures and dispensers, the containment sumps and dispenser pan sumps of these systems shall be monitored monthly beginning November 10, 2009, and monthly monitoring records maintained for the last 12 months of monitoring. Monitoring shall be accomplished by one of the following methods:**

(1) **Monthly visual check of the sumps.**

(2) **Interstitial monitoring under § 245.444(7) (relating to methods of release detection for tanks) (also see secondary containment—liquid sump sensors in PEI RP 100). ]**

§ 245.442. [ **Requirements** ] Periodic monitoring requirements for petroleum underground storage tank systems.

(a) [ **Owners and operators of underground storage tank systems installed after November 10, 2007, shall perform interstitial monitoring, at least once**

**every 30 days, in accordance with § 245.444(7) (relating to methods of release detection for tanks) of both the tank and underground piping that routinely contains a product (regulated substance). In addition, pressurized piping for these systems must be equipped and operated with an automatic line leak detector with an automatic pump shut off device in accordance with § 245.445(1) (relating to methods of release detection for piping). ] Owners and operators of underground storage tank systems that store petroleum installed after November 10, 2007, and underground piping installed after November 10, 2007, that routinely contain regulated substances shall perform interstitial monitoring in accordance with § 245.444(6) (relating to methods of release detection for tanks) at least once every 30 days. Underground piping installed after November 10, 2007, that conveys regulated substances under pressure must be equipped and operated with an automatic line leak detector with an automatic pump shut off device in accordance with § 245.445(1) (relating to methods of release detection for piping). Release detection is not required for suction piping that meets the requirements in subsection (b)(2)(ii)(A)—(E).**

(b) Owners and operators of petroleum underground storage tank systems installed on or before November 10, 2007, shall provide release detection for tanks and piping as follows:

(1) *Tanks.* Tanks shall be monitored at least every 30 days for releases using one of the methods [ **listed in § 245.444(4)—(9) except that: ] in § 245.444(1)—(8).**

[ (i) **Underground storage tank systems that meet the performance standards in § 245.421 (relating to performance standards for underground storage tank systems), may use monthly inventory control requirements in § 245.444(1) or (2), and tank tightness testing (conducted in accordance with § 245.444(3)) until 10 years after the tank was first installed or upgraded under § 245.422(b), but not later than December 22, 2008.**

(ii) **Underground storage tank systems with a capacity of 1,001 to 2,000 gallons may use manual tank gauging, conducted in accordance with § 245.444(2) and a tank tightness test at least every 5 years until November 10, 2017.**

(iii) **Tanks with a capacity of 550 gallons or less may use manual tank gauging, conducted in ac-**

cordance with § 245.444(2) as long as they continue to meet requirements of this subchapter.

(iv) Tanks with a capacity of 551 to 1,000 gallons using the longer test times specified may use manual tank gauging, conducted in accordance with § 245.444(2) as long as they continue to meet requirements of this subchapter. ]

(2) *Piping.* Underground piping that routinely contains regulated substances shall be monitored for releases in a manner that meets one of the following requirements:

\* \* \* \* \*

**§ 245.443. Requirements for hazardous substance underground storage tank systems.**

Owners and operators of hazardous substance underground storage tank systems shall provide release detection that meets the following requirements:

(1) [ **Release detection at existing underground storage tank systems shall meet the requirements for petroleum underground storage tank systems in § 245.442 (relating to requirements for petroleum underground storage tank systems). By December 22, 1998, all existing hazardous substance underground storage tank systems shall meet the release detection requirements for new systems in paragraph (2). ] Hazardous substance underground storage tank systems installed after November 10, 2007, shall perform interstitial monitoring in accordance with § 245.444(6) (relating to methods of release detection for tanks).**

(2) Release detection at [ **new** ] hazardous substance underground storage tank systems [ **shall** ] installed on or before November 10, 2007, must meet the following requirements:

(i) Secondary containment systems.

(A) Secondary containment systems shall be designed, constructed and installed to:

(I) Contain regulated substances released from the tank system until they are detected and removed.

(II) Prevent the release of regulated substances to the environment at any time during the operational life of the underground storage tank system.

(III) Be checked for evidence of a release at least every 30 days.

[ (B) The provisions of § 264.193 (relating to secondary containment) may be used to comply with the requirements of this paragraph. ]

(3) The provisions of 40 CFR 264.193 (relating to containment and detection of releases) may be used to comply with the requirements in this paragraph.

[ (ii) ] (i) Double walled tanks shall be designed, constructed and installed to:

(A) Contain a release from any portion of the inner tank within the outer wall.

(B) Detect the failure of the inner wall.

[ (iii) ] (ii) External liners, including vaults, shall be designed, constructed and installed to:

(A) Contain 100% of the capacity of the largest tank within its boundary.

(B) Prevent the interference of precipitation or ground-water intrusion with the ability to contain or detect a release of regulated substances.

(C) Surround the tank completely making it capable of preventing lateral as well as vertical migration of regulated substances.

[ (iv) ] (4) Underground piping shall be equipped with secondary containment that satisfies the requirements [ of ] in subparagraph (i) for example, trench liners, jacketing or double-walled pipe. In addition, underground piping that conveys regulated substances under pressure shall be equipped with an automatic line leak detector in accordance with § 245.445(1) (relating to methods of release detection for piping).

[ (v) ] (5) Other methods of release detection may be used if owners and operators:

[ (A) ] (1) Demonstrate to the Department that an alternate method can detect a release of the stored substance as effectively as any of the methods allowed in [ § 245.444(2)—(9) (relating to methods of release detection for tanks) ] § 245.444(1)—(8) can detect a release of petroleum.

[ (B) ] (ii) Provide information to the Department on effective corrective action technologies, health risks and chemical and physical properties of the stored substance, and the characteristics of the underground storage tank site.

[ (C) ] (iii) Obtain approval from the Department to use the alternate release detection method before the installation and operation of the new underground storage tank system.

**§ 245.444. Methods of release detection for tanks.**

[ **Each method of release detection for tanks used to meet the requirements of § 245.442 (relating to requirements for petroleum underground storage tank systems) shall be conducted in accordance with the following:**

(1) ***Inventory control.*** Product inventory control, or another test of equivalent performance, shall be conducted monthly to detect a release of at least 1.0% of flow-through plus 130 gallons on a monthly basis in the following manner:

(i) **Inventory volume measurements for regulated substance inputs, withdrawals and the amount still remaining in the tank are recorded each operating day.**

(ii) **The equipment used is capable of measuring the level of product over the full range of the tank's height to the nearest 1/8 of an inch.**

(iii) **The regulated substance inputs are reconciled with delivery receipts by measurement of the tank inventory volume before and after delivery.**

(iv) **Deliveries are made through a drop tube that extends to within 1 foot of the tank bottom.**

(v) **Product dispensing is metered and recorded within an accuracy of at least 6 cubic inches for every 5 gallons of product withdrawn.**

(vi) **Dispenser meters shall be calibrated.**

(vii) **The measurement of any water level in the bottom of the tank is made to the nearest 1/8 of an inch at least once a month.**

(2) *Manual tank gauging.* Manual tank gauging shall meet the following requirements: ]

Each method of release detection for tanks used to meet the requirements in §§ 245.441 and 245.442 (relating to general requirements for underground storage tank systems; and periodic monitoring requirements for petroleum underground storage tank systems) shall be conducted in accordance with all of the following:

(1) *Manual tank gauging.* Manual tank gauging shall meet the following requirements:

(i) Tank liquid level measurements are taken at the beginning and ending of a period of at least 36 hours

| <i>Nominal Tank Capacity</i>         | <i>Minimum Duration of Test</i> | <i>Weekly Standard (one test)</i> | <i>Monthly Standard (average of) four tests</i> | <i>Periodic Tightness Test Required</i> |
|--------------------------------------|---------------------------------|-----------------------------------|---|---|
| 550 gallons or less                  | 36 hours                        | 10 gallons                        | 5 gallons                                       | No                                      |
| 551—1,000 gallons: 64" diameter tank | 44 hours                        | 9 gallons                         | 4 gallons                                       | No                                      |
| 551—1,000 gallons: 48" diameter tank | 58 hours                        | 12 gallons                        | 6 gallons                                       | No                                      |
| 551—1,000 gallons                    | 36 hours                        | 13 gallons                        | 7 gallons                                       | Yes                                     |
| <b>[ 1,001—2,000 gallons</b>         | <b>36 hours</b>                 | <b>26 gallons</b>                 | <b>13 gallons</b>                               | <b>Yes ]</b>                            |

(v) [ Only tanks of 550 gallons or less nominal capacity may use this as the sole method of release detection. Tanks of 551 to 2,000 gallons may use the method in place of manual inventory control in paragraph (1). Tanks of greater than 2,000 gallons nominal capacity may not use this method to meet the requirements of this section. ] Owners and operators of underground storage tanks of greater than 1,000 gallons nominal capacity may not use this method to meet the requirements in this section.

[ (3) ] (2) *Tank tightness testing.* Tank tightness testing, or another test of equivalent performance, must be capable of detecting a 0.1 gallon per hour leak rate from any portion of the tank that routinely contains product while accounting for the effects of thermal expansion or contraction of the product, vapor pockets, tank deformation, evaporation or condensation, and the location of the water table.

[ (4) ] (3) *Automatic tank gauging.* Equipment for automatic tank gauging that tests for the loss of product and conducts inventory control must meet one of the following requirements:

(i) The automatic product level monitor test can detect a 0.2 gallon per hour leak rate from any portion of the tank that routinely contains product.

(ii) [ For tank gauges installed prior to December 22, 1990, that do not meet the requirements of subparagraph (i), inventory control, or another test of equivalent performance, shall also be conducted in accordance with paragraph (1). Tank gauges shall be replaced or be certified by an independent third party verifying the gauge's ability to detect the leak rate in subparagraph (i) following EPA evaluation protocol by November 10, 2008. ] Tank gauges shall be certified by an independent third

during which no liquid is added to or removed from the tank.

(ii) Level measurements are based on an average of two consecutive stick readings at both the beginning and ending of the period.

(iii) The equipment used is capable of measuring the level of product over the full range of the tank's height to the nearest 1/8 of an inch.

(iv) A leak is suspected and subject to Subchapter D (relating to corrective action process for owners and operators of storage tanks and storage tank facilities and other responsible parties) if the variation between beginning and ending measurements exceeds the weekly or monthly standards in the following table:

party verifying the gauge's ability to detect the leak rate in subparagraph (i) following EPA evaluation protocol.

[ (5) ] (4) *Vapor monitoring.* Testing or monitoring for vapors within the soil gas of the excavation zone must meet the following requirements:

\* \* \* \* \*

[ (6) ] (5) *Groundwater monitoring.* Testing or monitoring for liquids on the groundwater must meet the following requirements:

\* \* \* \* \*

[ (7) ] (6) *Interstitial monitoring.* Interstitial monitoring between the underground storage tank system and a secondary barrier immediately around or beneath it may be used, but only if the system is designed, constructed and installed to detect a leak from any portion of the tank that routinely contains product and also meets one of the following requirements:

(i) For double-walled underground storage tank systems, the sampling or testing method can detect a release through the inner wall in any portion of the tank that routinely contains product.

(ii) For underground storage tank systems with a secondary barrier within the excavation zone, the sampling or testing method used can detect a release between the underground storage tank system and the secondary barrier.

\* \* \* \* \*

(F) Monitoring wells are clearly marked and secured to avoid unauthorized access and tampering in accordance with [ § 245.432(5) ] § 245.432(b).

(iii) For tanks with an internally fitted liner, an automated device can detect a release between the inner wall of the tank and the liner, and the liner is compatible with the substance stored.

[ (8) ] (7) *Statistical Inventory Reconciliation (SIR)*. SIR shall meet the performance standards of paragraph [ (9)(i) ] (8)(i) for monthly monitoring.

(i) The owner or operator shall follow the instructions of the SIR manufacturer's protocol.

(ii) A separate report for each tank monitored shall be maintained by the [ owner/operator ] **owner or operator** in accordance with § 245.446(2) (relating to release detection recordkeeping). Each report shall meet the following requirements:

[ (A) Owners and operators shall have reports available within 20 days of the end of the monitored period.

(B) [ (A) ] A valid report shall include the calculated leak rate, positive for out of tank and negative for into tank, minimum detectable leak rate (MDL), leak detection threshold, probability of detection (Pd) and probability of false alarm (Pfa) which the supplied data supports.

[ (C) ] (B) A valid report shall also include one of the following test results:

(I) If the calculated leak rate, absolute value, is less than the leak threshold and the MDL is less than or equal to the certified performance standard [ (paragraph (3), paragraph (9)(i) or § 245.445(2) (relating to methods of release detection for piping) ] , the test result is "pass."

(II) If the calculated leak rate, absolute value, is greater than the leak threshold, the test result is "fail."

(III) If the MDL exceeds the certified performance standard and the calculated leak rate is less than the leak threshold, the test result is "inconclusive." An inconclusive result is considered a suspected leak and shall be investigated in accordance with § 245.304 (relating to investigation of suspected releases).

[ (9) ] (8) *Other methods*. Other types of release detection methods, or a combination of methods, may be used if the owner or operator can demonstrate to the Department that one of the following exists:

(i) It can detect a 0.2 gallon per hour leak rate or a release of 150 gallons within a month with a probability of detection of 0.95 and a probability of false alarm of 0.05.

(ii) It can detect a release as effectively as any of the methods allowed in paragraphs [ (3)—(8) ] (2)—(7). In comparing methods, the Department will consider the size of release that the method can detect and the frequency and reliability with which it can be detected. If the method is approved, the owner and operator shall comply with conditions imposed by the Department on its use to ensure the protection of human health and the environment.

#### § 245.445. Methods of release detection for piping.

Each method of release detection for piping used to meet the requirements [ of ] **in** § 245.442 (relating to **periodic monitoring** requirements for petroleum underground storage tank systems) shall be conducted in accordance with the following:

(1) *Automatic line leak detectors*. Methods which alert the operator to the presence of a leak by restricting or automatically shutting off the flow of regulated substances through piping or triggering an audible or visual alarm may be used only if they detect leaks of 3 [ gallons

per hour ] **gallons-per-hour** at 10 pounds per square inch line pressure within 1 hour. An annual test of the operation of the **automatic line** leak detector shall be conducted in accordance with the manufacturer's requirements. [ **Underground** ]

(i) **Except as provided in subparagraph (ii), underground storage tank systems installed or replaced after November 10, 2007, must have automatic line leak detectors with an automatic pump shut-off device that shuts off the flow of regulated substances through pressurized piping that routinely contains and conveys product from the tank (See § 245.421(a)(1) (relating to performance standards for underground storage tank systems)).**

**(ii) Owners and operators of underground storage tank systems that store fuel solely for use by emergency power generators shall install methods that trigger an audible or visual alarm to meet the requirements in this subsection.**

**(iii) Except as provided in subparagraph (ii), pressurized piping installed on or before November 10, 2007, that conveys regulated substances must be equipped with a method that restricts or automatically shuts off the flow of regulated substances and meets the requirements in this section if the storage tank facility is unattended while open for business.**

(2) *Line tightness testing*. A periodic test of piping may be conducted only if it can detect a 0.1 gallon per hour leak rate at 1 1/2 times the operating pressure.

(3) *Applicable tank methods*. The methods in [ § 245.444(5)—(9) ] § 245.444(4)—(8) (relating to methods of release detection for tanks) may be used if they are designed to detect a release from any portion of the underground piping that routinely contains regulated substances.

#### OUT-OF-SERVICE UNDERGROUND STORAGE TANK SYSTEMS AND CLOSURE

§ 245.451. Temporary [ **closure** ] **removal from service** (out-of-service).

(a) When an underground storage tank system is temporarily [ **closed** ] **removed from service** (out-of-service), the owner shall complete and submit an amended registration form to the Department within 30 days in accordance with § 245.41 (**relating to** tank registration requirements).

(b) Owners and operators shall continue operation and maintenance of corrosion protection in accordance with § 245.432 (relating to operation and maintenance including corrosion protection), while the tank is temporarily out-of-service[ , **and release detection in accordance with §§ 245.441—245.446 (relating to release detection) until the tank is empty** ]. Records shall continue to be kept in accordance with § 245.435 (relating to reporting and recordkeeping).

(c) Owners and operators shall empty a tank being placed temporarily out-of-service [ **within 30 days or** ] prior to submission of the registration form to the Department[ , **whichever occurs first,** ] unless directed otherwise by the Department. Removed contents shall be reused, treated or disposed of in accordance with State and Federal requirements, such as Chapter 299 (relating to storage and transportation of residual waste) and 29 CFR **Part** 1910 (relating to occupational safety and health standards). Release detection is not required as long as

the underground storage tank system is empty. The underground storage tank system is empty when all materials have been removed using commonly employed practices so that no more than 2.5 centimeters (1 inch) of residue, or 0.3% by weight of the total capacity of the underground storage tank system, remain in the system. Owners and operators shall maintain release detection records required under § 245.446(2) (relating to release detection recordkeeping) for the most recent 12-month period of active operation.

(d) Subchapter D (relating to corrective action process for owners and operators of storage tanks and storage tank facilities and other responsible parties) shall be complied with if a release is suspected or confirmed.

(e) **[ Routine facility inspection requirements at 3-year intervals in § 245.411(c) (relating to inspection frequency) may be delayed for a storage tank facility with all tank systems temporarily closed, unless notified otherwise by the Department under § 245.21(c) and (d) (relating to tank handling and inspection requirements). A delayed inspection shall be performed on a storage tank system or facility in temporary closure when returning the tank system to operating status. ] Inspection requirements at 3-year intervals in § 245.411(c) (relating to inspection frequency) shall be performed on an underground storage tank system in temporary out-of-service status.**

(f) When an underground storage tank system is temporarily **[ closed ] removed from service** for 3 months or more, owners and operators shall also comply with the following requirements:

(1) Vent lines shall be open and functioning.

(2) All other lines, pumps, manways and ancillary equipment shall be capped and secure.

(g) When an underground storage tank system is temporarily **[ closed ] removed from service** for more than 12 months, owners and operators shall:

(1) Permanently close the underground storage tank system if it does not meet either performance standards in § 245.421 (relating to performance standards for underground storage tank systems) for new underground storage tank systems or the upgrading requirements in § 245.422 (relating to upgrading of existing underground storage tank systems), except that the spill and overflow equipment requirements do not have to be met.

(2) Permanently close the substandard underground storage tank systems at the end of this 12-month period in accordance with §§ 245.452—245.455, unless the Department provides an extension of the 12-month temporary **[ closure ] out-of-service** period.

(3) Complete a site assessment in accordance with § 245.453 (relating to assessing the site at closure or change-in-service) before an extension may be applied for.

(h) Underground storage tank systems that meet performance standards in § 245.421 or the upgrading requirements in § 245.422 shall be permanently closed within 3 years of being placed temporarily out-of-service or by November 10, 2010, whichever is later, unless the Department grants an extension to this temporary **[ closure ] out-of-service** period. The Department may establish conditions and require submission of documentation associated with extension of the temporary **[ closure ] out-of-service** period, such as the following:

(1) Requirements for inspection under **[ §§ 245.21 and 245.411 ] § 245.21 (relating to tank handling and inspection requirements) and § 245.111.**

(2) Verification and testing of cathodic protection systems under § 245.432.

(3) Site assessment under § 245.453.

(4) Other considerations determined by the Department.

**(i) The Department may require tests to be performed of the underground storage tank system in temporary out-of-service status when returning the storage tank system to currently-in-use status. These tests may include tank and line tightness testing, verification of compatibility, operability testing as required under § 245.437 (relating to periodic testing), internal inspection of the tank or other tests to ensure proper operation.**

**§ 245.452. Permanent closure and changes-in-service.**

(a) At least 30 days before beginning either permanent closure or a change-in-service under subsections (b) (d), or within another reasonable time determined by the Department, owners and operators shall notify the Department on a form provided by the Department of their intent to permanently close or make the change-in-service, unless the action is in response to corrective action. The required assessment of the excavation zone under § 245.453 (relating to assessing the site at closure or change-in-service) shall be performed after notifying the Department but before completion of the permanent closure or a change-in-service.

(b) To permanently close a tank, owners and operators shall ensure that the tank is empty and clean in accordance with a Nationally recognized code of practice **[ such as API 2015 ]** by removing the liquids and accumulated sludges. Tanks **[ taken out of service permanently ] being permanently closed** shall also be either removed from the ground or filled with a nonshrinking, inert solid material.

**(c) [ Replacement of the underground piping connected to a storage tank shall be considered a permanent closure of that part of the underground storage tank system. The requirements applicable to permanent closure of an underground storage tank system also apply to the permanent closure of system piping. ] Replacement, removal or closure-in-place of underground product piping or remote fill lines connected to a storage tank shall be considered a permanent closure of that part of the underground storage tank system. A major modification to the dispenser involving excavation beneath the dispenser and removal of the dispenser shall also be considered permanent closure of that part of the tank system. The requirements applicable to permanent closure of an underground storage tank system also apply to the permanent closure of system piping, remote fill lines, and dispensers.**

(d) Before a change-in-service, owners and operators shall ensure that the tank is empty and clean in accordance with a Nationally recognized code of practice such as API 2015 by removing the liquid and accumulated sludge, and conduct a site assessment in accordance with § 245.453.

**(e) [ An amended registration shall be submitted by the owner to the Department. ] The owner shall**

complete and submit an amended tank registration form, signed by the owner and the certified installer that provided direct onsite supervision of the tank handling activity, to the Department within 30 days of either of the following:

- (1) The completion of permanent closure.
- (2) Change-in-service of the tank.

(f) A properly completed closure report is required to permanently close a site, including a change-in-service. A copy of the completed closure report shall be submitted to the Department when requested.

#### **Subchapter F. TECHNICAL STANDARDS FOR ABOVEGROUND STORAGE TANKS AND FACILITIES**

##### **GENERAL**

#### **§ 245.501. Purpose.**

This subchapter establishes technical standards and requirements for operations and maintenance, design, construction and installation, corrosion and deterioration prevention, release prevention and leak detection, inspection, and closure and removal from service requirements for large aboveground storage tanks and facilities **and aboveground storage tanks in underground vaults** regulated under the act. Regulated aboveground storage tanks are defined in § 245.1 (relating to definitions).

#### **§ 245.503. Variances.**

When unique or peculiar circumstances make compliance with this subchapter technically impractical, infeasible or unsafe, the Department may, upon written application from the [ **owner/operator** ] **owner** of a storage tank system subject to this subchapter, grant a variance from one or more specific provisions of this subchapter.

\* \* \* \* \*

(4) The Department will not grant a variance which would result in regulatory controls less stringent than other applicable Federal or State regulations, such as [ **37 Pa. Code Chapter 11** ] **34 Pa. Code Chapter 14** (relating to flammable and combustible liquids; preliminary provisions) and 40 CFR Part 112 (relating to oil pollution prevention).

(5) When granting the variance, the Department may impose specific conditions necessary to assure that the variance will adequately protect the public health, safety or welfare and the environment.

(6) The Department will provide to the applicant a written notice of approval, approval with conditions or denial. **The Department will publish notice of approved variances in the *Pennsylvania Bulletin*.**

#### **§ 245.505. Applicability.**

Existing tanks that become regulated due to the addition of new regulated substances as defined in § 245.1 (relating to definitions) [ (See definition of “regulated substance” (i)(C)(I) and (II)) ] (see subparagraph (iii)(A) and (B)), and the regulation of aboveground storage tanks greater than 30,000 gallons capacity, storing heating oil that is consumed on the premises (See definition of “consumptive use” in § 245.1) are subject to the requirements [ of ] **in** this chapter and shall be registered with the Department [ by January 9, 2008 ]. **[ In addition, these tanks are temporarily excluded from the following requirements:**

(1) **Monitoring requirements in § 245.541(c) (relating to overfill prevention requirements) until November 10, 2010.**

(2) **In-service inspection requirements in § 245.552 (relating to in-service inspections) until within 5 years of the date of construction or the date of the last inspection or by November 10, 2010, whichever is greater.**

(3) **Out-of-service inspection requirements in § 245.553 (relating to out-of-service inspections) until November 10, 2010, for tanks not previously inspected or 10 years after construction for tanks without known corrosion rates, whichever is greater, or within projected inspection intervals based on corrosion rates determined at the last out-of-service inspection, but not to exceed 20 years from the date of the last inspection. ]**

#### **OPERATIONS AND MAINTENANCE**

#### **§ 245.511. General operations and maintenance.**

[ **An aboveground storage tank facility owner/operator** ] **A storage tank facility owner and operator** shall implement and have onsite a written operations and maintenance plan which assures conformance with applicable safety and operational standards, compliance with applicable Federal and State regulations, and shall use appropriate work practices and procedures.

#### **§ 245.512. Facility operations and spill response plan.**

[ **An initial Spill Prevention Response Plan (Plan) and any future updates, which address the requirements described in Chapter 9 of the act (35 P.S. §§ 6021.901—6021.904) and this chapter, shall be submitted to the Department for aboveground storage tank facilities with an aggregate aboveground storage capacity greater than 21,000 gallons. ] **An initial Spill Prevention Response Plan (Plan), which addresses the requirements in sections 901—904 of the act (35 P.S. §§ 6021.901—6021.904) and this chapter, shall be submitted to the Department for a storage tank facility with an aggregate aboveground storage capacity greater than 21,000 gallons. Plan revisions shall be submitted to the Department within 120 days of any occurrences as described in section 901(b) of the act.** A current copy of the Plan shall be readily available at the facility at all times.**

#### **§ 245.513. Preventive maintenance and housekeeping requirements.**

(a) [ **An aboveground storage tank facility owner/operator** ] **A storage tank facility owner and operator** shall establish and implement a preventive maintenance and housekeeping program which protects the integrity of the system from degradation and protects the public health and the environment.

(b) [ **Routine maintenance inspection procedures shall be established and implemented at each storage tank facility. ] **The storage tank facility owner and operator shall establish and implement routine maintenance inspection procedures at each storage tank facility.****

(1) [ **An owner/operator is** ] **The facility owner and operator are** responsible to assure that a visual inspection is performed once every 72 hours. The visual

inspection may be accomplished by or supplemented with electronic surveillance and shall include:

(i) A check of the facility to ensure that no potential hazardous environmental conditions exist. This includes a check for evidence of a release for example, spill, overflow or leakage.

(ii) A check of the containment areas for accumulation of water and a confirmation that containment drain valves are secured in a closed position when not in use. If excessive water has accumulated, it shall be drained off and disposed of in accordance with applicable State and Federal requirements.

**(iii) In the case of aboveground storage tanks in underground vaults, a check of the continuous leak detection system, as required under § 245.523(7) (relating to aboveground storage tanks in underground vaults), to ensure the equipment is functioning as designed.**

**(2) [ An owner/operator is responsible to assure that a maintenance inspection of the facility and equipment is performed each month. The maintenance inspection shall include: ] The facility owner and operator are responsible to assure that a maintenance inspection of each aboveground storage tank system is performed each month. The maintenance inspection shall include all of the following:**

(i) An inspection of the tank system exterior surfaces for deterioration and maintenance deficiencies including a visual check for cracks, areas of wear, excessive settlement and deterioration of the foundation and supports.

(ii) Ancillary equipment and appurtenances shall be visually checked for operational malfunctions.

(iii) An inspection of containment and transfer areas for cracks, defects and fire hazards.

(iv) A check of overflow prevention equipment and monitoring of the leak detection system.

**(v) A check of the cathodic protection system, if installed, to ensure the equipment is functioning as designed.**

**[ (v) ] (vi) The monthly maintenance inspection report shall be completed and signed by the individual who conducted the inspections and maintained for 1 year.**

**(3) [ An owner/operator is ] The facility owner and operator are responsible to establish a process to assure that storage tank vents are operational and free of restrictions.**

**(c) [ Housekeeping practices shall be established and implemented in a manner that reduces the possibility of accidental spills and safety hazards to plant or facility personnel. ] The storage tank facility owner and operator shall immediately initiate the actions necessary to correct deficiencies noted during the 72-hour visual and monthly maintenance inspections.**

**(d) Repairs to aboveground storage tank systems shall be properly conducted in accordance with the manufacturer's instructions, a code of practice developed by a Nationally recognized association or an independent testing laboratory.**

#### § 245.514. Security.

**[ An owner/operator is ] (a) The storage tank facility owner and operator are responsible to assure**

that appropriate security measures and procedures based on the facility location are established and implemented to protect the environment and the public. These security measures and procedures may include, but are not limited to monitoring, fencing, lighting, access control, locked entrances and securing of valves and dispensers.

**(b) The owner and operator of an aboveground storage tank facility with an aggregate aboveground storage capacity greater than 21,000 gallons are responsible for maintaining a written log book. At a minimum, each log book entry must identify the name of the individual performing tank handling and inspection activities, the individual's signature, the company name, the date of work, start and end times, and a brief description of work performed, including tank identification.**

§ 245.515. Labeling/marketing of aboveground storage tank systems.

**(a) [ An owner/operator is ] The storage tank facility owner and operator are responsible to assure aboveground storage tank systems are labeled/marked in accordance with industry standards and in compliance with Federal and State requirements. Tank labels/marks shall be easily legible from outside the containment area and shall be capable of readily identifying the regulated substance stored.**

**(b) The [ owner/operator ] storage tank facility owner and operator shall be capable of readily identifying the substances transferred in the regulated piping system and be able to determine flow control points, including pumps, valves and dispensers through labeling or other suitable means.**

#### § 245.516. Recordkeeping requirements.

**[ (a) Owners and operators of aboveground tank facilities shall maintain required records. If records are maintained offsite, the records shall be easily obtained and provided to the Department upon request.**

**(b) Permanent records for new systems and available records for existing systems shall be maintained for the operational life of the tank system and retained for a minimum of 1 year after the tank system has been removed. Permanent records include the following: ]**

**(a) Owners and operators of aboveground storage tank systems shall maintain records as required under this chapter and provide records, as requested, and cooperate fully with inspections, monitoring and testing conducted by the Department, certified installers or certified inspectors. Owners and operators shall provide records and cooperate fully in response to requests for document submission, testing and monitoring by the owner or operator under section 107(c) of the act (35 P.S. § 6021.107(c)).**

**(b) Owners and operators shall maintain required records either onsite at the storage tank facility or at a readily available alternative site. Records maintained at the storage tank facility shall be immediately available for inspection by the Department and certified inspectors. If records are maintained offsite, the records shall be easily obtained and provided for inspection or for review by the Department upon request.**

**(c) Recordkeeping. Owners and operators shall maintain all of the following records for aboveground storage tank systems for the operational life of the tank system and retain the records for a minimum of 1 year after the tank system has been permanently closed:**

(1) Original installation and modification of **aboveground storage** tank system design specifications.

(2) Any variance issued for the **aboveground storage** tank system under § 245.503 (relating to variances).

(3) The permits issued under Subchapter C (relating to permitting of underground and aboveground storage tank systems and facilities).

(4) Tank handling activity installation, relocation, reconstruction and major modification inspection results.

(5) The notices of [ **reportable** ] releases submitted under § 245.305 (relating to reporting releases).

(6) Applicable manufacturer's documentation for the **aboveground storage** tank system and any ancillary equipment.

(7) Third party out-of-service inspection reports.

**[ (c) Temporary records shall be maintained as follows: ]**

**(8) Written log books required under § 245.514(b) (relating to security).**

[ (1) ] **(9)** The current registration certificate.

[ (2) ] **(10)** The leak detection records for the past 12 months.

[ (3) ] **(11)** The last two results of cathodic protection monitoring, when a cathodic protection system is in use.

[ (4) **The routine** ] **(12) The routine 72-hour visual and** monthly maintenance inspections for the past 12 months.

[ (5) ] **(13)** The last third party in-service inspection report.

[ (6) ] **(14)** A properly completed closure report and results of the site assessment conducted at permanent closure or change-in-service under § 245.561 (relating to permanent closure or change-in-service).

**(15) Documentation of investigations of suspected releases in accordance with § 245.304 (relating to investigation of suspected releases).**

#### **DESIGN, CONSTRUCTION AND INSTALLATION**

##### **§ 245.521. Performance standards for aboveground storage tanks.**

(a) [ **Tank** ] **Aboveground storage tank** construction shall meet or exceed Nationally recognized industry association codes of practice. New [ **tanks** ] **aboveground storage tank systems** shall be installed in accordance with applicable codes of practice and consistent with manufacturer's or fabricator's specifications as specified in § 245.522 (relating to new aboveground **storage** tank installations and reconstructions).

(b) [ **Tank** ] **Aboveground storage tank** modifications shall be in accordance with industry codes of practice as specified in § 245.524 (relating to aboveground tank modifications).

(c) [ **Tanks** ] **Aboveground storage tanks** shall be protected from corrosion and deterioration as specified in §§ 245.531—245.534 (relating to corrosion and deterioration prevention).

(d) A leak monitoring system shall be installed as specified in § 245.543 (relating to leak detection requirements).

(e) A release prevention system shall be installed as specified in §§ 245.541 and 245.542 (relating to overflow prevention requirements; and containment requirements for aboveground storage tank systems).

(f) [ **Tanks** ] **Aboveground storage tanks** shall be tested according to industry standards before being placed in service as specified in §§ 245.522 and 245.524 [ **(relating to new aboveground tank installations and reconstructions; and aboveground tank modifications)** ].

(g) [ **Tanks** ] **Aboveground storage tanks** shall be inspected at installation, reconstruction or relocation and when a major modification is performed on a tank as specified in § 245.554 (relating to installation and modification inspections).

§ 245.522. New aboveground **storage** tank installations and reconstructions.

(a) [ **Tanks must** ] **Aboveground storage tanks shall** be designed and constructed in accordance with an appropriate current code of practice developed by [ **Nationally-recognized** ] **Nationally recognized** associations such as UL, ACI, API, ASME, ASTM, STI or NACE and will follow applicable engineering specifications.

(b) [ **Tanks** ] **Aboveground storage tanks** must have a stable foundation, capable of supporting the total weight of the tank when full of product without movement, rolling or unacceptable settling. The foundation must minimize corrosion of the tank bottom and meet or exceed the specifications of the tank manufacturer. The foundation design and construction must be based on sound engineering practices.

(c) [ **Tanks** ] **Aboveground storage tanks** shall be tested for tightness in accordance with current codes of practice developed by [ **Nationally-recognized** ] **Nationally recognized** associations and manufacturer's specifications. If a pneumatic test is used for manufactured (shop built) tanks, the fittings, welds, joints and connections shall be coated with a soap solution and checked for leaks. Aboveground field constructed storage tanks shall be hydrostatically tested. Deficiencies shall be remedied prior to tanks being placed into service. Hydrostatic test fluids shall be discharged or disposed of in accordance with State and Federal requirements.

(d) Reconstruction of **aboveground storage** tanks must follow the current codes of practice developed by [ **Nationally-recognized** ] **Nationally recognized** associations and be accomplished in accordance with sound engineering practices. Reconstructed **aboveground storage** tanks must be inspected and hydrostatically tested before being placed into service. Reconstructed **aboveground storage** tanks must meet or exceed requirements specified in § 245.521 (relating to performance standards for aboveground storage tanks). Hydrostatic test fluids shall be discharged or disposed of in accordance with State and Federal requirements.

(e) Aboveground manufactured storage tanks that are relocated to another service site must meet the perfor-

mance requirements for aboveground storage tanks and shall be tested according to industry standards and inspected before being put back in service.

(f) The Department may require the tank owner to submit documentation of construction design criteria and engineering specifications for review.

**(g) Aboveground storage tanks previously regulated by the Department must meet performance requirements for new aboveground storage tank systems prior to returning to regulated tank status.**

**§ 245.523. Aboveground storage tanks in underground vaults.**

The following requirements shall be met when an owner or operator chooses to install an aboveground storage tank in an underground vault:

(1) The vault shall completely enclose the **aboveground storage** tank. There may be no openings in the vault enclosure except those necessary for access to, inspection of, and filling, emptying and venting of the tank. The walls and floor of the vault must be constructed of reinforced concrete at least 6 inches thick. The top, walls and floor shall be designed to withstand the anticipated loading, including loading from traffic, soil and groundwater.

(2) The vault must be compatible with the stored substance and have a permeability of less than  $1 \times 10^{-7}$  cm/sec for substance stored and be water tight.

(3) **[ A ] An aboveground storage** tank must be in its own vault. Adjacent vaults may share a common wall.

(4) There may be no backfill around the **aboveground storage** tank and there shall be sufficient space between the tank and the vault to allow inspection of the tank and ancillary equipment.

(5) **[ A vault and its tank ] Vaults and aboveground storage tanks** must be suitably anchored to withstand uplifting by either water or released substance, including when the tank is empty.

(6) Connections shall be provided to permit venting of each vault to dilute, disperse and remove vapors prior to personnel entering the vault.

(7) A vault must be equipped with a continuous leak detection system capable of detecting vapors and liquids including water. The detection system must activate an alarm that automatically shuts down the dispensing system if **[ a release occurs ] vapors or liquids are detected.**

(8) A vault must have a means for personnel entry. The entry point must have a warning sign indicating the need for procedures for safe entry into a confined space. An entry point must be secured against unauthorized entry and vandalism.

(9) A suitable means to admit a fire suppression agent shall be provided for each vault.

(10) **[ Tanks ] Aboveground storage tanks** and ancillary equipment shall be installed, maintained and inspected in accordance with the requirements for aboveground storage tanks in this subchapter.

(11) Underground piping distribution systems for each **aboveground storage** tank system used to dispense class I or class II motor fuels for resale must be provided with release detection equivalent to underground piping release detection addressed in § 245.445 (relating to methods of release detection for piping) and monitored as

required in paragraph (7) with monitoring records retained for 12 months as required under § 245.516 **[ or § 245.615 (relating to recordkeeping requirements) ]** (relating to recordkeeping requirements).

**§ 245.524. Aboveground tank modifications.**

(a) Modifications **performed on aboveground storage tank systems** shall be designed and implemented in accordance with current codes of practice developed by **[ Nationally-recognized ] Nationally recognized** associations such as API, ACI, ASME, ASTM, NACE, STI or UL.

(b) Modifications shall be performed in accordance with **[ Nationally-recognized ] Nationally recognized** codes and manufacturer's specifications or a professional engineer's design requirements.

(c) Aboveground **[ tanks ] storage tank systems** which are modified shall be inspected and tested according to industry standards before being put in service when a major modification has been performed on the **[ tank shell, tank roof or tank bottom ] storage tank system.** Deficiencies shall be remedied before being returned to service.

(d) The Department may require the tank owner to submit documentation of construction modification design criteria and engineering specifications for review.

**§ 245.525. Ancillary equipment for aboveground storage tanks.**

(a) Ancillary equipment shall be designed and installed in accordance with Nationally recognized codes of practice and manufacturer's specifications such as API, ASME, ASTM, UL, PEI or ANSI. Ancillary equipment shall be in good working order and maintained according to manufacturer's specifications and accepted industry practices. Ancillary equipment shall be compatible with the stored substance.

(b) **[ Tanks shall ] Aboveground storage tanks must** be appropriately vented to protect the tank from over pressurization and excessive vacuums. Vents shall meet or exceed the appropriate codes of practice developed by Nationally recognized associations such as API and NFPA. Normal venting **[ shall ] must** allow the tank to breath when transferring the stored product. Emergency venting **[ shall ] must** ensure that the safe pressure for the tank is not exceeded.

(c) **[ Tank ] Aboveground storage tank** connections through which regulated substance can flow **[ shall ] must** be equipped with an operating valve adjacent to the tank to control flow of substance. Appropriate valves **[ shall ] must** be installed to meet or exceed current codes of practice and jurisdictional requirements. Valves shall be designed, installed and maintained according to current codes of practice.

**§ 245.526. Piping for aboveground storage tanks.**

\* \* \* \* \*

(c) Piping **[ installed after October 11, 1997, and ]** in contact with the soil or an electrolyte shall be adequately protected from corrosion in accordance with current codes of practice developed by Nationally recognized associations such as NACE or API.

\* \* \* \* \*

**CORROSION AND DETERIORATION PREVENTION**

**§ 245.531. General corrosion and deterioration requirements.**

(a) [ The tank system shall be maintained with corrosion and deterioration prevention measures. Aboveground storage tank systems must be continuously protected from corrosion and deterioration. ]

(b) Metallic tank [ systems ] bottoms in direct contact with the soil or other electrolyte shall be evaluated by a corrosion expert to determine if cathodic protection is necessary or appropriate.

(c) [ Existing tank bottoms that do not meet the standards in subsection (b) shall be upgraded when the tank bottom is replaced. Tank bottoms that are not adequately protected from corrosion and deterioration shall be upgraded to meet §§ 245.532 and 245.534 (relating to cathodic protection systems; and interior linings and coatings). ]

**§ 245.532. Cathodic protection systems.**

(a) [ When required for corrosion prevention, on new, reconstructed or relocated tanks or the replacement of the tank bottom the cathodic protection system shall consist of one or more of the following: When required for corrosion prevention, cathodic protection systems must consist of one or more of the following: ]

(1) Sacrificial anodes and [ dielectrical ] dielectric coating.

(2) Impressed current.

(3) Another method specified in an appropriate Nationally recognized association code of practice [ such as API 651 or associations such as NACE ].

\* \* \* \* \*

**§ 245.533. Coating exterior tank and piping surfaces.**

The exterior surfaces of aboveground storage tanks and piping shall be protected by a suitable coating which prevents corrosion and deterioration. The coating system shall be maintained throughout the entire operational life of the tank.

**§ 245.534. Interior linings and coatings.**

(a) [ Coating or lining systems may be used to protect tank interiors from corrosion. The coating or lining system shall be designed in accordance with current codes of practices such as API 652 or associations such as NACE. Any appropriate coating which is bonded firmly to the interior surfaces may be used to protect a tank from corrosion. Coating or lining systems may be used to protect aboveground storage tank interiors from corrosion and deterioration. The coating or lining system shall be designed in accordance with current codes of practice. Coating or lining systems must be bonded firmly to the interior surfaces of the tank. ]

\* \* \* \* \*

(c) Interior linings or coatings shall be inspected by a third-party, Department-certified, aboveground storage tank inspector at installation, when undergoing a major modification, and at least every 10 years or as warranted or recommended by the manufacturer or design engineer and agreed upon by the Department.

**RELEASE PREVENTION AND LEAK DETECTION**

**§ 245.541. Overfill prevention requirements.**

(a) [ An owner/operator shall ensure that releases from overfills do not occur. Transfer of stored substance may not exceed the volume available in the receiving tank and the transfer shall be adequately monitored. Owners and operators shall ensure that releases due to spilling or overfilling do not occur. The owner and operator shall ensure that the volume available in the aboveground storage tank is greater than the volume of product to be transferred to the tank before the transfer is made and that the transfer operation is monitored constantly to prevent overfilling and spilling. ] Immediate action shall be taken to stop the flow of regulated substance prior to exceeding tank capacity or in the event that an equipment failure occurs.

(b) [ Tanks must ] Aboveground storage tanks shall be installed with the following:

(1) A gauge or monitoring device which accurately indicates the level or volume in the tank and is visible to the individual responsible for the transfer of product. The monitoring device shall be installed, calibrated and maintained in accordance with manufacturer's specifications.

(2) A high-level alarm with an automatic high-level cut-off device or a high-level alarm with a manned operator shutdown procedure in operation. The shutdown procedure must be in writing and shall be provided to the Department upon request.

(c) Existing aboveground storage tanks must have a gauge or monitoring device installed by October 11, 2000.

(d) An existing aboveground storage tank [ system ] which is taken out of service to perform a scheduled out-of-service inspection or a major modification to the tank shall be upgraded with a high-level alarm with a cut-off device or a high-level alarm with a manned operator shutdown procedure prior to being put back in service.

(e) An existing aboveground storage tank system which has not been required to be taken out of service to perform a scheduled inspection or modification must have overfill protection consistent with National industry standards [ , such as API 2350, NFPA 30 or PEI RP 200 by November 10, 2010 ].

**§ 245.542. Containment requirements for [ aboveground ] aboveground storage tank systems.**

(a) Containment structures must be compatible with the substance stored and minimize deterioration to the aboveground storage tank system.

(b) Containment areas shall be designed, maintained and constructed in accordance with sound engineering practices adhering to [ Nationally-recognized codes of practice such as NFPA, NACE, ACI or API ] Nationally recognized codes of practice and in compliance with State and Federal requirements.

(c) Secondary containment under the aboveground storage tank bottom and around underground piping must be designed to direct any release to a monitoring point to meet leak detection requirements. Secondary containment shall be provided on a new tank at installation, and shall be provided on an existing tank at reconstruction or relocation of the tank or when the tank floor is replaced (See API 650 Appendix I). Permeability of

the secondary containment must be less than  $1 \times 10^{-7}$  cm/sec at anticipated hydrostatic head and shall be verified at the time of installation.

(d) Aboveground **storage** tanks must have emergency containment structures, such as dike fields, curbing and containment collection systems, which contain releases from overfills, leaks and spills [ , **when a new tank system is installed or at the next out-of-service inspection for existing tank systems as established in § 245.553(d) (relating to out-of-service inspections) or by November 10, 2010, whichever occurs first** ] .

(1) Permeability of newly installed or replacement emergency containment structures must be less than  $1 \times 10^{-6}$  cm/sec at anticipated hydrostatic head and be of sufficient thickness to prevent the released substance from penetrating the containment structure for a minimum of 72 hours, and until the release can be detected and recovered.

(2) Emergency containment structures for existing aboveground storage tanks must meet one of the following standards [ **by November 10, 2010, or at the next out-of-service inspection, prior to the tank being placed back into service, whichever occurs first** ] :

(i) The standards for new emergency containment structures for aboveground storage tanks in paragraph (1).

(ii) Verification by a professional engineer that the emergency containment structure, coupled with the tank monitoring program and response plan, is capable of detecting and recovering a release and is designed to prevent contamination of the waters of this Commonwealth. Verification may be conducted in a manner consistent with the Department's technical document entitled "Verification of Emergency Containment Structures for Aboveground Storage Tanks" or in a manner at least as protective of public health and safety and the environment and which meets all statutory and regulatory requirements. Verification of earthen structures should include determination of the containment structure permeability following [ **Nationally-recognized testing methods such as ASTM Methods and Engineering Standards Listed in API Publication 351** ] **Nationally recognized testing methods.**

(3) Verification of the containment structure is valid until conditions at the site, monitoring program, response plan or procedures change.

(4) Transfers of regulated substances to [ **a** ] **an aboveground storage** tank within the emergency containment shall be monitored by designated personnel for the duration of the transfer.

(e) Emergency containment areas, such as dike fields, must be able to contain 110% of the capacity of the largest **aboveground storage** tank in the containment area.

(f) [ **Stormwater shall be removed from the emergency containment area as soon as possible or when the water is in contact with the tank or piping and prior to the capacity of containment being reduced by 10% or more.** ] **Water shall be removed from the emergency containment area as soon as possible. Water shall be removed from the containment before it comes in contact with the aboveground storage tank or piping and before it**

**reduces the capacity of containment by 10% or more.** Manually operated pumps or siphons and manually operated gravity drains may be used to empty the containment. If drain valves are used they shall be secured in the closed position when not in use. Discharge or disposal of substances from the containment structure must comply with applicable State and Federal requirements.

#### § 245.543. Leak detection requirements.

(a) Aboveground **storage** tank systems shall be provided **with** a method of leak detection at installation that is capable of detecting a release. The leak detection method shall be monitored at least monthly and shall be installed, calibrated, operated and maintained in accordance with industry practices and manufacturer's specifications.

(1) The area beneath the **aboveground storage** tank bottom shall be monitored for leakage by visual, mechanical or electronic leak detection methods.

(2) Observation wells outside of the secondary containment structure do not satisfy the leak detection requirements.

(b) Existing aboveground storage tank systems with secondary containment shall implement a monthly leak detection method as required by subsection (a). Monthly visual inspections shall be an acceptable method of leak detection.

(c) Existing aboveground storage tanks without secondary containment under the bottom of the tank that are in contact with the soil, such as vertical flat bottom tanks, [ **and** ] **that** do not have cathodic protection or an internal lining shall be leak tested at the next scheduled in-service inspection consistent with subsection (d) and continue to be leak tested at each in-service inspection thereafter, until the tank is upgraded.

(d) Tank leak test must follow a [ **Nationally-recognized** ] **Nationally recognized** procedure that is based on a volumetric/mass measurement, an acoustic measurement, or a soil-vapor monitoring method [ , **such as those addressed in API Publication 334 "Guide to Leak Detection in Aboveground Storage Tanks."** ] . The test shall be performed by a third-party inspector or a technician who has experience with the selected method and is qualified by the test equipment manufacturer or certified by the relevant industry association [ **such as ASNT (See Recommended Practice No. SNT-TC-1A)** ] and is not an employee of the tank owner.

(e) Aboveground piping shall be visually checked for leaks in accordance with the facility operations and maintenance plan.

#### ABOVEGROUND STORAGE TANK INSPECTIONS

§ 245.551. General requirements for [ **third party** ] **third-party** inspections.

(a) Aboveground storage tank owners and operators shall have their **aboveground** storage tank systems inspected by a Department certified aboveground storage tank inspector at frequencies [ **established** ] in this subchapter. Inspections will check for compliance with State and Federal requirements and adherence to current codes of practice developed by Nationally recognized associations, tank manufacturer's instructions and design engineer's specifications.

(b) Only Department certified inspectors, **certified for the applicable inspector certification category**, shall be used to satisfy requirements for:

- (1) In-service inspections.
- (2) Out-of-service inspections.
- (3) Installation and modification inspections.

**§ 245.552. In-service inspections.**

(a) The in-service inspection must follow the guidelines of a [ **Nationally-recognized** ] **Nationally recognized** association such as API 653, API 570 and applicable engineering criteria (See §§ 245.524(b), 245.542(d)(2) and 245.543(d) (relating to aboveground tank modifications; containment requirements for aboveground storage tank systems; and leak detection requirements)).

\* \* \* \* \*

(d) [ **Inspection** ] **Except as provided in paragraphs (5) and (6), inspection** intervals for in-service inspections are as follows:

(1) Aboveground [ **tanks installed after October 11, 1997,** ] **storage tanks** shall be initially inspected within 5 years of installation.

[ **(2) Existing tanks shall be initially inspected as follows:**

(i) **Tanks over 5 years old without a previous inspection shall be inspected by October 11, 1999.**

(ii) **Tanks with an inspection more than 3 years prior to October 11, 1997, shall be inspected by October 11, 2000.**

(iii) **Tanks with an inspection within 3 years prior to October 11, 1997, shall be inspected within 6 years of the previous inspection.**

(3) **Tanks** [ **(2) Aboveground storage tanks** shall have an in-service inspection within 1/4 of the corrosion rate life with a maximum of 5 years from the previous inspection or installation.

[ **(4)** ] [ **(3)** ] An out-of-service inspection may replace an in-service inspection.

[ **(5) An in-service inspection interval may be delayed under § 245.562 (relating to temporary removal-from-service) for a tank that is temporarily removed from service. The delayed inspection shall be conducted prior to placing regulated substance in a tank and returning the tank to operating status. Deficiencies noted during inspection shall be addressed and remedied and an amended registration form submitted to the Department prior to returning the tank to operating status.** ]

**(4) An in-service inspection interval, if agreed upon by the Department, may be delayed under § 245.562 (relating to temporary removal from service (out-of-service)) for an aboveground storage tank that is temporarily removed from service. Prior to placing product in the aboveground storage tank, the delayed inspection shall be conducted, deficiencies noted during inspection shall be addressed and remedied, and an amended registration form shall be completed and submitted to the Department.**

**(5) Aboveground storage tanks in underground vaults shall have in-service inspections conducted as follows:**

**(i) Aboveground storage tanks with a capacity greater than 5,000 gallons shall have in-service inspections conducted within 6 and 12 months of installation and at least every 3 years thereafter.**

**(ii) Aboveground storage tanks storing highly hazardous substances with a capacity greater than 1,100 gallons shall have in-service inspections conducted within 6 and 12 months of installation and at least every 3 years thereafter.**

**(iii) More frequent in-service inspections may be required by the Department when a prior inspection identifies corrosion, deterioration or other violations of this subchapter.**

**(6) Existing aboveground storage tanks in underground vaults with scheduled in-service inspections after \_\_\_\_\_ (Editor's Note: The blank refers to 1,095 days after the effective date of adoption of this proposed rulemaking.) shall be inspected by the next currently scheduled in-service inspection date, unless notified otherwise by the Department. Subsequent in-service inspections shall be conducted in accordance with this section.**

(e) Inspection recommendations shall be addressed and deficiencies remedied. When [ **substantial** ] modifications **or repairs** are necessary to correct deficiencies, they shall be made in accordance with manufacturer's specifications and engineering design criteria ([ **See** ] see §§ 245.522(a) and (b), 245.524(b)(2), 245.532(b) and (c) and 245.534(c)). The Department may require submission and review of all documentation relating to these remedies. Required tank handling activities are reported to the Department by the certified installer. Tank handling activities involving major modifications shall also be inspected by a certified aboveground storage tank inspector and reported to the Department.

(f) The complete inspection report shall be kept at the facility until the next out-of-service inspection is completed.

**§ 245.553. Out-of-service inspections.**

(a) Inspections must follow the guidelines of a [ **Nationally-recognized** ] **Nationally recognized** association such as API 653, API 570 or ASME and applicable engineering criteria (See §§ 245.524(b), 245.534(c), 245.542(d)(2) and 245.543(d)).

(b) The out-of-service inspection [ **must** ] **shall** evaluate the following:

- (1) Containment areas.
- (2) Foundation and supports.
- (3) Tank shell.
- (4) Tank roof.
- (5) Tank bottom.
- (6) Appurtenances.
- (7) Ancillary equipment including piping.
- (8) Leak detection method.
- (9) Cathodic protection system, if installed.
- (10) Internal linings and coatings, if installed.

(11) [ **Tank** ] **Aboveground storage tank** system integrity and suitability for service.

(c) The **aboveground storage** tank bottom evaluation of metallic floors must be based on ultrasonic testing and visual examination and include at least one other method

of nondestructive examination such as magnetic flux tests or vacuum tests of bottom lap welds (See API 653 and ASTM metallography—nondestructive testing Vol. 03.03). The ultrasonic evaluation must be statistically representative of the whole floor, excluding the release prevention barrier or secondary containment on double bottom tanks.

(d) Inspection information shall be submitted to the Department on a form provided by the Department and include the results of subsection (b) and the following:

(1) A determination of the corrosion rate for tank shell, bottom plates and piping.

(2) A calculation of the tank life and piping life based on the corrosion rate.

(3) The schedule for next out-of-service inspection, based on the API 653 calculated service life method or 1/2 of the corrosion rate life, with a maximum of 20 years between inspections. Other site-specific conditions, for example, maintenance practices, previous repairs, internal linings, the nature of the substance stored or soil conditions that may affect corrosion rate life and should be considered when projecting tank service life and the next inspection interval.

(4) The recommendations for maintaining **above-ground storage** tank system integrity and meeting performance standards.

(e) Inspection intervals for out-of-service inspections are as follows:

(1) **[ Tanks installed after October 11, 1997, ] Aboveground storage tanks** shall be initially inspected based on measured **[ or similar service ]** corrosion rates. When the corrosion rate is unknown, **such as with new tank bottoms**, the tank's actual bottom thickness shall be determined by inspection within 10 years of installation to determine the corrosion rate.

**[ (2) Existing tanks shall be initially inspected as follows:**

(i) **If corrosion rates are not known, tanks shall be inspected within 10 years of installation or by October 11, 2000, whichever is later.**

(ii) **If corrosion rates can be determined or are known, tanks shall be inspected at their API 653 calculated service life method or 1/2 the corrosion rate life, from installation or previous out-of-service inspection or by October 11, 2000, whichever is later.**

(3) **Tanks ] (2) Aboveground storage tanks** shall have an out-of-service inspection at their API 653 calculated service life **[ method ]** or 1/2 of the corrosion rate life, with a maximum of 20 years from the last out-of-service inspection.

**[ (4) An out-of-service inspection interval may be delayed under § 245.562 (relating to temporary removal-from-service) for a tank that is temporarily removed from service. The delayed inspection shall be conducted prior to placing regulated substance in a tank and returning the tank to operating status. Deficiencies noted during inspection shall be addressed and remedied and an amended registration form submitted to the Department prior to returning the tank to operating status. ]**

**(3) If agreed upon by the Department, an out-of-service inspection interval may be delayed under § 245.562 (relating to temporary removal from ser-**

**vice (out-of-service)) for a tank that is temporarily removed from service. Prior to placing product in the tank, the delayed inspection shall be conducted, deficiencies noted during inspection shall be addressed and remedied, and an amended registration form shall be completed and submitted to the Department.**

(f) **[ Deficiencies shall be remedied before the tank is returned to service. When substantial modifications are necessary to correct deficiencies, they shall be made in accordance with manufacturer's specifications or an engineer's design criteria (See §§ 245.522(a) and (b), 245.524(b)(2) and 245.532(b) and (c) (relating to new aboveground tank installations and reconstructions; aboveground tank modifications; and cathodic protection system)). ] Deficiencies noted during the inspection shall be remedied before the aboveground storage tank system is returned to service. Modifications or repairs performed on the aboveground storage tank system shall be made in accordance with manufacturer's specifications or an engineer's design criteria (see §§ 245.522(a) and (b), 245.524(b)(2) and 245.532(b) and (c) (relating to new aboveground storage tank installations and reconstructions; aboveground tank modifications; and cathodic protection systems)).** The Department may require submission of and review documentation relating to these remedies. Required tank handling activities **[ are ] shall be** reported to the Department by the certified installer. Tank handling activities involving major modifications shall also be inspected by a certified aboveground storage tank inspector and reported to the Department.

(g) Aboveground storage tanks which can be completely **[ examined from the exterior are exempt ] inspected from the exterior are excluded** from out-of-service inspections, except for tanks that are internally lined.

(h) The completed inspection report for out-of-service inspections shall be kept with the facility records under § 245.516 (relating to recordkeeping requirements).

#### **§ 245.554. Installation and modification inspections.**

(a) Aboveground storage tank systems shall be inspected by a Department-certified inspector at the time of installation in accordance with § 245.522 (relating to new aboveground **storage** tank installations and reconstructions), and current **[ Nationally-recognized ] Nationally recognized** association's code of practice and manufacturer's specifications. **[ The inspection report shall be kept for the operational life of the tank. ]**

(b) Major modifications shall be inspected by a Department-certified inspector at the time of modification under § 245.524 (relating to aboveground tank modifications) and current codes of practice developed by **[ Nationally-recognized ] Nationally recognized** associations prior to being put back in service. **[ The inspection report shall be kept for the operational life of the tank. When substantial ] When** modifications are made to the tank floor, the next inspection date projections shall be determined based on the condition of the tank subsequent to those modifications and reported to the Department by the certified inspector on the appropriate inspection form provided by the Department. Other site-specific conditions, for example, maintenance practices,

previous repairs, the nature of the substance stored or soil conditions that may affect corrosion rate life or **aboveground storage** tank system integrity should be considered when projecting tank service life and the next inspection interval.

(c) **[ Tanks ] Aboveground storage tanks** which are relocated or reconstructed shall be inspected by a Department-certified inspector and tested for tightness in accordance with § 245.522 and current codes of practice developed by **[ Nationally-recognized ] Nationally recognized** associations prior to being put in service. **[ The inspection report shall be kept for the operational life of the tank. ]**

**(d) The completed inspection report for installation and modification inspections shall be retained with the facility records under § 245.516.**

#### CLOSURE AND REMOVAL FROM SERVICE REQUIREMENTS

##### § 245.561. Permanent closure or change-in-service.

Before permanent closure or change-in-service is completed, the **[ owner/operator ] owner and operator** shall comply with the following:

(1) **[ At least 30 days before beginning either a permanent closure or change-in-service to an unregulated tank, or within a lesser time as determined by the Department, the owner/operator shall notify the Department of its intent to permanently close or change-in-service from a regulated tank to an unregulated tank, unless the action is in response to a corrective action or waived by the Department. ] At least 30 days before beginning either a permanent closure or change-in-service, or within a lesser time as determined by the Department, the owner and operator shall notify the Department of their intent to permanently close or perform a change-in-service, unless the action is in response to a corrective action or waived by the Department.**

(2) **[ The owner/operator shall submit an amended registration form to the Department indicating the change in tank status within 30 days after the change in tank status. ] The owner shall complete and submit an amended tank registration form, signed by the owner and the certified installer that provided direct onsite supervision of the tank handling activity, to the Department within 30 days of either of the following:**

- (i) **The completion of permanent closure.**
- (ii) **Change-in-service of the tank.**

(3) The **[ owner/operator ] owner and operator** shall complete a site assessment to measure for the presence of any release from the **aboveground** storage tank system and a closure report. The assessment of the site shall be made after the notification to the Department and may be conducted in a manner consistent with the Department's technical document entitled "Closure Requirements for Aboveground Storage Tank Systems" or in a manner at least as protective of public health and safety and the environment and which meets all statutory and regulatory requirements. The results of the site assessment and the closure report shall be retained for 3 years.

(4) If contaminated soil, sediment, surface water or groundwater, or free product is discovered or confirmed by

either direct observation or indicated by the analytical results of sampling, the **[ owner/operator ] owner and operator** shall proceed with the corrective action as required in Subchapter D (relating to corrective action process for owners and operators of storage tanks and storage tank facilities and other responsible parties) or, if applicable, in accordance with remedial action agreements.

(5) Regulated substance and contents removed from the **aboveground storage** tank system **[ including piping ]** shall be reused, treated or disposed of in a manner consistent with applicable State and Federal waste management requirements.

(6) **[ Tank ] Aboveground storage tank** systems shall be cleaned, rendered free of hazardous vapors and ventilated if left onsite or **[ tank systems ]** shall be emptied and removed from the site in a manner consistent with current industry practices and Bureau of Waste Management requirements such as Chapters 263a and 299 (relating to transporters of hazardous waste; and storage and transportation of residual waste).

(7) **[ Tanks to be ] Aboveground storage tanks** permanently closed and left onsite shall be legibly marked with the date of permanent closure.

(8) The appropriate State agency, county and local jurisdiction shall be notified if the tank is under a fire marshal, flammable and combustible liquids or other State agency, county or local jurisdiction permit.

(9) **[ Tanks that are to be ] Aboveground storage tanks** that are closed in place shall:

- (i) Be rendered inoperable and incapable of storing liquid substance.
- (ii) Be secured against unauthorized entry.
- (iii) Meet the requirements specified in paragraphs (1)—(8).

##### § 245.562. Temporary **[ removal-from-service ] removal from service (out-of-service).**

(a) The **[ owner/operator ] owner and operator** shall complete and submit an amended registration form to the Department within 30 days after the change in tank status.

(b) **[ A ] An aboveground storage** tank system shall be emptied and regulated substances and contents shall be reused, treated or disposed of in accordance with State and Federal requirements.

(c) **[ A ] An aboveground storage** tank shall be secured against unauthorized entry and all piping entering or exiting the tank, excluding vents, shall be capped or blinded.

(d) **[ Tank ] Aboveground storage tank system** integrity shall be maintained throughout the temporary **[ removal-from-service ] removal from service** time and the tank shall be protected against flotation.

(e) Inspection requirements shall be maintained as specified in §§ 245.551—245.554 (relating to aboveground storage tank inspections). In-service and out-of-service inspection intervals may be delayed for a tank that is temporarily removed from service. The delayed inspections shall be conducted prior to placing regulated sub-

stance in a tank and returning the tank to operating status. Deficiencies noted during inspection shall be addressed and remedied and an amended registration form submitted to the Department prior to returning the tank to operating status.

(f) [ Tanks which are temporarily removed-from-service for 5 years or longer must meet the requirements for permanent closure, unless the time frame for retaining the tank or tanks in temporary removal-from-service status is extended under § 245.503 (relating to variances). ] Aboveground storage tanks shall be permanently closed within 5 years of being placed temporarily out-of-service unless the owner requests in writing an extension to the temporary out-of-service period and the Department approves the request.

(g) The Department may impose conditions and require submission of documentation when reviewing and approving a request for an extension of the temporary out-of-service period, including:

(1) Requirements for inspection under §§ 245.552 and 245.553 (relating to in-service inspections; and out-of-service inspections).

(2) Site assessment under § 245.561 (relating to permanent closure or change-in-service).

(3) Other considerations determined by the Department to be necessary to ensure the integrity of the aboveground storage tank.

#### Subchapter G. SIMPLIFIED PROGRAM FOR SMALL ABOVEGROUND STORAGE TANKS

##### GENERAL

§ 245.603. General storage tank facility requirements.

(a) [ The owner/operator of aboveground storage tank facilities with an aggregate aboveground storage capacity greater than 21,000 gallons shall develop and adhere to a Spill Prevention Response Plan (Plan) which addresses the requirements described in Chapter 9 of the act (35 P.S. §§ 6021.901—6021.904). The Plan shall be provided to the Department and updated as necessary. ] The owner and operator of a storage tank facility with an aggregate aboveground storage capacity greater than 21,000 gallons shall develop and adhere to a Spill Prevention Response Plan (Plan) which addresses the requirements in sections 901—904 of the act (35 P.S. §§ 6021.901—6021.904). Plan revisions shall be submitted to the Department within 120 days of any occurrences as described in section 901(b) of the act. A current copy of the Plan shall be readily available at the storage tank facility at all times.

(b) [ The owner/operator of aboveground storage tank facilities is ] The owner and operator of a storage tank facility are responsible to assure that appropriate security measures and procedures based on the facility location are established and implemented to protect the environment and the public. These security measures may include, but are not limited to, fencing, lighting, access control, locked entrances and securing of valves, drains and dispensers.

(c) The owner and operator of a storage tank facility with an aggregate aboveground storage capacity greater than 21,000 gallons shall maintain a written log book. At a minimum, each log book

entry must identify the name of the individual performing tank handling and inspection activities, the individual's signature, the company name, the date of work, start and end times, and a brief description of work performed, including tank identification.

§ 245.605. Applicability.

Existing aboveground storage tanks that become regulated due to the addition of new regulated substances as defined in § 245.1 ((relating to definitions) [ (See “regulated substance” (i)(C)(I) and (II)) ] (see subparagraph (iii)(A) and (B)) are subject to the requirements [ of ] in this chapter and shall be registered with the Department [ by January 9, 2008 ]. [ In addition, these tanks are temporarily excluded from the following technical requirements:

(1) Emergency and secondary containment requirements in § 245.612(e) (relating to performance and design standards) until November 10, 2010.

(2) A method of leak detection as required in § 245.613(a) (relating to monitoring standards) until November 10, 2008.

(3) In-service inspections required in § 245.616 (c)(3) (relating to inspection requirements) until November 10, 2010. ]

*(Editor's Note: The following section is proposed to be added and printed in regular type to enhance readability.)*

§ 245.606. Variances.

When unique or peculiar circumstances make compliance with this subchapter technically impractical, infeasible or unsafe, the Department may, upon written application from the owner of a storage tank system subject to this subchapter, grant a variance from one or more specific provisions of this subchapter.

(1) A variance may only be granted if the storage tank system meets alternative technical standards that fully protect human health and the environment.

(2) A written application for a variance shall be submitted to the Department and must provide all of the following information:

(i) The facility name and identification number for which the variance is sought.

(ii) Specific sections of this subchapter from which the variance is sought.

(iii) The unique or peculiar conditions which make compliance with the sections identified under subparagraph (ii) technically impractical, infeasible or unsafe.

(iv) Evidence, including data, plans, specifications and test results, which supports an alternative design, practice, schedule or method as being at least as protective of human health and the environment as the requirement of the sections identified under subparagraph (ii).

(3) New technologies may be granted a variance. New technologies shall be reviewed and documented by a professional engineer and documentation provided to the Department with the variance request.

(4) The Department will not grant a variance which would result in regulatory controls less stringent than other applicable Federal or State regulations, such as 34 Pa. Code Chapter 14 (relating to flammable and combustible liquids; preliminary provisions) and 40 CFR Part 112 (relating to oil pollution prevention).

(5) When granting the variance, the Department may impose specific conditions necessary to assure that the variance will adequately protect the public health, safety or welfare and the environment.

(6) The Department will provide to the applicant a written notice of approval, approval with conditions or denial. Variance approvals will be published in the *Pennsylvania Bulletin*.

#### TECHNICAL REQUIREMENTS

##### § 245.611. Testing requirements for new and substantially modified small aboveground storage tanks.

(a) [ **Tanks** ] **Aboveground storage tanks** shall be tested for tightness at installation in accordance with current codes of practice developed by [ **Nationally-recognized** ] **Nationally recognized** associations and manufacturer's specifications, except for manufactured, shop built tanks that meet the requirements [ **of** ] **in** subsection (b). The testing shall be completed, as part of the installation process, prior to putting the tank in service.

(b) Manufactured, shop built tanks that are initially tested after full assembly at the plant do not require additional testing at installation if the manufacturer certifies that the tank was tested at the plant and the manufacturer's installation instructions do not specify additional testing.

(c) [ **Tanks** ] **Aboveground storage tanks** that receive major modifications to the tank shell or the tank bottom shall be tested for tightness, in accordance with current codes of practice developed by [ **Nationally-recognized** ] **Nationally recognized** associations or manufacturer's specifications, prior to being returned to service.

##### § 245.612. Performance and design standards.

(a) [ **Tanks** ] **Aboveground storage tanks** shall be designed, constructed and installed or modified in accordance with current codes of practice developed by [ **Nationally-recognized associations such as API, ASME, ASTM, ANSI, STI and UL** ] **Nationally recognized associations** and the manufacturer's specifications. Tank handling activities shall be accomplished by a Department-certified aboveground storage tank installer or under the installer's direct, onsite supervision and control.

(b) [ **Tanks** ] **Aboveground storage tanks** must have a stable support or foundation capable of adequately supporting the total weight of the tank and its contents when in use. The support or foundation must meet or exceed the specifications of the tank manufacturer and be designed and constructed in accordance with sound engineering practices.

(c) Ancillary equipment, including piping, shall be designed, installed and modified in accordance with current codes of practice developed by [ **Nationally-recognized associations such as API, SSPC, NACE, ASME, PEI and UL** ] **Nationally recognized associations** and the manufacturer's specifications. Ancillary equipment must be compatible with the substance stored and must be adequately protected from corrosion, excessive wear and deterioration. Protective coatings shall be maintained throughout the entire operational life of the **aboveground** storage tank system.

(d) [ **Tanks** ] **Aboveground storage tanks** shall be installed with secondary containment in or under the tank bottom to provide monitoring capability to satisfy leak detection requirements in § 245.613 (relating to monitoring standards) and emergency containment to contain possible releases, such as overfills, leaks and spills. Emergency containment must be sufficiently impermeable to contain any potential release for a minimum of 72 hours and until the release can be detected and fully recovered in an expeditious manner. Double walled tanks may meet both emergency and secondary containment requirements when the tank system is operated with spill and overflow protection controls including the following:

(1) [ **A spill containment bucket** ] **Permanently installed spill prevention equipment** at the tank fill point or containment at the remote fill point.

(2) An overflow alarm or prevention device or monitoring gauge and [ **shut down** ] **written shutdown** procedure.

(3) Block valves on product lines.

(4) Solenoid valve or antisiphon device, if [ **appropriate (See PEI RP 200)** ] **applicable**.

[ **(e) Existing tanks which do not meet the requirements specified in subsection (d) shall be upgraded with secondary containment by October 11, 2007, and emergency containment by October 11, 2000.**

[ **(f) Tanks installed in underground vaults after October 11, 1997, and used for dispensing Class I and Class II motor fuels must comply with § 245.523 (relating to aboveground storage tanks in underground vaults).**

[ **(g)** ] **(e)** The exterior of the **aboveground storage** tank system [ **shall** ] **must** be protected by an appropriate coating or paint which shall be maintained throughout the entire operational life of the **aboveground storage** tank system.

[ **(h) Tanks which are internally lined must comply with § 245.534 (relating to interior linings and coatings).** ]

[ **(f) Aboveground storage tanks which are internally lined must comply with § 245.534(a) and (b) (relating to interior linings and coatings).**

[ **(i) Tanks** ] [ **(g) Aboveground storage tanks** ] shall be labeled or marked in a manner consistent with industry standards and which provides for identifying the regulated substance stored from outside the containment area.

[ **(h) Aboveground storage tank systems and storage tank system components whose failure could contribute to a release of product shall be maintained in a good state of repair to ensure they function as designed.**

##### § 245.613. Monitoring standards.

(a) By October 12, 1998, a method of leak detection shall be in use and monitored at least monthly. An automatic sensing device, mechanical device or other appropriate method may be used. This method, at a minimum, shall provide a visual examination of the storage tank system by the [ **owner/operator** ] **owner and operator** or designated representative. If releases are detected, they shall be corrected and the provisions of Subchapter D (relating to corrective action process for

owners and operators of storage tanks and storage tank facilities and other responsible parties) shall be complied with.

(b) The [ owner/operator ] owner and operator shall assure that a maintenance and general operations check of the aboveground storage tank system is performed at least monthly. Deficiencies noted during the check shall be corrected. The small aboveground storage tank general operations and maintenance checklist provided by the [ owner/operator ] owner and operator shall be used to document the monthly operations and maintenance check. The operations and maintenance check shall include:

(1) A visual examination of the aboveground storage tank system for deterioration, including [ , but not limited to, ] the tank, piping, ancillary equipment, foundation, containment structure or facility, and safety equipment.

(2) A check of the containment areas for accumulation of water and removal of water as necessary.

(3) Confirmation that containment drain valves are secured in the closed position when not in use.

(4) [ Monitoring ] Functionality of the leak detection system.

(5) A check of the cathodic protection system, if installed, to ensure the equipment is functioning as designed.

[ (5) ] (6) A check of vents for restrictions.

[ (6) ] (7) A check of ancillary equipment for operational malfunctions.

[ (7) ] (8) An investigation of conditions that may be a fire or safety hazard, or pose an environmental hazard.

[ (8) ] (9) Observation for evidence of a release of regulated substance from the aboveground storage tank system.

§ 245.614. [ Requirements for closure. ] (Reserved).

[ (a) Tank systems shall be cleaned, rendered free from hazardous vapors and ventilated if left onsite or shall be emptied and removed from the site in a manner consistent with current industry practices and Bureau of Waste Management requirements such as Chapters 263a and 299 (relating to transporters of hazardous waste; and storage and transportation of residual waste). Piping shall be removed or capped and fill ports shall be secured, capped or dismantled.

(b) The owner shall conduct a visual examination of the surface, soil and area surrounding and underlying the storage tank system for obvious indications or evidence of a release of regulated substance.

(1) If a release is suspected, it shall be investigated in accordance with § 245.304 (relating to investigation of suspected releases).

(2) If a release is confirmed, it shall be reported to the appropriate Department regional office responsible for the county in which the tank is located in accordance with § 245.305 (relating to reporting releases).

(c) The owner shall complete and submit an amended tank registration form to the Department within 30 days of:

(1) The completion of permanent closure.

(2) Change-in-service status of the tank.

(3) Temporary removal from service.

(d) Temporary removal from service requires that the owner/operator empty the tank system of regulated substances and conduct a visual examination of the area surrounding the tank as required in subsection (b), excluding the surface and soil underlying any tank bottom in contact with the ground. A tank may be considered to be in a temporary removal from service status when the tank is emptied and intended to remain out of use for 1 year or more.

(1) Temporary removal from service may not exceed 5 years, unless the owner can demonstrate an operational need to retain the tank in temporary removal-from-service beyond 5 years and the Department agrees to extend this time frame.

(2) Monitoring standards in § 245.613 (relating to monitoring standards) are not required when a tank is reported to the Department as temporarily removed from service.

(3) Inspection of tanks temporarily removed from service shall be performed in accordance with § 245.616 (relating to inspection requirements). In-service inspection interval may be delayed for a tank that is temporarily removed-from-service. The delayed inspection shall be conducted prior to placing regulated substance in a tank and returning the tank to operating status. Deficiencies noted during inspection shall be addressed and remedied and an amended registration form submitted to the Department prior to returning a tank to operating status. ]

§ 245.615. Recordkeeping requirements.

(a) The [ owner/operator ] owner and operator shall maintain required aboveground storage tank system records. If records are maintained offsite, the records shall be easily obtained and provided to the Department upon request.

(b) The following records shall be maintained for the operational life of the aboveground storage tank system unless otherwise stated:

(1) Original [ tank and ] aboveground storage tank system installation records and design specifications. This requirement is limited to records currently available for [ tank systems existing prior to ] aboveground storage tank systems installed on or before October 11, 1997.

(2) Records of modification to the [ tank or ] aboveground storage tank system.

(3) The permits issued under Subchapter C (relating to permitting of underground and aboveground storage tank systems and facilities).

(4) Current registration certificates.

(5) [ Monthly leak ] Leak detection records and maintenance checklists for the past 12 months.

(6) Third-party inspection reports.

(7) Documentation of investigations of suspected releases in accordance with § 245.304 (relating to investigation of suspected releases).

**(8) Written log book information as required under § 245.603(c) (relating to general storage tank facility requirements).**

**§ 245.616. Inspection requirements.**

(a) Required inspections of small aboveground storage [ tanks ] tank systems shall be conducted by Department-certified aboveground storage tank inspectors according to a current [ **Nationally-recognized association's code of practice such as API, STI or ASME** ] **Nationally recognized association's code of practice** or according to manufacturer's specifications and applicable engineering criteria (See § 245.612 (relating to performance and design standards)). Deficiencies noted during the inspection shall be addressed and remedied. When [ **substantial** ] modifications **or repairs** are necessary to correct deficiencies, they shall be made in accordance with manufacturer's specifications and applicable engineering design criteria. The Department may require submission and review of documentation relating to these remedies. The associated tank handling activities are reported to the Department by a certified installer.

(b) Small aboveground field constructed storage tanks shall be inspected at installation, reconstruction or relocation and when a major modification activity is performed on the **aboveground storage** tank shell or the tank bottom plates.

(c) [ **The owner/operator** ] **Except as provided in paragraph (2), the owner and operator** of small aboveground storage tanks storing regulated substances with a capacity greater than 5,000 gallons and [ **owner/operator** ] **owner and operator** of small aboveground storage tanks storing highly hazardous substances with a capacity greater than 1,100 gallons shall have in-service inspections conducted every [ **10** ] **5** years or more often when corrosion, deterioration or other specific conditions necessitate. Other specific conditions may include maintenance practices, previous repairs, the nature of the substance stored and coatings or linings that should be considered when projecting tank service life and the next inspection interval. Internally lined tanks and flat bottom tanks without an interstice or external access to the tank bottom may require further evaluation or internal examination. [ **Inspections shall be phased in for tanks without a previous inspection as follows:**

(1) **New tanks shall be initially inspected within 10 years of installation.**

(2) **Existing tanks, less than 10 years old without a previous inspection, shall be inspected by October 13, 2003, or 10 years from the date of installation, whichever is later.**

(3) **Existing tanks over 10 years old, without a previous inspection, shall be inspected by October 11, 2002.**

(4) **When an inspection is delayed under § 245.614(d)(3) (relating to requirements for closure) for a tank in temporary removal-from-service status, the inspection shall be completed and deficiencies remedied prior to returning the tank to operational service. ]**

**(1) Aboveground storage tanks installed after \_\_\_\_\_ (Editor's Note: The blank refers to the effective date of adoption of this proposed rule-making.), shall be initially inspected within 5 years of installation.**

**(2) Existing aboveground storage tank systems with scheduled in-service inspections after \_\_\_\_\_ (Editor's Note: The blank refers to 1,825 days after the effective date of adoption of this proposed rulemaking.) shall be inspected by the next currently scheduled in-service inspection date, unless notified otherwise by the Department. Subsequent in-service inspections shall be conducted in accordance with this section.**

(d) In-service inspections [ **must** ] **shall** evaluate the following:

(1) Containment areas.

(2) Foundation and tank supports.

(3) Tank shell and tank roof, where a roof exists.

(4) Appurtenances.

(5) Ancillary equipment including piping.

(6) Leak detection method, including [ **monthly** ] leak detection records and maintenance checklists.

(7) Cathodic protection system, if installed.

(8) Coatings and protections from deterioration.

(9) Tank system integrity and suitability for service.

**(e) If agreed upon by the Department, an in-service inspection interval may be delayed under § 245.617 (relating to temporary removal from service (out-of-service)) for an aboveground storage tank that is temporarily removed from service. Prior to placing product in the aboveground storage tank, the delayed inspection shall be conducted, deficiencies noted during inspection shall be addressed and remedied, and an amended registration form shall be completed and submitted to the Department.**

(Editor's Note: Sections 245.617 and 245.618 are proposed to be added and printed in regular type to enhance readability.)

**§ 245.617. Temporary removal from service (out-of-service).**

(a) The owner and operator shall complete and submit an amended registration form to the Department within 30 days after the change in tank status.

(b) The owner and operator shall empty the aboveground storage tank system of regulated substances and conduct a visual examination of the area surrounding the tank as required under § 245.618(b) (relating to permanent closure or change-in-service), excluding the surface and soil underlying any tank bottom in contact with the ground before placing the tank in temporary removal from service status.

(c) Monitoring standards in § 245.613(a) (relating to monitoring standards) are not required when an aboveground storage tank is reported to the Department as temporarily removed from service.

(d) Inspection requirements shall be maintained as specified in § 245.616 (relating to inspection requirements). In-service inspection intervals may be delayed for a tank that is temporarily removed from service. The delayed inspections shall be conducted prior to placing regulated substance in a tank and returning the tank to operating status. Deficiencies noted during inspection shall be addressed and remedied and an amended registration form submitted to the Department prior to returning the tank to operating status.

(e) Aboveground storage tanks shall be permanently closed within 5 years of being placed temporarily out-of-service unless the owner requests in writing an extension to this temporary removal from service period and the Department approves the request.

(f) The Department may impose conditions and require submission of documentation when reviewing and approving a request for an extension of the temporary removal from service period, including:

- (1) Requirements for inspection under § 245.616.
- (2) Site assessment under § 245.561 (relating to permanent closure or change-in-service) or § 245.618(b).
- (3) Other considerations determined by the Department to be necessary to ensure the integrity of the aboveground storage tank.

**§ 245.618. Permanent closure or change-in-service.**

(a) Aboveground storage tank systems shall be cleaned, rendered free from hazardous vapors and ventilated if left onsite or emptied and removed from the site in a manner consistent with current industry practices and Bureau of Waste Management requirements such as Chapters 263a and 299 (relating to transporters of hazardous waste; and storage and transportation of residual waste). Piping shall be removed or capped and fill ports shall be secured, capped or dismantled.

(b) The owner shall conduct a visual examination of the surface, soil and area surrounding and underlying the storage tank system for obvious indications or evidence of a release of regulated substance.

(1) If a release is suspected, it shall be investigated in accordance with § 245.304 (relating to investigation of suspected releases).

(2) If a release is confirmed, it shall be reported to the appropriate Department regional office responsible for the county in which the aboveground storage tank is located in accordance with § 245.305 (relating to reporting releases).

(c) The owner shall complete and submit an amended tank registration form, signed by the owner and the certified installer that provided direct onsite supervision of the tank handling activity, to the Department within 30 days of either of the following:

- (1) The completion of permanent closure.
- (2) Change-in-service of the tank.

**Subchapter H. FINANCIAL RESPONSIBILITY REQUIREMENTS FOR OWNERS AND OPERATORS OF UNDERGROUND STORAGE TANKS AND STORAGE TANK FACILITIES**

**§ 245.704. General requirements.**

(a) An owner or operator of an underground storage tank shall continuously participate in the USTIF by timely paying all applicable fees and conforming with all other requirements for participation in the USTIF, unless the EQB has determined that the underground storage tank is an exempt underground storage tank.

\* \* \* \* \*

**§ 245.708. Failure to maintain financial responsibility.**

The failure of an owner or operator of an underground storage tank to comply with this subchapter shall subject the owner or operator to the enforcement

**[ pro09visions in Chapter 13 ] provisions in sections 1301—1315 of the act (35 P.S. §§ 6021.1301—6021.1315).**

[Pa.B. Doc. No. 18-289. Filed for public inspection February 23, 2018, 9:00 a.m.]

**STATE BOARD OF CHIROPRACTIC**

**[ 49 PA. CODE CH. 5 ]  
Chiropractic Specialties**

The State Board of Chiropractic (Board) proposes to amend §§ 5.1 and 5.31 (relating to definitions; and professional advertising) to read as set forth in Annex A.

*Effective Date*

This proposed rulemaking will be effective upon final-form publication in the *Pennsylvania Bulletin*.

*Statutory Authority*

This proposed rulemaking is authorized under section 302(3) of the Chiropractic Practice Act (act) (63 P.S. § 625.302(3)).

*Background and Need for this Proposed Rulemaking*

A licensee who “[m]ake[s] misleading, deceptive, untrue or fraudulent representations in the practice of chiropractic” is subject to disciplinary action under section 506(a)(2) of the act (63 P.S. § 625.506(a)(2)). Under § 5.31(c)(2), the Board has defined false, fraudulent, deceptive or misleading advertising to include advertising that “[m]akes only a partial disclosure of relevant facts in its content or in the context in which it is presented.” In addition, a licensee who “[h]old[s] himself out as a specialist unless he possesses a postgraduate certification in that specialty” is subject to disciplinary action under section 506(a)(17) of the act. “Chiropractic specialty” is defined in § 5.1 as a “specialized area of chiropractic in which a licensee has achieved certification or diplomate status through a program approved by an approved chiropractic college that has established valid standards acceptable to the Board for the achievement of certification or diplomate status.” Under § 5.31(c)(5), false, fraudulent, deceptive or misleading advertising includes advertising that “[c]ontains a representation that the licensee holds certification in a chiropractic specialty when the licensee does not hold certification in that specialty.”

The Board is aware that a chiropractor might obtain a “certification” that does not truly reflect genuine advanced knowledge, training or skill, but instead is rather easily obtained. Unfortunately, the public, not knowing what certifications are meaningful, may be confused or deceived by the advertising of these credentials. Because it is not a false statement to advertise the credentials that the licensee actually holds, regardless of the real value of those credentials, the licensee cannot be prosecuted under section 506(a)(2) of the act without showing that the advertisement was misleading or under § 5.31(c)(2) without showing that the advertisement made only a partial disclosure. Because § 5.31(c)(5) already specifically addresses the advertising of chiropractic specialties, it appears appropriate to amend that provision to create a brighter line rule in the advertising of professional credentials.

The American Board of Chiropractic Specialties recognizes various specialty boards including the Academy of

Chiropractic Orthopedists, the American Chiropractic Association Council on Pediatrics, the American Chiropractic Association Council on Chiropractic Physiological Therapeutics and Rehabilitation, the American Chiropractic Association Council on Diagnosis and Internal Disorders, the American Chiropractic Association Council on Diagnostic Imaging, the American Chiropractic Association Council on Nutrition, the American Chiropractic Council on Occupational Health, the American Chiropractic Association Council on Orthopedics, the American Chiropractic Association Council on Injuries and Physical Fitness, the American Chiropractic Association Council on Neurology, the American Chiropractic College of Radiology, the American College of Chiropractic Consultants, the American College of Chiropractic Orthopedists and the International Chiropractic Pediatric Association. These specialty boards require passing a certification examination after either a full-time residency of at least 3 years or a part-time program of more than 300 hours of education and clinical practice.

Consistent with the constitutionally protected commercial free speech rights of its licensees, the Board intends this proposed rulemaking to prohibit false or misleading advertising of chiropractic specialties and credentials, specifically prohibiting advertising those credentials that do not demonstrate any genuine advanced knowledge, training or skill. Because these credentials would not accurately inform the public about lawful activity and are more likely to deceive the public than to inform it, the Board may properly prohibit its licensees from advertising these credentials. See *Bureau of Professional and Occupational Affairs v. State Board of Physical Therapy*, 556 Pa. 268, 728 A.2d 340 (1999).

*Description of the Proposed Amendments*

This proposed rulemaking would amend § 5.31(c)(5) to provide that advertising is fraudulent, false, deceptive or misleading, and therefore grounds for disciplinary action, if the advertising represents that the licensee holds certification “or otherwise is a specialist in a chiropractic specialty unless the licensee holds certification or diplomate status in that specialty from a specialty board recognized by the American Board of Chiropractic Specialties,” rather than simply holding a certification in a specialty. This proposed rulemaking would also delete as unnecessary the definition of “chiropractic specialty” in § 5.1.

*Fiscal Impact and Paperwork Requirements*

This proposed rulemaking will not have adverse fiscal impact on the Commonwealth or its political subdivisions. This proposed rulemaking will not impose additional paperwork requirements upon the Commonwealth, political subdivisions or the private sector.

*Sunset Date*

The Board continuously monitors the effectiveness of its regulations. Therefore, a sunset date has not been assigned.

*Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on February 9, 2018, the Board submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the House Professional Licensure Committee and the Senate Consumer Protection and Professional Licensure Committee. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections must specify the regulatory review criteria in section 5.2 of the Regulatory Review Act (71 P.S. § 745.5b) which have not been met. The Regulatory Review Act specifies detailed procedures for review prior to final publication of the rulemaking by the Board, the General Assembly and the Governor.

*Public Comment*

Interested persons are invited to submit written comments, suggestions or objections regarding this proposed rulemaking to the Regulatory Unit Counsel, Department of State, State Board of Chiropractic, P.O. Box 69523, Harrisburg, PA 17105-9523, RA-STRegulatoryCounsel@pa.gov within 30 days following publication of this proposed rulemaking in the *Pennsylvania Bulletin*. Reference No. 16A-4312 (chiropractic specialties) when submitting comments.

J. GERARD HALLORAN, DC,  
*Chairperson*

**Fiscal Note:** 16A-4312. No fiscal impact; (8) recommends adoption.

**Annex A**

**TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS**

**PART I. DEPARTMENT OF STATE**

**Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS**

**CHAPTER 5. STATE BOARD OF CHIROPRACTIC**

**Subchapter A. GENERAL PROVISIONS**

**§ 5.1. Definitions.**

The following words and terms when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

\* \* \* \* \*

*ChildLine*—An organizational unit of the Department of Public Welfare which operates a 24-hour a day State-wide toll free telephone system for receiving reports of suspected child abuse, referring reports for investigation and maintaining the reports in the appropriate file.

**[ Chiropractic specialty—A specialized area of chiropractic in which a licensee has achieved certification or diplomate status through a program approved by an approved chiropractic college that has established valid standards acceptable to the Board for the achievement of certification or diplomate status. ]**

*Individual residing in the same home as the child*—An individual who is 14 years of age or older and who resides in the same home as the child.

\* \* \* \* \*

**Subchapter C. BUSINESS ASPECTS OF PRACTICE**

**§ 5.31. Professional advertising.**

\* \* \* \* \*

(c) Advertising which is false, fraudulent, deceptive or misleading will be considered unprofessional conduct and may provide the basis for disciplinary action against the advertising licensee. An advertisement shall be deemed

by the Board to be fraudulent, false, deceptive or misleading if it does one of the following:

\* \* \* \* \*

(5) [ **Contains a representation that the licensee holds certification in a chiropractic specialty when the licensee does not hold certification in that specialty. ] Contains a representation that the licensee holds certification or otherwise is a specialist in a chiropractic specialty unless the licensee holds certification or diplomate status in that specialty from a specialty board recognized by the American Board of Chiropractic Specialties.**

\* \* \* \* \*

[Pa.B. Doc. No. 18-290. Filed for public inspection February 23, 2018, 9:00 a.m.]

## STATE BOARD OF DENTISTRY

### [ 49 PA. CODE CH. 33 ]

#### Child Abuse Reporting Requirements

The State Board of Dentistry proposes to amend §§ 33.1, 33.250—33.255 and 33.401 and add §§ 33.252a, 33.256 and 33.257 (relating to mandatory reporting of children under 1 year of age; child abuse recognition and reporting—mandatory training requirement; and child abuse recognition and reporting course approval process) to read as set forth in Annex A.

#### *Effective Date*

This proposed rulemaking will be effective upon final-form publication in the *Pennsylvania Bulletin*.

#### *Statutory Authority*

Section 3(o) of The Dental Law (63 P.S. § 122(o)) sets forth the Board’s general rulemaking authority. Under sections 6301—6386 of 23 Pa.C.S. (relating to Child Protective Services Law) (CPSL), specifically section 6383(b)(2) of the CPSL (relating to education and training), the Board is required to promulgate regulations to implement the mandatory reporting requirements for Board-regulated practitioners.

#### *Background and purpose*

Throughout 2014, and continuing in 2015 and 2016, the General Assembly made numerous amendments to the CPSL, including the requirement imposed by the act of April 15, 2014 (P.L. 411, No. 31) (Act 31) on all health-related boards to require training in child abuse recognition and reporting for licensees who are considered “mandated reporters” under the CPSL. Section 2 of Act 31 provided that these training requirements would apply to all persons applying for a license, or applying for renewal of a license, on or after January 1, 2015. The Board implemented the training requirements as mandated by Act 31 at the beginning of 2015. This proposed rulemaking is required to update the Board’s existing regulations on the subject of child abuse reporting to be consistent with the CPSL.

#### *Description of the Proposed Amendments*

The Board proposes to amend § 33.1 (relating to definitions) to update the definitions of terms used in the CPSL. Specifically, the Board finds it necessary to add definitions of “bodily injury,” “child,” “parent,” “program, activity or service” and “serious physical neglect” and to

amend the definitions of “child abuse,” “person responsible for the child’s welfare,” “recent acts or omissions” and “sexual abuse or exploitation” to comport with amendments made to the CPSL. The Board proposes to define “mandated reporter” for ease of reference. All Board regulated practitioners are considered mandated reporters under the CPSL.

The Board further proposes to delete the following definitions because either they have been deleted from the CPSL or, although they remain in the CPSL, they are no longer used in the Board’s regulations: “individual residing in the same home as the child,” “perpetrator” and “serious physical injury.” The Board also proposes to amend, where necessary throughout this proposed rulemaking, “Department of Public Welfare” to “Department of Human Services,” as the name of the agency has changed. The Board proposes to amend the definition of “Board regulated practitioner” to include restricted faculty license holders, a new category of licensee added by the act of July 2, 2014 (P.L. 828, No. 89). The Board is in the process of promulgating a separate rulemaking which includes provisions regarding restricted faculty licenses.

Although section 6311(a)(12) of the CPSL (relating to persons required to report suspected child abuse) provides that “[a]n individual supervised or managed by a person” licensed or certified to practice in any health-related field under the jurisdiction of the Department of State (such as a dental assistant or other unlicensed staff supervised or managed by a Board regulated practitioner) who has direct contact with children in the course of employment is considered a mandated reporter, the definition of “Board regulated practitioner” was not amended to include those individuals because the Board does not otherwise regulate these individuals and cannot enforce the requirements of the CPSL as to unlicensed/uncertified persons. However, the Board reminds its licensees and certificateholders that individuals they supervise or manage who have direct contact with children in the course of their employment are considered mandated reporters and should be aware of the reporting requirements under the CPSL.

The Board is proposing to amend § 33.250 (relating to suspected child abuse—mandated reporting requirements) to provide the general rule that all Board regulated practitioners are considered mandated reporters, and to set forth the mandated reporting requirements and reporting procedures in section 6311 of the CPSL and section 6313 of the CPSL (relating to reporting procedure). The Department of Human Services (Department) has implemented an electronic reporting process for mandated reporters, and the Board finds it necessary to amend § 33.251 (relating to photographs, medical tests and X-rays of child subject to report) to set forth the requirement to submit these types of materials to the county children and youth social service agency within 48 hours of making an electronic report in accordance with section 6314 of the CPSL (relating to photographs, medical tests and X-rays of child subject to report).

The Board proposes to amend § 33.252 (relating to suspected death as a result of child abuse—mandated reporting requirement) to incorporate an amendment made to section 6317 of the CPSL (relating to mandatory reporting and postmortem investigation of deaths) to permit a report to be made to the appropriate coroner or medical examiner. The Board also proposes to add § 33.252a to incorporate the amendment to section 6386 of the CPSL (relating to mandatory reporting of children under one year of age). The Board proposes to add

§ 33.252a because, although the Board believes it would be an extremely rare situation for a Board regulated practitioner to be treating a child under 1 year of age who is affected by drugs or alcohol, the amendments to section 6386 of the CPSL refer specifically to “a health care provider” and that term is defined in section 6303 of the CPSL (relating to definitions) as a “licensed hospital or health care facility or person who is licensed, certified or otherwise regulated to provide health care services under the laws of this Commonwealth, including a . . . dentist.” Under the canons of statutory construction, “including” is to be read as “including, but not limited to” and for that reason the Board has included all Board regulated practitioners as subject to this section.

Further, the Board is proposing to amend § 33.253 (relating to immunity from liability) to incorporate amendments to section 6318 of the CPSL (relating to immunity from liability). The Board is proposing to amend § 33.254 (relating to confidentiality—waived) to incorporate the provisions of section 6311.1 of the CPSL (relating to privileged communications), which was added in 2014. Likewise, the Board proposes to amend § 33.255 (relating to noncompliance) to update the criminal penalties for failure to make a required report to conform to the increased criminal penalties in the amendments to section 6319 of the CPSL (relating to penalties).

The Board proposes to add two new sections pertaining to the mandatory training requirements in Act 31.

Proposed § 33.256 sets forth the requirements in section 6383(b) of the CPSL that all individuals applying to the Board for an initial license or certificate are required to complete 3 hours of training in child abuse recognition and reporting which has been approved by the Department and that all licensees and certificateholders seeking renewal of a license or certificate complete 2 hours of continuing education in child abuse recognition and reporting as a requirement of renewal. The Board also would provide notice that these 2 hours of training would be accepted as a portion of the total continuing education required for biennial renewal, and not an additional requirement, as provided in section 6383(b)(3)(ii) of the CPSL.

Proposed § 33.256 would also include the process for applying for an exemption from these requirements as set forth in section 6383(b)(4) and (6) of the CPSL for individuals who have already completed similar training or should otherwise not be subject to the training or continuing education requirement. The Board notes that section 6383(b)(4)(ii)(B) of the CPSL provides an exemption for individuals who have already completed child abuse recognition training required under the Human Services Code (62 P.S. §§ 101—1503) (formerly known as the Public Welfare Code), and the training was approved by the Department. However, the Department has confirmed that there is not a provision in the Human Services Code that requires this training. Instead, section 6383(c) of the CPSL sets forth the requirement that certain individuals and entities regulated by the Department complete mandated reporter training. Therefore, the Board believes it is appropriate to include an exemption for a Board regulated practitioner who has already completed comparable training in child abuse recognition and reporting required by the Department under section 6383(c) of the CPSL. For example, if a dentist happened to be a foster parent and was, therefore, required to complete the training under section 6383(c) of the CPSL, there would be no need to repeat the training as a condition of licensure or license renewal under section

6383(b) of the CPSL. In addition, section 6383(b)(6) of the CPSL permits the Board to exempt a licensee from the training requirement “if the licensee submits documentation acceptable to the licensing board that the licensee should not be subject to the training or continuing education requirement.” The Board believes that this section also provides the authority of the Board to determine that those licensees who are required to complete comparable training under section 6383(c) of the CPSL should be exempt from the training requirement under section 6383(b) of the CPSL, provided they submit acceptable documentation to the Board evidencing completion of comparable training.

The Board proposes to add § 33.257 to set forth the process developed by the Bureau of Professional and Occupational Affairs (Bureau), in conjunction with the Department, for individuals, entities and organizations to apply for approval to deliver training required under Act 31. The Bureau has incorporated a requirement that to be approved to provide Act 31 training in child abuse recognition and reporting, an applicant shall be able to report participation/attendance electronically to the Bureau. In this manner, the completion of the training is automatically imported into the licensee’s record with the Board at the time the course is completed. Then, at the time of renewal, the system verifies that the training was completed as required prior to renewing the license.

The Board is proposing to amend § 33.401 (relating to credit-hour requirements) to incorporate the mandatory 2 hours of continuing education in child abuse recognition and reporting in proposed § 33.256 of the Board’s continuing education regulations. It is important to note that the mandatory child abuse training is an exception to the Board’s general rule that continuing education shall be taken in subject areas in § 33.402 (relating to continuing education subject areas) from a program sponsor in § 33.403 (relating to program sponsors). For this reason, the Board will only accept 2 hours of continuing education in the area of child abuse recognition and reporting so as not to dilute further the number of hours of general dental continuing education required by the Board.

#### *Fiscal Impact and Paperwork Requirements*

The Board does not anticipate any significant fiscal impact or paperwork requirements regarding this proposed rulemaking. Because licensees and certificateholders are already required to complete mandatory continuing education, and these 2 hours are incorporated in the existing requirement, there would not be an increased burden. Only applicants for licensure or certification would incur an additional requirement and, as there are many low-cost and free options available to complete the training, the Board anticipates this impact to also be minimal. Because all approved Act 31 training providers are required to report attendance/participation electronically, there are no additional paperwork requirements imposed on licensees. In addition, the implementation of an electronic reporting system for mandatory reporters of child abuse under the CPSL by the Department has decreased the paperwork requirements related to the mandatory reporting requirements.

#### *Sunset Date*

The Board continuously monitors the effectiveness of its regulations on a fiscal year and biennial basis. Therefore, a sunset date has not been assigned.

#### *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on February 9, 2018, the Board submit-

ted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the House Professional Licensure Committee and the Senate Consumer Protection and Professional Licensure Committee. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections must specify the regulatory review criteria in section 5.2 of the Regulatory Review Act (71 P.S. § 745.5b) which have not been met. The Regulatory Review Act specifies detailed procedures for review prior to final publication of the rulemaking by the Board, the General Assembly and the Governor.

*Public Comment*

Interested persons are invited to submit written comments, suggestions or objections regarding this proposed rulemaking to Regulatory Counsel, Department of State, P.O. Box 69523, Harrisburg, PA 17106-9523, RA-ST RegulatoryCounsel@pa.gov within 30 days following publication of this proposed rulemaking in the *Pennsylvania Bulletin*. Reference No. 16A-4626 (Child Abuse Reporting Requirements) when submitting comments.

JOHN F. ERHARD, III, DDS,  
*Chairperson*

**Fiscal Note:** 16A-4626. No fiscal impact; (8) recommends adoption.

**Annex A**

**TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS**

**PART I. DEPARTMENT OF STATE**

**Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS**

**CHAPTER 33. STATE BOARD OF DENTISTRY**

**Subchapter A. GENERAL PROVISIONS**

**§ 33.1. Definitions.**

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

\* \* \* \* \*

**Board regulated practitioner**—A dentist, **restricted faculty license holder**, dental hygienist, public health dental hygiene practitioner or expanded function dental assistant.

**Bodily injury**—**Impairment of physical condition or substantial pain.**

**Bureau**—The Bureau of Professional and Occupational Affairs of the Commonwealth.

[ **Child abuse**—A term meaning any of the following:

(i) A recent act or failure to act by a perpetrator which causes nonaccidental serious physical injury to a child under 18 years of age.

(ii) An act or failure to act by a perpetrator which causes nonaccidental serious mental injury to or sexual abuse or sexual exploitation of a child under 18 years of age.

(iii) A recent act, failure to act or series of acts or failures to act by a perpetrator which creates an imminent risk of serious physical injury to or sexual abuse or sexual exploitation of a child under 18 years of age.

(iv) Serious physical neglect by a perpetrator constituting prolonged or repeated lack of supervision or the failure to provide the essentials of life, including adequate medical care, which endangers a child's life or development or impairs the child's functioning. ]

**Child**—An individual under 18 years of age.

**Child abuse**—Intentionally, knowingly or recklessly doing any of the following:

(i) **Causing bodily injury to a child through any recent act or failure to act.**

(ii) **Fabricating, feigning or intentionally exaggerating, or inducing a medical symptom or disease which results in a potentially harmful medical evaluation or treatment to the child through any recent act.**

(iii) **Causing or substantially contributing to serious mental injury to a child through any act or failure to act or a series of acts or failures to act.**

(iv) **Causing sexual abuse or exploitation of a child through any act or failure to act.**

(v) **Creating a reasonable likelihood of bodily injury to a child through any recent act or failure to act.**

(vi) **Creating a likelihood of sexual abuse or exploitation of a child through any recent act or failure to act.**

(vii) **Causing serious physical neglect of a child.**

(viii) **Engaging in any of the following recent acts:**

(A) **Kicking, biting, throwing, burning, stabbing or cutting a child in a manner that endangers the child.**

(B) **Unreasonably restraining or confining a child.**

(C) **Forcefully shaking a child under 1 year of age.**

(D) **Forcefully slapping or otherwise striking a child under 1 year of age.**

(E) **Interfering with the breathing of a child.**

(F) **Causing a child to be present at a location while a violation of 18 Pa.C.S. § 7508.2 (relating to operation of methamphetamine laboratory) is occurring.**

(G) **Leaving a child unsupervised with an individual, other than the child's parent, who the actor knows or reasonably should have known:**

(I) **Is required to register as a Tier II or Tier III sexual offender under 42 Pa.C.S. Chapter 97, Subchapter H (relating to registration of sexual offenders) when the victim of the sexual offense was under 18 years of age when the crime was committed.**

(II) **Has been determined to be a sexually violent predator under 42 Pa.C.S. § 9799.24 (relating to assessments) or any of its predecessors.**

**(III) Has been determined to be a sexually violent delinquent child as defined in 42 Pa.C.S. § 9799.12 (relating to definitions).**

**(H) Causing the death of the child through any act or failure to act.**

**(I) Engaging a child in a severe form of trafficking in persons or sex trafficking, as those terms are defined under section 103 of the Victims of Trafficking and Violence Protection Act of 2000 (22 U.S.C.A. § 7102).**

*ChildLine*—An organizational unit of the Department of [ **Public Welfare** ] **Human Services**, which operates a 24-hour a day Statewide toll free telephone system for receiving reports of suspected child abuse, referring reports for investigation and maintaining the reports in the appropriate file.

\* \* \* \* \*

*General supervision*—In a dental facility, supervision by a dentist who examines the patient, develops a treatment plan, authorizes the performance of dental hygiene services to be performed within 1 year of the examination, and takes full professional responsibility for the performance of the dental hygienist. In facilities identified in § 33.205(c)(2) and (3) (relating to practice as a dental hygienist), general supervision is defined in § 33.205(d)(2).

**[ Individual residing in the same home as the child—An individual who is 14 years of age or older and who resides in the same home as the child. ]**

*Individual study*—A course of continuing education offered by an approved program sponsor, which permits the participant to learn without interacting with an instructor or interactive learning methodologies and which requires a passing grade on a written examination or workbook.

*Local anesthesia*—The elimination of sensations, especially pain, in one part of the body by regional injection of an anesthetic agent.

**[ Perpetrator—A person who has committed child abuse and is a parent of the child, a person responsible for the welfare of a child, an individual residing in the same home as a child or a paramour of a child's parent. ]**

**Mandated reporter—A person who is required under 23 Pa.C.S. § 6311 (relating to persons required to report suspected child abuse) to make a report of suspected child abuse. For purposes of this chapter, the term includes all Board regulated practitioners.**

**Parent—A biological parent, adoptive parent or legal guardian.**

*Person responsible for the child's welfare*—A person who provides permanent or temporary care, supervision, mental health diagnosis or treatment, training or control of a child in lieu of parental care, supervision and control. [ **The term does not include a person who is employed by or provides services or programs in a public or private school, intermediate unit or area vocational-technical school. ]**

**Program, activity or service—Any of the following in which children participate which is sponsored by a school or a public or private organization:**

**(i) A youth camp or program.**

**(ii) A recreational camp or program.**

**(iii) A sports or athletic program.**

**(iv) A community or social outreach program.**

**(v) An enrichment or educational program.**

**(vi) A troop, club or similar organization.**

*Program sponsor*—The party approved by the Board who is responsible for the development and presentation of the continuing dental education program.

*Public health dental hygiene practitioner*—A licensed dental hygienist who is certified by the Board as having met the requirements of section 11.9 of the act (63 P.S. § 130j), and who is authorized to perform dental hygiene services in accordance with § 33.205b (relating to practice as a public health dental hygiene practitioner) without the authorization, assignment or examination of a dentist.

**Recent [ acts or omissions—Acts or omissions ] act or failure to act—An act or failure to act committed within 2 years of the date of the report to the Department of [ Public Welfare ] Human Services or county agency.**

*Serious mental injury*—A psychological condition, as diagnosed by a physician or licensed psychologist, including the refusal of appropriate treatment, that does one or more of the following:

(i) Renders a child chronically and severely anxious, agitated, depressed, socially withdrawn, psychotic or in reasonable fear that the child's life or safety is threatened.

(ii) Seriously interferes with a child's ability to accomplish age-appropriate developmental and social tasks.

**[ Serious physical injury—An injury that causes a child severe pain or significantly impairs a child's physical functioning, either temporarily or permanently. ]**

**Serious physical neglect—Any of the following when committed by a perpetrator that endangers a child's life or health, threatens a child's well-being, causes bodily injury or impairs a child's health, development or functioning:**

**(i) A repeated, prolonged or egregious failure to supervise a child in a manner that is appropriate considering the child's developmental age and abilities.**

**(ii) The failure to provide a child with adequate essentials of life, including food, shelter or medical care.**

*Sexual abuse or exploitation*—[ **The employment, use, persuasion, inducement, enticement or coercion of a child to engage in or assist another person to engage in sexually explicit conduct or a simulation of sexually explicit conduct for the purpose of producing a visual depiction, including photographing, videotaping, computer depicting or filming, of sexually explicit conduct or the rape, sexual assault, involuntary deviate sexual intercourse, aggravated indecent assault, molestation, incest, indecent exposure, prostitution, statutory sexual assault or other form of sexual exploitation of children. ] **Any of the following:****

(i) The employment, use, persuasion, inducement, enticement or coercion of a child to engage in or assist another individual to engage in sexually explicit conduct, which includes any of the following:

(A) Looking at the sexual or other intimate parts of a child or another individual for the purpose of arousing or gratifying sexual desire in any individual.

(B) Participating in sexually explicit conversation either in person, by telephone, by computer or by a computer-aided device for the purpose of sexual stimulation or gratification of any individual.

(C) Actual or simulated sexual activity or nudity for the purpose of sexual stimulation or gratification of any individual.

(D) Actual or simulated sexual activity for the purpose of producing visual depiction, including photographing, videotaping, computer depicting or filming.

(ii) Any of the following offenses committed against a child:

(A) Rape as defined in 18 Pa.C.S. § 3121 (relating to rape).

(B) Statutory sexual assault as defined in 18 Pa.C.S. § 3122.1 (relating to statutory sexual assault).

(C) Involuntary deviate sexual intercourse as defined in 18 Pa.C.S. § 3123 (relating to involuntary deviate sexual intercourse).

(D) Sexual assault as defined in 18 Pa.C.S. § 3124.1 (relating to sexual assault).

(E) Institutional sexual assault as defined in 18 Pa.C.S. § 3124.2 (relating to institutional sexual assault).

(F) Aggravated indecent assault as defined in 18 Pa.C.S. § 3125 (relating to aggravated indecent assault).

(G) Indecent assault as defined in 18 Pa.C.S. § 3126 (relating to indecent assault).

(H) Indecent exposure as defined in 18 Pa.C.S. § 3127 (relating to indecent exposure).

(I) Incest as defined in 18 Pa.C.S. § 4302 (relating to incest).

(J) Prostitution as defined in 18 Pa.C.S. § 5902 (relating to prostitution and related offenses).

(K) Sexual abuse as defined in 18 Pa.C.S. § 6312 (relating to sexual abuse of children).

(L) Unlawful contact with a minor as defined in 18 Pa.C.S. § 6318 (relating to unlawful contact with minor).

(M) Sexual exploitation as defined in 18 Pa.C.S. § 6320 (relating to sexual exploitation of children).

(iii) For the purposes of subparagraph (i), the term does not include consensual activities between a child who is 14 years of age or older and another person who is 14 years of age or older and whose age is within 4 years of the child's age.

*Sexual misconduct*—Any conduct with a current patient, including words, gestures or expressions, actions or

any combination thereof, which is sexual in nature, or which may be construed by a reasonable person as sexual in nature.

*Subgingival agents*—Therapeutic agents, including antimicrobials, antibiotics, antiseptics or anesthetics, placed below the free margin of the gingiva by a local delivery system or device, including injectable systems for ointments, gels or pastes, and degradable or nondegradable devices, such as fibers, films, strips, slabs, spheres, discs or chips.

### Subchapter C. MINIMUM STANDARDS OF CONDUCT AND PRACTICE

#### § 33.250. Suspected child abuse—mandated reporting requirements.

(a) *General rule.* Under 23 Pa.C.S. § 6311 (relating to persons required to report suspected child abuse), all Board regulated practitioners [ who, in the course of their employment, occupation or practice of their profession, come into contact with children shall report or cause a report to be made to the Department of Public Welfare when they have reasonable cause to suspect on the basis of their professional or other training or experience, that a child coming before them in their professional or official capacity is a victim of child abuse ] are considered mandated reporters. A mandated reporter shall make a report of suspected child abuse in accordance with this section if the mandated reporter has reasonable cause to suspect that a child is a victim of child abuse under any of the following circumstances:

(1) The mandated reporter comes into contact with the child in the course of employment, occupation and practice of the profession or through a regularly scheduled program, activity or service.

(2) The mandated reporter is directly responsible for the care, supervision, guidance or training of the child, or is affiliated with an agency, institution, organization, school, regularly established church or religious organization, or other entity that is directly responsible for the care, supervision, guidance or training of the child.

(3) A person makes a specific disclosure to the mandated reporter that an identifiable child is the victim of child abuse.

(4) An individual 14 years of age or older makes a specific disclosure to the mandated reporter that the individual has committed child abuse.

(b) *Staff members of public or private agencies, institutions and facilities.* [ Board regulated practitioners who are staff members of a dental or other public or private institution, school, facility or agency, and who, in the course of their employment, occupation or practice of their profession, come into contact with children shall immediately notify the person in charge of the institution, school, facility or agency or the designated agent of the person in charge when they have reasonable cause to suspect on the basis of their professional or other training or experience, that a child coming before them in their professional or official capacity is a victim of child abuse. Upon notification by the Board regulated practitioner, the person in charge or the designated agent shall assume the responsibility and have the legal obligation to report or cause a report to be made in accordance with subsections

(a), (c) and (d).] When a Board regulated practitioner is required to make a report under subsection (a) in the capacity as a member of the staff of a medical, dental, or other public or private institution, school, facility or agency, that Board regulated practitioner shall report immediately in accordance with subsection (c) and shall immediately thereafter notify the person in charge of the institution, school, facility or agency, or the designated agent of the person in charge.

(c) *Reporting procedure.* [ Reports of suspected child abuse shall be made by telephone and by written report.

(1) *Oral reports.* Oral reports of suspected child abuse shall be made immediately by telephone to ChildLine (800) 932-0313.

(2) *Written reports.* Written reports shall be made within 48 hours after the oral report is made by telephone. Written reports shall be made on forms available from a county children and youth social service agency.

A mandated reporter shall immediately make a report of suspected child abuse to the Department of Human Services by either:

(1) Making an oral report of suspected child abuse by telephone to ChildLine at (800) 932-0313, followed by a written report within 48 hours to the Department of Human Services or the county agency assigned to the case in a manner and format prescribed by the Department of Human Services. The written report submitted under this paragraph may be submitted electronically.

(2) Making an electronic report of suspected child abuse in accordance with 23 Pa.C.S. § 6305 (related to electronic reporting) through the Department of Human Service's Child Welfare Information Solution self-service portal at [www.compass.state.pa.us/cwis](http://www.compass.state.pa.us/cwis). A confirmation by the Department of Human Services of the receipt of a report of suspected child abuse submitted electronically relieves the mandated reporter of the duty to make an additional oral or written report.

(d) *Written or electronic reports.* [ Written reports shall be made in the manner and on forms prescribed by the Department of Public Welfare. The following information shall be included in the written reports, if available:] A written or electronic report of suspected child abuse must include the following information, if known:

(1) The names and addresses of the child [ and the parents or ], the child's parents and any other person responsible for the [ care of the child, if known ] child's welfare.

(2) Where the suspected child abuse occurred.

(3) The age and sex of the subject or subjects of the report.

(4) The nature and extent of the suspected child abuse, including any evidence of prior abuse to the child or siblings of the child.

(5) The name and relationship of the person or persons responsible for causing the suspected abuse [ , if known, ] and any evidence of prior abuse by those persons.

(6) Family composition.

(7) The source of the report.

[ (8) The person making the report and where that person can be reached.

(9) The actions taken by the reporting source, including the taking of photographs and X-rays, removal or keeping of the child or notifying the medical examiner or coroner.

(10) Other information which the Department of Public Welfare may require by regulation. ]

(8) The name, telephone number and e-mail address of the person making the report.

(9) The actions taken by the person making the report, including actions taken under 23 Pa.C.S. §§ 6314—6317.

(10) Other information required by Federal law or regulation.

(11) Other information that the Department of Human Services may require by regulation.

§ 33.251. Photographs, medical tests and X-rays of child subject to report.

A Board regulated practitioner may take or cause to be taken photographs of the child who is subject to a report and, if clinically indicated, cause to be performed a radiological examination and other medical tests on the child. Medical summaries or reports of the photographs, X-rays and relevant medical tests taken shall be sent to the county children and youth social service agency at the time the written report is sent, or within 48 hours after an electronic report is made under § 33.250(c)(2) (relating to suspected child abuse—mandated reporting requirements), or as soon thereafter as possible. The county children and youth social service agency shall have access to actual photographs or duplicates and X-rays and may obtain them or duplicates of them upon request.

§ 33.252. Suspected death as a result of child abuse—mandated reporting requirement.

A Board regulated practitioner who has reasonable cause to suspect that a child died as a result of child abuse shall report that suspicion to the coroner or medical examiner of the county where death occurred or, in the case where the child is transported to another county for medical treatment, to the coroner or medical examiner of the county where the injuries were sustained.

(*Editor's Note:* The following section is proposed to be added and printed in regular type to enhance readability.)

§ 33.252a. Mandatory reporting of children under 1 year of age.

A Board regulated practitioner shall immediately make a report to the appropriate county agency if the Board regulated practitioner is involved in the care of a child under 1 year of age who is born and identified as being affected by any of the following:

(1) Illegal substance abuse by the child's mother.

(2) Withdrawal symptoms resulting from prenatal drug exposure unless the child's mother, during the pregnancy, was:

(i) Under the care of a prescribing medical professional.

(ii) In compliance with the directions for the administration of a prescription drug as directed by the prescribing medical professional.

(3) A fetal alcohol spectrum disorder.

**§ 33.253. Immunity from liability.**

Under 23 Pa.C.S. § 6318 (relating to immunity from liability) a Board regulated practitioner who participates in good faith in the making of a report [ , cooperating with an investigation, testifying in a proceeding arising out of an instance of suspected child abuse or the taking of photographs ] of suspected child abuse, making a referral for general protective services, cooperating or consulting with an investigation including providing information to a child fatality or near fatality review team, testifying in a proceeding arising out of an instance of suspected child abuse or general protective services or engaging in any action authorized under 23 Pa.C.S. §§ 6314—6317, shall have immunity from civil and criminal liability that might otherwise result by reason of the Board regulated practitioner's actions. For the purpose of any civil or criminal proceeding, the good faith of the Board regulated practitioner shall be presumed. The Board will uphold the same good faith presumption in any disciplinary proceeding that might result by reason of a Board regulated practitioner's actions [ in participating in good faith in the making of a report, cooperating with an investigation, testifying in a proceeding arising out of an instance of suspected child abuse or the taking of photographs ] under §§ 33.250—33.252a.

**§ 33.254. Confidentiality—waived.**

To protect children from abuse, the reporting requirements of [ §§ 33.250—33.252 (relating to suspected child abuse—mandated reporting requirements; photographs, medical tests and X-rays of child subject to report; and suspected death as a result of child abuse—mandated reporting requirement) ] §§ 33.250—33.252a take precedence over any other ethical principle or professional standard that might otherwise apply to a Board regulated practitioner. In accordance with 23 Pa.C.S. § 6311.1 (relating to privileged communications), privileged communications between a mandated reporter and a patient does not apply to a situation involving child abuse and does not relieve the mandated reporter of the duty to make a report of suspected child abuse.

**§ 33.255. Noncompliance.**

(a) *Disciplinary action.* A Board regulated practitioner who willfully fails to comply with the reporting requirements in [ § 33.250 (relating to suspected child abuse—mandated reporting requirements) ] §§ 33.250—33.252a will be subject to disciplinary action under section 4.1 of the act (63 P.S. § 123.1).

(b) *Criminal penalties.* [ Under 23 Pa.C.S. § 6319 (relating to penalties for failure to report), a Board regulated practitioner who is required to report a case of suspected child abuse who willfully fails to do so commits a summary offense for the first violation and a misdemeanor of the third degree for a second or subsequent violation. ] Under 23 Pa.C.S. § 6319 (relating to penalties), a Board regulated practitioner who is required to report a case of suspected child abuse or to make a referral to the

appropriate authorities and who willfully fails to do so commits a criminal offense, as follows:

(1) An offense not otherwise specified in paragraph (2), (3) or (4) is a misdemeanor of the second degree.

(2) An offense is a felony of the third degree if all of the following apply:

(i) The mandated reporter willfully fails to report.

(ii) The child abuse constitutes a felony of the first degree or higher.

(iii) The mandated reporter has direct knowledge of the nature of the abuse.

(3) If the willful failure to report continues while the mandated reporter knows or has reasonable cause to believe the child is actively being subjected to child abuse, the mandated reporter commits a misdemeanor of the first degree, except that if the child abuse constitutes a felony of the first degree or higher, the mandated reporter commits a felony of the third degree.

(4) A mandated reporter who commits a second or subsequent offense commits a felony of the third degree, except that if the child abuse constitutes a felony of the first degree or higher, the penalty for the second or subsequent offense is a felony of the second degree.

*(Editor's Note: Sections 33.256 and 33.257 are proposed to be added and printed in regular type to enhance readability.)*

**§ 33.256. Child abuse recognition and reporting—mandatory training requirement.**

(a) Except as provided in subsection (c), individuals applying to the Board for an initial license or certificate shall submit proof of completion of 3 hours of training in child abuse recognition and reporting requirements which has been approved by the Department of Human Services.

(b) Except as provided in subsection (c), licensees and certificateholders seeking renewal of a license or certificate issued by the Board shall complete, as a condition of biennial renewal of the license or certificate, 2 hours of approved continuing education in child abuse recognition and reporting requirements, as a portion of the total continuing education required for biennial renewal. For credit to be granted, the continuing education course or program must be approved by the Bureau, in consultation with the Department of Human Services, as set forth in § 33.257 (relating to child abuse recognition and reporting course approval process).

(c) An applicant, licensee or certificateholder may apply in writing for an exemption from the training/continuing education requirements in subsections (a) and (b) provided the applicant, licensee or certificateholder meets one of the following:

(1) The applicant, licensee or certificateholder submits documentation demonstrating all of the following:

(i) The applicant, licensee or certificateholder has already completed child abuse recognition training as required under section 1205.6 of the Public School Code of 1949 (24 P.S. § 12-1205.6).

(ii) The training was approved by the Department of Education in consultation with the Department of Human Services.

(iii) The amount of training received equals or exceeds the amount of training or continuing education required under subsection (a) or (b), as applicable.

(2) The applicant, licensee or certificateholder submits documentation demonstrating all of the following:

(i) The applicant, licensee or certificateholder has already completed child abuse recognition training required under 23 Pa.C.S. § 6383(c) (relating to education and training).

(ii) The training was approved by the Department of Human Services.

(iii) The amount of training received equals or exceeds the amount of training or continuing education required under subsection (a) or (b), as applicable.

(3) The applicant, licensee or certificateholder submits documentation demonstrating that the applicant, licensee or certificateholder should not be subject to the training or continuing education requirement. Each request for an exemption under this paragraph will be considered on a case-by-case basis.

**§ 33.257. Child abuse recognition and reporting course approval process.**

(a) An individual, entity or organization may apply for approval to provide mandated reporter training as required under 23 Pa.C.S. § 6383(b) (relating to education and training) by submitting the course materials set forth in subsection (b) simultaneously to the Department of Human Services, Office of Children, Youth and Families, and to the Bureau at the following addresses:

(1) Department of Human Services, Office of Children, Youth and Families, Health and Welfare Building, 625 Forster Street, Harrisburg, Pennsylvania 17120 or electronically to RA-PWOCYFCPSL@pa.gov.

(2) Bureau of Professional and Occupational Affairs, 2601 North Third Street, P.O. Box 2649, Harrisburg, Pennsylvania 17105-2649 or electronically to RA-steps1\_course\_app@pa.gov.

(b) Submissions must include all of the following:

(1) Contact information (mailing address, e-mail address and telephone number) for the agency/course administrator.

(2) General description of the training and course delivery method.

(3) Title of the course.

(4) Timed agenda and estimated hours of training.

(5) Learning objectives.

(6) Intended audience.

(7) All course related materials, including, as applicable:

(i) Handouts.

(ii) Narrated script or talking points.

(iii) Interactive activities or exercises.

(iv) Videos and audio/visual content.

(v) Knowledge checks, quizzes or other means of assessing participant's understanding of the material.

(vi) For online courses, a transcript or recording of audio training.

(8) Citation of sources, including written permission to use copyrighted material, if applicable.

(9) Anticipated credentials or experience of the presenter, or biography of presenter, if known.

(10) Printed materials used to market the training.

(11) Evaluation used to assess participants' satisfaction with the training.

(12) Sample certificate of attendance/participation, which must include:

(i) Name of participant.

(ii) Title of training.

(iii) Date of training.

(iv) Length of training (2 or 3 hours).

(v) Name and signature of the authorized representative of the provider. The signature may be an electronic signature.

(vi) Statement affirming the participant attended the entire course.

(13) Verification of ability to report participation/attendance electronically to the Bureau in a format prescribed by the Bureau.

(c) The Bureau will notify the applicant in writing upon approval of the course and will post a list of approved courses on the Bureau's web site and the Board's web site.

**Subchapter F. CONTINUING DENTAL EDUCATION**

**§ 33.401. Credit-hour requirements.**

\* \* \* \* \*

(b) [ **The** ] **Except as provided in subsection (h), the required hours shall be taken in the subject areas listed in § 33.402 (relating to continuing education subject areas) from a program sponsor listed in § 33.403 (relating to program sponsors).**

\* \* \* \* \*

(g) Exceptions are as follows:

(1) An applicant is exempt from the continuing education requirement in subsection (a) for only the biennial period during which the applicant passed the licensure or certification examination.

(2) An applicant who cannot meet the continuing education requirement due to illness, emergency or hardship may apply to the Board in writing for a waiver. The request [ **shall** ] **must** explain why compliance is impossible. Waiver requests will be evaluated by the Board on a case-by-case basis.

**(h) All licensees and certificateholders shall complete 2 hours of the required hours of continuing education in approved courses on child abuse recognition and reporting as set forth in § 33.256 (relating to child abuse recognition and reporting—mandatory training requirement).**

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