

# Regulatory Analysis Form

(Completed by Promulgating Agency)



# IRRC

Independent Regulatory Review Commission

## SECTION I: PROFILE

(1) Agency:

Department of Environmental Protection

(2) Agency Number:

7-432

IRRC Number:

2755

(3) Short Title:

Underground Storage Tank Operator Training Requirements

(4) PA Code Cite:

25 Pa. Code Chapter 245

(5) Agency Contacts (List Telephone Number, Address, Fax Number and Email Address):

Primary Contact: Michele Tate, 783-8727, RCSOB, 400 Market St., 783-8926, mtate@state.pa.us

Secondary Contact: Kelly Heffner, 783-8727, RCSOB, 400 Market St., 783-8926, kheffner@state.pa.us

(6) Primary Contact for Public Comments (List Telephone Number, Address, Fax Number and Email Address) – Complete if different from #5:

(All Comments will appear on IRRC'S website)

(7) Type of Rulemaking (check applicable box):

- Proposed Regulation
- Final Regulation
- Final Omitted Regulation
- Emergency Certification Regulation;
  - Certification by the Governor
  - Certification by the Attorney General

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## Regulatory Analysis Form

(8) Briefly explain the regulation in clear and nontechnical language. (100 words or less)

The attached final rulemaking will amend 25 Pa. Code Chapter 245 to establish new comprehensive training requirements for three distinct classes of underground storage tank (UST) operators and make two clarifications and two minor corrections to existing UST regulatory language. The operator training proposal includes descriptions of the classes of UST operators to be trained, required and acceptable forms of training for each class of operator, deadlines for new and existing operators to meet the training requirements, and documentation requirements. These changes are necessitated by federal statute and will help to alleviate long-standing UST operator compliance problems that have been noted both in Pennsylvania and nationally.

(9) Include a schedule for review of the regulation including:

- A. The date by which the agency must receive public comments:      \_\_\_NA\_\_\_
- B. The date or dates on which public meetings or hearings will be held:      \_\_\_NA\_\_\_
- C. The expected date of promulgation of the proposed regulation as a final-form regulation:      Nov/Dec 2009
- D. The expected effective date of the final-form regulation:      Nov/Dec 2009
- E. The date by which compliance with the final-form regulation will be required:      See Below
- F. The date by which required permits, licenses or other approvals must be obtained:      \_\_\_NA\_\_\_

Minor corrections and clarifications to the current regulation must be complied with upon final-form publication. UST owners must comply fully with the new UST operator training provisions and must have all operators trained by August 8, 2012. Owners must have internal written instructions or emergency procedures for Class C operators in place at UST facilities within six months after final-form publication of the rulemaking.

(10) Provide the schedule for continual review of the regulation.

This regulation will be reviewed in accordance with the sunset review schedule published by the Department to determine whether the regulation effectively fulfills the goals for which it was intended.

**SECTION II: STATEMENT OF NEED**

(11) State the statutory authority for the regulation. Include specific statutory citation.

The final rulemaking is being made under the authority of section 106 of the Storage Tank and Spill Prevention Act (Storage Tank Act) (35 P.S. § 6021.106), which authorizes the Environmental Quality Board (EQB) to adopt rules and regulations governing aboveground and underground storage tanks to accomplish the purposes and carry out the provisions of the Storage Tank Act, section 501 of the Storage Tank Act (35 P.S. § 6021.501), which authorizes the Department to establish specific program requirements for underground storage tanks, and section 1920-A of The Administrative Code of 1929 (71 P.S. § 510-20), which authorizes the EQB to formulate, adopt and promulgate rules and regulations that are necessary for the proper work of the Department.

(12) Is the regulation mandated by any federal or state law or court order, or federal regulation? Are there any relevant state or federal court decisions? If yes, cite the specific law, case or regulation as well as, any deadlines for action.

Yes. The Federal Energy Policy Act of 2005 (EPAct), contains an August 8, 2009 deadline for states to develop UST operator training requirements consistent with EPA guidelines. The deadline for states to have the program fully implemented and all operators trained is August 8, 2012.

(13) State why the regulation is needed. Explain the compelling public interest that justifies the regulation. Describe who will benefit from the regulation. Quantify the benefits as completely as possible and approximate the number of people who will benefit.

Facility operators continue to struggle with the routine operation and maintenance of USTs. The problem is compounded by the frequent turnover of operators at retail sales facilities and inadequate training of operators at many facilities. Releases of regulated substances have occurred from thousands of USTs in the Commonwealth. These releases have resulted in substantial quantities of regulated substances entering the environment, including contamination of numerous public and private water supplies. More effective release detection and better operation and maintenance of USTs are still needed. While the number of releases has declined, and the severity and extent of contamination has lessened over recent years, this regulation should result in a further decline in the number of releases, increased protection of the public and the environment, and significant improvements in the routine operation and maintenance of USTs.

There are approximately 3,500 UST owners with operators at nearly 8,700 UST facilities who will benefit from the operator training requirements in this rulemaking. These training requirements should improve UST operation, maintenance and compliance with state and federal UST regulations. The operator training requirements will also provide economic opportunities for third-party industry trainers. Several industry associations, organizations and groups, such as the Pennsylvania Petroleum Marketers and Convenience Store Association and the Tank Installers of Pennsylvania, have expressed an interest in providing training to UST owners and operators. It is also anticipated that many Department-certified tank installers, inspectors and companies will provide contract services to tank owners as qualified UST operators.

## Regulatory Analysis Form

(14) If scientific data, studies, references are used to justify this regulation, please submit material with the regulatory package. Please provide full citation and/or links to internet source.

Grant Guidelines To States For Implementing The Operator Training Provision Of The Energy Policy Act Of 2005: [http://www.epa.gov/oust/fedlaws/final\\_ot.htm](http://www.epa.gov/oust/fedlaws/final_ot.htm)

(15) Describe who and how many will be adversely affected by the regulation. How are they affected?

UST owners and operators will be affected by this rulemaking. Major corporations account for more than half of the owners, while most of the remaining owners are associated with small businesses or government entities. These owners and operators will incur the training costs associated with the operator training provisions. There are nearly 8,700 UST facilities in Pennsylvania. Some facilities may have only one operator that serves as the Class A, Class B and Class C operator. Many facilities will have several operators. However, most facilities will only have one or two Class A and Class B operators that require formal training by an approved trainer. The greatest turnover will occur with Class C operators, who only require internal site-specific training on emergency procedures. Retail sales facilities and multi-facility owners will tend to have the most operators and the greatest turnover of operators. These facilities have the potential to require more training sessions than most other types of facilities and may incur a greater cost for operator training.

(16) List the persons, groups or entities that will be required to comply with the regulation. Approximate the number of people who will be required to comply.

There are approximately 3,500 UST owners with operators who will be directly affected and required to comply with the regulation. The actual number of UST operators cannot be predicted. Some UST facilities may only have one operator, but many facilities will have several operators. Generally, retail sales facilities will have the most operators. More than half of the UST facilities are owned and operated by major corporations. Most other facilities are owned and operated by small businesses, some farmers and various government entities. Owners and operators that must comply with these UST operator training requirements include: convenience store and retail service stations; heating oil distributors; commercial businesses; refineries; petro-chemical manufacturers; distributors and users; federal, state and local governments; volunteer fire companies; hospitals; emergency medical services organizations; and individuals.

Professional industry trainers who provide training for UST operators will also be required to comply with the provisions on operator training. Additionally, many Department-certified storage tank installers, inspectors and companies will likely choose to become involved in the UST operator training process, either as operators or as industry trainers.

**SECTION III: COST AND IMPACT ANALYSIS**

(17) Provide a specific estimate of the costs and/or savings to the **regulated community** associated with compliance, including any legal, accounting or consulting procedures which may be required. Explain how the dollar estimates were derived.

Most UST owners will incur the costs associated with training Class A and Class B operators, primarily relying on industry professionals to provide the training. There are currently several national industry trainers for storage tank operators. These trainers charge anywhere from \$145 to \$500 per training course, for each individual course participant. The Department anticipates that prices will moderate as additional trainers become available to satisfy new operator training requirements for all states. Additionally, several associations and groups in Pennsylvania, along with Department-certified installers, inspectors and companies have shown an interest in providing operator training courses for UST facility Class A and Class B operators. Therefore, market forces should improve the availability and lower the costs of operator training. Class C operators only require internal training specific to emergency procedures. This emergency training should already be provided at most facilities and little, if any new costs should be associated with training Class C operators. An estimate of the costs to the regulated community is shown in the table in (20) below.

Cost estimates to the regulated community under this regulation are based on 1 Class A and 1 Class B operator per facility (8,700 facilities) and \$200 in training costs per operator. The costs have been spread equally over three fiscal years beginning in the current FY 2009/2010. Costs for FY +3, FY +4 and FY +5 are based on the assumption that 5% of the Class A and Class B operators will be replaced or require re-training as a result of facility noncompliance. Recognize that since Class A and Class B operators can serve as the operator for multiple facilities, the costs presented in the table are to be considered conservative high. There is no way of predicting with any accuracy where operators will serve multiple facilities.

(18) Provide a specific estimate of the costs and/or savings to **local governments** associated with compliance, including any legal, accounting or consulting procedures which may be required. Explain how the dollar estimates were derived.

To the extent that local governments are tank owners, they are subject to the costs associated with training their UST operators. See the costs noted for operator training in (17) above and (20) below. However, there has been a trend with local governments to replace existing USTs with small aboveground storage tanks where practicable. Most townships and municipalities only have one UST facility, so costs should be minimal. Additionally, it is anticipated that townships and municipalities will partner with local government associations to obtain required training as a group at reduced costs or group rates.

The Department does not anticipate any significant savings to local governments in their governmental capacity. However, local governments should notice improved management of their USTs as a result of operator training, and fewer or less severe releases of regulated substances.

## Regulatory Analysis Form

(19) Provide a specific estimate of the costs and/or savings to **state government** associated with the implementation of the regulation, including any legal, accounting, or consulting procedures which may be required. Explain how the dollar estimates were derived.

The following State government entities have USTs and potential costs are based on one Class A and one Class B operator per facility at \$200 per training course during the 3 years leading up to the Aug. 8, 2012 training deadline. These estimates are conservatively high, as some entities with multiple facilities may not require separate operators for every facility. Thus, an agency may incur a lesser cost. See costs noted in (17) above and (20) below.

<u>Agency</u>	<u>UST Facilities</u>	<u>Training Costs</u>	<u>Agency</u>	<u>UST Facilities</u>	<u>Training Costs</u>
Agriculture	1	\$400	Labor & Industry	1	\$400
Corrections	12	\$4,800	Mil. & Vet. Affairs	22	\$8,800
DCNR	19	\$7,600	Penn Dot	48	\$19,200
DGS	7	\$2,800	PEMA	1	\$400
Higher Ed. System	7	\$2,800	State Police	2	\$800
Game Comm.	2	\$800	Turnpike Comm.	76	\$30,400
Welfare	4	\$1,200			

The Department does not anticipate any significant savings to the Commonwealth in its governmental capacity during the implementation and administration of these regulatory amendments. It is believed that implementation of these provisions can be handled by existing storage tank program staff.

(20) In the table below, provide an estimate of the fiscal savings and costs associated with implementation and compliance for the regulated community, local government, and state government for the current year and five subsequent years.

	<b>Current FY Year</b>	<b>FY +1 Year</b>	<b>FY +2 Year</b>	<b>FY +3 Year</b>	<b>FY +4 Year</b>	<b>FY +5 Year</b>
<b>SAVINGS:</b>	\$	\$	\$	\$	\$	\$
<b>Regulated Community</b>						
<b>Local Government</b>						
<b>State Government</b>						
<b>Total Savings</b>	NA	NA	NA	NA	NA	NA
<b>COSTS:</b>						
<b>Regulated Community</b>	1,133,000	1,133,000	1,133,000	170,000	170,000	170,000
<b>Local Government</b>						
<b>State Government</b>	27,000	27,000	27,000	4,000	4,000	4,000
<b>Total Costs</b>	1,160,000	1,160,000	1,160,000	174,000	174,000	174,000
<b>REVENUE LOSSES:</b>						
<b>Regulated Community</b>						
<b>Local Government</b>						
<b>State Government</b>						
<b>Total Revenue Losses</b>	NA	NA	NA	NA	NA	NA

## Regulatory Analysis Form

(20a) Provide the past three year expenditure history for programs affected by the regulation.

The below figures only represent the authorizations for the Storage Tank Fund. Program expenditures from the federal Underground Storage Tank and Leaking Underground Storage Tank (LUST) Trust Fund grant, and the Underground Storage Tank Indemnification Fund are not included.

Program	FY -3	FY -2	FY -1	Current FY
Storage Tank Fund - General Operations (210-20073)	\$ 7,473,000	\$ 8,220,000	\$ 8,120,000	\$ 9,100,000

(21) Explain how the benefits of the regulation outweigh any cost and adverse effects.

Through thousands of UST facility inspections, on-going problems with release detection practices, and routine operation and maintenance were identified at nearly 30% of UST facilities in Pennsylvania. These problems lead to continuing non-compliance and potential releases of regulated substances. A comprehensive operator training program will significantly improve UST release detection practices, and operation and maintenance, which will result in a higher rate of compliance and fewer releases of regulated substances in the Commonwealth. Over \$70 millions dollars are spent every year on cleanup of releases from USTs. The projected annual cost of operator training is insignificant compared to the cost of cleanup of released regulated substances. Further, the Department stands to lose at least \$2 million dollars in federal UST and LUST grant funds under Subtitle I, if it fails to implement a comprehensive UST operator training program that meets the requirements in the EPAct and related EPA guidelines to states.

## Regulatory Analysis Form

(22) Describe the communications with and input from the public and any advisory council/group in the development and drafting of the regulation. List the specific persons and/or groups who were involved.

The Department worked closely with the Storage Tank Advisory Committee (STAC) during development and finalization of the rulemaking. The Department considered comments received from the public and from the Independent Regulatory Review Commission on the proposed rulemaking and reviewed comments with the STAC during consideration of the final-form rulemaking. The STAC, which was established by section 105 of the Storage Tank Act, consists of persons representing a cross-section of organizations having a direct interest in the regulation of storage tanks in this Commonwealth. As required by section 105, the STAC participated in the development of the rulemaking and has been given the opportunity to review and comment on the final-form rulemaking. The STAC voted to support the final-form rulemaking at their meeting on June 9, 2009. The STAC vice-chairperson subsequently prepared a written report to the EQB on the final-form rulemaking. A list of STAC members may be obtained from the agency contacts noted in (5) above.

(23) Include a description of any alternative regulatory provisions which have been considered and rejected and a statement that the least burdensome acceptable alternative has been selected.

Federal statute (EPA Act) and EPA guidelines to states require that an UST operator training program be established with the same enforcement authority as provided for other UST program requirements in current state and federal UST regulations. This can only be accomplished with a regulatory program.

The Department considered using program staff to provide training to UST operators. However, the Department does not have staffing adequate to undertake such an extensive initiative, nor does the staff have the experience and extensive industry background needed to provide the necessary training on UST operation and maintenance practices. This training is better suited to be provided by industry professionals.

(24) Are there any provisions that are more stringent than federal standards? If yes, identify the specific provisions and the compelling Pennsylvania interest that demands stronger regulations.

The provisions in the final-form rulemaking are consistent with federal statute and mandates contained in the EPA Act, and EPA guidelines to states for implementation of the UST operator training requirements in the EPA Act.

(25) How does this regulation compare with those of other states? How will this affect Pennsylvania's ability to compete with other states?

Most other states are in the process of developing UST operator training requirements to satisfy the federal UST mandates in the EPA Act and related EPA guidelines to states for implementation of the UST requirements in the EPA Act. All other states must comply with federal UST regulations and the EPA Act requirements or jeopardize federal UST and LUST Grant Funding. Pennsylvania and most other states receive substantial UST and LUST grant funding from EPA, under Subtitle I. A few states are considering providing training to UST operators using program engineering staff to conduct the training. However, most states are choosing to rely on third-party industry professionals to provide UST operator training, with the training costs incurred by the tank owners or operators. The Department does not have engineering staff in the storage tanks program.

The final-form rulemaking will not put the Commonwealth or the regulated community at a competitive disadvantage with other states.

## Regulatory Analysis Form

(26) Will the regulation affect any other regulations of the promulgating agency or other state agencies? If yes, explain and provide specific citations.

The final-form rulemaking will amend two subsections (§ 245.422(e) and § 245.435(b)) in the existing provisions of 25 Pa.Code Chapter 245 and add one new section (§ 245.436) on UST operator training. It is not intended to affect any other existing regulations of the Department or any regulations promulgated by other state agencies.

(27) Submit a statement of legal, accounting or consulting procedures and additional reporting, recordkeeping or other paperwork, including copies of forms or reports, which will be required for implementation of the regulation and an explanation of measures which have been taken to minimize these requirements.

There are no new reporting requirements. The rulemaking clarifies current temporary recordkeeping requirements and will correct requirements for retention of cathodic protection documents at § 245.435 to be consistent with current state and federal technical requirements. Recordkeeping requirements at §§ 245.435 and 245.436 associated with the UST operator training requirements are being added. The operator training documentation is necessary to comply with the federal mandates in the EPAct and should not pose a significant additional burden on tank owners or operators in the Commonwealth. As noted in (17) above, written emergency procedures for Class C operators should already be available. Also, emergency procedures and related training are currently required under OSHA, 29 CFR, Part 1910 Occupational Safety and Health Standards.

(28) Please list any special provisions which have been developed to meet the particular needs of affected groups or persons including, but not limited to, minorities, elderly, small businesses, and farmers.

The rulemaking includes provisions that allow for a single operator to serve in all three operator classes, which is often the case at smaller facilities. The approval process for third-party or industry trainers will enable associations and small industry groups to provide the required training to association or group members at reduced costs and even allows for on-site hands-on training with practical application instead of written exams. Additionally, the Pennsylvania Petroleum Marketers and Convenience Store Association, and certified storage tank installers and inspectors have expressed an interest in becoming approved trainers and providing operator training services for their clients at small businesses and "mom and pop" facilities.

**FACE SHEET  
FOR FILING DOCUMENTS  
WITH THE LEGISLATIVE REFERENCE  
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**(Pursuant to Commonwealth Documents Law)**

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Copy below is hereby approved as to form and legality.  
Attorney General

By: \_\_\_\_\_  
(Deputy Attorney General)

DATE OF APPROVAL \_\_\_\_\_

Check if applicable  
Copy not approved. Objections attached.

Copy below is hereby certified to be true and  
correct copy of a document issued, prescribed or  
promulgated by:

DEPARTMENT OF ENVIRONMENTAL  
PROTECTION  
ENVIRONMENTAL QUALITY BOARD

(AGENCY)

DOCUMENT/FISCAL NOTE NO. 7-432

DATE OF ADOPTION September 15, 2009

BY John Hanger

TITLE JOHN HANGER  
CHAIRPERSON

EXECUTIVE OFFICER CHAIRMAN OR SECRETARY

Copy below is hereby approved as to form and legality  
Executive or Independent Agencies

BY Andrew C. Clark

DATE OF APPROVAL

SEP 16 2009

(Deputy General Counsel)

(~~Chief Counsel - Independent Agency~~)

(Strike inapplicable title)

Check if applicable. No Attorney General Approval  
or objection within 30 days after submission.

**NOTICE OF FINAL RULEMAKING**

**DEPARTMENT OF ENVIRONMENTAL PROTECTION  
ENVIRONMENTAL QUALITY BOARD**

**Underground Storage Tank Operators Training Requirements**

**25 Pa. Code, Chapter 245**

**Notice of Final Rulemaking**  
**Department of Environmental Protection**  
**Environmental Quality Board**  
**25 Pa. Code Ch. 245**  
**Administration of the Storage Tank and Spill Prevention Program**

**Order**

The Environmental Quality Board (Board) by this order amends 25 Pa. Code, Chapter 245 (relating to Administration of the Storage Tank and Spill Prevention Program).

This order was adopted by the Board at its meeting of September 15, 2009.

**A. Effective Date**

These amendments will go into effect upon publication in the *Pennsylvania Bulletin* as final-form rulemaking.

**B. Contact Persons**

For further information, contact Charles M. Swokel, Chief, Division of Storage Tanks, P.O. Box 8763, Rachel Carson State Office Building, Harrisburg, PA 17105-8763, (717) 772-5806; or Kurt Klapkowski, Assistant Counsel, Bureau of Regulatory Counsel, P.O. Box 8464, Rachel Carson State Office Building, Harrisburg, PA 17105-8464, (717) 787-7060. Persons with a disability may use the AT&T Relay Service by calling (800) 654-5984 (TDD users) or (800) 654-5988 (voice users). This final-form rulemaking is available electronically through the Department's website (<http://www.depweb.state.pa.us>).

**C. Statutory Authority**

The rulemaking is being made 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 aboveground and underground storage tanks to accomplish the purposes and carry out the provisions of the act; section 501 of the act (35 P.S. § 6021.501), which authorizes the Department of Environmental Protection (Department) to establish program requirements for underground storage tanks; 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 of the Amendments**

The Board established the initial rulemaking governing administration of the storage tank and spill prevention program with its final-form publication of Chapter 245, Subchapter A and Subchapter B (relating to general provisions; and certification program for installers and inspectors of storage tanks and storage tank facilities) on September 21, 1991, at 21 Pa.B. 4345. In that initial rulemaking, Federal requirements in 40 CFR Part 280 (relating to technical standards and corrective action requirements for owners and operators of underground storage tanks) were adopted by reference in Subchapter A. Comprehensive underground storage tank regulations were established in Chapter 245 when the Board adopted Subchapter E in 1997 (27 Pa.B. 5341, October 11, 1997). The Board last amended Subchapter E in 2007, when several underground storage tank provisions contained in the Federal Energy Policy Act of 2005 (August 8, 2005, Pub. L. No. 109-58, 119 Stat. 594) (EPAct) were adopted (37 Pa.B. 5965, November 10, 2007). The most significant provision in this final-form rulemaking addresses underground storage tank operator training requirements and codifies the last provision of the EPAct relating to underground storage tanks that needs to be addressed by the Department. Provisions for training course and trainer approvals, along with provisions for mandatory training or retraining of underground storage tank owners and operators whose tank systems are determined to be out of compliance as a result of an inspection, are already contained in current Chapter 245 regulations.

The proper conduct of operations, maintenance, and related recordkeeping for underground storage tanks has been a problem in Pennsylvania and nationally. The Department has noted particular compliance concerns relating to routine leak detection monitoring, periodic testing of monitoring equipment and corrosion protection systems, and maintenance. The operator training provisions in this rulemaking will help to significantly improve underground storage tank operations, maintenance, record keeping and related compliance with Pennsylvania and federal underground storage tank regulatory requirements, which will protect the citizens and the environment of this Commonwealth.

Establishment of an operator training program is necessary to comply with federal operator training grant guidelines issued by the U.S. Environmental Protection Agency (EPA) on August 8, 2007. Section 9010 of Subtitle I of the Solid Waste Disposal Act (Subtitle I), as amended by Section 1524 of the EPAct (42 U.S.C. § 6991i), required EPA to develop and publish guidelines for states to establish training requirements for underground storage tank operators. This section also requires that states receiving federal funds under Subtitle I develop state-specific regulatory training requirements consistent with the EPA guidelines by August 8, 2009 or be well underway in that process. Pennsylvania receives federal funding under Subtitle I in the form of the Underground Storage Tank and Leaking Underground Storage Tank Trust Fund grants. Additionally, the guidelines require states to ensure that all three classes of operators are trained according to state-specific training requirements by August 8, 2012. Failure to establish an effective operator training program in Pennsylvania would jeopardize current EPA state program approval and substantial funding provided to the Department under Subtitle I. For federal fiscal year 2009, the Department received \$2.79 million in federal funds from EPA for the Underground Storage Tank and Leaking Underground Storage Tank (cleanup) programs.

The final-form rulemaking amends existing § 245.422(e) (relating to upgrading of existing underground storage tank systems) to clarify that containment is required when replacing an existing product dispenser that involves a major modification.

The final-form rulemaking also amends § 245.435(b) (relating to reporting and recordkeeping) to clarify the timeframe for retention of temporary records and to correct errors on the retention of cathodic protection documents. This subsection also adds operator training documents to the temporary recordkeeping requirements.

The final-form rulemaking adds § 245.436 (relating to operator training) to existing regulations. This section establishes three distinct classes of underground storage tank operators and related training requirements. It includes the general requirements for trained operators (subsection (a)), descriptions of the classes of storage tank operators to be trained (subsection (b)), required and acceptable forms of training for each class of operator (subsection (c)), deadlines for new and existing operators to meet the training requirements (subsection (d)), and documentation requirements (subsection (e)).

The Department worked with the Storage Tank Advisory Committee (STAC) during development of this rulemaking. The Department also met with underground storage tank owners, operators and manufacturers; associations and groups, such as the Pennsylvania Petroleum Marketers and Convenience Store Association; the Tank Installers of Pennsylvania; and the Agricultural Advisory Board. 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 by section 105 of the act, the STAC has been given the opportunity to review and comment on the final-form rulemaking and to review comments received on the proposed rulemaking. On June 9, 2009, the STAC voted to support the amendments and recommended that the Board consider the amendments for publication as final-form rulemaking. A listing of STAC members and minutes of STAC meetings are available on the Department of Environmental Protection's website at [www.depweb.state.pa.us](http://www.depweb.state.pa.us) and may also be obtained from Charles M. Swokel, whose contact information appears in Section B of this preamble.

#### **E. Summary of Changes to and Comments and Responses on the Proposed Rulemaking**

The Board received comments on the proposed rulemaking from six commentators. Five individuals submitted comments during the 30-day public comment period, subsequent to the notification of availability published at 39 Pa.B. 1300 (March 14, 2009). The Department provided the Independent Regulatory Review Commission (IRRC) with all comments received during the public comment period. On May 13, 2009, IRRC submitted written comments to the Board. Based on the comments received, several changes have been made in the final-form rulemaking.

One commentator felt that compliance costs included in the preamble of the proposed rulemaking may be understated and did not address travel and labor costs associated with attending an operator training course. The Board recognizes that additional travel and labor costs could be incurred. However, the upper range of the rate shown for national trainers was for onsite training. Since the proposed rulemaking was published, some national trainers have started providing computer-based interactive operator training courses at even lower rates than projected in the

preamble. See Section F, Compliance Costs, below. The Board believes that market factors and national demand for training operators will ensure that training costs are competitive and reasonable.

Two commentators raised concerns that the proposed rulemaking may not meet EPA guidelines for operator training because the proposal does not provide for retraining or mandatory training of storage tank operators when a facility is determined to be out of compliance with regulatory requirements. Since existing regulations already contain provisions in § 245.411(d) for mandatory training or retraining of owners and operators, when a facility is determined to be out of compliance, the Board does not see a need to further amend the regulation on retraining. The existing regulations cover any formal retraining of owners and operators that may be required.

The Department may also rely on certified third-party inspectors or Department staff to provide instructions to operators during a facility inspection process for minor infractions, such as where on-the-spot corrections can be made or when the operator can provide documentation within a certain timeframe to the inspector that demonstrates compliance. This less formal training process should satisfy retraining requirements for minor infractions, so long as it measures the operators understanding of regulatory requirements, achieves compliance for the noted infractions and is documented on the inspection report or other enforcement records. The Board believes that the EPA guidelines allow for such flexibility when determining compliance and providing retraining specific to minor or limited infractions, as determined by the Department.

Two commentators complimented the Department on efforts to establish the rulemaking and one recommended that the provision on availability of Class A and Class B operators be retained as proposed. The Board appreciates the comments, and the provision is retained.

One commentator raised concerns about what constitutes a “manned facility” and recommended that definitions be added for manned and unmanned facilities and for determining when a facility is in operation that requires a Class C operator to be onsite. The Board recognizes this concern and has changed § 245.436(a)(ii) in the final-form rulemaking to clarify this issue and to reference 37 Pa. Code Chapter 13 (relating to storage and use of flammable and combustible liquids), which stipulates requirements for onsite operators when dispensing fuel for retail sales to the general public.

One commentator indicated that Class A operators may not make routine management decisions as indicated in § 245.436(b)(1), but may advise the tank owner or management on such matters. The Board has changed the routine requirements in this section to indicate that Class A operators “typically” have certain management responsibilities, thus implying that other methods of handling these responsibilities, such as advising management, may also be acceptable.

Two commentators were concerned that Department-certified entities should not be allowed to serve as operators and expressed that contracting the Class A operators position may pose safety concerns. The Board does not agree with the commentators that Department-certified entities should not be allowed to serve as operators or that contracting these functions poses safety concerns. However, the Board does believe that when designated as Class A or Class B operators, Department-certified entities should maintain current IUM or UMX certification categories or complete the same formal training as other operators. Therefore, the final-form rulemaking

requires that Department certification must be “current” in § 245.436(b)(1) and (2) for Department-certified entities when designated as the Class A operator, the Class B operator or both.

Several commentators raised concerns about Class C operator notification and use of environmental hot-line representatives for notification in emergencies. One of the commentators felt the proposed rulemaking was vague on instances when notification must be made. The Board recognizes these concerns and has included changes in § 245.436(b)(3) and (e)(3) of the final-form rulemaking that notification should be “based on the nature and type of emergency” and that Class C operator “or owner contact information including .....emergency procedures” shall be posted at unmanned facilities. This helps to clarify that an emergency hot-line representative may be used to satisfy notification, provided that written emergency procedures are provided that adequately address the process. The proposed rulemaking text also allows the hot-line representative to be designated as a Class C operator (additional, alternate or primary), if needed.

One commentator was concerned that maintaining lists of trained operators will be difficult and time-consuming, given the commentator’s experience with the high turnover of Class C operators. This commentator and another commentator also believe that the proposed rulemaking should further clarify retention requirements for operator training documents maintained off-site, such as for unmanned facilities. The Board believes that maintaining current lists of designated operators and other related documents is necessary and appropriate to identify the trained operators responsible for each underground storage tank facility. Retaining documentation at a readily available off-site location is already clarified in § 245.435(b) of the existing regulation, which is referenced in the proposed rulemaking under § 245.436(e)(2).

One commentator felt that the requirement to train a new Class A or Class B operator within 30 days for replacing a trained operator should be waived if the company has other trained operators already available to designate. The Board believes that the proposed rulemaking already allows for substitution of trained operators and no waiver is required. When designating any operator who is not yet trained, that operator must be trained within the timeframes stated in the regulation.

Finally, one commentator indicated that the corporate owner of multiple UST facilities is developing in-house training programs to fulfill the requirements to train and certify their own Class A and Class B operators under § 245.141. The Board agrees that the proposed rulemaking, coupled with existing training approval provisions in § 245.141, does not preclude an owner from developing in-house operator training courses and submitting the course outlines for approval by the Department for training the owner’s operators. The regulations require that the course instructor have professional background and knowledge necessary for the technical material covered and that the training course meet regulatory requirements, including testing and certification of the operators.

## **F. Benefits, Costs and Compliance**

### Benefits

The amendments are expected to result in significant improvements in the routine operation, maintenance and monitoring of underground storage tanks. This will help to further reduce the number of releases from underground storage tanks and in turn protect public health and the environment. These regulatory changes will provide economic opportunities for third-party trainers. By recognizing a wide array of training options, it is expected that costs to storage tank owners and operators will be minimized.

By establishing a viable operator training program, Pennsylvania will retain underground storage tank state program approval and will remain eligible for continued substantial federal funding for the program under Subtitle I.

### Compliance Costs

There are approximately 3,500 tank owners and their operators with nearly 8,700 underground storage tank facilities regulated by the Department in the Commonwealth. More than half of the owners are major corporations, while the remaining owners are mostly small businesses and various government entities. Many of the small businesses and corporations belong to organizations and associations that have shown an interest in helping with the required training for operators. The number of operators at any particular facility range from one to several, depending on the size of the facility and hours of operation. Generally, retail sales facilities have more operators than government entities or non-retail facilities.

The current national availability of underground storage tank training vendors for operators is somewhat limited, but is expected to expand significantly as all states implement mandatory operator training requirements. Many states have indicated that they will rely on third-party or industry trainers. The current cost of national training vendors ranges from \$145 to \$500 per training course for Class A and Class B operators. However, several organizations and associations in Pennsylvania, as well as Department-certified tank installers, inspectors and companies have indicated an interest in becoming approved trainers or in some cases providing services as qualified operators. It is anticipated with in-state and national trainers expanding into the underground storage tank program that the cost of operator training courses will be minimized through these market forces.

The costs for training Class C operators should be very minimal. The Class C operators only require in-house training on emergency procedures and written instructions. Tank owners should already provide this training to satisfy U.S. Occupational Safety and Health Administration requirements in 29 CFR Part 1910 (relating to Occupational Safety and Health Standards); and Pennsylvania Department of Labor and Industry requirements in 37 Pa. Code Chapter 13.

## Compliance Assistance Plan

It is not anticipated that the Commonwealth will provide sources of financial assistance to aid in compliance with the final-form rulemaking.

As for technical and educational assistance, the Department currently operates a fairly extensive program of outreach activities designed to assist owners and operators of storage tanks as well as individuals. This program includes a series of fact sheets that focus on single issues in the storage tank program (for example, Leak Detection: Meeting the Requirements); periodic seminars and conferences focusing on storage tank technical and administrative issues; training sessions presented by regional and central office training teams on a variety of issues; numerous guidance documents addressing technical and policy issues; and a great deal of information available on the Department's website. The Department will work with organizations, associations, companies and individuals to establish a base of industry trainers to provide the necessary training, testing and related documentation for owners and operators of underground storage tanks.

## Paperwork Requirements

There are very few new paperwork requirements in this rulemaking and no new reporting requirements. The rulemaking addresses requirements to maintain a list of designated operators, certificates or documentation of training, and facility contacts and written emergency procedures. The list of operators, training records and some contact information is new; emergency procedures should already be available at most facilities. These records will be checked during the periodic inspections currently required at underground storage tank facilities and will not be routinely required to be submitted to the Department.

## **G. Pollution Prevention**

The programs set out in this rulemaking package and in the current regulations are designed to prevent the release and spread of regulated substances from storage tanks located in this Commonwealth. They create a program similar to the cradle-to-grave process with the goal of making sure that the storage tank is installed, maintained, operated, closed and removed in a manner that will minimize the likelihood of a release occurring. If a release does occur, these amendments and regulations that currently exist in Chapter 245 are designed to detect and contain the release quickly, and make sure that corrective action is carried out expeditiously, minimizing exposure to the public and the environment.

In this rulemaking, the Department is attempting to reach or improve upon these goals through a combination of performance standards and training of storage tank operators. The final-form rulemaking has built-in flexibility as to how the regulated community achieves the goals and reliance on industry standards and trained industry professionals. By taking this approach, the Department hopes to improve routine storage tank operation and maintenance, reduce pollution, lower the number of corrective actions that must eventually be performed, decrease the amount of contaminated soil and groundwater that must be dealt with, and do so in a manner that is flexible, reasonable and cost effective.

## **H. Sunset Review**

This regulation will be reviewed in accordance with the sunset review schedule published by the Department to determine whether the regulation effectively fulfills the goals for which it was intended.

## **I. Regulatory Review**

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on February 27, 2009, the Department submitted a copy of the notice of proposed rulemaking, published at 39 Pa.B. 1300 (March 14, 2009) to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the House and Senate Environmental Resources and Energy Committees (Committees) for review and comment.

Under section 5(c) of the Regulatory Review Act, IRRC and the Committees were provided with copies of the comments received during the public comment period, as well as other documents when requested. In preparing the final-form rulemaking, the Department has considered all comments from IRRC, the Committees and the public.

Under section 5.1(j.2) of the Regulatory Review Act (71 P.S. § 745.5a(j2)), on     (date)    , this final-form rulemaking was deemed approved by the Committees. Under section 5.1(e) of the Regulatory Review Act, IRRC met on     (date)    , and approved the final-form rulemaking.

## **J. Findings**

The Board finds that:

- (1) Public notice of proposed rulemaking was given under sections 201 and 202 of the act of July 31, 1968, P.L. 769, No. 240) (45 P.S. §§ 1201 and 1202) and regulations promulgated thereunder at 1 Pa. Code §§ 7.1 and 7.2.
- (2) A public comment period was provided as required by law, and all comments were considered.
- (3) These regulations do not enlarge the purpose of the proposal published at 39 Pa.B. 1300 (March 14, 2009).
- (4) These regulations are necessary and appropriate for administration and enforcement of the authorizing acts identified in Section C of this order.

## **K. Order of the Board**

The Board, acting under the authorizing statutes, orders that:

- (a) The regulations of the Department of Environmental Protection, 25 Pa. Code, Chapter 245, is amended by amending §§ 245.422(e) and 245.435(b); and by adding § 245.436, to read as set forth in Annex A, with ellipses referring to the existing text of the regulations.

- (b) The Chairman of the Board shall submit this order and Annex A to the Office of General Counsel and the Office of Attorney General for review and approval as to legality and form, as required by law.
- (c) The Chairman shall submit this order and Annex A to the Independent Regulatory Review Commission and the Senate and House Environmental Resources and Energy Committees as required by the Regulatory Review Act.
- (d) The Chairman of the Board shall certify this order and Annex A and deposit them with the Legislative Reference Bureau, as required by law.
- (e) This order shall take effect immediately.

BY:

John Hanger  
Chairperson  
Environmental Quality Board

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 E. TECHNICAL STANDARDS FOR UNDERGROUND  
STORAGE TANKS

UNDERGROUND STORAGE TANK SYSTEMS: DESIGN, CONSTRUCTION,  
INSTALLATION AND NOTIFICATION

§ 245.422. Upgrading of existing underground storage tank systems.

\* \* \* \* \*

(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).

GENERAL OPERATING REQUIREMENTS

§ 245.435. Reporting and recordkeeping.

\* \* \* \* \*

(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.

\* \* \* \* \*

(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:

\* \* \* \* \*

(iv) Documentation of the last **[two] three** impressed current cathodic protection system inspection checks for each 60-day test period **in accordance with [(1)§ 245.432(1)]**.

(v) The last **two** cathodic protection **[survey] surveys**, done at 3-year intervals, on impressed current and galvanic cathodic protection systems in accordance with **[(1)§ 245.432(1)]**.

\* \* \* \* \*

**(ix) 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).**

**§ 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 facility that has underground storage tanks permitted to operate by the Department.**

**(2) A 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 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) [~~For manned facilities, a Class C operator shall be onsite whenever the facility is in operation, such as when dispensing a regulated substance at a retail sales facility~~] 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 CHAPTER 13, §§ 13.115 AND 13.117(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 THAT DO NOT DISPENSE MOTOR FUEL TO THE GENERAL PUBLIC MAY BE MANNED BASED ON THE FACILITY OWNER'S REQUIREMENTS AND ROUTINE OPERATIONAL NEEDS.**

**(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.**

**(4) Designated operators shall successfully complete required training under subsection (c) not later than August 8, 2012.**

**(5) 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 [routinely] 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 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 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 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 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 at one or more facilities. For example, the 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 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 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 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 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. This person is responsible for responding to alarms or other indications of emergencies caused by spills or releases from underground storage tank systems and 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 \_\_\_\_\_, (Editors Note: The blank refers to a date, 6 months after the effective date of adoption of this regulation.) 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 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 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 written 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 state or implementing agencies and which is approved by the EPA as meeting operator training grant guidelines published by the EPA.**

**(6) 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 \_\_\_\_\_, (Editor's Note: The blank refers to the effective date of adoption of this regulation.) contingent upon availability of approved training providers, but not later than August 8, 2012.**

**(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 \_\_\_\_\_, (Editor's Note: The blank refers to a date, 6 months after the effective date of adoption of this regulation.) 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 under Occupational Safety and Health Administration, 29 CFR Part 1910 (relating to Occupational Safety and Health Standards).

**(e) Documentation.**

**(1) The owner of an underground 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 recordkeeping).)**

**(3) Class C operator [~~and~~] OR owner contact information, including names and telephone numbers, and emergency [~~information~~] PROCEDURES, shall be conspicuously posted at unmanned facilities.**

**FINAL RULEMAKING**

**CHAPTER 245**

**ADMINISTRATION OF THE STORAGE TANK AND  
SPILL PREVENTION PROGRAM**

**COMMENT AND RESPONSE DOCUMENT**

**Proposed Rulemaking #7-432: Underground Storage Tank Operators Training Requirements**

COMMENTATOR LIST

ID	Name/Address	Submitted one page Summary for distribution to EQB	Provided Testimony	Requested Final Rulemaking following EQB Action
1.	Jo Ellen Litz 2501 Cumberland Street, Suite 4 Lebanon, PA 17042 <a href="http://www.JoEllenLitz.com">www.JoEllenLitz.com</a> (717) 644-4698			
2.	Jason A. Speicher Adv. Environmental Scientist FirstEnergy Corp. P.O. Box 16001 Reading, PA 19612			
3.	Rick Rogers Associate Director U.S. Environmental Protection Agency Region III Office of State Programs 1650 Arch Street Philadelphia, PA 19103-2029			
4.	Bob May <a href="mailto:rjmay@aol.com">rjmay@aol.com</a> 3531 Jacksonwald Ave Reading, PA 19606	X		
5.	Jennifer Celeste Supervisor, Environmental Compliance Sunoco Inc. 1735 Market Street / 12 <sup>th</sup> Floor Philadelphia, PA 19103 <a href="mailto:JLCELESTE@sunocoinc.com">JLCELESTE@sunocoinc.com</a>	X		
6.	Independent Regulatory Review Commission Harrisburg, PA 17101			

## COMMENT AND RESPONSE DOCUMENT

1. **Comment:** Both of my adjoining neighbors have had contamination, and my cooperation with their cleanups resulted in the placement of a deed restriction on my property in January 2000 prohibiting wells for drinking water on my property. It is my understanding that such deed restrictions will need to be converted to environmental covenants after the passage of the Uniform Environmental Covenants Act ("UECA"). This case is closed and the environment does not benefit from this conversion requirement. This is an undue burden and financial hardship on small businesses. (1)

**Response:** This comment addresses issues beyond the scope of the Underground Storage Tank (UST) Operator Training proposed rulemaking. The Department is developing a proposed rulemaking to implement the provisions of the UECA, and this comment has been forwarded to the Department's program that is working on that proposed rulemaking.

2. **Comment:** The U.S. Environmental Protection Agency's ("EPA") document titled "Grant Guidelines To States Implementing the Operator Training Provision Of The Energy Policy Act Of 2005" ("Grant Guidelines") states:

If a state determines an underground storage tank system is out of compliance, appropriate operator(s) must be retrained. States may determine whether both Class A and Class B operators are retrained or if only one class of operator (Class A or Class B) is retrained.

The proposed rulemaking does not require retraining of operators if an underground storage tank ("UST") system is determined to be out of compliance. This requirement should be added to the regulations. A second commentator recommended that the Board should amend the regulation to be consistent with EPA guidelines or explain the reason for deviating from the EPA guidelines. (3) (6)

**Response:** The Department does not agree that the Commonwealth's UST program does not require retraining of operators if an underground storage tank ("UST") system is determined to be out of compliance. Although there is no specific mention of "retraining" in proposed § 245.436, § 245.411(d) of the existing regulation states:

**COMMENT AND RESPONSE DOCUMENT**

(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.*

(Emphasis added.) Therefore, the existing regulations already contain authority for the Department to require operators to successfully complete an appropriate training course when related violations are documented.

The commentator appears to take issue that under § 245.411(d), the Department has discretion to require or not require retraining approved under § 245.141. First, the Department notes that the document cited by the commentator is merely a set of Grant Guidelines, and not regulations, and so are not binding norms for the Commonwealth or UST operators. The Grant Guidelines provide direction and a certain amount of flexibility to the states when setting up their UST programs and to EPA when making decisions on grant applications from the states.

More importantly, however, the Grant Guidelines cited by the commentator do not appear to hold a state to arbitrarily require formal retraining for all operators in every instance of non-compliance. The Grant Guidelines state:

“If a state determines an underground storage tank system is out of compliance, appropriate operator(s) must be retrained. States may determine whether both Class A and Class B operators are retrained, or if only one class of operator (either Class A or Class B) is retrained. At a minimum, an underground storage tank system is out of compliance if the system:

**COMMENT AND RESPONSE DOCUMENT**

- Does not meet EPA's Significant Operational Compliance requirements for release prevention and release detection measures identified at:  
<http://www.epa.gov/oust/cmplastc/soc.htm>; or
- Is not in significant compliance with other requirements, such as financial responsibility, as determined by the state.

Operators must be retrained within a reasonable time frame established by the state. At a minimum, retraining must include training of the areas determined not in significant compliance. States requiring at least annual operator training that covers all operator class requirements would meet retraining requirements.”

(Grant Guidelines, pages 7-8.) Clearly, the Grant Guidelines acknowledge that states wield a great deal of discretion over the retraining "requirement." States have the discretion to determine if:

- a) a non-compliance situation reaches "Significant Operational Compliance" (if not, then retraining is not required);
- b) the system is not in "significant compliance" with other requirements established by the states (if no, then retraining is not required);
- c) whether both the Class A and Class B operators must be retrained when significant noncompliance is found or if only one class of operator must be retrained; and,
- d) the scope of any retraining required and the timeframe in which the retraining must be completed.

The Department will also rely on less formal retraining through instructions given to owners and operators by Department-certified (third-party) inspectors or Department staff for minor deficiencies that can be corrected on the spot or through submission of records to the inspector, as long as there is a way for the inspector to measure the operator's

**COMMENT AND RESPONSE DOCUMENT**

understanding of regulatory requirements related to the deficiencies or violations and the training is documented. The Department believes that such practices can be accomplished through guidance or instructions provided to inspectors and less formal training documented on the inspection report form or enforcement records. These less formal retraining practices do not need to be addressed in the rulemaking.

The Department's authority to require retraining is no less stringent than that required by the Grant Guidelines, and is arguably broader in scope as the limitations listed here do not exist in § 245.411. In short, the Department believes that the existing retraining requirements contained in § 245.411(d) address the concerns raised by the commentator and are no less stringent than the federal requirements.

3. **Comment:** We compliment the Department on moving forward with proposed rules to provide a regulatory framework for implementing UST Operator Training in accordance with the Operator Training Provision included in the federal Energy Policy Act of 2005. The release of these proposed rules prior to the August 8, 2009 deadline provided by the EPA will allow our company added time to plan and budget for meeting the applicable training requirements for our employees involved in the operation of our UST systems. (2)  
**Response:** The Department appreciates the commentator's support for the proposed rulemaking and is working diligently to get the rulemaking finalized in a timely manner.
4. **Comment:** The "Costs" section of the Preamble only discusses the potential costs that will be incurred by the applicable regulated community for the anticipated administrative cost of attending an operator training course. At a minimum, the Department should state that additional labor and travel costs will be incurred by the regulated community for sending employees to the required training for Class A and B operators. In addition, the Department has not taken into account the costs that will be incurred by the regulated community to train Class C operators. In the case of our company, we have over 30 locations across the State of Pennsylvania that have regulated underground storage tanks. Each location will have one or more employees that will require Class C operator training. Therefore, we will incur additional labor and travel costs to provide on-site training at each location, or if we choose to utilize a computer based training program, we will incur the

**COMMENT AND RESPONSE DOCUMENT**

costs to develop and maintain the program. The cost to develop similar types of computer based training programs has been several thousand to tens of thousands of dollars.

Therefore, we recommend that the Department more appropriately address the likely costs that will be incurred by the regulated community by the implementation of these rules. (2)

**Response:** The Department agrees that additional labor and travel costs could be incurred for meeting the Class A or Class B operator training requirements. The Department's cost projections were based on available information from national trainers at the time that the proposed rulemaking was prepared for publication. However, the higher cost estimates in the accompanying preamble were for trainers that would provide onsite training. Also, some national trainers are now providing operator training courses at lower rates than those that we projected. Further, the Department believes that the commentator's position on Class C operators is overstated. Class C operator training should be site specific and can be provided with routine onsite safety training currently necessary to satisfy closely related OSHA requirements, which are referenced in the proposed rulemaking. Therefore, no increases have been calculated to the estimated costs of the rulemaking.

5. **Comment:** The rules would be greatly improved by providing additional definitions in § 245.2. For example, providing more specific definitions of "manned facilities" and "unmanned facilities" would provide companies with fleet operations better clarity in understanding how these rules apply or do not apply to them. (2)

**Response:** The Department acknowledges the commentator's concerns, but does not agree that additional definitions are necessary. Rather, the Department has revised subsection 245.436(a)(3)(ii) to more clearly reflect when a facility is required to be manned by a Class C operator. The revision references existing requirements at 37 Pa. Code Chapter 13, which, among other things, establishes rules regarding when a facility storing flammable and combustible liquids must be manned. Further, the Department believes that requirements for unmanned facilities are clearly stated in the proposed rulemaking. Also, see response to Comment 7.

6. **Comment:** Subsection 245.436(a)(3)(i). We support the inclusion of an option for either a Class A or a Class B operator to be available on-site within 24 hours. This provision should be maintained in the final rulemaking. (5)

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**Response:** The Department acknowledges the commentator's support and has retained the provision on availability of Class A and Class B operators in the final-form rulemaking.

7. **Comment:** Subsection 245.436(a)(3)(ii). The Department should clarify what it means for a facility to be "in operation." We would recommend the Department carefully consider restating this wording to indicate that "in operation" is considered "in operation during normal operating business hours." As currently written, the regulated community could interpret that a manned facility means if anyone, including janitorial or security staff, is at a facility outside of normal business hours, that a Class C operator shall be onsite. In addition, companies could have intermittent or emergency operations (e.g., response to electrical outages) outside of normal business hours that could be considered to require that a Class C operator be onsite. Having a Class C operator onsite during these unscheduled and unplanned operations is overly burdensome, would delay our response to electrical outages and negatively affect customer reliability. (2)

**Response:** The Department acknowledges the commentator's concerns and has revised this subsection in the final-form rulemaking. The revision requires that a Class C operator be present only at facilities that dispense motor fuel to the general public when open for business with the public in accordance with 37 Pa. Code Chapter 13. Further, 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. Because it references existing Department of Labor and Industry requirements, this revision should address any concerns regarding the need for a Class C operator to be onsite at a facility that operates other than for retail sale of motor fuel to the general public and allows facility owners of the non-retail facilities to determine their own needs for onsite operators.

8. **Comment:** Subsection 245.436(a)(3)(iii). Please clarify if a company has an established 24-hour emergency contact number (e.g., Environmental Hotline) as part of normal business activities, if posting a visible sign with this number will meet the requirement? (2) (6)

**Response:** Emergency procedures are required to be posted, which may include an environmental hotline or other emergency contact information. The final-form rulemaking

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has been revised to provide additional clarification on documentation and emergency procedures in subsection 245.436(e)(3). Also see response to Comment 13.

9. **Comment:** Subsection 245.436(b)(1), 2nd sentence. Because a Class A operator's designated job duties may not include the management of resources and personnel, especially the daily management of Class A operators, it is recommended that the language be broadened in this sentence to indicate that the Class A operator can advise appropriate management on procedures "...to achieve and maintain compliance with regulatory requirements." (2)

**Response:** The Department acknowledges that the Class A operator may advise management on procedures, resources and the like necessary to maintain compliance with regulatory requirements. The final-form rulemaking is revised to reflect that a Class A operator's responsibilities "typically" include managing resources, personnel, work assignments and so on, thus implying that other means of overseeing these responsibilities may be unusual, but are acceptable. The Department and EPA currently use the term "typically" in a similar way in existing underground storage tank regulations (Chapter 245 and 40 CFR 280). The Class A operator must, however, have some oversight or input with the storage tank owner or management regarding the responsibilities listed in this subsection.

10. **Comment:** Subsection 245.436(b)(1)(iii). We recommend that the Department consider revising this description of a Class A operator to state, "A Class A operator may prepare *or review* site drawings that indicate equipment locations...." (2)

**Response:** The preparation of site drawings and routine maintenance checklists are not mandatory. Therefore, the Department believes that the proposed language in this subsection allows the Class A operator to prepare or review such documents (or not). No change is needed in the final-form rulemaking.

11. **Comment:** Subsection 245.436(b)(1)(iv). Public safety is potentially compromised having tank installers or inspectors acting as the educated tank operator. Having the tank installer and inspectors assuming the responsibilities of the onsite operator leads to a variety of issues where the public is not protected as compared to the operator onsite. Tank

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installers and inspectors acting as the educated tank operator instead of the tank operator erodes the benefits that the public was awarded with increased education. The public has the perception that the best control and release protection occurs at the tank location, not at the remote tank installer or inspector office or truck. One commentator stated the Board should explain how safety is protected by these provisions. (4) (6)

**Response:** The Department appreciates the commentator's concerns, but does not agree that certified installers or inspectors serving as the designated Class A or Class B operator decrease the effectiveness of the program or public safety in any way. The Department-certified persons are well versed in the operation and maintenance of storage tank facilities and equipment. In fact, they are the experts on storage tank equipment - compatibility, installation, repair, maintenance and operations. Department-certified entities are currently serving as operators at several facilities and have corrected prior operator's deficiencies and maintain current operations quite well. We believe that the use of Department-certified entities will provide a high level of technical and operational compliance that some facility owners and operators would otherwise find very difficult to achieve on their own.

However, the Department believes that these entities should be required to maintain current Department certification or complete the same training that is required for other Class A or Class B operators. Most UST technical and operational requirements are the responsibility of both the owner and the operator. By agreeing to serve as the UST facility operator, the Department-certified entity would share liability for non-compliance with the UST owner. Department-certified entities would be especially sensitive to the consequences of non-compliance, as non-compliance at the UST facility could potentially put their Department certification at risk (see, 25 Pa. Code Section 245.108(a)(1), relating to suspension of certification). Thus, Department-certified entities are likely to be extremely cautious in avoiding problems or violations, including those that might jeopardize public safety.

Therefore, the final-form rulemaking is amended to reflect that Department-certification must be current.

12. **Comment:** Under section 245.436(b)(2)(i), a Class B operator is not qualified to confirm if certain corrosion protection equipment is functioning properly; however, a Class B operator can assure that the proper corrosion protection equipment inspections occur and

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appropriate maintenance on such systems is completed. Please amend the proposed rulemaking to reflect this. (5)

**Response:** The Department believes that assuring the proper corrosion protection equipment testing and any maintenance, when required, is performed by a qualified technician, and maintaining necessary records of such constitutes confirmation that the equipment is functional. Further, Class B operators should be able to routinely check impressed current corrosion protection systems to ensure that electric power to the system is turned on and the power function light is lit. Additionally, Class B operators should be able to read voltage meters displayed on these systems and record the voltage reading during the routine required system check, every 60 days, regardless of whether the facility owner has a separate maintenance technician perform these tasks or not.

13. **Comment:** Section 245.436(b)(3) requires the Class C operator to “notify the Class A or Class B operator and appropriate emergency responders when necessary” in the event of a release or other emergency. We have formal emergency response procedures to notify and respond to various incidents or emergencies. Depending on the incident or emergency the procedures may or may not include immediate notification to the Class A operator. We are interpreting this requirement of notification of a Class A or Class B operator not to be mandatory, but as appropriate or necessary depending on the type of incident or emergency. One commentator indicated that the regulation is vague on instances when notification must be made, and asked the Board to amend the regulation to clarify circumstances that require mandatory notification. (5) (6)

**Response:** The Department agrees that notification may not be required in all cases, but should be based on the nature and the type of emergency. The final-form rulemaking is revised to reflect this additional condition. Also, current regulations require that records of any release investigation or related equipment repairs be retained; the Class A or Class B operator would need to be apprised of incidents resulting in such records in order to have the available records. Further, the owner’s written instructions or procedures required under paragraph (ii) should also reflect what steps are taken in the event of specific emergency conditions, which may include the owner’s emergency response hot-line, rather than calling the Class C operator. The owner also has the option of designating the person or persons at the emergency response hot-line as additional or alternate Class C operators,

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provided that person receives Class C operator training and relevant written instructions or procedures required in this subsection.

14. **Comment:** Under § 245.436(c)(1)-(2), Class A and Class B operators shall successfully complete a training course approved by the Department under § 245.141. We are developing our own in-house training programs to fulfill these requirements and assume that such in-house programs may also be submitted for approval under § 245.141? (5)

**Response:** The Department agrees - the proposed rulemaking and existing provisions in § 245.141 do not preclude an owner from developing in-house operator training courses and submitting the courses for approval by the Department for training the owner's operators. Existing regulations do require that the course instructor have the professional background and knowledge necessary for the technical material covered and that the training course meet the regulatory requirements, including testing and certification of the operators.

15. **Comment:** Subsection 245.436(d)(2). The requirement to train a new operator within 30 days of replacing a Class A or B operator should be waived if a company, or its subsidiaries, have more than one designated Class A or B operator (i.e., a backup operator) as the UST facility would still maintain a Class A and B operator as required. We agree that a new person should be trained within 30 days after assuming the responsibilities of a Class A or B operator. (2)

**Response:** The Department agrees that if an owner has more than one person designated for a certain class of operator at a facility and one person leaves, another properly trained and designated operator for the class could potentially continue to perform required operator duties for that class of operator. The hiring and/or designation of a new, replacement or additional "untrained" operator mandates the training within the timeframes included in the rulemaking for the untrained operator.

16. **Comment:** Subsection 245.436(e)(1) and (3). The Department should recognize the potential difficulty in keeping a consistently current list of trained Class A, B, and C operators for a large company with many facilities containing regulated USTs across the State. While it could be more reasonable to keep a sustained list of Class A and B

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operators, or operators designated for all three categories, keeping a list of all the designated Class C operators current will be difficult with potential worker turnover. We recommend that the Department consider that if a company or entity has instituted and posted a 24-hr environmental emergency contact number, that this can be used in lieu of a posted contact list at each facility. Another commentator stated that if the posting of a 24-hour emergency contact number would sufficiently address public safety and environmental concerns, the Board should include this option in the final-form regulation. (2) (6)

**Response:** The Department believes that maintaining current lists of designated and trained operators is appropriate and necessary to satisfy EPA Grant Guidelines. Flexibility is provided for offsite retention of these documents for unmanned facilities. The final-form rulemaking is revised to allow for Class C operator or owner contact information and emergency procedures posting for unmanned facilities. This may include the use of a 24-hour emergency hotline. Also, see responses to Comments 8 and 13.

17. **Comment:** Subsection 245.436(e)(2). It is recommended that this language be changed to indicate that copies of operator training certificates or the facility list of Class A, Class B, and Class C operators shall be maintained “either onsite at the underground storage tank facility or at a readily available alternative site... If records are maintained offsite, the records shall be easily obtained and provided for inspection or for review by the Department upon request.” A second commentator asked for clarification in the final-form regulation as to what is considered “readily available”. (2) (6)

**Response:** Proposed subsection 245.436(e) references existing regulations at subsection 245.435(b), which currently states:

“(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.”

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This language is taken nearly verbatim from Federal underground storage tank regulations on availability and maintenance of records at 40 CFR Part 280, section 280.34(c)(1) and (2) and is codified by EPA as part of our state program approval. The Department includes a timeframe for providing records, when requesting any records that are maintained offsite or otherwise not immediately available during inspection of a facility. The Department believes no further clarification in the rulemaking is necessary.



Pennsylvania Department of Environmental Protection

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October 2, 2009

Policy Office

717-783-8727

Kim Kaufman, Executive Director  
Independent Regulatory Review Commission  
333 Market Street, 14th Floor  
Harrisburg, PA 17120

Re: Final-Form Rulemaking – Underground Storage Tank Operators Training Requirements (#7-432);  
Final-Form Rulemaking – Safe Drinking Water Amendments (#7-439)

Dear Mr. Kaufman:

Pursuant to Section 5.1(a) of the Regulatory Review Act, please find enclosed copies of two final-form rulemakings for review and comment by the Independent Regulatory Review Commission (IRRC). The Environmental Quality Board (EQB) approved these is final-form rulemakings at its September 15, 2009, meeting.

The Underground Storage Tank Operators Training Requirements final-form rulemaking amends the current underground storage tank (UST) regulations in *25 Pa Code* Chapter 245 to establish comprehensive UST operator training requirements for three distinct classes of UST operators, including Class A, Class B and Class C Operators. The amendments are necessary to meet federal mandates of the U.S. EPA as required by the Energy Policy Act of 2005. Section 1524 of the Energy Policy Act amended Section 9010 of Subtitle I of the Solid Waste Disposal Act. The amendments require that states receiving federal funds under Subtitle I develop state-specific training requirements for UST operators consistent with EPA guidelines. In addition, states must ensure that all three classes of operators are trained according to state-specific training requirements by August 8, 2012. Since Pennsylvania receives funding under Subtitle I, failure to establish an operator training program will jeopardize receipt of future federal funding under Subtitle I for the UST and Leaking UST (cleanup) programs.

The final rulemaking includes specific training requirements for Class A, Class B and Class C Operators. Each class varies depending upon the overall responsibilities of the individual for the operation and maintenance of USTs. The regulations include descriptions of the three classes of operators to be trained, the required training for each, the acceptable forms of training, deadlines for new and existing operators to meet the training requirements, and documentation requirements. The rulemaking will impact nearly 3,500 tank owners in Pennsylvania, including approximately 8,700 UST facilities. Of the tank owners, more than half are major corporations, while the remaining owners are small businesses and government entities. The number of operators to be trained at any particular facility will range from one to several, depending on the size of the facility and hours of operation.



During the public comment period, six commentators provided comments to the Board on the proposed rulemaking, including EPA Region III, Sunoco Inc., FirstEnergy Corp., and IRRC. At final rulemaking, the Department addressed the ambiguity concerning when a manned facility needs to have a Class C operator on site by adding language that relies on current Department of Labor and Industry rules for the supervision of facilities when dispensing fuel for retail sales to the general public. The Department worked with the Storage Tank Advisory Committee during the development and review of the rulemaking, including the review of public comments received on the proposed regulations. The committee voted at its June 9, 2009, meeting to support the rulemaking and urged the Department to submit the regulation to the EQB for consideration as a final-form rulemaking.

The final Safe Drinking Water Amendments amend Chapter 109 to incorporate necessary federal requirements for the Stage 2 Disinfectants and Disinfection Byproducts Rule (Stage 2 DBPR), the Long Term 2 Enhanced Surface Water Treatment Rule (LT2ESWTR), and the Groundwater Rule (GWR). The rulemakings are necessary to maintain primary enforcement authority and were presented to the Board as three individually proposed rulemakings on August 19, 2008. To aid in clarifying the breadth of changes proposed to Chapter 109, the Department consolidated the proposed regulations into one comprehensive final rulemaking.

The *Stage 2 DBPR* incorporates federal provisions in order to reduce disease incidence associated with the disinfection byproducts that are formed when public water systems add disinfectants. While DBPs disinfect water by controlling harmful microorganisms, they can react with organic and inorganic matter in the water to form byproducts that pose health risks at certain levels. This rulemaking augments the Stage 1 DBP Rule that was promulgated by the Commonwealth in 2001 by targeting the highest risk monitoring sites where customers are exposed to high levels of DBPs. The amendments will apply to community water systems and nontransient noncommunity water systems that add a primary or residual disinfectant other than ultraviolet light (UV) or deliver water that has been treated with a primary or residual disinfectant other than UV. Three commentators provided comments on the proposed rulemaking, including EPA Region III, the City of Philadelphia, and IRRC. At final rulemaking, the requirement for water suppliers to report compliance values for the Stage 2 DBPR parameters was deleted because the Department already performs these calculations. The requirement was also deleted in order to be consistent with existing policies and reporting requirements of the Department.

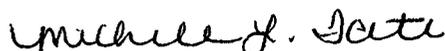
The *LT2ESWTR* is proposed to provide further public health protection against *Cryptosporidium* and other microbial pathogens by requiring public water systems to monitor their source water to determine an average *Cryptosporidium* level. *Cryptosporidium* is known to have caused a number of waterborne disease outbreaks in the United States and is highly resistant to chlorine. Based upon monitoring data collected, public water systems will be classified into one of four treatment categories, which will vary depending on the concentration of *Cryptosporidium* in the source water. Those having higher concentration levels will be required to implement a higher degree of additional *Cryptosporidium* treatment beyond existing treatment requirements. In Pennsylvania, approximately 355 public water systems will be impacted by the proposed amendments. During the public comment period, EPA Region III, the City of Philadelphia, and IRRC provided comments. At final rulemaking, the Department has added the requirement that a Tier 1 public notice (PN) is necessary for a LT2ESWTR treatment technique violation resulting from a failure to maintain the required level of treatment for *Cryptosporidium* because the violation constitutes a breakdown in treatment. Existing PN requirements classify a breakdown in treatment as a Tier 1 situation requiring a Tier 1 PN.

The *Groundwater Rule* provides for increased public health protection against fecal contaminants at public water systems served by groundwater sources. Currently, there is no Federal regulation that requires monitoring of groundwater sources or corrective action when fecal contamination is found in groundwater sources. To address this, EPA established the Ground Water Rule as a risk-targeted strategy where ground water systems that are susceptible to fecal contamination would be targeted for regulation, instead of the regulation of all ground water systems. Through this proposal, the Department has incorporated EPA's strategy, whereby systems with sources potentially at risk of fecal contamination that do not provide adequate treatment of viruses must monitor their untreated source water for *E. coli*, if directed by the Department. Systems detecting the presence of *E. coli* in their source water must take corrective action to protect consumers. Six commentators provided comment on the proposal, including Merck and Co., Inc., PPL, the PA Chamber of Business and Industry, Penn State University, EPA Region III and IRRC. At final rulemaking, a provision was added that will not require triggered source water *E. coli* monitoring if the routine coliform samples are invalidated within 24 hours. This provision added at final rulemaking is consistent with federal requirements.

The final rulemaking was presented to the Small Water Systems Technical Assistance Center Advisory Board (TAC) for review and discussion on May 21, 2009. Although the Board supports the revisions made to the final rulemaking, it submitted comments for consideration by the Department, which are provided on the Board's website and available to you upon request.

The Department will provide assistance as necessary to facilitate the Commission's review of these final-form rulemakings under Section 5.1(e) of the Regulatory Review Act. Please contact me at 717-783-8727 if you have any questions or need additional information.

Sincerely,



Michele L. Tate  
Regulatory Coordinator

Enclosures



**TRANSMITTAL SHEET FOR REGULATIONS SUBJECT TO  
THE REGULATORY REVIEW ACT**

I.D. NUMBER: 7- 432

SUBJECT: *underground Storage Tank Operators Training Requirements*

AGENCY: DEPARTMENT OF ENVIRONMENTAL PROTECTION

**TYPE OF REGULATION**

- Proposed Regulation
- Final Regulation
- Final Regulation with Notice of Proposed Rulemaking Omitted
- 120-day Emergency Certification of the Attorney General
- 120-day Emergency Certification of the Governor
- Delivery of Tolled Regulation
  - a.  With Revisions
  - b.  Without Revisions

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 INDEPENDENT REGULATORY REVIEW COMMISSION

**FILING OF REGULATION**

DATE	SIGNATURE	DESIGNATION
<i>10/2/05</i>	<i>[Signature]</i>	Majority Chair, HOUSE COMMITTEE ON ENVIRONMENTAL RESOURCES & ENERGY
<i>10/2/09</i>	<i>[Signature]</i>	Minority Chair, HOUSE COMMITTEE ON ENVIRONMENTAL RESOURCES & ENERGY
<i>10-2-09</i>	<i>[Signature]</i>	Majority Chair, SENATE COMMITTEE ON ENVIRONMENTAL RESOURCES & ENERGY
<i>10-2-09</i>	<i>A. Rybarczyk</i>	Minority Chair, SENATE COMMITTEE ON ENVIRONMENTAL RESOURCES & ENERGY
<i>10/2/09</i>	<i>Kathy Cooper</i>	INDEPENDENT REGULATORY REVIEW COMMISSION
_____	_____	ATTORNEY GENERAL (for Final Omitted only)
_____	_____	LEGISLATIVE REFERENCE BUREAU (for Proposed only)