

Regulatory Analysis Form		This space for use by IRRC
(1) Agency Department of Environmental Protection		RECEIVED 2009 FEB 27 PM 3:20
(2) I.D. Number (Governor's Office Use) 7 - 432		INDEPENDENT REGULATORY IRRC Number: 2753
(3) Short Title Underground Storage Tank Operator Training Requirements		
(4) PA Code Cite 25 Pa. Code Chapter 245	(5) Agency Contacts & Telephone Numbers Primary Contact: Michele Tate, 783-8727 Secondary Contact: Kelly Heffner, 783-8727	
(6) Type of Rulemaking (Check One) <input checked="" type="checkbox"/> Proposed Rulemaking <input type="checkbox"/> Final Order Adopting Regulation <input type="checkbox"/> Final Order, Proposed Rulemaking Omitted	(7) Is a 120-Day Emergency Certification Attached? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes: By the Attorney General <input type="checkbox"/> Yes: By the Governor	
(8) Briefly explain the regulation in clear and nontechnical language. The attached proposed 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) State the statutory authority for the regulation and any relevant state or federal court decisions. The proposed 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.		
10) Is the regulation mandated by any federal or state law or court order, or federal regulation? If yes, cite the specific law, case or regulation, and any deadlines for action. Yes. The Federal Energy Policy Act of 2005 (EPAAct), 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.		

(11) Explain the compelling public interest that justifies the regulation. What is the problem it addresses?

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.

(12) State the public health, safety, environmental or general welfare risks associated with non-regulation.

Releases of regulated substances from USTs pose a substantial risk to public health, safety and the environment. Substandard release detection and operational practices continue and will not improve significantly without a regulatory change that requires UST operators to be trained.

(13) Describe who will benefit from the regulation. (Quantify the benefits as completely as possible and approximate the number of people who will benefit.)

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 proposed 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.

(14) Describe who will be adversely affected by the regulation. (Quantify the adverse effect as completely as possible and approximate the number of people who will be adversely 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 proposed 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.

(15) 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, a number of farmers (27) 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.

(16) Describe the communications with and input from the public in the development and drafting of the regulation. List the persons and/or groups who were involved, if applicable.

The Department worked closely with the Storage Tank Advisory Committee (STAC) during development of the proposed rulemaking. The Department also met with storage tank owners, organizations, 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 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 proposal and has been given the opportunity to review and comment on the proposal. The STAC voted to support the proposed rulemaking at their meeting on June 10, 2008. The STAC vice-chairperson subsequently prepared a written report to the EQB on the proposed rulemaking. A list of STAC members may be obtained from the agency contacts noted in (5) above.

(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.

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 very few national industry trainers for storage tank operators. These trainers charge anywhere from \$200 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 no 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.

(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.

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. 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.

(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.

State government entities that are tank owners will incur the costs associated with training their UST operators. The following state agencies own and operate UST facilities: Department of Conservation and Natural Resources, Department of Agriculture, Department of Corrections, Military and Veterans Affairs, Department of Labor and Industry, Department of General Services, Department of Transportation, Department of Welfare, Pennsylvania Emergency Management Association, Pennsylvania Game Commission, Pennsylvania State Police, Pennsylvania Higher Education System, and the Pennsylvania Turnpike Commission. See costs noted in (17) above and (20) below.

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. Therefore, no increase or decrease in the Department's Storage Tank Program staff complement is being suggested as a result of this rulemaking; however, individual state agencies will be responsible for the costs to train UST operators according to the requirements of this rulemaking

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

	Current FY Year	FY +1 Year	FY +2 Year	FY +3 Year	FY +4 Year	FY +5 Year
SAVINGS:	\$	\$	\$	\$	\$	\$
Regulated Community						
Local Government						
State Government						
Total Savings	NA	NA	NA	NA	NA	NA
COSTS:						
Regulated Community	0	1,133,000	1,133,000	1,133,000	170,000	170,000
Local Government						
State Government	0	27,000	27,000	27,000	4,000	4,000
Total Costs	0	1,160,000	1,160,000	1,160,000	174,000	174,000
REVENUE LOSSES:						
Regulated Community						
Local Government						
State Government						
Total Revenue Losses	NA	NA	NA	NA	NA	NA

20a) Explain how the cost estimates listed above were derived.

In (20) above, dollar amounts relate to the cost to be incurred by UST owners to provide training for Class A and Class B UST operators. Cost estimates to the Regulated Community under this regulatory proposal 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 are spread equally over three fiscal years beginning in FY 2009/2010. Costs for 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 this table are to be considered conservative high. There is no way of predicting with any accuracy where operators will serve multiple facilities.

Local government costs should be minimal as most only have one UST facility. State government costs are calculated based on the costs to train one Class A and one Class B operator for each UST facility owned and operated by the state agency, assuming \$200 in training costs per operator (see below). The costs are spread equally over three fiscal years beginning in FY 2009/2010. Costs for 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.

<u>AGENCY</u>	<u>UST FACILITIES</u>	<u>TRAINING COSTS</u>
DCNR	19	\$ 7,600
Agriculture	1	\$ 400
Corrections	12	\$ 4,800
Military and Veterans Affairs	22	\$ 8,800
Labor and Industry	1	\$ 400
Dept. of General Services	7	\$ 2,800
PennDOT	48	\$ 19,200
Welfare	4	\$ 1,200
PEMA	1	\$ 400
Game Commission	2	\$ 800
State Police	2	\$ 800
Higher Education System	7	\$ 2,800
Turnpike	76	\$30,400

NOTE: Agencies having several UST facilities may not require a separate Class A or Class B operator for each facility. Thus an agency may incur a lesser cost if trained Class A or Class B operators are able to provide services at more than one facility.

Training options and costs for Class A and Class B operators vary widely and currently range from \$200 to \$500 per course nationally. When all states institute operator training requirements, market factors should reduce course costs. It is estimated that owners belonging to industry associations and organizations that provide training should incur lower costs in the \$50 to \$150 range per course for their members.

Owners can provide the minimal on-site training and written emergency procedures required for Class C operators using in-house sources at no additional cost. Class C operators represent the largest number of operators. Emergency procedures for this class of operator should already be in place at most facilities.

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

Program	FY 05/06	FY 06/07	FY 07/08	Current FY
Storage Tank Fund - General Operations (210-20073)	\$ 7,932,000	\$ 7,473,000	\$ 8,220,000	\$ 8,120,000

NOTE: The above 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.

(21) Using the cost-benefit information provided above, explain how the benefits of the regulation outweigh the adverse effects and costs.

Through thousands of UST facility inspections, on-going problems with release detection practices, and routine operation and maintenance were identified at over 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.

(22) Describe the nonregulatory alternatives considered and the costs associated with those alternatives. Provide the reasons for their dismissal.

Federal statute (EPAct) 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.

(23) Describe alternative regulatory schemes considered and the costs associated with those schemes. Provide the reasons for their dismissal.

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 do 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 regulation.

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

(25) How does the regulation compare with those of other states? Will the regulation put Pennsylvania at a competitive disadvantage with other states?

Most other states are in the process of developing UST operator training requirements to satisfy the federal UST mandates in the EPAct and related EPA guidelines to states for implementation of the UST requirements in the EPAct. All other states must comply with federal UST regulations and the EPAct 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 proposed rulemaking will not put the Commonwealth or the regulated community at a competitive disadvantage with other states.

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

The proposed rulemaking is intended to 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) Will any public hearings or informational meetings be scheduled? Please provide the dates, times, and locations, if available.

No public hearings are planned or anticipated. Informational sessions have been conducted with Department-certified tank installers and inspectors. Future informational sessions on regulatory changes will be offered for the regulated community and various associations and groups at dates to be determined, after a final-form rulemaking has been reviewed by the Board.

(28) Will the regulation change existing reporting, record keeping, or other paperwork requirements? Describe the changes and attach copies of forms or reports which will be required as a result of implementation, if available.

There are no new reporting requirements. The proposal 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. The proposal will add recordkeeping requirements at §§ 245.435 and 245.436 associated with the UST operator training requirements. The operator training documentation is necessary to comply with the federal mandates in the EPCRA and should not pose a significant additional burden on tank owners or operators in the Commonwealth. As noted in (17) and (20a) 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.

(29) 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.

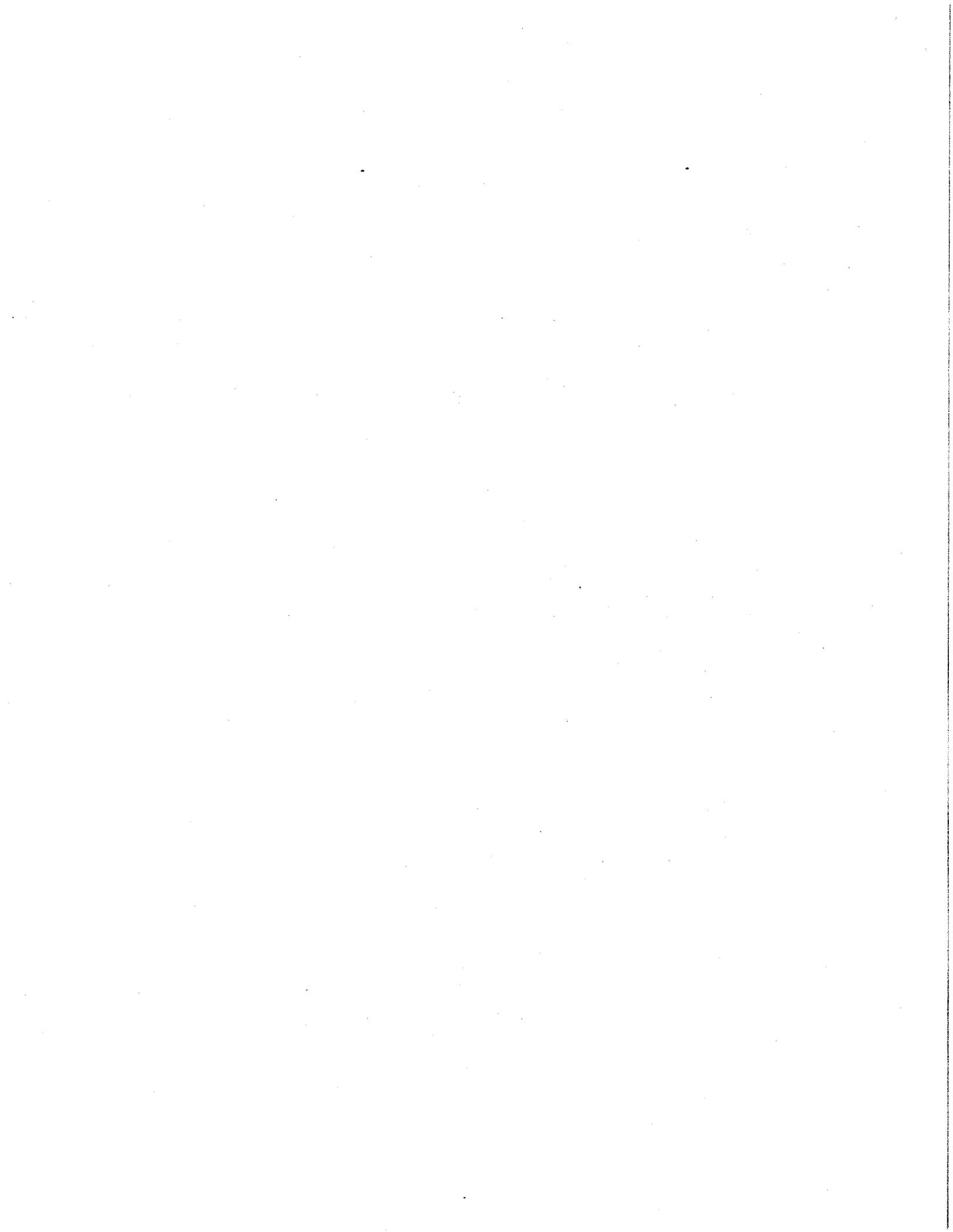
The proposed rulemaking includes provisions that allow for a single operator to serve in all three operator classes, which is often the case at smaller facilities. The approval process for third-party or industry trainers will enable associations and small industry groups to provide the required training 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.

(30) What is the anticipated effective date of the regulation; the date by which compliance with the regulation will be required; and the date by which any required permits, licenses or other approvals must be obtained?

Final-form publication of the proposed regulation is anticipated to occur in the late Summer or Fall of 2009. 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.

(31) 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.



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INDEPENDENT REGULATORY
REVIEW COMMISSION

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

Angela M. Elliott
(Deputy Attorney General)

By:

FEB 18 2009

DATE OF APPROVAL

Check if applicable
Copy not approved. Objections attached.

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promulgated by:

DEPARTMENT OF ENVIRONMENTAL
PROTECTION
ENVIRONMENTAL QUALITY BOARD

(AGENCY)

DOCUMENT/FISCAL NOTE NO. 7-432

DATE OF ADOPTION December 16, 2008

BY John Hanger

TITLE JOHN HANGER
ACTING CHAIRPERSON

EXECUTIVE OFFICER CHAIRMAN OR SECRETARY

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

BY

Andrew C. Clark
Andrew C. Clark

JAN 16 2009

DATE OF APPROVAL

(Deputy General Counsel)
(~~Chief Counsel - Independent Agency~~)
(~~Strike inapplicable title~~)

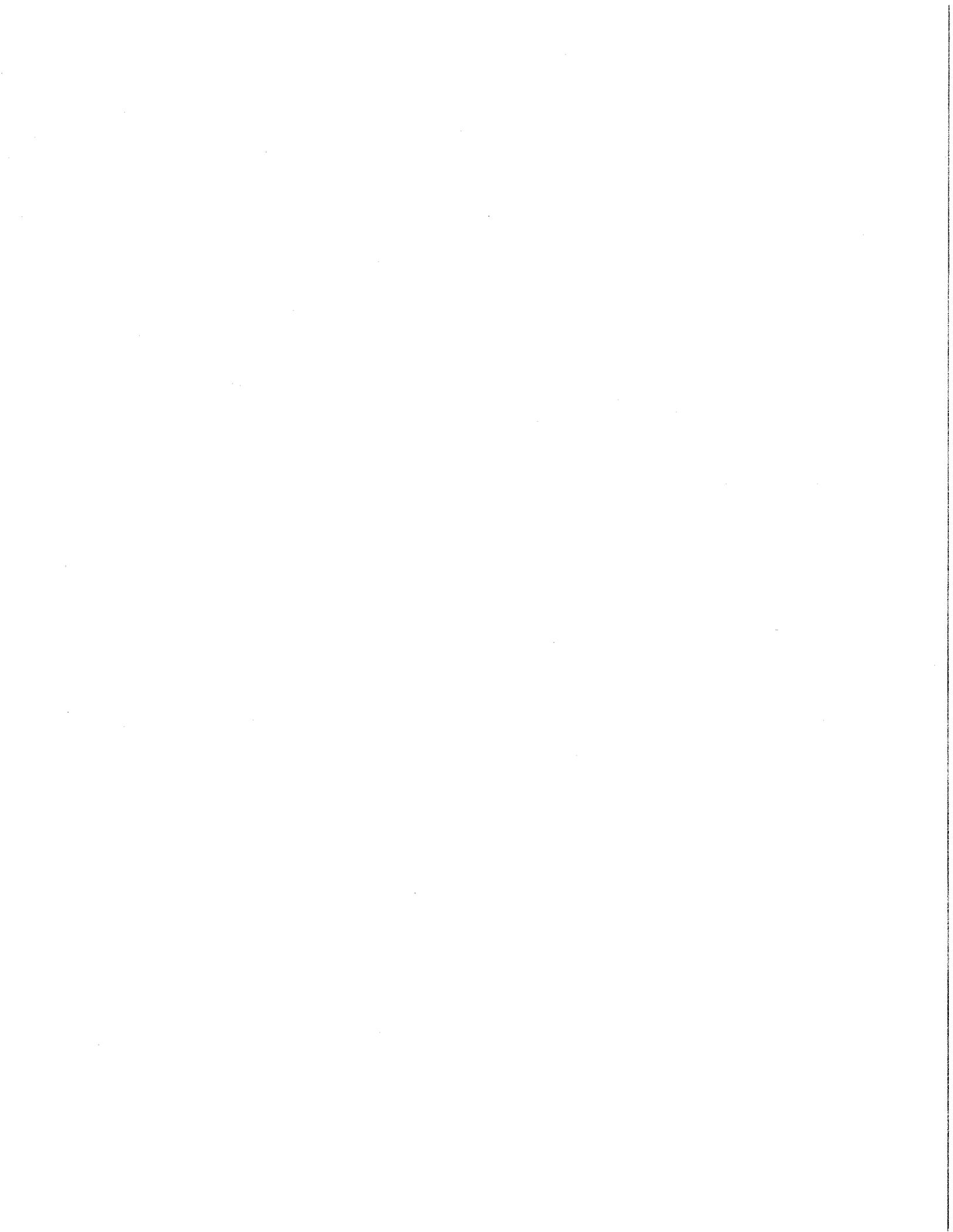
Check if applicable. No Attorney General Approval
or objection within 30 days after submission.

NOTICE OF PROPOSED RULEMAKING

**DEPARTMENT OF ENVIRONMENTAL PROTECTION
ENVIRONMENTAL QUALITY BOARD**

Underground Storage Tank Operators Training Requirements

25 Pa. Code, Chapter 245



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

Preamble

The Environmental Quality Board (Board) proposes to amend 25 *Pa. Code*, Chapter 245 (relating to Administration of the Storage Tank and Spill Prevention Program). The proposal includes comprehensive underground storage tank operator training requirements. The proposed operator training provisions are consistent with federal requirements for underground storage tank operators contained in the Energy Policy Act of 2005 (EPAAct) and related U.S. Environmental Protection Agency (EPA) guidelines to states for implementing operator training requirements. The proposal also includes corrections and clarifications to existing regulations.

This proposal was adopted by the Board at its meeting of December 16, 2008.

A. Effective Date

These amendments will go into effect upon publication in the *Pennsylvania Bulletin* as final 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. Information regarding submitting comments on this proposal appears in Section J of this preamble. 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 proposal is available electronically through the Department's website (<http://www.depweb.state.pa.us>).

C. Statutory Authority

The proposed 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 Board 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 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 and Purpose

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 certification program for installers and inspectors of storage tanks and storage tank facilities), which was published at 21 Pa.B. 4345 (September 21, 1991). 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 EPAct were adopted (37 Pa.B. 5965, November 10, 2007). The current proposed rulemaking addresses underground storage tank operator training requirements and represents 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 proposed in this rulemaking should 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.

The Department worked with the Storage Tank Advisory Committee (STAC) during development of this proposed 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 Storage Tank 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 Storage Tank Act, the STAC has been given the opportunity to review and comment on the proposed rulemaking. On June 10, 2008, the STAC voted to support the proposal and recommended that the Board consider the amendments for publication as proposed rulemaking.

E. Summary of Regulatory Requirements

The proposal to amend § 245.422(e) (relating to upgrading of existing underground storage tank systems) is intended to clarify that containment is required when replacing an existing product dispenser that involves a major modification.

The proposal to amend § 245.435(b) (relating to reporting and recordkeeping) is intended to clarify the timeframe for retention of temporary records and to correct errors on the retention of cathodic protection documents. The proposal also adds operator training documents to the temporary recordkeeping requirements.

The proposal to add a new § 245.436 (relating to operator training) is intended to establish three distinct classes of underground storage tank operators and related training requirements. The proposal 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)).

Comprehensive operator training requirements are not included in companion federal regulations at 40 CFR Part 280. However, the establishment of an operator training program is necessary to comply with federal operator training grant guidelines issued by 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 EPA Act, 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. 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, which is three years after the date states are required to develop state-specific training requirements. 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 2008, the Department received \$2.623 million in federal funds from EPA for the Underground Storage Tank and Leaking Underground Storage Tank (cleanup) programs. Further, the Board believes it is in Pennsylvania's best interest to have a viable underground storage tank operator training program. Lastly, the United States General Accounting Office (GAO) report to Congress in May 2001, entitled "Environmental Protection-Improved Inspections and Enforcement Would Better Ensure the Safety of Underground Storage Tanks," addressed the effectiveness of the federal underground storage tank program and state agencies' implementation of the program. The GAO report indicated that operator error and noncompliance was one of the greatest remaining problems for the underground storage tank program.

F. Benefits, Costs and Compliance

Benefits

The proposed changes 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 \$200 to \$500 per training course. 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, the cost of operator training courses will be minimized through these market forces.

Compliance Assistance Plan

It is not anticipated that the Commonwealth will provide sources of financial assistance to aid in compliance with this proposed 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 web site. 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 proposed in this rulemaking and no new reporting requirements. The proposal 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 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 proposed 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 proposed 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 proposal 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

In accordance with 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 proposed amendments to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the House and Senate Environmental Resources and Energy Committees. In addition to submitting the proposed amendments, the Department has provided IRRC and the Committees with a copy of a detailed regulatory analysis form prepared by the Department. A copy of this material is available to the public upon request.

Under Section 5(g) of the Regulatory Review Act, IRRC may convey any comments, recommendations or objections to the proposed regulations within 30 days of the close of the public comment period. The comments, recommendations or objections shall specify the regulatory review criteria that have not been met. The Act specifies detailed procedures for review of these issues by the Department, the General Assembly and the Governor prior to final publication of the regulations.

J. Public Comments

Written Comments – Interested persons are invited to submit comments, suggestions, or objections regarding the proposed regulation to the Environmental Quality Board, P.O. Box 8477, Harrisburg, PA 17105-8477 (express mail: Rachel Carson State Office Building, 16th Floor, 400 Market Street, Harrisburg, PA 17101-2301). Comments submitted by facsimile will not be accepted. Comments, suggestions or objections must be received by the Board by April 13, 2009. Interested persons may also submit a summary of their comments to the Board. The summary may not exceed one page in length and must also be received by April 13, 2009. The one-page summary will be provided to each member of the Board in the agenda packet distributed prior to the meeting at which the final-form regulation will be considered.

Electronic Comments – Comments may be submitted electronically to the Board at RegComments@state.pa.us and must also be received by the Board by April 13, 2009. A subject heading of the proposal and a return name and address must be included in each transmission. If an acknowledgement of electronic comments is not received by the sender within two (2) working days, the comments should be retransmitted to ensure receipt.

BY:

John Hanger
Acting 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 [(§ 245.432)].

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

* * * * *

(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.

(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) by August 8, 2012, or sooner.

(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 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 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 subparagraph (iv) 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 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 subparagraph (iv) 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.

(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 proposed rulemaking.) 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 overflow 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.* As 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) *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) 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 proposed rulemaking.) 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 proposed rulemaking.) 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.

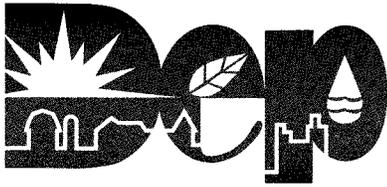
(1) The owner of an underground storage tank facility shall prepare a list of designated operators. The list must represent the current Class A, Class B and Class C operators for the underground storage tank facility and include:

(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 owner contact information, including names and telephone numbers, and emergency information, shall be conspicuously posted at unmanned facilities.



Pennsylvania Department of Environmental Protection

Rachel Carson State Office Building
P.O. Box 2063
Harrisburg, PA 17105-2063
February 27, 2009

Policy Office

717-783-8727

Kim Kaufman, Executive Director
Independent Regulatory Review Commission
333 Market Street, 14th Floor
Harrisburg, PA 17101

Re: Proposed Rulemaking: Underground Storage Tank Operators Training Requirements
(25 Pa. Code, Chapter 245) (#7-432)

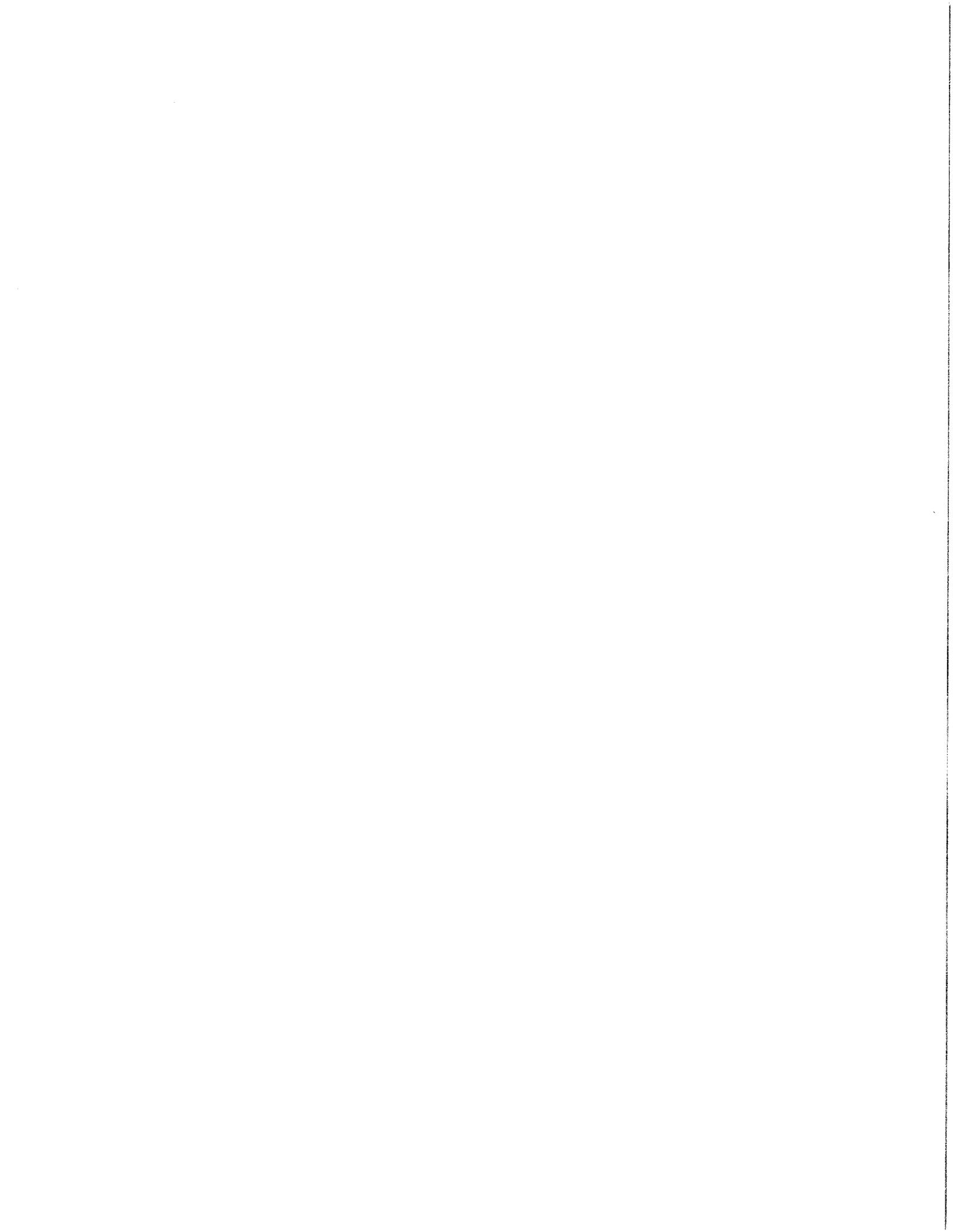
Dear Mr. Kaufmann:

Enclosed is a copy of a proposed regulation for review and comment by the Independent Regulatory Review Commission pursuant to Section 5(a) of the Regulatory Review Act. This proposal is scheduled for publication as a proposed rulemaking in the *Pennsylvania Bulletin* on March 14, 2009, with a 30-day public comment period. The Environmental Quality Board (EQB) adopted this proposal on December 16, 2008.

The proposed rulemaking amends the current underground storage tank (UST) regulations to establish comprehensive UST operator training requirements. Current regulations already require the training or retraining of UST owners and operators; however, that training is only mandatory for tank systems that are determined to be out of compliance as a result of an inspection. The amendments included in this proposal 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 by August 8, 2009. 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 proposed rulemaking includes specific training requirements for three distinct classes of UST operators, including 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 regulatory proposal includes 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 proposed 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.

The Department worked with the Storage Tank Advisory Committee during the development of the proposed rulemaking. The Department also met with UST owners, operators and manufacturers; association and groups, such as the Pennsylvania Petroleum Marketers and Convenience Store Association; the Tank Installers of Pennsylvania; and the Agricultural Advisory Board. As required by Section 105 of the Storage Tank Act, the STAC was given the opportunity to review and comment on the proposed rulemaking. On June 10, 2008, the STAC voted to support the proposal and recommended that the EQB consider the amendments for publication as proposed rulemaking.

The Department will provide the Commission with the assistance required to facilitate a thorough review of this proposal. Section 5(g) of the Regulatory Review Act provides that the Commission may, within 30 days of the close of the comment period, convey to the agency its comments, recommendations and objections to the proposed regulation. The Department will consider any comments, recommendation or suggestions submitted by the Commission, as well as the Committees and public commentators, prior to final adoption of the regulation.

Please contact me at 717-783-8727 if you have any questions or need additional information.

Sincerely,



Michele L. Tate
Regulatory Coordinator

Enclosures



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**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

INDEPENDENT REGULATORY
REVIEW COMMISSION

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 Tolerated Regulation
 - a. With Revisions
 - b. Without Revisions

FILING OF REGULATION

DATE	SIGNATURE	DESIGNATION
<u>2-27-09</u>	<u>[Signature]</u>	Majority Chair, HOUSE COMMITTEE ON ENVIRONMENTAL RESOURCES & ENERGY
<u>2/28/09</u>	<u>[Signature]</u>	Minority Chair, HOUSE COMMITTEE ON ENVIRONMENTAL RESOURCES & ENERGY
<u>2-27-09</u>	<u>[Signature]</u>	Majority Chair, SENATE COMMITTEE ON ENVIRONMENTAL RESOURCES & ENERGY
<u>2-27-09</u>	<u>[Signature]</u>	Minority Chair, SENATE COMMITTEE ON ENVIRONMENTAL RESOURCES & ENERGY
<u>2/27/09</u>	<u>[Signature]</u>	INDEPENDENT REGULATORY REVIEW COMMISSION
_____	_____	ATTORNEY GENERAL (for Final Omitted only)
<u>2/27/09</u>	<u>[Signature]</u>	LEGISLATIVE REFERENCE BUREAU (for Proposed only)

