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**VIA ELECTRONIC SUBMISSION AND U.S. MAIL**

Environmental Quality Board  
P.O. Box 8477,  
Harrisburg, PA 17105-8477

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IRRC  
2018 MAR 15 P 12: 23

Re: Proposed Amendments to Storage Tank and Spill Prevention Program at Chapter 245 (48 Pa.B. 1101 (Feb. 24, 2018))

To Whom It May Concern:

The Utility Solid Waste Activities Group ("USWAG")<sup>1</sup> submits the following comments in response to the amendments proposed by the Pennsylvania Environmental Quality Board ("EQB") to the state's Storage Tank and Spill Prevention Program at Chapter 245. 48 Pa.B. 1101 (Feb.24, 2018). USWAG is an association of electric and gas utilities, utility operating companies, and energy companies and associations. We regularly engage in the development of federal regulations that impact our industry including regulations that address aboveground and underground storage tanks. We are writing on behalf of our Pennsylvania members that would be impacted by the proposed amendments. Specifically, we are concerned about how the EQB plans to revise its regulation of underground storage tank ("UST") systems that are part of emergency generators at nuclear power facilities regulated by the Nuclear Regulatory Commission ("NRC"). USWAG participated in EPA's development of the revisions to the federal UST program at 40 C.F.R. Part 280 that resulted in the promulgation of the 2015 UST final rule. 80 Fed. Reg. 41566 (July 15, 2015). We are

<sup>1</sup> USWAG is an association of over one hundred and ten energy utilities, utility operating companies, energy companies and associations, including the Edison Electric Institute ("EEI"), the American Gas Association ("AGA"), the American Public Power Association ("APPA"), and the National Rural Electric Cooperative Association ("NRECA"). EEI is the principal national association of investor-owned electric power and light companies. AGA represents local energy companies that provide service to the nation's consumers of natural gas. APPA is the national association of publicly-owned electric utilities. NRECA is the national association of rural electric cooperatives. Together, USWAG members represent more than 73 percent of the total electric generating capacity of the United States and service more than 95 percent of the nation's consumers of electricity and 91 percent of the nation's consumers of natural gas.

writing to clarify the scope and applicability of those 2015 federal UST program revisions as they apply to tank systems at NRC-licensed facilities.

In the 1988 federal UST program, EPA provided a deferral for “[a]ny UST system that is part of an emergency generator system at nuclear power generation facilities licensed by the Nuclear Regulatory Commission under 10 CFR part 50, appendix A.” 40 C.F.R. § 280.10(c)(3). EPA deferred these tank systems from Subparts B, C, D, E, and G of the UST Regulations. These tank systems were also exempted from the Subpart H financial responsibility requirements. *Id.* at § 280.90(d). As a result, the only provisions that these tank systems were subject to were § 280.11, the only section of Subpart A with substantive requirements, and Subpart F, the release response and corrective action provisions. Notably, section 280.11 was an interim prohibition on *installing* UST systems that (1) would not prevent releases due to corrosion or structural failure, (2) were not cathodically-protected or designed to prevent releases, or (3) were incompatible with the stored substance. These prohibitions at § 280.11 were for new installations of tank systems, while the upgrading of existing UST systems were located at § 280.21.

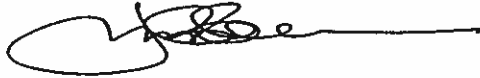
In the 2015 revisions, EPA examined the Department of Energy and the NRC regulations and determined that these requirements are comparable to EPA requirements. 80 Fed. Reg. at 41598. Based on this analysis, EPA decided to replace the deferral for these tank systems with a partial exclusion from “most requirements in this final UST regulation” but explained that “the regulatory requirements in subparts A and F for these systems remain the same.” *Id.* at 41599. EPA changed the wording of the title of Subpart A § 280.11 and changed the provision to clarify that this requirement was an installation requirement rather than a prohibition on installation. *Id.* The Agency noted that “owners and operators have had to follow this requirement since the effective date of the 1988 UST regulation.” *Id.* The final rule also (1) retained the applicability of Subpart F (release response and corrective action) requirements for these tank systems, (2) continued to exclude these tanks from Subparts B, C, D, E, and G, (3) retained the exemption at § 280.90(d) for the Subpart H financial responsibility requirements, and (4) expanded the exclusion for these tanks to cover the newly adopted requirements at Subparts J and K. 40 C.F.R. § 280.10(c)(4). Essentially, all EPA did in the final rule was replace the term “deferral” with the term “partial exclusion” and exempt these tank systems from the newly promulgated requirements. The Agency did not impose any new obligations on these tank systems in the 2015 UST final rule.

EPA originally adopted the 1988 deferrals for these tank systems because it was concerned about the possibility of dual regulation with NRC requirements. In 2015 the Agency reconfirmed that that the NRC requirements were comparable to the UST regulations and decided to continue to provide a fairly broad exemption for these tanks. We strongly urge the Pennsylvania EQB to follow EPA’s lead and retain the Agency’s partial exclusion for these tank systems.

\* \* \* \* \*

USWAG thanks the EQB for the opportunity to comment on this rulemaking of importance to our Pennsylvania members. If you need further information about USWAG's comments, please contact USWAG counsel, Aaron Wallisch (202-344-4474; [ajwallisch@venable.com](mailto:ajwallisch@venable.com)).

Sincerely,

A handwritten signature in black ink, appearing to read 'J. Roewer', with a long horizontal line extending to the right.

James R. Roewer  
Executive Director  
Utility Solid Waste Activities Group