

## **Comments of the Independent Regulatory Review Commission**



### **Environmental Quality Board Regulation #7-530 (IRRC #3199)**

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

**April 25, 2018**

We submit for your consideration the following comments on the proposed rulemaking published in the February 24, 2018 *Pennsylvania Bulletin*. Our comments are based on criteria in Section 5.2 of the Regulatory Review Act (71 P.S. § 745.5b). Section 5.1(a) of the Regulatory Review Act (71 P.S. § 745.5a(a)) directs the Environmental Quality Board (EQB) to respond to all comments received from us or any other source.

#### **1. Need; Fiscal impact.**

This comprehensive proposed rulemaking amends numerous sections of 25 Pa. Code Chapter 245, relating to the administration of the storage tank and spill prevention program. Many of the changes are driven by 2015 amendments to the U.S. Environmental Protection Agency's (EPA) regulations for underground storage tanks (USTs). As explained by EQB, Chapter 245 must be updated to be no less stringent than the revised federal requirements so the Department of Environmental Protection (DEP) can apply for revised state program approval from EPA.

Commentators have expressed their general support for EQB's effort to align Chapter 245 with the revised federal requirements. However, concerns have been raised about new notification, reporting and paperwork requirements. Amendments to existing forms and the addition of new forms have also been identified as an area of concern. It is unclear to the commentators if the additional regulatory burdens imposed by the proposed amendments will produce additional environmental benefits. In addition, commentators believe that EQB has not properly quantified the costs associated with the new notification, reporting and paperwork requirements.

As EQB moves forward with this regulatory proposal, we ask that it work with the regulated community to gain an understanding of the potential costs associated with the new regulatory requirements that are being imposed. When the final-form regulation is submitted to this Commission, we request that EQB include an explanation of how the additional regulatory requirements will assist DEP with its mission of protecting the environment. We also ask EQB to quantify the costs associated with complying with the new or revised requirements.

## **Subchapter A. GENERAL PROVISIONS**

### **2. Section 245.1. Definitions. – Statutory authority; Consistency with the intent of the General Assembly; Reasonableness; Implementation procedures; Clarity.**

#### *Release and Reportable release*

EQB proposes to amend the definition of “release” and to delete the definition of “reportable release.” These amendments have generated interest from the regulated community. They believe the changes will require the reporting of every spill into emergency and secondary containment structures as a “release” and argue that a spill into a secure containment area is not necessarily a threat to the environment. They contend that the revisions would trigger new reporting, corrective action and other obligations that are not necessary for the protection of human health or the environment. In addition, commentators contend that these amendments conflict with the statutory definition of “release” found in Section 103 the Storage Tank and Spill Prevention Act (35 P.S. § 6021.103) and the intention of the General Assembly.

We have several questions about these amendments and the issues raised by commentators. First, are these amendments needed to align Chapter 245 with EPA amendments to its UST regulations? Second, why does EQB believe the amendments being proposed are consistent with the statutory definition of “release” and the intention of the General Assembly? Third, what is the need for the changes? Are the existing requirements allowing spills to reach the environment and causing harm? Finally, will the amendments require additional reporting and corrective action for spills into emergency and secondary containment structures? If yes, what are the differences between existing requirements and the new requirements? We will review EQB’s responses to these questions in determining whether the rulemaking is in the public interest.

#### *Underground storage tank*

EQB is proposing to amend this definition by deleting two exclusions and modifying other exclusions. Commentators are concerned that the deletion of existing Paragraphs (xiii) and (xviii) and the replacement of those exclusions with partial exclusions in § 245.302(c)(2) and (3) would create inconsistencies between Chapter 245 and federal regulations for nuclear-related storage tanks. We ask EQB to explain why the changes being proposed are needed and how they are consistent with and not more stringent than the federal regulation on this subject matter.

Another concern relates to the amended exclusion for wastewater treatment tanks found under renumbered Paragraph (xiii). The new language being added will limit exclusions to wastewater tank systems that are part of a water treatment facility under certain sections of Clean Water Act. Similar to above, we ask EQB why the changes to this paragraph are needed and how it is consistent with federal regulations.

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

**3. Section 245.132. Standards of performance. – Reasonableness; Implementation procedures; Clarity.**

This section establishes standards of performance for certified companies, certified installers and certified inspectors. Amendments to Subsections (a)(4) and (6) would require those parties to report to DEP the observance of a regulated substance in a containment structure or facility. A commentator states that such a release is not necessarily a threat to the environment. We ask EQB to explain the need for and reasonableness of the new language being added to these subsections.

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

**4. Section 245.302. Scope. – Clarity.**

EQB is adding the phrase “suspected release investigation” to § 245.301, relating to purpose. For consistency we suggest the term “suspected release” be added to this section of the regulation.

**5. Section 245.304. Investigation of suspected releases. – Implementation procedures; Clarity.**

This section requires owners or operators of tank systems and facilities to investigate suspected releases of regulated substances. Subsection (a) specifies what constitutes an indication of a release. Subsection (a)(6) is being amended to include the discovery of “damage” to a storage tank system. A commentator believes this addition is vague, and as an example, asks if chipped paint would be considered damage. We ask EQB to explain how it will implement this provision in the Preamble to the final-form regulation and clarify Subsection (a)(6) accordingly in the final-form regulation.

**6. Section 245.305. Reporting releases. – Reasonableness.**

This section specifies procedures to be followed after the confirmation of a release. New Subsection (i) identifies types of releases that do not need to be reported to DEP. Commentators believe the exemptions are narrow and do not properly consider the actual threat to the environment. Why did EQB adopt this approach, which relies on reportable quantities, compared to an approach that would allow the owner or operator of a storage tank system or storage tank facility to evaluate the actual threat to the environment? EQB should explain the reasonableness of this approach in the Preamble to the final-form regulation.

## **Subchapter E. TECHNICAL STANDARDS FOR UNDERGROUND STORAGE TANKS**

### **7. Section 245.403. Applicability. – Reasonableness; Implementation procedures.**

Under Subsection (d), EQB is adding a requirement that UST systems that were previously excluded from registration with DEP be registered within 30 days of the effective date of this rulemaking. A commentator has stated that it may be difficult to obtain the necessary information to register a tank in that time period and has suggested 60 days as an alternative. We ask EQB to address the reasonableness of the proposed 30-day time period compared to the 60-day time period suggested by the commentator

### **8. Section 245.433. Compatibility. – Reasonableness; Implementation procedures; Clarity.**

This section requires owners or operators to use USTs that are made or lined with material that is compatible with the substance being stored. We have two concerns. First, new Subsection (b) will require an owner or operator of a UST storing alternative fuel blends or biodiesel or biodiesel blended fuel to provide certain information to DEP. A commentator notes that the term “alternative fuel blends” is not defined and also asks if DEP will consider all diesel fuel to be biodiesel fuel. To improve the clarity of the regulation, we ask EQB to define the term “alternative fuel blends.” We also ask EQB to clarify whether all diesel fuel would be considered biodiesel fuel.

Second, a commentator believes the new requirements found in Subsection (c) are more stringent than the federal requirements found at 40 CFR § 280.32(b) because the federal requirements only apply to USTs containing greater than 10% ethanol and 20% biodiesel fuel. They note it will be difficult to produce the required documentation for older UST systems, and this could lead to the decommissioning of tanks. We note that Subsection (c) only requires the submittal of the information to demonstrate compatibility upon the request of DEP. How will DEP implement this provision? Under what circumstance would DEP require the information? Would it apply to all USTs? If Subsection (c) is more stringent than the federal requirement, what is the need for it? We ask EQB to address these questions in the Preamble to the final-form rulemaking.

### **9. Section 245.445. Methods of release detection for piping. – Implementation procedures.**

Proposed amendments to Subsection (1)(iii) impose new requirements for unattended UST systems using pressurized piping installed on or before November 10, 2007. A commentator has requested that the implementation of this provision be delayed one or two years for existing UST systems. How will DEP implement this provision? Would a one or two year grace period, as requested, pose an immediate harm or threat to the environment? We ask EQB to consider this suggestion as it develops the final-form regulation.

## **Subchapter F. TECHNICAL STANDARDS FOR ABOVEGROUND STORAGE TANKS AND FACILITIES**

### **10. Section 245.512. Facility operations and spill response plan. – Implementation procedures; Clarity.**

This section is being amended to require Spill Prevention Response Plan revisions to be submitted to DEP within 120 days of any necessary updates to the plan. Would the owner or operator of an aboveground storage tank (AST) facility have to submit the entire plan or just revisions to DEP? This should be clarified in the final-form regulation.

In addition, a commentator has requested that the 120 day mandate be extended to 180 days. This requirement also appears in § 245.603, relating to general storage tank facility requirements. If extending the time frame for submitted revisions would not pose a harm or threat to the environment, we ask DEP to provide the regulated community this additional time for compliance.

### **11. Section 245.514. Security. – Reasonableness; Implementation procedures.**

EQB is codifying a best management practice that requires owners and operators of certain AST facilities to maintain a written log book. Commentators have asked if the log book they currently maintain as part of their existing best management practice would satisfy the requirement of this section. They also ask if the log book can be in an electronic format and then printed as needed. Similar concerns have been expressed with § 245.603. We ask EQB to explain how this provision will be implemented and to implement the least burdensome alternative for the regulated community while ensuring the proper protection of the environment.

### **12. Section 245.516. Recordkeeping requirements. – Reasonableness.**

Under Subsection (c)(15) owners and operators of ASTs will be required to keep documentation of investigations of suspected releases. A commentator has asked what the rationale for this new requirement is if the investigation finds that no release occurred. Similar language can be found under § 245.615 (b)(7). In the Preamble to the final-form regulation, we ask EQB explain why it needs this information.

### **13. Section 245.531. General corrosion and deterioration requirements. – Implementation procedures; Fiscal impact; Clarity.**

This existing section requires AST systems to be protected from corrosion and deterioration. EQB explains that proposed amendments are intended to clarify existing requirements. Commentators are concerned that the proposed amendments will impose new, potentially costly requirements. Specifically, they are concerned with new language that would require tank bottoms not adequately protected from corrosion and deterioration to be replaced immediately instead of at the next “out of service” inspection. They also ask if corrosion protection for tanks on concrete pads is needed. We ask EQB to explain if the amendments being proposed are new

requirements, and if so, to explain the need for the revisions. If the requirements are new, we ask EQB to quantify the costs associated with the amendments.

### **Subchapter G. SIMPLIFIED PROGRAM FOR SMALL ABOVEGROUND STORAGE TANKS**

#### **14. Section 245.612. Performance and design standards. – Reasonableness; Implementation procedures.**

Subsection (d)(1) is being amended to require permanently installed spill protection equipment at the tank fill point. A commentator notes that they use temporary spill buckets and believe the amendment is a new requirement that would be costly and provide little environmental benefit. We ask EQB to explain how DEP administers the existing regulation and if the proposed amendment will require the regulated community to change their procedures related to spill buckets. If the requirements are new, we ask EQB to quantify the costs and to consider a window of time for the regulated community to come into compliance with the new standard.