

FILED

Sep 26, 2012

BEFORE THE
ENVIRONMENTAL QUALITY COUNCIL
STATE OF WYOMING

**Jim Ruby, Executive Secretary
Environmental Quality Council**

IN THE MATTER OF)
REVISIONS TO CHAPTER 17) Docket No. 12-3104
OF THE WATER QUALITY)
RULES AND REGULATIONS)

PROPOSED RULES AND STATEMENT OF REASONS

Department of Environmental Quality, Solid & Hazardous Waste Division
Wyoming Water Quality Rules and Regulations Chapter 17
(Enforced through the Solid & Hazardous Waste Division/Storage Tank Program)
May 1, 2012
Revised June 25, 2012
Revised August 22, 2012 (WPMA Comments Revision)

These proposed rule changes are not in response to changes in the federal law. However, EPA has determined that the Storage Tank Program’s (STP’s) operator training rules are less stringent than EPA guidance, “Grant Guidelines To States For Implementing The Operator Training Provision Of The Energy Policy Act of 2005.” At the STP’s year-end grant teleconference held January 23, 2012, EPA requested these changes be made to our rules. Other minor clarifications have been made that are not in response to EPA’s request.

Authority to revise these rules is provided by W.S. § 35-11-1416. Changes proposed in the rules meet statutory requirements. Per W.S. § 35-11-1416(a)(i) these rules are no less or no more stringent than the federal standards.

The Statement of Reasons has been revised based on written comments received from F.E. Warren Air Force Base and revisions requested by the Water and Waste Advisory Board at its June 22, 2012, meeting in Casper. Revisions made were:

1. Proposed Rule Amendment #5 was revised to include the words, “(Service Station Clerks)” at the end of the only sentence in the proposed new rule. This clarification was added to notify operators that the new rule only applies to facilities required to have a Class C operator.
2. Proposed Rule Amendment #10 was added. The paragraph only applies to tanks supplying fuel to emergency power generators. Proposed Rule Amendment #10 was not part of the original proposed changes.

As a matter of clarification, EPA does not have operator training rules. However, in response to the Energy Policy Act of 2005 (Act), EPA was directed to develop guidance regarding the requirements of the Act. Wyoming must follow guidance established by EPA in order to receive Subtitle I grant funding for the Storage Tank Program.

The following proposed rule changes are in response to the above.

1. *Proposed rule amendment: Chapter 17, Part L, Section 46(c)*

(c) *Timing.* ~~The person in responsible charge shall, within six (6) months~~ Within ninety (90) days of their first date of employment with the company ~~in a capacity of being in responsible charge of any facility,~~ the Class A and Class B operators shall obtain a Class A or B Storage Tank Operator's license from the department. To obtain this license, each person shall submit documentary evidence that he or she has passed the following tests within the ~~two (2)~~ five (5) years preceding the application date:

Statement of reasons:

1. When the rule was written, there was no time frame associated with obtaining a Class A license, and we gave the Class B operator 6 months to obtain the license. The EPA guidance states: "Class A and B operators must be trained within 30 days or another reasonable period specified by the state, after assuming operation and maintenance responsibilities at the underground storage tank system." At the STP's year-end grant meeting, EPA indicated that 6 months is not a "reasonable period" and that the STP had not specified that the Class A operator needed to be trained within a specified time period. The STP agree with EPA that the 6-month time frame in the rule is too long, but believe that 30 days is not long enough to obtain training and take the exam. Therefore, the STP has specified that 90 days is a reasonable time period, and EPA has agreed that this time frame is acceptable. This rule establishes that both the Class A and Class B operator have 90 days to obtain the license.

2. When the rule was written, the tests were required every 2 years. After discussions with operators and owners, we believe that the 2-year time frame is onerous and not necessary. We have determined that a 5-year time frame is adequate.

2. *Proposed rule amendment: Chapter 17, Part L, Section 46(c)(i) through (iii)*

(i) UST Operators. The International Code Council test ~~for "UST System Operators – ICC Test U-6;"~~ "ICC BU Class B UST System Operator Exam" (Class B for UST operators); and/or

(ii) AST Operators. The International Code Council test ~~for "Wyoming AST System Operators – ICC Test W-5;"~~ (Class B for AST operators); or

(iii) In lieu of both of the above tests, the International Code Council test on "Wyoming State Specific Storage Tank Laws – ICC Test W-6;" (Class A operators).

Statement of reasons:

- 1. Additional clarification has been added to (i), (ii), and (iii) that identifies which test applies to which operator Class.
- 2. The Class B test has been renamed by ICC (i).
- 3. Formatting correction - add a tab after (iii).

3. Proposed rule amendment: Chapter 17, Part L, Section 46(h)

(h) *Class C Operators (Service Station Clerks-).* The Class C Operator must be trained prior to assuming responsibility for responding to emergencies or alarms. Managers and fuel clerks who work at a service station or convenience store, but who are not in responsible charge of the location, must be trained by the Class A or B Operator for that location in all of the following areas:

Statement of reasons: EPA requested this sentence be added because the rule does not designate when the Class C Operator must be trained. The guidance states, “Class C operators must be trained before assuming responsibility for responding to emergencies.”

4. Proposed rule amendment: Chapter 17, Part L, Section 46(j)

(j) *License Renewal.* Persons who are licensed as UST or AST Operators shall renew their license every ~~two (2)~~ five (5) years.

Statement of reasons: Change the renewal period to 5 years for consistency with proposed rule no. 1 above.

5. Proposed rule amendment: Chapter 17, Part L, Section 46(l) [new]

(l) *Recordkeeping.* Tank owners shall maintain on-site a list of designated and trained Class C Operators (Service Station Clerks).

Statement of reasons: Current rule does not require that a list of designated and trained Class C Operators be maintained as required by guidance. Guidance states, “Require owners or operators maintain records documenting the training received for all Class A, Class B, and Class C operators....” EPA has requested this requirement be added to conform to EPA guidance. Currently the rule is less stringent than federal guidance.

6. Proposed rule amendment: Chapter 17, Part L, Section 46(m) [new]

(m) Retraining Required. When a Notice of Violation and Order is issued to a facility for any of the reasons listed in Section 44(a)(i) through (xviii), the Class B Operator must be retrained. Retraining shall be in the form of retaking (if previously taken) or taking (if not previously taken) and passing the “Wyoming State Specific Storage Tank Laws – ICC Test W-6” exam. The Class B Operator shall take this test within ninety (90) days of the Notice of Violation date. If there is more than one Class B Operator for the facility, at a minimum one of the Class B Operators must take the exam.

Statement of reasons: Currently the rules do not require retraining as required by federal guidance. Guidance states, “If a state determines an underground storage tank system is out of compliance, appropriate operator(s) must be retrained.” EPA has requested this language be added to conform to federal guidance. The current rule is less stringent than federal guidance.

7. Proposed rule amendment: Chapter 17, Part L, Section 46(n) [new]

(n) Notification. When a licensed operator is no longer responsible for the facility, the facility owner or operator shall notify the department in writing within thirty (30) days of the date the operator is no longer responsible for the facility.

Statement of reasons: Currently the STP does not require notification; and therefore, is unaware if a facility’s operator resigns, which may leave the facility without a designated operator. Guidance states that, “Each underground storage tank system or group of underground storage tank systems at a facility must have a Class A, Class B, and Class C operator designated.” EPA has requested this language be added to conform to federal guidance. The current rule is less stringent than federal guidance.

8. Proposed rule amendment: Chapter 17, Part K, Section 44(a)(xv) and (xvi)

(xv) The operator’s annual inspection has not been performed, as required by Section 13(e) or Section 36(f) of this chapter, within ninety (90) days of the date when due; ~~or~~

(xvi) The department becomes aware that there has been no Licensed Class B Operator for a facility for ninety (90) days or more; ~~beyond the initial grace period of six (6) months for a new employee, or one year from enactment of this section, whichever is the later date.~~

Statement of reasons:

1. We are proposing to add two more subparagraphs to this Section (see number 9 below); therefore, the “or” has been removed at the end of (xv).

2. Proposed rule 1 (above) changes the 6-month period for new employees to 90 days and the 2008 rule has been in effect for longer than 1 year. Therefore, the end of the sentence has been deleted.

9. Proposed rule amendment: Chapter 17, Part K, Section 44(a)(xvii) and (xviii)[new]

(xvii) Repaired tanks and piping have not been tightness tested within thirty (30) days of repair completion; or

(xviii) Cathodic protection impressed current systems have not been inspected at least every sixty (60) days.

Statement of reasons: These two violations are Significant Operational Compliance (SOC) violations as defined by EPA. These two violations are currently not in the rule as violations that will result in a fuel delivery prohibition (red-tag). EPA guidance states, “At a minimum, an underground storage tank system is out of compliance if the system: Does not meet EPA’s Significant Operational Compliance requirements for release prevention and release detection measures...” Because we have required retraining for all red-tag violations (proposed rule 5 above) and EPA has required in the guidance that SOC violations require retraining, these two SOC violations have been added to the list of red-tag violations in Section 44(a).

10. Proposed rule amendment: Chapter 17, Part L, Section 46(d)

(d) *Inspection by the Class A or B Operator.* This paragraph does not apply to tanks supplying fuel to emergency power generators. Whenever a Class A operator is in charge of more than one facility, a monthly inspection is required. Either the Class A or B Operator for each facility must perform a monthly visual inspection of each storage tank system for which they are designated. The results of each inspection shall be recorded on a monthly inspection checklist.

Statement of reasons: We are clarifying that the monthly inspection does not apply to emergency power generator tanks. We agree with operators of emergency power generators located in remote areas (repeater stations on tops of mountains) that a monthly inspection may not be possible during the winter months. Additionally, monthly inspections of emergency power generators in secured areas, such as F.E. Warren Air Force Base, are unnecessary and cause undue burden on the facility. The STP does not have the resources to determine whether or not

specific emergency power generator tanks should be exempt; therefore, we propose to exempt all emergency power generator tanks from the monthly inspection requirement. All facilities, including emergency power generator tanks, must complete an annual walk-through inspection when they complete their Operator's Annual Inspection (Sections 13(e) and 36(f)).

The Council finds that these regulations are reasonable and necessary to accomplish the policy and purpose of the Act, as stated in W.S. 35-11-102, and that they have been promulgated in accordance with rulemaking provisions of the Wyoming Administrative Procedures Act.

Dated this _____ day of _____, 2012.

Hearing Examiner – *Printed Name*
Wyoming Environmental Quality Council

Hearing Examiner – *Signed Name*
Wyoming Environmental Quality Council