

March 27, 2008

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Executive Director

Mark Larson

Mr. Bob Luchts
Storage Tank Program
Herschler Building, 4W
122 West 25th Street
Cheyenne, WY 82002

Re: Proposed Rule Revision – Operator Training
Underground and Above Ground Storage Tanks

Dear Mr. Luchts,

The Wyoming Petroleum Marketers Association (WPMA) respectfully requests consideration of the following amendments to the proposed rule revisions to Chapter 17, Storage Tanks. A special thank you is extended in appreciation of your working with us in understanding these revisions.

1. **"Level 1 Operator"** This "Level 1" classification should be renamed "Class B Operator" to more closely reflect the EPA guidelines. WPMA believes this Class B designation was intended for area managers, not single facility general managers. The EPA guideline states: "Compared with training for the Class A operator, training for the Class B operator will provide a more in-depth understanding of operation and maintenance aspects, but may cover a more narrow breadth of applicable regulatory requirements." Also and importantly, the guidelines state: "This individual implements day-to-day aspects of operating, maintaining and recordkeeping for underground storage tanks at one or more facilities." [emphasis added] As I stated before the Council, many of our companies will have one "manager" that circulates between several facilities. We understand why you wanted to limit the number of facilities over which a Class B Operator may provide oversight, but we feel that restricting the allowance to only two or three additional facilities is still too restrictive. An area manager today may be responsible for up to ten facilities over which he has total hiring, firing, training, and operations responsibility. Allowing oversight over only three or four total facilities is unrealistically low, especially with cardlocks. We hope we can compromise somewhere between the "15" provided for with a Class A Operator and the tentatively agreed upon three or four total units.
2. **"Service Station Clerks"** We request that this section be renamed "Class C Operator" to more closely reflect the EPA guidelines. The guidelines state: "A Class C operator is an employee and is, generally, the first line of response to events indicating emergency conditions. This individual notifies the Class A or Class B operator and appropriate emergency responders when necessary." WPMA feels this language should be added to the regulation for clarity. Also, we would like to include the EPA allowed flexibility of, "For Class C operator training, the state may accept training conducted by a trained Class A or Class B operator."

(More)

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Terri A. Lorenzon, Director
Environmental Quality Council

3. **“Level 2 Operator”** This “Level 2” classification should be renamed “Class A Operator” to more closely reflect the EPA guidelines. WPMA believes this classification was intended for company owners and/or environmental contractors. The guidelines state that a Class A Operator should have “a general knowledge of underground storage tank system requirements so he or she can make informed decisions regarding compliance and ensure appropriate individuals are fulfilling operation, maintenance and recordkeeping requirements...”. Clearly this person has ultimate responsibility for entire training programs and is either the owner of the company or a designated operator employed by large chain organizations. While WPMA has not made any previous recommendations here, we feel it important to point out that the guidelines are silent as to the number of facilities a Class A Operator may have oversight over. Since this is an administrative level operator, it seems superfluous to limit how many facilities this person may have oversight over. It is WPMA’s position that the Department should consider removing any numerical restriction on this Class.
4. **“Level 3 Operator”** WPMA agrees that this item can be eliminated altogether. This provision is not mentioned anywhere in the guidelines.

WPMA feels that there is only one significant point of contention still left for discussion. We hope that there is room for compromise on the number of facilities over which a Class B Operator may have oversight that more closely reflects operational norms of companies in Wyoming.

For your review, I have attached a mark-up copy of our proposed changes for clarification and understanding. I am also attaching a copy of the August, 2007 EPA guideline revisions document with highlighted portions that are relevant to this discussion.

Thank you again for the opportunity to give our input on the proposed regulations. Your open, candid and genuine consideration is greatly appreciated. We look forward to your reply.

Sincerely,



Mark Larson
Executive Director

Attachments: Mark-up of Proposed Regulations
August, 2007 EPA Guidelines

Cc: Mr. Dennis Boal, Chairman
Environmental Quality Council
122 W. 25th St.
Herschler Bldg., Rm. 1714
Cheyenne, Wyoming 82002

Section 46. Licensing of Operators of Storage Tanks

(a) ~~Level 1 Operator.~~ Class B Operator. All owners and/or operators of storage tanks in Wyoming shall insure that the person who is in responsible charge of the day-to-day operation of the storage tanks obtains a license from the department. For facilities used to fuel vehicles, the person in responsible charge ~~cannot~~ may also be in responsible charge of up to three facilities in other locations at the same time.

Still open for discussion

(b) *Timing.* The person in responsible charge shall, within six months of their first date of employment with the company in a capacity of being in responsible charge of any facility, obtain a ~~Level 1 Storage Tank~~ Class B 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 years preceding the application date:

(i) *UST Operators.* The International Code Council test for UST System Operators; and/or

(ii) *AST Operators.* The International Code Council test for Wyoming AST System Operators; or

(iii) In lieu of both of the above tests, the International Code Council test on "Wyoming State Specific Storage Tank Laws."

(c) ~~Service Station Clerks.~~ Class C Operators. Persons who work at a service station or convenience store, ~~but who are not in responsible charge of the location~~ who are responsible for responding to alarms or other indications of emergencies caused by spills or releases from UST systems. This individual notifies the Class B or Class A operator and appropriate emergency responders when necessary. A Class C operator must be trained by the ~~Level 1 Operator~~ Class A Operator or Class B Operator for that location in the following areas:

(i) Proper procedures to follow in the event of an accident involving the fuel system. Accidents include any incident that damages the dispensers or any part of the fuel system;

(ii) The location and operation of all emergency shutoff switches, breakers, and other controls necessary to completely control all pumps installed on the system;

(iii) The limits of maintenance items that can be performed by the clerk, and what items must be referred to more qualified individuals;

(iv) Procedures to be followed in the event of a fuel release, regardless of the reason for that release; and

(v) The records that must be kept (if any) on each shift to insure that release detection is properly done.

(d) ~~Level 2 Operator.~~ Class A Operator. Each facility shall also be under the supervision of a person who has obtained a ~~Level 2 Storage Tank Operator's~~ Class A Operators License. To obtain a ~~Level 2 Storage Tank Operator's~~ Class A Operators License, each person shall submit documentary proof that they have passed The International Code Council test on Wyoming State Specific Storage Tank Laws. A ~~Level 2 Storage Tank~~ Class A Operator shall not be responsible for more than fifteen (15) facilities that are used to fuel vehicles.

~~(e) Level 3 Operator. Each facility shall have access to one or more persons, either within the company or a contractor, who has a valid tank and line testers license and a valid cathodic protection testers license if the facility has any steel tanks or lines.~~

~~(f)~~ (e) *License Renewal*. Persons who are licensed as UST or AST Operators shall renew their license every two years.

~~(g)~~ (f) *Reciprocity with other states and cities*. After evaluation of the other state or city's licensing requirements, the State of Wyoming Storage Tank Program, may accept a license from any adjacent state, or any city in Wyoming, in lieu of the International Code Council test required in Section 46(b) (i).

Grant Guidelines To States
For Implementing The
Operator Training Provision
Of The Energy Policy Act Of 2005

U.S. Environmental Protection Agency
Office of Underground Storage Tanks
Washington, D.C. 20460
www.epa.gov/oust
August 2007

EPA-510-R-07-005

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Overview Of Operator Training Grant Guidelines

Why Is EPA Issuing These Guidelines?

The U.S. Environmental Protection Agency (EPA), in consultation with states, developed these grant guidelines as required by the operator training provision in Section 9010(a) of the Solid Waste Disposal Act (SWDA), enacted by the Underground Storage Tank Compliance Act, part of the Energy Policy Act of 2005 signed by President Bush on August 8, 2005.

Section 1524 of the Energy Policy Act amends Subtitle I of the Solid Waste Disposal Act by adding Section 9010. Section 9010 requires EPA to publish guidelines that specify training requirements for three classes of operators:

- Persons having primary responsibility for on-site operation and maintenance of underground storage tank systems.
- Persons having daily on-site responsibility for the operation and maintenance of underground storage tank systems.
- Daily, on-site employees having primary responsibility for addressing emergencies presented by a spill or release from an underground storage tank system.

Section 9010(a)(2) requires EPA to consider:

- State training programs in existence when the guidelines are published.
- Training programs that are being used by tank owners and operators as of August 8, 2005.
- The high turnover rate of tank operators and other personnel.
- The frequency of improvement in underground storage tank equipment technology.
- The business in which tank operators are engaged.
- The substantial differences in the scope and length of training needed for the three classes of operators.
- Such other factors as EPA finds necessary to carry out Section 9010.

Section 9010(b)(2) also requires each state receiving Subtitle I funding (hereafter referred to as “state”), to develop state-specific training requirements that:

- Are consistent with EPA’s guidelines.
- Are developed in cooperation with tank owners and operators.
- Consider training programs implemented by tank owners and operators.
- Are appropriately communicated to tank owners and operators.

In addition, Section 9010(c) requires that all persons who are subject to the operator training requirements specified in these guidelines must:

- Meet the state-specific training requirements.
- Repeat applicable requirements if the tank for which they have primary daily on-site management responsibilities is determined to be out of compliance with a requirement or standard of 40 CFR 280 or a requirement or standard of a state program approved under Section 9004.

EPA’s Office of Underground Storage Tanks (OUST) is issuing these grant guidelines to establish the minimum requirements a state receiving Subtitle I funding must meet in order to comply with the operator training provisions of the Energy Policy Act.

What Is In These Guidelines?

These guidelines describe the minimum requirements a state’s underground storage tank (UST) program must contain in order for a state to comply with the Section 9010 requirements for Subtitle I funding. These guidelines include: a description of the classes of operators; required training for each class of operator; deadlines when operator training is required; and examples of acceptable state approaches to operator training.

When Do These Guidelines Take Effect?

These guidelines are effective August 8, 2007.

Operator Training Requirements

What Is Operator Training?

Underground storage tank operator training means any program that meets the requirements of these guidelines. Such a program is designed to ensure knowledge regarding operating and maintaining underground storage tank systems.

What Underground Storage Tank Systems Do These Guidelines Apply To?

These guidelines apply to underground storage tank systems regulated under Subtitle I, except those excluded by regulation at 40 CFR Part 280.10(b) and those deferred by regulation at 40 CFR 280.10(c).

How Does A State Implement These Guidelines?

A state implements these guidelines by:

- Requiring operator training for all operators in each class.
- Developing state-specific operator training requirements consistent with EPA's guidelines by August 8, 2009. State-specific operator training requirements must:
 - Be developed in cooperation with tank owners and operators;
 - Take into consideration training programs implemented by tank owners and tank operators; and
 - Be appropriately communicated to tank owners and operators.
- Establishing a procedure to identify individuals who are required to be trained under the operator training requirements specified in these guidelines.
- Ensuring all operators are trained in accordance with these guidelines.

States may choose to be more stringent than these minimum requirements.

Who Is Subject To Operator Training Requirements And What Are The Requirements?

For purposes of implementing the operator training requirements, these guidelines establish three classes of operators identified as Class A, Class B, and Class C. 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. All individuals designated as a Class A, B, or C operator must, at a minimum, be trained according to these guidelines. Separate individuals may be designated for each class

of operator described above or an individual may be designated to more than one of the above operator classes. An individual who is designated to more than one operator class must be trained in each operator class for which he or she is designated. Because an individual may be designated for more than one operator class, states may allow a training approach that encompasses training for more than one operator class.

States must establish a procedure to identify individuals who are required to meet the operator training requirements specified in these guidelines. For example, a state may accomplish this by requiring that underground storage tank system owners or operators identify, for each underground storage tank system or group of underground storage tank systems at a facility, at least one name for each class of operator outlined in these guidelines.

These guidelines in no way relieve the owner or operator, as defined in 40 CFR 280, from any legal responsibility mandated by the federal underground storage tank regulations or requirements of a state underground storage tank program approved by EPA under SWDA Section 9004.

There may be occasions when a Class A, Class B, or Class C operator will not be present at the facility. For example, operators are frequently not present at unmanned facilities, such as emergency generators at telecommunication towers and card lock/card access facilities. However, these operators are still responsible for operation and maintenance activities or responding to emergencies and must be trained according to these guidelines.

To assist states in identifying responsible individuals to be trained pursuant to these guidelines, the following sections characterize, in general terms, each class of operator. These sections also identify general training requirements pertaining to operating and maintaining underground storage tank systems. See Appendix (The Three Operator Classes At A Glance) which describes the operator classes and the objectives of training requirements. States must further specify training for each individual class of operator by developing state-specific training requirements.

Class A Operator

A Class A operator has primary responsibility to operate and maintain the underground storage tank system. The Class A operator's responsibilities include managing resources and personnel, such as establishing work assignments, to achieve and maintain compliance with regulatory requirements.

In general, this individual focuses on the broader aspects of the statutory and regulatory requirements and standards necessary to operate and maintain the underground storage tank system (i.e., 40 CFR 280 or requirements of a state

underground storage tank program approved by EPA under SWDA Section 9004). For example, this individual typically ensures that appropriate individual(s):

- Properly operate and maintain the underground storage tank system.
- Maintain appropriate records.
- Are trained to operate and maintain the underground storage tank system and keep records.
- Properly respond to emergencies caused by releases or spills from underground storage tank systems at the facility.
- Make financial responsibility documents available to the underground storage tank implementing agency as required.

At a minimum, the Class A operator must be trained in the following:

- A general knowledge of underground storage tank system requirements so he or she can make informed decisions regarding compliance and ensure appropriate individuals are fulfilling operation, maintenance, and recordkeeping requirements and standards of 40 CFR 280 or requirements and standards of a state underground storage tank program approved by EPA under SWDA Section 9004 regarding:
 - Spill prevention
 - Overfill prevention
 - Release detection
 - Corrosion protection
 - Emergency response
 - Product compatibility
- Financial responsibility documentation requirements.
- Notification requirements.
- Release and suspected release reporting.
- Temporary and permanent closure requirements.
- Operator training requirements.

Class B Operator

A Class B operator implements applicable underground storage tank regulatory requirements and standards (i.e., 40 CFR 280 or requirements of a state underground storage tank program approved by EPA under SWDA Section 9004) in the field. This individual implements day-to-day aspects of operating, maintaining, and recordkeeping for underground storage tanks at one or more facilities. For example, this individual typically monitors, maintains, and ensures:

- Release detection method, recordkeeping, and reporting requirements are met.
- Release prevention equipment, recordkeeping, and reporting requirements are met.
- All relevant equipment complies with performance standards.
- Appropriate individuals are trained to properly respond to emergencies caused by releases or spills from underground storage tank systems at the facility.

Compared with training for the Class A operator, training for the Class B operator will provide a more in-depth understanding of operation and maintenance aspects, but may cover a more narrow breadth of applicable regulatory requirements.

States may require either site-specific operator training, which is focused only on equipment used at the underground storage tank facility, or broader training regarding regulatory requirements that, at a minimum, encompass the following:

- Components of underground storage tank systems.
- Materials of underground storage tank system components.
- Methods of release detection and release prevention applied to underground storage tank components.
- Operation and maintenance requirements of 40 CFR 280 or requirements of a state underground storage tank program approved by EPA under SWDA Section 9004 that apply to underground storage tank systems and include:
 - Spill prevention
 - Overfill prevention
 - Release detection
 - Corrosion protection

- Emergency response
- Product compatibility
- Reporting and recordkeeping requirements.
- Class C operator training requirements.

Class C Operator

A Class C operator is an employee and is, generally, the first line of response to events indicating emergency conditions. This individual is responsible for responding to alarms or other indications of emergencies caused by spills or releases from underground storage tank systems. This individual notifies the Class B or Class A operator and appropriate emergency responders when necessary. Not all employees of the facility are necessarily Class C operators. This individual typically:

- Controls or monitors the dispensing or sale of regulated substances, or
- Is responsible for initial response to alarms or releases.

At a minimum, the Class C operator must be trained 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) or alarms caused by spills or releases from an underground storage tank system.

When Must Operators Be Trained?

States must ensure that Class A, Class B, and Class C 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. A state may want to establish a schedule for phasing in the training over this time.

After August 8, 2012, states must require operators be trained as follows:

- Class A and Class 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.
- Class C operators must be trained before assuming responsibility for responding to emergencies.

If a state determines an underground storage tank system is out of compliance, appropriate operator(s) must be retrained. States may determine whether both Class A

and Class B operators are retrained, or if only one class of operator (either Class A or Class B) is retrained. At a minimum, an underground storage tank system is out of compliance if the system:

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

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

What Training Approaches Would Meet The Operator Training Requirements?

Operator training must evaluate operator knowledge of the minimum training requirements described for each class of operator in these guidelines.

The following is a list of acceptable approaches to meet training requirements stated in these guidelines:

- An operator training program conducted or developed by the state or by a third party that has received prior state¹ approval. The program may include in-class, on-line, or hands-on training. Such a program must include an evaluation of operator knowledge. Examples include testing, practical demonstration, or other tools determined as acceptable by the state.
- An appropriately administered and evaluated verification of operator knowledge (i.e., examination). This determination must be accomplished through an operator examination designed to measure operator knowledge as required in these guidelines. The state or a third party acceptable to the state may administer this examination. The examination process must be acceptable to the state and reasonably determine the person tested has the necessary knowledge and skills to be considered competent to operate underground storage tanks.
- For Class C operator training, the state may accept training conducted by a trained Class A or Class B operator.

¹ States might need to establish criteria to determine the suitability of any training provider or curriculum of training courses provided.

- To address operators responsible for underground storage tank systems in multiple states, states may develop a program that accepts operator training verification from other states.
- Any combination of the above listed operator training approaches or comparable training approaches recognized by the state.

How May States Ensure All Operators Are Trained In Accordance With These Guidelines?

States must have a system in place for ensuring all operators are trained in accordance with these guidelines. The following are some examples for meeting this requirement.

- Require owners or operators maintain records documenting the training received for all Class A, Class B, and Class C operators either: at the underground storage tank site and immediately available for inspection by the implementing agency; or at a readily available alternative site and be provided for inspection to the implementing agency upon request.
- Require owners or operators report Class A, Class B, and Class C operator compliance to the implementing agency.

What Enforcement Authority Must States Have For Operator Training?

At a minimum, states must have comparable enforcement authorities for their operator training requirements as they have for current underground storage tank requirements.

How Will States Demonstrate Compliance With These Guidelines?

After August 8, 2009, and before receiving future grant funding, states must provide one of the following to EPA:

- For a state that has met the requirements for operator training, the state must submit a certification indicating that the state meets the requirements in the guidelines.
- For a state that has not yet met the requirements for operator training, the state must provide a document that describes the state's efforts to meet the requirements. This document must include:
 - A description of the state's activities to date to meet the requirements in the guidelines;

- A description of the state's planned activities to meet the requirements; and
- The date by which the state expects to meet the requirements.

EPA may verify state certifications of compliance through site visits, record reviews, or audits as authorized by 40 CFR Part 31.

How Will EPA Enforce States' Compliance With The Requirements In These Guidelines?

As a matter of law, each state that receives funding under Subtitle I, which would include a Leaking Underground Storage Tank (LUST) Cooperative Agreement, must comply with certain underground storage tank requirements of Subtitle I. The Agency will establish terms and conditions on grants and cooperative agreements for underground storage tank activities to require compliance with applicable requirements as a condition of funding. EPA will address noncompliance with these terms and conditions by utilizing EPA's grant enforcement authorities under 40 CFR Part 31.43, as necessary and appropriate.

For More Information About The Operator Training Grant Guidelines

Visit the EPA Office of Underground Storage Tanks web site at www.epa.gov/oust or call 703-603-9900.

Background About The Energy Policy Act Of 2005

On August 8, 2005, President Bush signed the Energy Policy Act of 2005. Title XV, Subtitle B of this act (titled the Underground Storage Tank Compliance Act) contains amendments to Subtitle I of the Solid Waste Disposal Act – the original legislation that created the underground storage tank (UST) program. These amendments significantly affect federal and state underground storage tank programs, will require major changes to the programs, and are aimed at reducing underground storage tank releases to our environment.

The amendments focus on preventing releases. Among other things, they expand eligible uses of the Leaking Underground Storage Tank (LUST) Trust Fund and include provisions regarding inspections, operator training, delivery prohibition, secondary containment and financial responsibility, and cleanup of releases that contain oxygenated fuel additives.

Some of these provisions require implementation by August 2006; others will require implementation in subsequent years. To implement the new law, EPA and states will work closely with tribes, other federal agencies, tank owners and operators, and other stakeholders to bring about the mandated changes affecting underground storage tank facilities. To see the full text of this new legislation and for more information about EPA's work to implement the underground storage tank provisions of the law, see: http://www.epa.gov/oust/fedlaws/nrg05_01.htm

Appendix: The Three Operator Classes At A Glance

	Class A Operator	Class B Operator	Class C Operator
Who fits this class of operator?	The individual who generally focuses on the statutory and regulatory requirements related to operating and maintaining the underground storage tank system	The individual who is generally responsible for field implementation of applicable underground storage tank regulatory requirements and implements day-to-day aspects of operating, maintaining, and recordkeeping for USTs at one or more facilities	The individual who is generally the first line of response to events indicating emergency conditions or responding to alarms
What is the objective of the training requirements?	Ensure broad knowledge of regulatory requirements	Ensure in-depth knowledge of implementing regulatory requirements	Ensure knowledge of actions to take in the event of a leak or other emergency

