

**MEMORANDUM
STORAGE TANK PROGRAM
WYOMING DEPARTMENT OF ENVIRONMENTAL QUALITY**

TO: Wyoming Joint Minerals and Economic Development
Committee

FROM: Wyoming Department of Environmental Quality,
Storage Tank Program

SUBJECT: Possible Statutory Changes Based on 2015
Federal Rules



This document provides an overview of the Wyoming Department of Environmental Quality's (DEQ) Storage Tank Program (STP) and provides recommended statutory changes in response to underground storage tank regulations adopted by the U.S. Environmental Protection Agency on July 15, 2015. DEQ is recommending changes and additions to the statutes in response to these new federal regulations. The STP is proposing changes and cleanups to address issues that the STP has perceived as problematic in the past that have not been addressed by the new federal rule. These proposed statutory changes were discussed with the Wyoming Petroleum Marketers Association (WPMA) representatives on April 27, 2016. The outcome of the meeting was positive and, overall, WPMA was supportive of the proposed changes.

Background

In 1990, after recognizing the burden that maintaining the federally required financial assurance would place on rural and small business storage tank owners and operators, the Wyoming Legislature created the STP. As a part of this program, the legislature created the storage tank corrective action account (CAA) and the financial responsibility account (FRA). The CAA provides funds necessary to clean up releases, while the FRA provides financial assurance for harm to third parties resulting from a release. Revenue into the CAA for site remediation comes from a Mineral Royalty offset equal to one cent per gallon of gasoline or diesel sold. Additional funds come from an EPA grant, contaminated site fees, and tank fees. Thus, in tandem, the CAA and FRA provide an affordable financial mechanism for Wyoming storage tank owners and operators to meet federal financial assurance requirements.

The Solid Waste Disposal Act, 42 U.S.C. § 6991, requires EPA to regulate storage tanks. Like other federal environmental laws, the Act allows states to assume from EPA the primary authority to enforce storage tank regulations. Although DEQ's storage tank program would qualify for primary enforcement authority, DEQ has not received EPA approval to operate its storage tank program in lieu of the federal program. Nonetheless, DEQ's program has operated in a de facto primacy state since 1988, with DEQ, rather than EPA, enforcing storage tank regulations in Wyoming because EPA has viewed DEQ's program as an adequate regulatory mechanism.

The STP prioritizes sites and begins work on the highest priority sites. A site is given a relatively low priority if there is no groundwater contamination. If DEQ has data indicating that

a site has groundwater contamination, this will result in a higher priority and more expensive remedial action. Lower priority sites in the same geographical area are combined with the high priority sites to develop projects. This allows the STP to reduce overall cleanup cost per site using economies of scale.

As of June 30, 2015, there were 3,857 facilities (gas stations, emergency power generator locations, etc.) with tanks or that had tanks in the past. There were 8,848 permanently out-of-use (POU) tank systems, 1,776 active tank systems, and 93 temporarily out-of-use (TOU) tank systems for a total of 10,717 tank systems regulated by the STP.

As of June 30, 2015, a total of 1,616 contaminated STP source sites, requiring some degree of active environmental remediation, existed in the Wyoming. Of these 1,616 contaminated source sites, 1,185 have been remediated or resolved by the STP, leaving 431 unresolved contaminated sites. All of these 431 unresolved contaminated sites are currently in corrective action projects.

While the STP has done a commendable job remediating contaminated sites, remediation work will be required in the future. At this time, there are 335 USTs in Wyoming that are older than 30 years; 81 of these are older than 40 years. There are 679 USTs that are approaching 30 years old (over 20 years old). About 9% of the tanks older than 30 years are made of materials that do not corrode (fiberglass, clad, composite materials); the remaining 91% will corrode. DEQ will continue to inspect facilities in order to prevent releases and assure that releases are remediated as quickly as possible.

As discussed above, DEQ has submitted program primacy applications to EPA in the past. The initial concern of EPA was timeliness of remedial actions and the inspection program. EPA has indicated that these are no longer concerns. The program intends to resubmit its primacy application now that EPA has finalized changes to the federal tank law. If Wyoming is granted program primacy, citizens and tank owners and operators will not see any significant changes in the day-to-day program administration. However, the state will receive full responsibility for program administration with a large reduction in direct federal program oversight. Before DEQ can submit its next program primacy application, it must first incorporate changes into its statutes to meet the minimum criteria set by the new federal rules.

Below DEQ presents the proposed statutory changes followed by DEQ's justification for recommending them.

Definitions

1. "Department" - 35-11-1415(a)(iii)

(iii) "Department" means the department of environmental quality through its ~~water quality division~~ solid and hazardous waste division;

DEQ Justification: DEQ suggests updating this statute to reference the solid and hazardous waste division rather than water quality division due to the fact that the tank program was moved out of the water quality division in 2006.

2. "Owner" - 35-11-1415(a)(vi)

(vi) "Owner" means:

(A) In the case of an underground storage tank in use or brought into use on or after November 8, 1984, any person who owns an underground storage tank while it is used for the storage, use or dispensing of regulated substances;

(B) In the case of an underground storage tank in use before November 8, 1984, but no longer in use after that date, any person who owned such a tank immediately before the discontinuation of its use; and

(C) Any person who owns an aboveground storage tank meeting the definition of paragraph (xi) of this subsection.

(D) In the case of a site contaminated by an aboveground or underground storage tank regulated under this article and where all tanks have been permanently closed, any person who owns the site.

DEQ Justification: DEQ recommends adding subsection (D) to the definition of "owner" to clarify the responsibilities of owners of sites where tanks have been removed. These responsibilities include providing a right of entry for DEQ during remediation activities (35-11-1422(a)(vi)) and for use of corrective action account funds (35-11-1424(d, e, f, g)). The existing definition only refers to tank owners; not site owners where tanks have been permanently closed and removed.

3. "Pipeline Facility" - 35-11-1415(a)(ix)(D)

(D) A pipeline facility, including gathering lines, regulated under:

(I) ~~The Pipeline Safety Improvement Act of 2002; Which is regulated under 49 C.F.R. 601 et. seq.; or~~

(II) ~~The Hazardous Liquid Pipeline Safety Act of 1995;~~

(III) An intrastate pipeline facility regulated under state laws comparable to the provisions of law in subdivision (I) or (II) of this paragraph. Which is an intrastate pipeline facility regulated under state laws as provided in chapter 601 of Title 49, and which is determined by the Secretary of Transportation to be connected to a pipeline, or to be operated or intended to be capable of operating at pipeline pressure or as an integral part of a pipeline.

DEQ Justification: DEQ recommends this modification to mirror the federal regulations and remove reference to the preexisting regulatory references that are no longer relevant.

4. "Underground storage tank" 35-11-1415(a)(ix)(N)

(ix) "Underground storage tank" means and includes any one (1) or combination of underground storage tanks, including underground pipes connected thereto, used to contain an accumulation of regulated substances, and the volume of which, including the volume of the underground pipes connected thereto, is ten percent (10%) or more beneath the surface of the ground, but does not include:

(N) Emergency spill or overflow containment underground storage tanks systems that are expeditiously emptied after use;

DEQ Justification: DEQ recommends this modification in order to mirror the federal definition and meet the minimum requirements of the updated federal regulations.

5. Aboveground Storage Tank Financial Assurance - 35-11-1416(a)(ii) and 35-11-1427

35-11-1416(a)(ii) – Require proof of financial assurance as required by federal law for underground storage tanks. Require proof of financial assurance for aboveground storage tanks if the owner of an aboveground storage tank wants to be eligible for coverage under the Financial Responsibilities Account.

35-11-1427 - This account is intended to provide for financial assurance coverage required by federal law for underground storage tanks and establish financial assurance coverage for aboveground storage tanks and shall be for the purpose of compensating third parties for damage caused by releases from one (1) or more tanks. Interest earned by the account shall be deposited in the general fund.

DEQ Justification: Currently, the financial responsibility account, W.S. 35-11-1427, can only be used by owners and operators of underground storage tanks to satisfy judgments against the owner and operator for third party property damage or personal injury. DEQ would like to change this to allow AST owners to avail themselves to the financial responsibilities account, if they provide proof of financial assurance. DEQ believes this is appropriate because AST owners also pay fees and should be entitled to use of the account like UST owners.

6. Tank Fees - 35-11-1425(b)

(b) On April 1 of each year the department may assess a late payment fee of one hundred dollars (\$100.00) per tank or contaminated site against any owner who has not paid the annual fee required pursuant to subsection (a) of this section or 35-11-1424 (e).

DEQ Justification: 35-11-1425(b) indicates that contaminated site late fees may be assessed if fees are not paid pursuant to subsection (a). However, subsection (a) only addresses tank fees; not contaminated site fees. Contaminated site fees are addressed in 35-11-1424(e). Therefore, 35-11-1424(e) should be referenced in 35-11-1425(b).

7. Single Wall Piping Replacement - 35-11-1429(d)

(d) Double wall underground storage tank system lines with interstitial leak monitoring shall be installed whenever any line is installed on any underground storage tank system. Whenever existing single wall underground piping connected to an underground storage tank system fails due to corrosion or manufacturer's recall, the entire run of single wall piping shall be replaced with double wall, interstitially monitored piping regardless of the length of piping requiring repair due to the failure. This does not apply to piping connected to field-constructed underground storage tank systems with a capacity exceeding 50,000 gallons or piping that is used for an airport hydrant system.

DEQ Justification: EPA's rules only require full piping run replacement if 50% or more of the single-walled piping needs to be replaced/repared. In order to minimize releases of petroleum products into the environment, DEQ suggests changing the statute to require the entire single-wall piping run to be replaced with double-wall interstitially monitored piping regardless of the length of piping requiring modification or repair. The majority of existing steel underground piping was installed without cathodic protection and was in operation for a period of time before cathodic protection was added. This means piping corrosion likely has taken place. If any portion of the piping fails due to corrosion, it is likely the remainder of the piping will fail in the future. There have also been recalls of several types of single-wall flexible piping. Whenever single-wall underground piping is repaired, any connection or repair can increase the risk of a release from the connections. All such releases will require cleanup at the state's expense. This proposed change excludes system failures from other sources, such as accidental damage.

8. Interstitial Monitoring - 35-11-1429(e)

(e) An underground tank and/or underground piping installed after December 1, 2005, that is/are double wall and interstitially monitored, shall be interstitially monitored for the lifetime of the tank and/or piping.

DEQ Justification: Double wall tanks or piping are basically tanks or piping within another tank or piping. The space between the two walls of the system is the interstice. Interstitial monitoring is a method that detects product or water when it enters the interstice. The monitoring system sends an alarm to the control panel. The operator can then shut down the system to determine if a leak has occurred. DEQ believes the intent of W.S. 35-11-1429 (c) and (d) is to require new tanks and piping to be interstitially monitored for the lifetime of the UST system so that eventually all tanks and piping will be double-wall, interstitially monitored systems. Additionally, new federal regulations require all tanks and piping installed after April 11, 2016, be secondarily contained and use interstitial monitoring.

DEQ has encountered numerous instances where the existing piping was interstitially monitored, but the owner switched from interstitial monitoring to using mechanical line leak detectors and line tightness testing for monitoring. We

have also had instances where owners have had water or fuel in the interstitial space of a tank and the owner wanted to consider the tank a single-wall tank and begin performing automatic tank gauging and inventory control for monitoring. We have considered this a rule violation because the tank is not being operated in accordance with the manufacturer's recommendations. However, DEQ would like to clarify this issue and require that once a tank or piping is double-walled and interstitially monitored, interstitial monitoring will continue for the life of the tank or piping.

9. Sump Sensor Fuel Shut Off - 35-11-1429(f)

(f) Whenever a new piping interstitial monitoring system is installed and sump sensors are used as standalone automatic line leak detectors, the system shall be configured such that when a sump sensor triggers an alarm, the system shuts off the flow of product in that piping run. Essential homeland security systems, emergency generator systems, and systems used for other disaster relief efforts are exempt from automatic shut off.

DEQ Justification: Sumps are enclosed areas used at various points along a piping run to catch liquids. Sumps are used at: 1) the tank to house the turbine, which controls where product goes when it's being pumped at the dispenser; 2) under the fueling dispenser to catch releases at the dispenser; and 3) where piping is connected to other piping in order to distribute the product to the dispensers. All double wall piping terminates in a sump. If fluid enters the interstice of the piping, it will flow to the sump where it accumulates and is detected by a sensor. The sensor will send an alarm to the control panel. The operator can then determine whether or not a leak has occurred. DEQ has encountered instances where sumps fill with water and the operator either lifts the sensor above the water level or mutes the alarm at the control panel. In these cases, if a product leak occurred, the leak would go undetected. Additionally, if the sump is full of water, the product would float on the water and eventually be released to the environment when the sump filled to the top. EPA has not provided any regulations with regard to these issues we see in the field.

For these reasons, DEQ is recommending to require automatic shutoffs to engage whenever a sump sensor alarms. This feature is already required on aboveground storage tanks. We recommend only requiring that this equipment be included on new installations and whenever the operator has to replace the interstitial monitoring system. Existing systems would not need to be upgraded until a modification of the system was necessary.

10. Tank System Operators, Installers, and Testers Licensing

§ 35-11-1431. Tank system operators, installers, and testers licensing.

(a) The Department shall promulgate rules and regulations, after recommendation from the Director and consultation with the appropriate advisory boards, to develop standards for the licensing of all tank system operators, installers and testers. The rules shall include but not be limited to rules and regulations which:

- (i) Designate license requirements for any person installing, modifying, or testing any underground or aboveground storage tank.
- (ii) Designate licensing requirements for Class A and B operators including passing a Department approved exam;
- (iii) Designate training requirements for Class C operators.
- (iv) Require that at least one person present on the job site must be licensed by the department to install or modify a tank system.

DEQ Justification: EPA's final rules provide a multitude of options for operator licensing that increase the burden on the state to determine whether or not those options meet EPA's requirements. Wyoming's operator training rules require Class A and B operators, tank installers, and testers to pass applicable exams in order to receive a license. Because Wyoming pays for cleanups from tank releases, DEQ believes that it is crucial that operators, installers, and testers demonstrate knowledge (i.e., pass an exam) needed to help prevent releases. In the 10 years prior to requiring operator training under our current rules, the state averaged 15 new releases per year with a high of 24 releases in one year. In the 6 years since requiring operator training, the state averaged 6 new releases per year with a high of 15 releases in one year. DEQ believes our operator training program has effectively reduced releases by over half, which reduces the burden on the state for cleanup.

Additionally, DEQ recommends this statutory addition to conserve resources. Other states employ one full time employee to review submitted operator trainings to determine whether they are appropriate. Because DEQ has limited resources to review a multitude of training programs from various entities and determine whether or not those training programs meet the federal requirements, DEQ believes this approach is more responsible. DEQ believes that the industry has become familiar with the existing licensing requirement and it should continue as it has for the past 7 years. This provides continuity to the industry and saves resources for DEQ. The added language will allow the DEQ to reopen its rules and work with the regulated community to examine its licensing requirements and develop regulations that are acceptable to industry but protective for DEQ.

11. Temporarily Out-of-Use (TOU) Tanks

§ 35-11-1432. Temporarily out-of-use (TOU) tanks.

(a) Underground and aboveground storage tanks that have been TOU for over 12 months, except tanks within operating facilities, shall be permanently closed in accordance with procedures established in rule unless a time extension is authorized in writing by the department. Up to two 1-year time extensions may be authorized. Closure shall take place within 15 months of the tank being placed in TOU status or the date a time extension expires.

(b) Existing tanks that have been TOU for over 12 months shall be permanently closed within 12 months of the effective date of this statute unless a time extension is authorized in writing by the department.

(c) The council may promulgate rules and regulations to administer this section after recommendation from the director.

DEQ Justification: DEQ has encountered TOU tanks being left in the ground indefinitely. These tanks can pose a risk to the environment if they are not emptied, and/or if they are put back into service without notification to DEQ. DEQ has had several reports of sewage from recreational vehicles being dropped into tanks with unsecured fill/drop tubes. We are considering adding a requirement to the statute that requires tanks that have been TOU for over 12 months to be removed.