

BEFORE THE
ENVIRONMENTAL QUALITY COUNCIL
STATE OF WYOMING

IN THE MATTER OF REVISIONS)
TO WATER QUALITY RULES AND) STATEMENT OF
REGULATIONS, CHAPTER 17,) PRINCIPAL REASONS
STORAGE TANKS AND CHAPTER 19,) FOR ADOPTION
FINANCIAL ASSURANCE FOR)
UNDERGROUND STORAGE TANKS)

INTRODUCTION

The Environmental Quality Council, pursuant to the authority vested in it by Wyoming Statute 35-11-112(a)(i) has adopted revisions to the following chapters of the Wyoming Water Quality Division Rules and Regulations: Chapter 17, Storage Tanks, and Chapter 19, Financial Assurance for Underground Storage Tanks.

Per the Streamlining Government Initiative, one chapter (Chapter 19) has been eliminated by combining it with Chapter 17 (50% reduction). Between the two chapters, the reduction in pages is 35 (24% reduction).

Section 35-11-1416(a) of the Environmental Quality Act (Act) states: “The council shall promulgate rules and regulations necessary to administer this article after recommendation from the director of the department, the administrators of the various divisions and their respective advisory boards. The rules shall include but shall not be limited to rules and regulations which:

- (i) Provide for performance, operating and installation standards for underground storage tanks which shall be no less or no more stringent than the federal standards.
- (ii) Require proof of financial assurance as required by federal law.”

Water Quality Division Rules and Regulations Chapter 17 contains standards for: 1) upgrading existing storage tank facilities; 2) tank abandonment and closure; 3) tank compatibility with stored substances; 4) new tank construction, design, and installation; 5) record maintenance; 6) release detection; 7) spill and overfill devices; 8) inspection procedures; 9) compliance deadlines; and 10) soil and groundwater restoration. The rules include standards for underground storage tanks (USTs), as required by federal law, and state-regulated aboveground storage tanks (ASTs). Standards developed in the rules are those determined by the council to be necessary to meet the goals of the statute.

Water Quality Division Rules and Regulations Chapter 19 contains financial assurance requirements for underground storage tanks as required by federal law.

These proposed rule changes: 1) move Chapter 17 Water Quality Division Rules and Regulations to Solid and Hazardous Waste Division, Storage Tank Program, Chapter 1 as authorized during the 2017 legislative session (Section 35-11-1415 of the Act); 2) are in response to changes in the October 2015 federal law to implement the 2005 Energy Policy Act; 3) address previously deferred tanks that as of October 2015 are no longer deferred by federal law; 4) move the full citation for all standards, codes of practice, and references to Section 2; 5) include new technologies that were not available when the federal law was written in 1988; 6) update standards, codes of practice, and references; 7) remove references to old dates; 8) make editorial, formatting, and technical corrections; 9) provide aboveground owners and/or operators the option of obtaining financial assurance; and 10) move Water Quality Division Rules and Regulations Chapter 19 (Financial Assurance for Underground Storage Tanks) into Solid and Hazardous Waste Division, Storage Tank Program, Chapter 1.

PROPOSED REVISIONS TO CHAPTER 17 (NOW CHAPTER 1)

Throughout the Chapter:

Substantive:

- 1) Add new EPA regulations that became effective October 13, 2015.
- 2) Add existing EPA regulations (pre-2015) that were not included in the Chapter.

Not Substantive:

- 1) Editorials, including editorial changes made by EPA to existing language and to meet the Franklin Covey Style Guide for technical writing.
- 2) Clarifications.
- 3) Update references, publications, etc. and cite Section 2 for complete reference citation.
- 4) Remove language no longer relevant due to: a) new regulations, b) changes to the rules, c) 2017 statute revisions, d) language not in the federal rules, or e) dates for compliance have passed.
- 5) Chapter 17 is now Chapter 1 of the Storage Tank Program (STP) under Solid and Hazardous Waste Division (STP was moved from Water Quality Division to Solid and Hazardous Waste Division (SHWD) during the 2017 legislative session).

Part A

Substantive:

- 1) Section 4: EPA removed the deferral for some tank that were previously deferred from regulations. Section revisions were made to reflect the tanks no longer deferred and the portions of the regulations that now apply to those tanks. Previously deferred tank language has been included, verbatim from the federal regulations, as Section M.

Not Substantive:

- 1) Section 1: Change statute references to reflect 2017 legislative changes.
- 2) Section 2: Change SHWD address to phone number.
- 3) Section 2: Move the complete citation for each reference, publication, etc., referenced throughout the Chapter to Section 2. This move cleans up the Chapter, puts all

references and their citations in one place, and reduces the number of pages in the rule. All references were updated in 2017.

4) Section 3: Move WQD Rules and Regulations Chapter 19 (Financial Assurance for Storage Tanks) into this new Chapter 1 as Part N to reduce the number of Chapters per the governor's initiative. Chapter 19 has been moved as Part N; minor editorial changes were made to Part N.

5) Section 3: Give AST owners the option for financial responsibility coverage per the 2017 statute.

6) Section 4: Revise for clarity.

7) Section 5: Update and add definitions needed to address the Chapter and 2017 statute revisions. Removed some definitions that are in the Code of Federal Regulations (CFR) and not routinely used by the regulated public.

Part B

Substantive:

1) Section 6: All new tanks and piping must be secondarily contained and interstitially monitored. This requirement was put into rule in December 2005 in response to the Energy Policy Act. EPA exempted some suction piping; however, W.S. 35-11-1429 does not allow for the exemption. Therefore, the EPA exemption has not been included in the rules.

2) Section 6: Added restrictions on using flow restrictors in vent lines (ball valves).

3) Section 6: Spill and overfill prevention equipment must be tested/inspected.

4) Section 6: Under dispenser containment is now required.

5) Section 6: Added flow restriction requirements to prevent overfills. Language was not in Chapter 17 but is in the federal rules.

6) Section 7: Permanently closed substandard USTs cannot be brought back into service if they do not meet the standard requirements.

7) Section 8: Allows repair of non-corrodible pipes and fittings.

8) Section 8: Repairs of spill and overfill prevention equipment must be tested after the repair.

9) Section 8: Clarification of the intent of the Statute and EPA regulations that all new and replacement tanks must be double-wall and interstitially monitored for the lifetime of the system. If either the primary or secondary tank wall fails, the tank is no longer being operated as it was designed to be operated.

Not Substantive:

1) Section 6: All tanks were required to install cathodic protection by June 30, 2008, per W.S. 35-11-1429(a). Language has been updated to reflect the 2008 date.

Part C

Substantive:

1) Section 9: Requirement to notify the department with change of ownership within 30 days.

2) Section 10: Requirement for periodic testing of spill prevention equipment and containment sumps used for interstitial monitoring of piping and periodic inspection of overfill prevention equipment.

3) Section 11: W.S. 35-11-1429(a) requires that cathodic protection be installed and operated on all internally lined tanks no later than June 30, 2008. The federal regulations have no timeframe to complete repairs on these systems. Included clarification to prevent having to issue a Red Tag (delivery prohibition) for not completing the repairs within 90 days of failure. This will assist tank owners/operators to remain in compliance and reduce the chance of delivery prohibition.

4) Section 12: Requirements for compatibility of substance being stored with the tank system.

5) Section 13: New notification requirements.

6) Section 13: New recordkeeping requirements.

7) Section 13: Requirements for inspections by the Class A and B operators.

8) Section 13: Provide option to allow submittal of electronic records.

9) Section 13: Clarification that if the owner/operator does not open access points (required) for DEQ inspectors and the equipment is damaged during inspection, the cost for repairs will be incurred by the owner/operator and not DEQ.

10) Section 13: Added notification requirements required by statute.

11) Section 13: Clarification of sump sensor placement for EPA-required detection of 3 gallons if sump sensors are used as automatic line leak detectors.

Not Substantive

1) Section 13: Annual reports must be submitted on forms approved by DEQ, and requires verification that the testing was completed by a licensed tester.

2) Section 13: Requires the tester to provide the owner/operator with the testing results so deficiencies can be corrected.

3) Section 13: Owners/operators may send permanent closure records to DEQ if they cannot be kept on site or at an alternate site.

Part D

Substantive:

1) Section 14: Release detection equipment must be operated, maintained, and tested.

2) Section 14: Previously deferred tanks must meet Part M requirements.

3) Section 14: Automatic line leak detectors are required on pressurized piping.

4) Section 14: Clarifies sump sensor placement when sump sensors are used as automatic line leak detectors.

5) Section 14: Added the 2017 statute that requires automatic shut off when sump sensors are used as standalone automatic line leak detectors.

6) Section 14: Leak detection requirements clarified per Petroleum Marketers Association of America (PMAA) regulatory report.

7) Section 15: Manual tank gauging variations standards table revised.

8) Section 16: Provided guidelines for automatic tank gauge testing.

9) Section 16: Added requirements for Statistical Inventory Reconciliation.

10) Section 16: Clarifies that another method of inventory control can be used as long as the method meets the inventory control requirements per the federal regulations.

11) Section 16: Added the 2017 statute that requires when interstitial monitoring has been installed, it must remain as the primary leak detection method for the life of the tank or piping.

12) Section 16: Requires that interstitial monitoring records be kept so that DEQ can determine if interstitial monitoring is being done in accordance with the statute.

13) Section 17: Hazardous substance UST containment systems must be monitored.

14) Section 18: Records of site assessments completed to use vapor or groundwater monitoring must be maintained as long as those methods are used, and site assessment must be stamped by a Wyoming Registered Professional Engineer or Geologist.

15) Section 18: Records for some forms of release detection for previously deferred USTs must be kept until the next test is completed.

Not Substantive:

1) Section 18: Tank tightness testing results must be maintained until the next test.

Part E

Substantive:

1) Section 19: Added that liquid in the tank interstice is considered an unusual operating condition and requires integrity testing as part of release investigation/confirmation.

2) Section 19: Liquid found in the interstitial space must be removed.

3) Section 19: Release reporting is required if an alarm occurs.

4) Section 19: If a release was contained and certain requirements are met, the release does not need to be reported.

5) Section 20: Require integrity test of outer wall if primary wall fails so that DEQ knows there has not been a release to the environment requiring state-funded cleanup.

6) Section 21: Added release investigation requirements for secondary containment failures.

7) Section 22: A release of a hazardous substance equal to or in excess of the reportable quantity must be reported immediately to the National Response Center in accordance with the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA).

Not Substantive:

1) Section 19: Added requirement for confirmed spills to be reported to the local fire authority.

2) Section 22: Updated spill reporting procedures to reflect DEQ's current spill reporting requirements.

3) Section 24: Added language to alert owners that the Voluntary Remediation Program may be available to them if they are not eligible for the Corrective Action Account for cleanup.

4) Section 26: Added that all public notices are posted to the STP website to meet EPA community engagement initiative, STP guidance documents, and DEQ process for public notices.

Part F

Not Substantive:

- 1) Section 29: Added/clarified minimum site assessment (MSA) requirements for tank systems.
- 2) Section 29: Clarified how an operator notifies and obtains authorization to close or change the service of a tank and when the owner/operator is required to pay for the MSA.
- 3) Section 29: Clarified that owners must perform an MSA when undergoing a tank change-in-service.
- 4) Section 29: Added the 2017 statute requirement that an MSA must be completed when a tank has been temporarily out-of-use (TOU) for 12 months.
- 5) Section 29: Removed the specifics on monitoring well construction and added that the wells need to be approved by DEQ. This will allow flexibility when completing an MSA.
- 6) Section 29: Clarified that all lab work needs to be done by an A2LA or NELAP certified lab (required for all program work).
- 7) Section 29: Changes are primarily to clean up the Part and revisions to include when an MSA is required and how to complete the MSA. In general, the revisions will be less cumbersome on tank owners.

Part G

Substantive:

- 1) Section 30: Clarified that corrosion protection must be maintained on TOU USTs.
- 2) Section 30: Clarified that Class A and B operators are required for TOU tanks.
- 3) Section 30: Changed requirements for tanks in TOU status from 6 months to 3 months.
- 4) Section 30: Corrosion protection must be maintained on TOU ASTs. EPA is requiring corrosion protection for USTs. Therefore, DEQ will require the same for ASTs, which are not regulated by EPA.
- 5) Section 30: Added that when a tank is TOU for 12 months or longer, the tank must be closed or brought back into service per the 2017 statute.
- 6) Section 31: Added that owners/operators not eligible for the Corrective Action Account must begin cleanup.
- 7) Section 31: Added that owners/operators must maintain records demonstrating compliance with tank closure requirements.
- 8) Section 31: Added that an MSA is required to convert a tank to a non-regulated use or to a regulated use, even for contaminated sites, so DEQ knows what the conditions of the site are before converting uses. This will prevent the State from possibly cleaning up a site for contamination caused during non-regulated use.

Not Substantive:

- 1) Section 30: Require notification from the owner to place tanks in TOU status so DEQ can track that requirements for TOU tanks are being met.
- 2) Section 31: Clarify that tanks become a solid waste after they have been removed.

Part H - None

Part I - Part I provides AST requirements; ASTs are not regulated by EPA

Substantive:

- 1) Section 35: Revised all testing and checks of AST systems to be on the same frequency as required by EPA for USTs. This reduces the burden on tank owners because the rules required testing and checks to be completed more frequently for ASTs than EPA required for USTs. This provides consistency between USTs and ASTs.
- 2) Section 35: Added that corrosion protection systems must be designed by a corrosion expert (as required for USTs).
- 3) Section 35: Added that all new and replacement underground piping on ASTs must be double-wall and interstitially monitored (as required for USTs per EPA and statute).
- 4) Section 35: Require all ASTs to be labeled; not just UL-listed ASTs.
- 5) Section 35: Added that all new installations, upgrades, and modifications to an AST system must be inspected by DEQ; not just upgrades as currently in the rule.
- 6) Section 35: Revised requirements for tank openings and pipe connections to account for the types of tanks at facilities. This revision is less restrictive than currently in rule, but meets safety concerns.
- 7) Section 35: Revised tank lettering requirement, which will be less cumbersome on owners.
- 8) Section 35: Added compatibility requirements that are similar to EPA UST requirements.
- 9) Section 36: Revised inventory control requirements for ASTs. Some requirements for USTs are not necessary for ASTs because portions of the AST tank system are visible. The revision is less burdensome on tank owners.

Part J

Substantive

- 1) Section 40: Required that a Remedial Action Plan be submitted.

Not Substantive

- 1) Section 38: Clarifies that site data, if available, should be used to determine cleanup standards if conflicts occur using modeling.
- 2) Section 38: Clarifies that the state will only cleanup soil and groundwater contaminated by regulated substances. Clarifies that cleanup will only be completed to background levels if those are higher than the protection standards.

Part K

Substantive

- 1) Section 44: Changed the date that DEQ can prohibit fuel delivery to a tank (red tag) from September 1 to April 1 if fees are not paid by April 1. Fees are due by January 1 for the coming year. DEQ believes 3 months is adequate for the owner to pay the tank fees.
- 2) Section 44: Added the ability to red tag ASTs for the same violations as USTs. This will provide consistency between USTs and ASTs.
- 3) Section 44: Added the ability to red tag a tank if: a) a tank is being operated without department authorization; b) spill prevention equipment, containment sumps, or overflow prevention device testing has not been completed within 60 days of the due date; or c) pressurized piping is being operated without an automatic line leak detector.

4) Section 44: Added the ability for an owner/operator to receive a one-time fuel delivery at a red-tagged tank to conduct testing requiring fuel in order to come into compliance so the red tag can be removed.

Part L

Substantive

- 1) Section 46: Require a Class A operator for TOU tanks.
- 2) Section 46: Added requirements for Class C operators.
- 3) Section 46: Added operator documentation requirements.
- 4) Section 46: Clarified that operators cannot be a third party and must be an employee of the facility.
- 5) Section 46: Removed the daily inspection requirement for unattended stations, which is not required by EPA.
- 6) Section 46: Clarified that Class C operators must be trained onsite so they know the facility.
- 7) Sections 45, 46, 48: Changed licensing requirements from 3 years to 5 years. This is less burdensome on those affected by the licensing program.
- 8) Sections 45, 46, 47 and 48: Clarified that for license reciprocity, the licensee must have taken an exam because per statute passing an exam is required for licensing in Wyoming.

Not Substantive

- 1) Moved some sections/subsections to other Chapter Parts.

Part M

Substantive

1) The entire Part has been added and mirrors new EPA regulations 280.250 through 280.252. The Part addresses EPA previously deferred tanks: field-constructed tanks and airport hydrant fuel distribution systems. Note that DEQ is currently unaware of these tanks being located in Wyoming. However, if DEQ becomes aware of these types of tanks or they are installed in the future, these new regulations need to be in place. Additionally, these regulations need to be in place to satisfy EPA for continued grant funding.

Part N

Substantive

1) Additional requirement that tank owners and/or operators of 101 or more USTs who are eligible for the state corrective action account demonstrate financial responsibility for compensating third parties for bodily injury or property damage caused by accidental releases arising from the operation of petroleum USTs. The amount required is \$1 million dollars such that a total aggregate amount of \$2 million is reached when the financial responsibility of \$1 million provided by the state is applied.

Not Substantive

1) Chapter 19 (Financial Assurance) has been included as Part N to reduce the number of Chapters per the governor's initiative. Minor editorial changes were made to Part N

Appendix A

Not Substantive

1) Appendix A has been removed to reduce the number of pages. We have referenced the regulated substance list found in CERCLA pertaining to USTs rather than include the list in Appendix A. This list will also be contained in a guidance document maintained by the department.

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 23 day of May, 2018.

Tim Flitzer
Hearing Examiner – *Printed Name*
Wyoming Environmental Quality Council

Tim Flitzer
Hearing Examiner – *Signed Name*
Wyoming Environmental Quality Council

