EFO - OCC Committee News

**November 19, 2015**

**Proposed Rule Changes for Chapter 15, Chapter 25, and Chapter 26, Chapter 27, Chapter 29 and Chapter 35**

The first Technical Conference was held November 4th for Chapters 15, 25, 26, 27, and 29 in the Petroleum Storage Tank Division. The Storage Tank Advisory Council met November 16th to discuss the latest version of the rules, and respond to comments. The next Technical Conference is scheduled for December 2, 2015 at 10:30am. Comments will be accepted until January 16th, with the Commission en banc hearing to consider adoption of the proposed permanent rules at 9:30am on February 3, 2016.

The Commission en banc hearing is scheduled for December 9, 2015 for Chapter 35, Electric Utility Rates, and are specific to wind energy facilities, which will be added under Chapter 45.. The Notice of Proposed Rulemaking was filed January 15, 2015. Proposed changes are posted on the website at [www.occeweb.com](http://www.occeweb.com). They will define terms used in the wind energy industry, require annual information submissions, set for the Commission’s review process, establish fees, and decommissioning procedures..

Items of interest:

1. **Chapter 15, 25 and 26- Petroleum Storage Tank Division**

Federal underground storage tank (UST) regulations were revised with an effective date of October 13, 2015. Those dates do not apply to those states with State Program Approval (SPA). Oklahoma has SPA, and therefore the effective date of any Commission rule changes should be the effective date of the rule (typically July 1, 2016). The EPA has published several documents with the same expectation - those SPA states will enact changes to their rules over the next 2 to 3 years, with up to 3 years allowed for implementation. The October 13, 2015 date is used repeatedly in OCC proposed rule changes. The PSTD tells us they want to match the dates to EPA revised regulations to avoid any conflicts when they reapply for State Program Approval. In the first technical conference Commissioner Murphy expressed concern over submitting a retroactive date in rule that could be questioned by legislators prior to approval of permanent rule changes.

**2. 165:15-3-22. Equipment installation (11) Fencing**

The proposed rule previously stated “All aboveground tanks at retail facilities must be enclosed by an appropriate security fence. All other facilities will depend on the circumstances as determined by PSTD.” At the STAC meeting held November 16th, the proposed rule was revised to state all facilities regulated by PSTD will require fencing, not just retail sites. The PSTD attorney said that NFPA 30 (industry code from National Fire Protection Agency) requires fencing, and therefore OCC could apply the same requirement to all sites.

The EPA Region 6 office inspects and regulates aboveground storage tanks that are subject to 40CFR112 requiring Spill Prevention, Control, and Countermeasures (SPCC) Plans. Facilities regulated by the PSTD with fuel systems of 1,320 gallons or more also fall under the federal regulation. Specifically, in the December 2008 amendments, the EPA modified the security requirements at Sec. 112.7 (g) to require “the owner or operator to document in the SPCC Plan how they will secure and control access to all storage areas, master flow and drain valves, prevent unauthorized access to starter controls, out-of-service and loading/unloading connections and address the appropriateness of security lighting to prevent acts of vandalism and assist in discovery of discharges. These requirements replace the more prescriptive fencing and other requirements previously found in Sec. 112 (g) (1) through (5).” (Federal Register Doc E9-27156) A licensed Professional Engineer must review and certify a SPCC Plan for it to be effective. The EPA does not *require* fencing, and this rule change would be more stringent than current federal regulations specified in SPCC and the rules already in Chapter 26.

See 26-2-32.1 (b) and 26-2-131 (d) *existing rules* in Aboveground Storage Tanks:

**165:26-2-32.1. Spill Prevention, Control and Countermeasure Plan**

(a) Owners of aboveground storage tanks must comply with the Spill Prevention Control and Countermeasure (SPCC) rule found in Title 40 of the Code of Federal Regulations (CFR), Part 112 (Oil Pollution Prevention). If a Spill Prevention Control and Countermeasure (SPCC) plan is required, it must be kept on site.

(b) The registered Professional Engineer or person responsible for preparation of plan must certify that plan has been prepared in accordance with good engineering practice, including consideration of applicable industry standards and the requirements of 40 CFR 112; procedures for required inspections and testing must be established; and the plan must be adequate for the facility.

**165:26-2-131. Fencing**

(a) Tanks not enclosed in vaults must be enclosed with a chain link fence at least 6 ft. (2m) high. The fence must be separated from the tanks by at least 10 ft (3 m) and must have a gate that is secured against unauthorized entry.

(b) The area within the fence must be kept free of vegetation, debris and any other material that is not necessary to the proper operation of the tank and piping system.

(c) Tanks are not required to be enclosed within a fence if the property on which the tanks are located already has a perimeter security fence.

(d) A fence may not be required if another method effectively restricts access to the tanks.

**3. 165:15-19-2 Enforcement procedure and 15-19-3 Notices of Violation**

The rule strikes “Complaint for Contempt” and replaces it with “Field Citation”.

The Commission has the authority to issue Field Citations in Title 17, Section 306 (15). This law states “Any penalties or fines assessed pursuant to this section shall be established by the Commission by rules promulgated pursuant to the Administrative Procedures Act.” The EPA Office of Underground Storage Tanks publishes a schedule of fines and the process used to calculate any penalties. In the past, a “Complaint for Contempt” was filed with the Court Clerk, and heard in a hearing in front of an Administrative Law Judge. This rule change eliminates that process, and only requires the approval of the Director. Guidance that will explain how the Field Citations will be applied and calculated was requested. The PSTD attorney only addressed the authority of the Division Director or designee to issue field citations in the STAC meeting.

Respectfully submitted,

Terri Roberts, OCC Media Chair