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CORPORATION COMMISSION
OF OKLAHOMA

The Oklahoma Register

Oklahoma
Secretary of State
Office of Administrative Rules



Brad Henry, Governor
M. Susan Savage,
Secretary of State
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160:45-11-1. Requirements for electronic communication [REVOKED]

(a) **Definition.** ~~"Electronic communication" means a message transmitted electronically between a creditor and a consumer in a format that allows visual text to be displayed on equipment, for example, a personal computer monitor.~~

(b) **General rule.** ~~In accordance with the Electronic Signatures in Global and National Commerce Act (the E-Sign Act) (15 U.S.C. 7001 et seq.) and the rules of this chapter, a creditor may provide by electronic communication any disclosure required by this chapter to be in writing.~~

(c) **When consent is required.** ~~Under the E-Sign Act, a creditor is required to obtain a consumer's affirmative consent when providing disclosures related to a transaction. For purposes of this requirement, the disclosures required under 160:45-3-2, 160:45-3-3(4) and (5), 160:45-3-14, 160:45-5-1(g)(1) through (5), 160:45-5-3(b) and 160:45-5-8 are deemed not to be related to a transaction.~~

(d) **Address or location to receive electronic communication.** ~~A creditor that uses electronic communication to provide disclosures required by this chapter shall:~~

- (1) ~~Send the disclosure to the consumer's electronic address; or~~
- (2) ~~Make the disclosure available at another location such as an Internet web site; and~~

~~(A) Alert the consumer of the disclosure's availability by sending a notice to the consumer's electronic address (or to a postal address, at the creditor's option). The notice shall identify the account involved and the address of the Internet web site or other location where the disclosure is available; and~~

~~(B) Make the disclosure available for at least 90 days from the date the disclosure first becomes available or from the date of the notice alerting the consumer of the disclosure, whichever comes later.~~

(3) **Exceptions.** ~~A creditor need not comply with paragraphs (d)(2)(A) and (B) of this section for the disclosures required under 160:45-3-2, 160:45-3-3(4) and (5), 160:45-3-14, 160:45-5-1(g)(1) through (5), 160:45-5-3(b) and 160:45-5-8.~~

(e) **Redelivery.** ~~When a disclosure provided by electronic communication is returned to a creditor undelivered, the creditor shall take reasonable steps to attempt redelivery using information in its files.~~

(f) **Electronic signatures.** ~~An electronic signature as defined under the E-Sign Act satisfies any requirement under this chapter for a consumer's signature or initials.~~

[OAR Docket #08-1111; filed 6-3-08]

**TITLE 165. CORPORATION COMMISSION
CHAPTER 5. RULES OF PRACTICE**

[OAR Docket #08-1134]

RULEMAKING ACTION:
PERMANENT final adoption

RULES:

Subchapter 3. Fees

Part 1. General Provisions

165:5-3-1. Fees [AMENDED]

Subchapter 7. Commencement of A Cause

Part 1. General

165:5-7-1. General application and notice requirements [AMENDED]

Part 3. Oil and Gas

165:5-7-14. Tax exemptions pursuant to OAC 165:10, Subchapter 21 [REVOKED]

165:5-7-22. Multiple zone completions [REVOKED]

165:5-7-23. Production through multiple choke assembly [REVOKED]

165:5-7-24. Commingling of well [REVOKED]

165:5-7-35. Operation of commercial pit and/or commercial soil farming site [AMENDED]

165:5-7-36. Road Oiling [REVOKED]

Part 5. Public Utilities

165:5-7-57. Acquisition, control, or merger of domestic public utilities. [AMENDED]

Subchapter 9. Subsequent Pleadings

165:5-9-3. Emergency applications [AMENDED]

AUTHORITY:

Oklahoma Corporation Commission

Article IX, Section 18, Oklahoma Constitution

17 Okla. Stat. §§ 151

DATES:

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March 24, 2008

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March 28, 2008

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Submitted to Senate:

March 28, 2008

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May 6, 2008

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Failure of the Legislature to disapprove the rules resulted in approval by May 21, 2008.

Final Adoption:

May 21, 2008

Effective Date:

July 11, 2008

SUPERSEDED EMERGENCY ACTIONS:

None

INCORPORATIONS BY REFERENCE:

None

ANALYSIS:

In 2008 the Commission is amending in Chapter 5 Rules of Practice, Rule OAC 165:5-3-1 in order to add a section whereby the Commission can accept payments by credit cards from entities and individuals who purchase licenses, permits, pay fines, pay court costs, etc at the Commission. Accepting payments by credit card will decrease the number of checks that are returned to the Commission from banks for insufficient funds, as well as providing a convenient means for entities and individuals to make required payments to the Commission.

In addition to amending OAC 165:5-3-1 five rules in Chapter 5, which apply to the Oil and Gas Conservation Rules in Chapter 10, are being revoked because they no longer are applicable to what they were originally adopted to regulate. These Rules, OAC 165:5-7-14, 165:5-7-22, 165:5-7-23, 165:5-7-24, and 165:5-7-36, are revoked to streamline the Commission process.

Rule 165:5-7-35 and 165:5-9-3 are being amended to eliminate the filing of emergency applications or emergency orders approving commercial disposal facilities. The purpose of the proposed amendments for disposal facilities is to afford Commission staff sufficient opportunity to evaluate applications for permits for commercial disposal facilities

The Commission is also amending OAC 165:5-7-57 to exclude gas utilities from this section, as to the acquisition, control or merger of domestic public gas utilities is addressed in OAC 165:45-3-5.1.

Permanent Final Adoptions

CONTACT PERSON:

Sally Shipley (405) 521-4258.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 11, 2008:

SUBCHAPTER 3. FEES

PART 1. GENERAL PROVISIONS

165:5-3-1. Fees

(a) General.

(1) **Exceptions to filing fees.** For each initial application in each category listed in (b) of this Section, a filing fee shall be paid by the person seeking to file or submit the document, unless the document is filed under authorization of and in the name of an instrumentality of the State of Oklahoma.

(A) Filing fees shall not apply to any emergency application, subsequent pleading, or amended application except a Form 1000 required in OAC 165:10-3-1(b)(A) and (B) and OAC 165:10-3-1(c).

(B) No filing fee shall be required for any application filed pursuant to OAC 165:10-21, Applications for Tax Exemptions.

(C) No filing fee shall be required for any application filed pursuant to OAC 165:5-3-31, Use of vacuum.

(D) No filing fee applicable to the conservation docket shall be required for any Notice of Intent to Mediate filed with the Office of Administrative Proceedings pursuant to OAC 165:5-23-1 et seq. A per participant fee provided in OAC 165:5-3-1(b)(1)(G) shall be charged for any informal dispute resolution procedure that commences.

(E) No filing fee shall be paid by a party filing a protest to an adverse action of the Commission pursuant to the International Fuel Tax Agreement ("IFTA") or the International Registration Plan ("IRPA").

(F) No filing fee shall be paid by a party filing a Consumer Complaint against a public utility.

(2) **Filing fees.** Any filing fee assessed by this Section shall be due and paid at the time of filing of the document. Neither the Court Clerk's Office nor any division of the Commission shall accept an application subject to a filing fee until the required fee is paid. No filing fee shall be refundable.

(3) **Other fees.** Any other fee assessed by this Section shall be due and payable at the time the service is requested. No service shall be rendered before payment of the prescribed fee. No such filing fee shall be refundable.

(4) **Negotiable instruments.** Fees paid by negotiable instruments shall be made payable to the "Oklahoma Corporation Commission." Negotiable instruments include personal checks, cashier checks, certified checks, and money orders. Foreign checks must be payable through a United States bank in United States funds.

(5) All fees pertaining to the Petroleum Storage Tank Division are listed in OAC 165:5-3-2.

(b) Schedule of filing fees.

(1) Oil and gas fees.

(A) Commercial disposal well application - \$1,000.00

(B) Commercial earthen pit application - \$1,000.00

(C) Commercial soil farming site application - \$1,000.00

(D) Conservation docket and other pollution docket base applications - \$100.00

(E) Permit to drill - \$175.00

(F) emergency walk-thru permit to drill - \$500.00

(G) Notice of Intent to Mediate pursuant to Chapter 23 of this Chapter - \$5.00 per participant

(H) Permit for one-time land application of water based fluids - \$100.00

(I) Emergency walk-through of permit for one-time land application water based fluids - \$200.00

(2) Transportation fees.

(A) Transportation docket application - \$100.00

(B) Other transportation fees:

(i) Intrastate license fees.

(I) Original license application filing fee - \$100.00

(II) License sub application filing fee - \$100.00

(III) Renewal license application filing fee - \$50.00

(IV) License reinstatement application filing fee - \$100.00

(V) License name change application filing fee - \$50.00

(VI) Earthen or wash pit construction or enlargement application fee - \$500.00

(ii) Intrastate certificate or permit fees.

(I) Original certificate or permit application filing fee - \$100.00

(II) Certificate or permit sub application filing fee - \$100.00

(III) Transfer of certificate or permit application filing fee - \$100.00

(IV) Certificate or permit temporary authority application filing fee - \$100.00

(V) Certificate or permit representative of estate application filing fee - \$100.00

(VI) Certificate or permit reinstatement application filing fee - \$100.00

(VII) Delinquent certificate or permit annual report fee - \$150.00

- (VIII) Certificate or permit name change application filing fee - \$50.00
- (IX) Voluntary suspension or abandonment of certificate or permit application filing fee - \$100.00
- (X) Tariff modification (requiring hearing) - \$350.00
- (iii) Intrastate and interstate fees.
 - (I) Identification device or per vehicle fee - \$7.00
 - (II) Deleterious Substance License Permit application filing fee - \$260.00
- (iv) Interstate fees.
 - (I) Exempt application filing fee - \$25.00
 - (II) Exempt name change - \$10.00
- (v) International Fuel Tax Agreement decal - \$2.00 per vehicle per decal set
- (vi) International Fuel Tax Agreement reinstatement fee - \$100.00
- (vii) Trailer registration processing fee per trailer registered through the IRP System - \$2.00
- (3) **Utility fee.** Public utility docket application - \$35.00
- (4) **Consumer Services fee.** Consumer Services docket application - \$35.00
- (5) **Enforcement fee.** Enforcement docket application - \$100.00
- (c) **Certified copies.** A fee of \$1.00 is charged for each certified copy of an order or other document on file with the Commission, in addition to the fees specified in (d) of this Section.
- (d) **Other fees.** The following fees shall be charged and collected at the time of request for same; none of which shall ever be refundable:
 - (1) Certificate of non-development (maximum of one quarter section) - \$10.00
 - (2) Mail-out copies of any file or order - flat fee to cover research, copying and postage not to exceed 30 pages.
 - (A) 1 to 15 pages - \$5.00
 - (B) 16 to 30 pages - \$10.00
 - (C) Documents exceeding 30 pages - \$0.25 per page plus postage
 - (3) Microfilmed images from coin-operated microfilm reader (coin box) - \$0.25
 - (4) Batch reproduction on continuing basis (per page) - \$0.25
 - (5) Copy of any document prepared in OCC offices (per page) - \$0.25
 - (6) Copy of any Chapter of Commission rules and regulations - \$10.00
 - (7) Copy of Oil and Gas Conservation rules - \$20.00
 - (8) Current ownership/lienholder information - \$1.00 per vehicle record page
 - (9) Computer generated title history - \$5.00 per vehicle
 - (10) Manual title history - \$7.50 per vehicle
 - (11) Copy of lien release - \$7.50 per vehicle
 - (12) Certified copy of lien release - \$10.00 per vehicle
 - (13) Certified copy of title history - \$10.00 per vehicle
- (e) **Computer data processing documents.** Reproduction of documents or informational searches involving computer data processing services will be in accordance with the rates established by the Oklahoma Office of State Finance, Information Services Division.
- (f) **Document search fee.** Except where provided otherwise by law, where the request for document copying and/or mechanical reproduction is solely for commercial purpose or clearly would cause excessive disruption of the Commission's essential functions, then a fee of \$7.00 per hour (minimum of one hour) shall be charged to recover the direct cost of document search.
- (g) **Fax.** A service charge of \$5.00 plus \$1.00 per page will be assessed for all outgoing faxes. All incoming faxes for persons not associated with the Commission shall be assessed a copy fee of \$0.25 per page including the cover page when not submitted for filing with the Court Clerk's Office.
- (h) **Payments by Credit Card.**
 - (1) "Nationally recognized" credit card means any instrument or device, whether known as a credit card, credit plate, charge plate, debit card, or by any other name, issued with or without fee by an issuer for the use of the cardholder in lieu of a check, as defined by 12 Oklahoma Statute § 3-104(f), in obtaining goods, services or anything else of value or for the use of the cardholder in obtaining such goods, services, or anything else of value on credit and which, in either case, is accepted by over one thousand merchants in this state. The Oklahoma Corporation Commission shall determine which nationally recognized credit card will be accepted for any payments due and owing to the Oklahoma Corporation Commission.
 - (2) Implementation of payment by nationally recognized credit card will be phased in over a period of time as determined by the Commission.
 - (3) The Oklahoma Corporation Commission will verify that sufficient credit is available before acceptance of credit card to insure that no loss of state revenue will occur by the use of such card.
 - (A) If a person is at a designated receiving point and credit is not available, the person then has the opportunity to pay by other methods accepted by the Commission.
 - (B) If a person mails in the credit card information and credit is not available, the transaction will be handled as one with no remittance and a bill will be forthcoming.
 - (4) The Oklahoma Corporation Commission may add an amount equal to the amount of the service charge incurred, not to exceed four percent (4%) of the amount of such payment as a service charge for the acceptance of such nationally recognized card.
 - (5) Persons wishing to pay by credit card must be willing to submit normally required credit card information to the Commission. This includes, but is not limited to: card type (VISA, etc.), card number, card expiration date, card holder name as shown, and three digit security personal identification number (PIN). The Commission assumes no liability for unauthorized use of this information.

SUBCHAPTER 7. COMMENCEMENT OF A CAUSE

PART 1. GENERAL

165:5-7-1. General application and notice requirements

(a) **Scope.** Except where otherwise specifically provided in this Subchapter, including the Petroleum Storage Tank Division at OAC 165:5-21-3, and the Oil and Gas Conservation Division at OAC 165:5-7-27 (injection and disposal wells), the provisions of this Section shall govern the commencement of a cause filed with the Commission and over which the Commission may exercise jurisdiction, including applications for declaratory rulings as to the applicability of any rule or order of the Commission.

(b) **Form.** Every cause shall be commenced by:

- (1) An application.
- (2) A complaint.
- (3) An order of the Commission commencing a cause.

(c) **Caption.** The application or complaint shall be headed by a caption, which shall contain:

- (1) The heading, "Before the Corporation Commission of Oklahoma".
- (2) The applicant.
- (3) The relief sought. In the case of a conservation docket or pollution docket cause, the statement shall contain the legal description of the lands involved in the cause.
- (4) The docket identifying initials, year prefix, and cause number, pursuant to OAC 165:5-5-1.
- (5) The title of the document.
- (6) In the case of an enforcement docket cause, the caption shall contain the name(s) of the respondent(s).

(d) **Body.** The body of the application or complaint shall consist of five numbered paragraphs, if applicable, as follows:

- (1) **Applicants and respondents identified.** The applicant shall be identified, including name, address, and telephone number of his attorney or designated representative and the nature of the applicant's interest in the subject matter of the cause; and the name and address of each person (if any) named as respondent.
- (2) **Allegation of facts.** The allegation of fact stated in the form of ultimate facts, without unnecessary detail, upon which the right to relief is based. The allegations will be stated in numbered subparagraphs as necessary for clarity.
- (3) **Legal authority.** Citations of statutes, rules, orders, and decided cases authorizing the relief sought; including, in the case of a complaint, the laws, rules, regulations, or orders alleged to have been violated. Statutes shall be cited by title and section. Rules and orders of the Commission shall be cited by number. Decided cases shall be cited by citation to official reports. Quotations from legal authorities shall not be required.
- (4) **Relief sought.** A brief statement of the provisions of the order, authority, or other relief sought. An application relating to oil and gas conservation shall seek only

one type of relief. Formal prayer for relief shall not be required.

(5) **Specify order to be affected.** An application to vacate, alter, modify, or amend an order shall state the specific order in the body which is sought to be vacated, altered, modified, or amended.

(e) **Certification.** The application shall be signed by the applicant, or an authorized agent of the applicant, or by the attorney for the applicant, and shall set out the address and telephone number of the person so signing it. The person signing the application shall be deemed, on signing same, to be certifying that:

- (1) He has read the application.
- (2) To the best of his knowledge, information, and belief formed after reasonable inquiry the facts and allegations contained in the application are true and correct.
- (3) The application is not filed to harass or to cause unnecessary delay or needless expense.

(f) **Manner of service.** A document may be served on a party of record by regular mail or in person, except where the rules of this Subchapter or a statute requires a specific mode of service, which shall be followed. Service on a corporation may be by delivery to the registered corporate agent, or by delivery to the principal place of business of the corporation. For purposes of this Section, a corporation may designate its principal place of business by filing a notice thereof with the Court Clerk. When an attorney has appeared of record for a person, all subsequent service shall be on the attorney. Service by mail shall be complete on the date of mailing except where otherwise provided in this Subchapter; provided, that a person may be granted appropriate relief upon showing that a document so served was not received, or delivery thereof was delayed.

(g) **Service of an application.** Except as hereinafter provided in this Subchapter, every application and notice of hearing stating the date on which the cause is set for hearing in which a person is named a respondent shall be served by regular mail on each respondent named therein and Commission staff counsel by the person filing the application. Thereafter, every document shall be served by the person filing it by regular mail upon all parties of record or, where the record has not been opened, upon the applicant and all named respondents.

(h) **Certificate of service.** Except where an affidavit of mailing is required by law or by this Subchapter, a certificate of service shall be filed following or with the filing of every document. The certificate of service shall contain a list of the persons served and the certification that on the date stated a copy of the document was mailed, postage prepaid, or delivered to each person listed.

(i) **Service not jurisdictional.** Service prescribed by the rules of this Subchapter shall not be jurisdictional except where so provided by the Constitution or by statute. Failure to comply with the provisions of this Section as to mailing and service of notice shall not deprive the Commission of jurisdiction of the application or complaint, but shall be grounds for such appropriate relief as the Commission may order.

(j) **Publication of notice.** Every application, except as provided in this Chapter for motor carrier and public utility applications, shall be accompanied by a notice of hearing, which date shall be set by the Commission. The notice of hearing shall be published as provided in the rules of this Subchapter.

(k) **Signatures.** The notice of hearing of an application shall be signed by the Secretary certifying to the Commissioners' signatures.

(l) **Content of notice.** The notice shall specify:

- (1) The time, date, and place of hearing.
- (2) Briefly the general nature of the order, rule, regulation or other relief sought.
- (3) In oil and gas causes, where applicable, the names or description of all common sources of supply affected by the order sought; or that the entire state would be affected.
- (4) Who to contact for additional information.

(m) **Form of notice.** The notice shall conform substantially to the form shown in Appendix A to this Chapter.

(n) **Notice by publication.**

(1) When a cause other than an oil and gas or Petroleum Storage Tank Division cause is commenced, the applicant shall cause the notice of hearing prescribed in (j) through (l) of this Section to be published in one or more newspapers of general circulation, on dates and for periods as required by law, or this Subchapter, or as the Commission shall order.

(2) In oil and gas causes, unless otherwise provided in this Subchapter, the notice of hearing shall be published one time at least fifteen (15) days prior to the hearing in a newspaper of general circulation published in Oklahoma County, Oklahoma and in a newspaper of general circulation published in each county in which the lands embraced in the application are located.

(3) Publication shall be at the expense of the applicant, and shall be made in a newspaper which has met the statutory requirements for publication of legal notices. Written proof of publication shall be filed in the cause.

(4) Proof of publication shall be established by an original proof of publication.

(o) **Effective date prior to date of issuance of order.** No order may be made effective prior to its date of issuance without evidence placed into the record that the approval of such effective date is necessary. An effective date prior to the date of issuance of the order shall be requested in the application and placed in the special relief paragraph of the notice of hearing.

(p) **Notice of motor carrier motions and applications.** Notice of all motor carrier motions and applications shall be printed on the Commission docket as prescribed by law for circulation to the public.

PART 3. OIL AND GAS

165:5-7-14. Tax exemptions pursuant to OAC 165:10, Subchapter 21 [REVOKED]

(a) **Form of application.**

(1) Each application under OAC 165:10-21, Part 13 shall be filed with the Technical Department on an OCC

Form 1139 with the exhibits required by OAC 165:10-21, Part 13.

(2) Each application under OAC 165:10-21, Parts 6, 7, 8, 9, 11 and 14, shall be filed with the Technical Department on an OCC Form 1534 with the exhibits required by the provisions of OAC 165:10-21, which pertain to each specific gross production tax exemption.

(3) Each application under OAC 165:10-21, Part 14A shall be filed with the Technical Department on an OCC Form 1535 with the exhibits required by the provisions of OAC 165:10-21, which pertain to sales tax exemptions for electricity sold to operate reservoir dewatering projects.

(b) **Referral to Conservation Division.** Upon filing of the application with required exhibits, the Commission shall refer the matter to the Conservation Division for the purpose of reviewing the application and making findings and recommendations by report to the Commission.

(c) **Notice.** No notice shall be required.

(d) **Right to hearing if application recommended for denial or modification.** If the Conservation Division recommends denial or modification of the application, then the applicant may move for a hearing de novo within ten (10) days after the date of report denying the application.

(e) **Appeal.** Any person adversely affected by the report of the Conservation Division may appeal said report subject to requirements of OAC 165:5-13-5.

165:5-7-22. Multiple zone completions [REVOKED]

(a) Each application for the approval of the multiple completion of a well shall be filed on Form 1023 and shall be verified.

(b) A copy of the application shall be served, by regular mail, or delivered to each operator of a producing leasehold within one-half (1/2) mile of the well location.

(c) No notice is required to be published.

(d) If a written objection to the application is filed within fifteen (15) days, after the application is mailed or if hearing is required by the Commission, the application shall be set for hearing and notice thereof shall be given in the same manner as required for the filing of the application. If no objection is filed and the Commission does not require a hearing, the matter shall be presented administratively to the Director of Oil and Gas Conservation or his designee who shall file his report and make his recommendations.

(e) All exhibits which shall be relied upon by the applicant at the hearing on the merits shall be filed with the Court Clerk and provided by the applicant to the Director of Oil and Gas Conservation not less than ten (10) days prior to hearing.

165:5-7-23. Production through multiple choke assembly [REVOKED]

(a) Each application for the approval of production through a multiple choke assembly in a well shall be filed on Form 1023 and shall be verified.

(b) A copy of the application shall be served, by regular mail, or delivered to each operator of a producing leasehold within one-half (1/2) mile of the well location.

(c) No notice is required to be published.

(d) If a written objection to the application is filed within fifteen (15) days, after the application is mailed or if hearing is required by the Commission, the application shall be set for hearing and notice thereof shall be given in the same manner as required for the filing of the application. If no objection is filed and the Commission does not require a hearing, the matter shall be presented administratively to the Director of Oil and Gas Conservation or his designee who shall file his report and make his recommendations.

165:5-7-24. Commingling of well [REVOKED]

(a) Each application for the approval of the commingling of a well, pursuant to 165:10-3-39, shall be filed on Form 1023 and shall be verified. The following shall be filed with the application:

- (1) An amended Form 1002A.
 - (2) Electric well log.
 - (3) A perforation report from the perforating company, or comparable information
 - (4) A plat showing the locations of all wells producing from the same common sources of supply within a one-half (1/2) mile radius of the subject well.
- (b) A copy of the application shall be served, by regular mail, or delivered to each operator of a producing leasehold within one-half (1/2) mile of the well location. An affidavit of mailing shall be filed within five (5) days of filing of the application.
- (c) No notice is required to be published.
- (d) If a written objection to the application is filed within fifteen (15) days after the application is mailed or if hearing is required by the Commission, the application shall be set for hearing and notice thereof shall be given in the same manner as required in OAC 165:5-7-1. If no objection is filed and the Commission does not require a hearing, the matter shall be presented administratively to the Director of Oil and Gas Conservation or designee who shall file a report and make recommendations to the Commission.
- (e) All exhibits which shall be relied upon by the applicant at the hearing on the merits, if required, shall be filed with the Court Clerk and provided by the applicant to the Director of Oil and Gas Conservation not less than ten (10) days prior to hearing.

165:5-7-35. Operation of commercial pit and/or commercial soil farming site

- (a) **Application.** Each application for authority to operate a commercial pit under 165:10-9-1 and/or a commercial soil farming site under 165:10-9-2 shall comply with the application requirements of OAC 165:5-7-1(a) through (e). The Commission will not accept an application for an emergency order approving a commercial disposal facility that requires a permit under OAC 165:10-9-1, or OAC 165:10-9-2.
- (b) **Exhibits.** The applicant shall submit at the time of filing of the application all exhibits and data.
- (c) **Dismissal for noncompliance.** Failure to complete the application, submit the exhibits, serve the notice, and perform the site inspection within sixty (60) days after the date of filing

of the application may be grounds for dismissal of the application.

(d) Notice of the application.

(1) **Contents.** The notice of the application shall contain the following information:

- (A) A brief description of the relief sought.
- (B) The terms of the protest period.
- (C) The date and time for a site inspection to be made by the applicant, a Commission representative and any interested person.
- (D) The name, address, and telephone number of the applicant or its representative, whom anyone may contact for additional information concerning the application.

(2) **Form.** The applicant shall prepare the notice of the application to substantially comply with the form shown in Appendix F to this Chapter.

(3) **Persons to whom notice shall be given.** The applicant shall serve a copy of the application and notice of the application to:

- (A) The Oklahoma Conservation Commission, 2800 North Lincoln, Suite 160, Oklahoma City, Oklahoma 73105.
- (B) Each surface owner and surface lessee on each tract of land adjacent and contiguous to the site of the proposed facility.

(4) **Newspaper publications.** The applicant shall publish the notice of the application:

- (A) Two times in a newspaper of general circulation in Oklahoma County, Oklahoma.
- (B) Two times in a newspaper of general circulation in each county where the proposed facility will be located.

(5) **Proof of notice.** The applicant shall submit a certificate of service and affidavits of publication.

(e) Protests.

(1) **Timely protests.** Any person objecting to the granting of the application shall file a written protest within the appropriate protest period. If a protest is filed after filing of the application but before commencement of the protest period, said protest shall be deemed to have been timely filed.

(2) **Late protests.**

- (A) Failure to file a protest within the prescribed time period shall be deemed a waiver of protest.
- (B) The Commission may reinstate a late filed protest upon motion for good cause shown.

(3) **Form of protest.** The protestant shall file with the Court Clerk its protest which shall be entitled protest and which shall contain the following information:

- (A) Caption from application.
- (B) Title: Protest.
- (C) Name, address, and telephone number of protesting parties.
- (D) Reasons for protest.

(4) **Notice to applicant of protest.** The protestant shall serve the applicant with a copy of his protest within five (5) days after filing of the protest.

(f) **Protest periods.**

(1) **Initial protest period.** Any person objecting to the granting of the application shall file a written protest during the protest period which shall run for thirty (30) days from the last of the following events to occur:

- (A) Filing of the application.
- (B) Filing of all required exhibits.
- (C) The date on which the last publication was made.
- (D) The date of completion of service of process on all respondents in the cause.
- (E) Site inspection of the proposed facility.

(2) **Additional protest period.**

- (A) After expiration of the protest period, an additional ten (10) day protest shall run:
 - (i) If the applicant amends the application to change the location of the facility or increase its size; or
 - (ii) If the applicant files amended exhibits changing the design of the facility.
- (B) The additional protest period shall run from the date of completion of service of the amendment on the respondents in the cause.

(g) **Unprotested Applications.**

- (1) **Administrative review.** If the application is unprotested, the Oil and Gas Conservation Division shall review the application without a hearing, and it shall report its finding to the Commission concerning what relief, if any, should be granted.
- (2) **Remedies after denial or modification.** If the Oil and Gas Conservation Division recommends denial or modification of the relief requested by the application, the applicant may move for a hearing de novo or appeal the report as under 165:5-13-5.

(h) **Withdrawal of protest.** If all protests are withdrawn, the application shall be remanded for administrative review under (g) of this Section.

(i) **Protested applications.**

- (1) **Hearing required.** A hearing shall be required on each timely protested application except as provided in (h) of this Section.
- (2) **Notice of hearing.** The applicant shall obtain a hearing date from the Office of Administrative Proceedings subject to approval by the Manager of Pollution Abatement. The applicant shall send a copy of the notice of hearing to each party of record not later than fifteen (15) days before the hearing date.
- (3) **Contents of the notice.** The notice of hearing shall contain the date, time, and place of hearing.
- (4) **Form.** The applicant shall prepare the notice of hearing to comply substantially with the form shown in Appendix G to this Chapter.

165:5-7-36. Road oiling [REVOKED]

(a) ~~Upon application after notice and hearing, the Commission may issue an order allowing a Board of County Commissioners to apply waste oil to a public street or road.~~

(b) ~~The applicant shall publish notice of the hearing in the manner prescribed by OAC 165:5-7-1. The applicant shall publish said notice in a newspaper of general circulation in Oklahoma County and in a newspaper of general circulation in the county where application of waste oil is proposed to be applied.~~

SUBCHAPTER 7. COMMENCEMENT OF A CAUSE

PART 5. PUBLIC UTILITIES

165:5-7-57. Acquisition, control, or merger of domestic public utilities.

(a) An application for approval of the acquisition, control or merger of a domestic public utility, pursuant to 17 O.S. §§191.1 et seq., excluding gas utilities, and an electric cooperative, pursuant to 17 O.S. §158.50, shall include the following additional information, made under oath or affirmation:

(1) The name and address of each acquiring party and all affiliates thereof; and

(A) If such acquiring party is an individual, his principal occupation and all offices and positions held during the past five (5) years, and any conviction of crimes other than minor traffic violations during the past ten (10) years, or

(B) If such acquiring party is not an individual, a report of the nature of its business and its affiliates' operations during the past five (5) years or for such lesser period as such acquiring party and any predecessors thereof shall have been in existence; an informative description of the business intended to be done by such acquiring party and its subsidiaries; and a list of all individuals who are or who have been selected to become directors or officers of such acquiring party, or who perform or will perform functions appropriate or similar to such positions. Such list shall include for each such individual the information required by (a)(1) of this Section.

(2) The source, nature and amount of the consideration used or to be used in effecting the merger or other acquisition of control, a detailed description of any transaction wherein funds were or are to be obtained for any such purpose, and the identity of persons furnishing such consideration; provided, however, that where a source of such consideration is a loan made in the lender's ordinary course of business, the identity of the lender shall remain confidential if the person filing such statement so requests.

(3) Audited financial information in a form acceptable to the Commission as to the financial condition of an acquiring party of the preceding three (3) fiscal years of each such acquiring party, or for such lesser period as such acquiring party and any predecessors thereof shall have been in existence, and similar information as of a date not earlier than one hundred thirty-five (135) days prior to the filing of the application.

- (4) Any plans or proposals which an acquiring party may have to liquidate such public utility, to sell its assets or a substantial part thereof, or merge or consolidate it with any person, or to make any other material change in its investment policy, business or corporate structure, or management. If any change is contemplated in the investment policy, or business or corporate structure, such contemplated changes and the rationale therefor shall be explained in detail. If any changes in the management of the domestic public utility or person controlling the domestic public utility are contemplated, the acquiring party shall provide a resume of the qualifications and the names and addresses of the individuals who have been selected or are being considered to replace the then current management personnel of the domestic public utility or the person controlling the domestic public utility.
- (5) The number of shares of any voting security which each acquiring party proposes to acquire, and the terms of the offer, request, invitation, agreement, or acquisition.
- (6) The amount of each class of any voting security which is beneficially owned or concerning which there is a right to acquire beneficial ownership by each acquiring party.
- (7) A full description of any contracts, arrangements, or understanding with respect to any voting security in which any acquiring party is involved, including but not limited to transfer of any securities, joint ventures, loan or option arrangements, puts or calls, guarantees of loans, guarantees against loss or guarantees of profits, division of losses or profits, or the giving or withholding of proxies. Such description shall identify the persons with whom such contracts, arrangements, or understandings have been entered into.
- (8) A description of the purchase of any voting security during the twelve (12) calendar months preceding the filing of the application, by any acquiring party, including the dates of purchase, names of the purchasers, and consideration paid or agreed to be paid therefor.
- (9) Copies of all tender offers for, requests for, advertisements for, invitations for tenders of, exchange offers for, and agreements to acquire or exchange any voting securities and, if distributed, of additional soliciting material relating thereto.
- (10) Such additional information as the Commission may prescribe as necessary or appropriate for the protection of ratepayers of the domestic public utility or in the public interest.
- (b) If a person required to file the application is a partnership, limited partnership, syndicate or other group, the Commission may require that the information called for in (a) of this Section shall be given with respect to each partner of such partnership or limited partnership, each member of such syndicate or group and each person who controls such partner or member. If any such partner, member, person or acquiring party is a corporation or if a person required to file the application is a corporation, the Commission may require that the information called for by (a) of this Section be given with respect to such corporation, each officer and director of

such corporation, and each person who is directly or indirectly the beneficial owner of more than ten percent (10%) of the outstanding voting securities of such corporation and each affiliate of such corporation.

(c) If any material change occurs in the facts set forth in the application filed with the Commission and sent to such domestic public utility, an amendment setting forth such change, together with copies of all documents and other material relevant to such change, shall be filed with the Commission and sent by the person filing the application to the domestic public utility within two (2) business days after such person learns of such change. Hearing shall be commenced within thirty (30) days after the application is filed and shall be concluded within thirty (30) days after its commencement. Notice of hearing shall be mailed to the domestic gas utility and to each of its customers at least twenty (20) days prior to the date of the hearing.

(d) Any merger or other acquisition of control shall be deemed approved unless the Commission has, within thirty (30) days after the conclusion of such hearing, entered an order disapproving the merger or other acquisition of control.

SUBCHAPTER 9. SUBSEQUENT PLEADINGS

165:5-9-3. Emergency applications

(a) **Filing.** After an application for emergency relief is filed with the Court Clerk, it may be placed on the Commission's Emergency Docket. The requisite number of file-stamped copies of the application shall be submitted to the Commission on or before 2:00 P.M. of the day preceding the hearing. No application for emergency relief shall be accepted for filing by the Court Clerk without a base application being previously filed. No base application shall be dismissed without hearing subsequent to the issuance of an emergency order in the same cause. A motion to dismiss shall be filed. Emergency applications for motor carrier causes shall be set for hearing in accordance with the provisions of the Commission rules and regulations governing motor carriers, OAC 165:20. The Commission will not accept an application for an emergency order approving a commercial disposal facility that requires a permit under OAC 165:10-5-5, OAC 165:10-9-1, or OAC 165:10-9-2.

(b) **Notice.** Notice of hearing on an emergency application shall be served on all parties otherwise entitled to notice under the base application not less than five (5) days prior to the date of the emergency hearing; provided that, if the applicant has received written approval from all parties of record and respondents, the provisions of this Section shall not apply. Notice of hearing on motor carrier emergency applications shall be set on the Commission docket as prescribed by law.

(c) **Exception.** In order to protect the public health and safety, the Commission may issue an emergency order without notice and hearing and without the filing of a base application.

[OAR Docket #08-1134; filed 6-5-08]

**TITLE 165. CORPORATION COMMISSION
CHAPTER 10. OIL & GAS CONSERVATION**

[OAR Docket #08-1135]

RULEMAKING ACTION:

Permanent final adoption

RULES:

Chapter 10. Oil & Gas Conservation [AMENDED]

AUTHORITY:

Oklahoma Corporation Commission: Article IX, §§ 18, 19, Oklahoma Constitution 17 Okla. Stat §151 et seq.

DATES:

Comment Period:

January 28, 2008 to March 12, 2008

Public Hearing:

March 12, 2008

Adoption:

March 12, 2008

Submitted to the Governor:

March 24, 2008

Submitted to the House:

March 24, 2008

Submitted to Senate:

March 24, 2008

Gubernatorial approval:

April 28, 2008

Legislative approval:

Failure of the Legislature to disapprove the rules resulted in approval on May 15, 2008

Final Adoption:

May 15, 2008

Effective Date:

July 11, 2008

SUPERSEDED EMERGENCY ACTIONS:

None

INCORPORATIONS BY REFERENCE:

None

ANALYSIS:

Most of the adopted rule changes for the Oil and Gas Conservation Division Chapter 10 rules further define and update terms according to 2008 standards and technology. For example the new rule changes will provide guidance for oil and gas operators wanting to drill in the Arbuckle-Simpson Aquifer located in Pontotoc, Murray, and Johnston Counties in Oklahoma. Any operator intending to drill in the Arbuckle-Simpson Aquifer should contact the Technical Services Department of the Oil and Gas Conservation Division at the Corporation Commission prior to filing an intent-to-drill to determine if additional protection of this aquifer is necessary (See Rule 165:10-7-3(d)). Under Rule 165:10-7-19 additional requirements will be imposed on soil farmers who file for one-time land applications of water-based fluids from earthen pits and tanks, and for one-time applications of contaminated soils and petroleum hydrocarbon based drill cuttings. The applicants will be required to provide additional information concerning the lands where such constituents are to be spread. And restrictions will now be imposed on land application vehicles. The permits will now include a termination date wherein the permit will no longer be valid. This year the Corporation Commission is adopting rules for the Brownfields Program. These Brownfields rules will be listed under Subchapter 10, which is a new Subchapter in the Chapter 10 rules. These rules will govern the Brownfields Program as authorized and funded by the Federal Environmental Protection Agency (EPA). The Brownfields Program is a voluntary program where funding may be provided to restore land that is contaminated by petroleum, petroleum products, and related wastes such as glycol and drilling muds. The Brownfields rules explain the process to apply, the eligibility process for a site, and the qualifications for Brownfields certification. Another new Subchapter for the Chapter 10 rules this year is Subchapter 29. Under Subchapter 29 the Commission is adopting special rules for oil and gas wells in the areas of Lake Atoka and McGee Creek Reservoirs, which are located in Atoka, Pittsburg and Coal Counties in Oklahoma. These rules will replace old Commission field rules that were defined and setout in prior Commission orders instead of in the Commission rules. The new Subchapter 29 rule lists each Section, Township, and Range in the three relative counties, which are applicable. These rules are intended to

further promote the protection of surface and subsurface water supplies in the subject areas.

CONTACT PERSON:

Sally Shipley 522-4258

DUE TO EXCESSIVE LENGTH OF THESE RULES (AS DEFINED IN OAC 655:10-7-12), THE FULL TEXT OF THESE RULES WILL NOT BE PUBLISHED. THE RULES ARE AVAILABLE FOR PUBLIC INSPECTION AT THE CORPORATION COMMISSION, 2101 NORTH LINCOLN BOULEVARD, OKLAHOMA CITY, OKLAHOMA, AND AT THE SECRETARY OF STATE'S OFFICE OF ADMINISTRATIVE RULES. THE FOLLOWING SUMMARY HAS BEEN PREPARED PURSUANT TO 75 O.S., SECTION 255(B):

SUMMARY:

Most of the adopted rule changes for the Oil and Gas Conservation Division Chapter 10 rules further define and update terms according to 2008 standards and technology. For example the new rule changes will provide guidance for oil and gas operators wanting to drill in the Arbuckle-Simpson Aquifer located in Pontotoc, Murray, and Johnston Counties in Oklahoma. Any operator intending to drill in the Arbuckle-Simpson Aquifer should contact the Technical Services Department of the Oil and Gas Conservation Division at the Corporation Commission prior to filing an intent-to-drill to determine if additional protection of this aquifer is necessary (See Rule 165:10-7-3(d)). Under Rule 165:10-7-19 additional requirements will be imposed on soil farmers who file for one-time land applications of water-based fluids from earthen pits and tanks, and for one-time applications of contaminated soils and petroleum hydrocarbon based drill cuttings. The applicants will be required to provide additional information concerning the lands where such constituents are to be spread. And restrictions will now be imposed on land application vehicles. The permits will now include a termination date wherein the permit will no longer be valid. This year the Corporation Commission is adopting rules for the Brownfields Program. These Brownfields rules will be listed under Subchapter 10, which is a new Subchapter in the Chapter 10 rules. These rules will govern the Brownfields Program as authorized and funded by the Federal Environmental Protection Agency (EPA). The Brownfields Program is a voluntary program where funding may be provided to restore land that is contaminated by petroleum, petroleum products, and related wastes such as glycol and drilling muds. The Brownfields rules explain the process to apply, the eligibility process for a site, and the qualifications for Brownfields certification to determine if additional protection of this aquifer is necessary (See Rule 165:10-7-3(d)). Another new Subchapter for the Chapter 10 rules this year is Subchapter 29. Under Subchapter 29 the Commission is adopting special rules for oil and gas wells in the areas of Lake Atoka and McGee Creek Reservoirs, which are located in Atoka, Pittsburg and Coal Counties in Oklahoma. These rules will replace old Commission field rules that were defined and setout in prior Commission orders instead of in the Commission rules. The new Subchapter 29 rule lists each Section, Township, and Range in the three relative counties, which are applicable. These rules are intended to further promote the protection of surface and subsurface water supplies in the subject areas.

[OAR Docket # 08-1135; filed 06-05-08]

**TITLE 165. CORPORATION COMMISSION
CHAPTER 26. ABOVEGROUND STORAGE
TANKS**

[OAR Docket #08-1105]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Chapter 26. Aboveground Storage Tanks [AMENDED]

AUTHORITY:

Oklahoma Corporation Commission

Article IX, §§18, 19 Oklahoma Constitution

17 O.S. §301 et seq.; 27A O.S. § 1-1-201 et seq. and § 1-3-101 et seq.; 42 U.S.C. § 6991 et seq.

Permanent Final Adoptions

DATES:

Comment Period:

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Public Hearing:

March 12, 2008

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March 12, 2008

Submitted to the Governor:

March 24, 2008

Submitted to the House:

March 24, 2008

Submitted to Senate:

March 24, 2008

Gubernatorial approval:

April 28, 2008

Legislative approval:

Failure of the Legislature to disapprove the rules resulted in approval by May 15, 2008.

Final Adoption:

May 15, 2008

Effective Date:

July 11, 2008

SUPERSEDED EMERGENCY ACTIONS:

None

INCORPORATIONS BY REFERENCE:

None

ANALYSIS:

The Federal Energy Act of 2005 necessitated operator training, and certain State legislative changes, as well as comments by industry, necessitated these change be made.

CONTACT PERSON:

Jeffrey Southwick 522-4457

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 11, 2008:

SUBCHAPTER 1. GENERAL PROVISIONS

PART 1. PURPOSE AND DEFINITIONS

165:26-1-2. Definitions

In addition to the terms defined in 17 O.S. § 301 et seq., the following words or terms, when used in this Chapter, shall have the following meaning unless the context clearly indicates otherwise:

"Aboveground storage tank" or "AST" means any stationary tank not included within the definition of a petroleum storage tank in OAC 165:25-1-11, which is designed to contain any PST regulated substances without structural support of earthen material.

"Aboveground storage tank system" means an aboveground storage tank and any connected aboveground or underground piping, dispensers and associated equipment and fixtures.

"Agent" means a person authorized by another to act on their behalf, either out of employment or contract.

"Airports" mean landing facilities for aircraft which are routinely available for public use (whether routinely used or not). Airports as used in this Chapter do not include private airstrips or private airports.

"Ancillary equipment" means any device including, but not limited to: devices, such as piping, fittings, flanges, valves, and pumps that are used to distribute, meter, or control the flow of regulated substances to or from an petroleum storage tank.

"ATG" means automatic tank gauging.

"Backfill" is the material that is placed in a tank and/or piping excavation to support and separate the tank and/or piping, from the natural environment.

"Beneath the surface of the ground" means beneath the ground's surface or otherwise covered with materials so that physical inspection is precluded or impaired.

"BTEX" means benzene, toluene, ethylbenzene and xylene.

"Bulk plant" means petroleum storage tank facility where regulated substances are received by tank vessels, pipelines, tank cars, or tank vehicles and are stored or blended in mass quantities or bulk for the purpose of distributing them by a tank vessel, pipeline, tank car, tank vehicle, portable tank or other container, for wholesale or retail sale.

"Cathodic protection" means a technique designed to prevent the corrosion of a metal surface by making that surface the cathode of an electrochemical cell. For example, protection can be accomplished with an impressed current system or a galvanic anode system.

"Change in service" means discontinuing use of the petroleum storage system for purposes regulated by the Commission PSTD.

"Commission" or "OCC" means the Oklahoma Corporation Commission and includes its designated agents or representatives.

"Compatible" means the ability of two or more substances to maintain their respective physical properties upon contact with one another for the design life of the PST system under conditions likely to be encountered in the system.

"Construction tank" means a fuel tank used for a limited period of time less than 12 months at a construction site.

"Contaminants" or "contamination" means concentrations of chemicals at levels that may cause adverse human health or environmental effects and/or nuisance conditions.

"Corrosion expert" means a person who has knowledge of the physical sciences, principles of engineering and mathematics, acquired by education and/or experience, and is qualified to engage in the practice of corrosion control on buried or submerged metal tanks and metal piping systems. The person must be NACE certified or be a registered professional engineer who has education and experience in corrosion control of buried or submerged metal tanks and metal piping systems.

"Corrosion technician" or "cathodic protection tester" means a person who can demonstrate an understanding of the principles and measurements of all common types of cathodic protection systems as applied to buried or submerged metal piping and tank systems. At a minimum, such persons must have education and experience in soil resistivity, stray current, structure to soil potential, and component electrical isolation measurements of buried metal piping and tank systems.

"Dielectric material" means a material that does not conduct direct electric current. Dielectric coatings can be used to

electrically isolate portions of tank systems under or in contact with the ground. Dielectric bushings are used to electrically isolate portions of the storage tank system (e.g., tank from piping).

"Division" means the Petroleum Storage Tank Division (PSTD) of the Corporation Commission.

"EPA" means the United States Environmental Protection Agency.

"Excavation area" means the volume containing the underground piping system and backfill materials, bounded by the ground surface, walls, and floor of the pit and trenches into which the underground piping system is placed at the time of installation.

"Farm tank" means the planting, growing, cultivation, and harvesting of shrubs, flowers, trees and other plants for sale. Farms also include ranching and dairy operations. Rural residential or non-commercial agricultural tanks are not included. is a tank located on a tract of land devoted to the production of crops or raising animals, including fish, and associated residences and improvements. A farm tank must be located on the farm property. "Farm" includes but is not limited to fish hatcheries, rangeland, and nurseries with growing operations.

"Fire protected tank" means an aboveground storage tank that is listed in accordance with UL 2085, *Standard for Insulated Aboveground Tanks for Flammable and Combustible Liquids, or an equivalent test procedure that consists of a primary tank provided with protection from physical damage and fire-resistive protection from exposure to a high-intensity liquid pool fire.*

"Fire resistant tank" means a UL listed aboveground storage tank that provides fire-resistant protection from exposures to a high intensity liquid pool fire.

"Flammable liquids" means all grades of gasoline, kerosene, diesel fuel, and aviation fuel having a vapor pressure not exceeding forty (40) pounds per square inch (psi) absolute at one hundred (100) degrees Fahrenheit.

(A) Class I liquids.

(i) Class IA liquids have flash points below 73 degrees Fahrenheit and boiling points below 100 degrees Fahrenheit.

(ii) Class IB liquids have flash points below 73 degrees Fahrenheit and boiling points at or above 100 degrees Fahrenheit.

(iii) Class IC liquids have flash points at or above 73 degrees Fahrenheit and boiling points below 100 degrees Fahrenheit.

(B) Class II liquids. Class II liquids have flash points at or above 73 degrees Fahrenheit and below 140 degrees Fahrenheit.

(C) Class III liquids.

(i) Class IIIA liquids have flash points at or above 140 degrees Fahrenheit and below 200 degrees Fahrenheit.

(ii) Class IIIB liquids have flash points at or above 200 degrees Fahrenheit.

"Fleet and Commercial" means any facility that uses aboveground storage tanks to store gasoline or diesel fuel

regulated substances for use in its own vehicles or equipment. This definition extends to facilities that provide oil change and lube services to consumers.

"Flow-through process tank" means a tank that forms an integral part of a production process through which there is a steady, variable, recurring or intermittent flow of material during the operation of the process. Flow-through process tanks do not include tanks used for the storage of materials prior to their introduction to the process or for the storage of finished products or by-products from the production process.

"Fund" means the Petroleum Storage Tank Indemnity Fund.

"Generation facilities" means those tanks that are permanently installed, which routinely contain fuel to be used in emergency generators in the event of a power failure.

"Impervious barrier" means a barrier of sufficient thickness, density, and composition that it is impenetrable to the regulated substance, has a permeability of at least 1×10^{-6} cm/sec., and will prevent the discharge to the environment of any regulated substance for a period of at least as long as the maximum anticipated time during which the regulated substance will be in contact with the impervious material.

"In service" means a petroleum storage tank that contains a regulated substance, and/or has a regulated substance added to or withdrawn from it.

"Marina" means any fuel storage facility located by the water for the purpose of fueling watercraft.

"Monitor well" means a piezometer or other cased and screened excavation, boring or drilled hole, pursuant to Oklahoma Water Resources Board (OWRB) standards that can be used for the continuous or periodic evaluation of groundwater quality or the detection of soil vapors.

"Operational life" is the period beginning from the time installation of the tank or system is commenced until it is properly closed or removed as provided for in this Chapter.

"Out of service" means a petroleum storage tank or system that:

(A) Is not in use (i.e., does not have regulated substances added to or withdrawn from the tank system); and

(B) Is intended to be placed back in service.

"Overfill" means a release that occurs when a petroleum storage tank is filled beyond its capacity.

"Person in charge" means the owner or person designated by the owner or operator as the one with direct supervisory responsibility for an activity or operation at a petroleum storage tank system or facility.

"Pier" means dock, floating dock, and wharf.

"Positive sampling, testing, or monitoring results" means the results of sampling, testing or monitoring using any of the release detection methods described in this Chapter that indicate that a release from an petroleum storage tank system may have occurred.

"Private airport" means an airport used only by its owner and regulated as a fleet and commercial facility.

"Private airstrip" means a personal residential takeoff and landing facility attached to the airstrip owner's residential property and used only by the owner.

"Protected tank" means an aboveground storage tank that is listed in accordance with UL 2085, *Standard for Insulated Aboveground Tanks for Flammable and Combustible Liquids*, or an equivalent test procedure that consists of a primary tank provided with protection from physical damage and fire resistive protection from exposure to a high-intensity liquid pool fire.

"PSTD" means Petroleum Storage Tank Division.

"Public Utility" means any entity providing gas, electricity, water, or telecommunications services for public use.

"Regulated substances" means antifreeze, motor oil, motor fuel, gasoline, kerosene, diesel or aviation fuel. It does not include compressed natural gas.

"Release detection" means the methodology used in determining whether a release of regulated substances has occurred from a petroleum storage tank or system into the environment or into the interstitial area between the petroleum storage tank system and its secondary barrier.

"Repair" means to restore a tank or petroleum storage tank system component to PSTD standards that has caused a release of regulated substances from the petroleum storage tank system.

"Residential tank" means a petroleum storage is a tank or system located on the property where contents are used by the residential occupants of the property used primarily for dwelling purposes.

"Responsible person" means a person other than a petroleum storage tank system owner or operator, such as an adjacent property owner, impacted party, or city, seeking corrective action of real property, and submits itself to the jurisdiction of the Commission.

"Retail facility" means a service station, convenience store or any other facility that is open to the general public.

"Sacrificial anode" means a device to reduce or prevent corrosion of a metal in an electrolyte by galvanic coupling to a more anodic metal.

"Secondary containment" means a system installed around a petroleum storage tank or system that is designed to prevent a release from migrating beyond the secondary containment system outer wall (in the case of a double-walled tank system) or excavation area (in the case of a liner or vault system) before the release can be detected. Such a system may include, but is not limited to, impervious barriers (both natural and synthetic), double walls, or vaults.

"Source of ignition" means flammable tobacco products or smoking materials, lighters or operating internal combustion engines and includes fixed sources of ignition like open flame heaters, pilot lights, electric heating elements or electric motors with exposed brushes or any machinery that produces exposed sparks while in operation.

"TCLP" means toxicity characteristic leaching procedure, a test procedure for determining if a solid waste is hazardous because it exhibits toxicity characteristics as enforced under Resource Conservation and Recovery Act.

"TPH" means total petroleum hydrocarbons.

"Tank tightness testing" or "precision testing" means a procedure for testing an petroleum storage tank system's

ability to prevent an inadvertent release of any stored regulated substances into the environment.

"Temporary closure" or "TOU" means the status of a petroleum storage tank system that has been taken out of service but not removed.

"Used Motor Oil" is any spent oil or similar petroleum substance that has been refined from crude oil or synthetic oil; used for its designed or intended purposes, and contaminated as a result of such use by physical or chemical impurities removed from a motor vehicle.

"Vault" means an enclosure consisting of four walls, a floor, and a top for the purpose of containing a liquid storage tank and not intended to be occupied by personnel other than for inspection, repair, or maintenance of the vault, the storage tank, or related equipment.

PART 3. SCOPE OF RULES

165:26-1-21. Overview of applicability

This Chapter will apply to owners and operators of aboveground storage tanks which ~~the Commission~~ PSTD is authorized to regulate pursuant to 27A O.S. (Supp. 1999) § 1-3-101 (E) (5) (b) and 17 O.S. § 301 et seq., which gives the Commission PSTD the responsibility of regulating aboveground storage tanks that contain regulated substances, including but not limited to, tanks from which these materials are dispensed into vehicles, or tanks used in wholesale or bulk distribution activities, as well as pumps, hoses, dispensers, and other ancillary equipment associated with the tanks, whether above the ground or below, excluding tanks at refineries or at the upstream or intermediate shipment points of pipeline operations, and excluding compressed natural gas whether used as a motor fuel or not. ~~The Commission~~ PSTD references the National Fire Protection Association 30 and 30A, Standard Number 30, 2003, "Flammable and Combustible Liquids Code" and Standard Number 30A, 2003, "Automotive and Marine Service Station Code". New editions of NFPA 30 and NFPA 30A supersede all previous editions.

PART 4. ADMINISTRATIVE PROVISIONS

165:26-1-27. Changes to rules [REVOKED]

~~The adoption of this Chapter does not preclude the Commission from subsequently altering, amending, or changing the Chapter after proper notice and hearing. The Commission may amend this Chapter upon application of any person or upon its own application.~~

165:26-1-28. Variances

(a) A variance to a provision of ~~these rules~~ this Chapter may be granted by the Commission after application, notice and hearing. ~~any time enforcement of the provision would impose a significant expense without furthering the purpose of the provision.~~

(b) Inspectors and other compliance personnel should work with tank owner/operators and the personnel of other government agencies and support variances as needed to avoid citizens being caught between the conflicting rules of different agencies.

(c) Tank systems that were properly installed pursuant to earlier fire codes should not be required to change unless:

- (1) The system or some part of it has become hazardous; or
- (2) The changes or upgrades are a mandatory requirement of the Environmental Protection Agency or Oklahoma Corporation Commission. These types of changes must be installed as listed in this Chapter and various facility Subchapters before the deadline dates established. Variances will not be granted for this type of change.

165:26-1-30.2. Consultation of Petroleum Storage Tank Division

At a tank owner's request, the ~~Petroleum Storage Tank Division~~ PSTD will confer with a tank owner planning a new installation or a reconfiguration of an existing installation to assure the tank owner of compliance, ~~in advance of the change or possible variances from this chapter.~~

165:26-1-30.3. Licensing procedure for aboveground storage tank licensee [RENUMBERED TO 165:26-1-110]

(a) ~~Any individual who would like to become an aboveground storage tank licensee must:~~

- (1) ~~Complete an application form.~~
- (2) ~~Provide sufficient proof of 2 years' related work experience, and of active participation in the completion of 3 aboveground storage tank handling activities, 2 of which must be installations.~~
- (3) ~~Pass an examination administered by the Commission.~~
- (4) ~~Pay fees for applications, examinations, and licensing according to the schedule provided in OAC 165:5-3-2.~~
- (5) ~~Certify that they will comply with all Commission rules and requirements for aboveground storage tanks.~~
- (b) ~~The Commission shall have the responsibility to deny, suspend, refuse to renew or revoke the license, or reprimand any aboveground storage tank installer who is found guilty of:~~
 - (1) ~~The practice of any fraud or deceit in obtaining a license or in performing work pursuant to this Chapter.~~
 - (2) ~~Any gross negligence, incompetence or misconduct in installation work performed pursuant to this Chapter.~~
 - (3) ~~Knowingly making false statements or signing false statements, certificates or affidavits to the Commission or to clients with the intention to induce payment.~~
 - (4) ~~Aiding or assisting another person in violating any provision of this Chapter.~~
 - (5) ~~Signing a verification statement for work performed pursuant to this Chapter which was not performed by the aboveground storage tank licensee.~~

(6) ~~Engaging in dishonorable, unethical or unprofessional conduct of a character likely to deceive, defraud or harm a customer or the public.~~

(7) ~~Being under indictment or convicted for a criminal act.~~

(c) ~~Prior to any license suspension, revocation, or refusal to renew, the Director of the Petroleum Storage Tank Division shall have the matter investigated and a report made to the Director for consideration. If the Director elects to pursue suspension, revocation, or refusal to renew, the Commission will schedule a hearing before an Administrative Law Judge and the licensee will be officially notified. The burden of substantial evidence rests upon the Petroleum Storage Tank Division.~~

(d) ~~This Section in no way exempts the aboveground storage tank licensee from having to meet other applicable requirements as set by state and federal statutes and regulations from other state and federal agencies.~~

(e) ~~Any person who holds an AST license may install or remove AST systems.~~

PART 5. STANDARDS AND CODES

165:26-1-31. Codes and standards

(a) Specific references to documents listed below are made throughout the Aboveground Storage Tank Rules. Each of these documents or parts thereof is adopted and incorporated by reference as a standard. In the event these rules are in conflict with any of the standards set forth below, the provisions of these rules shall prevail. New editions of codes and standards supersede all previous editions. A copy is available for inspection at the Offices of the Petroleum Storage Tank Division during regular business hours.

(1) American National Standards Institute (ANSI) Standards: American Society of Mechanical Engineers (ASME):

(A) Standard B31.3, 1999 2004, "Chemical Plant and Petroleum Refinery Piping".

(B) Standard B31.4, 1998 2002, "Liquid Transportation Systems for Hydrocarbons, Liquid Petroleum Gas, Anhydrous Ammonia and Alcohols".

(2) American Petroleum Institute (API) Standards:

(A) Recommended Practice 652, "Lining of Aboveground Petroleum Storage Tank Bottoms", Second Edition, April, 1997.

(B) Publication 1628, 1996, "A Guide, The Assessment and Remediation of Underground Petroleum Releases".

(3) American Society for Testing and Materials (ASTM) Standards: Standard E 1739-95, 1995, "Standard Guide for Risk-Based Corrective Action Applied at Petroleum Release Sites".

(4) National Association of Corrosion Engineers (NACE) Standards: Standard Number RP-0169-96, "Control of External Corrosion on Underground or Submerged Metallic Piping Systems".

(5) National Fire Protection Association (NFPA) Standards:

- (A) Standard Number 30, 2003, "Flammable and Combustible Liquids Code".
- (B) Standard Number 30A, 2003, "Automotive and Marine Service Station Code".
- (6) Underwriter's Laboratory (UL) Standards:
- (A) Standard UL142, 1987 2002, "Steel Above-ground Tanks for Flammable and Combustible Liquids".
- (B) Standard UL842, 1980 1999, "Valves for Flammable Fluids".
- (7) ~~Environmental Protection Agency and National Water Well Association, 1986, EPA-NWWA (TEGD) "RCRA Groundwater Monitoring Technical Enforcement Guidance Document".~~
- (78) Petroleum Equipment Institute: Publication PEI/RP 200-03, "Recommended Practices for Installation of Aboveground Storage Tank Systems for Motor Vehicle Fueling".
- (9) ~~U.S. Environmental Protection Agency Office of Water, 1997, "Drinking Water Advisory: Consumer Acceptability Advice on Health Effects Analysis on Methyl Tertiary Butyl Ether (MTBE)".~~
- (810) "Spill Prevention, Control and Countermeasure Regulation", 40 CFR 112.5, April 17, 2003.
- (b) The standards set forth in (a) of this Section are also available from the following sources:
- (1) American National Standards Institute (ANSI), Thirteenth Floor, 11 West 42nd Street, New York City, New York, 10036; Telephone: (212) 642-4900.
- (2) American Society of Mechanical Engineers (ASME), Three Park Ave., 23S2, New York, NY 10016-5990; Telephone (800) 843-2763.
- (3) American Petroleum Institute (API), Publications and Distribution, 1220 "L" Street, N.W., Washington, D.C. 20005-4070; Telephone (202) 682-8000.
- (4) American Society for Testing and Materials (ASTM), 100 Bar Harbor Drive, West Conshohocken, Pennsylvania 19428-2959; Telephone (610) 832-9585.
- (5) National Association of Corrosion Engineers (NACE), 1440 South Creek Drive, Houston, Texas 77084; Telephone (281) 492-0535.
- (6) National Fire Protection Association (NFPA), 1 Batterymarch Park, Quincy, Massachusetts 02269-9101; Telephone (800) 344-3555.
- (7) National Groundwater Association (NWWA), 601 Dempsey Road, Westerville, Ohio 43081; Telephone (614) 898-7791.
- (8) Underwriter's Laboratory (UL), 333 Pfingsten Road, Northbrook, Illinois 60062; Telephone (847) 272-8800, extension 2612.
- (9) Petroleum Equipment Institute, P.O. Box 2380, Tulsa, Oklahoma, 74101-2380; Telephone (918) 494-9696.

165:26-1-32. Other standards and regulations [REVOKED]

~~This Chapter is a part of, or is in addition to, any other standards of nationally recognized associations or any other~~

~~regulations of federal, state, county, city, or local governing bodies.~~

PART 6. FINANCIAL RESPONSIBILITY

165:26-1-36. Financial responsibility

- (a) This Subchapter applies to owners and operators of all petroleum aboveground storage tank (AST) systems except as otherwise provided in this Section.
- (b) State and Federal government entities whose debts and liabilities are the debts and liabilities of a state or the United States are exempt from the requirements of this Subchapter.
- (c) The requirements of this Subchapter do not apply to owners and operators of any AST system described in 165:26-1-22, "Exclusions."
- (d) If the owner and operator of a petroleum aboveground storage tank are separate persons, only one person is required to demonstrate financial responsibility; however, both parties are liable in event of noncompliance.
- (e) An owner or operator may satisfy the requirements of this Subchapter by use of the ~~Petroleum Storage Tank Release Environmental Cleanup~~ Indemnity Fund. There is a deductible for use of this mechanism and for which compliance may be demonstrated by use of any of the mechanisms listed in 165:26-18-3. For releases that occurred before June 4, 2004 the deductible is \$5,000; for releases that occurred after June 4, 2004 the deductible is 1% of fund expenditures not to exceed \$5,000.

PART 7. NOTIFICATION AND REPORTING REQUIREMENTS

165:26-1-41. General reporting requirements

~~The Commission PSTD~~ may require owners and operators of aboveground storage tank systems to provide information ~~if the Commission~~ deems necessary for the protection of human health, the environment and to assure the safety of people and property. Use of the designated ~~OCC~~ PSTD form(s) is required for scheduling, tank registration, change in ownership, monthly release detection, testing, temporary change in service, permanent closure, or return to service. These forms are available at the OCC website, PST Division webpage: www.occeweb.com follow link to Petroleum Storage Tank Division and link to PST Compliance Forms.

165:26-1-42. New tank systems

- (a) Owners of all aboveground storage tanks regulated pursuant to this Chapter must notify ~~the Commission~~ PSTD of the existence of their tanks if the tanks are covered by these rules and have not already been registered. The notice must be on a form prescribed by ~~the Commission~~ PSTD (Form 7530 Registration for Petroleum Storage Tanks) and specify, at a minimum, the date of installation if known, the location, type of tank construction and piping construction, size of tank installed, the type of release detection method utilized, type of

secondary containment, and type of regulated substance being stored unless otherwise specified. Thereafter, owners must notify the Commission PSTD of new tanks within 30 days of tank installations by application of Form 7530.

(b) Persons intending to install a new aboveground storage tank and/or new aboveground or underground piping must give the PSTD Petroleum Storage Tank Division notification of the installation at least 24 hours before the tank and/or lines are to be installed by submitting the PSTD scheduling form.

(c) Upon receipt of the scheduling form an authorization letter giving temporary approval to receive fuel into an unpermitted tank will be sent to the owner. This letter will expire 90 days after the date of issuance. After the tank installation is complete, the PSTD registration form must be submitted with copies of the installation testing.

(ed) Owners of new systems and AST Licensees must certify, either in on the notification PSTD Registration form or attachments to the form, the following: that the installation of tanks and piping meet the requirements of this Chapter.

(1) Installation of tanks and piping meets the requirements of this Chapter.

(2) The release detection method utilized meets the requirements of this Chapter.

(d) All owners of new aboveground storage tank systems must ensure that the AST licensee certifies in the notification form that the methods used to install the tanks and piping comply with the requirements of this Chapter.

165:26-1-44. Tank closure or change in service

Owners of aboveground storage tank systems must notify the ~~Petroleum Storage Tank Division~~ PSTD at least 14 days prior to the removal of the aboveground storage tanks and/or lines by submitting the PSTD scheduling form. If events require the owner to change the date of removal, the Division should be given 48 hours notice of the new date. An authorized agent of the ~~Commission~~ PSTD may be present to observe the removal operations and to inspect the closed tank system and the surrounding environment. Any company that removes aboveground storage tank systems must have an AST Licensee on the jobsite during removal.

165:26-1-47. Transfer of ownership

When the owner of an aboveground storage tank transfers ownership of the facility or tank to another person, the new owner must notify the Commission within 30 days of the transfer. The notice must specify at a minimum, the name of the new owner, the location of the facility and the date of the transfer of ownership. In addition, the former owner must advise the ~~Commission~~ PSTD of the name and address of the new owner.

165:26-1-48. Underground Tank and line tightness testing

(a) The results of any tank and line tightness testing test results required by this Chapter in which any part of the tank system tested fails to perform in accordance with the requirements of this Chapter does not pass must be reported

to PSTD within 24 hours by the owner, and/or operator, their employees or agents, and also independently by the person or company performing the test, within 10 days of the testing. Complete test results must be submitted within 7 days of the testing. The notice shall include:

(1) The types of testing equipment used.

(2) The name of the company performing the test.

(3) The name of the tester performing the test.

(4) The method of testing used.

(5) The results of the test.

(6) The details of steps taken or to be taken by the owner to repair, replace, or remove the tank system.

(b) Hydrostatic line tightness tests must be conducted in accordance with and reported on the prescribed Commission PSTD form.

(c) The tester performing line and leak detector tests must certify that the line leak detector is installed properly.

PART 9. RECORDKEEPING

165:26-1-55. Availability of records

(a) Owners and operators of regulated aboveground storage tank systems must cooperate with Commission PSTD requests for submission of inventory and monitoring records. All leak detection records, including sampling, testing, inventory and monitoring records must be available for each tank for at least the preceding twelve months. Copies of all records required pursuant to this Chapter ~~shall~~ must be kept: ~~At at the facility and available for immediate inspection by the PSTD Fuel Specialist Commission; or~~ (2) Available be readily available for inspection by the Commission upon request.

(b) Failure to have the required records available when requested by PSTD ~~the Commission~~ may result in an enforcement action.

(e) ~~The owner may voluntarily forward the required records for compliance inspection monthly to the PSTD. These records will be made electronically available only to the PSTD Fuel Specialist, who will have all necessary records upon arrival at the facility to be inspected. For participants in this program only, records necessary for compliance inspections need not be at the facility.~~

(ed) Release detection records must be maintained on forms specified by PSTD the Commission.

(ed) When a change in an owner or operator of a petroleum storage tank system occurs, all records required by the ~~Commission~~ PSTD must be transferred at no cost to the new owner or operator.

165:26-1-57. Tank installation, closure and removal records

(a) Owners and operators of aboveground storage tank systems must maintain records regarding the installation for the lifetime of the system; or, at the owner's option, give copies of installation records to the ~~Petroleum Storage Tank Division~~ PSTD for retention in the Division's files. Owners who have purchased systems must maintain the installation information if it is available.

(b) Owners and operators of aboveground storage tank systems must maintain records capable of demonstrating compliance with the closure and removal requirements for tanks that are temporarily taken out of service or permanently removed. ~~These closure and removal records must provide the results of any excavation area site assessment required in 165:26-2-214, "Assessing the site at tank closure or change in service." These results must be maintained for at least 3 years after removal of the tanks and permanent closure of the system in one of the following ways:~~

- ~~(1) By the owner or operator who took the aboveground storage tank system out of service;~~
- ~~(2) By the current owner or operator of the property where the tanks were located, or~~
- ~~(3) By mailing these records to the Commission.~~

(c) The owner or the owner's representative (as directed by the owner) must submit the PSTD Closure Report Form and all required attachments a report in writing to the Commission PSTD within 45 days from the date the tanks are permanently closed, taken out of service or removed. The information must include, but is not limited to, the following:

- ~~(1) Owner's name, address, and facility location.~~
- ~~(2) An accurate drawing showing the location of the tank, piping runs, dispensing units, property lines, and any sampling locations.~~
- ~~(3) Disposition of the soil removed from the tank and piping areas.~~
- ~~(4) Disposition of the tanks.~~
- ~~(5) Copies of laboratory reports on all samples collected. The lab reports must show the facility address and sample identification matching code systems used in the closure report. The part of a closure report pertaining to sampling must contain a verification statement signed by the licensed storage tank consultant in supervisory control of the sampling.~~
- ~~(6) An OCC registration form, signed by the owner, showing the tank as permanently removed.~~
- ~~(7) An OCC closure report form with the signature of the Remediation Consultant and AST licensee.~~

165:26-1-58. Release detection and corrosion protection records

(a) Owners and operators of regulated aboveground storage tank systems must maintain release detection records for a minimum of one year.

(b) Owners and operators of regulated aboveground storage tank systems who use cathodic protection ("CP") must maintain the following records: that demonstrate compliance with the performance standards of this Chapter.

- (1) Records must include the original Original cathodic protection design created in accordance with National Association of Corrosion Engineers (NACE) recommended practices with drawings or plans depicting all of the CP system components and a description of the materials used, along with the credentials of the company which designed the system.
- (2) Suitability study performed to determine if a tank could be upgraded with corrosion protection.

(23) Rectifier readings for impressed current systems conducted at least every 60 days.

(34) Results of the last three inspections or CP system tests completed by a corrosion tester.

~~(c) If external leak detection methods are used, the records must include the dates the monitoring wells were checked, the name of the person performing the inspection, the type of instrument used, and calibration data on the instrument.~~

165:26-1-59. Spill and overfill records

Owners and operators of aboveground storage tank systems must keep records of spills and overfills for review and inspection by the Commission PSTD for a period of 3 years.

165:26-1-61. Inventory records [REVOKED]

~~(a) Accurate daily inventory records must be maintained and reconciled on all fuel storage tanks for indication of possible leakage from tanks or piping required where, due to the nature of the aboveground storage tank and/or its secondary containment visual inspections are not adequate for purposes of determining whether a leak has occurred. A good example would be a vertical tank that is not raised off the ground, making it impossible to inspect its bottom, and is not sitting on a sound concrete slab within sound secondary containment. The records must be kept at the premises or made available for inspection by the Commission.~~

~~(b) At a minimum the records must include, by product, daily reconciliation between sales, use, receipts, and inventory on hand. If there is more than one system consisting of a tank(s) serving a separate pump(s) or dispenser(s) for any product, the reconciliation must be maintained separately for each tank system.~~

PART 13. SHUTDOWN OF OPERATIONS

165:26-1-90. Shutdown of operations

(a) The PSTD may close (shut down) a system:

(1) If the system poses an imminent threat to health, safety, or the environment.

(2) If the owner or operator is operating tanks for which permit fees have not been paid.

(3) If the owner or operator fails to comply with a Commission order.

(4) For failure to properly operate and/or maintain leak detection, spill, overfill, or corrosion equipment if the owner/operator has been issued a written notice of violation and has failed to take corrective action.

(5) Failure to protect a buried metal flexible connector from corrosion if the owner/operator has been issued a written notice of violation and has failed to take corrective action.

(b) The PSTD must close (shut down) a system:

(1) If required spill prevention equipment is not installed.

(2) If required overfill protection equipment is not installed.

- (3) If required leak detection equipment is not installed.
- (4) If required corrosion equipment is not installed.
- (5) If 2" or more of water is found in the tank.
- (6) If meter is found to be off in calibration by more than 19 cubic inches per every 5 gallons.
- (c) Only PSTD designated employees have the authority to lock or seal dispensers and/or fill pipes of any system violating subsection (a) or (b) of this Section. The PSTD employee must explain to the owner or operator the reason the AST system is being locked or sealed.
- (d) The PSTD "Out of Order" tag attached to each fill pipe of the tank(s) in violation shall serve to clearly identify the tank(s) as ineligible for delivery, deposit, or acceptance of product. Tank owners/operators and product deliverers are responsible for ensuring that product is not delivered into the tagged tank(s).
- (e) Owners, operators, or any persons who remove a lock or seal without permission from PSTD will be subject to penalties imposed by this Chapter, or formal enforcement proceedings.
- (f) Upon confirmation that the AST system no longer poses an imminent threat to health, safety, or the environment, permit fees paid, violation(s) corrected, or Commission order requirements satisfied, the authority to remove a lock or seal by the owner or operator may be obtained as follows:
 - (1) Verbal or written permission from the PSTD employee who placed the lock or seal on the device; or
 - (2) Verbal or written permission from the Manager of Compliance and Inspection; or
 - (3) Application to and order of the Commission.
- (g) If a facility is closed under the provisions of this Section, the owner or operator of the facility will be afforded a hearing within ten (10) days of receipt by PSTD of the owner's or operator's application for a hearing.
- (c) Continuing education is required to maintain an AST license; this consists of four hours of continuing education through a Commission approved program every two years.
- (d) PSTD shall have the responsibility to deny, suspend, refuse to renew or revoke the license, or reprimand any aboveground storage tank installer who is found guilty of:
 - (1) The practice of any fraud or deceit in obtaining a license or in performing work pursuant to this Chapter.
 - (2) Any gross negligence, incompetence or misconduct in installation work performed pursuant to this Chapter.
 - (3) Knowingly making false statements or signing false statements, certificates or affidavits to PSTD or to clients with the intention to induce payment.
 - (4) Aiding or assisting another person in violating any provision of this Chapter.
 - (5) Signing a verification statement for work performed pursuant to this Chapter which was not performed by the aboveground storage tank licensee.
 - (6) Engaging in dishonorable, unethical or unprofessional conduct of a character likely to deceive, defraud or harm a customer or the public.
 - (7) Being under indictment or convicted for a criminal act.
- (e) Prior to any license suspension, revocation, or refusal to renew, the Director of the PSTD shall have the matter investigated and a report made to the Director for consideration. If the Director elects to pursue suspension, revocation, or refusal to renew, PSTD will schedule a hearing before an Administrative Law Judge and the licensee will be officially notified. The burden of substantial evidence rests upon PSTD.
- (f) This Section in no way exempts the aboveground storage tank licensee from having to meet other applicable requirements as set by state and federal statutes and regulations from other state and federal agencies.
- (g) Any person who holds an AST license may install or remove AST systems.

PART 15. LICENSING PROCEDURES

165:26-1-110. Licensing procedure for aboveground storage tank licensee

- (a) Any individual who would like to become an aboveground storage tank licensee must:
 - (1) Complete an application form.
 - (2) Provide sufficient proof of 2 years' related work experience, and of active participation in the completion of 3 aboveground storage tank handling activities, 2 of which must be installations.
 - (3) Pass an examination administered by PSTD.
 - (4) Pay fees for applications, examinations, and licensing according to the schedule provided in OAC 165:5-3-2.
 - (5) Certify that they will comply with all PSTD rules and requirements for aboveground storage tanks.
- (b) All examinations and licensing procedures must be completed within one (1) year of approval of the application. Failure to complete will result in forfeiture of fees and will require a new application and appropriate fees.

PART 17. OPERATOR TRAINING

165:26-1-130. Training requirements

Each aboveground storage tank system or group of aboveground storage tank systems at a facility may have a Class A, Class B, and Class C operator designated. Separate individuals may be designated for each class of operator or an individual may be designated to more than one of the operator classes.

165:26-1-132. Operator Class designations

- (a) A Class A operator has primary responsibility to operate and maintain the aboveground storage tank system in the broader aspects of the statutory and regulatory requirements to achieve and maintain compliance.
- (b) A Class B operator implements applicable requirements and standards for one or more facilities to monitor day-to-day aspects of operation and recordkeeping.
- (c) A Class C operator is an onsite employee responsible for responding to alarms or emergencies caused by spills or release from aboveground storage tank systems.

SUBCHAPTER 2. GENERAL REQUIREMENTS FOR ABOVEGROUND STORAGE TANK SYSTEMS

PART 1. DESIGN AND INSTALLATION

165:26-2-1.1. Aboveground storage tank installation

All tanks, piping, and associated equipment used in conjunction with a AST installation shall be installed by personnel possessing appropriate skills, experience, and required Commission PSTD license to complete the installation in accordance with recognized industry standards and this Chapter. An AST licensee must be present at all times during the installation.

165:26-2-1.2. Compatibility [REVOKED]

Owners and operators of all aboveground storage tank systems must use aboveground tanks, piping, ancillary equipment, and containment systems that are made of or lined with materials which are compatible with the substance stored in the system. Fiberglass reinforced plastic tanks are not allowed.

165:26-2-1.3. Approved tanks, tank design

The material and construction of the tank must be compatible with the material stored and the conditions of storage such as pressure and temperature.

(a) Only storage tanks designed and listed for aboveground use can be used aboveground. Tanks designed and built for underground use cannot be installed for aboveground use.

(b) Only installers who have been licensed by the Commission's Petroleum Storage Tank Division can install aboveground tank systems or make modifications to existing aboveground tank systems including both aboveground and underground piping.

(c) Atmospheric tanks, including those incorporating secondary containment, must be built in accordance with recognized standards of design or approved equivalents. Atmospheric tanks must be built, installed and used within the scope of their approval or within the scope of any of the following:

(1) Underwriters Laboratories Inc., Standard for "Steel Aboveground Tanks for Flammable and Combustible Liquids," UL 142; Standard for "Aboveground Flammable Liquid Tank Systems," UL 2244; Standard for "Steel Inside Tanks for Oil Burner Fuel," UL 80; or Standard for "Insulated Aboveground Tanks for Flammable Liquids," UL 2085.

(2) American Petroleum Institute Standard No 650, "Welded Steel Tanks for Oil Storage," eighth edition.

(3) American Petroleum Institute Specifications 12B, "Bolted Tanks for Storage of Production Liquids," twelfth edition; 12D, "Field Welded Tanks for Storage of Production Liquids," eighth edition; or 12F, "Shop Welded Tanks for Storage of Petroleum Liquids," seventh edition.

(d) Fuel shall not be dispensed from the tank by either gravity flow or pressurization of the tank.

(e) All openings shall be located above the maximum liquid level of the aboveground tank on tanks installed after August 18, 2000.

165:26-2-2. Emergency pressure release [REVOKED]

(a) Aboveground storage tanks must have some form of construction or device that will relieve excess internal pressure caused by exposure to fires and have some form of emergency pressure venting.

(1) This requirement applies to each compartment of a compartmented tank, the interstitial space (annulus) of a secondary containment type (double-walled) tank and the enclosed space of tanks of closed-top dike construction.

(2) This requirement applies to spaces or enclosed volumes, such as those intended for insulation, membranes, or weather shields, that can contain liquid because of a leak from the primary vessel. The insulation, membrane, or weather shield must not interfere with emergency venting.

(b) In a vertical tank, the construction must take the form of a floating roof, lifter roof, a weak roof to shell seam, or other approved pressure-relieving construction.

(1) The weak roof to shell seam must be constructed to fail preferential to any other seam.

(2) Design methods that will provide a weak roof to shell seam construction are contained in API 650, "Welded Steel Tanks for Oil Storage", and UL 142, "Standard for Steel Aboveground Tanks for Flammable and Combustible Liquids".

(c) Where entire dependence for emergency pressure relief is placed upon pressure-relieving devices, the total venting capacity of both normal and emergency vents must be enough to prevent rupture of the shell or bottom of the tank if vertical, or of the shell or heads if horizontal.

(1) These devices must be vapor tight. They may be a self-closing manhole cover, or one using long bolts that permit the cover to lift under internal pressure, or an additional or larger relief valve or valves.

(2) The total capacity of both normal and emergency venting devices must not be less than that derived from the table in Appendix I.

(d) Where tank spacing is based on a weak roof to shell seam design, the user must present to the Commission upon request evidence certifying the construction.

(e) For the purpose of this Section, a floating roof tank is defined as one that incorporates either:

(1) A pontoon or double-deck metal floating roof in an open-top tank in accordance with API 650, "Welded Steel Tanks for Oil Storage," or

(2) A fixed metal roof with ventilation at the top and roof eaves in accordance with API 650 and containing a metal floating roof or cover meeting any one of the following requirements:

(A) A pontoon or double-deck metal floating roof meeting the requirements of API 650, or;

~~(B) A metal floating cover supported by liquid tight metal floating devices that provide sufficient buoyancy to prevent the liquid surface from being exposed when half of the flotation is lost.~~

~~(3) An internal metal floating pan, roof, or cover that does not meet the requirements above, or one that uses plastic foam (except for seals) for flotation, even if encapsulated in metal or fiberglass, will be considered a fixed roof tank.~~

165:26-2-3. Aboveground storage tank spacing

Spacing (shell to shell) between any two adjacent aboveground tanks for tanks storing Class I, II, or IIIA stable liquids must be according to the table in Appendix H. The minimum distance between tanks shall be no less than 3 feet. Variances can be made by the Commission PSTD for pre-existing facilities where deviation from these rules does not pose a serious hazard to people or property.

165:26-2-4. Distance to be kept around tanks

(a) The following distances, at a minimum, must be kept around aboveground storage tanks.

- (1) 50 ft (15 meters) from the nearest important building on the same property;
- (2) 50 ft (15 meters) from any fuel dispenser;
- (3) 50 ft (15 meters) from the nearest side of a public way; and
- (4) 100 ft (30 meters) from any property line that is or might be built upon, including the opposite side of a public way.

(b) The distances as set forth in (a) of this may be reduced by 50 percent if the tanks are fire-resistant. The distances as set forth in (a) may be further reduced if the tanks are a fire-protected type aboveground tank or tanks in vaults as per NFPA 30A-4.3.2.4.

(c) ~~Generally, variances~~ A variance may be granted for pre-existing facilities where compliance would be difficult and expensive and the current distances between tanks, property lines or dispensers pose no serious threat to people or property.

165:26-2-5. Requirements on fill pipes

~~(a) Fill pipes that enter the top of a tank must terminate within 6 in. (15 centimeters) of the bottom of the tank. Fill pipes should be installed or arranged so that vibration is minimized.~~

~~(ab)~~ Each fill pipe must be identified by a tag or other marking to identify the product for which the tank is used. The marking must be maintained in legible condition throughout the life of the tank. Color-coding may also be used in addition to marking.

~~(be)~~ If the fill pipe is located within the containment dike a spill bucket is not required.

165:26-2-5.1. General spill and overflow prevention requirements

(a) Owners and operators of aboveground storage tank systems, as well as those who transport regulated substances to these systems must do everything reasonably possible to ensure that releases due to spilling and overfilling do not occur.

(b) Tanks with a fill pipe must be filled through a liquid tight connection mounted inside at least a 5 gallon spill container. A spill bucket is not required if the fill pipe is located within the containment dike. Where an aboveground tank is filled by means of fixed piping, either a check valve and shutoff valve with a quick-connect coupling or a check valve with a dry-break coupling shall be installed in the piping at a point where connection and disconnection is made inside the spill containment between the tank and the delivery vehicle. This device shall be protected from tampering and physical damage.

~~(c) A 90 percent alarm and 95 percent overfill valve are required for any tank installed after July 15, 2000 if the tank is greater than 1,100 gallon capacity or if the tank is filled by a tight fill method.~~

~~(d) Tanks installed prior to July 15, 2000 must have a 90 percent alarm or a 95 percent overfill valve. (e) A 90 percent alarm is required on tanks less than 1,100 gallons that are filled with a delivery nozzle from a delivery vehicle.~~

(c) One of the following methods must be used to prevent overfilling.

(1) High liquid level alarms with an audible or visual signal at a constantly attended operation or surveillance station.

(2) High liquid level pump cutoff devices set to stop flow at a predetermined container content level.

(3) Direct audible or code signal communication between the container gauger and the pumping station.

(4) A fast response system for determining the liquid level of each bulk storage container such as digital computers, telepulse, or direct vision gauges. If this alternative is used a person must be present to monitor gauges and the overall filling of the tank.

(d) Liquid level sensing devices must be tested at least annually to ensure proper operation.

~~(fe)~~ Means shall be provided for determining the liquid level in each tank and this means shall be accessible to the delivery operator. Tank filling shall not begin until the delivery operator has determined that the tank has sufficient available capacity (ullage).

165:26-2-7. Collision barriers

(a) Aboveground storage tanks exposed to traffic must be resistant to damage from the impact of a motor vehicle or be protected by suitable collision barriers. The secondary containment dike may serve as a collision barrier provided that it ~~can not~~ cannot be penetrated by a motor vehicle.

(b) When guard posts or collision barriers are installed, the following design shall be acceptable:

- (1) They shall be constructed of steel not less than 4 in. (100 millimeters) in diameter and shall be filled with concrete.

- (2) They shall be spaced not more than 4 ft. (1.2 meters) on center.
- (3) They shall be set not less than 3 ft (0.9 meters) deep in a concrete footing of not less than 15-in. (380 millimeters) diameter.
- (c) Dispensing devices, except those attached to containers, must either be mounted on a concrete island or otherwise protected against collision damage by suitable means and must be securely bolted in place. If located indoors, the dispensing device will be located in a position where it cannot be struck by a vehicle that is out of control descending a ramp or other slope. The installation must be in accordance with the manufacturer's instructions.

165:26-2-8. Installation testing

- (a) A tightness test must be completed on tank and lines during construction and before being put into service after the lines have been covered.
 - (1) All aboveground storage tanks must be tested to manufacturers instructions. Single-wall tanks shall be air tested, soaped, and inspected for bubbling prior to installation.
 - (2) Aboveground product piping shall be subjected to a air test of at least 50 psi. The test must have a duration of not less than 60 minutes. All piping joints must be soaped while the system is under pressure, in order to detect any possible leaks. The interstice area of double-wall piping must be tested according to the manufacturer's instructions.
 - (3) All suction product piping must be tested while disconnected from the pumps, and dispensing units. The piping must be subjected to an air test of at least 50 psi. The test must have a duration of not less than 60 minutes. All piping joints must be soaped while the system is under pressure, in order to detect any possible leaks. The interstice area of double-wall piping must be tested according to the manufacturer's instructions
 - (4) All pressurized piping must be tested while connected to tanks, pumps and dispensing units if installed at the time of installation. The piping must be subjected to an air test of at least 50 psi. The test must have a duration of not less than 60 minutes. All piping joints must be soaped while the system is under pressure, in order to detect any possible leaks. The interstice area of double-wall piping must be tested according to the manufacturer's instructions.
 - (5) All piping should be air tested and monitored ~~continuously during the installation, after the installation and until the completion of the installation or precision tightness test.~~
 - (6) All underground pressurized and suction piping must have a precision tightness test performed after all paving over the piping has been completed and before the system is placed in operation. The precision tightness test must be performed by a certified tester, and in accordance with manufacturer's instructions. The product line(s) must

be hydrostatic tested by a NWGLDE approved nationally recognized testing device capable of detecting a leak of 0.10 gallons per hour with a test pressure of 50 psi or $1\frac{1}{2}$ times the operating pressure, whichever is greater. The lines must be tested for a minimum of one hour.

(67) Mechanical and electronic leak detector(s) must be tested for function by simulating a leak and operate in accordance with manufacturer's instructions.

(78) If an ATG system with electronic line leak detector(s) is installed it must complete a leak detector test in each of the modes in which it is certified as capable of detecting a leak (e.g. 3gph, 0.2gph, and 0.1gph).

(8) ~~A function test must be performed on all line leak detectors at installation.~~

(9) Containment sumps must be tested after all piping and conduit has been installed by filling sumps with water and monitoring the liquid level for an 8 hour period.

(10) ~~Alternate methods of tank system testing may be approved by the Commission, upon demonstration that the method chosen is effective.~~

PART 4. REQUIREMENTS FOR CORROSION PROTECTION SYSTEMS

165:26-2-40. Corrosion protection

- (a) Any portion of a tank or its piping system that is in contact with the soil must be protected from corrosion by a properly engineered, installed and maintained cathodic protection system in accordance with recognized standards of design, such as:
 - (1) American Petroleum Institute Publication 1632, Cathodic Protection of Underground Petroleum Storage Tanks and Piping Systems;
 - (2) ~~Underwriters Laboratories of Canada ULC S603-1 M, Standard for Galvanic Corrosion Protection Systems for Steel Underground Tanks for Flammable and Combustible Liquids; National Association of Corrosion Engineers Standard RP0193, Recommended Practice of External Cathodic Protection of On-Grade Metallic Storage Tank Bottoms;~~
 - (3) National Association of Corrosion Engineers Standard RP-01-69 (1996 rev.), Recommended Practice, Control of External Corrosion of Underground or Submerged Metallic Piping Systems;
 - (4) National Association of Corrosion Engineers Standard RP-02-85-95, Recommended Practice, Control of External Corrosion on Metallic Buried, Partially Buried, or Submerged Liquid Storage Systems; and
- (b) Approved or listed corrosion-resistant materials or systems include special alloys, fiberglass reinforced plastic, or fiberglass reinforced plastic coatings.
- (c) Piping systems for liquids, both aboveground and underground, that are subject to external corrosion must be protected.

PART 5. PIPING

165:26-2-54. Aboveground storage tank piping materials

(a) The design, fabrication, assembly, test and inspection of the piping system from the fuel tank to the fuel dispensers must be in accordance with the piping manufacturers installation recommendations and instructions.

(b) Pipes, valves, couplings, flexible connectors, fittings and other pressure containing parts must be installed in accordance with Petroleum Equipment Institute RP200, *Recommended Practices for Installation of Aboveground Storage Systems for Motor Vehicle Fueling*. Pipes, valves, faucets, couplings, flexible connectors, fittings and other pressure-containing parts must meet the material specifications and pressure and temperature limitations of ASME B31.3, *Petroleum Refinery Piping*, or ASME B31.4, *Liquid Petroleum Transportation Piping Systems*. Materials must be designed to specifications embodying recognized engineering principles, and be compatible with the fluid service.

(c) Nodular iron must conform to ASTM A 395 *Ferritic Ductile Iron Pressure Retaining Castings for Use at Elevated Temperatures*.

(d) Refer to Subchapter 8 for guidelines regarding over-water piping used at marinas.

(e) Valves at storage tanks and their connections to the tank must be of steel or nodular iron. Low melting point materials such as aluminum, copper, brass or non-ductile material such as cast iron may be used in aboveground piping provided that they are located downstream of an approved steel or nodular iron emergency valve that has been installed and located as close as practical to the shell of the tank or submerged pump.

(f) Valves at storage tanks may be other than steel or nodular iron if the valves are installed internal to the tank. Where installed external to the tank, the material must have a ductility and melting point comparable to steel or nodular iron so as to withstand reasonable stresses and temperatures involved in fire exposure or be protected by materials having a fire resistance rating of not less than 2 hours.

(g) Low melting point materials such as aluminum, copper, and brass, and materials that soften on fire exposure such as plastics, or non-ductile material such as cast iron may be used underground for all liquids within the pressure and temperature limits of ANSI B31, American National Standard Code for Pressure Piping. If these materials are used outdoors in aboveground piping systems handling Class I or Class II liquids, or within buildings handling any liquid, they must be either:

- (1) Resistant to damage by fire;
- (2) Located so that any leakage resulting from the failure will not unduly expose persons, important buildings, or structures;
- (3) Located where leakage can readily be controlled by operation of an accessible remotely located valve(s); or
- (4) Located pursuant to 165:26-2-54(d).

(h) Piping, valves, and fittings may have combustible or non-combustible linings.

(i) Nonmetallic piping, including piping systems incorporating secondary containment, must be built in accordance with recognized standards of design or approved equivalents. Non-metallic piping must be built, installed, and used within the

scope of their approvals or within the scope of Underwriters Laboratories Inc.'s Standard for Nonmetallic Underground Piping for Flammable Liquids, UL 971.

(j) If materials were installed in compliance with state or national codes in existence at the time of the installation, the Petroleum Storage Tank Division will not require a change unless they pose a hazard to people or property.

PART 7. VAULT REQUIREMENTS

165:26-2-71. Vaults

A vault is a superior installation system that is not required. When used they are allowed above or below grade and must meet NFPA 30 and NFPA 30A requirements, the following standards:

(1) A vault must completely enclose each tank. There can be no openings in the vault enclosure except those necessary for access to, inspection of, and filling, emptying, and venting of the tank.

(2) The walls and floor of the vault must be constructed of reinforced concrete at least 6 in. (15 cm) thick.

(3) The top of an above-grade vault must be constructed of noncombustible material and be designed to be weaker than the walls of the vault, to ensure that the thrust of any explosion occurring inside the vault is directed upward before significantly high pressure can develop within the vault.

(4) The top of an at-grade or below-grade vault must be designed to safely relieve or contain the force of any explosion occurring inside the vault.

(5) The top and floor of the vault and the tank foundation must be designed to withstand the anticipated loading, including loading from vehicular traffic, where applicable.

(6) The walls and floor of any vault installed below grade must be designed to withstand anticipated soil and hydrostatic loading.

(7) The vault must be substantially liquid tight with no backfill around the tank.

(8) There must be enough space between the tank and the vault for inspection of the tank and its appurtenances.

(9) Abovegrade vaults must be resistant to damage from the impact of a motor vehicle, or suitable collision barriers must be provided.

(10) Each tank must be in its own vault.

(11) Adjacent vaults may share a common wall.

(12) Connections must be provided to permit venting of each vault to dilute, disperse, and remove any vapors prior to personnel entering the vault.

(13) Vaults that contain tanks of Class I liquids must be provided with continuous ventilation at a rate of not less than one cubic foot per minute per one square foot of floor area.

(A) Failure of the exhaust air flow must automatically shut down the dispensing system.

(B) The exhaust system must be designed to provide air movement across all parts of the vault floor.

- (C) Supply and exhaust ducts must extend to within 3 in. (7.6 cm), but not more than 12 in. (30.5 cm), of the floor.
- (D) The exhaust system must be installed in accordance with the provisions of NFPA 91, Standard for Exhaust Systems for Air Conveying of Materials.
- (E) Means must be provided to automatically detect any flammable vapors and to automatically shut down the dispensing system upon detection of flammable vapors in the exhaust duct at a concentration of 25 percent of the lower flammable limit.
- (14) Each vault must be equipped with a detection system capable of detecting liquids, including water, and of activating an alarm.
- (15) Means must be provided to recover liquid from the vault. If a pump is used to meet this requirement, it must not be permanently installed in the vault. Electric powered portable pumps must be suitable for use in Class I, Division 1 locations, as defined in NFPA 70, National Electrical Code.
- (16) Vent pipes that are provided for normal tank venting must extend at least 12 ft. (3.6 m) above ground level.
- (17) Emergency vents must be vapor tight and may be permitted to discharge inside the vault. Long bolt manhole covers will not be permitted for this purpose.
- (18) Each vault must be provided with a way for personnel entry. At each entry point, a warning sign indicating procedures for safe entry must be posted. Each entry point must be secured against unauthorized entry and vandalism.
- (19) Each vault must be provided with a suitable means to admit a fire suppression agent.
- (20) The interior of any vault containing a tank that stores a Class I liquid will be designated a Class I, Division 1 location, as defined in NFPA 70, National Electrical Code. Class I liquids may not be stored or handled within a building having a basement or pit into which flammable vapors can travel unless the area is provided with ventilation that will prevent the accumulation of flammable vapors.
- (21) Vaults that were constructed in compliance with earlier state or national codes in existence at the time of construction will not be required to change unless they pose a danger to persons or property or to persons having to work in or around the vault.

PART 9. DISPENSER REQUIREMENTS

165:26-2-91. Dispensers

- (a) Liquids must be transferred from storage tanks by means of fixed pumps designed and equipped to allow control of the flow and prevent leakage or accidental discharge.
- (b) Dispensing devices for Class I liquids must be listed.
- (1) Existing listed or labeled dispensing devices may be modified provided the modifications made are "Listed by Report" by an approved testing laboratory or as otherwise approved by PSTD, the Commission.

- (2) Modification proposals must contain a description of the component parts used in the modification and the recommended methods of installation on specific dispensing devices, and they must be made available to the Commission PSTD upon request.

(c) A control must be provided that will permit the pump to operate only when a dispensing nozzle is removed from its bracket or normal position with respect to the dispensing device and only when the switch on this dispensing device is manually actuated. This control must also stop the pump when all nozzles have been returned either to their brackets or to the normal non-dispensing position.

(d) A listed emergency breakaway device designed to retain liquid on both sides of the breakaway point must be installed on each hose dispensing any class of liquids. These devices must be installed and maintained in accordance with the manufacturer's instructions. Where hoses are attached to a hose-retrieving mechanism, the listed emergency breakaway device must be installed between the point of attachment of the hose-retrieving mechanism to the hose and the hose nozzle valve.

PART 15. ELECTRICAL

165:26-2-151. Electrical requirements

- (a) ~~All electrical work must be installed by a state or federally licensed electrical contractor.~~ All electrical work must be performed by a licensed electrician.
- (b) All electrical wiring and electrical utilization equipment must be of a type specified by and must be installed in accordance with NFPA 30A and NFPA 70, National Electrical Code.
- (c) ~~All electrical wiring and electrical utilization equipment must be suitable for the locations in which they are installed.~~
- (d) ~~Refer to the NFPA 30A regulations for the table on Electrical Equipment Classified Areas - Motor Fuel Dispensing Facilities. This table should be used to delineate and classify areas for the purpose of installation of electrical wiring and electrical utilization equipment. The designation of classes and divisions of classified locations is defined in Chapter 5, Article 500, of NFPA 70, National Electrical Code.~~
- (e) ~~Electrical wiring and electrical utilization equipment that is integral with the dispensing hose or nozzle must be suitable for use in Class I, Division 1 classified locations.~~
- (f) ~~Where Class I liquids are stored, handled, or dispensed, electrical wiring and electrical utilization equipment must be designed and installed in accordance with the requirements for class I Division 1 or 2 classified locations, as set forth in Table as in (d) above and in NFPA 70, National Electrical Code.~~
- (g) ~~Clearly identified and easily accessible switch(es) or circuit breaker(s) must be provided at a location remote from dispensing devices, including remote pumping systems, to shut off the power to all dispensing devices in the event of an emergency.~~
- (h) ~~Electrical components for dispensing liquids must be installed according to the guidelines established in Electrical Installations of NFPA 30A. All electrical equipment must be installed and used in accordance with the requirements of NFPA~~

70, National Electrical Code, as it applies to wet, damp, and hazardous locations.

(i.d) Electrical equipment that was installed in compliance with an earlier state or national code will not require modification unless the equipment is hazardous to people or property.

PART 19. REPAIRS TO ABOVEGROUND STORAGE TANK SYSTEMS

165:26-2-191. Repairs to aboveground tank systems

Repairs to an aboveground storage tank must be performed by an AST Licensee. ~~aboveground storage tank licensee pursuant to OAC 165:26-1-30.3.~~ Routine maintenance such as painting and repairs to a product dispensing unit will not be considered repairs to the storage tank system.

PART 21. REMOVAL AND CLOSURE OF ABOVEGROUND STORAGE TANK SYSTEMS

165:26-2-210. Tank removal and closure

(a) Owners and Operators of all aboveground storage tank systems must notify the Petroleum Storage Tank Division at least 14 days prior to the removal or permanent closure of aboveground storage tanks and/or lines by submitting the PSTD scheduling form. If events require a change in the date of removal, the Division shall be given 48 hours notice of the new date.

(b) An authorized agent of the ~~Commission~~ PSTD may be present to observe the removal and to inspect the closed tank system and the surrounding environment prior to backfilling.

(c) Tanks and lines must be removed upon closure unless the ~~Commission~~ PSTD grants a variance.

(d) ~~All aboveground storage tanks must be removed by an AST licensee.~~ An AST Licensee must remove aboveground storage tank systems.

(e) ~~Any company that removes aboveground storage tank systems must have an AST licensee on the job site during removal.~~

165:26-2-212. Temporary removal from service

When an aboveground storage tank system is taken temporarily out of service, the owner or operator must:

- (1) Remove all fluid from the tank.
- (2) Leave all vent lines open and functioning.
- (3) Notify the ~~Commission~~ PSTD of a change in service on the prescribed form.

165:26-2-214. Assessing the site at tank closure or change in service

(a) Before permanent closure or a change in service is completed, the owner or operator must measure for the presence of a release where contamination is most likely to be present at the aboveground storage tank system site. Please refer to the PSTD AST sampling guidance document when choosing sample locations. ~~The Commission, at its discretion, may~~

have a witness present to verify that sampling is completed appropriately. Failure of the owner, operator or their representative to schedule the sampling 14 days in advance with the Commission and to advise the Commission at least 48 hours in advance of schedule changes may result in the Commission requiring a post-closure site assessment.

(b) In selecting sample types, sample locations, and measurement methods, the owner must consider the method of closure, the nature of the stored substance, the type of native soil, the depth of groundwater, and other factors appropriate for identifying the presence of a release. Sample locations should be approximately 5 feet (5') from the outer edge of the AST system in native soil or another location approved by the Commission. All samples required to be collected and analyzed pursuant to this Section must be analyzed by an Oklahoma Department of Environmental Quality certified laboratory.

(1b) For tank systems containing petroleum product, analyses must be done for both TPH and BTEX.

(2) Levels of contamination in native soils and groundwater that shall require further action at the direction of the commission, are:

(A) Benzene

- (i) Native Soils—0.5 mg/kg
- (ii) Groundwater—0.005 mg/l

(B) Toluene

- (i) Native Soils—40.0 mg/kg
- (ii) Groundwater—1.0 mg/l

(C) Ethyl Benzene

- (i) Native Soils—15.0 mg/kg
- (ii) Groundwater—0.7 mg/l

(D) Xylene

- (i) Native Soils—200.0 mg/kg
- (ii) Groundwater—10.0 mg/l

(E) TPH

- (i) Native Soils—50.0 mg/kg
- (ii) Groundwater—2.0 mg/l
- (iii) If BTEX concentrations are below action levels, a TPH concentration of 500 ppm or mg/kg in soil shall be required to confirm a case at the direction of the commission.

(c) If contaminated soils, contaminated groundwater, or free product as a liquid or vapor is discovered, the owner must immediately begin corrective action in accordance with OAC 165:29, the Commission's Rules on Remediation.

(d) Any sampling at closures must be under the supervision of a licensed Remediation Consultant.

(e) ~~Only soil and/or groundwater sampling results will be acceptable for site assessment at closure. Monitoring well records and/or inventory reconciliation records will not be accepted.~~

(fe) The requirements of this Section do not apply to aboveground storage tanks which are located in or on buildings.

SUBCHAPTER 3. RELEASE PREVENTION AND DETECTION

PART 4. RELEASE DETECTION

165:26-3-20. General release detection methods and devices

(a) Owners and operators of new and existing aboveground storage tank systems must use a release detection method, or a combination of release detection methods, that is:

- (1) Capable of detecting a release of regulated substances from any portion of the aboveground storage tank system that routinely contains product.
- (2) Designed, installed, calibrated, operated, and maintained in accordance with the manufacturer's instructions, including routine maintenance and service checks for operability or running conditions.
- (3) Capable of meeting the performance requirements of this Chapter, with any performance claims and their manner of determination described in writing by the equipment manufacturer or installer.
- (4) Sampled, tested, or checked for a release at least once every 30 days.

~~(b) If one of the external release detection methods in this Chapter is used, the owner of a new aboveground storage tank system must perform a necessary investigation to ensure proper operation of the release detection method.~~

~~(c) Owners and operators of all new aboveground storage tank systems must use one of the release detection methods, or a combination of methods, set forth in this Chapter. The owner or operator must notify the Commission in writing, at least 30 days after bringing a new system into operation, of the type of release detection method or combination of methods used at the new facility.~~

~~(db)~~ Owners and/or operators must keep all written manufacturer and installer performance specifications and the manner in which those specifications are determined.

~~(ec)~~ All electronic and mechanical equipment used for release detection, monitoring or warning must be tested for proper operation and calibration annually or per the manufacturer's recommendation, whichever is more frequent.

165:26-3-20.1. Monitoring requirements for aboveground tanks and aboveground piping

One of the following methods must be used:

- (1) Visual Monitoring
 - (A) Visual inspection of the aboveground storage tank systems to identify cracks or other defects in the secondary containment area and product transfer area.
 - (B) Visual inspection of the exterior surface of the tanks, piping, valves, pumps and other equipment for cracks, corrosion, releases and maintenance deficiencies; and identify poor maintenance, operating practices or malfunctioning equipment.
 - (C) Visual inspection of elevated tanks or tanks on concrete slabs.
 - (D) Visual inspection of the area between the tank's outer shell or the tank's floor and containment area or a vapor monitoring of the soil directly under the tank bottom or perimeter and the water table, unless the tank containment has a sound concrete floor.

(E) Visual inspections are not adequate where due to the nature of the aboveground storage tank and/or its secondary containment it cannot be determined whether a leak has occurred. A good example would be a vertical tank that is not raised off the ground, making it impossible to visually inspect its bottom, and is not sitting on a sound concrete slab within sound secondary containment.

(2) Monthly Inventory Reconciliation

(A) Product inventory control (or another test of equivalent performance) must be conducted monthly to detect a release of at least 1.0 percent of flow-through plus 130 gallons on a monthly basis in the following manner:

(i) Inventory volume measurements for regulated substance inputs, withdrawals, and the amount remaining in the tank are recorded each operating day.

(ii) The equipment used is capable of measuring the level of product over the full range of the tank's height to the nearest one-eighth inch (1/8").

(iii) The regulated substance inputs are reconciled with delivery receipts by measurement of the tank inventory volume before and after delivery.

~~(iv) Deliveries are made through a drop tube that extends to within 6 inches (6") of the tank bottom.~~

~~(vii)~~ Product dispensing is metered and recorded within an accuracy of 6 cubic inches for every 5 gallons of product withdrawn.

~~(viii)~~ The measurement of any water level in the bottom of the tank is made to the nearest one-eighth inch (1/8") at least once a month.

~~(viii)~~ Use of ~~OCG~~ the PSTD Monthly Inventory Reconciliation Form or an electronic equivalent is required.

~~(B) Compliance with API 1621, where applicable, will be deemed compliance with this Section.~~

(3) Interstitial Monitoring. Interstitial monitoring can be used for double walled aboveground storage tank systems. The sampling or testing method must detect a release monthly in accordance with the manufacturer instructions through the inner wall in any portion of the tank that routinely contains product.

(4) Automatic tank gauging systems

(A) Automatic tank gauging systems (ATGs) that test for the loss of product must conduct an automatic product level monitor test at a minimum frequency of once every 30 days and be capable of detecting at least a 0.2 gallon per hour leak rate with a probability of detection of 0.95 and a probability of false alarm of 0.05.

(B) Automatic tank gauging systems (ATG's) must be third party certified for the size and quantity of the tank. Only third party certifications that have been reviewed and approved by the National Work Group

on Leak Detection Evaluations (NWGLDE), as evidenced by their posting on the NWGLDE Web Site, will be accepted (nwglde.org).

165:26-3-20.2. Installation and monitoring requirements for underground piping

Underground piping that routinely contains regulated substances must be installed and monitored for releases in a manner that meets the following requirements:

(1) Pressurized piping

(A) Piping that conveys regulated substances under pressure must be equipped with an automatic line leak detector installed and operated in accordance with this Chapter.

(B) New installations and facilities replacing a piping system must have at least one sump sensor, float or similar mechanical device for each tank system, located at the bottom of the lowest piping gradient sump. The interstitial area of the piping must be open inside the sumps to allow fuel to drain into the sumps in the event that a leak occurs. Sensors must be mounted at the bottom of the sump(s) and accessible for testing.

(C) Underground pressure piping from a master dispenser to a satellite dispenser must be designed and installed so that the satellite piping is tested by the automatic line leak detector. An annual line tightness test is required on the satellite underground piping.

(2) Suction piping. New installations and facilities replacing a piping system must have at least one sump sensor, float or similar mechanical device for each tank system, located at the bottom of the lowest piping gradient sump. The interstitial area of the piping must be open inside the sumps to allow fuel to drain into the sumps in the event that a leak occurs. Sensors must be mounted at the bottom of the sump(s) and accessible for testing.

(3) Methods of release detection for pressurized piping. Each method of release detection for underground pressurized piping must be performed in accordance with the following requirements:

(A) Automatic mechanical line leak detectors and annual line tightness testing

(i) Methods which alert the owner and/or operator to the presence of a leak by restricting or shutting off the flow of regulated substances through piping or by triggering an audible or visual alarm may be used only if they detect leaks of 3 gallons per hour at 10 psi line pressure within 1 hour.

(ii) An annual test of the operation of the leak detector must be conducted by simulating a leak in accordance with the manufacturer's requirements. ~~in accordance with the manufacturer's requirements.~~

(iii) Automatic line leak detectors installed on or after September 22, 1991 must be capable of detecting the leak rate with a probability of detection of 0.95 and a probability of false alarm of 0.05.

(iv) A hydrostatic line tightness test must be performed annually by a certified tester.

(B) Sump sensors with automatic line leak detectors

(i) Double walled piping with sump sensors, floats or similar mechanical devices at each dispenser, transition and tank sump may be used in lieu of annual line tightness testing except at marinas where a line tightness test is required by April 1st of each year.

(ii) The sump sensors, floats or other mechanical devices used must be tested annually according to manufacturer's requirements. Sensors status and alarm history reports must be printed and retained each month. ~~must also be checked monthly to insure that they are operational.~~

(iii) An annual function test of the operation of the leak detector must be conducted by simulating a leak in accordance with the manufacturer's requirements.

(C) Electronic line leak detection. A certified electronic line leak detector may be used in lieu of an ~~automatic~~ mechanical line leak detector and annual tightness test only if:

(i) The system is capable of detecting and tests for a leak of 3 gallons per hour before or after each operation of the submersible turbine pump; and

(ii) The system is capable of detecting and tests for a leak of 0.2 gallons per hour at least once every month; and

(iii) The system is capable of detecting and tests for a leak of 0.1 gallons per hour annually; and

(iv) The system must be function tested annually by simulating a leak in accordance with manufacturer's specifications, ~~and by an actual leak test to test the integrity of the electronic line leak detection equipment. If the system has printer capabilities, attach the electronic line leak detector printout documenting the system shutdown or alarmed when tested.~~

(4) Methods of release detection for suction piping. Each method of release detection for underground suction piping must be performed in accordance with the following requirements.

(A) Sump Sensors

(i) Double walled piping with sump sensors, floats or similar mechanical devices at each dispenser, transition and tank sump may be used in lieu of annual line tightness testing except at marinas where a line tightness test is required by April 1st of each year.

(ii) The sump sensors, floats or other mechanical devices used must be tested annually according to manufacturer's requirements. Sensors status and alarm history reports must be printed and retained each month. ~~must also be checked monthly to insure that they are operational.~~

(B) Annual Line Tightness Testing. A hydrostatic line tightness test must be performed annually by a certified tester.

165:26-3-20.3. Commission-approved alternative methods [REVOKED]

(a) Any other type of release detection method, or combination of methods, may be used if:

(1) The method can detect a 0.2 gallon per hour leak rate or a release of 130 gallons within a month with a probability of detection of 0.95 and a probability of false alarm of 0.05; or

(2) The owner can demonstrate that the method proposed can detect a release as effectively as any of the methods allowed in this Subchapter. In comparing methods, the Commission will consider the size of release that the method can detect and the frequency and reliability with which it can be detected.

(3) Only Third Party certifications that have been reviewed and approved by the National Work Group on Leak Detection Evaluations (NWGLDE), as evidenced by their posting on the NWGLDE Web Site (nwglde.org), will be accepted.

(b) The Commission may impose additional conditions on the use of any alternative methods as it deems necessary to protect the public health and safety and the environment.

PART 14. RELEASE REPORTING REQUIREMENTS

165:26-3-77. Release reporting

(a) The reporting requirements of this Part do not relieve the owner or operator of the responsibility to take necessary corrective action pursuant to OAC 165:29, the Commission's Rules on Remediation, to protect the public health, safety and the environment, including the containment and cleanup of spills and overfills that are not required to be reported by this Chapter.

(b) All aboveground storage tank system owners, operators, their employees or agents, or transporters must report any of the following events to the Commission PSTD by telephone at (405) 521-6575 or toll free at 1-888-621-5878 (if after hours or on weekends or holidays, a detailed message must be left on the Commission's PSTD answering machine) within 24 hours of knowing of any of the following situations. Owners or operators must provide written confirmation to follow within 20 days in accordance with the requirements established in this Chapter. Qualifying events include:

(1) The discovery of released regulated substances at the aboveground storage tank system facility or in the surrounding area (such as the presence of free product or vapors in soils, basements, crawlspaces, sewer and utility lines, and nearby surface water);

(2) Any unusual operating conditions observed by owners and/or operators, such as the unexplained erratic behavior of product dispensing equipment, the sudden loss of product from the aboveground storage tank system,

or an unexplained presence of water in the tank, unless system equipment is found to be defective but not leaking, and is immediately repaired or replaced.

(3A) In the case of inventory control, two consecutive months where the Total Gallons Over/Short is greater than the "Leak Check" (1 percent of product sales plus 130 gallons) must be reported to the Commission PSTD within 24 hours of the owner or operator knowing the inventory control results.

(B) Any AST system failure from a third party certified Statistical Inventory Reconciliation (SIR) analysis must be reported to the Commission within 24 hours of the owner or operator knowing of the failure. An immediate investigation into the cause of the failed report must be conducted and results reported to the Commission within 7 days.

(C) An "Inconclusive" report from an SIR monthly analysis must be reported within 24 hours of the owner or operator knowing of the report. An Inconclusive means that the AST system has failed to meet leak detection requirements for that month.

(3) An unusual level of vapors on the site that is of unknown origin. A vapor monitor well reading in excess of 4,000 units/ppm from a pit containing gasoline tanks, and in excess of 1,500 units/ppm for a pit containing diesel or both gasoline and diesel, must be reported to the Commission within 24 hours of the owner or operator or any of his or her employees at the facility knowing the monitoring results. Within 10 days, the owner or operator must submit to the Commission all vapor monitoring well data, including background data, for the last 12 months. Upon examination of the submitted data, the Commission will advise the owner or operator what action, if any, he or she needs to take. When a 1,500 units/ppm reading is reported, the Petroleum Storage Tank Division will perform a preliminary investigation at its own expense prior to opening a cleanup case; if it finds no reason to open a case, the owner or operator is not liable for any expenses.

(4) An increase in vapor levels of 500 units/ppm above background or historical levels detected by monthly monitoring, even though below the 24-hour reporting level, must be reported if the increase does not correct itself in the second month of monitoring. It must be reported to the Commission within 24 hours of the owner or operator or any of his or her employees at the facility knowing the monitoring results.

(45) Monitoring results from a release detection method required by this Chapter that indicate a release may have occurred unless the monitoring device is found to be defective, and is immediately repaired, recalibrated, or replaced, and additional monitoring does not confirm the initial result.

(c) While aboveground releases of petroleum of less than 25 gallons need not be reported, they must be recorded by the owner or operator and contained and cleaned up immediately. All of the following releases must be reported by telephone within 24 hours of discovery, with a written confirmation to

follow within 20 days in accordance with the requirements established in this Chapter:

- (1) All known belowground releases in any quantity; for example, a release resulting from a line broken during an excavation.
- (2) Any aboveground release of petroleum greater than 25 gallons.
- (3) Any aboveground release of petroleum that is less than 25 gallons, but cannot be contained and cleaned up within 24 hours.
- (d) All owners and/or operators of aboveground storage tank systems must maintain records of all reportable and non-reportable events listed in this section sufficient to permit adequate inspection and review by PSTD the Commission. These records must be kept for 3 years following the date of the event.
- (e) If any of the possible, probable or definite release conditions in subsections (a) through (c) above are not reported within 24 hours, the owner or operator must be prepared to provide documentation or evidence that would reasonably indicate ~~why his or her~~ knowledge of release conditions or monitoring results was delayed.

PART 17. RELEASE INVESTIGATION

165:26-3-171. Release investigation and confirmation

- (a) This Section applies to the investigation of all reportable releases unless the ~~Commission's~~ PSTD staff specifically waives any part of this Section in writing.
- (b) Owners and/or operators must immediately investigate and confirm all suspected releases of regulated substances requiring reporting under this Chapter within 7 days of receipt of notice from ~~PSTD the Commission~~, using the following steps or another procedure approved by ~~PSTD the Commission~~:

- (1) **System test.** Owners and/or operators must conduct tightness tests (~~according to the requirements for tightness testing in this Chapter~~) that determine whether a leak exists in the storage tank system, that portion of the tank that routinely contains product, or the attached delivery piping, or both.

(A) Owners and/or operators must repair, or replace, ~~or upgrade~~ the aboveground storage tank system and begin investigation in accordance with (b)(2) of this Section if the test results for the system, tank, or delivery piping indicate that a leak exists.

(B) Further investigation is not required if the test results for the system, tank, and delivery piping do not indicate that a leak exists and if indicator chemical concentrations detected in soil or water are not the basis for suspecting a release.

(C) Owners and/or operators must conduct a site check as described in (b)(2) of this Section if the test results for the system, tank and delivery piping do not indicate that a leak exists but indicator chemical concentrations detected in soil or water are above action levels cited in (c).

- (2) **Site check.** Owners and/or operators must measure for the presence of a release where regulated substances are most likely to be present at the aboveground storage tank system site. In selecting sample types, sample locations, sample depths, and measurement methods, owners and/or operators must consider the nature of the stored substance, the type of initial alarm or cause for suspicion, the type of native soil, the depth of groundwater, and other factors appropriate for identifying the presence and source of the release. Sample locations should be approximately 5 feet (5') from the outside of the AST system in native soil or another location approved by ~~PSTD the Commission~~. Analyses for both BTEX constituents and the appropriate TPH must be obtained in all cases. Site check investigations must be performed by a PSTD licensed Remediation Consultant. ~~For sites where used oil may be involved, as determined through a TPH analysis, analysis for metals, semi-volatiles, and volatiles may be required. TCLP results will be used on a case-by-case basis to establish cleanup levels or to refer the case to the Oklahoma Department of Environmental Quality for regulation. The selected method must be able to detect the most stringent cleanup levels required in this Chapter. The Total Petroleum Hydrocarbon (TPH) Laboratory Methodology 418.1 will not be accepted for this Chapter.~~

(A) If the test results for soil and/or groundwater taken outside the excavation zone or the aboveground storage tank system site confirm that a release has occurred, owners and/or operators must begin corrective action in accordance with OAC 165:29, the Commission's Rules on Remediation.

(B) If the test results for the native soil and/or groundwater or the aboveground storage tank system site do not indicate that a release has occurred, further investigation is not required.

- (c) Levels of chemical constituent concentrations that shall confirm a release at the direction of ~~the commission~~ PSTD are:

- (1) Benzene
 - (A) Native Soils - 0.5 mg/kg
 - (B) Groundwater - 0.005 mg/l
- (2) Toluene
 - (A) Native Soils - 40.0 mg/kg
 - (B) Groundwater - 1.0 mg/l
- (3) Ethyl Benzene
 - (A) Native Soils - 15.0 mg/kg
 - (B) Groundwater - 0.7 mg/l
- (4) Xylene
 - (A) Native Soils - 200.0 mg/kg
 - (B) Groundwater - 10.0 mg/l
- (5) TPH
 - (A) Native Soils - 50.0 mg/kg
 - (B) Groundwater - 2.0 mg/l
 - (C) If BTEX concentrations are below action levels, a TPH concentration of 500 ppm or mg/kg in soil shall be required to confirm a case at the direction of ~~the commission~~ PSTD.

- (d) Within 20 days after the reporting of a release, the owner and/or operator must submit a report to ~~the Commission~~ PSTD

summarizing the steps taken under (a) of this Section and any resulting information or data. If a release is confirmed through performance of the steps taken under this Section, then the report must be submitted in accordance with a format established by the ~~Commission~~ PSTD, after which a remediation may be undertaken under the provisions of Chapter 29.

SUBCHAPTER 4. INSPECTIONS, PENALTIES, AND FIELD CITATIONS

PART 1. INSPECTIONS

165:26-4-1. Owner/operator cooperation

- (a) Owners and operators of regulated aboveground storage tank systems must cooperate with inspections, monitoring, and testing requested by or conducted by the ~~Commission~~ PSTD.
- (b) Upon request of the ~~Commission~~ PSTD, owners and operators must, at all reasonable times:
- (1) Furnish information relating to the owners' or operators' storage tank facilities, the contents of those facilities, and the associated equipment connected to those facilities.
 - (2) Conduct monitoring or testing of storage tank facilities.
 - (3) Permit the ~~Commission~~ PSTD to have access to, and to review, inspect, and copy records relating to storage tank facilities.

165:26-4-3. Completion of inspections

All inspections, whether done by the ~~Commission~~ PSTD or ordered by the ~~Commission~~ PSTD to be conducted by the owner or operator, must be started and completed with reasonable promptness, and the results submitted to the ~~Commission~~ PSTD consistent with the provisions of this Chapter.

165:26-4-5. Inspection for compliance

- (a) All storage tank systems regulated by this Chapter must be physically inspected for compliance with the provisions of this Chapter.
- (b) These inspections may include, but not necessarily be limited to:
- (1) Records of installation.
 - (2) Records of repair and retrofit operations.
 - (3) Review of release containment practices.
 - (4) Review of release detection practices.
 - (5) Compliance with prior Commission orders to perform corrective action.
 - (6) Records of removal and closure.
- (c) In addition, the ~~Commission~~ PSTD may perform any other inspection, testing, or monitoring which is necessary to ensure compliance with this Chapter and to protect property, human health and safety and the environment.

165:26-4-6. Exception and Variances [REVOKED]

- (a) ~~The rules of this Chapter are designed to protect the environment from pollution and persons and property from fire and explosions. If a tank system has been constructed to effectively accomplish these goals, it may not be required to change simply because it does it in a manner different from those spelled out in this Chapter unless the commission determines they pose a serious threat to people, property or the environment.~~
- (b) ~~Old tanks that were built and installed in compliance with earlier editions of the National Fire Protection Association codes may not be required to upgrade to comply with more recent fire codes, unless in their current condition they pose a serious threat to people, property or the environment.~~
- (c) ~~Fuel storage tanks that are specifically regulated by another government agency to accomplish the goals of this Chapter may not be required to comply with this Chapter if they are complying with the rules of the other agency.~~
- (d) ~~The demands of these rules should be modified to avoid placing a tank owner in conflict with another government agency.~~

PART 5. NOTICES OF VIOLATION, WARNING CITATIONS AND FINE CITATIONS

165:26-4-15. Notices of Violation, Warning Citations and Fine Citations

The purpose of this Section is to create a procedure that allows the ~~Commission's Petroleum Storage Tank Division~~ PSTD Fuel Specialists to issue Notices of Violation (NOVs) for any violation(s) found during Fuel Specialists' onsite inspections of storage tank systems and facilities. The issuance of an NOV will allow petroleum storage tank owners and operators to quickly address and correct the storage tank violation(s) without having to go to court at the Commission.

165:26-4-16. Notices of Violation

- (a) When a PSTD Fuel Specialist of the ~~Petroleum Storage Tank Division~~ finds a violation of any rule or order of the Commission regarding the regulation of petroleum storage tanks, the Fuel Specialist may issue a Notice of Violation (NOV) pursuant to Appendix G.
- (1) A Notice of Violation is to alert the tank owner or operator that a violation has been found. The NOV will describe the violation, and warn that further PSTD ~~Commission~~ enforcement action may occur if the violation is not corrected.
 - (2) There are some violations where a Citation will be issued to the tank owner or operator.
 - (3) In all situations where an NOV is issued, it must explain to the person to whom it is given what the offense is and how the person can correct it.
- (b) Notices of Violation will state the following information:
- (1) A clear description of the violation(s).
 - (2) A date by which the violation(s) must be corrected.
 - (3) The name of the Fuel Specialist issuing the NOV, along with a telephone number and address so that the tank owner or operator can ask the Fuel Specialist questions.

(c) A Fuel Specialist will give the NOV(s) to the owner of the storage tank facility, if the owner is at the facility. If the owner is not present, operators or managers at the storage tank facility can be given NOVs.

~~(d) The Fuel Specialist will mail or fax a copy of all NOVs to any facility's corporate office at the company's request. The company must make a request in writing to the Manager of Inspection and Compliance of the Petroleum Storage Tank Division.~~

165:26-4-17. Re-inspection and Citation

(a) On or after the date that the violation is to be corrected, a Fuel Specialist will re-inspect the storage tank facility to verify that the violation has been corrected.

(b) If the re-inspection shows that the violation has not been corrected, the Fuel Specialist will:

(1) Refer the violation to the PSTD Commission's Inspection and Compliance Manager for formal enforcement action; and/or

(2) If the storage tank facility constitutes an immediate hazard it may be shut down pending a correction of the problem or a hearing on the issue.

165:26-4-18. Payment of fine or hearing

(a) The storage tank owner or operator can either pay the amount of the fine as stated in the citation or request an evidentiary hearing.

(b) The tank owner or operator will have thirty (30) days from the date the citation was issued to pay the fine.

(1) A fine may be paid with cash, a money order, or check. Any cash payment must be made at the Commission cashier. All checks must be made payable to the Oklahoma Corporation Commission - Petroleum Storage Tank Division. If sending payment through the mail, a copy of the citation must be sent with the payment to ensure proper credit.

(2) Payment of the citation within the 30 day time frame will not be considered an agreement or disagreement with the citation.

(c) If the storage tank owner or operator disagrees with the citation, he or she can have a hearing at the Commission.

(1) To request a hearing, the procedure as provided on the citation should be followed and must be made within seven (7) days from the date the citation was issued.

~~(2) The Commission~~ PSTD will set a date for a hearing and will notify the tank owner or operator of the date and time of the hearing.

(3) If found guilty at the hearing, the tank owner or operator must pay the amount of the citation, as well as an administrative cost of \$250.00.

(d) If a citation has not been paid within ninety (90) days of being issued or within ninety (90) days of a Commission order confirming the fine, the amount of the fine will double. Refusal to comply with an order of the Commission may result in formal enforcement after notice and hearing in an amount as allowed by law.

(e) Failure of a tank owner or operator to appear at the hearing will result in additional enforcement actions. These actions may include the addition of a larger fine and/or assessment of an administrative fee.

(f) An appeal from the hearing may be made to the Commission en banc in accordance with OAC 165:5.

(g) A tank owner or operator is still responsible for following the Commission's rules regarding petroleum storage tanks regardless of paying a fine or correcting a violation.

PART 7. PENALTIES

165:26-4-21. Penalties

(a) Pursuant to 17 O.S. § 306, any owner or operator of a regulated aboveground storage tank system located within the State who violates any of the provisions of this Chapter may be issued a citation or may be subject to an administrative penalty not to exceed \$10,000.00 for each day that the violation continues.

~~(b) 17 O.S. § 311 provides that any person who has been determined by the Commission to have violated any provisions of the Storage Tank Regulation Act or any rule promulgated or order issued pursuant to the provisions of the Oklahoma Storage Tank Regulation Act may be held liable for an administrative penalty of not more than \$10,000.00 per day of continuing violation and 17 O.S. § 365(H) provides that owners or operators who fail to comply with any order issued by the Commission for corrective or enforcement action may be subject to an administrative penalty not to exceed \$25,000.00 per tank per day of violation. Under this Chapter the Manager of Inspection and Compliance may issue citations under the authority of 17 O.S. § 306 and Part 5 of this Subchapter, but only the Commission after notice and hearing may impose a larger fine.~~

SUBCHAPTER 6. REQUIREMENTS FOR ABOVEGROUND STORAGE TANK SYSTEMS UTILIZED BY AIRPORTS OPEN TO THE PUBLIC

PART 1. GENERAL APPLICATION AND COMPLIANCE PROVISIONS

165:26-6-1. Application

(a) This Subchapter applies to aboveground storage tank systems for aircraft fuel at airports. A storage tank system consists of a stationary tank and the pipes, pumps and dispensers attached to it. It This Chapter does not extend to aircraft fuel servicing vehicles.

~~(b) The purpose of this Subchapter is to protect the environment from pollution and people and property from fire and explosion.~~

~~(c) It extends into airport operations only in so far as they relate to the installation, operation, maintenance and inspection of fuel storage tank systems.~~

~~(bd)~~ Private airstrips are excluded from this Subchapter.

(c) Subchapters 1 General Provisions, 2 General Requirements for AST's, 3 Release Prevention and Detection, and 4 Inspections, Penalties, and Field Citations shall also apply in addition to this Subchapter.

165:26-6-2. Timeframes for registration and compliance with rules

(a) Stationary tanks greater than 110 gallons must be registered with the ~~Petroleum Storage Tank Division of the Corporation Commission~~ PSTD.

(b) Airport tank systems must have come into full compliance with the rules of this Chapter and subchapters before ~~July 15, 2005~~ July 1, 2009.

165:26-6-3. Codes and standards

The ~~Commission~~ PSTD adopts NFPA 407, which serves as a basis for the standards in this Subchapter. A copy of NFPA 407 is available for inspection at the ~~Petroleum Storage Tank Division~~ PSTD during regular business hours.

SUBCHAPTER 8. REQUIREMENTS FOR ABOVEGROUND STORAGE TANK SYSTEMS UTILIZED BY MARINAS

PART 1. GENERAL APPLICATION AND COMPLIANCE PROVISIONS

165:26-8-1. Application

(a) This Subchapter applies to the storage, handling and use of regulated substances kept in aboveground storage tanks at marinas.

(b) ~~Subchapters 1, 2, 3 and 4 shall also apply in addition to this Subchapter.~~ Subchapters 1 General Provisions, 2 General Requirements for AST's, 3 Release Prevention and Detection, and 4 Inspections, Penalties, and Field Citations shall also apply in addition to this Subchapter.

165:26-8-2. Timeframes for registration and compliance with rules

(a) Tanks that are greater than 110 gallons must be registered with the ~~Petroleum Storage Tank Division of the Commission~~ PSTD. The tank and piping system must come in compliance with the rules of this Chapter and Subchapter before July 1, 2009 ~~July 15, 2007~~. Compliance may be required sooner for any part of a system which poses a threat to property, people, or to the environment.

(b) All new underground piping at existing facilities must be installed in accordance with 165:26-2-55, "Underground piping materials," and with 165:26-3-9, "Installation and monitoring requirements for underground piping."

(c) All dock or pier product piping from the shoreline to the dispensers at new facilities must be installed according to 165:26-8-40.1 "Over-water piping at marinas" and

165:26-8-40.2 "Installation requirements for over-water piping".

(d) All dock or pier product piping from the shoreline to the dispensers at existing facilities must be upgraded before the deadline date of July 1, 2009 ~~July 15, 2007~~ according to 165:26-8-40.1 "Over-water piping at marinas" and 165:26-8-40.2 "Installation requirements for over-water piping".

(e) Temporary tanks may not be used at marinas.

PART 3. TANK DESIGN, CONSTRUCTION, CAPACITY AND LOCATION REQUIREMENTS

PART 21. MISCELLANEOUS SAFETY PROVISIONS

165:26-8-88. Fire extinguishers

(a) Each marina must be provided with listed fire extinguishers which have a minimum total capacity ~~capability~~ of 40 pounds, Class B, Class C.

(b) A minimum of three extinguishers must be located at the fuel dock and one or more located so they will be within 50 ft. (15m) of each pump, dispenser, underground fill pipe opening and lubrication or service room.

(c) ~~Where practical, there should be a frost-proof water hydrant with at least a 5/8" hose on the fuel dock.~~ Piers which extend more than 500 ft. (152 m) in travel distance from shore must have a Class III standpipe installed in accordance with NFPA 14, Standard for the Installation of Standpipe and Hose Systems.

(d) There must be a knife at the fuel dock for quickly cutting mooring lines in an emergency and a push pole for shoving away a boat.

SUBCHAPTER 10. REQUIREMENTS FOR ABOVEGROUND STORAGE TANK SYSTEMS UTILIZED BY RETAIL FACILITIES

PART 1. GENERAL APPLICATION AND COMPLIANCE PROVISIONS

165:26-10-1. Application

(a) This Subchapter applies to the storage, handling and use of all regulated substances which are kept in aboveground storage tanks, at facilities which engage in the retail sale of motor fuel.

(b) ~~Subchapters 1, 2, 3, and 4 shall also apply in addition to this Subchapter.~~ Subchapters 1 General Provisions, 2 General Requirements for AST's, 3 Release Prevention and Detection, and 4 Inspections, Penalties, and Field Citations shall also apply in addition to this Subchapter.

165:26-10-2. Timeframes for registration and compliance with rules

- (a) Tanks at retail facilities ~~except marinas that are greater than 110 gallons must be registered with PSTD, the Petroleum Storage Tank Division of the Commission before January 15, 2001. New construction of aboveground storage tank systems or tank replacement at existing aboveground storage tank facilities after July 15, 2007, must install aboveground storage tanks that are UL or API approved as aboveground fuel storage tanks.~~
- (b) ~~Temporary tanks and tanks that do not meet aboveground fuel storage tank construction and design requirements may not be used at retail facilities.~~

SUBCHAPTER 12. REQUIREMENTS FOR ABOVEGROUND STORAGE TANK SYSTEMS UTILIZED AT FLEET AND COMMERCIAL FACILITIES

PART 1. GENERAL APPLICATION AND COMPLIANCE PROVISIONS

165:26-12-1. Application

- (a) This Subchapter applies to the storage, handling and use of gasoline and diesel fuel at fleet and commercial facilities which are kept in aboveground storage tanks, with a an individual capacity of ~~1,321~~ 2,100 gallons or more. Aboveground storage tanks with an individual capacity of ~~1,320 less than 2,100~~ gallons or less are not subject to ~~Oklahoma Corporation Commission PSTD~~ regulation, and may not access the ~~Petroleum Storage Tank Indemnity Fund in the even event of a release from such aboveground storage tanks. Although the Oklahoma Corporation Commission PSTD does not regulate aboveground storage tanks with an individual capacity of 1,320 less than 2,100 gallons or less, owners of such tanks should be aware they may be subject to regulation by other jurisdictions.~~
- (b) ~~Subchapters 1, 2, 3, and 4 shall also apply in addition to this Subchapter. Subchapters 1 General Provisions, 2 General Requirements for AST's, 3 Release Prevention and Detection, and 4 Inspections, Penalties, and Field Citations shall also apply in addition to this Subchapter.~~

165:26-12-2. Timeframes for registration and compliance with rules

- (a) Tanks at fleet or commercial facilities with an ~~aggregate a capacity greater than 1,320 of 2,100 gallons or greater~~ must be registered with ~~PSTD, the Petroleum Storage Tank Division of the Commission. New construction of aboveground storage tank systems or tank replacement at existing aboveground storage tank facilities after July 15, 2007, must install aboveground storage tanks that are UL or API approved as aboveground fuel storage tanks.~~
- (b) ~~Temporary tanks and tanks that do not meet aboveground fuel storage tank construction and design requirements may not be used at fleet and commercial facilities.~~

SUBCHAPTER 14. REQUIREMENTS FOR ABOVEGROUND STORAGE TANK SYSTEMS UTILIZED BY BULK PLANT FACILITIES

PART 1. GENERAL APPLICATION AND COMPLIANCE PROVISIONS

165:26-14-1. Application

- (a) This Subchapter applies to the storage, handling and use of regulated substances at bulk plant facilities which are kept in aboveground storage tanks. Bulk plants built after July 15, 2000 must comply with this Chapter and Subchapter.
- (b) Bulk plants, already in existence on July 15, 2000 will not be required to comply with these rules unless they pose a threat to property, people or the environment. If a safety or environmental threat does exist at a bulk plant, the owner will be required to correct the specific problem.
- (c) ~~Subchapters 1, 2, 3, and 4 shall also apply in addition to this Subchapter. Subchapters 1 General Provisions, 2 General Requirements for AST's, 3 Release Prevention and Detection, and 4 Inspections, Penalties, and Field Citations shall also apply in addition to this Subchapter.~~

165:26-14-2. Timeframes for registration and compliance with rules

- (a) Tanks at bulk plants must be registered with ~~the Petroleum Storage Tank Division of the Commission PSTD~~. The tanks must come in compliance with the rules of this Subchapter before July 15, 2010. Compliance may be required sooner for any part of an existing bulk plant that poses a threat to property, people or the environment.
- (b) Temporary tanks will not be allowed at bulk plant facilities.

SUBCHAPTER 16. REQUIREMENTS FOR ABOVEGROUND STORAGE TANK SYSTEMS UTILIZED BY EMERGENCY GENERATORS

PART 1. GENERAL APPLICATION AND COMPLIANCE PROVISIONS

165:26-16-1. Application

- (a) This Subchapter applies to the storage, handling and use of gasoline and diesel fuel kept in aboveground storage tanks for use in emergency generators.
- (b) ~~Subchapters 1, 2, 3, and 4 shall also apply in addition to this Subchapter. Subchapters 1 General Provisions, 2 General Requirements for AST's, 3 Release Prevention and Detection, and 4 Inspections, Penalties, and Field Citations shall also apply in addition to this Subchapter.~~

Permanent Final Adoptions

165:26-16-2. Timeframes for registration and compliance with rules

(a) Tanks that are greater than 110 gallons that contain fuel for emergency generators must be registered with ~~the PSTD of the Commission~~ PSTD. The tanks must have come into compliance with the rules of this Chapter and Subchapter before July 15, 2005.

(b) There are emergency generators manufactured which have a fuel storage tank built into the unit. A manufactured unit will be accepted as being in full compliance with these rules if:

(1) The storage tank is double-walled and installed according to the manufacturer's specifications or;

(2) The storage tank is single walled with secondary containment built into the unit and installed according to the manufacturer's specifications; or

(3) Its location does not pose a threat to people, property or the environment.

(c) If a manufactured unit has a single walled tank without built in containment, it must be installed in compliance with the containment provision of this Chapter.

(d) If the fuel storage tank is separate from the generator unit, it must meet and be installed according to this Chapter.

APPENDIX G. FINE CITATIONS TABLE [REVOKED]

APPENDIX G. FINE CITATIONS TABLE [NEW]

Rule	Violation	Fine Amount
Registration & Permit Requirements		
165:26-1-41 and 165:26-1-42; 165:26-1-47 and 165:26-2-212	Failure to register tanks within 30 days of bringing the system into place, or failure to amend registration to reflect changes	\$500
165:26-1-70	Failure to pay AST permit fees prior to due date	Not > 50% of fee
165:26-2-5.1	Tank owner/operator accepting delivery into AST that does not have spill protection	\$1000
165:26-2-5.1 165:26-2-40 165:26-2-41	Tank owner/operator accepting delivery into AST that does have overfill protection or a required corrosion protection system	\$1,000
Notification Requirements		
	Failure to identify all storage tanks on notification form after third request, including a letter advising tank owner of the penalty	\$1,000
	Failure to provide installation information on notification form after third request, including a letter advising tank owner of the penalty	\$1,000
	Failure to notify the OCC prior to AST installation or closure.	\$500
	Failure to report non-passing tank or line tightness test results.	\$500
Required Reports		
165:26-1-57	Failure to submit tank closure report within 45 days	\$250
165:29 and 165:26-3-171	Failure to submit required reports pertaining to suspected release investigations and/or corrective action activities in a timely manner	\$250
	Second offense and thereafter for same case or tracking number	\$500
General Leak Detection Requirements		
165:26-3-77	Failure to notify Commission of indicated release	\$250
165:26-3-20.2 and 165:26-20.1	Failure to provide adequate release or leak detection for storage tank system (first offense)	\$250

Permanent Final Adoptions

Second Offense		\$500
Rule	Violation	Fine Amount
	Third Offense	\$1,000
	Failure to monitor tank(s) for releases as required	\$250
165:26-3-20.2	Failure to use approved release or leak monitoring method for piping	\$250
165:26-1-55, 165:26-1-57, and 165:26-1-59	Failure to maintain records of release or leak detection monitoring	\$250
165:26-1-56	Failure to retain records of calibration, maintenance, and repair of release or leak detection equipment	\$250
165:26-3-20.2	Failure to install or inspect leak detection on pressure piping	\$250
Spill & Overfill Control		
165:26-3-77	Failure to report a spill (over 25 gallons)	\$100
165:26-3-171	Failure to investigate a spill (over 25 gallons)	\$100
	Failure to investigate an overfill spill	\$100
	Failure to clean up a spill	\$500
	Failure to clean up an overfill spill	\$500
Operation/Maintenance of Corrosion Protection		
165:26-2-40 and 165:26-2-41	Failure to properly operate and maintain corrosion protection system (first offense)	\$150
	Second Offense	\$500
	Third Offense	\$1,000
165:26-2-42	Failure to properly test corrosion protection system	\$250
165:26-1-57	Failure to maintain records of cathodic protection inspections or testing	\$250
165:26-2-42	Failure to use a qualified cathodic protection tester to inspect corrosion protection system at least once every three years (first offense)	\$500
	Second Offense	\$1,000
165:26-1-58; 165:26-2-40	Failure to provide a Cathodic Protection Design or Suitability Study	\$1,000

Rule	Violation	Fine Amount
Release Investigation & Confirmation		
165:26-1-48 and 165:26-3-171	Failure to conduct tightness test(s) to investigate suspected leak(s)	\$250
Temporary Closure		
165:26-2-211	Failure to secure all storage tank-related equipment for temporary closure Failure to operate and maintain release or leak detection as required in a temporarily closed storage tank system	\$250
Permanent Closure		
165:26-2-214	Failure to measure for the presence of a release before a permanent closure	\$500
165:26-1-57	Failure to maintain proper closure records	\$250
165:26-2-210	Failure to use licensed AST Remover	\$500
Repairs Allowed		
165:26-2-1.1	Failure to use an AST licensee to install or repair person to repair	\$500
165:26-2-191	Second offense or thereafter by owner (per owner, not per facility)	\$1000
165:26-2-42	Failure to test storage tank systems cathodic protection within 6 months of repair	\$250
165:26-2-8	Failure to perform tightness test on tank system after installation or repair	\$300
165:26-1-56	Failure to maintain repair records for operating life of storage tank	\$250

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Rule	Violation	Fine Amount
Other		
165:15-19-1	Misrepresentation of octane level per location	\$500
	Second Offense within a year	\$1000
	Third Offense –Closure & Hearing	\$5000
165:26-1-31	Failure to follow standard codes for installation	\$500
165:26-4-1	Failure to provide records upon request	\$100
	Second offense or thereafter by owner (per owner, not per facility)	\$500
Administrative Penalty	Any owner or operator of a storage tank who fails to comply with any order issued by the Commission for corrective or enforcement actions may be subject, after notice and hearing, to an administrative penalty in an amount as allowed by law.	

[OAR Docket #08-1105; filed 5-30-08]

**TITLE 165. CORPORATION COMMISSION
CHAPTER 45. GAS SERVICE UTILITIES**

[OAR Docket #08-1104]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 3. Plant, Equipment, and Facilities

165:45-3-5. Sale or disposal of jurisdictional facilities by utility
[AMENDED]

165:45-3-5.1 Acquisition, control, or merger of domestic public gas utilities [NEW]

AUTHORITY:

Oklahoma Corporation Commission
Article IX, Section 18, Oklahoma Constitution
17 Okla. Stat. §§ 152

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None

INCORPORATIONS BY REFERENCE:

None

ANALYSIS:

OAC 165:45-3-5 was amended and OAC 165:45-3-5.1 was created to identify the information needed and the process to be used when transferring assets or customers. The changes provide for a central location of other provisions applicable to sales and mergers from Title 17 and from OAC 165:5. The amendment to OAC 165:45-3-5 is needed because the current rule was incomplete as to information needed to process an application for the sale or disposal of facilities. The new OAC 165:45-3-5.1 was added to include all applicable requirements from Title 17 of the Oklahoma Statutes and OAC 165:5 to address a request for acquisition, control, or the merger of a domestic water utility.

CONTACT PERSON:

Lenora Burdine (405) 522-1010.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 11, 2008:

SUBCHAPTER 3. PLANT, EQUIPMENT, AND FACILITIES

165:45-3-5. Sale or disposal of jurisdictional facilities by utility

(a) Except upon order of the Commission made upon application, notice and hearing, no utility shall discontinue or abandon any segment of its jurisdictional distribution system or sell, transfer, or dispose to another any portion of its jurisdictional plant or operating system unless the following criteria are satisfied:

(1) The Commission shall determine the functional division of utility property. If the function of the property intended to be sold by a utility will remain a utility function after the sale as determined by the Commission, the Commission retains jurisdiction; and

(2) Unless otherwise ordered by the Commission, after notice and hearing, no property shall be sold which:

(A) May have a detrimental impact on rates or service levels of customers, shippers or producers; or

(B) May have a detrimental impact on:

(i) Competition;

(ii) The competitive bidding process; or

(iii) Potential competitors.

(3) This Section shall not apply to discontinuance of service pursuant to OAC 165:45-11 nor to routine retirement or replacement of items of plant or equipment.

(4) Any portion of a utility's plant or operating system which has previously been included in the rate base of such utility will remain as part of such utility's jurisdictional plant or operating system, unless otherwise ordered by the Commission.

(b) When filing an application for the sale or transfer of ownership of a portion of its jurisdictional plant or operating system, the seller/transferor shall be required to provide a file stamped copy of the application to the Pipeline Safety Department of the Commission.

(c) When filing an application for the sale or transfer of ownership of a portion of its jurisdictional plant or operating system, the seller/transferor shall provide to the buyer or transferee all documents, from the previous two (2) calendar years, required by the Commission to be maintained pursuant to OAC 165:45-9-1 and customer deposit records required to be maintained pursuant to OAC 165:45-11-1.

(d) The buyer/transferee shall be required to maintain the records set forth in this Section for a period of two (2) years from the time of the date of the sale or transfer.

(e) Prior to approval of the sale or transfer, the seller/transferor shall be required to have all annual reports, monthly fuel filings and monthly reports current.

(f) The application for sale or transfer shall indicate whether the utility has any outstanding fines from the Commission, whether the utility has any outstanding Public Utility fee assessment, or whether the utility has any outstanding deficiencies which have been identified by the Public Utility Division, Consumer Services Division or the Pipeline Safety Department of the Commission.

(a) The parties to a transaction, the performance of which will result in the transfer of any portion of a natural gas utility's jurisdictional plant or operating system or the transfer of some or all of a natural gas utility's customers to a person or

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entity that is not an affiliate of such utility, shall, at least ninety (90) days before the effective date of such sale or transfer, request the approval of the Commission of the transaction by filing an original and eight (8) copies of a joint application, consistent with 165:5-7-1, with the Commission's Office of the Court Clerk, accompanied by the applicable filing fee. At the time the joint application is filed, the parties to the transaction shall serve a copy of the joint application, with all attachments thereto, upon the Attorney General and the Pipeline Safety Division. Additionally, the person or entity receiving the facilities or customers shall, at the time of the filing, be providing natural gas service to Oklahoma customers or be seeking approval, in the joint application or in a separate cause, to provide such service to Oklahoma customers.

(b) The joint application referred to in (a) of this Section shall include the following information:

- (1) The names of the parties to the transaction and the addresses of their respective principal places of business;
- (2) A narrative description of the transaction, including, without limitation, a description of the transferring party's jurisdictional plant or operating system to be transferred to the acquiring party, the number and types of customers to be transferred to the acquiring party as a result of the transfer of those jurisdictional assets, the contemplated effective date of the transfer, and the consideration to be given for consummating the transfer;
- (3) A statement as to whether the consideration to be given for consummating the transfer is below or above the net book value of the transferred assets;
- (4) A narrative description of how the transferred customers will continue to receive safe and reliable natural gas service after the effective date of the transaction, any proposed changes to the rates charged for that service after the effective date of the transaction, including a summary of the effect that the proposed changes to rates would have on an average customer's bill, and any other proposed changes in the terms and conditions of that service after such effective date subject to the terms of (g) of this Section;
- (5) A narrative description of the principal occupation or business of the acquiring party and all affiliates thereof during the previous five (5) years, and the names and relevant biographical information of all principals, officers, and directors of the acquiring party;
- (6) A narrative description of the operational and managerial experience of the acquiring party's personnel to be responsible for the operation and management of the facilities to be used to provide natural gas service to the transferred customers after the effective date of the transaction;
- (7) The names, addresses, and telephone numbers of representatives of the acquiring party who will be the contacts for the Public Utility Division and the Consumer Services Division and who will be primarily responsible for:
 - (A) Customer service issues;
 - (B) Repair and maintenance issues;
 - (C) Customer complaint issues;
 - (D) Authorizing and furnishing refunds to customers;
 - (E) Tariff issues; and
 - (F) Receiving notices related to causes docketed at the Commission.

(8) Audited financial statements of the acquiring party, to include but not be limited to balance sheets and income statements, covering the previous three (3) years;

(9) An unaudited financial statement of the acquiring party, covering the most recent quarter closed immediately preceding the filing of the application;

(10) An affidavit by the acquiring party stating that the acquiring party possesses the financial and managerial ability to provide safe and reliable natural gas utility service to the transferred customers and that the acquiring party is aware of and will abide by all Commission rules applicable to the provision of such service;

(11) The information required by 165:45-11-1(q) and (s) and an affirmation that the records and reports required by 165:45-9 exist and may be subject to review by the Commission during the application process.

(12) A copy of the agreement governing the terms of the transaction;

(13) If the acquiring party is also a public utility subject to the jurisdiction of the Commission, a statement to that effect. The information listed in (5) through (9) of this subsection is not required if the acquiring party is a public utility currently engaged in the furnishing of public utility services under the jurisdiction of the Commission at the time that the application is filed; and

(14) The name and address of the acquiring party's service agent registered with the Oklahoma Secretary of State.

(c) Upon Commission approval of the joint application referred to in (a) of this Section, the transferring party shall also transfer to the acquiring party the records required by the Commission to be maintained pursuant to 165:45-9 and 165:45-11-1(q) and (s), to the extent they pertain to the transferred customers.

(d) After notice and hearing, the Commission shall issue an order approving the application if it finds that the transaction is fair, just, and reasonable and in the public interest. The acquiring party shall have the burden of establishing that the proposed transaction is fair, just and reasonable, as well as in the public interest.

(e) Unless otherwise ordered by the Commission, the hearing referred to in (d) of this Section shall be commenced within sixty (60) days after the joint application referred to in (a) of this Section is filed. Upon motion by any interested party in the proceeding, or *sua sponte*, the Commission shall establish a procedural schedule setting forth dates for the filing of written testimony, discovery, and the hearing on the merits and such other dates, as the Commission deems appropriate.

(f) Notice of the hearing referred to in (d) of this Section shall be mailed to the Attorney General and to each customer of record of the transferring party who will be transferred to the acquiring party, and to any other person directed by the Commission to receive notice, at least twenty (20) days prior to the date of the hearing. The form of the notice must be approved by the Commission prior to such mailing.

(g) If the application is approved, the rates for natural gas service in effect for the transferred customers prior to the effective date of the transfer shall continue to be charged by the acquiring party with respect to those customers, unless and until different rates are reviewed and approved by the Commission in the current cause or in a subsequent cause. If different rates are reviewed and approved and/or changes in the terms and conditions of service are approved by the Commission in the current cause or in a subsequent cause, the acquiring party shall have thirty (30) days after the final order has been issued to submit an original and two (2) copies of the proposed tariffs, which conform to 165:45-15-2, reflecting the changes or additions to rates and/or terms of service to the Public Utility Division for review and approval.

(h) Upon motion, a party may request a waiver from or modification to any of the requirements of this section pursuant to 165:45-1-4.2.

(i) This section does not apply to transactions that involve the acquisition, control, or merger of a domestic public utility pursuant to 17 O.S. §§ 191.1 through 191.13, discontinuance of service pursuant to 165:45-11-10 or 165:45-11-11, nor routine retirement or replacement of facilities.

165:45-3-5.1. Acquisition, control, or merger of domestic public gas utilities]

(a) An original and eight (8) copies of an application for approval, consistent with 165:5-7-1, shall be filed with the Commission's Office of the Court Clerk no less than forty-five (45) days prior to the effective date of any of the following transactions pursuant to 17 O.S. §§ 191.1 through 191.13:

(1) acquisition of all or any controlling interest in a domestic public utility,

(2) merger of a domestic public utility,

(b) At the time the application is filed, the filing party shall serve a copy of the application with all attachments upon the Attorney General and the Commission's Pipeline Safety Division. The application shall include the following additional information, made under oath or affirmation:

(1) The name and address of each acquiring party and all affiliates thereof; and

(A) If such acquiring party is an individual, his principal occupation and all offices and positions held during the past five (5) years, and any conviction of crimes other than minor traffic violations during the past ten (10) years, or

(B) If such acquiring party is not an individual, a report of the nature of its business and its affiliates' operations during the past five (5) years or for such lesser period as such acquiring party and any predecessors thereof shall have been in existence; an informative description of the business intended to be done by such acquiring party and its subsidiaries; and a list of all individuals who are or who have been selected to become directors or officers of such acquiring party, or who perform or will perform functions appropriate or similar to such positions. Such list shall include for each such individual the information required by (A) of this paragraph.

(2) The source, nature and amount of the consideration used or to be used in effecting the merger or other acquisition of control, a detailed description of any transaction wherein funds were or are to be obtained for any such purpose, and the identity of persons furnishing such consideration; provided, however, that where a source of such consideration is a loan made in the lender's ordinary course of business, the identity of the lender shall remain confidential if the person filing such statement so requests. [17 O.S. § 191.3(A)(2)]

(3) Audited financial information in a form acceptable to the Commission as to the financial condition of an acquiring party of the preceding three (3) fiscal years of each such acquiring party, or for such lesser period as such acquiring party and any predecessors thereof shall have been in existence, and similar information as of a date not earlier than one hundred thirty-five (135) days prior to the filing of the application or the period of the most recent closed quarter prior to the filing of the application.

(4) Any plans or proposals which an acquiring party may have to liquidate such public utility, to sell its assets or a substantial part thereof, or merge or consolidate it with any person, or to make any other material change in its investment policy, business or corporate structure, or management. If any change is contemplated in the investment policy, or business or corporate structure, such contemplated changes and the rationale therefore shall be explained in detail. If any changes in the management of the domestic public utility or person controlling the domestic public utility are contemplated, the acquiring party shall provide a resume of the qualifications and the names and addresses of the individuals who have been selected or are being considered to replace the then current management personnel of the domestic public utility or the person controlling the domestic public utility. [17 O.S. § 191.3(A)(4)]

(5) The number of shares of any voting security which each acquiring party proposes to acquire, and the terms of the offer, request, invitation, agreement, or acquisition referred to in 17 O.S. § 191.2. . . .

(6) The amount of each class of any voting security which is beneficially owned or concerning which there is a right to acquire beneficial ownership by each acquiring party. [17 O.S. § 191.3(A)(6)]

(7) A full description of any contracts, arrangements, or understanding with respect to any voting security in which any acquiring party is involved, including but not limited to transfer of any securities, joint ventures, loan or option arrangements, puts or calls, guarantees of loans, guarantees against loss or guarantees of profits, division of losses or profits, or the giving or withholding of proxies. Such description shall identify the persons with whom such contracts, arrangements, or understandings have been entered into. [17 O.S. § 191.3(A)(7)]

(8) A description of the purchase of any voting security during the twelve (12) calendar months preceding the filing of the application, by any acquiring party, including

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the dates of purchase, names of the purchasers, and consideration paid or agreed to be paid therefore. [17 O.S. § 191.3(A)(8)]

(9) Copies of all tender offers for, requests for, advertisements for, invitations for tenders of, exchange offers for, and agreements to acquire or exchange any voting securities and, if distributed, of additional soliciting material relating thereto. [17 O.S. § 191.3(A)(9)]

(c) Such additional information as the Commission may prescribe as necessary or appropriate for the protection of ratepayers of the domestic public utility or in the public interest shall be provided as directed by the Commission.

(d) If a person required to file the application is a partnership, limited partnership, syndicate or other group, the Commission may require that the information called for in (b) of this Section shall be given with respect to each partner of such partnership or limited partnership, each member of such syndicate or group and each person who controls such partner or member. If any such partner, member, person or acquiring party is a corporation or if a person required to file the application is a corporation, the Commission may require that the information called for by (b) of this Section be given with respect to such corporation, each officer and director of such corporation, and each person who is directly or indirectly the beneficial owner of more than ten percent (10%) of the outstanding voting securities of such corporation and each affiliate of such corporation.

(e) If any material change occurs in the facts set forth in the application filed with the Commission and sent to such domestic public utility, an amendment setting forth such change, together with copies of all documents and other material relevant to such change, shall be filed with the Commission and sent by the person filing the application to the domestic public utility within two (2) business days after such person learns of such change.

(f) Unless otherwise ordered by the Commission, a hearing shall be commenced within thirty (30) days after the application is filed and shall be concluded within thirty (30) days after its commencement. Notice of hearing shall be mailed to the domestic gas utility and to each of its customers prior to the date of the hearing as ordered by the Commission.

(g) Any application for merger and other acquisition of control shall be deemed approved unless the Commission has, within sixty (60) days after the conclusion of such hearing, entered its order approving the merger or other acquisition.

[OAR Docket #08-1104; filed 5-30-08]

TITLE 165. CORPORATION COMMISSION CHAPTER 65. WATER SERVICE UTILITIES

[OAR Docket #08-1103]

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PERMANENT final adoption

RULES:

Subchapter 3. Plant, Equipment, and Facilities

165:65-3-5. Sale or disposal of facilities by utility [AMENDED]

165:65-3-5.1 Acquisition, control, or merger of domestic public water utilities [NEW]

AUTHORITY:

Oklahoma Corporation Commission
Article IX, Section 18, Oklahoma Constitution
17 Okla. Stat. §§ 152

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INCORPORATIONS BY REFERENCE:

None

ANALYSIS:

OAC 165:65-3-5 was amended and OAC 165:65-3-5.1 was created to identify the information needed and the process to be used when transferring assets or customers

CONTACT PERSON:

Lenora Burdine (405) 522-1010.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 11, 2008:

SUBCHAPTER 3. PLANT, EQUIPMENT, AND FACILITIES

165:65-3-5. Sale or disposal of facilities by utility

(a) ~~Except upon order of the Commission made upon application, notice and hearing, no utility shall discontinue or abandon any segment of its jurisdictional distribution system or sell, transfer or dispose to another any portion of its jurisdictional plant or operating system unless the following criteria are satisfied:~~

~~(1) The Commission shall determine the functional division of utility property. If the function of the property intended to be sold by a utility will remain a utility function after the sale as determined by the Commission, the Commission retains jurisdiction; and,~~

~~(2) Unless otherwise ordered by the Commission, after notice and hearing, no property shall be sold which may have a detrimental impact on rates or service levels of customers.~~

- (3) This Section shall not apply to discontinuance of service pursuant to OAC 165:65-11 nor to routine retirement or replacement of plant or equipment.
- (4) Any portion of a utility's plant or operating system which has previously been included in the rate base of such utility will remain as part of such utility's jurisdictional plant or operating system, unless otherwise ordered by the Commission.
- (b) When filing an application for the sale or transfer of ownership of a portion of its jurisdictional plant or operating system, the seller/transferor shall be required to provide a file stamped copy of the application to DEQ.
- (c) When filing an application for the sale or transfer of ownership of a portion of its jurisdictional plant or operating system, the seller/transferor shall provide to the buyer or transferee all documents, from the previous two (2) calendar years, required by the Commission to be maintained pursuant to OAC 165:65-9-1 and customer deposit records required to be maintained pursuant to OAC 165:65-11-2.
- (d) The buyer/transferee shall be required to maintain the records set forth in this Section for a period of two (2) years from the time of the date of the sale or transfer.
- (e) Prior to approval of the sale or transfer, the seller/transferor shall be required to have all annual reports, monthly filings and monthly reports current.
- (f) The application for sale or transfer shall indicate whether the utility has any outstanding fines from the Commission, whether the utility has any outstanding Public Utility fee assessment, or whether the utility has any outstanding deficiencies which have been identified by the PUD or the CSD.
- (a) The parties to a transaction, the performance of which will result in the transfer of any portion of a water utility's jurisdictional plant or operating system or the transfer of some or all of a water utility's customers to a person or entity that is not an affiliate of such utility, shall, at least ninety (90) days before the effective date of such sale or transfer, request the approval of the Commission of the transaction by filing an original and eight (8) copies of a joint application, consistent with 165:5-7-1, with the Commission's Office of the Court Clerk, accompanied by the applicable filing fee. At the time the joint application is filed, the parties to the transaction shall serve a copy of the joint application, with all attachments thereto, upon the Attorney General and the Department of Environmental Quality. Additionally, the person or entity receiving the facilities or customers shall, at the time of the filing, be providing water service to Oklahoma customers or be seeking approval, in the joint application or in a separate cause, to provide such service to Oklahoma customers.
- (b) The joint application referred to in (a) of this Section shall include the following information:
- (1) The names of the parties to the transaction and the addresses of their respective principal places of business;
 - (2) A narrative description of the transaction, including, without limitation, a description of the transferring party's jurisdictional plant or operating system to be transferred to the acquiring party, the number and types of customers to be transferred to the acquiring party as a result of the transfer of those jurisdictional assets, the contemplated effective date of the transfer, and the consideration to be given for consummating the transfer;
 - (3) A statement as to whether the consideration to be given for consummating the transfer is below or above the net book value of the transferred assets;
 - (4) A narrative description of how the transferred customers will continue to receive safe and reliable water service after the effective date of the transaction, any proposed changes to the rates charged for that service after the effective date of the transaction, including a summary of the effect that the proposed changes to rates would have on an average customer's bill, and any other proposed changes in the terms and conditions of that service after such effective date subject to the terms of (g) of this Section;
 - (5) A narrative description of the principal occupation or business of the acquiring party and all affiliates thereof during the previous five (5) years, and the names and relevant biographical information of all principals, officers, and directors of the acquiring party;
 - (6) A narrative description of the operational and managerial experience of the acquiring party's personnel to be responsible for the operation and management of the facilities to be used to provide water service to the transferred customers after the effective date of the transaction;
 - (7) The names, addresses, and telephone numbers of representatives of the acquiring party who will be the contacts for the Public Utility Division and the Consumer Services Division and who will be primarily responsible for:
 - (A) Customer service issues;
 - (B) Repair and maintenance issues;
 - (C) Customer complaint issues;
 - (D) Authorizing and furnishing refunds to customers;
 - (E) Tariff issues; and
 - (F) Receiving notices related to causes docketed at the Commission;
 - (8) Audited financial statements of the acquiring party, to include but not be limited to balance sheets and income statements, covering the previous three (3) years;
 - (9) An unaudited financial statement of the acquiring party, covering the most recent quarter closed immediately preceding the filing of the application;
 - (10) An affidavit by the acquiring party stating that the acquiring party possesses the financial and managerial ability to provide safe and reliable water utility service to the transferred customers and that the acquiring party is aware of and will abide by all Commission rules applicable to the provision of such service;
 - (11) The information required by 165:65-11-3(o) and (q) and an affirmation that the records and reports required by 165:65-9 exist and may be subject to review by the Commission during the application process.
 - (12) A copy of the agreement governing the terms of the transaction;
 - (13) If the acquiring party is also a public utility subject to the jurisdiction of the Commission, a statement to that

effect. The information listed in (5) through (9) of this subsection is not required if the acquiring party is a public utility currently engaged in the furnishing of public utility services under the jurisdiction of the Commission at the time that the application is filed; and

(14) The name and address of the acquiring party's service agent registered with the Oklahoma Secretary of State.

(c) Upon Commission approval of the joint application referred to in (a) of this Section, the transferring party shall also transfer to the acquiring party the records required by the Commission to be maintained pursuant to 165:65-9 and 165:65-11-3(o) and (q), to the extent they pertain to the transferred customers.

(d) After notice and hearing, the Commission shall issue an order approving the application if it finds that the transaction is, fair, just, and reasonable and in the public interest. The acquiring party shall have the burden of establishing that the proposed transaction is fair, just and reasonable, as well as in the public interest.

(e) Unless otherwise ordered by the Commission, the hearing referred to in (d) of this Section shall be commenced within sixty (60) days after the joint application referred to in (a) of this Section is filed. Upon motion by any interested party in the proceeding, or *sua sponte*, the Commission shall establish a procedural schedule setting forth dates for the filing of written testimony, discovery, and the hearing on the merits and such other dates, as the Commission deems appropriate.

(f) Notice of the hearing referred to in (d) of this Section shall be mailed to the Attorney General and to each customer of record of the transferring party who will be transferred to the acquiring party, and to any other person directed by the Commission to receive notice, at least twenty (20) days prior to the date of the hearing. The form of the notice must be approved by the Commission prior to such mailing.

(g) If the application is approved, the rates for water service in effect for the transferred customers prior to the effective date of the transfer shall continue to be charged by the acquiring party with respect to those customers, unless and until different rates are reviewed and approved by the Commission in the current cause or in a subsequent cause. If different rates are reviewed and approved and/or changes in the terms and conditions of service are approved by the Commission in the current cause or in a subsequent cause, the acquiring party shall have thirty (30) days after the final order has been issued to submit an original and two (2) copies of the proposed tariffs, which conform to 165:65-9-7, reflecting the changes or additions to rates and/or terms of service to the Public Utility Division for review and approval.

(h) Upon motion, a party may request a waiver from or modification to any of the requirements of this section pursuant to 165:65-1-5.

(i) This section does not apply to transactions that involve discontinuance of service pursuant to 165:65-11-10 or 165:65-11-11 or routine retirement or replacement of facilities.

165:65-3-5.1. Acquisition, control, or merger of domestic public water utilities

(a) An original and eight (8) copies of an application for approval, consistent with 165:5-7-1, shall be filed with the Commission's Office of the Court Clerk no less than forty-five (45) days prior to the effective date of any of the following transactions:

(1) acquisition of all or any controlling interest in a domestic public utility,

(2) merger of a domestic public utility,

(b) At the time the application is filed, the filing party shall serve a copy of the application with all attachments upon the Attorney General and the Department of Environmental Quality. The application shall include the following additional information, made under oath or affirmation:

(1) The name and address of each acquiring party and all affiliates thereof; and

(A) If such acquiring party is an individual, his principal occupation and all offices and positions held during the past five (5) years, and any conviction of crimes other than minor traffic violations during the past ten (10) years, or

(B) If such acquiring party is not an individual, a report of the nature of its business and its affiliates' operations during the past five (5) years or for such lesser period as such acquiring party and any predecessors thereof shall have been in existence; an informative description of the business intended to be done by such acquiring party and its subsidiaries; and a list of all individuals who are or who have been selected to become directors or officers of such acquiring party, or who perform or will perform functions appropriate or similar to such positions. Such list shall include for each such individual the information required by (A) of this paragraph;

(2) The source, nature and amount of the consideration used or to be used in effecting the merger or other acquisition of control, a detailed description of any transaction wherein funds were or are to be obtained for any such purpose, and the identity of persons furnishing such consideration; provided, however, that where a source of such consideration is a loan made in the lender's ordinary course of business, the identity of the lender shall remain confidential if the person filing such statement so requests;

(3) Audited financial information in a form acceptable to the Commission as to the financial condition of an acquiring party of the preceding three (3) fiscal years of each such acquiring party, or for such lesser period as such acquiring party and any predecessors thereof shall have been in existence, and similar information as of a date not earlier than one hundred thirty-five (135) days prior to the filing of the application or the period of the most recent closed quarter prior to the filing of the application;

(4) Any plans or proposals which an acquiring party may have to liquidate such public utility, to sell its assets or a substantial part thereof, or merge or consolidate it with any person, or to make any other material change in its investment policy, business or corporate structure.

or management. If any change is contemplated in the investment policy, or business or corporate structure, such contemplated changes and the rationale therefore shall be explained in detail. If any changes in the management of the domestic public utility or person controlling the domestic public utility are contemplated, the acquiring party shall provide a resume of the qualifications and the names and addresses of the individuals who have been selected or are being considered to replace the then current management personnel of the domestic public utility or the person controlling the domestic public utility.

(5) The number of shares of any voting security which each acquiring party proposes to acquire, and the terms of the offer, request, invitation, agreement, or acquisition;

(6) The amount of each class of any voting security which is beneficially owned or concerning which there is a right to acquire beneficial ownership by each acquiring party;

(7) A full description of any contracts, arrangements, or understanding with respect to any voting security in which any acquiring party is involved, including but not limited to transfer of any securities, joint ventures, loan or option arrangements, puts or calls, guarantees of loans, guarantees against loss or guarantees of profits, division of losses or profits, or the giving or withholding of proxies. Such description shall identify the persons with whom such contracts, arrangements, or understandings have been entered into;

(8) A description of the purchase of any voting security during the twelve (12) calendar months preceding the filing of the application, by any acquiring party, including the dates of purchase, names of the purchasers, and consideration paid or agreed to be paid therefore; and

(9) Copies of all tender offers for, requests for, advertisements for, invitations for tenders of, exchange offers for, and agreements to acquire or exchange any voting securities and, if distributed, of additional soliciting material relating thereto.

(c) Such additional information as the Commission may prescribe as necessary or appropriate for the protection of ratepayers of the domestic public utility or in the public interest shall be provided as directed by the Commission.

(d) If a person required to file the application is a partnership, limited partnership, syndicate or other group, the Commission may require that the information called for in (b) of this Section shall be given with respect to each partner of such partnership or limited partnership, each member of such syndicate or group and each person who controls such partner or member. If any such partner, member, person or acquiring party is a corporation or if a person required to file the application is a corporation, the Commission may require that the information called for by (b) of this Section be given with respect to such corporation, each officer and director of such corporation, and each person who is directly or indirectly the beneficial owner of more than ten percent (10%) of the outstanding voting securities of such corporation and each affiliate of such corporation.

(e) If any material change occurs in the facts set forth in the application filed with the Commission and sent to such domestic public utility, an amendment setting forth such change, together with copies of all documents and other material relevant to such change, shall be filed with the Commission and sent by the person filing the application to the domestic public utility within two (2) business days after such person learns of such change.

(f) Unless otherwise ordered by the Commission, a hearing shall be commenced within thirty (30) days after the application is filed and shall be concluded within thirty (30) days after its commencement. Notice of hearing shall be mailed to the domestic water utility and to each of its customers prior to the date of the hearing as ordered by the Commission.

(g) Any application for merger and other acquisition of control shall be deemed approved unless the Commission has, within sixty (60) days after the conclusion of such hearing, entered its order approving the merger or other acquisition.

[OAR Docket #08-1103; filed 5-30-08]

TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY CHAPTER 100. AIR POLLUTION CONTROL

[OAR Docket #08-1083]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 5. Registration, Emission Inventory and Annual Operating Fees

252:100-5-2.2. Annual operating fees [AMENDED]

AUTHORITY:

Environmental Quality Board; 27A O.S., § 2-2-101 and 2-2-201; and Oklahoma Clean Air Act, 27A O.S., § 2-5-101 *et seq.*

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March 10, 2008

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Failure of the Legislature to disapprove the rules resulted in approval on May 2, 2008

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May 2, 2008

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July 11, 2008

Permanent Final Adoptions

SUPERSEDED EMERGENCY ACTIONS:

N/A

INCORPORATIONS BY REFERENCE:

N/A

ANALYSIS:

The Department proposes to amend OAC 252:100-5-2.2. The proposed revision will increase annual operating fees for both minor facilities and Part 70 sources. Additional income resulting from a fee increase is needed to cover current and anticipated staffing requirements to administer the Department's programs. Language has also been updated as it relates to Part 70 sources fees which are adjusted automatically each year using the Consumer Price Index.

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 11, 2008:

SUBCHAPTER 5. REGISTRATION, EMISSION INVENTORY AND ANNUAL OPERATING FEES

252:100-5-2.2. Annual operating fees

(a) Applicability.

(1) OAC 252:100-5-2.2 applies to all facilities that are sources of air pollution, including government facilities, regardless of whether the source is currently permitted or whether an emission inventory has or has not at any time been submitted for the facility. The owners or operators of Part 70 sources shall pay annual fees that are sufficient to cover the Part 70 program costs. The permitting authority shall ensure that the fees required by OAC 252:100-5-2.2(b)(2) will be used solely for Part 70 program costs.

(2) OAC 252:100-5-2.2 does not apply to de minimis facilities or to permit exempt facilities.

(b) Fee schedule.

(1) **Minor facilities.** Beginning July 1, 2008, annual operating fees invoiced for minor facilities shall be \$25.12 per ton of regulated air pollutant (for fee calculation). The invoiced annual operating fees shall be discounted appropriately in any given year if the Department determines that other revenues, including appropriated state general revenue funds, have increased sufficiently to adequately fund the air program.

(A) Beginning January 1, 1999, annual operating fees shall be invoiced at \$17.12 per ton of regulated pollutant (for fee calculation).

(B) Beginning January 1, 2003, annual operating fees shall be no more than \$22.28 per ton of regulated pollutant (for fee calculation).

(2) **Part 70 Sources.** Beginning July 1, 2008, annual operating fees invoiced for Part 70 sources shall be \$32.30 per ton of regulated air pollutant (for fee calculation) and shall be adjusted each year pursuant to (b)(3) of this section. The invoiced CPI-adjusted annual operating fees

shall be discounted appropriately in any given year if the Department determines that other revenues, including appropriated state general revenue funds, have increased sufficiently to adequately fund the air program. Any discount would not affect CPI adjustments.

(A) From January 1, 1995, until January 1, 1999, the annual operating fee for Part 70 sources shall be \$15.19 per ton of regulated pollutant (for fee calculation).

(B) Beginning January 1, 1999, the annual operating fee for Part 70 sources shall be \$17.12 per ton of regulated pollutant (for fee calculation).

(C) Beginning January 1, 2003, the annual operating fee for Part 70 sources shall be no more than \$22.28 per ton of regulated pollutant (for fee calculation).

(D) The annual operating fee shall be adjusted automatically each year by the percentage, if any, by which the Consumer Price Index for the most recent calendar year ending before the beginning of such year differs from the Consumer Price Index for the calendar year 1994. The Consumer Price Index for any calendar year is the average of the Consumer Price Index for all urban consumers published by the Department of Labor, as of the close of the twelve-month period ending on August 31 of each calendar year.

(3) **Use of Consumer Price Index (CPI) to adjust annual operating fees.** Annual operating fees for Part 70 sources shall be adjusted automatically each year by the percentage, if any, by which the CPI for the most recent calendar year ending before the beginning of such year differs from the CPI for the calendar year 2007. The CPI for any calendar year is the average of the CPI for all-urban consumers published by the Department of Labor, as of the close of the twelve-month period ending on August 31 of each calendar year.

(c) Payment.

(1) Fees are due and payable on the invoice due date(s). Fees shall be considered delinquent 30 days after the invoice due date(s). Within five (5) years but not before a grace period of 120 days from the invoice due date, the DEQ may issue an administrative order to recover such fees and may assess a reasonable administrative fine in accordance with the provisions of the Oklahoma Clean Air Act, 27A O.S. §§ 2-5-101 *et seq.*, to an owner or operator of a facility who has failed to pay or has underpaid such fees.

(2) If an owner or operator has failed to submit the required annual emission inventory, the DEQ may issue an administrative order to recover fees that would have been invoiced had the emission inventory been submitted when due. The DEQ may issue such order within five (5) years from the date of billing and may assess a reasonable administrative fine in accordance with the provisions of the Oklahoma Clean Air Act, 27A O.S. §§ 2-5-101 *et seq.*

(3) When a fee overpayment has been made as a result of an error, an owner or operator may seek a credit for such