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Sent: Wednesday, January 02, 2019 11:04 AM
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Subject: Meeting
Attachments: UST Advisory Committee Meeting response to comments 12-18.docx

Hello USTAC members:

Hope you have all had a happy holiday season. We are gearing up for the New Year here in the Tank Management Section. As I had indicated in the last paragraph of the December 13 meeting minutes, TMS has committed to another meeting to further discuss our responses to USTAC comments previously received and provided here for your ease of review. No one has requested such a meeting. However, I did not want to rule out scheduling another meeting without asking once again if there is any interest. Please respond to this email by January 11 if you would like to participate in a meeting to further discuss TMS responses to USTAC questions regarding proposed UST regulations.

Thank you,
Eileen Butler

Eileen M. Butler

Planner IV
Dept. of Natural Resources & Environmental Control
Division of Waste and Hazardous Substances
Tank Management Section
302-395-2520

TO: UST Advisory Committee

FROM: Alex Rittberg, Tank Management Section, Division Waste & Hazardous Substances

DATE: December 13, 2018

SUBJECT: TMS response to USTAC Comments re: 11-18 Draft Regulations

On November 14, 2018 the Tank Management Section (DNREC-TMS) held a USTAC meeting to review changes to the UST regulations. A number of questions were aired at the meeting with the meeting minutes indicating the DNREC-TMS would give the matter additional consideration. The following is a summary of all questions asked and comments received since the meeting with the associated TMS responses. The DNREC-TMS appreciates the feedback that was provided and is committed to working together to maintain predictability and consistency to the regulated community while protecting the environment and public health.

Comments from Crompco:

- Class A/B Operator Training – concerns were raised that Crompco inspectors do not need TMS Class A/B training for the 30-Day Routine Inspection Requirements due to the fact that their technicians are trained through numerous UST equipment manufacturers.

TMS Response – We have reviewed the Routine Inspection requirements and agree that contractors certified for installation have the knowledge and experience to conduct routine inspections without attending the Class A and Class B Operator training. Therefore TMS will amend the language in Part B Sections 1.31 and 2.32, Part C Sections 1.28 and 2.29, and Part D Section 1.29 to read as follows:

“Persons in possession of Class A Operator or Class B Operator certification, or installation certification obtained in accordance with the requirements of Part G of these Regulations, shall conduct an inspection at an interval no less frequently than...”

- Industry Codes of Practice – Crompco strongly recommends TMS consider incorporating PEI RP 1200 into its reference standards.

TMS Response – The draft regulations already incorporate PEI RP 1200 as a reference standard and can be found in Part A Section 3.3.5.7.

- DNREC should remove the following option for allowable overfill equipment in 1.22.3.3: “Restrict flow 30 minutes prior to overfilling, alert other Operator with a high-level alarm one minute before overfilling, or automatically shut off flow into the UST so that none of

the fittings located on top of the Tank are exposed to Regulated Substance due to overfilling;”

TMS Response – Section 1.22.3.3 removed this option in an earlier draft. It remains removed.

Comments from Ellen Valentino on behalf of the Mid-Atlantic Petroleum Distributors Assn.:

- Part B, Section 1.9.4.3 – Current regulations do not allow third-party reports to be the sole means for reporting release detection monitoring results. It is unrealistic to expect a local station to maintain these paper records and unnecessarily burdens tank owners with paperwork requirements.

TMS Response – We disagree on the onerous nature of this requirement. The intent of the regulation change is to allow the owner to use third party reports as the sole means for reporting release detection monitoring results with the understanding that there needs to be a means to validate the third party reports. DNREC-TMS does not believe it burdensome upon the UST Owner to validate such reports. When requested, the Owner/Operator will be required to show the amount of product on an ATG slip on a report in conjunction with an annual function test. Another option to consider is to require this validation as part of the annual automatic tank gauge inspection by the certified technician required in 1.9.5.2. Please keep in mind that Part A Section 5.0 requires Owners and Operators of UST System Facilities to maintain records in a permanent form to demonstrate recent UST Facility compliance status for a period of no less than 3 years. This includes Tank and Piping Release Detection records.

- Part B, Section 2.9.5.1.3 – [the comment reflects language in Section 1.9.5.1.3] The periodic validation of third-party test reports should be clearly defined or removed.

TMS Response – It is our understanding that you are referring to the following language: “The Department may require the owner or Operator to periodically validate third party test reports;”

We do not believe it burdensome upon the UST Owner to validate such reports. When requested, the Owner/Operator will be required to show the amount of product on an ATG slip on a report in conjunction with an annual function test. Another option to consider is to require this validation as part of the annual automatic tank gauge inspection by the certified technician required in 1.9.5.2. Please keep in mind that, Part A Section 5.0 requires Owners and Operators of UST System Facilities to maintain records in a permanent form to demonstrate recent UST Facility compliance status for a period of no less than 3 years. This includes Tank and Piping Release Detection records.

- Part B, Section 1.14.3 – We believe the 1/8” slope requirement for product piping is an obsolete requirement and ask that DNREC eliminate it from the proposed regulation.

TMS Response – We understand that Delaware remains in a small category of states that maintain this provision where EPA does not; nonetheless, Delaware regulations can exceed federal requirements. We will continue to evaluate the Loop system; however it is the Department’s intent to maintain the slope requirement.

- Part A, Section 6.0 – We believe that conditions need to be outlined and detailed in the regulations to provide predictability and consistency to the regulated community if an alternate approval process is necessary.

TMS Response – We have amended Section 6.1.2 to read as follows:

“The Owner and Operator of an UST System subject to the provisions of these Regulations may request in writing a determination from the Department for approval of an alternative procedure or technology. The Department may approve alternative procedures or technologies or a combination of alternative procedures or technologies if the following requirements are met.”

We cannot regulate future technologies which may develop and be put forth as a request for DNREC-TMS to consider as an alternative procedure or technology. However, the information required for DNREC-TMS to consider does provide predictability and consistency to the regulated community, especially in light of the fact that the alternative procedure or technology must meet or exceed the performance standard coupled with a no less stringent degree of protection for human health, safety or the environment.

- Part B, Section 1.31.1.6 – We urge consideration of the low-level liquid alternative integrity test method for sumps used as secondary containment and interstitial monitoring, as the full sump testing method greatly increases the cost of compliance.

TMS Response – Delaware does not support low-level testing or dry testing for sump pumps. The concern remains that if such testing occurs, there may be other mechanisms in the sump that may fail such as entry boots, and will only be observed with the sump is full. It may entail a higher cost component; however, it is a more comprehensive test and provides appropriate protection to the environment and human health.

- Section 10, Training Requirements –
 - Has recertification been defined by the Department?
 - Will Class A and Class B Operators have to complete the course again?
 - Is DNREC in development of an on-line training program?
 - Why are Class C operators prohibited from performing the 30-day routine inspections? Rationale?
 - Has DNREC prepared a small business impact statement for this specific regulation?

TMS Response –

- Class A/B Certification has a time limit of three (3) years. Recertification will be necessary to continue as a Class A or Class B Certified Operator. As such the

certification holder will need to take the exam again to maintain his/her Class A/B Certification. The three year requirement will commence at the promulgation of the regulations.

- Yes, if the Operator desires to continue as a Class A/B Operator, they will need to take an exam every three years to maintain their certification.
- Yes, DNREC is working towards providing an on-line training and certification program.
- Class C Operators do not receive the same training as Class A or Class B Operators. Class C Operators are only trained to deal with emergency situations, not the maintenance and operation of the UST System.
- As part of Delaware's regulatory development process, TMS will prepare a Regulatory Flexibility Analysis and Regulatory Impact Statement as it relates to small business owners as defined pursuant to the Regulatory Transparency and Accountability Acts.

USTAC Comments during the meeting

- Operator Training – Mr. Baker raised the issue that for owners who hire a Delaware certified contractor to perform the 30-day routine inspection, it would mean that the contractor would be required to obtain Class A/B Operator certification via the State training classes.

TMS Response – After further consideration, and as described in our first response to Crompco, TMS will amend the draft regulations to permit installation contractors to perform the 30-day routine inspection.

- Closure Procedures – Ms. McCaney asked if Delaware will follow the RP-1700 process of UST emptying and closure procedures.

TMS Response – As indicated in the November 14 USTAC meeting minutes, TMS will review a draft of RP-1700 and then respond to the question. Since the document is still in draft form, Delaware cannot add it as a reference standard at this time.

- Overfill Prevention – Mr. Logue asked what happens when overfill prevention is over 95%? What if the manufacturer's recommendation requires it to be located at 96% of the tank?

TMS Response – Performance standards for overfill protection found in 40 CFR Part 280 Section 280.20 of 95 percent must be met. Delaware cannot be less stringent than the federal program.

Ms. Valentino requested an additional USTAC meeting prior to TMS sending the draft regulations to EPA. Due to the regulatory schedule TMS has committed to uphold to the EPA, and the

substantive comments (not related to EPA requirements) submitted to TMS, we will submit the draft regulations on schedule to EPA. TMS will however commit to another meeting with the USTAC to further discuss TMS responses should USTAC members still desire to do so after review of this memo. Please contact Eileen Butler directly if you are interested to participate in such a meeting. Eileen will contact USTAC members should an additional meeting be scheduled.

Thank you for your comments and effort in making this a better regulatory document.

