

**DEPARTMENT OF ENVIRONMENTAL PROTECTION**  
**Bureau of Environmental Cleanup and Brownfields**

**DOCUMENT NUMBER:** 263-4000-001

**TITLE:** Storage Tank Product Delivery Prohibition

**EFFECTIVE DATE:** September 8, 2012

**AUTHORITY:** The Storage Tank and Spill Prevention Act, P.L. 169, No. 32 of 1989, as amended (Tank Act) and 25 Pa Code, Chapter 245 (Storage Tank Regulations).

**POLICY:** This policy describes the circumstances under which the Department of Environmental Protection (DEP or Department) may impose storage tank product delivery prohibition in conjunction with suspension, revocation or denial of an operating permit, and the procedure it will follow to notify the tank owner/operator and product suppliers (distributors or deliverers).

**PURPOSE:** The Tank Act and Storage Tank Regulations require each regulated tank system to have a valid permit to operate. When a storage tank is determined by the Department to be ineligible for delivery, deposit, or acceptance of product the owner/operator and any known delivery company will be notified of the storage tank ineligible status. The Department will also maintain a website listing the storage tanks that are determined to be ineligible for delivery, deposit, or acceptance of product.

**APPLICABILITY:** This guidance is applicable to tank owners, operators, product distributors and DEP.

**DISCLAIMER:** The policies and procedures outlined in this guidance are intended to supplement existing requirements. Nothing in the policies or procedures shall affect regulatory requirements.

The policies and procedures herein are not an adjudication or a regulation. There is no intent on the part of DEP to give the rules in these policies that weight or deference. This document establishes the framework within which DEP will exercise its administrative discretion in the future. DEP reserves the discretion to deviate from this policy statement if circumstances warrant.

**PAGE LENGTH:** 5 pages

## Storage Tank Product Delivery Prohibition

- I. BACKGROUND.** Delivery prohibition is prohibiting the delivery, deposit or acceptance of regulated substances (product) to a regulated storage tank that has been determined to be ineligible for receiving product by the U.S. Environmental Protection Agency (EPA) or DEP.

On August 8, 2005 the Federal Energy Policy Act of 2005 (Energy Act) was signed in to law. Title XV, Subtitle B of the Energy Act (entitled the Underground Storage Tank Compliance Act) contained amendments to Subtitle I of the Solid Waste Disposal Act. This law has significantly amended the state's underground storage tank (UST) program.

The Energy Act requires states to implement a delivery prohibition procedure for certain classes of USTs. By formalizing aboveground and underground storage tank operating permits, DEP has used the suspension, revocation, withholding or denial of operating permits to prohibit deliveries since the aboveground and underground storage tank permitting program was established in Chapter 245, Subchapter C, on October 11, 1997. This guidance outlines the Department's procedure, including additional notifications to product delivery companies that are required under the Energy Act and related EPA Grant Guidelines.

Storage Tank Regulations provide for the automatic withdrawal or withholding of the operating permits for tanks registered as being temporarily removed-from-service or out-of-service (TOS). This is a routine practice, which is not directly associated with these delivery prohibition guidelines, except where a formal delivery prohibition order is issued by the Department. However, a tank registered in TOS status should not receive product and may not be operated, unless otherwise agreed upon in writing by the Department. The Department may re-permit a tank that is reported by the owner/operator (using the Registration/Permitting of Storage Tanks Form, see §245.41 and §245.203) as returning from TOS to an operating status. The Department annotates the permitting status for each tank on the Storage Tank Registration/Permit Certificate, which is mailed to the tank owner/operator and displayed or available at the storage tank facility.

- II. DEFINITIONS, TERMS AND ABBREVIATIONS.** See the Storage Tank Regulations, section 245.1 (Definitions) for other terms not specifically defined in this section.

Corrosion protection (CP) – The protection of metal “tank system components” from deterioration. The deterioration may be due to a natural electrochemical reaction between the metal and the soil, “backfill, water” or other electrolyte, or because of stray direct currents “or natural phenomenon related to the component's installation environment”. (*For the purpose of this document this definition has been expanded to add clarification.*)

Operating permit – A permit authorized under the Tank Act and Storage Tank Regulations for the operation of an aboveground or underground storage tank. Operating permits include permit-by-rule (PBR) and general operating permit (GOP), which are annotated on the Storage Tank Registration/Permit Certificate for each active tank system.

Overfill protection equipment – A device used to prevent overfills. There are three types of devices recognized by DEP and EPA – automatic delivery flow shut off devices, high level alarms and delivery flow restriction devices. Each type of equipment has specific system requirements. The form of overfill protection installed must be used in accordance with national standards and manufacturer's instructions and recommendations to function properly in the system where it is installed.

Product Deliverer – Any person (see §245.1) who delivers or deposits regulated substance (product) into a regulated storage tank. This term may include major oil companies, jobbers, petroleum transportation companies, pipeline companies and other product delivery or distribution entities.

Spill prevention equipment – A containment structure, usually taking the form of a bucket, to catch drips and small amounts of product at the completion of the tank filling process when the delivery hose is disconnected.

Temporary Out-of-Service (TOS) – A tank system that is not being filled or emptied on a routine basis, and has all product removed so that no more than 1 inch or 0.3% by weight of the total tank capacity of sludge or residue remain in the tank. The owner/operator may report placing a tank in TOS just prior to or after emptying the tank system. TOS status affects a storage tank system's operating permit and technical requirements. (See Storage Tank Regulations §§ 245.41, 245.203, 245.451, 245.562 and 245.614)

## **GUIDANCE**

### **III. Criteria for identifying ineligible storage tanks**

DEP may, immediately upon discovery, process an order prohibiting delivery when the following conditions are found at an operating UST system or facility:

- Required spill prevention equipment is not installed;
- Required overfill protection equipment is not installed;
- Required release detection equipment is not installed; or
- Required corrosion protection equipment for the tank or a major portion of underground piping is not installed or has been disabled.

When an owner/operator has been notified in writing that a violation of the Storage Tank Regulations exists and they fail to take corrective action after a reasonable timeframe, the Department may classify their storage tank system as ineligible for delivery, deposit, or acceptance of product, and issue an order prohibiting delivery. The time allowed to correct violations may include the already elapsed time since a third-party inspector recorded a corresponding violation. The written notice may be in the form of a field order, notice of violation (NOV), notice of noncompliance or DEP Narrative form, indicating one of the following conditions exists and a date when the violation should be corrected.

- Failure to properly operate and/or maintain release detection equipment;
- Failure to properly operate and/or maintain spill, overfill, or corrosion protection equipment;
- Failure to install required corrosion protection on small portions of underground piping, e.g., a steel flexible connector;
- Failure to have a required inspection;
- Failure to maintain financial responsibility for an underground storage tank or facility;
- Required emergency containment is not installed;

- Required secondary containment is not installed;
- There is evidence of an ongoing release at an operating facility; or
- Other noncompliant conditions DEP deems appropriate.

Prohibiting the delivery of product to tank systems regulated under the Tank Act is only one enforcement tool used by the Department. It will be used with discretion when tank systems do not meet the technical requirements of the Storage Tank Regulations and to bring systems that are not being properly operated into compliance, in accordance with the “Storage Tank Program Internal Policy on Inspections and On-site Visits” (263-4180-003). Delivery prohibition may be applied to a single tank or all tanks at a storage tank facility, as appropriate.

The Department may also issue Orders to cease and desist storage tank operations under the Tank Act for violations of the act, to protect water supplies, to abate a public nuisance and to aid in enforcement of the act (35 P.S. §6021.107(f), §6021.1303, §6021.1304 and §6021.1309); the Clean Streams Law (35 P.S. §§ 691.1 – 691.1001) and Storage Tank Regulations.

The current Storage Tank Registration/Permit Certificate, which must be conspicuously displayed at a retail storage tank facility or provided to the product deliverer, clearly identifies the storage tanks at the facility that are eligible for delivery, deposit, or acceptance of product. An eligible tank will be noted as PBR or GOP with approved permit status on the form, or described in a written order or supplement document provided by the Department.

#### **IV. Delivery authorizations while prohibition is in place**

The Department may authorize the delivery or deposit of product to an ineligible storage tank if such activity is necessary to test or calibrate the storage tank or appurtenances. The testing should be aimed at bringing the system into compliance with the Storage Tank Regulations.

Delivery prohibition is not always in the best interest of the public, even in the cases of significant and/or sustained noncompliance. For example, certain emergency generator storage tanks are needed to protect the public during the unexpected loss of electrical power in publicly accessible buildings. When determined to be in the best interest of the public, DEP may choose to classify a storage tank as ineligible to receive product, but then authorize, in writing, delivery in emergencies or for a given period (usually not for more than 180 days).

#### **V. Process for reclassifying ineligible storage tanks as eligible for delivery, deposit, or acceptance of product**

The Department will reclassify an ineligible storage tank as eligible to receive product as soon as practical, but no later than 10 (ten) business days after determining that the storage tank has been returned to compliance. DEP, after notification by the owner/operator that the violation(s) has/have been corrected, will confirm compliance and:

- If any deficiencies that led to the delivery prohibition remain, DEP will notify the owner/operator and the prohibition will remain in force.
- If the violations have been corrected, DEP will return the storage tank to being eligible to receive product through written notice to the owner/operator. DEP will also remove the eligible tank from the ineligible tank listing on the Department’s website.

**VI. Process for providing notice to storage tank owners, operators and product deliverers that a storage tank has been determined to be ineligible for delivery, deposit, or acceptance of product**

The “Storage Tank Program Internal Policy on Inspections and On-site Visits” (guidance document 263-4180-003) establishes timeframes for following up on noncompliant inspections with compliance actions. The determination of ineligibility for delivery, deposit or acceptance of product will be based on an inspection. Enforcements such as delivery prohibition will follow the timeframes established in the guidance for enforceable documents.

To satisfy the requirements of the Tank Act, when a storage tank is determined to be ineligible for delivery, deposit, or acceptance of product, DEP will make a reasonable effort to notify tank owners and/or operators in writing – either in person at the facility or via certified mail to the last reported mailing address – prior to prohibiting the delivery, deposit or acceptance of product. The correspondence will give the owner/operator the opportunity to correct the deficiencies at the facility, discuss the matter with the Department (“informal hearing”) and stop the prohibition process at this point. If an owner or operator is not present at the facility at the time the storage tank is identified as ineligible, an employee or representative at the facility at the time of identification (in lieu of the owner or operator) may be notified in writing prior to prohibiting delivery. Inability to provide advance notice to the owner or operator will not stop the prohibition process.

The official formal notice to the tank owner/operator of product delivery prohibition and/or permit suspension, revocation or denial shall be by formal Order of the Department and may be appealed within 30 days of issuance of the Order. The owner will be notified as soon as practical after a determination of ineligibility to receive product has been made.

A product transport or delivery company that is identified to or known by the Department to deliver or deposit product in a tank that has been determined to be ineligible for accepting or receiving product will be notified by DEP as soon as practical, but no later than 5 (five) business days. DEP may use telephone, fax, email or other appropriate means to notify the deliverer.

The owner and/or operator of a tank system that has been determined to be ineligible for accepting or receiving product should also notify the product delivery companies they use that a delivery prohibition is in place.

The ineligible tanks will be posted in the DEP database (eFACTS) tank information as soon as practical after the determination of ineligibility is made. The facility and tank information will be posted on the Storage Tank website on a page designated for the purpose of notifying product deliverers of storage tank systems that are not to receive product. Posting will be as soon as practical, but no later than 3 (three) business days after the determination of ineligibility is made.

**VII. Process for the application of delivery prohibition in rural and remote areas.**

In rural or remote areas where delivery prohibition may jeopardize the availability of or access to motor fuel, the Department will consider other forms of enforcement. In egregious circumstances, the delivery prohibition may only be delayed for a maximum of 180 days while compliance is being actively pursued.