

**Iowa Department of Natural Resources
Environmental Protection Commission**

ITEM

7

INFORMATION

TOPIC

**Notice of Intended Action - IAC 567 - Chapter 135 & 134:
Operator Training Rules and Conflict of Interest**

The Department is presenting the proposed additions to Chapters 135 and 134 to implement the EPA's Operating Training and UST Inspections guidelines, part of the Federal Energy Policy Act of 2005, and as authorized per legislation passed in 2007 (SF 499/HF792) (Iowa Act).

The rules outline three classes of operators that must be trained and designated at all underground storage tank (UST) facilities: Class A, Class B, and Class C. In brief, Class A operators have primary responsibility to operate and maintain the UST system; Class B operators actually implement applicable UST regulatory requirements and standards in the field; and the Class C operator is an employee at the UST site (e.g., cashier) and is the first line of response to events indicating emergency conditions. These rules contain specific job duties, training requirements, and training deadlines applicable to each operator class.

Additions to Chapter 134 are also included in this proposed rule package to include conflict of interest provisions contained in the EPA guidelines applicable to compliance inspectors who are also a designated Class A or B operators.

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ENVIRONMENTAL PROTECTION COMMISSION [567]

Notice of Intended Action

Pursuant to the authority of Iowa Code section 455B.474, the Environmental Protection Commission proposes to amend 567 Iowa Administrative Code Chapter 135, "Technical Standards and Corrective Action Requirements for Owners and Operators of Underground Storage Tanks." The amendments add new rules concerning underground storage tank operator training.

Any interested person may submit written comments on the proposed rule amendment on or before [INSERT DATE]. Written comments should be sent to the Iowa Department of Natural Resources, Attn. Paul Nelson, Wallace State Office Building, Des Moines, IA 50319, Fax 515-281-8895, or e-mail paul.nelson@dnr.iowa.gov

These rules are intended to implement Iowa Code section 455B.474.

The following rule changes are proposed.

ITEM 1. Adopt the following new definitions in **567–135.2(455B)**:

“Class A Operator” means a person responsible for managing resources and personnel to achieve and maintain compliance with regulatory requirements. This includes ensuring appropriate individuals are trained in the proper operation and maintenance of the underground storage tank system; maintaining all required records; trained in responding to emergencies caused by releases or spills; and providing financial responsibility documents to the department or its representatives as required.

“Class B Operator” means a person who implements applicable underground storage tank regulatory requirements and standards. This includes implementing the day-to-day aspects of operating, maintaining, and recordkeeping for underground storage tanks at one or more facilities. This individual typically monitors, maintains and ensures: release detection methods, recordkeeping and reporting requirements are met; release prevention equipment, recordkeeping and reporting requirements are met; all relevant equipment complies with performance standards; and appropriate individuals are trained to properly respond to emergencies caused by releases and spills.

“Class C Operator” means an on-site employee who typically controls or monitors the dispensing or sale of regulated substances and who is the first line of response to events indicating emergency conditions.

ITEM 2. Adopt the following new subrules to **567–135.4**:

135.4(8) Requirement to have trained UST operators.

a. An owner or operator shall designate Class A, Class B, and Class C operators for each underground storage tank system or facility that has underground storage tanks regulated by the department, except for unstaffed facilities which may designate only Class A and B operators.

b. A facility may not operate after August 8, 2011 unless operators have been designated and trained as required in this rule, or unless otherwise agreed upon by the department based on a finding of good cause for failure to meet this requirement and a plan for designation and training at the earliest practicable date.

c. Trained operators must be readily available to respond to suspected and/or confirmed releases, equipment shut-offs or failures, and other unusual operating conditions.

d. The Class A or Class B operator should be immediately available for telephone consultation with the Class C operator when a facility is in operation. Class A or Class B operators should be able to be on site at the storage tank facility within four hours.

e. For staffed facilities, a Class C operator must be on site whenever the UST facility is in operation.

f. For unstaffed facilities, a Class B operator must be geographically located such that the person can be on site within two hours of being contacted by the public, the owner or operator of the facility, or the department. Emergency contact information and emergency procedures must be prominently displayed at the site. An unstaffed facility shall have an emergency shutoff device and a sign posted in a conspicuous place, giving the name and telephone number of the facility owner, listing an emergency response telephone number to contact the Class B operator,, and information on local emergency responders.

g. Designated operators must successfully complete required training under rule 135.4(11) no later than August 8, 2011.

h. A person may be designated for more than one class of operator.

i. When a facility is found to be out of compliance, the department may require the owner and operator to retrain the designated UST system Class A, B, or C operator under a plan approved by the department. The department may require retraining only in the specific area of non-compliance. The retraining must occur within 60 days from departmental notice for Class A or B operators and within 15 days for Class C operators.

135.4(9) UST Operator Responsibilities.

a. *Class A Operator.* Class A operators have the primary responsibility to operate and maintain the underground storage tank system and facility. The Class A operator's responsibilities include managing resources and personnel to achieve and maintain compliance with regulatory requirements in the following ways:

(1) Class A operators assist the owner by ensuring that underground tank systems are properly installed and expeditiously repaired and inspected; financial responsibility is maintained; and records of system installation, modification, inspection and repair are retained and made available to the department and licensed compliance inspectors. The Class A operator shall properly respond to and report emergencies caused by releases or spills from UST systems; ensure the annual tank management fees are paid; and ensure that Class B and C operators are properly trained.

(2) Class A operators shall be familiar with training requirements for each class of operator and may provide required training for Class C operators.

(3) Class A operators shall provide site drawings that indicate equipment locations for Class B and Class C operators

(4) Department-licensed installers, installation inspectors, and compliance inspectors may perform Class A operator duties when employed or contracted by the tank owner to perform these functions so long as they are properly trained and designated as Class A operators pursuant to rule 567-135.4(11) through (13). Class A operators who are also licensed compliance inspectors under 567-Chapter 134, Part C, may perform in-house facility inspections of the UST system, but cannot perform department-mandated compliance inspections pursuant to rule 567-

135.20. Compliance inspections of an UST facility required by 567–135.20 must be completed by a third-party compliance inspector.

(6) A site undergoing a change in ownership shall designate a Class A operator prior to commencing operation. The Class A operator is responsible for ensuring all necessary documentation for change of ownership is completed and submitted to the department. If the USTs were temporarily closed or newly installed USTs are to be brought into operation, the Class A operator must ensure the department’s checklist for returning an UST to service or initiating service is followed, and the necessary documentation is submitted to the department.

b. Class B operator. A Class B operator implements applicable underground storage tank regulatory requirements and standards in the field or at the tank facility. A Class B operator oversees and implements the day-to-day aspects of operations, maintenance, and recordkeeping for the underground storage tanks at facilities within four hours of travel time from the Class B operator’s principle place of business. . A Class B operator’s responsibilities include but are not limited to:

(1) Performing mandated system tests at required intervals and making sure spill prevention, overfill control equipment, and corrosion protection equipment are properly functioning;

(2) Assisting the owner by ensuring that release detection equipment is operational; release detection monitoring and tests are performed at the proper intervals; and release detection records are retained and made available to the department and compliance inspectors;

(4) Making sure recordkeeping and reporting requirements are met, and that relevant equipment manufacturer’s or third-party performance standards are available and followed.

(5) Properly responding to, investigating and reporting emergencies caused by releases or spills from USTs;

(6) Performing UST release detection in accordance with to 567—135.5;

(7) Monitoring the status of UST release detection;

(8) Meeting spill prevention, overfill prevention, and corrosion protection requirements;

(9) Reporting suspected and confirmed releases, and taking release prevention and response actions according to the requirements of 567—135.6;

(10) Training and documenting Class C operators, and making sure at least one Class C operator is on site during operating hours. Class B operators shall be familiar with Class C operator responsibilities, and may provide required training for Class C operators.

(11) Department-licensed installers, installation inspectors, and compliance inspectors may perform Class B operator duties when employed or contracted by the tank owner to perform these functions so long as they are properly trained and designated as Class B operators under rule 567–135.4(11) through (13). Class B operators who are also licensed compliance inspectors under 567–chapter 134, Part C, may perform in-house facility inspections of the UST system, but cannot perform department-mandated compliance inspections pursuant to rule 567–135.20. Compliance inspections of an UST facility pursuant to 567–135.20 must be completed by a third-party compliance inspector.

(12) A site undergoing a change in ownership shall designate a Class B operator prior to commencing operation. The Class B operator must conduct an inspection using the department’s inspection checklist and submit the completed checklist along with change of ownership form. If an UST system had been temporarily closed, the Class B operator shall ensure the department’s checklist for returning an UST to service is followed and the necessary documentation is submitted to the department prior to operation of the UST system.

c. Class C operator. A Class C operator is an on-site employee who typically controls or monitors the dispensing or sale of regulated substances, and is the first to respond to events indicating emergency conditions. A Class C operator must be present at the facility at all times during normal operating hours. A Class C operator monitors product transfer operations to ensure that spills and overfills do not occur. The Class C operator must know how to properly respond to spills, overfills and alarms when they do occur. In the event of a spill, overfill or alarm, a Class C operator shall notify the Class A and Class B operators, as well as the department and appropriate local emergency authorities as required by rule.

(1) Within six months after the effective date of these rules, written basic operating instructions, emergency contact names and phone numbers, and basic procedures specific to the facility shall be provided to all Class C operators and readily available on site.

(2) There may be more than one Class C operator at a storage tank facility, but not all employees of a facility need be Class C operators.

135.4(10) UST Operator Training Course Requirements. Individuals must attend a department approved training course covering material designated for each operator class. Individuals must attend every session of the training, take the examination, and attend examination review.

a. Class A operators. To be certified as a Class A Operator, the applicant must successfully complete a department-approved training course that covers underground storage tank system requirements as outlined in 567 I.A.C. chapters 134, 135, and 136. The course must also provide a general overview of the department's UST program, purpose, groundwater protection goals, public safety and administrative requirements. The training must include, but is not limited to, the following:

(1) A general discussion of the content of PEI/RP900-08, Recommended Practices for the Inspection and Maintenance of UST Systems and PEI/RP500, Recommended Practices for Inspection and Maintenance of Motor Fuel Dispensing Equipment.

(2) Spill and overfill prevention, to include the American Petroleum Institute (API) publication 1621, "Recommended Practice for Bulk Liquid Stock Control at Retail Outlets," and National Fire Protection Association Standard 30, "Flammable and Combustible Liquids Code."

(3) Ensuring product delivery to the correct tank by using color-symbol codes in the API standard RP 1637, "Using the API Color-Symbol System to Mark Equipment and Vehicles for Product Identification at Service Stations and Distribution Terminals."

(4) Proper fuel ordering and delivery. Include procedures in API RP1007, "Loading and Unloading of MC/DOT 406 Cargo Tank Motor Vehicles."

(5) Release detection methods and related reporting requirements.

(6) Corrosion protection and inspection requirements, including the requirement to have a department-licensed cathodic protection tester.

(7) Discussion on the benefits of monthly or frequent inspections; and content and use of inspection checklists. Training materials for operators shall include the department's "Iowa UST Operator Inspection Checklist" or a checklist template similar to the department's document.

(8) Requirement and content of third-party compliance inspections.

(9) How to properly respond to an emergency, including hazardous conditions.

(10) Product and equipment compatibility, including the department's ethanol compatibility guidance and certification.

(11) Financial responsibility, including detailed explanation of liability, notice and claim procedures, and the six-month window to check for and report a release prior to insurance termination to maintain coverage for corrective action.

(12) Notification of installation and storage tank registration requirements.

(13) Requirement to use department licensed companies and individuals for UST installation, testing, lining, and removal.

(14) Temporary and permanent closure procedures and requirements.

(15) NESHAP vapor recovery requirements.

(16) Conditions under which the department could stop fuel delivery and take enforcement action.

(17) Ensure that annual tank management fees are paid.

(18) Ensure that suspected and confirmed releases are investigated and reported according to 567—135.6(1)

b. Class B operators. To be certified as a Class B operator, the individual must successfully complete a department approved training course that provides in-depth understanding of UST system regulations applicable to this class. Training must also provide a general overview of the department's UST program, purpose, groundwater protection goals, public safety and administrative requirements. Training shall cover the operation and maintenance requirements of this chapter and federal underground storage tank requirements in 40 C.F.R., Part 280, including, but not limited to, the following:

(1) A general discussion of the content of PEI/RP900-08, Recommended Practices for the Inspection and Maintenance of UST Systems and PEI/RP500, Recommended Practices for Inspection and Maintenance of Motor Fuel Dispensing Equipment

(2) Spill and overfill prevention.

(3) Ensuring product delivery to the correct tank by using color-symbol codes in the API standard RP 1637.

(4) Proper fuel ordering and delivery, including procedures from API RP1007.

(5) Release detection and related reporting requirements.

(6) Corrosion protection and related testing.

(7) Discussion on the benefits of monthly or frequent inspections; and content and use of inspection checklists. Training materials for operators shall include the department's "Iowa UST Operator Inspection Checklist" or a checklist template similar to the department's document. .

(8) Requirement and content of third-party compliance inspections.

(9) Emergency response, reporting and investigating releases.

(10) Product and equipment compatibility, including the department's ethanol compatibility guidance and certification.

(11) Financial responsibility, including detailed explanation of liability, notice and claim procedures, and the six-month window to check for and report a release prior to insurance termination to maintain coverage for corrective action.

(12) Notification of installation and storage tank registration requirements.

(13) Requirement to use department licensed companies and individuals for UST installation, testing, lining, and removal.

(14) Reporting and recordkeeping requirements.

(15) Overview of Class C operator training requirements.

(16) NESHAP vapor recovery requirements.

(17) Conditions under which the department could stop fuel delivery and take enforcement action.

c. Class C operators. To be certified as a Class C operator, an individual must complete a department approved training course that covers, at a minimum, a general overview of the department's UST program and purpose; groundwater protection goals; public safety and administrative requirements; and action to be taken in response to an emergency condition due to a spill or release from an UST system. Training must include written procedures for the Class C operator, including notification instructions necessary in the event of emergency conditions. The written instructions and procedures must be readily available on site.

135.4(11) Examination and review requirement. Class A and B operators must complete the department approved training course and take an exam to verify their understanding and knowledge. The examination may include both written and practical (hands-on) testing activities. The trainer must follow-up the exam with a review of missed test questions with the class or individual to ensure understanding of problem areas. Upon successful completion of the training course, the applicant will receive a certificate verifying his or her status as a Class A, Class B, or Class C operator.

a. Reciprocity. The department may waive the training course for operators upon showing successful completion of a training course and examination approved by another state or regulatory agency that the department determines is substantially equivalent to the UST requirements contained in this Chapter.

b. Transferability to another UST site. Class A and B operators may transfer to other UST facilities in Iowa provided they are properly designated by the facility owner as a Class A or B operator according to 567—134.4(13). Class A or B operators transferring from other states shall seek prior approval of training qualifications, unless the department has pre-approved the out-of-state program as substantially equivalent to the requirements of this Chapter. .

135.4(12) Timing of UST Operator Training.

a. An owner shall ensure that Class A, Class B, and Class C operators are trained as soon as practicable after the effective date of these rules contingent upon availability of approved training providers, but not later than August 8, 2011, except as provided in 567--135.4(8)'b'.

b. When a Class A or Class B operator is replaced, a new operator must be trained prior to assuming duties for that class of operator.

c. Class C operators must be trained before assuming duties of a Class C operator. Within six months after the effective date of these rules, written basic operating instructions, emergency contact names and phone numbers, and basic procedures specific to the facility shall be provided to all Class C operators and readily available on site. Class C operator may be briefed on these procedures concurrent with annual safety training required under Occupational Safety and Health Administration, 29 CFR, Part 1910.

135.4(13) Documentation of operator training.

a. The owner of an underground storage tank facility shall maintain a list of designated operators. The list shall be made available to the department in accordance with 567--135.4(5). The list shall represent the current Class A, Class B and Class C operators for the underground storage tank facility and must include:

(1) The name of each operator and the operator's class(es); contact information for the Class A and Class B operators; the date each operator successfully completed initial training and refresher training, if any; the name of the company providing the training; and the name of the trainer.

(2) For all classes of operators, the site(s) they are responsible for if more than one.

b. A copy of the certificates of training for Class A and Class B operators shall be on file and readily available for inspection in accordance with 135.4(5).

c. A copy of the certificates of training for Class B and Class C operators shall be conspicuously posted at each facility under their responsibility.

d. Class A and Class B operator contact information, including names and telephone numbers, and any emergency information, shall be conspicuously posted at unstaffed facilities near the dispensers and the station building.

ITEM 3. Add the following **new** paragraph **135.5(1)“e”**.

e. *UST Sites with No On-site Personnel.*

(1) Piping in-line leak detectors must be used that shut off the submersible pump and stop product flow to the dispenser. At existing sites without an electronic line leak detector, the electronic line leak detector must be installed by June 1, 2010.

(2) At sites with containment basins and sump sensors for leak detection, the sump sensors must shut off product flow when a leak is detected.

ITEM 4. Rescind **567–135.20(1)** and replace with the following **new** rule:

135.20(1) The owner or operator must have the UST system inspected and an inspection report submitted to the department by an UST compliance inspector certified by the department under 567—Chapter 134. An initial compliance site inspection shall be conducted no later than December 31, 2007. All subsequent compliance site inspections conducted after the compliance inspection for the 2008-2009 biennial period shall be conducted within 24 months of the prior site inspection. Compliance site inspections must be separated by at least six months.

ITEM 5. Amend rule **567–135.20** by adding the following **new** sub-rule:

135.20(4). Conflict of Interest. A compliance inspection must be conducted by a certified compliance inspector who is not the owner or operator of the UST system being inspected, an employee of the owner or operator of the UST system being inspected or a person having daily on-site responsibility for the operation and maintenance of the UST system.

ITEM 6. Amend rule **567–134.14** by adding the following **new** sub-rule:

134.14(6). Conflict of Interest. A compliance inspector shall not conduct a compliance inspection if the compliance inspector is the owner or operator of the UST system, an employee of the owner or operator of the UST system or is a person having daily on-site responsibility for the operation and maintenance of the UST system.