

PUBLIC PARTICIPATION RESPONSIVENESS SUMMARY
FOR
RULEMAKING ON 567 IAC 134, 135, & 136
Underground Storage Tank Regulations

IOWA DEPARTMENT OF NATURAL RESOURCES
ENVIRONMENTAL SERVICES DIVISION
LAND QUALITY BUREAU

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INTRODUCTION

This is a summary of the Iowa Department of Natural Resources' (DNR) response to comments received in response to the proposed rulemaking for 567 Iowa Administrative Code - chapters 134, 135, and 136. The primary purpose of the rulemaking is to conform regulations to recently enacted federal rules promulgated by the U.S. Environmental Protection Agency (EPA). The Environmental Protection Commission (EPC) must adopt rules consistent with EPA's rules in order for the DNR to maintain its delegated state program. Notice of the proposed rulemaking was released for public review and comments following approval of the Notice of Intended Action (NOIA) by the EPC on November 17, 2020. The EPC meeting minutes that include the NOIA are available online (<https://www.iowadnr.gov/API/Evotiva-UserFiles/FileActionsServices/DownloadFile?ItemId=68529&ModuleId=16274&TabId=593>).

The proposed rulemaking was published in the Iowa Administrative Bulletin (NOIA ARC 5044C) on December 16, 2020, (w www.legis.iowa.gov/docs/aco/bulletin/12-16-2020.pdf). Public comments were accepted from December 16, 2020, through January 8, 2021, with three virtual public hearings held on January 6th, 7th and 8th from 1pm to 2 pm each day. The Iowa Administrative Rules Review Committee (ARRC) meeting was also held on January 8, 2021. Comments were presented to the ARRC by Mr. John Maynes of FUEL Iowa and Mr. Patrick Rounds of PMMIC Insurance. Following the comments, committee members urged the DNR to work with stakeholders to reduce any additional regulatory burdens on rural Iowa. The minutes of the ARRC meeting are available online (<file:///iowa.gov.state.ia.us/data/dnrusers/jgastin/Downloads/IAC%20-%20ARC%20mintures%20for%20Jan.%208.pdf>)

COMMENTS

Commenter 1: Joe Zietlow, Kwik Trip / Kwik Star **Date Received, January 8, 2021**

Commenter 2: Todd Ferguson, Tanknology **Date Received, January 8, 2021**

Comments from Joe Zietlow of Kwik Trip, Inc. recommended reconsideration of the licensing requirements for licensed testers, noting the years of experience required for an individual licensed as a tester of underground storage tank (UST) systems as outlined in IAC 567 -134.25 (455B) is difficult to attain.

Todd Ferguson of Tanknology presented similar comments. In addition, Mr. Ferguson noted a concern with a rule modification regarding the responsibilities of testers (rule 134.25). For this item, Mr. Ferguson recommended a wording change, reasoning that during normal course of testing or troubleshooting, testers often need to replace certain pieces of equipment. He further recommended a statement be added to the proposed rule allowing for certain modifications; namely, "except for the removal, cleaning, and replacement of ancillary parts of the UST system, which are directly related to the procedures of testing and troubleshooting."

Commenter 3: John Maynes, FUEL Iowa **Date Received, January 8, 2021**

Mr. John Maynes of FUEL Iowa presented verbal comments during the public hearing on Friday, January 8, 2021 and then presented written comments describing the same issues. Mr. Maynes noted his association's appreciation for the DNR's willingness to consider comments during the stakeholder meetings that led up to the rule package, but asked for consideration on a few rules.

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First, concerning subrules 135.4(8) and 135.4(9) Operator Training. He noted Iowa has been following EPA regulations requiring operator training for over 10 years, yet the rule proposes changing the examination required to complete operator training requirements to a department examination and requiring the operator to pass a department examination by achieving a passing score of 85 percent or greater. FUEL Iowa requests that these items be removed from the rule.

Mr. Maynes commented that in general, Iowa Code section 455B.474A requires rules adopted by the EPC to be consistent with and shall not exceed the federal regulations relating to the regulation of underground storage tanks. Mandating operators to take a department examination and achieve a baseline score of 85 percent to pass are not requirements within the federal regulation so should be removed. Mr. Maynes noted FUEL Iowa is amenable to working with the DNR to review current operator training requirements noting that with the changes presented in the rule package, changes to the content and examinations being offered by the third-party vendors will be needed. Mr. Maynes also asked for a change to the licensing of testers but in the context of the limitation presented in paragraph 135.25(2)“c”. Mr. Maynes asked the date provision be removed to remain consistent the federal regulation, which places no restrictions on persons conducting the prescribed testing.

Commenter 4: Patrick Rounds, PMMIC

Date Received, January 8, 2021

In the comments presented by Mr. Patrick Rounds, President and COO of PMMIC Insurance, Mr. Rounds notes that PMMIC is one of the stakeholders who has been working with the DNR since 2015 to develop these rules. The required changes to implement the new federal regulations are significant and PMMIC is supportive of the majority of the changes; however, it was noted the proposed rules are still a work in progress and outlined a few changes to consider.

Mr. Rounds stated concerns have been discussed with the DNR and asked that the concerns be addressed prior to these rules becoming final. Mr. Rounds noted one of their key concerns include ensuring that the rule language mirrors federal regulations. Another was ensuring that new requirements are not more stringent than the federal regulations; cleaning up language that may create ambiguities or confusion going forward; properly implementing training, licensing and certification processes; ensuring small businesses are not burdened with greater costs than necessary, and ensuring that forms and policies are also not more stringent than federal regulations. PMMIC’s comments were presented in multiple sections of the NOIA.

PMMIC also submitted comments on licensing subrules 134.24(3) and (4), 134.25(2) and (3), 134.27 (2) and (3), as they pertain to the responsibilities of and documentation of the work performed by certified installers, testers, and installation inspectors. PMMIC stated their belief that the certification rules overlap with the technical rules in Chapter 135 so the certification rules should be deleted; but if those rules are deemed necessary, they should be inserted into Chapter 135. As these comments would result in a substantial revision to both Chapters 134 and 135 if implemented, the DNR requested that this be a topic for future rulemaking, which PMMIC agreed to. Further discussions are needed specifically in light of the fact that Chapter 134 is not tied to Federal regulations and is not subject to review in the State’s application for program approval. This approach was agreed upon to allow the current rule package to move forward at this time.

In addition to the rule changes, Mr. Rounds requested changes to the DNR’s walkthrough inspection form so that the form does not contain requirements that are more stringent than the federal regulation. He also requested that the language regarding who is qualified to complete the form be removed. Finally, Mr. Rounds asked that the DNR’s website accurately reflect the effective date of the rule, specifically regarding walkthrough inspections

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Other comments:

In addition to the comments presented by the public, a few additional changes have been incorporated into the rule package to remove unused language, correct citations and terminology, and to add rule changes as recommended by the EPA.

DNR RESPONSE TO COMMENTS:

Thank you for the comments.

DNR RESPONSE; CHANGES TO FINAL RULE

Following the January 8, 2021 deadline for presenting written comments, the DNR met with the commenters on January 21, 2021, and with the commenters and Mr. Grant Palmer, representing the Iowa Petroleum Equipment Contractors Association (IPECA), on January 25, 2021, to review the comments and consider options for the concerns presented. Following discussion, the DNR has agreed to the following revisions to the rules to address stakeholder concerns and the comments of the ARRC committee members. Several rule modifications were necessitated by the change in nomenclature regarding “certified” rather than “licensed” compliance inspectors, as provided in Chapter 134, Part B Certification of Compliance Inspectors.

ITEM 13. Amend rule 567—134.7(455B) as follows:

567—134.7(455B) Certification requirements for UST compliance inspectors.

Item 13: 134.7(2) Inspector certification will be issued by the department only to a person who:

a. no change from NOIA

~~2.~~ *b.* Attends the required training approved by the department as provided in rule 567—134.10(455B).

(1) Temporary exception to required training. An applicant may be issued a license certification without the required training if all other requirements of Part B of this chapter are satisfied and the required training is not offered within 60 days of the date of application. The applicant must attend required training within one year or, if training is not offered within one year, when required training is next offered. If an applicant receives a license certification under this temporary exception, the individual must attend required training, if offered, before renewal of the license certification.

(2) If an applicant receives a license certification under a temporary training exception pursuant to paragraph 134.7(2) “a,” all compliance inspection activities must be conducted under the supervision of a trained Iowa-certified compliance inspector. Supervision does not require the trained Iowa-certified compliance inspector to be on site for compliance inspections conducted by the inspector who has not completed the required training. The trained Iowa-certified compliance inspector must co-sign compliance inspections conducted by the inspector who has not completed the required training.

~~3.~~ *c.* Achieves a passing grade of ~~85~~75 percent on a certification examination administered or approved by the department as provided in rule 567—134.10(455B).

~~4.~~ *d.* Submits an accurate and complete application.

~~5.~~ *e.* Is not found to be in violation of this chapter and has not had a certification revoked by the department pursuant to rule 567—134.16(455B) or by the underground storage tank fund board pursuant to ~~591—Chapter 15~~.

DNR response: Change “license” to “certification”; reduce passing grade required to 75 percent.

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ITEM 16. Amend rule 567—134.10(455B) as follows:

567—134.10(455B) Training and certification examination

134.10(1) Prior to taking the compliance inspector examination, the applicant must:

~~a. Complete the U.S. EPA UST Web-based training modules: “Introduction to the Underground Storage Tanks (UST) Program” and “Basic UST Inspector Training” with a minimum passing grade of 85 percent.~~

~~b. Attend~~ attend the department’s inspector training course or designated approved course.

134.10(2) to 134.10(4) No change.

134.10(5) To receive a passing grade on the examination, the applicant for certification must achieve a minimum score of ~~85~~75 percent. An applicant who fails an initial examination may take a second examination.

134.10(6) No change.

DNR response: Reduce passing grade required to 75 percent.

ITEM 19. Amend rule 567—134.13(455B) as follows:

567—134.13(455B) Licensed Certified company. A company employing certified UST compliance inspectors shall be registered with the department as a ~~licensed~~ certified UST compliance company. A company shall lose its ~~license~~ certification if it fails to employ at least one certified inspector or if it employs uncertified individuals to do compliance inspections required by the department. The ~~annual~~ initial and biennial renewal ~~license~~ certification fee is ~~\$50~~ \$200.

DNR response: Change nomenclature wording “licensed” to “certified” and “license” to “certification”

NEW ITEM 21. Amend subrule 134.14(1) as follows:

134.14(1) Inspection process. The inspector shall record the inspection on a form provided by the department and conduct the inspection to address all items contained on the inspection form. The department may approve an alternative inspection form if requested by the inspector. The completed inspection form must be maintained by the inspector or ~~licensed~~ certified company for five years. Upon completion of the site inspection, the inspector shall send an inspection report to the owner and operator within ten business days, except for the notice of a potential suspected or confirmed release as provided in paragraph “b.” At a minimum, the report shall satisfy the following:

a. to d. No change

DNR response: Change nomenclature wording “licensed” to “certified”

NEW ITEM 24. Amend rule 567—134.15(455B) as follows:

567—134.15 (455B) Disciplinary actions.

134.15(1) The department may impose disciplinary actions which may include, but are not limited to, notices of deficiency, probationary notices, suspension of a certification ~~or license~~ and, pursuant to 567—134.16(455B), revocation of a certification ~~or license~~.

134.15(2) No change.

134.15(3) The department may suspend the certification of a certified inspector or ~~licensed~~ certified company for good cause, and based on a single act or omission or repeated acts or omissions. The suspension may require the certified inspector to take remedial measures intended to correct or

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prevent future acts and omissions. Good cause includes, but is not limited to:

a. to f. No change.

134.15(4) The suspension of a company ~~license~~ certification or inspector certification shall prevent the company or person from engaging in activities for which certification ~~or licensure~~ is required.

134.15(5) No change.

134.15(6) A certified inspector or ~~licensed~~ certified company shall immediately surrender the certificate ~~or license~~, as applicable, to the department as of the effective date of a suspension order. The department may reinstate the certification ~~or license~~ if it is determined the person has satisfied the terms of the suspension order and the certification has not expired.

DNR response: Change nomenclature wording “license” to “certification” and “licensed” to “certified”

NEW ITEM 25. Amend rule 567—134.16(455B) as follows:

567—134.16 (455B) Revocation of inspector certification or company ~~license~~ certification.

134.16(1) The department may revoke the inspector certification or company ~~license~~ certification for one or more of the following:

a. to c. No change.

d. Acts or omissions warranting suspension after having certification ~~or license~~ previously suspended.

e. The revocation of a certification as an installer or installation inspector under ~~591—Chapter 15 rule~~ 567—134.24(455B) or 567—134.27(455B).

134.16(2) A certified inspector or ~~licensed~~ certified company shall immediately surrender certification ~~or~~ licensing documents after the effective date of a revocation decision.

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

DNR response: Change nomenclature wording “license” to “certification” and “licensed” to “certified”

ITEM 26. Amend rule **567—134.17(455B)**, definitions of “Deductible,” “In the aggregate,” “Modification,” “OSHA,” “Removal,” “Self-insured retention,” “Underground storage tank professional” and “Underground storage tank system,” as follows:

“Deductible” means the portion of a claim paid by insureds on the policy issued by the board.

“In the aggregate” means for all claims or suits in a single year seeking damages under an insurance policy issued by the board.

“Modification” means to change a UST system currently in use by the installation of new UST system components. “Modification” includes, but is not limited to, the addition of corrosion protection to a previously lined tank, installation of new underground piping or replacement of existing underground piping, changing the primary release detection method to one of the methods listed in OAR 340-150-0450 through 340-150-0470, or adding secondary containment. “Modification” does not include those activities defined in this rule as “repair” or “replacement.”

“OSHA” means the Occupational Safety and Health Act Administration.

“Removal” means the process of removing and disposing of an underground storage tank system no longer in service or the process of abandoning an underground storage tank system in place, in accordance with rule ~~567—135.9(455B) 567—135.15(455B)~~.

“Self-insured retention” means the portion of a claim paid by insureds who self-insure a portion of their risk as part of a policy issued by the board. Expenses included as a part of the self-insured retention are the cost of claims settlements or suits, the cost of adjusting, legal fees, court costs and any other investigative cost associated with the claim.

DNR response: Delete phrase “issued by the board”; correct wording errors

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ITEM 28. Amend rule **567—134.19(455B)**

134.19(6) Examinations and course of instruction. Prior to the issuance of a license as an installer, installation inspector, remover, liner, tester, or cathodic protection tester, the applicant shall successfully complete a department or department-approved course of instruction and pass a qualification examination approved by the department.

a. Examination requirements for all license holders.

(1) A passing grade of not less than ~~85~~75 percent is required on the Iowa examination.

(2) to (4) No change.

b. to d. No change.

134.19(7) *Continuing education.* Each person licensed under Part C of this chapter shall complete a department-approved refresher course every two years, except for licensed cathodic protection testers. Cathodic protection testers shall maintain NACE or STI certification or another certification approved by the department. Beginning with the first application for license renewal, each UST professional shall provide evidence to the department, prior to submission of the application for renewal, that at least ~~12~~ eight ~~credit~~ hours of department-approved continuing education have been satisfactorily completed since the last license was issued or renewed. The department may limit the number of ~~credit~~ hours granted for similar courses during a renewal period. The requirement for continuing education may be met only by those continuing education offerings which have been approved by the department.

DNR response: Reduce passing grade required to 75 percent. Delete the word “credit” to be consistent with other continuing education provisions in rule.

ITEM 30. Amend subrule 134.24(3) as follows:

134.24(3) *Responsibilities of installers.*

a. no change from NOIA

b. no change from NOIA

c. Testing of UST equipment. Spill prevention equipment, containment sumps and UDC at new installations must be tested to ensure the equipment is liquid-tight before the UST system is placed into service. Acceptable test methods include vacuum, pressure or liquid testing used in accordance with requirements developed by the manufacturer, a code of practice such as PEI RP1200 or methods determined by the department to be no less protective of human health and the environment than the requirements listed in this subrule. Licensed installers may also perform periodic testing of spill and overfill devices, containment sumps and UDC as required by 567-Chapter 135

DNR response: Delete sentence as superfluous.

ITEM 32. Amend rule 567—134.25(455B), introductory paragraph, as follows:

567—134.25(455B) **Testers.** A tester of underground storage tank systems shall apply for licensing as a tester and note on the license application the systems and method(s) of testing the tester will use, except that a person engaging in testing described in paragraph 134.25(2) “b” need not be licensed if that person is under the supervision of an individual licensed under Chapter 134, Part B or Part C, when conducting those tests. In addition to the licensing requirements listed under rule 567—134.19(455B), a tester shall provide documentation of at least two years of relevant experience, documentation of manufacturer certification for past testing, and proof of current certification for future work. the following:

a. Current manufacturer certification(s) for equipment being used for testing; and

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b. Experience as documented by at least one of the following:

1. One years of relevant experience.
2. Has completed a minimum of 80 on-site tests with an Iowa-licensed tester.
3. Other relevant experience as approved by the department.

DNR response: Change the qualifications needed for licensing of a tester; provides for additional avenues to become a licensed UST Tester.

ITEM 33. Amend subrule 134.25(2) as follows:

~~**134.25(2) Documentation of work performed Responsibilities of testers. A copy of the test results shall be attached to DNR Form 148 when testing is done in connection with a new installation or the upgrading of an existing underground storage tank system.** The licensed tester is responsible for testing tanks, lines, leak detection systems, or monitoring systems as required by 567—Chapter 135 and this chapter. An owner, operator or an employee of an owner or operator performing leak detection or cathodic protection monitoring, as required by 567—Chapter 135, is not a tester. A tester license does not qualify an individual to perform replacements or repairs to a UST system.~~

a. no change from NOIA

b. A licensed tester may also perform periodic inspections of overfill devices and testing of spill prevention equipment, containment sumps and UDC as required by 567—Chapter 135. Spill prevention equipment, containment sumps and UDC at new installations must be tested to ensure the equipment is liquid-tight before the UST system is placed into service. Acceptable methods include vacuum, pressure or liquid testing used in accordance with requirements developed by the manufacturer, a code of practice such as PEI RP1200 or methods determined by the department to be no less protective of human health and the environment than the requirements listed in this subrule.

c. Periodic testing of spill prevention equipment, containment sumps and UDC as required by Subrule 135.4(12) conducted prior to October 13, 2021, may be conducted by a service technician. An individual licensed under Chapter 134, Part B or Part C, is not required to conduct periodic inspections of overfill devices and testing of spill prevention equipment, containment sumps, and UDC as required by 567—subrule 135.4(12) prior to October 13, 2021.

DNR response: Delete sentence on what a tester may do as superfluous. For clarity, add “prevention equipment” after the word “spill”. Include inspection of overfill devices as part of the periodic maintenance checks, consistent with 135.4(12). Delete reference to October 13, 2021, limitation.

NEW ITEM 58. Amend paragraph **135.3(8)“e”(1)** as follows:

(1) Prior to imposing a delivery prohibition response action under paragraph 135.3(8)“b” above, the department will provide notice to the owner or operator or, if notice to the owner or operator cannot be confirmed, to a person in charge at the UST facility of the basis for the finding and the intent to initiate a delivery prohibition response action. Notice may be by verbal contact, by facsimile, or by regular or certified mail to the UST facility address or the owner’s or operator’s last-known address. The owner and operator will be given a minimum of one business day to provide documentation that the finding is inaccurate or that reinstatement criteria in subparagraphs 135.3(8)“b”(1) through (5) have been satisfied. Additional days and the opportunity for a telephone or in-person conference may be provided the owner and operator to contest the factual basis for a finding under subparagraphs 135.3(8)“b”(6) through (1014). Additional procedural due process may be afforded the owner and operator on a case-by-case basis sufficient to satisfy Constitutional due process standards.

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DNR response: Update rule citation to be consistent with new numbering sequence.

ITEM 62. Amend subrule 135.4(2) as follows:

135.4(2) Operation and maintenance of corrosion protection. All owners and operators of ~~steel metal~~ UST systems with corrosion protection must comply with the following requirements to ensure that releases due to corrosion are prevented ~~for as long as~~ until the UST system is used to store regulated substances, permanently closed or undergoes a change in service in accordance with 135.15(2).

DNR response: Add phrase per request of EPA, requiring corrosion protection to remain active until the UST system is permanently closed.

ITEM 69. Amend paragraph **135.4(7)“a”**, as follows:

a. Class A operator.

(1) Class A operators have the primary responsibility to operate, ~~and maintain, and have knowledge~~ of the regulatory requirements for 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 under this chapter in the following ways:

1. Class A operators assist the owner by ensuring that underground storage 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~~ certified compliance inspectors. The Class A operator shall properly respond to and report emergencies caused by releases or spills from UST systems, ensure that the annual tank management fees are paid, and ensure that Class B and Class C operators are properly trained.

2. No change.

3. No change.

(2) Department-licensed installers, installation inspectors, and department-certified 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 subrules 135.4(9) through 135.4(11). Class A operators who are also ~~licensed~~ certified compliance inspectors under 567—Chapter 134, Part ~~CB~~, may perform in-house facility inspections of the UST system, but shall not perform department-mandated compliance inspections pursuant to rule 567—135.20(455B). Compliance inspections of a UST facility required by rule 567—135.20(455B) must be completed by a third-party compliance inspector ~~licensed~~ certified under 567—Chapter 134, Part B.

(3) No change.

(4) No change.

DNR response: Add new items to change term “licensed compliance inspector” to “certified compliance inspector” to ensure no confusion in the regulation of compliance inspectors.

ITEM 70. Amend paragraph **135.4(7)“b”**, as follows:

(1) A Class B operator ~~implements~~ is knowledgeable of the applicable underground storage tank regulatory requirements and standards and implements them in the field or at the tank facility. A Class B operator oversees and implements the day-to-day aspects of operation, maintenance, and record keeping for the underground storage tanks at facilities within four hours of travel time from the Class B operator’s principal place of business. A Class B operator’s responsibilities include, but are not limited

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to:

1. to 8. No change.

9. Training and documenting Class C operators to make 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 ~~additional required~~ training for Class C operators.

(2) Department-licensed installers, installation inspectors, and department-certified 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 subrules 135.4(9) through 135.4(11). Class B operators who are also ~~licensed~~ certified compliance inspectors under 567—Chapter 134, Part ~~CB~~, may perform in-house facility inspections of the UST system, but cannot perform department-mandated compliance inspections pursuant to rule 567—135.20(455B). Compliance inspections of a UST facility pursuant to rule 567—135.20(455B) must be completed by a third-party compliance inspector ~~licensed~~ certified under 567—Chapter 134, Part B.

(3) No change.

DNR response: Delete the added word “additional” and delete “required”, as it is redundant. Add new items to change term “licensed compliance inspector” to “certified compliance inspector” to ensure no confusion in the regulation of compliance inspectors.

NOIA ITEM 69. Amend subrule 135.4(8), introductory paragraph, as follows:

135.4(8) *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, ~~and take the department’s examination, and attend examination review.~~ (REVERT TO ORIGINAL LANGUAGE)

DNR response: Delete the added requirement for a department examination; revert to original language in existing rule.

NOIA ITEM 73. Amend subrule 135.4(9) as follows:

135.4(9) *Examination and review requirement.* Class A and Class B operators must complete the department-approved training course and take an ~~and achieve a passing grade of 85 percent on the~~ examination to verify their understanding and knowledge. The examination may include both written and practical (hands-on) testing activities. The trainer must follow up the examination 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 the applicant’s status as a Class A, Class B, or Class C operator. (REVERT TO ORIGINAL LANGUAGE)

DNR response: Delete requirement for passing an exam with a grade of 85 percent; revert to original language in existing rule.

ITEM 78. Adopt the following **new** subrules 135.4(12) and 135.4(13):

135.4(12) *Periodic testing of spill prevention equipment and containment sumps used for interstitial monitoring of piping and periodic inspection of overfill prevention equipment.*

a. no change from NOIA

(1) no change from NOIA

1. The equipment is double walled and the integrity of both walls is periodically monitored at a

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frequency of not less than ~~every 30 days~~ the frequency of the walkthrough inspections described in 135.4(13). If owners and operators discontinue periodic monitoring of this equipment, they must begin meeting paragraph 135.4(12)“a”(1)“2” and conduct a test within 30 days of discontinuing periodic monitoring of this equipment; or

2. no change from NOIA

(2) Overfill prevention equipment must be inspected at least once every three years. At a minimum, the inspection must ensure that overfill prevention equipment is set to activate at the correct level specified in paragraph 135.3(1)“c” and will activate when regulated substance reaches that level. Inspections must be conducted in accordance with one of the following criteria:

- Requirements developed by the manufacturer (Note: Owners and operators may use this option only if the manufacturer has developed requirements); or

- A code of practice developed by a nationally recognized association or independent testing laboratory; or

- Requirements determined by the department to be no less protective of human health and the environment than the requirements listed in this ~~section~~ subrule.

b. no change from NOIA

c. no change from NOIA

135.4(13) no change from NOIA

DNR response: Modification to frequency of walkthrough inspections to conform to federal rule. Nomenclature corrections.

ITEM 96. Adopt the following new paragraph **135.5(4)“h”**:

h. no change from NOIA

(1) to (5) no change from NOIA

(6) The statistical inventory reconciliation method must be certified by a third party and meet US EPA testing procedures in *Standard Test Procedures for Evaluating Release Detection Methods: Statistical Inventory Reconciliation* (EPA 510-B-19-004) May 2019 or as revised by EPA.

DNR response: Update reference to current EPA standard method and add phrase to allow for updates to methodology.

ITEM 97. Amend paragraphs **135.5(5)“a”** to **“c”** as follows:

a. no change from NOIA

b. *Line tightness testing*. A periodic test of piping may be conducted only if it can detect a 0.1 gallon-per-hour leak rate at one and one-half times the operating pressure. The line leak detection method must be certified by a third party and meet US EPA testing procedures in *Standard Test Procedures for Evaluating Release Detection Methods: Pipeline Release Detection* (EPA 510-B-19-005) May 2019 or as revised by EPA.

c. no change from NOIA

DNR response: Update reference to current EPA standard method and add phrase to allow for updates to methodology.

ITEM 143. Amend paragraph **135.12(10)“b,”** introductory paragraph, as follows:

b. No further action certificate. When the no action required site classification has been

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determined based on a recommendation of the certified groundwater professional as provided in subrules 135.9(11), 135.10(11) and ~~135.12(12)~~ 135.12(6) (see also ~~2009 Iowa Code Supplement section 455B.474(1)“h”(1) and (3) as amended by 2010 Iowa Acts, House File 2531, section 174~~ 455B.474(1)“a”(8)(a) and (c)), the department shall issue a no further action certificate.

DNR response: Correct citation to Iowa Code.

ITEM 144. Amend subparagraph **135.12(10)“b”(9)** as follows:

(9) The owner or operator or other persons conducting corrective action shall be responsible for recording the no further action certificate with the county recorder and return a file-stamped copy to the department within 30 days of the issue date. At its discretion, the department may record the no further action certificate with the appropriate county recorder as authorized in ~~2009 Iowa Code Supplement section 455B.474(1)“h”(3) as amended by 2010 Iowa Acts, House File 2531, section 174~~ 455B.474(1)“a”(8)(c).

DNR response: Correct citation to Iowa Code.

ITEM 150. Amend subrule 135.15(3) as follows:

135.15(3) Assessing the site at closure or change-in-service

- a. no change from NOIA
- b. For all permanent tank and piping closures or changes-in-service, at least one water sample must be taken from the first saturated groundwater zone via a developed monitoring well ~~or borehole~~ except as provided in paragraph ~~135.13 “g.”~~ The well ~~or borehole~~ must be located downgradient from and as close as possible to the ~~excavation~~ UST system but no farther away than 20 feet from system components. At some tank and piping closures, a minimum of one monitoring well may not be sufficient to represent a release where it is most likely to be present. An additional groundwater monitoring well or wells may be necessary.

DNR response: Strike added citation; paragraph ‘g’ is correct.

FURTHER WORK

In addition to the changes noted, PMMIC’s comment regarding the overlap of Chapter 134 provisions regarding responsibilities of UST professionals with Chapter 135 provisions on the technical requirements for owners, warrants further consideration. As addressing these comments would result in a substantial revision to both Chapters 134 and 135, the DNR requested that this topic be deferred to a future rulemaking, which PMMIC agreed to. Further discussions are needed specifically in light of the fact that Chapter 134 is not tied to federal regulations and is not subject to review in the State’s application for program approval. The authority for certification and licensing requirements is found in Iowa Code 455B.474(1)“a”(8) and 455B.474(1)“a”(10).

Lastly, from the comments presented by Mr. Rounds and from the acknowledgement of the ARRC, the DNR is in the process of looking at options to revise certain inspection forms to ensure that the forms are consistent with federal requirements. These include the 30-day walkthrough form and the Secondary Containment Testing Form. Additional forms may also be revised to ensure appropriate information is being provided to the DNR, consistent with federal requirements and as needed by the DNR to ensure that State Program approval is maintained.