

OCTOBER 25, 2018

RULE HEARING

EXHIBITS' INDEX

The Minnesota Pollution Control Agency (Agency) is placing the following documents into the hearing record for the Agency's proposed:

Amendment to Rules Governing Underground Storage Tanks, *Minnesota Rules*, Chapter 7150; Underground Storage Tanks (parts 7150.0010; 7150.0030; 7150.0090; 7150.0100; 7150.0205; 7150.0215; 7150.0216; 7150.0250; 7150.0300; 7150.0330; 7150.0340; 7150.0345; 7150.0400; 7150.0410; 7150.0430; 7150.0445; 7150.0450; 7150.0451; and 7150.0500)

Repeal of *Minnesota Rules*, parts 7150.0010, subpart 4; 7150.0030, subparts 8, 23, 25a, 44a, and 49; 7150.0100, subparts 10 and 12; 7150.0211; 7150.0300, subparts 2 and 7; 7150.0330, subpart 2; 7150.0410, subparts 2 and 6; and 7150.0420.

(Former OAH Docket #68-9003-35384) (New OAH Docket #80-9003-35384) (Revisor's ID #4360).

**I. DOCUMENTS REQUIRED TO BE PLACED IN THE HEARING RECORD BY MINN. RULES 1400.2220, SUBP. 1.**

- A. Request for Comments published in the *State Register* dated November 9, 2015.
- B. Petition for Rulemaking, if the rules were proposed in response to it (Not Applicable).
- C. Proposed Permanent Rules Relating to Underground Storage Tanks, including the Revisor's approval.
- D. Statement of Need and Reasonableness (SONAR), as published with the *State Register* on August 27, 2018.
- E. Transmittal letter showing the agency sent a copy of the SONAR to the Legislative Reference Library in electronic form.
- F. Dual Notice:
  - F.1. Dual Notice as signed by the Commissioner of the MPCA on August 9, 2018, and as mailed and posted to the MPCA Public Notice Webpage (<https://www.pca.state.mn.us/public-notices>) and the UST Update rule webpage at: <https://www.pca.state.mn.us/waste/underground-storage-tanks-ust-update-rulemaking> (See Exhibit H.5. and H.6. for copies of postings); as e-mailed to all subscribers to the Underground Storage Tanks Update Rule list via GovDelivery service on August 27, 2018 (See Exhibit H.1.); and as e-mailed to the chairs and ranking minority party members of the legislative policy and budget committees with jurisdiction over the subject matter.
  - F.2. Dual Notice as published in the *State Register* on August 27, 2018.

- G. Certifications:
  - G.1. Certificate of Mailing the Dual Notice to the Rulemaking Mailing List.
  - G.2. Certificate of Accuracy of the Mailing list.
- H. Certificate of Giving Additional Notice, if given, or a copy of the transmittal letter:
  - H.1. The electronic notice with hyperlink to electronic copies of the Notice, SONAR, and proposed rule amendments to all parties who have registered under Minn. Stat. § 14.14, subd. 1a, with the bulletin detail report.
  - H.2. The notice emailed to the additional notice contacts list approved by the Office of Administrative Hearings on August 9, 2018, as part of the additional notice plan.
  - H.3. The notice emailed to tribal contacts as approved by the Office of Administrative Hearings on August 9, 2018.
  - H.4. Corrected email addresses.
  - H.5. The electronic notice with hyperlinks to electronic copies of the Dual Notice, SONAR and the proposed rule amendments to the Tank Compliance list and the UST Contractors list. This information is already provided under H.1.
  - H.6. A copy of the posting showing the Dual Notice, proposed rule amendments, and SONAR on the MPCA's public notice webpage.
  - H.7. A copy of the posting showing the UST rule webpage with a hyperlink to the Dual Notice, proposed rule amendments, and SONAR information on the MPCA's public notice webpage.
  - H.8. Copies of two letters sent via U.S. Mail for tribal representatives with no email address. The letters contain hyperlinks to the Dual Notice, proposed rule amendments, and SONAR information.
- I. Written comments on the proposed rules received by the agency during the public notice comment period:
  - I.1. Submitted by Christopher J. Heinze on behalf of Angie Graupner, Timothy Gross, Mark Ogren, Rick Dehn, Frank Orton, Brian Schmeling, David Hutt, John Dericks, Lance Prouty, Daniel Kelly, Doug Mathees, Jay Cattoor, Brian Johnson, Pete Bartelt, Bret Wagner, Al Seckinger, Tyler Freyberg, Anne Leikam, Katie Kramer, Melissa Myron, Wade Carlson, Glenn Winter, Joyce Mamske, Robert Krogman, and Holly Werner.
  - I.2. Chrisoulla Rakowski, Environmental Compliance Management.
  - I.3. James T. Foldesi, Saint Louis County.
  - I.4. Holly Werner, Minnesota Petroleum Marketers Association.
  - I.5. Troy Batzel, Kwik Trip.
- J. If the Chief ALJ has authorized the agency to omit from the Dual Notice published in the *State Register* the text of any proposed rules, a copy of the document authorizing the omission. (not applicable. All rule text was published in the August 27, 2018 *State Register*).
- K. Any other document or evidence to show compliance with any other law or rule which the agency is required to follow in adopting these rules:
  - K.1. Notice to Legislators dated August 27, 2018, in compliance with Minn. Stat. § 14.116.
  - K.2. Notice to Commissioner of the Department of Agriculture dated July 23, 2018.
  - K.3. Evaluation letter from Management and Budget dated August 7, 2018, issued pursuant to Minn. Stat § 14.131.

- K.4. Notice of Hearing to Those Who Requested a Hearing.
- K.5. Certificate of Mailing a Notice of Hearing to Those who Requested a Hearing.
- K.6. Request for Comments. Certificate of Mailing the Request for Comments in Compliance with Minn. Stat. § 14.101.
- K.7. Request for Comments. Copy of GovDelivery notice sent to all persons on the UST Update Rule subscriber list, with copy of bulletin detail report.
- K.8. Request for Comments as posted on the public notice webpage.

L. Agency Response to select Minnesota Petroleum Marketers Association comments dated October 16, 2018.

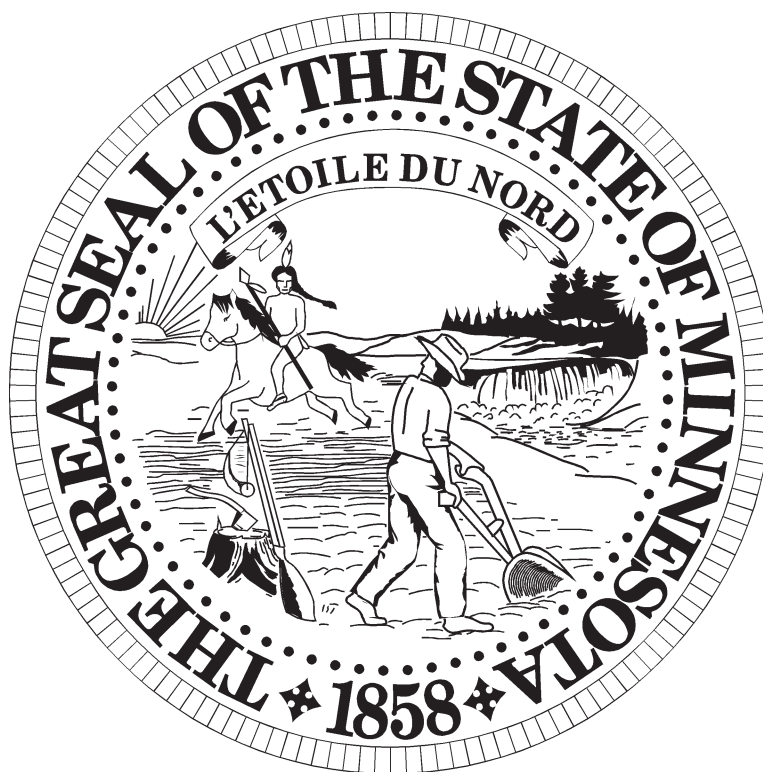
M. Changes made to the Underground Storage Tank SONAR to correct minor errors.

## **II. ADDITIONAL DOCUMENTS RECEIVED DURING THE HEARING, POST-HEARING AND REBUTTAL PERIODS:**

- N. Copy of Rule Hearing Presentation Slides.
- O. Comments and materials submitted during the hearing.
- P. Comments and materials submitted during the post-hearing comment period.
- Q. Comments and materials submitted during the rebuttal period.

# Minnesota State Register

(Published every Monday (Tuesday when Monday is a holiday.)



**Proposed, Adopted, Emergency, Expedited, Withdrawn, Vetoed Rules;  
Executive Orders; Appointments; Commissioners' Orders; Revenue Notices;  
Official Notices; State Grants & Loans; State Contracts;  
Non-State Public Bids, Contracts & Grants**

**Monday 9 November 2015  
Volume 40, Number 19  
Pages 523 - 558**



## Official Notices

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For details about time of the open meeting, the agenda or other information, please access the Board of Nursing website:  
<http://mn.gov/health-licensing-boards/nursing/?agency=NursingBoard>

The following 2016 meetings are for review of disciplinary cases and are closed to the public:

January 7, 4:30 p.m.  
 March 3, 7:30 a.m.  
 May 5, 4:30 p.m.  
 July 7, 7:30 a.m.  
 September 1, 4:30 p.m.  
 November 3, 7:30 a.m.

## Minnesota Pollution Control Agency (MPCA)

### Industrial Division

### Request for Comments on Planned Amendment to Rules Governing Underground Storage Tanks, *Minnesota Rules* Chapter 7150; Revisor's ID Number 04360

**NOTICE IS HEREBY GIVEN** that the Minnesota Pollution Control Agency (MPCA) is requesting comments on planned amendments to *Minnesota Rules* chapter 7150. This rulemaking is referred to as the Underground Storage Tanks (UST) Update Rule. The MPCA is considering amendments to the listed rule chapter and requests comments on the proposed amendments from affected or interested parties. Comments should be submitted in writing in accordance with the provisions of this notice under the public comment section below.

**Subject of rules.** The MPCA requests comments on its possible amendment to rules governing underground storage tanks. The MPCA is considering making corrections, clarifications, and adding conforming language for consistency with federal rules related to the operation and maintenance of underground storage tank equipment. Federal UST regulations were amended July 15, 2015, 80 FR 41566-41683. The proposed revisions will consider the topics listed below:

- adding secondary containment requirements for new and replaced tanks and piping
- adding operator training requirements for UST system owners and operators
- adding periodic operation and maintenance requirements for UST systems
- removing past deferrals for emergency generator tanks, airport hydrant systems, and field constructed tanks
- adding new release prevention and detection technologies
- updating codes of practice
- editorial and technical corrections

MPCA may consider related issues raised by commenters as time allows.

**Plain language summary.** This request for comments is the MPCA's legal notice of its intent to begin rulemaking. This is the first of several opportunities for public comment and input on this rulemaking. At this stage, we do not have a draft rule; we want your feedback to inform us about the ideas described under the subject of rules section above. If you have other ideas related to this rulemaking that we need to consider, please submit them in writing. For example, we recognize that costs to regulated parties can be a concern with rule changes. If you have cost information or data related to this rulemaking that you wish to share with us to inform our decisions, please submit that information. Submitting your ideas and information at this early stage in rulemaking allows us more time to address issues that may come up, and helps to ensure informed decision-making on our part.

**Persons affected.** The amendment to the rules would likely affect any individual or organization that owns or operates an underground storage tank regulated by chapter 7150, a delivery company or individual truck driver that delivers regulated material to a UST, local units of government that oversee UST programs and other entities interested in this topic area.

**Statutory authority.** The proposed amendments are authorized by *Minnesota Statutes*, section 116.49, subdivision 1, which provides:

- The agency must adopt rules applicable to all owners and operators of underground storage tanks.

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## Official Notices

- The rules must establish the safeguards necessary to protect human health and the environment.
- The agency may delay adopting the rules until the United States Environmental Protection Agency proposes regulations for regulated substances, as defined in section 116.46, subdivision 6, clause (1).
- The agency shall delay adopting the rules for regulated substances, as defined in section 116.46, subdivision 6, clause (2), until the United States Environmental Protection Agency publishes final regulations for underground storage tanks, or February 8, 1987, whichever is earlier.

**Public comment.** Interested persons or groups may submit comments or information on these possible rules in writing until 4:30 p.m. on December 11, 2015 that the MPCA intends to adopt or to withdraw the rules. The MPCA will not publish a notice of intent to adopt the rules until more than 60 days have elapsed from the date of this request for comments. The MPCA will appoint an advisory committee to comment on the possible rules. Interested persons or groups may submit their names, and relevant information, for consideration to the contact person listed below no later than December 11, 2015. For more information, see: <http://www.pca.state.mn.us/yp9rha3> .

The MPCA does not anticipate that the rule amendments will require a local government to adopt or amend an ordinance or other regulation under *Minnesota Statutes*, section 14.128. Local governments may submit written information to the contrary.

The MPCA requests any information pertaining to the cumulative effect of the rule amendments with other federal and state regulations related to the specific purpose of the rule. *Cumulative effect* means the impact that results from incremental impact of the proposed rule in addition to other rules, regardless of what state or federal agency has adopted the other rules.

**Rules drafts.** The MPCA has not yet drafted the possible rule amendments. Persons interested in being notified when a draft of the rules is available and of other activities relating to this (or other MPCA rulemakings) are encouraged to register at:

<http://public.govdelivery.com/accounts/MNPCA/subscriber/new> .

**Agency contact person.** Written comments, questions, requests to receive a draft of the rules when it has been prepared, and requests for more information on these possible rules should be directed to: Zachary Klaus, Minnesota Pollution Control Agency, 18 Woodlake Drive S.E., Rochester, Minnesota 55904, **E-mail:** [zachary.klaus@state.mn.us](mailto:zachary.klaus@state.mn.us), **Telephone:** (507) 206-2649, **fax:** (507) 280-5513, **Toll-free:** 1-800-657-3864.

**Alternative format.** Upon request, this information can be made available in an alternative format, such as large print, braille, or audio. To make such a request, please contact the Agency contact person at the address or telephone number listed above.

**NOTE:** Comments received in response to this notice will not necessarily be included in the formal rulemaking record submitted to the Administrative Law Judge (ALJ) if and when a proceeding to adopt rules is started. The Agency is required to submit to the ALJ only those written comments received in response to the draft rules after they are proposed. If you submit comments during the development of the rules and want to ensure that the ALJ reviews your comments, you should resubmit the comments after the rules are formally proposed.

Dated: 23 October 2015

John Linc Stine, Commissioner  
Minnesota Pollution Control Agency

## Minnesota Department of Transportation (Mn/DOT)

### Notice to Bidders: Suspensions/Debarments as of January 12, 2015

#### NOTICE OF DEBARMENT

**NOTICE IS HEREBY GIVEN** that MnDOT has ordered that the following vendors be debarred for a period of three (3) years, effective May 6, 2013 until May 6, 2016:

- Gary Francis Bauerly and his affiliates, Rice, MN
- Gary Bauerly, LLC and its affiliates, Rice, MN
- Watab Hauling Co. and its affiliates, Rice, MN

**B.**

**B. PETITION FOR RULEMAKING, IF THE RULES WERE PROPOSED IN  
RESPONSE TO IT. NOT APPLICABLE.**

1.1 **Pollution Control Agency**1.2 **Proposed Permanent Rules Relating to Underground Storage Tanks**1.3 **7150.0010 APPLICABILITY.**1.4 *[For text of subp 1, see M.R.]*

1.5 Subp. 2. **Exclusions.** The following ~~underground storage tank~~ UST systems are  
 1.6 excluded from the requirements of this chapter:

1.7 A. ~~an underground storage tank~~ a UST system holding:

1.8 (1) hazardous wastes listed or identified under:

1.9 (a) chapter 7045 ~~or~~;

1.10 (b) Code of Federal Regulations, title 40, part 261; or

1.11 (c) subtitle C of the Solid Waste Disposal Act, United States Code, title  
 1.12 42, section 6921 et seq.; or

1.13 (2) a mixture of such hazardous waste and other regulated substances;

1.14 B. a wastewater treatment tank system that is part of a wastewater treatment facility  
 1.15 regulated under ~~United States Code, title 33, section 1317 or 1342~~ section 307(b) or 402 of  
 1.16 the federal Clean Water Act;

1.17 *[For text of items C to J, see M.R.]*

1.18 K. a surface impoundment, pit, pond, or lagoon used for storing storm water,  
 1.19 wastewater, or animal waste;

1.20 *[For text of items L and M, see M.R.]*

1.21 N. a storage tank situated in an underground area such as a basement, cellar,  
 1.22 mineworking, drift, shaft, or tunnel if the storage tank is located upon or above the surface  
 1.23 of the floor; and

O. an oil-water separator;

~~P. underground storage tank systems containing radioactive material that are regulated under the Atomic Energy Act of 1954, United States Code, title 42, sections 2011 to 2296;~~

~~Q. an underground storage tank system that is part of an emergency generator system at nuclear power generation facilities regulated by the Nuclear Regulatory Commission under Code of Federal Regulations, title 10, part 50, Appendix A; and~~

~~R. airport hydrant fuel distribution systems.~~

Subp. 3. [Repealed, 32 SR 1751]

Subp. 4. [See repealer.]

Subp. 5. **Heating oil tanks.** Parts 7150.0010; 7150.0030; 7150.0090, subparts 1, 2, 4, and 6, and 7; 7150.0100, subparts 7, and 9, and 10; and 7150.0205, subparts 1 to 4; 7150.0250, subpart 2; and 7150.0345, subpart 2, apply to an underground storage tank a UST system of over 1,100 gallons capacity used exclusively for storing heating oil for consumptive use on the premises where stored.

Subp. 6. **Partially excluded tank systems.** Parts 7150.0010, 7150.0030, and 7150.0090, subpart 2, apply to items A to D. Parts 7150.0100, subpart 9, and 7150.0205, subparts 1, item B; 2; 3, item B; and 4, apply to items A, C, and D:

A. wastewater treatment tanks not regulated under section 307(b) or 402 of the federal Clean Water Act;

B. aboveground storage tanks associated with:

(1) airport hydrant fuel distribution systems regulated under part 7150.0451;  
and

(2) underground storage tanks with field-constructed tanks regulated under part 7150.0451;

C. UST systems containing radioactive material regulated under the federal Atomic Energy Act of 1954, United States Code, title 42, sections 2011 to 2296; and

D. a UST system that is part of an emergency-generator system at facilities that generate nuclear power and are licensed by the Nuclear Regulatory Commission and subject to Nuclear Regulatory Commission requirements regarding design and quality criteria under Code of Federal Regulations, title 10, part 50.

Subp. 7. **Other potentially harmful substances.** Part 7150.0100, subpart 9, applies to underground storage tanks storing other potentially harmful substances.

### **7150.0030 DEFINITIONS.**

Subpart 1. **Scope.** For the purposes of this chapter, the ~~following~~ terms ~~and abbreviations~~ in this part have the meanings given them. Terms that are not specifically defined have the meanings given ~~them~~ in Minnesota Statutes, sections 115.01, 115C.02, and 116.46.

Subp. 2. **Agency.** "Agency" means the Minnesota Pollution Control Agency or, if a regulated substance is released or spilled, the Minnesota duty officer pursuant to Minnesota Statutes, section 115E.09.

Subp. 2a. **Agency-approved tester.** "Agency-approved tester" means a person approved by the commissioner to inspect and test components of a UST system according to part 7150.0216, subpart 6, item A.

Subp. 2b. **Airport hydrant fuel distribution system.** "Airport hydrant fuel distribution system," also called an airport hydrant system, means a UST system that fuels aircraft and operates under high pressure with large diameter piping that typically terminates into one or more hydrants or fill stands with fueling points.

Subp. 3. **Appurtenances.** "Appurtenances" means ~~devices~~ components of a UST system such as piping, fittings, flanges, valves, dispensers, and pumps used to distribute, meter, or control the flow of regulated substances to or from an underground storage tank.

Subp. 4. **Beneath the surface of the ground.** "Beneath the surface of the ground" means ~~beneath the ground~~ below the surface of the ground, concrete, or asphalt or otherwise covered with earthen materials.

Subp. 4a. **Business hours.** "Business hours" means a minimum of six hours each day, Monday through Friday, excluding holidays, during which business is conducted.

Subp. 5. **Cathodic protection.** "Cathodic protection" means using a technique to prevent corrosion of a metal surface by making that surface the cathode of an electrochemical cell. For example, a ~~tank~~ UST system can be cathodically protected through the application of either ~~galvanic~~ sacrificial anodes or impressed current.

Subp. 6. ~~Cathodic protection~~ **Cathodic-protection tester.** "~~Cathodic protection~~ Cathodic-protection tester" means a person who has demonstrated an understanding of the principles and measurements of all common types of ~~cathodic protection~~ cathodic-protection systems as applied to buried or submerged metal piping and ~~tank~~ UST systems; by passing a test on cathodic protection test given by ~~the National Association of Corrosion Engineers~~ NACE International or the Steel Tank Institute. ~~Such persons~~ The person must also have education and experience in soil resistivity, stray current, structure-to-soil potential, and component electrical isolation measurements of buried metal piping and ~~tank~~ UST systems.

*[For text of subp 7, see M.R.]*

Subp. 8. [See repealer.]

Subp. 8a. **Class A operator.** "Class A operator" means an individual who has primary responsibility to operate and maintain the UST system.

5.1 Subp. 8b. **Class B operator.** "Class B operator" means an individual who has daily  
5.2 responsibility to operate and maintain the UST system.

5.3 Subp. 8c. **Class C operator.** "Class C operator" means an individual who has daily  
5.4 on-site presence and responsibility to handle emergencies and alarms pertaining to a spill  
5.5 or release from the UST system.

5.6 [For text of subps 9 and 10, see M.R.]

5.7 Subp. 11. **Connected piping.** "Connected piping" means underground piping including  
5.8 valves, elbows, joints, flanges, and flexible connectors attached to a ~~tank~~ UST system  
5.9 through which regulated substances flow. For the purpose of determining how much piping  
5.10 is connected to an individual ~~underground storage tank~~ UST system, the piping that joins  
5.11 two ~~underground storage tank~~ UST systems is allocated equally between them.

5.12 [For text of subp 12, see M.R.]

5.13 Subp. 12a. **Containment sump.** "Containment sump" means a single- or double-walled  
5.14 liquid-tight container that:

5.15 A. protects the environment by containing leaks and spills of regulated substances  
5.16 from piping, dispensers, pumps, and related components in the containment area; and

5.17 B. is located at the top of the tank, such as tank top or submersible turbine pump  
5.18 sumps; underneath the dispenser, such as underdispenser containment sumps; or at other  
5.19 points in the piping run, such as transition or intermediate sumps.

5.20 [For text of subps 13 to 15, see M.R.]

5.21 Subp. 16. **Excavation zone.** "Excavation zone" means the volume containing the ~~tank~~  
5.22 UST system and backfill material bounded by the ground surface, walls, and floor of the  
5.23 pit and trenches into which the ~~underground storage tank~~ UST system is placed at the time  
5.24 of installation.



*[For text of subps 17 and 18, see M.R.]*

Subp. 18a. **Field-constructed tank.** "Field-constructed tank" means a tank that is built or assembled at the tank site, but does not include a tank with a lining.

*[For text of subps 19 to 21, see M.R.]*

Subp. 22. **Hazardous ~~material~~ substance.**

A. "Hazardous ~~material~~ substance" means:

~~A.~~ (1) a substance listed in Code of Federal Regulations, title 40, part 302, including petroleum constituents under subpart 36, item C, but not including:

(1) (a) a hazardous waste listed or identified under chapter 7045 or Code of Federal Regulations, title 40, part 261, and subtitle C of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA); or

(2) (b) petroleum under subpart 36, item A, B, or D; or

(3) ~~a substance that is not liquid at a temperature of 60 degrees Fahrenheit and pressure of 14.7 pounds per square inch absolute; or~~

~~B.~~ (2) any mixture of substances identified in ~~item A~~ subitem (1) and petroleum, unless the amount of the substance identified in ~~item A~~ subitem (1) is de minimis.

B. Substances identified in ~~items~~ item A and B ~~which~~ that also meet the definition of petroleum are considered hazardous ~~materials~~ substances.

Subp. 23. [See repealer.]

*[For text of subps 24 and 25, see M.R.]*

Subp. 25a. [See repealer.]

Subp. 25b. **Impressed current or impressed-current system.** "Impressed current" or "impressed-current system" means a method of corrosion protection that generates a

7.1 cathodic current from a power source, such as a rectifier that converts alternating current  
7.2 to direct current, where the cathodic current flows from the anodes through the soil to the  
7.3 UST system and returns to the power source through an insulated wire attached to the UST  
7.4 system.

7.5 Subp. 25c. **Leak.** "Leak" means discharge of a regulated substance or any other  
7.6 potentially harmful substance from a point in a UST system that is not intended to be a  
7.7 discharge or dispensing point. A leak that reaches the environment is a release.

7.8 Subp. 25d. **Leak detection.** "Leak detection" has the meaning given under subpart  
7.9 42.

7.10 Subp. 25e. **Lessee.** "Lessee" means a person that leases a UST system. A lessee is  
7.11 also an operator if the lessee is in control of the daily operation of the UST system.

7.12 Subp. 25f. **Lining or internal lining.** "Lining" or "internal lining" means a coating  
7.13 of noncorrosive material bonded to the interior surface of a tank.

7.14 Subp. 25g. **Liquid tight.** "Liquid tight" means that liquid is not able to leak from a  
7.15 component of a UST system and that subsurface water is not able to infiltrate a tank, pipe,  
7.16 or secondary-containment area.

7.17 [For text of subp 26, see M.R.]

7.18 Subp. 27. **Motor fuel.** "Motor fuel" means ~~petroleum or a petroleum-based substance~~  
7.19 ~~that is motor gasoline, aviation gasoline, No. 1 or 2 diesel fuel, biodiesel, or any grade of~~  
7.20 ~~gasohol, and is typically used in the operation of a motor engine~~ a complex blend of  
7.21 hydrocarbons used to operate a motor engine, such as motor gasoline, aviation gasoline,  
7.22 No. 1 or No. 2 diesel fuel, or a blend containing one or more of these substances.

7.23 [For text of subps 28 and 29, see M.R.]

8.1 Subp. 29a. **Noncorrodible material.** "Noncorrodible material" means a synthetic or  
8.2 processed material that is certified for use in UST systems and compatible with the substance  
8.3 being stored in a UST system and the surrounding environment.

8.4 *[For text of subp 30, see M.R.]*

8.5 Subp. 31. **Operational life.** "Operational life" means the period beginning when  
8.6 installation of the ~~tank~~ UST system has begun until the time the ~~tank~~ UST system is  
8.7 permanently closed under part 7150.0410.

8.8 Subp. 32. **Operator.**

8.9 A. "Operator" means a person who:

8.10 (1) a person in has control of or having responsibility for the daily operation  
8.11 of the underground storage tank UST system or a person who was in;

8.12 (2) had control of or had responsibility for the daily operation of the tank  
8.13 immediately before discontinuation of its the tank's use. Operator also means;

8.14 (3) a person who is responsible under Minnesota Statutes, section 115C.021,  
8.15 for a release from an underground storage tank containing petroleum; or

8.16 (4) a person who is responsible under Minnesota Statutes, section 115B.03,  
8.17 for a release from an underground storage tank containing a hazardous material substance.

8.18 B. Operator does not include a person who operates a tank if the tank is not  
8.19 regulated by this chapter.

8.20 Subp. 32a. **Other potentially harmful substances.** "Other potentially harmful  
8.21 substances" means substances that are not regulated substances when used as intended by  
8.22 the manufacturer but that may cause harm to human health and the environment if released  
8.23 from a leaking UST system because of the volume and nature of the release. Other potentially  
8.24 harmful substances does not include:

9.1 A. petroleum substances under standard temperature and pressure; or

9.2 B. hazardous substances.

9.3 Subp. 32b. **Out of service.** "Out of service" means the status of a UST system from  
9.4 which a regulated substance is not or has not been introduced or dispensed, pending a  
9.5 decision or action to close the UST system or begin reusing the UST system.

9.6 [For text of subp 33, see M.R.]

9.7 Subp. 34. **Owner.**

9.8 A. "Owner" means a person who:

9.9 (1) holds title to, controls, or possesses an interest in an underground storage  
9.10 tank, ~~and a person who;~~

9.11 (2) held title to, controlled, or possessed an interest in the tank immediately  
9.12 before discontinuation of its the tank's use. ~~Owner also means a person who;~~

9.13 (3) is responsible under Minnesota Statutes, section 115C.021, for a release  
9.14 from an underground storage tank containing petroleum, ~~or a person who;~~ or

9.15 (4) is responsible under Minnesota Statutes, section 115B.03, for a release  
9.16 from an underground storage tank containing a hazardous ~~material~~ substance.

9.17 B. Owner does not include a person who:

9.18 (1) owns a tank if the tank is not regulated by this chapter ~~and does not include~~  
9.19 ~~a person who;~~ or

9.20 (2) holds an interest in a tank solely for financial security, unless through  
9.21 foreclosure or other related actions the holder of a security interest has taken possession of  
9.22 the tank.

10.1 Subp. 34a. **Permanent closure.** "Permanent closure" means permanently taking a  
10.2 UST system out of service by either closing it in place or removing it from the ground.

10.3 [For text of subp 35, see M.R.]

10.4 Subp. 36. **Petroleum.** "Petroleum" means one of the following substances:

10.5 [For text of items A to C, see M.R.]

10.6 D. petroleum-based substances that are comprised of a complex blend of  
10.7 hydrocarbons ~~derived from crude oil through processes of separation, conversion, upgrading,~~  
10.8 ~~and finishing~~, such as motor fuels, jet fuels, distillate fuel oils, residual fuel oils, lubricants,  
10.9 and used oils.

10.10 Subp. 37. **Petroleum ~~underground storage tank~~ UST system.** "Petroleum  
10.11 ~~underground storage tank~~ UST system" means ~~an underground storage tank~~ a UST system  
10.12 that is used to contain petroleum or a mixture of petroleum with de minimis quantities of  
10.13 hazardous ~~materials~~ substances.

10.14 Subp. 38. **Pipe or piping.** "Pipe" or "piping" means a hollow cylinder or tubular  
10.15 conduit for conveying a regulated substance from one point to another within ~~an underground~~  
10.16 ~~storage tank~~ a UST system that is made of nonearthen materials.

10.17 Subp. 38a. **Piping system.** "Piping system" means piping, secondary containment,  
10.18 leak-detection devices, tubing, flanges, gaskets, valves, fittings, flexible connectors, and  
10.19 other pipe appurtenances that mix, separate, distribute, meter, or control flow and any core  
10.20 components that allow the piping system to function as intended and in accordance with  
10.21 installation requirements. Piping system includes:

10.22 A. a pipe run, which is the portion of the pipe from the submersible pump to the  
10.23 furthest dispenser, or in the case of suction piping, from the top of the tank to the furthest  
10.24 dispenser, or in cases where piping enters a building, the first pipe joint inside the building.  
10.25 UST systems may have multiple pipe runs;

11.1 B. a pipe segment, which is the portion of pipe between components in a pipe  
11.2 run, such as from the pump to a dispenser or between two dispensers; and

11.3 C. a pipe section, which is the portion of a pipe segment that is limited to ten feet  
11.4 in length.

11.5 *[For text of subp 39, see M.R.]*

11.6 Subp. 39a. **Product.** "Product" means a regulated substance.

11.7 Subp. 40. **Regulated substance.** "Regulated substance" means a hazardous material  
11.8 substance or petroleum.

11.9 Subp. 41. **Release.** "Release" means a spilling, leaking, emitting, discharging, escaping,  
11.10 leaching, or disposing from an underground storage tank a UST system into the environment  
11.11 including spills associated with overfills and transfer operations as the regulated substance  
11.12 moves to or from an underground storage tank a UST system. "Release" does not include  
11.13 discharges or designed venting allowed under agency rules.

11.14 Subp. 42. **Release detection or leak detection.** "Release detection" or "leak detection"  
11.15 means determining whether a release of a regulated substance has occurred from the  
11.16 underground storage tank UST system:

11.17 A. into the environment; or

11.18 B. into the interstitial space between the underground storage tank UST system  
11.19 and its secondary barrier or between the UST system and its secondary containment around  
11.20 it.

11.21 Subp. 43. **Repair.** "Repair" means the correction or restoration to operating condition  
11.22 of an underground storage tank or appurtenance to correct or restore a component of a UST  
11.23 system to the component's original design function or operating condition.

12.1 A. "Piping repair" includes installation of installing a single run section of up to  
12.2 ten feet of new piping to replace existing piping. Piping repair involving installation of a  
12.3 single run of more than ten feet of new piping to replace existing piping constitutes  
12.4 replacement.

12.5 B. "Dispenser repair" includes ~~installation of~~ installing a new dispenser to replace  
12.6 an existing dispenser ~~so long as~~ if work is performed entirely on or above any shear valves  
12.7 and check valves. ~~Installation of a new dispenser to replace an existing dispenser constitutes~~  
12.8 ~~replacement if the work is performed beneath any shear valves or check valves or on any~~  
12.9 ~~flexible connectors or unburied risers.~~

12.10 C. "Tank repair" includes repairing a tank lining, patching or coating damaged  
12.11 areas, and repairing or replacing corrosion protection.

12.12 Subp. 43a. **Replace or replacement.** "Replace" or "replacement" means the installation  
12.13 ~~of to install a new underground storage tank or appurtenance~~ component for a UST system  
12.14 ~~in substantially the same location as another tank or appurtenance~~ component of a UST  
12.15 system in lieu of that tank or appurtenance, not including installation of new piping in  
12.16 ~~connection with certain repairs as described in subpart 43.~~ component. Replacement includes:

12.17 A. piping repair to install a single piping segment or an accumulation of piping  
12.18 segments of more than ten feet of new piping to replace existing piping;

12.19 B. installing a new dispenser if work is performed beneath any shear valve or  
12.20 check valve or on any flexible connector or unburied riser; and

12.21 C. installing a replacement submersible pump that involves removing the pump

12.22 head from the riser.

12.23 Subp. 43b. **Retrofit tank.** "Retrofit tank" means a new tank installed in an existing

12.24 host tank as an internal lining according to part 7150.0205, subpart 1.

12.25 [For text of subp 44, see M.R.]

13.1 Subp. 44a. [See repealer.]

13.2 Subp. 44b. **Sacrificial-anode system.** "Sacrificial-anode system" means a  
13.3 cathodic-protection system that uses zinc, magnesium, or other anodic metals buried near  
13.4 and connected to the metal surface that is being protected.

13.5 Subp. 44c. **Secondary containment or secondarily contained.** "Secondary  
13.6 containment" or "secondarily contained" means a release-prevention and release-detection  
13.7 system that is used for a UST system and that has an inner and outer barrier with an interstitial  
13.8 space that is monitored for leaks.

13.9 [For text of subp 45, see M.R.]

13.10 Subp. 45a. **Spill bucket.** "Spill bucket" means a containment structure designed to  
13.11 capture releases that may occur in the UST fill port when a regulated substance is transferred.  
13.12 "Spill containment," "spill container," and "spill catchment basin" have the same meaning  
13.13 as spill bucket.

13.14 [For text of subp 46, see M.R.]

13.15 Subp. 46a. **Sump.** "Sump" means an area belowground that is designed to provide  
13.16 access to components of a UST system such as pumps, valves, piping, and fittings. Sump  
13.17 includes a dirt sump, an uncontained sump, and a containment sump.

13.18 [For text of subps 47 and 48, see M.R.]

13.19 Subp. 49. [See repealer.]

13.20 Subp. 49a. **Unattended card-lock facility.** "Unattended card-lock facility" means a  
13.21 facility where dispensing a regulated substance during business hours is mechanically or  
13.22 electronically controlled without the constant on-site presence of a class A, B, or C operator.

13.23 Subp. 50. **Underground area.** "Underground area" means an underground room such  
13.24 as a basement, cellar, shaft, or vault providing enough space for physical inspection of the



14.1 entire exterior of the tank or the tank's secondary containment, situated on or above the  
14.2 surface of the floor.

14.3 Subp. 50a. **Underground storage tank or UST.** "Underground storage tank" or  
14.4 "UST" means any one or combination of tanks, vessels, enclosures, structures, or internal  
14.5 linings that is used to contain an accumulation of regulated substances or other potentially  
14.6 harmful substances when the combined volume, including the volume of connected pipes,  
14.7 is ten percent or more beneath the surface of the ground. An underground storage tank does  
14.8 not include any tank described in part 7150.0010, subpart 2.

14.9 Subp. 51. **Underground storage tank or underground storage tank storage-tank**  
14.10 **system or UST system.**

14.11 A. "Underground storage tank" or "underground storage tank storage-tank system"  
14.12 or "UST system" means ~~any one or combination of containers including tanks, vessels,~~  
14.13 ~~enclosures, or structures and underground appurtenances connected to them that is used to~~  
14.14 ~~contain or dispense an accumulation of regulated substances, and the volume of which,~~  
14.15 ~~including the volume of underground pipes connected to them, is ten percent or more beneath~~  
14.16 ~~the surface of the ground. This term~~ an underground storage tank and any underground  
14.17 pipng or equipment connected to an underground storage tank that is used to:

14.18 (1) dispense a regulated substance or other potentially harmful substance;

14.19 (2) provide for safe operation of the tank, piping, or appurtenances; or

14.20 (3) detect and prevent a release to the environment.

14.21 B. UST system does not include any ~~tank or~~ tanks, pipes, or appurtenances  
14.22 connected to a tank described in part 7150.0010, subpart 2.

14.23 Subp. 51a. **Unusual operating condition.** "Unusual operating condition" means:

14.24 A. a condition, equipment deficiency, or occurrence that:

- 15.1 (1) results in a release of a regulated substance;
- 15.2 (2) indicates the possibility of a leak from a UST system;
- 15.3 (3) creates a reasonable expectation that a leak from a UST system is probable;
- 15.4 or
- 15.5 (4) may cause an undetected leak;
- 15.6 B. an unexplained presence of water in the tank; or
- 15.7 C. liquid in the interstitial space of secondary-containment systems.

15.8 *[For text of subps 52 and 53, see M.R.]*

15.9 **7150.0090 NOTIFICATION AND CERTIFICATION.**

15.10 Subpart 1. **Prenotification.** At least ten days before beginning any of the following

15.11 activities, owners and operators must notify the ~~commissioner~~ agency in the manner

15.12 prescribed by the commissioner of their intent to perform the activity:

- 15.13 A. ~~installation or replacement, or repair of an underground storage tank~~ a UST
- 15.14 system, including tanks, piping, or dispensers linings, containment sumps, and corrosion
- 15.15 protection systems, but excluding dispensers and exposed components below grade that can
- 15.16 be visually inspected;

15.17 *[For text of items B and C, see M.R.]*

- 15.18 D. inspection of a lining on an internally lined tank.

15.19 Subp. 2. **Notification of installation, replacement, or change in status.** ~~An owner~~

15.20 ~~or operator~~ Owners and operators who ~~brings an underground storage tank~~ bring a UST

15.21 ~~system, including tanks, piping, or dispensers,~~ or components such as tanks, retrofit tanks,

15.22 piping, or dispensers into use or ~~makes~~ make a change in status must, within 30 days of

15.23 bringing ~~such tank~~ the UST system into use or making a change in status, submit to the

16.1 agency, in the manner prescribed by the commissioner, a notice of the existence of ~~such~~  
 16.2 ~~tank~~ the UST system or type of change in status, including the information required by  
 16.3 Minnesota Statutes, section 116.48, subdivisions 1 and 3.

16.4 Subp. 3. **Certification by owners and operators.** Owners and operators of new and  
 16.5 replacement ~~underground storage tank~~ UST systems, including tanks, retrofit tanks, piping,  
 16.6 and dispensers, must sign and certify in the notification form compliance with the following  
 16.7 requirements:

16.8 *[For text of item A, see M.R.]*

16.9 B. financial responsibility under Code of Federal Regulations, title 40, part 280,  
 16.10 subpart H; ~~and~~

16.11 C. release detection according to parts 7150.0300 to 7150.0340-; and

16.12 D. corrosion protection according to part 7150.0215.

16.13 Subp. 4. **Certification by installers.** Owners and operators of new and replacement  
 16.14 ~~underground storage tank~~ UST systems, including tanks, retrofit tanks, piping, or dispensers,  
 16.15 must ensure that the installer signs and certifies in the notification form that:

16.16 A. all work was performed as specified by the manufacturer's instructions;

16.17 B. all work was performed according to the applicable codes of practice in ~~part~~  
 16.18 parts 7150.0205 and 7150.0500;

16.19 *[For text of items C and D, see M.R.]*

16.20 *[For text of subps 5 and 6, see M.R.]*

16.21 Subp. 7. **Notification of tank purchase.** A person who purchases property that the  
 16.22 purchaser knows contains ~~an underground storage tank~~ a UST system must notify the  
 16.23 ~~commissioner~~ agency within 30 days after closing the transaction, pursuant to subpart 2.  
 16.24 The notification ~~shall~~ must include the change in ownership and verify that all operators,

17.1 including lessees, have read this chapter and have sufficient knowledge in the operation  
17.2 and maintenance of ~~underground storage tank~~ UST systems.

17.3 Subp. 8. **Notification of compatibility.** Owners and operators of a UST system must  
17.4 notify the agency at least 30 days before storing a regulated substance containing more than  
17.5 ten percent ethanol, more than 20 percent biodiesel, or any other regulated substance  
17.6 identified by the commissioner as a substance that could degrade components of a UST  
17.7 system. Owners and operators must demonstrate to the commissioner that the components  
17.8 of the UST system are compatible with the product being stored in accordance with part  
17.9 7150.0100, subpart 9.

17.10 Subp. 9. **Notification of other regulated substances.** The commissioner must notify  
17.11 owners and operators in writing or electronically if the commissioner identifies any other  
17.12 regulated substances that require notice of compatibility under subpart 8.

17.13 **7150.0100 PERFORMANCE STANDARDS FOR ~~UNDERGROUND STORAGE~~**  
17.14 **~~TANK~~ UST SYSTEMS.**

17.15 *[For text of subps 1 to 6, see M.R.]*

17.16 Subp. 7. **Installation.** Owners and operators must ensure that the person installing  
17.17 UST systems or components has been certified under chapter 7105. All ~~underground storage~~  
17.18 ~~tank~~ UST systems must be properly installed according to the manufacturer's instructions  
17.19 and one of the following codes of practice developed by a nationally recognized association  
17.20 or independent testing laboratory. The codes are incorporated by reference under part  
17.21 7150.0500:

17.22 ~~A. American Petroleum Institute, Installation of Underground Petroleum Storage~~  
17.23 ~~Systems, API 1615 (1996);~~

17.24 ~~B. Petroleum Equipment Institute, Recommended Practices for Installation of~~  
17.25 ~~Underground Liquid Storage Systems, RP100 (2005);~~

~~C. American Society of Mechanical Engineers, Process Piping, B31.3 (2005); or~~  
~~D. American Society of Mechanical Engineers, Pipeline Transportation Systems~~  
~~for Liquid Hydrocarbons and Other Liquids, B31.4 (2006).~~

A. American Petroleum Institute, Installation of Underground Petroleum Storage  
Systems, API RP 1615;

B. National Fire Protection Association:

(1) Flammable and Combustible Liquids Code, NFPA 30; and  
(2) Code for Motor Fuel Dispensing Facilities and Repair Garages, NFPA  
30A; and

C. Petroleum Equipment Institute:

(1) Recommended Practices for the Installation of Marina Fueling Systems,  
PEI/RP1000-14; and

(2) Recommended Practices for Installation of Underground Liquid Storage  
Systems, PEI/RP100-11.

Subp. 8. [Repealed, 32 SR 1751]

Subp. 9. **Compatibility.**

A. Owners and operators must use underground storage tank UST systems, spill  
catchment basins, submersible pump sumps, and dispenser sumps made of or lined with  
materials that are compatible with the substance stored in the underground storage tank  
UST system. Owners and operators storing alcohol blends may use the following guidancee  
to comply with the requirements of this part: American Petroleum Institute, Storing and  
Handling Ethanol and Gasoline-Ethanol Blends at Distribution Terminals and Service  
Stations, API 1626 (1985). The document is incorporated by reference under part 7150.0500.  
Owners and operators storing a regulated substance containing more than ten percent ethanol,

19.1 more than 20 percent biodiesel, or any other substance identified by the commissioner that  
19.2 could degrade components of a UST system must also comply with item B, if applicable,  
19.3 and item C or D.

19.4 B. Owners and operators must provide secondary containment for tanks retrofitted  
19.5 after the effective date of this part according to part 7150.0205, subpart 1.

19.6 C. Owners and operators must demonstrate compatibility of the UST system by  
19.7 showing:

19.8 (1) the equipment or component used in the UST system is certified or listed  
19.9 by an independent testing laboratory for use with the regulated substance; or

19.10 (2) the equipment's or component's manufacturer has issued a written  
19.11 affirmative statement of compatibility, specifying the range of biofuel blends the equipment  
19.12 or component is compatible with.

19.13 D. Owners and operators may demonstrate compatibility other than as specified  
19.14 in item C if they:

19.15 (1) provide information to the commissioner demonstrating the alternative  
19.16 option is no less protective of human health and the environment than the options in item  
19.17 C to ensure that the UST system is not degrading and will not degrade; and

19.18 (2) obtain the commissioner's prior written approval of the alternative option.

19.19 E. When considering an alternative option under item D, the commissioner must  
19.20 consider the type of substance and concentration of the substance that can be safely stored  
19.21 as part of the alternative option. If the commissioner approves the alternative option, owners  
19.22 and operators must comply with any conditions imposed by the commissioner to ensure  
19.23 human health and the environment are protected.

19.24 Subp. 10. [See repealer.]

Subp. 11. **Spill and overfill release prevention.**

A. Owners and operators must ensure that releases due to spilling or overfilling do not occur. The owner or operator must ensure that the volume available in the tank is greater than the volume of product to be transferred to the tank before the transfer is made and that the transfer operation is monitored constantly to prevent overfilling and spilling. One of the following codes of practice developed by a nationally recognized association or independent testing laboratory must be used to comply with this subpart. The codes are incorporated by reference under part 7150.0500:

~~(1) National Fire Protection Association, Flammable and Combustible Liquids Code, NFPA 30 (2003);~~

~~(2) National Fire Protection Association, Standard for Tank Vehicles for Flammable and Combustible Liquids, NFPA 385 (2007); or~~

~~(3) American Petroleum Institute, Bulk Liquid Stock Control at Retail Outlets, API 1621 (1987).~~

(1) American Petroleum Institute, Bulk Liquid Stock Control at Retail Outlets, API RP 1621;

(2) American Petroleum Institute, Loading and Unloading of MC 306/DOT 406 Cargo Tank Motor Vehicles, API RP 1007; and

(3) National Fire Protection Association, Standard for Tank Vehicles for Flammable and Combustible Liquids, NFPA 385.

B. ~~The owner and operator~~ Owners and operators must report, investigate, and clean up any spills and overfills according to Minnesota Statutes, section 115.061.

Subp. 12. [See repealer.]

21.1        Subp. 12a. **Containment sumps and spill buckets.** Owners and operators must ensure  
21.2 that containment sumps used for interstitial monitoring and spill buckets are liquid tight to  
21.3 prevent releases of regulated substances to the environment.

21.4        Subp. 13. **Shear valves.** Owners and operators must ensure all shear valves ~~shall be~~  
21.5 are securely anchored and installed according to manufacturer recommendations and industry  
21.6 standards. Shear valves installed or repaired after the effective date of this part must be of  
21.7 a double-poppet design that prevents release of fuel from both sides of the shear valve if  
21.8 the shear valve breaks at the shear point.

21.9        Subp. 14. **Drop tubes.** Owners and operators must ensure that all underground storage  
21.10 tanks ~~shall~~ have a drop tube that extends to within six inches of the tank bottom.

21.11        **7150.0205 DESIGN AND CONSTRUCTION.**

21.12        Subpart 1. **Tanks.** Each tank must be properly designed and constructed and any part  
21.13 underground that routinely contains product must be protected from corrosion using one of  
21.14 the following methods, except that all hazardous materials tanks and all tanks, other than  
21.15 heating oil tanks, installed or replaced after December 22, 2007, must comply with item D.  
21.16 The corrosion protection methods must be in accordance with one of the codes of practice  
21.17 in subpart 2 developed by a nationally recognized association or independent testing  
21.18 laboratory.

21.19        A. Tanks that do not meet the requirements of this subpart must be permanently  
21.20 closed according to part 7150.0410.

21.21        A. The tank is constructed of fiberglass-reinforced plastic.

21.22        B. The tank is constructed of steel and cathodically protected in the following  
21.23 manner:

21.24        (1) the tank is coated with a suitable dielectric material;



- 22.1 ~~(2) field-installed cathodic protection systems are designed by a corrosion~~  
22.2 ~~expert;~~
- 22.3 ~~(3) impressed current systems are designed to allow determination of current~~  
22.4 ~~operating status as required in part 7150.0215, subpart 3, item A; and~~
- 22.5 ~~(4) cathodic protection systems are operated and maintained according to~~  
22.6 ~~part 7150.0215.~~
- 22.7 ~~C. The tank is constructed of a steel and fiberglass-reinforced plastic composite.~~
- 22.8 ~~D. The tank is secondarily contained.~~
- 22.9 ~~(1) Secondary containment tanks shall use one of the following designs:~~
- 22.10 ~~(a) the tank is of double-walled fiberglass-reinforced plastic construction;~~
- 22.11 ~~(b) the tank is of double-walled steel construction, with cathodic~~  
22.12 ~~protection of the outer wall meeting the requirements of item B;~~
- 22.13 ~~(c) the tank is of double-walled steel construction with a~~  
22.14 ~~fiberglass-reinforced plastic jacket; or~~
- 22.15 ~~(d) the tank is of single-walled steel construction with a~~  
22.16 ~~fiberglass-reinforced plastic jacket, which is designed to contain and detect a leak through~~  
22.17 ~~the steel wall.~~
- 22.18 ~~(2) All secondary containment tanks shall be capable of containing a release~~  
22.19 ~~from the inner wall of the tank and shall be designed with release detection according to~~  
22.20 ~~part 7150.0330, subpart 6.~~
- 22.21 ~~(3) If a tank is replaced in accordance with this item, all piping appurtenant~~  
22.22 ~~to the tank shall comply with subpart 3, item D.~~
- 22.23 ~~E. The tank is internally lined.~~

~~(1) A tank with an internal lining as the sole method of corrosion protection shall be internally inspected and evaluated within ten years after lining, and every five years thereafter, and found to be structurally sound with the lining still performing according to original design specifications, as follows:~~

~~(a) internal inspections and evaluations shall be conducted in accordance with American Petroleum Institute, Interior Lining and Periodic Inspection of Underground Storage Tanks, API 1631 (2001), incorporated by reference under part 7150.0500;~~

~~(b) lining inspectors shall be approved by the manufacturer of the lining, if an approval process exists, or shall be qualified by reason of training and experience in the application and inspection of type of internal lining to be inspected;~~

~~(c) the owner, operator, or lining inspector shall notify the commissioner at least ten days prior to performing an inspection according to part 7150.0090, subpart 1;~~

~~(d) inspections shall include thorough cleaning of the lining; visual inspection of the lining for cracking, blistering, perforation, disbonding, and excessive wear; ultrasonic thickness testing (steel tanks only); holiday (spark) testing for lining continuity; lining thickness measurement; lining hardness testing; and representative photographs of internal surfaces;~~

~~(e) inspections shall be primarily by manned entry. Video camera observation alone is not allowed;~~

~~(f) minor abnormal conditions of the lining, such as short cracks or localized disbonding, may be repaired, so long as the conditions do not constitute more than five percent of the lining surface area and the repairs will return the lining to substantially the original design specifications;~~

~~(g) if a repair to the tank or to the internal lining as allowed under unit (f) is performed, the tank must pass a tightness test at a 0.1 gallon per hour leak rate using~~

24.1 ~~equipment for automatic tank gauging or another test method, prior to or within 30 days~~  
24.2 ~~after returning the tank to service;~~

24.3 ~~(h) a written inspection report shall be produced that describes the results~~  
24.4 ~~of all tests and evaluations required by unit (d), and the results of tightness testing under~~  
24.5 ~~unit (g). The report shall identify any abnormal conditions found during the inspection and~~  
24.6 ~~the measures taken to correct the conditions. The inspector shall certify in the report that,~~  
24.7 ~~in the professional judgment of the inspector, the tank is structurally sound, the lining is~~  
24.8 ~~performing according to original design specifications, and the tank and lining will maintain~~  
24.9 ~~their integrity for at least five years under the anticipated conditions of use; and~~

24.10 ~~(i) the inspection report under unit (h) shall be submitted to the~~  
24.11 ~~commissioner within 60 days of the internal inspection.~~

24.12 ~~(2) A tank with an internal lining as the sole method of corrosion protection~~  
24.13 ~~shall be permanently closed and site assessment completed according to parts 7150.0410~~  
24.14 ~~and 7150.0420 if at any time the lining is found to have failed. Lining failure is defined as~~  
24.15 ~~any abnormal conditions other than minor abnormal conditions described in subitem (1),~~  
24.16 ~~unit (f). The lining may not be replaced, nor may such a tank be upgraded with cathodic~~  
24.17 ~~protection or another corrosion protection method to meet the requirements of this subpart.~~

24.18 ~~F. The tank construction and corrosion protection are determined by the~~  
24.19 ~~commissioner to be designed to prevent the release or threatened release of a stored, regulated~~  
24.20 ~~substance in a manner that is no less protective of human health and the environment than~~  
24.21 ~~items A to E. The commissioner's determination under this item must be obtained in writing~~  
24.22 ~~and the owners and operators must keep the determination for the life of the tank.~~

24.23 B. Owners and operators must ensure that any underground part of a tank that  
24.24 rouinely contains product is properly designed, constructed, and protected from corrosion  
24.25 using one of the methods under this item. The tank must be:

- 25.1                   (1) constructed of fiber-reinforced plastic, including:
- 25.2                   (a) a costructural retrofit tank, with cathodic protection on corrodible
- 25.3 structural supports; or
- 25.4                   (b) a self-structural retrofit tank;
- 25.5                   (2) constructed of steel and cathodically protected according to this subitem.
- 25.6 All cathodic-protection systems under this subitem must be operated and maintained
- 25.7 according to part 7150.0215. The tank must:
- 25.8                   (a) be coated with a suitable dielectric material and a factory-installed
- 25.9 sacrificial-anode system;
- 25.10                  (b) have a field-installed cathodic-protection system designed and
- 25.11 certified by a corrosion expert; or
- 25.12                  (c) have an impressed-current system designed and certified by a
- 25.13 corrosion expert that allows determination of current operating status as required under part
- 25.14 7150.0215, subpart 3;
- 25.15                  (3) constructed of steel with a noncorrodible jacket of a design and thickness
- 25.16 so that additional corrosion protection is not required;
- 25.17                  (4) internally lined, provided that the tank is lined on or before December
- 25.18 22, 2007, according to part 7150.0215, subpart 4; or
- 25.19                  (5) constructed and protected from corrosion using a method that prevents
- 25.20 the release or threatened release of a stored, regulated substance and is no less protective
- 25.21 of human health and the environment than the methods under subitems (1) to (4), as
- 25.22 determined by the commissioner. The commissioner's determination under this subitem
- 25.23 must be obtained in writing, and the owners and operators must keep the determination for
- 25.24 the life of the tank.

C. Except for heating-oil tanks, owners and operators must:

(1) secondarily contain all hazardous-substance tanks;

(2) secondarily contain all tanks containing regulated substances, including retrofit tanks, installed or replaced after December 22, 2007; and

(3) ensure that:

(a) the secondary containment is capable of containing a release from the inner wall of a tank and designed with release detection according to part 7150.0330, subpart 6; and

(b) if a tank is replaced or retrofitted in accordance with this item, all piping appurtenant to the tank is secondarily contained and complies with subpart 3.

Subp. 2. **Codes of practice for tanks.** ~~Codes of practice for subpart 1 are described in items A to E.~~ The codes of practice in this subpart must be used to comply with subpart 1, as applicable. The codes are incorporated by reference under part 7150.0500.

~~A. The following codes of practice apply to subpart 1, item A:~~

~~(1) Underwriters Laboratories, Standard for Glass Fiber Reinforced Plastic Underground Storage Tanks for Petroleum Products, Alcohols, and Alcohol-Gasoline Mixtures, UL 1316 (2006); or~~

~~(2) Underwriters' Laboratories of Canada, Standard for Reinforced Plastic Underground Tanks for Flammable and Combustible Liquids, ULC-S615-98 (1998).~~

~~B. The following codes of practice apply to subpart 1, item B:~~

~~(1) Steel Tank Institute, Specification and Manual for External Corrosion Protection of Underground Steel Storage Tanks, STI-P3 (2006);~~

27.1 ~~(2) Underwriters Laboratories, Standard for Safety for External Corrosion~~  
27.2 ~~Protection Systems for Steel Underground Storage Tanks, UL 1746 (2007);~~

27.3 ~~(3) Underwriters' Laboratories of Canada, External Corrosion Protection~~  
27.4 ~~Systems for Steel Underground Tanks for Flammable and Combustible Liquids,~~  
27.5 ~~CAN/ULC-S603.1-03 (2003);~~

27.6 ~~(4) Underwriters' Laboratories of Canada, Standard for Steel Underground~~  
27.7 ~~Tanks for Flammable and Combustible Liquids, CAN/ULC-S603-00 (2000);~~

27.8 ~~(5) Underwriters' Laboratories of Canada, Isolating Bushings for Steel~~  
27.9 ~~Underground Tanks Protected with External Corrosion Protection Systems, ULC-S631-05~~  
27.10 ~~(2005);~~

27.11 ~~(6) National Association of Corrosion Engineers, Corrosion Control of~~  
27.12 ~~Underground Storage Tank Systems by Cathodic Protection, RP0285-2002 (2002); or~~

27.13 ~~(7) Underwriters Laboratories, Standard for Steel Underground Tanks for~~  
27.14 ~~Flammable and Combustible Liquids, UL 58 (1996).~~

27.15 ~~C. The following codes of practice apply to subpart 1, item C:~~

27.16 ~~(1) Underwriters Laboratories, Standard for Safety for External Corrosion~~  
27.17 ~~Protection Systems for Steel Underground Storage Tanks, UL 1746 (2007); or~~

27.18 ~~(2) Steel Tank Institute, ACT-100 Specification for External Corrosion~~  
27.19 ~~Protection of Composite Steel Underground Storage Tanks, STI F894 (2006).~~

27.20 ~~D. The following codes of practice apply to subpart 1, item D:~~

27.21 ~~(1) Underwriters Laboratories, Standard for Steel Underground Tanks for~~  
27.22 ~~Flammable and Combustible Liquids, UL 58 (1996);~~

27.23 ~~(2) Underwriters Laboratories, Standard for Safety for External Corrosion~~  
27.24 ~~Protection Systems for Steel Underground Storage Tanks, UL 1746 (2007);~~

- 28.1                   ~~(3) Steel Tank Institute, Recommended Practice for Interstitial Tightness~~  
28.2 ~~Testing of Existing Underground Double Wall Steel Tanks, RP012 (2006); and~~
- 28.3                   ~~(4) Steel Tank Institute, Standard for Dual Wall Underground Steel Storage~~  
28.4 ~~Tanks, STI F841 (2006).~~
- 28.5                   ~~E. The following code of practice applies to subpart 1, item E: American Petroleum~~  
28.6 ~~Institute, Interior Lining and Periodic Inspection of Underground Storage Tanks, API 1631~~  
28.7 ~~(2001).~~
- 28.8                   A. American Petroleum Institute, Interior Lining and Periodic Inspection of  
28.9 Underground Storage Tanks, API STD 1631.
- 28.10                  B. NACE International, Corrosion Control of Underground Storage Tank Systems  
28.11 by Cathodic Protection, SP0285-2011.
- 28.12                  C. Steel Tank Institute, Recommended Practice for Interstitial Tightness Testing  
28.13 of Existing Underground Double Wall Steel Tanks, R012.
- 28.14                  D. Steel Tank Institute, ACT-100<sup>®</sup> Specification for External Corrosion Protection  
28.15 of FRP Composite Steel USTs, F894.
- 28.16                  E. Steel Tank Institute, Specification and Manual for External Corrosion Protection  
28.17 of Underground Steel Storage Tanks, STI-P3<sup>®</sup>.
- 28.18                  F. Steel Tank Institute, Standard for Dual Wall Underground Steel Storage Tanks,  
28.19 F841.
- 28.20                  G. Steel Tank Institute, ACT-100-U<sup>®</sup> Specification for External Corrosion  
28.21 Protection of Composite Steel Underground Storage Tanks, F961.
- 28.22                  H. Steel Tank Institute, Specification for Permatank<sup>®</sup>, F922.

29.1 I. Underwriters' Laboratories of Canada, External Corrosion Protection Systems  
29.2 for Steel Underground Tanks for Flammable and Combustible Liquids,  
29.3 CAN/ULC-S603.1-11.

29.4 J. Underwriters' Laboratories of Canada, Standard for Steel Underground Tanks  
29.5 for Flammable and Combustible Liquids, CAN/ULC-S603-14.

29.6 K. Underwriters' Laboratories of Canada, Standard for Isolating Bushings for  
29.7 Steel Underground Tanks Protected with External Corrosion Protection Systems,  
29.8 ULC-S631-05.

29.9 L. Underwriters' Laboratories of Canada, Standard for Fibre Reinforced Plastic  
29.10 Underground Tanks for Flammable and Combustible Liquids, CAN/ULC-S615-14.

29.11 M. Underwriters Laboratories, Outline of Investigation for Underground Fuel  
29.12 Tank Internal Retrofit Systems, UL 1856.

29.13 N. Underwriters Laboratories, Glass-Fiber-Reinforced Plastic Underground Storage  
29.14 Tanks for Petroleum Products, Alcohols, and Alcohol-Gasoline Mixtures, UL 1316.

29.15 O. Underwriters Laboratories, Standard for External Corrosion Protection Systems  
29.16 for Steel Underground Storage Tanks, UL 1746.

29.17 P. Underwriters Laboratories, Standard for Steel Underground Tanks for  
29.18 Flammable and Combustible Liquids, UL 58.

29.19 Subp. 3. **Piping.** ~~The piping that routinely contains regulated substances and is in~~  
29.20 ~~contact with the ground must be properly designed, constructed, and protected from corrosion~~  
29.21 ~~using one of the following methods, except that all hazardous materials piping and all piping,~~  
29.22 ~~other than heating oil piping, installed or replaced after December 22, 2007, other than~~  
29.23 ~~piping that conveys regulated substances under safe suction meeting the design requirements~~  
29.24 ~~of part 7150.0300, subpart 6, item B, subitem (2), shall comply with item D. The corrosion~~  
29.25 ~~protection methods in items A to D must be in accordance with one of the codes of practice~~



30.1 ~~in subpart 4 developed by a nationally recognized association or independent testing~~  
30.2 ~~laboratory.~~

30.3 ~~A. The piping is constructed of fiberglass-reinforced plastic.~~

30.4 ~~B. The piping is constructed of steel and cathodically protected in the following~~  
30.5 ~~manner:~~

30.6 ~~(1) the piping is coated with a suitable dielectric material;~~

30.7 ~~(2) field-installed cathodic protection systems are designed by a corrosion~~  
30.8 ~~expert;~~

30.9 ~~(3) impressed current systems are designed to allow determination of current~~  
30.10 ~~operating status as required in part 7150.0215, subpart 3, item A; and~~

30.11 ~~(4) cathodic protection systems are operated and maintained according to~~  
30.12 ~~part 7150.0215.~~

30.13 ~~C. The piping is constructed of a steel and fiberglass-reinforced plastic composite.~~

30.14 ~~D. The piping is secondarily contained.~~

30.15 ~~(1) Secondary containment piping shall use one of the following designs:~~

30.16 ~~(a) the piping is of double-walled fiberglass-reinforced plastic~~  
30.17 ~~construction;~~

30.18 ~~(b) the piping is of double-walled steel construction, with cathodic~~  
30.19 ~~protection of the outer wall meeting the requirements of item B;~~

30.20 ~~(c) the piping is of double-walled steel construction with a~~  
30.21 ~~fiberglass-reinforced plastic jacket;~~

~~(d) the piping is of single-walled steel construction with a fiberglass-reinforced plastic jacket, which is designed to contain and detect a leak through the steel wall; or~~

~~(e) the piping is of double-walled nonmetallic flexible construction.~~

~~(2) All secondary containment piping shall be capable of containing a release from the inner wall of the piping and shall be designed with release detection according to part 7150.0340, subpart 4.~~

~~E. The piping is of single-walled nonmetallic flexible construction.~~

~~F. The piping construction and corrosion protection are determined by the commissioner to be designed to prevent the release or threatened release of a stored regulated substance in a manner that is no less protective of human health and the environment than the requirements of items A to D. The commissioner's determination under this item must be obtained in writing and the tank owners and operators must keep the determination for the life of the tank.~~

A. Piping that does not meet the requirements of this subpart must be permanently closed according to part 7150.0410.

B. Owners and operators must ensure that piping that routinely contains product is properly designed, constructed, and protected from corrosion using one of the methods under this item. The piping must be:

(1) constructed of a noncorrodible material;

(2) constructed of steel and cathodically protected according to this subitem. All cathodic-protection systems under this subitem must be operated and maintained according to part 7150.0215. The piping must:

32.1 (a) be coated with a suitable dielectric material and a sacrificial-anode  
32.2 system designed and installed according to industry standards or under the control of a  
32.3 corrosion expert;

32.4 (b) have a field-installed cathodic-protection system designed and  
32.5 certified by a corrosion expert; or

32.6 (c) have an impressed-current system designed by a corrosion expert  
32.7 that allows determination of current operating status as required under part 7150.0215,  
32.8 subpart 3; or

32.9 (3) constructed and protected from corrosion using a method that prevents  
32.10 release or threatened release of a stored, regulated substance and is no less protective of  
32.11 human health and the environment than the methods under subitems (1) and (2), as  
32.12 determined by the commissioner. The commissioner's determination under this subitem  
32.13 must be obtained in writing, and the owners and operators must keep the determination for  
32.14 the life of the tank.

32.15 C. Except for heating-oil piping and piping that conveys product under suction  
32.16 and meets the design requirements of part 7150.0300, subpart 6, item B, subitem (2), owners  
32.17 and operators must:

32.18 (1) secondarily contain hazardous substance piping;

32.19 (2) secondarily contain all piping containing regulated substances installed  
32.20 or replaced after December 22, 2007; and

32.21 (3) ensure that:

32.22 (a) the secondary containment is capable of containing a release from  
32.23 the inner wall of the piping and is designed with release detection according to part  
32.24 7150.0340, subpart 4; and

33.1 (b) all secondarily contained piping installed after December 22, 2007,  
 33.2 has secondary containment meeting the requirements of subparts 6 and 7 at each end of the  
 33.3 piping segment, except for:

33.4 i. secondarily contained piping entering a building, provided that  
 33.5 the building will contain a release until it can be detected and remedied; or

33.6 ii. transition joints approved for direct burial by the manufacturer  
 33.7 when connecting secondarily contained piping to a single-wall pipe.

33.8 Subp. 4. **Codes of practice for piping.** ~~Codes of practice for subpart 3 are described~~  
 33.9 ~~in items A and B.~~ The codes of practice under this subpart must be used to comply with  
 33.10 subpart 3, as applicable. The codes are incorporated by reference under part 7150.0500.

33.11 ~~A. The following codes of practice apply to subpart 3, item A:~~

33.12 ~~(1) Underwriters Laboratories, Emergency Breakaway Fittings, Swivel~~  
 33.13 ~~Connectors and Pipe-Connection Fittings for Petroleum Products and LP-Gas, UL 567~~  
 33.14 ~~(2004);~~

33.15 ~~(2) Underwriters' Laboratories of Canada, Standard for Flexible Underground~~  
 33.16 ~~Hose Connectors for Flammable and Combustible Liquids, CAN/ULC-S633-99 (1999); or~~

33.17 ~~(3) Underwriters' Laboratories of Canada, Guide for Glass-Fiber-Reinforced~~  
 33.18 ~~Plastic Pipe and Fittings for Flammable Liquids, ULC Subject C107C-M1984 (1984).~~

33.19 ~~B. The following codes of practice apply to subpart 3, item B:~~

33.20 ~~(1) National Fire Protection Association, Flammable and Combustible Liquids~~  
 33.21 ~~Code, NFPA 30 (2003);~~

33.22 ~~(2) American Petroleum Institute, Installation of Underground Petroleum~~  
 33.23 ~~Storage Systems, API 1615 (1996);~~

~~(3) American Petroleum Institute, Cathodic Protection of Underground Petroleum Storage Tanks and Piping Systems, API 1632 (1996); or~~

~~(4) National Association of Corrosion Engineers, Control of External Corrosion on Underground or Submerged Metallic Piping Systems, SP0169-2007 (2007).~~

A. American Petroleum Institute, Cathodic Protection of Underground Petroleum Storage Tanks and Piping Systems, API RP 1632.

B. NACE International, Control of External Corrosion on Underground or Submerged Metallic Piping Systems, SP0169-2013.

C. NACE International, Corrosion Control of Underground Storage Tank Systems by Cathodic Protection, SP0285-2011.

D. Steel Tank Institute, Recommended Practice for Corrosion Protection of Underground Piping Networks Associated with Liquid Storage and Dispensing Systems, R892.

E. Underwriters' Laboratories of Canada, Standard for Nonmetallic Underground Piping for Flammable and Combustible Liquids, CAN/ULC S660-08.

F. Underwriters Laboratories, Standard for Nonmetallic Underground Piping for Flammable Liquids, UL 971.

G. Underwriters Laboratories, Outline of Investigation for Metallic Underground Fuel Pipe, UL 971A.

Subp. 5. ~~Spill and overfill prevention~~ Spill-prevention and overfill-prevention equipment.

A. Except as provided in item B, to prevent spilling and overfilling associated with product transfer to the ~~underground storage tank~~ UST system, owners and operators must use ~~the following spill and overfill prevention equipment:~~

35.1 (1) ~~spill-prevention~~ spill-prevention equipment that ~~will prevent~~ prevents  
35.2 release of product to the environment when the transfer hose is detached from the fill pipe;  
35.3 for example, a spill ~~catchment basin~~ bucket; and

35.4 (2) ~~overflow-prevention~~ one of the following types of overflow-prevention  
35.5 equipment ~~that will~~:

35.6 (a) equipment that automatically shut shuts off flow into the tank when  
35.7 the tank is no more than 95 percent full; ~~or~~. Any flow-restricting overflow device in a vent  
35.8 line must be entirely removed when an automatic shutoff device is used to prevent releases  
35.9 from the tank;

35.10 (b) ~~alert~~ equipment that alerts the transfer operator when the tank is no  
35.11 more than 90 percent full by restricting the flow into the tank or triggering a high-level  
35.12 alarm audible to the transfer operator; provided that:

35.13 i. all tank openings are liquid tight when used in conjunction with  
35.14 flow-restricting devices in vent lines and high-level alarms;

35.15 ii. flow-restricting devices used in vent lines are not installed on  
35.16 UST systems after the effective date of this part;

35.17 iii. flow-restricting devices in vent lines are not allowed on suction  
35.18 systems with air eliminators;

35.19 iv. flow-restricting devices used in vent lines are not used in  
35.20 conjunction with overflow devices installed in the drop tube; and

35.21 v. flow-restricting devices in vent lines are not used in conjunction  
35.22 with coaxial stage 1 vapor-recovery systems; and

36.1 (c) vent-restriction devices in vent lines or auto-shutoff devices must  
36.2 not be used on tanks equipped with remote fill pipes or on UST systems where product is  
36.3 delivered under pressure.

36.4 B. Owners and operators are not required to use the ~~spill and overfill prevention~~  
36.5 spill-prevention and overfill-prevention equipment specified in item A if:

36.6 *[For text of subitem (1), see M.R.]*

36.7 (2) the ~~underground storage tank~~ UST system is filled by transfers of no more  
36.8 than 25 gallons at one time.

36.9 The commissioner's determination under subitem (1) must be obtained in writing<sub>2</sub> and the  
36.10 tank owners and operators must keep the determination for the life of the tank.

36.11 C. Before placing a UST system into service, the owners and operators must:

36.12 (1) test spill buckets for liquid tightness according to part 7150.0216, subparts  
36.13 1 and 4; and

36.14 (2) test overfill devices for proper function according to part 7150.0216,  
36.15 subparts 1 and 5.

36.16 Subp. 6. **Submersible ~~pumps~~ pump sumps.**

36.17 A. After December 22, 2007, owners and operators must provide any new or  
36.18 replacement submersible pump, ~~including replacement pump head, shall be provided~~ with  
36.19 secondary containment around and beneath the pump head. Secondary containment ~~shall~~  
36.20 must be:

36.21 (1) designed to contain a ~~release~~ leak from the pump head and any ~~connectors,~~  
36.22 ~~fittings, and valves beneath the pump head~~ appurtenance or leak-detection device until the  
36.23 release can be detected and removed;

36.24 (2) designed with liquid-tight sides, bottom, ~~cover,~~ and points of penetration;

(3) constructed of fiberglass-reinforced plastic or other synthetic material of comparable thickness and durability; ~~and~~

(4) compatible with the stored substance; and

(5) tested liquid tight before backfilling the secondary containment and placing the UST system into service according to part 7150.0216, subparts 1 and 4.

B. Any submersible pump installed before December 22, 2007, and not in a secondarily contained sump used for interstitial monitoring must be accessible for visual inspection and must not be covered by soil, water, or other obstacles that prevent visual inspections.

C. The following ~~code~~ codes of practice may are incorporated by reference under part 7150.0500 and must be used to meet the requirements of this subpart, as applicable:

(1) Underwriters' Laboratories of Canada, Under-Dispenser Sumps, ULC/ORD-C107.21-1992 (1992). The code is incorporated by reference under part 7150.0500. ULC/ORD-C107.21; and

(2) Underwriters Laboratories, Outline of Investigation for Containment Sumps, Fittings and Accessories for Fuels, UL 2447.

Subp. 7. ~~Dispensers~~ Dispenser sumps.

A. ~~After December 22, 2007, any new dispenser, and any replacement dispenser where work is performed beneath any shear valves or check valves or on any flexible connectors or unburied risers, shall be provided with secondary containment beneath the dispenser. Secondary containment shall be:~~ Owners and operators must install secondary containment under a dispenser if:



(1) ~~designed to contain a release from the dispenser and any connectors, fittings, and valves beneath the dispenser until the release can be detected and removed~~ the dispenser is part of a new UST system;

(2) ~~designed with liquid-tight sides, bottom, and points of penetration~~ new or replacement piping is connected to the dispenser;

(3) ~~constructed of fiberglass-reinforced plastic or other synthetic material of comparable thickness and durability; and~~ a dispenser is replaced with work performed below the shear valves; or

(4) ~~compatible with the stored substance~~ the concrete or base material under the dispenser is replaced, repaired, or modified.

B. Secondary containment must be:

(1) designed to contain a leak from the dispenser and any components of a UST system in or under the dispenser until the leak can be detected and remedied;

(2) designed with liquid-tight sides, bottom, and points of penetration;

(3) constructed of fiberglass-reinforced plastic or other synthetic material of comparable thickness and durability;

(4) compatible with the stored substance; and

(5) tested liquid tight before backfilling the secondary containment and placing the dispenser into service according to part 7150.0216, subparts 1 and 4.

C. Owners and operators must ensure that underdispenser containment installed after the effective date of this part allows for visual inspection and access to the components in the containment system.

D. Owners and operators performing dispenser repair are not required to install secondary containment.

E. The following ~~code codes~~ of practice ~~shall~~ are incorporated by reference under part 7150.0500 and must be used to meet the requirements of this subpart, as applicable:

(1) Underwriters' Laboratories of Canada, Under-Dispenser Sumps, ~~ULC/ORD-C107.21-1992 (1992). The code is incorporated by reference under part 7150.0500.~~ ULC/ORD-C107.21; and

(2) Underwriters Laboratories, Outline of Investigation for Containment Sumps, Fittings and Accessories for Fuels, UL 2447.

Subp. 8. **Emergency stops.** Owners and operators must have an emergency disconnect switch that is readily available to persons dispensing a regulated substance to disconnect electric power to pumps and dispensers, in accordance with the Minnesota State Fire Code, in the event of an emergency.

**7150.0215 OPERATION AND MAINTENANCE OF CATHODIC OPERATING AND MAINTAINING CORROSION PROTECTION.**

Subpart 1. **General Operating and maintaining cathodic protection.** ~~Cathodic protection~~ Owners and operators of a UST system must operate and maintain cathodic-protection systems must be operated and maintained to continuously provide cathodic protection to the metal components of the parts of the tank and piping that routinely contain regulated substances and are in contact with the ground.

Subp. 2. **Sacrificial-anode Sacrificial-anode systems.** ~~Sacrificial-anode cathodic protection systems~~ Owners and operators with a sacrificial-anode system for cathodic protection must be tested test for proper operation according to the following requirements:

A. systems must be tested by a ~~cathodic protection~~ cathodic-protection tester:

(1) within six months of installation and at least every three years thereafter;  
and

(2) within six months after any repairs and at least every three years thereafter;

40.1 B. ~~the criteria that are~~ one of the codes of practice under subpart 5 must be used  
40.2 to determine that cathodic protection is adequate as required by this subpart ~~must be according~~  
40.3 ~~to National Association of Corrosion Engineers, Corrosion Control of Underground Storage~~  
40.4 ~~Tank Systems by Cathodic Protection, RP0285-2002 (2002), incorporated by reference~~  
40.5 ~~under part 7150.0500; and~~

40.6 C. ~~systems designed with external testing stations must be tested using a voltmeter~~  
40.7 ~~according to this subpart, but do not require testing by a cathodic protection tester. repairs~~  
40.8 to sacrificial-anode systems must be conducted within 60 days of failing test results and  
40.9 must be:

40.10 (1) conducted according to one of the industry standards under subpart 5 by  
40.11 a certified tank contractor under chapter 7105, a cathodic-protection tester, or a corrosion  
40.12 expert; or

40.13 (2) conducted according to the design and recommendations of a  
40.14 corrosion-protection expert by a certified tank contractor under chapter 7105, a  
40.15 cathodic-protection tester, or a corrosion expert.

40.16 Subp. 3. ~~Impressed current~~ Impressed-current systems. ~~Impressed current cathodic~~  
40.17 ~~protection systems~~ Owners and operators with an impressed-current system for cathodic  
40.18 protection must be tested ~~test~~ for proper operation according to the following requirements:

40.19 A. the rectifier must be read every 60 days to ensure that current is being delivered  
40.20 to the system, and the voltage and amperage readings ~~shall~~ must be recorded;

40.21 B. systems must be tested by a corrosion expert or a ~~cathodic protection~~  
40.22 cathodic-protection tester:

40.23 (1) within six months of installation and at least annually thereafter; and

40.24 (2) within six months after any repairs and at least annually thereafter; and

41.1 C. ~~the criteria that are~~ one of the codes of practice under subpart 5 must be used  
41.2 to determine that cathodic protection is adequate as required by this subpart ~~must be according~~  
41.3 ~~to National Association of Corrosion Engineers, Corrosion Control of Underground Storage~~  
41.4 ~~Tank Systems by Cathodic Protection, RP0285-2002 (2002), incorporated by reference~~  
41.5 ~~under part 7150.0500;~~ and

41.6 D. repairs to the impressed-current system must be conducted:

41.7 (1) within 60 days of a failing test result;

41.8 (2) by a certified tank contractor under chapter 7105, a cathodic-protection  
41.9 tester, or a corrosion expert; and

41.10 (3) in accordance with the design and written approval of a corrosion expert.

41.11 Subp. 4. **Internally lined tanks.**

41.12 A. Owners and operators must ensure that a tank with an internal lining for  
41.13 corrosion protection is internally inspected and evaluated within ten years after lining and  
41.14 every five years thereafter and found to be structurally sound with the lining performing  
41.15 according to original design specifications as follows:

41.16 (1) internal inspection and evaluation must be conducted according to  
41.17 American Petroleum Institute, Interior Lining and Periodic Inspection of Underground  
41.18 Storage Tanks, API 1631, incorporated by reference under part 7150.0500;

41.19 (2) the lining inspector must be approved by the manufacturer of the lining,  
41.20 if an approval process exists, or must be qualified by training and experience in the  
41.21 application and inspection of the type of internal lining to be inspected;

41.22 (3) the owners, operators, or lining inspector must notify the agency at least  
41.23 ten days before performing an inspection according to part 7150.0090, subpart 1;

42.1 (4) inspections must include a thorough cleaning of the lining; visual  
42.2 inspection of the lining for cracking, blistering, perforation, disbonding, and excessive wear;  
42.3 ultrasonic thickness testing; holiday (spark) testing for lining continuity; lining thickness  
42.4 measurement; lining hardness testing; and representative photographs of internal surfaces;

42.5 (5) inspections must be primarily by manned entry. Video-camera observation  
42.6 alone is not allowed;

42.7 (6) minor abnormal conditions of the lining, such as short cracks or localized  
42.8 disbonding, may be repaired if the conditions do not constitute more than five percent of  
42.9 the lining surface area and the repairs will return the lining to substantially the original  
42.10 design specifications; and

42.11 (7) if a repair to the tank or to the internal lining as allowed under subitem  
42.12 (6) is performed, the tank must pass a tightness test according to part 7150.0330, subpart  
42.13 4, before or within 30 days after returning the tank to service.

42.14 B. A written inspection report must be produced that describes the results of all  
42.15 tests and evaluations required by item A, subitem (4), and the results of tightness testing  
42.16 under item A, subitem (7). The report must identify any abnormal conditions found during  
42.17 the inspection and the measures taken to correct the conditions. The inspector must certify  
42.18 in the report that, in the professional judgment of the inspector, the tank is structurally sound,  
42.19 the lining is performing according to original design specifications, and the tank and lining  
42.20 will maintain their integrity for at least five years under the anticipated conditions of use.  
42.21 The inspection report must be submitted to the agency within 60 days after the internal  
42.22 inspection.

42.23 C. A tank with an internal lining as the sole method of corrosion protection must  
42.24 be permanently closed and site assessment completed according to parts 7150.0345 and  
42.25 7150.0410 if at any time abnormal conditions other than minor abnormal conditions described  
42.26 in item A, subitem (6), are found to exist. The lining may not be replaced, nor may the tank

43.1 be upgraded with cathodic protection or another corrosion-protection method to meet the  
43.2 requirements of this subpart.

43.3 Subp. 5. **Codes of practice.** The following codes of practice for operating and  
43.4 maintaining cathodic protection must be used to comply with this part, as applicable, and  
43.5 the codes are incorporated by reference under part 7150.0500:

43.6 A. NACE International, Control of External Corrosion on Underground or  
43.7 Submerged Metallic Piping Systems, SP0169-2013;

43.8 B. NACE International, Corrosion Control of Underground Storage Tank Systems  
43.9 by Cathodic Protection, SP0285-2011;

43.10 C. NACE International, Measurement Techniques Related to Criteria for Cathodic  
43.11 Protection of Underground Storage Tank Systems, TM101-2012;

43.12 D. NACE International, Measurement Techniques Related to Criteria for Cathodic  
43.13 Protection on Underground or Submerged Metallic Piping Systems, TM0497-2012;

43.14 E. Petroleum Equipment Institute, Recommended Practices for Installation of  
43.15 Underground Liquid Storage Systems, PEI/RP100-11;

43.16 F. Steel Tank Institute, Cathodic Protection Testing Procedures for sti-P3<sup>®</sup> UST's,  
43.17 R051;

43.18 G. Steel Tank Institute, Recommended Practice for Corrosion Protection of  
43.19 Underground Piping Networks Associated with Liquid Storage and Dispensing Systems,  
43.20 R892; and

43.21 H. Steel Tank Institute, Recommended Practice for the Addition of Supplemental  
43.22 Anodes to sti-P3<sup>®</sup> UST's, R972.

44.1 **7150.0216 OPERATING, MAINTAINING, AND TESTING UST SYSTEMS.**

44.2 **Subpart 1. General.**

44.3 **A. Owners and operators must maintain, test, operate, and inspect tanks, piping,**  
44.4 **and associated components of a UST system as described in this part and in accordance**  
44.5 **with:**

44.6 **(1) requirements of the manufacturer;**

44.7 **(2) the following codes of practice developed by a nationally recognized**  
44.8 **association and incorporated by reference under part 7150.0500:**

44.9 **(a) Petroleum Equipment Institute, Recommended Practices for the**  
44.10 **Testing and Verification of Spill, Overfill, Leak Detection and Secondary Containment**  
44.11 **Equipment at UST Facilities, PEI/RP1200; and**

44.12 **(b) Petroleum Equipment Institute, Recommended Practices for the**  
44.13 **Inspection and Maintenance of UST Systems, PEI/RP900; or**

44.14 **(3) requirements determined by the commissioner to be equivalent and no**  
44.15 **less protective of human health and the environment than subitems (1) and (2).**

44.16 **B. Wastes from testing, such as hydrostatic testing water, must be properly disposed**  
44.17 **of according to state and local regulations. Documentation demonstrating that testing wastes**  
44.18 **were properly disposed of according to state and local regulations must be maintained**  
44.19 **according to part 7150.0450.**

44.20 **Subp. 2. Periodic operation and maintenance inspections.**

44.21 **A. Owners and operators of a UST system must ensure the proper maintenance**  
44.22 **and operation of the UST system. At a minimum, owners and operators must conduct a**  
44.23 **monthly walk-through inspection of the UST system. During the inspection, the owners**  
44.24 **and operators must:**

45.1 (1) visually check dispenser sumps, spill buckets, transition sumps, and  
45.2 submersible pump sumps for leaks and equipment defects;

45.3 (2) investigate and remedy the source of any spill, drip, or leak from the UST  
45.4 system;

45.5 (3) remove any liquid or debris from containment sumps used for interstitial  
45.6 monitoring and spill buckets;

45.7 (4) remove any liquid or debris from sumps to allow the piping, pump head,  
45.8 and other appurtenances in the sump to be inspected;

45.9 (5) ensure that release-detection equipment is operating with no alarms or  
45.10 other unusual operating conditions present and that records of release detection are reviewed  
45.11 and current;

45.12 (6) ensure that riser caps are tight and that there are no obstructions in the  
45.13 fill risers that would prevent an overfill device from functioning properly; and

45.14 (7) ensure that the bottom of the tank is monitored for water to the nearest  
45.15 one-eighth of an inch through electronic or manual gauging at least once a month.

45.16 B. Submersible pump sumps are exempt from inspections under item A if the  
45.17 sump is secondarily contained and equipped with a leak-sensing device that alerts the  
45.18 operator of a regulated substance or water in the sump and the sump sensor is tested annually  
45.19 for proper function.

45.20 C. Spill buckets are exempt from inspections under item A if the UST system  
45.21 receives deliveries at intervals greater than 30 days and the spill bucket is inspected before  
45.22 and immediately after each delivery. Owners and operators must maintain delivery records  
45.23 to verify infrequent deliveries.



46.1 D. Owners and operators must maintain records of inspections under this subpart.  
46.2 Records must include a list of each area checked, whether each area checked was compliant  
46.3 or needed action taken, and a description of any compliance actions taken.

46.4 Subp. 3. **Release-detection equipment.**

46.5 A. Owners and operators must test and maintain release-detection equipment to  
46.6 ensure that the equipment can detect a release from any part of the UST system that routinely  
46.7 contains product.

46.8 B. Owners and operators must annually test electronic, mechanical, and handheld  
46.9 components of release-detection equipment for serviceability and proper operation. Beginning  
46.10 no later than October 13, 2020, owners and operators must annually inspect components  
46.11 listed under item C using an agency-approved tester.

46.12 C. As applicable to the facility, testing under this subpart must, at a minimum,  
46.13 include the following components and criteria:

46.14 (1) for automatic tank gauges and other controllers, test alarms, verify system  
46.15 configuration, and test battery backup.

46.16 (2) for probes and sensors, inspect for residual buildup, ensure floats move  
46.17 freely, ensure the shaft is not damaged, ensure cables are free of kinks and breaks, and test  
46.18 alarm operability and communication with controller;

46.19 (3) for automatic line-leak detectors, test the operation to meet the criteria  
46.20 under part 7150.0340, subpart 2, item D;

46.21 (4) for vacuum pumps and pressure gauges, ensure proper communication  
46.22 with sensors and controllers;

47.1 (5) for spill buckets and containment sumps, visually inspect spill buckets  
47.2 and containment sumps used for interstitial monitoring, including seals at piping, electrical,  
47.3 and other penetration points, for deficiencies; and

47.4 (6) for handheld leak-detection materials, ensure that any measuring sticks,  
47.5 fuel-finding pastes, or other handheld items used for leak detection are in a functional  
47.6 condition.

47.7 **Subp. 4. Spill buckets and containment sumps.**

47.8 **A. Owners and operators must ensure spill buckets and containment sumps used**  
47.9 **for interstitial monitoring of piping prevent releases to the environment by:**

47.10 (1) testing spill buckets and containment sumps at least once every three  
47.11 years to ensure the equipment is liquid tight; or

47.12 (2) monitoring spill buckets and containment sumps that are double walled  
47.13 monthly to ensure the integrity of both walls, checking for leaks into the interstitial area or  
47.14 equipment.

47.15 **B. Any automatic leak-sensing device used to monitor spill bucket or containment**  
47.16 **sump interstitial areas must be tested annually for proper function.**

47.17 **C. Beginning no later than October 13, 2020, testing under items A, subitem (1),**  
47.18 **and B must be performed by an agency-approved tester.**

47.19 **Subp. 5. Overfill-prevention equipment. Owners and operators must ensure**  
47.20 **overfill-prevention equipment is inspected at least every three years. The inspection must**  
47.21 **ensure that the overfill-prevention equipment is set to activate at the correct level and will**  
47.22 **activate when a regulated substance reaches that level. Beginning no later than October 13,**  
47.23 **2020, inspections under this subpart must be performed by an agency-approved tester.**

48.1 Subp. 6. Agency-approved testers.

48.2 A. To become agency-approved testers, individuals must:

48.3 (1) apply to the commissioner for approval every four years in a format  
48.4 prescribed by the commissioner. The application must include the applicant name, mailing  
48.5 address, telephone number, and information demonstrating compliance with subitems (2)  
48.6 and (3);

48.7 (2) be certified by the manufacturers of components of a UST system being  
48.8 tested and the manufacturers of equipment used to test UST systems, if the manufacturers  
48.9 offer certification; and

48.10 (3) meet one of the following criteria:

48.11 (a) be an employee of an agency-certified tank contractor under chapter  
48.12 7105; or

48.13 (b) be an employee of an independent company that specializes in testing  
48.14 UST systems, is not affiliated with the owner or operator of the UST system being tested,  
48.15 and has comprehensive general liability insurance with pollution liability coverage no less  
48.16 than \$1,000,000.

48.17 B. The commissioner must deny an application for an agency-approved tester or  
48.18 suspend, restrict, or revoke approval of an agency-approved tester if the commissioner finds  
48.19 the applicant or tester:

48.20 (1) failed to meet the approval requirements in item A;

48.21 (2) failed to comply with inspection and testing requirements in this chapter;

48.22 (3) submitted false or misleading information to obtain or renew agency  
48.23 approval under this part or certification under chapter 7105; or

49.1                   (4) engaged in fraudulent activities related to records, test results, or repairs  
49.2 while performing duties as an agency-approved tester.

49.3                   C. The commissioner must provide written notice by mail to the subject of the  
49.4 action under item B describing, as applicable, the effective date of the action, the basis for  
49.5 the action under item B, the facts supporting the action, and the specific steps necessary to  
49.6 become an approved tester. The notice must contain a statement that any request for a  
49.7 contested case hearing must, within ten calendar days exclusive of the day of service, be  
49.8 filed as a written request with the commissioner. If a contested case hearing is requested,  
49.9 the action is stayed pending the outcome of the hearing. If the individual does not request  
49.10 a hearing, the subject of the action forfeits any opportunity for a hearing. An agency-approved  
49.11 tester or applicant whose approval is revoked or denied may not apply for approval for one  
49.12 year after the effective date of revocation or denial.

49.13 **7150.0250 RESTORATION, CORRECTIVE ACTIONS, AND REQUIRED**  
49.14 **PERMANENT CLOSURE.**

49.15                   Subpart 1. Unusual operating conditions.

49.16                   A. Owners and operators must immediately investigate and remedy all unusual  
49.17 operating conditions in a UST system. The owner or operator must take the UST system  
49.18 out of service unless:

49.19                   (1) the unusual operating condition is investigated and resolved in accordance  
49.20 with this chapter;

49.21                   (2) any defective components are isolated from the UST system to prevent  
49.22 a leak; or

49.23                   (3) any defective components or equipment are repaired by a person certified  
49.24 under chapter 7105.

50.1 B. The owner or operator must report unresolved unusual operating conditions  
50.2 that may have resulted in a leak or that indicate a release has occurred according to part  
50.3 7150.0345, subpart 2.

50.4 Subp. 2. **Repairs.**

50.5 A. Owners and operators must maintain a UST system according to the  
50.6 manufacturer's instructions. If instructions are not available, owners and operators must  
50.7 maintain the functions of a UST system as intended by the manufacturer or according to  
50.8 industry standards. Repairs must ensure that releases due to structural failures, equipment  
50.9 failures, or corrosion do not occur while storing regulated substances in a UST system or  
50.10 while operating the UST system.

50.11 B. Within 30 days after completing a repair, owners and operators must ensure  
50.12 that:

50.13 (1) a repaired tank passes a tightness test according to part 7150.0330, subpart  
50.14 4;

50.15 (2) repaired piping passes a tightness test according to part 7150.0340, subpart  
50.16 3, item A; and

50.17 (3) repaired secondary-containment areas of tanks, piping used for interstitial  
50.18 monitoring, and containment sumps used for interstitial monitoring or piping passes an  
50.19 integrity test according to part 7150.0216, subpart 4.

50.20 C. Subitems (1) to (3) are codes of practice for repaired secondary-containment  
50.21 areas of tanks, piping, or containment sumps used for interstitial monitoring. The codes are  
50.22 incorporated by reference under part 7150.0500 and must be used to comply with this part:

50.23 (1) Fiberglass Tank and Pipe Institute, Field Test Protocol for Testing the  
50.24 Annular Space of Installed Underground Fiberglass Double and Triple-Wall Tanks with  
50.25 Dry Annular Space, RP 2007-2;

51.1                   (2) Steel Tank Institute, Recommended Practice for Interstitial Tightness  
51.2                   Testing of Existing Underground Double Wall Steel Tanks, R012; and

51.3                   (3) Petroleum Equipment Institute, Recommended Practices for the Testing  
51.4                   and Verification of Spill, Overfill, Leak Detection and Secondary Containment Equipment  
51.5                   at UST Facilities, PEI/RP1200.

51.6                   D. Within six months after a cathodic-protection system is repaired, the  
51.7                   cathodic-protection system must be tested according to part 7150.0215 to ensure that it is  
51.8                   operating properly. Impressed-current systems must be repaired according to part 7150.0215,  
51.9                   subpart 3, item D. Sacrificial-anode systems must be repaired according to part 7150.0215,  
51.10                  subpart 2, item C.

51.11                  E. Within 30 days of any repair to spill-prevention or overfill-prevention  
51.12                  equipment, the repaired spill-prevention or overfill-prevention equipment must be tested  
51.13                  or inspected to ensure it is operating properly according to part 7150.0216.

51.14                  F. Within 30 days of any repair to components of a UST system that are used for  
51.15                  leak detection, the repaired or replaced component must be tested or inspected to ensure it  
51.16                  is operating properly according to part 7150.0216.

51.17                  G. Owners and operators must ensure repairs to UST systems are properly  
51.18                  conducted according to one of the codes of practice in this item developed by a nationally  
51.19                  recognized association or independent testing laboratory and incorporated by reference  
51.20                  under part 7150.0500, except that repairs to fiber-reinforced plastic tanks may be made by  
51.21                  the manufacturer's authorized representative.

51.22                  (1) American Petroleum Institute, Cathodic Protection of Underground  
51.23                  Petroleum Storage Tanks and Piping Systems, API RP 1632.

51.24                  (2) American Petroleum Institute, Repairing Hazardous Liquid Pipelines,  
51.25                  API RP 2200.

52.1                   (3) American Petroleum Institute, Interior Lining and Periodic Inspection of  
52.2 Underground Storage Tanks, API STD 1631.

52.3                   (4) Fiberglass Tank and Pipe Institute, Remanufacturing of Fiberglass  
52.4 Reinforced Plastic (FRP) Underground Storage Tanks, RP T-95-1.

52.5                   (5) NACE International, Corrosion Control of Underground Storage Tank  
52.6 Systems by Cathodic Protection, SP0285-2011.

52.7                   (6) National Fire Protection Association, Flammable and Combustible Liquids  
52.8 Code, NFPA 30.

52.9                   (7) National Fire Protection Association, Standard for the Safeguarding of  
52.10 Tanks and Containers for Entry, Cleaning, or Repair, NFPA 326.

52.11                  (8) National Leak Prevention Association, Entry, Cleaning, Interior Inspection,  
52.12 Repair, and Lining of Underground Storage Tanks, NLPA 631, Chapter A.

52.13                  (9) Steel Tank Institute, Recommended Practice for the Addition of  
52.14 Supplemental Anodes to sti-P3<sup>®</sup> UST's, R972.

52.15                  Subp. 3. **Replacement.**

52.16                  A. Components of a UST system that do not meet the performance standards in  
52.17 part 7150.0100 must be repaired or replaced. Owners and operators must replace:

52.18                   (1) any component that has corrosion that may cause the component to not  
52.19 function as intended by the manufacturer or that may cause a release of a regulated substance;  
52.20 and

52.21                   (2) any component not functioning properly according to this chapter.

52.22                  B. The entire piping run, not including a submersible pump or any dispenser, must  
52.23 be replaced with secondary-containment piping according to part 7150.0205, subpart 3, if:

- 53.1                   (1) metal segments are found to have pitting-type corrosion damage;
- 53.2                   (2) metal or noncorrodible piping segments have released a regulated
- 53.3 substance;
- 53.4                   (3) pipe segments are found to have degraded because of age, incompatibility,
- 53.5 or poor installation practices; or
- 53.6                   (4) 50 percent or more of the piping run is replaced.

53.7                   C. Piping may be repaired and the entire piping run need not be replaced if:

- 53.8                   (1) the piping is secondarily contained according to part 7150.0205, subpart
- 53.9 3;
- 53.10                   (2) a release is due to an external, onetime cause, such as damage during
- 53.11 excavation; or
- 53.12                   (3) a release occurring on a piping appurtenance, such as a flex connector,
- 53.13 shear valve, or check valve, did not occur as a result of corrosion.

53.14                   Subp. 4. **Required permanent closure.** Owners and operators must ensure that a tank

53.15 system or pipe system is permanently closed according to part 7150.0410 and a site

53.16 assessment is completed according to part 7150.0345, subpart 3, if:

53.17                   A. a tank has shifted upward from its original burial position to the extent that the

53.18 UST has caused a bulge in the concrete or cover material over the tank or components

53.19 secured to the top of the UST are contacting access covers, unless repairs can be made to

53.20 the UST system to prevent the tank from shifting and ensure that the UST system has not

53.21 been, nor will be, damaged;

53.22                   B. a UST that is not secondarily contained has released a regulated product to the

53.23 environment, unless the UST can be retrofitted according to part 7150.0205, subpart 1; or



54.1 C. the inner or outer shell of a secondarily contained UST, including retrofit tanks,  
54.2 or pipe is not liquid tight, unless the tank or pipe can be repaired according to subpart 2.

54.3 **7150.0300 RELEASE DETECTION.**

54.4 Subpart 1. **General.** With the exception of emergency generator tanks that must  
54.5 comply with parts 7150.0300 to 7150.0340 by October 13, 2020, owners and operators of  
54.6 ~~underground storage tank~~ UST systems must provide a method, or combination of methods,  
54.7 of release detection for tanks, piping, dispensers, and submersible pumps that:

54.8 A. can detect a ~~release~~ leak from any part of the tank and the connected  
54.9 underground piping, dispensers, and submersible pumps that routinely contains product;

54.10 *[For text of item B, see M.R.]*

54.11 C. meets the performance standards in part 7150.0330 or 7150.0340. The  
54.12 performance of release detection equipment, as certified by an independent testing laboratory  
54.13 or a nationally recognized association, must be documented with written specifications  
54.14 supplied by the equipment manufacturer or installer. Methods of release detection for tanks  
54.15 and piping must be capable of detecting the leak rate or quantity specified for that method  
54.16 in parts 7150.0330 and 7150.0340.

54.17 Subp. 2. [See repealer.]

54.18 *[For text of subps 3 and 4, see M.R.]*

54.19 Subp. 5. **Tanks.** Tanks must be monitored at least every 30 days for ~~releases~~ leaks  
54.20 using one of the following methods or combination of methods, except that hazardous  
54.21 ~~materials~~ substance tanks and tanks installed on or after December 22, 2007, must comply  
54.22 with item B:

54.23 A. automatic tank gauging according to part 7150.0330, subpart 5, ~~combined with~~  
54.24 ~~inventory control in accordance with part 7150.0330, subpart 2;~~

B. interstitial monitoring according to part 7150.0330, subpart 6;

~~C. inventory control according to part 7150.0330, subpart 2, subject to the following conditions: statistical inventory reconciliation according to part 7150.0330, subpart 6a;~~

~~(1) tank tightness testing shall be performed according to part 7150.0330, subpart 4, within five years after installation; and~~

~~(2) inventory control shall be discontinued within ten years after tank installation and another method of release detection shall be substituted;~~

~~D. for tanks with capacities of greater than 1,000 gallons and less than 2,000 gallons, manual tank gauging according to part 7150.0330, subpart 3, subject to the following conditions:~~

~~(1) tank tightness testing shall be performed according to part 7150.0330, subpart 4, within five years after installation; and~~

~~(2) manual tank gauging shall be discontinued within ten years after tank installation and another method of release detection shall be substituted;~~

~~E. D.~~ for tanks with capacities of 1,000 gallons or less, manual tank gauging according to part 7150.0330, subpart 3; or

~~F. E.~~ another method of release detection according to part 7150.0330, subpart 7.

Subp. 6. **Piping.** ~~Underground~~ Piping that routinely contains regulated substances must be monitored for releases using one of the ~~following~~ methods or combination of methods, ~~except that piping installed on or after December 22, 2007, must comply with item A, subitem (3) or (4) under items A to C:~~

A. This item applies to pressure piping. Underground piping that conveys regulated substances under pressure must use one of the ~~following~~ methods: under this item, except

56.1 that piping installed on or after December 22, 2007, must comply with subitem (3). Piping  
56.2 that is positioned lower than the top of the tank must be equipped with an antisiphon device  
56.3 and use one of the methods under this item:

56.4 [For text of subitem (1), see M.R.]

56.5 (2) line leak detection conducted according to part 7150.0340, subpart 2, and  
56.6 monthly line tightness testing conducted according to part 7150.0340, subpart 3, item B; or

56.7 (3) line leak detection conducted according to part 7150.0340, subpart 2, and  
56.8 ~~monthly~~ interstitial monitoring conducted according to part 7150.0340, subpart 4, ~~item A,~~  
56.9 ~~subitem (2); or.~~

56.10 ~~(4) continuous interstitial monitoring conducted according to part 7150.0340,~~  
56.11 ~~subpart 4, item A, subitem (1).~~

56.12 B. This item applies to suction piping.

56.13 (1) Except as described in subitem (2), underground piping that conveys  
56.14 regulated substances under suction must be equipped with an antisiphon device if piping is  
56.15 positioned lower than the top of the tank and:

56.16 (a) have a line tightness test conducted at least every three years if it can  
56.17 detect a 0.1 gallon per hour leak rate at ~~one and one-half times the operating pressure~~ 50  
56.18 pounds per square inch; or

56.19 [For text of unit (b), see M.R.]

56.20 [For text of subitem (2), see M.R.]

56.21 C. ~~Other methods.~~ Another method of release detection may be used according  
56.22 to part 7150.0340, subpart 5.

56.23 Subp. 7. [See repealer.]

57.1 **7150.0330 METHODS OF RELEASE DETECTION FOR TANKS.**57.2 [For text of subp 1, see M.R.]57.3 Subp. 2. [See repealer.]57.4 Subp. 3. **Manual tank gauging.**57.5 A. Manual tank gauging must ~~be conducted in the following manner~~ comply with  
57.6 this subpart:57.7 ~~A. (1) tank liquid level measurements are~~ of the level of liquid in a tank must be  
57.8 taken at the beginning and ending of a period of at least 36 hours during which no liquid is  
57.9 added to or removed from the tank;57.10 ~~B. (2) level measurements are~~ must be based on an average of two consecutive  
57.11 stick readings at both the beginning and ending of the period; and57.12 ~~C. (3) the equipment used is~~ must be capable of measuring the level of product  
57.13 over the full range of the tank's height to the nearest one-eighth of an inch.57.14 B. A leak is suspected ~~and subject to the requirements of Minnesota Statutes,~~  
57.15 ~~section 115.061,~~ if the variation between beginning and ending measurements under item  
57.16 A exceeds the weekly or monthly standards in the following table:

		Weekly Standard (one-test)	Monthly Standard (four-test avg.)	Minimum Duration of Test
57.17				
57.18				
57.19	Tank Capacity			
57.20	<del>If manual tank gauging is the ONLY leak detection method used:</del>			
57.21	up to 550 gallons	10 gallons	5 gallons	36 hours
57.22	551-1,000 gallons (when largest			
57.23	tank is 64" x 73")	9 gallons	4 gallons	44 hours
57.24	1,000 gallons (if tank is 48" x			
57.25	128")	12 gallons	6 gallons	58 hours

58.1 ~~If manual tank gauging is combined with Tank Tightness Testing:~~

58.2 ~~1,001-2,000 gallons                      26 gallons                      13 gallons                      36 hours~~

58.3 [For text of subp 4, see M.R.]

58.4 Subp. 5. **Automatic tank gauging.** ~~Equipment for~~ Use of automatic tank gauging  
58.5 that tests for the loss of product ~~and conducts inventory control~~ must ~~meet the following~~  
58.6 ~~requirements~~ comply with this subpart:

58.7 A. the automatic product level monitor test ~~can~~ must be able to detect a 0.2 gallon  
58.8 per hour leak rate from any part of the tank that routinely contains product; and

58.9 B. ~~inventory control is conducted according to the requirements of subpart 2.~~  
58.10 owners and operators must ensure testing is performed with the system operating in one of  
58.11 the following modes:

58.12 (1) in-tank static testing conducted at least once every 30 days; or

58.13 (2) continuous in-tank leak detection operating without interruption or  
58.14 operating to allow the system to gather incremental measurements to determine the leak  
58.15 status of the tank at least once every 30 days.

58.16 Subp. 6. **Interstitial monitoring.**

58.17 A. Interstitial monitoring of ~~secondary containment~~ secondary-containment tanks  
58.18 ~~shall~~ must be conducted:

58.19 (1) continuously, by ~~means of~~ an automatic leak-sensing device that signals  
58.20 the operator of the presence of any liquid in the interstitial space; or

58.21 (2) monthly, by ~~means of~~ a procedure capable of detecting the presence of  
58.22 any liquid in the interstitial space.

58.23 B. The interstitial space ~~shall~~ must be maintained free of water, debris, or anything  
58.24 that could interfere with leak detection capabilities.

59.1 C. ~~On an annual basis,~~ Any automatic leak-sensing device ~~shall~~ must be annually  
 59.2 tested for proper function.

59.3 Subp. 6a. Statistical inventory reconciliation.

59.4 A. A release-detection method based on applying statistical principles to inventory  
 59.5 data must:

59.6 (1) report a quantitative result with a calculated leak rate;

59.7 (2) report a test result of pass, fail, or inconclusive;

59.8 (3) be capable of detecting a leak rate of 0.2 gallons per hour or a release of  
 59.9 150 gallons within 30 days; and

59.10 (4) use a threshold that does not exceed one-half the minimum detectable  
 59.11 leak rate.

59.12 B. An inconclusive test result under item A, subitem (2), means the requirements  
 59.13 of part 7150.0300, subpart 5, have not been met and the test results must be investigated  
 59.14 according to part 7150.0345, subpart 1, item B.

59.15 Subp. 7. **Other methods.** Any other type of ~~release detection~~ release-detection method,  
 59.16 or combination of methods, can be used if:

59.17 [For text of item A, see M.R.]

59.18 B. ~~the owner~~ owners and ~~operator~~ operators can demonstrate to the commissioner  
 59.19 that the method can detect a release as effectively as any of the methods allowed in this part  
 59.20 and obtain the commissioner's prior written approval of the method. In comparing methods,  
 59.21 the commissioner ~~shall~~ must consider the size of release that the method can detect and the  
 59.22 frequency and reliability with which ~~it~~ a release can be detected. If the method is approved  
 59.23 by the commissioner, ~~the owner~~ owners and ~~operator~~ operators must comply with any

conditions imposed by the commissioner on ~~its~~ the method's use to ensure the protection of human health and the environment.

**7150.0340 METHODS OF RELEASE DETECTION FOR PIPING.**

*[For text of subp 1, see M.R.]*

Subp. 2. **Automatic ~~line-leak~~ line-leak detectors.** ~~Methods that continuously alert the 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~~

A. An automatic line-leak detector must be able to detect leaks of three gallons per hour at ~~ten pounds per square inch~~ ten-pounds-per-square-inch line pressure within one hour. ~~An annual test of the operation of any line-leak detector must be conducted. Testing shall:~~

~~A. be conducted by a person:~~

~~(1) certified under chapter 7105;~~

~~(2) approved by the manufacturer of the equipment to test the detector; or~~

~~(3) qualified by reason of training or experience to test the detector;~~

~~B. comply with the manufacturer's testing requirements;~~

~~C. involve creation of a physical leak in a piping segment; and~~

~~D. verify the leak detection threshold of three gallons per hour at ten pounds per square inch line pressure within one hour.~~

B. At facilities where an operator is present during business hours, the leak-detection system must alert the operator of a leak by restricting or shutting off the flow of a regulated substance through piping or by triggering an audible or visual alarm.

61.1 C. At unattended card-lock facilities, the leak-detection system must alert the  
61.2 operator of a leak by shutting off the flow of a regulated substance.

61.3 D. The operation of any line-leak detector must be tested annually according to  
61.4 part 7150.0216. Testing must:

61.5 (1) be conducted by an agency-approved tester;

61.6 (2) create a physical leak or simulate a leak in the pipe system; and

61.7 (3) verify the leak-detection threshold of three gallons per hour at  
61.8 ten-pounds-per-square-inch line pressure within one hour.

61.9 Subp. 3. **Line tightness testing.** A periodic test of piping ~~may~~ must be conducted:

61.10 A. annually by an agency-approved tester, if it can detect a 0.1 gallon per hour  
61.11 leak rate at one and one-half times the operating pressure; or

61.12 [For text of item B, see M.R.]

61.13 Subp. 4. **Interstitial and sump monitoring.**

61.14 A. Interstitial monitoring of ~~secondary containment~~ secondary-containment piping  
61.15 ~~shall~~ must be conducted:

61.16 (1) continuously, by ~~means of~~ an automatic leak-sensing device that signals  
61.17 the operator of the presence of any regulated substance in the interstitial space or sump; or

61.18 (2) monthly, by ~~means of~~ a procedure, such as visual monitoring, capable of  
61.19 detecting the presence of any regulated substance in the interstitial space or sump.

61.20 B. The interstitial space or sump ~~shall~~ must be maintained free of water, debris,  
61.21 or anything that could interfere with leak detection capabilities.

61.22 C. ~~On an annual basis, any sump shall be visually inspected for integrity of sides~~  
61.23 ~~and floor and tightness of piping penetration seals. Any automatic~~ Sumps and leak-sensing



62.1 ~~device shall~~ devices must be inspected and tested for proper function annually according  
 62.2 to part 7150.0216, subpart 3.

62.3 Subp. 5. **Other methods.** Any other type of ~~release detection~~ release-detection method,  
 62.4 or combination of methods, may be used if:

62.5 *[For text of item A, see M.R.]*

62.6 B. ~~the owner and operator~~ owners and operators can demonstrate to the  
 62.7 commissioner that the method can detect a release as effectively as any of the methods  
 62.8 allowed in subparts 2 to 4 and obtain the commissioner's prior written approval of the  
 62.9 method. In comparing methods, the commissioner ~~shall~~ must consider the size of release  
 62.10 that the method can detect and the frequency and reliability with which ~~it~~ a release can be  
 62.11 detected. If the method is approved by the commissioner, ~~the owner~~ owners and ~~operator~~  
 62.12 operators must comply with any conditions imposed by the commissioner on the method's  
 62.13 use to ensure the protection of human health and the environment.

## 62.14 **REPORTING, INVESTIGATING, AND CONFIRMING RELEASES**

### 62.15 **7150.0345 REPORTING, INVESTIGATING, AND CONFIRMING RELEASES.**

#### 62.16 **Subpart 1. Investigating and confirming.**

62.17 A. Owners and operators must immediately investigate, confirm, and remedy all  
 62.18 suspected releases.

62.19 B. Within 24 hours of discovering an unusual operating condition while conducting  
 62.20 leak detection according to part 7150.0330 or 7150.0340, owners and operators must  
 62.21 investigate the condition by:

62.22 (1) conducting a visual inspection of aboveground and exposed below-grade  
 62.23 components of a UST system for leaks and deficiencies; and

63.1 (2) if applicable, repeating any leak test that indicated an unusual operating  
63.2 condition, conducted according to part 7150.0330, subpart 5, 6, or 6a, or 7150.0340, subpart  
63.3 2, item A; 3, item B; or 4, item A.

63.4 C. Within 24 hours of discovering an unusual operating condition or confirming  
63.5 an unusual operating condition according to item B, subitem (2), the owners and operators  
63.6 must initiate:

63.7 (1) tightness testing according to part 7150.0330, subpart 4, or 7150.0340,  
63.8 subpart 3, item A, on the component suspected of leaking; and

63.9 (2) if applicable, integrity testing, using an agency-approved tester, of  
63.10 interstitial and secondary-containment areas used for leak detection.

63.11 D. If the investigation under item B or the testing under item C indicates that the  
63.12 UST system is not leaking, owners and operators may resume leak testing the UST system  
63.13 according to part 7150.0300.

63.14 E. If testing confirms a leak, owners and operators must immediately remove the  
63.15 regulated substance from the leaking component to prevent further releases and must repair,  
63.16 replace, upgrade, or permanently close the UST system.

63.17 Subp. 2. **Reporting releases or suspected releases.** A person who has knowledge of  
63.18 a release from a UST system must immediately notify the Minnesota duty officer upon  
63.19 discovering the release by calling 1-800-422-0798 and must begin recovering the substance  
63.20 according to Minnesota Statutes, section 115.061. Notice under this subpart is also required  
63.21 if:

63.22 A. the owners and operators discover a release of a regulated substance at the  
63.23 underground tank site or in the surrounding area;

63.24 B. an unusual operating condition exists, unless:

64.1 (1) the system component is immediately repaired or replaced; and

64.2 (2) for secondarily contained systems, any liquid in the interstitial space not  
64.3 used for monitoring is immediately removed; or

64.4 C. monitoring results from a release-detection method or alarm indicates a release  
64.5 may have occurred, unless:

64.6 (1) the monitoring device or alarm is found to be defective and is immediately  
64.7 repaired, recalibrated, or replaced, and additional monitoring does not confirm the initial  
64.8 results;

64.9 (2) the leak is contained in a secondary-containment space and:

64.10 (a) any liquid in the secondary-containment space not used for monitoring  
64.11 is immediately removed; and

64.12 (b) any defective system equipment or component is immediately repaired  
64.13 or replaced; or

64.14 (3) the alarm is investigated and determined to be a nonrelease event.

64.15 Subp. 3. Assessing site; permanent closure or status change.

64.16 A. Before completing a tank or piping system closure according to part 7150.0410  
64.17 or changing the status of storing a nonregulated substance, owners and operators must  
64.18 measure, by laboratory analysis, for the presence of a release.

64.19 B. Sampling under item A must be according to the commissioner's requirements.  
64.20 The requirements must be based upon where contamination is most likely to be present,  
64.21 taking into consideration the method of closure, nature of the stored substance, type of  
64.22 backfill, depth to groundwater, and other factors relevant to identifying the presence of a  
64.23 release.

65.1 C. If contaminated soils, contaminated groundwater, or free product as a liquid  
65.2 or vapor is discovered by measurement under this subpart or by any other means, the  
65.3 Minnesota duty officer must be immediately notified by calling 1-800-422-0798 and  
65.4 corrective action must be started according to Minnesota Statutes, section 115.061.

65.5 ~~**OUT-OF-SERVICE UNDERGROUND STORAGE**~~  
65.6 ~~**TANK SYSTEMS AND UST SYSTEM CLOSURE**~~

65.7 **7150.0400 TEMPORARY CLOSURE.**

65.8 *[For text of subp 1, see M.R.]*

65.9 Subp. 2. **Tanks out of service less than 90 days.** When an ~~underground storage tank~~  
65.10 a UST system is out of service for less than 90 days, owners and operators must continue  
65.11 operation and maintenance of corrosion protection according to part 7150.0215, and any  
65.12 release detection according to parts 7150.0300 to 7150.0340. Release detection is not required  
65.13 as long as the ~~underground storage tank~~ UST system is empty. The ~~underground storage~~  
65.14 ~~tank~~ UST system is empty when all materials have been removed using commonly employed  
65.15 practices so that no more than 2.5 centimeters, or one inch, of residue remains in the system  
65.16 as measured through any part of the ~~tank~~ UST system.

65.17 *[For text of subp 3, see M.R.]*

65.18 Subp. 4. **Tanks out of service one year.** When an ~~underground storage tank~~ a UST  
65.19 system is out of service for one year or more, owners and operators must permanently close  
65.20 the ~~underground storage tank~~ UST system according to part 7150.0410, unless the owner  
65.21 or operator requests an extension of the closure period by submitting an application for an  
65.22 extension on a form approved by the commissioner and the commissioner approves the  
65.23 extension in writing based on compliance with this part. Conditions of extension ~~shall~~ must  
65.24 include record keeping requirements according to part 7150.0450 and the continued operation  
65.25 and maintenance of ~~cathodic~~ corrosion protection according to part 7150.0215. The  
65.26 ~~underground storage tank~~ UST system may not be returned to service without the written

66.1 approval of the commissioner, based on compliance with the applicable requirements of  
66.2 this chapter.

66.3 Subp. 5. **Tanks out of service five years.** All ~~underground storage tank~~ UST systems  
66.4 must be permanently closed if the ~~tank~~ UST system is out of service for five years or more.

66.5 **7150.0410 PERMANENT CLOSURE AND CHANGE IN STATUS TO STORAGE**  
66.6 **OF NONREGULATED SUBSTANCES.**

66.7 Subpart 1. **Requirements.** In addition to the requirements of the most current  
66.8 Minnesota Fire Code, owners and operators must comply with ~~the provisions in~~ subparts 2  
66.9 3 to 7 relating to permanent closure or change in status to storage of nonregulated substances.

66.10 Subp. 2. [See repealer.]

66.11 Subp. 3. **Permanent closure.**

66.12 A. To permanently close a ~~tank~~ piping system, owners and operators must empty  
66.13 and clean it ~~the piping~~ by removing all liquids. To permanently close a UST system, owners  
66.14 and operators must empty and clean the tank and piping by removing all liquids and  
66.15 accumulated sludges ~~from the tank and piping~~.

66.16 B. All tanks and piping ~~taken out of service~~ permanently closed must also be  
66.17 either:

66.18 (1) removed from the ground; or

66.19 (2) completely filled in with an inert solid material and free of voids that  
66.20 could allow flammable or hazardous vapors or liquids to accumulate in the voids.

66.21 C. A site assessment must be conducted according to part 7150.0345, subpart 3,  
66.22 for all tanks and piping permanently closed.

D. When a tank is retrofitted according to part 7150.0205, subpart 1, the original tank upon which the retrofitted tank is secured is considered permanently closed and a site assessment must be conducted according to part 7150.0345, subpart 3.

Subp. 4. ~~Storage of~~ **Storing nonregulated substances.** Continued use of an ~~underground storage tank~~ a UST system to store a nonregulated substance is considered a change in status. Before a change in status to storage of a nonregulated substance, owners and operators must empty and clean the tank and piping by removing all liquid and accumulated sludge and conduct a site assessment according to part ~~7150.0420~~ 7150.0345, subpart 3.

Subp. 5. **Certification of ~~closers~~ closure.** Owners and operators must ensure that persons performing permanent closures under subpart 3 or changes in status under subpart 4:

A. are in compliance with certification requirements imposed by chapter 7105-  
~~Such persons must:~~

B. furnish copies of current certificates issued by the ~~agency~~ commissioner to the owner and operator before beginning a permanent closure ~~under subpart 3~~ or a change in status ~~under subpart 4;~~ and

C. certify on the notification form required under part 7150.0090, subpart 2, that the methods used to perform the permanent closure or change in status complied with this part.

Subp. 6. [See repealer.]

Subp. 7. **Cleaning and closure procedures.** The cleaning and closure procedures listed in one of the following documents must be used ~~as guidance for complying to comply~~ with this part. The documents are incorporated by reference under part 7150.0500:

A. American Petroleum Institute, Closure of Underground Petroleum Storage Tanks, API RP 1604 ~~(1996)~~;

B. American Petroleum Institute, Interior Lining and Periodic Inspection of Underground Storage Tanks, API STD 1631 ~~(2001)~~; ~~or~~

C. American Petroleum Institute, Requirements for Safe Entry and Cleaning of Petroleum Storage Tanks, API STD 2015 ~~(2001)~~;

D. American Petroleum Institute, Guidelines and Procedures for Entering and Cleaning Petroleum Storage Tanks, API RP 2016;

E. National Fire Protection Association, Standard for the Safeguarding of Tanks and Containers for Entry, Cleaning, or Repair, NFPA 326; and

F. National Institute for Occupational Safety and Health, Criteria for a Recommended Standard: Working in Confined Spaces, DHEW (NIOSH) Publication No. 80-106.

**7150.0430 PREVIOUSLY CLOSED UNDERGROUND STORAGE TANK UST SYSTEMS.**

When directed by the commissioner, ~~the owner~~ owners and ~~operator~~ operators of an ~~underground storage tank~~ a UST system permanently closed before December 22, 1988, must assess the excavation zone according to part ~~7150.0420~~ 7150.0345, subpart 3, and close the ~~underground storage tank~~ UST system according to part 7150.0410 if releases from the underground storage tank may, in the judgment of the commissioner, pose a current or potential threat to human health and the environment.

69.1 **OPERATOR REQUIREMENTS, REPORTING, AND RECORD KEEPING**

69.2 **7150.0445 CLASS A, B, AND C OPERATOR REQUIREMENTS.**

69.3 **Subpart 1. General.**

69.4 A. Owners and operators of a UST system are responsible for ensuring that class  
69.5 A, B, and C operators fulfill their responsibilities under this chapter.

69.6 B. Class A, B, and C operators must be the owner or operator of the UST system  
69.7 or a designated employee of the owner or operator.

69.8 C. Owners or operators of a UST system must designate a class A, B, and C  
69.9 operator for the UST system, except that owners or operators are not required to designate  
69.10 a class C operator for unattended card-lock facilities.

69.11 D. During business hours, a class A, B, or C operator must be on site during  
69.12 operation of the UST system except at unattended card-lock facilities. Unattended card-lock  
69.13 facilities must post a legible sign in a conspicuous location with the facility name, facility  
69.14 address, telephone numbers for the facility owner and operator, and telephone number for  
69.15 local emergency response.

69.16 E. Each individual that meets the definition of a class C operator must be  
69.17 designated as a class C operator.

69.18 Subp. 2. Class A operator responsibilities. The class A operator is responsible for  
69.19 managing resources and personnel to achieve and maintain compliance with this chapter.  
69.20 At a minimum, a class A operator must be knowledgeable about the purpose, methods, and  
69.21 function of:

69.22 A. spill and overfill prevention;

69.23 B. release detection;

69.24 C. corrosion protection;



70.1 D. emergency response;

70.2 E. product and equipment compatibility;

70.3 F. notification under part 7150.0090, subpart 2;

70.4 G. temporary and permanent closure;

70.5 H. testing, reporting, and record keeping for UST systems;

70.6 I. environmental and regulatory consequences of releases;

70.7 J. financial responsibility; and

70.8 K. training.

70.9 Subp. 3. **Class B operator responsibilities.**

70.10 A. The class B operator is responsible for daily operation and maintenance of the  
70.11 UST system. The class B operator must be on site at least once each month to ensure proper  
70.12 operation and maintenance of the UST systems, except that the class B operator of an  
70.13 unattended card-lock facility must be on site at least once each week.

70.14 B. Each month, the class B operator must validate that:

70.15 (1) release-detection monitoring is being performed according to parts  
70.16 7150.0300 to 7150.0340;

70.17 (2) reporting is being performed and records are being maintained according  
70.18 to part 7150.0450;

70.19 (3) spill-, overfill-, and corrosion-protection systems are in place and operating  
70.20 according to part 7150.0205;

70.21 (4) cathodic-protection testing is being performed according to part 7150.0215;

71.1                   (5) unusual operating conditions or release-detection system indications are  
71.2 being reported and investigated according to Minnesota Statutes, section 115.061; and

71.3                   (6) routine operation and maintenance activities are being done according to  
71.4 part 7150.0216.

71.5                   C. At a minimum, a class B operator must be knowledgeable about the purpose,  
71.6 methods, and function of:

71.7                   (1) operating and maintaining the UST system;

71.8                   (2) spill and overfill prevention;

71.9                   (3) release detection and related reporting;

71.10                  (4) corrosion protection;

71.11                  (5) emergency response;

71.12                  (6) product and equipment compatibility;

71.13                  (7) testing, inspection, and record keeping for UST systems;

71.14                  (8) environmental and regulatory consequences of a release; and

71.15                  (9) training requirements for class C operators.

71.16                  Subp. 4. **Class C operator responsibilities.** The class C operator must be:

71.17                  A. on site daily and responsible for handling emergencies and alarms pertaining  
71.18 to a spill or release from a UST system, including reporting spills and releases;

71.19                  B. trained by a class A or B operator before assuming responsibility for the tank  
71.20 system; and

72.1 C. trained to take action according to this chapter in response to emergencies or  
72.2 alarms caused by spills or releases resulting from operating the UST system or from  
72.3 dispensing activities.

72.4 Subp. 5. **Class A and B operator examinations.**

72.5 A. Class A and B operators must pass an agency-administered examination with  
72.6 a score of 75 percent or higher to verify knowledge of the UST system. Class A and B  
72.7 operators must pass the agency-administered examination within 30 days after being  
72.8 designated by the owner or operator of the UST system.

72.9 B. A class B operator must retake the examination under item A within 30 days  
72.10 after a change in any of the following components of a UST system:

72.11 (1) tank or piping construction material;

72.12 (2) tank or piping release-detection method; or

72.13 (3) type of cathodic-protection system.

72.14 C. Notwithstanding item A, if a designated class A or B operator is certified in  
72.15 another state as a class A or B operator for underground storage tanks, the owner or operator  
72.16 may apply to the commissioner for a waiver of the examination requirement in item A. To  
72.17 get approval of a waiver application, the owner or operator must submit to the commissioner  
72.18 a copy of the designated class A or B operator's current certification issued by another state  
72.19 and information to demonstrate that the other state's operator certification examination is  
72.20 equivalent in content to the agency-administered examination under item A. The  
72.21 commissioner must approve in writing a waiver application that complies with this item  
72.22 and demonstrates the required equivalency. Owners and operators are subject to the  
72.23 commissioner's conditions of approval and to the other requirements in this part, including  
72.24 the reexamination requirements in item B and the training and reexamination requirements  
72.25 in subpart 6, item B.

73.1           Subp. 6. Class A and B operator training requirements.

73.2           A. If the class A or B operator does not receive a passing score of 75 percent or  
73.3 higher on the examination under subpart 5, the class A or B operator must attend an  
73.4 agency-approved training course and retake and pass an agency-administered examination  
73.5 with a score of 75 percent or higher. The class A or B operator must pass the examination  
73.6 within 60 days after the commissioner notifies the class A or B operator of a failing score  
73.7 on the original examination.

73.8           B. If the commissioner determines that the owner or operator of a UST system  
73.9 has violated part 7150.0205, subpart 5; 7150.0215; 7150.0216; 7150.0300; 7150.0330;  
73.10 7150.0340; or 7150.0400, the class B operator of the UST system must attend an  
73.11 agency-approved training course and retake and pass an agency-administered examination  
73.12 with a score of 75 percent or higher. The class B operator must pass the examination within  
73.13 30 days after the commissioner notifies the class B operator of the requirement.

73.14           Subp. 7. Training course approval.

73.15           A. A person seeking to train class A or B operators must apply for agency approval  
73.16 of the training course according to this subpart.

73.17           B. A training provider must submit to the commissioner an application on a form  
73.18 provided by the commissioner. The application must contain:

73.19                   (1) the course sponsor's name, address, and telephone number;

73.20                   (2) a list of states that approve the training course at the time the application  
73.21 is submitted;

73.22                   (3) the course curriculum, including topics to be covered and length of the  
73.23 training;

74.1                   (4) a letter from the course sponsor that explains how the course meets the  
74.2 requirements of this chapter;

74.3                   (5) a copy of all course materials, such as student manuals, instructor  
74.4 notebooks, and handouts;

74.5                   (6) a copy of the certificate that will be issued to students who attend the  
74.6 course; and

74.7                   (7) other information determined relevant by the commissioner for evaluating  
74.8 whether the course will train operators to meet the requirements of this chapter.

74.9                   C. Training must provide the knowledge necessary for class A or B operators to  
74.10 monitor and maintain UST systems in a manner that complies with this chapter, prevents  
74.11 releases to the environment, minimizes the size of accidental releases through early detection,  
74.12 and mitigates damage from releases with proper emergency response.

74.13                   D. The commissioner must suspend or revoke approval of a training course if the  
74.14 commissioner finds that the course no longer provides training that meets the requirements  
74.15 of this chapter.

74.16                   E. Except as provided in item D, approval of a training course is effective until  
74.17 the commissioner determines that the training course does not meet the requirements of this  
74.18 chapter. Upon making the determination, the commissioner must notify the approved training  
74.19 provider that changes in the course are required to maintain commissioner approval. The  
74.20 training provider must then submit a revised training course to the commissioner for approval.

74.21 **7150.0450 REPORTING AND RECORD KEEPING.**

74.22                   *[For text of subp 1, see M.R.]*

74.23                   Subp. 2. **Reporting.** Owners and operators must submit the following information to  
74.24 the commissioner within the applicable time frames:

75.1 [For text of items A and B, see M.R.]

75.2 C. reports of all releases under part 7150.0345 and Minnesota Statutes, section  
75.3 115.061, including suspected releases, spills and overfills, and confirmed releases;

75.4 [For text of items D and E, see M.R.]

75.5 F. inspection reports for internally lined tanks under part ~~7150.0205~~ 7150.0215,  
75.6 subpart ~~4~~, ~~item E, subitem (1)~~ items A and B.

75.7 Subp. 3. **Record retention.** Owners and operators must maintain the following  
75.8 information in a legible manner for the specified time frame:

75.9 A. the commissioner's determination under part 7150.0205, subpart 1, item ~~F B~~,  
75.10 subitem (5); subpart 3, item ~~F A~~, subitem (3); or subpart 5, item B, subitem (1), that  
75.11 ~~alternative corrosion protection equipment~~ for corrosion protection or spill and overfill  
75.12 ~~prevention equipment~~ may be used, shall must be maintained for the life of the ~~tank~~ UST  
75.13 system;

75.14 [For text of item B, see M.R.]

75.15 C. documentation of ~~underground storage tank system~~ repairs for UST systems,  
75.16 including the nature of each repair, and results of required integrity testing, and any  
75.17 ~~commissioner's written determination~~ under part ~~7150.0100, subpart 10, item C~~ 7150.0250,  
75.18 subpart 2, shall must be maintained for the life of the ~~tank~~ UST system;

75.19 D. documentation of compliance with release detection requirements under parts  
75.20 7150.0300 to 7150.0340, as follows:

75.21 (1) all written performance claims pertaining to any release detection system  
75.22 ~~used, and the manner in which these claims have been justified or tested by the equipment~~  
75.23 ~~manufacturer or installer, including documentation of "safe suction" design according to~~  
75.24 suction piping meeting the design requirements of part 7150.0300, subpart 6, item B, subitem

76.1 (2), must be maintained for as long as the system is being used to comply with the  
 76.2 requirements of this chapter;

76.3 (2) the results of any ~~sampling~~, testing, or monitoring must be maintained  
 76.4 for at least ~~ten~~ five years, including:

76.5 (a) monthly ~~tank inventory control according to part 7150.0330, subpart~~  
 76.6 2 statistical inventory reconciliation results according to part 7150.0330, subpart 6a;

76.7 [For text of unit (b), see M.R.]

76.8 (c) ~~monthly or annual~~ tank tightness testing according to part 7150.0330,  
 76.9 subpart 4;

76.10 [For text of unit (d), see M.R.]

76.11 (e) monthly interstitial monitoring of ~~secondary containment~~  
 76.12 secondary-containment tanks according to part 7150.0330, subpart 6, item A, ~~subitem (2);~~

76.13 [For text of units (f) to (i), see M.R.]

76.14 (j) monthly interstitial monitoring of ~~secondary containment~~  
 76.15 secondary-containment piping according to part 7150.0340, subpart 4;

76.16 (k) monthly results of an alternative ~~piping release detection~~ method for  
 76.17 detecting releases in piping according to part 7150.0340, subpart 5; and

76.18 ~~(l) monthly sump and basin monitoring according to part 7150.0300,~~  
 76.19 ~~subpart 7; and~~

76.20 ~~(m)~~ (l) annual testing of any automatic leak-sensing device in any  
 76.21 secondarily contained tank according to part 7150.0330, subpart 6, item C, or submersible  
 76.22 pump sump according to part 7150.0340, subpart 4, item C;

(3) written documentation of all calibration, maintenance, and repair of release detection equipment permanently located on site must be maintained for at least ~~ten~~ five years after the servicing work is completed. Any schedules of required calibration and maintenance provided by the release detection equipment manufacturer must be retained as long as the system is being used to comply with the requirements of this chapter; and

*[For text of subitem (4), see M.R.]*

E. documentation that shows that testing wastes generated during sump and spill-bucket testing have been disposed of properly in accordance with state and local regulations must be maintained for at least five years after the testing;

E. F. results of the site assessment conducted at permanent closure or change in status to a nonregulated substance under part ~~7150.0420~~ 7150.0345 and any other records that are capable of demonstrating compliance with closure requirements under parts 7150.0400 and 7150.0410. ~~The results of the site assessment required in part 7150.0420~~ must be maintained for at least three years after completion of permanent closure or change in status in one of the following ways:

(1) at the facility by the owners and operators who took the ~~underground storage tank~~ UST system out of service;

(2) at the facility by the current owners and operators of the ~~underground storage tank~~ UST system site; or

(3) by mailing these records to the commissioner if the records cannot be maintained at the closed facility;

F. G. certification that the facility's class A operator and class B operator have passed the operator examination requirements or documentation of current certification in another state if the commissioner has approved a waiver of the agency-administered examination. ~~Certifications on current personnel must be kept until closure of the facility-~~



78.1 ~~Certifications on former personnel must be kept for at least three years from the date of the~~  
78.2 ~~employee's termination~~ or until the class A or B operator is no longer employed at the  
78.3 facility, whichever occurs first;

78.4 ~~G.~~ H. records of monthly or weekly on-site presence of the class B operator  
78.5 according to part ~~7150.0211~~ 7150.0445, subpart ~~5~~ 3, must be kept for at least ~~ten~~ five years;  
78.6 ~~and~~

78.7 ~~H.~~ I. records that document that the class C operator has received the training  
78.8 required in part ~~7150.0211~~ 7150.0445, subpart ~~6~~ 4, including the date of training, who  
78.9 performed the training, and the contents of the training. ~~Training records on current personnel~~  
78.10 ~~must be kept until closure of the facility. Training records on former personnel must be kept~~  
78.11 ~~for at least three years from the date of the employee's termination.~~ or until the class C  
78.12 operator is no longer employed at the facility, whichever occurs first;

78.13 J. results of the following testing, inspections, and monitoring must be maintained  
78.14 for at least five years:

78.15 (1) periodic operation and maintenance inspections according to part  
78.16 7150.0216, subpart 2;

78.17 (2) leak-detection equipment inspections and testing according to part  
78.18 7150.0216, subpart 3;

78.19 (3) testing or monitoring spill buckets or containment sumps according to  
78.20 part 7150.0216, subpart 4;

78.21 (4) overfill-prevention equipment inspection and testing according to part  
78.22 7150.0216, subpart 5; and

78.23 (5) any other documentation of compliance with part 7150.0216; and

K. documentation that the components of the UST system are compatible with the substance stored according to part 7150.0100, subpart 9, must be maintained for the life of the UST system.

[For text of subp 4, see M.R.]

**7150.0451 UST SYSTEMS WITH FIELD-CONSTRUCTED TANKS AND AIRPORT HYDRANT FUEL DISTRIBUTION SYSTEMS.**

Code of Federal Regulations, title 40, part 280, subpart K, as amended, entitled "UST Systems with Field-Constructed Tanks and Airport Hydrant Fuel Distribution Systems," is incorporated by reference.

**7150.0500 INCORPORATION BY REFERENCE.**

Subpart 1. **Scope.** For purposes of this chapter ~~7150~~, the documents in subpart 2 are incorporated by reference. These documents are not subject to frequent change. They can be found at the Minnesota Pollution Control Agency Library, 520 Lafayette Road, Saint Paul, Minnesota 55155, ~~at the addresses indicated~~, or through the Minitex interlibrary loan system. If any of the documents are amended, ~~and if the amendments are incorporated by reference or otherwise made a part of federal technical rules at Code of Federal Regulations, title 40, part 280~~, then the amendments to documents are also incorporated by reference in this chapter.

Subp. 2. **Referenced standards.** The documents referenced throughout this chapter are listed in items A to ~~H~~ J:

~~A. American Society of Mechanical Engineers, 345 East 47th Street, New York, New York 10017.~~

~~(1) B31.3, Process Piping (2005); and~~

~~(2) B31.4, Pipeline Transportation Systems for Liquid Hydrocarbons and Other Liquids (2006).~~

~~B. A. American Petroleum Institute, 1220 L Street Northwest, Washington, D.C. 20005;~~

(1) API RP 1007, Loading and Unloading of MC 306/DOT 406 Cargo Tank Motor Vehicles (2001);

(2) API RP 1604, Closure of Underground Petroleum Storage Tanks (1996);

~~(2)~~ (3) API RP 1615, Installation of Underground Petroleum Storage Systems (1996) (2011);

~~(3)~~ (4) API RP 1621, Bulk Liquid Stock Control at Retail Outlets (1987) (1993);

~~(4) API 1626, Storing and Handling Ethanol and Gasoline-Ethanol Blends at Distribution Terminals and Service Stations (1985);~~

(5) API STD 1631, Interior Lining and Periodic Inspection of Underground Storage Tanks (2001);

(6) API RP 1632, Cathodic Protection of Underground Petroleum Storage Tanks and Piping Systems (1996);

(7) API STD 2015, Requirements for Safe Entry and Cleaning of Petroleum Storage Tanks (2001) (2014); and

(8) API RP 2200, Repairing Crude Oil, Liquefied Petroleum Gas, and Product Hazardous Liquid Pipelines (1994) (2015); and

(9) API RP 2016, Guidelines and Procedures for Entering and Cleaning Petroleum Storage Tanks (2001).

B. Fiberglass Tank and Pipe Institute:

81.1 (1) RP T-95-1, Remanufacturing of Fiberglass Reinforced Plastic (FRP)

81.2 Underground Storage Tanks (1995); and

81.3 (2) RP 2007-2, Field Test Protocol for Testing the Annular Space of Installed

81.4 Underground Fiberglass Double and Triple-Wall Tanks with Dry Annular Space (2007).

81.5 C. ~~National Association of Corrosion Engineers, Publications Department, P.O.~~

81.6 ~~Box 218340, Houston, Texas 77218.~~ NACE International:

81.7 (1) ~~SP0169-2007~~ SP0169-2013, Control of External Corrosion on

81.8 Underground or Submerged Metallic Piping Systems ~~(2007)~~ (2013); and

81.9 (2) ~~RP0285-2002~~ SP0285-2011, Corrosion Control of Underground Storage

81.10 Tank Systems by Cathodic Protection ~~(2002)~~ (2011);

81.11 (3) TM0101-2012, Measurement Techniques Related to Criteria for Cathodic

81.12 Protection of Underground Tank Systems (2012); and

81.13 (4) TM0497-2012, Measurement Techniques Related to Criteria for Cathodic

81.14 Protection on Underground or Submerged Metallic Piping Systems (2012).

81.15 D. ~~National Fire Protection Association, Batterymarch Park, Quincy, Massachusetts~~

81.16 ~~02269.~~

81.17 (1) NFPA 30, Flammable and Combustible Liquids Code ~~(2003)~~ (2015); and

81.18 (2) NFPA 30A, Code for Motor Fuel Dispensing Facilities and Repair Garages

81.19 (2015);

81.20 (3) NFPA 385, Standard for Tank Vehicles for Flammable and Combustible

81.21 Liquids ~~(2007)~~ (2012); and

81.22 (4) NFPA 326, Standard for the Safeguarding of Tanks and Containers for

81.23 Entry, Cleaning, or Repair (2015).

82.1 E. National Leak Prevention Association, NLPA 631, Chapter A, Entry, Cleaning,  
 82.2 Interior Inspection, Repair, and Lining of Underground Storage Tanks (1991).

82.3 F. National Institute for Occupational Safety and Health, DHEW (NIOSH)  
 82.4 Publication No. 80-106, Criteria for a Recommended Standard: Working in Confined Spaces  
 82.5 (1979).

82.6 ~~E. G. Petroleum Equipment Institute, P.O. Box 2380, Tulsa, Oklahoma 74101:~~

82.7 (1) RP100 PEI/RP 100-11, Recommended Practices for Installation of  
 82.8 Underground Liquid Storage Systems (2005); (2011);

82.9 (2) PEI/RP900, Recommended Practices for the Inspection and Maintenance  
 82.10 of UST Systems (2008);

82.11 (3) PEI/RP1000-14, Recommended Practices for the Installation of Marina  
 82.12 Fueling Systems (2014); and

82.13 (4) PEI/RP1200, Recommended Practices for the Testing and Verification  
 82.14 of Spill, Overfill, Leak Detection and Secondary Containment Equipment at UST Facilities  
 82.15 (2017).

82.16 ~~F. H. Steel Tank Institute, 570 Oakwood Road, Lake Zurich, Illinois 60047.:~~

82.17 ~~(1) STI-P3, Specification and Manual for External Corrosion Protection of~~  
 82.18 ~~Underground Steel Storage Tanks (2006);~~

82.19 ~~(2) (1) STI F841, Standard for Dual Wall Underground Steel Storage Tanks~~  
 82.20 ~~(2006);~~

82.21 ~~(3) (2) STI F894, ACT-100<sup>®</sup> Specification for External Corrosion Protection~~  
 82.22 ~~of FRP Composite Steel Underground Storage Tanks (2006) USTs (2015); and~~

82.23 (3) F922, Specification for Permatank<sup>®</sup> (2014);

- 83.1 (4) F961, ACT-100-U<sup>®</sup> Specification for External Corrosion Protection of  
 83.2 Composite Steel Underground Storage Tanks (2015);
- 83.3 (5) STI-P3<sup>®</sup>, Specification and Manual for External Corrosion Protection of  
 83.4 Underground Steel Storage Tanks (2015);
- 83.5 ~~(4)~~ (6) R012, Recommended Practice for Interstitial Tightness Testing of  
 83.6 Existing Underground Double Wall Steel Tanks ~~(2006)~~; (2007);
- 83.7 (7) R051, Cathodic Protection Testing Procedures for sti-P3<sup>®</sup> UST's (2006);
- 83.8 (8) R892, Recommended Practice for Corrosion Protection of Underground  
 83.9 Piping Networks Associated with Liquid Storage and Dispensing Systems (2006); and
- 83.10 (9) R972, Recommended Practice for the Addition of Supplemental Anodes  
 83.11 to sti-P3<sup>®</sup> UST's (2010).
- 83.12 ~~G. I. Underwriters Laboratories Inc., 333 Pfingsten Road, Northbrook, Illinois~~  
 83.13 ~~60062-;~~
- 83.14 (1) UL 58, Standard for Steel Underground Tanks for Flammable and  
 83.15 Combustible Liquids (1996);
- 83.16 ~~(2) UL 567, Emergency Breakaway Fittings, Swivel Connectors and~~  
 83.17 ~~Pipe-Connection Fittings for Petroleum Products and LP-Gas (2004)~~ UL 971, Standard for  
 83.18 Nonmetallic Underground Piping for Flammable Liquids (1995);
- 83.19 (3) UL 971A, Outline of Investigation for Metallic Underground Fuel Pipe  
 83.20 (2006);
- 83.21 ~~(3)~~ (4) UL 1316, Standard for Glass-Fiber-Reinforced Plastic Underground  
 83.22 Storage Tanks for Petroleum Products, Alcohols, and Alcohol-Gasoline Mixtures (2006);  
 83.23 and

- 84.1 ~~(4)~~ (5) UL 1746, Standard for ~~Safety for~~ External Corrosion Protection  
 84.2 Systems for Steel Underground Storage Tanks (2007);
- 84.3 (6) UL 1856, Outline of Investigation for Underground Fuel Tank Internal  
 84.4 Retrofit Systems (2013); and
- 84.5 (7) UL 2447, Outline of Investigation for Containment Sumps, Fittings and  
 84.6 Accessories for Fuels (2012).
- 84.7 ~~H. J. Underwriters' Laboratories of Canada, 7 Crouse Road, Scarborough, Ontario,~~  
 84.8 ~~Canada M1R 3A9.;~~
- 84.9 ~~(1) CAN/ULC-S603.1-03, External Corrosion Protection Systems for Steel~~  
 84.10 ~~Underground Tanks for Flammable and Combustible Liquids (2003);~~
- 84.11 ~~(2)~~ (1) CAN/ULC-S603-00 CAN/ULC-S603-14, Standard for Steel  
 84.12 Underground Tanks for Flammable and Combustible Liquids (2000) (2014);
- 84.13 (2) CAN/ULC-S603.1-11, External Corrosion Protection Systems for Steel  
 84.14 Underground Tanks for Flammable and Combustible Liquids (2011);
- 84.15 ~~(3) ULC-S615-98~~ CAN/ULC-S615-14, Standard for Fibre Reinforced Plastic  
 84.16 Underground Tanks for Flammable and Combustible Liquids (1998) (2014);
- 84.17 (4) ULC-S631-05, Standard for Isolating Bushings for Steel Underground  
 84.18 Tanks Protected with External Corrosion Protection Systems (2005);
- 84.19 ~~(5) CAN/ULC-S633-99, Standard for Flexible Underground Hose Connectors~~  
 84.20 ~~for Flammable and Combustible Liquids (1999);~~ CAN/ULC S660-08, Standard for  
 84.21 Nonmetallic Underground Piping for Flammable and Combustible Liquids (2008); and
- 84.22 ~~(6) ULC Subject C107C-M1984, Guide for Glass-Fiber Reinforced Plastic~~  
 84.23 ~~Pipe and Fittings for Flammable Liquids (1984);~~
- 84.24 ~~(7)~~ (6) ULC/ORD-C107.21-1992, Under-Dispenser Sumps (1992); and.

85.1                   ~~(8) ULC/ORD-C971-2005, Nonmetallic Underground Piping for Flammable~~  
85.2 ~~and Combustible Liquids (2005).~~

85.3    **TERM CHANGE.** The term "underground storage tank system" is changed to "UST  
85.4 system," together with any necessary grammatical changes, wherever the term appears in  
85.5 Minnesota Rules, chapter 7150.

85.6    **REPEALER.** Minnesota Rules, parts 7150.0010, subpart 4; 7150.0030, subparts 8, 23,  
85.7 25a, 44a, and 49; 7150.0100, subparts 10 and 12; 7150.0211; 7150.0300, subparts 2 and 7;  
85.8 7150.0330, subpart 2; 7150.0410, subparts 2 and 6; and 7150.0420, are repealed.



# Office of the Revisor of Statutes

## Administrative Rules



**TITLE:** Proposed Permanent Rules Relating to Underground Storage Tanks

**AGENCY:** Pollution Control Agency

**REVISOR ID:** R-4360

**MINNESOTA RULES:** Chapter 7150

**INCORPORATIONS BY REFERENCE:** [See attached]

The attached rules are approved for  
publication in the State Register

*Cindy K. Maxwell*

Cindy K. Maxwell  
Assistant Deputy Revisor



## **STATEMENT OF NEED AND REASONABLENESS**

Proposed amendments related to underground storage tanks

Minn. R. ch. 7150

**Minnesota Pollution Control Agency  
Industrial Division  
July 2018**

The *State Register* notice, this Statement of Need and Reasonableness (SONAR) and the proposed rule will be available during the public comment period on the Agency's Public Notices website:

<http://www.pca.state.mn.us/news/data/index.cfm?PN=1>

**Agency contact for information, documents, or alternative formats:**

Upon request, this Statement of Need and Reasonableness can be made available in an alternative format, such as large print, braille, or audio.

To make a request, contact Yolanda Letnes, Rulemaking Coordinator,

Minnesota Pollution Control Agency,

520 Lafayette Road North, St. Paul, MN 55155-4194;

telephone 651-757-2527; 1-800-657-3864;

email [yolanda.letnes@state.mn.us](mailto:yolanda.letnes@state.mn.us); or

use your preferred telecommunications relay service.

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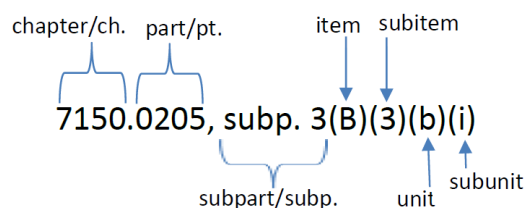
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Figure 1. Anatomy of a rule.



## Acronyms or abbreviations

§ or §§ - Section or sections

40 CFR pt. 280 or Part 280 - Title 40, Code of Federal Regulations, Part 280

Agency or MPCA - Minnesota Pollution Control Agency

ATG - Automatic tank gauge or automatic tank gauging

CFR - Code of Federal Regulations

ch. - Chapter

Commissioner - Minnesota Pollution Control Agency, Commissioner

EPA - United States Environmental Protection Agency

Fed. Reg. - Federal Register

Minn. R. - Minnesota Rules

Minn. R. ch. - Minnesota Rules chapter

Minn. Stat. - Minnesota Statutes

MMB - Minnesota Management and Budget

MN - Minnesota

MORS - Minnesota Office of the Revisor of Statutes

MSFC - Minnesota State Fire Code

OAH - Office of Administrative Hearings

Psi - pounds per square inch

SONAR - Statement of Need and Reasonableness

UST - Underground Storage Tank

# 1. Introduction and overview

## A. Introduction

The subject of this Statement of Need and Reasonableness (SONAR) is the amendment of certain rules of the Minnesota Pollution Control Agency (MPCA or Agency) governing the operation of regulated Underground Storage Tanks (USTs) in Minnesota. The amendments are aimed at adding conforming language for consistency with federal regulations. The amendments incorporate recent changes at the federal level that were adopted July 15, 2015, Federal Register, volume 80, pages 41566-41683 (80 Fed. Reg. 41566-41683). The proposed revisions address the topics listed below in item C. While a majority of the revisions are consistent with federal language, some of the proposed changes are more stringent and are discussed in further detail in section 5.B. of the SONAR. Some examples of areas where proposed requirements are more stringent than the federal requirements are:

- Introduction of potentially harmful substances.
- Requirement of double-poppet shear valves for new and replacement shear valves.
- Submersible pump sump requirements.
- Underdispenser sump requirements.
- Emergency stops.
- Agency-approved tester requirements.
- Sixty-day timeline for cathodic protection repairs.
- Conditions under which tank system replacement or permanent closure are required.
- Antisiphon device requirements.
- Positive shutoff for line leak detection at unattended card-lock facilities.

This SONAR does not discuss existing UST rules that the MPCA does not propose to modify, including relocated requirements, because the need for and reasonableness of these rules was addressed in the respective SONAR listed in SONAR Attachment 1.

## B. Statement of general need

Leaking USTs have led to groundwater contamination and significant cleanup costs in Minnesota. The clean-up costs have often been borne by the citizens of Minnesota because the former UST owners responsible for the tanks were no longer in business or lacked adequate assets to pay for cleanup. Due to rising concern with leaking USTs throughout the State, the MPCA was authorized and directed by the 1985 Minnesota Legislature to adopt rules applicable to USTs as necessary to protect human health and the environment under Minnesota Statutes section 116.49 (Minn. Stat. § 116.49).

The inception of the Minnesota rules in 1991, along with the deadline for upgrading existing UST systems in 1998, has had positive effect in reducing the number of releases and amount of product released to the environment. Based upon the MPCA's UST database, Minnesota currently has an aging infrastructure of tank systems where approximately 60% of the systems are over 20 years old. The industry standard for the life of a tank system is approximately 20-30 years before major repair or replacement is needed. Minnesota does not have a sunset date for tank systems, but the need to have clear regulations, which address maintenance, repairs, and replacement of this aging infrastructure, is paramount to reduce or eliminate the risk of future releases from UST systems.



Federal law also has requirements to protect against such releases to the environment. The United States Environmental Protection Agency (EPA) first adopted regulations governing USTs in 1988. EPA can delegate implementation of those requirements to states. Minnesota currently has “state program approval” from EPA, which means Minnesota’s rules meet the federal requirements and the MPCA enforces state UST requirements in lieu of an EPA enforcement program. See 66 Fed. Reg. 59,713 (Nov. 30, 2001) (“Minnesota: Final Approval of State Underground Storage Tank Program”).

On July 15, 2015, the EPA published final revisions to UST regulations in the Federal Register. See [80 Fed. Reg. 41566-41683](#). The new revisions were to title 40, Code of Federal Regulations, Part 280 “Technical Standards and Corrective Action Requirements for Owners and Operators of Underground Storage Tanks (UST)” (40 CFR pt. 280 or Part 280). With the promulgation of the revised regulations in 2015, Minnesota’s rules no longer meet all federal minimum requirements. To maintain state program approval status, the MPCA needs to modify state UST rules to comply with the minimum requirements of 40 CFR pt. 280. If the MPCA does not modify state rules to meet the minimum requirements of 40 CFR pt. 280, the EPA will have jurisdiction to enforce those regulations.

The passage of this rule is needed to maintain federal funding and continue the effective state-federal partnership in protecting the human health and the environment. The MPCA has developed expertise in the areas of UST compliance, UST enforcement, and how to prevent releases to ensure the protection of human health and the environment. The MPCA relies heavily on federal funding to operate and maintain the UST compliance, assistance, and enforcement programs. Federal funding, when combined with state funding, has been an important factor in Minnesota’s UST regulatory oversight program for many years.

The MPCA believes that meeting the new minimum federal regulations will reduce the number of releases to the environment. However, experience gained during the last 27 years of program implementation shows that there is an additional need for state-specific requirements to address certain problems. These state-specific requirements are discussed in this SONAR. Since the MPCA last revised its UST rules in 2009, industry standards have evolved and new technologies have become more prevalent in the industry. The MPCA is proposing amendments to UST rules that are needed to incorporate and clarify appropriate use of these new technologies and industry standards to minimize the risk of releases from UST systems in Minnesota. In addition, the MPCA has identified a need to comprehensively review and address problems with redundancy, organization, and clarity of the rules as identified in this SONAR.

### **C. Scope of the proposed amendments:**

The proposed amendments affect Minnesota Rules chapter 7150 (Minn. R. ch. 7150), and address requirements resulting from the final 2015 amendment of 40 CFR pt. 280 that address:

- Adding periodic operation and maintenance requirements for UST systems.
- Removing certain deferrals.
- Adding new release prevention and detection technologies.
- Updating codes of practice.
- Editorial and technical corrections.

The Agency is also proposing amendments that exceed federal requirements as outlined in section 1.A. of the SONAR. The proposed amendments will also clarify how new tank technologies apply to the regulations.

## 2. Background

The MPCA explained the purpose and history of adopting UST rules in the SONAR of the most recent revision of the rules:

*"The purpose of these rules (Minn. R. ch. 7150) is to prevent the improper design, installation, use, maintenance, and closure of USTs and their appurtenances such as piping and dispensers, which could adversely affect water quality and the public health, safety, and general welfare through releases of petroleum of hazardous materials to the land, groundwater, and surface water of the state of Minnesota (State).*

*Due to rising concern with leaking underground storage tanks throughout the State, the MPCA was authorized and directed by the 1987 [sic: 1985] Minnesota Legislature to adopt rules applicable to USTs as necessary to protect human health and the environment (Minn. Stat § 116.49). In 1988, the United States Environmental Protection Agency (EPA) published its final rule outlining technical requirements for USTs and state UST program approval (40 CFR § pt. 280).*

*In 1991, the MPCA published final rules for USTs (Minn. R. ch. 7150). The 1991 rules addressed standards for design of new (post-1991) petroleum and hazardous material USTs and appurtenant piping, such as cathodic protection and secondary containment and requirements for upgrading existing (pre-1991) UST systems by December 22, 1998, the federal UST upgrade deadline. New and upgraded tanks are required to have cathodic protection, release detection, spill prevention equipment, and overfill protection equipment. The majority of existing UST systems were either upgraded to meet the new requirements or taken out of service by the December 22, 1998, deadline.*

*Despite the existence of the UST rule, leaks and spills from UST systems have continued to occur in Minnesota and around the nation. On August 8, 2005, President Bush signed the Energy Policy Act of 2005 (Act). Title XV, subtitle B of this Act contains amendments to Subtitle I of the Solid Waste Disposal Act, the original legislation that created the federal UST program. The Energy Policy Act of 2005 significantly affects federal and state underground storage tank programs, requires major changes to these programs, and is aimed at reducing underground storage tank releases to the environment. The UST provision of the Energy Policy Act of 2005 focuses on preventing releases. Among other things, the Act expands eligible uses of the Leaking Underground Storage Tank (LUST) Trust Fund, and includes provisions regarding facility inspection frequency, training of facility operators, delivery prohibition in the case of non-compliance, public availability of tank release records and owner/operator compliance records, groundwater protection through either secondary containment or manufacturer/installer financial assurance, and cleanup of releases that contain oxygenated fuel additives. A variety of deadlines were given to state programs to implement these provisions.*

*The MPCA revised Minn. R. ch. 7150, effective March 24, 2008; to comply with the secondary containment requirement of the Energy Policy Act, as well as to update and clarify existing language to account for new technologies, deadlines no longer applicable, common owner/operator compliance problems, and other concerns that have emerged during the past 16 years of the UST program. The other requirements of the Act were addressed in the 2007 SONAR...."*

SONAR Attachment 1 (34 SR 1610 SONAR, July 13, 2009, at 1-2).

As discussed above, the 1988 federal rule required tank systems to upgrade or install equipment to meet the cathodic protection, leak detection, spill and overfill prevention requirements. The recent

revisions to 40 CFR pt. 280 (2015) now include additional operation, maintenance and testing requirements to assure the integrity and proper functioning of existing tank systems. Furthermore, some new requirements to 40 CFR pt. 280 (2015) were established to meet the Energy Policy Act of 2005, such as secondary containment requirements, operator training requirements, and sump inspection requirements.

Minnesota is obligated to revise the state UST rules to meet minimum requirements of 40 CFR pt. 280 according to Minn. Stat. § 116.49. Some of the new requirements in 40 CFR pt. 280, such as monthly sump inspections, secondary containment requirements and operator training and certification requirements, were previously added to Minn. R. ch. 7150 (in 2008 and 2009, respectively) to meet the requirements of the Energy Policy Act of 2005. The current proposed rule revisions address amendments needed to address the 2015 40 CFR pt. 280 amendments outlined in section 1.C. In addition to meeting the minimum requirements of 40 CFR pt. 280, the MPCA has identified a need to comprehensively review and address problems with redundancy, organization, and clarification of the rules as described in section 1.B, 1.C, and throughout this SONAR. For these reasons, the MPCA believes there is a need for the proposed changes.

### 3. Public participation and stakeholder involvement

The MPCA has provided the required notifications to the public and the entities identified in statute. A Request for Comments was published in the November 9, 2015, *State Register*. The notifications required under Minnesota Statutes chapter 14 (Minn. Stat. ch. 14) will be provided at the time the amendments are proposed. The MPCA intends to publish a Dual Notice in the *State Register* and to provide additional notice of its activities to all parties who have registered their interest in receiving such notice.

The MPCA conducted the following activities to notify potentially interested parties of the rule project:

- Established a self-subscribing rule-specific mailing list to provide information to interested and affected parties: <http://public.govdelivery.com/accounts/MNPCA/subscriber/new>.
- Posted information on the proposed amendments in its rulemaking docket. The docket is maintained monthly and available online.
- Established a rule-specific webpage.
- Sent an electronic message via GovDelivery to interested parties encouraging them to register to receive rulemaking information on the rule project.
  - October 26, 2015 – Message sent to self-subscribers of the *New rule announcement* topic list expressing an interest in receiving notice of all new Agency rules.
  - November 9, 2015 – Message communicating Request for Comments publication sent to self-subscribers of the *UST Update Rule* topic list.
- Sent an electronic message via GovDelivery to UST owners and operators, UST contractors and interested parties encouraging them to register to receive rulemaking information on the rule project.
  - March 1, 2017 – General update on rule status. This message was forwarded to the Agency regulated parties list and contractors list. This message was sent to regulated parties and contractors.
  - October 30, 2015 – General message discussing content of rule with invitation to self-subscribe to receive future notices. This message was sent to regulated parties.
  - October 30, 2015 – General message discussing content of rule with invitation to self-subscribe to receive future notices. This message was sent to contractors.
- The MPCA established the UST advisory committee consisting of trade organizations, tank owner/operators, UST contractors, and government entities which are owners and operators of USTs. The MPCA planned various advisory committee meetings and released a preliminary draft of the proposed rule language to the advisory committee on February 2, 2016, for focused feedback. Meeting dates are listed below:
  - On February 10, 2016, MPCA staff met with the advisory committee to obtain feedback on the general concept of the proposal. After a general discussion of the concept, the meeting focused primarily on definitions and tank system design criteria.
  - On February 24, 2016, MPCA staff met with the advisory committee to obtain feedback on changes made to the preliminary draft rule based on the February 10, 2016, meeting. The

- advisory committee also discussed proposed requirements for maintaining, testing, and repairing UST systems.
- On March 9, 2016, MPCA staff met with the advisory committee to obtain feedback on language changes made based on prior advisory committee feedback. The topics discussed were issues arising from conducting periodic facility inspections and third-party testers.
  - On March 23, 2016, MPCA staff met with the advisory committee to discuss changes made to the preliminary draft rule language, leak detection requirements, and UST closure.
  - On April 13, 2016, MPCA staff met with the advisory committee to discuss questions comments and concerns from previous meetings, particularly the concept of agency-approved testers.
  - The Agency carefully considered all of the advisory committee meeting feedback, federal requirements, and Agency needs and made appropriate changes. On June 9, 2016, the Agency released edits to the preliminary draft to the advisory committee. On June 22, 2016, MPCA staff met with the advisory committee to discuss edits made to the preliminary draft and to seek further advisory committee feedback.
  - MPCA staff attended trade organization shows and gave formal presentations of the proposed draft rules to attendees.
    - On March 21, 2016, MPCA staff presented at the National Institute of Storage Tank Management (NISTM) trade show located in Bloomington, MN.
    - On April 12, 2016, MPCA staff presented at the Minnesota Petroleum Marketers Association convention located in St. Paul, MN.
    - On March 13, 2017, MPCA staff presented at the NISTM trade show located in Bloomington, MN.
  - Because some of the proposed changes involve federal requirements, the EPA was included in early discussions and throughout the process.
  - The MPCA held seven statewide public meetings at locations around the state (Marshall, Detroit Lakes, Baxter, Duluth, Shakopee, Rochester, and Roseville) to discuss the preliminary draft rule requirements. The Agency provided updates on the content of the preliminary draft rule and answered questions about the requirements. Meetings were held from January 2018 to March 2018.

## 4. Statutory authority

The MPCA's statutory authority to make the proposed changes is based on the specific rulemaking authority relative to each of the areas being amended. Minn. Stat. § 116.49 directs the MPCA to "adopt rules applicable to all owners and operators of USTs. The rules must establish the safeguards necessary to protect human health and the environment."

The following table summarizes underlying authority for each of the rule efforts for UST requirements in Minn. R. ch. 7150.

Table 1. Previous rulemaking information.

Adoption or withdrawal date, <i>State Register</i> citation, and Minnesota Office of the Revisor of Statutes (MORS) number	Description	Statutory authorities
Withdrawal on 2/19/91 15SR264 R-1470	The MPCA was authorized and directed by the legislature in 1985 to adopt rules applicable to all owners and operators of USTs. SONAR was signed on 6/15/1990.	Minn. Stat. § 116.49 (1988)
Adopted on 7/8/91 16SR59 R-1834	The MPCA was authorized and directed to adopt rules applicable to all owners and operators of USTs. SONAR was signed on 1/10/1991.	Minn. Stat. § 116.49 (1990)
Adopted on 8/21/2000 25SR556 R-03091	Amendments to ch. 7150 to ensure consistency with federal requirements and various clarification amendments to ch. 7001. SONAR was signed 3/31/2000.	Minn. Stat. § 115.03, subd. 1(e)(3), and Minn. Stat. § 116.49, subd. 1
Adopted on 3/17/2008 32SR1751 R-03689	Amendments required as a result of the Energy Policy Act of 2005, excluding operator training requirements. SONAR was signed 7/24/07.	Minn. Stat. § 116.49
Adopted on 5/17/10 34SR1610 R-03863	Amendments to address operator training requirements as a result of the Energy Policy Act of 2005. SONAR was signed 7/13/2009.	Minn. Stat. § 116.49

## 5. Reasonableness of the amendments

### A. General reasonableness

As discussed in section 1.B. (Statement of general need), with the promulgation of EPA rule revisions in 2015, the MPCA identified a need to protect against releases from USTs. The federal requirements will reduce the risk of such releases, but program implementation over the past 27 years shows that there is an additional need for state-specific requirements to address certain problems that have come about since the last rule revision in 2009. Updating the existing rules will satisfy the requirements of Minn. Stat. § 116.49, which required adoption of rules necessary to protect human health and the environment.

Updating the rules is a reasonable approach because alternative approaches would create duplication or confusion. If the MPCA did not adopt the updated federal requirements, the Agency would lose its state program approval from EPA, and EPA would begin to regulate USTs. Meanwhile, the MPCA's existing rules would still be in place and the MPCA would have overlapping enforcement authority with EPA. The MPCA would also need to identify other methods to impose the requirements that it has identified as necessary to ensure protection of human health and the environment. Adopting other methods (e.g., permits) would create new administrative and regulatory burdens for UST owners and operators, as well as confusion over which agency had regulatory authority over particular issues. If the MPCA repealed the UST rules, it would be inconsistent with the rule requirement in Minn. Stat. § 116.49; the MPCA would maintain tank contractor certification rules authorized by section 116.491; and EPA would assume oversight of USTs in the state, but not the contractor certification. This would create similar confusion and inconsistency. In contrast, revising the MPCA's UST rules provides a single regulatory agency administering the program, providing consistent oversight as the current implementation. UST owners and operators will have the same point of contact they have now. As a result, the proposed changes to Minn. R. ch. 7150 are more reasonable than the alternative methods to address the needs that MPCA identified.

Finally, the MPCA has identified a need to comprehensively review and address problems with redundancy, organization, and clarification of the rules as identified in this SONAR. The Agency believes that it is reasonable to propose changes to Minn. R. ch. 7150 to address these needs because a better organized rule will make finding applicable requirements easier for regulated parties and MPCA staff. The proposed clarifications will help regulated parties and MPCA staff interpret regulations consistently. The MPCA notes that the reorganization of information results in existing requirements being moved to different locations throughout the proposed rule. The need and reasonableness of the relocated requirements has already been established in previous rulemaking SONARs listed in SONAR Attachment 1 and those requirements will generally not be rejustified, consistent with Minn. R. 1400.2070, subpart 1.

### B. Specific reasonableness

The specific reasonableness of each proposed change is discussed below.

Some of the amendments have resulted in the re-numbering or changes to the lettering of items and subitems. Those types of formatting changes are made through the authority of the Minnesota Office of the Revisor of Statutes (MORS) and the MPCA will not explain or justify those changes in this SONAR.

## CHAPTER 7150 - UNDERGROUND STORAGE TANKS; PROGRAM

The Agency has completely reorganized Minn. R. ch. 7150 to improve its readability. General information to guide the reader to the major changes is included in SONAR Attachment 3.

### GENERALLY

#### 1. Part 7150.0010 APPLICABILITY.

This existing part establishes the applicability of Minn. R. ch. 7150 to owners and operators of underground storage tank systems (UST systems).

**Subp. 2. Exclusions.** Subpart 2 is an existing subpart that establishes exclusions to Minn. R. ch. 7150.

**Item A.** On July 15, 2015, EPA amended federal regulations related to USTs. See SONAR Attachment 5. The Agency is amending existing Minnesota rules to conform to changes to title 40, Code of Federal Regulations, Part 280 (40 CFR pt. 280). Specifically, this item is amended to include hazardous substances listed in Subtitle C of the Solid Waste Disposal Act as exclusions under 40 CFR § 280.10(b)(1). The proposed changes are equivalent to federal rules.

**Item B.** For the same reasons described above, the MPCA is amending this item to include the exclusion to wastewater treatment tanks regulated under Section 402 or 307(b) of the federal Clean Water Act - 40 CFR § 280.10(b)(2). The proposed changes are identical to federal rules.

**Item K.** Under the existing exclusion, the Agency believes that a UST system owner or operator could mistakenly interpret that a hazardous substance stored in a pit dug in the ground would meet the existing exclusion to Minn. R. ch. 7150. Such activities would be within the scope of this chapter. The federal regulations similarly do not exclude such activities. Storing a hazardous substance in such a pit does not reduce the risk of harm to human health or the environment. Instead, the risk of harm to humans or the environment increases. The exclusion for surface impoundments, pits, ponds, or lagoons applies to structures designed to contain storm water. These structures are regulated under chapter 7090. Substances stored in surface impoundments, pits, ponds, or lagoons under chapter 7020 pose a limited risk to human health or the environment. Thus, the Agency is adding clarifying language to ensure owners or operator understand the exclusion.

**Items N and O.** The Agency is making minor formatting changes to accommodate the subsequent deletions of existing items P, Q, and R.

**Item P.** To comply with 40 CFR § 280.10(c)(3), UST systems containing radioactive materials must be partially regulated. UST systems in existing part 7150.0010, subp. 2 are exempt from regulation. Therefore, UST systems containing radioactive materials should not be included in this subpart that lists exempt tanks. UST systems containing radioactive materials are now addressed in part 7150.0010, subp. 6(C).

**Item Q.** To comply with 40 CFR § 280.10(c)(4), emergency generator UST systems at nuclear power generator facilities must be partially regulated. Therefore, they are no longer fully exempt, and have been removed from this subpart. Emergency generator UST system requirements are addressed in part 7150.0010, subp. 6(D).

**Item R.** To comply with 40 CFR § 280.10(c)(2)(i), airport hydrant distribution systems must be partially regulated. Therefore, they are no longer fully exempt, and should not be in this subpart. The requirements for airport hydrant distribution systems are now located in part 7150.0010, subp. 6(B)(1).

**Subp. 4. Emergency power generator tanks.** Currently emergency power generator USTs are fully regulated with the exception of having leak detection. As part of the 2015 revisions to 40 CFR §



280.10(a)(1)(iii), the EPA removed the language that emergency power generator USTs are excluded from having leak detection or maintaining leak detection records. Emergency power generator USTs will now be fully regulated under Minn. R. ch. 7150 and the Agency proposes to repeal subpart 4 for consistency with the federal requirement.

**Subp. 5. Heating oil tanks.** The agency proposes to add three new references to the existing requirement:

- Part 7150.0090, subp. 7 adds a requirement that owners and operators that purchase heating oil UST systems must notify the Agency of the ownership change. This requirement is important to ensure that the Agency is able to contact the new owner and operator of a heating oil UST system should that need arise.
- Part 7150.0250, subp. 2 replaces the current reference to part 7150.0010, subp. 10, which is obsolete. This requirement will ensure problems with heating oil tanks are corrected, thereby reducing risk to the environment and human health. Imposing the same requirements is reasonable because the risks are similar to those of other tanks.
- Part 7150.0345, subp. 2 adds a requirement that the owners and operators must report releases and suspected releases. This is reasonable because such releases could pose a risk to the environment or human health. It is reasonable to add cross-references to these requirements to ensure that owners and operators are aware of their applicability. The reasonableness of each specific requirement is discussed in detail under those subparts.

**Subp. 6. Partially excluded tanks.** For consistency with 40 CFR § 280.10(c), the Agency proposes to establish this new subpart. This subpart lists the types of tanks under items A to D (wastewater USTs, USTs containing radioactive materials, emergency generator USTs at nuclear power facilities, airport hydrant fuel systems, and field-constructed tanks) that qualify as partially excluded tank systems. Partially excluded tanks are not subject to all requirements of Minn. R. ch. 7150, and it is reasonable to list applicable requirements to ensure owners and operators understand what requirements apply to partially excluded tanks.

The partially excluded tanks must meet the parts listed below.

- 7150.0010 (Applicability)
- 7150.0030 (Definitions)
- 7150.0090, subp. 2 (Notification of installation, replacement, or change in status)
- 7150.0205, subps. 1, item B (Tanks); 2 (Codes of practice for tanks); 3, item B (Piping); and 4 (Codes of practice for piping)

Additionally, airport hydrant fuel systems and field-constructed tanks must meet part 7150.0451 (UST systems with field-constructed tanks and airport hydrant fuel distribution systems), which references the requirements of 40 CFR pt. 280, Subpart K. With the exception of meeting the notification requirements of part 7150.0090, subp. 2, all of the above requirements are based upon 40 CFR § 280.10. The notification requirements will allow the MPCA to contact a facility owner or operator if an issue arises that necessitates MPCA involvement.

**Subp. 7. Other potentially harmful substances.** The Agency proposes to add this requirement to ensure that owners and operators are aware of the applicability of part 7150.0100, subp 9, to USTs when handling “...any liquid or solid substance or other pollutant...” subject to Minn. Stat. § 115.03, subd. 1(3) regulations regarding other potentially harmful substances are proposed in this section to assure compatibility with these substances. See the discussion under part 7150.0030, subp. 32a.

## 2. Part 7150.0030 DEFINITIONS.

This part establishes terms and abbreviations necessary for regulated parties to comply with applicable UST requirements and for regulators to interpret requirements consistently. The reasonableness of all definition change is discussed under this part and applies to changes made throughout the proposed rule for these specific amendments. For example, existing references to “underground storage tank” are now replaced with “UST” throughout Minn. R. ch. 7150.

**Subp. 1. Scope.** The Agency is proposing minor revisions to existing language to adhere to the standards of the MORS.

**Subp. 2. Agency.** The MPCA is modifying the definition of “Agency” to include the Minnesota duty officer in the event a regulated substance is released or spilled. The notification requirement in part 7150.0100 subpart 11(B) requires notification of spills consistent with Minn. Stat. § 115.061. That section requires notification to the “agency.” Incorporating the duty officer into the definition of “agency” is needed because the MPCA consists of a large diversified group of employees that are not all trained in the proper procedures to take in responding to the release or spill of a regulated substance. The Minnesota duty officer program was developed for providing assistance for emergencies, accidents or incidents and for dispatching response personnel to hazardous substance and petroleum spills and releases. Including the Minnesota duty officer in the definition of Agency allows the owner or operator to notify the duty officer while complying with the statute, thereby minimizing the risks to human health and the environment in the event of a spill or release of a regulated substance.

Additionally, throughout Minn. R. ch. 7150, the term “Commissioner” has been replaced with the term Agency for specific circumstances. Per statute, all authority regulating USTs comes from the Commissioner. In those instances where the Commissioner determines, approves, directs or makes similar actions, no changes to the term have been made. In those cases where prenotification, records or documentation are required to be submitted or examinations to be administered, the term Commissioner has been replaced with the term Agency for clarification. The Commissioner is the seat of authority. The Agency handles the record keeping, notices and examinations.

**Subp. 2a. Agency-approved tester.** Currently, Minnesota-certified tank contractors or third-party testing contractors conduct most tank system testing in Minnesota. They have the training, experience, knowledge, and appropriate insurance to test tank system components. The MPCA is proposing to make this a requirement to ensure accurate testing of tank systems. Requiring minimum standards is reasonable to avoid inaccurate test results that would increase the risk of a release to the environment. The Agency originally considered requiring all testing associated with this chapter to be conducted by a third-party testing firm or certified contractor with no affiliation to the facility. During the advisory committee meetings, representatives of some regulated parties expressed a desire for an alternative to hiring a third party contractor to reduce costs. The Agency considered the feedback and determined that an alternative option with specified criteria was a reasonable request to requiring third-party testing. The intent of creating an agency-approved tester is to establish a definition describing who is allowed to inspect and test components of a UST system according to the conditions proposed in part 7150.0216, subp. 6(A).

**Subp. 2b. Airport hydrant fuel distribution system.** The Agency is amending existing Minnesota rules to conform to changes to 40 CFR pt. 280. Specifically, the MPCA is proposing to include the definition in 40 CFR § 280.250. The proposed changes are equivalent to federal rules.

**Subp. 3. Appurtenances.** The MPCA is proposing to replace the word “device” with “components of a UST system” to further clarify what UST appurtenances are. Federal regulations, 40 CFR § 280.12, use

the term “ancillary equipment” to describe components of a UST system. Ancillary equipment and appurtenances have the same meaning.

**Subp. 4. Beneath the surface of the ground.** The MPCA is amending the existing definition to mean below the plane created by the ground surface. In the past, there has been some confusion because “beneath the surface of the ground” could mean below the ground surface or buried in soil. Additionally, the word “ground” was not defined and led to confusion: Was “ground” pavement, gravel, dirt, or some other surface? The revised definition defines a fixed plane or surface upon which any point below that plane or surface is considered beneath the surface of the ground. The ground surface could be created by soil, gravel, blacktop, concrete, or other earthen material. The federal definition uses the words of the term in the definition, which is discouraged by the MORs.

**Subp. 4a. Business hours.** Proposed revisions to Minn. R. ch. 7150 include the new term “business hours” for operator requirements. Establishing a definition for business hours is needed for determining the type of pipe leak detection that may be used at a UST facility. This definition is also for determining when a Class A, B, or C operator must be on site to oversee the operation of the UST system. The Agency considered three possible time periods to define “business hours”:

- $\geq 8$  hours
- $< 6$  hours
- 6 hours

An 8-hour option would be more than sufficient to perform the duties required of a class A, B, or C operator according to the requirements of part 7150.0445, subpart 1, and to conduct proper line leak detection according to part 7150.0340, subpart 2. However, not all employees work 8 hours and it would not be reasonable to establish this standard. Also,  $\geq 8$  hours has the potential to negatively affect small business owners and operators with UST systems with no added environmental or health benefit. Therefore, the  $\geq 8$ -hour option is not reasonable.

A time period of  $< 6$  hours would not allow a sufficient amount of time for class A, B, or C, operators to conduct the requirements of part 7150.0445, subpart 1. Therefore, the MPCA determined that  $< 6$  hours is not reasonable. If a business is open less than 6 hours a day it creates a higher risk of a line leak going undetected according to part 7150.0340, subpart 2.

A time period of 6 hours is sufficient time for class A, B, or C, operators to conduct requirements of part 7150.0445, subpart 1, and proper line leak detection according to part 7150.0340, subp. 2. Since some employees work an 8-hour day, the Agency decided to use a 6-hour time period to give class A, B, or C operators sufficient time to conduct operator requirements.

**Subp. 5. Cathodic protection.** The MPCA regulates aboveground and underground tank systems. Therefore, the Agency proposes to replace the term “tank system” with “UST system” to better describe the tank system that is being regulated under the proposed revisions. The proposed change will clarify the existing requirement.

The term “galvanic” is an archaic term. The Agency proposes to replace the archaic term with the more commonly used “sacrificial” term. The existing definition has not changed with these minor revisions. The previous justification remains intact. Corrosion protection can be applied to a metal surface by either isolating that surface from the causes of corrosion, or by making the metal surface part of an electrochemical cell. The reaction that creates an electrochemical cell is called galvanic or cathodic. Cathodic protection is a means of providing corrosion protection to a UST system by creating a cathodic reaction on the metal surfaces of the UST system. There are two methods of creating the cathodic reaction. They are through the application of sacrificial anodes or impressed current.

**Subp. 6. Cathodic-protection tester.** The Agency is proposing minor revisions to existing language to adhere to the standards of the MORS.

**Subp. 8. Permanent closure.** The existing definition in part 7150.0030, subp. 8 is being deleted for relocation purposes. For the same reasons discussed under subp. 48, the definition has been updated to include the term “UST system” in place of “underground storage tank” and is now listed under subpart 34a. The proposed revision is minor and simply keeps the definitions in alphabetical order.

**Subp. 8a. Class A operator.** The existing definition for Class A operator is being relocated from part 7150.0211, subp. 1 to the definitions section of part 7150.0030. The proposed revision will make it easier for regulated parties to locate definitions in one section of the rule. For the same reasons discussed under subp. 51, the Agency replaced the term “underground storage tank system” with “UST system.”

**Subp. 8b. Class B operator.** As discussed above, the Agency relocated the part 7150.0211, subp. 1(B) to part 7150.0030, subp. 8b and replaced the term “underground storage tank system” with “UST system.”

**Subp. 8c. Class C operator.** As discussed above, the Agency relocated part 7150.0211, subp. 1(C) to part 7150.0030, subp. 8c and replaced the term “underground storage tank system” with “UST system.”

**Subp. 11. Connected piping.** For the same reasons discussed under subp. 51, the Agency replaced the term “underground storage tank system” with “UST system.” Additionally, the Agency replaced the term “tank system” with “UST system” to clarify whether the term applied to aboveground or underground tanks.

**Subp. 12a. Containment sump.** For conformity with federal rules (40 CFR § 280.12), the Agency is proposing to add an equivalent definition for containment sump. The federal definition was grammatically formatted to fit the MORS style.

**Subp. 16. Excavation zone.** For the same reasons discussed under subp. 51, the Agency replaced the term “underground storage tank system” with “UST system.” Additionally, the Agency replaced the term “tank system” with “UST system” to clarify whether the term applied to aboveground or underground tanks.

**Subp. 18a. Field-constructed tank.** For conformity with federal rules (40 CFR § 280.250), the Agency considered adding an equivalent definition to the federal definition for field-constructed tank. However, 40 CFR § 280.250 does not clearly address retrofit USTs where a lining, or tank, is installed inside an existing UST. Retrofit tanks are unlike the examples given in the federal rule, and as a result the MPCA does not consider retrofit USTs to be field-constructed tanks. Field-constructed tanks are only partially regulated. To be no less protective of human health and the environment, the MPCA considers retrofit tanks to be new USTs, which are fully regulated.

**Subp. 22. Hazardous substance.**

**Item A.** The term “hazardous material” is not used in state statutes and the Agency is proposing to replace the term with “hazardous substance” to conform to federal rules under 40 CFR pt. 280.

The Agency is also proposing to include a reference to “subtitle C of the Solid Waste Disposal Act, United States Code, title 42, section 6921 et seq.” to conform to the requirements of 40 CFR § 280.10(b).

The definition for a “regulated substance” in 40 CFR § 280.12 makes reference to a petroleum which is liquid at 60 degrees Fahrenheit and 14.7 pounds per square inch (psi). This reference does not belong in the definition for a hazardous substance, and has been relocated to the definition for petroleum.

**Item B.** This item is amended to reflect changes necessary after the revisions to item A.

**Subp. 23. Hazardous material underground storage tank system.** The Agency is deleting this definition because it is now obsolete.

**Subp. 25a. Lessee.** The existing definition in part 7150.0030, subp. 8 is being deleted for relocation purposes and is now listed under subp. 25e. The definition was updated to reflect the change to “UST system” as discussed under subpart 51. The proposed revision is minor and simply keeps the definitions in alphabetical order.

**Subp. 25b. Impressed current or impressed-current system.** Impressed current is an important method of corrosion protection for components of metallic UST systems. The definition is added to distinguish impressed current from other methods of corrosion protection. The definition is based upon terms and definitions commonly used in the corrosion protection industry. It is reasonable to establish this definition to ensure regulated parties and the Agency maintain a common understanding of the term for regulation purposes.

**Subp. 25c. Leak.** The words “leak” and “release” are often used interchangeably at the state or federal level; however, the terms have different meanings and the Agency believes it is reasonable to clarify that distinction. A leak occurs when a regulated substance, or any other potentially harmful substance, is discharged from a UST system component in a way other than intended. A leak is unintentional, and may or may not come into contact with soil or surface or ground water. A leak that evaporates before coming in contact with soil or water is often described as a weep. The leaked substance may be captured within secondary containment. However, if the leaked substance escapes and comes into contact with soil or ground or surface water, then the leak becomes a release.

While the Agency seeks to clarify the terms leak and release for the proposed revisions, the Agency understands that scenarios may occur that cause owners and operators to use the terms interchangeably. For example, owners and operators are required to conduct monthly sump inspections to look for releases. However, looking for releases may not be possible because the point of a release is likely covered by soil. In this case, the owner or operator is really looking for a leak in the sump to be used as an indicator of a release. In this example, the word release takes on the meaning of a leak for an owner and operator.

**Subp. 25d. Leak detection.** Federal rules (40 CFR pt. 280) and Minn. R. ch. 7150 use the terms “leak detection” and “release detection” interchangeably. For all practical purposes, they have the same meaning. See the explanation for release detection in subp. 42.

**Subp. 25e. Lessee.** See subp. 25a.

**Subp. 25f. Lining or internal lining.** As fuels change and installation costs continue to rise, increasing numbers of USTs are being lined for compatibility, secondary containment, and UST repairs. The newly lined USTs are subject to additional rules and requirements. The Agency believes it is critical to include a definition for lining to give owners and operators not familiar with tank linings a basic idea of what a lining is. This definition will clarify how to comply with applicable requirements for owners and operators of newly lined USTs.

**Subp. 25g. Liquid tight.** Chapter 7150 makes several references to “liquid tight.” The Agency is proposing this new definition to ensure that regulated parties and the MPCA have the same understanding for the term. The definition has two parts. The first part is that no liquid may leak from any UST component. Preventing releases from UST components is the main purpose of the federal and Minnesota UST rules.

The second part is that no subsurface water may infiltrate into any UST, pipe, or secondary containment. Water infiltrating into a UST, suction pipe, or secondary containment area is often the first indicator that

there is a hole or leak in that component. Maintaining a UST component liquid tight avoids water infiltration and will help assure that no regulated substance or other potentially harmful substances moves through that component and is released to the environment.

**Subp. 27. Motor fuel.** The MPCA proposes to amend the existing definition to conform to federal changes in 40 CFR pt. 280. The change is equivalent to federal rules.

**Subp. 29a. Noncorrodible material.** Early UST systems used fiberglass-reinforced plastic as a construction material for USTs and piping. Since then, many new materials have been developed and certified for use in UST systems. Examples of newer materials would include urethane coatings, Kevlar-reinforced plastics, and ceramic materials. The Agency believes it is reasonable to establish a definition that allows the flexibility to use future materials. Noncorrodible materials do not include components made of any metallic material, such as stainless steel, carbon steel, or bronze because these materials are subject to corroding when in contact with soil.

**Subp. 32. Operator.** The Agency is proposing minor changes to make the requirements more easily understood. For the same reasons described under subp. 22, item A, the Agency is replacing the term “hazardous material” with “hazardous substance.” The basic definition has not changed.

**Subp. 32a. Other potentially harmful substances.**

In the last 10-15 years, unregulated substances have been introduced into USTs that may pollute waters of the state if released to the environment. Two examples of these substances are Diesel Exhaust Fluid (DEF), which is used to control emissions from diesel engines, and chlorides (such as sodium chloride and magnesium chloride) which are used for icing and dust control on roadways. When properly used, these substances are intended to be discharged to the environment in small quantities at controlled rates. However, if released to the environment in large quantities, particularly underground, these substances have the potential to contaminate ground water. The MPCA has determined it needs to partially regulate these substances stored in UST systems to protect human health and the environment.

Minnesota Statutes section 115.03, subdivision 1(e)(3), states that the Agency shall prohibit

*... the storage of any liquid or solid substance or other pollutant in a manner which does not reasonably assure proper retention against entry into any waters of the state, or that would be likely to pollute any waters of the state.*

The Agency believes that creating this definition is useful because it aids in complying with the statute. Early working drafts of the proposed rules attempted to use the term “other regulated substances” to describe the substances in the statute above. However, the term was difficult to implement because it was too similar to the already existing term “regulated substances.” The Agency developed the term “other potentially harmful substance” to address the substances in the statute above that are not within the definition of regulated substance. The term “other potentially harmful substances” identifies those liquids, solids or pollutants that may cause pollution of the waters of the state if released to the environment. Pollution of water is a defined term in Minnesota Statutes, at section 115.01, subdivision 13.

The statutory phrase “...in a manner which does not reasonably assure proper retention...” also creates difficulties in defining other potentially harmful substances and how they might be regulated. Requiring leak detection, secondary containment, and compatibility would “reasonably assure” the substance would not be released to the environment. However, if those requirements were applied to other potentially harmful substances, then there would be little distinction between the requirements for fully regulated substances and other potentially harmful substances.

The Agency does not believe that other potentially harmful substances need to be regulated to the same extent as a regulated substance. The other potentially harmful substances identified above are aqueous solutions and are intended to be discharged to the environment in order to function as intended by the manufacturer. The elements in these aqueous solutions that pose a concern, when used properly, are discharged in de minimis quantities. The goal of the Agency is to prevent the release of these other potentially harmful substances from a UST in concentrations great enough to cause pollution to waters of the state. Currently, the Agency is only aware of, and concerned about those substances identified above. The Agency believes that the most important aspect of storing any other potentially harmful substance is that the UST that the substance is being stored in does not degrade and fail. This means the UST must be compatible to the substance being stored, which is consistent with the statutory focus on proper storage and retention. As a result, the only requirement for other potentially harmful substances in the proposed rules is that the UST must be compatible with the substance being stored according to part 7150.0100, subp. 9 (Compatibility), to ensure that owners and operators know that the UST must be compatible with the substance being stored.

The Agency is proposing language that complies with Minn. Stat. § 115.03, subd. 1(e)(3). It is impossible to predict what other future substances might be stored in UST systems that would fit the requirement in the statute. Thus, the Agency has created language that allows the agency to evaluate if the stored substances are potentially harmful substances, as their potential to pollute the waters of the state is determined. To determine if products are identified as meeting this definition, the MPCA would refer to industry standards, or the recommendations of the manufacturer of the product, if they exist.

The design of UST systems for other potentially harmful substances may not be identical to those of regulated substances. To further reduce burdens for these lower-risk substances, the owners and operators of tanks with other potentially harmful substances are not required to report or identify to the Agency any other potentially harmful substance being stored. Owners and operators are only required to notify the Agency when storing a regulated substance or a petroleum product. The requirements for other potentially harmful substances will be applied as individual incidences are discovered.

The Agency only wants to be able to apply the requirements for other potentially harmful substances to those UST's where there is risk to human health and the environment when storing a substance in a container that is not compatible. Primarily this requirement would prohibit corrosive substances from being stored in steel USTs. USTs manufactured of fiberglass-reinforced plastic or lined with an epoxy or similar coating are resistant to corrosion and in most cases are suitable for storage of other potentially harmful substances. It is reasonable to establish this definition to clarify that the level of regulation for other potentially harmful substances is less than the level of regulation for a regulated substance.

**Subp. 32b. Out of service.** USTs are subject to the closure requirements of part 7150.0400 based upon their status. A UST's status as an out-of-service UST is established when an owner or operator stops introducing or dispensing product from the UST. The Agency is proposing this definition as a means of establishing a date when the UST is no longer in service. The date a UST's status becomes out of service determines when the requirements of part 7150.0400 apply.

The argument can be made, that a UST is being used and is in service, because it is storing a regulated substance, regardless of whether a regulated substance has recently been introduced or removed from the UST. The problem with the argument is that, theoretically, a UST could remain in the ground indefinitely as long as there is product in the UST. That situation would increase the likelihood of corrosion or other degradation, leading to release of the regulated substance. The proposed definition for "out of service" will establish that a UST is not in service when product is not being introduced or

removed from the UST. This definition is modeled on the definition for an out of service UST used by the New Jersey Department of Environmental Quality.

**Subp. 34. Owner.** The Agency is proposing minor changes in wording and formatting to make the requirements more easily understood. The MPCA does not believe the changes will affect who meets the definition of an owner. In addition, the term “hazardous material” has been replaced with the word “hazardous substance” for the same reasons described under subpart 22 above.

**Subp. 34a. Permanent closure.** The Agency uses the term “permanent closure” throughout Minn. R. ch. 7150, but the MPCA has never defined the term. The proposed definition establishes that there are two methods of permanently closing a UST – closing it in place or removing it from the ground. Procedures for permanent closure are in part 7150.0410.

**Subp. 36. Petroleum.** The Agency is proposing a change to item D of the definition to conform to federal language. Changes to the federal language no longer define petroleum as being derived from crude oil. The federal changes address new technologies that are developing petroleum products comprised from materials other than crude oil, such as bio-fuels blends or hydrocarbons developed from natural gas.

**Subp. 37. Petroleum UST system.** The Agency proposes to revise this definition to reflect changes in subp. 22 for “hazardous substance,” and subp. 51 for “UST system.” Justification for these changes is addressed in the relevant subparts.

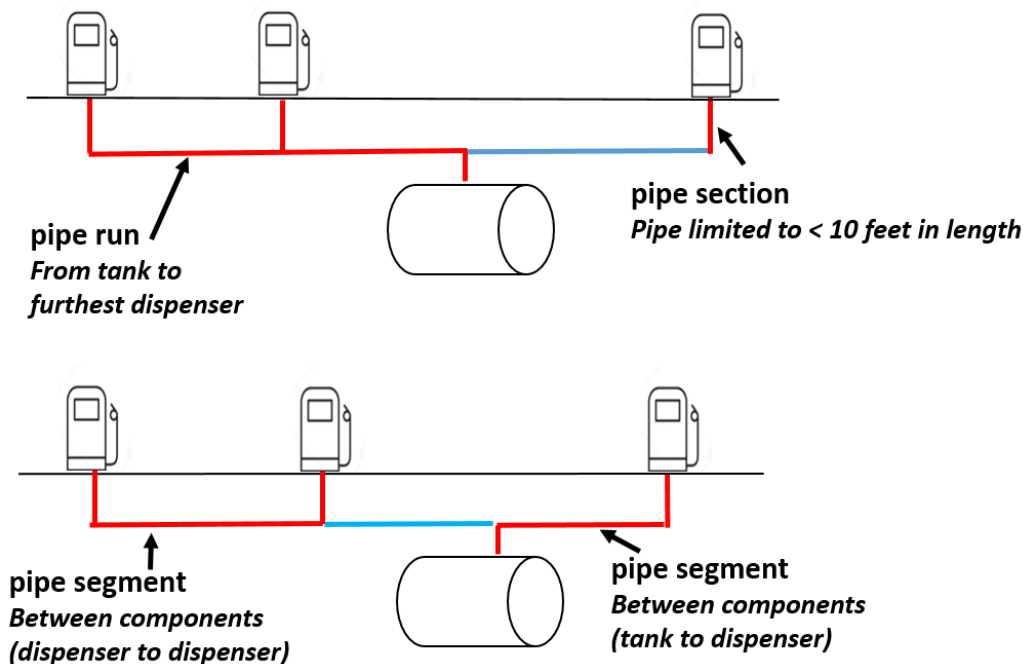
**Subp. 38. Pipe or piping.** The Agency is proposing to further define piping to include the requirement that piping be made of nonferrous materials to conform to the definition in 40 CFR pt. 280. The MPCA is also updating a reference to include UST system to reflect changes in subp. 51. See the subp. 51 justification.

**Subp. 38a. Piping system.** The Agency is proposing a new definition for piping system. Most people think of a piping system as just the pipes in the ground. They fail to realize that the piping system also includes all the appurtenances that are used to convey product or prevent a release of product. The piping system definition outlines what those appurtenances are, and what the parts of a piping system are.

The definition establishes three parts to a piping system – piping runs, piping segments, and piping sections. The piping system definition also defines what the parts of a piping system are. Defining what those parts are is important in determining what the requirements are for testing, repairing, and replacing pipe systems or their appurtenances.



Figure 2: Parts of a piping system.



**Subp. 39a. Product.** The Agency is proposing a definition for “product” to avoid confusion with the definition of a “regulated substance.” The word is used in existing rule without definition. The proposed definition clarifies that the term product has the same meaning as a regulated substance. The word product is used interchangeably with the term regulated substance throughout Minn. R. ch. 7150.

**Subp. 40. Regulated substance.** The Agency is amending the definition to conform to changes at the federal level under 40 CFR pt. 280. The federal definition references the statute, section 101(14) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980. The proposed rule references the implementing regulation of that statute, which provides greater detail on the substances meeting the statutory definition.

**Subp. 41. Release.** Under existing part 7150.0300, subp. 41, a release is limited to occurring from an UST. However, releases can occur from any part of an UST system and not just from the UST. Therefore, the Agency is proposing to broaden the definition by establishing that a release may occur from any part of an UST system.

**Subp. 42. Release detection or leak detection.** The Agency is adding the term “leak detection” to the existing definition. The distinction between a release and leak is discussed under subp. 25c. Chapter 7150 and 40 CFR pt. 280 use the terms leak detection and release detection interchangeably. For all practical purposes, they have the same meaning.

**Subp. 43. Repair.** The existing definition for “repair” includes many references to “replacement.” The terms have different meanings and the Agency is proposing amendments to guide the reader. To clarify the definition for repair, the references to replacement have been removed and inserted into the subp. 43a definition. The definition for repair has also been reformatted into listed items for easier reading. Items A to C cover the same topics as the original definition for a UST system repair – piping repair, dispenser repair, and tank repair. Portions of the definition referencing repairs have been reworded, but the requirements remain essentially unchanged.

The Agency observes that there is often confusion regarding piping repair and how it differs from piping replacement. Thus, the Agency believes it is important clarify in rule what piping repair encompasses.

- Piping repair involves replacing less than 10 feet of piping. Sometimes, the repair occurs directly below a dispenser, e.g., on a flex connector. To facilitate certain repairs, it may be necessary to remove the dispenser to gain access to the piping being repaired. If the same dispenser that was removed is being reinstalled after the piping repair is completed, the work is considered a repair.
- Occasionally, it is necessary to cut an undamaged pipe section to allow a dispenser sump installation to reroute a pipe section for a sump installation, or some similar activity. Though technically not a repair because the pipe section was not damaged to begin with, replacing less than 10 feet of piping to facilitate a sump installation, or similar activity, is treated as a repair in the rules.
- Piping repair involves replacing less than 10 feet of piping. Piping located above grade level is not calculated into the amount of replaced piping. All piping replaced below-grade level is calculated into the amount of piping replaced and would include the length of the bottom half of shear valves, flex connectors, as well as pipe segments, if they are replaced.

If a dispenser is taken off and work is performed on the dispenser or on piping on or above the shear valve, and the same dispenser is put back into place it is a repair. Additionally, if a new or used dispenser is installed and no work is performed below the shear then that dispenser replacement is considered a “repair”, even though a different dispenser is being installed.

The definition for repair also defines what a UST repair is. It is reasonable to include this definition to ensure that regulated parties and Agency regulators have a common meaning of this term.

**Subp. 43a. Replace or replacement.** The Agency is proposing to simplify the definition of parts that are replaced by naming them “components of a UST system.” The components of a UST system include the UST and its appurtenances. Revisions also include moving the references to repair into the subp. 43 definition.

The Agency is also revising portions of the definition referencing replacement, but the requirements remain essentially unchanged. The Agency believes it is important to clarify in rule what replacement encompasses.

- Installing more than 10 feet of piping of a piping run is a piping replacement. This is an accumulation of the total of replacement piping in a piping run. For example, if a 6-foot segment of piping is replaced in one part of a pipe run and 5 feet of piping is replaced in the same piping run in another area, the total replaced pipe length is 11 feet. This is a piping replacement.
- Installing a new or used dispenser is considered a replacement, if the piping below the shear valve is disturbed. A dispenser replacement involving piping repair, replacement or modification below the shear valve, is different than a piping repair involving the removal of a dispenser. In a dispenser replacement, the piping is disturbed to facilitate the installation of a different dispenser. In piping repair, the piping and dispenser is disturbed to facilitate a piping repair. All piping replaced below-grade level is calculated into the amount of piping replaced and would include the length of the bottom half of shear valves, flex connectors, as well as pipe segments, if they are replaced.
- The proposed Agency revisions clarify what constitutes dispenser replacement. Proposed item C includes a reference to the submersible pump replacement requirements of part 7150.0205, subp. 6.

**Subp. 43b. Retrofit tank.** The MPCA is proposing a new definition for a retrofit tank. A retrofit tank is a new UST that is built inside of an existing UST using fiber-reinforced materials. The retrofit UST must meet the requirements of corrosion protection and secondary containment of new USTs. Unlike single-walled linings that were used for corrosion protection upgrades, retrofit tanks are required to have secondary containment. Retrofit tanks are a relatively new technology and the definition differentiates a retrofit tank, which is secondarily contained, from a UST that was lined for corrosion protection.

**Subp. 44a. Secondary containment tank or secondary containment piping.** The existing definition in part 7150.0030, subp. 44a is being deleted for relocation purposes. A revised definition is now located under subp. 44c.

**Subp. 44b. Sacrificial-anode system.** Chapter 7150 makes reference to sacrificial anodes and contains specific requirements for sacrificial anodes systems. The Agency is establishing this definition to ensure that regulated parties and state regulators have a common understanding of what a sacrificial-anode system is and its use for corrosion protection.

**Subp. 44c. Secondary containment or secondarily contained.** See subp. 44a discussion. The Agency is proposing revisions to the definition to conform to changes to 40 CFR § 280.12.

**Subp. 45a. Spill bucket.** The Agency is proposing a new definition for a spill bucket. A spill bucket is a containment system used to catch spills during UST fills. Spill buckets are also known as spill catchment containers and spill containers. The most widely accepted industry name for the containment system is spill bucket. The Agency is proposing this definition to ensure that regulated parties and state regulators have a common understanding of the term.

**Subp. 46a. Sump.** The Agency is proposing a new definition to remove confusion about what a sump is. A sump is a below-grade area that allows access to UST system components. Sumps can be contained or uncontained. Sumps can be made of fiberglass, plastic or other similar materials. Sumps can also be a dirt hole.

It is important to note that sumps installed after December 22, 2007, must be contained or liquid tight to facilitate interstitial monitoring for leaks. Sumps made of fiberglass, plastic, or similar materials installed prior to December 22, 2007, may either be contained or uncontained depending on whether they are used for interstitial monitoring.

**Subp. 49. Tank system.** The Agency is proposing to repeal this definition because it is not specific to USTs. The reference to tank can mean aboveground or underground and this ambiguous definition is being repealed. The term applicable to USTs is "UST system" in subpart 51.

**Subp. 49a. Unattended card-lock facility.** The MPCA is proposing to move the definition for an "unattended card-lock facility" from part 7150.0211 to part 7150.0030, subp. 49a. The move places the definition with other applicable definitions of Minn. R. ch. 7150 for easier reference. The Agency is proposing to add the phrase "during business hours" to the definition to distinguish businesses that do not have operators during night time hours from those businesses that do not have operators on site during most operating hours. Sites that do not have operators during nighttime hours are considered attended as long as the hours of operation fit the definition of business hours in subpart 4a.

**Subp. 50. Underground area.** The Agency believes that changes to the definition would clarify the definition of a tank in an underground storage area. The change would treat tanks in confined areas that cannot be physically inspected as USTs under Minn. R. ch. 7150. Tanks in underground areas are exempt from UST regulations because it is possible to treat them like an aboveground storage tank in terms of inspections. An aboveground storage tank has less stringent release detection requirements because it is possible to inspect the exterior surface of the tank or the secondary containment area for leaks.

There are some tanks in underground storage areas that are in very tight locations, often with covers over them, that cannot be inspected for leaks. In some instances, the only access to the tank is a small hole in the cover that allows only the top of the tank to be viewed. It is not possible to view the bottom of the tank or the secondary containment area through these small holes because the tank top blocks the view to the areas that need to be inspected. This definition would ensure that tanks in tight areas, and that cannot be inspected, are regulated as USTs. This clarification ensures that all tanks have the same degree of inspection and accordingly the same degree of protection against releases.

**Subp 50a. Underground storage tank or UST.** Existing part 7150.0030, subp. 51 combines two separate ideas into one definition. A UST is only a tank located in the ground. An “underground storage tank system” includes the UST and the appurtenances connected to them. Some requirements in chapter 7150 apply to just USTs and other requirements apply to UST systems. The Agency believes that two separate definitions are appropriate to facilitate specifying which requirements apply. The proposed definition is based on the definition in 40 CFR § 280.12. The MPCA proposes to include in the definition an UST containing other potentially harmful substances as discussed in part 7150.0030, subp. 32a.

**Subp. 51. Underground storage-tank system or UST system.** The Agency is proposing to remove references to an UST from this definition to bring the language in line with the changes discussed in subp. 50a. Similarly, the MPCA is also expanding the definition of an UST system to include USTs containing other potentially harmful substances as discussed in part 7150.0030, subp. 32a.

The definition of a UST system in 40 CFR § 280.12 states that a tank system consists of a tank, connected piping, containment, if any, and appurtenances (ancillary equipment). This definition limits the tank system to only those components that hold or contain a regulated product or other potentially harmful substance.

The MPCA believes that a UST system should include any component used to fill, contain, or dispense a regulated substance or other potentially harmful substance from a UST in a safe manner that protects human health and the environment. UST system components can include:

- Corrosion protection systems used to contain the regulated substance by preventing corrosion leaks.
- Drop tubes that prevent excessive turbulence within the UST while product is being placed in the UST.
- Vent pipes that prevent damage to the UST due to over-pressurization or an excessive vacuum.
- Release detection equipment used to detect a leak from the UST, piping and appurtenances, and dispensers.
- Internal linings used for corrosion control and compatibility purposes.

Using the narrower federal definition would require repeatedly listing additional components that would be outside the definition.

**Subp. 51a. Unusual operating condition.** Federal regulations require owners and operators to report unusual operating conditions under 40 CFR § 280.50. Although no definition for unusual operating condition is established, examples of unusual operating conditions are provided. The Agency believes it is reasonable to establish a definition rather than rely on examples, because the examples may not be comprehensive. The definition will ensure owners and operators understand what an unusual operating condition is and how to address it. The Agency’s proposed definition is based on the examples provided in the federal rule.

### 3. Part 7150.0090 NOTIFICATION AND CERTIFICATION.

This part establishes the requirements upon which owners and operator must submit notifications and certifications to the Agency.

#### Subp. 1. Prenotification.

**Item A.** The MPCA proposes to remove the requirement to prenotify the Commissioner when dispenser installations or replacements occur. Dispensers are above-grade and they can be inspected at a later date to ensure work adheres to industry standards and practices; therefore, prenotification is not required.

The current prenotification requirements limit prenotification to tanks, piping, or dispensers. The Agency proposes to expand this requirement to include any UST system components that cannot be inspected once installed, replaced, or repaired.

Examples of UST system components that will be installed, repaired, or replaced that typically would or would not require a 10-day prenotification is listed below in Table 2: Prenotification requirements for installed, repaired, or replaced UST system components.. UST system components listed under column A require a 10-day prenotification to allow the Agency the option to inspect the work prior to burial to minimize the potential for releases due to substandard work. UST system components listed under column B do not require a 10-day prenotification because the work remains visible and can be easily inspected after completion. The MPCA is not proposing to include this table in rule because site-specific circumstances could allow more or fewer components to be visually inspected after installation. The ability to visually inspect after installation is the determining factor for the notification requirement.

Table 2: Prenotification requirements for installed, repaired, or replaced UST system components.

A. 10-day prenotification <u>required</u> for UST system components that are installed, repaired, or replaced:	B. 10-day prenotification <u>not</u> required for UST system components that are installed, repaired, or replaced:
<ul style="list-style-type: none"> <li>• Tanks</li> <li>• Tank linings or retrofit systems</li> <li>• Piping</li> <li>• Piping and appurtenances that will be buried after the work is completed</li> <li>• Secondary containment sumps</li> <li>• Secondary containment sump boots, where the piping and containment sumps are removed or altered to perform the work</li> <li>• Vent lines where work is performed below the surface of the ground</li> <li>• Other UST system work that cannot be inspected when completed</li> </ul>	<ul style="list-style-type: none"> <li>• Pipe and appurtenances which are visible after the work is completed and not in contact with soil</li> <li>• Secondary containment sump boots where piping outside the containment sump and the containment sump remains in place and is not removed or altered to perform the work</li> <li>• Automatic shutoff overfill protection devices</li> <li>• Drop tubes</li> <li>• Overfill alarms</li> <li>• Automatic tank gauge (ATG) probes</li> <li>• Vapor recovery equipment</li> <li>• Vent lines where work is performed above the surface of the ground</li> <li>• UST system work that can be fully inspected when completed</li> </ul>

Additionally, prenotification is required for corrosion protection system installation, replacement, or repair work done below grade that cannot be visibly inspected after work completion. For example,

installing additional anodes on tanks or piping requires a prenotification. Minor corrosion protection repairs, such as isolation of piping from a dispenser, would not require prenotification because the Agency can inspect the repair work after completion.

**Item D.** Prenotification is already required for lining inspections on USTs that have been lined for corrosion protection upgrade purposes under existing part 7150.0215, subp. 4, and the information is simply being cross referenced for the ease of the reader. This is a new requirement for USTs that are lined, or partially lined, for reasons other than corrosion protection upgrade purposes under part 7150.0205, subp. 1(B)(4).

Owners and operators may voluntarily choose to internally line, or partially line, USTs to prevent corrosion inside tanks. A lining that has failed or degraded may actually cause accelerated corrosion within an UST; therefore, the Agency wants to monitor these lining failures. Requiring prenotification of a lining inspection allows the MPCA an opportunity to be present during these lining inspections. Other than submitting the prenotification, this requirement places no additional burden on the owner or operator. The MPCA is proposing no further requirements for voluntarily lined, or partially lined, USTs beyond a prenotification requirement.

**Subp. 2. Notification of installation, replacement, or change in status.** The Agency is proposing minor revisions to clarify the language. The basic requirements remain the same. Retrofit tanks are new USTs; therefore, they are already included in notification requirements. However, since retrofit tanks are built inside of existing USTs, confusion may arise as to whether there needs to be a notification submitted because the original UST, upon which the retrofit tank is built, has already met the notification requirements. The Agency views a retrofit tank as a new or replacement UST and requires notification to be submitted. Therefore, it is reasonable for the Agency to clarify that retrofit tanks are subject to this requirement.

**Subp. 3. Certification by owners and operators.** For the same reasons described above, the Agency is proposing to add retrofit tanks to this requirement. The Agency views a retrofit tank as both a new and replacement UST; therefore, the Agency requires certification that the retrofit tank is in compliance with applicable with items A to D.

**Item D.** The Agency is proposing that owners and operators must certify compliance with the corrosion protection requirements of part 7150.0215 when installing new or replacement tank systems or components. The MPCA is proposing this requirement to conform to 40 CFR § 280.22.

**Subp. 4. Certification by installers.** For the same reasons described under subps. 2 and 3, the Agency is proposing to require an installer certify that the work they performed related to a retrofit installation complies with items A to D of this subpart.

**Subp. 7. Notification of tank purchase.** The MPCA is proposing to replace all references to "Commissioner" with a reference to the "agency" where the action involves submittal of a document that does not require approval. References to submittals that require a decision remain as references to the Commissioner that require a decision. It is reasonable to make this distinction to deal with submittals in a more efficient manner. Additionally, the Agency is changing the reference from "shall" to "must" to be consistent with other requirements in part 7150.0090 that use "must."

**Subp. 8. Notification of compatibility.** The Agency is proposing to add the requirement that owners and operators must notify the Agency of their intent to store a regulated substance containing more than 10 percent ethanol, more than 20 percent biodiesel, or any other regulated substance identified by the Commissioner. Demonstration of compatibility with these fuels is also required. The proposed revisions

conform to 40 CFR § 280.32. Higher concentrations of ethanol or biodiesel can affect the compatibility with certain materials.

**Subp. 9. Notification of other regulated substances.** Future fuels being developed may not be compatible with existing UST systems and would need to be treated as a regulated substance. Therefore, the Agency is proposing to add a requirement that the Commissioner notify owners and operators of these “other regulated substances” to ensure owners and operators know that a notification of compatibility under part 7150.0090, subpart 8, is required. The Agency believes that Commissioner notification for “other regulated substances” will be few. The proposed rule establishes that notification of other regulated substances must be provided by the Commissioner to owners and operators in written or electronic form. Thus the MPCA has the flexibility to provide 1) notice to an individual, or 2) notice to a relevant group of individuals.

## DESIGN AND CONSTRUCTION

### 4. Part 7150.0100 PERFORMANCE STANDARDS FOR UST SYSTEMS.

This part establishes the requirements for preventing releases due to structural failure, corrosion, or spills and overfills from UST systems.

**Subp. 7. Installation.** Under existing part 7105.0030, subp. 3, owners and operators must ensure that persons performing installations of USTs and components are certified according to Minn. R. ch. 7105. The existing requirement is based on Minn. Stat. § 116.491. The Agency is proposing to add a reference to the already applicable requirement to clarify to owners and operators unfamiliar with certification requirements that they must comply with the requirement. The Agency is also revising the applicable codes of practice to conform to 40 CFR § 280.20(d) for new UST systems.

**Subp. 9. Compatibility.** The Agency is proposing to revise this subpart to address federal changes under 40 CFR § 280.32 for items A, B (portions), and C; and to reorganize the information for ease of reference.

**Item A.** The Agency is proposing to add requirements related to compatibility with the substance stored. Where degradation is possible under the listed stored regulated substance scenarios, the applicability of items B, C, and D is referenced. The proposed language is equivalent to 40 CFR § 280.32; meaning, all UST system components must be compatible with the substance being stored. The reference in the federal rule to lined tanks is not included because, as discussed above at part 7150.0030, subp. 43b, the MPCA treats lined tanks as equivalent to new tanks. Items B, C, and D are discussed below.

**Item B.** Owners may decide to retrofit a UST to meet compatibility requirements. The MPCA is proposing to add the requirement that USTs retrofitted after the effective date of this rule meet compatibility requirements. Retrofitted USTs must be constructed with secondary containment according to part 7150.0205, subp. 1. Lining a tank to meet compatibility requirements constitutes a retrofit tank. Retrofit tank systems are a newer tank construction technology where a tank is constructed inside of another tank. A retrofit tank is not considered a field-constructed tank. Retrofit tank systems are typically installed because the existing tank is no longer suitable to store the regulated product or complete removal and replacement is not feasible due to site constraints. Since a retrofit tank system is an alternative to a new tank system, it is reasonable to require retrofit tank systems to meet new tank construction standards, including secondary containment, in accordance with part 7150.0205, subp. 1. The secondary containment must be created within the retrofit tank itself. The shell of the old UST must not be used as part of the secondary containment because the shell may be compromised due to age, compatibility or corrosion. The marketplace currently offers retrofit tank systems that are UL approved and will meet part 7150.0205, subp 1.

**Item C.** The MPCA is proposing to add the requirement that owners and operators must demonstrate compatibility of the UST systems with the product being stored. The proposed requirement for demonstrating compatibility are equivalent with 40 CFR § 280.32.

**Items D and E.** The Agency is proposing to add requirements to allow owners and operators to use an alternate method of assuring that a UST system is not degrading provided the Commissioner determines that the alternative method is no less protective to human health and the environment. It is reasonable for the Agency to establish criteria and a process for owners and operators to obtain approval for demonstrating compatibility as an alternative to part 7150.0100, subp. 9(D).

**Subp. 10. Repairs allowed.** The Agency is proposing to repeal this subpart to relocate the information to proposed part 7150.0250, subp. 2. It is reasonable to move the content of part 7150.0100, subp. 10 because the topic of repairs fits best in proposed part 7150.0250, which includes restoration and corrective actions.

**Subp. 11. Spill and overfill release prevention.** The Agency is proposing revisions to subpart 11(A) to conform to the federal codes of practice under 40 CFR § 280.30(a).

**Subp. 12. Sump and basin maintenance.** The Agency is repealing subpart 12 because language regarding construction standards and maintenance will be located in parts 7150.0205 and 7150.0216. The proposed change is reasonable because it removes language that would become duplicative.

**Subp. 12a. Containment sumps and spill buckets.** The Agency is proposing to add a new subpart 12a to outline the performance standard for containment sumps and spill buckets. The requirement, to be maintained in good repair and liquid tight, applies to all spill buckets. However, only those containment sumps that are required for interstitial monitoring are required to be maintained in good repair and liquid tight. Prior to containment sumps being required in December 2007, some owners and operators installed containment sumps. To require these owners and operators to maintain their containment sumps in good repair and liquid tight, when they were not originally required to be, would be forcing undue requirements on them. Only those owners and operators that use their containment sumps for interstitial monitoring purposes, regardless of when installed, are required to maintain their sumps in good working order.

**Subp. 13. Shear valves.** The Agency is proposing to add a requirement that shear valves be installed according to manufacturer recommendations. This is not a new requirement because owners and operators are currently required to install all UST components according to the manufacturer requirements and industry standards. The Agency is proposing to add the requirement that shear valves installed after the effective date of the rule be of a double-poppet design. With a single-poppet shear valve, in the event of an accident that breaks the shear valve, the valve will shut and stop the flow of product from the UST piping beneath the shear valve. However, the product in the dispenser, approximately 3 gallons, will drain out and pose a fire risk. On a double-poppet shear valve there is an additional valve that stops the product from draining out of the dispenser if the shear valve breaks. The cost difference between a single-poppet valve and a double-poppet valve is minimal. It is reasonable to add this requirement because of the added safety benefit if a dispenser is hit and a shear valve is activated.

**Subp. 14. Drop tubes.** The Agency is proposing a minor revision to clarify who is responsible for assuring compliance with this subpart. Clarifying that owners and operators understand that they are responsible for ensuring compliance with the requirements of this subpart is reasonable because they are responsible for the system as a whole. The basic requirement remains unchanged.



## 5. Part 7150.0205 DESIGN AND CONSTRUCTION.

This part establishes the requirements for corrosion protection and secondary containment.

**Subp. 1. Tanks.** The Agency is proposing to reorganize existing requirements into three items for better organization. The revisions group topics into the areas of permanent closure for noncompliance, corrosion protection, and applicable secondary containment requirements. The MPCA is moving the requirements for inspections of lined tanks of part 7150.0205, subp. 1(E) to the new proposed part 7150.0215, subp. 4 (internally lined tank requirements). With the exception of item C, the requirements remain unchanged.

**Item A.** The Agency is proposing revisions to existing language to adhere to the standards of the MORS. The requirements have simply been relocated and remain essentially unchanged.

**Item B.** The requirements have simply been relocated and remain essentially unchanged.

**Item C.** As previously discussed, the Agency has moved existing requirements into this item. Additionally, the Agency has added the requirement that retrofit tanks must be secondarily contained. Retrofit tanks are discussed under part 7150.0030, subp. 43b. Retrofit tank systems are typically installed because the existing tank is no longer suitable to store the regulated product and complete removal and replacement is not feasible due to site constraints. Because a retrofit tank system is an alternative to installing a new tank system, it is reasonable to require retrofit tank systems to meet new tank construction standards according to this item. All new tanks must be secondarily contained according to 40 CFR § 280.20. Currently, on a new tank, or if a tank is replaced, all piping appurtenant to the tank must be secondarily contained. It is reasonable to add a requirement that if a tank is retrofitted, all piping must meet the secondary requirements of a new tank system.

**Subp. 2. Codes of practice for tanks.** The Agency is proposing revisions to this subpart to conform to changes to the codes of practice in accordance with 40 CFR § 280.20(a). The standards are also incorporated by reference under part 7150.0500.

**Subp. 3. Piping.** The Agency is proposing to reorganize existing requirements into three items for increased readability. The revisions group topics into the areas of permanent closure for noncompliance, corrosion protection, and applicable secondary containment requirements. The Agency is proposing to delete part 7150.0205 subp. 3(D)(1)(c). There are no known applications of double-walled steel piping with a fiberglass-reinforced plastic jacket being used. Such piping would be impractical to install and not cost effective. Should owners and operators choose to install double-walled steel piping that has a fiberglass-reinforced plastic jacket, it would be allowed under other provisions of this subpart.

**Item A.** The Agency believes it is reasonable to require any piping systems that do not meet the requirements of this subpart to be permanently closed. Currently, only tanks that do not comply with requirements are required to permanently close. The Agency is proposing to add the same closure requirements to piping systems. The same type of release that the tank requirements prevent could occur in piping, so it poses a similar risk. As a result, the Agency determined that piping needs an equivalent secondary containment requirement. This is a new requirement.

**Item B.** As previously discussed, the Agency has moved existing requirements into this item. However, the Agency has added a new requirement under subitem (1). The Agency is proposing to change the requirement that piping be made of fiberglass-reinforced plastic, to allowing piping to be made of a noncorrodible material under subitem (1). A noncorrodible materials includes fiberglass-reinforced plastic, Kevlar®- reinforced plastic, Nylon 12 and any other plastic materials developed that are noncorrodible. This is reasonable because the previous need for requiring fiberglass-reinforced plastic

was to have a noncorrodible material. More materials are available now and could be developed in the future, so citing the principle rather than a list allows flexibility while meeting the need.

**Item C.** The Agency is also proposing revisions to relocated language. The Agency is proposing to add requirements that piping that is required to be secondarily contained and have interstitial monitoring (installed after December 22, 2007) also have contained submersible pump sumps and dispenser sumps. Manufacturer specifications and industry standards also require sumps at each end of the piping segment in order to conduct interstitial monitoring properly. The Agency believes the proposed changes are reasonable to clarify original intent of the rule and meet current industry standards.

There are two exceptions to the requirement to have secondary containment at each end of secondarily contained piping. The first exception is where the end of a secondarily contained pipe enters a building, which in itself, provides containment until any releases from that pipe can be detected and remedied. This exception does not increase the risk of a release to the environment. The second exception is where the secondarily contained pipe joins with a single-walled pipe segment using a pipe joint method approved by the secondarily contained pipe manufacturer for direct burial in the ground, and for interstitial monitoring. This exception is necessary to allow the transition from secondarily-contained piping to single-walled piping where such a change is permissible.

**Subp. 4. Codes of practice for piping.** The Agency is proposing revisions to this subpart to conform to changes to the codes of practice in accordance with 40 CFR § 280.20(b). The standards are also incorporated by reference under part 7150.0500.

**Subp. 5. Spill-prevention and overfill-prevention equipment.** For consistency with 40 CFR § 280.20(c)(2) and industry standards for petroleum equipment the Agency is proposing additional restrictions on the use of flow-restricting overfill devices. Additionally, the Agency is proposing minor changes to adhere to the standards of the MORS.

**Item A.** The Agency is proposing that flow-restricting overfill devices installed in vent lines, commonly referred to as ball floats, must not be used in conjunction with automatic flow shutoff overfill devices. To comply with this requirement, owners and operators sometimes choose to disable the ball floats without completely removing them. This practice creates a dangerous condition where a tank may experience pressurization while being filled. As a result, when the delivery hose is disconnected from the tank fill riser, fuel is forced under pressure up the riser pipe, potentially resulting in the delivery person being sprayed with fuel and fuel being released to the environment. Thus, it is reasonable to establish a requirement that when an automatic shutoff device is used, the ball float must be completely removed to ensure the safety of the delivery person and to prevent releases.

Additionally, the Agency is proposing new requirements outlining the conditions upon which flow-restricting overfill devices in vent lines may or may not be used. The requirements are needed to clarify current industry standards referenced in the requirements of 40 CFR § 280.20. The petroleum equipment industry has identified problems with ball float overfill protection devices used in conjunction with automatic shutoff devices (see discussion above), suction systems with air eliminators, and coaxial stage 1 vapor recovery. The industry standards are now specified under this item. The requirement that flow restricting devices in vent lines can no longer be installed conforms to 40 CFR § 280.20(c).

**Item C.** To conform to 40 CFR § 280.35(b)(1), the Agency is proposing to add the requirement that at the time of installation or replacement, spill prevention equipment must be tested tight and overfill devices must be tested for proper operation.

### **Subp. 6. Submersible pump sumps.**

**Item A.** The Agency is proposing revisions that clarify who is responsible for assuring compliance with this subpart. Additionally, the MPCA is proposing revisions related to the replacement of a submersible pump, including a replacement pump head. The Agency believes it is reasonable to make these changes to remove confusion regarding what a pump is. Some people view the submersible pump as the whole pump assembly, which includes the pump head, pump, pump motor, and check valve. Under this scenario, if a pump assembly is replaced, with the pump assembly removed from the UST riser or where the pump assembly is disconnected from existing piping, secondary containment is required. Other people view the submersible pump as just the pump located at the bottom of the tank. With this interpretation of a submersible pump, replacing a pump at the bottom of a tank would require secondary containment to be installed around and beneath the pump. Due to normal wear and tear on pumps, this would place an undue burden on owners and operators that do not have secondary containment already installed. Thus, for the purpose of these rules, submersible pumps will only mean the pump assembly. For example, a repair to a submersible pump where the pump/motor/check valve assembly is removed from the bottom of the tank and a pump is replaced, would not be considered a submersible pump replacement. If a submersible pump assembly is disconnected from a UST riser or existing piping, secondary containment must be installed around a submersible pump.

**Subitem (1).** The Agency is replacing the word “release” with the word “leak” to reflect the clarification to part 7150.0030, subp. 25c and the existing definition under subp. 41. Without the proposed revision, the requirement would not make sense because secondary containment is designed to contain a leak; a leak is not release – a release is a leak that has entered the environment. Additionally, the Agency is also proposing to replace the words “connectors, fittings, and valves beneath the pump head” with “appurtenance or leak-detection device” to better describe relevant equipment. The Agency also found the phrase “beneath the pump head” as too restrictive in requiring leaks from beneath the pump head be contained. The MPCA believes owners and operators may misinterpret “beneath the pump head” to mean that leaks from components above the pump are not required to be contained. Leaks may also occur from the pressure regulator or from the line leak detector. Both of these devices are located above the pump head. In addition, the Agency proposes to add appurtenances in the requirement to include all components of the tank system within the containment area. For example, because leaks can occur from the vent tubes on line leak detectors, containment sumps must also be designed to contain releases from leak detectors.

**Subitem (2).** The MPCA is proposing to remove the requirement that secondary containment have liquid-tight covers. Liquid-tight covers are nearly impossible to maintain because of the need to constantly open the sumps for inspection; dirt, water, and ice can damage and weaken the seals. The Agency believes that retaining this requirements places undue hardship on owners and operators and is being removed as a requirement. This change does not have a major effect on the likelihood of a leak or release.

**Subitems (3) and (4).** The Agency is proposing minor formatting revisions.

**Subitem (5).** The Agency is proposing to add a requirement that new and replacement secondary containment systems be tested liquid tight prior to placing the UST system into service. The proposed language conforms to 40 CFR § 280.35. Secondary containment must be liquid tight and tested and inspected while the penetration points are exposed with no soil covering them according industry standards.

**Item B.** To be consistent with industry standards, the MPCA is proposing to add a requirement that submersible pumps, installed on or before December 22, 2007, be accessible for inspections and not be

covered with soil, water, or other obstacles that prevent visual inspections. Submersible pumps installed before that date were often installed in dirt sumps with no secondary containment around them. Over time, soil tends to build up around the pump head. This soil prevents the inspection of the entire pump head for leaks. Sumps installed before December 22, 2007, were not required to be liquid tight. Thus, water can leak into the sump and interfere with the proper inspection of the sump. Therefore, it is important that the submersible pump be accessible for inspection by removing water, dirt and debris from the sump. This requirement does not apply to submersible pumps installed after December 22, 2007, because those submersible pumps must have liquid-tight secondary containment. The December 22, 2007, date is an existing effective date for secondary containment that is simply being carried forward in this requirement.

**Item C.** The Agency is proposing revisions to this subpart to conform to changes to the codes of practice in accordance with industry standards. The standards are also incorporated by reference under part 7150.0500.

**Subp. 7. Dispenser sumps.** The Agency is proposing to amend this subpart to clarify the contents. The MPCA is separating existing item A into proposed items A and B; thus, existing item B is renumbered to the new item C. Dispenser sumps must meet the requirements of proposed items A, B, and C.

**Item A.** This is an amended item and now addresses the conditions under which an owner and operator must install secondary containment under a dispenser. It is reasonable to make this revision to clarify applicable requirements. The MPCA is also proposing to remove the reference to December 22, 2007, because these requirements apply to all USTs regardless of when they were installed.

**Subitem (1).** This is an existing requirement that has been moved from item A, and conforms to 40 CFR §280.20(f).

**Subitem (2).** The Agency is proposing to require that secondary containment sumps be installed under a dispenser when new or replacement piping is connected to that dispenser. According to 40 CFR §280.20(f), secondary containment sumps are required when new piping is installed as part of a new UST installation. The proposed rule requirement is more stringent than 40 CFR §280.20(f); however, the Agency believes that the requirement to install secondary containment under dispensers should not be contingent upon a new UST being installed, only. The Agency considers it reasonable to require secondary containment under a dispenser when every new or replacement piping is connected to a dispenser. When a dispenser is disconnected for installation of new piping, it presents an opportunity to install secondary containment. This requirement will reduce the risk of release from older dispensers that are connected to partially-updated UST systems.

**Subitem (3).** This is an existing requirement that has been moved from item A. The requirement remains the same.

**Subitem (4).** During dispenser upgrades, some owners and operators have replaced the dispenser islands without installing underdispenser containment. Under the existing rule, underdispenser containment is not required in situations where replacement of only islands, or any portion of the base material beneath the dispenser, is performed; however, this is only true in situations where no work has occurred in the existing piping beneath the shear valve.

**Subitem (4)** is a new non-federal requirement that the Agency is proposing because demolition and construction activity around piping poses a risk of a release that could harm human health and the environment. For example, when the base material beneath the dispenser is removed, the piping and associated connectors to the dispensers become unsupported and may be damaged by shifting, twisting, turning, or other motion that occurs during construction activity. Releases are possible when

personnel unknowingly damage exposed piping and associated connectors during construction activity and equipment movement. Thus, releases have occurred as a result of damage to flex connectors, fittings, and piping when the base material beneath the dispenser has been removed and/or replaced. Generally, UST system leaks in the form of releases, drips, or weeps can occur at dispensers of all ages for various reasons. The Agency has determined that there is greater chance of a release occurring shortly after completion of the work; unfortunately, the releases are often not discovered until later – sometimes days or weeks later. If underdispenser containment had been installed, the release could have been contained until the release was discovered and remedied.

When an owner or operator plans replacement work for a dispenser island or base material, it is reasonable to use the opportunity to perform containment work related to the dispenser. During work activities is an opportune time for owners and operators to install secondary containment because the concrete is removed and part of the excavation work is already completed. Therefore, the Agency believes underdispenser containment is reasonable and installation should be required as the opportunity presents itself.

The MPCA strongly believes that anytime underdispenser containment can be installed, it will protect human health and the environment. The proposed item will only be required for future construction activities involving the concrete or base material around the dispensers being removed and/or replaced. The MPCA does not expect this requirement will affect many owners and operators because other work is usually proposed that would already require underdispenser containment sumps.

**Item B.** This is an existing item that has been amended to outline the design and installation requirements for a dispenser sump. The Agency is proposing to move the requirements of existing item A into proposed item B, subitems (1) to (4). The requirements have not changed.

**Subitem (5).** This is a new subitem. The Agency is proposing to add the requirement to conduct integrity testing of dispenser sumps to conform to industry standards.

**Item C.** This is a new item. The Agency is proposing to add the requirement that dispenser sumps installed after the effective date of this rule must allow for visual inspection of the containment sump and be large enough to provide access to components within the sump for inspection and servicing. The proposed requirement conforms to 40 CFR § 280.20(f)(2). This is somewhat more restrictive because the Agency requires both physical access and visual access in this part and requires monitoring in part 7150.0216, subp. 2 to prevent releases to the environment. Federal rules allow visual inspection and access or monitoring for leaks.

**Item D.** This is a new item. The Agency is proposing to add this item to clarify that owners and operators conducting dispenser repairs are not required to install secondary containment under the dispenser. It is reasonable to add this requirement to remove confusion that already exists about dispenser replacement and dispenser repair. See part 7150.0030, subps. 43 and 43a.

**Item E.** This is a new item. The requirements for this item have been moved from previously existing item B to this item. The Agency is proposing revisions to conform to 40 CFR pt. 280.

**Subp. 8. Emergency stops.** This item is new. The proposed amendment references already-existing emergency stop requirements from the existing Minnesota State Fire Code (MSFC). The proposed language simply consolidates already-existing tank system requirements for owners and operators. It is reasonable to add this requirement to ensure that owners and operators understand that the Agency can readily inspect emergency stops during routine compliance inspections. This requirement establishes no additional burden on owners and operators because compliance is already required

under the MSFC. Additionally, functioning and compliant emergency stops protect human health and the environment.

#### 6. Part 7150.0211 CLASS A, B, AND C OPERATOR REQUIREMENTS.

The Agency is proposing to delete the Class A, B, and C operator requirements in existing part 7150.0211 and relocate them to proposed part 7150.0445. This action allows the Agency to locate operator requirements, reporting requirements, and recordkeeping requirements in one location for better overall rule organization and better user access.

### OPERATION AND MAINTENANCE

#### 7. Part 7150.0215 OPERATING AND MAINTAINING CORROSION PROTECTION.

The Agency is proposing to revise existing part 7150.0215 to include requirements for operating and maintaining corrosion protection. Since this revised part now addresses all aspects of corrosion protection, not just cathodic protection, this part is now more accurately retitled.

**Subp. 1. Operating and maintaining cathodic protection.** The Agency is proposing to revise this subpart to clarify who is responsible for operating and maintaining cathodic-protection systems and providing a more descriptive subpart title. The MPCA is also including minor language revisions in the proposed amendments, but the requirements remain unchanged.

**Subp. 2. Sacrificial-anode systems.** The Agency is proposing to reword this paragraph to clarify that owners and operators are responsible testing their corrosion protection systems for proper operation.

**Item A.** The Agency is proposing to reorganize existing requirements into two items for increased readability. The requirements have not changed.

**Item B.** The MPCA is proposing to update the codes of practice used to determine if the corrosion protection is adequate to conform to 40 CFR § 280.31(b)(2).

**Item C.** The Agency is proposing to remove the provision that allowed persons who are not cathodic-protection testers to determine the adequacy of the corrosion protection system on a UST using an external test station, commonly called a P4 test station. It is reasonable to propose this change because the EPA requires corrosion-protection testing to be conducted by a cathodic-protection tester according to 40 CFR § 280.31(b).

In addition to the federally required items A and B, the Agency is proposing in this item to add requirements for repairing sacrificial-anode systems for corrosion protection. The proposed requirements are consistent with industry standards that are outlined in the [MPCA Guidelines for the Evaluation of Underground Storage Tank Cathodic Protection Systems \(MN CP Manual\)](#) that has been used throughout Minnesota since 2012. See SONAR Attachment 7. With this rulemaking, the Agency is codifying the accepted industry standards. In addition, the Agency is also proposing to accept the design of a corrosion protection expert in lieu of the applicable industry standard. Thus, the proposed amendments allow repairs to be conducted based on industry standards or based on the design of a corrosion expert. To ensure that repairs are adequate and that damage does not occur to the tank system, repairs must be conducted by certified tank contractors, corrosion protection testers and corrosion protection experts. These requirements are reasonable to protect human health and the environment because they ensure equipment repairs occur in accordance with all applicable standards.

**Subp. 3. Impressed current systems.** The Agency is proposing to reword this paragraph to clarify that owners and operator are responsible for testing their corrosion-protection systems for proper operation.

**Items A and B.** The Agency is proposing minor language changes to items A and B to adhere to the standards of the MORS.

**Item C.** The MPCA is proposing to update the codes of practice used to determine if the corrosion protection is adequate to conform to 40 CFR § 280.31(b)(2).

**Item D.** The Agency is establishing the conditions that apply to repairs to impressed current systems in this item.

**Subitem (1).** Subitem (1) requires that repairs be conducted within 60 days of a failing test result. This requirement comes from the MN CP Manual that is modeled on the State of Mississippi's requirements, considered the standard among regulators in the United States. The 60-day deadline has been recommended since 2012 and is being codified with this rulemaking.

**Subitems (2) and (3).** Currently, part 7150.0100, subp. 10, item E requires repairs on impressed-current systems to be conducted by a corrosion expert. This requirement exists because each impressed-current system is unique to the facility and requires specialized training to design an impressed-current system for the appropriate application. Due to a shortage of corrosion experts, owners and operators are often unable to have repairs conducted in a timely manner that reduces the risk of corrosion damage to the UST system. Therefore, the Agency is proposing to allow certified contractors and cathodic-protection testers to conduct impressed-current system repairs, provided the repairs are in accordance with the design requirements developed by a corrosion expert. The Agency believes that the proposed changes in no way increase the risk of environmental damage due to corrosion because the work is conducted in accordance with the repair design of a corrosion expert and the actual repair work is within the skill levels of corrosion-protection testers and certified tank contractors.

**Subp. 4. Internally lined tanks.** The MPCA is proposing to move the requirements of existing part 7150.0205, subp. 1, item E for the internal inspection of tanks lined for corrosion protection to proposed part 7150.0215, subp. 4 for consolidation and reorganization purposes. References to "Commissioner" have been changed to "agency" for the reasons discussed under part 7150.0030, subp. 2. The requirements for conducting the inspection of internally lined tanks remain unchanged.

**Subp. 5. Codes of practice.** The Agency is proposing revisions to subpart 5 to conform to 40 CFR pt. 280.

#### 8. Part 7150.0216 OPERATING, MAINTAINING, AND TESTING UST SYSTEMS.

The Agency is proposing to add this part to consolidate all of the requirements for operating, maintaining, and testing UST systems into one part of the rule for better organization.

##### **Subp. 1. General.**

**Item A.** Under item A, the MPCA establishes that owners and operators must maintain, test, operate, and inspect tanks, piping, and associated components of a UST system in accordance with the requirements of the manufacturer (subitem (1)), codes of practice developed by a nationally recognized association (subitem (2)), or according to the requirements of the Agency (subitem (3)). The requirements conform to 40 CFR § 280.31, 40 CFR § 280.35, 40 CFR § 280.36, and 40 CFR § 280.40. The proposed requirements will ensure that the components function properly to prevent a release.

**Subitem (3).** Under proposed subitem (3), the Commissioner may determine equivalent alternative methods for operating, maintaining, and testing UST system. The requirement conforms to 40 CFR § 280.35(a)(1)(ii) and 40 CFR § 280.36(a)(2), which allow an implementing agency to:

1. Approve test methods for those incidences where no manufacturer requirements or codes of practice exist;

2. Approve test methods for those incidences where manufacturer requirements or codes of practices do not apply because of unique circumstances; or
3. Approve test methods that consolidate the requirements of several manufacturer requirements or several codes of practices.

**Item B.** The MPCA is proposing a new requirement that wastes generated during testing must be disposed of according to state and local regulations. This requirement applies primarily to liquids used to hydrostatic test spill buckets and containment sumps that may be contaminated during testing. It can also apply to any other wastes that may be generated during testing, such as waste petroleum product released while conducting line tightness testing. This requirement is reasonable because an owner or operator must properly dispose of wastes to reduce the risk of a regulated product being released to the environment. Additionally, an inspector must have the ability to review records regarding testing and disposal to determine compliance. In the absence of this requirement, the releases prevented by other parts of this chapter could be offset by the release of contaminated wastes. Improper disposal of such wastes may be prohibited by other law.

**Subp. 2. Periodic operation and maintenance inspections.** The Agency is proposing this new subpart to consolidate maintenance and inspection requirements currently located in parts 7150.0100 subp. 12 and 7150.0300 subp. 7.

**Item A.** The MPCA is proposing to move the requirements for sump and spill-bucket inspection and maintenance requirements from part 7150.0300, subp. 7, to this item.

**Subitem (1).** The requirement to visually check sumps (dispenser, transition, and submersible pump) and spill buckets for leaks is from part 7150.0300, subp. 7 and is now located in this subitem. The Agency is also proposing a new requirement that owners and operators must look for equipment defects that could result in releases to the environment. Examples of equipment defects include holes in spill buckets, torn boots at pipe and electrical sump penetration points and sump sensors not positioned properly.

**Subitem (2).** When owners and operators discover a spill, leak, or drip from any part of a UST system, they must immediately determine the source and take action to stop the spill, leak, or drip. The Agency is moving and clarifying this existing requirement from current part 7150.0300, subp. 7, to this subitem to consolidate inspection and maintenance requirements to 7150.0216, subp. 2, for organizational purposes. The requirements to remove liquid and debris remains the same.

**Subitem (3).** Spill buckets and sumps used for interstitial monitoring should not contain any debris or liquids. Liquids and debris may mask equipment defects, or cause UST system components to degrade; therefore, any liquids or debris observed during an inspection must be removed from the sump or spill bucket. This requirement, originally located in part 7150.0300, subp. 7, was moved to this subitem to consolidate inspection requirements. The requirements of this subitem conform to 40 CFR § 280.36(a)(1)(i)(A).

**Subitem (4).** In sumps that are not required to be contained, it is common to find the sump partially filled with water, soil, and debris. To ensure that the piping, pump head, and UST appurtenances can be properly inspected, the water, soil, and debris must be removed before inspection. Once an inspection has been completed, the sump would not be required to be maintained free of liquid because the sump is not a contained sump used for interstitial monitoring. However, soil and debris should be kept out of the sump to prevent excess corrosion on UST system components in the sump. The MPCA believes it is reasonable to require liquid and debris to be removed so proper inspections can be conducted to identify any defects or leaks in the UST system in a timely manner.



**Subitem (5).** The requirement to ensure that release detection equipment is operating with no alarms or unusual operating conditions and that release detection records are reviewed conform to 40 CFR § 280.36(a)(1)(i)(B).

**Subitem (6).** The requirement to ensure that riser caps are tight and that there are no obstructions in the fill pipe that would interfere with the operation of an overfill device conform to 40 CFR § 280.36(a)(1)(i)(A).

**Subitem (7).** Currently, only tanks using inventory control or an automatic tank gauging (ATG) for tank leak detection are required to monitor for water on the tank bottom. The proposed requirements conform to 40 CFR § 280.43.

The MPCA is proposing to expand the requirement to monitor for water on tank bottoms to include all regulated USTs because water entering a UST is usually an indicator of a problem with the UST system. The most common problems that allow the ingress of water are a leak in the UST, corrosion holes in the UST riser, or damage to the piping for the UST vent. The Agency believes proposed subitem (7) results in little burden to owners and operators because most forms of tank leak detection allow for easy monitoring for water on the UST bottom. In most cases, sites with ATG allow owners and operators to view a printout to determine water readings. If there is no ATG on site, then owners and operators must already have a gauging stick on hand to monitor fuel levels. For the cost of a tube of water finding paste, about \$7, owners and operators have the capability of checking water for years. Owners and operators simply need to place paste on a gauging stick and drop it in the tank. If the paste changes color, water is present in the tank. Thus, the cost is not considered burdensome. Additionally, water causes bio-fuels to degrade and that causes excessive corrosion on the interior of steel tanks and causes the resins in older fiberglass tanks to breakdown. Damage to the interior of steel and fiberglass is not repairable and would result in a significant investment loss for owners and operators; thus, monitoring the water levels on the bottoms of USTs is critical in preventing releases and does not unduly burden owners and operators because it is easily and inexpensively done.

**Item B.** The Agency is proposing to move this requirement from part 7150.0300, subp. 7 to this item to consolidate maintenance and inspection requirements. The proposed requirement conforms to 40 CFR § 280.36(a)(1)(i)(A).

**Item C.** The Agency is proposing that UST systems that receive infrequent deliveries (greater than 30 days apart) are exempt from the spill-bucket inspection requirements under proposed item A. However, the spill bucket must be inspected before and immediately after each delivery. The owner and operator must also keep records that verify the infrequency of deliveries. The proposed requirement conforms to 40 CFR § 280.36(a)(1)(i).

**Item D.** Currently, under part 7150.0450 subp. 3, item D, subitem (2), unit (I), owners and operators must keep records of monthly sump and basin monitoring. Changes to EPA tank regulations now require owners and operators to keep records of each area checked, whether the area was acceptable or needed corrective actions, and what corrective actions were taken. The Agency is proposing additional monitoring records to conform to 40 CFR § 280.36 (b).

### **Subp. 3. Release-detection equipment.**

**Item A.** Testing leak detection equipment to ensure that it is working properly is important to prevent releases from USTs, piping, and any secondary containment areas of a UST system. Currently, only sensors used for interstitial monitoring, according to part 7150.0300, subp. 7, and automatic line-leak detectors, according to part 7150.0330, subp. 5, must be function tested annually. The Agency is

proposing to expand the requirement to test leak-detection equipment in this subpart to include function testing of any UST system leak detection equipment to conform to 40 CFR § 280.40(a)(3).

**Item B.** The MPCA is establishing two requirements under proposed item B. The first requirement establishes that owners and operator must conduct annual inspections and testing of any handheld electronic or mechanical leak detection devices to ensure they are serviceable and operating properly. This requirements conforms to 40 CFR § 280.40(a)(3).

The second requirement establishes that annual testing of UST system release-detection equipment must be conducted by agency-approved testers to ensure that the release-detection equipment is inspected and tested properly. Persons that are agency-approved testers must comply with part 7150.0216, subp. 6; thus, they would have the necessary experience and training to allow them to identify release-detection equipment deficiencies. Most owners and operators are not qualified to conduct this testing because they are not familiar with release-detection equipment and have not been trained to conduct the testing. It is reasonable to establish item B to ensure proper operation and testing of equipment.

**Item C.** This item identifies UST system components that must be tested to ensure that UST release-detection equipment is operating and maintained properly and conforms to 40 CFR § 280.40(a)(3). Additionally, the Agency is proposing to include spill buckets and containment sumps in the list of equipment that must be inspected annually under proposed subitem (5). Containment sumps provide a means of leak detection when they are used to visually look for leaks, thus they are pieces of equipment that should be inspected annually for deficiencies, just like any other leak detection device. Spill buckets contain releases that occur during deliveries to the UST. Since spill buckets contain releases, they must be inspected also.

Subitem (5) conforms to 40 CFR § 280.36(a)(1)(ii), which requires annual inspections of containment sumps for damage, and 40 CFR § 280.35 (a)(2), which requires inspections according to industry standards; the proposed standards include inspections of spill buckets.

**Subp. 4. Spill buckets and containment sumps.** This subpart outlines the monitoring and testing requirements that owners and operators must apply to spill buckets and containment sumps. Under items A and B, the Agency is proposing requirements that conform to 40 CFR § 280.35(a)(1).

**Item C.** The MPCA is requiring that the items described in subp. 4 be tested by an agency-approved tester to ensure that spill bucket, containment sumps, and interstitial monitors are tested properly per industry standards and in a manner similar to the conditions in which the sensors are intended to function. It is reasonable to establish this requirement for the same reasons outlined in subp. 3(B) above.

**Subp. 5. Overfill-prevention equipment.** According to 40 CFR § 280.35 (a)(2), overfill devices must be tested every three years to ensure the equipment is operating properly. Testing shall ensure that the overfill device will activate at the correct level as specified in 40 CFR § 280.20(c). The MPCA is proposing to require owners and operators to use an agency-approved tester to conduct this testing because in most cases there is a certain amount of disassembly of the tank system to conduct the testing. Using an agency-approved tester ensures that the integrity of the tank system is not compromised as a result of the testing.

**Subp. 6. Agency-approved testers.**

Currently, Minn. R. ch. 7105 requires any person who installs, repairs, or takes an UST permanently out of service to obtain a certificate of competency from the Agency. This requirement ensures that only qualified MPCA-certified tank contractors and supervisors are allowed to perform work on UST systems.

The Agency is proposing a similar requirement for persons who conduct UST system testing and certain inspections now required under 40 CFR pt. 280, to be agency-approved testers.

UST system tests and inspections are often similar to tests and inspections conducted by an MPCA-certified tank contractor during tank system installations or repairs. It is often necessary to partially disassemble the UST system in order to perform the tests or inspections, or to connect industry specialized test equipment to the UST. Once the tests or inspections of the UST system are completed, the UST system must be reassembled and placed back into service. All work must follow industry standards in a manner that ensures that the tank system is not leaking or damaged. Because the activities necessary to conduct UST system tests and inspections are so similar to those activities performed by MPCA-certified tank contractors and supervisors, the Agency believes it is reasonable to require persons conducting UST system tests and inspections to be agency-approved testers. Other states that are known to have agency-approved testers include Iowa, West Virginia, Maine, Arkansas, and Montana.

**Item A.** Under item A, the Agency is proposing to outline the requirements necessary to be an agency-approved tester. The requirements are discussed below.

**Subitem (1).** This subitem establishes that an application must be submitted to the Commissioner every four years and that it must include information needed to identify and contact the applicant and documentation demonstrating compliance with subitems (2) and (3). It is reasonable to establish minimum qualifications on the content of an application to determine whether the applicant meets the necessary criteria. The four year renewal frequency was chosen because it matches the renewal period currently required for MPCA-certified tank supervisors who install, repair or remove UST systems. The intent is to overlap the renewal periods to streamline applicable requirements for MPCA-certified tank contractors and supervisors. The MPCA believes this is reasonable also, because it can align the timing of both certification application submissions.

**Subitem (2).** This subitem establishes that certifications by the manufacturer of components of a UST system being tested, and certification by the manufacturers of the equipment used for testing, must be included with the application, if such certifications are offered by the respective manufacturers. It is critical for the MPCA to have accurate information about the applicant to determine whether the applicant is qualified to perform any necessary work on UST systems. Gaining information that the applicant, or approved-agency tester, has taken relevant manufacturer training and achieved the certification demonstrates relevant qualifications to conduct work on specific UST system components or test equipment.

**Subitem (3).** This subitem establishes the criteria for who may be an agency-approved tester. Due to the numerous tests, types of tests, and inspections being required under 40 CFR pt. 280, the Agency is proposing that tests and inspections conducted on UST systems should be conducted by a person certified under Minn. R. ch. 7105, or an independent testing laboratory not affiliated with the owner or operator that specialize in tank system testing.

Originally, the Agency considered proposing that tests and inspections conducted on UST systems be conducted by third-party testers not affiliated with the owner or operator. Third-party testers would have been defined as a certified Minnesota UST contractor under Minn. R. ch. 7105, or an independent testing laboratory specializing in tank system testing. This option would not have allowed owners and operators to conduct testing or inspections on their own facilities under any circumstances. When the original concept was presented to the advisory committee, representatives of some of the regulated parties expressed a desire to have an alternative to hiring a third-party tester. The major concern about requiring a third-party tester is that some regulated parties are currently performing their own testing

and establishing third-party tester requirements would prohibit this activity. Given this feedback, the Agency determined it was necessary to assess the testing and inspections being conducted.

Currently, the MPCA is aware of only two current cases where owners or operators conduct their own testing and inspections. They represent a very small percentage of all the regulated USTs in Minnesota. Most owners and operators do not want to test their own UST systems due to the potential liabilities and the level of training required to conduct the testing and inspections.

The MPCA evaluated information relevant to the two known instances of UST self-testing to determine the existing level of training, and the adequacy of the testing and inspections currently conducted by owners and operators in Minnesota.

**Table 3: Case A and B comparison**

Descriptions	Case A	Case B
Who they are	UST owner certified as a MN UST contractor under Minn. R. ch. 7105	UST owner/operator employees not certified as a MN UST contractor under Minn. R. ch. 7105
Training	Testing per industry standards; Manufacturer certifications	Testing not to industry standards; No manufacturer certifications
Agency review of testing records	Satisfactory – data and reports are accurate and thorough	Unsatisfactory – inaccurate and incomplete
Agency review of owner/operator inspection results	No significant issues raised during the past three years.	Employees, on numerous occasions, have been conducting UST system tests and subsequent repairs as a result of failed test results, or unusual operating conditions. In the last three years, the owner has had at least four releases at multiple sites because of repairs employees conducted. However, a total of 26 releases have been reported across all of the sites under this one owner since the Agency began tracking releases.

In reviewing the above information, it is clear that the MN UST certified contractor has received the training necessary to conduct testing on their equipment, maintain relevant records, and conduct relevant repairs so as to avoid/mitigate releases. Therefore, the Agency does not have an issue with an owner certified as a UST contractor conducting his own testing and inspections under Case A. The individual is clearly adequately trained, maintains good records, and does not pose a significant threat to human health and the environment. However, the Agency has concerns about the number of releases at multiple sites and the total number of releases across the different sites under the same ownership under Case B. The Agency believes the activities described under this example pose a threat to human health and the environment and that untrained persons are not qualified to conduct testing and repairs. As a result of this review of the two known owner/operators that currently conduct their own testing, the Agency has determined that training and certification are important factors to consider with testing and inspecting USTs.

That said, other members of the advisory committee were still in favor of requiring testers to be third-party testers, as originally proposed, due to the level of skill and training needed to perform testing and due to liability concerns.

The Agency also considered the following in establishing criteria for who may conduct testing and inspections on UST systems, agency-approved tester criteria.

- MPCA-certified tank contractors and supervisors have the experience and training necessary to conduct the testing and inspections according to manufacturer requirements and industry standards. Additionally, many of the tests required under 40 CFR pt. 280 are already performed in the normal course of installing and repairing UST systems.
- Third-party testing firms fall into two basic categories – large testing laboratories that conduct work in many states, and small independent testing laboratories that work in localized areas within Minnesota. The large testing companies are highly skilled, well organized, and familiar with testing procedures as a result of their need to comply with various states' requirements. These firms are reputable, and the Agency has little cause for concern with the testing and inspections they perform in Minnesota. Smaller testing firms located in Minnesota pose a potential concern to the Agency because some of them have a history of conducting repairs and other UST service work, even though they are not certified by the MPCA to do so. After further consideration, the Agency believes concerns about these smaller firms can be addressed by instituting a tester approval process with a means of revoking approvals for specific reasons, such as unprofessional conduct. See item B for further discussion.
- The Agency could consider allowing owners, operators, and their employees to be trained and certified by the manufacturers of their onsite UST components. The Agency currently requires MPCA-certified contractors to attend contractor classes and to pass qualification examinations. A similar requirement could be extended towards owners, operators and their employees. However, practical field experience and necessary tools to perform work are not easily addressed. The Agency recognizes that the primary reason owners and operators would want to test their own UST systems is the cost savings in performing the work themselves. However, the MPCA must weigh those cost savings along with the factors listed below.
  - MPCA staff experience with questionable records during field inspections is a concern.
  - MPCA staff experience with the tampering of UST components to circumvent their intended functions due to lack of practical field experience on equipment and testing procedures is a concern.
  - Owners, operators and their employees have a greater potential for improper testing and inspections, due to inexperience with the UST equipment and testing procedures. There would be a higher risk of harm to human health and the environment if such persons were allowed to conduct their own testing. An agency-approved tester would be performing hundreds of tests a year versus an owner or operator performing only 3 or 4 a year.
  - Owners and operators that conduct their own testing may take it upon themselves to conduct repairs to alleviate their perception of a problem. Proper repair procedures and specialized tools are sometimes needed to conduct appropriate repairs; improper repairs may unintentionally create a larger problem because improper testing may mask a defect that could result in a leak. Proper procedures and reporting must take place if a release occurs so remedial action can be taken, as needed. Owners and operators may not have the resources to respond to releases, or knowledge in the reporting and cleanup of such releases. Repairs performed on a UST system must be conducted by a Minnesota-certified UST contractor because they have both the training and experience in the appropriate reporting, repairs, and clean up procedures. If repairs are conducted by owners and operators that are not a certified UST contractor, they are in violation of existing Minn. R. ch. 7150.

- A member of the advisory committee suggested the Agency should penalize owners and operators that are currently conducting testing and repairs in violation of Minn. R. ch. 7150. In implementing the UST program, the Agency seeks to protect human health and the environment. While a punitive approach would be within the Agency's authority, the MPCA believes a better approach is to revise the existing rules to address the key underlying issues – a lack of necessary training to conduct appropriate testing; a lack of certification that would enable owners and operators to understand the specifics of testing, inspecting, and repairing their onsite equipment; and a lack of proper documentation. The Agency believes that dedicating resources to revising the existing rule will do more to benefit human health and the environment than simply dedicating resources to penalizing untrained owners and operators.
- Any entity that tests UST systems has the potential of causing a release as a result of conducting testing or of causing a leak to go undetected due to testing errors. The tests being conducted often involve compromising the UST integrity (piping and interstitial areas), removing UST components (ATG probes and overfill devices), or attaching test equipment (line tightness testers, line-leak detector function testers, and vacuum pumps). In many instances, specialized tools and equipment may be needed to prepare and conduct the required testing. In the case of hydrotesting spill buckets and containment sumps, the water can cause damage to electrical systems, and infiltrate into the piping interstice. If this occurs, the pipe may burst due to freezing. Water introduced to spill buckets can infiltrate into the tank and contaminate the regulated substance through leaks in the drain valve or fill adaptor. Overall, there is a great potential of damage to the UST system, or a release to the environment, if the testing is not conducted properly. Though not infallible, agency-approved testers bring relevant training and a wealth of experience to each UST system test and inspection; thus, agency-approved testers provide more protection to human health and environment than an untrained and uncertified owner or operator.

In most cases, agency-approved testers will be conducting the same type of testing that is being performed by MPCA-certified tank contractors during a UST installation or repair. MPCA-certified contractors must maintain "*...comprehensive general liability insurance, surety bonds, or liquid company assets that, in combination, represent a value of not less than five times the value of the largest storage tank project contract performed by the contractor during the previous two years...*" under part 7105.0050, subp. 1(B). Because testing and inspections being conducted by agency-approved testers pose the same risks to human health and the environment as those being conducted by MPCA-certified contractors, the Agency believes it is reasonable to require agency-approved testers to carry insurance similar to what is required by MPCA-certified contractors.

The Agency believes it is reasonable to require insurance coverage that is equivalent to that carried by certified contractors because of the potential for: (1) releases from a UST system while conducting testing, inspections or repair work, and (2) catastrophic damage due to the flammable or hazardous nature of the contents in a UST system. However, it is not possible to directly apply the criteria for determining the level of insurance coverage for MPCA-certified contractors established under part 7105.0050, subp. 1(B) to an agency-approved tester because the criteria is based on the value of an installation; agency-approved testers do not perform installations. The Agency is proposing an insurance level of no less than \$1,000,000 of comprehensive liability insurance with pollution liability coverage for agency-approved testers. This level of insurance is being proposed because it is the minimum level of comprehensive liability insurance with pollution liability coverage that is available to testing firms who conduct testing and inspection work. The insurance level is also the same level of insurance required for UST testers that are licensed in Iowa.

MPCA-certified tank contractors and most testing firms currently have comprehensive liability insurance with pollution liability coverage greater than the \$1,000,000 minimum coverage being proposed by the Agency. Therefore, there is no additional insurance costs passed on to owners and operators. In the rare instance where testing firms do not have insurance, the MPCA estimates that the cost of the insurance passed on to owners and operators would amount to less than \$17.50 per year for approximately 5% of the currently existing 4,100 UST sites in Minnesota.

After careful consideration, the Agency believes that it is reasonable and necessary for agency-approved testers to be either an employee of a certified tank contractor under Minn. R. ch. 7105, or employees of an independent testing laboratory that is not affiliated with the owner or operator of the UST system being tested, and to carry \$1,000,000 of comprehensive liability insurance with pollution liability coverage.

**Item B.** Under proposed item B, the Agency outlines the criteria the Commissioner will apply with (1) the denial of an application; or (2) the suspension, restriction, or revocation of an agency-approved tester. The requirements are discussed below. As a comparison to other states, Iowa, Massachusetts, Maine, and West Virginia have similar provisions for denying, suspending, restricting or revoking certifications.

**Subitem (1).** This subitem establishes that the Commissioner has authority to deny, suspend, restrict, or revoke an application for an agency-approved tester, if the applicant or agency-approved tester fails to meet the application requirements under proposed item A. The reasonableness of item A has been established above and the MPCA believes that it is reasonable to deny an application if the applicant or agency-approved tester cannot demonstrate compliance with the applicable criteria.

**Subitem (2).** This subitem establishes that the Commissioner has authority to deny, suspend, restrict, or revoke an application for an agency-approved tester, if the applicant or agency-approved tester fails to comply with the inspection and testing requirements of Minn. R. ch. 7105. The reasonableness of the proposed inspection and testing requirements has been discussed in the reasonableness discussion of part 7150.0216. The Agency believes noncompliance with the inspection and testing requirements calls into question the validity of information gathered from those activities for the inspected or tested UST system. Even if the tester has the required training, failure to implement the training when conducting tests allows a potential release that could harm human health or the environment. Therefore, it is reasonable to use noncompliance with this item as criteria for denying, suspending, restricting, or revoking an application for an agency-approved tester.

**Subitem (3).** This item establishes that the Commissioner has authority to deny, suspend, restrict, or revoke an application for an agency-approved tester, if the applicant or agency-approved tester submitted false or misleading information to obtain or renew agency approval under part 7150.0216 or certification under Minn. R. ch. 7105. It is reasonable for the Agency to establish this requirement to ensure that the MPCA does not approve testers who do not actually meet the criteria. It also makes clear to applicants and approved/certified individuals that the submittal of false or misleading information is unacceptable and will result in negative consequences to the party submitting false or misleading information.

**Subitem (4).** This item establishes that the Commissioner has authority to deny, suspend, restrict, or revoke an application for an agency-approved tester, if the applicant or agency-approved tester engaged in fraudulent activities related to records, test results, or repairs while performing duties as an agency-approved tester. It is reasonable for the Agency to establish this requirement to avoid risk of fraud and inaccurate test results in the future. It also ensures applicants and agency-approved testers understand that their engagement in fraudulent activities related to records, test results, or repairs while

performing duties as an agency-approved tester is unacceptable and will result in negative consequences to the party engaging in those actions.

**Item C.** The MPCA is proposing that the Commissioner provide a written notice to any agency-approved tester who has had their application rejected or have had their approval to act as an agency-approved tester revoked or suspended; the notice must list effective date, basis, facts supporting the action, and the specific steps necessary to become an agency-approved tester. Item C also outlines the provisions for an agency-approved tester, or applicant to request a hearing to contest the Commissioner's decision to deny, revoke or suspend an approval. These requirements are reasonable because they provide the agency-approved tester with due process. Requiring written notice for denials, suspensions and revoking certifications is similar to requirements of other states, such as Iowa, Massachusetts, and Arkansas. A few states, such as West Virginia, Maine, and Montana do not have provisions for providing written notice or due process. The process is also similar to that of tank contractor certifications at part 7105.0110 and licenses or certifications for septic system professionals in Minn. R. 7083.2020 subp. 4.

The Agency is proposing to establish a period of one calendar year as the time period upon which a person may not apply to be an agency-certified tester, if a person has had their application denied, or their certification revoked or suspended. The Agency does not intend to apply this time period restriction to those incidences where an application is submitted with inadequate or missing information. The decision to establish a one-year period is specific to Minnesota. Most states do not have a limit to how long of period to deny, suspend or revoke a tester's certification. Maine sets a time period of 90 days to one year. Iowa suspends certification until the tester has completed special training and any terms of a suspension order. The Agency has chosen a one-year period because it is a period of time that the Agency believes is necessary for a tester to be recertified by manufacturers to conduct testing on UST components. It is also a time period that would allow a tester who is an MPCA-certified tank contractor, to be able to complete the MPCA tank contractor class that is offered on an annual basis. It provides a deterrent against improper conduct in the duties as an agency-approved tester. This is similar to the one-year restriction for septic system professionals in part 7083.2020, subpart 4(C).

#### 9. Part 7150.0250 RESTORATION, CORRECTIVE ACTIONS, AND REQUIRED PERMANENT CLOSURE.

This part addresses the corrective and restorative actions that must be conducted by owners and operators to return a UST system back to proper operating condition. If the UST system cannot be returned to a proper operating condition, this part also outlines the conditions upon which a UST system is required to be permanently closed.

##### **Subp. 1. Unusual operating conditions.**

**Item A.** The MPCA is proposing to add a requirement to immediately correct unusual operating conditions in a UST system or take the UST system out of service to prevent further leaks. The proposed requirement conforms to 40 CFR § 280.50(b), which identifies unusual operating conditions such as erratic behavior of dispensing equipment, sudden loss of product, and water ingress. Also, see the discussion for unusual operating conditions under the part 7150.0030, subp. 51a discussion.

**Subitem (1).** Under subitem (1), the MPCA is proposing that the UST system does not need to be placed into temporary closure if an unusual operating condition can be resolved. An example of an unusual operating condition being resolved might be when the ATG detects a sudden loss of product. Usually a report of sudden loss occurs when fuel is removed from the UST while a tank leak test is being performed. If the owner or operator can verify that the reported loss can be attributed to fuel being



removed and not a leak, the UST does not need to be placed into temporary closure and the unusual operating condition has been resolved.

**Subitem (2).** Under subitem (2), the MPCA is proposing that the UST system does not have to be taken out of service if the defective or leaking component can be isolated in a manner that will prevent product from leaking. An example of isolating a leaking component might be when a fire or shear valve is closed to stop a leak from a defective dispenser meter. In this case, the UST system would remain in service and non-isolated dispensers could continue to dispense product.

**Subitem (3).** Under subitem (3), the MPCA is proposing that the UST system does not have to be placed into temporary closure if the defective component is repaired or replaced by a certified tank contractor. Until repairs are completed, owners and operators of a UST system must meet the requirements of either subitem (2) or subpart. 1(A).

**Item B.** Under item B, the MPCA is proposing that the owner or operator must report unresolved unusual operating conditions that may have resulted in a leak or that indicate a release according to part 7150.0345, subp. 2. The onus is on the owner or operator to verify that a release has not occurred. If the owner or operator cannot resolve the unusual operating condition or is unable to determine that a release has not occurred, then the unusual operating condition must be treated as a release and reported to the Minnesota duty officer.

#### **Subp. 2. Repairs.**

The Agency is proposing to move the requirements from existing part 7150.0100, subp. 10 to this subpart for better organization and improved clarity. Except as described below, the requirements have not changed.

**Item A.** The Agency is proposing to add the requirement that owners and operators must keep their UST systems in “good working condition” at all times. Good working condition means that tank system components are maintained according to the manufacturer’s requirements, if applicable, or that the components are maintained such that they function as intended by the manufacturer or according to industry standards. To comply with 40 CFR § 280.33, the MPCA is also adding the requirement that repairs must ensure that releases due to structural failure or corrosion do not occur for as long as UST system is storing a regulated substance.

**Item B, subitem (3).** The MPCA is proposing this requirement to conform to 40 CFR § 280.33, that requires secondary-containment areas used for interstitial monitoring on tanks, piping and containment sumps must be tightness tested.

**Item C.** The Agency is proposing to add references to three codes of practice that address repaired tanks, piping, secondary containment areas used for interstitial monitoring, and containment sumps. The codes of practices, which are identified in the repair section of 40 CFR § 280.33(d) are referenced here to place emphasis on the requirement for tightness testing after repairs, and the references are also listed in the summary of all methods located in part 7150.0500. Item C conforms to federal requirements.

**Item E.** To conform with 40 CFR § 280.33(f), the MPCA is proposing that repaired spill and overfill prevention equipment must be tested or inspected to ensure that it is functioning properly within 30 days of a repair. Spill and overfill equipment are important components in preventing releases from tank systems; therefore, testing or inspecting the spill and overfill equipment after a repair ensures that the chance of a release due to an improper repair or defective components is reduced.

**Item F.** The MPCA is proposing to add a requirement that UST system components used for leak detection must be function tested or inspected after being repaired to ensure proper function. It is reasonable to include this requirement because a malfunctioning leak-detection device with no alarms or warning may give owners and operators a false sense of security and allow a leak to go undetected.

**Item G.** The MPCA is proposing this requirement to conform to the codes of practice required under 40 CFR pt. 280. The codes of practice must be used to ensure repairs to UST systems are properly conducted.

### **Subp. 3. Replacement.**

**Item A.** The MPCA is proposing to add the requirement that UST system components that do not meet the performance standards of part 7150.0100 must be repaired or replaced. The Agency intends that owners and operators must take immediate action to replace deficient components. Immediate action means that owners and operators must initiate and actively continue the process of having the component replaced as soon as practicable. Depending on the situation, this could mean within minutes, or within a day or two. Once the process to replace a component has started, delays in replacing a component may occur due to issues beyond the certified tank contractor's control – e.g., scheduling problems, or lead times in ordering components. These types of delays are often beyond the owner or operator's control, and the owner or operator should not be accountable for these delays, provided the owner or operator has taken the actions necessary to initiate the repair process, and is actively working towards getting the component replaced as soon as practicable. It is important to note that delays in replacing components that are leaking are not acceptable because immediate action must be taken to minimize and abate releases according to Minn. Stat. § 115.061.

**Subitem (1).** The MPCA is adding the requirement that UST system components with excessive corrosion must be replaced if the components do not function as intended by the manufacturer or may cause a release. This requirement is an extension to the current requirement to replace piping with excessive corrosion, and is expanded to include any tank system component that has excessive corrosion. This subitem does not apply to components with superficial surface corrosion. This subitem is intended for those components with corrosion that is excessive, heavy or that causes pitting-type corrosion that may cause the components to not function as the manufacturer intended, or that may cause a leak.

**Subitem (2).** The MPCA is adding the requirement that any component that has been identified as being deficient per the requirements of chapter 7150 must be replaced. The current UST rules require deficient UST components to be identified by inspections or testing; however, only corroded piping must be replaced. Thus, it is necessary to establish this requirement to ensure that all deficient components that are not corroded piping, are also replaced.

**Item B.** The MPCA is adding the requirement that the entire piping run must be replaced with secondarily contained piping, if any of the listed conditions exist.

**Subitems (1) and (2).** The MPCA is moving the existing requirement under existing part 7150.0100, subp. 10(B) that the entire piping run must be replaced with secondarily contained piping, if metal segments have pitting-type corrosion or have leaked. This requirement has been relocated to consolidate replacement requirements in one area.

**Subitem (3).** Under subitem (3), the MPCA is requiring pipe segments that have degraded to be replaced. This is a new requirement brought about by an increase in the number of cases where piping has degraded due to age, incompatibility, or poor installation practices. Examples of piping that has degraded, include piping that has an outer protective coating that has cracked or peeled, piping that has swollen or has softened, or piping that has grown in length. Poor installation practices includes piping

that has been nicked or cut while installing fittings or removing outer coatings, piping that has been overheated or charred while installing fittings, and piping with kinks or sharp bends.

**Subitem (4).** In conformance with 40 CFR § 280.20 and the definition of “replaced” piping in section 280.12, the Agency is establishing the requirement that if 50% or more of a piping run is replaced, the entire piping run must be replaced. This requirement applies regardless of when various segments were replaced or repaired. If a series of repairs or replacements encompass more than 50% of a piping run, then the entire piping run must be replaced.

**Item C.** This item outlines the conditions that may exist that would allow piping to be repaired, instead of being replaced. The MPCA proposes to move the requirements of part 7150.0100, subp. 9(B) to this item to consolidate repairs in this part.

**Subitem (3).** Currently, existing part 7150.0100, subp. 10(B) establishes that pipe sections that have leaked must be replaced in their entirety. The MPCA is revising part 7150.0100, subp. 10(B) for two reasons. First, piping appurtenances are readily accessible for repair and can be replaced without damaging the piping; therefore, it is unreasonable for the MPCA to require replacement of the entire piping run if a piping appurtenance in a pipe section leaks. However, failure of a piping appurtenance by corrosion is usually indicative that the entire piping system has corrosion issues, and as a result the entire piping run must be replaced if the release was due to corrosion issues. Second, the Agency is moving the requirements to this subitem to consolidate repair requirements in one location. For these reasons, the proposed revision is reasonable.

**Subp. 4. Required permanent closure.** Under this proposed subpart, the Agency is proposing that if UST system or piping conditions exist under items A to C, which have a high potential of causing a release, the UST system or piping, as applicable, must be permanently closed in accordance with part 7150.0410, and a site assessment in accordance with part 7150.0345, subp. 3.

**Item A.** The MPCA is proposing a new requirement that USTs that have shifted upward must be permanently closed, unless repairs can be made to prevent further shifting and to correct any damage that has occurred to the UST system. UST manufacturer installation instructions stress the importance of properly anchoring a UST to avoid shifting. Site inspection standards recommend owners and operators inspect the concrete over USTs to verify that it is in good condition to ensure that the tank is not shifting. As many of the older tank systems age, the tank anchors that hold the UST systems in the ground have failed due to corrosion. As a result, some USTs are starting to float upwards due to high water tables. As the UST floats upwards, great strain is being placed on the UST and the piping. Unless the shifting can be corrected (repaired) there is a high probability of the UST system failing and causing a release. Additionally, when the UST shifts in the ground, the UST can tilt out of level and cause problems with leak detection and interior corrosion due to water collecting at one end of the tank. Concrete cracking and bulging upward over a UST, and the UST risers rising to a point where they start to contact driveway access covers, are indicators that the UST has shifted. The most common repair is replacing the concrete over the UST with concrete of sufficient thickness to counteract the upward buoyancy or lift of the UST. Additionally, it is necessary to inspect piping and sumps for evidence of stress or strain and conduct repairs as necessary. Based on this discussion, the Agency believes that this requirement is reasonable to protect human health and the environment.

**Item B.** The MPCA is proposing this new requirement. The primary reason for not allowing a non-secondarily contained tank from being repaired is that the deficiency that caused the tank to leak is usually endemic. Even if a tank is repaired, the condition that caused the release could cause another future release; repairing a tank would require the exterior of the tank to be exposed. The process of exposing a tank may inflict additional damage to the tank system. If the exterior of a tank is exposed to

conduct repairs, the tank would need to be recertified by the manufacturer. It is unlikely that a manufacturer will recertify an existing single-walled tank that has been prohibited from installation in Minnesota since 2007.

The MPCA would allow a leaking UST to be retrofitted because retrofitting a tank would involve building a new secondarily contained tank within the shell of the leaking tank. By definition, a retrofitted tank is a new UST and must meet all requirements for a new UST. Additionally, because the leaking tank is being taken out of service all requirements for permanently closing a UST must be met.

**Item C.** Secondarily contained tanks and piping that have leaked may be repaired due to the added protection that the secondary containment provides to prevent releases. Repairing a secondarily contained UST or piping must ensure that the repairs will allow the interstitial space of the UST or piping to be monitored for leaks. This may involve assuring that all liquids are removed from the interstitial space of the UST or double-walled piping.

If a secondarily contained pipe or tank cannot be repaired in accordance with the requirements of part 7150.0250, subp. 2, the piping or tank must be permanently closed.

## RELEASE DETECTION

### 10. Part 7150.0300 RELEASE DETECTION

This part outlines the requirements for providing leak detection for tank systems.

**Subp. 1. General.** The Agency is proposing to remove the release detection exemption for emergency generator systems by requiring emergency generator tanks systems to have tank and piping leak detection by October 13, 2020. This proposed amendment conforms to the 40 CFR § 280.10(a)(1)(ii) recent federal rule change that emergency generator tanks are no longer exempt from release detection requirements.

For clarification purposes, the MPCA notes that heating oil tanks and partially excluded tank systems are not required to meet the requirements of this subpart for the reasons discussed under part 7150.0010, subps. 5 and 6.

**Item A.** The Agency is proposing to change the word “release” to the word “leak” to conform with new definitions. This will clarify that release detection systems must be capable of detecting a leak of a regulated substance from the UST system.

**Item C.** The MPCA is proposing that release detection equipment must be certified by an independent testing laboratory or a nationally recognized association. To ensure proper function, release detection equipment must meet certain performance standards for conducting leak testing on tanks and piping. Manufacturers use independent testing laboratories and nationally recognized association to test and document that the performance claims for the release detection equipment are being met. Requiring written documentation that performance claims are being met assures that the release detection equipment meets the performance standards of parts 7150.0330 and 7150.0340. The equipment manufacturer or the installer must supply documentation that performance standards are being met. It is reasonable to establish this requirement to ensure that the performance standards of release detection equipment are being met and can be verified at a later date when MPCA staff can review the documentation.

**Subp. 2. Release notification.** The Agency is proposing to repeal this subpart and move the requirements to the new part 7150.0345, subp. 2. The relocation of information groups the existing

release notification requirements into the new information reporting, investigating, and confirming requirements related to releases or suspected releases into one location for better organization.

**Subp. 5. Tanks.** The Agency is proposing to replace two words in this subpart to conform to the new definitions discussed under part 7150.0030. The word “release” will be replaced with “leak” for the reasons discussed under part 7150.0030, subps. 25c and subp. 41. The word “materials” will be replaced with “substance” for the reason discussed under part 7150.0030, subp. 22.

**Item A.** The Agency is proposing to remove the existing requirement that release detection using an ATG must also use inventory control. The proposed change is needed because 40 CFR § 280.43(d) establishes that tank release detection using an ATG be used with inventory control or another test of equivalent performance. ATG exceeds the performance standards of inventory control, with the exception of monitoring the tanks for water monthly. Thus, the only benefit of inventory control is the monthly check for water. The MPCA is adding a new requirement that tanks be checked monthly for the presence of water under proposed part 7150.0216, subpart 2(A)(7), which removes the need to conduct inventory control. This change is reasonable because the requirement to conduct two forms of tank leak detection would cause undue hardship to some owners and operators. By adding the monthly water monitoring, there is no increased risk of a release. The EPA has reviewed and accepted this change to be equivalent with 40 CFR § 280.

**Item C.** The MPCA is proposing to remove inventory control as an acceptable form of release detection because inventory control alone is only acceptable for 10 years after the installation of the tank. Based on proposed part 7150.0300, subp. 5, UST systems installed after December 22, 2007, are required to use interstitial monitoring as the primary form of release detection. Therefore, tanks installed prior to December 22, 2007, would only be allowed to rely on inventory control until December 22, 2017, at the latest. It is reasonable to remove inventory control as an acceptable form of release detection because the requirements are now obsolete.

With the 2015 revisions to 40 CFR § 280.43(h), EPA now allows statistical inventory reconciliation as an acceptable means for tank release detection. Therefore, it is reasonable for the MPCA to propose inserting the requirements for conducting statistical inventory reconciliation into this item.

**Item D.** The Agency is proposing to remove the option to conduct manual tank gauging as described in existing item D for tanks with capacities of greater than 1,000 gallons and less than 2,000 gallons for the same reasons described above in item C.

**Items E and F.** The Agency is proposing to reletter existing items E and F to the new items D and E to adhere to the standards of the MORS.

**Subp. 6. Piping.** The Agency is proposing changes to this subpart to clarify the original intent of the rule to include piping that conveys a regulated substance from one point to another as part of a UST system, as defined under proposed part 7150.0030, subp. 38. It is reasonable to make this change because there is no distinction between piping that is located above or below the ground when it is part of a UST system. Current subpart 6 addresses piping leak detection for UST systems and the word “underground” has caused confusion as to whether piping release detection is limited to piping physically located underground. The Agency believes that removing the existing reference to “underground” in describing piping will eliminate the confusion by clarifying that all piping used as part of an UST system must have release detection, e.g. aboveground piping located within a dispenser, aboveground piping going to a bulk fueling rack, etc. The Agency believes that this change is reasonable because Minn. R. ch. 7151 (Aboveground Storage of Liquid Substances) regulations do not address aboveground piping originating from a UST. Regardless of whether piping is physically located under the ground, above the ground, or

partially buried, an owner or operator needs to ensure it is functioning without leaks because they can lead to releases and harm human health and the environment.

Currently, the Agency may allow visual inspections for aboveground piping where piping is entirely above grade and can be easily inspected and immediately observed. This visual inspection method must be requested by owners and operators as an alternative method of piping leak detection under existing part 7150.0340 subpart 5. The proposed rules retain this flexibility.

The Agency also proposes to remove the requirement that piping installed on or after December 22, 2007, must comply with existing part 7150.0300, subp. 6(A)(3) or (4). Subitems (3) and (4) are intended for pressurized piping; thus, the requirement must be removed because it does not apply to both pressurized and suction piping. The MPCA proposes to move the existing subitem (3) requirement to item A, which applies to pressurized piping only.

**Item A.** For the reasons described above, the MPCA is moving the existing part 7150.0300, subp. 6(A)(3) requirement to this amended item.

The Agency also proposes to add a requirement that pressurized piping positioned lower than the top of the tank must be equipped with an antisiphon device. Except for boat marinas' installation codes of practice, manufacturer's requirements and recommended installation codes of practices do not address this piping because piping design generally slopes back to the tank and drains product back into piping in the event of a leak. Without the installation of an antisiphon device on this piping, releases may result in the draining of fuel if the leak point is below the fuel level of the tank. This requirement, which is similar to the requirement for boat marinas, will apply to all piping used as a part of an underground tank systems in which the piping is positioned lower than the top of the tank.

**Subitem (2).** The Agency is proposing revisions to existing language to adhere to the standards of the MORS.

**Subitems (3) and (4).** For the reasons described under item A, the MPCA is proposing to combine subitems (3) and (4). The wording has changed but the requirements have remained the same.

**Subitem (4).** As discussed above, the Agency is proposing to combine existing subitem (4) into proposed subitem (3). Thus, the MPCA is proposing to remove this existing subitem.

**Item B.** The Agency is proposing revisions to existing language to adhere to the standards of the MORS.

**Subitem (1).** For similar reasons, as explained in item A, the Agency is proposing to add a requirement that suction piping that is positioned lower than the top of the tank must be equipped with an antisiphon device.

**Unit (a).** Because a suction system operates at a vacuum, it is not possible to test suction piping at one and one-half times the operating pressure. Thus, this unit is improperly worded. The Agency is proposing to modify the wording to require a tightness test that can detect a 0.1 gallon per hour leak rate at 50 psi pressure, which is the same criteria that suction piping must be tested at during installation. The Agency believes this change is reasonable because it conforms to industry testing standards and corrects existing improper wording.

**Item C.** The Agency is proposing revisions to existing language to adhere to the standards of the MORS.

**Subp. 7. Sump and basin monitoring.** The Agency is proposing to repeal this subpart because the requirements for periodic operation and maintenance inspections have been moved to part 7150.0216, subp. 2.

## 11. Part 7150.0330 METHODS OF RELEASE DETECTION FOR TANKS.

This part outlines the requirements for conducting leak detection on USTs.

**Subp. 2. Inventory control.** The MPCA is proposing to remove the requirements for inventory control. For the same reasons described under part 7150.0300, subp. 5(C), the release test requirements for inventory control are no longer applicable.

### **Subp. 3. Manual tank gauging.**

**Item A.** The Agency is proposing revisions to existing lettering, numbering, and language to adhere to the standards of the MORS. Although existing items A to C are now listed as part of the proposed item A, the requirements have not changed.

**Item B.** Because the requirements for reporting releases or suspected releases are outlined in part 7150.0345, the Agency is proposing to remove the reference to Minn. Stat. § 115.061 under proposed item B.

The Agency is also proposing to remove test criteria for tanks greater than 1,000 gallons in capacity from the manual tank gauging table because manual tank gauging is no longer an acceptable method for release detection under proposed part 7150.0300, subp. 5(D). See SONAR part 7150.0300, subp. 5(D) for further discussion.

**Subp. 5. Automatic tank gauging.** Inventory control is no longer required to be used in conjunction with an ATG; therefore, the Agency is proposing to delete the reference. For further discussion, see part 7150.0300, subp. 5(A).

**Item A.** The Agency is proposing minor revisions to existing language to adhere to the standards of the MORS.

**Item B.** For the same reasons discussed under part 7150.0300, subp. 5(A), the Agency is proposing to remove the reference that inventory control must be used in conjunction with an ATG.

To comply with 40 CFR § 280.43(d)(3), the Agency is proposing the requirement that owners and operators must ensure that ATG testing measures the leak status of the UST at least every 30 days, with the leak testing performed in either a in-tank static test mode, subitem (1), or in a continuous in-tank leak test mode with specified conditions, subitem (2).

**Subp. 6. Interstitial monitoring.** The Agency is proposing minor revisions to existing language to adhere to the standards of MORS.

**Subp. 6a. Statistical inventory reconciliation.** The Agency is proposing to add subpart 6a to address the requirements of statistical inventory reconciliation (SIR). With the latest changes to EPA regulations, SIR is an acceptable form of leak detection under 40 CFR § 280.43(h). The language for this requirement is equivalent with 40 CFR § 280.43(h). Historically, SIR has been approved as an other acceptable form of leak detection in Minnesota under part 7150.0330, subp. 7. The method has proved an adequate form of leak detection.

**Subp. 7. Other methods.** The Agency is proposing minor revisions to existing language to adhere to the standards of the MORS.

## 12. Part 7150.0340 METHODS OF RELEASE DETECTION FOR PIPING.

This part outlines the requirements for conducting leak detection on the piping for UST systems. This part has been rewritten to adhere to the standards of the MORS. Except for the requirements as to who

may conduct testing, the basic requirements, which are based upon 40 CFR § 280.44(a), have remained the same.

**Subp. 2. Automatic line-leak detectors.** The Agency is proposing to move the existing requirements into items A and B for better organization.

**Item A.** The Agency is proposing to replace the requirements for who may conduct testing of line-leak detectors with the test criteria from existing subpart 2. Requirements regarding who may conduct the testing would be moved to proposed item D(1).

**Item B.** To be consistent with EPA regulations, the Agency is proposing to remove the requirements to comply with manufacturer's test requirements.

The requirements from existing subpart 2 that would be moved to item B address methods of continuously alerting an operator of a leak. The Agency considers the use of the word "continuously" as posing an unreasonable requirement on owners and operators. For example, in order to be notified continuously, the facility would need to be staffed 24 hours per day, 365 days per year. Outside of normal business hours or on weekends, when owners and operators may not be present, the throughput of product tends to be so low that the risk of environmental damage due to a leak going undetected is low. If a leak is detected by the line-leak detector, the line-leak detector will either restrict the flow of product, or will stop the flow of product entirely. The Agency believes that the revised requirement will adequately alert an operator of a possible leak within a reasonable period of time. The Agency believes that having an operator on site during normal business hours is adequate for alerting an operator of a leak. Therefore, the Agency is proposing to modify the requirements for alerting an operator of a leak from being continuously alerting to alerting during normal business hours.

**Item C.** The Agency is proposing to move the requirement that a physical leak must be created to test line-leak detectors from existing item C to proposed item D(2). As part of proposed item C, the MPCA is also proposing to require that line-leak detectors used at unattended card-lock facilities must shut off the flow of product if a leak is detected.

The MPCA has interpreted the meaning, in subpart 2, of "continuously alert the operator to the presence of a leak" to mean that the operator must be alerted of a leak in a fairly short period of time so that corrective actions can be made in a timely manner. If the operator is notified of a leak quickly, a line-leak detector that restricts the flow of the regulated material is acceptable because the risks of damage to the environment is minimal. At unattended card-lock facilities, a leak may go undetected for a long period of time, due to an operator only being required to be on site once per week; therefore, the MPCA considers a flow restricting line-leak detector to be unacceptable for use at these facilities.

One of the following line leak detection configurations can be used at unattended card lock facilities to ensure, in the event of a release, that the flow of product stops:

- Line-leak detectors that completely shut off the flow of the regulated substance, such as an electronic line-leak detector, programmed for positive shutoff, or
- Line-leak detectors that restrict flow of the regulated substance may be used on double-walled piping conducting interstitial monitoring with a sump sensor that shuts off the flow of the regulated substance.

**Item D.** The Agency is proposing to combine the function test requirements of existing items A to D into proposed item D. With the exception of adding language to clarify who may conduct the function testing of the line-leak detector, the requirements have remained the same.



**Subitem (1).** Earlier versions of this requirement left it unclear as to who was allowed to conduct testing. The intent of the requirement, from its inception, was to allow certified contractors and testers that specialize in conducting the testing to perform line-leak detector function testing. The Agency is proposing to reword the requirement to remove confusion as to who may conduct the function testing of line-leak detectors. The requirements outlining who may conduct the testing of the line-leak detector are outlined in proposed part 7150.0216, subp. 6.

The Agency is proposing that testing be conducted according to 7150.0216, subp. 3, to be in compliance with 40 CFR § 280.44 (a).

**Subp. 3. Line tightness testing.** The Agency is proposing minor revisions to existing language to adhere to the standards of MORS. The requirements have not changed.

The MPCA notes that the testing conducted by an automatic line-leak detector is not the same as the periodic line tightness testing. An automatic line-leak detector is required to detect leaks at a minimum of 3 gallons per hour (gph) at 10 psi. A periodic line tightness test is intended to find 0.2 gph leaks at least monthly, or a 0.1 gph leak at 1.5 times the operating pressure annually.

**Subp. 4. Interstitial and sump monitoring.** The Agency is proposing minor revisions to existing language to adhere to the standards of the MORS and is changing the name of this subpart to include sump monitoring, since this subpart applies to both interstitial spaces and sump areas.

**Subp. 5. Other methods.** The Agency is proposing minor revisions to existing language to adhere to the standards of the MORS.

## REPORTING, INVESTIGATING, AND CONFIRMING RELEASES

### 13. Part 7150.0345 REPORTING, INVESTIGATING, AND CONFIRMING RELEASES.

The Agency is proposing this new part to outline the steps that owners and operators must take to report, investigate, and confirm releases. Except as noted below, the proposed requirements conform to 40 CFR Part 280, Subpart E – Release Reporting, Investigation, and Confirmation.

**Subp. 1.** Proposed part 7150.0345, subp. 1 establishes requirements for investigating and confirming releases.

**Item A.** The Agency is proposing that owners and operators must immediately investigate and confirm all suspected releases in conformance with 40 CFR § 280.52. This is consistent with the requirements of Minn. Stat. § 115.061 to report and remedy releases.

**Item B.** The Agency is proposing that owners and operators must investigate unusual operating conditions within 24 hours of discovery under specified conditions. This item outlines the steps that owners and operators are required to perform, according to 40 CFR § 280.52, when investigating an unusual operating condition. Under 40 CFR § 280.50(b), EPA provides some examples of unusual operating conditions. For example, the erratic behavior of product dispensing equipment, the sudden loss of product from the UST, the unexplained presence of water in the UST, and the presence of liquid in the interstitial space of secondarily contained systems. While EPA only provides three examples, the Agency expects numerous scenarios and is proposing a definition under proposed part 7150.0030, subp. 51a that encompasses other unusual operating condition scenarios. For example, safe suction lines losing their prime, mechanical line leak detectors restricting the flow of product indicating a release, and SIR reports indicating small product losses over several months while achieving passing leak reports. Any abnormalities while conducting leak detection according to part 7150.0330 or 7150.0340 would be an unusual operation condition that must be investigated. The requirement to investigate unusual

operating conditions is reasonable to assure the system is functioning properly to protect human health and the environment.

**Subitem (1).** The Agency proposes owners and operators conduct a visual inspection of the UST system as the first step in investigating and confirming suspected releases and unusual operating conditions. The MPCA would require owners and operators to visually inspect the components of the tank system that are readily accessible. Generally, this would be within dispensers, dispenser sumps, spill buckets, and tank top sumps. If a leak is confirmed during the visual inspection, additional testing would not be necessary. The MPCA believes that a visual inspection is a reasonable first response action to any unusual operating condition that may exist to verify if a release has occurred. The Agency believes this requirement would not be less strict than EPA regulations, because the visual inspection is only to confirm a leak. If a leak is not confirmed, then owners and operators must conduct additional testing as outlined in this subpart and according to 40 CFR § 280.50 and 40 CFR § 280.52.

**Subitem (2).** The Agency is proposing to require owners and operators to repeat any tests, if applicable, that indicated an unusual operating condition or suspected leak. If the additional testing establishes the UST system is not leaking and the unusual operating condition has been resolved, owners and operators may resume operating as normal and no additional testing is required. The Agency believes that requiring owners and operators to repeat applicable UST system testing complies with 40 CFR § 280.50 by providing a method to establish that there is not a release of a regulated substances to the environment. Additionally, the Agency believes that repeating the test is a reasonable approach to confirming the initial result that an unusual operating condition actually exists.

**Item C.** The Agency is proposing to require owners and operators to initiate specific actions within 24 hours of discovering an unusual operating condition or confirming an unusual operating condition under item B, subitem (2).

**Subitem (1).** The Agency is proposing to require owners and operators to conduct tightness testing of the UST or piping system depending on the nature of the unusual operating condition. Tightness testing will be required if repeat testing conducted under item B, subitem 2 confirms the initial result that an unusual operating condition exists. The Agency believes that these requirements will comply with 40 CFR § 280.52(a).

40 CFR § 280.52(a) establishes that owners and operators must conduct tightness testing of UST and piping systems to confirm or refute a suspected leak. The Agency interprets 40 CFR § 280.52(a) to require tightness testing on tanks and piping, as appropriate. For example, if there is a suspected tank leak, the tank and tank interstice must be tightness tested. Line tightness testing would not be required. If a line leak is suspected, the piping and associated secondary containment must be tightness tested; however, the UST would not require testing. If statistical inventory reconciliation (SIR) indicates a possible leak, the tank and piping must be tightness tested because SIR is a leak test for the entire UST system. The MPCA believes it is reasonable to require tightness testing on tank system components suspected of leaking, not the entire system. Requiring a tightness test on tank systems components that are not suspected of leaking or malfunctioning would place undue hardship on owners and operators without added benefit to the environment.

**Subitem (2)** The Agency is proposing that if a leak is contained in a secondary containment area, the containment area must be integrity tested to ensure that no product has been released to the environment. A leak into a secondary containment sump would require sump integrity testing, if the product level reaches the lowest penetration point in the sump, as indicated either by actual product levels or staining on the walls of the containment sump. This subitem complies with 40 CFR § 280.52(a).

**Item D.** The Agency is proposing that if the investigation or tightness testing for an unusual operating condition under items B and C of this subpart show that the UST system is not leaking, owners and operators may resume operation using the leak detection method allowed under part 7150.0300 before the discovery of the unusual operating condition. This complies with 40 CFR § 280.52(a).

**Item E.** The Agency is proposing to require owners and operators to remove as much of the regulated substance from the UST system as is necessary to prevent further product from being released. This requirement is based upon 40 CFR § 280.62. The MPCA is also proposing language to require an owner and operator to repair, replace, upgrade, or close the UST system to meet the requirements of 40 CFR § 280.52(a)(2). This will prevent continuation of any release to the environment.

**Subp. 2. Reporting releases or suspected releases.** The Agency is proposing to require a person with knowledge of the release of a product under their control to report the release to the Minnesota duty officer as required by Minn. Stat. § 115.061. The MPCA is also proposing additional conditions under which a release must also be reported, proposed items A to C(3) that are based upon 40 CFR § 280.50, except that item C(2)(c) is based upon 40 CFR § 280.52(a).

As discussed above, Minn. Stat. § 115.061 does not limit the reporting of releases or suspected releases to owners and operators. Persons who are controlling a product include owners, operators, employees who control dispensing of a regulated substance, and service technicians who are working on the UST system. In interpreting this requirement, the Agency believes it is necessary to exercise discretion to avoid duplicate reporting that results in no added environmental benefit. It is possible that more than one person will have knowledge of the same release of a product. The rule follows the statute by making any person potentially subject to the reporting requirement, but MPCA recognizes that in practice, reports by multiple people for the same event are generally not necessary.

**Subp. 3. Assessing site; permanent closure or status change.** The Agency is proposing to move the requirements for conducting a site assessment from existing part 7150.0420 to this subpart. The basic requirements for conducting a site assessment have remained unchanged, however, the requirements were reworded to conform to 40 CFR § 280.72.

## **UST SYSTEM CLOSURE**

### **14. Part 7150.0400 TEMPORARY CLOSURE.**

Subps. 2 and 4. The Agency is proposing minor changes to adhere to the standards of the MORS. The requirements of part 7150.0400 have not changed.

### **15. Part 7150.0410 PERMANENT CLOSURE AND CHANGE IN STATUS TO STORAGE OF NONREGULATED SUBSTANCES.**

This part outlines the requirement owners and operators must follow to permanently close an UST or to change it to storing a nonregulated substance.

**Subp. 1. Requirements.** The Agency is proposing revisions to accommodate the proposed repeal discussed under subp. 2 of this part.

**Subp. 2. Notice of closure or change in status.** The MPCA is proposing to repeal this subpart because the requirement to notify the Commissioner of a closure or change in status is already identified in part 7150.0090 subp. 2, Notification of installation, replacement, or change in status. The MPCA believes it is reasonable to repeal this subpart to reduce redundancy. Notification is required under 40 CFR § 280.71.

**Subp. 3. Permanent closure.** The Agency is proposing to reorganize existing requirements into two items for better organization.

**Item A.** Under existing part 7150.0420, subp. 3, the MPCA requires owners and operators to remove liquids and sludges from tanks and piping when permanently closing a UST. Current state regulations do not require the removal of liquids and sludges from piping when only the piping system is being taken out of service. Furthermore, 40 CFR § 280.71 does not address removing liquids and sludges in any piping being taken out of service. Any regulated substances left in piping systems that have been permanently closed pose a risk of being released to the environment. The MPCA believes that it is reasonable to expand this subpart to include requirements for permanently closing piping systems also, and is proposing to require liquids and sludges to be removed from any piping being permanently closed to protect human health and the environment.

**Item B.** Both the current part 7150.0420, subp. 3 and 40 CFR § 280.71 require permanently closed tanks to be removed from the ground or filled with an inert solid material. The requirement for USTs closed in place to be filled with a solid inert material that is free of voids that would allow flammable or hazardous vapors or liquids to accumulate is consistent with § 5704.2.13.1.4 of the Minnesota State Fire Code. It is reasonable to include this clarification to ensure owners and operators do not have conflicting regulations when considering closure in place.

**Item C.** The Agency is proposing that an owner and operator must ensure a site assessment is conducted in accordance with part 7150.0345, subp. 3 for all tanks and piping that is permanently closed. This requirement comes from part 7150.0420 and has been relocated to this part for better organization. The requirement remains unchanged. The EPA has identified piping as the number one source of releases from UST systems and recommend a site assessment for pipe only replacements as being beneficial to protect human health and the environment.

**Item D.** The MPCA is proposing to require owners and operators to conduct a site assessment when a retrofit lining is installed in a UST according to part 7150.0205, subp. 1. When a retrofit tank is built inside of the original tank upon which the new retrofit tank is secured, the MPCA considers the original UST as being permanently closed.

This proposed requirement would ensure that a site assessment is conducted when the host tank is taken out of service and a retrofit tank is installed. The purpose of a site assessment is to address, as soon as possible, any releases. Conducting a site assessment when a tank is retrofitted would ensure that releases are investigated and remediated in a timely manner. Retrofit tanks may have a lifespan of 30 years, which would create an unacceptable delay in addressing a release that may have occurred from the host tank. Generally, after installation of the retrofit tank, there are not reasons to conduct a site assessment during the life of that tank. Therefore, the proposed requirement to conduct the assessment at the time of the retrofit minimizes potential harm to the environment and is reasonable.

**Subp. 4. Storing nonregulated substances.** The Agency is proposing minor revisions to adhere to the standards of the MORS and updated the reference to part 7150.0420, which was repealed and moved to part 7150.0345, subp. 3. The requirements have not changed.

**Subp. 5. Certification of closure.** The Agency is proposing to reorganize the existing subpart 5 requirement into proposed items A and B for increased readability and clarification. In addition, the MPCA is also proposing to move the existing part 7150.0410, subp. 6 requirement into the proposed item C. To clarify notification requirements, the Agency is also proposing to add a reference to the certification on the notification form as required under part 7150.0090, subp. 2. The combined requirements from this subpart and subpart 6 have not changed.

**Subp. 6. Tank system closure certification.** The MPCA is proposing to repeal this subpart and merge the requirements of this subpart with subpart 5 above.

**Subp. 7. Cleaning and closure procedures.** The Agency is proposing clarifications to ensure that owners and operators understand that they must comply with subpart 7. The MPCA is proposing changes to update the codes of practices required under 40 CFR Part 280.

16. Part 7150.0420 SITE ASSESSMENT.

The Agency is proposing to repeal this subpart because the requirements for conducting site assessments are now in proposed part 7150.0345, subp. 3. It is reasonable to move the requirements to this new location for organization and clarification purposes. The new location integrates the site assessment requirements into the larger release investigation process. The requirements have not changed.

17. Part 7150.0430 PREVIOUSLY CLOSED UST SYSTEMS.

The Agency is proposing minor revisions to adhere to the standards of the MORS. Also, the MPCA is updating references to existing part 7150.0420, which have been moved to proposed part 7150.0345, subp. 3. The requirements have not changed.

18. Part 7150.0445 CLASS A, B, AND C OPERATOR REQUIREMENTS.

The Agency is proposing to move the requirements for class A, B, and C operators in the current part 7150.0211 to proposed part 7150.0445. This part was relocated to place the operator requirements in the section of Minn. R. ch. 7150 for Operator Requirements, Reporting, and Record Keeping. Except as noted otherwise, existing part 7150.0211, remains unchanged, though they are renumbered to adhere to the standards of the MORS.

**Subp. 1. General.** The MPCA is proposing to move current definitions of Class A, B, and C operator to part 7150.0030 DEFINITIONS. This change is needed to keep all the definitions in a designated location in the rule for clarifications and readability.

Existing subpart 2 became subpart 1. The MPCA is proposing to divide the subpart into items to make it easier to understand, and to incorporate existing subpart 3. To comply with part 40 CFR § 280.241(b) the Agency is also requiring each individual who meets the definition of a Class C operator must be designated as a Class C operator for the UST facility.

**Subp. 2. Class A operator responsibilities.** The MPCA is proposing to add a requirement that the Class A operators must be knowledgeable about the purpose, method and function of listed tank system components. The MPCA believes the Class A operator needs at least some familiarity with the workings of a UST system to be able to properly manage personnel responsible for maintaining the facility. This complies with 40 CFR § 280.242(a)(1).

**Subp. 3. Class B operator responsibilities.** To comply with 40 CFR § 280.242(b)(1), the Agency is proposing to include a requirement that the Class B operators must be knowledgeable about the purpose, method, and function of listed tank system components. Defining the minimum standard for Class B operators is reasonable to ensure adequate knowledge to implement the rule requirements.

**Subp. 4. Class C operator responsibilities.** The Agency is proposing to add a requirement that Class C operators be trained to take appropriate action in response to emergencies or alarms caused by spills and releases according to 40 CFR § 280.242(c). Proper response training for this class of employees will minimize releases in the event of an emergency. The other requirements for Class C operators have not changed.

**Subp. 5. Class A and B operator examinations.** The Agency is deleting the timetable upon which Class A and B operators must take the agency-administered examination, which is currently part 7150.0211,

subpart 7, item C. The Agency believes this change is justified because it is outdated. The examination waiver for being certified in another state and passing an equivalent examination is now mandatory, rather than at the Commissioner's discretion. All other requirements remain the same.

**Subp. 6, item B.** The Agency is proposing to reduce the time period for attending an agency-approved training course, and retaking and passing the examination from 60 days to 30 days in accordance with 40 CFR § 280.244.

**Subp. 7. Training course approval.** The Agency is proposing to move existing part 7150.0211, subp. 9, to this subpart with minor changes to adhere to the standards of the MORS. The requirements have not changed.

#### 19. Part 7150.0450 REPORTING AND RECORD KEEPING.

This part outlines the requirements owners and operators must follow to report tank system releases, unusual operating conditions, or inspection and testing activities.

##### **Subp. 2, Reporting.**

**Item C.** The MPCA is proposing that to add a cross-reference to the existing requirement that releases be reported in accordance with part 7150.0345 because that part addresses appropriate responses to leaks and releases.

**Item F.** The Agency is proposing updates to reflect renumbering changes that result in no significant changes to the requirements.

##### **Subp. 3. Record retention.**

**Item A.** The Agency is proposing updates to reflect renumbering changes that result in no significant changes to the requirements.

**Item C.** The MPCA is proposing minor changes to reflect proposed numbering changes throughout the rule and to adhere to the standards of the MORS. There is no change to this requirement.

##### **Item D.**

**Subitem (1).** The MPCA is proposing minor language changes to provide clarity and to adhere to the standards of the MORS. The requirements have not changed.

**Subitem (2).** In 2007, the MPCA proposed a 10 year record retention period. The basis for the established time period was that it was "...consistent with most other UST record retention times." See page 43 of the 32SR1751 SONAR. In this rulemaking, the Agency is proposing to reduce the time period for record retention from 10 years to 5 years. This proposal is reasonable because the MPCA currently inspects UST systems approximately every three years and Agency staff are able to inspect current records during those inspections to determine compliance status. Therefore, it is not necessary to retain records for 10 years. The Agency believes this change is also reasonable because it reduces the cost of record retention for owners and operators without negatively impacting human health and the environment. It is consistent with the recommended retention period in 40 CFR § 280.45.

**Unit (a).** The Agency is proposing to remove the record keeping requirements for inventory control because part 7150.0330, subpart 2 has been proposed to be repealed. To support leak detection requirements in part 7150.0330 subp. 6a for statistical inventory reconciliation, the Agency is proposing to replace the wording with requirements for keeping statistical inventory reconciliation records.

**Unit (c).** The Agency is proposing to remove the reference to monthly or annual tightness testing. The Agency believes this change is reasonable because part 7150.0330, subp. 4 already addresses applicable

tightness testing requirements. The Agency believes the monthly and annual testing language was erroneously included in the original requirement and it is necessary to correct this oversight by deleting that language.

**Unit (e).** The Agency is proposing minor changes to adhere to the standards of the MORS. The requirements remain unchanged.

**Units (j) and (k).** The Agency is proposing minor changes to adhere to the standards of the MORS. The requirements remain unchanged.

**Unit (l).** The Agency is proposing to remove the requirements in the current unit (l) because they are now covered in the proposed unit (j).

**Unit (m).** The Agency is proposing to renumber existing unit (m) to unit (l) to reflect renumbering changes required as a result of the deletion of existing item (l). The requirements remain unchanged.

**Subitem (3).** For the reasons same reasons discussed under proposed part 7150.0450, subp. 3, item D, subitem (2), the Agency is proposing to reduce the time period for record retention from 10 years to 5 years.

**Item E.** The Agency is proposing to add a requirement that owners and operators must retain documentation that testing wastes generated during sump and spill-bucket testing are properly disposed of in accordance with state and local regulations for a period of 5 years. The duration will allow the Agency to verify proper disposal since the last inspection. It is reasonable for the Agency to add this requirement as the new item E to ensure owners and operators are properly disposing of wastewater generated during the sump and spill-bucket testing.

**Item F.** Under the newly proposed item F, the Agency is proposing to update references to accommodate the repeal of existing part 7150.0420 and relocation of information to part 7045.0345. The proposed changes also include changes to adhere to the standards of the MORS. The requirements remain unchanged.

**Item G.** Under the renumbered item G, the Agency is proposing to remove the requirement that owners and operators must retain operator certification records of former employees and to update the wording to keep the records for as long as the class A or B operator is employed at the facility. The Agency believes this change is reasonable because it removes burdensome record keeping requirements from owners and operators, because the MPCA has not found this to be a problem in the past. The Agency updated references to reflect renumbering changes.

**Item H.** Existing item G. has been renumbered as the new item H. For the same reasons discussed under proposed part 7150.0450, subp. 3, item D, subitem (2), the Agency is proposing to reduce the time period for record retention from 10 years to 5 years.

**Item I.** Existing item H has been renumbered as the new item I. For the same reasons as item G above, the Agency is proposing to remove the requirement that owners and operators must retain operator certification records of former employees and to update the wording to keep the records for as long as the class C operator is employed at the facility. The Agency updated references to reflect renumbering changes.

**Item J.** Under proposed item J, the Agency is proposing to add language that outlines record retention requirements for documenting compliance with part 7150.0216. For consistency with proposed part 7150.0450, subp. 3, item D, subitem (2), it is reasonable to establish a frequency of 5 years for record retention.

**Item K.** The Agency is proposing to require owners and operators to retain system compatibility records for the life of the UST system. This is reasonable because incompatible substances can lead to degradation of a UST system, increasing the risk of release. Maintaining the records provides a demonstration of compatibility. These requirements conform to 40 CFR § 280.32.

20. Part 7150.0451 UST SYSTEMS WITH FIELD-CONSTRUCTED TANKS AND AIRPORT HYDRANT FUEL DISTRIBUTION SYSTEMS.

The Agency is proposing to conform to federal requirements by adopting 40 CFR Part 280, Subpart K - UST Systems with Field-Constructed Tanks and Airport Hydrant Fuel Distribution Systems by incorporation. To retain authorization to implement and enforce Part 280, the MPCA must, at a minimum, adopt requirements that are as stringent as federal requirements. It is reasonable to adopt the federal requirements because the Agency is not aware of any facilities regulated under this part. As a result, the Agency does not have direct experience with the problems unique to these types of tanks and does not have justification for specific requirements that would exceed the federal requirements. In the absence of specific need for additional requirements, consistency with the federal rules will provide time for the newly-regulated industries to become more familiar with the types of regulations for UST systems.

21. Part 7150.0500 INCORPORATION BY REFERENCE.

The part incorporates the reference documents that are used in Minn. R. ch. 7150. The codes of practice were updated to repeal outdated codes of practice and include new codes of practice. The updated codes of practice conform to 40 CFR Part 280.



## 6. Regulatory and additional analysis

### A. Regulatory analysis

This part addresses the requirements of Minn. Stat. § 14.131 (a), which compel state agencies to address a number of questions in the SONAR. In some cases, the response will depend on a specific amendment being proposed and specific detail will be provided. However, for most of the questions, the MPCA's response can be general and will apply across all of the components of this rulemaking, regardless of the specific amendment being proposed.

#### 1. Description of the classes of person who probably will be affected by the proposed rule, including classes that will bear the costs of the proposed rule and classes that will benefit from the proposed rule.

The classes of persons who will potentially be affected by the proposed rule changes are:

- Owners and operators of UST systems
- Manufacturers of UST systems
- Installers of UST systems
- Contractors and consultants who provide UST system-related maintenance and operational services
- State and federal government agencies that regulate or are otherwise involved with UST systems
- Minnesota citizens

EPA revised the rules at 40 CFR part 280, Technical Standards and Corrective Action Requirements for Owners and Operators of Underground Storage Tanks, on July 15, 2015. The proposed Minnesota rules are based on already applicable federal rules and already applicable federal costs. EPA has conducted an assessment of the costs and benefits of the federal requirements and the Agency accepts the assessment. See SONAR Attachment 2. However, the Agency proposes to include additional Minnesota (MN) amendments. The additional amendments will create minor costs that will be discussed in relevant portions of this SONAR. The federal estimate for costs for secondary containment and owner/operator training would be lower in Minnesota because those costs are already in existing rules.

Owners and operators of UST systems who are responsible for the day-to-day operation and maintenance of UST systems will bear a majority of the costs for the proposed rules. However, these costs are minor for proposed MN-only amendments. Owners and operators of UST systems, manufacturers of UST systems, installers of UST systems, contractors and consultants who provide UST system related maintenance and operational services, and state and federal government agencies that regulate or are otherwise involved with UST systems will bear minimal administrative costs in learning about and complying with the new MN-only requirements. Overall, the MN-only requirements are designed to provide clarification and additional protection of human health and the environment. See the respective rationale for a more detailed discussion.

Also, tank owners and operators will bear both the costs and benefits from the proposed rules related to conducting proposed testing and additional inspections to ensure UST systems are working properly; thus, the rules protect their long term investment, and help to ensure human health and the environment is protected in the communities they serve.

Minnesota citizens are not expected to incur direct costs. Any increased costs to tank owners or operators may be passed indirectly through to citizens via higher prices. However, citizens will benefit from the implementation of additional MN-only requirements. Additional inspections, testing, soil sampling analysis, and clarification of actions required when an unusual operating condition presents itself will assure tank systems are operating properly. Thus, the proposed revisions will result in protecting land and ground water resources and reducing the number and volume of releases and spills from tank systems. As a result, the proposed revisions will reduce the state's liability for reimbursing owners and operators for costs associated with the cleanup of tank releases and spills covered by the State's Petroleum Tank fund (Petrofund) program under Minn. Stat. §§ 115C.08 and 115C.09. Reduced cleanup costs borne by the state will result in reduced costs to its taxpaying citizens.

All classes of affected parties will benefit from the clarification of rule language, elimination of uncertainty and ambiguity, and more logical and readable organization of the requirements.

## **2. The probable costs to the agency and to any other agency of the implementation and enforcement of the proposed rule and any anticipated effect on state revenues.**

The proposed rule changes are only expected to impose costs on State agencies that own or operate regulated UST systems. The Agency estimates there are less than 50 regulated sites owned by state agencies that would be affected by the proposed changes.

The costs to the MPCA for implementation and enforcement of the proposed UST rule changes is expected to be minimal and absorbed into the existing program. The MPCA expects to:

- Develop technical guidance
- Communicate changes to the regulated community
- Update agency databases, forms, and documents to reflect the new rules

The proposed MN-only revisions will not have any negative impact on state revenues. The Agency collects no fees to administer the program. In fact, the proposed MN-only revisions are expected to reduce the Petrofund expenditures for leak site cleanup projects over time, since there will be fewer releases from properly maintained and operated UST systems.

## **3. A determination of whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule.**

EPA revised the rules to 40 CFR part 280, Technical Standards and Corrective Action Requirements for Owners and Operators of Underground Storage Tanks, on July 15, 2015. The promulgation of these rules will affect all owners and operators of federally regulated UST systems throughout Minnesota, regardless of whether the Agency amends its existing rules. If the MPCA does not amend existing rules, EPA will have jurisdiction and enforce the federal rules. The MPCA considered the following alternatives when developing the proposed rule:

Option A. Not pursuing any new rulemaking. This option would have made the state and federal UST rules inconsistent and confusing to owners and operators. Additionally, this option was not viable because the MPCA is currently authorized to administer the UST program and in doing so must be no less restrictive than the federal rules. In order to continue to implement our program, a rule revision is required at the state level. Otherwise, Minnesota's state program approval would have been revoked. If the program were revoked, owners and operators would be subject to both state and federal rules. Therefore, this option was rejected.

Option B. Adopting the federal rule without changes into current state rules. This option would limit the ability to clarify rule language and alter rule language for specific MN-only requirements. The Agency

believes that it is reasonable to establish requirements that are stricter than EPA requirements for certain provisions. Those provisions are discussed in greater detail under the respective rationale located in section 5(B) of the SONAR. Also, please refer to the discussion in Option C below.

Option C. Adopting federal rules with modifications that are specific to Minnesota. When EPA's final rule was issued in July 2015, the Agency carefully reviewed the federal requirements and determined that neither Option A or B sufficiently addressed concerns with the operation of USTs. The Agency believed that additional amendments were needed:

- To clarify existing state rules
- To clarify what conditions constitute repair, replacement or removal
- To clarify notification requirements
- To clarify required actions for unusual operating conditions
- To clarify who can do repair testing and inspections of UST systems
- To address new technologies not addressed in the federal rules

The MPCA wanted to address the above items to ensure clarity and consistency with the interpretation of the proposed rules for regulated parties and state regulators. Additionally, the Agency included amendments to address issues identified throughout the rulemaking process. For these reasons, the MPCA pursued Option C.

**4. A description of any alternative methods for achieving the purpose of the proposed rule that were seriously considered by the Agency and the reasons why they were rejected in favor of the proposed rule.**

See the discussion in 6.A.3 above.

**5. The probable costs of complying with the proposed rule, including the portion of the total costs that will be borne by identifiable categories of affected parties, such as separate classes of governmental units, businesses, or individuals.**

Estimated types of costs of compliance are discussed below and illustrated in SONAR Attachment 6.

**a) Owners and operators of regulated UST systems**

A majority of the proposed rule revisions where extra costs would be incurred are associated with the revision of 40 CFR pt. 280 - Technical Standards and Corrective Action Requirements for Owners and Operators of Underground Storage Tanks, July 15, 2015. EPA has conducted an assessment of the costs and benefits of the federal requirements and the Agency accepts the assessment. See SONAR Attachment 2. It is noteworthy that many of the new federal requirements already exist in current Minnesota rules such as secondary containment on newly installed UST systems, monthly sump inspections, and operator training.

The MPCA has also added requirements that may add minimal costs to owners and operators for the topics listed below (MN-only requirements).

- 1) USTs that store other potentially harmful substances must be compatible to the substance being stored. No other requirements apply to USTs storing other potentially harmful substances. Examples of other potentially harmful substances include calcium chloride, magnesium chloride, or diesel exhaust fluid. The costs associated with this requirement should be minimal to non-existent if stored in a compatible tank system.
- 2) Double-poppet shear valves will now be required for all newly installed shear valves and are only required as they are replaced or installed. The approximate cost for this is an extra \$30

- per shear valve. This is a one-time cost at the time of installation and is only required upon replacement of the shear valves. A small facility may have 2 to 6 shear valves (\$60 - \$180), a medium sized facility may have 7 to 18 shear valves (\$210 - \$540), and a large facility may have 18 or more shear valves (\$540) if they are replaced or installed all at one time. A double-poppet shear valve is designed to increase safety by decreasing the hazards associated with collision or fire at the dispenser.
- 3) Retrofit tank systems are a newer tank construction technology that is not specifically addressed in existing MPCA rules or federal rules. Retrofit tank systems are typically installed because the existing tank is no longer suitable to store the regulated product and complete removal and replacement is not feasible due to site constraints. Since a retrofit tank system is an alternative to a new tank system, it is subject to the same requirements as a new tank system (i.e., secondary containment and associated piping). Because retrofit tanks are an alternative to installing an entirely new tank system, it is an option the tank owner/operator selects. The owner can choose the lower-cost option of an entirely new tank or a retrofit tank, so the retrofit option does not increase costs to owners.
  - 4) For submersible pump sumps installed prior to December 22, 2007, proposed rules require submersible pump sumps be accessible for inspections and not covered with soil or obstacles that prevent visual inspections. The costs should be minimal because the MPCA estimates an owner or operator is capable of removing the soil from around the submersible pump in approximately one hour. At an hourly rate of \$25/hour, the cost is approximately \$25 per sump. This will be a one-time cost and will only affect submersible pumps installed before December 22, 2007, that are covered with soil or other obstructions. A small facility may have 1-2 submersible pumps (\$25 - \$50), a medium sized facility may have 3 - 6 submersible pumps (\$75 - \$150), and a large facility may have 6 or more submersible pumps (\$150 or more). Conservatively, the Agency estimates that 20% of the submersible sumps will require soil and/or obstacle removal. The owners and operators may also incur lower maintenance and pipe replacement costs if soils are removed to prevent corrosion, offsetting the time to clear soil/obstacles.
  - 5) Underdispenser containment. In addition to requiring underdispenser containment when work is performed beneath the shear valve, as required by federal rules, the proposed MPCA rule also requires the underdispenser containment to be installed when concrete or base material beneath the dispenser is being replaced or modified. For example, when the concrete island is being replaced, but no work is being performed beneath the shear valve. The cost analysis for adding underdispenser containment to this work would be approximately \$2,000 per dispenser, which would include the cost of the sump and the labor to install the sump. This cost does not include electrical, concrete or labor for concrete costs since that was the original intent of the work. It is a one-time cost and only applicable for dispenser sumps that do not currently have underdispenser containment sumps. The MPCA expects this to affect few owners/operators because island replacements alone are not typical. More often, the piping is being replaced, or piping reconfigurations are occurring, which trigger the federal requirements and otherwise require underdispenser containment.
  - 6) Emergency stops are currently required at retail fueling facilities according to the Minnesota State Fire Code. The addition of this requirement will add no extra costs to owners and operators who comply with existing Minnesota State Fire Code.

- 7) Corrosion protection testing and repairs. The proposed rule language on who and how cathodic protection systems can be repaired is for clarification purposes only and does not establish any new requirements and should not add any additional costs.
- 8) Agency-approved testers. The MPCA has added language to clarify who can perform tank system testing to ensure experienced and qualified technicians, consistent with industry standards and manufacturer's requirements, perform testing. Owners and operators may become agency-approved testers if they elect to become an MPCA-certified UST supervisor and contractor, and be certified by the equipment manufacturers. The current cost of becoming an MPCA-certified UST contractor is a one-time fee of \$795 to attend a certified contractor course. The agency-approved tester would also incur a fee of \$425 to attend recertification class every two years. Application fees of \$50 would also be incurred upon initial certification and recertification.

The MPCA is aware of one owner and operator within the state with an interest in testing their own equipment to comply with the new testing requirements, and this particular owner is currently an MPCA-certified contractor who would bear minimal costs for manufacturer certification if such certifications are available. Costs for certified contractors are discussed below See under section 6.A.5.d of the SONAR.

The MPCA anticipates many owners or operators will employ an independent testing laboratory or a certified contractor who currently meets agency-approved tester criteria to conduct compliance testing at their facilities. Increased costs to the independent testing laboratories or certified contractors would be passed on to owners and operators, but as discussed below at section 6.A.5.d, the MPCA anticipates these costs to be minimal. In addition, the incremental agency-approved tester costs would be distributed among the many owners and operators of tank systems.

- 9) Unusual operating conditions, repair, replacement, and required permanent closure. The MPCA has added language that describes and clarifies actions and steps to take when an unusual operating condition exists or a release to the environment has occurred or a release is imminent. The proposed clarifications do not add extra costs to the owner/operator as they have always been required to have compliant tank system equipment. This requirement simply clarifies situations where owners/operators must repair, replace, or permanently close non-compliant equipment.
- 10) Antisiphon devices are now required on suction or pressurized piping where the piping is positioned beneath the top of the tank. In the event that one of these piping configurations leaks, the antisiphon device will minimize the risk of siphoning the tank. These piping configurations are most likely found with mounded systems and marinas where the tank is located uphill from the shoreline and piping runs downhill to the dispenser. A one-time cost of installing this device is approximately \$1,000 for each piping run that is positioned beneath the top of the tank. Marinas will most likely have only one tank system (\$1,000) that pumps premium non-oxygenated gasoline for boat motors. A medium size facility will have 2-4 tank systems (\$2,000-\$4,000). The MPCA is not aware of any existing facility that has over 4 tank systems that will need to retroactively install an anti-siphon device to meet this proposed rule. This cost varies based on the system configuration and electrical needs.
- 11) Line-leak detectors on card-lock facilities will now be required to shut down the flow of product if a release is detected. A card-lock facility is defined as a facility which is not attended during business hours (six hours a day excluding holidays and weekends). Those

systems that do not have a line-leak detector that shuts down the flow of product when a leak is detected, or a sump sensor that shuts down the submersible pump if conducting interstitial monitoring, will incur an expense to install such systems. The installation of a line-leak detector that shuts down the flow of product will have a one-time cost approximately \$1,200 per product line. The one-time cost to install a sump sensor with positive shut off will cost approximately \$500 per sump. The costs may change depending on system configurations and electrical needs. Many card-lock facilities in Minnesota already have systems that shut down the flow of product or are safe suction piping. Based on staff experience, the MPCA estimates there are approximately 200 card-lock facilities in the state and that less than 15% of existing card-lock facilities will be affected by this new requirement.

- 12) Record keeping requirements. Owners and operators are now required to retain leak detection and system maintenance records for five years rather than the previous requirement of ten years. Owners and operators will incur less expense to store and maintain records by 50%.

Overall, the most likely estimated costs for the first year of compliance for owners and operators of regulated UST systems is estimated at \$46 (small facility), \$138 (medium facility), or \$138 (large facility). The cost is based on 20% of the total costs listed in SONAR Attachment 6.

The least likely estimated costs for the first year of compliance for owners and operators associated with antisiphon devices and line leak detectors for card-lock facilities that must be immediately installed is estimated at \$4,400 (small facility) and \$11,200 (medium facility). No large facilities are known need this requirement at this time. The Agency believes that these costs are less likely and that less than 5% of the sites (205 total sites based on approximately 4,100 federally regulated sites in MN) will be affected by these requirements and potential costs. See SONAR Attachment 6 for further details.

Optional costs the owners and operators may incur the first year of regulation are related to obtaining "agency-approved tester" status or the requirement to install underdispenser containment when only replacing dispensing islands. The costs to obtain "agency-approved tester" status is not a requirement and is optional for owner/operators to obtain if they so choose. The costs for dispenser sumps when replacing islands ONLY will be incurred if the owner operators performs the island replacement and this requirement is triggered. The proposed regulations do not require island replacement. Owners and operators can replace islands as they so choose, thus requiring under dispenser containment. If owners and operators choose to pursue both scenarios described above, the cost are estimated to be \$9,250 (small facility), \$21,250 (medium facility), and \$23,250 (large facility). It is reasonable to estimate that less than 5% of the sites (225 total sites based on approximately 4,100 federally regulated sites in MN) will be affected by these requirements and potential costs. See SONAR Attachment 6 for further details.

- b) Manufacturers of UST systems.

Other than minor administrative costs to understand the new requirements, there are no anticipated costs to UST manufacturers.

c) Installers of UST systems.

There are no anticipated costs to installers, other than administrative costs to understand the new requirement and procedures.

d) Contractors and consultants who provide UST-related maintenance, operational testing and services. Certified contractors, testing firms and consultants may incur minor administrative costs in adopting and offering new procedures for inspections, testing, and maintenance. Other associated costs may be to comply with the agency-approved tester requirements by completing manufacturer certifications for new testing equipment, and certifications of UST system equipment, as applicable. MPCA review of manufacturer certification revealed minor to no costs with obtaining these certifications. These minor additional costs will be offset by the sale of services they provide to help owners and operators comply with the new rules.

The Agency anticipates that there will be no added costs for comprehensive general liability insurance (insurance) for agency-approved testers. The MPCA estimates that two groups of people may seek agency-approved tester status, MN UST certified contractors and third-party testers.

The first group seeking agency-approved tester status would be MN UST certified contractors that already perform installations and repair. The scope of work projects generally requires working with large vehicles, excavations, and other equipment that has the potential for catastrophic losses to property, physical injury, and releases to the environment. As such, insurance is already required to be a certified contractor and no additional insurance costs would be incurred to be an agency-approved tester. Contractors already carry liability insurance to protect their business assets and the minimum coverage is usually no less than \$1,000,000. While the proposed rules do not require insurance coverage for a certified contractor, the coverage is already in place for certified contractors.

The second group seeking agency-approved tester status are third-party independent testers. The Agency expects that this group of people already carries the proposed liability coverage. The MPCA contacted a representative of this group and determined that the \$1,000,000 insurance coverage was already carried as a matter of standard business practice. Thus, the Agency is not adding additional costs by including a requirement that insurance be carried. Owners and operators of UST systems risk potential catastrophic losses with any work done onsite. As such, they are not likely to allow contractors onsite without adequate insurance coverage. As discussed, the Agency believes the \$1,000,000 insurance coverage proposed under part 7150.0250, subp. 6, item A, subitem (3), unit (b) is reasonable because it reflects the industrywide practice of minimum coverage amongst general contractors. Thus, the requirement adds no additional cost.

e) State and federal government agencies which regulate or are otherwise involved with UST systems.

See section 6.A.2.

f) Citizens of the State of Minnesota

Costs to petroleum marketers and owner/operators of UST systems may be passed through to consumers in the form of higher gas prices at the pump, or other goods and services offered by the owner/operators. These increases would be negligible and would be offset by less frequent imposition of the \$0.02 per gallon distribution fee used to fund the state Petrofund, due to lower release-site cleanup costs.

**6. The probable costs or consequences of not adopting the proposed rule, including those costs or consequences borne by identifiable categories of affected parties, such as separate classes of government units, businesses, or individuals.**

- Owners and operators of regulated UST systems. Tank owners and operators who do not conduct the additional inspections and testing as described in the proposed rule will be subject to an increased risk of equipment failure going unnoticed for potentially prolonged periods of time. Malfunctioning equipment going unnoticed will increase the potential for releases or for releases to go uncontained. The owners and operators may bear an increased cost of remediation costs not covered by the State Petrofund because the release may have been prevented or minimized if the malfunctioning equipment would have been detected at an earlier time.
- Manufacturers of UST systems. No impacts.
- Installers of UST systems. No impacts.
- Contractors and consultants who provide UST related maintenance and operational services. No impacts.
- State and federal government agencies which regulate or are otherwise involved with UST systems. More MPCA staff time may be spent for enforcement due to lack of repairs and maintenance activities to prevent releases from UST systems. If the rules are not adopted, EPA still retains jurisdiction and enforcement authority over owners and operators in Minnesota under 40 CFR pt. 280. There will be continued uncertainty of interpretation and application of these rules because state and federal government agencies will have jurisdiction enforcing different rules. Furthermore, if the proposed rules are not adopted, the MPCA may lose federal funding from EPA for its UST program, reducing its capacity to inspect sites and prevent releases.
- Citizens of the state of Minnesota. If the proposed rules are not adopted, human health and the environment may be negatively impacted due to malfunctioning equipment and increased releases. Furthermore, the state may not have an EPA authorized program and federal funding may be decreased. This would affect citizens because more state funding would be necessary in order to operate the current UST program in Minnesota. Also, gas costs at the pump may increase due to increased Petrofund use to cover increasing remediation costs due to more tank system failures.

**7. An assessment of any differences between the proposed rule and existing federal regulations and a specific analysis of the need for and reasonableness of each difference.**

An assessment of the differences between the proposed Minnesota rule language and the existing federal regulations was conducted. Please see SONAR Attachment 4 for a complete discussion.

**8. An assessment of the cumulative effect of the rule with other federal and state regulations related to the specific purpose of the rule.**

*Minn. Stat. § 14.131 defines “cumulative effect” as “the impact that results from incremental impact of the proposed rule in addition to the other rules, regardless of what state or federal agency has adopted the other rules. Cumulative effects can result from individually minor but collectively significant rules adopted over a period of time.”*

Minn. Stat. § 116.49, subd. 1, requires the MPCA to “adopt rules applicable to all owners and operators of UST to protect human health and the environment.” Section 4 of this SONAR outlines the Agency’s statutory authority and section 2 outlines historical rulemaking actions. Additionally, the Agency must comply with the rulemaking administrative procedures under Minn. Stat. ch. 14.



EPA regulations set the minimum requirements for federally-regulated tanks throughout the United States. By adopting rules that meet the federal minimum and obtaining State Program Approval from EPA for Minnesota's UST program, Chapter 7150 becomes the governing set of rules for UST systems in Minnesota. This avoids duplication of regulation by MPCA and EPA.

The MSFC also has rules that pertain to UST systems in Minnesota. The standards in the fire code have stringent equipment and installation standards. The fire code regulations are incorporated by reference in Chapter 7150. MSFC regulations do not conflict with federal rules.

There are no other known state or federal regulations governing UST systems in Minnesota. Local government units (LGUs) or local fire officials may impose more stringent requirements than Minn. R. ch. 7150, if they so choose. In fact, some LGUs have established requirements for temporary and permanent closure requirements that are more stringent than ch. 7150. Those requirements can be no less stringent than the state requirements.

Cumulatively, USTs have become increasingly regulated over the last 30 years to prevent major releases to the environment that lead to human health and environmental effects, as well as significant cleanup costs. The history of releases and subsequent cleanup efforts have led the federal and state government to recognize the benefits of preventative measures. The proposed rules maintain most of the existing requirements and impose a small number of improvements in UST systems to reduce the risk of releases to the environment. The proposed rules avoid potentially greater cumulative effects that would result if the MPCA took no action to revise the rules – such inaction would result in separate MPCA and EPA programs, which could lead to confusion over applicable standards. The proposed rules also incorporate the concurrent fire code rules to avoid duplication or increased regulatory burden.

Overall, the proposed amendments to Minn. R. ch. 7150 meet the minimum equivalency requirements for continued federal program approval, comport with existing MSFC requirements, and comply with all applicable statutory requirements.

## B. Minnesota Statute § 116.07, Subdivision 2

*Minn. Stat. § 116.07 subd. 2 requires that for proposed rules adopting air quality, solid waste, hazardous waste, or water quality standards, the SONAR must include an assessment of any differences between the proposed rule and existing federal standards adopted under the Clean Air Act, title 42, section 7412(b)(2); Clean Water Act, United States Code, title 33, sections 1312(a) and 1313(c)(4); and the Resource Conservation and Recovery Act, United States Code, title 42, section 6921(b)(1); similar standards in states bordering Minnesota; and similar standards in states within the US Environmental Protection Agency (EPA) Region 5; and a specific analysis of the need and reasonableness of each difference.*

At a minimum, each state authorized by EPA to administer an UST program must establish state requirements that are equivalent to EPA regulations; states have the option of establishing more stringent requirements.

An assessment of the federal regulations along with states that are part of Region 5 EPA (Wisconsin, Indiana, Ohio, Illinois, and Michigan) and neighboring states (South Dakota, North Dakota, and Iowa) was performed to determine the differences between the MPCA proposed rules and other state rules. At the time this SONAR was created, all states listed above are pursuing rulemaking activities similar to the MPCA to adopt rules that are no less stringent than the federal requirements. At this time, rulemaking in those states (other than Ohio, described below) is too early in the process to determine whether other states will choose to apply requirements that are more stringent because final rule

language of their rules have not yet been adopted. Where the Agency establishes more stringent requirements, the need and reasonableness is established in section 5.B. of the SONAR.

Ohio has already adopted final rule language that is no less stringent than the 2015 revisions to 40 CFR pt. 280. A comparative analysis in SONAR Attachment 4 identifies the differences between Agency proposed rules, federal rules, and the State of Ohio Rules.

It is noteworthy that many of the states in Region 5 EPA and surrounding states currently charge administrative fees to owner and operators to implement their UST program. Fees such as registration fees, permit fees, inspection fees, re-inspection fees range from \$35 to \$100 per tank, or hourly rates of up to \$60/hr. The fees may be annual registration fees or permit fees for work performed on systems within their jurisdiction. The MPCA does not currently have any one time, annual, or permit fees imposed on owner or operators in Minnesota.

## C. Environmental justice policy

The MPCA's [\*Environmental Justice Framework 2015 – 2018 \(EJ Framework\)\*](#), on page 3, describes the MPCA's history with environmental justice (EJ):

*“Following action on the national level, the MPCA began formally working on environmental justice in the mid-1990s. Presidential Executive Order 12898, issued in 1994, directed each federal agency to make “achieving environmental justice part of its mission by identifying and addressing disproportionately high and adverse human health or environmental effects of its programs, policies and activities on minority and low-income populations.”*

The Presidential Executive Order built on Title VI of the Civil Rights Act of 1964. Title VI prohibits discrimination based on race, color, or national origin. As a recipient of federal funding, the MPCA is required to comply with Title VI of the Civil Rights Act.

The MPCA developed a policy for environmental justice that closely mirrors the EPA policy. The MPCA's policy, last revised in 2012, states:

*“The Minnesota Pollution Control Agency will, within its authority, strive for the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.*

*Fair treatment means that no group of people should bear a disproportionate share of the negative environmental consequences resulting from industrial, governmental, and commercial operations or policies.*

*Meaningful involvement means that:*

- *People have an opportunity to participate in decisions about activities that may affect their environment and/or health.*
- *The public's contribution can influence the regulatory agency's decision.*
- *Their concerns will be considered in the decision making process.*
- *The decision-makers seek out and facilitate the involvement of those potentially affected.*

*The above concept is embraced as the understanding of environmental justice by the MPCA.”*

As explained in the EJ Framework on page 11, when undertaking rulemaking the MPCA considers how the impacts of a proposed rule are distributed across Minnesota and works to actively engage all

Minnesotans in rule development. This review of the impacts and meaningful involvement are provided in this section of the SONAR for ease of review with the rest of the Regulatory Analysis, though these analyses are not required under the Administrative Procedures Act (Minn. Stat. ch. 14).

### Equity Analysis

To implement the “fair treatment” aspect of the EJ Framework policy, the MPCA would generally complete an equity analysis considering and documenting how the proposed rule may affect low-income populations and communities of color. The MPCA does not expect the proposed rules to have any negative environmental consequences; as stated previously, the intent of the rules is to update existing requirements by conforming to applicable federal requirements with additional added stringency with MN-only requirements.

EPA conducted a screening analysis as part of its [Assessment of the Potential Costs, Benefits, and Other Impacts Of The Final Revisions To EPA’s Underground Storage Tank Regulation](#). See SONAR Attachment 2. To retain state program approval status, the MPCA must, at a minimum, adopt state rules that are equivalent to federal rules. All states have the option to establish requirements that exceed EPA rules. MPCA has chosen to adopt rules that are equivalent to federal rules in most instances but more stringent than federal rules in others. The reasonableness of those stricter requirements is discussed in section 5 of the SONAR. The Agency agrees with EPA’s observation from the assessment that increasing the stringency of requirements reduces the number and size of releases (see chapter 5 of the EPA assessment). By establishing additional, stricter requirements, the MPCA is further reducing the number and size of releases.

The proposed revisions simply incorporate federal requirements into state rules with minor changes designed to make the rule more protective for all Minnesotans. The EPA conducted the above assessment in 2015 and the MPCA accepts the results. See SONAR Attachment 2.

Therefore, the Agency believes that no further analysis is required. However, the Agency notes that the stricter requirements established for the areas listed below will generally benefit areas of concern for low-income communities, people of color, and Native American lands.

**Table 4: Benefits for low-income communities, people of color, and Native American lands.**

<b>Requirements beyond EPA:</b>	<b>Expected added benefits:</b>
<ul style="list-style-type: none"> <li>• Introduction of potentially harmful substances</li> </ul>	<ul style="list-style-type: none"> <li>• Minimize risk of releases of non-regulated substances that may cause environmental harm if released in large quantities.</li> </ul>
<ul style="list-style-type: none"> <li>• Requirement of double-poppet shear valves for new and replacement shear valves</li> </ul>	<ul style="list-style-type: none"> <li>• Minimize risk of releases and added safety benefits to the protect human health and the environment.</li> </ul>
<ul style="list-style-type: none"> <li>• Submersible pump sump requirements</li> </ul>	<ul style="list-style-type: none"> <li>• Minimize releases to the environment by containing petroleum leaks prior to entering the soil.</li> </ul>
<ul style="list-style-type: none"> <li>• Underdispenser sump requirements</li> </ul>	<ul style="list-style-type: none"> <li>• Minimize releases to the environment by containing petroleum leaks prior to entering the soil.</li> </ul>
<ul style="list-style-type: none"> <li>• Emergency stops</li> </ul>	<ul style="list-style-type: none"> <li>• Minimize risk of a release and added safety benefits in emergency situations to protect human health and the environment.</li> </ul>
<ul style="list-style-type: none"> <li>• Agency-approved tester requirements</li> </ul>	<ul style="list-style-type: none"> <li>• Testing by trained and experienced individuals to ensure tank systems are operating properly consistent with industry standards throughout the state will minimize the risk of a release and protect human health.</li> </ul>

Requirements beyond EPA:	Expected added benefits:
<ul style="list-style-type: none"> <li>• 60-day timeline for cathodic protection repairs</li> </ul>	<ul style="list-style-type: none"> <li>• Cathodic protection systems repaired in a timely manner will ensure tank system integrity and minimize releases.</li> </ul>
<ul style="list-style-type: none"> <li>• Conditions under which tank system replacement or permanent closure are required</li> </ul>	<ul style="list-style-type: none"> <li>• Clarifying circumstances in which substandard tank system equipment must be replaced or taken out of service will minimize releases to the environment and protect human health.</li> </ul>
<ul style="list-style-type: none"> <li>• Antisiphon device requirements</li> </ul>	<ul style="list-style-type: none"> <li>• Minimize the risk of catastrophic releases to the environment by preventing tanks from siphoning when the piping is positioned lower than the top of the tank.</li> </ul>
<ul style="list-style-type: none"> <li>• Positive shutoff for line-leak detection at unattended card-lock facilities</li> </ul>	<ul style="list-style-type: none"> <li>• Minimize catastrophic releases to the environment from pressurized pipe where an attendant is not readily available to respond alarms or an unusual operating conditions.</li> </ul>

### Meaningful Involvement

In order to meet the directive to strive for “meaningful involvement,” the MPCA works to seek out and facilitate the involvement of those potentially affected by the proposed rule, particularly those populations that have historically not been as engaged in the public process. Because the proposed revisions (1) amend existing rules to reflect new federal rules that exceed existing state rules in stringency, and (2) amend existing rules to establish additional requirements that go beyond federal rules as discussed in the table above, the MPCA does not expect the proposed rules to have any negative environmental consequences. The proposed rules will apply statewide, with no unique effect on any one community over another. It is possible that gas stations may experience additional costs based on MN-only requirements. Required MN-only costs are minimal and can be found in section 6.A.(7) of the SONAR. Thus, no additional outreach is necessary.

As described in Section 3, Public participation and stakeholder involvement, there has been stakeholder involvement during the development of the proposed rules. While there was no specific plan developed to reach out to low-income populations and communities of color, we believe our stakeholder outreach has ensured that most affected communities are aware of the rule. Additionally, during the formal public comment period, all interested and affected parties may submit comments on the proposed rulemaking.

## 7. Notice plan

Minn. Stat. § 14.131 requires that an Agency include in its SONAR a description of its efforts to provide additional notification to persons or classes of persons who may be affected by the proposed rule, or explain why these efforts were not made.

The MPCA utilizes a self-subscription service for interested and affected parties to register to receive rule related notices. Request for U.S. Mail service is available. Rule projects are listed on the Agency's Public Rulemaking docket. Once projects are active (i.e., no longer listed as a future project), a self-subscription list for that specific rule is established and an electronic notice is sent to individuals who have subscribed to receive notice for all rulemakings. The Agency also purchases the League of Minnesota Cities' email address list on a yearly basis. The list is used to reach out to new government officials that may not be familiar with the electronic delivery system used by the MPCA to send rule notices, public notices and other information. Examples of the government officials are: MN Cities, County Chairs, Zoning and Planning, Commissioners and Solid Waste Officers. An electronic message is sent inviting individuals to subscribe to topics that interest them. Listed topics include rulemaking projects. The MPCA sent an electronic message to the government officials on March 28, 2016.

### A. Notice:

On November 9, 2015, the MPCA published notice requesting comments on planned rule amendments to *Minn. R. ch. 7150*. The notice was placed on the MPCA's Public Notice webpage and the UST Update rule webpage at <https://www.pca.state.mn.us/waste/underground-storage-tanks-ust-update-rulemaking>.

1. Minn. Stat. § 14.14, subd. 1a. On the date the Notice is published in the State Register, the MPCA intends to send an electronic notice with a hyperlink to electronic copies of the Notice, SONAR, and proposed rule amendments to all parties who have registered with the MPCA for the purpose of receiving notice of rule proceedings. Parties within this group that have requested non-electronic notice will receive copies of the Notice and the proposed rule amendments in hard copy via U.S. Mail.
2. Minn. Stat. § 14.116. The MPCA intends to send a cover letter with a hyperlink to electronic copies of the Notice, SONAR, and the proposed rule amendments to the chairs and ranking minority party members of the legislative policy and budget committees with jurisdiction over the subject matter of the proposed rule amendments, as required by Minn. Stat. § 14.116. The timing of this notice will occur at least 33 days before the end of the comment period because it will be delivered via U.S. Mail. This statute also states that if the mailing of the notice is within two years of the effective date of the law granting the agency authority to adopt the proposed rules, the agency must make reasonable efforts to send a copy of the notice and SONAR to all sitting House and Senate legislators who were chief authors of the bill granting the rulemaking. Notice to chief authors does not apply because no bill was authored within the past two years granting rulemaking authority.
3. Minn. Stat. §14.111. If the rule affects agricultural land, Minn. Stat. § 14.111 requires an agency to provide a copy of the proposed rule changes to the Commissioner of Agriculture no later than 30 days before publication of the proposed rule in the *State Register*.

This rule is expected to have a minor impact agricultural land or farming operations.

As requested, the rule changes will be submitted via inter-office mail with a cover letter notifying the MDA of the changes. The following individuals will receive the information:

- David J. Frederickson, Commissioner
  - Matthew Wohlman, Deputy Commissioner
  - Joshua Stamper, Division Director, Pesticide and Fertilizer Management Division
  - Paul Hugunin, Division Director, Agricultural Marketing and Development Division
  - Dan Stoddard, Assistant Division Director, Pesticide and Fertilizer Management Division
  - Andrea Vaubel, Assistant Commissioner
  - Susan Stokes, Assistant Commissioner
  - Doug Spanier, Department Counsel for Agriculture
4. Minn. Stat. § 115.44, subd. 7. Under Minn. Stat. § 115.44, subd. 7, the MPCA is required to send notice to the governing body of each municipality touching the waters for which standards (authorized under Minn. Stat. § 115.44) are sought to be adopted. The proposed amendments do not involve standards authorized under Minn. Stat. § 115.44.
  5. Minn. Stat. § 116.07, subd. 7(i). Under Minn. Stat. § 116.07, subd. 7(i), the MPCA is required to send notice to the members of legislative policy and finance committees with jurisdiction over agriculture and the environment before final adoption of any new rules or amendments authorized under Minn. Stat. § 116.07, subd. 7. The proposed amendments do not involve new rules or amendments authorized under Minn. Stat. § 116.07, subd. 7.

## B. Additional Notice:

1. The MPCA intends to send an electronic notice with a hyperlink to electronic copies of the Notice, SONAR, and the proposed rule amendments to the following organizations:

**Table 5: Additional notice contacts.**

Name	Contact	Email
Association of MN Counties	Jennifer Berquam, Environment & Natural Resources Policy Analyst	jberquam@mncounties.org
Association of Metropolitan Municipalities	Charlie Vander Aarde, Government Relations Specialist	Charlie@MetroCitiesMN.org
League of MN Cities	Craig Johnson, Intergovernmental Relations Representative	cjohnson@lmc.org
Metropolitan Council	Leisa Thompson, MCES General Manager	leisa.thompson@metc.state.mn.us
Metropolitan Airports Commission	Mike Harder, Environmental Compliance Administrator	Mike.Harder@mspmac.org
Minnesota Service Station & Convenience Store Association (MSSA)	Lance Klatt, Executive Director	lance@mnssa.com

Name	Contact	Email
Minnesota Petroleum Marketers Association (MPMA)	Kevin Thoma, Executive Director	kthoma@mnmaonline.com
MN Association of Townships (MAT)	Gary Pederson, Executive Director	gpedersen@mntownships.org
MN Chamber of Commerce	Tony Kwilas, Environmental Policy Director	tkwilas@mnchamber.com
MN City/County Management Association	Bart Fischer, President (Oakdale City Administrator)	bart.fischer@ci.oakdale.mn.us

2. The MPCA intends to send an electronic notice with a hyperlink to electronic copies of the Notice, SONAR and the proposed rule amendments to the tribal contacts expressing an interest in receiving notices for land-related rulemaking. The Air and Water Tribal Contacts list is available at <https://www.pca.state.mn.us/sites/default/files/p-gen5-25.pdf>. Liaison tribal contacts listed on the last page of the document will be excluded.
3. The MPCA intends to send an electronic notice with a hyperlink to electronic copies of the Notice, SONAR and the proposed rule amendments to the following GovDelivery email lists:
  - Tank Compliance – List of owners and operators of tank systems (UST and AST) in Minnesota.
  - UST Contractors – List of contractors who work with tank systems (UST and AST).

In addition, a copy of the Notice, proposed rule amendments and SONAR will be posted on the MPCA's Public Notice webpage: <https://www.pca.state.mn.us/public-notices>

Pursuant to Minn. Stat. § 14.14, subd. 1a, the MPCA believes its regular means of notice, including publication in the *State Register* and on the MPCA's Public Notice webpage, will provide adequate notice of this rulemaking to persons interested in or regulated by these rules.

## 8. Performance-based rules

Minn. Stat. §14.002 requires state agencies, whenever feasible, to develop rules that are not overly prescriptive and inflexible, and rules that emphasize achievement of the MPCA's regulatory objectives while allowing maximum flexibility to regulated parties and to the MPCA in meeting those objectives.

The primary objective of UST rules are to prevent releases of regulated substances to the environment. Because UST system equipment is buried and cannot be seen, compliance requirements heavily rely upon testing and inspection and result in prescriptive requirements. The proposed revisions are geared towards primarily meeting the federal requirements of 40 CFR pt. 280. Therefore, the use of a performance-based approach does not readily apply. To the extent that the federal requirements allow flexibility, the proposed rules do as well – for example, owners/operators have options for how to measure for leaks; owners/operators have flexibility to determine how to investigate and remedy unusual operating positions; and the rules do not prescribe particular products or brands, so long as the containment systems meet the standards in rule. However, the proposed rules also contain the following MN-only requirements that are discussed in section 1.A. of the SONAR. The following bullets summarize the evolution of the indicated requirements following feedback from the advisory committee on the initial concept to provide flexibility.

- The introduction of the term “other potentially harmful substances” for USTs. The Agency rules team initially introduced the term “other regulated substances” to govern substances that may pollute waters of the state, excluding regulated substances that are defined under part 7150.0030, subp. 32a, items A and B. In working with the advisory committee, the Agency determined that it was not necessary to govern such substances to the same degree as a regulated substance as defined under part 7150.0030, subp. 40. As an example, the Agency considered the nonpetroleum substance magnesium chloride that does not meet the definition of a regulated substance as defined under part 7150.0030, subp. 40. The storage of magnesium chloride would not require some standards for regulated substances (tank-leak detection, line-leak detection, cathodic protection, etc.), but it would require compatibility because the MPCA wants to ensure that all substances stored in USTs are compatible with the storage tank. The Agency agreed with the advisory committee that a more appropriate term was necessary to regulate substances that do not meet the part 7150.0030, subp. 40 definition. As initially introduced “other regulated substances” was a confusing term because regulating “other regulated substances” appeared as a circular reference. As a result of feedback from the advisory committee, the term “other regulated substances” evolved to “other potentially harmful substances” to reflect the need for regulation focused on compatibility and not regulation focused to the degree of a regulated substance. The proposed rule is more flexible for owners of USTs with other potentially harmful substances because fewer prescriptive requirements apply, while still protecting human health and the environment.
- Clarification of retrofit tank system requirements. The term “retrofit tank” was added to the rules to help separate internal linings that were used for corrosion protection in the 1998 upgrade requirements from the double-walled linings that are considered a new UST when completed. The MPCA also clarified whether retrofit tanks were self-structural (stand-alone) or co-structural (needed the existing tank for support). The flexibility in the proposed requirement is that the proposed rule allows a retrofit tank to be considered a brand new tank, which decreases costs for owners and operators while being protective of human health and the environment; owners and operators must still ensure that the old tank is permanently closed and closure complies with part 7150.0250, subp. 4.



- Submersible pump sump requirements. Submersible pump sump requirements have been in the MPCA's UST rule since the 2007 rulemaking update. The advisory committee discussed needed clarification to the rule; after considering the feedback, the MPCA clarified the requirements for sumps that were installed before and after December 22, 2007. Thus, tank systems with sumps installed before December 22, 2007, that do not conduct interstitial monitoring are exempt from conducting the sump testing required under the EPA rules. Tank systems with sumps installed after December 22, 2007, are required to conduct the sump testing. The flexibility in the Agency's revision comes from the allowed exclusion to complying with EPA rules for tank systems with sumps installed before December 22, 2007, that do not conduct interstitial monitoring.
- Underdispenser sump requirements. Underdispenser sump requirements have been in the MPCA's UST rule since the 2007 rulemaking update. The advisory committee discussed some needed clarification to the rule; after considering the feedback, the MPCA clarified the requirements for sumps that were installed before and after December 22, 2007. Tank systems with sumps installed before December 22, 2007, that do not conduct interstitial monitoring are not required to conduct the sump testing required under the EPA rules. In cases where interstitial monitoring is being conducted on tank systems with sumps installed before and after December 22, 2007, owners and operators are required to conduct the sump testing required under the EPA rules. The flexibility in the Agency's revision comes from the Agency's attempt to address clarifications that regulated parties believe are needed to comply with the requirements.
- Emergency stops. The MPCA adopted the wording for emergency stops from the Minnesota State Fire Code. The flexibility in the proposed requirement is that the rules are no more prescriptive than the Minnesota State Fire Code.
- Agency-approved tester requirements. The factors the Agency considered, feedback the advisory committee provided, and the subsequent reevaluation with the concept of third-party testing is discussed in detail under the SONAR explanation of part 7150.0216, subp. 6, and applies to this discussion. The flexibility in the proposed requirement is that the proposed rule establishes an option for owners and operators to properly test their equipment or hire a third-party tester; owners and operators can test their own equipment provided that they are an agency-approved tester.
- Conditions where tank system replacement or permanent closure are required. The Agency discussed various scenarios with the advisory committee to clarify the conditions under which tank system repair, replacement, or permanent closure are required. The advisory committee members agreed with the proposed amendments to address the scenarios discussed. Thus, the Agency is proposing requirements to reflect three scenarios with tank systems; (1) conditions where repairs can be made; (2) conditions where replacement is required; and (3) conditions where permanent closure is required. The flexibility in the proposed requirements are that they address the concerns of industry for clarity, allow repairs at lower cost instead of replacement for some situations, and remain protective of human health and the environment.
- Retain alternative testing flexibility. The proposed rules retain the ability for owners and operators to request alternative testing on approval of the Commissioner.

The proposed rules do allow for flexibility for different monitoring methods and allows flexibility for owners and operators to investigate and address problems as they occur over time.

## 9. Consideration of economic factors

In exercising its powers, the MPCA is required by identical provisions in Minn. Stat. § 116.07, subdivision 6 and Minn. Stat. § 115.43, subdivision 1 to give due consideration to:

*...the establishment, maintenance, operation and expansion of business, commerce, trade, industry, traffic, and other economic factors and other material matters affecting the feasibility and practicability of any proposed action, including, but not limited to, the burden on a municipality of any tax which may result there from, and shall take or provide for such action as may be reasonable, feasible, and practical under the circumstances...*

As previously discussed, at a minimum, the MPCA needs to establish requirements that are equivalent to federal regulations. However, the Agency has flexibility with establishing any additional MN-only requirements. The Agency has already discussed the need and reasonableness for each of the MN-only requirement in section 5.B. of the SONAR and believes that the agency-approved tester option to reduce costs comply with this statutory requirement. In addition, the MPCA reviewed the economic burden anticipated for each group of affected parties in SONAR section 6.A. The MPCA determined that costs would be low for each affected group, and does not expect the rules to affect the feasibility of operating or expanding businesses.

## **10. Consult with Minnesota Management and Budget on local government impact**

As required by Minn. Stat. § 14.131, the MPCA will consult with Minnesota Management and Budget (MMB). The Agency will do this by sending MMB copies of the documents that are sent to the Governor's office for review and approval on the same day the Agency sends them to the Governor's office. The Agency will do this before publishing the Dual Notice. The documents will include - the Governor's Office Proposed Rule, and SONAR Form, the proposed rules; and the SONAR. The MPCA will submit a copy of the cover correspondence and any response received from MMB to the Office of Administrative Hearing (OAH) at the hearing or with the documents it submits for Administrative Law Judge review.

## **11. Impact on local government ordinances and rules**

Minn. Stat. § 14.128, subd. 1, requires an agency to determine whether a proposed rule will require a local government to adopt or amend any ordinances or other regulation in order to comply with the rule. Minn. Stat. § 116.50 preempts conflicting local ordinances and LGUs are not required to update their local ordinances as a result of this rulemaking. The MPCA has determined that the proposed amendments will not have any effect on local ordinances or regulations.

## 12. Costs of complying for small business or city

Minn. Stat. § 14.127, subds. 1 and 2 require an agency to *“determine if the cost of complying with a proposed rule in the first year after the rule takes effect will exceed \$25,000 for any one business that has less than 50 full-time employees, or any one statutory or home rule charter city that has less than ten full-time employees.”*

The proposed amendments incorporate new federal requirements into state requirements, make corrections to existing language for consistency with existing EPA requirements, relocate existing requirements to make it easier to understand applicable requirements and remove obsolete requirements. In determining the costs of complying for small businesses or a city, the MPCA excludes the costs of already existing requirements from its determination below. While the Agency provides the costs for complying with the federal requirements, those costs are not included in the costs of complying for small business or city because they are federally mandated requirements that all regulated parties must comply with. Costs related to Minnesota-only requirements are discussed in section 6.A.5. of the SONAR and summarized in SONAR Attachment 6. Small businesses or small cities are expected to incur costs only if they are an owner or operators of a UST. As shown in section 6.A., the estimated costs will not exceed the \$25,000 threshold for any business or city.

## 13. Authors, witnesses and SONAR attachments

### A. Authors

- Zachary Klaus, MPCA. Mr. Klaus is the principal author of the SONAR and proposed rule language. Mr. Klaus will testify on the general need for and reasonableness of the proposed rules, as well as on the technical requirements listed in the rule.
- Jacob Mueller, MPCA. Mr. Mueller is a coauthor of the SONAR and proposed rule language. Mr. Mueller will testify on the general need for and reasonableness of the proposed rules, as well as on the technical requirements listed in the rule.
- Carey Mattison, MPCA. Carey Mattison is a coauthor of the SONAR and proposed rule language. Mr. Mattison will testify on the general need for and reasonableness of the proposed rules, as well as on the technical requirements listed in the rule.

### B. Witnesses

The MPCA expects that the proposed amendments will be noncontroversial. In the event that a hearing is necessary, the MPCA anticipates having the listed authors testify as witnesses in support of the need for and reasonableness of the rules.

- Michael Schmidt, MPCA. Mr. Schmidt is an attorney in the Legal Services Unit at the MPCA and will introduce the required jurisdictional documents into the record.
- Yolanda Letnes, MPCA. Ms. Letnes is the project rule coordinator and will testify on any Minnesota Administrative Procedures Act process questions.
- Mr. Nathan Blasing, Industrial Division. Mr. Blasing will testify on the technical requirements listed in the rule.
- The three authors listed under item A will testify on questions that may come up regarding their areas of expertise.

### C. SONAR attachments

1. List of SONAR references.
2. Assessment of the Potential Costs, Benefits, and Other Impacts of the Final Revisions to EPA's Underground Storage Tank Regulations, April 2015.
3. Overview: Chapter 7150 reorganization.
4. Comparison: Minnesota, EPA, and other states.
5. EPA 2015 FR final rule.
6. Added costs for proposed Minnesota-only costs table.
7. MN CP Manual.

## 14. Conclusion

In this SONAR, the MPCA has established the need for and the reasonableness of each of the proposed amendments to Minn. R. ch. 7150. The MPCA has provided the necessary notifications and in this SONAR documented its compliance with all applicable administrative rulemaking requirements of Minnesota statute and rules.

Based on the forgoing, the proposed amendments are both needed and reasonable.

7/23/18

Date

  
John Linc Stine, Commissioner  
Minnesota Pollution Control Agency

**Attachment 1.**

List of SONAR references.

1. In the matter of the proposed Technical Standards for Owners and Operators of Underground Storage Tanks, Minnesota Rules Chapter 7150. SONAR, signed January 10, 1991. 16 Minn. Reg. 59 (July 8, 1991).
2. Proposed Amendment to Rules Governing Permits and Certification, Minnesota Rules Chapter 7001, Aboveground Storage of Liquid Substances, Minnesota Rules Chapter 7151 and Standards of Performance for Underground Storage Tanks, Minnesota Rules Chapter 7150. SONAR, signed March 31, 2000. 25 Minn. Reg. 556 (August 21, 2000).
3. Proposed Amendments to Rules Governing the Underground Storage Tanks (UST) Program – Minn. R. ch. 7150. SONAR, signed July 24, 2007. 32 Minn. Reg. 1751 (March 17, 2008).
4. Proposed Amendment to Rule Governing the Underground Storage Tanks (UST) Program, Minn. R. ch. 7150. SONAR, signed July 13, 2009. 34 Minn. Reg. 1610 (July 16, 2011).



**Attachment 2.**

The document pictured below is 167 pages and available at:

<https://www.epa.gov/sites/production/files/2015-07/documents/regs2015-ria.pdf>

**Assessment Of The Potential Costs, Benefits, And Other Impacts  
Of The Final Revisions To  
EPA's Underground Storage Tank Regulations**

Prepared for:

Release Prevention Division, Office of Underground Storage Tanks  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue NW  
Washington, DC 20460

Prepared by:

Industrial Economics, Incorporated  
2067 Massachusetts Avenue  
Cambridge, MA 02140  
617/354-0074

April 2015

**Attachment 2 appendices.**

The document pictured below is 227 pages and available at:

<https://www.regulations.gov/document?D=EPA-HQ-UST-2011-0301-0473>

The document contains the full appendices to the Assessment Of The Potential Costs, Benefits, And Other Impact Of The Final Revisions To EPA's Underground Storage Tank Regulations listed under Attachment 2.

**Appendix A**

**Configuration and Cost Assumptions for Airport Hydrant Fuel Distribution Systems (AHFDSs) and UST Systems with Field-Constructed Tanks (FCTs)**

## Attachment 3

## Overview: Chapter 7150 reorganization

## CHAPTER 7150

## MINNESOTA POLLUTION CONTROL AGENCY

## UNDERGROUND STORAGE TANKS; PROGRAM

## GENERALLY

7150.0010 APPLICABILITY.

7150.0020 [REPEALED, 32 SR 1751]

7150.0030 DEFINITIONS.

7150.0090 NOTIFICATION AND CERTIFICATION.

## DESIGN AND CONSTRUCTION

7150.0100 PERFORMANCE STANDARDS FOR ~~UNDERGROUND STORAGE TANK~~ UST SYSTEMS.

7150.0110 [REPEALED, 32 SR 1751]

7150.0120 [REPEALED, 32 SR 1751]

7150.0200 [REPEALED, 32 SR 1751]

7150.0205 DESIGN AND CONSTRUCTION.

7150.0211 ~~CLASS A, B, AND C OPERATOR REQUIREMENTS.~~

## OPERATION AND MAINTENANCE

7150.0215 ~~OPERATION AND MAINTENANCE OF CATHODIC~~ OPERATING AND MAINTAINING CORROSION PROTECTION.7150.0216 OPERATING, MAINTAINING, AND TESTING UST SYSTEMS.

7150.0220 [REPEALED, 32 SR 1751]

7150.0230 [REPEALED, 32 SR 1751]

7150.0240 [REPEALED, 32 SR 1751]

7150.0250 RESTORATION, CORRECTIVE ACTIONS, AND REQUIRED PERMANENT CLOSURE.

## RELEASE DETECTION

7150.0300 RELEASE DETECTION.

7150.0310 [REPEALED, 32 SR 1751]

7150.0320 [REPEALED, 32 SR 1751]

7150.0330 METHODS OF RELEASE DETECTION FOR TANKS.

7150.0340 ~~METHODS OF RELEASE DETECTION FOR PIPING.~~REPORTING, INVESTIGATING, AND CONFIRMING RELEASES7150.0345 REPORTING, INVESTIGATING, AND CONFIRMING RELEASES.

7150.0350 [REPEALED, 32 SR 1751]

~~OUT-OF-SERVICE UNDERGROUND STORAGE TANK SYSTEMS AND~~ UST SYSTEM

## CLOSURE

7150.0400 TEMPORARY CLOSURE.

7150.0410 PERMANENT CLOSURE AND CHANGE IN STATUS TO STORAGE OF NONREGULATED SUBSTANCES.

7150.0420 ~~SITE ASSESSMENT.~~7150.0430 ~~PREVIOUSLY CLOSED UNDERGROUND STORAGE TANK~~ UST SYSTEMS.

7150.0440 [REPEALED, 32 SR 1751]

OPERATOR REQUIREMENTS, REPORTING, AND RECORD KEEPING7150.0445 CLASS A, B, AND C OPERATOR REQUIREMENTS.

7150.0450 REPORTING AND RECORD KEEPING.

7150.0451 UST SYSTEMS WITH FIELD-CONSTRUCTED TANKS AND AIRPORT HYDRANT FUEL DISTRIBUTION SYSTEMS.

7150.0500 INCORPORATION BY REFERENCE.

1. MPCA is reordering the chapter parts to group similar topics together.
2. MPCA is creating sections on REPORTING, INVESTIGATING, AND CONFIRMING RELEASES and OPERATOR REQUIREMENTS, REPORTING, AND RECORDKEEPING.
3. MPCA is renumbering part 7150.0211 CLASS A, B, AND C OPERATOR REQUIREMENTS to part 7150.0445 and moved the requirements from the section under DESIGN AND CONSTRUCTION to the section for OPERATOR REQUIREMENTS, REPORTING, AND RECORDKEEPING.
4. MPCA moved part 7150.0420 SITE ASSESSMENT from the section under OUT-OF-SERVICE UNDERGROUND STORAGE TANK SYSTEMS AND CLOSURE to the new section on REPORTING, INVESTIGATING, AND CONFIRMING RELEASES and combined the requirements with new part 7150.0345 REPORTING, CONFIRMING, AND INVESTIGATING RELEASES.
5. MPCA created the new part 7150.0216 OPERATING, MAINTAINING, AND TESTING UST SYSTEMS, and part 7150.0250 RESTORATION, CORRECTIVE ACTIONS, AND REQUIRED PERMANENT CLOSURE. The Agency also moved operation and testing requirements from other areas of chapter 7150 and combined them under part 7150.0216. Similarly, the Agency also combined maintenance and repair requirements from other areas of chapter 7150 under part 7150.0250.
6. MPCA is also renaming part 7150.0215 to OPERATING AND MAINTAINING CORROSION PROTECTION to allow greater details relating to non-cathodic corrosion protection to be provided in this part.

Comparison: EPA and other states.

MN proposed rule citation	Federal	Ohio
<p>1. Minn. R. 7150.0010 establishes the applicability of the rule and what underground storage tank systems are regulated.</p> <ul style="list-style-type: none"> <li>• 7150.0010, subp. 1</li> <li>• 7150.0010, subp. 2</li> <li>• 7150.0010, subp. 5</li> <li>• 7150.0010, subp. 6</li> <li>• 7150.0010, subp. 7</li> </ul>	<p>In 2015, the United States Environmental Protection Agency (EPA) revised 40 CFR pt. 280. The revisions effectively removed the existing exemptions for certain underground storage tank (UST) systems such as emergency generator tanks, airport hydrant tanks, and field-constructed tanks. As part of the revisions, EPA established new requirements for these particular facilities.</p> <p>The Minnesota Pollution Control Agency (Agency) is proposing revisions to part 7150.0010, subps. 1,2, 5, and 6 that are equivalent to EPA rules.</p> <p>The proposed revision to part 7150.0010, subp. 7 is a state-only requirement that requires other potentially harmful substances to meet the compatibility requirements under proposed part 7150.0100, subp. 9. No other Minn. R. ch. 7150 requirements apply to tanks storing other potentially harmful substances. There is no federal counterpart for other potentially harmful substances. See the detailed explanation for part 7150.0010, subpart 7, in the Statement of Need and Reasonableness (SONAR).</p>	<p>See section 6.B. of the SONAR for a discussion of Wisconsin, Indiana, Illinois, Michigan, South Dakota, North Dakota, and Iowa.</p> <p>With the exception of fees and permits Ohio charges, Ohio adopted state regulations are equivalent to federal regulations. This means that Ohio regulations are no less stringent or more stringent than federal rules. Fees are discussed in section 6.B. of the SONAR.</p> <p>The comparison discussion under the column titled "Federal" is the same for this column, unless otherwise noted in this column.</p> <p>Currently, all other EPA region V and surrounding states are pursuing rulemaking. The Agency expects all EPA Region V and surrounding states to be no less stringent than 40 CFR pt. 280.</p>

MN proposed rule citation	Federal	Ohio <b>D.</b>
<p>2. Minn. R. 7150.0090 establishes the notification and certification requirements by owners and operators of underground storage tanks.</p> <ul style="list-style-type: none"> <li>• 7150.0090, subp. 1</li> <li>• 7150.0090, subp. 2</li> <li>• 7150.0090, subp. 3</li> <li>• 7150.0090, subp. 4</li> <li>• 7150.0090, subp. 5</li> <li>• 7150.0090, subp. 6</li> <li>• 7150.0090, subp. 7</li> <li>• 7150.0090, subp. 8</li> <li>• 7150.0090, subp. 9</li> </ul>	<p>The proposed revisions to part 7150.0090, subp. 1, modify existing regulations specific to Minnesota and have no federal counterpart. These revisions were proposed to clarify which activities require a ten-day notification. The ten-day notification is needed to give inspectors an opportunity to conduct inspections on the work being done.</p> <p>The proposed amendments to part 7150.0090, subps. 2 to 7, do not establish any new standard or requirement. They are simple corrections and clarifications to existing state requirements and are equivalent to federal rules.</p> <p>The 2015 revisions to 40 CFR pt. 280 now requires a 30-day notification of compatibility for storing biofuels of greater than 10% ethanol, 20% biodiesel, or other regulated substances identified by the Agency. Proposed part 7150.0090, subp. 8 is a new requirement that is equivalent to this EPA rule.</p> <p>Part 7150.0090, subp. 9 is a proposed addition that requires the Agency to notify regulated parties if other regulated substances are identified in the future of needing to meet the requirements of subpart 8. For discussion of the need and reasonableness of this subpart, see SONAR section 5.B.</p>	<p>See the discussion under item 1.</p>
<p>3a. Minn. R. 7150.0100 establishes performance standards for underground storage tank systems.</p> <ul style="list-style-type: none"> <li>• 7150.0100, subp. 1</li> <li>• 7150.0100, subp. 7</li> <li>• 7150.0100, subp. 11</li> </ul>	<p>The proposed amendments do not establish any new standard or requirements. They are simple corrections and clarifications to existing state requirements to be equivalent with federal rule language. Codes of practice were also updated in these sections to be equivalent to federal requirements.</p>	<p>See the discussion under item 1.</p>
<p>3b. Minn. R. 7150.0100, subp. 9, establishes compatibility performance standards for underground storage tank systems.</p>	<p>The 2015 revisions to 40 CFR pt. 280 resulted in additional requirements for compatibility and for demonstrating compatibility. The proposed amendments to this subpart are equivalent to the new EPA rules with the following exception:</p> <ul style="list-style-type: none"> <li>• The proposed amendments specifically address retrofit tank systems that are installed to meet compatibility requirements. Retrofit systems installed to meet compatibility requirements must meet part 7150.0205, subp. 1, by installing a retrofit system that is double walled and protected from corrosion. The EPA rules do not require retrofit systems for compatibility to be double walled. For discussion of the need and reasonableness of this subpart, see SONAR section 5.B.</li> </ul>	<p>See the discussion under item 1.</p> <p>The proposed rule revisions are specific to Minnesota.</p>

MN proposed rule citation	Federal	Ohio <b>D.</b>
<p>3c. Minn. R. 7150.0100 establishes performance standards for underground storage tank systems.</p> <ul style="list-style-type: none"> <li>• 7150.0100, subp. 12a</li> <li>• 7150.0100, subp. 13</li> <li>• 7150.0100, subp. 14</li> </ul>	<p>The proposed rule revisions in these subparts are to existing Agency rules. They are corrections and clarifications to existing state requirements. The rules are specific to Minnesota and have no specific federal counterpart, but follow industry standards outlined in the EPA rules. The requirements for subparts 12a and 14 do not change.</p> <p>The proposed rule language for subpart 13 now requires shear valves of double-poppet construction to be used for newly installed shear valves. This is more restrictive than federal requirements. For discussion of the need and reasonableness of this subpart, see SONAR section 5.B.</p>	<p>See the discussion under item 1.</p>
<p>4a. Minn. R. 7150.0205 establishes design and construction requirements of underground storage tank systems as it pertains to tanks and pipe.</p> <ul style="list-style-type: none"> <li>• 7150.0205, subp. 1</li> <li>• 7150.0205, subp. 2</li> <li>• 7150.0205, subp. 3</li> <li>• 7150.0205, subp. 4</li> </ul>	<p>The 2015 revisions to 40 CFR pt. 280 resulted in the requirement of all new tank systems (tanks and pipe) to be secondarily contained, designed to contain releases, and to conduct interstitial monitoring. Part 7150.0205 has had this requirement since December 22, 2007. The amendments to these sections are to simplify and clarify existing rule language, numbering, and update codes of practice to be equivalent with EPA rules with the following exceptions:</p> <ul style="list-style-type: none"> <li>• Proposed rule revisions to part 7150.0205, subp. 1(B), address retrofit tank systems that are co-structural with the support provided by the host tank need to meet corrosion protection methods listed in this section. This is not addressed in the EPA rules but is established within industry standards. The Agency determined it was important to distinguish this in the proposed rules as these types of systems are becoming more popular and it should be clarified. For discussion of the need and reasonableness of this subpart, see SONAR section 5.B.</li> <li>• Proposed rule revision part 7150.0205, subp. 1(C)(3)(b), requires that if a tank is new, replaced or retrofitted and is secondarily contained, the piping must also be secondarily contained. This is not addressed in the EPA rules. This rule is already in effect under existing part 7150.0205, subp. 1(D)(3). The only addition to the existing rule is to include retrofit tanks. The Agency determined it was important to include retrofit tanks in the proposed rules as these types of systems are becoming more popular and requirements should be clarified. For discussion of the need and reasonableness of this subpart, see SONAR section 5.B.</li> </ul>	<p>See the discussion under item 1.</p>
<p>4b. Minn. R. 7150.0205, subp. 5, establishes design and construction requirements of underground storage tank systems as it pertains to spill and overfill protection.</p>	<p>The 2015 revisions to 40 CFR pt. 280 no longer allow ballfloat overfill protection systems to be replaced or installed on any new tank system. The new EPA rules also require that spill and overfill protection must be tested upon installation of the device. The proposed amendments to this section are equivalent to new EPA rules. The proposed amendments to this section also specify circumstances when a ballfloat overfill device cannot be used in existing systems. These circumstances are not addressed in EPA rules specifically but are addressed in industry standard publications that EPA references in the rule. The Agency determined it was important to include these circumstances in the proposed rules to clarify when ballfloats must be removed and replaced with a new overfill device. For discussion of the need and reasonableness of this subpart, see SONAR section 5.B.</p>	<p>See the discussion under item 1.</p>

MN proposed rule citation	Federal	Ohio <b>D.</b>
<p>4c. Minn. R. 7150.0205, subp. 6, establishes design and construction requirements of underground storage tank systems as it pertains to submersible pump sumps.</p>	<p>The proposed amendments in this section are to existing rules and have no federal counterpart. This existing rule section specifically states what is required for submersible pump sumps installed after December 22, 2007: it needs to be liquid tight in order to meet interstitial monitoring leak-detection requirements. The EPA rules limit the liquid-tight specifications to underdispenser sumps only. The Agency determined that it was just as important to require submersible pump sumps to be designed and installed liquid tight, just as it is for underdispenser sumps to be liquid tight for interstitial monitoring purposes. This also follows industry standards referenced in the rule and manufacturer's instructions. For discussion of the need and reasonableness of this subpart, see SONAR section 5.B.</p> <p>The proposed amendments also require submersible pumps installed prior to December 22, 2007, to be accessible for inspection and shall not be covered in soil or other obstacles that prevent visual inspections. This amendment is needed so visual inspections can be done to identify substandard equipment before leaks occur. This amendment also follows industry standards referenced in the rule and manufacturer's instructions. For discussion of the need and reasonableness of this subpart, see SONAR section 5.B.</p> <p>The proposed amendments also require the submersible pump sumps to be integrity tested upon installation. The EPA rules do not address sump testing upon installation except for sumps installed that are part of a double wall piping system required to do interstitial monitoring. The Agency decided to add this requirement to clarify that all sumps must be tested upon installation regardless of whether it is part of a double wall piping system. This amendment is consistent with industry standards referenced in the rule and manufacturer's installation instructions. For discussion of the need and reasonableness of this subpart, see SONAR section 5.B.</p>	<p>See the discussion under item 1.</p> <p>The proposed rule revisions are specific to Minnesota.</p>



MN proposed rule citation	Federal	Ohio <b>D.</b>
4d. Minn. R. 7150.0205, subp. 7, establishes design and construction requirements of underground storage tank systems as it pertains to dispenser sumps.	<p>The 2015 revisions to 40 CFR pt. 280 now require underdispenser containment when dispensers and certain equipment are installed. The Agency has had this requirement in the rules since December 22, 2007. The proposed amendments to this subpart are to clarify and update existing rule language, numbering, and update codes of practice to be equivalent to the new EPA rules with the following exceptions:</p> <ul style="list-style-type: none"> <li>• The proposed revisions require underdispenser sumps to be installed if concrete or base material under the dispenser is replaced or modified. The Agency has identified leaks from dispenser components to be problematic. Therefore, it was determined that if the concrete or base material was being replaced beneath the dispenser, it would be appropriate to install an underdispenser containment at that time. EPA rules do not require underdispenser containment to be installed if only concrete or base material is being replaced or modified. For discussion of the need and reasonableness of this subpart, see SONAR section 5.B.</li> <li>• The proposed amendments require that the underdispenser containment must be integrity tested upon installation. The EPA rules do not address sump testing upon installation except for sumps installed that are part of a double wall piping system required to do interstitial monitoring. The Agency decided to add this requirement to clarify that all sumps must be tested upon installation regardless whether it is part of a double-wall piping system. This amendment is consistent with industry standards referenced in the rule and manufacturer's installation instructions. For discussion of the need and reasonableness of this subpart, see SONAR section 5.B.</li> </ul>	See the discussion under item 1.
4e. Minn. R. 7150.0205, subp. 8, establishes design and construction requirements of underground storage tank systems as it pertains to emergency stops.	The proposed rule revisions in this subpart are specific to Minnesota and have no federal counterpart. The Agency has elected to reference Minnesota State Fire Code requirements as it pertains to emergency stops at regulated facilities. For discussion of the need and reasonableness of this subpart, see SONAR section 5.B.	The State of Ohio also requires emergency stops at UST locations where fuel dispensing occurs. They must be in a location where anyone can activate the emergency stops, if needed. This is equivalent to the proposed MN rules.

MN proposed rule citation	Federal	Ohio <b>D.</b>
<p>5a. Minn. R. 7150.0215 establishes requirements for operation and maintenance of corrosion protection of underground storage tank systems.</p> <ul style="list-style-type: none"> <li>• 7150.0215, subp. 1</li> <li>• 7150.0215, subp. 2</li> <li>• 7150.0215, subp. 3</li> <li>• 7150.0215, subp. 5</li> </ul>	<p>The proposed amendments to part 7150.0215, subps. 1 to 3 and 5 do not establish any new standards or requirements. The amendments to these sections are to simplify and clarify existing state requirements and policies and update Codes of Practice to be equivalent with EPA rules with the following exception:</p> <ul style="list-style-type: none"> <li>• Proposed amendments to part 7150.0215, subp. 2(C) and subp. 3(D) now clarify repairs to cathodic protections systems must be done within 60 days of the failing test. The Agency determined it was needed to give a timeline to assure systems are being repaired in a timely fashion. EPA rules do not give a specific timeline for repair of a system failure; they require the proper operation of the UST system. For discussion of the need and reasonableness of this subpart, see SONAR section 5.B.</li> </ul>	<p>See the discussion under item 1.</p>
<p>5b. Minn. R. 7150.0215, subp. 4, establishes requirements for internally lined tanks.</p>	<p>This subpart is an existing rule under Design and Construction requirements located in part 7150.0205, subp. 1(E). The amendment in this subpart simply moves this language to part 7150.0215, subp. 4. The proposed revisions do not establish new requirements. Changes to language and numbering were made to comply with grammar and formatting practices of the Minnesota Office of the Revisor of Statutes (MORS) and result in no change in the meaning of the previously existing requirements. Comparison with federal requirements is therefore not applicable. For discussion of the need and reasonableness of this subpart, see SONAR section 5.B.</p>	<p>See the discussion under item 1.</p>

MN proposed rule citation	Federal	Ohio <b>D.</b>
<p>6. Minn. R. 7150.0216 establishes requirements for operation, maintenance and testing of underground storage tank systems.</p> <ul style="list-style-type: none"> <li>• 7150.0216, subp. 1</li> <li>• 7150.0216, subp. 2</li> <li>• 7150.0216, subp. 3</li> <li>• 7150.0216, subp. 4</li> <li>• 7150.0216, subp. 5</li> <li>• 7150.0216, subp. 6</li> </ul>	<p>The 2015 revisions to 40 CFR pt. 280 require periodic inspections and testing of underground storage tank systems. The new federal requirements are described in 40 CFR §§ 280.35, 280.36, and 280.40. The Agency is proposing to create a new subpart under part 7150.0216 incorporating the new federal rules and applicable codes of practice. Part 7150.0216 Tank System Operation, Maintenance, and Testing is equivalent to new federal rules at 40 CFR §§ 280.35, 280.36, and 280.40.</p> <p>Specific differences between the proposed rules in this section and federal rules are as follows:</p> <ul style="list-style-type: none"> <li>• 7150.0216, subp. 1(B) requires testing wastes must be disposed of properly and documented. 40 CFR pt. 280 does not address the issue of proper disposal of testing material, but the topic is addressed in applicable federal and state hazardous waste regulations. For discussion of the need and reasonableness of this subpart, see SONAR section 5.B.</li> <li>• 7150.0216, subp. 6 gives the criteria of an “agency-approved tester.” “Agency-approved tester” is referenced throughout Minn. R. ch. 7150 as a qualification to test and/or inspection of certain tank system components. EPA rules reference manufacturer’s specifications and PEI RP 1200 as acceptable methods to conduct the new testing/inspections; the specifications or methods require “qualified” people to do the work. Federal rules do not define who is “qualified.” The Agency decided to add “agency-approved tester” qualifications to assure testing is done correctly and consistently throughout the state by qualified people. For discussion of the need and reasonableness of this subpart, see SONAR section 5.B.</li> <li>• Existing part 7150.0300, subp. 7, currently requires monthly inspections on spill buckets, submersible pump sumps, and dispenser sumps. This requirement has now been proposed to be moved to part 7150.0216, subp. 2. The new federal rules now require monthly inspections on spill buckets and operability of release detection equipment and annual inspections of submersible pump sumps and dispenser sumps. Underground storage tank rules in MN have required monthly inspections on spill buckets, submersible pump sumps, and dispenser sumps since December 22, 2007; therefore, the Agency elected to keep this requirement. For discussion of the need and reasonableness of this subpart, see SONAR section 5.B.</li> </ul>	<p>See the discussion under item 1.</p>
<p>7a. Minn. R. 7150.0250 establishes requirements for restoration and corrective actions of underground storage tank systems.</p> <ul style="list-style-type: none"> <li>• 7150.0250, subp. 1</li> <li>• 7150.0250, subp. 4</li> </ul>	<p>The Agency is proposing to create a new- section under part 7150.0250 to address restoration and corrective actions. The proposed amendments in these subparts are new rules and have no federal counterpart. For discussion of the need and reasonableness of this subpart, see SONAR section 5.B.</p>	<p>See the discussion under item 1.</p> <p>The proposed rules are specific to Minnesota and no state counterpart exists.</p>

MN proposed rule citation	Federal	Ohio <b>D.</b>
<p>7b. Minn. R. 7150.0250 establishes requirements for restoration and corrective actions of underground storage tank systems.</p> <ul style="list-style-type: none"> <li>• 7150.0250, subp. 2</li> <li>• 7150.0250, subp. 3</li> </ul>	<p>The Agency is proposing to create a new section under part 7150.0250 to address restoration and corrective actions.</p> <ul style="list-style-type: none"> <li>• The Agency is proposing to move existing part 7150.0100, subp. 10, items A, C, D, E, and F (Repairs Allowed) to a new subpart under part 7150.0250, subp. 2 (Repairs). The proposed amendments to this subpart clarify and update existing rule language, numbering, and update codes of practice to be equivalent to federal revisions to 40 CFR § 280.33.</li> <li>• The Agency is proposing to move existing part 7150.0100, subp. 10(B) (Repairs Allowed) to a new subpart under part 7150.0250, subp. 3 (Replacement). The language in this subpart describes when particular tank system components need to be replaced rather than repaired. The proposed amendments to this subpart clarify and update existing rule language and number formatting. The proposed amendments to this subpart also reflect new federal rule language “when fifty percent or more of the piping is replaced, the entire piping system must be replaced” to be equivalent to the federal revision to 40 CFR pt. 280. Another proposed revision is to add language regarding pipe segments found to have degraded due to age, incompatibility, or poor installation practices need to be replaced which is not addressed in the federal rules. For discussion of the need and reasonableness of this subpart, see SONAR section 5.B.</li> </ul>	<p>See the discussion under item 1.</p>
<p>8a. Minn. R. 7150.0300, subp. 1, establishes general requirements for release detection for underground storage tank systems.</p>	<p>The proposed amendments to this subpart do not establish any new standard or requirement. The amendments to these sections are to simplify and clarify existing state requirements and update rule language to be equivalent with EPA rules.</p>	<p>See the discussion under item 1.</p>

MN proposed rule citation	Federal	Ohio <b>D.</b>
<p>8b. Minn. R. 7150.0300, subp. 5, establishes requirements for tank release detection for underground storage tank systems.</p>	<p>The proposed amendments to this subpart do not establish any new standard or requirement. The amendments to this subpart simplify and clarify existing state requirements and update rule language. The proposed amendments to this subpart include adding language that statistical inventory reconciliation is an acceptable form of tank leak detection and is considered equivalent with the 2015 revisions to 40 CFR pt. 280.</p> <p>The proposed amendments to this subpart also include repealing existing rule language about inventory control and manual tank gauging for tanks greater than 1,000 gallons. Manual tank gauging for tanks over 1,000 gallons and inventory control are only acceptable for ten years after the installation of the tank. Part 7150.0205, subp. 1, has required double-wall tanks and interstitial monitoring for tanks installed after December 22, 2007. Thus, these methods could only be used until December 22, 2017. Because the effective date of this proposed rule will be after December 22, 2017, the Agency decided to remove this rule language to simplify the rule. The Agency is not aware of any owners and operators of tanks in MN who are using manual tank gauging for tanks over 1,000 gallons or inventory control as the only form of leak detection and anticipates the proposed change will not affect any regulated tank in Minnesota. The 2015 revisions to 40 CFR pt. 280 still allow manual tank gauging on tanks over 1,000 gallons and inventory control in conjunction with tank tightness testing for ten years from the installation date. EPA rules have just started requiring double-wall tank installations with interstitial monitoring on systems installed after April 11, 2016. For discussion of the need and reasonableness of this subpart, see SONAR section 5.B.</p>	<p>See the discussion under item 1.</p>
<p>8c. Minn. R. 7150.0300, subp. 6, establishes requirements for piping release detection for underground storage tank systems.</p>	<p>The proposed amendments to this section clarify existing state requirements and update rule language to be equivalent with the 2015 EPA revisions to 40 CFR pt. 280. Subpart 6 previously conflicted with EPA rules. The Agency has revised the language such that automatic line leak detectors are required on all pressurized piping regardless of when the piping was installed or regardless of the use of other forms of leak detection on the piping. This rule language was amended to be equivalent with EPA rules.</p> <p>Proposed amendments to this section now require antisiphon devices on pressurized or suction piping systems where the piping is positioned beneath the top of the tank. EPA rules do not specifically require this, but this requirement is consistent with industry standards referenced in the rules. The Agency added this requirement in the proposed rules to make it clear when an antisiphon device is needed.</p>	<p>See the discussion under item 1.</p>

MN proposed rule citation	Federal	Ohio <b>D.</b>
<p>9. Minn. R. 7150.0330 establishes requirements for tank release detection methods for underground storage tank systems.</p> <ul style="list-style-type: none"> <li>• 7150.0330, subp. 1</li> <li>• 7150.0330, subp. 2</li> <li>• 7150.0330, subp. 3</li> <li>• 7150.0330, subp. 4</li> <li>• 7150.0330, subp. 5</li> <li>• 7150.0330, subp. 6</li> <li>• 7150.0330, subp. 7</li> </ul>	<p>The proposed amendments to this section are to clarify existing state requirements and update rule language to be equivalent with the 2015 rule revision to 40 CFR pt. 280. Rule language added to part 7150.0330, subps. 5 and 6a was proposed to be equivalent with EPA rules.</p> <p>The Agency is proposing to repeal part 7150.0330, subp. 2, regarding inventory control, and additional language in subp. 3 regarding manual tank gauging on tanks greater than 1,000 gallons. The reasoning to eliminate this language is described above in 8b. The removal of this language will simplify this section because these methods will no longer be permitted as the only form of tank leak detection.</p> <p>Proposed amendments to revise part 7150.0330, subp. 5, regarding automatic tank gauging include removing the requirement to conduct inventory control in conjunction with automatic tank gauging. EPA rules still require inventory control to be done in conjunction with automatic tank gauging, but EPA has accepted the Agency proposal to remove this requirement because tank bottoms are now required to be monitored monthly for water under part 7150.0216, subp. 2(A)(4). For discussion of the need and reasonableness of this subpart, see SONAR section 5.B.</p>	<p>See the discussion under item 1.</p>
<p>10. Minn. R. 7150.0340 establishes requirements for pipe release detection methods for underground storage tank systems.</p> <ul style="list-style-type: none"> <li>• 7150.0340, subp. 1.</li> <li>• 7150.0340, subp. 2</li> <li>• 7150.0340, subp. 3</li> <li>• 7150.0340, subp. 4</li> </ul>	<p>The proposed amendments to this section are to clarify and simplify existing state requirements and update rule language to be equivalent with the 2015 revision to 40 CFR pt. 280. The changes in this category are made to ensure rule language and numbering adheres to grammar and formatting practices of the MORS.</p> <p>Proposed amendments under part 7150.0340, subps. 2(B) and (C) distinguish the line leak detection requirements between unattended facilities and attended facilities. Proposed amendments would require line leak detectors at unattended card-lock facilities to alert the operator to the presence of a leak by shutting off the flow of regulated substance. On the other hand, line leak detectors at attended facilities can notify owners and operators by restricting or shutting off the flow of a regulated substance or by triggering an alarm. Federal rules do not make the same distinction as the proposed rule. The Agency determined it was important to make this clarification because unattended card-lock facilities can be unattended for days before an alarm or restricted product flow would be noticed. However, stopping the flow of product flow can be done immediately by an automatic line leak detector when operating properly. For discussion of the need and reasonableness of this subpart, see SONAR section 5.B.</p>	<p>See the discussion under item 1.</p>

MN proposed rule citation	Federal	Ohio <b>D.</b>
<p>11a. Minn. R. 7150.0345 establishes requirements for release reporting, investigation and confirmation for underground storage tanks.</p> <ul style="list-style-type: none"> <li>• 7150.0345, subp. 1.</li> <li>• 7150.0345, subp. 2</li> </ul>	<p>The 2015 revisions to 40 CFR pt. 280 changed release-reporting requirements and requirements relating to investigation and confirmation. The proposed language is a now in part 7150.0345. The proposed language in these subparts is equivalent with EPA rules with the following exception:</p> <ul style="list-style-type: none"> <li>• 7150.0345, subp. 1, requires investigation of suspected releases to begin within 24 hours to be consistent with Minn. Stat. § 115.061. The EPA rules allow 7 days to begin an investigation or another timeframe specified by the implementing agency. The EPA has reviewed and accepted the 24-hour investigation timeline the Agency proposed in this section.</li> </ul>	<p>See the discussion under item 1.</p>
<p>11b. Minn. R. 7150.0345, subp. 3, establishes requirements for assessing a site at permanent closure or change in status for underground storage tanks.</p>	<p>The proposed amendments to this section are to clarify and update existing rule language, numbering, and update codes of practice to be equivalent to the 2015 revisions to 40 CFR pt. 280. This subpart is currently in the existing rules under part 7150.0420 and is being moved to this subpart for organizational purposes. This subpart now clarifies that site assessments are also required when piping systems are closed even if the tanks remain in place. For discussion of the need and reasonableness of this subpart, see SONAR section 5.B.</p>	<p>See the discussion under item 1.</p>
<p>12. Minn. R. 7150.0400 establishes requirements for temporary closure of underground storage tank systems.</p> <ul style="list-style-type: none"> <li>• 7150.0400, subp. 1</li> <li>• 7150.0400, subp. 2</li> <li>• 7150.0400, subp. 3</li> <li>• 7150.0400, subp. 4</li> <li>• 7150.0400, subp. 5</li> </ul>	<p>The proposed amendments do not establish any new standard or requirement. The changes in this category are made to ensure rule language and numbering adheres to grammar and formatting practices of the MORS and result in no change in the meaning of the previously existing requirements. Comparison with federal requirements is therefore not applicable. For discussion of the need and reasonableness of this subpart, see SONAR section 5.B.</p>	<p>See the discussion under item 1.</p>
<p>13. Minn. R. 7150.0410 establishes requirements for permanent closure of underground storage tank systems.</p> <ul style="list-style-type: none"> <li>• 7150.0400, subp. 1</li> <li>• 7150.0400, subp. 2</li> <li>• 7150.0400, subp. 3</li> <li>• 7150.0400, subp. 4</li> <li>• 7150.0400, subp. 5</li> </ul>	<p>The proposed amendments to this section are to clarify and update existing rule language, numbering, and update codes of practice to be equivalent to the 2015 revisions to 40 CFR pt. 280. This section now clarifies that piping systems that are permanently closed must also meet permanent closure requirements established in this part.</p> <ul style="list-style-type: none"> <li>• 7150.0410, subp. 3(D) also requires that when a tank is lined or retrofitted according to proposed part 7150.0205, subp. 1, the original tank upon which the lining is secured is considered permanently closed and a site assessment must be done according to proposed part 7150.0345, subp. 3. Federal regulation does not address such systems in the permanent closure section. The Agency determined it was important to include retrofit tanks in the proposed rules as these types of systems are becoming more popular. For discussion of the need and reasonableness of this subpart, see SONAR section 5.B.</li> </ul>	<p>See the discussion under item 1.</p>

MN proposed rule citation	Federal	Ohio <b>D.</b>
14. Minn. R. 7150.0430 establishes requirements for previously closed underground storage tank systems.	The proposed amendments do not establish any new standard or requirement. The changes in this category are made to ensure rule language and numbering adheres to grammar and formatting practices of the MORS and result in no change in the meaning of the previously existing requirements, and is equivalent to the 2015 revisions to 40 CFR pt. 280.	See the discussion under item 1. .
15. Minn. R. 7150.0445 establishes requirements for Class A, B, and C operator requirements <ul style="list-style-type: none"> <li>• 7150.0445, subp. 1</li> <li>• 7150.0445, subp. 2</li> <li>• 7150.0445, subp. 3</li> <li>• 7150.0445, subp. 4</li> <li>• 7150.0445, subp. 5</li> <li>• 7150.0445, subp. 6</li> <li>• 7150.0445, subp. 7</li> </ul>	The proposed amendments to this part are to clarify and update existing rule language, numbering, and update codes of practice to be equivalent to the 2015 revisions to 40 CFR pt. 280. The proposed amendments do not establish any new standard or requirement. These requirements currently exist under part 7150.0211 and are being moved to the newly proposed part 7150.0445 for organizational purposes.	See the discussion under item 1.
16. Minn. R. 7150.0450 establishes requirements for reporting and record keeping. <ul style="list-style-type: none"> <li>• 7150.0450, subp. 1</li> <li>• 7150.0450, subp. 2</li> </ul>	The proposed amendments do not establish any new standard or requirement. The changes in this category are made to ensure rule language and numbering adheres to grammar and formatting practices of the MORS and result in no change in the meaning of the previously existing requirements.	See the discussion under item 1.



MN proposed rule citation	Federal	Ohio <b>D.</b>
<p>16a. Minn. R. 7150.0450 establishes requirements for reporting and record keeping.</p> <ul style="list-style-type: none"> <li>• 7150.0450, subp. 3</li> </ul>	<p>The proposed amendments to this part were made to ensure rule language and numbering adheres to the grammar and formatting practices of the MORS. The proposed addition of part 7150.0450, subp. 3(J) was also created to establish record retention requirements of five years for testing associated with the proposed part 7150.0216.</p> <p>Furthermore, the current requirement for record retention for leak detection under part 7150.0450, subp. 3(D)(2) is to retain records for ten years. The Agency is proposing to decrease the timeframe to keep records to five years.</p> <p>The 2015 revisions to 40 CFR pt. 280 contain the same record retention requirements as the proposed Agency rules, except that the Agency is more restrictive in the following areas:</p> <ul style="list-style-type: none"> <li>• Monthly walkthrough inspection records must be kept one year according to EPA rules; however, this proposed rule requires a five-year record retention for those same records.</li> <li>• Spill, overfill, and containment sump testing and inspection records are required to be kept for three years according to EPA rules however, this proposed rule requires a five-year record retention for those same records.</li> <li>• Tank and piping leak detection testing results are required to be kept for one year according to EPA rules; however, this proposed rule requires a five-year record retention for those same records.</li> <li>• Annual leak detection equipment testing and inspections are required to be kept for three years according to EPA rules; however, this proposed rule requires a five-year record retention for those same records.</li> </ul> <p>For discussion of the need and reasonableness of this subpart, see SONAR section 5.B.</p>	<p>See the discussion under item 1.</p>
<p>17. Minn. R. 7150.0451 establishes requirements for UST systems associated with field- constructed tanks and airport hydrant fuel distribution systems</p>	<p>The proposed addition of this part is equivalent to the 2015 revisions to 40 CFR pt. 280. These tanks were previously deferred and are now regulated under the federal requirements. The Agency incorporated 40 CFR pt. 280, subpart K, by reference.</p>	<p>See discussion under item 1.</p>
<p>18. Minn. R. 7150.0500 establishes incorporation of documents referenced throughout the rule.</p>	<p>The proposed amendments to this part are to clarify and update existing rule language, numbering, and update codes of practice to be equivalent to the 2015 revisions to 40 CFR pt. 280.</p>	<p>See discussion under item 1.</p>

Attachment 5.

The document pictured below is 119 pages and available at:

<https://www.gpo.gov/fdsys/pkg/FR-2015-07-15/pdf/2015-15914.pdf>



# FEDERAL REGISTER

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Vol. 80                      Wednesday,  
No. 135                     July 15, 2015

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## Part II

### Environmental Protection Agency

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40 CFR Parts 280 and 281  
Revising Underground Storage Tank Regulations—Revisions to Existing  
Requirements and New Requirements for Secondary Containment and  
Operator Training; Final Rule

## Attachment 6

Added costs for proposed Minnesota-only requirements.

- Based on the Minnesota (MN) Underground Storage Tank (UST) database, an estimated 4,100 UST facilities exist in MN.
- The numbering established in the discussion under section 6.A.5 of the Statement of Need and Reasonableness (SONAR) is retained in the table below for consistency. Information has been grouped where applicable. The Minnesota State Fire Code is referenced as MSFC throughout this document.

Category	MN only requirements and citation	Estimated costs: small facility	Estimated costs: medium facility	Estimated costs: large facility
(a) Owners and operators of regulated UST systems	(1) Other potentially harmful substances stored in UST systems	minimal	minimal	minimal
	(2) Double poppet shear valve (~\$30 per shear valve)	2 - 6 shear valves (\$60 - \$180)	7 – 18 shear valves (\$210 - \$540)	18 or more shear valves (\$540)
	(3) Retrofit tank systems	no added costs, already subject to federal requirements	no added costs, already subject to federal requirements	no added costs, already subject to federal requirements
	(4) Submersible pump sumps installed before 12/22/07 – accessibility for inspections (\$25/hour cleaning)	1-2 submersible pumps (\$25 - \$50)	3-6 submersible pumps (\$75 - \$150)	6 or more submersible pumps (\$150 or more)
	(6) Emergency stops	no added costs, already subject to MSFC	no added costs, already subject to MSFC	no added costs, already subject to MSFC
	(7) Corrosion protection testing and repairs (\$150 per tank)	no added costs, already existing requirement	no added costs, already existing requirement	no added costs, already existing requirement
	(9) Unusual operating conditions	no added cost, existing requirement	no added cost, existing requirement	no added cost, existing requirement
	(12) Recordkeeping requirements	existing costs halved; thus, there is no added cost	existing costs halved; thus, there is no added cost	existing costs halved; thus, there is no added cost
	Total	\$230	\$690	\$690
	Estimated cost for first year of compliance=Total×(0.20)	\$46	\$138	\$138
The Minnesota Pollution Control Agency (Agency) estimates that the costs listed above are full costs for equipment that is immediately installed. The Agency believes that these are the most likely costs owners and operators will incur the first year of regulation. The proposed regulations do not require immediate equipment replacement on the effective date of the rule. Instead, equipment will be installed as the equipment needs replacement. Based on historical UST tank system repairs and upgrades, it is more realistic to estimate that 20% of the total cost, a conservative estimate, will likely to be incurred in the first year of compliance for added MN-only requirements. Costs of these requirements may vary because owners/operators choose what upgrades will occur and when they occur. Further detail is provided in section 6.A.5 of the SONAR.				

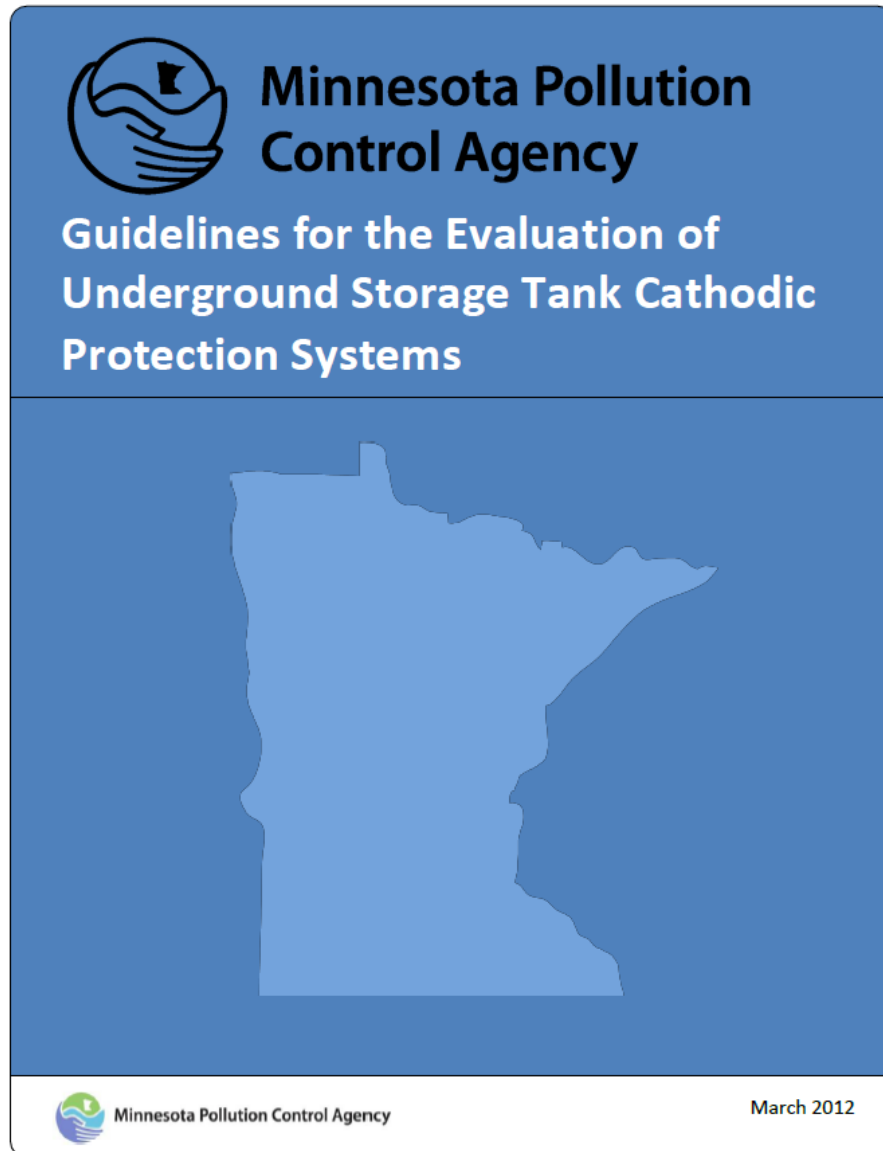
Category	MN only requirements and citation	Estimated costs: small facility	Estimated costs: medium facility	Estimated costs: large facility
(continued)	(10) Antisiphon devices (\$1,000 per device)	1-2 antisiphon devices (\$1,000 to \$2,000)	3-4 antisiphon devices (\$3,000 to \$4,000)	no known large facilities this would apply to
	(11) Line leak detectors on card-lock facilities \$1,200 per product;	1-2 line-leak detectors (\$1,200 to \$2,400)	3 to 6 line-leak detectors (\$3,600 to \$7,200)	no known large facilities this would apply to
	Estimated cost for first year of compliance for 5% of UST facilities in MN	\$4,400	\$11,200	\$0
	The Agency estimates that the costs listed above are full costs for equipment that is immediately installed. The Agency believes that these costs are less likely and that less than 5% of the sites in MN will be affected by these requirements and potential costs. Further detail is provided in section 6.A.5 of the SONAR.			
	(5) Underdispenser containment for island replacement	cost, if requirement is triggered; 1-4 dispenser sumps (\$2,000 to \$8,000)	cost, if requirement is triggered; 5-10 dispenser sumps (\$10,000 to \$20,000)	cost, if requirement is triggered; 11 or more dispenser sumps (\$22,000 or more)
	(8) Agency-approved testers (\$725 certification class and \$50 application fee; \$425/two years for recertification class and \$50 application fee)	optional costs: 4 years of agency-approved tester approval - \$1,250	optional costs: 4 years of agency-approved tester approval - \$1,250	optional costs: 4 years of agency-approved tester approval - \$1,250
	Estimated cost for first year of compliance for 5% of UST facilities in MN	\$9,250	\$21,250	\$23,250
	The Agency estimates that the costs listed above are full costs for equipment that is immediately installed, or for obtaining "agency-approved tester" status. The costs to obtain "agency-approved tester" status is not a requirement and is optional for owner/operators to obtain if they so choose. The costs for dispenser sumps when replacing islands ONLY will be incurred if the owner operators performs the island replacement and this requirement is triggered. The proposed regulations do not require immediate island replacement. Owners and operators can replace islands as they so choose, which triggers the underdispenser containment requirement. Based on the historical frequency of the island replacement, and the availability of independent testers as an alternative to immediate agency-approved tester status, it is more reasonable to estimate that less than 5% of the sites in MN will be affected by these requirements and potential costs. Further detail is provided in section 6.A.5 of the SONAR.			
(b) Manufacturers of UST systems	Already required tank components	none	none	none

Category	MN only requirements and citation	Estimated costs: small facility	Estimated costs: medium facility	Estimated costs: large facility
(c) Installers of UST systems	Administrative costs to understand new rules	none	none	none
(d) Contractors and consultants who provide UST-related maintenance, operational testing and services	Administrative costs to understand new rules	none	none	none
(e) State and federal government agencies which regulate or are otherwise involved with UST systems	UST system owners and operators          UST system regulators	same as (a)(1) to (a)(12)          none	same as (a)(1) to (a)(12)          none	same as (a)(1) to(a)(12)          none
(f) Citizens of the State of Minnesota	Pass through costs	negligible	negligible	negligible

Attachment 7.

The document pictured below is 68 pages and available at:

<https://www.pca.state.mn.us/sites/default/files/t-u5-10.pdf>





520 Lafayette Road North | St. Paul, Minnesota 55155-4194 | 651-296-6300

800-657-3864 | Use your preferred relay service | [info.pca@state.mn.us](mailto:info.pca@state.mn.us) | Equal Opportunity Employer

August 27, 2018

(via email only)

Legislative Reference Library  
645 State Office Building  
100 Rev. Dr. Martin Luther King Jr. Blvd.  
St. Paul, MN 55155

Re: In The Matter of the Proposed Rules of the Minnesota Pollution Control Agency Governing  
Underground Storage Tanks; Revisor's ID Number 4360

Dear Librarian:

The Minnesota Pollution Control Agency (Agency) intends to adopt rules governing underground storage tanks. We plan to publish a Dual Notice in the August 27, 2018, State Register.

The Agency has prepared a Statement of Need and Reasonableness. As required by Minnesota Statutes, sections 14.131 and 14.23, the Agency is sending the Library an electronic copy of the Statement of Need and Reasonableness at the same time we are mailing our Dual Notice.

If you have questions, please contact me at 651-757-2527.

Yours very truly,

A handwritten signature in cursive script that reads 'Yblanda Letnes'.

Yblanda Letnes  
Rule Coordinator

YL:bt

**From:** [Letnes, Yolanda \(MPCA\)](#)  
**To:** [sonars@lrl.leg.mn](mailto:sonars@lrl.leg.mn)  
**Subject:** Statement of Need and Reasonableness submittal  
**Date:** Monday, August 27, 2018 3:18:00 PM  
**Attachments:** [UST SONAR.pdf](#)  
[image001.png](#)  
[ltr-lrl signed.pdf](#)

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FYI,

Attached is a copy of the signed Statement of Need and Reasonableness for the Underground Storage Tanks rule that was public noticed on August 27, 2018.

Thanks,

**Yolanda Letnes** | Rule Coordinator  
Minnesota Pollution Control Agency (MPCA)  
520 Lafayette Road | St. Paul, MN | 55155  
Office Phone: (651) 757-2527  
[yolanda.letnes@state.mn.us](mailto:yolanda.letnes@state.mn.us) | [www.pca.state.mn.us](http://www.pca.state.mn.us)



**Our mission is to protect and improve the environment and enhance human health.**

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F.

## F. DUAL NOTICE

## Minnesota Pollution Control Agency

## Industrial Division

**DUAL NOTICE:** Notice of Intent to Adopt Rules Without a Public Hearing Unless 25 or More Persons Request a Hearing, and Notice of Hearing if 25 or More Requests for Hearing Are Received; Docket No. 68-9003-35384; Revisor's ID Number 4360.

**Proposed Amendment to Rules Governing Underground Storage Tanks, *Minnesota Rules*, Chapter 7150 Underground Storage Tanks (parts 7150.0010; 7150.0030; 7150.0090; 7150.0100; 7150.0205; 7150.0215; 7150.0216; 7150.0250; 7150.0300; 7150.0330; 7150.0340; 7150.0345; 7150.0400; 7150.0410; 7150.0430; 7150.0445; 7150.0450; 7150.0451; and 7150.0500), and**

**Repeal of *Minnesota Rules*, parts 7150.0010, subpart 4; 7150.0030, subparts 8, 23, 25a, 44a, and 49; 7150.0100, subparts 10 and 12; 7150.0211; 7150.0300, subparts 2 and 7; 7150.0330, subpart 2; 7150.0410, subparts 2 and 6; and 7150.0420**

**Plain English Summary.** This notice is the Minnesota Pollution Control Agency's (MPCA) legal notice of its intent to adopt amended underground storage tank rules. The purpose of these rules, known as the "UST update rules," is to amend existing underground storage tank (UST) requirements to (1) align state rules with federal requirements, (2) establish stricter requirements for certain requirements outlined in the Subject of Rules section of this notice, (3) reorganize the requirements for improved information grouping, (4) clarify language, and (5) update requirements to reflect current industry standards.

This notice provides an opportunity for public comment and input on the proposed rules. Anyone who would like to comment on the proposed rule language must submit written comment or a written request for a hearing on the proposed rules by the deadline identified below. The Subject of Rules section provides further description of these proposed rules. If the proposed rules affect you in any way, the MPCA encourages you to participate in the rulemaking process.

**Introduction.** The Minnesota Pollution Control Agency (MPCA) intends to adopt rules without a public hearing following the procedures in the rules of the Office of Administrative Hearings, *Minnesota Rules*, parts 1400.2300 to 1400.2310, and the Administrative Procedure Act, *Minnesota Statutes*, sections 14.22 to 14.28. If, however, 25 or more persons submit a written request for a hearing on the rules by 4:30 p.m. on Thursday, October 11, 2018, one public hearing will be convened at 3:30 p.m. on Thursday, October 25, 2018. The hearing will continue until all parties have been heard or until the Administrative Law Judge (ALJ) adjourns it. The public hearing will be held at the following locations:

- MPCA Brainerd Office, 7678 College Road, Suite 105, Baxter, MN 56425
- MPCA Duluth Office, 525 Lake Avenue South, Suite 400, Duluth, MN 55802
- Marshall, 504 Fairgrounds Road, Suite 200, Marshall, MN 56258
- MPCA St. Paul Office, 520 Lafayette Road North, Saint Paul, MN 55155

The MPCA will hold the hearing simultaneously at the four locations listed above via videoconference. The ALJ will conduct the hearing from the Saint Paul location. MPCA staff will be present at all four locations to facilitate the process and to ensure that all persons attending will be able to see, hear, and speak during the hearing. Directions to these offices can be found on the MPCA webpage at: <http://www.pca.state.mn.us/iryp3e4>.

To find out whether the MPCA will adopt the rules without a hearing or if it will hold the hearing, you should contact the MPCA contact person listed below after October 11, 2018, and before October 25, 2018.

**Availability of Rules.** A copy of the proposed rules is published in the *State Register* after this notice, or they can be viewed on the MPCA public notice webpage: <https://www.pca.state.mn.us/public-notice>, and on the underground storage tanks rulemaking webpage: <https://www.pca.state.mn.us/waste/underground-storage-tanks-ust-update-rulemaking>. A free copy of the proposed rules is also available upon request by contacting Mary Blackstock at 651-757-2207. Only one copy will be sent per request.

**Subject of Rules.** The United States Environmental Protection Agency (EPA) published final revisions to underground storage tank regulations on July 15, 2015, at Federal Register, volume 80, pages 41566-41683. Regulations are codified in title 40, Code of Federal Regulations, part 280 (40 CFR pt. 280). This federal action resulted in the need for the MPCA to revise state underground storage tank regulations to retain authority for implementing Minnesota's regulatory program and to avoid the need for regulated parties to comply with separate federal and state regulations. The MPCA may establish requirements that are equivalent to, or more stringent than, federal requirements. Some proposed revisions conform to federal requirements, while others establish stricter requirements to protect human health and the environment.

The MPCA is including three types of amendments in this rule revision:

1. Requirements equivalent to federal rules;
2. Requirements exceeding federal rules; and
3. Requirements that only relocate rules within the chapter, reformat rules for ease of reading, or provide simple clarification to the content.

The proposed amendments affect Minn. R. ch. 7150, and include requirements resulting from the final 2015 amendment of 40 CFR pt. 280 that address:

- Adding periodic operation and maintenance requirements for UST systems;
- Removing past deferrals for emergency generator tanks, airport hydrant systems, and field constructed tanks;
- Adding new release prevention and detection technologies;
- Updating codes of practice; and
- Editorial and technical corrections.

The proposed amendments will also clarify how new tank technologies apply to the regulations. The MPCA is proposing requirements that exceed federal rules in the following parts:

- Part 7150.0010, subp. 7. The proposed revision is a state-only requirement to require other potentially harmful substances to meet the compatibility requirements under proposed part 7150.0100, subp. 9. No other Minn. R. ch. 7150 requirements apply to tanks storing other potentially harmful substances.
- Part 7150.0090, subp. 9. The proposed revision establishes the requirement that the commissioner notify owners and operators of other regulated substances identified in the future that require a notice of compatibility.

- Part 7150.0100 subp. 9. The proposed amendments establish that if retrofit tanks are installed to meet current state and federal compatibility requirements, the retrofit tank must also have secondary containment.
- Part 7150.0100, subp. 13. The proposed rule language now requires shear valves of double-poppet construction to be used for newly installed shear valves. This is more restrictive than federal requirements.
- Part 7150.0205, subp. 1(C)(3)(b). The proposed revisions require that if a tank is new, replaced or retrofitted and is secondarily contained, the piping must also be secondarily contained. This requirement is already in effect under existing part 7150.0205, subp. 1(D)(3). The only addition to the existing rule is to include retrofit tanks because these types of systems are becoming more popular and requirements must be clarified.
- Part 7150.0205, subp. 6. Establishes that submersible pump sumps installed after December 22, 2007, must be integrity tested upon installation. The EPA rules do not address sump testing upon installation except for sumps installed that are part of a double-wall piping system required to conduct interstitial monitoring. This requirement was added to clarify that all sumps must be integrity tested upon installation regardless of whether they are part of a double-wall piping system. The requirements follow industry standards referenced in the rule and manufacturers' instructions.
- The proposed amendments also indicate submersible pumps installed prior to December 22, 2007, be accessible for inspection and shall not be covered in soil or other obstacles that prevent visual inspections. This amendment is needed to conduct appropriate visual inspections to identify substandard equipment before leaks occur. This amendment also follows industry standards referenced in the rule and manufacturers' instructions.
- Part 7150.0205 subp. 7. This subpart previously described when underdispenser containment sumps must be installed. New language proposed in this section now provides clarification and the additional requirement that if concrete or base material under the dispenser is replaced or modified, underdispenser containment is required.
- Part 7150.0205, subp. 8. The MPCA proposes to add emergency stop requirements for consistency with applicable Minnesota State Fire Code requirements.
- Part 7150.0215, subp. 2(C) and 3(D). Proposed amendments clarify that repairs to cathodic protection systems must be completed within 60 days of a failing test. New proposed language also provides clarification for cathodic protection (CP) system repairs, and allowable design standards. The EPA rules do not specify CP repair requirements other than testing after a CP repair. The MPCA believes it is important to specify repair criteria in the proposed rule to ensure repairs are done consistently and to meet industry standards. The proposed amendments provide clarification only and do not add any additional requirements.
- Part 7150.0216, subp. 1(B). The MPCA is establishing the requirement that testing wastes must be disposed of properly and documented. 40 CFR pt. 280 does not address the issue of proper disposal of testing material, but the topic is addressed in applicable federal and state hazardous waste regulations.
- Part 7150.0216, subp. 6. The MPCA is proposing to list the criteria of an "agency-approved tester" for the purpose of determining qualifications to test and/or inspect certain tank system components regulated under Minn. R. ch. 7150. EPA rules reference manufacturer specifications and PEI RP 1200 as acceptable methods to conduct the new testing/inspections. The specifications or methods require "qualified" people to perform the work. EPA rules do not

address “qualified” people. Thus, the MPCA added “agency-approved tester” qualifications to assure testing is done correctly and consistently by qualified people.

- Part 7150.0250, subps. 1 and 4. The MPCA is proposing to create a new subpart under part 7150.0250 to address restoration and corrective actions. The MPCA has always required tank system repairs to function properly. This new section provides clarification and will ensure malfunctioning equipment will be addressed in a timely and consistent manner.
- Part 7150.0300, subp. 6, items A and B. The MPCA is proposing to require antisiphoning devices on piping that is positioned lower than the top of the tank.
- Part 7150.0340, subps. 2 and 3. The MPCA is proposing revisions that distinguish the line-leak detection requirements between unattended card-lock facilities and other facilities. Proposed amendments require line-leak detectors at unattended card-lock facilities to alert the operator to the presence of a leak by shutting off the flow of regulated substance. However, line-leak detectors at other facilities can be notified by restricting or shutting off the flow of a regulated substance or by triggering an alarm. EPA rules do not make the same distinction in the rule. The MPCA determined it was important to make this clarification because unattended card-lock facilities can be unattended for days before an alarm or restricted product flow would be noticed. However, stopping the product flow can be done immediately by an automatic line-leak detector when operating properly.
- Part 7150.0345, subp. 1. The MPCA is proposing amendments that require investigation of suspected releases within 24 hours. The EPA rules allow seven days to begin an investigation or another timeframe specified by the implementing agency. The EPA reviewed this proposed amendment and has indicated that the 24-hour investigation timeline appears acceptable.
- Part 7150.0410, subp. 3(D). The MPCA is proposing that when a tank is lined or retrofitted according to proposed part 7150.0205, subp. 1, the original tank upon which the lining is secured is considered permanently closed and a site assessment must be done according to proposed part 7150.0345, subp. 3. EPA does not address such systems in the permanent closure section of their rules. The MPCA determined it was important to include retrofit tanks in the proposed rules as these types of systems are becoming more popular.
- Part 7150.0450. The MPCA is proposing that retention records must be kept for five years, instead of the shorter one or three year retention periods required by EPA for monthly walkthrough inspection records; spill, overfill, and containment sump testing and inspection records; tank and piping leak detection testing results; and annual leak detection equipment testing and inspections.

The MPCA is repealing obsolete *Minnesota Rules*, parts 7150.0010, subp. 4; 7150.0030, subps. 8, 23, 25a, 44a, and 49; 7150.0100, subp. 10 and 12; 7150.0211; 7150.0300, subps. 2 and 7; 7150.0330, subp. 2; 7150.0410, subps. 2 and 6; and 7150.0420.

**Statutory Authority.** The statutory authority to adopt the rules is Minnesota Statutes, section 116.49, Subdivision 1.

**Comments.** You have until **4:30 p.m. on Thursday, October 11, 2018**, to submit written comment in support of or in opposition to the proposed rules or any part or subpart of the rules. Your comment must be in writing and submitted **via the Office of Administrative Hearings Rulemaking eComments website at <https://minnesotaoah.granicusideas.com/discussions>** or directly to the **Administrative Law Judge** listed in the Notice of Hearing section below by the due date. Comment is encouraged. Your comments should identify the portion of the proposed rules addressed, the reason for

the comment, and any change proposed. You are encouraged to propose any change that you desire. Any comments that you have about the legality of the proposed rules must also be made during this comment period. Any questions about submitting comments via the Rulemaking eComments website should be directed to Katie Lin, Office of Administrative Hearings, at 651-361-7911 or [katie.lin@state.mn.us](mailto:katie.lin@state.mn.us). All comments received are public and will be available for review at the Office of Administrative Hearings.

**Request for a Hearing.** In addition to submitting comments, you may also request that the MPCA hold a hearing on the rules. You must make your request for a public hearing in writing by 4:30 p.m. on Thursday, October 11, 2018. Your written request must be submitted via <https://minnesotaoah.granicusideas.com/discussions> or directly to the Administrative Law Judge. You must include your name and address in your written request. In addition, you must identify the portion of the proposed rules that you object to or state that you oppose the entire set of rules. Any request that does not comply with these requirements is not valid and the MPCA cannot count it when determining whether it must hold a public hearing. You are also encouraged to state the reason for the request and any changes you want made to the proposed rules.

**Withdrawal of Requests.** If 25 or more persons submit a valid written request for a hearing, the MPCA will hold a public hearing unless a sufficient number of persons withdraw their requests in writing. If enough requests for hearing are withdrawn to reduce the number below 25, the MPCA must give written notice of this to all persons who requested a hearing, explain the actions the MPCA took to effect the withdrawal, and ask for written comments on this action. If a public hearing is required, the MPCA will follow the procedures in Minnesota Statutes, sections 14.131 to 14.20.

**Alternative Format/Accommodation.** Upon request, this information can be made available in an alternative format, such as large print, braille, or audio. To make such a request or if you need an accommodation to make this hearing accessible, please contact the MPCA contact person at the address or telephone number listed below.

**Modifications.** The MPCA may modify the proposed rules, either as a result of public comment or as a result of the rule hearing process. It must support modifications by data and views submitted to the MPCA or presented at the hearing. The adopted rules may not be substantially different than these proposed rules unless the MPCA follows the procedure under Minnesota Rules, part 1400.2110. If the proposed rules affect you in any way, the MPCA encourages you to participate in the rulemaking process.

**Cancellation of Hearing.** The MPCA will cancel the hearing scheduled for October 25, 2018, if 25 or more persons do not submit a request for a hearing as required under the Request for a Hearing section above. If you requested a public hearing, the MPCA will notify you before the scheduled hearing whether the hearing will be held. You may also call the MPCA contact person at 651-757-2527 after October 11, 2018, to find out whether the hearing will be held. On the scheduled day, you may check for whether the hearing will be held by calling 651-757-2527 or going on-line at <https://www.pca.state.mn.us/waste/underground-storage-tanks-ust-update-rulemaking>.

**Notice of Hearing.** If 25 or more persons submit valid written requests for a public hearing on the rules, the MPCA will hold a hearing following the procedures in Minnesota Statutes, sections 14.131 to 14.20. The MPCA will hold the hearing on the date and at the time and place listed above. The hearing will continue until all interested persons have been heard. Administrative Law Judge Jeanne

Cochran is assigned to conduct the hearing. Judge Cochran's Legal Assistant Katie Lin can be reached at the Office of Administrative Hearings, 600 North Robert Street, P.O. Box 64620, Saint Paul, Minnesota 55164-0620, telephone (651) 361-7900, and fax (651) 539-0310 or [katie.lin@state.mn.us](mailto:katie.lin@state.mn.us).

**Hearing Procedure.** If the MPCA holds a hearing, you and all interested or affected persons, including representatives of associations or other interested groups, will have an opportunity to participate. You may present your views either orally at the hearing or in writing at any time before the hearing record closes. All evidence presented should relate to the proposed rules. You may also submit written material to the Administrative Law Judge to be recorded in the hearing record for five working days after the public hearing ends. At the hearing the Administrative Law Judge may order that this five-day comment period is extended for a longer period but not more than 20 calendar days. Following the comment period, there is a five-working-day rebuttal period when the MPCA and any interested person may respond in writing to any new information submitted. No one may submit **new** evidence during the five-day rebuttal period. The Office of Administrative Hearings must receive all comments and responses submitted to the Administrative Law Judge or **via the Office of Administrative Hearings Rulemaking eComments website** at <https://minnesotaoah.granicusideas.com/discussions> no later than 4:30 p.m. on the due date. All comments or responses received will be available for review **at the Office of Administrative Hearings Rulemaking eComments website**. This rule hearing procedure is governed by *Minnesota Rules*, parts 1400.2000 to 1400.2240, and *Minnesota Statutes*, sections 14.131 to 14.20. You may direct questions about the procedure to the Administrative Law Judge.

**Statement of Need and Reasonableness.** The statement of need and reasonableness (SONAR) contains a summary of the justification for the proposed rules, including a description of who will be affected by the proposed rules and an estimate of the probable cost of the proposed rules. A print copy is available for the cost of reproduction by contacting the MPCA contact person identified below. The MPCA posted the SONAR on its public notice webpage at: <https://www.pca.state.mn.us/public-notice>, and the underground storage tanks rulemaking webpage at: <https://www.pca.state.mn.us/waste/underground-storage-tanks-ust-update-rulemaking>.

**Adoption Procedure if No Hearing.** If no hearing is required, the MPCA may adopt the rules after the end of the comment period. The MPCA will submit the rules and supporting documents to the Office of Administrative Hearings for a legal review. You may ask to be notified of the date the rules are submitted to the office. If you want either to receive notice of this, to receive a copy of the adopted rules, or to register with the MPCA to receive notice of future rule proceedings, submit your request to the MPCA contact person listed below.

**MPCA Contact Person.** The MPCA contact person is Yolanda Letnes at 520 Lafayette Road North, St. Paul, Minnesota 55155, telephone 651-757-2527, toll free 1-800-657-3864 or email [yolanda.letnes@state.mn.us](mailto:yolanda.letnes@state.mn.us). TTY users may use their preferred telecommunications relay service.

**Adoption Procedure after a Hearing.** If a hearing is held, after the close of the hearing record, the Administrative Law Judge will issue a report on the proposed rules. You may ask to be notified of the date that the Administrative Law Judge's report will become available, and can make this request at the hearing or in writing to the Administrative Law Judge. You may also ask to be notified of the date that the MPCA adopts the rules and the rules are filed with the Secretary of State by requesting this at the hearing or by writing to the MPCA contact person stated above.

**Lobbyist Registration.** Minnesota Statutes, chapter 10A, requires each lobbyist to register with the State Campaign Finance and Public Disclosure Board. Ask any questions about this requirement of the Campaign Finance and Public Disclosure Board at: Suite #190, Centennial Building, 658 Cedar Street, St. Paul, Minnesota 55155, telephone (651) 539-1180 or 1-800-657-3889.

**Order.** I order that the rulemaking hearing be held at the date, time, and location listed above.

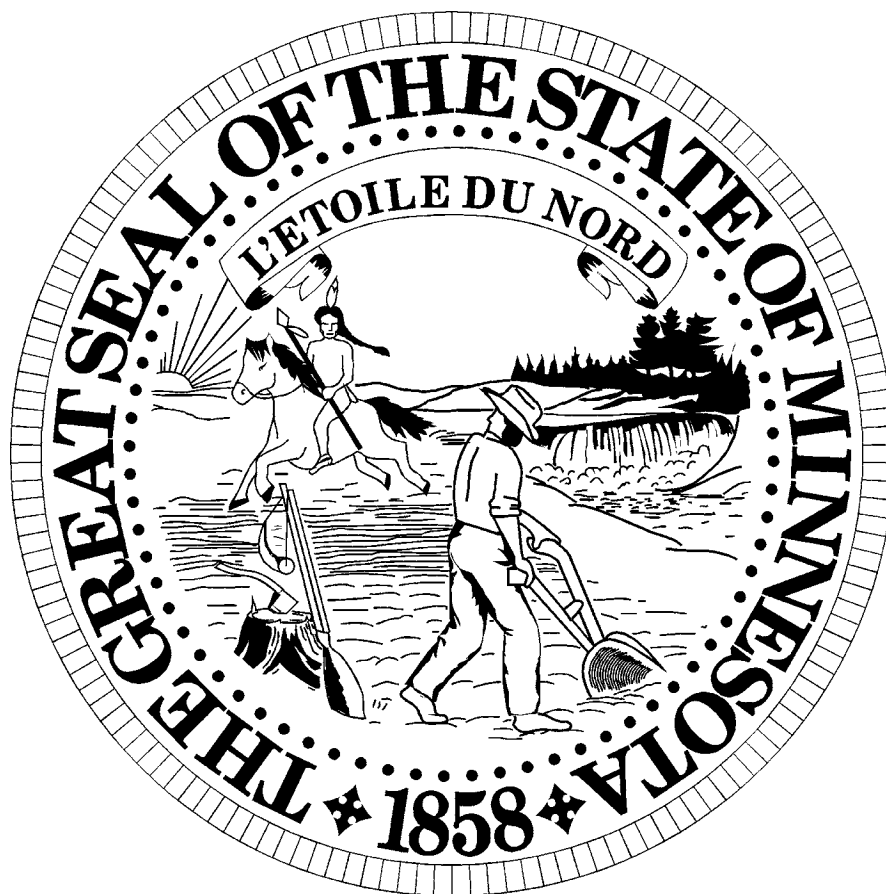
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Date

  
\_\_\_\_\_  
John Linc Stine, Commissioner  
Minnesota Pollution Control Agency



# Minnesota State Register

Published every Monday (Tuesday when Monday is a holiday)



**Proposed, Adopted, Emergency, Expedited, Withdrawn, Vetoed Rules;  
Executive Orders; Appointments; Commissioners' Orders; Revenue Notices;  
Official Notices; State Grants & Loans; State Contracts;  
Non-State Public Bids, Contracts and Grants**

**Monday 27 August 2018  
Volume 43, Number 9  
Pages 193 - 290**

# Proposed Rules

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occurrences in a given loan repayment period. In setting policies, the commissioner shall take into consideration the financial strength of the loan program, the impact of policy changes on the office's ability to obtain cost-effective financing options, current or projected market conditions, loan defaults, and bond rating agency requirements.

*[For text of item G, see M.R.]*

## Minnesota Pollution Control Agency (MPCA)

### Industrial Division

**Proposed Permanent Rules Relating to Underground Storage Tanks; DUAL NOTICE: Notice of Intent to Adopt Rules Without a Public Hearing Unless 25 or More Persons Request a Hearing, and Notice of Hearing if 25 or More Requests for Hearing Are Received; Docket No. 68-9003-35384; Revisor's ID Number 4360**

**Proposed Amendment to Rules Governing Underground Storage Tanks, *Minnesota Rules*, Chapter 7150 Underground Storage Tanks (parts 7150.0010; 7150.0030; 7150.0090; 7150.0100; 7150.0205; 7150.0215; 7150.0216; 7150.0250; 7150.0300; 7150.0330; 7150.0340; 7150.0345; 7150.0400; 7150.0410; 7150.0430; 7150.0445; 7150.0450; 7150.0451; and 7150.0500), and**

**Repeal of *Minnesota Rules*, parts 7150.0010, subpart 4; 7150.0030, subparts 8, 23, 25a, 44a, and 49; 7150.0100, subparts 10 and 12; 7150.0211; 7150.0300, subparts 2 and 7; 7150.0330, subpart 2; 7150.0410, subparts 2 and 6; and 7150.0420**

**Plain English Summary.** This notice is the Minnesota Pollution Control Agency's (MPCA) legal notice of its intent to adopt amended underground storage tank rules. The purpose of these rules, known as the "UST update rules," is to amend existing underground storage tank (UST) requirements to (1) align state rules with federal requirements, (2) establish stricter requirements for certain requirements outlined in the Subject of Rules section of this notice, (3) reorganize the requirements for improved information grouping, (4) clarify language, and (5) update requirements to reflect current industry standards.

This notice provides an opportunity for public comment and input on the proposed rules. Anyone who would like to comment on the proposed rule language must submit written comment or a written request for a hearing on the proposed rules by the deadline identified below. The Subject of Rules section provides further description of these proposed rules. If the proposed rules affect you in any way, the MPCA encourages you to participate in the rulemaking process.

**Introduction.** The Minnesota Pollution Control Agency (MPCA) intends to adopt rules without a public hearing following the procedures in the rules of the Office of Administrative Hearings, *Minnesota Rules*, parts 1400.2300 to 1400.2310, and the Administrative Procedure Act, *Minnesota Statutes*, sections 14.22 to 14.28. If, however, 25 or more persons submit a written request for a hearing on the rules by 4:30 p.m. on Thursday, October 11, 2018, one public hearing will be convened at 3:30 p.m. on Thursday, October 25, 2018. The hearing will continue until all parties have been heard or until the Administrative Law Judge (ALJ) adjourns it. The public hearing will be held at the following locations:

- MPCA Brainerd Office, 7678 College Road, Suite 105, Baxter, MN 56425
- MPCA Duluth Office, 525 Lake Avenue South, Suite 400, Duluth, MN 55802
- Marshall, 504 Fairgrounds Road, Suite 200, Marshall, MN 56258
- MPCA St. Paul Office, 520 Lafayette Road North, Saint Paul, MN 55155

The MPCA will hold the hearing simultaneously at the four locations listed above via videoconference. The ALJ will conduct the hearing from the Saint Paul location. MPCA staff will be present at all four locations to facilitate the process and to ensure that all persons attending will be able to see, hear, and speak during the hearing. Directions to these offices can be found on the MPCA webpage at: <http://www.pca.state.mn.us/iryp3e4>.

To find out whether the MPCA will adopt the rules without a hearing or if it will hold the hearing, you should

## Proposed Rules

contact the MPCA contact person listed below after October 11, 2018, and before October 25, 2018.

**Availability of Rules.** A copy of the proposed rules is published in the *State Register* after this notice, or they can be viewed on the MPCA public notice webpage: <https://www.pca.state.mn.us/public-notices>, and on the underground storage tanks rulemaking webpage:

<https://www.pca.state.mn.us/waste/underground-storage-tanks-ust-update-rulemaking>. A free copy of the proposed rules is also available upon request by contacting Mary Blackstock at 651-757-2207. Only one copy will be sent per request.

**Subject of Rules.** The United States Environmental Protection Agency (EPA) published final revisions to underground storage tank regulations on July 15, 2015, at Federal Register, volume 80, pages 41566-41683. Regulations are codified in title 40, Code of Federal Regulations, part 280 (40 CFR pt. 280). This federal action resulted in the need for the MPCA to revise state underground storage tank regulations to retain authority for implementing Minnesota's regulatory program and to avoid the need for regulated parties to comply with separate federal and state regulations. The MPCA may establish requirements that are equivalent to, or more stringent than, federal requirements. Some proposed revisions conform to federal requirements, while others establish stricter requirements to protect human health and the environment.

The MPCA is including three types of amendments in this rule revision:

1. Requirements equivalent to federal rules;
2. Requirements exceeding federal rules; and
3. Requirements that only relocate rules within the chapter, reformat rules for ease of reading, or provide simple clarification to the content.

The proposed amendments affect Minn. R. ch. 7150, and include requirements resulting from the final 2015 amendment of 40 CFR pt. 280 that address:

- Adding periodic operation and maintenance requirements for UST systems;
- Removing past deferrals for emergency generator tanks, airport hydrant systems, and field constructed tanks;
- Adding new release prevention and detection technologies;
- Updating codes of practice; and
- Editorial and technical corrections.

The proposed amendments will also clarify how new tank technologies apply to the regulations. The MPCA is proposing requirements that exceed federal rules in the following parts:

- Part 7150.0010, subp. 7. The proposed revision is a state-only requirement to require other potentially harmful substances to meet the compatibility requirements under proposed part 7150.0100, subp. 9. No other Minn. R. ch. 7150 requirements apply to tanks storing other potentially harmful substances.
- Part 7150.0090, subp. 9. The proposed revision establishes the requirement that the commissioner notify owners and operators of other regulated substances identified in the future that require a notice of compatibility.
- Part 7150.0100 subp. 9. The proposed amendments establish that if retrofit tanks are installed to meet current state and federal compatibility requirements, the retrofit tank must also have secondary containment.
- Part 7150.0100, subp. 13. The proposed rule language now requires shear valves of double-poppet construction to be used for newly installed shear valves. This is more restrictive than federal requirements.
- Part 7150.0205, subp. 1(C)(3)(b). The proposed revisions require that if a tank is new, replaced or retrofitted and is secondarily contained, the piping must also be secondarily contained. This requirement is already in effect under existing part 7150.0205, subp. 1(D)(3). The only addition to the existing rule is to include retrofit tanks because these types of systems are becoming more popular and requirements must be clarified.
- Part 7150.0205, subp. 6. Establishes that submersible pump sumps installed after December 22, 2007, must be integrity tested upon installation. The EPA rules do not address sump testing upon installation except for sumps installed that are part of a double-wall piping system required to conduct interstitial monitoring. This requirement was added to clarify that all sumps must be integrity tested upon installation regardless of whether they are part of a double-wall piping system. The requirements follow industry standards referenced in the rule and

# Proposed Rules

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manufacturers' instructions.

- The proposed amendments also indicate submersible pumps installed prior to December 22, 2007, be accessible for inspection and shall not be covered in soil or other obstacles that prevent visual inspections. This amendment is needed to conduct appropriate visual inspections to identify substandard equipment before leaks occur. This amendment also follows industry standards referenced in the rule and manufacturers' instructions.
- Part 7150.0205 subp. 7. This subpart previously described when underdispenser containment sumps must be installed. New language proposed in this section now provides clarification and the additional requirement that if concrete or base material under the dispenser is replaced or modified, underdispenser containment is required.
- Part 7150.0205, subp. 8. The MPCA proposes to add emergency stop requirements for consistency with applicable Minnesota State Fire Code requirements.
- Part 7150.0215, subp. 2(C) and 3(D). Proposed amendments clarify that repairs to cathodic protection systems must be completed within 60 days of a failing test. New proposed language also provides clarification for cathodic protection (CP) system repairs, and allowable design standards. The EPA rules do not specify CP repair requirements other than testing after a CP repair. The MPCA believes it is important to specify repair criteria in the proposed rule to ensure repairs are done consistently and to meet industry standards. The proposed amendments provide clarification only and do not add any additional requirements.
- Part 7150.0216, subp. 1(B). The MPCA is establishing the requirement that testing wastes must be disposed of properly and documented. 40 CFR pt. 280 does not address the issue of proper disposal of testing material, but the topic is addressed in applicable federal and state hazardous waste regulations.
- Part 7150.0216, subp. 6. The MPCA is proposing to list the criteria of an "agency-approved tester" for the purpose of determining qualifications to test and/or inspect certain tank system components regulated under Minn. R. ch. 7150. EPA rules reference manufacturer specifications and PEI RP 1200 as acceptable methods to conduct the new testing/inspections. The specifications or methods require "qualified" people to perform the work. EPA rules do not address "qualified" people. Thus, the MPCA added "agency-approved tester" qualifications to assure testing is done correctly and consistently by qualified people.
- Part 7150.0250, subps. 1 and 4. The MPCA is proposing to create a new subpart under part 7150.0250 to address restoration and corrective actions. The MPCA has always required tank system repairs to function properly. This new section provides clarification and will ensure malfunctioning equipment will be addressed in a timely and consistent manner.
- Part 7150.0300, subp. 6, items A and B. The MPCA is proposing to require antisiphoning devices on piping that is positioned lower than the top of the tank.
- Part 7150.0340, subps. 2 and 3. The MPCA is proposing revisions that distinguish the line-leak detection requirements between unattended card-lock facilities and other facilities. Proposed amendments require line-leak detectors at unattended card-lock facilities to alert the operator to the presence of a leak by shutting off the flow of regulated substance. However, line-leak detectors at other facilities can be notified by restricting or shutting off the flow of a regulated substance or by triggering an alarm. EPA rules do not make the same distinction in the rule. The MPCA determined it was important to make this clarification because unattended card-lock facilities can be unattended for days before an alarm or restricted product flow would be noticed. However, stopping the product flow can be done immediately by an automatic line-leak detector when operating properly.
- Part 7150.0345, subp. 1. The MPCA is proposing amendments that require investigation of suspected releases within 24 hours. The EPA rules allow seven days to begin an investigation or another timeframe specified by the implementing agency. The EPA reviewed this proposed amendment and has indicated that the 24-hour investigation timeline appears acceptable.
- Part 7150.0410, subp. 3(D). The MPCA is proposing that when a tank is lined or retrofitted according to proposed part 7150.0205, subp. 1, the original tank upon which the lining is secured is considered permanently closed and a site assessment must be done according to proposed part 7150.0345, subp. 3. EPA does not address such systems in the permanent closure section of their rules. The MPCA determined it was important to include retrofit tanks in the proposed rules as these types of systems are becoming more popular.
- Part 7150.0450. The MPCA is proposing that retention records must be kept for five years, instead of the shorter one or three year retention periods required by EPA for monthly walkthrough inspection records; spill, overfill, and containment sump testing and inspection records; tank and piping leak detection testing results; and annual

# Proposed Rules

leak detection equipment testing and inspections.

The MPCA is repealing obsolete *Minnesota Rules*, parts 7150.0010, subp. 4; 7150.0030, subps. 8, 23, 25a, 44a, and 49; 7150.0100, subp. 10 and 12; 7150.0211; 7150.0300, subps. 2 and 7; 7150.0330, subp. 2; 7150.0410, subps. 2 and 6; and 7150.0420.

**Statutory Authority.** The statutory authority to adopt the rules is Minnesota Statutes, section 116.49, Subdivision 1.

**Comments.** You have until **4:30 p.m. on Thursday, October 11, 2018**, to submit written comment in support of or in opposition to the proposed rules or any part or subpart of the rules. Your comment must be in writing and submitted **via the Office of Administrative Hearings Rulemaking eComments website at <https://minnesotaoah.granicusideas.com/discussions> or directly to the Administrative Law Judge** listed in the Notice of Hearing section below by the due date. Comment is encouraged. Your comments should identify the portion of the proposed rules addressed, the reason for the comment, and any change proposed. You are encouraged to propose any change that you desire. Any comments that you have about the legality of the proposed rules must also be made during this comment period. Any questions about submitting comments via the Rulemaking eComments website should be directed to Katie Lin, Office of Administrative Hearings, at 651-361-7911 or [katie.lin@state.mn.us](mailto:katie.lin@state.mn.us). All comments received are public and will be available for review at the Office of Administrative Hearings.

**Request for a Hearing.** In addition to submitting comments, you may also request that the MPCA hold a hearing on the rules. You must make your request for a public hearing in writing by 4:30 p.m. on Thursday, October 11, 2018. Your written request must be submitted via <https://minnesotaoah.granicusideas.com/discussions> or **directly to the Administrative Law Judge**. You must include your name and address in your written request. In addition, you must identify the portion of the proposed rules that you object to or state that you oppose the entire set of rules. Any request that does not comply with these requirements is not valid and the MPCA cannot count it when determining whether it must hold a public hearing. You are also encouraged to state the reason for the request and any changes you want made to the proposed rules.

**Withdrawal of Requests.** If 25 or more persons submit a valid written request for a hearing, the MPCA will hold a public hearing unless a sufficient number of persons withdraw their requests in writing. If enough requests for hearing are withdrawn to reduce the number below 25, the MPCA must give written notice of this to all persons who requested a hearing, explain the actions the MPCA took to effect the withdrawal, and ask for written comments on this action. If a public hearing is required, the MPCA will follow the procedures in Minnesota Statutes, sections 14.131 to 14.20.

**Alternative Format/Accommodation.** Upon request, this information can be made available in an alternative format, such as large print, braille, or audio. To make such a request or if you need an accommodation to make this hearing accessible, please contact the MPCA contact person at the address or telephone number listed below.

**Modifications.** The MPCA may modify the proposed rules, either as a result of public comment or as a result of the rule hearing process. It must support modifications by data and views submitted to the MPCA or presented at the hearing. The adopted rules may not be substantially different than these proposed rules unless the MPCA follows the procedure under Minnesota Rules, part 1400.2110. If the proposed rules affect you in any way, the MPCA encourages you to participate in the rulemaking process.

**Cancellation of Hearing.** The MPCA will cancel the hearing scheduled for October 25, 2018, if 25 or more persons do not submit a request for a hearing as required under the Request for a Hearing section above. If you requested a public hearing, the MPCA will notify you before the scheduled hearing whether the hearing will be held. You may also call the MPCA contact person at 651-757-2527 after October 11, 2018, to find out whether the hearing will be held. On the scheduled day, you may check for whether the hearing will be held by calling 651-757-2527 or going on-line at <https://www.pca.state.mn.us/waste/underground-storage-tanks-ust-update-rulemaking>.

**Notice of Hearing.** If 25 or more persons submit valid written requests for a public hearing on the rules, the MPCA will hold a hearing following the procedures in Minnesota Statutes, sections 14.131 to 14.20. The MPCA will hold the hearing on the date and at the time and place listed above. The hearing will continue until all interested persons have been heard. Administrative Law Judge Jeanne Cochran is assigned to conduct the hearing. Judge Cochran's Legal Assistant Katie Lin can be reached at the Office of Administrative Hearings, 600 North Robert Street, P.O. Box 64620, Saint Paul, Minnesota 55164-0620, telephone (651) 361-7900, and fax (651) 539-0310 or [katie.lin@state.mn.us](mailto:katie.lin@state.mn.us).

# Proposed Rules

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**Hearing Procedure.** If the MPCA holds a hearing, you and all interested or affected persons, including representatives of associations or other interested groups, will have an opportunity to participate. You may present your views either orally at the hearing or in writing at any time before the hearing record closes. All evidence presented should relate to the proposed rules. You may also submit written material to the Administrative Law Judge to be recorded in the hearing record for five working days after the public hearing ends. At the hearing the Administrative Law Judge may order that this five-day comment period is extended for a longer period but not more than 20 calendar days. Following the comment period, there is a five-working-day rebuttal period when the MPCA and any interested person may respond in writing to any new information submitted. No one may submit **new** evidence during the five-day rebuttal period. The Office of Administrative Hearings must receive all comments and responses submitted to the Administrative Law Judge or **via the Office of Administrative Hearings Rulemaking eComments website at <https://minnesotaoah.granicusideas.com/discussions>** no later than 4:30 p.m. on the due date. All comments or responses received will be available for review **at the Office of Administrative Hearings Rulemaking eComments website.** This rule hearing procedure is governed by *Minnesota Rules*, parts 1400.2000 to 1400.2240, and *Minnesota Statutes*, sections 14.131 to 14.20. You may direct questions about the procedure to the Administrative Law Judge.

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**Lobbyist Registration.** Minnesota Statutes, chapter 10A, requires each lobbyist to register with the State Campaign Finance and Public Disclosure Board. Ask any questions about this requirement of the Campaign Finance and Public Disclosure Board at: Suite #190, Centennial Building, 658 Cedar Street, St. Paul, Minnesota 55155, telephone (651) 539-1180 or 1-800-657-3889.

**Order.** I order that the rulemaking hearing be held at the date, time, and location listed above.

Date: 8/9/18

John Linc Stine, Commissioner  
Minnesota Pollution Control Agency

# Proposed Rules

## 7150.0010 APPLICABILITY.

*[For text of subp 1, see M.R.]*

Subp. 2. **Exclusions.** The following ~~underground storage tank~~ UST systems are excluded from the requirements of this chapter:

A. ~~an underground storage tank~~ a UST system holding:

(1) hazardous wastes listed or identified under:

(a) chapter 7045 or;

(b) Code of Federal Regulations, title 40, part 261; or

(c) subtitle C of the Solid Waste Disposal Act, United States Code, title 42, section 6921 et seq.; or

(2) a mixture of such hazardous waste and other regulated substances;

B. a wastewater treatment tank system that is part of a wastewater treatment facility regulated under United States Code, title 33, section 1317 or 1342 section 307(b) or 402 of the federal Clean Water Act;

*[For text of items C to J, see M.R.]*

K. a surface impoundment, pit, pond, or lagoon used for storing storm water, wastewater, or animal waste;

*[For text of items L and M, see M.R.]*

N. a storage tank situated in an underground area such as a basement, cellar, mineworking, drift, shaft, or tunnel if the storage tank is located upon or above the surface of the floor; and

O. an oil-water separator;

P. ~~underground storage tank systems containing radioactive material that are regulated under the Atomic Energy Act of 1954, United States Code, title 42, sections 2011 to 2296;~~

Q. ~~an underground storage tank system that is part of an emergency generator system at nuclear power generation facilities regulated by the Nuclear Regulatory Commission under Code of Federal Regulations, title 10, part 50, Appendix A; and~~

R. ~~airport hydrant fuel distribution systems.~~

Subp. 3. [Repealed, 32 SR 1751]

Subp. 4. [See repealer.]

Subp. 5. **Heating oil tanks.** Parts 7150.0010; 7150.0030; 7150.0090, subparts 1, 2, 4, ~~and 6, and 7;~~ 7150.0100, subparts 7; ~~and 9, and 10;~~ and 7150.0205, subparts 1 to 4; 7150.0250, subpart 2; and 7150.0345, subpart 2, apply to ~~an underground storage tank~~ a UST system of over 1,100 gallons capacity used exclusively for storing heating oil for consumptive use on the premises where stored.

Subp. 6. **Partially excluded tank systems.** Parts 7150.0010, 7150.0030, and 7150.0090, subpart 2, apply to items A to D. Parts 7150.0100, subpart 9, and 7150.0205, subparts 1, item B; 2; 3, item B; and 4, apply to items A, C, and D:

A. wastewater treatment tanks not regulated under section 307(b) or 402 of the federal Clean Water Act;

B. aboveground storage tanks associated with:

# Proposed Rules

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(1) airport hydrant fuel distribution systems regulated under part 7150.0451; and

(2) underground storage tanks with field-constructed tanks regulated under part 7150.0451;

C. UST systems containing radioactive material regulated under the federal Atomic Energy Act of 1954, United States Code, title 42, sections 2011 to 2296; and

D. a UST system that is part of an emergency-generator system at facilities that generate nuclear power and are licensed by the Nuclear Regulatory Commission and subject to Nuclear Regulatory Commission requirements regarding design and quality criteria under Code of Federal Regulations, title 10, part 50.

Subp. 7. **Other potentially harmful substances.** Part 7150.0100, subpart 9, applies to underground storage tanks storing other potentially harmful substances.

## 7150.0030 DEFINITIONS.

Subpart 1. **Scope.** For the purposes of this chapter, the ~~following terms and abbreviations in this part~~ have the meanings given them. Terms that are not specifically defined have the meanings given ~~them~~ in Minnesota Statutes, sections 115.01, 115C.02, and 116.46.

Subp. 2. **Agency.** “Agency” means the Minnesota Pollution Control Agency or, if a regulated substance is released or spilled, the Minnesota duty officer pursuant to Minnesota Statutes, section 115E.09.

Subp. 2a. **Agency-approved tester.** “Agency-approved tester” means a person approved by the commissioner to inspect and test components of a UST system according to part 7150.0216, subpart 6, item A.

Subp. 2b. **Airport hydrant fuel distribution system.** “Airport hydrant fuel distribution system,” also called an airport hydrant system, means a UST system that fuels aircraft and operates under high pressure with large diameter piping that typically terminates into one or more hydrants or fill stands with fueling points.

Subp. 3. **Appurtenances.** “Appurtenances” means ~~devices~~ components of a UST system such as piping, fittings, flanges, valves, dispensers, and pumps used to distribute, meter, or control the flow of regulated substances to or from an underground storage tank.

Subp. 4. **Beneath the surface of the ground.** “Beneath the surface of the ground” means ~~beneath the ground below the surface of the ground, concrete, or asphalt~~ or otherwise covered with earthen materials.

Subp. 4a. **Business hours.** “Business hours” means a minimum of six hours each day, Monday through Friday, excluding holidays, during which business is conducted.

Subp. 5. **Cathodic protection.** “Cathodic protection” means using a technique to prevent corrosion of a metal surface by making that surface the cathode of an electrochemical cell. For example, a ~~tank~~ UST system can be cathodically protected through the application of either galvanic sacrificial anodes or impressed current.

Subp. 6. ~~Cathodic protection~~ **Cathodic-protection tester.** “~~Cathodic protection~~ Cathodic-protection tester” means a person who has demonstrated an understanding of the principles and measurements of all common types of ~~cathodic-protection~~ cathodic-protection systems as applied to buried or submerged metal piping and ~~tank~~ UST systems; by passing a test on cathodic protection test given by the National Association of Corrosion Engineers NACE International or the Steel Tank Institute. ~~Such persons~~ The person must also have education and experience in soil resistivity, stray current, structure-to-soil potential, and component electrical isolation measurements of buried metal piping and ~~tank~~ UST systems.

*[For text of subp 7, see M.R.]*



# Proposed Rules

Subp. 8. [See repealer.]

Subp. 8a. **Class A operator.** “Class A operator” means an individual who has primary responsibility to operate and maintain the UST system.

Subp. 8b. **Class B operator.** “Class B operator” means an individual who has daily responsibility to operate and maintain the UST system.

Subp. 8c. **Class C operator.** “Class C operator” means an individual who has daily on-site presence and responsibility to handle emergencies and alarms pertaining to a spill or release from the UST system.

*[For text of subps 9 and 10, see M.R.]*

Subp. 11. **Connected piping.** “Connected piping” means underground piping including valves, elbows, joints, flanges, and flexible connectors attached to a ~~tank~~ UST system through which regulated substances flow. For the purpose of determining how much piping is connected to an individual ~~underground storage tank~~ UST system, the piping that joins two ~~underground storage tank~~ UST systems is allocated equally between them.

*[For text of subp 12, see M.R.]*

Subp. 12a. **Containment sump.** “Containment sump” means a single- or double-walled liquid-tight container that:

A. protects the environment by containing leaks and spills of regulated substances from piping, dispensers, pumps, and related components in the containment area; and

B. is located at the top of the tank, such as tank top or submersible turbine pump sumps; underneath the dispenser, such as underdispenser containment sumps; or at other points in the piping run, such as transition or intermediate sumps.

*[For text of subps 13 to 15, see M.R.]*

Subp. 16. **Excavation zone.** “Excavation zone” means the volume containing the ~~tank~~ UST system and backfill material bounded by the ground surface, walls, and floor of the pit and trenches into which the ~~underground storage tank~~ UST system is placed at the time of installation.

*[For text of subps 17 and 18, see M.R.]*

Subp. 18a. **Field-constructed tank.** “Field-constructed tank” means a tank that is built or assembled at the tank site, but does not include a tank with a lining.

*[For text of subps 19 to 21, see M.R.]*

Subp. 22. **Hazardous material substance.**

A. “Hazardous material substance” means:

~~A.~~

(1) a substance listed in Code of Federal Regulations, title 40, part 302, including petroleum constituents under subpart 36, item C, but not including:

(+)

(a) a hazardous waste listed or identified under chapter 7045 or Code of Federal Regulations, title 40, part 261, and subtitle C of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA); or

(2)

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(b) petroleum under subpart 36, item A, B, or D; or

(3) a substance that is not liquid at a temperature of 60 degrees Fahrenheit and pressure of 14.7 pounds per square inch absolute; or

B.

(2) any mixture of substances identified in ~~item A~~ subitem (1) and petroleum, unless the amount of the substance identified in ~~item A~~ subitem (1) is de minimis.

B. Substances identified in ~~items item A and B~~ which that also meet the definition of petroleum are considered hazardous ~~materials~~ substances.

Subp. 23. [See repealer.]

*[For text of subps 24 and 25, see M.R.]*

Subp. 25a. [See repealer.]

Subp. 25b. **Impressed current or impressed-current system.** “Impressed current” or “impressed-current system” means a method of corrosion protection that generates a cathodic current from a power source, such as a rectifier that converts alternating current to direct current, where the cathodic current flows from the anodes through the soil to the UST system and returns to the power source through an insulated wire attached to the UST system.

Subp. 25c. **Leak.** “Leak” means discharge of a regulated substance or any other potentially harmful substance from a point in a UST system that is not intended to be a discharge or dispensing point. A leak that reaches the environment is a release.

Subp. 25d. **Leak detection.** “Leak detection” has the meaning given under subpart 42.

Subp. 25e. **Lessee.** “Lessee” means a person that leases a UST system. A lessee is also an operator if the lessee is in control of the daily operation of the UST system.

Subp. 25f. **Lining or internal lining.** “Lining” or “internal lining” means a coating of noncorrosive material bonded to the interior surface of a tank.

Subp. 25g. **Liquid tight.** “Liquid tight” means that liquid is not able to leak from a component of a UST system and that subsurface water is not able to infiltrate a tank, pipe, or secondary-containment area.

*[For text of subp 26, see M.R.]*

Subp. 27. **Motor fuel.** “Motor fuel” means ~~petroleum or a petroleum-based substance that is motor gasoline, aviation gasoline, No. 1 or 2 diesel fuel, biodiesel, or any grade of gasohol, and is typically used in the operation of a motor engine~~ a complex blend of hydrocarbons used to operate a motor engine, such as motor gasoline, aviation gasoline, No. 1 or No. 2 diesel fuel, or a blend containing one or more of these substances.

*[For text of subps 28 and 29, see M.R.]*

Subp. 29a. **Noncorrodible material.** “Noncorrodible material” means a synthetic or processed material that is certified for use in UST systems and compatible with the substance being stored in a UST system and the surrounding environment.

*[For text of subp 30, see M.R.]*

Subp. 31. **Operational life.** “Operational life” means the period beginning when installation of the ~~tank~~ UST system has begun until the time the ~~tank~~ UST system is permanently closed under part 7150.0410.

Subp. 32. **Operator.**

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A. “Operator” means a person who:

(1) ~~a person in~~ has control of or ~~having~~ responsibility for the daily operation of the ~~underground storage tank~~ UST system or ~~a person who was in;~~

(2) had control of or ~~had~~ responsibility for the daily operation of the tank immediately before discontinuation of ~~its the tank’s~~ use. ~~Operator also means;~~

(3) ~~a person who~~ is responsible under Minnesota Statutes, section 115C.021, for a release from an underground storage tank containing petroleum; ~~or~~

(4) ~~a person who~~ is responsible under Minnesota Statutes, section 115B.03, for a release from an underground storage tank containing a hazardous ~~material~~ substance.

B. Operator does not include a person who operates a tank if the tank is not regulated by this chapter.

Subp. 32a. **Other potentially harmful substances.** “Other potentially harmful substances” means substances that are not regulated substances when used as intended by the manufacturer but that may cause harm to human health and the environment if released from a leaking UST system because of the volume and nature of the release. Other potentially harmful substances does not include:

A. petroleum substances under standard temperature and pressure; or

B. hazardous substances.

Subp. 32b. **Out of service.** “Out of service” means the status of a UST system from which a regulated substance is not or has not been introduced or dispensed, pending a decision or action to close the UST system or begin reusing the UST system.

*[For text of subp 33, see M.R.]*

Subp. 34. **Owner.**

A. “Owner” means a person who:

(1) holds title to, controls, or possesses an interest in an underground storage tank; ~~and a person who;~~

(2) held title to, controlled, or possessed an interest in the tank immediately before discontinuation of ~~its the~~ tank’s use. ~~Owner also means a person who;~~

(3) is responsible under Minnesota Statutes, section 115C.021, for a release from an underground storage tank containing petroleum; ~~or a person who; or~~

(4) is responsible under Minnesota Statutes, section 115B.03, for a release from an underground storage tank containing a hazardous ~~material~~ substance.

B. Owner does not include a person who:

(1) owns a tank if the tank is not regulated by this chapter ~~and does not include a person who; or~~

(2) holds an interest in a tank solely for financial security, unless through foreclosure or other related actions the holder of a security interest has taken possession of the tank.

Subp. 34a. **Permanent closure.** “Permanent closure” means permanently taking a UST system out of service by

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either closing it in place or removing it from the ground.

*[For text of subp 35, see M.R.]*

Subp. 36. **Petroleum.** “Petroleum” means one of the following substances:

*[For text of items A to C, see M.R.]*

D. petroleum-based substances that are comprised of a complex blend of hydrocarbons ~~derived from crude oil through processes of separation, conversion, upgrading, and finishing~~, such as motor fuels, jet fuels, distillate fuel oils, residual fuel oils, lubricants, and used oils.

Subp. 37. **Petroleum ~~underground storage tank~~ UST system.** “Petroleum ~~underground storage tank~~ UST system” means ~~an underground storage tank~~ a UST system that is used to contain petroleum or a mixture of petroleum with de minimis quantities of hazardous ~~materials~~ substances.

Subp. 38. **Pipe or piping.** “Pipe” or “piping” means a hollow cylinder or tubular conduit for conveying a regulated substance from one point to another within ~~an underground storage tank~~ a UST system ~~that is made of nonearthen materials.~~

Subp. 38a. **Piping system.** “Piping system” means piping, secondary containment, leak-detection devices, tubing, flanges, gaskets, valves, fittings, flexible connectors, and other pipe appurtenances that mix, separate, distribute, meter, or control flow and any core components that allow the piping system to function as intended and in accordance with installation requirements. Piping system includes:

A. a pipe run, which is the portion of the pipe from the submersible pump to the furthest dispenser, or in the case of suction piping, from the top of the tank to the furthest dispenser, or in cases where piping enters a building, the first pipe joint inside the building. UST systems may have multiple pipe runs;

B. a pipe segment, which is the portion of pipe between components in a pipe run, such as from the pump to a dispenser or between two dispensers; and

C. a pipe section, which is the portion of a pipe segment that is limited to ten feet in length.

*[For text of subp 39, see M.R.]*

Subp. 39a. **Product.** “Product” means a regulated substance.

Subp. 40. **Regulated substance.** “Regulated substance” means a hazardous ~~material~~ substance or petroleum.

Subp. 41. **Release.** “Release” means a spilling, leaking, emitting, discharging, escaping, leaching, or disposing from ~~an underground storage tank~~ a UST system into the environment including spills associated with overfills and transfer operations as the regulated substance moves to or from ~~an underground storage tank~~ a UST system. “Release” does not include discharges or designed venting allowed under agency rules.

Subp. 42. **Release detection or leak detection.** “Release detection” or “leak detection” means determining whether a release of a regulated substance has occurred from the ~~underground storage tank~~ UST system:

A. into the environment; or

B. into the interstitial space between the ~~underground storage tank~~ UST system and its secondary barrier or between the UST system and its secondary containment around it.

Subp. 43. **Repair.** “Repair” means ~~the correction or restoration to operating condition of an underground storage tank or appurtenance~~ to correct or restore a component of a UST system to the component’s original design function or operating condition.

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A. “Piping repair” includes ~~installation of~~ installing a single run section of up to ten feet of new piping to replace existing piping. Piping repair involving installation of a single run of more than ten feet of new piping to replace existing piping constitutes replacement.

B. “Dispenser repair” includes ~~installation of~~ installing a new dispenser to replace an existing dispenser so long as if work is performed entirely on or above any shear valves and check valves. Installation of a new dispenser to replace an existing dispenser constitutes replacement if the work is performed beneath any shear valves or check valves or on any flexible connectors or unburied risers.

C. “Tank repair” includes repairing a tank lining, patching or coating damaged areas, and repairing or replacing corrosion protection.

Subp. 43a. **Replace or replacement.** “Replace” or “replacement” means ~~the installation of~~ to install a new under-ground storage tank or appurtenance component for a UST system in substantially the same location as another tank or appurtenance component of a UST system in lieu of that tank or appurtenance, not including installation of new piping in connection with certain repairs as described in subpart 43. component. Replacement includes:

A. piping repair to install a single piping segment or an accumulation of piping segments of more than ten feet of new piping to replace existing piping;

B. installing a new dispenser if work is performed beneath any shear valve or check valve or on any flexible connector or unburied riser; and

C. installing a replacement submersible pump that involves removing the pump head from the riser.

Subp. 43b. **Retrofit tank.** “Retrofit tank” means a new tank installed in an existing host tank as an internal lining according to part 7150.0205, subpart 1.

*[For text of subp 44, see M.R.]*

Subp. 44a. [See repealer.]

Subp. 44b. **Sacrificial-anode system.** “Sacrificial-anode system” means a cathodic-protection system that uses zinc, magnesium, or other anodic metals buried near and connected to the metal surface that is being protected.

Subp. 44c. **Secondary containment or secondarily contained.** “Secondary containment” or “secondarily contained” means a release-prevention and release-detection system that is used for a UST system and that has an inner and outer barrier with an interstitial space that is monitored for leaks.

*[For text of subp 45, see M.R.]*

Subp. 45a. **Spill bucket.** “Spill bucket” means a containment structure designed to capture releases that may occur in the UST fill port when a regulated substance is transferred. “Spill containment,” “spill container,” and “spill catchment basin” have the same meaning as spill bucket.

*[For text of subp 46, see M.R.]*

Subp. 46a. **Sump.** “Sump” means an area belowground that is designed to provide access to components of a UST system such as pumps, valves, piping, and fittings. Sump includes a dirt sump, an uncontained sump, and a containment sump.

*[For text of subps 47 and 48, see M.R.]*

Subp. 49. [See repealer.]

Subp. 49a. **Unattended card-lock facility.** “Unattended card-lock facility” means a facility where dispensing a regulated substance during business hours is mechanically or electronically controlled without the constant on-site presence of a class A, B, or C operator.

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Subp. 50. **Underground area.** “Underground area” means an underground room such as a basement, cellar, shaft, or vault providing enough space for physical inspection of the entire exterior of the tank or the tank’s secondary containment, situated on or above the surface of the floor.

Subp. 50a. **Underground storage tank or UST.** “Underground storage tank” or “UST” means any one or combination of tanks, vessels, enclosures, structures, or internal linings that is used to contain an accumulation of regulated substances or other potentially harmful substances when the combined volume, including the volume of connected pipes, is ten percent or more beneath the surface of the ground. An underground storage tank does not include any tank described in part 7150.0010, subpart 2.

Subp. 51. **~~Underground storage tank or underground storage tank~~ storage-tank system or UST system.**

A. “~~Underground storage tank~~” or “~~underground storage tank~~ ~~storage-tank~~ system” or “UST system” means ~~any one or combination of containers including tanks, vessels, enclosures, or structures and underground appurtenances connected to them that is used to contain or dispense an accumulation of regulated substances, and the volume of which, including the volume of underground pipes connected to them, is ten percent or more beneath the surface of the ground. This term an underground storage tank and any underground piping or equipment connected to an underground storage tank that is used to:~~

- (1) dispense a regulated substance or other potentially harmful substance;
- (2) provide for safe operation of the tank, piping, or appurtenances; or
- (3) detect and prevent a release to the environment.

B. UST system does not include any ~~tank or tanks, pipes, or appurtenances~~ connected to a tank described in part 7150.0010, subpart 2.

Subp. 51a. **Unusual operating condition.** “Unusual operating condition” means:

A. a condition, equipment deficiency, or occurrence that:

- (1) results in a release of a regulated substance;
- (2) indicates the possibility of a leak from a UST system;
- (3) creates a reasonable expectation that a leak from a UST system is probable; or
- (4) may cause an undetected leak;

B. an unexplained presence of water in the tank; or

C. liquid in the interstitial space of secondary-containment systems.

*[For text of subps 52 and 53, see M.R.]*

## 7150.0090 NOTIFICATION AND CERTIFICATION.

Subpart 1. **Prenotification.** At least ten days before beginning any of the following activities, owners and operators must notify the commissioner agency in the manner prescribed by the commissioner of their intent to perform the activity:

A. installation or replacement, or repair of an underground storage tank a UST system, including tanks, piping, or dispensers linings, containment sumps, and corrosion protection systems, but excluding dispensers and exposed

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components below grade that can be visually inspected;

*[For text of items B and C, see M.R.]*

D. inspection of a lining on an internally lined tank.

Subp. 2. **Notification of installation, replacement, or change in status.** ~~An owner or operator~~ Owners and operators who ~~brings an underground storage tank~~ bring a UST system, including tanks, piping, or dispensers, or components such as tanks, retrofit tanks, piping, or dispensers into use or ~~makes~~ make a change in status must, within 30 days of bringing ~~such tank~~ the UST system into use or making a change in status, submit to the agency, in the manner prescribed by the commissioner, a notice of the existence of ~~such tank~~ the UST system or type of change in status, including the information required by Minnesota Statutes, section 116.48, subdivisions 1 and 3.

Subp. 3. **Certification by owners and operators.** Owners and operators of new and replacement ~~underground storage tank~~ UST systems, including tanks, ~~retrofit tanks~~, piping, and dispensers, must sign and certify in the notification form compliance with the following requirements:

*[For text of item A, see M.R.]*

B. financial responsibility under Code of Federal Regulations, title 40, part 280, subpart H; ~~and~~

C. release detection according to parts 7150.0300 to 7150.0340-; ~~and~~

D. corrosion protection according to part 7150.0215.

Subp. 4. **Certification by installers.** Owners and operators of new and replacement ~~underground storage tank~~ UST systems, including tanks, ~~retrofit tanks~~, piping, or dispensers, must ensure that the installer signs and certifies in the notification form that:

A. all work was performed as specified by the manufacturer's instructions;

B. all work was performed according to the applicable codes of practice in ~~part~~ parts 7150.0205 and 7150.0500;

*[For text of items C and D, see M.R.]*

*[For text of subps 5 and 6, see M.R.]*

Subp. 7. **Notification of tank purchase.** A person who purchases property that the purchaser knows contains ~~an underground storage tank~~ a UST system must notify the ~~commissioner~~ agency within 30 days after closing the transaction, pursuant to subpart 2. The notification ~~shall~~ must include the change in ownership and verify that all operators, including lessees, have read this chapter and have sufficient knowledge in the operation and maintenance of ~~underground storage tank~~ UST systems.

Subp. 8. **Notification of compatibility.** Owners and operators of a UST system must notify the agency at least 30 days before storing a regulated substance containing more than ten percent ethanol, more than 20 percent biodiesel, or any other regulated substance identified by the commissioner as a substance that could degrade components of a UST system. Owners and operators must demonstrate to the commissioner that the components of the UST system are compatible with the product being stored in accordance with part 7150.0100, subpart 9.

Subp. 9. **Notification of other regulated substances.** The commissioner must notify owners and operators in writing or electronically if the commissioner identifies any other regulated substances that require notice of compatibility under subpart 8.

## 7150.0100 PERFORMANCE STANDARDS FOR ~~UNDERGROUND STORAGE TANK~~ UST SYSTEMS.

*[For text of subps 1 to 6, see M.R.]*

Subp. 7. **Installation.** Owners and operators must ensure that the person installing UST systems or components has been certified under chapter 7105. All ~~underground storage tank~~ UST systems must be properly installed according to the

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manufacturer's instructions and one of the following codes of practice developed by a nationally recognized association or independent testing laboratory. The codes are incorporated by reference under part 7150.0500:

~~A. American Petroleum Institute, Installation of Underground Petroleum Storage Systems, API 1615 (1996);~~

~~B. Petroleum Equipment Institute, Recommended Practices for Installation of Underground Liquid Storage Systems, RP100 (2005);~~

~~C. American Society of Mechanical Engineers, Process Piping, B31.3 (2005); or~~

~~D. American Society of Mechanical Engineers, Pipeline Transportation Systems for Liquid Hydrocarbons and Other Liquids, B31.4 (2006).~~

A. American Petroleum Institute, Installation of Underground Petroleum Storage Systems, API RP 1615;

B. National Fire Protection Association:

(1) Flammable and Combustible Liquids Code, NFPA 30; and

(2) Code for Motor Fuel Dispensing Facilities and Repair Garages, NFPA 30A; and

C. Petroleum Equipment Institute:

(1) Recommended Practices for the Installation of Marina Fueling Systems, PEI/RP1000-14; and

(2) Recommended Practices for Installation of Underground Liquid Storage Systems, PEI/RP100-11.

Subp. 8. [Repealed, 32 SR 1751]

Subp. 9. **Compatibility.**

A. Owners and operators must use ~~underground storage tank UST~~ systems, ~~spill catchment basins, submersible pump sumps, and dispenser sumps made of or lined with materials that are compatible with the substance stored in the underground storage tank UST system.~~ Owners and operators storing alcohol blends may use the following guidance to comply with the requirements of this part: American Petroleum Institute, Storing and Handling Ethanol and Gasoline-Ethanol Blends at Distribution Terminals and Service Stations, API 1626 (1985). The document is incorporated by reference under part 7150.0500. Owners and operators storing a regulated substance containing more than ten percent ethanol, more than 20 percent biodiesel, or any other substance identified by the commissioner that could degrade components of a UST system must also comply with item B, if applicable, and item C or D.

B. Owners and operators must provide secondary containment for tanks retrofitted after the effective date of this part according to part 7150.0205, subpart 1.

C. Owners and operators must demonstrate compatibility of the UST system by showing:

(1) the equipment or component used in the UST system is certified or listed by an independent testing laboratory for use with the regulated substance; or

(2) the equipment's or component's manufacturer has issued a written affirmative statement of compatibility, specifying the range of biofuel blends the equipment or component is compatible with.

D. Owners and operators may demonstrate compatibility other than as specified in item C if they:

(1) provide information to the commissioner demonstrating the alternative option is no less protective of



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human health and the environment than the options in item C to ensure that the UST system is not degrading and will not degrade; and

(2) obtain the commissioner's prior written approval of the alternative option.

E. When considering an alternative option under item D, the commissioner must consider the type of substance and concentration of the substance that can be safely stored as part of the alternative option. If the commissioner approves the alternative option, owners and operators must comply with any conditions imposed by the commissioner to ensure human health and the environment are protected.

Subp. 10. [See repealer.]

Subp. 11. **Spill and overfill release prevention.**

A. Owners and operators must ensure that releases due to spilling or overfilling do not occur. The owner or operator must ensure that the volume available in the tank is greater than the volume of product to be transferred to the tank before the transfer is made and that the transfer operation is monitored constantly to prevent overfilling and spilling. One of the following codes of practice developed by a nationally recognized association or independent testing laboratory must be used to comply with this subpart. The codes are incorporated by reference under part 7150.0500:

(1) ~~National Fire Protection Association, Flammable and Combustible Liquids Code, NFPA 30 (2003);~~

(2) ~~National Fire Protection Association, Standard for Tank Vehicles for Flammable and Combustible Liquids, NFPA 385 (2007); or~~

(3) ~~American Petroleum Institute, Bulk Liquid Stock Control at Retail Outlets, API 1621 (1987).~~

(1) American Petroleum Institute, Bulk Liquid Stock Control at Retail Outlets, API RP 1621;

(2) American Petroleum Institute, Loading and Unloading of MC 306/DOT 406 Cargo Tank Motor Vehicles, API RP 1007; and

(3) National Fire Protection Association, Standard for Tank Vehicles for Flammable and Combustible Liquids, NFPA 385.

B. ~~The owner and operator~~ Owners and operators must report, investigate, and clean up any spills and overfills according to Minnesota Statutes, section 115.061.

Subp. 12. [See repealer.]

Subp. 12a. **Containment sumps and spill buckets.** Owners and operators must ensure that containment sumps used for interstitial monitoring and spill buckets are liquid tight to prevent releases of regulated substances to the environment.

Subp. 13. **Shear valves.** Owners and operators must ensure all shear valves ~~shall be~~ are securely anchored and installed according to manufacturer recommendations and industry standards. Shear valves installed or repaired after the effective date of this part must be of a double-poppet design that prevents release of fuel from both sides of the shear valve if the shear valve breaks at the shear point.

Subp. 14. **Drop tubes.** Owners and operators must ensure that all underground storage tanks ~~shall~~ have a drop tube that extends to within six inches of the tank bottom.

## 7150.0205 DESIGN AND CONSTRUCTION.

Subpart 1. **Tanks.** ~~Each tank must be properly designed and constructed and any part underground that routinely~~

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contains product must be protected from corrosion using one of the following methods, except that all hazardous materials tanks and all tanks, other than heating oil tanks, installed or replaced after December 22, 2007, must comply with item D. The corrosion protection methods must be in accordance with one of the codes of practice in subpart 2 developed by a nationally recognized association or independent testing laboratory:

A. Tanks that do not meet the requirements of this subpart must be permanently closed according to part 7150.0410.

~~A. The tank is constructed of fiberglass-reinforced plastic.~~

~~B. The tank is constructed of steel and cathodically protected in the following manner:~~

~~(1) the tank is coated with a suitable dielectric material;~~

~~(2) field-installed cathodic protection systems are designed by a corrosion expert;~~

~~(3) impressed current systems are designed to allow determination of current operating status as required in part 7150.0215, subpart 3, item A; and~~

~~(4) cathodic protection systems are operated and maintained according to part 7150.0215.~~

~~C. The tank is constructed of a steel and fiberglass-reinforced plastic composite.~~

~~D. The tank is secondarily contained:~~

~~(1) Secondary containment tanks shall use one of the following designs:~~

~~(a) the tank is of double-walled fiberglass-reinforced plastic construction;~~

~~(b) the tank is of double-walled steel construction, with cathodic protection of the outer wall meeting the requirements of item B;~~

~~(c) the tank is of double-walled steel construction with a fiberglass-reinforced plastic jacket; or~~

~~(d) the tank is of single-walled steel construction with a fiberglass-reinforced plastic jacket, which is designed to contain and detect a leak through the steel wall.~~

~~(2) All secondary containment tanks shall be capable of containing a release from the inner wall of the tank and shall be designed with release detection according to part 7150.0330, subpart 6.~~

~~(3) If a tank is replaced in accordance with this item, all piping appurtenant to the tank shall comply with subpart 3, item D.~~

~~E. The tank is internally lined.~~

~~(1) A tank with an internal lining as the sole method of corrosion protection shall be internally inspected and evaluated within ten years after lining, and every five years thereafter, and found to be structurally sound with the lining still performing according to original design specifications, as follows:~~

~~(a) internal inspections and evaluations shall be conducted in accordance with American Petroleum Institute, Interior Lining and Periodic Inspection of Underground Storage Tanks, API 1631 (2001), incorporated by reference under part 7150.0500;~~

~~(b) lining inspectors shall be approved by the manufacturer of the lining, if an approval process exists, or~~

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shall be qualified by reason of training and experience in the application and inspection of type of internal lining to be inspected;

(c) the owner, operator, or lining inspector shall notify the commissioner at least ten days prior to performing an inspection according to part 7150.0090, subpart 1;

(d) inspections shall include thorough cleaning of the lining; visual inspection of the lining for cracking, blistering, perforation, disbonding, and excessive wear; ultrasonic thickness testing (steel tanks only); holiday (spark) testing for lining continuity; lining thickness measurement; lining hardness testing; and representative photographs of internal surfaces;

(e) inspections shall be primarily by manned entry. Video camera observation alone is not allowed;

(f) minor abnormal conditions of the lining, such as short cracks or localized disbonding, may be repaired, so long as the conditions do not constitute more than five percent of the lining surface area and the repairs will return the lining to substantially the original design specifications;

(g) if a repair to the tank or to the internal lining as allowed under unit (f) is performed, the tank must pass a tightness test at a 0.1 gallon per hour leak rate using equipment for automatic tank gauging or another test method, prior to or within 30 days after returning the tank to service;

(h) a written inspection report shall be produced that describes the results of all tests and evaluations required by unit (d), and the results of tightness testing under unit (g). The report shall identify any abnormal conditions found during the inspection and the measures taken to correct the conditions. The inspector shall certify in the report that, in the professional judgment of the inspector, the tank is structurally sound, the lining is performing according to original design specifications, and the tank and lining will maintain their integrity for at least five years under the anticipated conditions of use; and

(i) the inspection report under unit (h) shall be submitted to the commissioner within 60 days of the internal inspection.

(2) A tank with an internal lining as the sole method of corrosion protection shall be permanently closed and site assessment completed according to parts 7150.0410 and 7150.0420 if at any time the lining is found to have failed. Lining failure is defined as any abnormal conditions other than minor abnormal conditions described in subitem (1), unit (f). The lining may not be replaced, nor may such a tank be upgraded with cathodic protection or another corrosion protection method to meet the requirements of this subpart.

F. The tank construction and corrosion protection are determined by the commissioner to be designed to prevent the release or threatened release of a stored, regulated substance in a manner that is no less protective of human health and the environment than items A to E. The commissioner's determination under this item must be obtained in writing and the owners and operators must keep the determination for the life of the tank.

B. Owners and operators must ensure that any underground part of a tank that routinely contains product is properly designed, constructed, and protected from corrosion using one of the methods under this item. The tank must be:

(1) constructed of fiber-reinforced plastic, including:

(a) a costructural retrofit tank, with cathodic protection on corrodible structural supports; or

(b) a self-structural retrofit tank;

(2) constructed of steel and cathodically protected according to this subitem. All cathodic-protection systems under this subitem must be operated and maintained according to part 7150.0215. The tank must:

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- (a) be coated with a suitable dielectric material and a factory-installed sacrificial-anode system;
- (b) have a field-installed cathodic-protection system designed and certified by a corrosion expert; or
- (c) have an impressed-current system designed and certified by a corrosion expert that allows determination of current operating status as required under part 7150.0215, subpart 3;
- (3) constructed of steel with a noncorrodible jacket of a design and thickness so that additional corrosion protection is not required;
- (4) internally lined, provided that the tank is lined on or before December 22, 2007, according to part 7150.0215, subpart 4; or
- (5) constructed and protected from corrosion using a method that prevents the release or threatened release of a stored, regulated substance and is no less protective of human health and the environment than the methods under subitems (1) to (4), as determined by the commissioner. The commissioner's determination under this subitem must be obtained in writing, and the owners and operators must keep the determination for the life of the tank.

C. Except for heating-oil tanks, owners and operators must:

- (1) secondarily contain all hazardous-substance tanks;
- (2) secondarily contain all tanks containing regulated substances, including retrofit tanks, installed or replaced after December 22, 2007; and
- (3) ensure that:
  - (a) the secondary containment is capable of containing a release from the inner wall of a tank and designed with release detection according to part 7150.0330, subpart 6; and
  - (b) if a tank is replaced or retrofitted in accordance with this item, all piping appurtenant to the tank is secondarily contained and complies with subpart 3.

Subp. 2. **Codes of practice for tanks.** ~~Codes of practice for subpart 1 are described in items A to E. The codes of practice in this subpart must be used to comply with subpart 1, as applicable. The codes are incorporated by reference under part 7150.0500.~~

~~A. The following codes of practice apply to subpart 1, item A:~~

- ~~(1) Underwriters Laboratories, Standard for Glass-Fiber-Reinforced Plastic Underground Storage Tanks for Petroleum Products, Alcohols, and Alcohol-Gasoline Mixtures, UL 1316 (2006); or~~
- ~~(2) Underwriters' Laboratories of Canada, Standard for Reinforced Plastic Underground Tanks for Flammable and Combustible Liquids, ULC-S615-98 (1998).~~

~~B. The following codes of practice apply to subpart 1, item B:~~

- ~~(1) Steel Tank Institute, Specification and Manual for External Corrosion Protection of Underground Steel Storage Tanks, STI-P3 (2006);~~
- ~~(2) Underwriters Laboratories, Standard for Safety for External Corrosion Protection Systems for Steel Underground Storage Tanks, UL 1746 (2007);~~

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~~(3) Underwriters' Laboratories of Canada, External Corrosion Protection Systems for Steel Underground Tanks for Flammable and Combustible Liquids, CAN/ULC-S603.1-03 (2003);~~

~~(4) Underwriters' Laboratories of Canada, Standard for Steel Underground Tanks for Flammable and Combustible Liquids, CAN/ULC-S603-00 (2000);~~

~~(5) Underwriters' Laboratories of Canada, Isolating Bushings for Steel Underground Tanks Protected with External Corrosion Protection Systems, ULC-S631-05 (2005);~~

~~(6) National Association of Corrosion Engineers, Corrosion Control of Underground Storage Tank Systems by Cathodic Protection, RP0285-2002 (2002); or~~

~~(7) Underwriters Laboratories, Standard for Steel Underground Tanks for Flammable and Combustible Liquids, UL 58 (1996).~~

C. The following codes of practice apply to subpart 1, item C:

~~(1) Underwriters Laboratories, Standard for Safety for External Corrosion Protection Systems for Steel Underground Storage Tanks, UL 1746 (2007); or~~

~~(2) Steel Tank Institute, ACT-100 Specification for External Corrosion Protection of Composite Steel Underground Storage Tanks, STI F894 (2006).~~

D. The following codes of practice apply to subpart 1, item D:

~~(1) Underwriters Laboratories, Standard for Steel Underground Tanks for Flammable and Combustible Liquids, UL 58 (1996);~~

~~(2) Underwriters Laboratories, Standard for Safety for External Corrosion Protection Systems for Steel Underground Storage Tanks, UL 1746 (2007);~~

~~(3) Steel Tank Institute, Recommended Practice for Interstitial Tightness Testing of Existing Underground Double Wall Steel Tanks, RP012 (2006); and~~

~~(4) Steel Tank Institute, Standard for Dual Wall Underground Steel Storage Tanks, STI F841 (2006).~~

E. The following code of practice applies to subpart 1, item E: American Petroleum Institute, Interior Lining and Periodic Inspection of Underground Storage Tanks, API 1631 (2001).

A. American Petroleum Institute, Interior Lining and Periodic Inspection of Underground Storage Tanks, API STD 1631.

B. NACE International, Corrosion Control of Underground Storage Tank Systems by Cathodic Protection, SP0285-2011.

C. Steel Tank Institute, Recommended Practice for Interstitial Tightness Testing of Existing Underground Double Wall Steel Tanks, R012.

D. Steel Tank Institute, ACT-100<sup>®</sup> Specification for External Corrosion Protection of FRP Composite Steel USTs, F894.

E. Steel Tank Institute, Specification and Manual for External Corrosion Protection of Underground Steel Storage Tanks, STI-P3<sup>®</sup>.

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F. Steel Tank Institute, Standard for Dual Wall Underground Steel Storage Tanks, F841.

G. Steel Tank Institute, ACT-100-U<sup>®</sup> Specification for External Corrosion Protection of Composite Steel Underground Storage Tanks, F961.

H. Steel Tank Institute, Specification for Permatank<sup>®</sup>, F922.

I. Underwriters' Laboratories of Canada, External Corrosion Protection Systems for Steel Underground Tanks for Flammable and Combustible Liquids, CAN/ULC-S603.1-11.

J. Underwriters' Laboratories of Canada, Standard for Steel Underground Tanks for Flammable and Combustible Liquids, CAN/ULC-S603-14.

K. Underwriters' Laboratories of Canada, Standard for Isolating Bushings for Steel Underground Tanks Protected with External Corrosion Protection Systems, ULC-S631-05.

L. Underwriters' Laboratories of Canada, Standard for Fibre Reinforced Plastic Underground Tanks for Flammable and Combustible Liquids, CAN/ULC-S615-14.

M. Underwriters Laboratories, Outline of Investigation for Underground Fuel Tank Internal Retrofit Systems, UL 1856.

N. Underwriters Laboratories, Glass-Fiber-Reinforced Plastic Underground Storage Tanks for Petroleum Products, Alcohols, and Alcohol-Gasoline Mixtures, UL 1316.

O. Underwriters Laboratories, Standard for External Corrosion Protection Systems for Steel Underground Storage Tanks, UL 1746.

P. Underwriters Laboratories, Standard for Steel Underground Tanks for Flammable and Combustible Liquids, UL 58.

Subp. 3. **Piping.** The piping that routinely contains regulated substances and is in contact with the ground must be properly designed, constructed, and protected from corrosion using one of the following methods, except that all hazardous materials piping and all piping, other than heating oil piping, installed or replaced after December 22, 2007, other than piping that conveys regulated substances under safe suction meeting the design requirements of part 7150.0300, subpart 6, item B, subitem (2), shall comply with item D. The corrosion protection methods in items A to D must be in accordance with one of the codes of practice in subpart 4 developed by a nationally recognized association or independent testing laboratory:

A. The piping is constructed of fiberglass-reinforced plastic:

B. The piping is constructed of steel and cathodically protected in the following manner:

(1) the piping is coated with a suitable dielectric material;

(2) field-installed cathodic protection systems are designed by a corrosion expert;

(3) impressed current systems are designed to allow determination of current operating status as required in part 7150.0215, subpart 3, item A; and

(4) cathodic protection systems are operated and maintained according to part 7150.0215.

C. The piping is constructed of a steel and fiberglass-reinforced plastic composite:

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~~D. The piping is secondarily contained.~~

~~(1) Secondary containment piping shall use one of the following designs:~~

~~(a) the piping is of double-walled fiberglass-reinforced plastic construction;~~

~~(b) the piping is of double-walled steel construction, with cathodic protection of the outer wall meeting the requirements of item B;~~

~~(c) the piping is of double-walled steel construction with a fiberglass-reinforced plastic jacket;~~

~~(d) the piping is of single-walled steel construction with a fiberglass-reinforced plastic jacket, which is designed to contain and detect a leak through the steel wall; or~~

~~(e) the piping is of double-walled nonmetallic flexible construction.~~

~~(2) All secondary containment piping shall be capable of containing a release from the inner wall of the piping and shall be designed with release detection according to part 7150.0340, subpart 4.~~

~~E. The piping is of single-walled nonmetallic flexible construction.~~

~~F. The piping construction and corrosion protection are determined by the commissioner to be designed to prevent the release or threatened release of a stored regulated substance in a manner that is no less protective of human health and the environment than the requirements of items A to D. The commissioner's determination under this item must be obtained in writing and the tank owners and operators must keep the determination for the life of the tank.~~

A. Piping that does not meet the requirements of this subpart must be permanently closed according to part 7150.0410.

B. Owners and operators must ensure that piping that routinely contains product is properly designed, constructed, and protected from corrosion using one of the methods under this item. The piping must be:

(1) constructed of a noncorrodible material;

(2) constructed of steel and cathodically protected according to this subitem. All cathodic-protection systems under this subitem must be operated and maintained according to part 7150.0215. The piping must:

(a) be coated with a suitable dielectric material and a sacrificial-anode system designed and installed according to industry standards or under the control of a corrosion expert;

(b) have a field-installed cathodic-protection system designed and certified by a corrosion expert; or

(c) have an impressed-current system designed by a corrosion expert that allows determination of current operating status as required under part 7150.0215, subpart 3; or

(3) constructed and protected from corrosion using a method that prevents release or threatened release of a stored, regulated substance and is no less protective of human health and the environment than the methods under subitems (1) and (2), as determined by the commissioner. The commissioner's determination under this subitem must be obtained in writing, and the owners and operators must keep the determination for the life of the tank.

C. Except for heating-oil piping and piping that conveys product under suction and meets the design requirements of part 7150.0300, subpart 6, item B, subitem (2), owners and operators must:

(1) secondarily contain hazardous substance piping;

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(2) secondarily contain all piping containing regulated substances installed or replaced after December 22, 2007; and

(3) ensure that:

(a) the secondary containment is capable of containing a release from the inner wall of the piping and is designed with release detection according to part 7150.0340, subpart 4; and

(b) all secondarily contained piping installed after December 22, 2007, has secondary containment meeting the requirements of subparts 6 and 7 at each end of the piping segment, except for:

i. secondarily contained piping entering a building, provided that the building will contain a release until it can be detected and remedied; or

ii. transition joints approved for direct burial by the manufacturer when connecting secondarily contained piping to a single-wall pipe.

Subp. 4. **Codes of practice for piping.** ~~Codes of practice for subpart 3 are described in items A and B. The codes of practice under this subpart must be used to comply with subpart 3, as applicable.~~ The codes are incorporated by reference under part 7150.0500.

A. ~~The following codes of practice apply to subpart 3, item A:~~

~~(1) Underwriters Laboratories, Emergency Breakaway Fittings, Swivel Connectors and Pipe-Connection-Fittings for Petroleum Products and LP-Gas, UL 567 (2004);~~

~~(2) Underwriters' Laboratories of Canada, Standard for Flexible Underground Hose Connectors for Flammable and Combustible Liquids, CAN/ULC-S633-99 (1999); or~~

~~(3) Underwriters' Laboratories of Canada, Guide for Glass-Fiber-Reinforced Plastic Pipe and Fittings for Flammable Liquids, ULC Subject C107C-M1984 (1984).~~

B. ~~The following codes of practice apply to subpart 3, item B:~~

~~(1) National Fire Protection Association, Flammable and Combustible Liquids Code, NFPA 30 (2003);~~

~~(2) American Petroleum Institute, Installation of Underground Petroleum Storage Systems, API 1615 (1996);~~

~~(3) American Petroleum Institute, Cathodic Protection of Underground Petroleum Storage Tanks and Piping Systems, API 1632 (1996); or~~

~~(4) National Association of Corrosion Engineers, Control of External Corrosion on Underground or Submerged Metallic Piping Systems, SP0169-2007 (2007).~~

A. American Petroleum Institute, Cathodic Protection of Underground Petroleum Storage Tanks and Piping Systems, API RP 1632.

B. NACE International, Control of External Corrosion on Underground or Submerged Metallic Piping Systems, SP0169-2013.

C. NACE International, Corrosion Control of Underground Storage Tank Systems by Cathodic Protection, SP0285-2011.



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D. Steel Tank Institute, Recommended Practice for Corrosion Protection of Underground Piping Networks Associated with Liquid Storage and Dispensing Systems, R892.

E. Underwriters' Laboratories of Canada, Standard for Nonmetallic Underground Piping for Flammable and Combustible Liquids, CAN/ULC S660-08.

F. Underwriters Laboratories, Standard for Nonmetallic Underground Piping for Flammable Liquids, UL 971.

G. Underwriters Laboratories, Outline of Investigation for Metallic Underground Fuel Pipe, UL 971A.

Subp. 5. ~~Spill and overfill prevention~~ **Spill-prevention and overfill-prevention equipment.**

A. Except as provided in item B, to prevent spilling and overfilling associated with product transfer to the ~~underground storage tank~~ UST system, owners and operators must use the following ~~spill and overfill prevention equipment~~:

(1) ~~spill prevention~~ spill-prevention equipment that ~~will prevent~~ prevents release of product to the environment when the transfer hose is detached from the fill pipe; for example, a spill ~~catchment basin~~ bucket; and

(2) ~~overfill prevention~~ one of the following types of overfill-prevention equipment that ~~will~~:

(a) equipment that automatically shut shuts off flow into the tank when the tank is no more than 95 percent full; or. Any flow-restricting overfill device in a vent line must be entirely removed when an automatic shutoff device is used to prevent releases from the tank;

(b) ~~alert~~ equipment that alerts the transfer operator when the tank is no more than 90 percent full by restricting the flow into the tank or triggering a high-level alarm audible to the transfer operator; provided that:

i. all tank openings are liquid tight when used in conjunction with flow-restricting devices in vent lines and high-level alarms;

ii. flow-restricting devices used in vent lines are not installed on UST systems after the effective date of this part;

iii. flow-restricting devices in vent lines are not allowed on suction systems with air eliminators;

iv. flow-restricting devices used in vent lines are not used in conjunction with overfill devices installed in the drop tube; and

v. flow-restricting devices in vent lines are not used in conjunction with coaxial stage 1 vapor-recovery systems; and

(c) vent-restriction devices in vent lines or auto-shutoff devices must not be used on tanks equipped with remote fill pipes or on UST systems where product is delivered under pressure.

B. Owners and operators are not required to use the ~~spill and overfill prevention~~ spill-prevention and overfill-prevention equipment specified in item A if:

*[For text of subitem (1), see M.R.]*

(2) the ~~underground storage tank~~ UST system is filled by transfers of no more than 25 gallons at one time. The commissioner's determination under subitem (1) must be obtained in writing, and the tank owners and operators must keep the determination for the life of the tank.

C. Before placing a UST system into service, the owners and operators must:

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- (1) test spill buckets for liquid tightness according to part 7150.0216, subparts 1 and 4; and
- (2) test overflow devices for proper function according to part 7150.0216, subparts 1 and 5.

## Subp. 6. ~~Submersible pumps~~ **Submersible pump sumps.**

A. After December 22, 2007, owners and operators must provide any new or replacement submersible pump, ~~including replacement pump head, shall be provided~~ with secondary containment around and beneath the pump head. Secondary containment ~~shall~~ must be:

- (1) designed to contain a release leak from the pump head and any connectors, fittings, and valves beneath the pump head appurtenance or leak-detection device until the release can be detected and removed;
- (2) designed with liquid-tight sides, bottom, cover, and points of penetration;
- (3) constructed of fiberglass-reinforced plastic or other synthetic material of comparable thickness and durability; and
- (4) compatible with the stored substance; and
- (5) tested liquid tight before backfilling the secondary containment and placing the UST system into service according to part 7150.0216, subparts 1 and 4.

B. Any submersible pump installed before December 22, 2007, and not in a secondarily contained sump used for interstitial monitoring must be accessible for visual inspection and must not be covered by soil, water, or other obstacles that prevent visual inspections.

C. The following code codes of practice may are incorporated by reference under part 7150.0500 and must be used to meet the requirements of this subpart, as applicable:

- (1) Underwriters' Laboratories of Canada, Under-Dispenser Sumps, ULC/ORD-C107.21-1992 (1992). The code is incorporated by reference under part 7150.0500. ULC/ORD-C107.21; and
- (2) Underwriters Laboratories, Outline of Investigation for Containment Sumps, Fittings and Accessories for Fuels, UL 2447.

## Subp. 7. ~~Dispensers~~ **Dispenser sumps.**

A. After December 22, 2007, any new dispenser, and any replacement dispenser where work is performed beneath any shear valves or check valves or on any flexible connectors or unburied risers, ~~shall be provided with secondary containment beneath the dispenser. Secondary containment shall be:~~ Owners and operators must install secondary containment under a dispenser if:

- (1) designed to contain a release from the dispenser and any connectors, fittings, and valves beneath the dispenser until the release can be detected and removed the dispenser is part of a new UST system;
- (2) designed with liquid-tight sides, bottom, and points of penetration new or replacement piping is connected to the dispenser;
- (3) constructed of fiberglass-reinforced plastic or other synthetic material of comparable thickness and durability; and a dispenser is replaced with work performed below the shear valves; or
- (4) compatible with the stored substance the concrete or base material under the dispenser is replaced, repaired,

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or modified.

B. Secondary containment must be:

- (1) designed to contain a leak from the dispenser and any components of a UST system in or under the dispenser until the leak can be detected and remedied;
- (2) designed with liquid-tight sides, bottom, and points of penetration;
- (3) constructed of fiberglass-reinforced plastic or other synthetic material of comparable thickness and durability;
- (4) compatible with the stored substance; and
- (5) tested liquid tight before backfilling the secondary containment and placing the dispenser into service according to part 7150.0216, subparts 1 and 4.

C. Owners and operators must ensure that underdispenser containment installed after the effective date of this part allows for visual inspection and access to the components in the containment system.

D. Owners and operators performing dispenser repair are not required to install secondary containment.

E. The following code codes of practice shall are incorporated by reference under part 7150.0500 and must be used to meet the requirements of this subpart, as applicable:

- (1) Underwriters' Laboratories of Canada, Under-Dispenser Sumps, ULC/ORD-C107.21-1992 (1992). The code is incorporated by reference under part 7150.0500; ULC/ORD-C107.21; and
- (2) Underwriters Laboratories, Outline of Investigation for Containment Sumps, Fittings and Accessories for Fuels, UL 2447.

Subp. 8. **Emergency stops.** Owners and operators must have an emergency disconnect switch that is readily available to persons dispensing a regulated substance to disconnect electric power to pumps and dispensers, in accordance with the Minnesota State Fire Code, in the event of an emergency.

## **7150.0215 ~~OPERATION AND MAINTENANCE OF CATHODIC~~ OPERATING AND MAINTAINING CORROSION PROTECTION.**

Subpart 1. **General Operating and maintaining cathodic protection.** Cathodic protection Owners and operators of a UST system must operate and maintain cathodic-protection systems must be operated and maintained to continuously provide cathodic protection to the metal components of the parts of the tank and piping that routinely contain regulated substances and are in contact with the ground.

Subp. 2. **Sacrificial-anode Sacrificial-anode systems.** Sacrificial anode cathodic protection systems Owners and operators with a sacrificial-anode system for cathodic protection must be tested test for proper operation according to the following requirements:

A. systems must be tested by a ~~cathodic protection~~ cathodic-protection tester:

- (1) within six months of installation and at least every three years thereafter;; and
- (2) within six months after any repairs and at least every three years thereafter;

B. the criteria that are one of the codes of practice under subpart 5 must be used to determine that cathodic

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protection is adequate as required by this subpart ~~must be according to National Association of Corrosion Engineers, Corrosion Control of Underground Storage Tank Systems by Cathodic Protection, RP0285-2002 (2002), incorporated by reference under part 7150.0500; and~~

C. ~~systems designed with external testing stations must be tested using a voltmeter according to this subpart, but do not require testing by a cathodic protection tester. repairs to sacrificial-anode systems must be conducted within 60 days of failing test results and must be:~~

(1) ~~conducted according to one of the industry standards under subpart 5 by a certified tank contractor under chapter 7105, a cathodic-protection tester, or a corrosion expert; or~~

(2) ~~conducted according to the design and recommendations of a corrosion-protection expert by a certified tank contractor under chapter 7105, a cathodic-protection tester, or a corrosion expert.~~

Subp. 3. ~~**Impressed-current**~~ **Impressed-current systems.** ~~Impressed-current cathodic protection systems Owners and operators with an impressed-current system for cathodic protection must be tested test for proper operation according to the following requirements:~~

A. ~~the rectifier must be read every 60 days to ensure that current is being delivered to the system, and the voltage and amperage readings shall must be recorded;~~

B. ~~systems must be tested by a corrosion expert or a cathodic-protection cathodic-protection tester;~~

(1) ~~within six months of installation and at least annually thereafter; and~~

(2) ~~within six months after any repairs and at least annually thereafter; and~~

C. ~~the criteria that are one of the codes of practice under subpart 5 must be used to determine that cathodic protection is adequate as required by this subpart must be according to National Association of Corrosion Engineers, Corrosion Control of Underground Storage Tank Systems by Cathodic Protection, RP0285-2002 (2002), incorporated by reference under part 7150.0500; and~~

D. ~~repairs to the impressed-current system must be conducted:~~

(1) ~~within 60 days of a failing test result;~~

(2) ~~by a certified tank contractor under chapter 7105, a cathodic-protection tester, or a corrosion expert; and~~

(3) ~~in accordance with the design and written approval of a corrosion expert.~~

Subp. 4. **Internally lined tanks.**

A. ~~Owners and operators must ensure that a tank with an internal lining for corrosion protection is internally inspected and evaluated within ten years after lining and every five years thereafter and found to be structurally sound with the lining performing according to original design specifications as follows:~~

(1) ~~internal inspection and evaluation must be conducted according to American Petroleum Institute, Interior Lining and Periodic Inspection of Underground Storage Tanks, API 1631, incorporated by reference under part 7150.0500;~~

(2) ~~the lining inspector must be approved by the manufacturer of the lining, if an approval process exists, or must be qualified by training and experience in the application and inspection of the type of internal lining to be inspected;~~

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(3) the owners, operators, or lining inspector must notify the agency at least ten days before performing an inspection according to part 7150.0090, subpart 1;

(4) inspections must include a thorough cleaning of the lining; visual inspection of the lining for cracking, blistering, perforation, disbonding, and excessive wear; ultrasonic thickness testing; holiday (spark) testing for lining continuity; lining thickness measurement; lining hardness testing; and representative photographs of internal surfaces;

(5) inspections must be primarily by manned entry. Video-camera observation alone is not allowed;

(6) minor abnormal conditions of the lining, such as short cracks or localized disbonding, may be repaired if the conditions do not constitute more than five percent of the lining surface area and the repairs will return the lining to substantially the original design specifications; and

(7) if a repair to the tank or to the internal lining as allowed under subitem (6) is performed, the tank must pass a tightness test according to part 7150.0330, subpart 4, before or within 30 days after returning the tank to service.

B. A written inspection report must be produced that describes the results of all tests and evaluations required by item A, subitem (4), and the results of tightness testing under item A, subitem (7). The report must identify any abnormal conditions found during the inspection and the measures taken to correct the conditions. The inspector must certify in the report that, in the professional judgment of the inspector, the tank is structurally sound, the lining is performing according to original design specifications, and the tank and lining will maintain their integrity for at least five years under the anticipated conditions of use. The inspection report must be submitted to the agency within 60 days after the internal inspection.

C. A tank with an internal lining as the sole method of corrosion protection must be permanently closed and site assessment completed according to parts 7150.0345 and 7150.0410 if at any time abnormal conditions other than minor abnormal conditions described in item A, subitem (6), are found to exist. The lining may not be replaced, nor may the tank be upgraded with cathodic protection or another corrosion-protection method to meet the requirements of this subpart.

Subp. 5. **Codes of practice.** The following codes of practice for operating and maintaining cathodic protection must be used to comply with this part, as applicable, and the codes are incorporated by reference under part 7150.0500:

A. NACE International, Control of External Corrosion on Underground or Submerged Metallic Piping Systems, SP0169-2013;

B. NACE International, Corrosion Control of Underground Storage Tank Systems by Cathodic Protection, SP0285-2011;

C. NACE International, Measurement Techniques Related to Criteria for Cathodic Protection of Underground Storage Tank Systems, TM101-2012;

D. NACE International, Measurement Techniques Related to Criteria for Cathodic Protection on Underground or Submerged Metallic Piping Systems, TM0497-2012;

E. Petroleum Equipment Institute, Recommended Practices for Installation of Underground Liquid Storage Systems, PEI/RP100-11;

F. Steel Tank Institute, Cathodic Protection Testing Procedures for sti-P3® UST's, R051;

G. Steel Tank Institute, Recommended Practice for Corrosion Protection of Underground Piping Networks Associated with Liquid Storage and Dispensing Systems, R892; and

H. Steel Tank Institute, Recommended Practice for the Addition of Supplemental Anodes to sti-P3® UST's, R972.

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## 7150.0216 OPERATING, MAINTAINING, AND TESTING UST SYSTEMS.

### Subpart 1. General.

A. Owners and operators must maintain, test, operate, and inspect tanks, piping, and associated components of a UST system as described in this part and in accordance with:

- (1) requirements of the manufacturer;
- (2) the following codes of practice developed by a nationally recognized association and incorporated by reference under part 7150.0500:
  - (a) Petroleum Equipment Institute, Recommended Practices for the Testing and Verification of Spill, Overfill, Leak Detection and Secondary Containment Equipment at UST Facilities, PEI/RP1200; and
  - (b) Petroleum Equipment Institute, Recommended Practices for the Inspection and Maintenance of UST Systems, PEI/RP900; or
- (3) requirements determined by the commissioner to be equivalent and no less protective of human health and the environment than subitems (1) and (2).

B. Wastes from testing, such as hydrostatic testing water, must be properly disposed of according to state and local regulations. Documentation demonstrating that testing wastes were properly disposed of according to state and local regulations must be maintained according to part 7150.0450.

### Subp. 2. Periodic operation and maintenance inspections.

A. Owners and operators of a UST system must ensure the proper maintenance and operation of the UST system. At a minimum, owners and operators must conduct a monthly walk-through inspection of the UST system. During the inspection, the owners and operators must:

- (1) visually check dispenser sumps, spill buckets, transition sumps, and submersible pump sumps for leaks and equipment defects;
- (2) investigate and remedy the source of any spill, drip, or leak from the UST system;
- (3) remove any liquid or debris from containment sumps used for interstitial monitoring and spill buckets;
- (4) remove any liquid or debris from sumps to allow the piping, pump head, and other appurtenances in the sump to be inspected;
- (5) ensure that release-detection equipment is operating with no alarms or other unusual operating conditions present and that records of release detection are reviewed and current;
- (6) ensure that riser caps are tight and that there are no obstructions in the fill risers that would prevent an overfill device from functioning properly; and
- (7) ensure that the bottom of the tank is monitored for water to the nearest one-eighth of an inch through electronic or manual gauging at least once a month.

B. Submersible pump sumps are exempt from inspections under item A if the sump is secondarily contained and equipped with a leak-sensing device that alerts the operator of a regulated substance or water in the sump and the sump sensor is tested annually for proper function.

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C. Spill buckets are exempt from inspections under item A if the UST system receives deliveries at intervals greater than 30 days and the spill bucket is inspected before and immediately after each delivery. Owners and operators must maintain delivery records to verify infrequent deliveries.

D. Owners and operators must maintain records of inspections under this subpart. Records must include a list of each area checked, whether each area checked was compliant or needed action taken, and a description of any compliance actions taken.

## **Subp. 3. Release-detection equipment.**

A. Owners and operators must test and maintain release-detection equipment to ensure that the equipment can detect a release from any part of the UST system that routinely contains product.

B. Owners and operators must annually test electronic, mechanical, and handheld components of release-detection equipment for serviceability and proper operation. Beginning no later than October 13, 2020, owners and operators must annually inspect components listed under item C using an agency-approved tester.

C. As applicable to the facility, testing under this subpart must, at a minimum, include the following components and criteria:

(1) for automatic tank gauges and other controllers, test alarms, verify system configuration, and test battery backup.

(2) for probes and sensors, inspect for residual buildup, ensure floats move freely, ensure the shaft is not damaged, ensure cables are free of kinks and breaks, and test alarm operability and communication with controller;

(3) for automatic line-leak detectors, test the operation to meet the criteria under part 7150.0340, subpart 2, item D;

(4) for vacuum pumps and pressure gauges, ensure proper communication with sensors and controllers;

(5) for spill buckets and containment sumps, visually inspect spill buckets and containment sumps used for interstitial monitoring, including seals at piping, electrical, and other penetration points, for deficiencies; and

(6) for handheld leak-detection materials, ensure that any measuring sticks, fuel-finding pastes, or other handheld items used for leak detection are in a functional condition.

## **Subp. 4. Spill buckets and containment sumps.**

A. Owners and operators must ensure spill buckets and containment sumps used for interstitial monitoring of piping prevent releases to the environment by:

(1) testing spill buckets and containment sumps at least once every three years to ensure the equipment is liquid tight; or

(2) monitoring spill buckets and containment sumps that are double walled monthly to ensure the integrity of both walls, checking for leaks into the interstitial area or equipment.

B. Any automatic leak-sensing device used to monitor spill bucket or containment sump interstitial areas must be tested annually for proper function.

C. Beginning no later than October 13, 2020, testing under items A, subitem (1), and B must be performed by an agency-approved tester.

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Subp. 5. **Overfill-prevention equipment.** Owners and operators must ensure overfill-prevention equipment is inspected at least every three years. The inspection must ensure that the overfill-prevention equipment is set to activate at the correct level and will activate when a regulated substance reaches that level. Beginning no later than October 13, 2020, inspections under this subpart must be performed by an agency-approved tester.

Subp. 6. **Agency-approved testers.**

A. To become agency-approved testers, individuals must:

(1) apply to the commissioner for approval every four years in a format prescribed by the commissioner. The application must include the applicant name, mailing address, telephone number, and information demonstrating compliance with subitems (2) and (3);

(2) be certified by the manufacturers of components of a UST system being tested and the manufacturers of equipment used to test UST systems, if the manufacturers offer certification; and

(3) meet one of the following criteria:

(a) be an employee of an agency-certified tank contractor under chapter 7105; or

(b) be an employee of an independent company that specializes in testing UST systems, is not affiliated with the owner or operator of the UST system being tested, and has comprehensive general liability insurance with pollution liability coverage no less than \$1,000,000.

B. The commissioner must deny an application for an agency-approved tester or suspend, restrict, or revoke approval of an agency-approved tester if the commissioner finds the applicant or tester:

(1) failed to meet the approval requirements in item A;

(2) failed to comply with inspection and testing requirements in this chapter;

(3) submitted false or misleading information to obtain or renew agency approval under this part or certification under chapter 7105; or

(4) engaged in fraudulent activities related to records, test results, or repairs while performing duties as an agency-approved tester.

C. The commissioner must provide written notice by mail to the subject of the action under item B describing, as applicable, the effective date of the action, the basis for the action under item B, the facts supporting the action, and the specific steps necessary to become an approved tester. The notice must contain a statement that any request for a contested case hearing must, within ten calendar days exclusive of the day of service, be filed as a written request with the commissioner. If a contested case hearing is requested, the action is stayed pending the outcome of the hearing. If the individual does not request a hearing, the subject of the action forfeits any opportunity for a hearing. An agency-approved tester or applicant whose approval is revoked or denied may not apply for approval for one year after the effective date of revocation or denial.

## **7150.0250 RESTORATION, CORRECTIVE ACTIONS, AND REQUIRED PERMANENT CLOSURE.**

Subpart 1. **Unusual operating conditions.**

A. Owners and operators must immediately investigate and remedy all unusual operating conditions in a UST system. The owner or operator must take the UST system out of service unless:



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- (1) the unusual operating condition is investigated and resolved in accordance with this chapter;
- (2) any defective components are isolated from the UST system to prevent a leak; or
- (3) any defective components or equipment are repaired by a person certified under chapter 7105.

B. The owner or operator must report unresolved unusual operating conditions that may have resulted in a leak or that indicate a release has occurred according to part 7150.0345, subpart 2.

## Subp. 2. Repairs.

A. Owners and operators must maintain a UST system according to the manufacturer's instructions. If instructions are not available, owners and operators must maintain the functions of a UST system as intended by the manufacturer or according to industry standards. Repairs must ensure that releases due to structural failures, equipment failures, or corrosion do not occur while storing regulated substances in a UST system or while operating the UST system.

B. Within 30 days after completing a repair, owners and operators must ensure that:

- (1) a repaired tank passes a tightness test according to part 7150.0330, subpart 4;
- (2) repaired piping passes a tightness test according to part 7150.0340, subpart 3, item A; and
- (3) repaired secondary-containment areas of tanks, piping used for interstitial monitoring, and containment sumps used for interstitial monitoring or piping passes an integrity test according to part 7150.0216, subpart 4.

C. Subitems (1) to (3) are codes of practice for repaired secondary-containment areas of tanks, piping, or containment sumps used for interstitial monitoring. The codes are incorporated by reference under part 7150.0500 and must be used to comply with this part:

(1) Fiberglass Tank and Pipe Institute, Field Test Protocol for Testing the Annular Space of Installed Underground Fiberglass Double and Triple-Wall Tanks with Dry Annular Space, RP 2007-2;

(2) Steel Tank Institute, Recommended Practice for Interstitial Tightness Testing of Existing Underground Double Wall Steel Tanks, R012; and

(3) Petroleum Equipment Institute, Recommended Practices for the Testing and Verification of Spill, Overfill, Leak Detection and Secondary Containment Equipment at UST Facilities, PEI/RP1200.

D. Within six months after a cathodic-protection system is repaired, the cathodic-protection system must be tested according to part 7150.0215 to ensure that it is operating properly. Impressed-current systems must be repaired according to part 7150.0215, subpart 3, item D. Sacrificial-anode systems must be repaired according to part 7150.0215, subpart 2, item C.

E. Within 30 days of any repair to spill-prevention or overfill-prevention equipment, the repaired spill-prevention or overfill-prevention equipment must be tested or inspected to ensure it is operating properly according to part 7150.0216.

F. Within 30 days of any repair to components of a UST system that are used for leak detection, the repaired or replaced component must be tested or inspected to ensure it is operating properly according to part 7150.0216.

G. Owners and operators must ensure repairs to UST systems are properly conducted according to one of the codes of practice in this item developed by a nationally recognized association or independent testing laboratory and incorporated by reference under part 7150.0500, except that repairs to fiber-reinforced plastic tanks may be made by the manufacturer's authorized representative.

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- (1) American Petroleum Institute, Cathodic Protection of Underground Petroleum Storage Tanks and Piping Systems, API RP 1632.
- (2) American Petroleum Institute, Repairing Hazardous Liquid Pipelines, API RP 2200.
- (3) American Petroleum Institute, Interior Lining and Periodic Inspection of Underground Storage Tanks, API STD 1631.
- (4) Fiberglass Tank and Pipe Institute, Remanufacturing of Fiberglass Reinforced Plastic (FRP) Underground Storage Tanks, RP T-95-1.
- (5) NACE International, Corrosion Control of Underground Storage Tank Systems by Cathodic Protection, SP0285-2011.
- (6) National Fire Protection Association, Flammable and Combustible Liquids Code, NFPA 30.
- (7) National Fire Protection Association, Standard for the Safeguarding of Tanks and Containers for Entry, Cleaning, or Repair, NFPA 326.
- (8) National Leak Prevention Association, Entry, Cleaning, Interior Inspection, Repair, and Lining of Underground Storage Tanks, NLPA 631, Chapter A.
- (9) Steel Tank Institute, Recommended Practice for the Addition of Supplemental Anodes to sti-P3® UST's, R972.

## Subp. 3. **Replacement.**

A. Components of a UST system that do not meet the performance standards in part 7150.0100 must be repaired or replaced. Owners and operators must replace:

- (1) any component that has corrosion that may cause the component to not function as intended by the manufacturer or that may cause a release of a regulated substance; and
- (2) any component not functioning properly according to this chapter.

B. The entire piping run, not including a submersible pump or any dispenser, must be replaced with secondary-containment piping according to part 7150.0205, subpart 3, if:

- (1) metal segments are found to have pitting-type corrosion damage;
- (2) metal or noncorrodible piping segments have released a regulated substance;
- (3) pipe segments are found to have degraded because of age, incompatibility, or poor installation practices; or
- (4) 50 percent or more of the piping run is replaced.

C. Piping may be repaired and the entire piping run need not be replaced if:

- (1) the piping is secondarily contained according to part 7150.0205, subpart 3;
- (2) a release is due to an external, onetime cause, such as damage during excavation; or
- (3) a release occurring on a piping appurtenance, such as a flex connector, shear valve, or check valve, did not

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occur as a result of corrosion.

Subp. 4. **Required permanent closure.** Owners and operators must ensure that a tank system or pipe system is permanently closed according to part 7150.0410 and a site assessment is completed according to part 7150.0345, subpart 3, if:

A. a tank has shifted upward from its original burial position to the extent that the UST has caused a bulge in the concrete or cover material over the tank or components secured to the top of the UST are contacting access covers, unless repairs can be made to the UST system to prevent the tank from shifting and ensure that the UST system has not been, nor will be, damaged;

B. a UST that is not secondarily contained has released a regulated product to the environment, unless the UST can be retrofitted according to part 7150.0205, subpart 1; or

C. the inner or outer shell of a secondarily contained UST, including retrofit tanks, or pipe is not liquid tight, unless the tank or pipe can be repaired according to subpart 2.

## 7150.0300 RELEASE DETECTION.

Subpart 1. **General.** With the exception of emergency generator tanks that must comply with parts 7150.0300 to 7150.0340 by October 13, 2020, owners and operators of ~~underground storage tank~~ UST systems must provide a method, or combination of methods, of release detection for tanks, piping, dispensers, and submersible pumps that:

A. can detect a release leak from any part of the tank and the connected underground piping, dispensers, and submersible pumps that routinely contains product;

*[For text of item B, see M.R.]*

C. meets the performance standards in part 7150.0330 or 7150.0340. The performance of release detection equipment, as certified by an independent testing laboratory or a nationally recognized association, must be documented with written specifications supplied by the equipment manufacturer or installer. Methods of release detection for tanks and piping must be capable of detecting the leak rate or quantity specified for that method in parts 7150.0330 and 7150.0340.

Subp. 2. [See repealer.]

*[For text of subps 3 and 4, see M.R.]*

Subp. 5. **Tanks.** Tanks must be monitored at least every 30 days for ~~releases~~ leaks using one of the following methods or combination of methods, except that hazardous ~~materials~~ substance tanks and tanks installed on or after December 22, 2007, must comply with item B:

A. automatic tank gauging according to part 7150.0330, subpart 5; ~~combined with inventory control in accordance with part 7150.0330, subpart 2;~~

B. interstitial monitoring according to part 7150.0330, subpart 6;

C. ~~inventory control according to part 7150.0330, subpart 2, subject to the following conditions:~~ statistical inventory reconciliation according to part 7150.0330, subpart 6a;

(1) ~~tank tightness testing shall be performed according to part 7150.0330, subpart 4, within five years after installation; and~~

(2) ~~inventory control shall be discontinued within ten years after tank installation and another method of release detection shall be substituted;~~

D. ~~for tanks with capacities of greater than 1,000 gallons and less than 2,000 gallons, manual tank gauging ac-~~

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cording to part 7150.0330, subpart 3, subject to the following conditions:

(1) tank tightness testing shall be performed according to part 7150.0330, subpart 4, within five years after installation; and

(2) manual tank gauging shall be discontinued within ten years after tank installation and another method of release detection shall be substituted;

E. D. for tanks with capacities of 1,000 gallons or less, manual tank gauging according to part 7150.0330, subpart 3; or

F. E. another method of release detection according to part 7150.0330, subpart 7.

Subp. 6. **Piping.** ~~Underground~~ Piping that routinely contains regulated substances must be monitored for releases using one of the following methods or combination of methods; ~~except that piping installed on or after December 22, 2007, must comply with item A, subitem (3) or (4) under items A to C:~~

A. This item applies to pressure piping. Underground piping that conveys regulated substances under pressure must use one of the following methods; ~~under this item, except that piping installed on or after December 22, 2007, must comply with subitem (3).~~ Piping that is positioned lower than the top of the tank must be equipped with an antisiphon device and use one of the methods under this item:

*[For text of subitem (1), see M.R.]*

(2) line leak detection conducted according to part 7150.0340, subpart 2, and monthly line tightness testing conducted according to part 7150.0340, subpart 3, item B; or

(3) line leak detection conducted according to part 7150.0340, subpart 2, and ~~monthly~~ interstitial monitoring conducted according to part 7150.0340, subpart 4, ~~item A, subitem (2); or~~

(4) ~~continuous interstitial monitoring conducted according to part 7150.0340, subpart 4, item A, subitem (1).~~

B. This item applies to suction piping.

(1) Except as described in subitem (2), underground piping that conveys regulated substances under suction must be equipped with an antisiphon device if piping is positioned lower than the top of the tank and:

(a) have a line tightness test conducted at least every three years if it can detect a 0.1 gallon per hour leak rate at ~~one and one-half times the operating pressure~~ 50 pounds per square inch; or

*[For text of unit (b), see M.R.]*

*[For text of subitem (2), see M.R.]*

C. ~~Other methods.~~ Another method of release detection may be used according to part 7150.0340, subpart 5.

Subp. 7. [See repealer.]

## 7150.0330 METHODS OF RELEASE DETECTION FOR TANKS.

*[For text of subp 1, see M.R.]*

Subp. 2. [See repealer.]

Subp. 3. **Manual tank gauging.**

A. Manual tank gauging must ~~be conducted in the following manner~~ comply with this subpart:

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A.

(1) ~~tank liquid level measurements are~~ of the level of liquid in a tank must be taken at the beginning and ending of a period of at least 36 hours during which no liquid is added to or removed from the tank;

B.

(2) ~~level measurements are~~ must be based on an average of two consecutive stick readings at both the beginning and ending of the period; and

C.

(3) ~~the equipment used is~~ must be capable of measuring the level of product over the full range of the tank's height to the nearest one-eighth of an inch.

B. A leak is suspected ~~and subject to the requirements of Minnesota Statutes, section 115.061,~~ if the variation between beginning and ending measurements under item A exceeds the weekly or monthly standards in the following table:

Tank Capacity	Weekly Standard (one-test)	Monthly Standard (four-test avg.)	Minimum Duration of Test
<del>If manual tank gauging is the ONLY leak detection method used:</del>			
up to 550 gallons	10 gallons	5 gallons	36 hours
551-1,000 gallons (when largest tank is 64" x 73")	9 gallons	4 gallons	44 hours
1,000 gallons (if tank is 48" x 128")	12 gallons	6 gallons	58 hours
<del>If manual tank gauging is combined with Tank Tightness Testing:</del>			
1,001-2,000 gallons	26 gallons	13 gallons	36 hours

*[For text of subp 4, see M.R.]*

Subp. 5. **Automatic tank gauging.** ~~Equipment for Use of automatic tank gauging that tests for the loss of product and conducts inventory control must meet the following requirements comply with this subpart:~~

A. the automatic product level monitor test ~~can~~ must be able to detect a 0.2 gallon per hour leak rate from any part of the tank that routinely contains product; and

B. ~~inventory control is conducted according to the requirements of subpart 2; owners and operators must ensure testing is performed with the system operating in one of the following modes:~~

(1) ~~in-tank static testing conducted at least once every 30 days; or~~

(2) ~~continuous in-tank leak detection operating without interruption or operating to allow the system to gather incremental measurements to determine the leak status of the tank at least once every 30 days.~~

Subp. 6. **Interstitial monitoring.**

A. Interstitial monitoring of ~~secondary containment~~ secondary-containment tanks ~~shall~~ must be conducted:

(1) continuously, by ~~means of~~ an automatic leak-sensing device that signals the operator of the presence of any liquid in the interstitial space; or

(2) monthly, by ~~means of~~ a procedure capable of detecting the presence of any liquid in the interstitial space.

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B. The interstitial space ~~shall~~ must be maintained free of water, debris, or anything that could interfere with leak detection capabilities.

C. ~~On an annual basis,~~ Any automatic leak-sensing device ~~shall~~ must be annually tested for proper function.

## Subp. 6a. Statistical inventory reconciliation.

A. A release-detection method based on applying statistical principles to inventory data must:

- (1) report a quantitative result with a calculated leak rate;
- (2) report a test result of pass, fail, or inconclusive;
- (3) be capable of detecting a leak rate of 0.2 gallons per hour or a release of 150 gallons within 30 days; and
- (4) use a threshold that does not exceed one-half the minimum detectable leak rate.

B. An inconclusive test result under item A, subitem (2), means the requirements of part 7150.0300, subpart 5, have not been met and the test results must be investigated according to part 7150.0345, subpart 1, item B.

Subp. 7. **Other methods.** Any other type of ~~release detection~~ release-detection method, or combination of methods, can be used if:

*[For text of item A, see M.R.]*

B. ~~the owner~~ owners and ~~operator~~ operators can demonstrate to the commissioner that the method can detect a release as effectively as any of the methods allowed in this part and obtain the commissioner's prior written approval of the method. In comparing methods, the commissioner ~~shall~~ must consider the size of release that the method can detect and the frequency and reliability with which ~~it~~ a release can be detected. If the method is approved by the commissioner, ~~the owner~~ owners and ~~operator~~ operators must comply with any conditions imposed by the commissioner on ~~its~~ the method's use to ensure the protection of human health and the environment.

## 7150.0340 METHODS OF RELEASE DETECTION FOR PIPING.

*[For text of subp 1, see M.R.]*

Subp. 2. **Automatic ~~line-leak~~ line-leak detectors.** ~~Methods that continuously alert the 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~~

A. An automatic line-leak detector must be able to detect leaks of three gallons per hour at ten pounds per square inch ten-pounds-per-square-inch line pressure within one hour. An annual test of the operation of any line leak detector must be conducted. Testing shall:

A. ~~be conducted by a person:~~

- ~~(1) certified under chapter 7105;~~
- ~~(2) approved by the manufacturer of the equipment to test the detector; or~~
- ~~(3) qualified by reason of training or experience to test the detector;~~

B. ~~comply with the manufacturer's testing requirements;~~

C. ~~involve creation of a physical leak in a piping segment; and~~

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~~D. verify the leak detection threshold of three gallons per hour at ten pounds per square inch line pressure within one hour.~~

B. At facilities where an operator is present during business hours, the leak-detection system must alert the operator of a leak by restricting or shutting off the flow of a regulated substance through piping or by triggering an audible or visual alarm.

C. At unattended card-lock facilities, the leak-detection system must alert the operator of a leak by shutting off the flow of a regulated substance.

D. The operation of any line-leak detector must be tested annually according to part 7150.0216. Testing must:

(1) be conducted by an agency-approved tester;

(2) create a physical leak or simulate a leak in the pipe system; and

(3) verify the leak-detection threshold of three gallons per hour at ten-pounds-per-square-inch line pressure within one hour.

Subp. 3. **Line tightness testing.** A periodic test of piping ~~may~~ must be conducted:

A. annually by an agency-approved tester, if it can detect a 0.1 gallon per hour leak rate at one and one-half times the operating pressure; or

*[For text of item B, see M.R.]*

Subp. 4. **Interstitial and sump monitoring.**

A. Interstitial monitoring of ~~secondary-containment~~ secondary-containment piping ~~shall~~ must be conducted:

(1) continuously, by ~~means of~~ an automatic leak-sensing device that signals the operator of the presence of any regulated substance in the interstitial space or sump; or

(2) monthly, by ~~means of~~ a procedure, such as visual monitoring, capable of detecting the presence of any regulated substance in the interstitial space or sump.

B. The interstitial space or sump ~~shall~~ must be maintained free of water, debris, or anything that could interfere with leak detection capabilities.

C. ~~On an annual basis, any sump shall be visually inspected for integrity of sides and floor and tightness of piping penetration seals. Any automatic Sumps and leak-sensing device shall~~ devices must be inspected and tested for proper function annually according to part 7150.0216, subpart 3.

Subp. 5. **Other methods.** Any other type of ~~release detection~~ release-detection method, or combination of methods, may be used if:

*[For text of item A, see M.R.]*

B. ~~the owner and operator~~ owners and operators can demonstrate to the commissioner that the method can detect a release as effectively as any of the methods allowed in subparts 2 to 4 and obtain the commissioner's prior written approval of the method. In comparing methods, the commissioner ~~shall~~ must consider the size of release that the method can detect and the frequency and reliability with which ~~it a release~~ a release can be detected. If the method is approved by the commissioner, ~~the owner~~ owners and ~~operator~~ operators must comply with any conditions imposed by the commissioner on the method's use to ensure the protection of human health and the environment.

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## REPORTING, INVESTIGATING, AND CONFIRMING RELEASES

### 7150.0345 REPORTING, INVESTIGATING, AND CONFIRMING RELEASES.

#### Subpart 1. Investigating and confirming.

A. Owners and operators must immediately investigate, confirm, and remedy all suspected releases.

B. Within 24 hours of discovering an unusual operating condition while conducting leak detection according to part 7150.0330 or 7150.0340, owners and operators must investigate the condition by:

(1) conducting a visual inspection of aboveground and exposed below-grade components of a UST system for leaks and deficiencies; and

(2) if applicable, repeating any leak test that indicated an unusual operating condition, conducted according to part 7150.0330, subpart 5, 6, or 6a, or 7150.0340, subpart 2, item A; 3, item B; or 4, item A.

C. Within 24 hours of discovering an unusual operating condition or confirming an unusual operating condition according to item B, subitem (2), the owners and operators must initiate:

(1) tightness testing according to part 7150.0330, subpart 4, or 7150.0340, subpart 3, item A, on the component suspected of leaking; and

(2) if applicable, integrity testing, using an agency-approved tester, of interstitial and secondary-containment areas used for leak detection.

D. If the investigation under item B or the testing under item C indicates that the UST system is not leaking, owners and operators may resume leak testing the UST system according to part 7150.0300.

E. If testing confirms a leak, owners and operators must immediately remove the regulated substance from the leaking component to prevent further releases and must repair, replace, upgrade, or permanently close the UST system.

Subp. 2. Reporting releases or suspected releases. A person who has knowledge of a release from a UST system must immediately notify the Minnesota duty officer upon discovering the release by calling 1-800-422-0798 and must begin recovering the substance according to Minnesota Statutes, section 115.061. Notice under this subpart is also required if:

A. the owners and operators discover a release of a regulated substance at the underground tank site or in the surrounding area;

B. an unusual operating condition exists, unless:

(1) the system component is immediately repaired or replaced; and

(2) for secondarily contained systems, any liquid in the interstitial space not used for monitoring is immediately removed; or

C. monitoring results from a release-detection method or alarm indicates a release may have occurred, unless:

(1) the monitoring device or alarm is found to be defective and is immediately repaired, recalibrated, or replaced, and additional monitoring does not confirm the initial results;

(2) the leak is contained in a secondary-containment space and:



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- (a) any liquid in the secondary-containment space not used for monitoring is immediately removed; and
- (b) any defective system equipment or component is immediately repaired or replaced; or
- (3) the alarm is investigated and determined to be a nonrelease event.

## Subp. 3. **Assessing site; permanent closure or status change.**

A. Before completing a tank or piping system closure according to part 7150.0410 or changing the status of storing a nonregulated substance, owners and operators must measure, by laboratory analysis, for the presence of a release.

B. Sampling under item A must be according to the commissioner's requirements. The requirements must be based upon where contamination is most likely to be present, taking into consideration the method of closure, nature of the stored substance, type of backfill, depth to groundwater, and other factors relevant to identifying the presence of a release.

C. If contaminated soils, contaminated groundwater, or free product as a liquid or vapor is discovered by measurement under this subpart or by any other means, the Minnesota duty officer must be immediately notified by calling 1-800-422-0798 and corrective action must be started according to Minnesota Statutes, section 115.061.

## **OUT-OF-SERVICE UNDERGROUND STORAGE TANK SYSTEMS AND UST SYSTEM CLOSURE**

### **7150.0400 TEMPORARY CLOSURE.**

*[For text of subp 1, see M.R.]*

Subp. 2. **Tanks out of service less than 90 days.** When an ~~underground storage tank~~ a UST system is out of service for less than 90 days, owners and operators must continue operation and maintenance of corrosion protection according to part 7150.0215, and any release detection according to parts 7150.0300 to 7150.0340. Release detection is not required as long as the ~~underground storage tank~~ UST system is empty. The ~~underground storage tank~~ UST system is empty when all materials have been removed using commonly employed practices so that no more than 2.5 centimeters, or one inch, of residue remains in the system as measured through any part of the ~~tank~~ UST system.

*[For text of subp 3, see M.R.]*

Subp. 4. **Tanks out of service one year.** When an ~~underground storage tank~~ a UST system is out of service for one year or more, owners and operators must permanently close the ~~underground storage tank~~ UST system according to part 7150.0410, unless the owner or operator requests an extension of the closure period by submitting an application for an extension on a form approved by the commissioner and the commissioner approves the extension in writing based on compliance with this part. Conditions of extension ~~shall~~ must include record keeping requirements according to part 7150.0450 and the continued operation and maintenance of ~~cathodic~~ corrosion protection according to part 7150.0215. The ~~underground storage tank~~ UST system may not be returned to service without the written approval of the commissioner, based on compliance with the applicable requirements of this chapter.

Subp. 5. **Tanks out of service five years.** All ~~underground storage tank~~ UST systems must be permanently closed if the ~~tank~~ UST system is out of service for five years or more.

### **7150.0410 PERMANENT CLOSURE AND CHANGE IN STATUS TO STORAGE OF NONREGULATED SUBSTANCES.**

Subpart 1. **Requirements.** In addition to the requirements of the most current Minnesota Fire Code, owners and operators must comply with ~~the provisions in subparts 2\_3 to 7~~ relating to permanent closure or change in status to storage of nonregulated substances.

Subp. 2. [See repealer.]

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## Subp. 3. **Permanent closure.**

A. To permanently close a ~~tank piping system~~, owners and operators must empty and clean ~~it the piping~~ by removing all liquids. To permanently close a UST system, owners and operators must empty and clean the tank and piping by removing all liquids and accumulated sludges from the tank and piping.

B. All tanks and piping ~~taken out of service~~ permanently closed must also be either:

(1) removed from the ground; or

(2) completely filled in with an inert solid material and free of voids that could allow flammable or hazardous vapors or liquids to accumulate in the voids.

C. A site assessment must be conducted according to part 7150.0345, subpart 3, for all tanks and piping permanently closed.

D. When a tank is retrofitted according to part 7150.0205, subpart 1, the original tank upon which the retrofitted tank is secured is considered permanently closed and a site assessment must be conducted according to part 7150.0345, subpart 3.

Subp. 4. **~~Storage of~~ Storing nonregulated substances.** Continued use of ~~an underground storage tank~~ a UST system to store a nonregulated substance is considered a change in status. Before a change in status to storage of a nonregulated substance, owners and operators must empty and clean the tank and piping by removing all liquid and accumulated sludge and conduct a site assessment according to part ~~7150.0420~~ 7150.0345, subpart 3.

Subp. 5. **Certification of ~~closers~~ closure.** Owners and operators must ensure that persons performing permanent closures under subpart 3 or changes in status under subpart 4:

A. are in compliance with certification requirements imposed by chapter 7105. ~~Such persons must:~~

B. furnish copies of current certificates issued by the ~~agency~~ commissioner to the owner and operator before beginning a permanent closure ~~under subpart 3~~ or a change in status ~~under subpart 4~~; and

C. certify on the notification form required under part 7150.0090, subpart 2, that the methods used to perform the permanent closure or change in status complied with this part.

Subp. 6. [See repealer.]

Subp. 7. **Cleaning and closure procedures.** The cleaning and closure procedures listed in one of the following documents must be used ~~as guidance for complying to comply~~ with this part. The documents are incorporated by reference under part 7150.0500:

A. American Petroleum Institute, Closure of Underground Petroleum Storage Tanks, API RP 1604 (~~1996~~);

B. American Petroleum Institute, Interior Lining and Periodic Inspection of Underground Storage Tanks, API STD 1631 (~~2001~~); ~~or~~

C. American Petroleum Institute, Requirements for Safe Entry and Cleaning of Petroleum Storage Tanks, API STD 2015 (~~2001~~);

D. American Petroleum Institute, Guidelines and Procedures for Entering and Cleaning Petroleum Storage Tanks, API RP 2016;

E. National Fire Protection Association, Standard for the Safeguarding of Tanks and Containers for Entry, Clean-

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ing, or Repair, NFPA 326; and

F. National Institute for Occupational Safety and Health, Criteria for a Recommended Standard: Working in Confined Spaces, DHEW (NIOSH) Publication No. 80-106.

## **7150.0430 PREVIOUSLY CLOSED ~~UNDERGROUND STORAGE TANK~~ UST SYSTEMS.**

When directed by the commissioner, ~~the owner~~ owners and ~~operator~~ operators of an ~~underground storage tank~~ a UST system permanently closed before December 22, 1988, must assess the excavation zone according to part 7150.0420, 7150.0345, subpart 3, and close the ~~underground storage tank~~ UST system according to part 7150.0410 if releases from the underground storage tank may, in the judgment of the commissioner, pose a current or potential threat to human health and the environment.

## **OPERATOR REQUIREMENTS, REPORTING, AND RECORD KEEPING**

### **7150.0445 CLASS A, B, AND C OPERATOR REQUIREMENTS.**

#### **Subpart 1. General.**

A. Owners and operators of a UST system are responsible for ensuring that class A, B, and C operators fulfill their responsibilities under this chapter.

B. Class A, B, and C operators must be the owner or operator of the UST system or a designated employee of the owner or operator.

C. Owners or operators of a UST system must designate a class A, B, and C operator for the UST system, except that owners or operators are not required to designate a class C operator for unattended card-lock facilities.

D. During business hours, a class A, B, or C operator must be on site during operation of the UST system except at unattended card-lock facilities. Unattended card-lock facilities must post a legible sign in a conspicuous location with the facility name, facility address, telephone numbers for the facility owner and operator, and telephone number for local emergency response.

E. Each individual that meets the definition of a class C operator must be designated as a class C operator.

**Subp. 2. Class A operator responsibilities.** The class A operator is responsible for managing resources and personnel to achieve and maintain compliance with this chapter. At a minimum, a class A operator must be knowledgeable about the purpose, methods, and function of:

- A. spill and overfill prevention;
- B. release detection;
- C. corrosion protection;
- D. emergency response;
- E. product and equipment compatibility;
- F. notification under part 7150.0090, subpart 2;
- G. temporary and permanent closure;
- H. testing, reporting, and record keeping for UST systems;

# Proposed Rules

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I. environmental and regulatory consequences of releases;

J. financial responsibility; and

K. training.

## **Subp. 3. Class B operator responsibilities.**

A. The class B operator is responsible for daily operation and maintenance of the UST system. The class B operator must be on site at least once each month to ensure proper operation and maintenance of the UST systems, except that the class B operator of an unattended card-lock facility must be on site at least once each week.

B. Each month, the class B operator must validate that:

(1) release-detection monitoring is being performed according to parts 7150.0300 to 7150.0340;

(2) reporting is being performed and records are being maintained according to part 7150.0450;

(3) spill-, overfill-, and corrosion-protection systems are in place and operating according to part 7150.0205;

(4) cathodic-protection testing is being performed according to part 7150.0215;

(5) unusual operating conditions or release-detection system indications are being reported and investigated according to Minnesota Statutes, section 115.061; and

(6) routine operation and maintenance activities are being done according to part 7150.0216.

C. At a minimum, a class B operator must be knowledgeable about the purpose, methods, and function of:

(1) operating and maintaining the UST system;

(2) spill and overfill prevention;

(3) release detection and related reporting;

(4) corrosion protection;

(5) emergency response;

(6) product and equipment compatibility;

(7) testing, inspection, and record keeping for UST systems;

(8) environmental and regulatory consequences of a release; and

(9) training requirements for class C operators.

## **Subp. 4. Class C operator responsibilities.** The class C operator must be:

A. on site daily and responsible for handling emergencies and alarms pertaining to a spill or release from a UST system, including reporting spills and releases;

B. trained by a class A or B operator before assuming responsibility for the tank system; and

# Proposed Rules

C. trained to take action according to this chapter in response to emergencies or alarms caused by spills or releases resulting from operating the UST system or from dispensing activities.

## **Subp. 5. Class A and B operator examinations.**

A. Class A and B operators must pass an agency-administered examination with a score of 75 percent or higher to verify knowledge of the UST system. Class A and B operators must pass the agency-administered examination within 30 days after being designated by the owner or operator of the UST system.

B. A class B operator must retake the examination under item A within 30 days after a change in any of the following components of a UST system:

- (1) tank or piping construction material;
- (2) tank or piping release-detection method; or
- (3) type of cathodic-protection system.

C. Notwithstanding item A, if a designated class A or B operator is certified in another state as a class A or B operator for underground storage tanks, the owner or operator may apply to the commissioner for a waiver of the examination requirement in item A. To get approval of a waiver application, the owner or operator must submit to the commissioner a copy of the designated class A or B operator's current certification issued by another state and information to demonstrate that the other state's operator certification examination is equivalent in content to the agency-administered examination under item A. The commissioner must approve in writing a waiver application that complies with this item and demonstrates the required equivalency. Owners and operators are subject to the commissioner's conditions of approval and to the other requirements in this part, including the reexamination requirements in item B and the training and reexamination requirements in subpart 6, item B.

## **Subp. 6. Class A and B operator training requirements.**

A. If the class A or B operator does not receive a passing score of 75 percent or higher on the examination under subpart 5, the class A or B operator must attend an agency-approved training course and retake and pass an agency-administered examination with a score of 75 percent or higher. The class A or B operator must pass the examination within 60 days after the commissioner notifies the class A or B operator of a failing score on the original examination.

B. If the commissioner determines that the owner or operator of a UST system has violated part 7150.0205, subpart 5; 7150.0215; 7150.0216; 7150.0300; 7150.0330; 7150.0340; or 7150.0400, the class B operator of the UST system must attend an agency-approved training course and retake and pass an agency-administered examination with a score of 75 percent or higher. The class B operator must pass the examination within 30 days after the commissioner notifies the class B operator of the requirement.

## **Subp. 7. Training course approval.**

A. A person seeking to train class A or B operators must apply for agency approval of the training course according to this subpart.

B. A training provider must submit to the commissioner an application on a form provided by the commissioner. The application must contain:

- (1) the course sponsor's name, address, and telephone number;
- (2) a list of states that approve the training course at the time the application is submitted;
- (3) the course curriculum, including topics to be covered and length of the training;

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(4) a letter from the course sponsor that explains how the course meets the requirements of this chapter;

(5) a copy of all course materials, such as student manuals, instructor notebooks, and handouts;

(6) a copy of the certificate that will be issued to students who attend the course; and

(7) other information determined relevant by the commissioner for evaluating whether the course will train operators to meet the requirements of this chapter.

C. Training must provide the knowledge necessary for class A or B operators to monitor and maintain UST systems in a manner that complies with this chapter, prevents releases to the environment, minimizes the size of accidental releases through early detection, and mitigates damage from releases with proper emergency response.

D. The commissioner must suspend or revoke approval of a training course if the commissioner finds that the course no longer provides training that meets the requirements of this chapter.

E. Except as provided in item D, approval of a training course is effective until the commissioner determines that the training course does not meet the requirements of this chapter. Upon making the determination, the commissioner must notify the approved training provider that changes in the course are required to maintain commissioner approval. The training provider must then submit a revised training course to the commissioner for approval.

## 7150.0450 REPORTING AND RECORD KEEPING.

*[For text of subp 1, see M.R.]*

Subp. 2. **Reporting.** Owners and operators must submit the following information to the commissioner within the applicable time frames:

*[For text of items A and B, see M.R.]*

C. reports of all releases under part 7150.0345 and Minnesota Statutes, section 115.061, including suspected releases, spills and overfills, and confirmed releases;

*[For text of items D and E, see M.R.]*

F. inspection reports for internally lined tanks under part 7150.0205 7150.0215, subpart 4, ~~item E, subitem (1)~~ items A and B.

Subp. 3. **Record retention.** Owners and operators must maintain the following information in a legible manner for the specified time frame:

A. the commissioner's determination under part 7150.0205, subpart 1, item F B, subitem (5); subpart 3, item F A, subitem (3); or subpart 5, item B, subitem (1), that alternative ~~corrosion protection~~ equipment for corrosion protection or spill and overfill prevention equipment may be used, ~~shall must~~ be maintained for the life of the ~~tank~~ UST system;

*[For text of item B, see M.R.]*

C. documentation of ~~underground storage tank system~~ repairs for UST systems, including the nature of each repair; and results of required integrity testing; and any commissioner's written determination under part 7150.0100, ~~subpart 10, item C 7150.0250, subpart 2, shall must~~ be maintained for the life of the ~~tank~~ UST system;

D. documentation of compliance with release detection requirements under parts 7150.0300 to 7150.0340, as follows:

(1) all written performance claims pertaining to any release detection system used; and the manner in which these claims have been justified or tested by the equipment manufacturer or installer, including documentation of "safe-suction" design according to suction piping meeting the design requirements of part 7150.0300, subpart 6, item B,

# Proposed Rules

subitem (2), must be maintained for as long as the system is being used to comply with the requirements of this chapter;

(2) the results of any ~~sampling~~, testing, or monitoring must be maintained for at least ~~ten~~ five years, including:

(a) ~~monthly tank inventory control according to part 7150.0330, subpart 2~~ statistical inventory reconciliation results according to part 7150.0330, subpart 6a;

*[For text of unit (b), see M.R.]*

(c) ~~monthly or annual~~ tank tightness testing according to part 7150.0330, subpart 4;

*[For text of unit (d), see M.R.]*

(e) monthly interstitial monitoring of ~~secondary containment~~ secondary-containment tanks according to part 7150.0330, subpart 6, item A, ~~subitem (2);~~

*[For text of units (f) to (i), see M.R.]*

(j) monthly interstitial monitoring of ~~secondary containment~~ secondary-containment piping according to part 7150.0340, subpart 4;

(k) monthly results of an alternative ~~piping release detection~~ method for detecting releases in piping according to part 7150.0340, subpart 5; and

(~~h~~) ~~monthly sump and basin monitoring according to part 7150.0300, subpart 7; and~~

(~~m~~) (l) annual testing of any automatic leak-sensing device in any secondarily contained tank according to part 7150.0330, subpart 6, item C, or submersible pump sump according to part 7150.0340, subpart 4, item C;

(3) written documentation of all calibration, maintenance, and repair of release detection equipment permanently located on site must be maintained for at least ~~ten~~ five years after the servicing work is completed. Any schedules of required calibration and maintenance provided by the release detection equipment manufacturer must be retained as long as the system is being used to comply with the requirements of this chapter; and

*[For text of subitem (4), see M.R.]*

E. documentation that shows that testing wastes generated during sump and spill-bucket testing have been disposed of properly in accordance with state and local regulations must be maintained for at least five years after the testing;

E. F. results of the site assessment conducted at permanent closure or change in status to a nonregulated substance under part ~~7150.0420~~ 7150.0345 and any other records that are capable of demonstrating compliance with closure requirements under parts 7150.0400 and 7150.0410. ~~The results of the site assessment required in part 7150.0420 must be maintained for at least three years after completion of permanent closure or change in status in one of the following ways:~~

(1) at the facility by the owners and operators who took the ~~underground storage tank~~ UST system out of service;

(2) at the facility by the current owners and operators of the ~~underground storage tank~~ UST system site; or

(3) by mailing these records to the commissioner if the records cannot be maintained at the closed facility;

F. G. certification that the facility's class A operator and class B operator have passed the operator examination requirements or documentation of current certification in another state if the commissioner has approved a waiver of the agency-administered examination. ~~Certifications on current personnel must be kept until closure of the facility. Certifications on former personnel must be kept for at least three years from the date of the employee's termination or until the~~

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class A or B operator is no longer employed at the facility, whichever occurs first;

G. H. records of monthly or weekly on-site presence of the class B operator according to part 7150.0211, 7150.0445, subpart 5 3, must be kept for at least ~~ten~~ five years; and

H. I. records that document that the class C operator has received the training required in part 7150.0211, 7150.0445, subpart 6 4, including the date of training, who performed the training, and the contents of the training—  
Training records on current personnel must be kept until closure of the facility. Training records on former personnel must be kept for at least three years from the date of the employee's termination, or until the class C operator is no longer employed at the facility, whichever occurs first;

J. results of the following testing, inspections, and monitoring must be maintained for at least five years:

- (1) periodic operation and maintenance inspections according to part 7150.0216, subpart 2;
- (2) leak-detection equipment inspections and testing according to part 7150.0216, subpart 3;
- (3) testing or monitoring spill buckets or containment sumps according to part 7150.0216, subpart 4;
- (4) overfill-prevention equipment inspection and testing according to part 7150.0216, subpart 5; and
- (5) any other documentation of compliance with part 7150.0216; and

K. documentation that the components of the UST system are compatible with the substance stored according to part 7150.0100, subpart 9, must be maintained for the life of the UST system.

*[For text of subp 4, see M.R.]*

## **7150.0451 UST SYSTEMS WITH FIELD-CONSTRUCTED TANKS AND AIRPORT HYDRANT FUEL DISTRIBUTION SYSTEMS.**

Code of Federal Regulations, title 40, part 280, subpart K, as amended, entitled “UST Systems with Field-Constructed Tanks and Airport Hydrant Fuel Distribution Systems,” is incorporated by reference.

## **7150.0500 INCORPORATION BY REFERENCE.**

Subpart 1. **Scope.** For purposes of this chapter 7150, the documents in subpart 2 are incorporated by reference. These documents are not subject to frequent change. They can be found at the Minnesota Pollution Control Agency Library, 520 Lafayette Road, Saint Paul, Minnesota 55155, at the addresses indicated, or through the Minitex interlibrary loan system. If any of the documents are amended, and if the amendments are incorporated by reference or otherwise made a part of federal technical rules at Code of Federal Regulations, title 40, part 280, then the amendments to documents are also incorporated by reference in this chapter.

Subp. 2. **Referenced standards.** The documents referenced throughout this chapter are listed in items A to H J:

A. American Society of Mechanical Engineers, 345 East 47th Street, New York, New York 10017:

- (1) B31.3, Process Piping (2005); and
- (2) B31.4, Pipeline Transportation Systems for Liquid Hydrocarbons and Other Liquids (2006).

B. A. American Petroleum Institute, 1220 L Street Northwest, Washington, D.C. 20005:

- (1) API RP 1007, Loading and Unloading of MC 306/DOT 406 Cargo Tank Motor Vehicles (2001);



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- (2) API RP 1604, Closure of Underground Petroleum Storage Tanks (1996);
- (2)(3) API RP 1615, Installation of Underground Petroleum Storage Systems (1996) (2011);
- (3)(4) API RP 1621, Bulk Liquid Stock Control at Retail Outlets (1987) (1993);
- (4) API 1626, Storing and Handling Ethanol and Gasoline-Ethanol Blends at Distribution Terminals and Service Stations (1985);
- (5) API STD 1631, Interior Lining and Periodic Inspection of Underground Storage Tanks (2001);
- (6) API RP 1632, Cathodic Protection of Underground Petroleum Storage Tanks and Piping Systems (1996);
- (7) API STD 2015, Requirements for Safe Entry and Cleaning of Petroleum Storage Tanks (2001) (2014); and
- (8) API RP 2200, Repairing Crude Oil, Liquefied Petroleum Gas, and Product Hazardous Liquid Pipelines (1994) (2015); and
- (9) API RP 2016, Guidelines and Procedures for Entering and Cleaning Petroleum Storage Tanks (2001).

## B. Fiberglass Tank and Pipe Institute:

- (1) RP T-95-1, Remanufacturing of Fiberglass Reinforced Plastic (FRP) Underground Storage Tanks (1995);  
and
- (2) RP 2007-2, Field Test Protocol for Testing the Annular Space of Installed Underground Fiberglass Double and Triple-Wall Tanks with Dry Annular Space (2007).

## C. National Association of Corrosion Engineers, Publications Department, P.O. Box 218340, Houston, Texas 77218; NACE International:

- (1) SP0169-2007 SP0169-2013, Control of External Corrosion on Underground or Submerged Metallic Piping Systems (2007) (2013); and
- (2) RP0285-2002 SP0285-2011, Corrosion Control of Underground Storage Tank Systems by Cathodic Protection (2002) (2011);
- (3) TM0101-2012, Measurement Techniques Related to Criteria for Cathodic Protection of Underground Tank Systems (2012); and
- (4) TM0497-2012, Measurement Techniques Related to Criteria for Cathodic Protection on Underground or Submerged Metallic Piping Systems (2012).

## D. National Fire Protection Association, Batterymarch Park, Quincy, Massachusetts 02269:

- (1) NFPA 30, Flammable and Combustible Liquids Code (2003) (2015); and
- (2) NFPA 30A, Code for Motor Fuel Dispensing Facilities and Repair Garages (2015);
- (3) NFPA 385, Standard for Tank Vehicles for Flammable and Combustible Liquids (2007) (2012); and
- (4) NFPA 326, Standard for the Safeguarding of Tanks and Containers for Entry, Cleaning, or Repair (2015).

## E. National Leak Prevention Association, NLPA 631, Chapter A, Entry, Cleaning, Interior Inspection, Repair, and

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Lining of Underground Storage Tanks (1991).

F. National Institute for Occupational Safety and Health, DHEW (NIOSH) Publication No. 80-106, Criteria for a Recommended Standard: Working in Confined Spaces (1979).

E. G. Petroleum Equipment Institute, P.O. Box 2380, Tulsa, Oklahoma 74101:

(1) ~~RP100~~ PEI/RP 100-11, Recommended Practices for Installation of Underground Liquid Storage Systems (2005). (2011);

(2) PEI/RP900, Recommended Practices for the Inspection and Maintenance of UST Systems (2008);

(3) PEI/RP1000-14, Recommended Practices for the Installation of Marina Fueling Systems (2014); and

(4) PEI/RP1200, Recommended Practices for the Testing and Verification of Spill, Overfill, Leak Detection and Secondary Containment Equipment at UST Facilities (2017).

F. H. Steel Tank Institute, 570 Oakwood Road, Lake Zurich, Illinois 60047.:

(1) ~~STI-P3, Specification and Manual for External Corrosion Protection of Underground Steel Storage Tanks (2006);~~

(2) ~~(1) STI F841, Standard for Dual Wall Underground Steel Storage Tanks (2006);~~

(3) ~~(2) STI F894, ACT-100® Specification for External Corrosion Protection of FRP Composite Steel Underground Storage Tanks (2006)~~ USTs (2015); and

(3) F922, Specification for Permatank® (2014);

(4) F961, ACT-100-U® Specification for External Corrosion Protection of Composite Steel Underground Storage Tanks (2015);

(5) ~~STI-P3®, Specification and Manual for External Corrosion Protection of Underground Steel Storage Tanks (2015);~~

(4) ~~(6) R012, Recommended Practice for Interstitial Tightness Testing of Existing Underground Double Wall Steel Tanks (2006).~~ (2007);

(7) R051, Cathodic Protection Testing Procedures for sti-P3® UST's (2006);

(8) R892, Recommended Practice for Corrosion Protection of Underground Piping Networks Associated with Liquid Storage and Dispensing Systems (2006); and

(9) R972, Recommended Practice for the Addition of Supplemental Anodes to sti-P3® UST's (2010).

G. I. Underwriters Laboratories Inc., 333 Pfingsten Road, Northbrook, Illinois 60062.:

(1) UL 58, Standard for Steel Underground Tanks for Flammable and Combustible Liquids (1996);

(2) ~~UL 567, Emergency Breakaway Fittings, Swivel Connectors and Pipe-Connection Fittings for Petroleum Products and LP-Gas (2004)~~ UL 971, Standard for Nonmetallic Underground Piping for Flammable Liquids (1995);

(3) UL 971A, Outline of Investigation for Metallic Underground Fuel Pipe (2006);

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~~(3) (4)~~ UL 1316, ~~Standard for~~ Glass-Fiber-Reinforced Plastic Underground Storage Tanks for Petroleum Products, Alcohols, and Alcohol-Gasoline Mixtures (2006); ~~and~~

~~(4) (5)~~ UL 1746, Standard for ~~Safety for~~ External Corrosion Protection Systems for Steel Underground Storage Tanks (2007);

~~(6)~~ UL 1856, Outline of Investigation for Underground Fuel Tank Internal Retrofit Systems (2013); and

~~(7)~~ UL 2447, Outline of Investigation for Containment Sumps, Fittings and Accessories for Fuels (2012).

~~H. J.~~ Underwriters' Laboratories of Canada, ~~7 Crouse Road, Scarborough, Ontario, Canada M1R 3A9~~;

~~(1)~~ CAN/ULC-S603.1-03, External Corrosion Protection Systems for Steel Underground Tanks for Flammable and Combustible Liquids (2003);

~~(2) (1)~~ ~~CAN/ULC-S603-00~~ CAN/ULC-S603-14, Standard for Steel Underground Tanks for Flammable and Combustible Liquids (2000) (2014);

~~(2)~~ CAN/ULC-S603.1-11, External Corrosion Protection Systems for Steel Underground Tanks for Flammable and Combustible Liquids (2011);

~~(3)~~ ~~ULC-S615-98~~ CAN/ULC-S615-14, Standard for Fibre Reinforced Plastic Underground Tanks for Flammable and Combustible Liquids (1998) (2014);

~~(4)~~ ULC-S631-05, Standard for Isolating Bushings for Steel Underground Tanks Protected with External Corrosion Protection Systems (2005);

~~(5)~~ CAN/ULC-S633-99, Standard for Flexible Underground Hose Connectors for Flammable and Combustible Liquids (1999); CAN/ULC S660-08, Standard for Nonmetallic Underground Piping for Flammable and Combustible Liquids (2008); and

~~(6)~~ ULC Subject C107C-M1984, Guide for Glass-Fiber-Reinforced Plastic Pipe and Fittings for Flammable Liquids (1984);

~~(7) (6)~~ ULC/ORD-C107.21-1992, Under-Dispenser Sumps (1992); ~~and~~

~~(8)~~ ULC/ORD-C971-2005, Nonmetallic Underground Piping for Flammable and Combustible Liquids (2005).

**TERM CHANGE.** The term “underground storage tank system” is changed to “UST system,” together with any necessary grammatical changes, wherever the term appears in Minnesota Rules, chapter 7150.

**REPEALER.** Minnesota Rules, parts 7150.0010, subpart 4; 7150.0030, subparts 8, 23, 25a, 44a, and 49; 7150.0100, subparts 10 and 12; 7150.0211; 7150.0300, subparts 2 and 7; 7150.0330, subpart 2; 7150.0410, subparts 2 and 6; and 7150.0420, are repealed.

G.

## G. CERTIFICATIONS

**Minnesota Pollution Control Agency**

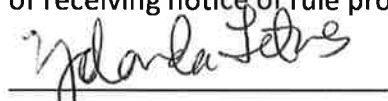
**CERTIFICATE OF MAILING THE DUAL NOTICE TO THE RULEMAKING MAILING LIST**

**Proposed Amendment to Rules Governing Underground Storage Tanks, *Minnesota Rules*, Chapter 7150 Underground Storage Tanks (parts 7150.0010; 7150.0030; 7150.0090; 7150.0100; 7150.0205; 7150.0215; 7150.0216; 7150.0250; 7150.0300; 7150.0330; 7150.0340; 7150.0345; 7150.0400; 7150.0410; 7150.0430; 7150.0445; 7150.0450; 7150.0451; and 7150.0500), and**

**Repeal of *Minnesota Rules*, parts 7150.0010, subpart 4; 7150.0030, subparts 8, 23, 25a, 44a, and 49; 7150.0100, subparts 10 and 12; 7150.0211; 7150.0300, subparts 2 and 7; 7150.0330, subpart 2; 7150.0410, subparts 2 and 6; and 7150.0420.**

**Docket No. 68-9003-35384 and Revisor's ID Number 4360.**

I certify that on August 27, 2018, at least 45 days before the end of the comment period, at St. Paul, Ramsey County, Minnesota, I sent an electronic notice with a hyperlink to electronic copies of the Notice (1) Dual Notice, (2) Statement of Need and Reasonableness, and (3) the proposed rule amendments to all parties who have registered with the MPCA for the purpose of receiving notice of rule proceedings under Minnesota Statutes, section 14.14, subdivision 1a.

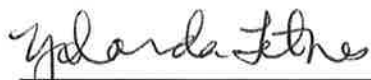
  
\_\_\_\_\_  
Yolanda Letnes,  
Rule Coordinator

**Minnesota Pollution Control Agency**

**CERTIFICATE OF ACCURACY OF THE MAILING LIST**

**Proposed Rules Governing Underground Storage Tank Systems, Minnesota Rules, 7150;  
Revisor's ID Number 4360**

I certify that the list of persons and associations who have requested that their names be placed on the Minnesota Pollution Control Agency rulemaking mailing list under Minnesota Statutes, section 14.14, subdivision 1a, is accurate, complete, and current as of August 24, 2018.

A handwritten signature in dark ink, appearing to read "Yolanda Letnes", is written over a horizontal line.

Yolanda Letnes,  
Rule Coordinator

## Minnesota Pollution Control Agency

### CERTIFICATE OF GIVING NOTICE AND ADDITIONAL NOTICE UNDER THE ADDITIONAL NOTICE PLAN IN COMPLIANCE WITH MINNESOTA STATUTES, SECTION 14.131

#### Proposed Rules Governing Underground Storage Tanks, Minnesota Rules, ch. 7150

I certify that on August 27, 2018, at St. Paul, Dakota County, Minnesota, I:

- sent an electronic notice with a hyperlink to electronic copies of the Notice, SONAR, and proposed rule amendments to all parties who have registered with the MPCA for the purpose of receiving notice of rule proceedings under Minnesota Statutes, section 14.14, subdivision 1a. A summary of the GovDelivery statistics associated with the GovDelivery email are attached to this Certificate.
- gave notice according to the Additional Notice Plan approved by the Office of Administrative Hearings on August 9, 2018. Specifically, I
  - sent an electronic notice with a hyperlink to electronic copies of the Notice, SONAR, and proposed rule amendments to the following:
    - Association of MN Counties; Jennifer Berquam, Environment & Natural Resources Policy Analyst; [jberquam@mncounties.org](mailto:jberquam@mncounties.org)
    - Association of Metropolitan Municipalities; Charlie Vander Aarde, Government Relations Specialist; [Charlie@MetroCitiesMN.org](mailto:Charlie@MetroCitiesMN.org)
    - League of MN Cities; Craig Johnson, Intergovernmental Relations Representative; [cjohnson@lmc.org](mailto:cjohnson@lmc.org)
    - Metropolitan Council; Leisa Thompson, MCES General Manager; [leisa.thompson@metc.state.mn.us](mailto:leisa.thompson@metc.state.mn.us)
    - Metropolitan Airports Commission; Mike Harder, Environmental Compliance Administrator; [Mike.Harder@mspmac.org](mailto:Mike.Harder@mspmac.org)
    - Minnesota Service Station & Convenience Store Association (MSSA); Lance Klatt, Executive Director; [lance@mnsa.com](mailto:lance@mnsa.com)
    - Minnesota Petroleum Marketers Association (MPMA); Kevin Thoma, Executive Director; [kthoma@mnmaonline.com](mailto:kthoma@mnmaonline.com)
    - MN Association of Townships (MAT); Gary Pederson, Executive Director; [gpetersen@mntownships.org](mailto:gpetersen@mntownships.org)
    - MN Chamber of Commerce; Tony Kwilas, Environmental Policy Director; [tkwilas@mnchamber.com](mailto:tkwilas@mnchamber.com)
    - MN City/County Management Association; Bart Fischer, President (Oakdale City Administrator); [bart.fischer@ci.oakdale.mn.us](mailto:bart.fischer@ci.oakdale.mn.us)
- sent an electronic notice with a hyperlink to electronic copies of the Dual Notice, SONAR and the proposed rule amendments to the tribal contacts expressing an interest in receiving notices for land-related rulemaking. The Air and Water Tribal Contacts list is available at <https://www.pca.state.mn.us/sites/default/files/p-gen5-25.pdf>. Liaison tribal contacts listed on the last page of the document will be excluded.
- sent an electronic notice with a hyperlink to electronic copies of the Dual Notice, SONAR and the proposed rule amendments to the following GovDelivery email lists:
  - Tank Compliance – List of owners and operators of tank systems (UST and AST) in Minnesota.

- UST Contractors – List of contractors who work with tank systems (UST and AST).

The summary of the GovDelivery statistics associated with the above lists are already included in the summary of the GovDelivery statistics under the first bullet.

- Posted a copy of the Dual Notice, proposed rule amendments, and SONAR on the MPCA's Public Notice webpage: <https://www.pca.state.mn.us/public-notices>
- Posted a link from the UST rule webpage to the public notice webpage where copies of the Dual Notice, proposed rule amendments, and SONAR were posted.

I certify that on August 24, 2018, at St. Paul, Dakota County, Minnesota, I:

- gave notice according to the Additional Notice Plan approved by the Office of Administrative Hearings on August 9, 2018, to individuals without an email address. Specifically, I mailed a hard copy of the notice with a hyperlink to electronic copies of the Notice, SONAR, and proposed rule amendments to two tribal contacts by depositing a copy in the State of Minnesota's central mail system for United States mail with postage prepaid.

Copies of the following documents are attached to this certification:

- Two tribal contact notices sent by U.S. Mail on August 24, 2018.

The Agency already provides copies of the documents listed below as part of the documentation:

- Dual Notice, draft rule, and SONAR as they appeared in the Public Notice webpage, hyperlinked to the GovDelivery email. See section 6.a).
- Dual Notice as published in the State Register. See section 6.b).



Yolanda Letnes

Rule Coordinator



**From:** Minnesota Pollution Control Agency  
**To:** [Letnes, Yolanda \(MPCA\)](#)  
**Subject:** Underground Storage Tanks Update Rule: Dual Notice  
**Date:** Monday, August 27, 2018 9:01:09 AM

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Minnesota Pollution Control Agency



## Underground Storage Tanks Update Rule: Dual Notice

### Why are you receiving this?

You are subscribed to receive electronic notices from the Minnesota Pollution Control Agency (MPCA) on rules relating to underground storage tanks (UST) via the following GovDelivery topic lists: UST Update Rule; Tanks Compliance, or Underground Storage Tank Contractors.

### What is this rule about?

The MPCA is revising existing UST rules to conform to 2015 federal updates, and to ensure regulated parties do not need to comply with separate federal and state regulations. The MPCA is including three types of amendments in this rule revision:

1. Requirements equivalent to federal rules;
2. Requirements exceeding federal rules; and
3. Requirements that only relocate rules within the chapter, reformat rules for ease of reading, or provide simple clarification to the content.

The proposed amendments affect Minn. R. ch. 7150, and include requirements resulting from the final 2015 amendment of 40 CFR pt. 280 that address:

- Adding periodic operation and maintenance requirements for UST systems;
- Removing past deferrals for emergency generator tanks, airport hydrant systems, and field constructed tanks;
- Adding new release prevention and detection technologies;
- Updating codes of practice; and
- Editorial and technical corrections.

The proposed amendments will also clarify how new tank technologies apply to the regulations.

While most revisions are consistent with federal language, some changes, listed below, exceed federal requirements to protect human health and the environment:

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- Positive shutoff for line leak detection at unattended card-lock facilities.

The Agency is also proposing to decrease record retention timeframes for certain operational testing records. Currently, release detection and monitoring records must be retained for 10 years; the Agency is proposing to decrease the record retention period to 5 years.

### What are the compliance dates?

Rules become effective within 5 working days of publication in the State Register; however, the proposed rules establish:

- October 13, 2020, as a deadline for owners and operators to initiate the new annual and 3-year testing requirements under proposed Minn. R. 7150.0216.
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requirements on these systems.

#### Where can I find more information?

The MPCA published the above Dual Notice in the August 27, 2018, [State Register](#). The Dual Notice and any related documents are available by visiting the:

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---

The mission of the MPCA is to protect and improve the environment and human health.

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---

This email was sent to yolanda.letnes@state.mn.us using GovDelivery Communications Cloud on behalf of: Minnesota Pollution Control Agency  
520 Lafayette Road North · Saint Paul, MN 55155 · 1-800-439-1420

Subject: Underground Storage Tanks Update Rule: Dual Notice

Sent: 08/27/2018 09:00 AM CDT

Sent By: mary.blackstock@state.mn.us

Sent To: Subscribers of Rulemaking: UST Update Rule, Tank Compliance, or Underground Storage Tank Contractors,

**2,945**

Recipients

 Email SMS Facebook Twitter RSS**97%**

Delivered

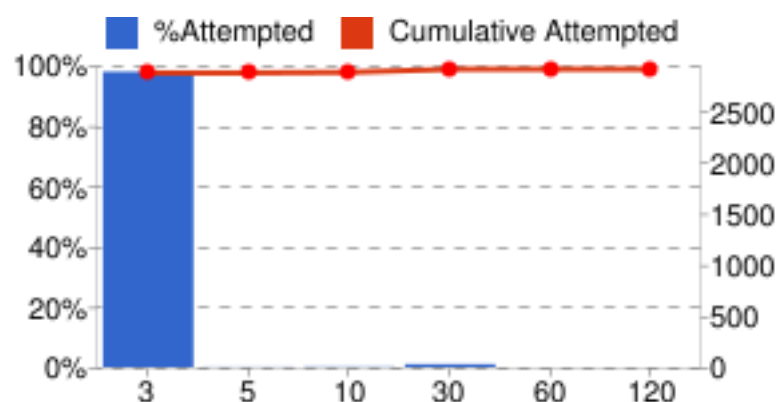
0% Pending

3% Bounced

24% Open Rate

2% Click Rate

## Email Delivery Stats



Minutes	Cumulative Attempted
3	98%
5	98%
10	98%
30	99%
60	99%
120	99%

## Delivery Metrics - Details

**2,945** Total Sent**2,864 (97%)** Delivered**0 (0%)** Pending**81 (3%)** Bounced**1 (0%)** Unsubscribed

## Bulletin Analytics

**2,046** Total Opens**698 (24%)** Unique Opens**85** Total Clicks**71 (2%)** Unique Clicks**13** # of Links

## Delivery and performance

*These figures represent all data since the bulletin was first sent to present time.*

	Progress	% Delivered	Recipients	# Delivered	Opened Unique	Bounced/Failed	Unsubscribes
<b>Email Bulletin</b>	Delivered	96.7%	2,432	2,351	657 / 27.9%	81	1
<b>Digest</b>	n/a	n/a	513	513	41 / 8.0%	0	0
<b>SMS Message</b>	Delivered	0.0%	0	0	n/a	0	n/a

## Link URL

Unique  
ClicksTotal  
Clicks

<a href="https://www.pca.state.mn.us/waste/underground-storage-tan...">https://www.pca.state.mn.us/waste/underground-storage-tan...</a>	29	35
<a href="https://www.pca.state.mn.us/public-notice">https://www.pca.state.mn.us/public-notice</a>	21	25
<a href="http://www.comm.media.state.mn.us/bookstore/mnbookstor...">http://www.comm.media.state.mn.us/bookstore/mnbookstor...</a>	9	12
<a href="https://content.govdelivery.com/accounts/MNPCA/bulletins/2...">https://content.govdelivery.com/accounts/MNPCA/bulletins/2...</a>	5	6
<a href="http://www.pca.state.mn.us/index.php/view-document.html?...">http://www.pca.state.mn.us/index.php/view-document.html?...</a>	4	4
<a href="https://minnesotaoah.granicusideas.com/discussions">https://minnesotaoah.granicusideas.com/discussions</a>	2	2
<a href="https://public.govdelivery.com/accounts/MNPCA/subscriber/o...">https://public.govdelivery.com/accounts/MNPCA/subscriber/o...</a>	1	1
<a href="https://www.pca.state.mn.us">https://www.pca.state.mn.us</a>	0	0
<a href="https://subscriberhelp.govdelivery.com/">https://subscriberhelp.govdelivery.com/</a>	0	0
<a href="https://public.govdelivery.com/accounts/MNPCA/subscribers/...">https://public.govdelivery.com/accounts/MNPCA/subscribers/...</a>	0	0
<a href="http://www.pca.state.mn.us/index.php?option=com_k2&amp;view...">http://www.pca.state.mn.us/index.php?option=com_k2&amp;view...</a>	0	0
<a href="https://content.govdelivery.com/accounts/MNPCA/bulletins/2...">https://content.govdelivery.com/accounts/MNPCA/bulletins/2...</a>	0	0
<a href="http://www.pca.state.mn.us/">http://www.pca.state.mn.us/</a>	0	0

**From:** [Letnes, Yolanda \(MPCA\)](#)  
**To:** ["jberquam@mncounties.org"](#); ["Charlie@MetroCitiesMN.org"](#); ["cjohnson@lmc.org"](#); ["leisa.thompson@metc.state.mn.us"](#); ["Mike.Harder@mshmac.org"](#); ["lance@mnssa.com"](#); ["kthoma@mnmaonline.com"](#); ["gpedersen@mntownships.org"](#); ["tkwilas@mchamber.com"](#); ["bart.fischer@ci.oakdale.mn.us"](#)  
**Subject:** Underground Storage Tanks (UST) Update Rule: Dual Notice for organizations  
**Date:** Monday, August 27, 2018 7:56:00 AM  
**Attachments:** [image001.png](#)

---

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Sincerely,

**Yolanda Letnes** | Rule Coordinator  
Minnesota Pollution Control Agency (MPCA)  
520 Lafayette Road | St. Paul, MN | 55155  
Office Phone: (651) 757-2527  
[yolanda.letnes@state.mn.us](mailto:yolanda.letnes@state.mn.us) | [www.pca.state.mn.us](http://www.pca.state.mn.us)



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**From:** [Letnes, Yolanda \(MPCA\)](#)  
**To:** ["cgoodsdy@boisforte-nsn.gov"](#); ["christina.maley@boisforte-nsn.gov"](#); ["cchavers@boisforte-nsn.gov"](#); ["tgeshick@boisforte-nsn.gov"](#); ["davidsmith@fdlrez.com"](#); ["vallenc@grandportage.com"](#); ["mwatkins@grandportage.com"](#); ["air@lldrm.org"](#); ["carma.huseby@llojibwe.org"](#); ["levib@lldrm.org"](#); ["jeffh@lldrm.org"](#); ["smalloy@lldrm.org"](#); ["bradley.harrington@millelacsband.com"](#); ["charlie.lippert@millelacsband.com"](#); ["perry.bunting@millelacsband.com"](#); ["chad.weiss@millelacsband.com"](#); ["deb.dirlam@lowersioux.com"](#); ["gmiller@pic.org"](#); ["leva.charles@pic.org"](#); ["margaret.obear@pic.org"](#); ["barbaral@uppersiouxcommunity-nsn.gov"](#); ["kevinj@uppersiouxcommunity-nsn.gov"](#); ["waziyatawin@uppersiouxcommunity-nsn.gov"](#); ["barbaral@uppersiouxcommunity-nsn.gov"](#); ["steve.albrecht@shakopeedakota.org"](#); ["mnorthbird@mnchippewatribe.org"](#); ["gfrazier@mnchippewatribe.org"](#); ["jmalinski@redlakenation.org"](#); ["kayla.bowe@redlakenation.org"](#); ["sbowe@redlakenation.org"](#); ["jleblanc@redlakenation.org"](#); ["monica.hedstrom@whiteearth-nsn.gov2"](#); ["terrance.tibbetts@whiteearth-nsn.gov"](#); ["dvogt@1854treatyauthority.org"](#); ["jcoleman@glifwc.org"](#); ["esteban@glifwc.org"](#); ["greg.blackdeer@ho-chunk.com"](#); ["ernie.grooms@redcliff-nsn.gov"](#); ["linda.nguyen@redcliff-nsn.gov"](#); ["richard.peterson@redcliff-nsn.gov"](#); ["dustino@swo-nsn.gov"](#); ["rhondab@swo-nsn.gov"](#); ["chairman@swo-nsn.gov"](#); ["jeremyb@stcroixtribalcenter.com"](#)  
**Subject:** Underground Storage Tanks (UST) Update Rule: Dual Notice for tribal contacts  
**Date:** Monday, August 27, 2018 7:56:00 AM  
**Attachments:** [image001.png](#)

---

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520 Lafayette Road | St. Paul, MN | 55155  
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[yolanda.letnes@state.mn.us](mailto:yolanda.letnes@state.mn.us) | [www.pca.state.mn.us](http://www.pca.state.mn.us)



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*corrected email addresses***Letnes, Yolanda (MPCA)**

---

**From:** Letnes, Yolanda (MPCA)  
**Sent:** Monday, August 27, 2018 8:19 AM  
**To:** 'monica.hedstrom@whiteearth-nsn.gov'  
**Subject:** FW: Underground Storage Tanks (UST) Update Rule: Dual Notice for tribal contacts

**From:** Letnes, Yolanda (MPCA)  
**Sent:** Monday, August 27, 2018 7:57 AM  
**To:** 'cgoodsky@boisforte-nsn.gov' <cgoodsky@boisforte-nsn.gov>; 'christina.maley@boisforte-nsn.gov' <christina.maley@boisforte-nsn.gov>; 'cchavers@boisforte-nsn.gov' <cchavers@boisforte-nsn.gov>; 'tgeshick@boisforte-nsn.gov' <tgeshick@boisforte-nsn.gov>; 'davidsmith@fdlrez.com' <davidsmith@fdlrez.com>; 'vallenc@grandportage.com' <vallenc@grandportage.com>; 'mwatkins@grandportage.com' <mwatkins@grandportage.com>; 'air@lldrm.org' <air@lldrm.org>; 'carma.huseby@llojibwe.org' <carma.huseby@llojibwe.org>; 'levib@lldrm.org' <levib@lldrm.org>; 'jeffh@lldrm.org' <jeffh@lldrm.org>; 'smalloy@lldrm.org' <smalloy@lldrm.org>; 'bradley.harrington@millelacsband.com' <bradley.harrington@millelacsband.com>; 'charlie.lippert@millelacsband.com' <charlie.lippert@millelacsband.com>; 'perry.bunting@millelacsband.com' <perry.bunting@millelacsband.com>; 'chad.weiss@millelacsband.com' <chad.weiss@millelacsband.com>; 'deb.dirlam@lowersioux.com' <deb.dirlam@lowersioux.com>; 'gmiller@piic.org' <gmiller@piic.org>; 'leya.charles@piic.org' <leya.charles@piic.org>; 'margaret.obear@piic.org' <margaret.obear@piic.org>; 'barbaral@uppersiouxcommunity-nsn.gov' <barbaral@uppersiouxcommunity-nsn.gov>; 'kevinj@uppersiouxcommunity-nsn.gov' <kevinj@uppersiouxcommunity-nsn.gov>; 'waziyatawin@uppersiouxcommunity-nsn.gov' <waziyatawin@uppersiouxcommunity-nsn.gov>; 'barbaral@uppersiouxcommunity-nsn.gov' <barbaral@uppersiouxcommunity-nsn.gov>; 'steve.albrecht@shakopeedakota.org' <steve.albrecht@shakopeedakota.org>; 'mnorthbird@mnchippewatribe.org' <mnorthbird@mnchippewatribe.org>; 'gfrazier@mnchippewatribe.org' <gfrazier@mnchippewatribe.org>; 'jmalinski@redlakenation.org' <jmalinski@redlakenation.org>; 'kayla.bowe@redlakenation.org' <kayla.bowe@redlakenation.org>; 'sbowe@redlakenation.org' <sbowe@redlakenation.org>; 'jleblanc@redlakenation.org' <jleblanc@redlakenation.org>; 'monica.hedstrom@whiteearth-nsn.gov2' <monica.hedstrom@whiteearth-nsn.gov2>; 'terrance.tibbetts@whiteearth-nsn.gov' <terrance.tibbetts@whiteearth-nsn.gov>; 'dvogt@1854treatyauthority.org' <dvogt@1854treatyauthority.org>; 'jcoleman@glifwc.org' <jcoleman@glifwc.org>; 'esteban@glifwc.org' <esteban@glifwc.org>; 'greg.blackdeer@ho-chunk.com' <greg.blackdeer@ho-chunk.com>; 'ernie.grooms@redcliff-nsn.gov' <ernie.grooms@redcliff-nsn.gov>; 'linda.nguyen@redcliff-nsn.gov' <linda.nguyen@redcliff-nsn.gov>; 'richard.peterson@redcliff-nsn.gov' <richard.peterson@redcliff-nsn.gov>; 'dustino@swo-nsn.gov' <dustino@swo-nsn.gov>; 'rhondab@swo-nsn.gov' <rhondab@swo-nsn.gov>; 'chairman@swo-nsn.gov' <chairman@swo-nsn.gov>; 'jeremyb@stcroixtribalcenter.com' <jeremyb@stcroixtribalcenter.com>  
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**Yolanda Letnes** | Rule Coordinator  
Minnesota Pollution Control Agency (MPCA)  
520 Lafayette Road | St. Paul, MN | 55155  
Office Phone: (651) 757-2527  
[yolanda.letnes@state.mn.us](mailto:yolanda.letnes@state.mn.us) | [www.pca.state.mn.us](http://www.pca.state.mn.us)



Our mission is to protect and improve the environment and enhance human health.

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## Letnes, Yolanda (MPCA)

---

**From:** Letnes, Yolanda (MPCA)  
**Sent:** Monday, August 27, 2018 8:32 AM  
**To:** 'stephen.albrecht@shakopeedakota.org'  
**Subject:** FW: Underground Storage Tanks (UST) Update Rule: Dual Notice for tribal contacts

**From:** Letnes, Yolanda (MPCA)  
**Sent:** Monday, August 27, 2018 7:57 AM  
**To:** 'cgoodsky@boisforte-nsn.gov' <cgoodsky@boisforte-nsn.gov>; 'christina.maley@boisforte-nsn.gov' <christina.maley@boisforte-nsn.gov>; 'cchavers@boisforte-nsn.gov' <cchavers@boisforte-nsn.gov>; 'tgeshick@boisforte-nsn.gov' <tgeshick@boisforte-nsn.gov>; 'davidsmith@fdlrez.com' <davidsmith@fdlrez.com>; 'vallenc@grandportage.com' <vallenc@grandportage.com>; 'mwatkins@grandportage.com' <mwatkins@grandportage.com>; 'air@lldrm.org' <air@lldrm.org>; 'carma.huseby@llojibwe.org' <carma.huseby@llojibwe.org>; 'levib@lldrm.org' <levib@lldrm.org>; 'jeffh@lldrm.org' <jeffh@lldrm.org>; 'smalloy@lldrm.org' <smalloy@lldrm.org>; 'bradley.harrington@millelacsband.com' <bradley.harrington@millelacsband.com>; 'charlie.lippert@millelacsband.com' <charlie.lippert@millelacsband.com>; 'perry.bunting@millelacsband.com' <perry.bunting@millelacsband.com>; 'chad.weiss@millelacsband.com' <chad.weiss@millelacsband.com>; 'deb.dirlam@lowersioux.com' <deb.dirlam@lowersioux.com>; 'gmiller@piic.org' <gmiller@piic.org>; 'leya.charles@piic.org' <leya.charles@piic.org>; 'margaret.obear@piic.org' <margaret.obear@piic.org>; 'barbaral@uppersiouxcommunity-nsn.gov' <barbaral@uppersiouxcommunity-nsn.gov>; 'kevinj@uppersiouxcommunity-nsn.gov' <kevinj@uppersiouxcommunity-nsn.gov>; 'waziyatawin@uppersiouxcommunity-nsn.gov' <waziyatawin@uppersiouxcommunity-nsn.gov>; 'barbaral@uppersiouxcommunity-nsn.gov' <barbaral@uppersiouxcommunity-nsn.gov>; 'steve.albrecht@shakopeedakota.org' <steve.albrecht@shakopeedakota.org>; 'mnorthbird@mnchippewatribe.org' <mnorthbird@mnchippewatribe.org>; 'gfrazier@mnchippewatribe.org' <gfrazier@mnchippewatribe.org>; 'jmalinski@redlakenation.org' <jmalinski@redlakenation.org>; 'kayla.bowe@redlakenation.org' <kayla.bowe@redlakenation.org>; 'sbowe@redlakenation.org' <sbowe@redlakenation.org>; 'jleblanc@redlakenation.org' <jleblanc@redlakenation.org>; 'monica.hedstrom@whiteearth-nsn.gov2' <monica.hedstrom@whiteearth-nsn.gov2>; 'terrance.tibbetts@whiteearth-nsn.gov' <terrance.tibbetts@whiteearth-nsn.gov>; 'dvogt@1854treatyauthority.org' <dvogt@1854treatyauthority.org>; 'jcoleman@glifwc.org' <jcoleman@glifwc.org>; 'esteban@glifwc.org' <esteban@glifwc.org>; 'greg.blackdeer@ho-chunk.com' <greg.blackdeer@ho-chunk.com>; 'ernie.grooms@redcliff-nsn.gov' <ernie.grooms@redcliff-nsn.gov>; 'linda.nguyen@redcliff-nsn.gov' <linda.nguyen@redcliff-nsn.gov>; 'richard.peterson@redcliff-nsn.gov' <richard.peterson@redcliff-nsn.gov>; 'dustino@swo-nsn.gov' <dustino@swo-nsn.gov>; 'rhondab@swo-nsn.gov' <rhondab@swo-nsn.gov>; 'chairman@swo-nsn.gov' <chairman@swo-nsn.gov>; 'jeremyb@stcroixtribalcenter.com' <jeremyb@stcroixtribalcenter.com>  
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The Agency is also proposing to decrease record retention timeframes for certain operational testing records. Currently, release detection and monitoring records must be retained for 10 years; the Agency is proposing to decrease the record retention period to 5 years.

#### **What are the compliance dates?**

Rules become effective within 5 working days of publication in the State Register; however, the proposed rules establish:

- October 13, 2020, as a deadline for owners and operators to initiate the new annual and 3-year testing requirements under proposed Minn. R. 7150.0216.
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Sincerely,

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**Letnes, Yolanda (MPCA)**

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**From:** Letnes, Yolanda (MPCA)  
**Sent:** Monday, August 27, 2018 8:48 AM  
**To:** 'kthoma@mpmaonline.com'  
**Subject:** FW: Underground Storage Tanks (UST) Update Rule: Dual Notice for organizations

**From:** Letnes, Yolanda (MPCA)  
**Sent:** Monday, August 27, 2018 7:57 AM  
**To:** 'jberquam@mncounties.org' <jberquam@mncounties.org>; 'Charlie@MetroCitiesMN.org' <Charlie@MetroCitiesMN.org>; 'cjohnson@lmc.org' <cjohnson@lmc.org>; 'leisa.thompson@metc.state.mn.us' <leisa.thompson@metc.state.mn.us>; 'Mike.Harder@msspmac.org' <Mike.Harder@msspmac.org>; 'lance@mnssa.com' <lance@mnssa.com>; 'kthoma@mnmaonline.com' <kthoma@mnmaonline.com>; 'gpedersen@mntownships.org' <gpedersen@mntownships.org>; 'tkwilas@mnchamber.com' <tkwilas@mnchamber.com>; 'bart.fischer@ci.oakdale.mn.us' <bart.fischer@ci.oakdale.mn.us>  
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**Letnes, Yolanda (MPCA)**

---

**From:** Letnes, Yolanda (MPCA)  
**Sent:** Monday, August 27, 2018 2:01 PM  
**To:** 'dseki@redlakenation.org'  
**Subject:** FW: Underground Storage Tanks (UST) Update Rule: Dual Notice for tribal contacts

**From:** Letnes, Yolanda (MPCA)  
**Sent:** Monday, August 27, 2018 7:57 AM  
**To:** 'cgoodsky@boisforte-nsn.gov' <cgoodsky@boisforte-nsn.gov>; 'christina.maley@boisforte-nsn.gov' <christina.maley@boisforte-nsn.gov>; 'cchavers@boisforte-nsn.gov' <cchavers@boisforte-nsn.gov>; 'tgeshick@boisforte-nsn.gov' <tgeshick@boisforte-nsn.gov>; 'davidsmith@fdlrez.com' <davidsmith@fdlrez.com>; 'vallenc@grandportage.com' <vallenc@grandportage.com>; 'mwatkins@grandportage.com' <mwatkins@grandportage.com>; 'air@lldrm.org' <air@lldrm.org>; 'carma.huseby@llojibwe.org' <carma.huseby@llojibwe.org>; 'levib@lldrm.org' <levib@lldrm.org>; 'jeffh@lldrm.org' <jeffh@lldrm.org>; 'smalloy@lldrm.org' <smalloy@lldrm.org>; 'bradley.harrington@millelacsband.com' <bradley.harrington@millelacsband.com>; 'charlie.lippert@millelacsband.com' <charlie.lippert@millelacsband.com>; 'perry.bunting@millelacsband.com' <perry.bunting@millelacsband.com>; 'chad.weiss@millelacsband.com' <chad.weiss@millelacsband.com>; 'deb.dirlam@lowersioux.com' <deb.dirlam@lowersioux.com>; 'gmiller@piic.org' <gmiller@piic.org>; 'leya.charles@piic.org' <leya.charles@piic.org>; 'margaret.obear@piic.org' <margaret.obear@piic.org>; 'barbaral@uppersiouxcommunity-nsn.gov' <barbaral@uppersiouxcommunity-nsn.gov>; 'kevinj@uppersiouxcommunity-nsn.gov' <kevinj@uppersiouxcommunity-nsn.gov>; 'waziyatawin@uppersiouxcommunity-nsn.gov' <waziyatawin@uppersiouxcommunity-nsn.gov>; 'barbaral@uppersiouxcommunity-nsn.gov' <barbaral@uppersiouxcommunity-nsn.gov>; 'steve.albrecht@shakopeedakota.org' <steve.albrecht@shakopeedakota.org>; 'mnorthbird@mnchippewatribe.org' <mnorthbird@mnchippewatribe.org>; 'gfrazier@mnchippewatribe.org' <gfrazier@mnchippewatribe.org>; 'jmalinski@redlakenation.org' <jmalinski@redlakenation.org>; 'kayla.bowe@redlakenation.org' <kayla.bowe@redlakenation.org>; 'sbowe@redlakenation.org' <sbowe@redlakenation.org>; 'jleblanc@redlakenation.org' <jleblanc@redlakenation.org>; 'monica.hedstrom@whiteearth-nsn.gov2' <monica.hedstrom@whiteearth-nsn.gov2>; 'terrance.tibbetts@whiteearth-nsn.gov' <terrance.tibbetts@whiteearth-nsn.gov>; 'dvogt@1854treatyauthority.org' <dvogt@1854treatyauthority.org>; 'jcoleman@glifwc.org' <jcoleman@glifwc.org>; 'esteban@glifwc.org' <esteban@glifwc.org>; 'greg.blackdeer@ho-chunk.com' <greg.blackdeer@ho-chunk.com>; 'ernie.grooms@redcliff-nsn.gov' <ernie.grooms@redcliff-nsn.gov>; 'linda.nguyen@redcliff-nsn.gov' <linda.nguyen@redcliff-nsn.gov>; 'richard.peterson@redcliff-nsn.gov' <richard.peterson@redcliff-nsn.gov>; 'dustino@swo-nsn.gov' <dustino@swo-nsn.gov>; 'rhondab@swo-nsn.gov' <rhondab@swo-nsn.gov>; 'chairman@swo-nsn.gov' <chairman@swo-nsn.gov>; 'jeremyb@stcroixtribalcenter.com' <jeremyb@stcroixtribalcenter.com>  
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## **H.4.**

- H.d. The electronic notice with hyperlinks to electronic copies of the Dual Notice, SONAR and the proposed rule amendments to the Tank Compliance list and the UST Contractors list. (See Exhibit H.1.)






## Public Notices

The following public notices have been issued by the Minnesota Pollution Control Agency. Most are open for public comment for 30 days and are available as PDF files. To see public notices that are no longer open for public comment, visit the Archived Public Notices page.

Monday, August 27, 2018

**Notice of Intent to Adopt Rules Without a Public Hearing Unless 25 or More Persons Request a Hearing, and Notice of Hearing if 25 or More Requests for Hearing are Received; Docket No. 68-9003-35384; Revisor's ID Number 4360**

-  UST draft rule.pdf
-  UST Dual Notice.pdf
-  UST SONAR.pdf

Open for public comment through Thursday, October 11, 2018

Friday, August 24, 2018





**Intent to Issue Coverage Under the State of Minnesota General Animal Feedlot NPDES Permit to Shane Kuehl Farm - Sec 9, Truman**

-  public\_notice-MNG442011-2018.pdf

Open for public comment through Monday, September 24, 2018

Tuesday, August 21, 2018








### **Intent to Modify Air Permit and State Implementation Plan for Flint Hills Resources Pine Bend Refinery**

-  Public Notice - 03700011-102 - 2018.pdf
-  Draft Permit - 03700011-102 - 2018.pdf
-  TSD - 03700011-102 - 2018.pdf
-  Proposed SIP12 Revision.pdf

Open for public comment through Wednesday, September 19, 2018

Monday, August 20, 2018




### **Notice of Proposed State Implementation Plan Revision**

-  Public Notice for Proposed State Implementation Plan Revision.pdf
-  Enclosures 1 2 and 3 - Background information, rule changes, final rules.pdf
-  Enclosure 4a - SR notices of proposed rule changes 04.1993 to 05.1995.pdf
-  Enclosure 4b - SR notices of proposed rule changes 08.1995 to 01.1999.pdf
-  Enclosure 4c - SR notices of proposed rule changes 04.2002 to 02.2016.pdf
-  Enclosure 5 - SR notices of approved rule changes.pdf
-  Enclosures 6 and 7 - Public notice and completeness review.pdf

Open for public comment through Friday, September 21, 2018

Friday, August 17, 2018



**Intent to Issue Air Emission Permit to Hormel Foods**

-  Public Notice - 09900002-102 - 2018.pdf
-  Draft Permit 09900002-102 - 2018 - .pdf
-  TSD - 09900002-102 - 2018.pdf

Open for public comment through Monday, September 17, 2018

Thursday, August 16, 2018

**Intent To Reissue NPDES and SDS Permit to Tapestry WWTP, Lake Elmo, MN0067547**

-  Public Notice - MN0067547 - 8-16-18.pdf
-  Draft Permit - MN0067547 - 8-16-18.pdf

Open for public comment through Monday, September 17, 2018

Monday, August 13, 2018

**Notice of availability and request for comments on the draft Lower Red River Watershed Restoration and Protection Strategy Report and Total Maximum Daily Load Report**

-  wq-iw5-15m.pdf

Open for public comment through Wednesday, September 12, 2018

Friday, August 10, 2018

**Intent to Issue Coverage Under the State of Minnesota General Animal Feedlot NPDES Permit to Jim Hebrink Site, Renville**



- [public\\_notice-MNG441999-2018.pdf](#)

Open for public comment through Monday, September 10, 2018

### **Intent to Issue Coverage Under the State of Minnesota General Animal Feedlot NPDES Permit to Huisinga 71 Site, Danube**

- [public\\_notice-MNG440524-2018.pdf](#)

Open for public comment through Monday, September 10, 2018

### **Intent to Issue Coverage Under the State of Minnesota General Animal Feedlot NPDES Permit to Wood Site, Granada**

- [public\\_notice-MNG442013-2018.pdf](#)

Open for public comment through Monday, September 10, 2018

### **Intent to Issue Coverage Under the State of Minnesota General Animal Feedlot NPDES Permit to Fraser Pork, Welcome**

- [public\\_notice-MNG442015-2018.pdf](#)

Open for public comment through Monday, September 10, 2018

### **Intent to Reissue NPDES and SDS Permit to Hennepin Energy Recovery Center, Minneapolis**

- [Public Notice - MN0057525 - 2018.pdf](#)
- [Draft Permit - MN0057525 - 2018.pdf](#)

Open for public comment through Monday, September 10, 2018



Thursday, August 9, 2018

**Intent to Modify an Animal Feedlot Facility that has been provided Coverage Under the State of Minnesota General Animal Feedlot NPDES Permit to Skyview Dairy Inc, Hutchinson**

-  [public\\_notice-MNG441937-2018.pdf](#)

Open for public comment through Monday, September 10, 2018

**Intent to Reissue SDS Permit to City of Nisswa Wastewater Treatment Facility**

-  Public Notice MN0059242
-  Draft Permit MN0059242

Open for public comment through Monday, October 8, 2018

**Intent to Issue Coverage Under the State of Minnesota General Animal Feedlot NPDES Permit to Joe & Chris Wieneke Farm - Sec 22 & 27, Adrian**

-  [public\\_notice-MNG442014-2018.pdf](#)

Open for public comment through Monday, September 10, 2018



**Intent to Issue Coverage Under the State of Minnesota General Animal Feedlot NPDES Permit to J&C Swine - Jeremy Site, Renville**

-  [public\\_notice-MNG440841-2018.pdf](#)

Open for public comment through Monday, September 10, 2018




Wednesday, August 8, 2018

**Intent to Reissue NPDES/SDS Permit to Magellan Pipeline Co LP - Rochester Terminal, Eyota**

-  Public Notice - MN0059820 - 2018.pdf
-  Draft Permit - MN0059820 - 2018.pdf

Open for public comment through Friday, September 7, 2018

**Intent to Reissue NPDES and SDS Permit to MCES - Eagles Point WWTP, Cottage Grove, MN0029904**

-  Public Notice - MN0029904 - 8-8-18.pdf
-  Draft Permit - MN0029904 - 8-8-18.pdf
-  Fact Sheet - MN0029904 - 8-8-18.pdf

Open for public comment through Monday, October 8, 2018



**Intent to Modify General Animal Feedlot NPDES Permit to KeDu Inc., Villard**

-  Public Notice MNG440263

Open for public comment through Friday, September 7, 2018

Friday, August 3, 2018



**Intent to Reissue SDS Permit to Charles L Sommers Wilderness Canoe Base, Ely**

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Open for public comment through Tuesday, September 4, 2018



Thursday, August 2, 2018

**Intent to Issue Coverage Under the State of Minnesota Individual Animal Feedlot NPDES Permit to Westland Dairy LLP, Richmond**

-  draft\_permit-MN0071340-2018.pdf
-  public\_notice-MN0071340-2018.pdf

Open for public comment through Tuesday, September 4, 2018

**Intent to Issue Coverage Under the State of Minnesota General Animal Feedlot NPDES Permit to Lenzen Acres LLP - Home Site, Farm 2 West, Farm 3 Smith's, and Mark's Site, Green Isle**

-  draft\_permit-MN0071331-2018.pdf
-  public\_notice-MN0071331-2018\_0.pdf

Open for public comment through Tuesday, September 4, 2018

Wednesday, August 1, 2018

**Intent to Modify a Manure Management Plan for an Animal Feedlot Facility that has been provided Coverage Under the State of Minnesota General Animal Feedlot NPDES Permit to Krohn Pork LLC, Nicollet**

-  public\_notice-MNG440355-2018.pdf

Open for public comment through Friday, August 31, 2018

## **Intent to Issue Coverage Under the State of Minnesota General Animal Feedlot NPDES Permit to Dennis Tauer Barns, Springfield**

- [public\\_notice-MNG442012-2018.pdf](#)

Open for public comment through Friday, August 31, 2018

Friday, July 27, 2018

## **Intent to Reissue Air Emission Permit to The Toro Company**

- [Public Noitce - 05300844-102 - 2018.pdf](#)
- [Draft Permit - 05300844-102 - 2018.pdf](#)
- [TSD - 05300844-102 - 2018.pdf](#)

Open for public comment through Monday, August 27, 2018

1 2 next › last »

## **H.5.**

**H.5. The electronic notice with hyperlinks to electronic copies of the Dual Notice, SONAR and the proposed rule amendments to the Tank Compliance list and the UST Contractors list. (See Exhibit H.1.)**






## Public Notices

The following public notices have been issued by the Minnesota Pollution Control Agency. Most are open for public comment for 30 days and are available as PDF files. To see public notices that are no longer open for public comment, visit the Archived Public Notices page.

Monday, August 27, 2018

**Notice of Intent to Adopt Rules Without a Public Hearing Unless 25 or More Persons Request a Hearing, and Notice of Hearing if 25 or More Requests for Hearing are Received; Docket No. 68-9003-35384; Revisor's ID Number 4360**

-  UST draft rule.pdf
-  UST Dual Notice.pdf
-  UST SONAR.pdf

Open for public comment through Thursday, October 11, 2018

Friday, August 24, 2018





**Intent to Issue Coverage Under the State of Minnesota General Animal Feedlot NPDES Permit to Shane Kuehl Farm - Sec 9, Truman**

-  public\_notice-MNG442011-2018.pdf

Open for public comment through Monday, September 24, 2018

Tuesday, August 21, 2018








### **Intent to Modify Air Permit and State Implementation Plan for Flint Hills Resources Pine Bend Refinery**

-  Public Notice - 03700011-102 - 2018.pdf
-  Draft Permit - 03700011-102 - 2018.pdf
-  TSD - 03700011-102 - 2018.pdf
-  Proposed SIP12 Revision.pdf

Open for public comment through Wednesday, September 19, 2018

Monday, August 20, 2018

### **Notice of Proposed State Implementation Plan Revision**




-  Public Notice for Proposed State Implementation Plan Revision.pdf
-  Enclosures 1 2 and 3 - Background information, rule changes, final rules.pdf
-  Enclosure 4a - SR notices of proposed rule changes 04.1993 to 05.1995.pdf
-  Enclosure 4b - SR notices of proposed rule changes 08.1995 to 01.1999.pdf
-  Enclosure 4c - SR notices of proposed rule changes 04.2002 to 02.2016.pdf
-  Enclosure 5 - SR notices of approved rule changes.pdf
-  Enclosures 6 and 7 - Public notice and completeness review.pdf

Open for public comment through Friday, September 21, 2018

Friday, August 17, 2018





**Intent to Issue Air Emission Permit to Hormel Foods**

-  Public Notice - 09900002-102 - 2018.pdf
-  Draft Permit 09900002-102 - 2018 - .pdf
-  TSD - 09900002-102 - 2018.pdf

Open for public comment through Monday, September 17, 2018

Thursday, August 16, 2018

**Intent To Reissue NPDES and SDS Permit to Tapestry WWTP, Lake Elmo, MN0067547**

-  Public Notice - MN0067547 - 8-16-18.pdf
-  Draft Permit - MN0067547 - 8-16-18.pdf

Open for public comment through Monday, September 17, 2018

Monday, August 13, 2018

**Notice of availability and request for comments on the draft Lower Red River Watershed Restoration and Protection Strategy Report and Total Maximum Daily Load Report**

-  wq-iw5-15m.pdf

Open for public comment through Wednesday, September 12, 2018

Friday, August 10, 2018

**Intent to Issue Coverage Under the State of Minnesota General Animal Feedlot NPDES Permit to Jim Hebrink Site, Renville**

- [public\\_notice-MNG441999-2018.pdf](#)

Open for public comment through Monday, September 10, 2018

### **Intent to Issue Coverage Under the State of Minnesota General Animal Feedlot NPDES Permit to Huisinga 71 Site, Danube**

- [public\\_notice-MNG440524-2018.pdf](#)

Open for public comment through Monday, September 10, 2018

### **Intent to Issue Coverage Under the State of Minnesota General Animal Feedlot NPDES Permit to Wood Site, Granada**

- [public\\_notice-MNG442013-2018.pdf](#)

Open for public comment through Monday, September 10, 2018

### **Intent to Issue Coverage Under the State of Minnesota General Animal Feedlot NPDES Permit to Fraser Pork, Welcome**

- [public\\_notice-MNG442015-2018.pdf](#)

Open for public comment through Monday, September 10, 2018

### **Intent to Reissue NPDES and SDS Permit to Hennepin Energy Recovery Center, Minneapolis**

- [Public Notice - MN0057525 - 2018.pdf](#)
- [Draft Permit - MN0057525 - 2018.pdf](#)

Open for public comment through Monday, September 10, 2018



Thursday, August 9, 2018

**Intent to Modify an Animal Feedlot Facility that has been provided Coverage Under the State of Minnesota General Animal Feedlot NPDES Permit to Skyview Dairy Inc, Hutchinson**

-  [public\\_notice-MNG441937-2018.pdf](#)

Open for public comment through Monday, September 10, 2018

**Intent to Reissue SDS Permit to City of Nisswa Wastewater Treatment Facility**

-  Public Notice MN0059242
-  Draft Permit MN0059242

Open for public comment through Monday, October 8, 2018

**Intent to Issue Coverage Under the State of Minnesota General Animal Feedlot NPDES Permit to Joe & Chris Wieneke Farm - Sec 22 & 27, Adrian**

-  [public\\_notice-MNG442014-2018.pdf](#)

Open for public comment through Monday, September 10, 2018



**Intent to Issue Coverage Under the State of Minnesota General Animal Feedlot NPDES Permit to J&C Swine - Jeremy Site, Renville**

-  [public\\_notice-MNG440841-2018.pdf](#)

Open for public comment through Monday, September 10, 2018




Wednesday, August 8, 2018

**Intent to Reissue NPDES/SDS Permit to Magellan Pipeline Co LP - Rochester Terminal, Eyota**

-  Public Notice - MN0059820 - 2018.pdf
-  Draft Permit - MN0059820 - 2018.pdf

Open for public comment through Friday, September 7, 2018

**Intent to Reissue NPDES and SDS Permit to MCES - Eagles Point WWTP, Cottage Grove, MN0029904**

-  Public Notice - MN0029904 - 8-8-18.pdf
-  Draft Permit - MN0029904 - 8-8-18.pdf
-  Fact Sheet - MN0029904 - 8-8-18.pdf

Open for public comment through Monday, October 8, 2018



**Intent to Modify General Animal Feedlot NPDES Permit to KeDu Inc., Villard**

-  Public Notice MNG440263

Open for public comment through Friday, September 7, 2018

Friday, August 3, 2018



**Intent to Reissue SDS Permit to Charles L Sommers Wilderness Canoe Base, Ely**

-  Public Notice-MN0050199-2018.pdf
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Open for public comment through Monday, August 27, 2018

1 2 next › last »



# Underground Storage Tanks (UST) Update Rulemaking

## ✉ UST Update Rule notices

Be the first to know about underground storage tank rulemaking notices!

**Email:**

jane.doe@example.com

Next

In Minnesota, there are about 18,000 regulated USTs currently in use. The tanks are regulated by the UST program. UST regulations were first implemented by MPCA in 1988 primarily to prevent releases of petroleum products and hazardous substances from gas stations and other facilities into the environment. The regulations were subsequently amended to address federal language changes.

The existing underground tank rule is designed to prevent improper design, installation, use, maintenance, and closure of UST systems which includes the tanks, piping, and dispensers. There is a need to revise the UST regulations to incorporate U.S. Environmental Protection Agency changes to the UST program as well as to update outdated portions of the regulations due to changes in technology since the

1980s. Program knowledge gained during the last 20 years will be used to update and revise the regulations to make targeted changes to improve implementation and prevent UST releases.

The proposed revisions consider these topics:

- adding secondary containment requirements for new and replaced tanks and piping;
- adding operator training requirements for UST system owners and operators;
- adding periodic operation and maintenance requirements for UST systems;
- removing certain deferrals;
- adding new release prevention and detection technologies;
- updating codes of practice;
- other related topics that time and resources allowed; and
- editorial and technical corrections.

## Notices

- **Request for comments (Nov. 9, 2015)**
- **Dual Notice, draft rule, and the SONAR (Aug. 27, 2018)**

## Rule-related documents

Rule-related documents will be posted here as they become available.

**Minnesota Revisor's Office (R-04360)**

## Current Minnesota statutes and rules

- **Minn. Stat. 116.49, Subd. 1**
- **Minn. R. 7150**

### **Tentative schedule**

<b>Task</b>	<b>Date(s)</b>
Publish Request for Comments	Nov. 9, 2015



Advisory committee meetings	Jan - June 2016
Publish notice of proposed rules in the State Register	Aug. 27, 2018
Final adoption of rules	~3 months after notice
<ul style="list-style-type: none"><li>• no hearing</li><li>• with a hearing</li></ul>	~6 months after notice

## Staff Contacts

For questions about the advisory committee or technical questions on the UST rules, contact:

Zachary Klaus  
18 Wood Lake Drive SE  
Rochester, MN 55904  
507-285-7343  
**[zachary.klaus@state.mn.us](mailto:zachary.klaus@state.mn.us)**

For questions about the rulemaking process or public participation opportunities, contact:

Yolanda Letnes  
520 Lafayette Road North  
St. Paul, MN 55155-4194  
651-757-2527  
**[Yolanda.letnes@state.mn.us](mailto:Yolanda.letnes@state.mn.us)**



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August 24, 2018

The Honorable Melanie Benjamin  
 Chief Executive  
 Mille Lacs Band of Ojibwe  
 43408 Oodena Drive  
 Onamia, MN 56359-2236

RE: In The Matter of the Proposed Rules of the Minnesota Pollution Control Agency Governing  
 Underground Storage Tanks; Revisor's ID Number 4360

Dear Chief Executive Benjamin:

**Summary:** The Minnesota Pollution Control Agency (Agency) is revising existing Underground Storage Tank (UST) rules to conform to 2015 federal updates, and to ensure regulated parties do not need to comply with separate federal and state regulations. The Agency is including 3 types of amendments in this rule revision:

1. Requirements equivalent to federal rules;
2. Requirements exceeding federal rules; and
3. Requirements that only relocate rules within the chapter, reformat rules for ease of reading, or provide simple clarification to the content.

The proposed amendments affect Minn. R. ch. 7150, and include requirements resulting from the final 2015 amendment of 40 CFR pt. 280 that address:

- Adding periodic operation and maintenance requirements for UST systems;
- Removing past deferrals for emergency generator tanks, airport hydrant systems, and field constructed tanks;
- Adding new release prevention and detection technologies;
- Updating codes of practice; and
- Editorial and technical corrections.

The proposed amendments will also clarify how new tank technologies apply to the regulations.

While most revisions are consistent with federal language, some changes, listed below, exceed federal requirements to protect human health and the environment:

- Introduction of potentially harmful substances;
- Requirement of double-poppet shear valves for new and replacement shear valves;
- Submersible pump sump requirements;
- Underdispenser sump requirements;
- Emergency stops;

Chief Executive Benjamin  
Page 2  
August 24, 2018

- Agency-approved tester requirements;
- Sixty-day timeline for cathodic protection repairs;
- Conditions under which tank system replacement or permanent closure are required;
- Antisiphon device requirements; and
- Positive shutoff for line leak detection at unattended card-lock facilities.

The Agency is also proposing to decrease record retention timeframes for certain operational testing records. Currently, release detection and monitoring records must be retained for 10 years; the Agency is proposing to decrease the record retention period to 5 years.

**Compliance Dates:** Rules become effective within 5 working days of publication in the State Register; however, the proposed rules establish:

- October 13, 2020, as a deadline for owners and operators to initiate the new annual and 3-year testing requirements under proposed Minn. R. 7150.0216.
- October 13, 2020, as a deadline for owners and operators of emergency generator tanks that were previously exempt from release detection requirements, to comply with release detection requirements on these systems.

We plan to publish a Dual Notice of Intent to Adopt Rules in the August 27, 2018, *State Register* and are now emailing the Notice.

The MPCA is sending you a copy of the Dual Notice, Statement of Need and Reasonableness, and the proposed rules via any of the following hyperlinks:

- <http://www.pca.state.mn.us/index.php/public-notices.html>
- <https://www.pca.state.mn.us/waste/underground-storage-tanks-ust-update-rulemaking>
- <https://minnesotaoah.granicusideas.com/discussions>

You may contact me if you would like a paper copy of these documents.

If you have any questions about these rules, please contact me at 651-757-2527 or [yolanda.letnes@state.mn.us](mailto:yolanda.letnes@state.mn.us).

Sincerely,

  
Yolanda Letnes,  
Rule Coordinator

YL:mb



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August 24, 2018

George Reynolds  
Lands Supervisor  
St. Croix Chippewa Indians of Wisconsin  
24663 Angeline Avenue  
Webster, WI 54893

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George Reynolds  
Page 2  
August 24, 2018

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YL:mb





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Chief Executive Benjamin  
Page 2  
August 24, 2018

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- Antisiphon device requirements; and
- Positive shutoff for line leak detection at unattended card-lock facilities.

The Agency is also proposing to decrease record retention timeframes for certain operational testing records. Currently, release detection and monitoring records must be retained for 10 years; the Agency is proposing to decrease the record retention period to 5 years.

**Compliance Dates:** Rules become effective within 5 working days of publication in the State Register; however, the proposed rules establish:

- October 13, 2020, as a deadline for owners and operators to initiate the new annual and 3-year testing requirements under proposed Minn. R. 7150.0216.
- October 13, 2020, as a deadline for owners and operators of emergency generator tanks that were previously exempt from release detection requirements, to comply with release detection requirements on these systems.

We plan to publish a Dual Notice of Intent to Adopt Rules in the August 27, 2018, *State Register* and are now emailing the Notice.

The MPCA is sending you a copy of the Dual Notice, Statement of Need and Reasonableness, and the proposed rules via any of the following hyperlinks:

- <http://www.pca.state.mn.us/index.php/public-notices.html>
- <https://www.pca.state.mn.us/waste/underground-storage-tanks-ust-update-rulemaking>
- <https://minnesotaoah.granicusideas.com/discussions>

You may contact me if you would like a paper copy of these documents.

If you have any questions about these rules, please contact me at 651-757-2527 or [yolanda.letnes@state.mn.us](mailto:yolanda.letnes@state.mn.us).

Sincerely,

  
Yolanda Letnes,  
Rule Coordinator

YL:mb

I.

**I. WRITTEN COMMENTS ON THE PROPOSED RULES RECEIVED BY THE AGENCY DURING THE PUBLIC NOTICE COMMENT PERIOD.**

# Libby Law Office, P. A.

Attorneys at Law

# RECEIVED

By: OAH on 10/5/18 3:53 p.m.

Kirsten J. Libby  
[kirsten@libbylawoffice.com](mailto:kirsten@libbylawoffice.com)

Libby Law Building  
855 Rice Street, Suite 100  
St. Paul, MN 55117

Christopher J. Heinze  
[chris@libbylawoffice.com](mailto:chris@libbylawoffice.com)

Anthony D. Johnson  
[tony@libbylawoffice.com](mailto:tony@libbylawoffice.com)

Telephone: (651) 487-1208  
Facsimile: (651) 487-0662

Kirsten L. Christopherson  
[kchristopherson@libbylawoffice.com](mailto:kchristopherson@libbylawoffice.com)

## FACSIMILE TRANSMISSION RECORD

Date: October 5, 2018  
Sent To: The Honorable Jeanne M. Cochran  
Fax: 651-539-0310  
From: Christopher J. Heinze  
Re: Proposed Permanent Rules Relating to Underground Storage Tanks  
OAH Docket No. 68-9003-35384  
No. of Pages: 27 (including cover page and attached correspondence)

Please see attached correspondence.

   ORIGINAL WILL BE MAILED   X   ORIGINAL WILL NOT BE MAILED

*The information contained in this telecopier transmission is confidential, privileged attorney-client communication and is intended for the use of the individual or entity named above. If the reader of this message is not the intended recipient, or the employee or agent responsible to deliver it to the intended recipient, you are hereby notified that any distribution or copying of this privileged attorney-client communication is strictly prohibited. If you have received this facsimile by mistake, please immediately notify us by telephone, and return all the documents received to us at the above address.*

## Libby Law Office, P.A.

Attorneys at Law

Kirsten J. Libby, Esq. [kirsten@libbylawoffice.com](mailto:kirsten@libbylawoffice.com)

Anthony D. Johnson, Esq. [tony@libbylawoffice.com](mailto:tony@libbylawoffice.com) – Also licensed in WI

Christopher J. Heinze, Esq. [chris@libbylawoffice.com](mailto:chris@libbylawoffice.com)

Mark Murphy, Esq. [mark@libbylawoffice.com](mailto:mark@libbylawoffice.com)

Kirsten Christopherson, Esq. [kchristopherson@libbylawoffice.com](mailto:kchristopherson@libbylawoffice.com)

855 Rice Street, Suite 100

St. Paul, MN 55117

Office (651) 487-1208

Fax (651) 487-0662

October 5, 2018

The Honorable Jeanne M. Cochran  
Administrative Law Judge  
Minnesota Office of Administrative Hearings  
651-539-0310 Facsimile

**VIA FACSIMILE ONLY**

Re: Proposed Permanent Rules Relating to Underground Storage Tanks  
OAH Docket No. 68-9003-35384

Dear Judge Cochran:

Pursuant to the Dual Notice dated August 9, 2018, by John Linc Stine, Commissioner of the Minnesota Pollution Control Agency, regarding the above captioned matter, enclosed herein please find Requests for a Hearing from the following individuals: Angie Graupner; Timothy Gross; Mark Ogren; Rick Dehn; Frank Orton; Brian Schmeling; David Hutt; John Derichs; Lance Prouty; Daniel Kelly; Doug Mathees; Jay Cattoor; Brian Johnson; Pete Bartelt; Bret Wagner; Al Seckinger; Tyler Freyberg; Anne Leikam; Katie Kramer; Melissa Myron; Wade Carlson; Glenn Winter; Joyce Mamske; Robert Krogman; and Holly Werner.

As there are 25 written requests that the Minnesota Pollution Control Agency hold a hearing on these proposed rules, the agency shall hold a public hearing.

Please let us know if there are any questions or concerns regarding the foregoing.

Very Truly Yours,

LIBBY LAW OFFICE, P.A.

*/s/ Christopher J. Heinze*

Christopher J. Heinze

I.1.

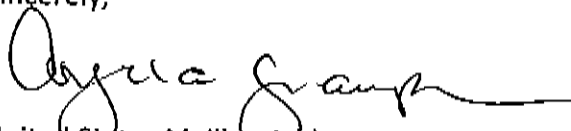
Yolanda Letnes  
Minnesota Pollution Control Agency  
520 Lafayette Road North  
Saint Paul, MN 55155

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After reviewing Minn.R.ch.7150, I am submitting this request in opposition to the entire rule. Under the provisions of Chapter 14, the MPCA shall precede under the provisions of sections 14.14 to 14.20 and hold a public hearing.

Thank you for your time and consideration. I look forward to the Agency's response and I have included my mailing address for future correspondences.

Sincerely,



United States Mailing Address

Angie Graupner  
6908 Tourville Circle  
Centerville mn 55038



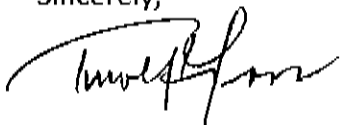
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Sincerely,



United States Mailing Address

Timothy Gross  
2323 Hutchinson Rd

Duluth, MN 55811

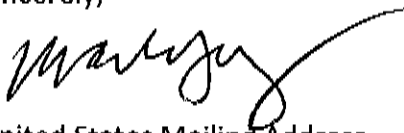
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Sincerely,



United States Mailing Address

MARK OGREN

P.O. Box 15

Stillwater, MN 55082

I.1.

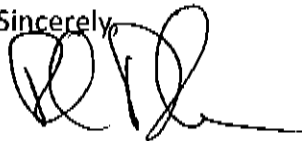
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United States Mailing Address

RICK DEHN  
15863 UPWATER ST  
ANDOVER, MN 55304

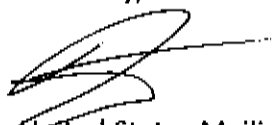
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Sincerely,

 Frank Oster  
United States Mailing Address  
P.O. Box 163B  
Walker MN 5648

Yolanda Letnes  
Minnesota Pollution Control Agency  
520 Lafayette Road North  
Saint Paul, MN 55155

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Sincerely,

  
United States Mailing Address

Brian Schmeling  
755 Roberts St. S.W.  
Hutchinson, MN. 55350

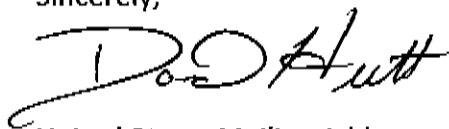
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Sincerely,



United States Mailing Address

David Hutt  
1424 Hwy 275  
Boyd Mn 56218

Yolanda Letnes  
Minnesota Pollution Control Agency  
520 Lafayette Road North  
Saint Paul, MN 55155

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United States Mailing Address

JOHN DERICHS

17536 - Hwy 22

DEARBORN, MN 56368

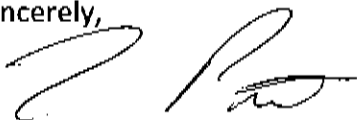
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Sincerely,



United States Mailing Address

LANCE PEARTY  
14017 White Rock Rd  
Burnsville, MN 55337



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Minnesota Pollution Control Agency  
520 Lafayette Road North  
Saint Paul, MN 55155

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Sincerely,



United States Mailing Address

Daniel Kelley  
3131 210<sup>th</sup> St. E  
Prior Lake MN 55372

I.1.


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Minnesota Pollution Control Agency  
520 Lafayette Road North  
Saint Paul, MN 55155

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Sincerely,



United States Mailing Address

Doug Matthees  
131 Walnut St  
Zumbrota, MN 55992

I.1.

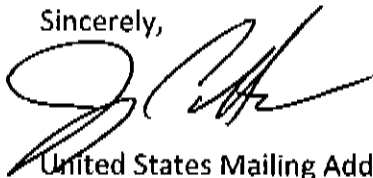
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United States Mailing Address

Jay Cathar  
500 S. Bruce St.  
Marshall, MN 56258

I.1.

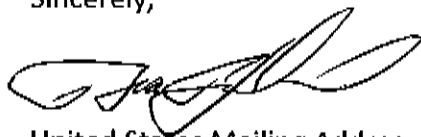
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Sincerely,



United States Mailing Address

Brian R. Johnson  
PO Box 121  
2679 STATE HWY 195  
HAWK, MN 56728

**I.1.**

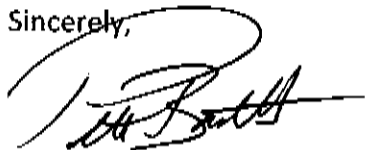
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Sincerely,



Pete Bartelt

United States Mailing Address

675 Plum Ave.  
Winoom, MN 56101


Yolanda Letnes  
Minnesota Pollution Control Agency  
520 Lafayette Road North  
Saint Paul, MN 55155

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Sincerely,



United States Mailing Address

Bret Wagner  
909 SW 7th ave  
Grand Rapids, MN 55744

Yolanda Letnes  
Minnesota Pollution Control Agency  
520 Lafayette Road North  
Saint Paul, MN 55155

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Sincerely,

*Al Seckinger*

*Al Seckinger*

United States Mailing Address

*500 Commerce Way  
Cloquet MN*

*55720*

I.1.

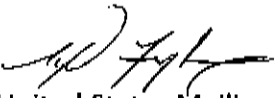
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Sincerely,

 Tyler Frayberg  
United States Mailing Address  
1525 LA MAR DR.  
NORTH MANKATO, MN 56003



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Minnesota Pollution Control Agency  
520 Lafayette Road North  
Saint Paul, MN 55155

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Sincerely,



Anne Leikam

United States Mailing Address

2641 Lake Elmo Ave N.

Lake Elmo, MN 55042

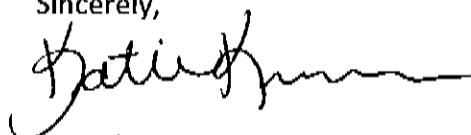
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Sincerely,



Katie Kramer

United States Mailing Address

1525 LaMar Drive  
North Mankato, MN 56003

**I.1.**


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Minnesota Pollution Control Agency  
520 Lafayette Road North  
Saint Paul, MN 55155

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Sincerely,

  
United States Mailing Address  
PO Box 149  
Elbow Lake, MN 56531

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Saint Paul, MN 55155

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Sincerely,

*Wade Carlson* Wade Carlson

United States Mailing Address

*33128 Nueman Ct*  
*Lindstrom mn 55045*

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Saint Paul, MN 55155

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Sincerely,

 Glenn Winter

United States Mailing Address

22562, Hwy 15  
St Cloud MN. 56301

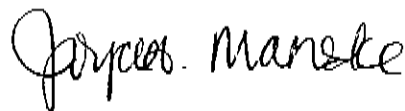
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Sincerely,



Joyce mamste

United States Mailing Address

20941 170th St

Eden Valley MN 55329

I.1.


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Minnesota Pollution Control Agency  
520 Lafayette Road North  
Saint Paul, MN 55155

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Sincerely,

 Robert Krogman  
United States Mailing Address

3721 MIDLAND AVE  
WHITE BEAR LAKE MN  
55110

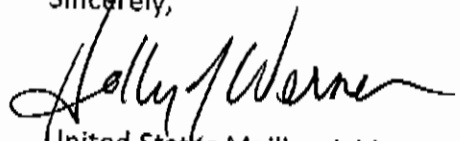
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Sincerely,

 Holly Werner

United States Mailing Address

2369 County Rd I  
Mendota Minn 55112





Chrisoulla Rakowski  
7G Environmental Compliance  
1203 Governors Square Blvd Suite #101  
Tallahassee, FL 32301  
Chrissie.rakowski@7g-enviro.com

October 1, 2018

Minnesota Pollution Control Agency  
520 Lafayette Road North  
St. Paul, MN 55155-4194

Public Comment

To Whom it may concern,

We are writing to you to submit a public comment and request a hearing on the proposed UST regulations in Chapter 7150. Specifically, 7150.0216 Subpart 3. Release Detection Equipment, sections B and C.

The proposed rule adversely affects the regulated community of tank owners by limiting their options and potentially increasing the cost of the work to be done, while giving preferential treatment unnecessarily to tank testers contrary to industry standards and the EPA rule. There is nothing that states in either the PEI RP-900, or the EPA's 40 CFR that annual walkthroughs require an agency-certified tester to conduct annual walkthroughs of spill containment and sumps, thereby limiting business at the expense of inspection and maintenance companies, consultants, and experts in the industry while requiring testers to go beyond scope of practice. Industry professionals are certified A/B in multiple states and are knowledgeable of UST regulations, have degrees or years of experience in the field, and can carry ICC certification.

Sincerely,

Chrisoulla Rakowski  
Regulatory Specialist



# Saint Louis County

Public Works Department • Richard H. Hansen Transportation & Public Works Complex  
4787 Midway Road, Duluth, MN 55811 • Phone: (218) 625-3830

**James T. Foldesi, P.E.**  
Public Works Director/  
Highway Engineer

October 9, 2018

Submitted electronically per public notice instructions to:

Attention: Administrative Law Judge Jeanne Cochran / Legal Assistant Katie Lin

Office of Administrative Hearings

600 North Robert Street, PO Box 64620

St. Paul MN 5164-0620

**Subject: MPCA Update Rules Docket No. 68-9003-35384/Revisor's ID Number 4360**

**Agency:** Minnesota Pollution Control Agency

The St. Louis County Public Works Department has reviewed the MPCA's proposed amendments to Minnesota Rules Chapter 7150 governing underground storage tanks (UST). The purpose of this letter is to submit written comments on the proposed UST rule amendments pursuant to the public notice signed by Commissioner Stine on August 9, 2018. Thank you for the opportunity to comment.

The proposed rule revisions have significant potential to affect St. Louis County. The County currently owns and operates twenty USTs that fuel equipment and vehicles that allow St. Louis County to provide critical safety functions that serve our citizens and visitors every day. This includes snow plowing, road maintenance and emergency response services. St. Louis County staff has worked closely with MPCA regional staff since the USTs were installed to ensure we are following UST rules (Minn. R. 7150) and minimize the potential for negative environmental impacts.

We respectfully submit the following comments:

- A. General Comment: It is important to allow a reasonable amount of time for UST system owners and operators to comply with the new rules. It is our understanding that many existing UST systems can be expected to require significant upgrades or full replacement to comply with the updated UST rules. St. Louis County is in the process of assessing our options for repair or replacement of our USTs, balancing the need to provide consistent service and environmental protection with the myriad of other budget needs facing the County. Our estimated cost to replace 19 tanks (all USTs except a UST recently replaced in downtown Duluth) is between \$2,000,000 and \$3,000,000 (not including potential remediation costs).

## Administrative Law Judge Jeanne Cochran

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B. Comments on Specific Rules

**Part 7150.0345, Subp. 1:** As stated in the public notice rule summary, the proposed rule amendments require investigation of suspected releases within 24 hours; EPA UST rules (40 CFR § 280.52) allow up to seven days (unless another time period specified by the implementing agency). While we understand the need to act quickly if a release from a UST is suspected, we are concerned that this rule, as currently written, establishes requirements that may be infeasible to meet in all cases, especially for remote facilities outside the Twin Cities metro area. The Statement of Need and Reasonableness (SONAR pages 54-55) states that the proposed rule complies with 40 CFR § 280.52 but does not provide any discussion of feasibility, especially with regard to arranging for an agency-approved tester to provide the tightness and integrity testing required by Item C.

The following proposed revised wording would continue to require that the UST system owner/operator take actions such as visual inspection and leak testing that can be accomplished with their own trained staff within 24 hours but allows one additional day to initiate and arrange for an agency-approved tester (typically a hired outside contractor) to conduct the testing required under item C. The following proposed wording also clarifies the start time of the deadline for complying with item C. As currently written this deadline has two different start times, leaving it overly open to interpretation by Agency staff.

B. Within 24 hours of discovering an unusual operating condition while conducting leak detection according to part 7150.0330 or 7150.0340, owners and operators must investigate the condition by:

- (1) conducting a visual inspection of aboveground and exposed below-grade components of a UST system for leaks and deficiencies; and
- 2) if applicable, repeating any leak test that indicated an unusual operating condition, conducted according to part 7150.0330, subpart 5, 6, or 6a, or 7150.0340, subpart 2, item A; 3, item B; or 4, item A.

C. Within ~~24~~ 48 hours of ~~discovering an unusual operating condition or~~ confirming an unusual operating condition according to item B, subitem (2), the owners and operators must initiate:

- (1) tightness testing according to part 7150.0330, subpart 4, or 7150.0340, subpart 3, item A, on the component suspected of leaking; and
- (2) if applicable, integrity testing, using an agency-approved tester, of interstitial and secondary-containment areas used for leak detection.

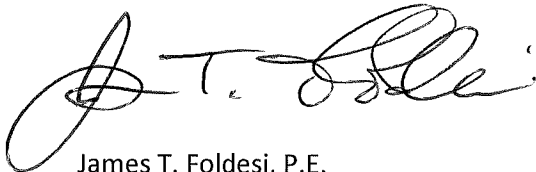
**Administrative Law Judge Jeanne Cochran**

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Please do not hesitate to contact Carol Andrews, Environmental Project Manager, with any questions or to discuss our comments. Carol can be reached by phone at (218)625-3862 or by email at [andrewsc@stlouiscountymn.gov](mailto:andrewsc@stlouiscountymn.gov).

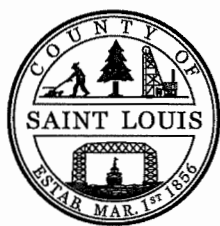
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James T. Foldesi, P.E.

Public Works Director/Highway Engineer

Cc: Keith Carlson, Minnesota Inter-County Association  
Mark Krebsbach, P.E., Minnesota County Engineers Association/Dakota County Engineer  
Brian Boder, P.E., St. Louis County Public Works  
Carol Andrews, P.E., St. Louis County Public Works



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We respectfully submit the following comments:

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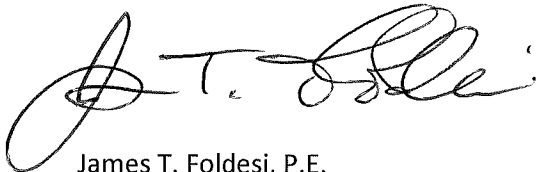
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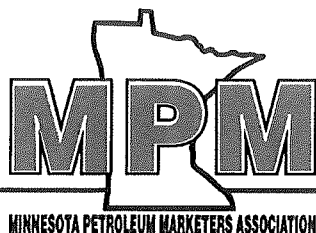
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www.mpmaonline.com

October 11, 2018

Yolanda Letnes  
Minnesota Pollution Control Agency  
520 Lafayette Road North  
St. Paul, MN 55115

Re: Proposed Permanent Rules Relating to Underground Storage Tanks  
OAH Docket No. 68-9003-35384

Ms. Letnes:

Pursuant to the Dual Notice dated August 9, 2018, by John Linc Stine, Commissioner of the Minnesota Pollution Control Agency (PCA), regarding the above captioned matter, please find this request for a hearing on the proposed rules by the Minnesota Petroleum Marketers Association (MPMA).

Pursuant to the Notice, the MPMA opposes to the proposed rules in its entirety where it is vague, ambiguous, subjective, or related to speculation. Nonetheless, pursuant to the Notice, the MPMA shall state the reasons for this request, and identify some of the rules that are objectional and suggest changes to these rules.

#### Unusual Operating Conditions

In proposed rule 7150.0030, entitled "Definitions," a new subpart 51a is set forth and gives a definition for the term "Unusual Operating Condition." That proposed rule defines this term as "a condition, equipment deficiency, or occurrence that: (1) results in the release of a regulated substance; (2) indicates the possibility of a leak from a UST system; (3) creates a reasonable expectation that a leak from a UST system is probable; or (4) may cause an undetected leak" (emphasis added).

In proposed rule 7150.0250, entitled "Restoration, Corrective Actions, and Required Permanent Closure," a new subpart 1, entitled "Unusual operating conditions," states that the "owner or operator must report unresolved unusual operating conditions that may have resulted in a leak or that indicate a release has occurred according to part 7150.0345, subpart 2."

The proposed language is problematic for a number of reasons. The language is very ambiguous and vague, making it difficult or impossible for owners and operators to comply with these rules. The federal rules, specifically 40 C.F.R. § 280.50, sub. b, states that "unusual operating conditions" includes "erratic behavior of product dispensing equipment, the sudden loss of



product from the UST system, and unexplained presence of water in the tank, or liquid in the interstitial space of a secondarily contained system.” Further, the federal rules state with particularity when the owner or operator does not need to report an unusual operating condition, including when “the system equipment or component is found not to be releasing regulated substances to the environment,” and when “any defective system equipment or component is immediately repaired or replaced.” The proposed rule states that in order to preclude reporting, the unusual operating condition must be “investigated,” any defective components are isolated from the UST system,” or “defective components or equipment are repaired by a person certified under chapter 7105.” Moreover, the proposed rules require the operator or owner to report unresolved issues that may have resulted in a leak.

The federal rules are written in such a way that allows owners and operators the ability to understand and follow the rules, as they are without ambiguity. The proposed rules define “unusual operating conditions” with vague, undefined terms such as condition, equipment deficiency, and occurrence, and use words such as “may” which is subjective, ambiguous, and does not allow for owners and operators to reasonably understand how to follow the rules.

The MPMA suggests that this section simply reiterate the federal rules, as those rules are without ambiguity.

#### Liquid Tight Testing

In proposed rule 715.0216, entitled “Operating, Maintaining, and Testing UST Systems,” a new subpart 4, entitled “Spill Buckets and Containment Sumps,” states that “[o]wners and operators must ensure spill buckets and containment sumps used for interstitial monitoring of piping prevent releases to the environment by: (1) testing spill buckets and containment sumps at least once every three years to ensure the equipment is liquid tight; or (2) monitoring spill buckets and containments sumps that are double walled monthly to ensure the integrity of both walls, checking for leaks into the interstitial area or equipment.”

This method would require sumps to be filled above penetration points in the sump wall. In Minnesota, where we have annual extreme temperature swings of over 100 degrees Fahrenheit, the ability of a sump to be “liquid tight” is impossible, as the water used to fill each containment sump up to its penetration points will expand and contract through thaws and freezes.

The Petroleum Marketers Association of America (PMAA) has developed an alternative low level liquid test that has been approved by the EPA. This test is advantageous as it avoids testing penetration points in the sump wall for water tightness. Making the penetration points watertight, which would involve changing grommets, flanges, test boots, etc. in order to test to within 4 inches of the top of the sump wall would cost thousands in extra compliance costs per sump just to get the sump ready for testings. The PMAA alternative method allows for low level liquid testing of the sump walls so long as the sump is equipped with a liquid level sensor alarm, mounted below the penetration points, that automatically activates a positive shutdown of the

submersible pump, or in the alternative, an automatic shutdown of the dispenser pump so long as the facility is staffed when the system is operational and a manual shutdown occurs.

The MPMA proposes that the EPA alternative test be approved by the MPCA and incorporated into this rule.

#### UST Corrosion

In proposed rule 7150.0250, a new subpart 3, entitled “Replacement,” states that owners and operators “must replace any component that has corrosion that may cause the component to not function as intended by the manufacturer or that may cause a release of a regulated substance” (emphasis added).

In the SONAR, the PCA states that it is “adding the requirement that UST system components with excessive corrosion must be replaced if the components do not function as intended by the manufacturer” (emphasis added).

The language in the proposed rule goes well above and beyond what is set forth in the SONAR. First, the term “excessive” has been removed, and seemingly any corrosion would qualify regardless of degree. Second, the terms “components do not function as intended” has been replaced with “may cause the component to not function.”

Moreover, the term “corrosion” is undefined in these rules, and there is no guidance from the federal rules, as they have no similar requirements.

The MPMA proposes that the term “corrosion” be defined, such that it can be determined with specificity what constitutes corrosion under this rule and what does not. Additionally, the MPMA proposes that the term “excessive” be included in the rule. Further, the MPMA proposes that if the excessive corrosion has caused the components to not function as intended, then in that case the owner or operator must replace, as opposed to a speculative language currently in the rule. Lastly, the MPMA proposes that the language “may cause a release of a regulated substance” is changed to “has caused a release of a regulated substance.”

#### Upward Shifting

In proposed rule 7150.0250, entitled “Restoration, Corrective Actions, and Required Permanent Closure,” a new subpart 4, entitled “Required Permanent Closure,” states that owners and operators must ensure that a tank system or pipe system is permanently closed if “a tank has shifted upward from its original burial position to the extent that the UST has caused a bulge in the concrete or cover material over the tank. . . unless repairs can be made to the UST system to prevent the tank from shifting and ensure that the UST system has not been, nor will be, damaged.”

This rule also contains ambiguous and subjective language, and makes it difficult for an owner or operator to comply with the rule. Concrete shifts all the time in Minnesota, often due to the extreme weather in this state. How will it be determined if an upward shift in concrete is due to movement of the underground storage tank? What constitutes a “bulge?” Is there a difference between a bump and a bulge, and if so, how is that measured? What if a tank has moved upward but is in no way more likely to be damaged because of the shift?

The MPMA proposes that the language in this rule be modified such that ambiguity is extinguished. For example, if a PCA certified tank installer has issued a professional opinion that the UST has caused the upward shift, and the UST cannot be repaired, and the UST has been damaged or is likely to be damaged as a result of the upward shift, then in such circumstances the owner or operator shall ensure that UST is permanently closed.

#### Dispenser Sumps

In proposed rule 7150.0205, entitled “Design and Construction,” a revised subpart 7, entitled “Dispenser sumps,” states that owners and operators “must install secondary containment under a dispenser if . . . the concrete or base material under the dispenser is replaced, repaired or modified.”

The language of this rule is vague, ambiguous, and leads to unnecessary and expensive replacement of working equipment. For example, an owner or operator who removes a dispenser to install new electronic equipment, and installs a new concrete pad for that installation, and no work is conducted below the shear valve, such a minor modification would require installing a secondary containment. When an island experiences cracking in the concrete due to changes in the weather, and that concrete is repaired with concrete filler, the owner or operator would be required to install secondary containment. The rule as written would require an owner or operator to spend upwards of \$20,000.00 or more when there is no leak or evidence of a potential leak if that operator or owner does anything to the concrete around the dispenser.

The MPMA proposes language that would restrict this rule such that the only replacement, repair, or modification to the concrete or base material under the dispenser that would trigger the requirement to install a secondary containment is that work which occurs below the shear valve.

#### Additional Issues

There are a number of other issues the MPMA has with the proposed rules. These include, but are not limited to:

- Compatibility for biofuels – when the state mandates use of higher blends, how will owners and operators prove compatibility?

Letter to Yolanda Letnes

October 11, 2018

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- How will owners of retrofit USTs obtain secondary containment without removing the UST?
- The language regarding emergency stops is vague. The MPMA wants to make it clear that the Minnesota State Fire Code is followed as to placement of emergency shutoffs.
- The language regarding waste disposal testing appears designed to prevent owners and operators to not test their own waste disposal
- If submersible sumps are exempt from testing if they have a leak sensing device, then are dispenser sumps also exempt if they have a leak sensing device? The language is unclear.

The MPMA reserves the right to argue any other issue not expressly herein referenced at the hearing. The MPMA hopes that by delineating some of these concerns the PCA can address these issues and take action to revise these proposed rules such that a public hearing is unnecessary.

Thank you.

A handwritten signature in cursive script, appearing to read "Holly Werner".

Holly Werner  
Executive Director

MN Chapter 7150 Draft Rule Revision comments based on draft rule.

Section numbers on the left correspond with numbers/section in the draft rule document dated 6/19/2018

- 8.2 Definition of "other potentially harmful substances". The concern here is that anything can be harmful in large quantity. Does this mean those stored substances require the same compliance rules for use's including testing and such? Applicability needs to be defined. For example, DEF fluid does not have the same equipment available for use as standard petroleum products.
- 7.14 section defines "liquid tight", the concern is that I don't think manufacturers will guarantee liquid tight (especially from entry in the lid) if completely submerged in water.
- 17.3 30 day notice if planning to store >10% ethanol or >20% bio. 30 days seems to be a long notification period, could this be reduced?
- 21.1 same comment as in section 7.14
- 44.16 hydrostatic test water disposal must be documented, this should be made part of the test form so that separate documents don't need to be maintained. Are petroleum inspectors trained to know what is appropriate for disposal including reviewing analytical data?
- 46.14 Part of functionality requirement is to verify configuration of the tank monitor. This is vague and needs to be more detailed. Each O/O may have specific set points for some items that are not required by code. Minimum configuration requirements must be clarified.  
  
Also, is there a standard test for battery backup testing? If not, this needs to be clarified.
- 46.3 Monthly inspection forms likely won't have all compliance actions taken due to the fact that work orders are issued from the inspection and the forms are posted before all actions are completed.
- 47.21 The term "correct level" is used when referencing the 95% shut off, shouldn't it read 95% then?
- 48.1 If a manufacturer doesn't have an approved training for their equipment how is this handled? For example, can an electrician certify an overfill alarm since it is an electrical device?
- 50.17 The term "secondary-containment area" is used but is not specific and is vague.
- 52.18 Who is determining the level of corrosion in this section? What are the guidelines?
- 61.23 Sumps inspected AND tested annually? Shouldn't this be tested every 3 years the same as Federal rule?
- 63.4 It will be difficult to guarantee a test within 24 hours – especially if this is for a tank interstice. Contractors are not always available to respond that quickly.
- 64.16 How can samples be collected BEFORE a removal?

- 72.9 If a company's people take the exam for multiple sites already and have various components it doesn't make sense to retake the exam if one site changes equipment. Likely another site within the company already has the same equipment.
- 77.7 see comment from section 44.16

- J. If the Chief Administrative Law Judge has authorized the agency to omit from the notice of hearing published in the State Register the text of any proposed rule, a copy of the document authorizing the omission. (Not applicable. All rule text was published in the August 27, 2018, *State Register*).

K.

K. ANY OTHER DOCUMENT OR EVIDENCE TO SHOW COMPLIANCE WITH ANY OTHER LAW OR RULE WHICH THE AGENCY IS REQUIRED TO FOLLOW IN ADOPTING THESE RULES.



520 Lafayette Road North | St. Paul, Minnesota 55155-4194 | 651-296-6300

800-657-3864 | Use your preferred relay service | [info.pca@state.mn.us](mailto:info.pca@state.mn.us) | Equal Opportunity Employer

August 27, 2018

(VIA USMAIL and EMAIL)

Senator Bill Ingebrigtsen, Chair  
Senate Environment and Natural Resources Finance Committee  
95 University Avenue W.  
3207 Minnesota Senate Bldg.  
St. Paul, MN 55155

Senator David J. Tomassoni, Ranking DFL Lead  
Senate Environment and Natural Resources Finance Committee  
95 University Avenue W.  
2235 Minnesota Senate Bldg.  
St. Paul, MN 55155

Senator Carrie Ruud, Chair  
Senate Environment and Natural Resources Policy and Legacy Finance Committee  
95 University Avenue W.  
3233 Minnesota Senate Bldg.  
St. Paul, MN 55155

Senator Chris Eaton, Ranking DFL Lead  
Senate Environment and Natural Resources Policy and Legacy Finance Committee  
95 University Avenue W.  
2403 Minnesota Senate Bldg.  
St. Paul, MN 55155

Senator David Osmek, Chair  
Senate Energy and Utilities Finance and Policy Committee  
95 University Avenue W.  
2107 Minnesota Senate Bldg.  
St. Paul, MN 55155

Senator John Marty, Ranking DFL Lead  
Senate Energy and Utilities Finance and Policy Committee  
95 University Avenue W.  
2401 Minnesota Senate Bldg.  
St. Paul, MN 55155

Representative Pat Garofalo, Chair  
House Job Growth and Energy Affordability Policy and Finance Committee  
5997 193<sup>rd</sup> St. W.  
Farmington, MN 55024

Legislators  
Page 2  
August 27, 2018

Representative Tim Mahoney, Co-DFL Lead  
House Job Growth and Energy Affordability Policy and Finance Committee  
345 State Office Building  
100 Rev. Dr. Martin Luther King Jr. Blvd.  
St. Paul, MN 55155

Representative Karen Clark, Co-DFL Lead  
House Job Growth and Energy Affordability Policy and Finance Committee  
273 State Office Building  
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Representative Dan Fabian, Chair  
House Environment and Natural Resources Policy and Finance Committee  
365 State Office Bldg.  
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Representative Rick Hansen, DFL Lead  
House Environment and Natural Resources Policy and Finance Committee  
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Greg Hubinger, Director  
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Jamie Hyland, Administrative Assistant/Claims Clerk  
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72 State Office Building  
100 Rev. Dr. Martin Luther King Jr. Blvd.  
St. Paul, MN 55155

RE: In The Matter of the Proposed Rules of the Minnesota Pollution Control Agency Governing  
Underground Storage Tanks; Revisor's ID Number 4360

Dear Legislators:

**Executive Summary:** The Minnesota Pollution Control Agency (Agency) is revising existing Underground Storage Tank (UST) rules to conform to 2015 federal updates, and to ensure regulated parties do not need to comply with separate federal and state regulations. The Agency is including 3 types of amendments in this rule revision:

1. Requirements equivalent to federal rules;
2. Requirements exceeding federal rules; and
3. Requirements that only relocate rules within the chapter, reformat rules for ease of reading, or provide simple clarification to the content.

The proposed amendments affect Minn. R. ch. 7150, and include requirements resulting from the final 2015 amendment of 40 CFR pt. 280 that address:

- Adding periodic operation and maintenance requirements for UST systems;
- Removing past deferrals for emergency generator tanks, airport hydrant systems, and field constructed tanks;
- Adding new release prevention and detection technologies;
- Updating codes of practice; and
- Editorial and technical corrections.

The proposed amendments will also clarify how new tank technologies apply to the regulations.

While most revisions are consistent with federal language, some changes, listed below, exceed federal requirements to protect human health and the environment:

- Introduction of potentially harmful substances;
- Requirement of double-poppet shear valves for new and replacement shear valves;
- Submersible pump sump requirements;
- Underdispenser sump requirements;
- Emergency stops;
- Agency-approved tester requirements;
- Sixty-day timeline for cathodic protection repairs;
- Conditions under which tank system replacement or permanent closure are required;
- Antisiphon device requirements; and
- Positive shutoff for line leak detection at unattended card-lock facilities.

The Agency is also proposing to decrease record retention timeframes for certain operational testing records. Currently, release detection and monitoring records must be retained for 10 years; the Agency is proposing to decrease the record retention period to 5 years.

**Compliance Dates:** Rules become effective within 5 working days of publication in the *State Register*; however, the proposed rules establish:

- October 13, 2020, as a deadline for owners and operators to initiate the new annual and 3-year testing requirements under proposed Minn. R. 7150.0216.
- October 13, 2020, as a deadline for owners and operators of emergency generator tanks that were previously exempt from release detection requirements, to comply with release detection requirements on these systems.

**Key Issues:** The Agency anticipates that stakeholders will fully support changes that conform to federal rules. However, there may be some controversy with the following revisions:

Topic	Potential controversy	Potential support/opposition	Reason behind proposal
Agency-approved tester requirement	The Agency is proposing to require that owners and operators that currently do their own testing become an agency-approved tester or hire outside parties to conduct testing.	Support: Most UST owners/operators and general contractors will support the agency-approved tester requirement because it only allows qualified individuals to conduct testing.  Opposition: UST owners/operators that believe they are "qualified" to perform testing may not support the agency-approved tester requirement.	Ensure qualified individuals with relevant experience, training, and certification test UST system components to avoid the potential for releases to the environment.

Minnesota Statutes, section 14.116, states:

***"14.116 NOTICE TO LEGISLATURE.***

*...When an agency mails notice of intent to adopt rules under section 14.14 or 14.22, the agency must send a copy of the same notice and a copy of the statement of need and reasonableness to the chairs and ranking minority party members of the legislative policy and budget committees with jurisdiction over the subject matter of the proposed rules and to the Legislative Coordinating Commission..."*

We plan to publish a Dual Notice of Intent to Adopt Rules in the August 27, 2018, *State Register* and are now emailing the Notice under section 14.14 or 14.22.

As required by section 14.116, the MPCA is sending you a copy of the Dual Notice, Statement of Need and Reasonableness, and the proposed rules via any of the following hyperlinks:

- <http://www.pca.state.mn.us/index.php/public-notice.html>
- <https://www.pca.state.mn.us/waste/underground-storage-tanks-ust-update-rulemaking>
- <https://minnesotaoah.granicusideas.com/discussions>

You may contact me if you would like a paper copy of these documents.

If you have any questions about these rules, please contact me at 651-757-2527 or [yolanda.letnes@state.mn.us](mailto:yolanda.letnes@state.mn.us).

Sincerely,

  
Yolanda Letnes  
Rule Coordinator

YL:mb

cc: David Gross, Legislative Assistant

## Letnes, Yolanda (MPCA)

---

**From:** Letnes, Yolanda (MPCA)  
**Sent:** Monday, August 27, 2018 7:57 AM  
**To:** 'sen.bill.ingebrigtsen@senate.mn'; 'sen.david.tomassoni@senate.mn';  
'sen.carrie.ruud@senate.mn'; 'chrise@senate.mn'; 'david.gross@senate.mn';  
'sen.david.osmek@senate.mn'; 'sen.john.marty@senate.mn';  
'rep.pat.garofalo@house.mn'; 'rep.tim.mahoney@house.mn';  
'rep.karen.clark@house.mn'; 'rep.dan.fabian@house.mn'; 'rep.rick.hansen@house.mn';  
Hubinger, Greg; 'jamie.hyland@lcc.leg.mn'; 'lcc@lcc.leg.mn'  
**Subject:** Underground Storage Tanks (UST) Update Rule: Dual Notice for legislators  
**Attachments:** ltr-leg signed.pdf

### Why are you receiving this?

Minnesota Statutes, section 14.116, states:

***"14.116 NOTICE TO LEGISLATURE.***

*...When an agency mails notice of intent to adopt rules under section 14.14 or 14.22, the agency must send a copy of the same notice and a copy of the statement of need and reasonableness to the chairs and ranking minority party members of the legislative policy and budget committees with jurisdiction over the subject matter of the proposed rules and to the Legislative Coordinating Commission..."*

Attached to this email is a copy of a cover letter with a hyperlink to electronic copies of the Dual Notice, SONAR, and the proposed rule amendments to comply with this requirement.

### What is this rule about?

The MPCA is revising existing UST rules to conform to 2015 federal updates, and to ensure regulated parties do not need to comply with separate federal and state regulations. The MPCA is including three types of amendments in this rule revision:

1. Requirements equivalent to federal rules;
2. Requirements exceeding federal rules; and
3. Requirements that only relocate rules within the chapter, reformat rules for ease of reading, or provide simple clarification to the content.

The proposed amendments affect Minn. R. ch. 7150, and include requirements resulting from the final 2015 amendment of 40 CFR pt. 280 that address:

- Adding periodic operation and maintenance requirements for UST systems;
- Removing past deferrals for emergency generator tanks, airport hydrant systems, and field constructed tanks;
- Adding new release prevention and detection technologies;
- Updating codes of practice; and
- Editorial and technical corrections.

The proposed amendments will also clarify how new tank technologies apply to the regulations.

While most revisions are consistent with federal language, some changes, listed below, exceed federal requirements to protect human health and the environment:

- Introduction of potentially harmful substances;
- Requirement of double-poppet shear valves for new and replacement shear valves;
- Submersible pump sump requirements;
- Underdispenser sump requirements;
- Emergency stops;
- Agency-approved tester requirements;
- Sixty-day timeline for cathodic protection repairs;
- Conditions under which tank system replacement or permanent closure are required;
- Antisiphon device requirements; and
- Positive shutoff for line leak detection at unattended card-lock facilities.

The Agency is also proposing to decrease record retention timeframes for certain operational testing records. Currently, release detection and monitoring records must be retained for 10 years; the Agency is proposing to decrease the record retention period to 5 years.

**What are the compliance dates?**

Rules become effective within 5 working days of publication in the State Register; however, the proposed rules establish:

- October 13, 2020, as a deadline for owners and operators to initiate the new annual and 3-year testing requirements under proposed Minn. R. 7150.0216.
- October 13, 2020, as a deadline for owners and operators of emergency generator tanks that were previously exempt from release detection requirements, to comply with release detection requirements on these systems.

**Where can I find more information?**

See the attached letter for further information. The MPCA published the above Dual Notice in the August 27, 2018, State Register. The Dual Notice and any related documents are available by visiting the:

- MPCA Public Notice Webpage at <https://www.pca.state.mn.us/public-notice>;
- UST rulemaking webpage at <https://www.pca.state.mn.us/waste/underground-storage-tanks-ust-update-rulemaking>; or
- Office of Administrative Hearings Rulemaking e-comments website at <https://minnesotaoah.granicusideas.com/discussions>.

The Dual Notice specifies how to submit public comments and requests for a hearing. The public comment period for this Dual Notice closes at 4:30 P.M. on Thursday, October 11, 2018.

To access information about a particular rulemaking, visit the Public Rulemaking Docket.

Respectfully,

**Yolanda Letnes** | Rule Coordinator  
Minnesota Pollution Control Agency (MPCA)  
520 Lafayette Road | St. Paul, MN | 55155  
Office Phone: (651) 757-2527  
[yolanda.letnes@state.mn.us](mailto:yolanda.letnes@state.mn.us) | [www.pca.state.mn.us](http://www.pca.state.mn.us)



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**K.1.**

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July 23, 2018 (Via interoffice mail)

Commissioner Dave Frederickson  
Commissioner of Agriculture  
Minnesota Department of Agriculture  
625 Robert Street North  
St. Paul, MN 55155-2538

Dear Commissioner Frederickson:

The Minnesota Pollution Control Agency (MPCA) is currently revising its rules governing underground storage tanks (USTs). The MPCA is revising existing UST rules to conform to 2015 federal updates, and to ensure regulated parties do not need to comply with separate federal and state regulations. The MPCA is including three types of amendments in this rule revision:

- 1) Requirements equivalent to federal rules;
- 2) Requirements exceeding federal rules; and
- 3) Requirements that only relocate rules within the chapter, reformat rules for ease of reading, or provide simple clarification to the content.

The proposed amendments affect Minn. R. ch. 7150, and include requirements resulting from the final 2015 amendment of 40 CFR pt. 280 that address:

- Adding periodic operation and maintenance requirements for UST systems;
- Removing past deferrals for emergency generator tanks, airport hydrant systems, and field constructed tanks;
- Adding new release prevention and detection technologies;
- Updating codes of practice; and
- Editorial and technical corrections.

The proposed amendments will also clarify how new tank technologies apply to the regulations.

While most revisions are consistent with federal language, some changes, listed below, exceed federal requirements to protect human health and the environment:

- Introduction of potentially harmful substances;
- Requirement of double-poppet shear valves for new and replacement shear valves;
- Submersible pump sump requirements;
- Underdispenser sump requirements;
- Emergency stops;
- Agency-approved tester requirements;
- Sixty-day timeline for cathodic protection repairs;
- Conditions under which tank system replacement or permanent closure are required;
- Antisiphon device requirements; and
- Positive shutoff for line leak detection at unattended card-lock facilities.



The following summary provides further detail of proposed amendments exceeding 2015 federal UST requirements:

- 1) Part 7150.0010, subp. 7. The proposed revision is a state-only requirement to require other potentially harmful substances to meet the compatibility requirements under proposed part 7150.0100, subp. 9. No other Minn. R. ch. 7150 requirements apply to tanks storing other potentially harmful substances.
- 2) Part 7150.0090, subp. 9. The proposed revision establishes the requirement that the commissioner notify owners and operators of other regulated substances identified in the future that require a notice of compatibility.
- 3) Part 7150.0100 subp. 9. The proposed amendments establish that if retrofit tanks are installed to meet current state and federal compatibility requirements, the retrofit tank must also have secondary containment.
- 4) Part 7150.0100, subp. 13. The proposed rule language now requires shear valves of double-poppet construction to be used for newly installed shear valves. This is more restrictive than federal requirements.
- 5) Part 7150.0205, subp. 1(C)(3)(b). The proposed revisions require that if a tank is new, replaced or retrofitted and is secondarily contained, the piping must also be secondarily contained. This requirement is already in effect under existing part 7150.0205, subp. 1(D)(3). The only addition to the existing rule is to include retrofit tanks because these types of systems are becoming more popular and requirements must be clarified.
- 6) Part 7150.0205, subp. 6. Establishes that submersible pump sumps installed after December 22, 2007, must be integrity tested upon installation. The Environmental Protection Agency (EPA) rules do not address sump testing upon installation except for sumps installed that are part of a double-wall piping system required to conduct interstitial monitoring. This requirement was added to clarify that all sumps must be integrity tested upon installation regardless of whether they are part of a double-wall piping system. The requirements follow industry standards referenced in the rule and manufacturers' instructions.

The proposed amendments also indicate submersible pumps installed prior to December 22, 2007, be accessible for inspection and shall not be covered in soil or other obstacles that prevent visual inspections. This amendment is needed to conduct appropriate visual inspections to identify substandard equipment before leaks occur. This amendment also follows industry standards referenced in the rule and manufacturers' instructions.

- 7) Part 7150.0205 subp. 7. This subpart previously described when underdispenser containment sumps must be installed. New language proposed in this section provides clarification and the additional requirement that if concrete or base material under the dispenser is replaced or modified, underdispenser containment is required.
- 8) Part 7150.0205, subp. 8. MPCA proposes to add emergency stop requirements for consistency with applicable Minnesota State Fire Code requirements.
- 9) Part 7150.0215, subp. 2(C) and 3(D). Proposed amendments clarify that repairs to cathodic protection systems must be completed within 60 days of a failing test. New proposed language also provides clarification for cathodic protection (CP) system repairs and allowable design standards. The EPA rules do not specify CP repair requirements other than testing after a CP repair. MPCA believes it is important to specify repair criteria in the proposed rule to ensure repairs are done consistently and to meet industry standards. The proposed amendments provide clarification only and do not add any additional requirements

- 10) Part 7150.0216, subp. 1(B). The MPCA is establishing the requirement that testing wastes must be disposed of properly and documented. Federal UST regulations do not address the issue of proper disposal of testing material, but the topic is addressed in applicable federal and state hazardous waste regulations.
- 11) Part 7150.0216, subp. 6. The MPCA is proposing to list the criteria of an “agency-approved tester” for the purpose of determining qualifications to test and/or inspect certain tank system components regulated under Minn. R. ch. 7150. EPA rules reference manufacturer specifications and PEI RP 1200 as acceptable methods to conduct the new testing/inspections. The specifications or methods require “qualified” people to perform the work. EPA rules do not address “qualified” people. Thus, MPCA added “agency-approved tester” qualifications to assure testing is done correctly and consistently by qualified people.
- 12) Part 7150.0250, subps. 1 and 4. The MPCA is proposing to create a new subpart under part 7150.0250 to address restoration and corrective actions. The MPCA has always required tank system repairs to function properly. This new section provides clarification and will ensure malfunctioning equipment will be addressed in a timely and consistent manner.
- 13) Part 7150.0300, subp. 6, items A and B. The MPCA is proposing to require antisiphoning devices on piping that is positioned lower than the top of the tank.
- 14) Part 7150.0340, subps. 2 and 3. The MPCA is proposing revisions that distinguish the line-leak detection requirements between unattended card-lock facilities and other facilities. Proposed amendments require line-leak detectors at unattended card-lock facilities to alert the operator to the presence of a leak by shutting off the flow of regulated substance. However, line-leak detectors at other facilities can be notified by restricting or shutting of the flow of a regulated substance or by triggering an alarm. EPA rules do not make the same distinction in the rule. MPCA determined it was important to make this clarification because unattended card-lock facilities can be unattended for days before an alarm or restricted product flow would be noticed. However, stopping the flow of product flow can be done immediately by an automatic line-leak detector when operating properly.
- 15) Part 7150.0345, subp. 1. The MPCA is proposing amendments that require investigation of suspected releases within 24 hours. The EPA rules allow seven days to begin an investigation or another timeframe specified by the implementing agency. The EPA reviewed this proposed amendment and has indicated that the 24-hour investigation timeline appears acceptable.
- 16) Part 7150.0410, subp. 3(D). The MPCA is proposing that when a tank is lined or retrofitted according to proposed part 7150.0205, subp. 1, the original tank upon which the lining is secured is considered permanently closed and a site assessment must be done according to proposed part 7150.0345, subp. 3. EPA does not address such systems in the permanent closure section of their rules. MPCA determined it was important to include retrofit tanks in the proposed rules as these types of systems are becoming more popular.
- 17) Part 7150.0450. The MPCA is proposing that retention records must be kept for five years, instead of the shorter one or three year retention periods required by EPA for monthly walkthrough inspection records; spill, overfill, and containment sump testing and inspection records; tank and piping leak detection testing results; and annual leak detection equipment testing and inspections.

Although the MPCA does not believe this rulemaking will be of any special concern regarding agriculture, the MPCA is providing copies of the proposed Statement of Need and Reasonableness and proposed rule amendments to you at the same time that it submits these documents to the Governor's Office for approval to publish the Dual Notice in the *State Register*.

Commissioner Frederickson

Page 4

July 23, 2018

If you have any questions related to these proposed rule amendments or the associated enclosures, please contact Yolanda Letnes at 651-757-2527.

Sincerely,



John Linc Stine,  
Commissioner

JS/YL:mb

Enclosures: Draft rule  
Statement of Need and Reasonableness

cc: Doug Spanier, Department Counsel for Agriculture  
Matthew Wohlman, Deputy Commissioner  
Joshua Stamper, Division Director, Pesticide and Fertilizer Management Division  
Paul Hugunin, Division Director, Agricultural Marketing and Development Division  
Andrea Vaubel, Assistant Commissioner  
Susan Stokes, Assistant Commissioner  
Dan Stoddard, Assistant Division Director, Pesticide and Fertilizer Management Division



## Office Memorandum

**Date:** August 7, 2018

**To:** Yolanda Letnes, Minnesota Pollution Control Agency

**From:** Sean Fahnhorst, Minnesota Management and Budget

**CC:** Alisha Cowell, Minnesota Management and Budget

### **RE: M.S. 14.131 Review of Proposed Rule Amendments Governing Underground Storage Tanks**

---

The Minnesota Pollution Control Agency (MPCA) proposes to amend Minnesota Rules Chapter 7150 governing the operation of regulated Underground Storage Tanks (USTs) in Minnesota. The primary focus of the proposed amendment is to add conforming language for consistency with federal regulations and state-specific requirements to prevent groundwater contamination. Pursuant to M.S. 14.131, MPCA has consulted with the Commissioner of Minnesota Management and Budget (MMB) to help evaluate the fiscal impact of the proposed rule changes on local units of government.

#### **Evaluation**

On behalf of the Commissioner of MMB, I reviewed the proposed rule changes and the related Statement of Need and Reasonableness and consulted with agency staff to determine the local fiscal impact of the changes as proposed. At MMB's request, the MPCA provided additional information about cities with USTs, which is attached to this memorandum. The MPCA has considered the cost of complying with the proposed rules and determined the cost for any city or municipality will be negligible.

Cities or municipalities are expected to incur costs only if they are among the fewer than 50 in the state that own or operate a UST. These costs are primarily for UST testing will generally not exceed \$500 annually. These testing costs are a result of the federal regulations. Further, the MPCA has determined that the proposed amendment will not have any effect on local ordinances or regulations, and local government units are not required to update their local ordinances as a result of this rulemaking.

## Cities under 10,000 population UST summary

(excludes airport UST's)

City Size	Number Cities	Sample Size	% Cities Sampled	Number Cities with UST's	% Cities Sampled with UST's	EST Cities with UST's
< 500	266	8	3%	-	-	0
500 → 1000	120	10	8%	-	-	0
1000 → 1500	60	10	16%	-	-	0
1500 → 2000	33	9	27%	-	-	0
2000 → 3000	51	10	20%	2	20%	10
3000 → 4000	30	10	33%	1	10%	3
4000 → 5000	28	10	36%	2	20%	6
5000 → 6000	13	9	69%	2	22%	3
6000 → 7000	6	6	100%	2	33%	2
7000 → 8000	9	8	88%	1	12%	1
8000 → 9000	10	7	70%	7	100%	10
9000 → 9999	5	5	100%	-	-	0
Est Cities under 10,000 population with UST's						35
Number of cities under 10,000 population						641
% of cities under 10,000 population with UST's						5.4%

Note: does not include cities with only airport UST's. Proposed rules would have minimal impact on airport tanks. Airport UST's are suction systems and would only require testing every 3 years of spill buckets and tank leak detection. These tests are critical in airport tank systems to prevent and detect water ingress into fuel systems. Estimated that an additional 11 cities under 10,000 population would be impacted.

## Minnesota Pollution Control Agency

## NOTICE OF HEARING TO THOSE WHO REQUESTED A HEARING

**Proposed Amendment to Rules Governing Underground Storage Tanks, *Minnesota Rules*, Chapter 7150 Underground Storage Tanks (parts 7150.0010; 7150.0030; 7150.0090; 7150.0100; 7150.0205; 7150.0215; 7150.0216; 7150.0250; 7150.0300; 7150.0330; 7150.0340; 7150.0345; 7150.0400; 7150.0410; 7150.0430; 7150.0445; 7150.0450; 7150.0451; and 7150.0500), and**

**Repeal of *Minnesota Rules*, parts 7150.0010, subpart 4; 7150.0030, subparts 8, 23, 25a, 44a, and 49; 7150.0100, subparts 10 and 12; 7150.0211; 7150.0300, subparts 2 and 7; 7150.0330, subpart 2; 7150.0410, subparts 2 and 6; and 7150.0420.**

**Former Docket No. 68-9003-35384; New Docket No. 80-9003-35384; and Revisor's ID Number 4360.**

**To persons who requested a hearing.** In accordance with *Minnesota Statutes*, section 14.25, subdivision 1, the Minnesota Pollution Control Agency (Agency) is sending this Notice to all persons who requested a hearing.

**There will be a hearing.** In the August 27, 2018, *State Register*, on pages 212 to 261, the Agency published a Notice of Intent to Adopt Rules relating to Underground Storage Tanks. The Notice stated that the Agency would hold a hearing on the proposed rules if 25 or more persons submitted written requests. We have received a sufficient number of requests for a hearing.

The hearing will be conducted as stated in the State Register at 3:30 P.M. on Thursday, October 25, 2018. The hearing will continue until all parties have been heard or until the Administrative Law Judge (ALJ) adjourns it. The public hearing will be held at the following MPCA locations:

- 1) Large conference room, Brainerd Office, 7678 College Road, Suite 105, Baxter, MN 56425
- 2) Conference room 400-1, Duluth Office, 525 Lake Avenue South, Suite 400, Duluth, MN 55802
- 3) Large conference room, Marshall, 504 Fairgrounds Road, Suite 200, Marshall, MN 56258
- 4) St. Paul Office, 520 Lafayette Road North, Saint Paul, MN 55155

The MPCA will hold the hearing simultaneously at the four locations listed above. The ALJ will conduct the hearing from the Saint Paul location. MPCA staff will be present at all four locations to facilitate the process and to ensure that all persons attending will be able to see, hear, and speak during the hearing. Directions to these offices can be found on the MPCA webpage at: <http://www.pca.state.mn.us/iryp3e4>.

**Administrative Law Judge.** Administrative Law Judge Laura Sue Schlatter will conduct the hearing. The judge can be reached at the Office of Administrative Hearings, 600 North Robert Street, P.O. Box 64620, Saint Paul, Minnesota 55164-0620, **by telephone by calling OAH Rulemaking Coordinator Katie Lin at (651) 361-7911, or by email to [katie.lin@state.mn.us](mailto:katie.lin@state.mn.us)**, and FAX (651) 361-7936. You should direct questions concerning the rule hearing procedure to the administrative law judge.

**Agency Contact Person.** The agency contact person is: Yolanda Letnes at MPCA, 520 Lafayette Road North, St. Paul, MN 55155, (651) 757-2527, and [yolanda.letnes@state.mn.us](mailto:yolanda.letnes@state.mn.us). You should direct questions or comments about the rules to the agency contact person. A copy of the Notice of Intent to Adopt Rules, as published in the State Register on August 27, 2018, is available upon request from the agency contact person.

10/18/2018

Date signed: October 18, 2018

Yolanda Letnes

Signed by: Yolanda Letnes, Rule Coordinator

**Minnesota Pollution Control Agency**

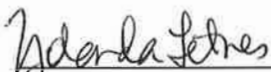
**CERTIFICATE OF MAILING A NOTICE OF HEARING TO THOSE WHO REQUESTED A HEARING**

**Proposed Amendment to Rules Governing Underground Storage Tanks, *Minnesota Rules*, Chapter 7150 Underground Storage Tanks (parts 7150.0010; 7150.0030; 7150.0090; 7150.0100; 7150.0205; 7150.0215; 7150.0216; 7150.0250; 7150.0300; 7150.0330; 7150.0340; 7150.0345; 7150.0400; 7150.0410; 7150.0430; 7150.0445; 7150.0450; 7150.0451; and 7150.0500), and**

**Repeal of *Minnesota Rules*, parts 7150.0010, subpart 4; 7150.0030, subparts 8, 23, 25a, 44a, and 49; 7150.0100, subparts 10 and 12; 7150.0211; 7150.0300, subparts 2 and 7; 7150.0330, subpart 2; 7150.0410, subparts 2 and 6; and 7150.0420.**

**Former Docket No. 68-9003-35384; New Docket No. 80-9003-35384; and Revisor's ID Number 4360.**

I certify that on October 18, 2018, I mailed a Notice of Hearing by either depositing the Notice in the State of Minnesota's central mail system for United States mail with postage prepaid or sending an electronic copy via email to all persons who requested a hearing. The Notice is given under Minnesota Statutes, section 14.25, subdivision 1. Copies of both the Notice and of the mailing list are attached to this Certificate.



Signed by: Yolanda Letnes, Rule Coordinator

**Minnesota Pollution Control Agency**

**CERTIFICATE OF MAILING THE REQUEST FOR COMMENTS IN COMPLIANCE WITH MINNESOTA  
STATUTES § 14.101**

**Proposed Rules Governing Underground Storage Tanks, Minnesota Rules, 7150**

I certify that on November 9, 2015, at St. Paul, Ramsey County, Minnesota, I:

- mailed the Request for Comments to persons on the MPCA's rulemaking mailing list established by Minnesota Statutes, section 14.14, subdivision 1a. I accomplished this mailing by sending an electronic message via GovDelivery email to all persons and associations on the list. The message contained a hyperlink to the Request for Comments.
- Copies of the electronic message, Request for Comments, and a summary of the GovDelivery statistics for the mailing are attached to this Certificate.
- Copies of the Notice as published are attached to this Certificate.

  
\_\_\_\_\_  
Yolanda Letnes, Rule Coordinator





**From:** Minnesota Pollution Control Agency  
**To:** [Ooley, Michelle \(MPCA\)](#); [Donath, Alexis \(MPCA\)](#); [Letnes, Yolanda \(MPCA\)](#); [Dickison, Laura \(MPCA\)](#); [Andre, Paul \(MPCA\)](#); [Smith, Walker \(MPCA\)](#); [Lehner-Reil, Janice \(MPCA\)](#)  
**Subject:** Courtesy Copy: Minnesota Pollution Control Agency Request for Comments about changes to the Underground Storage Tanks (UST) Rule  
**Date:** Monday, November 09, 2015 9:00:18 AM

**This is a courtesy copy of an email bulletin sent by Janice Lehner-Reil.**

**This bulletin was sent to the following groups of people:**

Subscribers of Rulemaking: UST Update Rule (165 recipients)

Having trouble viewing this email? [View it as a Web page.](#)

MPCA header



## UST Update Rule

The MPCA is requesting comment on changes being considered to the existing Underground Storage Tanks (UST) rule.

Some of the proposed changes to UST rules include:

- adding secondary containment requirements for new and replaced tanks and piping
- adding operator training requirements for UST system owners and operators
- adding periodic operation and maintenance requirements for UST systems
- removing past deferrals for emergency generator tanks, airport hydrant systems, and field constructed tanks
- adding new release prevention and detection technologies
- updating codes of practice

The Minnesota Pollution Control Agency published the above notice in the State Register. The public comment period for this notice closes at 4:30 P.M. on December 11, 2015. The notice and any related documents are available by visiting the [MPCA Public Notice Webpage](#).

To access information about a particular rulemaking, visit the [Public Rulemaking Docket](#).

The mission of the MPCA is to protect and improve the environment and enhance human health.

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# Minnesota Pollution Control Agency - Bulletin Detail Rep... **govDELIVERY**

Subject: Minnesota Pollution Control Agency Request for Comments about changes to the Underground Storage Tanks (UST) Rule

Sent: 11/09/2015 10:01 AM CST

Sent By: janice.lehner-reil@state.mn.us

Sent To: Subscribers of Rulemaking: UST Update Rule

# 166

 Recipients

✓  Email

✗  SMS

✗  Facebook

✗  Twitter

✓  RSS

# 99%

Delivered

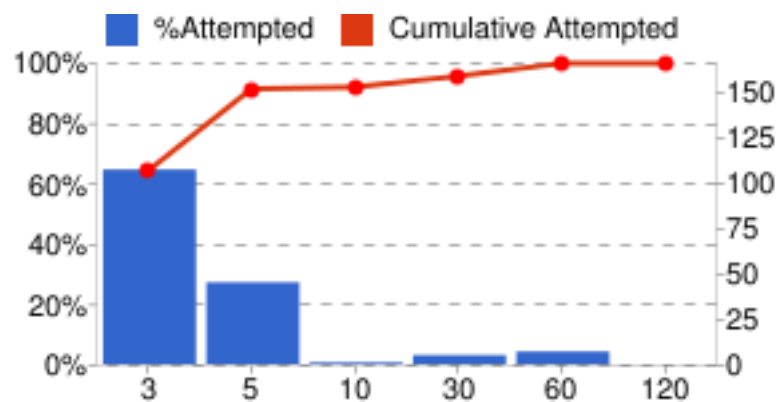
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120	100%

## Delivery Metrics - Details

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**338** Total Opens

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**33** Total Clicks

**17 (10%)** Unique Clicks

**15** # of Links

## Delivery and performance

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<b>Digest</b>	n/a	n/a	11	11	3 / 27.3%	0	0
<b>SMS Message</b>	Delivered	0.0%	0	0	n/a	0	n/a

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<a href="http://www.pca.state.mn.us/index.php/view-document.html?...">http://www.pca.state.mn.us/index.php/view-document.html?...</a>	10	14
<a href="http://content.govdelivery.com/accounts/MNPCA/bulletins/12...">http://content.govdelivery.com/accounts/MNPCA/bulletins/12...</a>	2	2
<a href="https://public.govdelivery.com/accounts/MNPCA/subscriber/u...">https://public.govdelivery.com/accounts/MNPCA/subscriber/u...</a>	0	0
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<a href="https://public.govdelivery.com/accounts/MNPCA/subscriber/n...">https://public.govdelivery.com/accounts/MNPCA/subscriber/n...</a>	0	0
<a href="http://twitter.com/#!/MnPCA">http://twitter.com/#!/MnPCA</a>	0	0
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## Minnesota Pollution Control Agency

### Industrial Division

#### Request for Comments on Planned Amendment to Rules Governing Underground Storage Tanks, *Minnesota Rules* Chapter 7150; Revisor's ID Number 04360

**NOTICE IS HEREBY GIVEN** that the Minnesota Pollution Control Agency (MPCA) is requesting comments on planned amendments to *Minnesota Rules* chapter 7150. This rulemaking is referred to as the Underground Storage Tanks (UST) Update Rule. The MPCA is considering amendments to the listed rule chapter and requests comments on the proposed amendments from affected or interested parties. Comments should be submitted in writing in accordance with the provisions of this notice under the public comment section below.

**Subject of rules.** The MPCA requests comments on its possible amendment to rules governing underground storage tanks. The MPCA is considering making corrections, clarifications, and adding conforming language for consistency with federal rules related to the operation and maintenance of underground storage tank equipment. Federal UST regulations were amended July 15, 2015, 80 FR 41566-41683. The proposed revisions will consider the topics listed below:

- adding secondary containment requirements for new and replaced tanks and piping
- adding operator training requirements for UST system owners and operators
- adding periodic operation and maintenance requirements for UST systems
- removing past deferrals for emergency generator tanks, airport hydrant systems, and field constructed tanks
- adding new release prevention and detection technologies
- updating codes of practice
- editorial and technical corrections

MPCA may consider related issues raised by commenters as time allows.

**Plain language summary.** This request for comments is the MPCA's legal notice of its intent to begin rulemaking. This is the first of several opportunities for public comment and input on this rulemaking. At this stage, we do not have a draft rule; we want your feedback to inform us about the ideas described under the subject of rules section above. If you have other ideas related to this rulemaking that we need to consider, please submit them in writing. For example, we recognize that costs to regulated parties can be a concern with rule changes. If you have cost information or data related to this rulemaking that you wish to share with us to inform our decisions, please submit that information. Submitting your ideas and information at this early stage in rulemaking allows us more time to address issues that may come up, and helps to ensure informed decision-making on our part.

**Persons affected.** The amendment to the rules would likely affect any individual or organization that owns or operates an underground storage tank regulated by chapter 7150, a delivery company or individual truck driver that delivers regulated material to a UST, local units of government that oversee UST programs and other entities interested in this topic area.

**Statutory authority.** The proposed amendments are authorized by *Minnesota Statutes*, section 116.49, subdivision 1, which provides:

*The agency must adopt rules applicable to all owners and operators of underground storage tanks. The rules must establish the safeguards necessary to protect human health and the environment. The agency may delay adopting the rules until the United*

*States Environmental Protection Agency proposes regulations for regulated substances, as defined in section 116.46, subdivision 6, clause (1). The agency shall delay adopting the rules for regulated substances, as defined in section 116.46, subdivision 6, clause (2), until the United States Environmental Protection Agency publishes final regulations for underground storage tanks, or February 8, 1987, whichever is earlier.*

**Public comment.** Interested persons or groups may submit comments or information on these possible rules in writing until 4:30 p.m. on December 11, 2015 that the MPCA intends to adopt or to withdraw the rules. The MPCA will not publish a notice of intent to adopt the rules until more than 60 days have elapsed from the date of this request for comments. The MPCA will appoint an advisory committee to comment on the possible rules. Interested persons or groups may submit their names, and relevant information, for consideration to the contact person listed below no later than December 11, 2015. For more information, see: <http://www.pca.state.mn.us/yp9rha3>.

The MPCA does not anticipate that the rule amendments will require a local government to adopt or amend an ordinance or other regulation under *Minnesota Statutes*, section 14.128. Local governments may submit written information to the contrary.

The MPCA requests any information pertaining to the cumulative effect of the rule amendments with other federal and state regulations related to the specific purpose of the rule. *Cumulative effect* means the impact that results from incremental impact of the proposed rule in addition to other rules, regardless of what state or federal agency has adopted the other rules.

**Rules drafts.** The MPCA has not yet drafted the possible rule amendments. Persons interested in being notified when a draft of the rules is available and of other activities relating to this (or other MPCA rulemakings) are encouraged to register at:  
<http://public.govdelivery.com/accounts/MNPCHA/subscriber/new>.

**Agency contact person.** Written comments, questions, requests to receive a draft of the rules when it has been prepared, and requests for more information on these possible rules should be directed to: Zachary Klaus, Minnesota Pollution Control Agency, 18 Woodlake Drive SE, Rochester, Minnesota 55904, E-mail: [zachary.klaus@state.mn.us](mailto:zachary.klaus@state.mn.us), Telephone: 507-206-2649, FAX: 507-280-5513, Toll-free: 1-800-657-3864.

**Alternative format.** Upon request, this information can be made available in an alternative format, such as large print, braille, or audio. To make such a request, please contact the Agency contact person at the address or telephone number listed above.

**NOTE:** Comments received in response to this notice will not necessarily be included in the formal rulemaking record submitted to the Administrative Law Judge (ALJ) if and when a proceeding to adopt rules is started. The Agency is required to submit to the ALJ only those written comments received in response to the draft rules after they are proposed. If you submit comments during the development of the rules and want to ensure that the ALJ reviews your comments, you should resubmit the comments after the rules are formally proposed.

10/23/15  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
John Linc Stine, Commissioner  
Minnesota Pollution Control Agency



520 Lafayette Road North | St. Paul, Minnesota 55155-4194 | 651-296-6300

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October 16, 2018

(VIA USMail and Email)

Holly Werner  
Executive Director  
Minnesota Petroleum Marketers Association  
3244 Rice Street  
St. Paul, MN 55126-3047

Dear Holly Werner:

RE: October 11, 2018, Minnesota Petroleum Marketers Association (MPMA) Letter in Response to the Underground Storage Tanks Rule Former Docket No. 68-9003-35384, New Docket No. 80-9003-35384, and **Revisor's ID Number 4360**.

Dear Holly Werner:

Thank you for taking the time to submit your October 11, 2018, letter in response to the Dual Notice published by the Minnesota Pollution Control Agency (MPCA or Agency), on August 27, 2018. The intent of this letter is to convey two changes that the MPCA is considering following your recent comments.

At this time, the MPCA is proposing to make the following changes in response to the comments described below. ~~Double strike through~~ and double underline indicate changes. The MPCA intends on proposing the following edits:

1) **Comment 4-A (part 7150.0030, subp. 51a – Unusual operating conditions):** The MPMA believes that the proposed definition is ambiguous and vague. The MPMA suggests that the wording will make it difficult for owners and operators to comply, and the MPMA suggests the language should be more consistent with 40 CFR § 280.50.

**MPCA Response:** Currently, the proposed definition of unusual operating condition is:  
Subp. 51a. Unusual operating condition. "Unusual operating condition" means:

A. a condition, equipment deficiency, or occurrence that:

- (1) results in a release of a regulated substance;
- (2) indicates the possibility of a leak from a UST system;
- (3) creates a reasonable expectation that a leak from a UST system is probable; or
- (4) may cause an undetected leak;

B. an unexplained presence of water in the tank; or

C. liquid in the interstitial space of secondary-containment systems.

The MPCA agrees that the language should be revised and is deleting proposed subitems (3) and (4). The MPCA believes it is reasonable to make this change to provide clarity to owners and operators to ensure that they understand the requirements that they must comply with. The change increases clarity because it eliminates the need to assess the probability of a future leak in two ways: whether a future leak is "probable" and what "may" cause an undetected leak. The MPCA is also proposing to add items D and E for consistency with 40 CFR § 280.50. The MPCA believes the changes are reasonable to provide clarity and consistency with federal requirements.

Therefore, the MPCA is proposing to amend the definition as follows:

Subp. 51a. Unusual operating condition. "Unusual operating condition" means:

A. a condition, equipment deficiency, or occurrence that:

(1) results in a release of a regulated substance; or

(2) indicates the possibility of a leak from a UST system;

(3) creates a reasonable expectation that a leak from a UST system is probable; or

(4) may cause an undetected leak;

B. an unexplained presence of water in the tank; or

C. liquid in the interstitial space of secondary-containment systems;

D. erratic behavior of product dispensing equipment; or

E. a sudden loss of product from the UST system.

**2) Comment 4-B (7150.0216, subp. 1(A) – Liquid-tight testing):** The MPMA requests that the MPCA incorporate an alternative low level liquid test that was developed by the Petroleum Marketers Association of America (PMAA) into the rule. The MPMA offers background on the development of the method and states that the PMAA low-level liquid test has been approved by the U.S. Environmental Protection Agency (EPA).

**MPCA Response:**

The MPCA does not believe proposed part 7150.0216 needs to be amended to allow for the use of low level liquid testing. Under proposed part 7150.0216, subp. 1(A)(3), there is already a means of using an alternative method: *"...requirements determined by the commissioner to be equivalent and no less protective of human health and the environment than subitems (1) and (2)..."* Under the proposed language, the MPCA has the authority to approve methods other than the requirements of the manufacturer or codes of practices developed by a nationally recognized association referenced in the rule. This language is equivalent with 40 CFR Part 280 and the MPCA could approve the alternative identified by the MPMA in the same way that EPA approved it. Therefore, the MPCA proposes no change in response to this comment.

The Agency will respond to all remaining comments as it proceeds with this rule. At this time, the MPCA has received 27 requests for a hearing. For logistical purposes, the MPCA must determine whether hearing requests remain at 25 no later than October 17, 2018.

Sincerely,

  
Yolanda Letnes,  
Rule Coordinator

YL:mb

cc: See next page



cc: Christopher J. Heinze, Libby Law Offices, P.A.  
Angie Graupner  
Timothy Gross  
Mark Ogren  
Rick Dehn  
Frank Orton  
Brian Schmeling  
David Hutt  
John Derichs  
Lance Prouty  
Daniel Kelly  
Doug Mathees  
Jay Cattoor  
Brian Johnson  
Pete Bartelt  
Bret Wagner  
Al Seckinger  
Tyler Freyberg  
Anne Leikam  
Katie Kramer  
Melissa Myron  
Wade Carlson  
Glenn Winter  
Joyce Mamske  
Robert Krogman  
Holly Werner  
Chrisoulla Rakowski, Environmental Compliance Management  
James T. Foldesi, P.E., St. Louis County  
Troy Batzel, Kwik Trip (via email)

Corrections to the Minnesota Pollution Control Agency (MPCA) Statement of Need and Reasonableness: Proposed amendments related to underground storage tanks that was signed on July 23, 2018.

1. Page 74, section 7.A. The first paragraph that appears below is corrected as follows:

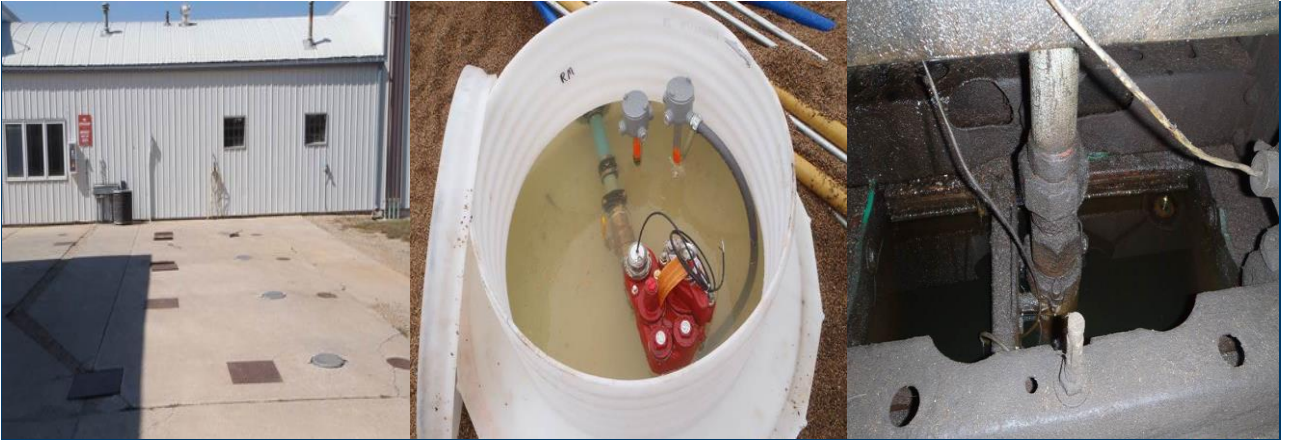
On November 9, 2015, the MPCA published notice requesting comments on planned rule amendments to Minn. R. ch. 7150. The notice was placed on the MPCA's Public Notice webpage ~~and the UST Update rule webpage at <https://www.pca.state.mn.us/waste/underground-storage-tanks-ust-update-rulemaking>~~.

Reason for change: Due to an oversight, no hyperlink was activated on the webpage at the time the Request for Comments was public noticed. This oversight was not corrected until recently. Therefore, it is reasonable for the MPCA is removing the language to ensure the SONAR is accurate.

2. Page 74, section 7. The second paragraph is corrected by replacing the last sentence indicated below as follows:

The MPCA sent an electronic message to the government officials on ~~March 28, 2016~~ March 9, 2018.

Reason for change: Due to an oversight, no hyperlink was activated on the webpage at the time the Request for Comments was public noticed. This oversight was not corrected until recently. Therefore, it is reasonable for the MPCA to remove the language to ensure the SONAR is accurate.



## Topics

- Background
- Rulemaking objective
- Rule development
- Controversial topics
- Changes in response to comments

## Background

- July 15, 2015, 40 CFR Pts. 280 and 281 UST regulations:
  - Option A: Adopt Federal Regulations in entirety
  - Option B: Develop State UST rules by Oct. 13, 2018
- MN chose Option B because MN has State Program Approval for the UST program
  - State rules must be equivalent to or more stringent than EPA regulations

## Rulemaking objective

- Incorporate federal regulations into state rules
- In some cases, add more stringent requirements than those established by federal rules to protect human health and the environment
- Reorganize rule, remove redundancy, and clarify language to improve compliance
- Update the rule to reflect industry standards

## Rulemaking development

- Published Request for comments: Nov. 9, 2015
- Created a rule specific mailing list for affected parties (GovDelivery)
- Established a rulemaking webpage
- Five separate messages were sent out notifying subscribers of rule announcements and activities
- Published Dual Notice: Aug. 27, 2018

## Rulemaking development

- Advisory committee established
  - Two major Petroleum trade associations (MPMA, MSSA)
  - Tank owners/operators (MAC and Holiday Station stores)
  - 3 UST contractors
  - Government entities owning tanks (MNDOT)
- MPCA released a preliminary rule draft to the advisory committee on Feb. 2, 2016, for review and discussion

## Rulemaking development

- Advisory committee met from Feb. 10 – Apr. 27, 2016
- Six meetings were held from 9:00am- 3:00pm
- Discussed the preliminary draft language, line by line
  - Lively discussion and debate
  - Differing perspectives and expertise
  - Federal versus state requirements

## Rulemaking development

- Agency considered advisory committee feedback, federal requirements, and agency needs when editing the draft rule
- June 9, 2016: Agency released edits of the preliminary draft rule to advisory committee members
- June 22, 2016: Agency staff meet with advisory committee to discuss edits and to seek further feedback

## Rulemaking development

### Additional outreach:

- March 2016- National Institute of Storage Tank Management
- April 2016- Minnesota Petroleum Marketers Association convention
- March 2017- National Institute of Storage Tank Management

## Rulemaking development

- Public meetings from Jan. – March 2018:
  - Marshall, Detroit Lakes, Baxter, Duluth, Shakopee, Rochester, and Roseville
  - Meetings included discussion on preliminary draft rule and Q&A sessions
  - Well attended (20-150 participants/meeting)

## Controversial topics

- Unusual operating conditions
- Low level sump testing
- Ambiguous and subjective rule language
- Replacement of tank system equipment relating to corrosion
- Agency-approved testers

## Controversial topics

- Ballfloat removal
- Other potentially harmful substances
- Upward shifting of tank systems
- Dispenser sump containment
- Allow time for new requirements to be implemented



## Change in response to comments

Part 7150.0030, Subp. 51a. **Unusual operating condition.** "Unusual operating condition" means:

A. a condition, equipment deficiency, or occurrence that:

(1) results in a release of a regulated substance; or

(2) indicates the possibility of a leak from a UST system;

~~(3) creates a reasonable expectation that a leak from a UST system is probable; or~~

~~(4) may cause an undetected leak;~~

B. an unexplained presence of water in the tank; ~~or~~

C. liquid in the interstitial space of secondary-containment systems;

D. erratic behavior of product dispensing equipment; or

E. a sudden loss of product from the UST system.

# Thank you!

**Nate Blasing**

*nathan.blasing@state.mn.us*

218 316 3899



**HOLIDAY STATIONSTORES**  
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October 25, 2018

Honorable Judge Jeanne Cochran  
Administrative Law Judge  
600 North Robert Street  
St. Paul, MN 55101



**Re: Underground Storage Tanks (UST) Rulemaking – Public Hearing**

Dear Judge Cochran:

Holiday Stationstores has reviewed the MPCA's proposed amendments to Minnesota Rules Chapter 7150 governing underground storage tanks (UST). We have also reviewed the public comments and requests for hearings made during the open comment period. The purpose of this letter is to submit written testimony during the Public Hearing to be held October 25, 2018.

Below we have listed out the items that Holiday is objecting to and documenting supporting testimony of how the vague, open to interpretation, and overly restrictive the proposed rules will cause undue burden to industry.

**Item 1: Proposed Rule Part 7150.0090, subp. 8**

*Notification of compatibility. Owners and operators of a UST system must notify the agency at least 30 days before storing a regulated substance containing more than ten percent ethanol, more than 20 percent biodiesel, or any other regulated substance identified by the commissioner as a substance that could degrade components of a UST system. Owners and operators must demonstrate to the commissioner that the components of a UST system are compatible with the product being stored in accordance with part 7150.0100, subpart 9.*

- Future compliance with this rule could be very difficult and put undue burden on industry.
- Mandated higher ethanol or biodiesel percent fuels could be difficult to prove compatibility and mandate tank and piping replacement.

**Option 1:** Holiday proposes statement added to help with the transition to higher ethanol or biodiesel percent fuels.

Honorable Judge Jeanne Cochran

Page 2

October 25, 2018

**Item 2: Proposed Rule Part 7150.0100, subp. 13**

*Shear valves. Owners and operators must ensure all shear valves are securely anchored and installed according to manufacturer recommendations and industry standards. Shear valves installed or repaired after the effective date of this part must be of a double-poppet design that prevents release of fuel from both sides of the shear valve if the shear valve breaks at the shear point.*

- This rule requiring double-poppet shear valves could cause an unnecessary risk to public safety and emergency responders.
  - In the event of an impact to a dispenser, a double-poppet impact valve would seal the liquid above the valve. The intent of this valve is to minimize a potential release in the event of a minor incident.
  - By encapsulating a flammable liquid during a major impact, this could potentially become an explosive condition due to creating a sealed vessel.
  - Holiday believes the risk outweighs the benefit.

**Option:** Holiday proposes that the double poppet shear valve requirement be removed from this rule.

**Item 3: Proposed Rule Part 7150.0205, subp. 6**

*Any submersible pump installed before December 22, 2007, and not in a secondarily contained sump used for interstitial monitoring must be accessible for visual inspection and must not be covered by soil, water, or other obstacles that prevent visual inspections.*

- This rule is open to interpretation because it does not specify what is meant by visual “inspection” and open to interpretation when it comes to “other obstacles”.
  - Inspections is vague, doesn’t note if this is referring to monthly and/or regulatory.
  - Sump accessibility is not clearly defined.
  - “Other Obstacles” is not defined.
- Many of the sumps that were installed prior to December 22, 2007 were not designed to be water tight. In some cases, the sumps are dirt bottom. Also due to high water tables, water fills back in as fast as the water is removed.
- This rule could potentially cause many unnecessary sump replacements due to the cost of keeping them constantly clean

Honorable Judge Jeanne Cochran

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October 25, 2018

and/or for the potential of citations depending on the interpretation of the rule.

- This rule also creates the potential for increased pumping of sumps leading to large amounts of fuel contaminated wastes to be disposed of at the expense of industry.

**Option 1:** Holiday proposes to remove this from the proposed rule.

**Option 2:** Holiday proposes that the rule should be better defined. It should clearly state what is meant by the visual “inspection”. Also define what determines if a sump is not accessible for visual inspection.

**Item 4: Proposed Rule Part 7150.0205, subp. 7**

*Owners and operators must install secondary containment under a dispenser if:*

...

*(4) the concrete or base material under the dispenser is replaced, repaired, or modified.*

- This rule is open to interpretation. It does not define what is meant by “repaired” or “modified”.
  - Does “repair” or “modified” include filling of cracks?
  - Does “repair” or “modified” include surface coating?
  - Etc.
- Not defining “repair” or “modified” to the base material has the potential to cause undue burden in costs of unnecessary sump installs at cost to industry.

**Option 1:** Holiday proposes to remove “repaired” or “modified” from the proposed rule.

**Option 2:** Holiday proposes that “repaired” and “modified” need to be defined.

**Item 5: Proposed Rule Part 7150.0205, subp. 8**

*Emergency stops. Owners and operators must have an emergency disconnect switch that is readily available to persons dispensing a regulated substance to disconnect electric power to pumps and dispensers, in accordance with Minnesota State Fire Code, in the event of an emergency.*

- Emergency stops are already regulated by fire code and should not be regulated by another entity that is not versed in the code.

Honorable Judge Jeanne Cochran

Page 4

October 25, 2018

- Emergency stops are tested at least annually.
- Potential for discrepancies/conflict among the entities i.e. Fire Code, MPCA and/or other.

**Option 1:** Holiday proposes that the proposed rule be removed.

**Item 6: Proposed Rule Part 7150.0215, subp. 2 (C) and 3(D)**

*Repairs to the impressed-current system must be conducted:*

*(1) Within 60 days of a failing test result.*

- During the winter, frozen soils are less conductive and accurate test results cannot be achieved.

**Option 1:** Holiday proposes adding an exception during the winter months.

**Item 7: Proposed Rule Part 7150.0250, subp. 3**

*Replacement.*

*A. Components of a UST system that do not meet the performance standards in part 7150.0100 must be repaired or replaced. Owners and operators must replace:*

*(1) Any component that has corrosion that may cause the component to not function as intended by the manufacturer or that may cause a release of regulated substance.*

- The statement “may” cause a release is vague and open to interpretation.
- Components are prone to surface corrosion nearly as soon as it is put in the ground.
- Corrosion is not defined.

**Option 1:** Holiday proposes removing this proposed rule.

**Option 2:** Holiday proposes removing the “may cause a release” statement from the proposed rule.

**Option 3:** Holiday proposes that “may cause a release” and “corrosion” be defined.

**Option 4:** Holiday proposes the following restatement: Any corrosion of a component that has caused weeping of product, a release of product, fails to meet the manufacturer definition of material thickness integrity or that has caused the component to not function as intended by the manufacturer.

**Item 8: Proposed Rule Part 7150.0250, subp. 4**

*Required permanent closure. Owners and operators must ensure that a tank system or pipe system is permanently closed according to part 7150.0410 and a site assessment is completed according to part 7150.0345, subpart 3, if:*

*A. A tank has shifted upward from its original burial position to the extent that the UST has caused a bulge in the concrete or cover material over the tank or components secured to the top of the UST are contacting access covers, unless repairs can be made to the UST system to prevent the tank from shifting and ensure that the UST system has not been, nor will be, damaged;*

- This proposed rule is open to interpretation.
- Tanks can move a little over time and not cause a potential release. Amount of movement is not defined.
- Also concrete and cover materials can move without having been caused by the tank moving.
- Being open to interpretation, an undue burden could be caused by having to permanently close or replace a tank that bears no leak potential.

**Option 1:** Holiday proposes removing this proposed rule.

**Option 2:** Holiday proposes noting that an investigation shall be conducted to verify if a tank has moved in excess of equipment manufactures tolerances before enforcement action. Also need to define what constitutes movement by a tank.

**Item 9: Proposed Rule Part 7150.0250, subps. 1 and 4 & Part 7150.0345, subp. 1**

*Unusual operating conditions.*

*A. Owners and operators must immediately investigate and remedy all unusual operating conditions in a UST system. The owner operator must take the UST system out of service unless:*

*(1) The unusual operating condition is investigated and resolved in accordance with this chapter;*

*Investigating and confirming.*

- A. *Owners and operators must immediately investigate, confirm and remedy all suspected releases.*
  - B. *Within 24 hours of discovering an unusual operating condition while conducting leak detection according to part 7150.0330 or 7150.0340, owners and operators must investigate the condition by:*
    - ...
    - C. *Within 24 hours of discovering an unusual operating condition or confirming an unusual operating condition according to item B, subitem (2) the owners and operators must initiate:*
      - (1) *Tightness testing according to part 7150.0330, subpart 4, or 7150.0340, subpart 3, item A, on the component suspected of leaking; and*
      - (2) *If applicable, integrity testing, using an agency-approved tester, of interstitial and secondary-containment areas used for leak detection.*
- Unusual operating conditions is vague and undefined.
  - 24 hr. notice of unusual operating conditions is extreme especially when compared with the 7-day notice mandated by the EPA.
  - 24 hr. requirement to confirm an unusual operating condition is not possible, vendors can not get on site and complete the required testing within the allowed 24hr window.
  - Onsite personnel are not trained in the complexity of the UST systems and how to accurately identify potential (yet to be defined) “unusual operating conditions”.
  - Trained personnel may not be available 24hrs, 7 days a week, this could lead to product lines having to be shut down until vendors can arrive and/or technicians are available to diagnose “unusual operating conditions”.
  - The vagueness and unreasonable timeframe will cause undue burden on industry and vendors.
  - The 24hr requirement and lack of definition of “unusual operating conditions” will lead to multiple unnecessary calls to the MN Duty Officer on a daily basis.

**Option 1:** Holiday proposes leaving the rule as previously written.

Honorable Judge Jeanne Cochran  
Page 7  
October 25, 2018

**Option 2:** Holiday proposes defining "unusual operating conditions" and leaving the 7 days as EPA mandated to determine and report unusual operating conditions.

Holiday is committed to protecting the environment in which we live and do business. However, we believe that some of the proposed rules that go above and beyond that of the EPA are vague, open to interpretation and overly restrictive to the point of causing undue burden to industry.

Thank you for your time and consideration of these issues.

Sincerely,

HOLIDAY STATIONSTORES, LLC



Camie Pederson, PE  
Environmental Manager, Holiday Stationstores

cc: Rick Johnson, Vice President of Operations, Holiday Stationstores  
John Baregi, Sr. Director of Facilities, Holiday Stationstores  
Sam Sveeggen, Maintenance Support Manager, Holiday Stationstores  
Chuck Nyberg, Environmental Compliance Manager, Holiday Stationstores  
Tressa Lukes, Environmental Compliance Manager, Holiday Stationstores  
Brent Puzak, Director North American Environmental Shared Services, Circle K





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November 14, 2018

The Honorable LauraSue Schlatter  
Administrative Law Judge  
Office of Administrative Hearings  
P.O. Box 64620  
600 North Robert Street  
St. Paul, MN 55164 – 0620

RE: Post-Hearing Response and Proposed Amendments to Minnesota Rules, Chapter 7150  
Governing Underground Storage Tanks; Former OAH Docket #68-9003-35384; New OAH  
Docket #80-9003-35384 ); and Revisor No. 4360

Dear Judge Schlatter:

Enclosed please find the Minnesota Pollution Control Agency's (MPCA) Post-Hearing Response (Response) for the proposed rule amendments referenced above. This Response, prepared for the post-hearing comment period that ends on November 14, 2014, addresses: (a) the substantive issues raised in the comment letters received by the MPCA during the rule notice public comment period, which ended October 11, 2018; and (b) the verbal testimony and written comments submitted during the October 25, 2018, public hearing on the proposed amendments. This Response also proposes several changes to the rule as proposed.

The MPCA also plans to prepare a Final Response that will be submitted during the rebuttal comment period, which ends on November 21, 2018. If you have questions regarding the enclosed Response, the content of the rule amendments, or questions regarding the rulemaking procedures followed for this rulemaking, please contact Yolanda Letnes at 651-757-2527 or [yolanda.letnes@state.mn.us](mailto:yolanda.letnes@state.mn.us).

Sincerely,

A handwritten signature in black ink that reads 'Y. Letnes'.

Yolanda Letnes  
Rules Coordinator  
Environment & Energy Section  
Resource Management and Assistance Division

YL:mb

Enclosures

State of Minnesota  
Minnesota Pollution Control Agency

In the Matter of Proposed Amendment to Rules  
Governing Underground Storage Tanks,  
*Minnesota Rules*, Chapter 7150 Underground  
Storage Tanks (parts 7150.0010; 7150.0030;  
7150.0090; 7150.0100; 7150.0205; 7150.0215;  
7150.0216; 7150.0250; 7150.0300; 7150.0330;  
7150.0340; 7150.0345; 7150.0400; 7150.0410;  
7150.0430; 7150.0445; 7150.0450; 7150.0451;  
and 7150.0500), and Repeal of *Minnesota Rules*,  
parts 7150.0010, subpart 4; 7150.0030,  
subparts 8, 23, 25a, 44a, and 49; 7150.0100,  
subparts 10 and 12; 7150.0211; 7150.0300,  
subparts 2 and 7; 7150.0330, subpart 2;  
7150.0410, subparts 2 and 6; and 7150.0420

Former OAH Docket # 68-9003-35384  
New OAH Docket # 80-9003-35384  
Revisor ID # 4360.

MPCA Post-Hearing Response to  
Public Comments

November 14, 2018

MPCA Post-Hearing Response to Public Comments.

## **I. Introduction**

### **A. Notice and hearing**

The Minnesota Pollution Control Agency (Agency or MPCA) published a Dual Notice of Intent to Adopt Proposed Amendments to Minn. R. ch. 7150 (Underground Storage Tanks (parts 7150.0010; 7150.0030; 7150.0090; 7150.0100; 7150.0205; 7150.0215; 7150.0216; 7150.0250; 7150.0300; 7150.0330; 7150.0340; 7150.0345; 7150.0400; 7150.0410; 7150.0430; 7150.0445; 7150.0450; 7150.0451; and 7150.0500), and Repeal of *Minnesota Rules*, parts 7150.0010, subpart 4; 7150.0030, subparts 8, 23, 25a, 44a, and 49; 7150.0100, subparts 10 and 12; 7150.0211; 7150.0300, subparts 2 and 7; 7150.0330, subpart 2; 7150.0410, subparts 2 and 6; and 7150.0420), and Hold a Public Hearing, together with the proposed amendments in the *Minnesota State Register* on August 27, 2018 ([43 SR 212](#)). The required number of requests to hold a hearing were received during the public comment period.

The MPCA presented information to demonstrate that the proposed amendments are needed and reasonable in the Statement of Need and Reasonableness (SONAR) introduced in the administrative record at the public hearing held on October 25, 2018. The MPCA presented additional information during the public hearing, which was held in St. Paul and simultaneously at three of the MPCA's Regional Offices via interactive videoconferencing.

## **B. Review of comments and organization of this document**

This document is the MPCA's response to comments received during the pre-hearing comment period which ended on October 11, 2018; testimony and submittals entered into the record at the public hearing; and comments submitted during the post-hearing comment period and available to the MPCA through November 9, 2018. This document supplements information provided by the Statement of Need and Reasonableness (SONAR).

For ease of reference, comment letters received have been numbered sequentially. The number corresponds to the number assigned to the letter as it was retrieved. All documents are posted in their entirety on the MPCA webpage for this rulemaking. Attachment 1 provides the numbered index of pre-hearing and post-hearing comment letters, non-MPCA public hearing exhibits and hearing testimony referenced in this document. A single comment letter may address multiple issues or multiple parts of the proposed rule. Each distinguishable comment within a letter has been labeled alphabetically. For example, if comment letter 1 addresses two issues, the first issue is labeled "1-A" and the second issue is labeled "1-B" in this document.

With respect to testimony and submittals entered into the record at the public hearing, comments that are reiterations of comments previously submitted by the same individual or organization are treated as addressed through the MPCA's response to the original submittal and are not addressed separately. New comments raised in testimony or submittals entered into the record at the public hearing are addressed and identified as either "Public Hearing Exhibit (#)" or "Public Hearing Testimony of (name)."

## **II. Proposed Changes to the Rule Amendments, as Published in the *Minnesota State Register* on August 27, 2018.**

After review and careful consideration of comments, the MPCA proposes several changes to the rule as published in the *Minnesota State Register* on August 27, 2018. Attachment 2 includes these proposed changes. Attachment 2 supersedes Hearing Exhibit L because additional changes are proposed to the rule sections identified in Hearing Exhibit L. Each of the proposed changes in Attachment 2 are included and discussed in part III of this document immediately following public comments on the related rule section.

The need and reasonableness of each proposed rule section is established in the SONAR. Any additional statements of need and reasonableness for the proposed changes in Attachment 2 are included in part III of this document at the point where the additional change is discussed. *Minnesota State Register* section 14.05, subd. 2, establishes the standard to assess if a change is substantially different than the proposed rule. The changes proposed in Attachment 2 are not substantial because:

- 1) The changes are within the scope of the matter announced in the notice of hearing;
- 2) The changes are a direct and logical outgrowth of comments submitted in response to the notice of hearing;
- 3) The notice of hearing provided fair notice to persons interested in and affected by the rule amendments that the additional changes would be part of the rule in question;

- 4) The additional changes do not change in any way the group of persons who will be affected by the rule;
- 5) The subject matter of the additional changes is the same as the subject matter contained in the notice of hearing; and
- 6) The additional changes do not alter the effects of the rule proposed in the hearing notice.

### III. Response to Comments

The MPCA's responses to comments in this part is organized sequentially by proposed rule section. Each rule section is followed by a listing of the comments, by index number, related to the rule section. The comments organized by rule section are presented first, followed by comments not related to a rule section.

#### A. Comments organized by specific rule section

##### 1. Comment 4-A: Part 7150.0030, subp. 51a (Unusual operating condition)

The Commenter believes that the proposed definition is ambiguous and vague. The Commenter suggests that the wording will make it difficult for owners and operators to comply, and the Commenter suggests the language should be more consistent with 40 CFR section 280.50.

**MPCA Response:** Currently, the proposed definition of unusual operating condition is:

Subp. 51a. Unusual operating condition. "Unusual operating condition" means:

A. a condition, equipment deficiency, or occurrence that:

(1) results in a release of a regulated substance;

(2) indicates the possibility of a leak from a UST system;

(3) creates a reasonable expectation that a leak from a UST system is probable; or

(4) may cause an undetected leak;

B. an unexplained presence of water in the tank; or

C. liquid in the interstitial space of secondary-containment systems.

The MPCA agrees that the language should be revised and is deleting proposed subitems (3) and (4). The MPCA believes it is reasonable to make this change to provide clarity to owners and operators to ensure that they understand the requirements that they must comply with. The change increases clarity because it eliminates the need to assess the probability of a future leak in two ways: whether a future leak is "probable" and what "may" cause an undetected leak. The MPCA is also proposing to add items D and E as shown below for consistency with 40 CFR section 280.50. The MPCA believes the changes are reasonable to provide clarity and consistency with federal requirements.

Therefore, the MPCA is proposing to amend the definition as follows:

Subp. 51a. **Unusual operating condition.** "Unusual operating condition" means:

A. a condition, equipment deficiency, or occurrence that:

(1) results in a release of a regulated substance; or

(2) indicates the possibility of a leak from a UST system;

~~(3) creates a reasonable expectation that a leak from a UST system is probable; or~~

~~(4) may cause an undetected leak;~~

B. an unexplained presence of water in the tank; ~~or~~

C. liquid in the interstitial space of secondary-containment systems;

D. erratic behavior of product dispensing equipment; or

E. a sudden loss of product from the UST system.

## **2. Comment 7-G: Part 7150.0030, subp. 51a (Unusual operating condition)**

The Commenter states:

*The proposed rule concerning the term unusual operating condition is also problematic. The term is defined in 7150.0030. The MPMA has received comments from the MPCA proposing to remove lines 3 and 4 from subpart A .... MPMA generally agrees with this change. However, there are still issues that remain.*

*Line 2 of that definition is still ambiguous. The implementation is that after an owner or operator investigates, and a leak isn't indicated, it is not an unusual operating condition. In order to better describe that implementation that line should be modified to reads "indicates to the owner or operator the possibility of a leak from a UST system."*

### **MPCA Response:**

See the response to comment 4-A for discussion on this topic.

Regarding the claim of ambiguous language on line 2 of the definition "indicates the possibility of a leak from a UST system," the MPCA believes it is no more ambiguous than the federal standard at 40 CFR section 280.50, which states ".....that indicates a release may have occurred...." Because the UST rules are preventative in nature, they address the increased risk of release, not only responses to past releases. See response to comment 4-D for additional discussion of this issue.

## **3. Comment 7-H: Part 7150.0030, subp. 51a (Unusual operating condition)**

The Commenter states:

*Also the actual rule regarding an unusual operating condition needs to be modified in conjunction with the modification of its definition, as that rule contains some of the language which has already be removed from the definition.*

*Subpart B of 7150.0250 of subpart 1 includes the language quote, “may have resulted in a leak,” unquote. That is no longer part of the definition under the MPCA’s proposal. Removing the quote “that may have resulted in a leak” will resolve this issue and add clarity to this rule.*

**MPCA Response:**

See the response to comment 4-D for discussion of this topic.

The Agency is not proposing any changes based on this comment.

**4. Comment 6-C: Part 7150.0205, subp. 6, item B (Submersible pump sumps installed prior to December 22, 2007)**

The Commenter states:

*This rule is open to interpretation because it does not specify what is meant by visual “inspection” and open to interpretation when it comes to “other obstacles”.*

- *Inspections is vague, doesn’t note if this is referring to monthly and/or regulatory.*
- *Sump accessibility is not clearly defined.*
- *Other Obstacles is not defined.*

The Commenter also states two options to alleviate the concern:

*Option 1: Holiday proposes to remove this from the proposed rule.*

*Option 2: Holiday proposes that the rule should be better defined. It should clearly state what is meant by visual “inspection”. Also define what determines if a sump is not accessible for visual inspection.*

**MPCA Response:**

The MPCA does agree that language alterations are needed in this rule section and the rule language should be removed as described in option 1 of this comment.

Currently the proposed language in part 7150.0205, subp. 6, item B reads:

B. Any submersible pump installed before December 22, 2007, and not in a secondarily contained sump used for interstitial monitoring must be accessible for visual inspection and must not be covered by soil, water, or other obstacles that prevent visual inspections.

The MPCA is no longer proposing to add item B and will renumber subsequent item C to accommodate this change.

The MPCA believes it is reasonable to remove this item of the proposed rule because it is open to interpretation with respect to “other obstacles,” which is undefined. Removing the item maintains

consistency with federal requirements. The MPCA also agrees that sumps installed prior to December 22, 2007, were not required to be liquid tight.

**5. Comment 9-A: Part 7150.0205, subp. 7 (Dispenser sumps)**

The MPCA believes the Commenter is concerned about the dispenser sump requirements relating to concrete repair and modifications. Specifically, comments were made relating to bollard repair/replacement.

**MPCA Response:**

Bollards are short, thick vertical posts used to divert traffic from an area or a dispenser. Please see the responses to comments 4-H, 6-D, and 7-C.

**6. Comment 4-H: Part 7150.0205, subp. 7, item A, subitem (4) (Dispenser sumps)**

The Commenter expresses concern about the installing dispenser sumps when concrete or base material under the dispenser is replaced, repaired or modified.

The Commenter stated:

*....When an island experiences cracking in the concrete due to changes in the weather, and the concrete is repaired with concrete filler, the owner or operator would be required to install secondary containment....*

The Commenter proposed a change to the rule to address the concern:

*The MPMA proposes language that would restrict this rule such that the only replacement, repair, modification to the concrete or base material under the dispenser that would trigger the requirement to install secondary containment is that work which occurs below the shear valve.*

**MPCA Response:**

Currently, the proposed language in part 7150.0205, subp 7, item A, subitem 4 states:

*(4) ~~compatible with the stored substance~~ the concrete or base material under the dispenser is replaced, repaired or modified.*

Based on this comment the MPCA agrees that language should be revised by deleting the words “repaired or modified”.

As stated in the SONAR on pages 33-34, the intent of the proposed rule language is to require the installation of under dispenser containment sumps when base material beneath the dispenser is removed and replaced which requires the use of demolition equipment to do work. The use of demolition equipment near the concrete has the potential to damage piping and thereby increase the likelihood of a release. The MPCA believes that minor modifications or repairs to the base material, such as repairing the island with concrete filler as the Commenter stated, does not present an increased likelihood of a release.

Furthermore, the intent of this rule language, as explained in the SONAR on pages 33-34, is to have dispenser sumps installed when the owner or operator chooses to do work on the concrete or base material beneath the dispenser that involves the removal or replacement of the base material (most commonly known as concrete islands). The MPCA believes this is an opportune time to install dispenser containment sumps to contain leaks and drips from dispenser equipment. Minor modifications or repair to an island as described by the Commenter would not present an opportune time to install dispenser containment sumps.

Therefore, the MPCA is proposing to make the following changes in response to the comments described above. ~~Double strike through~~ indicate changes of the proposed rule language. The MPCA is proposing to amend 7150.0205, subpart 7, item A, subitem 4 to the following:

(4) ~~compatible with the stored substance~~ the concrete or base material under the dispenser is replaced. ~~repaired or modified.~~

The MPCA has observed numerous chronic leaks located in the area beneath dispensers. The leak points most notable include pipe unions, check valves, break away valves, dispenser meters, and anywhere a pipe joint may occur. Based on the frequency of these leaks, the Agency believes it is reasonable to require installation of dispenser containment to contain leaks and drips from dispensing equipment to protect human health and the environment. The MPCA believes replacement of the base material is an opportune time to install under dispenser containment sumps. The additional costs would be for the installation of the containment sumps only, as the concrete and island replacement cost would already be incurred by the owner or operator selecting to do concrete replacement to begin with.

Regarding the suggestion that the requirement be triggered by work below the shear valve, the MPCA noted in the SONAR at page 23 that “if a new or used dispenser is installed and no work is performed below the shear then that dispenser replacement is considered a “repair”, even though a different dispenser is being installed.”

**7. Comment 7-C: Part 7150.0205, subp. 7, item A, subitem (4) (Dispenser secondary containment)**

The Commenter states that the vagueness of the rule grants undue discretion to the MPCA as to what constitutes a replacement, repair, or modification under part 7150.0205, subpart 7, item A, subitem 4. The Commenter expressed concern regarding the language “replaced, repaired, or modified” and gave multiple scenarios of when a repair or modification of concrete beneath the dispensers occur and would trigger this requirement. The Commenter questioned what constituted a replaced, repaired, or modified island. Regarding replacement, the Commenter questioned whether an island must be fully removed or partially removed, and whether “replaced” is triggered where no separate concrete island exists.

**MPCA Response:**

The MPCA has considered this comment and others and is addressing these concerns in proposed rule language changes which are discussed in detail in comment 4-H. Furthermore, the MPCA would like to clarify that this requirement would apply when concrete or base material beneath the dispenser is replaced (see the proposed rule revision in comment 4-H) directly under the footprint of the dispenser. The MPCA would also like to clarify that if a partial island is replaced under one dispenser, then only one



dispenser containment sump would be required. This rule would apply only for the dispenser(s) where concrete work or base material is replaced.

**8. Comment 7-D: Part 7150.0205, subp. 7, item A, subitem (4) (Cost analysis – underdispenser containment)**

The Commenter expresses concern that the MPCA has not presented an adequate agency analysis of the cost of the rule as required by Minnesota Statute section 14.131, subdivision 5, and 14.127. The Commenter specifically identified deficiencies on page 65 of the SONAR regarding costs to install a dispenser pump, i.e., the basis for the \$2,000 cost and the cost of the island replacement.

**MPCA Response:**

Analysis of federal costs and the Minnesota-specific costs is in SONAR Attachments 2 and 6. Page 65 of the SONAR, referenced by the Commenter, is a summary of the analysis in Attachment 6 for Minnesota-specific provisions of the proposed rule. At page 65, the MPCA explained that the cost is estimated based on the material for the sump and the labor to install it.

The MPCA would like to clarify that this requirement does not require the replacement of concrete islands. The proposed language indicates if the owner or operator chooses to replace the concrete or base material around the dispenser (most commonly known as concrete island replacement), then a containment sump must be installed at that time. The cost of labor to remove the dispenser, demolition of existing concrete or base material, new island forms, new concrete and labor to remove and install the concrete is not a cost incurred by this requirement. The only cost incurred by this requirement is purchasing the containment sump and labor to install the containment sump.

The MPCA's cost analysis process consisted of contacting three underground storage tank contractors to get an estimated cost of the following:

- purchasing one dispenser containment sump;
- soil excavation beneath the dispenser to install the sumps;
- cutting 3 product lines and installing one dispenser sump;
- cutting holes in sump for lines and inserting boots;
- replacing disturbed piping;
- installing shear valves and supports for one dispenser sump; and
- miscellaneous parts and materials to do the work

The contractors that the agency asked to provide this information were very helpful, but requested they remain anonymous for competitive reasons. Following is a breakdown of the costs received from the contractors at the time the cost analysis was conducted in early 2017.

- 1) Contractor A – \$1,500 to \$2,000; Mean = \$1,750
- 2) Contractor B – \$1,700; Mean = \$1,700
- 3) Contractor C – \$1,800 to \$2,200; Mean = \$2,000

The calculated average of the mean estimate between the three contractors was \$1,816. The MPCA rounded up to state the average cost to comply with this rule would be approximately \$2,000 per dispenser.

After the Commenter challenged the MPCA's findings at the public hearing, the MPCA decided to reassess the cost analysis described above to verify the original cost estimate. The following costs analysis was done on October 31, 2018. The MPCA also decided to include electrical work in the cost estimate, which was not included in the original cost analysis above.

- 1) Contractor A – \$2,000 to \$2,500; Mean = \$2,250
- 2) Contractor B – \$2,000; Mean = \$2,000
- 3) Contractor C – \$2,400 to \$2,800; Mean = \$2,600

The new cost analysis shows the calculated average of the mean estimate between the three contractors as \$2,283. The MPCA attributes the increased cost from \$2,000 to \$2,283 per dispenser to including electrical cost, which the previous analysis did not include. The updated estimate is not substantially different from the original estimate.

The Agency is not proposing changes based on this comment.

**9. Comment 7- E: Part 7150.0205, subp. 7, item A, subitem (4) (Cost analysis – underdispenser containment)**

The Commenter expresses concern that the MPCA has not presented an adequate agency analysis of the number of parties affected by the requirement to install underdispenser containment.

**MPCA Response:**

The MPCA would like to clarify that this rule only applies where there is not already a containment sump beneath the dispenser. The need and reasonableness for dispenser containment sumps is discussed on pages 33-34 of the SONAR and also in response to comment 4-H. The proposed rule language does not require the owner or operator to replace concrete islands, and the choice of replacing the concrete islands is entirely up to the owner or operator. The MPCA cannot determine with absolute certainty how many facilities this will affect. The MPCA can, based on industry knowledge and experience, estimate how many facilities this requirement may affect. The following industry knowledge and experiences the MPCA considered were:

1. Based on MPCA's past inspections, approximately fifty percent of the 4,100 regulated facilities in Minnesota have secondary containment sumps already installed, which this rule would not affect.
2. Even though there is no standard or "rule of thumb" for replacement of concrete islands, the MPCA estimates concrete islands replacements may occur every 15-20 years in highly populated areas and larger facilities because of increased traffic and salt use in the winter months. (Increased salt use in the wintertime can cause the steel island forms to corrode at a faster rate.)
3. The replacement of concrete islands may occur every 20-30 years in lower populated areas or smaller facilities because of lower traffic and less salt use in winter months.

4. The MPCA has seen concrete islands installed in the 1980s that have never been replaced and are still in good condition. If the owner or operator does not choose to replace the islands, this rule would not apply.
5. For facilities that do not have dispenser containment sumps already installed, approximately 50 percent of these facilities that replace islands also replace and upgrade product piping, or reconfigure product piping beneath dispensers to accommodate more or fewer dispensers. This would by itself require dispenser containment under existing state and federal rules. Many owners and operators have recognized the benefits of upgrading product piping or reconfiguring piping when the concrete islands are replaced.
6. Based on notification forms received by the MPCA every year, the MPCA conservatively estimates that approximately 100 facilities in Minnesota upgrade product piping every year, which would by itself trigger the requirement for under dispenser containment sumps under current state and federal rules.
7. The MPCA estimates that 100 facilities in Minnesota may elect to replace concrete islands only, every year. The MPCA also conservatively estimates that 25% of the 100 facilities already that have secondary containment installed, even though approximately 50% of the facilities in Minnesota already have secondary containment, to which this requirement would not apply.
8. Based on the careful consideration of the items and calculations described above, the MPCA estimates the number of facilities this requirement may affect to be 75 per year, which is less than 2% of all regulated facilities in Minnesota.

Appendix 6 of the SONAR states “Based on the historical frequency if island replacement,....it is reasonable to estimate that less than 5% of the sites in MN will be effected by these requirements and potential costs.” The MPCA conservatively estimated in the SONAR that more costs would be incurred by the requirement than is likely to occur in practice, particularly given the change in scope to “replaced” islands. As shown by this analysis, the MPCA gave careful consideration to the number of facilities this rule may affect.

The MPCA estimated the number of state-owned facilities by reviewing past inspections, which include state-owned facilities. As noted in the SONAR at page 59, the MPCA inspects systems approximately every three to five years, and as a result the inspectors are familiar with sites across the state.

The Agency is not proposing changes based on this comment.

**10. Comment 7- F: Part 7150.0205, subp. 7, item A, subitem (4) (Consideration of alternatives)**

The Commenter expressed concern that the MPCA did not describe an alternative for achieving the purpose of the proposed rule.

**MPCA Response:**

The MPCA would like to clarify that the Section 6.A.3 of the SONAR discusses alternative options the MPCA considered for achieving the purpose of the proposed rule.

**11. Comment 6-D: Part 7150.0205, subp. 7, item A, subitem (4) (Dispenser sump replacement)**

The Commenter states:

*Owners and Operators must install secondary containment under a dispenser if:*

*...*

*(4) the concrete or base material is replaced, repaired, or modified.*

- *This rule is open to interpretation. It does not define what is meant by “repaired” or “modified”.*
- *Does “repair” or “modified” include filling of cracks?*
- *Does “repair” or “modified” include surface coating?*
- *Etc.*
- *Not defining “repair” or “modified to the base material has the potential to cause undue burden in costs of unnecessary sump installs at cost to industry.*

The Commenter proposes two options to address the comment:

***Option 1:** Holiday proposes to remove “repaired” or “modified” from the proposed rule.*

***Option 2:** Holiday proposes that “repaired” and “modified” need to be defined.*

**MPCA Response:**

See the response to Comment 4-H.

The proposed rule language is emphasizing that only the replacement of concrete and base material directly under the footprint of the dispenser would require a dispenser sump to be installed beneath the dispenser.

The Agency is not proposing any changes based on this comment.

**12. Comment 6-E: Part 7150.0205, subp. 8 (Emergency stops)**

The Commenter states “Emergency stops are already regulated by the fire code and should not be regulated by another entity that is not versed in the code.” The Commenter further states “Emergency stops are tested at least annually.”

The Commenter expresses concern about discrepancies or conflict between the fire code and MPCA.

**MPCA Response:**

Existing Minnesota Rule ch. 7150 incorporates the National Fire Protection Association (NFPA) Code 30 under performance standards for underground storage tank systems, which allows Emergency Stops to be regulated via chapter 7150. There are several subjects that are included in both Fire Code and chapter 7150, including tank removal procedures, shear valves, and emergency stops. The MPCA believes emergency stops are a crucial part of the tank systems that assures public safety. By requiring emergency stops “in accordance with the Minnesota State Fire Code,” the Agency avoids potential conflict with the MSFC when the MSFC is updated. The Agency believes tank inspectors encounter and address emergency stops on a regular basis and are versed in the requirements and functionality.

Minnesota Rule ch. 7150 does not require emergency stops to be tested annually.

The MPCA conferred with the Minnesota State Fire Marshal's Office and it does not have any issues with the MPCA also regulating emergency stops. By specifically listing emergency stops in the UST rule, it allows the MPCA to be more transparent when addressing issues relating to emergency stops rather than merely incorporating a code of practice, which makes it difficult for owners to identify all requirements of chapter 7150.

The Agency is not proposing any changes based on this comment.

**13. Comment 8-D: Part 7150.0205, subp. 8 (Emergency stops)**

The Commenter suggested concerns of the use of the term "Emergency Stop" because the Minnesota State Fire Code uses the term "Emergency Shutoff" devices.

The Commenter suggests the MPCA adopt fire code language as it pertains to these devices.

The Commenter also expressed concern that another state law indicates you must be in close attendance when dispensing product and feared an emergency disconnect switch will have to be posted at each dispenser.

**MPCA Response:**

The MPCA would like to clarify that the Minnesota State Fire Code is the code of practice the MPCA is adopting as it pertains to emergency disconnect switches. Please see the response to comment 4-K.

The following language is from the Minnesota State Fire Code:

*CHAPTER 23 MOTOR FUEL-DISPENSING FACILITIES AND REPAIR GARAGES*

*2303.2 Emergency disconnect switches. An approved, clearly identified and readily accessible emergency disconnect switch shall be provided at an approved location to stop the transfer of fuel to the fuel dispensers in the event of a fuel spill or other emergency. An emergency disconnect switch for exterior fuel dispensers shall be located within 100 feet (30 480 mm) of, but not less than 20 feet (6096 mm) from, the fuel dispensers. For interior fuel-dispensing operations, the emergency disconnect switch shall be installed at an approved location. Such devices shall be distinctly labeled as: EMERGENCY FUEL SHUTOFF. Signs shall be provided in approved locations.*

The agency uses the term "emergency stop" because it is an accepted industry term that operators can identify.

The MPCA would like to clarify the state law that requires someone to be in close attendance when dispensing the product:

Minnesota Statute section 239.751. Petroleum Dispenser, Price, Label and Sign

*Subd. 6a. Person must be present when fueling; sign.*

*(a) A person must be in close attendance to the dispenser nozzle while fuel is being dispensed into a motor vehicle. No civil or criminal penalties apply to violations of this subdivision.*

*(b) A person who sells petroleum product at retail to the public for use in motor vehicles as defined in section 296A.01, subdivision 21:*

*(1) shall post signs in the locations described in subdivision 5 that state: "A person fueling a motor vehicle must be in close attendance to the dispenser nozzle during the fueling process."; and*

*(2) may discontinue fuel services to a person who violates paragraph (a).*

The MPCA would like to clarify that this regulation is a signage and labeling requirement administered by the Minnesota Department of Commerce and will have no effect on the requirements as outlined in proposed rule part 7150.0205, subpart 8 or the Minnesota State Fire Code as it pertains to an emergency disconnect switch. Owners and operators will not be required to install an emergency disconnect switch at every dispenser. The MPCA interprets section 239.751 to allow a person dispensing fuel to use an emergency stop that is placed in accordance with the Minnesota State Fire Code.

The Agency is not proposing any changes based on this comment.

**14. Comment 4-K: Part 7150.0205, subp. 8 (Emergency stops)**

The Commenter states:

*The Language regarding emergency stops is vague. The MPMA wants to make it clear that the Minnesota State Fire Code is followed as to placement of emergency shutoffs.*

**MPCA Response:**

The MPCA would like to clarify that proposed language located in part 7150.0205, subpart 8, specifically states "...in accordance with the Minnesota State Fire Code,..." as it pertains to emergency stops.

The Agency is not proposing any changes based on this comment.

**15. Comment 7-J: Part 7150.0216, subp. 1, item A (Low level sump testing)**

The Commenter stated:

*As it concerns 7150.0216, subp. 1(A), the MPCA has agreed and it was reiterated today, in replying to the MPMA comment, that the PMAA test, which is an alternative low-level liquid test, is allowed under this rule. For clarity, we believe that the test needs to be identified with particularity in the rule, so all people in the community understand that this is an allowable test under the rule.*

**MPCA Response:**

The MPCA would like to clarify the test referred to in the comment is incorrectly called a PMAA test. PMAA stands for Petroleum Marketers Association of America. The low level liquid test, which is also

referred to as a low level sump test, is an EPA-approved test procedure for conducting a low liquid level hydrostatic testing of sumps.

The statement that the MPCA has allowed the PMAA test, or any low-level sump test, is not correct. The MPCA stated in the proposed rule and in the response to comment 4-E that if an alternative test procedure is equivalent and no less protective of human health and the environment than those outlined by manufacturer or industry standards, the Commissioner could allow that alternative procedure to be used. This position is similar to the EPA's position outlined in 40 CFR section 280.35(a)(1)(ii)(C), which reads: "(C) Requirements determined by the implementing agency to be no less protective of human health and the environment than the requirements listed in paragraphs (a)(1)(ii)(A) and (B) of this section." Part 280 allows for approval of low level sump testing as an alternative method, but it is not included with particularity. For consistency purposes, the MPCA does not need to expressly include low level sump testing in part 7150.0216.

The success of low level sump testing depends on the proper positioning and functionality of the sump sensor. The MPCA has documented more than 100 instances in Minnesota where sump sensors were positioned incorrectly or malfunctioning. See Attachment 4 with photographs documenting examples of improperly operating sump sensors. As a result of its experience with improperly operating sump sensors, the MPCA is concerned that low-level sump testing procedure is less protective of human health and the environment in its current form. Several states have accepted EPA-approved low level sump testing subject to additional conditions. Those conditions place additional safeguards to ensure the test method is no less protective of human health and the environment than the requirements of manufacturers or industry standards.

If the rules are approved, the Agency would consider accepting a form of low level sump testing as an alternative testing method similar to Attachment 5, containing the following conditions:

1. Piping containments sumps with sensors must be wired to shut down the product lines entering the sump upon activation of the sensor.
2. Piping sumps must be free of debris and liquid.
3. Agency-approved testers must be certified by the sensor manufacturer in the sensor activation testing procedure.
4. A written log must be maintained with the following information:
  - a. Date and sump identification of each sensor alarm that occurs
  - b. Alarm investigation results
  - c. Corrective actions taken to remedy the alarm condition
5. Both sensor activation and positive shut down of the pump supplying the product line must be verified.
6. Any of the following conditions found prior to testing shall disqualify the sump from being tested using this method:
  - a. Sump is found with liquid level high enough to trigger a properly positioned sensor, whether or not sensor is found in alarm.
  - b. Obvious structural damage to the containment sump exists prior to testing, such as cracks or breaks in the walls and floor of the containment sump.

7. If sensors are found pulled up or otherwise manipulated to prevent activation, the owner/operator will be prohibited from using this method at the facility.

The MPCA would consider allowing low sump testing with the additional safeguards listed above as authorized by proposed part 7150.0216, subpart 1, item A, subitem 3. Conditions such as those listed above would address the agency's concerns identified in the examples in Attachment 4. Because this method is not third-party certified, the MPCA may determine it needs to adjust conditions to protect human health and the environment.

The Agency is not proposing any changes based on this comment.

**16. Comment 4-E: Part 7150.0216, subp. 1, item A (Liquid-tight testing)**

The Commenter requests that the MPCA incorporate an alternative low level liquid test that was developed by the Petroleum Marketers Association of America (PMAA) into the rule. The Commenter offers background on the development of the method and states that the PMAA low-level liquid test has been approved by the U.S. Environmental Protection Agency (EPA).

**MPCA Response:**

The MPCA does not believe proposed part 7150.0216 needs to be amended to allow for the use of low level liquid testing. Under proposed part 7150.0216, subp. 1(A)(3), there is already a means of using an alternative method: "...requirements determined by the commissioner to be equivalent and no less protective of human health and the environment than subitems (1) and (2)..." Under the proposed language, the MPCA has the authority to approve methods other than the requirements of the manufacturer or codes of practices developed by a nationally recognized association referenced in the rule. This language is equivalent with 40 CFR Part 280 and the MPCA could approve the alternative identified by the Commenter in the same way that EPA approved it.

The Agency is not proposing any changes based on this comment.

**17. Comment 4-L: Part 7150.0216, subp. 1, item B (Testing waste)**

The Commenter states:

*The Language regarding waste disposal testing appears designed to prevent owners and operators to not test their own waste disposal*

**MPCA Response:**

The MPCA would like to clarify that proposed language regarding testing waste disposal is located in part 7150.0216, subpart 1, item B, and is further explained in the SONAR. The proposed rule language does not preclude owners and operators from testing their own waste. The MPCA would like to clarify the owners and operators can test their own testing waste if they so choose, and dispose of that waste accordingly. Alternatively, owners and operators can have a contractual agreement with a testing company they hire to properly dispose of the testing waste as well.

The Agency is not proposing any changes based on this comment.



**18. Comment 5-E: Part 7150.0216, subp. 1, item B (Documentation of wastewater disposal)**

The Commenter states:

*Hydrostatic test water disposal must be documented, this should be made part of the test form so that separate documents don't need to be maintained. Are petroleum inspectors trained to know what is appropriate for disposal including reviewing analytical data?*

**MPCA Response:**

These comments do not directly affect rule language. The MPCA will consider adding “wastewater disposal” to the test form. The proper disposal of wastewater is the responsibility of the owner or operator. Examples of documentation would be a receipt from a disposal facility or a contract from an agency-approved tester stating they will dispose of the wastewater.

The Agency is not proposing any changes based on this comment.

**19. Comment 4-M: Part 7150.0216, subp. 2, item B (Submersible pump sump inspection exemption)**

The Commenter states:

*If submersible sumps are exempt from testing if they have a leak sensing device, then are dispenser sumps also exempt if they have a leak sensing device? The language is unclear.*

**MPCA Response:**

The MPCA would like to clarify that language proposed in part 7150.0216 Subpart 2, Item B exempts only submersible pump sumps from periodic (monthly) operating and maintenance inspections if they have a leak sensing device that alerts the operator of a regulated substance or water in the sump and the sump sensor is tested annually for proper function. As stated in the SONAR, the Agency moved this requirement from existing rule located in part 7150.0300, subpart 7, to consolidate maintenance and inspections requirements into one section of the rule. This exemption has not changed from the existing rule. The proposed rule language specifically states “Submersible pump sumps are exempt...” to make clear that the exemption does not apply to other components.

The MPCA would also like to clarify that proposed language under part 7150.0216, subpart 4, which describes the three-year testing requirements for spill prevention and containment sumps, is equivalent to 40 CFR section 280.35. An exemption from the three-year testing requirement for any of these tank components is given if the spill buckets or containment sumps are double walled and the integrity of both walls is checked for leaks as well as the interstitial area monthly.

The Agency is not proposing any changes based on this comment.

**20. Comment 6-F: Part 7150.0216 subp. 2 item C; part 7150.0215, subp. 3, item D (Cathodic protection repairs)**

The Commenter expressed concern about the proposed requirement to conduct cathodic protection system repairs within 60 days of a failing test.

The Commenter states:

*During the winter, frozen soils are less conductive and accurate tests results cannot be achieved.*

**MPCA Response:**

The MPCA would like to clarify the proposed language the Commenter is referring to only applies to cathodic protection (CP) repairs. This language does not apply to testing CP systems as the Commenter is inferring. Industry codes and standards do not prevent owners and operators from repairing CP systems in frozen soils. The owners and operators of UST systems can conduct repairs year round, then test CP systems when the ground thaws in the spring while still maintaining compliance with this rule.

As described on page 36 of the SONAR, the MPCA has a CP manual referenced in Attachment 7 of the SONAR, which has been the standard practice for CP systems in Minnesota since 2012. The recommended 60-day timeline by which a CP repair must be completed is being codified with this rule update.

The Agency is not proposing changes based on this comment.

**21. Comment 5-G: Part 7150.0216, subp. 2, item D (Documenting monthly periodic inspections)**

The Commenter states:

*Monthly inspection forms likely won't have all compliance actions taken due to the fact that work orders are issued from the inspection and the forms are posted before all actions are completed.*

**MPCA Response:**

This comment does not have a direct effect on rule language. Owners and operators can document an MPCA-certified contractor has been hired and attach the invoice when it is received by the facility.

The Agency is not proposing any changes based on this comment.

**22. Comment 2-A: Part 7150.0216, subp. 3, items B and C (Adverse impact associated with agency-approved tester)**

The Commenter states:

*Proposed rule adversely affects owners and operator by limiting tester options and increasing the cost of work being done*

**MPCA Response:**

The Agency believes that the requirement to have an agency-approved tester inspect spill buckets and containment sumps does not add excessive costs to the walkthrough inspection, nor does the Agency believe that this requirement limits the owner or operators options in choosing who may do the inspection.

The Agency created the “agency-approved tester” to give owners and operators options as to who may conduct tank system testing and inspections. As proposed, agency-approved testers may be employees of an agency-certified tank contactor, or an independent company specializing in testing or inspections of UST systems. To be an agency-approved tester, the company or person must meet minimum qualifications as outlined in part 7150.0216 subp. 6. The purpose of agency-approved testers is not to give preferential treatment to certain people or groups, but to assure properly trained, and qualified personnel are performing the testing and inspections outlined in the proposed rule.

The Agency does not believe the requirement to annually inspect spill buckets and containment sumps proposed in part 7150.0216, subp. 3, item C, subitem (5) will have significant implications. Agency-approved testers will most likely be on site annually to test or inspect other release detection devices as outlined in part 7150.0216, subp. 3. Spill bucket and containment sumps used for interstitial monitoring require only a visual inspection annually according to this part; therefore, the impacts would be minimal if conducted when the other testing and inspections are being conducted.

The Agency is not proposing any changes based on this comment.

**23. Comment 2-B: Part 7150.0216, subp. 3, items B and C (Adverse impact associated with agency-approved tester)**

The Commenter stated that:

*There is nothing that states in either the PEI RP-900, or the EPA’s 40 CFR that annual walkthroughs require an agency-certified tester to conduct annual walkthroughs of spill containment and sumps, thereby limiting business at the expense of inspection and maintenance companies, consultants, and experts in the industry while requiring testers to go beyond scope of practice.*

**MPCA Response:**

As discussed in section 5.A. (page 12) of the SONAR, the Agency has the authority under Minnesota Statutes section 116.49 to establish rules necessary to protect human health and the environment. Additionally, 40 CFR section 280.36 references PEI RP 900 as a standard that may be used to conduct the periodic walk through inspections. PEI RP 900 explains the importance of having “properly trained” individuals to conduct the inspections. In the MPCA’s experience, most owners and operators may not be qualified to conduct annual walk through inspections because they are not familiar with existing and potential problems associated with spill buckets and containment sumps, and have not have not been trained to identify those problems. Requiring agency-approved testers will ensure that properly trained personnel are conducting the inspections.

The Agency is not proposing any changes based on this comment.

**24. Comment 2-C: Part 7150.0216, subp. 3, items B and C (Adverse impact associated with agency-approved tester)**

The Commenter stated that:

*Industry professionals are certified A/B in multiple states and are knowledgeable with UST regulations, have degrees or years of experience in the field and can carry ICC certification.*

**MPCA Response:**

The Agency is attempting to ensure that people conducting annual inspections are qualified to identify tank equipment issues that may not be as easy to identify as those that can be found during the monthly inspections which are performed by certified A/B operators. MPCA inspectors on several occasions have identified major equipment failures that the class A/B operator has not identified while doing their monthly inspections. An example of this is relating to spill buckets. It is common for MPCA inspectors to review monthly A/B inspection records of the spill buckets only to find a crack or hole in the spill bucket which was not identified by the class A/B operator. An agency-approved tester would be qualified to perform a thorough inspection of the equipment and identify any issues.

The Agency is not proposing any changes based on this comment.

**25. Comment 5-F: Part 7150.0216, subp. 3, item C, subitem (1) (Testing automatic tank gauges)**

The Commenter states:

*Part of functionality requirement is to verify configuration of the tank monitor. This is vague and needs to be more detailed. Each O/O may have specific set points for some items that are not required by code. Minimum configuration requirements must be clarified.*

**MPCA Response:**

The system configuration is set by the manufacturer of the automatic tank gauge. The testing of the system preferences must be done by an agency-approved tester to ensure the system configurations and the battery backup are set to the manufacturer's recommendations.

The Agency is not proposing any changes based on this comment.

**26. Comment 5-H: Part 7150.0216, subp. 5 (Overfill-prevention equipment)**

The Commenter states:

*The term "correct level" is used when referencing the 95% shut off, shouldn't it read 95% then?*

**MPCA Response:**

The proposed rule uses industry standards and manufacturer requirements to determine the proper level of activation of the overfill device. The percentage may not be identical for every tank because

different overfill devices may be used. The proper levels can be found in part 7150.205 subpart 5, item A, subitem (2) which identifies the correct levels for various overfill devices.

The Agency is not proposing any changes based on this comment.

**27. Comment 5-I: Part 7150.0216, subp. 6 (Agency-approved testers)**

The Commenter states:

*If a manufacturer doesn't have an approved training for their equipment how is this handled? For example, can an electrician certify an overfill alarm since it is an electrical device?*

**MPCA Response:**

If a manufacturer does not have an approved training or certification for their equipment then no certification for that piece of equipment is required. PEI 1200 is an industry standard that is referenced in part 7150.0216, subpart 1, which lists testing procedures when a manufacturer does not list a method.

The Agency is not proposing any changes based on this comment.

**28. Comment 4-B: Part 7150.0250, subp. 1 (Unusual operating conditions)**

The Commenter stated:

*The proposed rule states that in order to preclude the reporting, the unusual operating condition must be "investigated," any defective components are isolated from the UST system," or "defective components or equipment are repaired by a person certified under Chapter 7105."*

**MPCA Response:**

The MPCA would like to clarify the language the Commenter is referring to is found in part 7150.0250, subpart 1, item A, which describes what actions owners and operators must take to address unusual operating conditions in a UST system. The language in this section does not preclude reporting unusual operating conditions.

The Agency is not proposing any changes based on this comment.

**29. Comment 7-I: Part 7150.0250, subp. 1 (Out of service)**

The Commenter stated

*In this proposed rule, closure is discussed as temporary closures, and the proposed rule should match that, and state in subpart 1(A) "that the owner or operator must take out the UST system temporarily out of service, as opposed to the implication that is permanent."*

**MPCA Response:**

The Agency believes that the term “out of service” is correctly used in the proposed rule at part 7150.0250, subpart 1(A). Part 7150.0400, Temporary Closure, outlines the requirements that must be followed between the time when the UST is taken out of service and when the UST is either permanently closed or placed back into service, if applicable. See the definition of “out of service” in 7150.0030 subp. 32b. The requirements outlined in part 7150.0400 vary based upon how long the UST has been out of service.

In reviewing the SONAR for part 7150.0250, subpart 1, the MPCA realizes that the SONAR incorrectly used the phrase “placed into temporary closure” in subitems (1) and (3) at pages 45-46. Instead of using the phrase “placed into temporary closure” the agency should have used the phrase “taken out of service.” This would be consistent with wording for subitem (2) of this part. In the phrase “temporary closure” the word “closure” implies a finality or end of life to the tank. In most cases where the UST is taken out of service, it will be placed back into service once repairs are conducted or the problem area is isolated. In those cases, the term “closure” does not apply. In those cases where repairs cannot be made and the tank, or tank component will not be placed back into service, the word “closure” could be applied. However, in those cases, the phrase “out of service” also applies.

The Agency is not proposing any changes based on this comment.

**30. Comment 5-J: Part 7150.0250, subp. 2, item B, subitem (3) (Repaired secondary containment areas)**

The Commenter states:

*The term secondary containment area is used but is not specific and is vague.*

**MPCA Response:**

The definition of the term secondary containment can be found at part 7150.0030, subpart 44c.

The Agency is not proposing any changes based upon this comment.

**31. Comment 4-F: Part 7150.0250, subp. 3, item A, subitem (1) (UST corrosion)**

The Commenter expressed concerns about the language regarding replacement as described in part 7150.0250, subpart 3.

**MPCA Response:**

The proposed language in part 7150.0250, subpart 3 (Replacement) is intended to describe when components are required to be replaced. The MPCA would like to clarify the language the Commenter is referring to is located in part 7150.0250, subpart 3, item A, subitem (1). Earlier drafts of the rule language did include the word “excessive,” as the Commenter requested, to describe the degree of corrosion. The Minnesota Office of the Revisor of Statutes did not approve the language “excessive” and removed it from earlier drafts of the rule. Rather than use a term that would provide unreasonable discretion to the agency, the proposed rule language defined a standard to determine whether the corrosion triggered replacement: it may cause the component not to function, or may cause a release. The MPCA then used the SONAR to further clarify the intent of this requirement, which is to require

those components with corrosion that is “excessive, heavy or that causes pitting-type corrosion that may cause the components to not function as the manufacturer intended, or that may cause a leak.” The SONAR goes on to explain that this requirement is not intended for those components with superficial surface corrosion. This explanation is consistent with the rule, because superficial corrosion would not cause the component to stop functioning or cause a release.

The Agency is not proposing any changes based on this comment.

**32. Comment 6-G: Part 7150.0250, subp. 3, item A, subitem (1) (UST corrosion)**

The Commenter says the statement “may” cause a release is vague and open to interpretation. Commenter also states “components are prone to surface corrosion nearly as soon as it is put in the ground.

The Commenter further states “corrosion is not defined.”

**MPCA Response**

Regarding the language “may cause a release,” see the response to comment 4-F. Regarding the definition of “corrosion,” the EPA does not define corrosion in 40 CFR part 280, nor do the majority of other states regulating UST systems. If a term is not specifically defined by rule, it defaults to a dictionary definition.

The Agency is not proposing any changes based on this comment.

**33. Comment 5-K: Part 7150.0250, subp. 3, item A, subitem (1) (UST Corrosion)**

The Commenter states:

*Who is determining the level of corrosion in this section? What are the guidelines?*

**MPCA Response:**

See the response to Comment 4-F.

The Agency is not proposing any changes based on this comment.

**34. Comment 9-C: Part 7150.0250, subp. 3, item A, subitem (1) (UST corrosion)**

The Commenter states that the proposed rule uses the term corrosion and the SONAR uses the terms “excessive” and “superficial” in conjunction with corrosion; the proposed rule language and the SONAR do not match. In addition the Commenter states that the use of the phrases “...may cause not to function, may cause a release,” are subjective to the future and proposes replacing the phrases “may cause” with “that have caused” or similar language under item B to address the issue. The Commenter offers a theoretical example to illustrate the subjectiveness of being required to replace a new piece of equipment with little visible corrosion.

**MPCA Response:**

The proposed rule language did initially include the word “excessive”, but the MPCA response to Comment 4-F explains how the term was removed by the Minnesota Office of the Revisor of Statutes.

With respect to the subjectiveness of using “may”, the intent of the wording is to be preventative. The Commenter suggested the MPCA change the language to “...the UST system component that has or has caused the release of the regulated substance...” The MPCA believes this statement would create a reactive response to a leak, rather than preventing a leak. The MPCA would like to clarify that the intent of this requirement is discussed on page 47 of the SONAR, which is to require those components with corrosion that is “...excessive, heavy or that causes pitting-type corrosion that may cause the components to not function as the manufacturer intended, or that may cause a leak...” that need to be replaced. Furthermore, this requirement “...does not apply to components with superficial surface corrosion...” as stated on page 47 of the SONAR.

The Agency is not proposing any changes based on this comment.

### **35. Comment 4-G: Part 7150.0250, subp. 4, item A (Upward shifting)**

The Commenter expressed concerns about the language regarding required permanent closure as described in part 7150.0250, subpart 4.

#### **MPCA Response:**

The MPCA proposed language in part 7150.0250, subpart 4, to address required permanent closure of tanks. The MPCA would like to clarify the language the Commenter is referring to is located in part 7150, subp. 4, item A. The rule language in this section describes conditions under which the UST must be permanently closed due to tank movement and upward shifting. The Commenter contends the language is ambiguous. The MPCA respectfully disagrees. The Agency understands that concrete cracks in Minnesota due to weather extremes. This rule language would not apply to concrete cracking due to weather extremes. This rule language applies to the tank moving in an upward direction, which would create an extremely dangerous condition for public safety and the environment if the tank were to emerge from the ground. The concrete cracking because of the upward movement of the tank is an indication the tank is moving. This condition can be identified by visual observation comparing if the grade of the concrete on top of the tank is comparatively higher than the grade of the concrete beside the tank, and large cracks are observed in the concrete on top of the tank, resulting in a “bulging” appearance. Given the tank bottoms of underground storage tanks are typically greater than ten feet beneath the surface of the ground, it is highly unlikely the tank will shift upward unless there is a high water table, and there is a problem with the tank anchoring devices, or tank anchoring devices were not installed.

The Commenter suggests that the MPCA change language to include consulting with an MPCA certified tank installer to determine if the condition can be repaired. The MPCA would like to clarify that the language in this section does provide such an allowance: tanks must be closed “...unless repairs can be made to the UST system to prevent the tank from shifting....” This language gives the regulated party the opportunity to consult with an MPCA-certified tank contractor to determine if repairs can be made to alleviate the situation. If repairs can be made to alleviate the situation, the tank would not have to be permanently closed. Also, please see the discussion in the SONAR to further clarify the need and reasonableness of this proposed rule.

The Agency is not proposing any changes based on this comment.



**36. Comment 6-H: Part 7150.0250, subp. 4, item A. (Upward shifting)**

The Commenter states:

*Required permanent closure. Owners and operators must ensure that a tank system or pipe system is permanently closed according to part 7150.0410 and a site assessment is completed according to part 7150.0345, subpart 3, if:*

*A. A tank has shifted upward from its original burial position to the extent that the UST has caused a bulge in the concrete or cover material over the tank or components secured to the top of the UST are contacting access covers, unless repairs can made to the UST system to prevent the tank from shifting and ensure that the UST system has not been, nor will be damaged;*

- *This proposed rule is open to interpretation.*
- *Tanks can move a little over time and not cause a potential release. Amount of movement is not defined.*
- *Also concrete and cover materials can move without having been caused by the tank moving.*
- *Being open to interpretation, an undue burden could be caused by having to permanently close or replace a tank that bears no leak potential.*

The Commenter lists two proposed changes:

*Option 1: Holiday proposes removing this proposed rule.*

*Option 2: Holiday proposes noting that an investigation shall be conducted to verify if a tank has moved in excess of equipment manufactures tolerances before enforcement action. Also need to define what constitutes movement by a tank.*

**MPCA Response:**

See response to Comment 4-G.

The picture in Attachment 6 shows an example of a tank moving and pushing the concrete up.

The MPCA had discussions with tank manufacturers regarding this issue. According to tank manufacturers, either a tank floats to its level of buoyancy based on groundwater levels, or it does not move at all. Tanks do not move due to frost because the bottoms of underground tanks are buried below the frost line.

The tank system backfill material is very important as it ensures proper support of the tank. Installed USTs are not designed to move in the excavation after they are back filled. There are allowable amounts of deflection, which can be caused by hydraulic pressure, but the tanks themselves should not move. A tank warranty is tied to proper installation according to the tank manufacturer's installation manual. An improper installation that allows the tank to move will void the warranty.

If tanks do move, it will have an effect on not only the tank but the entire tank system, which includes piping, sumps, and spill buckets. The movement of tanks will cause stress on the piping due to strain induced by movement, which is likely to cause a release.

The Agency is not proposing any changes based on this comment.

**37. Comment 8-E: Part 7150.0250, subp. 4, item A (Upward shifting)**

The Commenter expresses concerns regarding the definition of a bulge and who determines the cause. The Commenter states that tanks often move and suggests that the MPCA allow an agency-certified tank installer to provide a written opinion on whether a release from the tank is imminent.

**MPCA Response:**

Please see response to comment 4-G and 6-H for further discussion on this topic.

The Agency is not proposing any changes based on this comment.

**38. Comment 6-I: Part 7150.0250, subps. 1 and 4; and part 7150.0345, subp. 1. (Unusual operating conditions)**

The Commenter states:

*Unusual operating conditions is vague and undefined.*

and

*Onsite personnel are not trained in the complexity of UST systems and how to accurately identify potential (yet to be defined) unusual operating conditions.*

**MPCA Response:**

The MPCA would like to clarify that “unusual operating condition” is defined in part 7150.0030, subp. 51a. Also, please see the response to comment 4-A for revisions to this definition based on other comments. Because the term is defined, onsite personnel should be able to identify the conditions.

The Agency is not proposing changes, other than those identified in the response to comment 4-A.

**39. Comment 6-J: Part 7150.0250, subps. 1 and 4; and part 7150.0345, subp. 1 (Unusual operating conditions)**

The Commenter states:

*24 hr. notice of unusual operating conditions is extreme especially when compared with the 7-day notice mandated by the EPA.*

**MPCA Response:**

The MPCA would like to clarify that 40 CFR section 280.50 states:

*Owners and operators of UST systems must **report to the implementing agency within 24 hours**..... for any of the following conditions:*

*(a) The discovery by owners and operators or others of released regulated substances....*

*(b) **Unusual operating conditions** observed by owners and operators....unless:*

*(1) The system equipment or component is found not to be releasing regulated substances....*

*(2) Any defective system equipment or component is immediately repaired or replaced; and*

*(3) For secondarily contained systems,....any liquid in the interstitial space not used as part of the interstitial monitoring method....is immediately removed.*

*(c) Monitoring results, including investigation of an alarm, from a release detection method....that indicate a release may have occurred unless:*

*(1) The monitoring device is found to be defective, and is immediately repaired....*

*(2) The leak is contained in the secondary containment and;.....*

*(3) In the case of inventory control.....*

*(4) The alarm was investigated and determined to be a non-release event....*

*(emphasis added)*

As indicated above, the MPCA requirement as proposed in part 7150.0345, subparts 2(B), and 2(C), is equivalent with 40 CFR section 280.50 reporting of suspected releases requirements. The exceptions to reporting as indicated in 40 CFR section 280.50 as quoted in the text above, are also equivalent in proposed part 7150.0345, subpart 2, item B and C. The MPCA must adopt rules that are no less stringent as 40 CFR part 280. While the MPCA did reorganize language as presented in 40 CFR section 280.50 in an attempt to simplify the requirements, the MPCA does not believe the proposed rule language is more stringent than 40 CFR part 280 in this matter. In addition, part 7150.0345, subpart 2, provides that “A person who has knowledge of a release must immediately notify the Minnesota duty officer upon discovering the release....” This requirement is consistent with statutory notification requirements at section 115.061.

The Agency is not proposing any changes based on this comment.

**40. Comment 6-K: Part 7150.0250, subps. 1 and 4; and part 7150.0345, subp. 1. (Unusual operating conditions)**

The Commenter states:

*24 hr. requirement to confirm an unusual operating condition is not possible, vendors cannot get on site and complete the required testing with the allowed 24hr window....*

*Trained personnel may not be available 24 hrs, 7 days a week, this could leak to product lines have to be shut down until vendors can arrive and/or technicians are available to diagnose unusual operating conditions.*

The Commenter also states two options to alleviate their concern on this matter:

*Option 1 Holiday proposes leaving the rules as previously written*

*Option 2 Holiday proposes defining unusual operating conditions and leaving the 7 days EPA mandated to determine and report unusual operating condition*

**MPCA Response:**

The MPCA would like to clarify the process of investigation and confirming suspected releases. The intent of proposed part 7150.0345, subpart 1, is to require appropriate, reasonable, and proactive steps to investigate whether a leak condition actually exists or does not exist after a leak detection method indicates a release. The MPCA understands that leak detection equipment can malfunction, indicating an alarm condition, when in fact there may be no release. The actions outlined in proposed part 7150.0345 subp. 1 provides steps for the owners and operators to follow before reporting of the unusual operating condition is required by part 7150.0345, subpart 2.

As stated in proposed part 7150.0345, subpart 1, item B:

*B. Within 24 hours of discovering an unusual operating condition while conducting leak detection according to part 7150.0330 or 7150.0340, owners and operators must investigate the condition by:*

*(1) conducting a visual inspection of aboveground and exposed below-grade components of a UST system for leaks and deficiencies; and*

*(2) if applicable, repeating any leak test that indicated an unusual operating condition conducted according to part 7150.0330, subpart 5, 6, or 6a, or 7150.0340, subpart 2, item A; 3, item B; or 4, item A.*

The MPCA would like to point out that this language only applies to unusual operating conditions as it pertains to leak detection methods according to parts 7150.0330 and 7150.0340. The MPCA offers the following example to clarify this requirement.

**Example: An electronic line leak detector alarms indicating a 3.0 gallon per hour leak in regular unleaded product piping.**

- 1) The first step in investigating would to be conduct a visual inspection of any visible piping for the regular unleaded pipe by onsite personnel. Piping would be visible beneath any dispenser that the regular unleaded pipe leads to, and the submersible pump sump that connects the piping to the tank. Other areas to visual inspect may be a transition sump (if applicable).
  - a) If the visual inspection reveals product in the areas inspected have leaked, then the unusual operating condition is verified as a release and proposed part 7150.0250, subpart 1 would apply.
  - b) If the visual inspection reveals that the leak detector has malfunctioned because the wire broke, or any other equipment deficiency has been identified, then an unusual operating condition would be verified and proposed part 7150.0250, subpart 1 would require the defective components to be repaired. Reporting of the monitoring results would not be required under the reporting exemption as stated in proposed part 7150.0345 subpart 2, item C, subitem 1 once the monitoring

device has been repaired and testing after the repair indicates a passing result. Owners and operators may resume leak testing and normal operation of the tank system, and no further action is required.

- c) If the visual inspection does not reveal product in the areas inspected, then an unusual operating condition is not yet verified and the second step must be initiated.
- 2) The second step is to repeat the testing that originally indicated the unusual operating condition. In this example, the electronic line leak detector can be manually programmed to repeat the test by onsite personnel. Depending on the manufacturer, the leak detector may automatically repeat the test to verify the initial result.
  - a) If the repeated test now indicates a passing result, the unusual operating condition has been determined to be a non-release event, and according to proposed part 7150.0345, subpart 1, Item D, owners and operators may resume regular leak testing and no further action would be needed.
  - b) If the repeated test still indicates an unusual operating condition, then part 7150.0345, subpart 1, item C would be initiated.

The Agency believes the first two steps to investigate an unusual operating condition are reasonable and would not require outside vendor services as the comment claims. Onsite personnel are capable of visually inspecting equipment to the best of their ability to verify if a leak has actually occurred. Furthermore, repeating a leak test, in many cases (depending on the manufacturer) is done automatically by the leak detection device. If the leak detection device does not automatically re-test, onsite personnel may manually initiate the monitoring equipment to repeat the test with minimal effort. The MPCA believes these first two steps are a reasonable approach to the verification of an alarm condition, and can be achieved within 24 hours.

As stated in part 7150.0345 subp. 1, Item C:

Within 24 hours of discovering an unusual operating condition or confirming an unusual operating condition according to item B, subitem (2), the owners and operators must initiate:

(1) tightness testing .....on the component suspected of leaking; and  
(2) if applicable, integrity testing, using an agency-approved tester, of  
interstitial and secondary-containment areas used for leak detection.

Continuing with the example as given above, if the repeated test as described in step 2 above still indicates the regular unleaded line still does not pass a 3 gallon per hour leak test, the owner or operator must continue to investigate the unusual operating condition and the proposed language in this section would apply. This would be considered step 3 in verifying whether a leak occurred.

- 3) The third step in this example requires that within 24 hours the owner or operator “must initiate” tightness testing according to part 7150. 0340, subpart 3, item A, which is a line tightness test conducted by an agency-approved tester.
  - a) If the line tightness test indicates the pipe is not leaking, the unusual operating condition has been determined to be a non-release event, and according to proposed

part 7150.0345 subpart 1, item D, owners and operators may resume leak testing as normally conducted and no further action would be needed.

- b) If the line tightness test indicates the pipe is leaking, than the unusual operating condition is verified as a release, and part 7150.0250, subpart 1 would apply.

The Commenter expressed concern that the 24 hour requirement to confirm an unusual operating condition is not possible. The MPCA recognizes that it may take time to get outside vendors to conduct tightness testing. The Agency used the term “must initiate” to accommodate scheduling delays. The Agency would consider simply contacting an outside vendor to schedule the testing as “initiating” the tightness testing proposed in the rule language. The MPCA would like to clarify that if an investigation as described in 7150.0345, subpart 1, item C is “initiated” within 24 hours, they would be in compliance with this proposed rule. The MPCA believes it is reasonable to “initiate” tightness testing described in part 7150.0345, subpart 1, item C within 24 hours to verify if a release has occurred.

Upon considering the comments, the MPCA agrees that the language in this section is unclear. Furthermore, the Agency realized that the proposed language does not indicate a time in which the investigation must be completed. Therefore, the agency is proposing to revise the language in 7150.0345, subpart 1, item C.

Currently the proposed language in part 7150.0345, subp. 1, item C reads:

*C. Within 24 hours of discovering an unusual operating condition or confirming an unusual operating condition according to item B, subitem (2), the owners and operators must initiate:*

*(1) tightness testing according to part 7150.0330, subpart 4, or 7150.0340, subpart 3, item A, on the component suspected of leaking; and*

*(2) if applicable, integrity testing, using an agency-approved tester, of interstitial and secondary-containment areas used for leak detection.*

The MPCA agrees that the proposed language needs modification to address the original intent. Therefore, the MPCA is proposing to make the changes indicated below to proposed part 7150.0345 subpart 1, item C. Changes to the proposed language are indicated by ~~double strike through~~ and double underline. The MPCA is proposing to amend 7150.0345, subpart 1, item C to the following:

~~C. Within 24 hours of~~ Upon discovering an unusual operating condition or confirming an unusual operating condition according to item B, subitem (2), the owners and operators must initiate within 24 hours, and complete within 7 days, the following items:

(1) tightness testing according to part 7150.0330, subpart 4, or 7150.0340, subpart 3, item A, on the component suspected of leaking; and

(2) if applicable, integrity testing, using an agency-approved tester, of interstitial and secondary-containment areas used for leak detection.

The Agency believes this is a reasonable amendment to provide clarification to owners and operators. The amendment also ensures the rule will be no less restrictive than 40 CFR section 280.52.

**41. Comment 5-L: Part 7150.0340, subp. 4, item C (Sump device testing)**

The Commenter states:

*Sumps inspected AND tested annually? Shouldn't this be tested every 3 years the same as the Federal rule?*

**MPCA Response:**

The proposed rule language states sumps must be inspected annually and leak-sensing devices must be tested annually. This requirement is the same as federal requirements located at 40 CFR § 280.36, and 40 CFR § 280.40. The sumps then have to be tested every three years, which is the same as the federal regulations found at 40 CFR § 280.35 and in part 7150.0216, subpart 4.

The Agency is not proposing any changes based on this comment.

**42. Comment 5-M: Part 7150.0345, subp. 1, item C (Investigating and confirming)**

The Commenter states:

*It will be difficult to guarantee a test within 24 hours- especially if this is for a tank interstice. Contractors are not always available to respond that quickly.*

**MPCA Response**

See the response to comment 6-K.

The Agency is not proposing any additional changes other than those identified in 6-K.

**43. Comment 9-D: Part 7150.0345, subp. 1 (Investigation and confirming)**

The Commenter expressed concern about the timeliness of reporting and confirming releases; specifically that 48 hours may not be reasonable, EPA allows 7 days. The Commenter runs through a scenario to demonstrate how 24 hours is not a sufficient amount of time to investigate and confirm a release; the Commenter suggests 72 hours would be more appropriate.

**MPCA Response:**

Please see the response to Comment 6-K for discussion on this topic and the proposed rule changes.

**44. Comment 4-C: Part 7150.0345 subp. 2, item B (Reporting unusual operating conditions)**

The Commenter stated;

*Further, that federal rule states with particularity when the owner or operator does not need to report an unusual operating condition including when "the system equipment or component is found not to be releasing a regulated substance to the environment," and when "any defective system equipment or component is immediately repaired or replaced".*

**MPCA Response:**

The MPCA would like to clarify the proposed rules in part 7150.0345, subpart 2, items B and C, which gives many conditions in which unusual operating condition do not have to be reported. These are consistent with language in 40 CFR § 280.50 and also include the language the Commenter is referring to. It is the intent of the agency to require reporting of only those unusual operating conditions that:

- 1) result in a leak from the UST system, or
- 2) are investigated and cannot be determined to be a non-release event.

It is reasonable to limit reporting to these instances, because it reduces the frequency of false reports and triggers further action where corrective measures cannot be determined.

The Agency is not proposing any changes based on this comment.

**45. Comment 5-N: Part 7150.0345, subp. 3, item A (Sampling)**

The Commenter states:

*How can samples be collected BEFORE a removal?*

**MPCA Response:**

This language is to address tanks that are filled in place or when retrofit tanks are installed. Sampling can be done at the time of permanent closure through routine industry sampling methods. Normal sampling procedures remain for routine tank removals.

The Agency is not proposing any changes based on this comment.

**46. Comment 5-O: Part 7150.0445, subp. 5, item B (Operator testing)**

The Commenter states:

*If a company's people take the exam for multiple sites already and have various components it doesn't make sense to retake the exam if one site changes equipment. Likely another site within the company already has the same equipment.*

**MPCA Response:**

Currently, the proposed language in part 7150.0445 subp. 5, item B states:

*B. A class B operator must retake the examination under item A within 30 days after a change in any of the following components of a UST system:...*

The Agency agrees with the Commenter that it is not reasonable for an existing Class B operator to be required to retake an exam if one site changes equipment and the Class B operator is already certified on that system component that has changed.

Therefore, the MPCA is proposing to make the following changes in response to the comments described above. Double underline indicate changes of the proposed rule language. The MPCA is proposing to amend part 7150.0445. Subp. 5, Item B, to the following:



B. A class B operator must retake the examination under item A within 30 days after a change in any of the following components of a UST system, unless the Class B operator has been previously certified in the system component that has changed:

(1) tank or piping construction material;

(2) tank or piping release-detection method; or

(3) type of cathodic-protection system.

#### **47. Comment 5-P: Part 7150.0450, subp. 3, item E (Record retention)**

The Commenter states:

*see comment from section 44.16*

#### **MPCA Response:**

See the response to Comment 5-E.

The Agency is not proposing any changes based on this comment.

#### **48. Comment 9-B: Part 7150.0450 (Record keeping)**

The Commenter believes that the proposed five-year record retention period should be "...reduced to either the same as the EPA or a lesser amount of three years..." for leak detection and system maintenance records. The Commenter believes that the MPCA's fifty percent cost savings rationale for reducing the record retention time period from ten to five years does not sufficiently address the need and reasonableness for establishing a time period more "onerous than EPA." In fact, the Commenter states that further cost savings of 70-90 percent could be achieved with a shorter record retention period.

#### **MPCA Response:**

The MPCA recognizes that cost savings are an important factor to regulated parties. However, site records are critical to the MPCA in determining whether equipment is functioning properly to ensure protection of human health and the environment. During MPCA site inspections, inspectors check site records generated since the last MPCA site inspection. Since 2008, most inspections are conducted at a frequency of every three to five years. Because records dated prior to the last inspection have already been reviewed, the MPCA no longer needs to inspect them. Thus, it is reasonable to retain records for a minimum of five years, not ten as currently required, in order to verify that the owner or operator is conducting the required monthly, annual and periodic (three year) tests and inspections.

As part of the SONAR discussion supporting amendment of the record retention requirements from ten to five years, the MPCA discussed halving record retention costs. It is important to note that the amount of cost savings is very small. Under the proposed amendments, the records required to be kept annually per site are estimated at 30 to 50 sheets of paper, which is a stack approximately ¼ to ½ inch thick.

For a small owner or operator, the physical storage space required to maintain five years of records is very small. For an owner or operator storing records for many sites, the physical storage space would be larger, but most large scale owners/operators now store their records electronically, so the cost of

storing five years of records is minimal. Overall, the proposed amendments decrease the number of records that are currently stored.

As discussed above, the MPCA believes that it is reasonable to establish a minimum record retention of five years because of the need to inspect site records to ensure equipment is properly operating and protecting human health and the environment.

The Agency is not proposing any changes based on this comment.

## **B. General comments**

### **49. Comment 1: (Opposition to entire rule)**

The Commenters state opposition to the entire rule and request a hearing.

#### **MPCA Response:**

The Minnesota Pollution Control Agency (MPCA) has established the need and reasonableness for the proposed rule in the Statement of Need and Reasonableness (SONAR).

The Agency is not proposing any changes based on this comment.

### **50. Comment 4-D: (Ambiguous or subjective language)**

The Commenter expresses concerns regarding the use of ambiguous or subjective language throughout the rule.

#### **MPCA Response:**

The purpose of Minnesota Rule ch. 7150 is to prevent releases of regulated substances and to protect human health and the environment. As discussed in the SONAR at part 5.B., the significant cleanup costs from past releases led to the creation of the UST regulations. The Legislature directed the MPCA to adopt safeguards to protect human health and the environment, which necessarily includes release *prevention*, not merely *remediation* after a release. In order to prevent releases, the MPCA uses the word “may” to be able to address conditions that substantially increase the risk of release before a release occurs. Where possible, the proposed rules defined the conditions increasing the risk of release as specifically as possible (e.g., see response to comment 4-A, revising requirements for “unusual operating condition”). For instances where the conditions cannot be specifically delineated, the proposed rules restrict the agency’s discretion to those conditions that increase the potential for a release (e.g., at 7150.0250, subp. 3, requires replacement for corrosion that “may cause the component to not function as intended by the manufacturer or that may cause a release of a regulated substance”).

Upon reviewing other state and federal rule language, the MPCA found that language potentially viewed as subjective is commonly used to identify conditions before a release occurs. Please see the Attachment 3, which identifies language in multiple regulatory agencies through the United States that uses a similar approach to preventative rules and regulations. It is impossible to predict every situation that might arise and address it in rule language. This language is necessary to address conditions before a release occurs. If conditions exist that present a potential release condition, the Agency’s intent is to first consult with equipment manufacturers and industry standards to determine potential risks and

respond to the situation accordingly. If the Agency determines corrective actions are required to protect human health and the environment and the regulated party does not agree with the determination in a particular case, the Agency decision may be challenged by the regulated party through the enforcement process.

The Agency is not proposing any changes based on this comment.

**51. Comment 3-A: (Compliance timeline consideration)**

The Commenter states:

*It is important to allow a reasonable amount of time for UST system owners and operators to comply with the new rules. It is our understanding that many existing UST systems can be expected to require significant upgrades or full replacement to comply with the updated UST rules. St. Louis County is in the process of assessing our options for repair or replacement of our USTs, balancing the need to provide consistent service and environmental protection with the myriad of other budget needs facing the County. Our estimated cost to replace 19 tanks (all USTs except a UST recently replaced in downtown Duluth) is between \$2,000,000 and \$3,000,000 (not including potential remediation costs).*

**MPCA Response:**

The MPCA acknowledges that there will be a cost associated with the implementation of the new tank regulations. The MPCA would like to clarify that the proposed tank rules do not require total replacement of tank systems, only components that do not function properly. The majority of the cost is associated with federal requirements. The MPCA will give until October 13, 2020, to meet the new component testing requirements. The MPCA proposed the October 13, 2020, deadline for equipment function testing to help spread out the cost for owners, and also allow time to make decisions on whether to upgrade tank systems, install new tank systems, or decommission existing tank systems. Under the federal tank regulations, this work was required to be completed by October 13, 2018. The MPCA's State Program Approval for the Underground Storage Tank Program and state-specific rules allows the MPCA to give extra time after state rule adoption to complete this work. This extension would not be allowable if the MPCA did not have a state-specific UST rule or state program approval. The additional time is a reasonable accommodation for compliance with the new requirements in the proposed rules.

The Agency is not proposing any changes based on this comment.

**52. Comment 3-B: (Reporting, investigating, and confirming releases)**

The Commenter states:

*As stated in the public notice rule summary, the proposed rule amendments require investigation of suspected releases within 24 hours; EPA UST rules (40 CFR 280.52) allow up to seven days (unless another time period specified by the implementing agency). While we understand the need to act quickly if a release from a UST is suspected, we are concerned that this rule, as currently written, established*

*requirements that may be infeasible to meet in all cases, especially for remote facilities outside the Twin Cities metro area. The Statement of Need and Reasonableness (Sonar pages 54-55) states that the proposed rule complies with 40 CFR 280.52 but does not provide any discussion of feasibility, especially with regard to arranging for an agency approved tester to provide the tightness and integrity testing required by Item C.*

#### **MPCA Response:**

The proposed rule states that within 24 hours of discovering an unusual operating condition while conducting leak detection according to part 7150.0330 or 7150.0340, owners and operators must investigate the condition. Investigating the condition requires visual inspection of the aboveground and exposed below-grade components. As described in response to comment 6-K, if no release can be confirmed visually, the owner also has the ability to repeat that leak test that originally indicated the unusual operating condition as part of the investigation. This would allow an owner the ability to conduct another tightness test using an automatic tank gauge **or** using an agency-approved tester. In effect, this gives owners 48 hours from the time of the original discovery of the unusual operating condition to the time an agency-approved tester would be required to respond or emptying of the tank because the unusual operating condition has been confirmed.

Current MPCA tank regulation at Minnesota Rule part 7150.0300, subpart 2 states, “When a release detection method operated according to the performance standards in parts 7150.0330 and 7150.0340 indicate a release **may have occurred**, owners and operators must notify the agency according to Minnesota Statutes, section 115.061” (emphasis added). That means if an owner receives a non-passing leak test, they must call it in as a suspected release. The proposed tank regulations give owners additional time to **investigate** the non-passing leak test in many instances before having to report the suspected release because in many cases the suspected release, through investigation or retesting, can be found to not be an actual release or equipment malfunction. Allowing the investigation time is reasonable because it reduces false reports, while requiring the investigation to begin within 24 hours is reasonable to minimize the potential volume released in cases where a release does occur.

An example of this would be if a facility had an automatic tank gauge alarm stating it did not pass a 0.2 gallons per hour (gph) leak test. The facility would then need to investigate the reason for not receiving a passing leak test. The investigation would consist of checking the appropriate visible portions of that tank system and if a cause was not visibly found the facility could run another 0.2 gph leak test. At that point if the leak test passed the facility could continue with normal operation. However if the second leak test still did not pass, then the facility would have to call an agency-approved tester to conduct additional tests to identify why the system is not passing the leak tests.

See response to comment 6-K for a proposed rule amendment to this requirement.

#### **53. Comment 7-A: (Reasonableness generally)**

The Commenter expresses concerns regarding the reasonableness of the rule and the rational relationship to MPCA’s objectives. The comment further states the MPCA has not met its burden under Minnesota Statutes section 14.131 or 14.127.

**MPCA Response:**

The MPCA explained the overall need and reasonableness of the rules in SONAR section 5.A. The MPCA provided cost estimates in SONAR attachments 2 and 6. This introductory comment during hearing testimony does not in itself provide a specific basis to question or rebut the MPCA's findings.

The Agency is not proposing any changes based on this comment.

**54. Comment 7-B: (Procedural defects)**

The Commenter expresses concerns that the MPCA has not responded to comments in a manner consistent with its legal obligations. The MPCA must explain the need when responding to parties.

**MPCA Response:**

The MPCA is satisfying the obligation in statute through this response document. The MPCA was not obligated to provide initial responses to comments before the hearing, but did so to give advance notice to potential testifiers at the hearing that the agency intended to modify its proposal.

The Agency is not proposing any changes based on this comment.

**55. Comment 7-K: (Summary)**

The Commenter summarizes the arguments above for rule disapproval.

**MPCA Response:**

For the reasons described in responses to Comments 7-A through 7-J, the MPCA disagrees with the conclusions of the Commenter or has modified the rule to address the concerns.

**56. Comment 8-A: (SONAR agency-approved tester)**

The Commenter stated:

*In attachment 6 of the SONAR, there was no cost attributed to hiring an Agency-approved tester.*

The commenter further stated:

*The statement within [SONAR] Attachment 6, that it will only be incurred as an agency-approved test is optional for owner/operator is, in fact, not accurate. The cost, we suspect - we don't know. We suggest that the cost will be substantial because some of the testing involves hydrostatic testing of sumps, and underground - - and spill buckets. And that has the potential for generation hazardous waste.... The cost to hire an agency-approved tester could be substantial.*

**MPCA Response:**

The MPCA would like to clarify the cost analysis in Attachment 6 of the SONAR only represents requirements specific to Minnesota, i.e., those not required by 40 CFR part 280. It should be noted that Minnesota does not propose any additional testing requirements beyond what is specified in 40 CFR part 280. The MPCA adopted the federal cost analysis for conducting test that are required by 40 CFR

part 280. The EPA conducted a cost analysis for this testing and the MPCA did not have reason to differ from the EPA's findings. The federal analysis is incorporated as Attachment 2 of the SONAR.

The MPCA did conduct a cost analysis of becoming an agency-approved tester located in Attachment 6 of the SONAR as the requirement to become an agency-approved tester is a Minnesota-only requirement.

The Agency is not proposing any changes based on this comment.

#### **57. Comment 8-B: (SONAR agency-approved tester)**

The Commenter expresses concern that owner or operators cannot become an agency-approved tester because requirements relating to being approved as a tester are too stringent. The Commenter also expresses there will be a shortage of agency-approved testers.

#### **MPCA Response**

The requirements to become an agency-approved tester are listed in proposed rule part 7150.0216, subpart 6, which lists who can become an agency-approved tester and how a person can become an agency-approved tester. Proposed part 7150.0216, subpart 6, states:

##### Subpart 6. Agency-approved testers.

##### A. To become agency-approved testers, individuals must:

(1) apply to the commissioner for approval....

(2) be certified by the manufacturers of components of a UST system being tested and the manufacturers of equipment used to test UST systems,....

(3) meet one of the following criteria:

(a) be an employee of an agency-certified tank contractor under chapter 7105; or

(b) be an employee of an independent company that specializes in testing UST systems, is not affiliated with the owner or operator of the UST system being tested, and has comprehensive general liability insurance with pollution liability coverage no less than \$1,000,000.

The rule states that any person that currently works for a certified contractor or independent company that specializes in UST testing simply has to apply to become an agency-approved tester. The Agency has already spoken to several Minnesota tank contractors who plan to have many of their staff apply to become agency-approved testers. There are also many independent testing firms in Minnesota that the agency expects will meet agency-approved tester requirements. The Agency believes those contractors currently conducting tank system testing will become agency-approved testers as well. Therefore, the MPCA disagrees that there will be a shortage of testers available.

The MPCA would also like to clarify owners and operators also have the ability to become an agency-approved tester by meeting the criteria of Minnesota Rule chapter 7105, if they so choose. If owners choose to do this they must show previous experience with installation and removals of UST systems listed in Minnesota Rule chapter 7105, take the certification course equivalent to what is required for

UST contractors/supervisors, and then apply to the Agency to become an agency-certified UST contractor. The MPCA proposes to put these criteria in place to ensure that if any owner wants to be an agency-approved tester, they are well trained on UST principles. Some testing requires removal and reinstallation of tank components, which can adversely affect UST equipment if not done properly. There are owners and operators who are currently certified underground storage contractors and who could become agency-approved testers. Agency-approved testers are discussed in great length in the SONAR on pages 39-45. Discussion of the definition is also found on page 15 of the SONAR.

The Agency is not proposing any changes based on this comment.

**58. Comment 8-C: (Hazardous waste generation)**

The Commenter expresses concern with generating a hazardous waste while conducting sump and spill bucket testing:

*Also, it requires that the owner/operator's document that shows the testing while waste generated during sump and spill bucket testing be disposed of properly in accordance with state and federal regulations as well as hazardous materials regulations. They require, I think, a cradle-to-grave accounting. Well, when this agency-approved tester shows up at your site with his vac truck, he's going to use the water from more than one place. He's going to transport it.*

*We think the rules should reflect that the agency-approved tester is the generator of that hazardous waste. Otherwise there's the potential that every site owner, underground site owner, has to become a small quantity hazardous waste materials generator for 15 gallons of water, if he's only testing his three spill buckets. We think that is doable.*

**MPCA Response:**

The MPCA would like to clarify that there are sump testing options available that do not produce a hazardous waste stream, which include vacuum testing of sumps and spill buckets. Additionally, if sumps are kept in a manner required in part 7150.0216 subp. 2(A), the potential for generating a hazardous waste while performing hydrostatic testing of the sumps will be minimized.

The MPCA would like to clarify that the wastewater can be reused from site to site, and does not become a waste until the responsible party determines it is no longer usable. At that time the waste must be managed according to Minnesota rule chapter 7045.

The EPA has proposed the following options for disposal of the test water:

- 1) Disposal to the sanitary sewer or waste water treatment plant, with local authority approval.
- 2) Drum and properly store until a hazardous waste or fuel recycler can pick it up on site.
- 3) Filter the test water through an oil-water separator and properly dispose of the oil and water.
- 4) Disposal at a fuel water recycling facility.

As an example, if an agency-approved tester is hired and the owner signs a contract stating that the agency-approved tester is responsible for the proper disposal of the waste, then the owner is no longer responsible for managing any waste. The MPCA discussed this issue with existing tank contractors that offer this service, and this type of contractual agreement appears to be a common practice (i.e., the contractor takes liability for the waste management once the owner and contractor enter into a contract for sump testing services). Contractors can also reuse the waste water if they chose to. Several contractors have stated that they plan to first use best management practices at the facility to clean the sumps and spill buckets prior to introducing water for the hydrostatic test. Doing so minimizes the amount of product that may be in the wastewater after testing the sumps. Contractors may then run the water through carbon filters to clean the water after using it and reuse the water at future testing sites.

The Agency is not proposing any changes based on this comment.

#### IV. Corrections to the SONAR

The Agency introduced Hearing Exhibit M at the October 25, 2018, hearing. However, due to an oversight, the Agency did not include the intended discussion for replacing the March 28, 2016, date listed on page 74 of the SONAR. Attachment 2 now supersedes Hearing Exhibit M because the intended March 28, 2016, discussion is now included and other minor corrections are also listed.

*Table 1. SONAR corrections.*

SONAR Page #	SONAR text	Correction
Page 14	The Agency proposes to add this requirement to ensure that owners and operators are aware of the applicability of part 7150.0100, subp 9, to USTs when handling “...any liquid or solid substance or other pollutant...” subject to <b>Minn. Stat. § 115.03, subd. 1(3)</b> regulations regarding other potentially harmful substances are proposed in this section to assure compatibility with these substances.	The reference to “Minn. Stat. § 115.03, subd. 1(3)” needs to be replaced with “Minn. Stat. § 115.03, subd. 1(e)(3)” to correct a minor citation error.
Page 18	The existing definition in <b>part 7150.0030, subp. 8</b> is being deleted for relocation purposes and is now listed under subp. 25e.	The reference to “part 7150.0030, subp. 8” needs to be replaced with “part 7150.0030, subp. 25a” to address a minor citation error.



SONAR Page #	SONAR text	Correction
Pages 45 - 46	<p>Subitem (1). Under subitem (1), the MPCA is proposing that the UST system does not need to be <b>placed into temporary closure</b> if an unusual operating condition can be resolved. An example of an unusual operating condition being resolved might be when the ATG detects a sudden loss of product. Usually a report of sudden loss occurs when fuel is removed from the UST while a tank leak test is being performed. If the owner or operator can verify that the reported loss can be attributed to fuel being removed and not a leak, the UST does not need to be placed into temporary closure and the unusual operating condition has been resolved.</p> <p>...</p> <p>Subitem (3). Under subitem (3), the MPCA is proposing that the UST system does not have to be <b>placed into temporary closure</b> if the defective component is repaired or replaced by a certified-tank contractor. Until repairs are completed, owners and operators of a UST system must meet the requirements of either subitem (2) or subpart. 1(A).</p>	<p>In reviewing the SONAR for Part 7150.0250, subpart 1, the MPCA realizes that the SONAR incorrectly used the phrase “placed into temporary closure” in subitems (1) and (3) at pages 45-46. Instead of using the phrase “placed into temporary closure” the agency should have used the phrase “taken out of service.” This would be consistent with wording for subitem (2) of this part. In the phrase “temporary closure” the word “closure” implies a finality or end of life to the tank. In most cases where the UST is taken out of service, it will be placed back into service once repairs are conducted or the problem area is isolated. In those cases, the term “closure” does not apply. In those cases where repairs cannot be made and the tank, or tank component will not be placed back into service, the word “closure” could be applied. However, in those cases, the phrase “out of service” also applies.</p>
Page 74, section 7.A.	<p>On November 9, 2015, the MPCA published notice requesting comments on planned rule amendments to Minn. R. ch. 7150. The notice was placed on the MPCA’s Public Notice webpage <b>and the UST Update rule webpage at <a href="https://www.pca.state.mn.us/waste/underground-storage-tanks-ust-update-rulemaking">https://www.pca.state.mn.us/waste/underground-storage-tanks-ust-update-rulemaking</a></b>.</p>	<p>Due to an oversight, no hyperlink was activated on the webpage at the time the Request for Comments was public noticed. This oversight was not corrected until recently. Therefore, it is reasonable for the MPCA to delete “...and the UST Update rule webpage at <a href="https://www.pca.state.mn.us/waste/underground-storage-tanks-ust-update-rulemaking">https://www.pca.state.mn.us/waste/underground-storage-tanks-ust-update-rulemaking</a>” from the last sentence to ensure the SONAR is accurate.</p>

<b>SONAR Page #</b>	<b>SONAR text</b>	<b>Correction</b>
Page 74, section 7	The MPCA sent an electronic message to the government officials on March 28, 2016.	The Agency is replacing “March 28, 2016” with “March 9, 2018” to ensure that the SONAR reflects the most recent date the Agency took the listed action.

## **V. Attachments**

1. Index of Pre-Hearing and Post-Hearing Comment Letters, Non-MPCA Public Hearing Exhibits and Testimony.
2. Proposed Changes to the Rule Amendments, as Published in the Minnesota State Register on August 27, 2018.
3. Examples of Vague, Ambiguous, Subjective Language from State and Federal Regulatory Agencies.
4. Examples of improperly operating sump sensors.
5. Containment Sump Test Report for Positive Shutoff Testing.
6. Example of a tank moving and pushing concrete up.

## **VI. Conclusion**

After diligent consideration of comments made on the proposed rule, MPCA continues to assert that, as required by Minn. Stat. § § 14.131, 14.14, subd. 2, and 14.15, subd. 4, and Minn. Rules § 1400.2100, the Agency has shown the rule as proposed with the additional changes in Attachment 2 is needed and is reasonable as demonstrated by and affirmatively shown by facts presented by the Agency on the hearing record.

Attachment 1.

**Index of Pre-Hearing and Post Hearing Comment Letters, Non-Minnesota Pollution Control Agency  
Public Hearing Exhibits and Testimony.**

<b>Pre- Hearing Letter</b>	<b>Name</b>
1	Christopher J. Heinze, Libby Law Offices, P.A
2	Chrisoulla Rakowski, Environmental Compliance Management
3	James T. Foldesi, P.E., St. Louis County
4	Holly Werner, Minnesota Petroleum Marketers Association
5	Troy Batzel, Kwik Trip
<b>Hearing Letter</b>	<b>Name</b>
6	Camie Pederson, Holiday Stationstores
7	Public Hearing Testimony of Chris Heinze
8	Public Hearing Testimony of Bob Krogman
9	Public Hearing Testimony of Frank Orton
<b>Post- Hearing Letter</b>	

Attachment 2.

**Proposed Changes to the Rule Amendments, as Published in the Minnesota State Register on August 27, 2018.**

Double underline and ~~double strike through~~ indicate changes to language proposed in the Minnesota State Register on August 27, 2018.

**7150.0030 METHODS OF RELEASE DETECTION FOR TANKS.**

1. Part 7150.0030, Subp. 51a:

Subp. 51a. **Unusual operating condition.** "Unusual operating condition" means:

- A. a condition, equipment deficiency, or occurrence that:
  1. results in a release of a regulated substance; or
  2. indicates the possibility of a leak from a UST system;
  - ~~3. creates a reasonable expectation that a leak from a UST system is probable; or~~
  - ~~4. may cause an undetected leak;~~
- B. an unexplained presence of water in the tank; or
- C. liquid in the interstitial space of secondary-containment systems.;
- D. erratic behavior of product dispensing equipment; or
- E. a sudden loss of product from the UST system.

**7150.02015 DESIGN AND CONSTRUCTION.**

2. Part 7150.0205, Subp. 6, item B:

~~B. Any submersible pump installed before December 22, 2007, and not in a secondarily contained sump used for interstitial monitoring must be accessible for visual inspection and must not be covered by soil, water, or other obstacles that prevent visual inspections.~~

€The following codes of practice are incorporated by reference under part 7150.0500 and must be used to meet the requirements of this subpart, as applicable:

- (1) Underwriters' Laboratories of Canada, Under-Dispenser Sumps, ULC/ORD-C107.21; and
- (2) Underwriters Laboratories, Outline of Investigation for Containment Sumps, Fittings and Accessories for Fuels, UL 2447.

**7150.0205 DESIGN AND CONSTRUCTION.**

3. Part 7150.0205, subp. 7, item A, subitem (4):

~~(4) compatible with the stored substance the concrete or base material under the dispenser is replaced, repaired, or modified.~~

**7150.0345 REPORTING, INVESTIGATING, AND CONFIRMING RELEASES.**

4. Part 7150.0345, subp. 1, item C:

C. ~~Within 24 hours of~~ Upon discovering an unusual operating condition or confirming an unusual operating condition according to item B, subitem (2), the owners and operators must initiate within 24 hours, and complete within 7 days, the following items:

(1) tightness testing according to part 7150.0330 , subpart 4, or 7150.0340, subpart 3, item A, on the component suspected of leaking; and

(2) if applicable, integrity testing, using an agency-approved tester, of interstitial and secondary-containment areas used for leak detection.

**7150.0445 CLASS A, B, AND C OPERATOR REQUIREMENTS.**

5. Part 7150.0445, subp. 5, item B

*B. A class B operator must retake the examination under item A within 30 days after a change in any of the following components of a UST system, unless the Class B operator has been previously certified in the system component that has changed:*

*(1) tank or piping construction material;*

*(2) tank or piping release-detection method; or*

*(3) type of cathodic-protection system.*

Attachment 3.



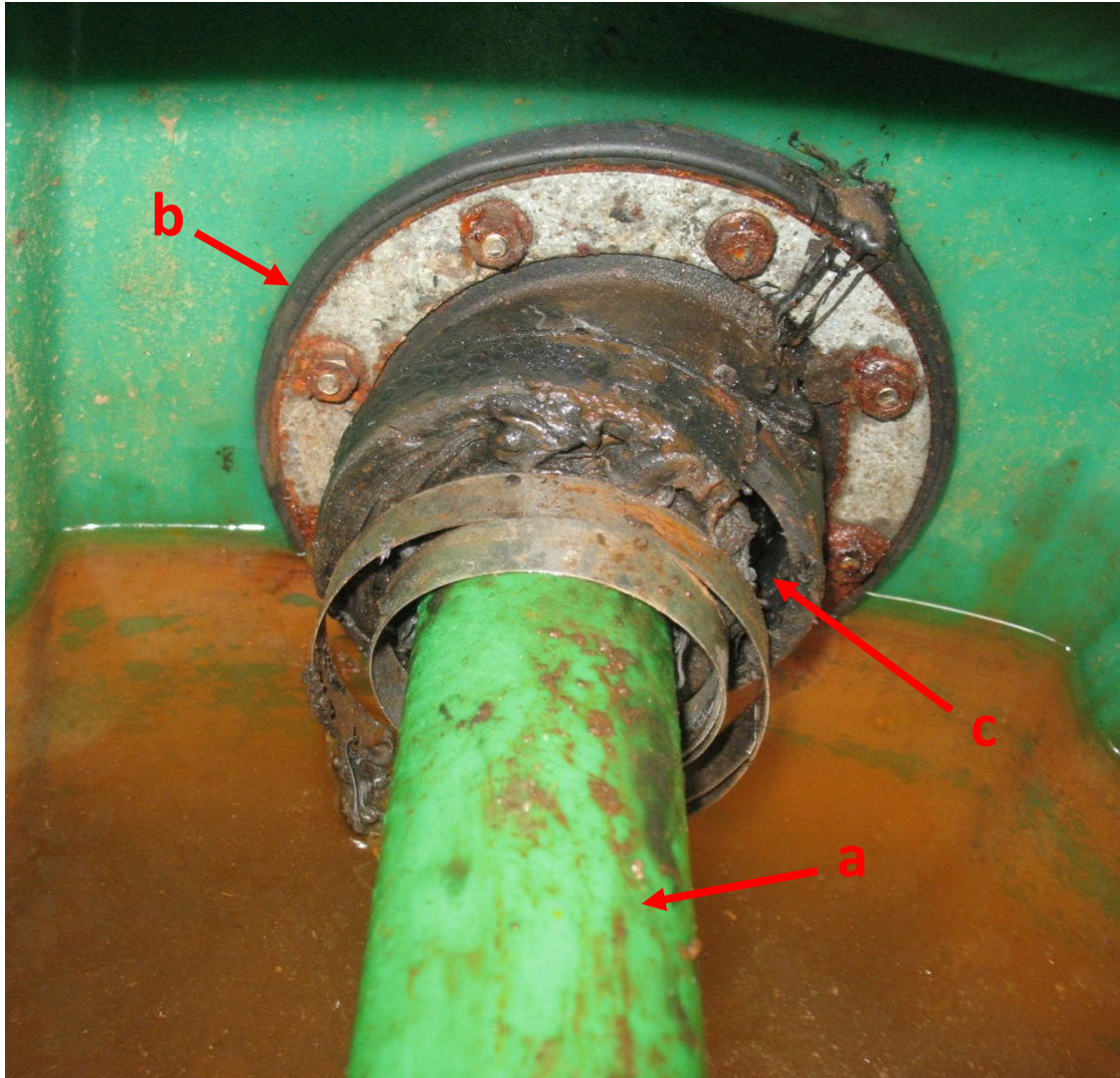
### Examples of Vague, Ambiguous, Subjective language from State and Federal Regulatory Agencies.

1. Monitoring results, including investigation of an alarm, from a release detection method required under 280.42 and 280.r42 that indicate a release **may** have occurred....  
(40 CFR 280.50 (c))
2. When a release detection method operated in accordance with the performance standards in 280.43, 280.44, or subpart K indicates a release **may** have occurred, owners and operators must notify the implementing agency in accordance with subpart E. (40 CFR 280. 40 (b))
3. Unless corrective action is initiated in accordance with Subpart F, owner and operators must immediately investigate and confirm all **suspected releases** of regulated substance....  
(40 CFR 280.52)
4. Repair means to restore to proper operating condition a tank, pipe, spill prevention equipment, overfill prevention equipment, release detection equipment or other UST system components that has caused a release of product from the UST system or has **failed to function properly**.  
(40 CFR 280.12 Repair)
5. Release Notification. When a release detection method operated according to performance standard in parts 715.0330 and 7150.0340 indicates a release **may** have occurred, owners and operators must notify the agency according to Minnesota Statutes, section 115.061.  
(MN 7150.0300 subp 2 –Release Notification)
6. When directed by the Commissioner, the owner and operators of an underground storage tank system permanently closed..... If released from the underground storage tank **may, in the judgement of the commissioner**, pose a current or **potential** threat to human health and the environment. (MN 7150.0430)
7. Imminent threat to human health or safety or environment means **a condition that creates a substantial probability of harm**, when the probability and potential extent of harm **make it reasonably necessary to take immediate action to prevent**, reduce or mitigate the actual or **potential damage** to human health, or safety or the environment.  
(CO 7.C.C.R 1101-14 section 1-5)
8. All retail motor fuel dispensers **shall be suitable for their intended use, properly installed, and accurate, and shall be maintained in that condition** by their owner/operator.  
(CO 7.C.C.R 1101-14 section 1.5-2)
9. Equipment and other items required by Ill. Admin Code 160....., Shall be maintained in accordance with Ill. Admin. Code 175....., and this part and manufactures instructions **and otherwise shall be kept in good operating condition at all times**. (Ill Section 174.370)
10. If repairs are required for any component or part of a UST system, and the nature of the repair activities or the condition of the component or part of the system **requiring a repair may result in a release**, and the component or part cannot otherwise be taken out of service until the tank has been repaired or replaced. (FL 62-761.700 (1)(a) 1.)
11. Owners and operators shall inspect all accessible UST and piping components at least once a year for evidence of degradation and **shall correct any deficiencies that could cause a release** or prevent release detection equipment from working properly. (OH 1301:7-9-06)

12. An UST shall be classified as ineligible for delivery, deposit or acceptance of product upon determination by the department that the underground storage tank meets one or more of the following conditions:
  - a. Other conditions which the department determines may present an imminent and substantial endangerment to public health and the environment. (ND 33-24-08-37)
13. The department **shall retain the discretion to decide** whether to identify an UST as ineligible to deliver, deposit, or accept product **based on whether the prohibition is in the best interest** of the public. (ND 33-24-08-37)
14. A Class A operator assists the owner by ensuring that UST systems are properly installed and **expeditiously repaired**. (PA 245.436)
15. Monitoring results including investigation of an alarm, from a release detection method required under Part D that indicate a release **may** have occurred. (Wyoming Chapter1, Part E, Section19 (a)(iii))
16. The Class A or B Operator or licensed tank tester shall provide the facility owner and/or operator with a copy of each monthly inspection documentation and alert the owner and/or operator of any condition discovered during the monthly visual inspection that **may** require follow-up actions. (Wyoming Chapter1, Section 13 (e))
17. Unusual operating conditions of underground storage tank system equipment, **including but not limited to** a loss of prime in product piping, erratic functioning of dispensing equipment, and the infiltration of water into the underground storage tank system.  
(Vermont 10 V.S.A. §8-103 (b)(4)(ii))
18. **Strong** petroleum vapors present in the **vicinity** of the UST, or **other environmental conditions** present in the **vicinity** of the tank,.....that indicate a release **may** have occurred.(Vermont 10 V.S.A. §8-103 (b)(4)(iv))
19. Any component of an UST **that renders another component ineffective** shall not be used.  
(Vermont 10 V.S.A. §8-508 (b))
20. Dispensers, dispensing islands, and fueling pads shall be visually examined for stains or **other indications** of a spill or leak in a dispenser. (Vermont 10 V.S.A. §8-509 (a)(3)(C))
21. There are no exceptions to the responsibility to report a **suspected** or confirmed leak or spill.  
(Rhode Island DEM-OWM-UST03-11,3.02)
22. "POLLUTANT" means any material of effluent which **may** alter the chemical, physical, biological, or radiological characteristics and/or integrity of water, soil, air or other environmental media.  
(Rhode Island DEM-OWM-UST03-11, 5.70)

Attachment 4.

# Low level sump testing – 1. Defective sump boot



Example of a pipe boot that is leaking. A pipe boot is suppose to seal the point where the pipe (a) goes through the sump wall (b).

Note how liquid level is at same level as pipe boot. This is an indicator that the boot has a hole (c) and is leaking.

Low level sump testing is based upon the assumption that the sensor has not failed or been tampered with.

## Low level sump testing – 2. Manipulated sump sensor



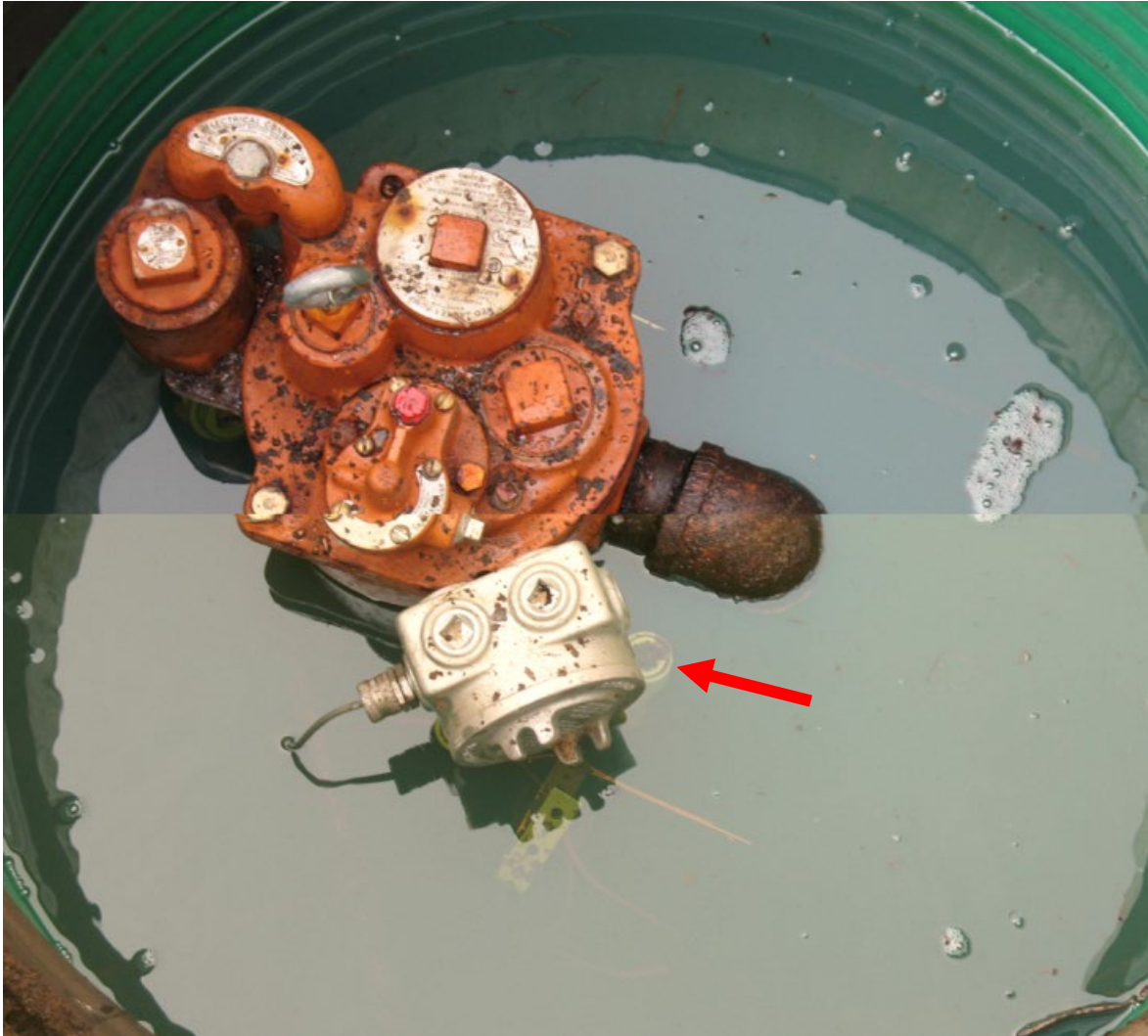
Low level sump testing is based upon the assumption that the sensor has not failed or been tampered with.

It does not take into account that someone raised the sensor (a) to bypass alarm condition.

Sump has partially filled with liquid up to level of leaking sump boot. (arrow)



## Low level sump testing – 3. Failed sump sensor



Example of a sump sensor that has failed.

Sump has partially filled.

It is not known if pipe boot is leaking or not

Sensor is submerged and is identified by arrow.

Low level sump testing is based upon the assumption that the sensor has not failed or been tampered with.

## Low level sump testing – 4. Manipulated sump sensor

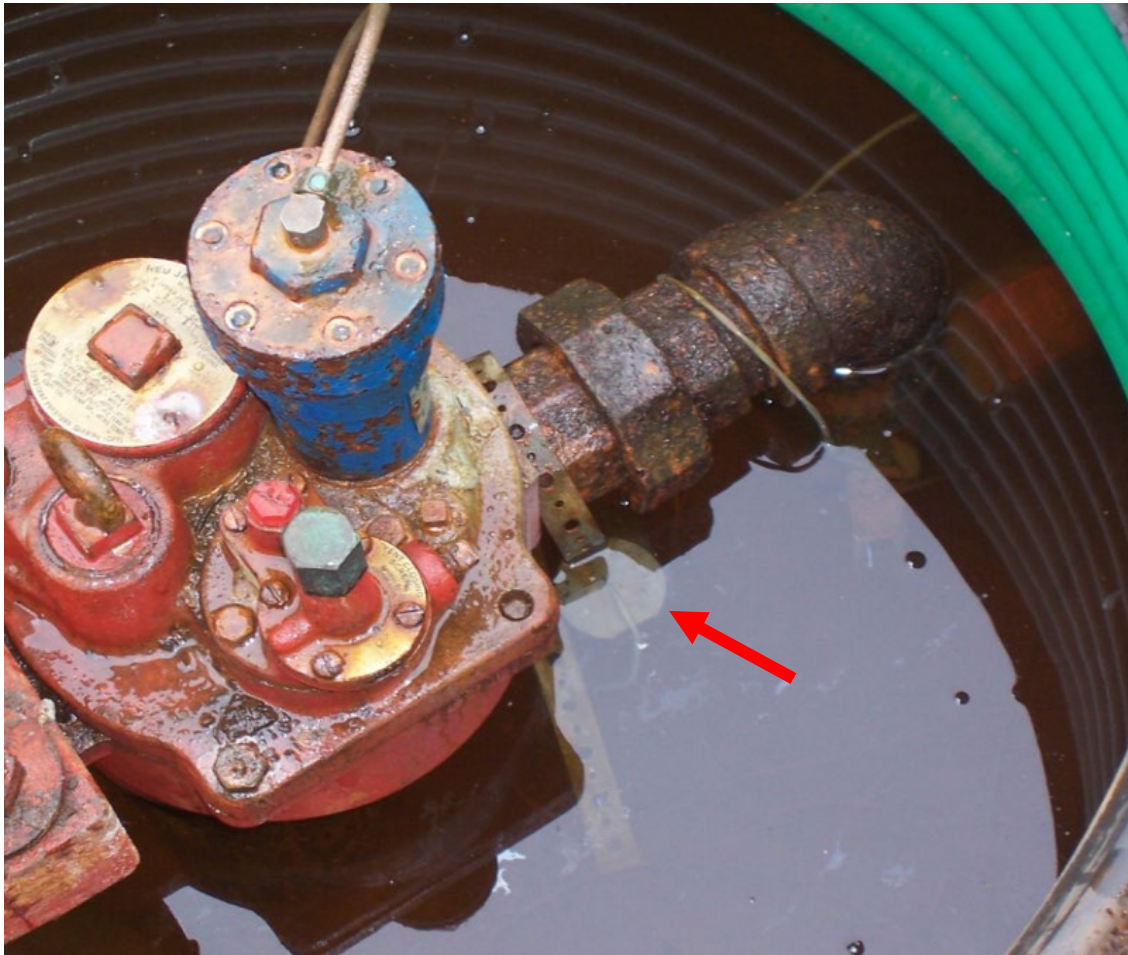


Low level sump testing is based upon the assumption that the sensor has not failed or been tampered with.

It does not take into account that someone raised the sensor (a) to by-pass alarm condition.

Sump has partially filled with liquid up to level of sump boot. (arrow)

# Low level sump testing – 5. Failed sump sensor



Example of a sump sensor that has failed.

Sump has partially filled.

Sensor is submerged and is identified by arrow.

Low level sump testing is based upon the assumption that the sensor has not failed or been tampered with.



## Low level sump testing – 6. Manipulated sump sensor



Low level sump testing is based upon the assumption that the sensor has not failed or been tampered with.

It does not take into account that someone raised the sensor (a) and wrapped it in plastic to bypass alarm condition.

# Low level sump testing – 7. Failed sump sensor



Example of a sump sensor (a) that has failed.

Sump has partially filled with liquid up to level of sump boots. (arrows)

Low level sump testing is based upon the assumption that the sensor has not failed or been tampered with.

# Low level sump testing – 8. Manipulated sump sensor



Low level sump testing is based upon the assumption that the sensor has not failed or been tampered with.

It does not take into account that someone raised the sensor (a) to bypass alarm condition.

Sump has partially filled with liquid up to level of sump boots. (arrows)

# Low level sump testing – 9. Failed sump sensor



Example of a sump sensor that has failed.

Sump has partially filled.

It is not known if pipe boot is leaking or not

Sensor is submerged and is identified by arrow.

Low level sump testing is based upon the assumption that the sensor has not failed or been tampered with.



# Low level sump testing – 10. Failed sump sensor



Example of a sump sensor that has failed.

Sump has filled with liquid.

Sensor is submerged and somewhere within the sump.

Low level sump testing is based upon the assumption that the sensor has not failed or been tampered with.

Attachment 5.



## Containment Sump Test Report for Positive Shutoff Testing

(Leave form at facility -- DO NOT mail or fax to OSFM)

### FACILITY WHERE EQUIPMENT IS LOCATED:

Facility Number: \_\_\_\_\_

Facility Name: \_\_\_\_\_

Street Address: \_\_\_\_\_

City: \_\_\_\_\_ County: \_\_\_\_\_

### CONTRACTOR:

Contractor License: IL \_\_\_\_\_

Contractor Name: \_\_\_\_\_

Street Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

This test is only to be used for triennial testing of piping containment sumps used for the interstitial monitoring of piping. Piping Containment Sumps shall still be tested hydrostatically pursuant to 41 Il. Adm. Code 175.410 upon:

1. Initial installation of any piping containment sump.
2. Following repair of any piping containment sump.
3. Following work within any piping containment sump that affected any penetrations.

### Conditions necessary in order to use of this method:

- Only piping containment sumps with sensors wired to shut down the product line upon activation of the sensor qualify for this testing option.
- Piping sumps must be free of debris and incidental moisture prior to testing.
- Contractor employees performing this test must be currently certified by the sensor manufacturer in the sensor activation testing procedure.
- Testing of sensor activation will be according to the sensor manufacturer's instructions for testing non-discriminating or discriminating sensors.
  - Note: Testing discriminating sensor activation with test liquid may shorten the life span of the discriminating sensor. Always follow manufacturer's instructions and recommendations.
- Both sensor activation and positive shut down of the pump supplying the product line must be verified.
- Any of the following conditions found prior to testing shall disqualify the sump from being tested using this method:
  - Sump is found with liquid levels high enough to trigger a properly positioned sensor, whether or not sensor is found in alarm.
  - Sensors are found pulled up or otherwise manipulated to prevent activation.
  - Obvious structural damage to the containment sump exists prior to testing, such as cracks or breaks in the walls or floor of the containment sump.

### Qualifying conditions necessary for testing contractors:

- Contractor must be Licensed and Active with OSFM in either the Tank and Line Tightness Testing Module or the Installation/Retrofit Module.
- Employee performing testing must have current manufacturer's certification in the testing procedure for the specific sensor(s) being tested.
- Employee performing testing must have current manufacturer's certification for any testing equipment being used, if that applies.
- Form must be completed, including Type of Sump, Checklist, Results and Testing Employee's information.
- Form must be signed and dated by the employee conducting the test.

**Type of Sump Being Tested and Identification of Sump**  
**(check all that apply):**

- 1) Single Wall Sump \_\_\_\_\_ ID: \_\_\_\_\_
- 2) Double Wall Sump \_\_\_\_\_ ID: \_\_\_\_\_
- 3) Submersible Sump \_\_\_\_\_ ID: \_\_\_\_\_
- 4) Dispenser Sump \_\_\_\_\_ ID: \_\_\_\_\_
- 5) Transition Sump \_\_\_\_\_ ID: \_\_\_\_\_
- 6) Spill Bucket \_\_\_\_\_ ID: \_\_\_\_\_
- 7) Other ( \_\_\_\_\_ ) ID: \_\_\_\_\_

**COMMENTS:**

**Testing Contractor's Checklist:**

- |  |           |       |
|--|-----------|-------|
| 1) Sump found free of debris, or debris was removed prior to test:       | Affirmed: | _____ |
| 2) Sump is free of all but incidental moisture; moisture removed:        | Affirmed: | _____ |
| 3) Sensor found in proper position, per manufacturer specification:      | Affirmed: | _____ |
| 4) Sensor mounted securely, per manufacturer specification:              | Affirmed: | _____ |
| 5) Sensor activated at correct level, per manufacturer specification:    | Affirmed: | _____ |
| 6) Sensor activation triggered positive shutdown of the product pump(s): | Affirmed: | _____ |

**Result of Testing:**

- 1) **PASS** \_\_\_\_\_ Do not mail or fax Passing Test Reports to OSFM.
- 2) **FAIL** \_\_\_\_\_ Notify OSFM using Failed Test Report **within 3 days** of any failed test per 176.430(g)(2).

**Reason for Test Failure:**

**COMMENTS:**

**Contractor Employee Conducting Test:**

- 1) Signature: \_\_\_\_\_
- 2) Print Name and Title: \_\_\_\_\_
- 3) Date of Test: \_\_\_\_/\_\_\_\_/\_\_\_\_

Is Manufacturer's Sensor Testing Certification Current? \_\_\_\_\_ Yes

Cert.#: \_\_\_\_\_



Attachment 6.

Example of a tank moving, and pushing the concrete up.



# Libby Law Office, P. A.

Attorneys at Law

# RECEIVED

By: OAH on 11/14/18 3:43 p.m.

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## FACSIMILE TRANSMISSION RECORD

Date: November 14, 2018  
Sent To: The Honorable Laura Sue Schlatter  
Fax: 651-539-0310  
From: Christopher J. Heinze  
Re: Proposed Permanent Rules Relating to Underground Storage Tanks  
OAH Docket No. 68-9003-35384

No. of Pages: 16 (including cover page and attached correspondence)

Please see attached memorandum.

   ORIGINAL WILL BE MAILED   X   ORIGINAL WILL NOT BE MAILED

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OAH 80-9003-35384

**STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS**

**In the Matter of the Proposed Permanent  
Rules Governing Underground Storage  
Tanks**

**MINNESOTA PETROLEUM  
MARKETERS ASSOCIATION'S  
MEMORANDUM OF LAW**

Minnesota Petroleum Marketers Association (hereinafter "MPMA") hereby submits this Memorandum of Law in the above captioned matter. The MPMA respectfully requests that some of the Minnesota Pollution Control Agency's (hereinafter "MPCA") proposed rules for underground storage tanks be disapproved for the reasons set forth below. These rules include but are not limited to:

**Proposed Minn. R. 7150.0030, subp. 22  
Proposed Minn. R. 7150.0030, subp. 51a  
Proposed Minn. R. 7150.0205, subp. 7  
Proposed Minn. R. 7150.0205, subp. 8  
Proposed Minn. R. 7150.0250, subp. 1  
Proposed Minn. R. 7150.0250, subp. 3  
Proposed Minn. R. 7150.0250, subp. 4**

The MPCA objects to these proposed rules in addition to those proposed rules that have already been discussed at the public hearing and those proposed rules that have been discussed in the previous written comments in this matter.

**Background**

The United States Environmental Protection Agency published final revisions to regulations for Underground Storage Tank (hereinafter "UST") systems in June of 2015. The MPCA is required to modify Minnesota's UST rules such that the Minnesota rules comply with the federal EPA regulations. If the MPCA fails to modify Minnesota's UST rules as such, the MPCA would not retain authority to regulate UST systems in Minnesota. As set forth in the

Statement of Need and Reasonableness (hereinafter "SONAR"), "[f]ederal funding, when combined with state funding, has been an important factor in Minnesota's UST regulatory oversight program for many years." SONAR, p. 6.

The MPCA has not only proposed adopting the EPA regulations, but has also proposed "state-specific requirements" in these proposed rules. SONAR, p. 6. The MPCA argued that these "state-specific requirements" are needed to "comprehensively review and address problems with redundancy, organization and clarity of" UST rules. SONAR, p. 6

### **Rulemaking Legal Standards**

Under Minn. R. 1400.2100, in considering proposed rules from the MPCA, the Administrative Law Judge shall consider whether the MPCA has statutory authority to adopt the rule; whether the rule is unconstitutional or otherwise illegal; whether the MPCA has complied with the rule adoption procedures; whether the proposed rule grants undue discretion to government officials; whether the rule constitutes an undue delegation of authority to another entity; and whether the proposed language meets the definition of a rule.

#### **1. Reasonableness of the Rule (Minn. R. 1400.2100, subp. B).**

The MPCA must establish the need for and the reasonableness of all proposed rules. *See* Minn. Stat. § 14.131, subd. 2; Minn. R. 1400.2100. A proposed rule is reasonable if the MPCA can "explain on what evidence it is relying and how the evidence connects rationally with the agency's choice of action to be taken." *Manufactured Housing Institute v. Pettersen*, 347 N.W.2d 238, 244 (Minn. 1984). However, a proposed rule will be deemed arbitrary and capricious where the agency's choice is based upon whim, devoid of articulated reasons or "represents its will and not its judgment." *Mammenga v. Agency of Human Services*, 442 N.W.2d 786, 789 (Minn. 1989). When a rule is not rationally related to the objective sought to

be achieved, the rule is unreasonable and therefore invalid. *See Contos v. Herbst*, 278 N.W.2d 732, 741 (Minn. 1979). *See also Sisson v. Triplett*, 428 N.W.2d 565, 571 (Minn. 1988); *State v. Hopf*, 323 N.W.2d 746, 752 (Minn. 1982); Minn. R. 1400.2100, subp. B (“A rule must be disapproved by the judge or chief judge if the rule. . . is not rationally related to the agency’s objective or the record does not demonstrate the need for or reasonableness of the rule.”)

The MPCA largely adopted the federal rules concerning USTs, which the agency is required to do. These state specific additions to the federal rules are necessary for clarification, according to the MPCA (“the MPCA has identified a need to comprehensively review and address problems with redundancy, organization and clarification of the rules.” SONAR at 8). Indeed, throughout the SONAR, the push for these state specific additions is the objective of clarification of the federal UST rules that Minnesota must adopt, such that regulated parties and MPCA staff will interpret regulations consistently.<sup>1</sup>

A. Dispenser Sumps (Proposed Rule 7150.0205, subp. 7)

The MPCA states that it proposed this amendment “to clarify the contents.” SONAR, p. 33. Additionally, the MPCA argues that the changes to the language in Item A of this subpart is necessary because “[i]t is reasonable to make this revision to clarify applicable requirements.” *Id.* However, Proposed Rule 7150.0205, subp. 7 (A)(4) will require owners and operators to

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<sup>1</sup> See SONAR, P. 12 (“the MPCA has identified a need to comprehensively review and address problems with redundancy, organization, and clarification of the rules as identified in this SONAR. The Agency believes that it is reasonable to propose changes to Minn. R. ch. 7150 to address these needs because a better organized rule will make finding applicable requirements easier for regulated parties and MPCA staff. The proposed clarifications will help regulated parties and MPCA staff interpret regulations consistently) emphasis added. See also SONAR, p. 25 (“The definition [of “Unusual Operating Condition”] will ensure owners and operators understand what an unusual operating condition is”); SONAR, p. 33 (“The Agency is proposing to amend this subpart [regarding dispenser sumps] to clarify the contents”); SONAR, p. 64 (“The Agency believed that additional amendments were needed to clarify existing rules; to clarify what conditions constitute repair, replacement or removal; to clarify notification requirements; to clarify required actions for unusual operating conditions; to clarify who can do repair testing and inspections of UST systems; and to address new technologies not addressed in the federal rules. The MPCA wanted to address the above items to ensure clarity and consistency with the interpretation of the proposed rules for regulated parties and state regulators”) emphasis added.

install secondary containment if “the concrete or base material under the dispenser is replaced, repaired or modified.” This proposed language does nothing to “clarify applicable requirements.” Rather, this is an entirely new requirement proposed by the MPCA for a reason that is not clarification. The language in Proposed Rule 7150.0205, subp. 7 (A)(4) is not rationally related to addressing “problems with redundancy, organization and clarification of the rules.” Because this language is not rationally related to the objective sought to be achieved, this proposed rule should be disapproved because the language violates Minn. R. 1400.2100(B).

Despite the overall purpose of these proposed rules, it is anticipated that the MPCA will argue that the reason for this rule is the protection of “human health and the environment.” SONAR, p. 34. However, there is no evidence in the record that the proposed language of this rule will do anything to protect human health and the environment apart from the MPCA’s conclusory statement that it “strongly believes” that it will. *Id.* Additionally, at the public hearing, the MPCA testified that it desired to modify the language in this proposed rule so that it only applied to the concrete or base material that was directly under the dispenser, and not to any other concrete or other base material. As the MPCA has not yet made any modification despite its testimony, the MPMA cannot address any potential language changes the Agency may propose.

B. Unusual Operating Conditions (Proposed Rule 7150.0030, subp. 51a).

The MPCA states that the language in this proposed rule will make it such that the definition of “Unusual Operating Conditions” “will ensure owners and operators understand what an unusual operating condition is and how to address it.” SONAR, p. 25. Further, while the federal rules concerning “Unusual Operating Conditions” set forth examples for guidance,

the MPCA stated that it “believes it is reasonable to establish a definition rather than rely on examples, because the examples may not be comprehensive.”

The MPCA defined “Unusual Operating Conditions” in its proposed rule as “a condition, equipment deficiency, or occurrence that: 1) results in a release of a regulated substance; 2) indicates the possibility of a leak from a UST system; 3) creates a reasonable expectation that a leak from a UST system is probable; or 4) may cause an undetected leak.” There is nothing in the definition that sets forth what metric should be used in determining if a condition or occurrence *may* cause an undetected leak. Moreover, there is no metric as to what quantifies as a “possibility of a leak.” While this definition may go to the MPCA’s second concern, that the examples given in the federal rule are not comprehensive, it creates confusion and ambiguity, and does not clarify what an Unusual Operating Condition as numerous conditions and occurrences may cause a leak or may indicate a possibility of a leak, however unlikely such a possibility is. The language in Proposed Rule 7150.0030, subp. 51a is not rationally related to addressing “problems with redundancy, organization and clarification of the rules” as it complicates and confuses the rule, rather than clarifies the rule. This proposed rule should be disapproved because the language violates Minn. R. 1400.2100(B).

C. Unusual Operating Conditions (Proposed Rule 7150.0250, subp. 1)

The same problems exist with this rule as with the rule defining the term “Unusual Operating Conditions.” This proposed rule states that whenever an Unusual Operating Condition exists, an “owner or operator must take the UST system out of service unless: 1) the unusual operating condition is investigated and resolved in accordance with this chapter; 2) any defective components are isolated from the UST system to prevent a leak; or 3) any defective components or equipment are repaired by a person certified under chapter 7105.” More



importantly, the proposed rule also states that owners and operators “must report unresolved unusual operating conditions that may have resulted in a leak or that indicate a release has occurred.” There is nothing in the language of the rule that sets forth what metric is to be used in determining whether an Unusual Operating Condition *may* have resulted in a leak. Further, in the SONAR the MPCA suggests that if “the owner or operator can verify that [a] reported loss [of fuel in a UST] can be attributed to fuel being removed and not a leak, the UST does not need to be placed into temporary closure and the unusual operating condition has been resolved.” SONAR, p. 45-46. However, this sort of procedure for investigation of Unusual Operating Conditions is not set forth in the rule. Further, the language of the rule suggests that closure of the UST is permanent, whereas the SONAR suggests it is temporary. Additionally, in the SONAR the MPCA seems to indicate that if an owner or operator can “verify that a release has not occurred,” then the owner or operator does not have to report to the MPCA, as the Unusual Operating Condition has been resolved. SONAR, p. 46. However, there is nothing in the language of the rule to give this guidance to owners and operators or to the MPCA.

As with the definition section, the language in Proposed Rule 7150.0250, subp. 1 is not rationally related to addressing “problems with redundancy, organization and clarification of the rules” as it complicates and confuses the rule, rather than clarifies the rule. This proposed rule should be disapproved because the language violates Minn. R. 1400.2100(B).

2. Exceeds, Conflicts With, Does Not Comply With Existing Law, or Grants the MPCA Discretion Beyond What is Allowed by Law ((Minn. R. 1400.2100, subp. D)

Minnesota Rule 1400.2100 states that a “rule must be disapproved by the judge or chief judge if the rule. . . exceeds, conflicts with, does not comply with, or grants the agency discretion beyond what is allowed by, its enabling statute or other applicable law.” Moreover, “an

administrative agency may not adopt a rule that conflicts with a statute.” *JC Penney Co. v. Comm’r of Econ. Sec.*, 353 N.W.2d 243, 247 (Minn. Ct. App. 1984).

A. Hazardous Substance (Proposed Rule 7150.0030, subp. 22)

The MPCA states that “[t]he term ‘hazardous material’ is not used in state statutes and the Agency is proposing to replace the term with ‘hazardous substance’ to conform to the rules under 40 CFR pt. 280.” SONAR, p. 17.

The MPCA is incorrect in this supposition. “Hazardous Materials” are defined and regulated nationally under the Hazardous Materials Regulations by the Pipeline and Hazardous Materials Safety Administration, an agency of the United States Department of Transportation. Hazardous Materials include some “Hazardous Wastes” (but not all), some “Hazardous Substances” (but not all), along with other designated materials. In Minnesota, the Minnesota Department of Transportation implements these national Hazardous Materials Regulations.

In Minnesota, when a tank truck is loading fuel at a terminal or refinery, the fuel is defined as a Hazardous Material by the United States Department of Transportation and that truck is placarded as such per Minnesota and federal rules. All drivers of trucks that transport Hazardous Materials must have a Hazardous Materials endorsement on their commercial drivers license. When fuel is thereafter unloaded into a UST, to then change the definition of the fuel to a “Hazardous Substance” from a “Hazardous Material,” because it is now in a UST and not a tanker truck is confusing. Further, the term “Hazardous Substance” already has six definitions in Minnesota regulations, and two of these specifically exclude petroleum and natural gas fuels (CERCLA and MERLA).

The proposed language “conflicts with. . . other applicable law” for the reasons set forth above. As such, this proposed rule should be disapproved because the language violates Minn. R. 1400.2100(B).

**B. Emergency Stops (Proposed Rule 7150.0205, subp. 8)**

The MPCA stated in the SONAR that this proposed rule “references already-existing emergency stop requirements from the existing Minnesota State Fire Code,” and that this proposed rule “simply consolidates already-existing tank system requirements for owners and operators.” SONAR, p. 34. The proposed rule set forth by the MPCA states that “[o]wners and operators must have an emergency disconnect switch that is readily available to persons dispensing a regulated substance to disconnect electric power to pumps and dispensers, in accordance with the Minnesota State Fire Code, in the event of an emergency.” emphasis added.

The Minnesota State Fire Code requires that emergency disconnect switches be located within 100 feet, **but not less than 20 feet** from fuel dispensers. While the MPCA’s proposed rule references the state fire code requirements, it adds the additional non-specific requirement that emergency disconnect switches be located such that they are “readily available to persons dispensing a regulated substance.” This language conflicts with the Minnesota State Fire Code which requires that emergency disconnect switches be at least 20 feet **away from** fuel dispensers. This proposed language “conflicts with. . . other applicable law.” As such, this proposed rule should be disapproved because the language violates Minn. R. 1400.2100(B).

**C. Required Permanent Closure – Upward Shifting (Proposed Rule 7150.0250, subp. 4).**

The MPCA has proposed a rule that will require the permanent closure of a UST if “a tank has shifted upward from its original burial position to the extent that the UST has caused a bulge in the concrete or cover material over the tank or components secured to the top of the

UST are contacting access covers, unless repairs can be made to the UST system to prevent the tank from shifting and ensure that the UST system has not been, **nor will be**, damaged.” emphasis added.

This proposed language does not set forth what constitutes a “bulge” in the concrete, nor does it state who determines that such a bulge exists. The proposed rule contains no standards or other criteria for determination that a UST has shifted upward so much that permanent closure is required apart from the existence of bulging concrete. The lack of any standards or other criteria suggests that MPCA inspectors will have to adjudge bulges in concrete by their appearance alone in determining whether to permanently close USTs. Moreover, there is nothing in the proposed rule that sets forth who determines if repairs can be made and what those repairs consist of. This proposed rule grants the MPCA discretion beyond what is allowed by law, and this proposed rule should therefore be disapproved.

3. Unconstitutional (Minn. R. 1400.2100, subp. E)

In Minnesota, a proposed rule “is void for vagueness, if it fails to give a person of ordinary intelligence a reasonable opportunity to know what is prohibited or fails to provide sufficient standards for enforcement.” *In re N.P.*, 361 N.W.2d 386, 394 (Minn. 1985).

Despite the MPCA’s desire to clarify language in these proposed rules, the agency has proposed rules that are vague to the point of being unconstitutional.

A. Unusual Operating Conditions (Proposed Rule 7150.0030, subp. 51a).

In this proposed rule, the MPCA defines “Unusual Operating Conditions” in part as “a condition, equipment deficiency, or occurrence that: 1) results in a release of a regulated substance; 2) indicates the possibility of a leak from a UST system; 3) creates a reasonable expectation that a leak from a UST system is probable; or 4) may cause an undetected leak.”

The MPCA does not set forth specific standards or examples such that a person of ordinary intelligence can reasonably determine what conditions qualify as Unusual Operating Conditions. Language such as “an occurrence that may cause an undetected leak” or “a condition that creates a reasonable expectation that a leak from a UST system is probable” is so vague and inexplicit that it is nearly impossible to determine what constitutes an Unusual Operating Condition. Because of this vagueness, the proposed rule is unconstitutional and should be disapproved.

**B. Unusual Operating Conditions (Proposed Rule 7120.0250, subp. 1)**

Further, proposed rule 7150.0250, subp. 1, concerning this defined term, states that whenever an Unusual Operating Condition exists, an “owner or operator must take the UST system out of service unless: 1) the unusual operating condition is investigated and resolved in accordance with this chapter; 2) any defective components are isolated from the UST system to prevent a leak; or 3) any defective components or equipment are repaired by a person certified under chapter 7105.” That proposed rule also states that owners and operators “must report unresolved unusual operating conditions that may have resulted in a leak or that indicate a release has occurred.”

This proposed rule is also vague. Subsection 1 does not state how the Unusual Operating Condition is to be investigated or by whom, nor does it define what a resolution of an Unusual Operating Condition consists of. Additionally, this language does not set forth what Unusual Operating Conditions may result in a leak and what Unusual Operating Conditions may not result in a leak, leaving a person of ordinary intelligence unable to determine what is permissible and what is not. Because of this vagueness, the proposed rule is unconstitutional and should be disapproved.

C. Corrosion (Proposed Rule 7150.0250, subp. 3)

This proposed rule states that owners and operators must replace “any component that has corrosion that may cause the component to not function as intended by the manufacturer or that may cause a release of a regulated substance.” Proposed Rule 7150.0250, subp. 3 (A)(1). In the SONAR, the MPCA states that it has added this proposed rule so that “UST system components with **excessive corrosion** must be replaced if the components do not function as intended by the manufacturer or may cause a release.” SONAR, p. 47 emphasis added. The MPCA goes on to say that “[t]his requirement is an extension to the current requirement to replace piping with **excessive corrosion**, as is expanded to include any tank system component that has **excessive corrosion**.” *Id.* emphasis added. Further, “[t]his subitem **does not apply to components with superficial surface corrosion**.” *Id.* emphasis added. Lastly, “[t]his subitem is intended for those components with corrosion that is **excessive, heavy or that causes pitting-type corrosion** that may cause the components to not function as the manufacturer intended, or that may cause a leak.” *Id.* emphasis added.

This proposed rule is also vague. It does not give any standards to what degree of corrosion must exist such that owners and operators are required to replace components, despite the language in the SONAR which does provide some guidance, if not standards or other metrics. The language as written does not leave a person of ordinary intelligence able to determine what is permissible and what is not as it concerns corrosion of UST components. Because of this vagueness, the proposed rule is unconstitutional and should be disapproved.

Statutory Requirements for the SONAR

The Minnesota Administrative Procedures Act obligates an agency adopting rules to address certain factors in its SONAR. *See, e.g.*, Minn. Stat. § 14.131. Those factors are:

1) a description of the classes of persons who probably will be affected by the proposed rule, including classes that will bear the costs of the proposed rule and classes that will benefit from the proposed rule; 2) the probable costs to the agency and to any other agency of the implementation and enforcement of the proposed rule and any anticipated effect on state revenues; 3) a determination of whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule; 4) a description of any alternative methods for achieving the purpose of the proposed rule that were seriously considered by the agency and the reasons why they were rejected in favor of the proposed rule; 5) the probable costs of complying with the proposed rule, including the portion of the total costs that will be borne by identifiable categories of affected parties, such as separate classes of governmental units, businesses, or individuals; 6) the probable costs or consequences of not adopting the proposed rule, including those costs or consequences borne by identifiable categories of affected parties, such as separate classes of government units, businesses, or individuals; 7) an assessment of any differences between the proposed rule and existing federal regulations and a specific analysis of the need for and reasonableness of each difference; and 8) an assessment of the cumulative effect of the rule with other federal and state regulations related to the specific purpose of the rule.

*See id.*

1. Probable Costs of Complying with the Proposed Rule (Minn. Stat. § 14.131(5)).

The MPCA argued in the SONAR that the “Minnesota Only” provisions that the MPCA has proposed “may add minimal costs to owners and operators.” For example, as it concerns “Underdispenser Containment,” the MPCA only addresses a situation wherein an owner or operator replaces an entire concrete island. The MPCA states that in such a situation, “[t]he cost analysis for adding underdispenser containment to this work would be approximately \$2,000.00 per dispenser, which would include the cost of the sump and the labor to install the pump.” The MPCA acknowledges that such an estimate “does not include electrical, concrete or labor for concrete costs” as those costs would already be incurred by an owner or operator when the owner or operator is completely replacing a dispenser and the entire concrete island it rests upon.

However, the MPCA’s proposed rule concerning underdispenser containment (7150.0205, subpart 7(4)), “[o]wners and operators must install secondary containment under a

dispenser if. . . the concrete or base material under the dispenser is replaced, repaired, or modified.” In other words, any time an owner or operator repairs or modifies the concrete base material under the dispenser, and owner or operator must also install secondary containment. The MPCA did not do any analysis for any of these situations, wherein an owner or operator replaces the concrete or base material that does not involve the replacement of the entire concrete island, where repairs are done to part of the concrete under the dispenser, or even modifications of the concrete or base material.

There were numerous comments expressed at the hearing regarding these concerns. For example, under the proposed rule, if an owner or operator repaired or modified the concrete base to install a new U-shaped bollard which protects the dispensers from automobiles, that owner or operator would need to install a secondary containment. If an owner or operator repairs cracking in the concrete base due to extreme weather, that owner or operator would need to install a secondary containment. There has been no analysis conducted by the MPCA as required under Minn. Stat. § 14.131(5) regarding these situations that an owner or operator are far more likely to experience than a full dispenser replacement.

While the MPCA has attempted to engage in this required analysis, the MPCA’s analysis is not adequate under Minnesota law.

2. Alternative Methods for Achieving the Purpose of the Proposed Rule (Minn. Stat. § 14.131(4)).

The MPCA was required to describe any alternative methods for achieving the purpose of the proposed rules that were seriously considered by the MPCA and the reasons why they were rejected in favor of the proposed rules.

In the SONAR, in addressing alternative methods, the MPCA simply refers to its previous discussion for a different requirement, specifically Minn. Stat. 14.131(3). In its



response to its requirement under subsection 3, the MPCA discussed three options regarding all of the proposed rules. The MPCA first discussed “doing nothing,” which would have been nearly impossible, as Minnesota’s federal funding would have been revoked by doing so. While identified as an option, it was not one under any consideration whatsoever. The MPCA then discussed adopting the federal rules without any changes. The MPCA argued that doing this “would limit the ability to clarify rule language and later rule language for specific state specific requirements.” Lastly, the MPCA discussed a third option, whereby it would adopt the federal rules “with modifications that are specific to Minnesota.” The MPCA argued the state specific requirements were needed “[t]o clarify existing rules; to clarify what conditions constitute repair, replacement or removal; to clarify notification requirements; to clarify required actions for unusual operating conditions; to clarify who can do repair testing and inspections of UST systems; and to address new technologies not addressed in the federal rules.”

Despite the foregoing, there is nothing in the SONAR that identifies alternative methods for achieving the purpose of any of the proposed rules with any specificity, no identification of alternative methods that were seriously considered by the MPCA, or any reasons for the course the MPCA took.

3. Description of the Classes of Persons Who Probably Will Be Affected by the Proposed Rule. (Minn. Stat. § 14.131(1))

The MPCA was required to describe the classes of persons who probably will be affected by the proposed rule.

In the SONAR, the MPCA stated that the persons to be affected were owners and operators of UST systems, manufactures and installers of UST systems, contractors and consultants to maintain UST systems, the MPCA and other agencies that are involved with UST systems, and the public at large. *See* SONAR, p. 52. The MPCA further acknowledges that

[o]wners and operators of UST systems who are responsible for the day-to-day operation and maintenance of UST systems will bear a majority of the costs of the proposed rules.” *Id.*

However, the MPCA presented no evidence as to how many regulated UST systems are in Minnesota that would be affected, how many owners and operators would be affected, how many small businesses would be affected, and instead made conclusory statements that these proposed rules would only cause “minor costs” to owners and operators. *See id.* Compare this requirement to the probable costs to the MPCA and other agencies, where the MPCA undertook the effort to determine the number of regulated UST sites owned by state agencies that will be affected by these proposed rules.

The MPCA’s failure in meeting this requirement dovetails with its failure of identifying probable costs of complying with the proposed rules, as set forth earlier.

#### Conclusion

A number of the MPCA’s proposed rules violate Minnesota Rules, Minnesota Statutes, and the Minnesota Constitution, as set forth above. These rules should be disapproved by this Court.

Dated: November 14, 2018.

**LIBBY LAW OFFICE, P.A.**

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November 21, 2018

The Honorable LauraSue Schlatter  
Administrative Law Judge  
Office of Administrative Hearings  
P.O. Box 64620  
600 North Robert Street  
St. Paul, MN 55164 – 0620

RE: Final Response for Proposed Amendments to Minnesota Rules, Chapter 7150 Governing  
Underground Storage Tanks; Former OAH Docket #68-9003-35384; New OAH Docket #80-9003-  
35384 ); and Revisor No. 4360

Dear Judge Schlatter:

Enclosed, please find the Minnesota Pollution Control Agency's (MPCA) Post-Hearing Rebuttal Response to Public Comments for the proposed rule amendments referenced above. This Rebuttal responds to public comments received during the post-hearing comment period that were not previously addressed by MPCA in its Post-Hearing Response to Comments filed with the Office of Administrative Hearings on November 14, 2018.

If you have questions regarding the enclosed rebuttal, the content of the proposed rule amendments, or questions regarding the rulemaking procedures followed for this rulemaking, please contact me at 651-757-2527 or [yolanda.letnes@state.mn.us](mailto:yolanda.letnes@state.mn.us).

Sincerely,

A handwritten signature in black ink that reads 'Y. Letnes'.

Yolanda Letnes  
Rules Coordinator  
Environment & Energy Section  
Resource Management and Assistance Division

YL:jrh

Enclosure

State of Minnesota  
Minnesota Pollution Control Agency

In the Matter of Proposed Amendment to Rules  
Governing Underground Storage Tanks,  
*Minnesota Rules*, Chapter 7150 Underground  
Storage Tanks (parts 7150.0010; 7150.0030;  
7150.0090; 7150.0100; 7150.0205; 7150.0215;  
7150.0216; 7150.0250; 7150.0300; 7150.0330;  
7150.0340; 7150.0345; 7150.0400; 7150.0410;  
7150.0430; 7150.0445; 7150.0450; 7150.0451;  
and 7150.0500), and Repeal of *Minnesota Rules*,  
parts 7150.0010, subpart 4; 7150.0030,  
subparts 8, 23, 25a, 44a, and 49; 7150.0100,  
subparts 10 and 12; 7150.0211; 7150.0300,  
subparts 2 and 7; 7150.0330, subpart 2;  
7150.0410, subparts 2 and 6; and 7150.0420

MPCA Post-Hearing Rebuttal Response to  
Public Comments

November 21, 2018

Former OAH Docket # 68-9003-35384  
New OAH Docket # 80-9003-35384  
Revisor ID # 4360.

MPCA Rebuttal Response to Comments Submitted during the Post-hearing Comment Period.

**I. Introduction**

This document and attachment(s) constitutes the Minnesota Pollution Control Agency's (MPCA or Agency) Post-Hearing Rebuttal Response to Public Comments (Rebuttal) on proposed amendments to Minn. R. ch. 7150. Specifically, this Rebuttal responds to public comments received during the post-hearing comment period that were not previously addressed by MPCA in its Post-Hearing Response to Comments filed with the Office of Administrative Hearings on November 14, 2018 (Response).

**II. Response to comments**

This section presents responses to the general and specific issues that arose in comments submitted by one commenter during the post-hearing comment period.

**A. The rule as proposed is rational, related to the purpose for which the rules are proposed, and reasonable.**

**1. Comment 10-L: § 14.131(1) (Description of the classes of persons who will probably be affected by the proposed rule)**

The Commenter states that the MPCA failed to identify the number of UST systems, owners/operators, and businesses would be affected by the proposed rule, and said they would incur "minor costs."

**MPCA Response:**

Section 6.A.1 of the SONAR identifies the classes of persons potentially affected. The requirement cited in the comment only requires identification of classes of persons affected, not an estimate of the number of each. In addition, as described in part 7150.0010, all UST systems within the scope of the rules are affected. The MPCA did identify the number of UST systems affected as part of the cost analysis in Attachment 6 (4,100 systems), and estimated the number of systems subject to Minnesota-specific requirements each year in the same attachment.

The MPCA is not proposing a change based on this comment.

**2. Comment 10-K: § 14.131(4) (No alternative methods)**

The Commenter asserts that nothing in the SONAR identifies alternative methods the agency seriously considered for achieving the purpose of any of the proposed rules.

**MPCA Response:**

See the response to comment 7-F. As identified in the comment, the MPCA did consider alternatives to this rulemaking. Because the alternatives the MPCA considered would create greater confusion, due to the potential conflict between federal and state requirements, or would result in greater likelihood of releases to the environment, the MPCA rejected the alternatives to this rulemaking. The MPCA also described consideration of alternatives to specific rule parts in the SONAR at pages 15 and 40 (agency-approved testers) as a result of feedback from the advisory committee.

The MPCA is not proposing a change based on this comment.

**3. Comment 10-J: § 14.131(5) (Probable costs of complying with the proposed rule)**

The Commenter asserts that the MPCA failed to analyze costs of situations involving modification or repair of base material under a dispenser as required by proposed rule part 7150.0205, subp. 7(A)(4).

**MPCA Response:**

See the response to comment 4-H regarding repairs and modifications. The MPCA is proposing to revise the rule to exclude repairs and modifications. Also see response to comment 7-D, which provides additional detail of the cost analysis conducted by the MPCA.

The MPCA is not proposing a change based on this comment.

**B. Responses to specific issues.**

**4. Comment 10-D: Part 7150.0030, subp. 22 (Hazardous substance)**

The Commenter states that the term “hazardous material” is defined by some federal agencies. The comment states that in Minnesota, the Department of Transportation implements a program reliant on the federal definition. The Commenter states that six Minnesota regulations define the term “hazardous substance.”

**MPCA Response:**

The federal definition of “hazardous material” is not applicable to underground storage tank regulations. Although transport vehicles may be subject to the federal term, they are not subject to existing UST rules and would not be subject to the proposed rules. Therefore, the MPCA does not anticipate

confusion by the change in term. The MPCA, therefore, corrects the SONAR at page 17 to specify that the term “hazardous material” is not used in state statutes regulating USTs. The SONAR already specifies that the Agency is proposing to replace the term with “hazardous substance” to conform to federal rules at 40 CFR part 280. See section III for a listing of this additional SONAR correction.

The proposed definitions would apply only to this chapter, as expressly stated in proposed rule part 7150.0030, subp. 1. As demonstrated by the number of state regulations identified in the comment, it is a more widely used term than “hazardous material.” Although there are multiple definitions for “hazardous substance” in Minnesota regulations, the proposed definition is consistent with the definition contained in Minnesota Statutes section 115B.02, subd. 8 (governing environmental response and liability) and its use in Minnesota Statutes section 115D.03, subd. 8 (toxic pollution prevention). Because it is consistent with definitions in statute that may be relevant in dealing with releases to the environment, the MPCA does not believe the definition conflicts with other applicable law as the comment asserts.

The MPCA is not proposing a change based on this comment.

**5. Comment 10-B: Part 7150.0030, subp. 51a (Unusual operating conditions).**

The Commenter expresses concern that there is no metric for “determining if a condition or occurrence may cause an undetected leak,” or a “possibility of a leak.” The Commenter takes the position that the definition creates confusion and ambiguity, and is not rationally related to the rule.

**MPCA Response:**

See the response to comment 4-A, which describes changes proposed to the rule language to align the rule language with federal regulation. As the MPCA noted in the SONAR and at the hearing, UST rules are intended to *prevent* releases to the environment, rather than *allow* the releases and remediate their effects. This is consistent with the intent and approach of the state statute at section 116.49 and federal regulations in 40 CFR part 280.

Regarding the concern about the “possibility of a leak,” the owners and operators subject to this rule must obtain training under the Class A or Class B operator requirements that informs them of the types of problems that reflect the possibility of a leak. To receive the classification, the operator must pass an exam demonstrating an understanding of UST systems. See proposed rule part 7150.0445, subp. 2 (Class A operator responsibilities), subp. 3 (Class B operator responsibilities) and subp. 5 (examinations). Because of the variety and complexity of tank systems, it is not feasible to list every potential alarm or other warning that could indicate that a tank is leaking. Owners and operators are familiar with their UST systems and are trained to ensure that leaks do not occur. As described in the SONAR at pages 45-46, requiring action in response to conditions that present an increased risk of a leak will decrease the likelihood of a leak going undetected. Therefore, the response action reduces the risk of a subsequent release to the environment.

The MPCA is not proposing a change based on this comment.

**6. Comment 10-G: Part 7150.0030, subp. 51a (Unusual operating conditions)**

The Commenter asserts that the definition of unusual operating conditions is unconstitutionally vague because it is impossible to determine what constitutes an unusual operating condition.

**MPCA Response:**

See the response to comment 4-A, in which MPCA proposes to revise the rule language. The MPCA is proposing to delete two of the phrases quoted in the comment. See also response to comment 10-B above; as described in that response, owners and operators must be trained on tank operations and potential releases. In addition, the revised definition more closely aligns with the federal criteria for an unusual operating condition. Because this rule applies to owners and operators who must have had previous training in this subject, the owners and operators subject to the rule would be familiar with UST system components and would be aware of the potential conditions that present a possible leak.

The MPCA is not proposing a change based on this comment.

**7. Comment 10-A: Part 7150.0205, subp. 7 (Dispenser sumps)**

The Commenter questions the reasonableness of this rule. The Commenter identifies the basis for rulemaking as clarifying existing rules, and argues that the rule language is not rationally related to the objective of the rule. The Commenter argues that there is no evidence the rule will protect human health and the environment.

**MPCA Response:**

See the response to comment 4-H, which describes the changes the MPCA proposes to make to the language in question and the basis for those changes.

Regarding the need for this rule language, page 6 of the SONAR lists needs that are satisfied by this rulemaking. Clarification is one of multiple needs being addressed by this rule. For this issue in particular, the SONAR at pages 33-34 describes the increased potential for a release caused by demolition near the base of dispenser islands. By reducing the potential for a release as a result of replacement of dispenser islands, the proposed rule protects human health and the environment.

The MPCA is not proposing a change based on this comment.

**8. Comment 10-E: Part 7150.0205, subp. 8 (Emergency stops)**

The Commenter expresses concern that the proposed rule adds requirements that are not contained in the Minnesota State Fire Code, including that disconnect switches be “readily available to persons dispensing a regulated substance.”

**MPCA Response:**

See the response to comment 8-D. As described in that response, the proposed rule language is consistent with the fire code, which requires a “readily accessible emergency disconnect.”

The MPCA is not proposing a change based on this comment.

**9. Comment 10-C: Part 7150.0250, subp. 1 (Unusual operating conditions)**

The Commenter reiterates that there is no metric for “determining whether an Unusual Operating Condition *may* have resulted in a leak.” The Commenter further takes the position that in responding to such conditions, the “procedure for investigation of unusual operating conditions is not set forth in the rule” and the rule suggests permanent closure. The comment states there is nothing in the rule to guide owners and operators or the MPCA regarding non-reporting of a potential release. The comment concludes that as a result, the rule is not rationally related to the purpose of clarifying the rule.

**MPCA Response:**

Regarding the metric for determining whether a leak may have occurred, see the response to comment 10-B above.

Regarding the actions owners and operators must take in response to unusual operating conditions, see the response to comment 4-B. In addition, proposed part 7150.0345, subp. 1, describes the procedure that owners and operators must take in response to discovery of unusual operating conditions. Proposed part 7150, subpart 2(B) describes the conditions under which an owner or operator need not report a potential release. Also see the response to comment 4-C on this issue.

As described in the rule language at part 7150.0250, subp. 1(A)(1), the owner or operator does not have to take the UST out of service if the condition is resolved in accordance with chapter 7150.

Because the rule does guide owners and operators in determining unusual operating conditions, identifies the procedure for investigation, defines the conditions triggering reporting of a release, and ultimately reduces the risk of an undetected leak that is released to the environment, the rule is related to the purposes identified in the SONAR.

The MPCA is not proposing a change based on this comment.

**10. Comment 10-H: Part 7150.0250, subp. 1 (Unusual operating conditions)**

The Commenter asserts that the actions owners and operators must take in response to unusual operating conditions is unconstitutionally vague.

**MPCA Response:**

See the response to comment 4-B. Investigation must occur “in accordance with this chapter,” and part 7150.0345, subp. 1, describes the actions to take during the investigation. The MPCA provided an example to clarify the circumstances under which reporting of a release would apply as part of response to comment 6-K.

The MPCA is not proposing a change based on this comment.

**11. Comment 10-I: Part 7150.0250, subp. 3 (Corrosion)**

The Commenter asserts that the proposed rule requiring replacement of components with corrosion is unconstitutionally vague because it does not give a standard or degree of corrosion triggering replacement.

**MPCA Response:**

See response to comments 4-F, 6-G, 5-K, and 9-C. The proposed rule provides a standard by which to determine the corrosion; only components with “corrosion that may cause the component to not function as intended by the manufacturer or that may cause a release of a regulated substance” must be replaced. Because owners and operators must be trained in the proper operation and maintenance of UST systems as Class A or Class B operators, and pass an examination before being certified, they have the knowledge to identify such components.

The MPCA is not proposing a change based on this comment.



### **12. Comment 10-F: Part 7150.0250, subp. 4 (Upward shifting)**

The Commenter expresses concern that a “bulge” from upward shifting is unclear and the rule does not identify the person who determines that a bulge exists or whether it can be repaired. The comment asserts that there are no criteria for evaluating the upward shifting and that MPCA inspectors will evaluate whether bulges exist.

#### **MPCA Response:**

See the response to comments 4-G and 6-H. As described in that response, the rule allows repairs to be made; any such repairs would have to be conducted by a certified tank contractor. If the owner or operator hires a contractor who repairs the tank, the tank may remain in service. The MPCA also provided an example photo in the previous response to comments showing a tank that had shifted upward.

The MPCA is not proposing a change based on this comment.

### **III. Additional correction(s) to the SONAR**

In addition to the corrections listed in the November 14, 2018, Post-hearing Response to Comments, the MPCA is including the additional corrections listed below.

SONAR Page #	SONAR text	Correction
17	<b>Subp. 22. Hazardous substance.</b> <b>Item A.</b> The term “hazardous material” is not used in state statutes and the Agency is proposing to replace the term with “hazardous substance” to conform to federal rules under 40 CFR pt. 280.	For the reasons discussed in the response to comment 4-D, the MPCA corrects the indicated text as follows:  <b>Subp. 22. Hazardous substance.</b> <b>Item A.</b> The term “hazardous material” is not used in state statutes regulating USTs and the Agency is proposing to replace the term with “hazardous substance” to conform to federal rules under 40 CFR pt. 280.

### **IV. Conclusion**

The MPCA has demonstrated through the SONAR, the hearing presentation and oral testimony, and responses to comments that the proposed amendments are needed and are reasonable.

### **V. Attachments**

1. List of Comments/Rebuttals in Response to Proposed Amendments to Minn. R. ch.7150

Attachment 1.

## List of Comments/Rebuttals in Response to Proposed Amendments to Minn. R. ch. 7150

Letter	Name
10	Christopher J. Heinze, on behalf of Minnesota Petroleum Marketers Association