

RESPONSE TO COMMENT

Title 47 Series 62

Initial Inspection, Certification, and Spill Prevention Response Plan Requirements

Under W.Va. Code §§22-30-6 and 22-30-9

October 20, 2014

Comment #1 Commenter suggests that Level 1 and 3 definitions should include filtered and unfiltered surface and groundwater. Water that has been diverted from natural sources such as lakes, streams, and rivers.

Response: WVDEP agrees with this comment. Tanks containing unfiltered surface water or groundwater (excluding flowback water from oil and gas wells) have been added to the definition of Level 3 tanks found at section 2.4 of the Interpretive Rule.

Comment #2 Commenter suggests clarification of definitions of "wellhead protection area" re: the phrase "public water supply", and groundwater under the influence of surface water

Response: WVDEP agrees with this comment. To clarify these definitions the agency has amended the Level 1 tank definition at section 2.2.a to read, "An AST located within a zone of critical concern, source water protection area or public surface water influenced groundwater supply source..." These terms are clearly defined in Chapter 22, Article 30. The term "wellhead protection area" was deleted.

Comment #3 Commenter suggests to define all the DHHR terms we are using as "ZCC" synonyms (wellhead protection area, GW intake under influence of surface water)

Response: The terms have the meaning prescribed in the WV Source Water Protection Program. Refer to response to comment 2 above.

Comment #4 Commenter suggests clarification of level 3 definition with regard to "subject to other strict program language" like SPCC...

Response: WVDEP agrees with this comment. The level three tank definition has been amended to offer added clarity.

Comment #5 Commenter requests to have tanks required to have Spill Prevention Control and Counter Measures Plans (SPCC) and Groundwater Protection Plans (GPP) regulated as Level 3.

Response: WVDEP disagrees with this comment. The agency does not believe tanks associated with a site required to have a SPCC or GPP exhibit a low enough risk to human health and the environment to be defined and regulated as a level 3 tank.

Comment #6 Commenter suggests that only Currently in Use (CIU), Temporarily Out of Service (TOS), and non-operational tanks should be required to have a Spill Prevention Response Plan (SPRP) and to be inspected and certified annually.

Response: *Permanently Out of Service (POS) tanks do not meet the definition of an above ground storage tank (AST) and therefore are not subject to the Aboveground Storage Tank Act (the Act). Non-Operational, CIU and TOS tanks must be registered have an SPRP and inspected and certified as prescribed in the Act.*

Comment #7 Commenter finds annual inspection and certification of tanks requirements in the Interpretive Rule problematic on several levels including, but not limited to, completion of an internal tank inspection.

Response: *WVDEP believes inspection provisions are protective and achievable. An external visual inspection may be acceptable in some situations, depending on the availability of existing maintenance and inspection history of the tank.*

Comment #8 Commenter suggests certification that a site specific SPCC plan is current should be allowed instead of an actual submittal of the SPCC. This suggestion is similar to the GPP certification provisions in lieu of submittal found in 47 CSR 62 4.2 to ease a perceived administrative burden.

Response: *GPPs submitted to the Agency for NPDES-permitted facilities are on file and available for review; however, SPCCs are not routinely submitted to the WVDEP as the plan is a federal requirement. This necessitates submittal of the SPCC plans to the agency. SPCC plans shall be submitted via the Electronic Submission System (ESS) and will not be overly burdensome. See also response to comment #48.*

Comment #9 Commenter suggests for level 3 tanks, simply certify an existing SPCC or GPP instead of submitting a Bio-terrorism plan.

Response: *WVDEP agrees with this comment. Section 4.4 of the rule has been amended to reflect this comment. This provision is analogous to the provisions for Level 2 tanks found in section 4.2.*

Comment #10 Commenter suggests empty mobile tanks should not be level 1 regardless of location.

Response: *WVDEP agrees with this comment. The definition of Level 1 tank in Section 2.2 had been amended to reflect this change.*

Comment #11 Commenter suggests empty mobile tanks should not be required to submit a SPRP and SPRP submittal requirements should be applicable to the operator, not the owner of a mobile tank.

Response: *WVDEP disagrees with this comment. The Act requires all tanks to have an SPRP. Tank regulations are applicable for both the owner and operator.*

Comment #12 Commenter suggests removing the 50,000 gallon requirement from Level 1. If capacity is to be used as a deciding factor for Level 1 designation, the commenter suggested that a 100,000 gallon capacity was more appropriate.

Response: WVDEP disagrees with this comment. The Agency believes Level 1 designation of tanks this size containing materials other than water is appropriate and protective of human health and the environment.

Comment #13 Commenter suggests ASTs of water treatment chemicals at mine sites and material that are normally sprayed in a “controlled manner” on the ground anyway should be exempt from the Act.

Response: WVDEP disagrees with this comment. A large leak or catastrophic tank failure would not be a "controlled" application as specified as a site condition by the commenter. This uncontrolled rapid release of materials would have a significant potential for harm to human health and the environment.

Comment #14 Numerous comments, questions and suggestions were received by WVDEP were found to be beyond the intended scope of the Interpretive Rule (47 CSR 62). These comments, questions and suggestions include, but are not limited, to the following:

- Various questions were asked (as opposed to actual comments) about registration, tank locations, Emergency Rule requirements, Expedient use of 2.2.d discretionary authority to classify significant risk Level 2 tanks as Level 1, and requests for exemptions from requirements of the Act
- Ability to petition for an exemption to Level 3 designation and submittal of annual inspection and certification and SPRP
- Mobile tanks are problematic and should be exempt from SPRP requirements and inspections
- Suggestions that water tanks be regulated by Bureau of Public Health
- Mobile tanks should not be exempted even if the tanks are on site for less than 60 days
- Permits should require notification to local PSD of spills
- Numerous questions concerning who is responsible for and who will receive fines and violations
- Request to be specific on leak detection requirements
- A request to regulate cemeteries
- Change time for mobile tanks from 60 days to 1 year
- Notify tanks owners quickly if in ZCC and provide info on how ZCC was determined
- SPCC Tanks regulated by SPCC and 35CSR1 pose a substantial threat of contamination and SPCC and 35CSR1 requirements do not meet or exceed protective standards of the act
- Delay application of civil and criminal penalties
- Urges designation of tanks into appropriate levels and discretionary reclassification of tanks to level 1 that are near ZCCs and where little is known about the chemical being stored
- Concerns on how mobile tank will be classified
- Supports keeping SPRPs confidential and exempt from the Freedom of Information Act (FOIA)
- Request to exempt level 3 tanks from requirement to submit SPRPs
- Various comments previously provided on Senate Bill 373 were resubmitted
- Clarification on the level of coordination with Bureau of Public Health and county municipalities
- Several commenters had questions regarding how to register, can GPPs be modified to incorporate the new tank requirements, can tanks be required to be moved away from waterways, who will inspect tanks on mine sites, etc.

- Several commenters asked questions about tank locations, some asked for expedient use of Section 2.2.d discretionary authority to classify significant risk Level 2 tanks as Level 1, others requested exemptions (especially for Level 3 tanks) from all or part of the requirements of the Act, and exemptions for mobile tanks.

Response: *The Agency has responded to countless questions during the implementation of the Act and staff continues to do so. Many of the questions posed in this rulemaking comment period were not germane to the content of this Interpretive Rule proposal and are thus outside the scope of the response. Further, many of the suggested changes to the Interpretive Rule would require a statutory change before they could be affected.*

Comment #15 Commenter suggests that methanol and glycol storage tanks should be exempt from permitting because these are associated with hydraulic lift tanks, electrical equipment, etc. which are exempt from permitting.

Response: *WVDEP disagrees. The agency believes these devices are storage tanks and not process vessels, regardless of the language concerning hydraulic lift tanks, etc...*

Comment #16 Commenter suggests clarification is required of the Level 2 tank definition.

Response: *WVDEP disagrees. Level 1 and Level 3 tanks are clearly defined. If a tank does not meet the Level 1 or Level 3 definition, the tank is a Level 2 tank. The agency believes this approach provides adequate clarity to tank owner / operators.*

Comment #17 Commenter suggests clarification as to what specific submittals will satisfy SPRP requirements for the different levels of tanks.

Response: *WVDEP appreciates this comment and understands your concerns. The agency has amended portions of applicable sections of the Interpretive Rule. Also, WVDEP has made changes to the rule to allow for submittals of GPPs and SPCCs to satisfy the SPRP requirements applicable to Level 3 tanks.*

Comment #18 Commenter requests WVDEP inform them what level a tank is designated as and requests that they have a mechanism to contest this designation and find resolution.

Response: *WVDEP will notify tank owners/operators whether they are in a zone of critical concern (ZCC) or wellhead protection area. With this information, the tank owner/operator will be able to make a determination of their tank level since all the other available information needed to make the determination (e.g. tank size and contents) will be in readily available to the tank owner / operator. The Agency has been, and will continue to, field questions on tank locations relative to ZCCs and other source water areas.*

Comment #19 Numerous commenters noted their support of Interpretive Rule and maintaining important statutory deadlines and required submittals.

Response: *WVDEP appreciates the support.*

Comment #20 Several commenters indicated that Level 1 definition should be changed to match the Rough Draft Emergency Rule definition of a Level 1 tank. Other commenters have indicated that the definition of Level 1, 2 and 3 tanks in the Interpretive Rule should be compared to the definitions in the Rough Draft Emergency Rule and the agency should use the most protective.

Response: WVDEP appreciates this comment. Due to time constraints, and to make the initial compliance deadlines more easily achievable for tank owners, Level 1 definition with regard to tank contents was purposely limited to CERCLA hazardous substances in the Interpretive Rule. The agency believes this approach is both helpful and protective.

Comment #21 Commenters have suggested miscellaneous edits to Appendix C – SPRP Checklist.

Response: WVDEP disagrees. The checklist found in Appendix C is based on requirements of the Act (22-30-9). The Agency has had this guidance available to the regulated community since June 2014.

Comment #22 Commenter requests WVDEP define "qualified person working under the direct supervision of an engineer". Commenter also concerned that a "qualified person" (an undefined term) may not have the ability to complete the inspection in accordance with the inspection checklist found in Appendix B of the Interpretive Rule. Lastly, commenter states that tanks should only be inspected by Professional Engineers (PEs), American Petroleum Institute (API) or Steel Tank Institute (STI) certified inspectors.

Response: WVDEP understands your concern. Be advised the language concerning inspections conducted by a PE, qualified person working under the direct supervision of a PE and an API certified individual was taken directly from the Act. And, with regard to the qualified person working under the direct supervision of an engineer, the acceptability of the tank inspection and final certification is ultimately the responsibility of the P.E.

Comment #23 Commenter is in favor of the level of detail required by Appendix C (Spill Prevention Response Plan)

Response: Thank you for your comment.

Comment #24 Various commenters commended WVDEP for its efforts through the Interpretive Rule to balance the demands of the AST Act with the limited/inadequate timeframes in the Act.

Response: Thank you for your comment.

Comment #25 Commenters believe the Interpretive Rule fails to adequately take into account the size, location and contents of the AST [as prescribed in 22-30-5(b)] that are used in oil and gas operations. Also, commenter believes all mobile tanks should be Level 3.

Response: WVDEP disagrees with this comment. The Interpretive Rule is completely based on tank size location and contents to determine risk. Also, WVDEP believes that classifying all mobile tanks as Level 3 regardless of size, location and contents is not appropriate.

Comment #26 Interpretive Rule is too vague and lacking definition to adequately advise AST owners/operators of the actions they must take to comply.

Response: WVDEP disagrees with this comment. This interpretive rule is very limited in scope. The interpretive rule is intended to provide additional clarity on initial inspection, certification and spill prevention response plan requirements, where items of timely compliance were a concern. Complete compliance with all regulatory requirements mandated by the Act is beyond the scope of this Interpretive Rule.

Comment #27 Commenter finds it problematic that the Interpretive Rule cannot be put into effect until November 8, 2014 at the earliest, leaving only 25 days for owners/operators to submit SPRPs and 53 days to perform inspections and certifications.

Response: WVDEP disagrees with this comment. The AST Act became effective on June 6th, at which time it was clear that an SPRP and tank inspection were needed for all AST in West Virginia. Section Nine of the Act afforded 180 days for companies to submit a SPRP and Section six afforded greater than six months for tanks to be inspected and certified. The Interpretive Rule is intended to assist with some clarity as far as what the Agency will accept for the submittals and inspections. Clearly, if a company chose to proceed as the Act is written, it would be acceptable to the Agency. WVDEP believes that adequate time has been available to tank owner / operators to comply with SPRP and inspection / certification requirements.

Comment #28 Fiscal note included with the Interpretive Rule fails to address the economic impact of the Interpretive Rule on persons affected by the rules and regulations as required by the statute.

Response: The commenter has cited a particular statutory provision he believes requires the WVDEP to consider the economic impact of the proposed interpretive rule. The requirement that all rules include a fiscal note “and a statement of the economic impact of the rule on the state or its residents.” Notwithstanding whatever interpretation is given the cited language, the WVDEP does not have the ultimate authority to decide what information must be included in a fiscal note for rules. Rather, the Secretary of State’s office and the Legislative Rulemaking Review Committee are responsible for designing the fiscal note form and specifying its contents. The Secretary of State and the legislative committee are using the same form as is used by the Legislature for the passage of Act. The WVDEP has used the appropriate form and it does not include any requirement for assessing economic impact upon the regulated public or citizens of the State. It only requires the agency to provide an assessment of potential impacts upon State government.

Comment #29 ASTs used at oil and gas well sites during drilling and production are subject to oversight by WVDEP's Office of Oil and Gas (OOG) and are subject to the regulatory requirements of

35 CSR 1, 35 CSR 4 and 35 CSR 8, which include inspections by OOG, routine inspections by owner/operator with written annual inspection reports submitted to OOG, and secondary containment and spill prevention requirements. Because of this, the commenter urges WVDEP to classify these tanks as Level 3, unless they are located within a zone of critical concern.

***Response:** WVDEP appreciates your comment. This Interpretive rule is designed to address the initial SPRP submittal and inspection / certification requirements mandated by the Act. Through the registration process, WVDEP has observed and documented that a large percentage of tanks located in West Virginia are related to the oil and gas industry. The commenter's concern about the classification of tanks related to oil and gas operation can be further vetted in the upcoming legislative session.*

Comment #30 Definition of a Level 1 should be modified to clarify that only if the AST contains primarily a listed hazardous substance it will be categorized as a Level 1 tank.

***Response:** WVDEP understands your concern. It was never the intent of the Agency to consider trace amounts of a hazardous substance to cause a tank to be categorized as a Level 1 tank. WVDEP is continuing to evaluate this concern. However, for purposes of this interpretive rule, believes the definition of a level one tank can be reasonably applied as it is currently written.*

Comment #31 Definition of a Level 2 should be modified to read "Level 2 AST means an AST that does not qualify as either a level 1 AST or a Level 3 AST. These ASTs have been determined by the Secretary to have the potential for lesser risk of harm to public health or the environment than a Level 1 AST due to its contents, size or location (i.e., an AST located in an isolated area with respect to public water systems, waters of the State or populated locales."

***Response:** Thank you for your comment, the agency believes there is no substantive difference between the suggested language and current definition in the Interpretive Rule.*

Comment #32 Commenter asked that Wellhead Protection Area be defined and indicated that there was "simply no rational basis for regulating ASTs" in relationship to public groundwater supply sources or wellhead protection.

***Response:** WVDEP strongly disagrees with this comment. Sections 22-30-2 and 22-30-5(b) 15 of the Act includes a number of references concerning the need to protect all waters from leaking tanks. Further, the agency is not considering a facility to be within a ZCC by virtue of only being in a wellhead protection area. WVDEP has modified the Level 1 tank definition to make it consistent with the Act and this will clarify the address the commenter's concern about the term Wellhead Protection Area.*

Comment #33 Use of WVDEP OOG Form OP-13 (Operator's Annual Inspection Form) should be approved as fulfilling the industry standard inspection requirements

Response: WVDEP disagrees with this comment. OP-13 does not fulfill all of the inspection requirements mandated by the Act. WVDEP has included the Interim Inspection Checklist for Initial AST Inspection as an Appendix to the Interpretive Rule and this information has been available on our website since June 2014.

Comment #34 Commenter requests a modification to Appendix B to only require AST design specifications and records if they are available for the tank.

Response: The agency has responded to many inquiries related to this concern. The agency has designed the Interim Inspection Checklist to be flexible in order to allow the certifying person to use best engineering/professional judgment in determining tank suitability for service. The checklist allows for the consideration of all available records.

Comment #35 Mobile tanks should be exempt from compliance with the interpretive rule and suggested October 1 was the start date for the 60 day clock in determining applicability.

Response: WVDEP disagrees with this comment and regulatory interpretation. The Act was effective June 6, 2014. Any tank meeting the definition in the Act as of that date is subject to the requirements of the Act.

Comment #36 Commenter is concerned that there is a conflict with language in rule that implies ONLY Potable water tanks under 50,000 gallons are considered Level 3. Commenter seeks clarification that potable water in tanks greater than 50,000 gallon and/or in a ZCC are not Level 1.

Response: WVDEP understands your concern, and had modified the Level 1 tank definition in the Interpretive Rule to provide clarity.

Comment #37 Commenter believes that a registered P.E. does not possess sufficient knowledge for an adequate tank inspection.

Response: The inspection and certification by a P.E., among others, is required by the Act.

Comment #38 Commenter cites numerous procedural deficiencies related to the registration process and mentions a gap of time between Interpretive Rule issuance and required public hearing does not meet requirements of W. Va. Code §§ 29A-3-5 and 29A-3-7. Commenter further cites a failure to set registration fee rule by October 1. Commenter believes that Secretary should waive application of any civil or criminal penalties due to substantive and procedural defects in the rule.

Response: WVDEP does not agree with these comments. Registration procedures and Fee assessments are outside the scope of this Interpretive rule. The Agency does not believe any procedural deficiencies exist. The registration process was adequately addressed in the Act.

Comment #39 Commenter suggests that food grade materials used in the fracking process should not be exempt from the interpretive or emergency rule. Commenter supports Secretary's ability to ONLY reclassify tanks as Level 1.

Response: WVDEP appreciates your comment. This rule is designed to address the impending requirements (Spill Prevention Response Plans and Inspection Certifications) of the Act from now through January 1. This concern is noted and will be evaluated during processing of tank registrations and further refinement of the Emergency rule.

Comment #40 Commenter urges the Agency to reconsider the risk of exempting chemically treated non-contact cooling water.

Response: WVDEP understands the commenters concerns. If chemical additives are mixed with cooling water, the agency no longer considers this as non-contact cooling water; therefore, WVDEP does not believe the definition needs revised.

Comment #41 Commenter suggests that Section 4.3 of the Interpretive Rule should be revised so that "Spill Prevention Plans pursuant to 35 CSR1 or" and "applicable" be deleted. Commenter states that there is no requirement in 35 CSR 1 requiring a Spill Prevention Plan prior to having a spill.

Response: Thank you for your comment. The agency believes Section 4.3 is appropriate in that the section allows for submittal of Spill Prevention Plan, if one was required to be developed pursuant to 35 CSR1. If the tank owner does not have a Spill Prevention Plan developed pursuant to 35 CSR 1, the interpretive rule still requires submittal of a spill plan (i.e. GPP, SPRP, WSSP, etc.).

Comment #42 Commenter opposes allowing owner/operators to certify their own tanks.

Response: Note that there will be WVDEP oversight applicable to lower risk (Level 2 and 3) tanks eligible for owner / operator inspection / certification as well as the inspection / certification of the Level 1 tanks.

Comment #43 Supports WVDEP designation of 50,000 gallon tank as Level 1, would support lower capacity for Level 1 but not higher capacity.

Response: Thank you for your comment.

Comment #44 Commenter urges WVDEP to narrow the definition of a Level 1 tank basing the definition on location alone, and not on tank contents, specifically the presence of a CERCLA hazardous substance.

Response: WVDEP disagrees with this comment. The Act requires WVDEP to consider size, contents and location when determining risks. For purposes of this Interpretive Rule WVDEP had to make determinations in the interest of time. As with other similar comments, the Agency will further evaluate these issues in preparation of the Emergency rule for consideration in the upcoming legislative session.

Comment #45 Commenter believes there should be the ability to re-designate ASTs within the ZCC to Level 2 or 3, and tank classification should include appeal provisions to the Environmental Quality Board (EQB).

***Response:** WVDEP appreciates your comment. This rule is designed to address the impending requirements (initial Spill Prevention Response Plans and Inspection Certifications) of the Act from now through January 1. This concern is noted and will be evaluated further during the Emergency rulemaking process. The Act allows for orders of the Secretary to be appealed to the EQB.*

Comment #46 Commenter suggests that WVDEP change the definition of a level three tank in section 2.4 of the rule to include hazardous waste tanks subject to 40 CFR 264 and 265

***Response:** WVDEP agrees with this comment. The Agency amended the definition of a level 3 tank to include tanks subject to regulation by 40 CFR 265 with the exception of tanks used by Small Quantity Generators of hazardous waste subject to the requirements of 40 CFR 265.201.*

Comment #47 Commenter states that under the proposed interpretive rule, ASTs containing CERCLA listed/identified substances are automatically categorized as Level 3 tanks.

***Response:** WVDEP does not agree with this interpretation. Under the proposed interpretive rule, ASTs containing CERCLA listed/identified substances are automatically categorized as Level 1 tanks, not Level 3.*

Comment #48 Commenter states that inspection certifications should be completed in accordance with Industry Standards only and not to requirements in Appendix B. Furthermore, Appendix B references AST systems which are not defined. Also, commenter believes that Level 2 tanks with SPCCs should not be subject to the same inspection / certification requirements as other ASTs because they are exempted from additional permitting in 22-30-25.

***Response:** WVDEP does not agree with this comment. WVDEP believes inspection provisions in Appendix B are protective, achievable and based on the requirements of the Act. An external visual inspection may be acceptable in some situations, depending on the availability of existing maintenance and inspection history of the tank. Nowhere in Appendix B does it require an annual internal inspection. Furthermore, API 653 does not fully address all requirements of the Act, e.g., secondary containment. In regards to the SPCC tanks, 22-30-25 exempts ASTs from permitting requirements set in 22-30-5; however, it does not exempt the AST from section 22-30-6 (Annual Inspection and Certification). Also, 22-30-6 (a) states that "...Every owner or operator shall submit, on a form prescribed by the secretary, a certification from the engineer that each tank, associated equipment, leak detection system and secondary containment structure meets the minimum standards established by the article or by the Secretary by rule. ...".*

Comment #49 Commenter urges WVDEP to allow for submittal of Groundwater Protection Plan (GPP) to satisfy SPRP submittals requirements for Level 2 tanks.

Response: WVDEP agrees with this comment and will allow a Level 2 tank owner to submit a copy of a GPP instead of SPCC or SPRP, if the owner has a GPP that has not been previously submitted in conjunction with a permit.

Comment #50 Commenter seeks clarification that actions taken by the Secretary are appealable to the EQB.

Response: The AST Act (Section 22-30-18) specifies that orders of the Secretary are appealable to the EQB.

Comment #51 Commenter requests that the definition of AST in Section 2.1 should be as defined in WV Code 22-30-3 (1).

Response: WVDEP concurs with your comment and has made the appropriate change.

Comment #52 Commenter urges that Well Site Safety Plans (WSSP) be considered in Section 4.2 to be equivalent to SPRPs for initial submittals.

Response: WVDEP agrees with this comment. Section 4.2 of the Interpretive Rule has been amended to include Well Site Safety Plans as an acceptable means of meeting SPRP submittal requirements. However, MSDSs not originally submitted with the WSSP must be submitted to WVDEP for SPRP requirements to be satisfied.

Comment #53 Commenter requests WVDEP correct the spelling of “Appendix” in Appendix C. Commenter also, urges changes to the requirements of Appendix C including incorporating by reference the Well Site Safety Plan including “frac fluid” info as filed with work permit applications. Commenter also requests clarification if survey quality drawings must be performed to satisfy SPRP requirements, and provide clarification of level of input by Bureau of Public health required for development of the SPRP.

Response: WVDEP agrees partially with this comment. WVDEP will correct the spelling error for the word “Appendix” in Appendix C. Furthermore, the Agency agrees with the suggestion to include Well Site Safety Plans (WSSP) in Section 4.2; however, MSDSs not originally submitted with the WSSP to WVDEP must be submitted. Site Maps / Drawing as required by Appendix C do not need to be survey quality drawings but must include a scale. The AST Act requires that the owner or operator consult with the Bureau of Public Health in development of the SPRP.

Comment #54 The commenter believes the rule of statutory construction would dictate that tanks with SPCC requirements would only be subject to inventory and registration requirements.

Response: The partial quote that is used in the second paragraph of item number 1 of the comment, when read in its entirety is, “While all aboveground storage tanks shall be required to participate in the inventory and registration process set forth in section four of this article, the following categories of containers and tanks shall not be required to be

permitted under section five of this article, either because they do not represent a substantial threat of contamination, or they are currently regulated under standards which meet or exceed the protective standards and requirements set forth in this article.” The underlined section of the quotation that was omitted from the comment makes it clear what the exception is from, which is “not required to be permitted under section five of this article”. The assumption that the legislature intended only for the inventory and registration requirements to apply to such tanks would then be inconsistent with the plain language of the Act.