

demonstration for a variance. The Regional Administrator also will hold a public hearing, in response to a request or at his own discretion, whenever such a hearing might clarify one or more issues concerning the demonstration for a variance. Public notice of the hearing will be given at least 30 days prior to the date of the hearing and may be given at the same time as notice of the opportunity for the public to review and comment on the demonstration. These two notices may be combined.

(5) The Regional Administrator will approve or disapprove the request for a variance within 90 days of receipt of the demonstration from the owner or operator and will notify in writing the owner or operator and each person who submitted written comments or requested notice of the variance decision. If the demonstration for a variance is incomplete or does not include sufficient information, the 90-day time period will begin when the Regional Administrator receives a complete demonstration, including all information necessary to make a final determination. If the public comment period in paragraph (h)(4) of this section is extended, the 90-day time period will be similarly extended.

(i) All tank systems, until such time as secondary containment meeting the requirements of this section is provided, must comply with the following:

(1) For non-enterable underground tanks, a leak test that meets the requirements of § 265.191(b)(5) must be conducted at least annually;

(2) For other than non-enterable underground tanks, and for all ancillary equipment, the owner or operator must either conduct a leak test as in paragraph (i)(1) of this section or an internal inspection or other tank integrity examination by a qualified Professional Engineer that addresses cracks, leaks, and corrosion or erosion at least annually. The owner or operator must remove the stored waste from the tank, if necessary, to allow the condition of all internal tank surfaces to be assessed.

NOTE: The practices described in the American Petroleum Institute (API) Publication Guide for Inspection of Refining Equipment, Chapter XIII, "Atmospheric and Low Pres-

sure Storage Tanks," 4th edition, 1981, may be used, when applicable, as guidelines for assessing the overall condition of the tank system.

(3) The owner or operator must maintain on file at the facility a record of the results of the assessments conducted in accordance with paragraphs (i)(1) through (i)(3) of this section.

(4) If a tank system or component is found to be leaking or unfit-for-use as a result of the leak test or assessment in paragraphs (i)(1) through (i)(3) of this section, the owner or operator must comply with the requirements of § 265.196.

[51 FR 25479, July 14, 1986; 51 FR 29430, Aug. 15, 1986, as amended at 53 FR 34087, Sept. 2, 1988; 71 FR 16910, Apr. 4, 2006; 71 FR 40275, July 14, 2006]

§ 265.194 General operating requirements.

(a) Hazardous wastes or treatment reagents must not be placed in a tank system if they could cause the tank, its ancillary equipment, or the secondary containment system to rupture, leak, corrode, or otherwise fail.

(b) The owner or operator must use appropriate controls and practices to prevent spills and overflows from tank or secondary containment systems. These include at a minimum:

(1) Spill prevention controls (e.g., check valves, dry disconnect couplings);

(2) Overfill prevention controls (e.g., level sensing devices, high level alarms, automatic feed cutoff, or bypass to a standby tank); and

(3) Maintenance of sufficient freeboard in uncovered tanks to prevent overtopping by wave or wind action or by precipitation.

(c) The owner or operator must comply with the requirements of § 265.196 if a leak or spill occurs in the tank system.

[51 FR 25479, July 14, 1986, as amended at 71 FR 40275, July 14, 2006]

§ 265.195 Inspections.

(a) The owner or operator must inspect, where present, at least once each operating day, data gathered from monitoring and leak detection equipment (e.g., pressure or temperature gauges, monitoring wells) to ensure

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that the tank system is being operated according to its design.

NOTE: Section 265.15(c) requires the owner or operator to remedy any deterioration or malfunction he finds. Section 265.196 requires the owner or operator to notify the Regional Administrator within 24 hours of confirming a release. Also, 40 CFR part 302 may require the owner or operator to notify the National Response Center of a release.

(b) Except as noted under the paragraph (c) of this section, the owner or operator must inspect at least once each operating day:

(1) Overfill/spill control equipment (e.g., waste-feed cutoff systems, bypass systems, and drainage systems) to ensure that it is in good working order;

(2) Above ground portions of the tank system, if any, to detect corrosion or releases of waste; and

(3) The construction materials and the area immediately surrounding the externally accessible portion of the tank system, including the secondary containment system (e.g., dikes) to detect erosion or signs of releases of hazardous waste (e.g., wet spots, dead vegetation).

(c) Owners or operators of tank systems that either use leak detection equipment to alert facility personnel to leaks, or implement established workplace practices to ensure leaks are promptly identified, must inspect at least weekly those areas described in paragraphs (b)(1) through (3) of this section. Use of the alternate inspection schedule must be documented in the facility's operating record. This documentation must include a description of the established workplace practices at the facility.

(d) Performance Track member facilities may inspect on a less frequent basis, upon approval by the Director, but must inspect at least once each month. To apply for a less than weekly inspection frequency, the Performance Track member facility must follow the procedures described in § 265.15(b)(5).

(e) Ancillary equipment that is not provided with secondary containment, as described in § 265.193(f)(1) through (4), must be inspected at least once each operating day.

(f) The owner or operator must inspect cathodic protection systems, if present, according to, at a minimum,

the following schedule to ensure that they are functioning properly:

(1) The proper operation of the cathodic protection system must be confirmed within six months after initial installation, and annually thereafter; and

(2) All sources of impressed current must be inspected and/or tested, as appropriate, at least bimonthly (i.e., every other month).

NOTE: The practices described in the National Association of Corrosion Engineers (NACE) standard, "Recommended Practice (RP-02-85)—Control of External Corrosion on Metallic Buried, Partially Buried, or Submerged Liquid Storage Systems," and the American Petroleum Institute (API) Publication 1632, "Cathodic Protection of Underground Petroleum Storage Tanks and Piping Systems," may be used, where applicable, as guidelines in maintaining and inspecting cathodic protection systems.

(g) The owner or operator must document in the operating record of the facility an inspection of those items in paragraphs (a) and (b) of this section.

[51 FR 25479, July 14, 1986; 51 FR 29430, Aug. 15, 1986, as amended at 71 FR 16910, Apr. 4, 2006]

§ 265.196 Response to leaks or spills and disposition of leaking or unfit-for-use tank systems.

A tank system or secondary containment system from which there has been a leak or spill, or which is unfit for use, must be removed from service immediately, and the owner or operator must satisfy the following requirements:

(a) *Cessation of use; prevent flow or addition of wastes.* The owner or operator must immediately stop the flow of hazardous waste into the tank system or secondary containment system and inspect the system to determine the cause of the release.

(b) *Removal of waste from tank system or secondary containment system.* (1) If the release was from the tank system, the owner or operator must, within 24 hours after detection of the leak or, if the owner or operator demonstrates that that is not possible, at the earliest practicable time remove as much of the waste as is necessary to prevent further release of hazardous waste to