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Submitted Electronically via eComment (<http://www.ahs.dep.pa.gov/eComment>)

March 23, 2018

Environmental Quality Board
Rachel Carson State Office Building
16th Floor
400 Market Street
Harrisburg, PA 17101-2301

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Re: Comments of Exelon Generation Co. LLC on Environmental Quality Board's Proposed Amendment to Chapter 245 Relating to Administration of the Storage Tank and Spill Prevention Program

Dear Sir or Madam:

Exelon Generation Company, LLC ("Exelon"), a subsidiary of Exelon Corporation (NYSE: EXC), is one of the largest, most efficient clean energy producers in the U.S., with electric power generation capacity of nearly 35,000 megawatts. Exelon Generation operates the largest U.S. fleet of emission-free nuclear plants with 20,300 megawatts of capacity from 23 reactors at 14 facilities in Illinois, Maryland, New Jersey, New York and Pennsylvania. In Pennsylvania, Exelon Generation operates the Limerick, Three Mile Island and Peach Bottom nuclear power stations. These facilities, combined, directly employ 2,435 persons. Nuclear power stations, operated by Exelon and others in Pennsylvania, currently produce approximately 93 percent of the zero-emission generation in Pennsylvania, avoiding approximately 37 million tons of carbon emissions annually. We appreciate the opportunity to comment upon these proposed amendments to the Chapter 245 program.

Published at Vol. 48, No. 8 of the Pennsylvania Bulletin, February 24, 2018 is the Environmental Quality Board's Notice of Proposed Rulemaking for amending Chapter 245 of the Pennsylvania

Code. Exelon submits comments in opposition to certain proposed rule changes within the Notice and provides requested revisions.

Current regulations under 25 PA 245 Subchapter A General Provisions, 245.1 define tanks to be exempt from Chapter 245 if they are:

- (xiii) Tanks containing radioactive materials or coolants that are regulated under The Atomic Energy Act of 1954 (42 U.S.C.A. §§§§ 2011—2297);
- (xviii) 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 10 CFR Part 50, Appendix A (relating to general design criteria for nuclear power plants).

The proposed changes set forth in the Pennsylvania Bulletin would eliminate these two exemptions. Exelon opposes the deletion of the two exemptions from the definition of Underground Storage Tank contained in 25 PA Code §245.1 and their replacement with partial exclusions in new Subchapter E¹ Sections 245.403(c)(2) and 245.403(c)(3).

(c) Partial exclusions. The following underground storage tanks systems are not required to comply with §§ 245.411, 245.421(b)(3) and (4)(ii) and (iii), 245.422(d), 245.432(g) and 245.436—245.446:

...

(2) An underground storage tank system containing radioactive material that is regulated under the Atomic Energy Act of 1954 (42 U.S.C.A. §§ 2011—2296b-7).

(3) An underground storage tank system that is part of an emergency generator system at a nuclear power generation facility licensed by the United States Nuclear Regulatory Commission and subject to United States Nuclear Regulatory Commission requirements regarding design

¹ 25 PA 245 Subchapter E Technical Standards for Underground Storage Tanks

and quality criteria, including 10 CFR Part 50 (relating to domestic licensing of production and utilization facilities).

The proposed changes would unnecessarily create an inconsistency in the degree of regulation between 40 CFR 280 and 25 PA 245 for nuclear-related storage tanks, with the inconsistency imposing more stringent than federal requirements on affected USTs at nuclear-related facilities in Pennsylvania.

40 CFR 280 Subpart A – Program Scope and Installation Requirements for Partially Excluded UST Systems at 40 CFR §280.10 provides in §§280.10(c)(3) and (4), a partial exclusion for the same two categories of nuclear-related tanks from most Part 280 requirements. These tanks are excluded from Part 280 Subparts B, C, D, E, G, J, and H, but remained subject to Subpart F² and to the installation requirements of partially excluded tanks under Subpart A³.

(c) Partial Exclusions. Subparts B, C, D, E, G, J, and K of this part do not apply to:

...

(3) Any UST systems containing radioactive material that are regulated under the Atomic Energy Act of 1954 (42 U.S.C. 2011 and following); and

(4) Any UST system that is part of an emergency generator system at nuclear power generation facilities licensed by the Nuclear Regulatory Commission and subject to Nuclear Regulatory Commission requirements regarding design and quality criteria, including but not limited to 10 CFR part 50.

In the July 15, 2015 Federal Register pp. 41598-41600, US EPA documented their decision-making process for this partial exclusion, acknowledging that these tanks to be comparably regulated by the US Nuclear Regulatory Commission (US NRC) under 10 CFR 50.

² Release Response and Corrective Actions for UST Systems containing Petroleum or Hazardous Substances

³ Program Scope and Installation Requirements for Partially Excluded UST Systems

“After review of DOE Orders and NRC regulations, EPA determined these requirements are comparable to EPA requirements for new and existing USTs regarding spill and overfill control (§ 280.30); operation and maintenance of corrosion protection (§ 280.31); and release detection (40 CFR part 280, subpart D). DOE established standards for facility operations that: protect the public and environment from exposure to radiation from radioactive materials; protect workers; provide industrial safety; and ensure compliance with applicable federal, state, and local laws, as well as Executive Orders and other DOE directives. DOE uses orders to regulate radioactive materials at their facilities” (footnotes omitted) 80 FR 41598-9.

Insofar as the regulation for USTs containing radioactive material and for emergency generator UST systems at nuclear power generation facilities regulated by the NRC, EPA concluded:

“...the historic level of regulation for these tanks is appropriate and provides adequate environmental controls to ensure environmental protection.

...

This final UST regulation also amends § 280.10(c)(4) which refers to facilities licensed under 10 CFR part 50. This change is consistent with the regulatory citation listed in the Spill Prevention, Control, and Countermeasure provision in 40 CFR part 112 and also applies to installation of these tanks at NRC facilities in the future”. 80 FR 41599-41600.

In order to retain consistency between federal and state regulations for these two categories of nuclear-related tanks, we propose that PA DEP replace the proposed changes to 25 PA 245 with the following revisions:

1. Revise the definition of *Underground Storage Tank* under 245.1 Definitions, so that these two categories of nuclear-related tanks be subject only to the portions of 25

PA 245 that are equivalent to 40 CFR 280 Subpart A (Program Scope and Installation Requirements for Partially Excluded UST Systems and Subpart F (Release Response and Corrective Actions for UST Systems containing Petroleum or Hazardous Substances); and,

2. Explicitly exclude these two categories of tanks from those portions of 25 PA 245 that are equivalent to 40 CFR 280 Subparts B, C, D, E, G, J, and H.

We believe the above changes would eliminate any potential concerns U.S. EPA may have with regards to these two categories of nuclear-related tanks not being regulated as stringently under 24 PA 245 as they currently are under 40 CFR 280. As currently written, 25 PA 245 does not appear to regulate these tanks under the state-equivalent of Part 280 Subparts A and F. This discrepancy would be corrected with our proposed revisions above.

Additionally, we request that PA DEP clarify that the Part 280 Subpart A installation requirements apply to the installation of new tanks, which we believe is the intent of the Part 280 regulation. This would not impose any new requirements for existing tanks within these two categories of nuclear-related tanks.

If the US EPA's 40 CFR 280 partial exclusions for these tanks as described above is not incorporated into 25 PA 245, then these two categories of nuclear-related tanks would become subject to numerous provisions of 25 PA 245 that these tanks have never been subject to before. Several portions of these new and duplicative regulatory requirements could pose jurisdictional, operational and capital planning challenges to the current safety-related emergency diesel generator systems that these two categories of tanks are associated with at Pennsylvania's nuclear power plants. Requiring these facilities to make potentially expensive changes associated with the continued operation of these tank systems to satisfy newly applicable regulations is unnecessary. US EPA has already deemed the current 10 CFR 50 regulatory coverage to be comparable and adequate for these tanks systems, which have a long and safe operational history at Pennsylvania's nuclear power plants.

In addition to our comments, the Utility Solid Waste Activities Group (USWAG) has also submitted comments to this docket⁴. These comments provide USWAG's analysis of the U.S. EPA's 2015 UST final rule. As stated in the USWAG letter, regarding UST at nuclear-related facilities, "... all EPA did in the final rule was replace the term 'deferral' with the term 'partial exclusion' and exempt these tank systems from the newly promulgated requirements. The Agency did not impose any new obligations on these tank systems in the 2015 UST final rule."

Exelon concurs with this analysis and we ask that, as we have suggested above, that PA DEP revise its final regulations such that they are consistent with, and no more stringent than, the requirements of the U.S. EPA 2015 UST update rule with regard to regulation of UST at nuclear-related facilities. PA DEP's proposed changes related to storage tanks at nuclear facilities are not required to retain state program approval of the UST program and, as proposed, are more stringent than federal requirements.

We would be glad to make our subject matter experts available to discuss this issue and/or provide additional information to PA DEP as it works to finalize its rulemaking update. Thank you for considering our comments. I can be reached at 215-841-5687.

Sincerely,



Bruce Alexander
Senior Manager, Strategic Environmental Analysis
Exelon Corporation

⁴ See USWAG letter, dated March 15, 2018, from Mr. James Roewer, Executive Director, to the docket for this rulemaking.