

BEFORE THE ARKANSAS POLLUTION CONTROL AND ECOLOGY
COMMISSION

IN THE MATTER OF AMENDMENTS TO)
REGULATION NO. 12, STORAGE TANKS)

DOCKET NO. 09-001-R

RESPONSIVE SUMMARY FOR
REGULATION NO. 12, STORAGE TANKS

Pursuant to A.C.A. § 8-4-202(d)(4)(C) and Regulation No. 8.815, a responsive summary groups public comments into similar categories and explains why the Commission accepted or rejected the rationale of each comment.

Comments 1-8 were submitted by Ms. Ann Hines, Arkansas Oil Marketers Association

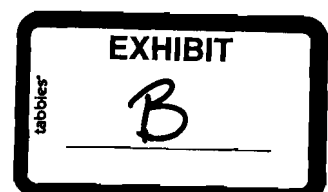
Comment 1 – 12.302(E) It is not prudent to have a request for review filed with the Advisory Committee Chairman since the Chairman is only present at the agency during Advisory Committee meetings. Instead, the Regulated Storage Tank Division Chief should receive such requests for review.

Response 1 – ADEQ agrees with this comment and a change to that effect will be made to 12.302(E).

Comment 2 – 12.302(E) Add the following to this section: “Any person requesting Advisory Committee review of a Department determination shall have their request for review placed on the agenda for the next Advisory Committee meeting which follows receipt of the request.”

Response 2 – The suggested change would conceivably require ADEQ to place a request for review on a meeting agenda even if the request was just received the morning of the meeting. Advisory Committee meeting agendas are set one week prior to each meeting to allow staff adequate time to prepare and mail the committee members’ meeting packages. ADEQ’s Legal Division must also research and evaluate any request for review prior to its being placed on an agenda. The suggested language would, again, not allow for this. The regulation will not be changed as a result of this comment.

Comment 3 – We suggest the following verbiage be placed in Regulation No. 12: “Trust fund coverage for a release can be transferred from an owner or operator to another owner or operator if the transferor executes documents satisfactory to the Department requiring the Transferor to accept responsibility for addressing the occurrence.”



Response 3 – This comment concerns an area of the regulation not addressed by the proposed rulemaking. The basis for the comment as outlined by the commenter is to enhance the “marketability” of storage tank facilities. ADEQ’s statutory and regulatory authority with regard to the trust fund is to administer it for the two-fold purpose established in 1989 by the Arkansas General Assembly: 1) to provide a financial assurance mechanism for underground storage tank owners to utilize in order to comply with their federal financial assurance requirements; 2) to provide reimbursement to eligible tank owners for the costs of cleaning up environmental contamination and paying third-party claims resulting from leaks from petroleum storage tanks. The “marketability” or non-marketability of a storage tank facility concerns a private business transaction between buyer and seller. ADEQ, as the state’s environmental regulatory agency, should not be in the position of brokering private property transactions using access to a public trust fund as leverage.

The comment proposes to add language to Regulation No. 12 that is not based on existing statutory authority or provision. Therefore, no change will be made based on this comment.

Comment 4 – Add verbiage to Regulation No. 12 that requires the Department to notify the owner or operator whenever a release is eligible for trust fund reimbursement.

Response 4 – This comment concerns an area of the regulation not addressed by the proposed rulemaking. The commenter is seeking to require ADEQ to react to each reported storage tank release with an automatic determination of trust fund eligibility for the owner. This is not practical (or even possible in most cases) for several reasons. First, a release is usually reported as “suspected”. Until a suspected release has been confirmed under the provisions of 40 CFR 280, Subpart E, trust fund eligibility cannot be determined. Confirmation or denial of a suspected release may take an indefinite period of time to achieve. Second, participation in the trust fund is voluntary – not mandatory. It is the tank owner’s responsibility to seek trust fund eligibility if he/she wishes to access the trust fund for assistance with the costs of cleanup. Third, a tank owner should know whether or not he/she has met the requirements for trust fund eligibility at the time of a release. [The eligibility requirements are: 1) at the time of the release, the owner had the tank(s) registered with ADEQ; 2) at the time of the release, the owner had paid the storage tank fees required; 3) at the time of the release, the tank owner had financial assurance for the trust fund deductible amount (\$7,500).]

Additionally, there are issues of trust fund **coverage** -- not eligibility -- that can’t be established until well after a release has occurred and been confirmed. The elements of coverage include timely reporting of the release to ADEQ; full cooperation of the owner in conducting corrective action to address the release; and the expenditure by the owner of the deductible amount (\$7,500) in reasonable, allowable and necessary costs of cleanup for the release. When ADEQ makes a “determination of trust fund eligibility” for a release, the owner’s compliance with **all** the elements discussed above for both eligibility and coverage has to be determined; hence, the impracticality of the

commenter's suggested addition to Regulation No. 12. Therefore, no change will be made based on this comment.

Comment 5 – Reg. 12.702 Add the following definition: “Remotely monitored facility means any facility that has automatic tank gauges on all underground storage tanks and pressurized line leak detectors on all product lines in operation at the facility and which are remotely monitored 24 hours a day, seven days a week.”

Response 5 – The suggested definition is overly broad and ambiguous. Some of the equipment mentioned is appropriate for installation on certain types of UST systems but not on others. Additionally, the 24/7 remote monitoring referenced is completely undefined as to location, method, frequency, etc. No change will be made based on this comment.

Comment 6 – Reg. 12.704 Add “(C) Remotely monitored facilities”.

Response 6 – ADEQ declined to include the commenter's term “remotely monitored facilities” and its associated definition. (See “Comment and Response 5.”) The commenter's suggestion is to add this type of facility to the facilities identified in Reg. 12.704 as not required to have at least one Class C operator onsite during all hours of operation. Not only is this suggestion inappropriate given the reasons outlined in ADEQ's previous response, it is also potentially in conflict with the requirements of the Arkansas Fire Prevention Code, 2007 Edition, Section 2204, “Unattended Self-Service Motor Fuel/Dispensing Facilities”. No change will be made based on this comment.

Comment 7 – Reg. 12.708 ADEQ should consider whether third-party providers could be enlisted to help administer the examination process.

Response 7 – ADEQ received federal funding to implement the new regulatory requirements associated with the Energy Policy Act of 2005, including training for operators of underground storage tanks (USTs). The RST Division is adequately staffed to provide sufficient testing opportunities and venues for UST operators to meet their training/certification deadline of August 8, 2012. Therefore, no change will be made based on this comment.

Comment 8 – Reg. 12.708 ADEQ currently certifies or otherwise utilizes third-party trainers in some of its other programs. This program should also provide that option.

Response 8 – Although listed as a comment on Reg. 12.708, “Operator Examination”, this comment does not apply to the regulatory section cited. However, in response, ADEQ's proposed language requires only that an applicant make a passing score on the operator examination in order to be certified as a trained UST operator. Training is one method an applicant may choose by which to prepare for the exam, and ADEQ is proposing to make Department-provided training available to applicants at no cost.

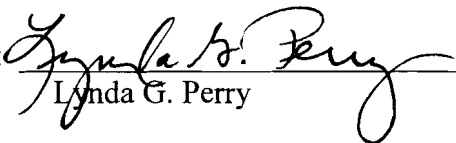
However, this would not prohibit an applicant's use of a third-party provider for UST operator training. Therefore, no change will be made based on this comment.

Comment 9 was submitted by Mr. Stephen Sturdivant, Office of Underground Storage Tanks, U.S. EPA, Region 6

Comment 9 – Reg. 12.706(A)(1) Add the word “reporting” after the word “maintenance”, and before the words “and recordkeeping”.

Response 9 – This comment correctly identifies an omission of “reporting” in the draft language as one of the required elements of knowledge for a Class B Operator. ADEQ agrees with this comment and a change will be made as follows: “Reporting and recordkeeping requirements” will be added as 12.706(A)(1)(g); “Class C operator training requirements” will be changed to 12.706(A)(1)(h). This change will conform to the comparable list in EPA’s grant guidance for operator training.

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