

September 6, 2017

Ms. Kelly Robinson
Arkansas Department of Environmental Quality
5301 Northshore Drive
North Little Rock, AR 72118

Re: Notice of Proposed Regulation Changes, Public Hearing, and Public
Comment Period – Regulation 12

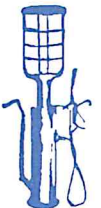
Dear Ms. Robinson:

I am writing on behalf of the Arkansas Oil Marketers Association (“AOMA”) in regards to Notice of Proposed Regulation Changes, Public Hearing, and Public Comment Period – Regulation 12. AOMA very much appreciated the Arkansas Department of Environmental Quality (“ADEQ”) holding the June 8th stakeholder meeting which provided myself and several of our members the opportunity to express views on the draft and related issues. We have appreciated the opportunity to work with the agency as it finalizes formal proposed revisions to Regulation 12.

AOMA has over 200 members which include independent petroleum marketing companies who represent wholesaler and retailers of gasoline, diesel, lubricants and renewable fuels. Associate members include companies that provide petroleum equipment and environmental services to our industry. Many of our members are small family-owned businesses and play a vital role in supplying petroleum products to various areas of our state. By necessity, both underground storage tanks (“USTs”) and aboveground storage tanks (“ASTs”) are a critical component of a typical AOMA member’s operation.

As you may know, AOMA has a long history in working with ADEQ on the Arkansas statutory and regulatory provisions addressing both USTs and ASTs. We worked with ADEQ and the Arkansas General Assembly in the late 1980s in crafting the two statutes that both provided the agency the authority to regulate USTs and created the trust fund. Further, we have continued to stay involved with legislative and regulatory changes related to these programs over the past two-and-a-half decades.

We have always appreciated ADEQ’s sensitivity to the need to protect the environment along with recognition that a substantial portion of the regulated community using USTs and ASTs are small businesses. Further, these facilities are often located in rural parts of the state and may be critical sources of petroleum products for a large area. In other words, these facilities play a vital role in many Arkansas communities.



AOMA recognizes that the changes to Regulation No. 12 are driven by the 2015 revisions to the federal UST regulations along with the Arkansas General Assembly legislation which includes:

- Act 534 (addressing UST piping secondary containment)
- Act 584 (AST registration/fees)
- Act 809 (Trust fund eligibility transfers)

AOMA would like to emphasize that it continues to support Arkansas's operation of this delegated federal UST program. We recognize the need for swift preparation by ADEQ of a rules/program package that can be approved by the United States Environmental Protection Agency ("EPA"). Therefore, we plan to provide to ADEQ any necessary assistance to facilitate revision of Regulation No. 12.

As you know, revisions to the federal UST regulations have been minor and infrequent since their original promulgation. The Arkansas UST statute has always required that Arkansas promulgate companion regulations that are neither more nor less stringent than the federal UST regulations. Further, Arkansas Pollution Control and Ecology Commission Reg. 12.104 has simply mandated that the UST regulations adopted by the EPA be incorporated by reference.

The Reg. 12.104 (Incorporation of Federal Regulations) language has simplified the Arkansas rulemaking process in regards to USTs. However, as we discussed in prior stakeholder meetings, the 2015 UST revisions offer states certain choices in terms of regulatory requirements. Therefore, AOMA believes it important to identify for ADEQ the areas in which EPA has provided the states flexibility in terms of certain UST regulatory requirements. We would like to work with ADEQ in determining how these choices can be specified in Regulation No. 12 and yet maintain the simplicity provided by Reg. 12.104 (Incorporation of Federal Regulations).

The choices discussed below were identified in a June 8th memorandum from our national association (Petroleum Marketers Association of America) ("PMAA") titled *Strategies for State Adoption of EPA 2015 UST Amendments*. An abbreviated discussion of these choices/recommendations include:

- AOMA opposes and believes ADEQ should consider adopting language that would eliminate use of the Petroleum Equipment Institute UST Standards as either part of Regulation No. 12 or as a matter of agency policy which include:
 - PEI Recommended Practice 1200 (RP-1200) protesting an inspection of UST systems
 - PEI Recommended Practice 900 (RP-900) addressing walk-through inspections
- AOMA requests that the agency consider language which states that any referenced industry standards shall not impose any additional regulatory

- requirements not included under 40 CFR Part 280 of the federal UST regulations.
- Incorporate in Regulation No. 12 the alternative test method for containment sumps that was proposed by PMAA and subsequently adopted by EPA
 - EPA recognized PMAA's alternative integrity test method for sumps used as secondary containment and interstitial monitoring for UST system piping as "equally protective of the environment"
 - PMAA notes that this test method can therefore be used in place of the RP-1200 containment sump test method referenced in the 2015 revisions
 - AOMA will provide ADEQ any necessary documentation regarding EPA's prior recent approval
 - Since ADEQ has been delegated UST program authority the State has two compliance deadline options
 - A later compliance deadline will provide the many Arkansas service and small businesses affected by the 2015 UST revisions additional time to obtain the necessary capital and/or financing to fund the necessary improvements
 - The October 13, 2021 deadline option should be adopted by ADEQ

As to the legislatively driven Regulation No. 12 revisions, AOMA has the following comments.

First, the revisions to Regulation No. 12 that correspond to Act 534 appear to accurately track that legislation. ADEQ had previously asked for our input as to the legislative choice in terms of secondary containment. As a result, we support the relevant language.

Second, significant revisions to Regulation No. 12 will need to be made to the draft revisions to comply with Act 584. The Arkansas Environmental Federation ("AEF") has submitted comments providing the necessary changes. AOMA supports these proposed changes and they are attached to our comments. Again, we believe that Regulation No. 12 should be revised to reflect Act 584's mandates.

In summary, Act 584 eliminated any mandatory registration or fee requirements for ASTs. Instead, it provided that the registration and fee requirements would only be applicable if an AST chose to participate in the trust fund. The elimination of mandatory fee and payment requirements also meant that the AST delivery and receipt prohibitions found in Chapter 2 would logically be eliminated.

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Our reading of the draft revisions indicates that the only change to Chapter 2 is the adding of “F” which provides owners or operators of ASTs the option of registration to access the trust fund. It does not appear that the provisions of Chapter 2 mandating AST registration/fee payment have been removed. Further, the provisions prohibiting sale or receipt of motor fuel to such ASTs also remain in Chapter 2. This is at odds with the legislation and necessary revisions must be made. We believe this was simply an agency oversight.

Finally, in regards to Regulation No. 12, a number of AOMA members have raised an issue that we would like to see addressed as soon as possible. We would be happy to work with ADEQ in drafting appropriate language.

As you know, the Chapter 2 UST requirements mandate registration certification (with appropriate color sticker for the current year) prominently displayed at the location. It is our understanding that transport companies rely on that certification when delivering motor fuel to that location.

AOMA understands that ADEQ takes the position that if there is a change in ownership in the USTs/property the current certificate is invalid. Further, we understand that the transport company may be subject to penalties for delivering motor fuel into an unregistered UST. Similarly, it is our understanding that until the new certificate (with the new owner) is issued and prominently displayed at the site, no deliveries may be made. AOMA respectfully suggests that Chapter 2 should be revised to provide a “Safe Harbor” of some type for a valid certification being posted.

AOMA has serious concerns about penalties being imposed upon marketers or transportation companies that deliver motor fuel to a location if it has a current UST certificate at the site or the ADEQ website identifies the UST fees as having been paid (i.e., current).

We would suggest that Chapter 2 be revised to provide a grace period for filing registration paperwork. A 30-day grace period for the UST seller and buyer to submit the relevant paperwork and receive the new registration certificate should therefore be incorporated into Chapter 2. Further, penalties for failing to timely file a change of registration should not be imposed upon transportation companies or a marketer supplying the fuel in such limited circumstances. Instead, the only parties that should be penalized during this limited period would be the seller or buyer of the UST.

AOMA also would like to address three issues that may not necessarily be incorporated into Regulation No. 12. We believe one or more other commenters are putting forth these recommendations. These issues need to be considered as ADEQ begins implementation of the 2015 UST revisions. They include:

Reuse of Water in Hydrostatic Testing

Under the topic, “UST Sump Test Water Characterization And Disposal” within the EPA “Questions and Answers About the 2015 UST Regulation – As of May 2017 (“Q&A”), EPA provides multiple references indicating the reuse of test water is permissible. We support other commenters’ recommendation of the reuse of test water to support conservation goals, reduce (potentially hazardous) waste generation, and reduce the burden of increased costs on the industry. We recommend as an option organizations work with third party service providers to develop a testing approach incorporating a “milk-run” schedule in which it would only service their organization during the milk-run; thereby, eliminating the potential for cross contamination between fuel stations from separate companies. In this approach, test water will be introduced to sumps for site testing, and at the conclusion of the test, the water will be placed into a mobile tank and transported to the next test site.

Test Water Management

EPA also provides in the Q&A additional direction under the “UST Sump Test Water Characterization and Disposal” topic that test water can be cleaned or filtered while the water is being used/reused to test multiple sumps. Specifically, the Q&A states:

“A testing contractor or UST facility owner and operator could potentially reuse the water over and over again, especially if the test water is filtered in between uses to remove any free or dissolved petroleum. When the tester decides not to reuse the water, it then becomes a waste, must be characterized, and either properly disposed or determined if it can be reclaimed.”

We support other commenters that recommend the approval of filtration, absorption, or enzymatic cleaning agents to remove and/or reduce the petroleum constituents to further prolong the test water life cycle. They also note and we support their analysis that EPA has concluded that a waste determination would not need to be made until the completion of the testing cycle. The testing contractor who determines when to remove the water from service should be considered the “generator” of the test water.

Alternative Test Methods

Other commenters note that in the Q&A topic “Containment Sump – Alternative Test Procedures,” EPA acknowledges that requiring UST owners to test sumps at 4 inches above the highest penetration as outlined in PEI RP1200 “*may create unusual challenges and unintended consequences.*” They note that EPA provides an example of a site using liquid sensors in the sumps along with positive shutdown to illustrate an acceptable alternative test method. In this example, the agency provides guidance that an acceptable test measure would be to fill the sump to the level which would activate the sensor.

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AOMA also agrees with this position, and recommends ADEQ approve this test method to conserve water and significantly reduce waste.

Finally, AOMA is concerned that the 2015 UST revisions will require activities that generate greater amounts of water that may be regulated. The previous example of hydrostatic testing is one example. We would respectfully request the initiation of a stakeholder process with ADEQ Water and UST personnel to explore creative options for addressing the disposition options. Temporary, General NPDES or authorizations need to be discussed. Because it will take some time to consider alternatives and the length of the permitting process AOMA believes this discussion should start in the near future.

AOMA recognizes that several of these comments are not germane to the proposed revisions to Regulation 12. Nevertheless, we believe that these suggested action items are time sensitive and discussions should begin in the near future on how to address these issues.

Thank you again for the opportunity to submit these comments.

Sincerely,



Steve Ferren
Executive Vice President
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